

Federal High Court upholds Consumption Tax and limits application of Value Added Tax in Lagos State

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Legal basis

The Nigerian Constitution contains Exclusive and Concurrent lists. While the Federal Government (“FG”) has exclusive powers to legislate over items on the Exclusive list, both FG and State governments can legislate over items contained in the Concurrent list. However, the FG (i.e. the National Assembly) has powers to legislate over collection or administration of tax by States, for example the Personal Income Tax Act which is a Federal Law but administered by State authorities. In this

regard, any subsequent State law must be consistent with any existing Federal law on such item.

Any matter not contained in either list is deemed to be a residual matter over which the States have exclusive competence to legislate. Neither the Exclusive nor Concurrent lists expressly grant powers to the FG to legislate over consumption taxes.

Background

In 2015, the Taxes and Levies (Approved List for Collection) Act, which is a law of the National Assembly, was amended to include ‘Hotel, Restaurant or Event Centre Consumption Tax’ as one of the taxes States can impose and collect. Consequently, some States, including Lagos, introduced the Hotel Occupancy and Restaurant Consumption Tax Law (Consumption Tax Law). Sometime in 2018, Lagos State introduced the Hotel Occupancy and Restaurant Consumption (Fiscalisation) Regulations 2017 (Regulations) which granted Lagos State powers to install electronic fiscal devices for the purpose of monitoring the tax at the point of sale to customers.

The Registered Trustees of Hotel Owners and Managers Association of Lagos challenged the Lagos State law and the Regulations on the ground that Value Added Tax (VAT) covered the field; that is, it is the only valid consumption tax applicable across Nigeria.

In May 2018, the Federal High Court issued an Order restraining the Lagos State Government from enforcing both the Consumption Tax Law and Regulations, pending the determination of the suit. See our alert [here](#). Subsequently, the Court varied its Order and allowed Lagos State continue enforcing the Consumption Tax Law but not the Fiscalisation Regulations. See our alert [here](#).

Analysis of the decision

In Registered Trustees of Hotel Owners and Managers Association of Lagos v. Attorney General of Lagos State and Federal Inland Revenue Service, the taxpayers asked the Federal High Court the following questions:

- Whether VAT has covered the field of taxing goods and services including those consumed in hotels, restaurants and event centres in Lagos State?
- Whether the Regulations are operative since VAT has covered the field? and
- Whether the FIRS is not the only lawful agency allowed to administer consumption tax on goods and services in hotels, restaurants and event centres in Lagos State.



