INTERTANKO intervention for FIRS/OPTS engagement

20 November 2023

INTERTANKO represents over 180 companies that own, operate and manage over 4,000 ocean-going crude, chemical, product and gas tankers around the globe and our intervention is therefore to summarise the tanker industry's general position and concerns.

In May of this year, some of our Members drew our attention to letters that they had received from the Nigerian Federal Inland Revenue Service (FIRS) in relation to a Tax Compliance Review Exercise (2010 – 2019). The letters alleged that named vessels had traded to Nigeria between 2010-2019 and had not filed Companies Income Tax (CIT) returns nor paid taxes to the Nigerian government. The letters contained details of the vessels and a summary of the alleged liability payable for listed years, said to pertain to total gross freight, tax payable on this freight of 6%, a penalty of 10% and interest at 19%. The letters also stated that failure to make payment would be classified as *"tax evasion, which is a criminal offence, punishable in accordance with the provisions of the extant laws in Nigeria and your country of jurisdiction"*.

You can appreciate our Members' concerns in receiving such letters about a tax that they had no knowledge of and what the consequences would be for their vessels calling in Nigeria in the future. And with little information in the letter about how the tax was calculated or what to do if the tax was not due apart from to say that follow up assessment notices would be sent, INTERTANKO immediately opened a channel with the FIRS and in good faith sought clarity on the taxes alleged to be due.

In order for tax to be paid, it is reasonable to expect full and proper notification prior to implementation and before the process can be properly considered. There was no proper notification to the international community prior to implementation of this tax.

The FIRS have said that there was no need for notification prior to implementation and the international community should have known about the freight tax. But given that thousands of vessels appear to have been affected, there is a clear issue and disconnect in communications between the Nigerian tax authorities and the international oil and gas shipping industry as this tax has taken both tanker owners and charterers by surprise. And, in fact, taken non-tanker owners (those in the bulk trade) and charterers by surprise too.

We have noted comments that some non-resident companies have been aware of the tax and this appears to be a reference to liner operators. Perhaps a shipping service that operates to a timed schedule, visiting a fixed loop of ports, will be aware of the tax of a country that they regularly visit, and therefore have the opportunity to factor this tax into their negotiations with their counterparties to ensure the commercial viability of their trade. But this is not how the tanker market works.

Under a time charterparty, the charterer hires the vessel for a fixed period, which can be a few months to several years, and it will be the charterers who have control over the vessel's employment. The charterer is responsible for finding and arranging cargo for the vessel and planning its route and schedule in return for the payment of hire of the vessel, calculated at a daily rate and payable in advance. The owner may therefore have no knowledge of the vessel's next destination until it is given the instruction to sail there and will be contractually obliged to do so providing it's within the agreed trading limits specified in the charterparty.

The owners' income is therefore from hiring out the vessel and not derived from lifting freight. So as a tax on freight this should more appropriately be addressed to Charterers or those operating on a voyage charter basis. Instead, it appears that letters of intent have been sent to vessel owners, as the easily identifiable party of vessels that called in Nigeria between 2010-2019 who are expected to engage with the FIRS even if they have no tax liability and to inform the FIRS of who their charterers were at the relevant time.

However, we are now aware that INTERTANKO Members who have communicated with the FIRS recently have experienced a less than cooperative reaction from the agency. As such, Members should not expect a reasonable and judicious response from the FIRS despite intentions to cooperate.

Where our Members have operated on a voyage charter basis and earned freight, they have not profited in the non-payment of any taxes alleged to be due. Had there been proper notification prior to implementation of the tax, Owners would have had the opportunity to factor this tax into their negotiations with their Charterers to ensure the commercial viability of their charterparties.

Instead, Owners now face costly, multi-jurisdictional recourse actions which may be time barred against Charterers, who may no longer be trading and there will be circumstances where Owners simply do not have the funds to pay.

In addition, Owners now also face the time and costs involved in challenging the demands with the FIRS: on whether any tax is due, on the amounts alleged and the rates claimed.

It is still not clear what is due in relation to the freight tax. The FIRS explained how they reached the rate of 6% which assumes a net profit of 20% on which there is a 30% tax. A 30% tax cannot be considered, per section 13 of CITA, to be a fair percentage of the profits to be deemed to be derived from Nigeria but in any event such wording does not provide any transparency on what is actually due. We also understand that there is no basis for imposing penalty and interest on tax until it has become final and conclusive.

It is also not transparent, whether the FIRS consider any non-freight tax is due. We are aware that there is the NIMASA levy (paid to NIMASA), a withholding tax (paid to the FIRS) and now this exercise pertains to a tax in relation to freight (paid to the FIRS). If owners are not liable for freight tax, will they suddenly discover that the FIRS consider that they are liable for some other form of tax if they engage with the FIRS? It seems there are a multiplicity of taxes to multiple revenue collection agencies all due at different points in time and from different parties all for the one vessel on the one trip that it has loaded cargo in Nigeria.

We are aware of the formation of the new Presidential Committee on Fiscal Policy & Tax Reforms and the call for submissions of memoranda on matters which fall under the Committee's terms of reference including revenue Transformation and we echo the Committee's wording on Nigeria's fragmented, rudimentary and complex tax system.

The unintended consequences of this tax exercise are that our Members are concerned about their exposure to taxes for which there was no proper notification prior to implementation and our Members now have grave reservations about the consequences of calling in Nigeria, particularly from 1 January 2024, including the risk of arrest or detention.

This uncertainty coupled with the new mandatory requirements for non-resident companies to present evidence of income tax filing for the preceding year, the provision of tax clearance certificates showing income taxes paid for the 3 preceding tax years and the requirement to register their TIN with Nigerian tax authorities in order to trade in Nigeria going forwards means that some owners consider, due to the increasing complexity of trading in Nigeria, they have no option but to avoid calling in the region until such time as there is clear guidance on a practicable tax regime from the Nigerian authorities.

We are aware that this is a position being taken by both owners in receipt of letters of intent and those who have not received them. Another unintended consequence of this will be the impacting on Nigerian business and economic growth.

INTERTANKO's position therefore remains that given the lack of prior notification and clarity, the retrospective Tax Compliance Review Exercise should be dispensed with. The Exercise has achieved the result of drawing to the international shipping community's attention that the FIRS consider that some form of tax is due from non-resident companies and INTERTANKO instead requests that the FIRS now focuses on tax compliance going forwards from a set date, providing clarity on who it's due from, what is due and any other requirements.

Today's dialogue needs to focus on how to deal with this issue going forwards rather than retrospectively. We therefore welcome the opportunity to participate in the meeting and look forward to a constructive outcome for all parties.