

AN OVERVIEW OF VAT TAXING IN NIGERIA: A REVIEW OF LANDMARK DECISIONS ON DOUBLE TAXATION

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INTRODUCTION:

Value Added Tax (VAT) is a consumption tax levied on goods and services in Nigeria. The collection and distribution of VAT have been a subject of debate among stakeholders, particularly with regards to the landmark decisions. The recent Federal High Court judgment in the case of *Attorney General of Rivers State vs. Federal Inland Revenue Service & Attorney General of the Federation* has sparked intense debate across Nigeria. The decision has reignited discussions on fiscal federalism, questioning the taxing powers of the federal government and states within the federation. This ruling also raises fundamental questions about the nature of federalism practiced in Nigeria, potentially leaning towards unitarism. Key issues emerging from this decision include the limits of the National Assembly's legislative powers, particularly regarding matters in Chapter II of the Nigerian Constitution and whether these developments have diminished the "residual powers" traditionally reserved for states in a federal system.

This analysis reviews the pros and cons of the Federal High Court's decision, highlighting its strengths and weaknesses, to identify potential solutions and directions for resolving the legal impasse and enhancing Nigeria's federal experience.

THE CONCEPT OF TAXING POWER:

Taxing power refers to the legitimate authority granted to a governmental body to levy, impose, and collect taxes in accordance with the law. This power enables a tier of government to legislate on taxation, prescribe conditions for tax collection and administration, and enforce tax laws within its jurisdiction¹.

In a sovereign government, taxing power is the absolute authority to impose taxes on persons, income, and activities within its territory, exercisable only

¹ Aladekomo A.S., Division of Taxing Powers in the Federation of Nigeria, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3639090>, 22, accessed 9th July, 2025

through legislation². The extent to which a government can exercise its taxing powers is largely determined by its system of government. Nigeria's federal system divides power among the federal, state, and local governments, each with distinct taxing powers. This division implies that each tier of government has the authority to impose and collect taxes within its areas of jurisdiction.

Nigerian taxes are broadly categorized into federal and state taxes, each established by distinct laws and subject to specific jurisdictional limitations. The administration of these taxes is divided between the federal government, which oversees federal taxes, and state governments, which administer state taxes. The authority to impose and administer taxes is governed by law, outlining the scope and application of each tax type.

DIFFERENCES BETWEEN FEDERAL AND STATE TAXES IN NIGERIA

The Federal Government, exercising its taxing powers under the Exclusive Legislative List, enacts tax laws to impose taxes on specific items. These taxable items include, customs and excise duties, export duties, company income tax, income tax on federal workers, private sector employees in the Federal Capital Territory, and members of the armed forces and police. Tax on foreign service officers and non-resident individuals with Nigerian-sourced income, petroleum profits tax, stamp duties on federal documents and transactions, capital gains tax on companies, taxes on international and interstate trade and commerce, entertainment tax in the Federal Capital Territory, taxes related to tertiary education and information technology development, and tax on real properties in the Federal Capital Territory. These taxes are categorized as federal taxes, imposed by the Federal Government through legislation and administered by the Federal Inland Revenue Service.

State governments, under the Concurrent Legislative List, exercise their taxing powers by enacting laws that impose taxes on specific items. While sharing legislative competence with the Federal government, State governments can levy taxes on income of state workers and private sector employees within the state, documents and transactions involving individuals, assets disposed of by individuals, real property within the state. Additionally, State governments can impose taxes on matters not covered by the Exclusive and Concurrent Lists, such as entertainment tax within their territories. These

² Section 2 (2) 1999 CFRN provides that "Nigeria shall be a Federation consisting of States and a Federal Capital Territory."

taxes are classified as State taxes, highlighting the shared taxing authority between the Federal and State governments.

The Federal and State governments' taxing powers are governed by constitutional doctrines, including the doctrine of covering the field. This principle resolves conflicts between federal and state laws. When the National Assembly enacts a law on a matter within the Concurrent Legislative List, it supersedes any inconsistent state law, rendering it void to the extent of the inconsistency³. Secondly, the inconsistency rule which ensures that state laws align with federal laws, preventing conflicts and inconsistencies. These doctrines ensure a harmonious exercise of taxing powers between the Federal and State governments, with the National Assembly's laws taking precedence in areas of shared legislative competence.

