

A REVIEW OF THE POWERS OF THE FEDERAL INLAND REVENUE SERVICE VIS-À-VIS RIGHTS TO PRIVACY AND INFORMATION

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Abstract

On the 31st day of May, 2021 the Federal High Court in Nigeria issued a practice direction that is described as The Federal High Court of Nigeria (Federal Inland Revenue Service) Practice Direction, 2021 with 1st day of June, 2021 as its effective date of take-off. Since the publication was released, multiple debates on the constitutionality and legality of some of the provisions of the practice direction continue to generate concerns among taxpayers and the general public. This paper is an examination of the constitutionality or otherwise of the rights to privacy of taxpayers and issues regarding taxes in Nigeria. The paper made further examination of the powers of the FIRS to access tax payers records and the challenges of tax assessment by taxpayers, possible rights of the taxpayers and the responsibility of FIRS as the authorized revenue collecting body of the Federal Government of Nigeria among other related issues. The paper adopts the doctrinal methodology through the X-ray of primary and secondary sources with available data in the area. This paper finds that probing, searching and revenue generation concepts for proper tax administration of Nigeria and for the purpose of generating revenue and increasing the internally generated

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revenue of the nation and the rights to privacy of taxpayers and the rights of FIRS to administer tax in Nigeria needs to be regulated by the courts.

Keywords: Rights, Privacy, Revenue, Access and Information

1.0 Introduction

Tax generally is said to be a compulsory payment levied by government on tax payers in a particular place, it can also mean, a compulsory levy on individual, corporate organisation and transactions. On the other hand, data protection is a strategy in which an organization put in place to protect their data and information. In the same vein, right to privacy is the right of an individual to maintain the secrecy of their personal information, activities and physical space which has no public interest, the right is basically for people to live in a society where unwanted disturbances are eliminated or reduced minimum. Right to privacy can also mean personal information that are of non-public use. In the context of taxation, the Nigerian government and tax authorities have the responsibility to gather and process personal information to administer tax laws effectively¹. However, it is essential to strike a balance between the need for information gathering and the protection of individuals' privacy rights. The Federal Inland Revenue Service (FIRS) is responsible for administering VAT in Nigeria and collects information from registered taxpayers. The information collected includes details about a taxpayer's business operations, transactions, and financial records. The FIRS is required to keep this information confidential and use it only for tax purposes.

Under Nigerian law, individuals have a right to privacy, which is protected by the Constitution² and other laws. The FIRS is required to adhere to these

¹ Sarah Sanni, Nigeria: Basic Principles of Taxation in Nigeria. <https://www.mondaq.com/nigeria/tax-authorities/870372/basic-principles-of-taxation-in-nigeria> accessed 11 May 2023.

² Section 37 (n2)

privacy laws when collecting and processing taxpayer information. The FIRS cannot disclose taxpayer information to third parties without the taxpayer's consent or a court order.

The collection and processing of personal information for VAT purposes in Nigeria is governed by the principles of privacy and data protection enshrined in the Nigerian Constitution and other relevant legislation. These include the Nigerian Data Protection Regulation (NDPR)³ and the provisions of the Federal Inland Revenue Service (Establishment) Act and the Value Added Tax Act.

When it comes to VAT, tax authorities, such as the Federal Inland Revenue Service (FIRS), require certain information from taxpayers to determine their VAT liabilities accurately⁴. This may include business records, transactional details, financial statements, and other relevant information related to the supply of goods or services. The purpose of gathering this information is to ensure compliance with VAT obligations and to prevent tax evasion or fraud.

However, tax authorities must ensure that the collection and processing of personal information for VAT purposes are done in accordance with privacy and data protection principles. This includes the principles of necessity, proportionality, and consent. Tax authorities should only collect and process the minimum amount of information required for VAT

³<https://www.pwc.com/ng/en/publications/data-protection-bill-2020.html#:~:text=Download%20The%20NDPR%20and%20the,guaranteed%20under%20the%20Nigerian%20Constitution>. Accessed 11 May 2023.

⁴“Nigeria’s Tax Landscape: An Overview,” KPMG Nigeria (2018): <https://home.kpmg/ng/en/home/insights/2018/11/nigeria-tax-landscape-overview.html>

administration and should not exceed the scope necessary to achieve legitimate tax objectives.⁵

Additionally, taxpayers' consent should be obtained before collecting and processing their personal information, except where permitted by law. Taxpayers have the right to know what information is being collected, how it will be used, and their rights regarding the handling of their personal data.

Tax authorities are also responsible for ensuring the security and confidentiality of the information they collect. Appropriate measures should be in place to safeguard taxpayer information from unauthorized access, disclosure, or misuse. This includes implementing robust data protection and cyber security measures to protect against data breaches and other security risks.