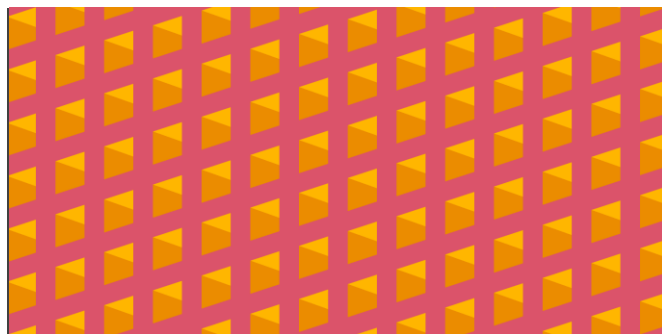
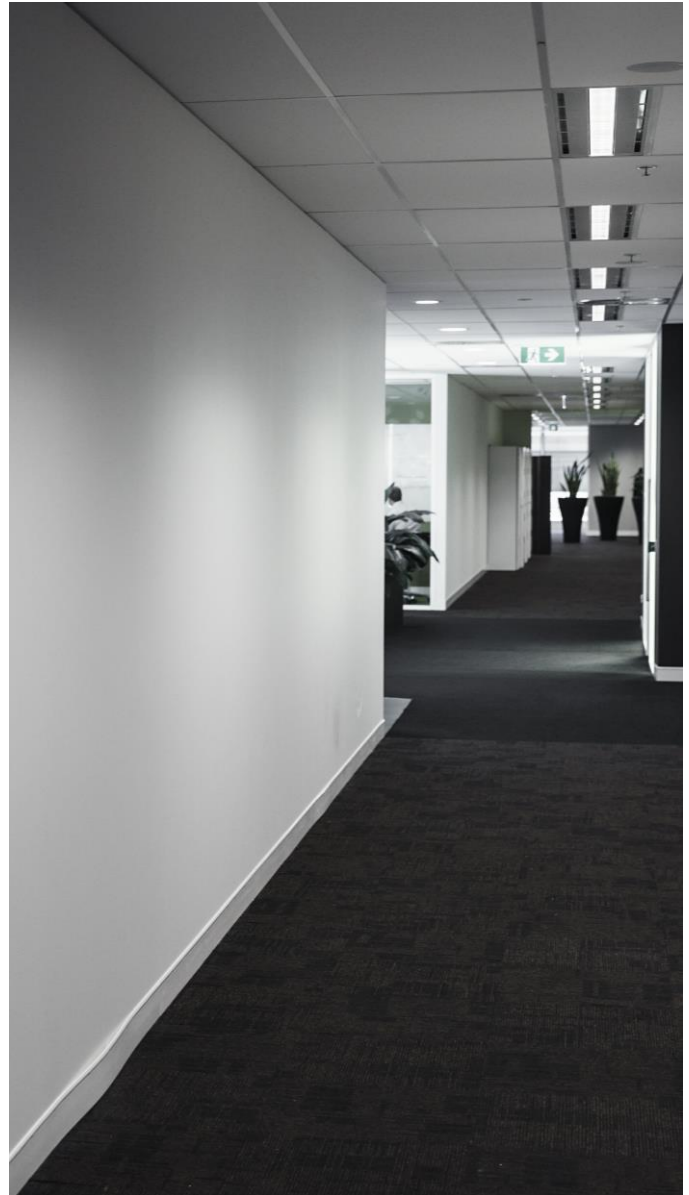
The Court held that VAT did not cover the field given that the Constitution did not vest powers on the FG to legislate over consumption tax on individuals or goods and services consumed in hotels, restaurants and event centres. Therefore, the power to impose consumption tax was a residual power within the exclusive competence of the States.

The court also held that VAT was null and void because it is not in line with the Constitution. The Court also held that the Tax and Levies (Approved List of Collection etc.) Act (TLA), being a subsequent law to the VAT Act, had impliedly repealed the provisions of the VAT Act, particularly the power to impose consumption tax. The Court concluded by restraining FIRS from imposing VAT on goods and services consumed in hotels, restaurants and event centres.

Similar questions had been raised in earlier cases with different conclusions

- *Attorney General of Lagos State v. Eko Hotels Limited & Federal Board of Inland Revenue* where the Supreme Court held that VAT covered the field over Sales Tax introduced by Lagos State,
- *A.G. Ogun State v. Aberuagba* where the Supreme Court struck down the Ogun State sales tax because by the Constitution the FG had exclusive competence to legislate over inter-state trade and commerce though recognising the state's power to legislate over intra-state trade provided there is no conflict with federal law and
- *Nigerian Soft Drinks Limited v. A.G. Lagos* where the courts held that the Sales Tax Law in Lagos imposed on persons, was valid, unlike the Ogun State Sales Tax which imposed tax on goods brought into the state.

However, all the above judgments were given before the new version of the Taxes and Levies (Approved List for Collection) Act of 2015. The introduction of consumption tax, by the National Assembly, in the list of taxes to be administered by the State creates a new dynamic that favours the State's position.



Takeaway

Unless appealed, this would remain the law. This decision has far-reaching implications. It means that the FIRS can no longer impose and collect taxes on goods and services consumed in hotels, restaurants and event centres in Lagos State. The LIRS would collect consumption tax going forward. The FIRS is likely to have a contrary view so affected taxpayers are advised to monitor developments.

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