

Federal High Court suspends Lagos State Consumption Tax and Fiscalisation Laws



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Introduction

The Federal High Court (FHC) recently issued an Order restraining Lagos State Government (LASG) from enforcing both the Hotel Occupancy and Restaurant Consumption Law (Law) and the Hotel Occupancy and Restaurant Consumption (Fiscalisation) Regulation (Regulations) pending the hearing and determination of the case.

Background Facts

In January 2018, Lagos State Internal Revenue Service ("LIRS") issued the Regulations introducing Electronic Fiscal Devices (EFD) to effectively administer Consumption Tax. See our alert [here](#). However, the Registered Trustees of Hotel Owners and Managers challenged the legality of both the Law and Regulations. The substance of the suit is that since the Value Added Tax (VAT) contains provisions relating to consumption it had 'covered the field' and as such no State law can impose any similar tax.

The questions before the FHC are summarized below:

- i. Whether the VAT Act has not 'covered the field' on taxation of goods and services including those consumed in hotels, restaurants and event centres in Lagos State?
- ii. Whether the Regulations are valid in view of the VAT Act?
- iii. Whether by s. 7(1) of the VAT Act, the Federal Inland Revenue Service (FIRS) is the only agency to administer consumption tax in hotels, restaurants and event centres in Lagos State?

Doctrine of Covering the Field

The Doctrine of 'Covering the Field' operates in a federal system like Nigeria where legislative power is shared between the Federal and State governments. It requires that where a federal law regulates an item over which both the Federal and States have shared competence to legislate, then a State cannot introduce any other law inconsistent with the federal law.

Other decisions and legislation

In 2013, the Supreme Court ("SC") in *Attorney General Federation v Attorney General Lagos*, when asked to determine who had powers to regulate hotel registration and licensing, held that only States could regulate licensing of hotels (see our alert [here](#).) Though the SC decision was silent on whether Consumption Tax was inconsistent with VAT, it could be inferred that since States can regulate hotels and event centres, they can also impose Consumption Tax in such places.

In 2015, the Taxes and Levies (Approved List for Collection) Act was amended to include 'Hotel, Restaurant or Event Centre Consumption Tax' as one of the taxes which States can impose and collect. Consequently, some States introduced Consumption Taxes to operate alongside VAT.

In December 2017, the Supreme Court in *Attorney General of Lagos State v. Eko Hotels Limited & Federal Board of Inland Revenue* held that the VAT Act had covered the field of consumption tax as such any similar tax such as Sales Tax would be invalid. The Court also held that Sales Tax would result in double taxation.

Takeaway

The current suit provides an opportunity for the court to determine the constitutionality of Consumption Tax given that, like VAT, it also imposes 5% on some taxable goods and services. Under a federal system, States may claim a right to impose Consumption Tax since the Nigerian Constitution does not give the Federal government exclusive powers to legislate on taxes imposed on hotels, restaurants and event centres.

It is expected that the dispute would go all the way to the SC given that the Constitution does not vest either the State or Federal Government any exclusive or concurrent power to legislate on consumption tax.

A much earlier decision of the SC in *Attorney General of Ogun State v. Aberuagba and Others* alluded to the fact that States could be allowed to regulate intra-State trade and commerce provided such regulations do not conflict or interfere with inter-State trade and commerce.

The implication would be that goods and services consumed within a State would be liable to a State Consumption Tax Law whereas any inter-State consumption or sales should be liable to VAT. Alternatively, VAT could be centrally legislated but administered by states similar to personal income tax. This would address the concerns of double taxation and unfairness in the horizontal distribution of VAT amongst States (currently 50% Equality, 30% Population and 20% Derivation).

Pending when the FHC Order is reversed or vacated, Lagos state may not impose or enforce the tax.