Furthermore, taxpayers have the right to access and correct their personal information held by tax authorities. They should have the ability to review their VAT records, request amendments if necessary, and have a mechanism for redress if their privacy rights have been violated.

To protect privacy and prevent unauthorized access or disclosure of taxpayer information, tax authorities in Nigeria must implement appropriate data protection and security measures. This includes ensuring the confidentiality, integrity, and availability of taxpayer information, as well as implementing measures to safeguard against data breaches and cyber threats.

In cases where tax authorities share taxpayer information with other government agencies or foreign tax authorities, adequate safeguards should be in place to protect individuals' privacy rights. Information sharing should

⁵“Nigeria’s National Tax Policy: A Review of the Value Added Tax,” SSRN Electronic Journal (2017): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2921974. Accessed 11 May 2023.

be based on legal frameworks and bilateral agreements that ensure the confidentiality and proper use of shared information.⁶

Furthermore, taxpayers have the right to access and correct their personal information held by tax authorities. They should have the ability to review their tax records, request amendments if necessary, and have recourse if their privacy rights have been violated.

To ensure that the FIRS complies with privacy laws, the Nigerian government has established the National Information Technology Development Agency (NITDA)⁷ to oversee data protection and privacy issues. The NITDA has issued guidelines for the protection of personal data in Nigeria, which include requirements for data controllers to obtain consent before collecting personal information and to implement appropriate security measures to protect this data.⁸

It is worth noting that in 2021, the Nigerian government enacted the Finance Act⁹, which introduced significant changes to the VAT system in Nigeria. These changes included an increase in the VAT rate and the expansion of the VAT net to cover more goods and services. With these changes, there may be an increased need for information gathering and processing in VAT administration. Therefore, it becomes even more critical to ensure that privacy rights are protected throughout the VAT process. There are several other aspects of privacy and information gathering in the Nigeria VAT systems that are worth exploring further some of these are:

⁶ Guidelines for Data Protection in Nigeria: <https://www.dataguidance.com/notes/nigeria-data-protection-overview> accessed 11 May 2023.

⁷ National Information Technology Development Agency (NITDA): <https://nitda.gov.ng/> accessed 11 May 2023.

⁸“Privacy and Data Protection Laws in Nigeria,” TechPoint Africa (2021): <https://techpoint.africa/2021/02/23/privacy-and-data-protection-laws-in-nigeria/> accessed 11 May 2023.

⁹(n152)

- i. Security of taxpayer information: The FIRS is responsible for ensuring that the information it collects from taxpayers is stored securely and protected from unauthorized access or disclosure. This can be challenging in a world where cyber threats are constantly evolving and becoming more sophisticated. To address this challenge, the FIRS has invested in information security measures, including firewalls, encryption, and intrusion detection systems. The agency also conducts regular security audits to identify vulnerabilities and improve its security posture.
- ii. Transparency and accountability. While the FIRS is required to keep taxpayer information confidential, it is also accountable to the public for its use of that information. To promote accountability, the FIRS publish an annual report that provides detailed information about its activities and finances. This report includes information about the number of taxpayers registered, the amount of VAT collected, and the agency's expenditures.
- iii. The right to appeal tax assessments and the right to receive timely, accurate, and clear information about their tax obligations. The FIRS is required to respect these rights and provide taxpayers with the support and assistance they need to comply with tax laws and regulations.

Overall, the Nigerian VAT system seeks to balance the need for information gathering to enforce tax compliance with the rights of individuals to privacy and data protection. The FIRS is responsible for ensuring that information is collected and stored securely, and that taxpayer rights are respected. The NITDA provides oversight and guidance to ensure that personal data is protected. Ultimately, this framework is designed to promote compliance with tax laws and regulations while preserving the privacy and data protection rights of Nigerian citizens.¹⁰

¹⁰“Nigeria’s New Tax Amnesty Programme: Is It the Last Chance for Tax Offenders?” Tax Law Review (2017): <https://www.taxlawreview.com/nigerias-new-tax-amnesty-programme-is-it-the-last-chance-for-tax-offenders/> accessed 20 May 2023.

In essence, privacy and information gathering are important considerations in the administration of VAT in Nigeria. Tax authorities, such as the FIRS, must balance the need for information gathering with the protection of privacy rights. Adherence to privacy principles, implementation of data protection measures, and respect for individuals' rights promote transparency, trust, and compliance within the VAT system in Nigeria.

