

FEDERAL HIGH COURT RULES ON VALIDITY OF THE HOTEL OCCUPANCY AND RESTAURANT CONSUMPTION LAW AND REGULATIONS

TAX ALERT

The Federal High Court, sitting in Lagos State, recently delivered judgment in the case of *The Registered Trustees of Hotels and Managers Association of Lagos (RTHMAL) v. Attorney General of Lagos State & Federal Inland Revenue Service (FIRS)*. It ruled on the validity or otherwise of the Hotel Occupancy and Restaurant Consumption (HORC) Laws and Regulations passed by the Lagos State legislature. It held that the HORC Law of Lagos State is a legal and binding law as Lagos state is vested with the statutory authority to impose consumption tax on all Hotels and Restaurants within the State.

The court came to this decision upon consideration of the provisions of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended). It stated that the power to legislate on Consumption taxes, which are part of Residual matters, lies solely within the jurisdiction of the Lagos State Legislature. This is because such powers existed neither in the Exclusive nor the Concurrent Legislative Lists of the Second Schedule to the Constitution. The Court also highlighted the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015, that lists "Hotel Restaurant or Event Centre Consumption Tax" as a tax that may be collected by State Governments.

Finally, the Federal High Court outlawed the collection of Value Added Tax (VAT) by the FIRS on goods and services consumed in Hotels, Restaurants and Event Centres in the State. It held that the tier of Government with the authority to charge and collect consumption tax on such goods and services is the State Government i.e. Lagos.

Although, this is an update, we will come up with a

Tax Alert/Memorandum highlighting the flaws in this judgment and addressing key implications that may affect the current tax jurisprudence at the instance of this judgment if it is not appealed.

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