

Rivers State issues new VAT law



August 2021

Background

The historic legal tussle over the taxing powers of states and the Federal Government relating to Consumption Taxes/VAT has been subject to various conflicting decisions. For the purposes of this background, we will focus on the recent *Ukala v. FIRS* (December 2020) and *AG Rivers State v. FIRS & AG Federation* (August 2021), where the Federal High Court (FHC) in both cases held (among other things) that:

- The constitution does not allow the Federal Government (FG) to make tax laws outside the taxation of incomes, profits, and capital gains.
- The FG is not entitled to make VAT laws, as such powers are “residual” for the states.

These judgments have culminated in the Rivers State Government enacting the state’s Value Added Tax Law No. 4 of 2021 on 19 August 2021.

The VAT Law of Rivers State

Highlights

- The VAT Law is similar in content to the VAT Act before the Finance Act 2019. However, references to the FIRS and the Minister of Finance have been replaced with the Rivers State Internal Revenue Service (RIRS) and the Governor, respectively.
- The tax rate is 7.5% and the tax is to be administered by the RIRS. The Governor is empowered to amend the rate subject to the approval of the State House of Assembly.
- Taxable persons are required to register for the tax within 6 months of commencement of business, or of the state VAT Law, whichever is earlier. This means that already existing businesses in the state are to register immediately, while new businesses set up after 19 August 2021, have up to 18 February 2022 to register. There is no registration exemption for businesses that generate annual revenues not more than N25m, as included in the Federal VAT Act.
- The state VAT Law requires an importer of taxable goods to pay the tax on the goods to the state before clearing the goods. Import is defined under the law as “*bringing in goods and services from another country or from an export processing zone*”.
- Non-resident companies (NRCs) are to register for the tax if they carry on business in the state, and include the tax on their invoices. The person to whom the supplies are made is required to withhold and remit the tax to the RIRS.
- Monthly remittance and return is due by the 21st of the succeeding month in a manner specified by the RIRS. This means the first return under the law will become due by 21st of September 2021.

- Any appeal against the decision of the RIRS should be to the Tax Appeal Commission and subsequently to the State High Court. However, the Tax Appeal Commission has not been established.
- The VAT revenue is to be shared 70% to the State and 30% to the Local Governments.
- The list of exempt items is similar to the Federal VAT Act, and includes basic food items, medical services and educational materials, among others. The Governor is empowered to amend the schedule subject to the ratification of the State House of Assembly
- The state VAT Law also includes non-compliance penalties which are largely similar to the penalties in the VAT Act. These penalties are published in a separate [Tax Alert](#).

Some practical challenges with the law

The law does not define “Non-Resident Companies”, and it is unclear how the RIRS will interpret this provision. Will this be any company outside the geographical jurisdiction of the Rivers State Government, or outside Nigeria?

Also, the law exempts exported goods and services from VAT, but does not define what constitutes an “export”. This may lead to ambiguity as export may either be considered as where goods/services are supplied to customers outside Rivers State, or the opposite of “import” as defined under the law which would cover supplies to persons outside Nigeria. In addition, the law does not address the practical difficulties with the claim/offset of input/output VAT across different states.

It would seem based on the definition of imports that state VAT would be imposed on items that are brought in through any port in Nigeria irrespective of location. Of course, this cannot be enforced and is obviously outside the powers of a State law.

The challenges on interstate and international matters raise questions on the jurisdictional and geographical competence of the State House of Assembly to legislate on the subject. Item 62 in the Exclusive list of the Constitution also places trade between Nigeria and other countries and commerce between states, under the purview of the FG. This was considered and upheld in the Supreme Court’s judgment in *AG Ogun State v. Aberuagba* (1985).

While a seaport and international airport are situated in Rivers State, matters relating to such facilities, including Customs and so on, fall under the Exclusive list, and therefore should be legislated on by the National Assembly.



Takeaway

RIRS has already started writing to businesses that have operations in the State to immediately comply with the state VAT law. However, there are so many practical issues that it would have been best for the state to organise stakeholder engagement in this regard. This would assist both the RIRS and taxpayers with dealing with the practical challenges, and would give taxpayers time to adjust (update their systems, advise their customers on pricing, assess grey areas, and so on).

Nigeria has about 6 ports and the most active ones are in Lagos. The enforcement of Rivers State VAT at the Onne and Port Harcourt ports would lead to (i) double incidence of VAT (ii) additional administration from dealing with the Nigeria Customs Service and the RIRS. This may lead to importers moving any residual business away from those ports.

Press reports suggest that the FIRS has appealed the *AG Rivers State v. FIRS & AG Federation* ruling and has sought a "stay of execution", requesting taxpayers to continue to comply with the Federal VAT Act, to avoid non-compliance penalties. However, the state VAT Law is already in operation. In the event that the injunction pending appeal is granted, it is unclear which law will stand, as in a similar dispute between *AG Lagos State v. Eko Hotels & FBIR (2018)*, the federal VAT Act was said to have "covered the field" and thus prevailed over the Sales tax law of Lagos state. It is left to be seen how this will be applied in this instance.

Complications may arise for businesses (including SMEs) within the state, who may have to deal with multiple tax authorities for VAT purposes, and this may result in a decline in Nigeria's ease of paying taxes and doing business ranking. Some taxpayers may need to seek advice on feasible next steps, including whether to file an "interpleader" case, which is a suit to help determine the rightful claimant to a property (VAT payments in this case).

A nationally administered VAT Act may have its advantages, especially considering the country's peculiarities. Therefore, some thought may need to be put into amending the constitution for this purpose. Where different states go ahead to enact separate state VAT laws, a practical approach may be for each state to ensure similarity in the legal framework of the laws and to appoint the Joint Tax Board to administer the tax nationally.



For a deeper discussion, please contact:

Kenneth Erikume

Tax Partner

kenneth.y.erikume@pwc.com

Emeka Chime

Associate Director

chukwuemeka.x.chime@pwc.com

Ikechi Douglas-Chukwu

Senior Associate

ikechi.douglas-chukwu@pwc.com