

## IS THE VAT A FEDERAL OR STATE TAX?

*A review of the decisions in AG RIVERS STATE V FIRS & AG FEDERATION and EMMANUEL C. UKALA V. FIRS & AG FEDERATION.*



The Federal High Court Port Harcourt Division recently held that the Rivers State Government and not the Federal Government is empowered to collect Value Added Tax (“VAT”) among other taxes in the State. This decision was delivered in the case of **AG Rivers State v FIRS and AG Federation**<sup>1</sup>. Another notable recent decision on VAT from the Port Harcourt Division of the Federal High Court was in the matter between **Emmanuel C. Ukala v FIRS and AG Federation**<sup>2</sup>. In the latter case, the court held that there was no constitutional basis for the imposition and collection of VAT by the Defendant on and from the Plaintiff.

So where lies the confusion on its status as a federal or state tax? The confusion can be traced back to its inception. VAT as a consumption tax was introduced by a military decree in 1993 to replace the sales tax. Since inception, it has been administered as a federal tax. As with military administrations, the constitutionality of replacing sales tax with VAT and making the latter a federal tax was not an issue. Several contentions have

arisen over VAT as administered in Nigeria. One of which has been the sharing formula between the three tiers of government. From an initial sharing ratio of 20:80 between federal and state with states having the greater part, the current sharing ratio is 15:50:35 for the federal, state and local governments respectively. The allocation of the greater proportion to the states is a tacit acknowledgment that collection of the tax should rest with the states.

Another contention and perhaps the most hotly contested is the propriety of collection by the Federal Government. Besides Rivers State, other states have at different times attempted to collect VAT directly and indirectly. For instance, in 2000, Lagos State enacted a Sales Tax Law. In the case of **Manufactures Association of Nigeria v AG Lagos State and Anor** the Sales tax was upheld by the Court and VAT held ultra vires the Federal Government. In **Eko Hotels Ltd. v. AG Lagos State and FIRS**<sup>3</sup>, the Lagos State Sales Tax Law was declared null and void and VAT upheld. In **Registered Trustees of Hotel Owners and Managers Association of Lagos v AG Federation**<sup>4</sup>, the tax in issue was that imposed by the Hotel Occupancy and Restaurant Consumption of Lagos State. The court nullified the application of VAT to consumptions in hotel, restaurants, and event centers. The Registered Trustees case is one among several and other cases on the validity of the consumption tax received conflicting decisions from the Lagos State High Court and the Federal High Court.

<sup>1</sup> Suit No. FHC/PH/CS/149/2020

<sup>2</sup> (2021) 56 TLRN 1

<sup>3</sup> (2018) 36 TLRN 1

<sup>4</sup> SUIT NO. FHC/L/CS/1082/2019

While the Supreme Court in upholding the validity of the tax in the Eko Hotel's case considered VAT from the angle of the doctrine of covering the field, the recent decisions from the Port Harcourt Division of the Federal High Court challenge the constitutionality of the VAT Act. The Court in Ukala's case held that the powers of the National Assembly did not cover VAT or any specie of sales tax and in the Manufactures Association of Nigeria's case, the Court held that it was only the State Legislature that could legislate on intra-state trade and commerce.

VAT is a consumption tax and its co-existence with any state sales law or consumption tax law amounts to double taxation. Resolving the impasse will necessarily involve retaining either one or the other. Interestingly, the attempt by several states to introduce consumption taxes have been in response to their inability to collect VAT. Undoubtedly, the thirty-six states of the federation do not generate equal amount of internal revenue and the current administration of the tax has the effect of depriving some states their fair share and giving other states more than they generate. It can therefore be expected that while some states align with the recent Federal High Court decision, others will align with the continued administration of VAT as

a federal tax. In between citizens and businesses are left to deal with the FIRS and the State revenue services as to where collection lies.

### Conclusion

Nigeria already suffers a low ranking in the ease of doing business. Certainty of tax laws is one of several ways to improve this ranking. It is desirable that local and foreign businesses are not caught in the quagmire between the federal and state governments over the VAT.

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