

PRIVATE AGENCY ARRANGEMENTS AND TAX COLLECTION IN NIGERIA



Nigeria currently operates a self-assessment system. Prior to 1991, tax administration in Nigeria was based exclusively on assessments made by revenue authorities. Focus has since shifted to the self-assessment system as part of the continuing process to encourage voluntary compliance among corporate and individual taxpayer.¹ While the self-assessment system encourages voluntary compliance and reduces the cost of revenue collection, Nigeria continues to be plagued with low levels of compliance and falsification of tax returns. These reasons among others motivate the employment of collecting agents or concessionaries by the revenue authorities.² The propriety or otherwise of this practice, depends on the law.

The Position of the Law

In considering the position of the law, the first consideration to be had is the nature of the tax sought to be collected. Currently, collections are made on taxes, duties, levies and statutory contributions. While the distinction between a tax, levy or other statutory contribution may be obvious from a financial reporting perspective; to the average citizen- MSMEs and individuals, they all amount to an additional cost of doing business to the extent that penalties arise for non-compliance. Consequently, understanding the

position of the law on who should collect tax is vital. In **Standard Chartered Bank Nigeria Limited v Kasmal International Services Limited and 22 others**³, the Court of Appeal in examining the propriety of NIPOST delegating the collection of stamp duties to Kasmal International Services Limited, stated that it is never the responsibility or duty of a private person to enforce laws which fall under the executive preserve.⁴ Importantly, the same judgment noted that statutory bodies may lawfully delegate their powers when empowered by statute. Accordingly, collection of sub-taxes bearing the nature of statutory contributions may be delegated. In the case of **Transport Service Ltd V Governing Council of the Industrial Training Fund**⁵, the Court of Appeal in deciding the power of the defendant to delegate collections, made reference to the definition of tax in the Black's Law Dictionary as “*a monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue*” thus making a qualification that contributions made pursuant to the ITF Act being for the benefit of employees fell outside the precincts of a tax. The same court had in an earlier decision also held that the power of collection of contributions to the fund could be delegated.⁶

With federal taxes, the Federal Inland Revenue Service (Establishment) Act, 2007 as amended (“the Act”) clearly designates the FIRS as the primary agency of the Federal Government of Nigeria responsible for the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federal Government or any of its agencies.⁷ While the Act empowers the FIRS to employ consultants and agents to perform acts required to be done in the execution of its functions

¹ Ade Ipaye, *Nigerian Tax Law & Administration - A Critical Review* (ASCO Prime Publications Ltd 2014).

² *ibid.*

³ (2016) 27 TLRN 1.

⁴ Stamp Duties Act only designates the FIRS as the only competent authority to impose, charge and collect stamp duties.

www.sskohn.com

⁵ (2020) 49 TLRN 1.

⁶ *Director General Industrial Training Fund v. Centage Savings & Loans Ltd* (2018) LPELR-46804(CA).

⁷ Section 68(2) Federal Inland Revenue Service (FIRS) (Establishment) Act, 2007 (as amended). Also provided in section 53 of the Finance Act 2019.

under the Act⁸, it limits such powers of delegation to non-core duties. As such, consultants are not permitted to engage in assessment and collection of taxes or other routine responsibilities of tax officials. Furthermore, the Act provides in section 68 (3) that the appointment or authorisation of any person, other than by the FIRS, to assess, collect, enforce or account for taxes constitutes an offence.⁹

Under the Personal Income Tax Act, tax collectors are defined as duly authorised officials of the State Board of Internal Revenue (SBIR) or the FIRS.¹⁰ Section 88 dealing with delegation of powers precludes the SBIR from delegating critical functions such as assessment, collections or exercise of discretion vested in the SBIR for the determination of tax liability, etc. Going by the above provisions, the position of the law is clear that the duty of administration, assessment, collection, accounting or enforcement of taxes and levies due to the government or any of its agencies is that of the federal or relevant state IRS and its officials. No part of these responsibilities can be contracted to a private enterprise, tax consultants or concessionaires.

While the law provides guidance on the extent to which private agents may be employed in tax affairs, the challenge of digitalisation to traditional tax systems might make it difficult for Nigeria to obviate the role of third parties in tax processing and collections. In section 51 of the Finance Act 2020, the FIRS is empowered to deploy third-party payment processing or other digital platform or application to collect and remit taxes due on international transactions in the supply of digital services to and from a person in Nigeria in cases of transactions carried out through remote, digital, electronic or other such platform. The Finance Act 2021 further permits the FIRS to deploy third party technology to automate

tax administration processes including tax assessment and information gathering provided it gives 30 days' notice to the taxpayer and to enlist assistance considered necessary in the collection of international or other revenue claims.¹¹ By implication, tax collections are no longer purely outside the boundaries of third parties.¹²

Conclusion

The practice of private agents at both the federal and state levels demanding payments of duties, levies, statutory contributions or taxes has been around for some time. The courts have by several pronouncements provided some clarity on what collections may be made by private agents and collections that fall within the exclusive preserve of government agencies. The evolving nature of the digitalisation of tax systems has necessitated some level of delegation of collection on third-party platforms. Importantly, citizens must understand the nature of their statutory obligations and the appropriate collecting authorities.

Disclaimer

SSKÖHN NOTES is a resource of the law firm STREAMSOWERS & KÖHN deployed for general information and does not constitute legal advice neither is it a substitute for obtaining legal advice from a legal practitioner.

⁸ Section 12(4).

⁹ Section 22 of the Finance Act 2021 amended section 68 of the FIRS Act.

¹⁰ Section 102.

¹¹ Section 18 of the Finance Act 2021.

¹² In Lagos, for example, the Finance Ministry hired an external company, ABC Consulting, to manage tax payments using an electronic billing and payment system in exchange for a commission on these payments.

Contact persons for the article



Eberechi May Okoh
Senior Associate
eberechi@sskohn.com



Akinola Samuel Oladimeji
Associate
akinola@sskohn.com

STREAMSOWERS & KÖHN is a leading commercial law firm providing legal advisory and advocacy services from its offices in Lagos, Abuja, and Port Harcourt. The firm has extensive experience in acting for Nigerian and international companies, government, and industry regulators in the firm's various areas of practice.

Contact us at:
16D Akin Olugbade Street
(Off Adeola Odeku Street)
Victoria Island, Lagos
Tel: +234 1 271 2276; **Fax:** +234 1 271 2277
Email: info@sskohn.com; **Website:** www.sskohn.com