2.0 The Role of the Judiciary in Tax Regulation

The judiciary plays a crucial role in interpreting the Constitution in Nigeria. As the third arm of government, the judiciary is responsible for upholding the rule of law and ensuring that the Constitution is followed and respected. The judiciary is empowered to interpret the Constitution, as well as other laws and legal documents, and to provide guidance and clarification on their meaning and application.¹¹

The Constitution of Nigeria is the supreme law of the land, and all other laws and regulations must be consistent with its provisions or such other law shall be to the extent of its inconsistency be rendered void.¹² The judiciary plays an important role in ensuring that this standard is upheld, by resolving disputes and providing guidance on the interpretation of constitutional provisions. The judiciary also has the power to strike down laws or actions that are found to be inconsistent with the Constitution, a power known as judicial review.

The role of the judiciary in interpreting the Constitution is particularly important in Nigeria, which is a federal system with a complex legal framework. The Constitution provides for a separation of powers between the federal government and the state governments, and between the different branches of government. The judiciary is responsible for ensuring

¹¹ Section 6 and chapter VII (n2)

¹²(n163)

that these divisions are respected, and that the Constitution is applied consistently across all levels of government.

In addition to interpreting the Constitution, the judiciary is also responsible for enforcing it. This includes hearing cases and disputes related to constitutional provisions, and adjudicating on the legality of actions taken by government officials or other individuals. The judiciary also has the power to issue injunctions and other orders to enforce constitutional rights and protections.

In Nigeria, judicial interpretations of taxation clauses play a significant role in shaping the legal framework for taxation. Court decisions and precedents help clarify the scope and limitations of taxation powers, establish principles for constitutional compliance in tax legislation, and ensure fairness and consistency in the tax system.

Nigerian courts interpret the constitutional provisions related to taxation to determine the extent of the federal and state governments' authority, as well as any accompanying limitations. Judicial interpretations also provide guidance on constitutional issues such as the definition of taxable events, the determination of tax bases, and the permissible scope of exemptions or deductions.¹³

These judicial interpretations are essential for maintaining a consistent and predictable tax system in Nigeria, ensuring that tax laws adhere to constitutional requirements and protecting taxpayers' rights. Judicial review of tax legislation helps strike a balance between the power to tax and the limitations imposed by the constitution, promoting fairness, accountability, and the rule of law in the Nigerian tax system.

¹³ Abiola O. Sanni, *Interpretation of Tax Statutes: An Examination of The Supreme Court Approach* (Nigerian Institute of Advanced Legal Studies. 2006)

The VAT Act is a federal law that governs the administration and collection of VAT in the country. It sets out the legal framework for VAT registration, filing and payment, and the enforcement of VAT laws and regulations.¹⁴

The judiciary's role in interpreting the VAT Act is particularly important given the complexity of the law and the potential for disputes and legal challenges to arise. For example, there may be disputes over the interpretation of specific provisions of the Act, or challenges to the legality of actions taken by the Federal Inland Revenue Service (FIRS) or other tax authorities in enforcing VAT laws and regulations.

The judiciary has the power to resolve these disputes and provide guidance on the interpretation and application of the VAT Act. This includes hearing cases related to VAT, adjudicating on the legality of actions taken by tax authorities, and providing guidance on the meaning and scope of specific provisions of the Act.¹⁵

In recent years, there have been a number of high-profile cases related to VAT in Nigeria, which have highlighted the importance of the judiciary's role in interpreting and enforcing the VAT Act. For example, in 2020, a legal challenge was brought against the FIRS over the authority of state governments to collect VAT. The case ultimately resulted in a ruling by the Federal High Court that states had the power to collect VAT, rather than the FIRS.

The judiciary's role in interpreting the VAT Act extends to both civil and criminal matters. This includes the resolution of disputes related to VAT

¹⁴<https://www.oecd.org/tax/consumption/vat-digital-toolkit-for-asia-pacific.pdf> accessed 1 June 2023.

¹⁵<https://www.pwc.com/ng/en/assets/pdf/tax-controversy-and-dispute-resolution.pdf> accessed 1 June 2023.

registration, filing and payment, as well as cases involving VAT fraud, evasion, and non-compliance.¹⁶

The judiciary's interpretation of the VAT Act can have significant implications for businesses and individuals operating in Nigeria¹⁷. For example, a ruling on the legality of a specific VAT provision could impact the tax liability of businesses in a particular industry or sector.

Given the complexity of the VAT Act, the judiciary may rely on a range of legal principles and tools to interpret its provisions. This may include statutory interpretation, case law, and legal precedent from other jurisdictions¹⁸.

