

Court Declares Nigerian Government's Collection of Value Added Tax, Personal Income Tax, and others as Illegal

The Federal High Court sitting in Port Harcourt has declared the Rivers State Government, and not the Federal Inland Revenue Services (FIRS) as the rightful tax agency to preside over the collection of Value Added Tax (VAT) and Personal Income Tax (PIT) in the State.

The suit (FHC/PH/CS/149/2020) between the Attorney-General for Rivers State and Federal Inland Revenue Service (FIRS) as the first defendant and the Attorney General of the Federation (AGF), Abubakar Malami, as the second defendant, was won by the State government.

The court ruled in favor of Rivers State as the rightful arm to receive personal income tax and VAT originating from the state. The presiding judge, Stephen Pam, ruled that the Nigerian government's constitutional powers did not include VAT collection but those items in number 58 and 59 of the Exclusive Legislative List.

The Judge also issued an order of perpetual injunction restraining the FIRS and the AGF from collecting, demanding, coercing, and intimidating residents of Rivers State to pay VAT and PIT to the FIRS.

The court stated there was no constitutional basis for the FIRS to demand for and collect VAT, Education Tax, Technology Levy and Withholding Tax from any state in Nigeria as the constitutional powers and competence of the Federal Government was limited to taxation of incomes, profits and capital gains, which did not include VAT or any other species of sales or levy other than those specifically mentioned in items 58 and 59 of the Exclusive Legislative List of the Constitution.

The judge further dismissed the defendant's plea for the case to be transferred to the Court of Appeal for interpretation on the grounds that hearing the case was within the court's jurisdiction.

WYZE Comments:

To fully understand the basis of the Federal High Court's ruling, we take a closer look at sections 3 and 4 of the constitution which empowers the National Assembly to legislate on matters contained in the exclusive legislative list and certain items under the concurrent legislative list.

Furthermore, the 2nd Schedule to the constitution, items 7 & 8 of Part II (concurrent legislative list) provides that the National Assembly in exercise of its power to impose tax or duty on persons other than companies, may prescribe that such tax or duty be collected or administered by the State.

The Federal High Court ruled that the Rivers State Government and not the FIRS is entitled to collect VAT generated in the State. This is on the grounds that only the State is constitutionally entitled to impose taxes in its territory of the nature of consumption or sales tax.

Prior to now, a previous Supreme Court judgement had ruled that VAT covered the field (of consumption tax) and therefore a State cannot impose a consumption tax in addition to VAT. This means any state intending to impose VAT will have to repeal its existing consumption tax.

This judgement may also have roll over implications for taxes collectible by Local Governments which are currently administered by states as well as the amendment via Finance Act 2020 which introduced electronic money transfer levy as part of stamp duties, among others. In addition, difficulties may arise for businesses including SMEs who may have to deal with multiple tax authorities for VAT purposes and consequently a decline in Nigeria's ease of paying taxes and doing business ranking.

Meanwhile, the FIRS has since lodged an appeal against the judgement of the Federal High Court. The FIRS also sought an injunction pending appeal and as Stay of Execution of the Judgement. Therefore, things may remain as they are in the meantime till the appeal process or options are exhausted. If the judgement is implemented or upheld on appeal, it will apply to other states and not just Rivers.

State. This means that each state would administer VAT differently within their territory. By implication, FIRS will administer VAT within the Federal Capital Territory (FCT) while Nigeria Customs will continue to collect import VAT on all international trade.

It will be necessary to amend the Constitution to address the current challenges while retaining the positives under the current system. For instance, states will have to rely on the federal government to enforce the Significant Economic Presence requirement for global tech companies.

We urge the general public to watch this case closely as we might be on the verge of witnessing yet another change to VAT landscape as we currently know it.

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