Examining the Taxing Powers of Federal and State Governments in Nigeria:

The taxing powers of the Federal and State governments in Nigeria are derived from Section 4 of the 1999 Constitution, which grants legislative powers to the National Assembly and State Houses of Assembly. These legislative institutions have the authority to make laws for the country's peace, order, and good governance, albeit on different matters⁴.

The Federal Government exercises its taxing powers through the National Assembly on matters listed in the Exclusive and Concurrent Legislative Lists⁵. In contrast, State Governments exercise their taxing powers through State Houses of Assembly on matters in the Concurrent Legislative List (provided the Federal Government hasn't legislated on the matter) and the Residual List⁶. Tax administration and collection are carried out by the Federal Inland Revenue Service (FIRS) for the Federal Government and States Inland Revenue Services for State Governments. These agencies are established by law to administer and collect taxes on behalf of their respective governments⁷.

³ Section 4 (1), 1999 CFRN provides that "The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly...which shall consist of a Senate and a House of Representatives."

⁴ *Ibid*

⁵ Section 4 (6), 1999 CFRN provides that "The legislative powers of a State of the federation shall be vested in the House of Assembly of the State."

⁶ Section 4 (4)(a), 1999 CFRN; Part II, Schedule II, 1999 CFRN

⁷ Section 4 (3), 1999 CFRN; Part I, Schedule II, 1999 CFRN

AN OVERVIEW OF CONFLICTING TAXING POWER AND JUDICIAL INTERVENTION IN NIGERIA:

When conflicts arise between the Federal and State governments over taxing powers, the courts intervene to interpret the law and determine which level of government has the authority to impose taxes. In resolving these conflicts, the courts analyze the relevant laws and consider the legislative competence of each level of government. For example, in the case of consumption tax and value-added tax (VAT), the Supreme Court have ruled that consumption tax is unconstitutional and inconsistent with VAT, as it attempts to collect the same tax. States have countered that consumption tax falls within their legislative competence, but the courts have prioritized consistency with federal laws, such as VAT.

The Lagos State House of Assembly in 2009 enacted the Hotel Occupancy and Restaurant Consumption Tax Law, imposing taxes on hotel stays and restaurant services in the state. The law's validity was tested in two notable cases. In *Princel Court Ltd v AG Lagos & Ors*⁸, the High Court noted that the Value Added Tax Act imposed similar obligations on taxpayers, raising questions about the law's consistency. In case of *Mas Everest Hotels & Ors v AG Lagos State & Anor*⁹; the High Court ultimately upheld the law, ruling that it fell within the legislative competence of Lagos State. The tax was deemed valid as it targeted services rendered, not income.

In a landmark case, *AG Ogun State v Aberuagba*¹⁰, the Supreme Court ruled that the Sales Tax Law of Ogun State was invalid. The court held that the law encroached on the Federal Government's exclusive legislative powers, specifically in the area of interstate trade and commerce. The law was deemed unconstitutional and invalid because it imposed taxes on taxable products brought into the state, a matter falling within the Federal Government's exclusive jurisdiction.

In another notable case of *Nigerian Soft Drinks v Attorney General of Lagos State*¹¹, the Court of Appeal upheld the Sales Tax Law of Lagos State. The Court distinguished it from the Ogun State Sales Tax Law, which was previously deemed invalid. The Lagos State law was found to be constitutional because it did not tax items on the Exclusive Legislative List and targeted consumers and purchasers within the state, rather than regulating interstate trade. The Court further declared Section 2 of the Lagos

⁸ [2010] 3 TLRN 30

⁹ Vol. 7 All NTC 93

¹⁰ [1985] 1 NWLR (pt.3) pg. 395

¹¹ Vol.3 All NTC 133 at 148; [1987] 2 NWLR (pt. 57) pg. 444

State Sales Tax Law valid and constitutional, highlighting the distinction between state and federal taxing powers.

In a more recent case of *AG Federation v AG Lagos State*¹², in this landmark case, the Federal Government challenged the constitutionality of three laws enacted by Lagos State which are Hotel Licensing Law 1983, Hotel Occupancy and Restaurant Consumption Law, and Hotel Licensing (Amendment) Law. The challenge centered on whether Lagos State had the legislative competence to enact these laws, with the Federal Government arguing that they fell under the exclusive legislative list. The Supreme Court dismissed the suit, ruling that:

“The Federal Government lacks constitutional authority to make laws outside its legislative competence, which includes residual matters for state assemblies. The National Assembly cannot confer authority on the Federal Government to encroach on state governments’ exclusive constitutional authority under residual legislative power”.