The judiciary's role in enforcing the VAT Act is closely tied to its broader role in upholding the rule of law and ensuring that the legal system is fair and effective. This includes ensuring that tax authorities act within the bounds of their legal authority and that taxpayers are treated fairly and equitably.

The judiciary's interpretation and enforcement of the VAT Act can also have implications for broader economic and policy objectives. For example, changes to the VAT regime or legal challenges to the VAT Act could impact government revenue, economic growth, and the overall business environment in Nigeria.

Overall, the role of the judiciary in interpreting and enforcing the VAT Act in Nigeria is critical to ensuring that the law is applied consistently and

¹⁶Dauda Adeyemi Ariyoosu, 'An Overview of Legal Regulation and Institutional Framework for the Nigerian Tax Policy and Administration' *KIU Journal of Social Sciences*, (2016) (2)(2)

¹⁷ (n25)

¹⁸Richard K. Gordon, *Law of Tax Administration and Procedure 'Tax Law Design and Drafting'*(1996) (1)(4)

fairly, and that disputes related to VAT are resolved in a timely and effective manner. While there may be challenges and controversies associated with this role, the judiciary remains an essential institution in the Nigerian legal system.

This can be seen in the case of *Attorney General of Rivers State v Federal Inland Revenue Service (FIRS)*¹⁹ is particularly significant, as it resulted in a major shift in the administration of VAT in Nigeria. Prior to the ruling, the FIRS had been responsible for the collection of VAT across the country. However, the ruling established those states had the power to collect VAT instead, which has significant implications for the distribution of revenue between the federal and state governments.

Flowing from the above, the summary of findings in this piece of work and the deduction can be reflected in the following ways: That the Federal Inland Revenue Service is a federal government owned agency that is responsible for the collection, of tax across Nigeria, it also follows that they in the performance of their duties carry out or gathers information via various ways so to enable them carry-out their primary responsibilities as provided in the Act establishing the Federal Inland Revenue Service and all that appertain to the operation of the service. The Federal Inland Revenue Service generally collects, manage and use personal information for the purpose of filling relevant documents and information belonging to tax payers, the FIRS also gathers information that tax payers provide for the purpose of registration, fillings and many other things, the FIRS may use information provided by tax payers for either or all of the following: personalized the their websites, administer their website, enable tax payers access site services provided by the FIRS, collect payments from tax payers and to also publish information among many others.

¹⁹ (n62)

In situation where the FIRS discloses or release such received personal information to third parties like agents and other sub-contractors, such agents are expected to use such personal information by following the laid down terms and conditions guiding personal information as contained in the privacy policy statement of the FIRS. It is expected that the FIRS should reasonably take care and protect the personal information received by them from tax payers, FIRS is expected to save securely on their server all information that are personal that are received by them. FIRS in many occasions are observed not to protect personal information received from tax payers thereby indiscriminately or illegally sharing same without respect to the terms and conations of the supply of the same information.

3.0 Recommendations

Data privacy and protection is basically an issue of global concern, the importance of data privacy is such that the rights will continue to expand and evolve across the world due to societal needs and concerns. Government at various level should make laws that seek to regulate data privacy of others who do not want their issues in the public, the government should also ensure that violators of others right to privacy are punished or made to pay compensation to those whose rights are violated. Due to insufficient laws and rules on data protection in Nigeria and before the passing into the law the Personal Information and Data Protection Bill 2015, Nigeria will continue to suffer insufficient laws concerning this very important area of our lives, the various states and the Federal Capital Territory should make laws that protect privacy and finally the government should create more awareness about the negative effects of violating people's privacy.

4.0 Conclusion

Regulatory procedures require that practice procedures are put in place for proper administrative regulation intended to drive and guide procedure of the Court and that of the FIRS for the court, FIRS and taxpayers that may be aggrieved. It is understandable that the FIRS practice direction appears

to be very good for the purpose of helping in smooth adjudication of tax disagreements in Nigeria, it also raises concerns among taxpayers and the general public about the privacy and security of taxpayers' information as it regards security and sensitivity of personal data of taxpayers. The case of *Registered Trustees of Hotel Owners and Managers Association of Lagos v Attorney General of Lagos State*²⁰ is an example of a legal challenge to a state-level VAT law. The ruling in this case clarified the limits of state power to impose consumption taxes, and provided important guidance on the interpretation of the VAT Act.

*Abia State Board of Internal Revenue and Federal Board of Inland Revenue v Diamond Bank Plc.*²¹ this case involved a dispute over the VAT liability of Diamond Bank Plc. The ruling clarified the legal requirements for businesses to register for VAT, and provided guidance on the calculation of VAT liabilities.

²⁰(n 161)

²¹ (SC 205 of 1964) [1964] NGSC 3