

FIRS issues Public Notice on deployment of automated tax administration solutions

April 2021



Background

The Finance Act (FA) 2020 introduced an amendment to the Federal Inland Revenue Service Establishment Act (FIRSEA), empowering the FIRS to deploy proprietary technology to automate the tax administration process in Nigeria. The FIRS however has to give 30 days notice to taxpayers before it can deploy such technology.

In compliance with this requirement, the FIRS has issued a Public Notice to inform taxpayers of its intention to connect its Automated Tax Administration System (ATAS) to access relevant records, data or information stored in computers or other electronic devices operated, owned or controlled by the taxpayers or their agents.

The Notice stated that the connection shall include relevant Point-of-Sales or invoicing platforms of all taxable persons and will start anytime from 30 days after the publication of the notice.

The Finance Act amendments

The FA 2020 amended Section 25 and 26 of the FIRSEA, granting the FIRS powers to:

- (i) deploy proprietary or third party Payment Processing Companies (PPCs) or digital platforms as agents to collect taxes due on international transactions in the supply of digital services.
- (ii) deploy technology to automate the tax administration process including assessment, collection and information gathering, provided that it

gives the taxpayer a notice of 30 days.

(iii) receive assistance in the collection of revenue claims or other tax matters relating to agreements between Nigeria and other countries or bodies.

Section 26 of the FIRSEA was also amended to mandate taxpayers to grant the FIRS access to relevant information in the taxpayers' devices or cloud computing facilities.

Refusal to allow the FIRS connect to the taxpayer's system attracts a penalty of N25,000 in the first month and N10,000 for every subsequent month in which the default continues.

Takeaway

The deployment of the ATAS is one of the steps taken by the FIRS in its drive to shore up tax revenue. It is expected to provide real-time access to information from taxpayers' systems.

As the notice was issued to the general public, it is not clear whether taxpayers can argue that it does not meet the requirement of the law, which provides that the FIRS should provide a notice to the taxpayer.

The first paragraph of the notice suggests that it is addressed particularly to "taxable persons", indicating that the system targets platforms and information relating to VAT, such as invoicing modules etc. However, subsequent wordings infer that the FIRS intends to access all electronic information on taxpayers' devices. This may be intrusive and contravene privacy. It would be useful for the FIRS to clarify that this is not the case.

Beyond this move, it is very likely that the FIRS will soon seek to enforce the other powers granted by the FA 2020, including deploying proprietary technology or PPCs as agents to collect taxes, particularly VAT due on cross-border digital services.

However, despite the provisions in the law providing for any information received by the FIRS to be confidential, taxpayers may still harbour concerns about the risk of granting the FIRS access to their systems including sensitive operational information.

There may also be concerns about whether the taxpayers will have to reconfigure their systems to fit the FIRS' ATAS and who will bear the cost in such cases.

The publication was issued in late March, meaning that the FIRS may start to deploy ATAS from late April into May 2021. It is left to be seen how this will be implemented by the FIRS.

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