In the case of *AG Lagos State v Eko Hotels & Anor*¹³, the Lagos State Government enacted the Sales Tax Law and Sales Tax (Amendment) Order 2000 to boost its internally generated revenue. However, the Sales Tax Law had similar provisions to the Value Added Tax (VAT) Act, requiring vendors like Eko Hotels to collect and remit taxes on sales. The Court found that both laws covered the same goods and services, and since the VAT Act had effectively “covered the field,” its provisions would prevail over the Sales Tax Law. The Supreme Court also noted that allowing both laws to coexist would lead to double taxation, as they targeted the same consumers and goods/services. Although the court did not determine the validity of either law, it ruled that the VAT Act's provisions would take precedence, rendering the Sales Tax Law insignificant in this regard.

Consumption Tax and the “Covering the Field” Doctrine

In *AG Lagos State v Eko Hotels & Anor (supra.)*, the validity of state laws imposing consumption tax on individuals and goods/services consumed in hotels, restaurants, and event centers was challenged. Although, consumption tax was not explicitly listed in the Exclusive or Concurrent Legislative Lists, the Court ruled that the Value Added Tax (VAT) Act had “covered the field” on matters of consumption tax. The Supreme Court clarified the “covering the field” doctrine, stating that a National Assembly Act can only prevail over state laws if: “It’s validly enacted and “it pertains to a matter within the National

¹² [2013] 16 NWLR (pt. 1380) 249 SC

¹³ [2018] 36 TLRN 1

Assembly's legislative competence". The court emphasized that the determinant factor is the validity of the paramount legislation vis-à-vis the subordinate legislation.

In the case of *Emmanuel Chukwuka Ukala v FIRS*¹⁴, the plaintiff, Emmanuel Chukwuka Ukala, challenged the Federal Government's power to enact laws for taxation purposes beyond income, profits, and capital gains. Specifically, the plaintiff questioned the constitutionality of the Value Added Tax (VAT) imposed by the Federal Inland Revenue Service (FIRS). The plaintiff's argument centered on the contention that the Federal Government's constitutional powers to impose taxes are limited to the items listed in Item 59 of the Exclusive Legislative List, which does not include VAT. The plaintiff sought a declaration that there was no constitutional basis for the imposition, demand, and collection of VAT by FIRS.

The Federal High Court's decision was in favor of the plaintiff's interpretation of the Constitution. The court held that the 1999 Constitution explicitly limits the National Assembly's power to enact laws on taxation to specific areas, namely Income, Profits, and Capital gains and Stamp duties on documents and transactions. The Court ruled that if the National Assembly enacts laws on any other form of taxation outside these specified areas, such laws would be null and void¹⁵. Consequently, the court implied that the imposition of VAT, being a form of consumption tax, falls outside the National Assembly's legislative competence as defined by the Constitution.

The Federal High Court's reasoning was based on the principle of *expressio unius est exclusio alterius*, which implies that the explicit mention of certain items excludes others not mentioned. In this case, the express mention of taxation on income, profits, capital gains, and stamp duties implies that the National Assembly is excluded from imposing other forms of taxes, such as VAT or sales tax.

ATTORNEY GENERAL OF RIVERS STATE VS. FEDERAL INLAND REVENUE SERVICE & ATTORNEY GENERAL OF THE FEDERATION:

Prior to the recent decision of the Federal High Court (FHC), there was no court judgment in Nigeria that had barred the Federal Government or its agencies, particularly the Federal Inland Revenue Service (FIRS), from collecting Value Added Tax (VAT) in the country. However, the FHC sitting

¹⁴ [2021] 56 TLRN 1

¹⁵ Michael Ango & Emmanuel Omoju, An Analysis of Federal High Court Decision Invalidating the VAT Act – Implications for VAT Administration and Compliance, *Mondaq* (Nigeria, 9 June 2021)

in Port Harcourt delivered a groundbreaking judgment that challenged the status quo. The court thoroughly considered various legal issues related to the taxing powers of the Federal Government and Rivers State, and ultimately made the following key rulings:

1. The Federal Government's power to impose and collect taxes is limited to the specific taxes listed in Items 58(stamp duties) and 59(taxation of income, profits and capital gains) of the Exclusive Legislative List. The court found that the Constitution does not empower the Federal Government to impose and collect taxes beyond these specified areas. As a result, the court held that the Federal Government lacks the authority to legislate on VAT, Education Tax, and Technology Tax, as these taxes fall outside its taxing powers¹⁶.
2. The National Assembly's power to delegate tax collection authority is restricted. According to Item 7(a) and (b) of the Concurrent Legislative List, the National Assembly can only delegate the power to collect taxes listed in Items 58 and 59 of the Exclusive Legislative List to State Governments or their agencies. Any delegation to other entities would be null and void. This implies that the National Assembly cannot enact laws empowering the Federal Government or its agencies, such as FIRS, to collect taxes (except company income tax) listed in the Exclusive Legislative List. Item 7(a) - covers capital gains, Incomes, or profits of persons other than companies, while 7(b) covers documents or transactions by way of stamp duties

These rulings have sparked controversy in Nigeria's tax discourse, and the Federal Government and/or FIRS have already appealed against the FHC's decision.

Analysis of the Decision and the Position of the Law:

The resolution of the current legal impasse hinges on understanding the taxing powers of the Federal Government and State Governments under the Nigerian Constitution. The Constitution outlines the legislative powers of both tiers of government, with the Exclusive Legislative List (Part I of the Second Schedule) granting the Federal Government, through the National Assembly, exclusive authority to legislate on specific matters. Conversely, State Houses of Assembly are prohibited from legislating on matters contained in the Exclusive Legislative List.

In addition to the Exclusive List, both the National Assembly and State Houses of Assembly have the power to legislate on matters listed in the

¹⁶ Attorney General of Rivers State vs. Federal Inland Revenue Service: A Review of the Pros and Cons of this Landmark VAT Decision

Concurrent Legislative List (Part II of the Second Schedule). However, in cases where laws made by the National Assembly conflict with those made by a State House of Assembly, the National Assembly's law is deemed to have "*covered the field*," leaving no room for the State's law.

Furthermore, matters not listed in either the Exclusive or Concurrent Legislative Lists are considered residual matters, falling under Section 4(7)(a) and (b) of the Constitution. According to judicial authorities, residual matters are within the exclusive province of State Governments to legislate on, and the Federal Government is constitutionally barred from legislating on such matters.

In its decision, the Federal High Court (FHC) focused on interpreting the taxing powers outlined in Items 58 and 59 of the Exclusive List and Item 7 of the Concurrent List. Although the FHC did not explicitly discuss the exclusive power of State Houses of Assembly to legislate on residual matters, its interpretation of the taxing powers has significant implications for the division of legislative authority between the Federal Government and State Governments.

A Critique of the Judgment/Unintended Consequences:

At first glance, the Federal High Court's (FHC) decision appears sound, especially for advocates of fiscal federalism. However, a closer examination reveals loopholes and potential issues. Some key concerns include:

(A) Failure to Distinguish Between Intra-State and Inter-State/International Transactions:

The FHC's ruling that the National Assembly lacks the power to impose or collect Value Added Tax (VAT) in Rivers State or any other state fails to differentiate between Intra-State transactions and inter-state or international transactions. According to the Supreme Court's decision in *Attorney General of Ogun State vs. Aberuagba*¹⁷, state governments have the constitutional power to impose sales tax or consumption tax only on Intra-State transactions. In contrast, inter-state and international transactions fall under the exclusive jurisdiction of the Federal Government, as outlined in Item 62 of the Exclusive Legislative List (trade and commerce clause).

The Supreme Court's ruling in *Aberuagba's* case, which struck down Ogun State's tax law for imposing sales tax on inter-state and international

¹⁷(1985) 1 NWLR (Pt 3) 395, 405

transactions, highlights the importance of this distinction. The FHC's failure to draw this line may have far-reaching implications for the taxation of inter-state and international transactions.

The FHC's decision to prohibit the Federal Government or the Federal Inland Revenue Service (FIRS) from collecting VAT in Rivers State without drawing this distinction may lead to unintended consequences and potential conflicts.

