

## ***Court vacates Order restraining Lagos State from enforcing Consumption Tax***



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### ***Introduction***

The Federal High Court (FHC) in *Registered Trustees of Hotel Owners and Managers v. Attorney General Lagos State and Federal Inland Revenue Service* recently varied its Orders restraining Lagos State from enforcing both the Hotel Occupancy and Restaurant Consumption Law 2009 (Law) and the Hotel Occupancy and Restaurant Consumption (Fiscalisation) Regulation 2017 (Regulations) pending the determination of the case. See details of our [tax alert on the earlier Order](#).

Under the new Order, Lagos State can enforce the Law but cannot carry out any new measures in relation to the 'Fiscalisation Regulations' pending the

determination of the suit. See details of the Fiscalisation Regulations in our [tax alert](#).

### ***Lagos State's position***

Lagos State approached the Court to vary its earlier Order to allow the state to continue enforcing the Law given that the Law had been in force since 2009 and was generally complied with by the intended subjects.

In support of its position, Lagos State argued that the earlier Order would result in irreparable damage to the State.

### ***Plaintiff's position***

The Plaintiff's counsel did not challenge Lagos State's request and by mutual agreement both parties to the suit agreed that the Order be varied to allow Lagos State to continue to enforce the Law such that the restraining Order is limited to the Fiscalisation Regulations.

### ***FHC's new Order***

The FHC granted Lagos State's request by deleting the part of the Order restraining it from enforcing the Law.

The FHC however retained the part of the earlier Order restraining the state from enforcing the Fiscalisation Regulations pending the determination of the suit.

### ***Takeaway***

The revised Order means that hotels, restaurants and event centres are required to comply with the extant consumption tax law

and continue to charge, collect and remit consumption tax to Lagos state as they were doing before the earlier Order.

One key issue which was not specifically stated in the revised Order, is whether the State can enforce the tax during the intervening period when the Law was temporarily suspended.

In varying the Order, the FHC appeared to have considered the competing interests and balance of convenience as between the Plaintiff and Lagos State.

The revised Order also appears to have considered the fundamental issue regarding the importance of taxation given that the damage to the State in terms of loss of revenue would have been greater if the earlier Order was retained than the damage to the Plaintiff if the Order was varied/reversed.

However, by retaining the Order restraining Lagos State from enforcing the Regulations, Lagos State cannot install Electronic Fiscal Devices (EFDs) in hotels, restaurants, and event centres or enforce any part of the Regulations until the suit has been concluded and determined in its favour barring any appeal to the higher courts.

The Lagos State Internal Revenue may therefore explore other administrative avenues to provide assurance over the declaration and returns being made by relevant taxpayers such as tax audit, investigation, tax intelligence and whistle-blowing.