

FREEZING OF TAXPAYERS ACCOUNTS BY THE FEDERAL INLAND REVENUE SERVICE AND NIGERIAN BANKS; WHETHER CONDITION PRECEDENT IS MET

TAX ALERT

The Federal Inland Revenue Service (FIRS) has been writing letters to banks appointing them as agents of collection of taxes from taxpayers who they presume to be in default of payment of taxes. The FIRS has gone as far as directing banks to set aside an amount in the sum of the purported tax allegedly in dispute to offset the purported tax liabilities from the accounts of the taxpayers. In addition to the above, the FIRS has instructed banks to place lien (Post no Debit) on the accounts of such taxpayers thereby preventing operations on their accounts. Incidentally, the banks have been placing the lien without exploring the law that allows them to question the propriety of such notice. This has resulted in putting a lot of businesses on a stand-still thus causing set back to the Ease of Doing Business in Nigeria being sermonised by the Federal Government under the Economic Recovery and Growth Plan (ERGP).

Federation of Nigeria 2004 (as amended). Meanwhile, a perusal of those sections call to question the propriety of application of those sections in respect of disputed taxes.

“The tax laws are not silent on enforcement of taxes in Nigeria, hence adopting arbitrary means of tax collection should be discouraged. As failure to abide by the standard tax enforcement procedures will further stiffen ease of doing business in Nigeria and discourage investors from trooping into the Nigerian economy.”

Matters Arising

Below are some of the issues that are begging for answers as a result of the actions of the FIRS and the Nigerian Banks on the purported defaulting taxpayers (companies) and business enterprises:

- Is the right of fair hearing of taxpayer (before an assessment is enforced for collection) negotiable under the constitution?
- Are taxpayers still king when they are wrongly treated as tax evaders or criminals and punished by both the FIRS and the banks before been heard?
- Can a principal (FIRS) legally appoint an agent of collection (the bank) for the purpose of collecting taxes which has not evidentially become payable to the principal?
- Can the agent of collection exercise



Powers conferred on FIRS to appoint agent of collection of tax

The FIRS is empowered to appoint agent of collection of tax payable under Section 31 Federal Inland Revenue Service (Establishment) Act (FIRSEA), 2007 and Section 49 of the Companies Income Tax Act (CITA) Cap C21 Laws of the

- powers which the principal does not have?
- (e) Has the FIRS and the banks not breached the laws by overlooking the provisions mandatorily requiring objections and appeal procedures?
 - (f) Would the bank not have breached its duty of care under the tax laws where it acts on the instruction of the FIRS without any form of objection or demand for a court order before any action is taken as required by the laws?
 - (g) Who becomes liable to penalty and interest where the taxpayer is unable to fulfil its tax obligations as a result of lien on its accounts as most companies are no longer able to pay their taxes due?
 - (h) Is the taxpayer not entitled to compensation for loss of business as a result of lien wrongly put on their bank accounts for taxes that have not become payable or final and conclusive?

Our Comments

The tax laws are not silent on enforcement of taxes in Nigeria, hence adopting arbitrary means of tax collection should be discouraged. As failure to abide by the standard tax enforcement procedures will further stiffen ease of doing business in Nigeria and discourage investors from trooping into the Nigerian economy.

While Section 31 of FIRSEA is very important in ensuring prompt payment of taxes, it can only be used arbitrarily by the FIRS in collecting taxes with proper tax assessments and after following correct procedures stated in the extant tax laws including the rights of objection, the FIRS' right of notice of refusal to amend any assessment and the right of appeal to complete the conditions precedent. It is our view that section 31 of FIRSEA is applicable only when tax is payable either when taxpayer has agreed to the tax liability or when declared to be payable by the Tax Appeal Tribunal or a superior court without objection within the statutory time limits. In the absence of either of this, it is our view that the actions of the FIRS and the banks may suffer constitutional and legal challenges when they are subjected to court intervention.

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