(B). Restriction on the National Assembly's Powers:

The Federal High Court's (FHC) interpretation of Item 7(a) and (b) of the Concurrent Legislative List has been called into question. Item 7(a) - covers capital gains, Incomes, or profits of persons other than companies, while 7(b) covers documents or transactions by way of stamp duties. The FHC held that the National Assembly's power to legislate on taxes listed in Items 58 and 59 of the Exclusive Legislative List is restricted to conferring the power to collect those taxes only on State Governments or their agencies. However, this interpretation is flawed for several reasons:

Companies Income Tax Exception

Firstly, it is well-established that State Governments or their revenue collecting agencies are not authorized to collect Companies Income Tax. This exception highlights the complexity of tax collection powers in Nigeria and suggests that the FHC's interpretation may be overly broad.

Discretionary Nature of Item 7(a) and (b)

Secondly, the power referred to in Item 7(a) and (b) is discretionary, meaning that the National Assembly may or may not choose to exercise it. Furthermore, the provision requires the National Assembly to prescribe the conditions under which the taxes could be collected. This suggests that the National Assembly has a significant degree of flexibility in determining how to implement tax collection powers.

No New Head of Tax Created

Additionally, the Concurrent Legislative List does not create any new heads of tax beyond those listed in Items 58 and 59 of the Exclusive Legislative List. It is therefore illogical to suggest that the Concurrent List can control the exercise of taxing powers listed in the Exclusive List.

Existing Tax Laws

Indeed, existing tax laws, such as the Personal Income Tax Act, demonstrate a more nuanced approach to tax collection powers. For example, Section 2 of the Act allocates the power to collect personal income tax between the Federal Government and State Governments, with the Federal Government

empowered to collect personal income tax from specific groups, such as members of the Nigerian Police Force, Army, Navy, Air Force, officers of the Nigerian foreign service, and non-residents of Nigeria who derive income from anywhere in Nigeria.

(C). Mis-classification of Withholding Tax:

The Federal High Court's (FHC) decision demonstrates a fundamental misunderstanding of Nigeria's tax regime. Specifically, the FHC treated withholding tax as a separate form of taxation, rather than recognizing it as a means of tax collection. This error led the FHC to include withholding tax as one of the taxes that the Federal Government is excluded from collecting, citing its absence from Items 58 and 59 of the Exclusive Legislative List.

Withholding Tax: A Means of Tax Collection

Withholding tax is not a distinct form of taxation; rather, it is a mechanism for collecting taxes in advance. Its purpose is to capture taxpayers' earnings subject to income tax early, thereby limiting tax evasion. In practice, withholding tax operates as follows:

1. A purchaser of goods and services subject to withholding tax deducts the applicable rate from the supplier's invoice.
2. The withheld amount is remitted to the relevant tax authority.
3. The tax authority issues a withholding tax credit note to the purchaser, who then transmits it to the supplier.
4. The supplier uses the credit note to offset the withheld amount against their income tax liabilities.

Implications for Corporate Income Tax:

Given that corporate income tax is a legitimate area of Federal Government taxation, it is illogical to prohibit the Federal Government from collecting advanced corporate income tax through withholding tax. Withholding tax is merely a collection mechanism, not a separate tax head. By recognizing this distinction, the tax authorities can ensure that taxpayers' obligations are met while minimizing the risk of tax evasion.

(D). Additional Taxes Under Exclusive Federal Jurisdiction:

The Federal High Court's (FHC) assertion that Items 58 and 59 of the Exclusive Legislative List are the only taxes within the exclusive jurisdiction of the Federal Government to impose and collect is incorrect. A closer examination of the Exclusive List reveals additional taxes that fall under Federal Government authority, including Item 16 of the Exclusive List grants the Federal Government exclusive power to impose and collect customs and

excise duties. Item 25 of the Exclusive List also empowers the Federal Government to impose and collect export duties.

The FHC's failure to consider these items in its judgment is a significant oversight, as they clearly establish the Federal Government's authority to impose and collect taxes beyond those listed in Items 58 and 59.

RECOMMENDATION:

Given the complexities and controversies surrounding taxation powers in Nigeria, the following recommendations would provide clarity and guidance:

Distinction Between Intra-State and Inter-State/International Transactions

In line with the Supreme Court's decision in *Aberuagba's* case, we recommend that the appellate court establish a clear distinction between Intra-State and inter-state/international transactions for Value Added Tax (VAT) purposes. Specifically, State Governments should have exclusive power to legislate on VAT matters relating to Intra-State transactions. The Federal Government should exercise exclusive power to legislate on VAT matters relating to inter-state and international transactions. This distinction would help to clarify the roles of different levels of government in taxation and reduce potential conflicts.

Interpretation of Implied Legislative Powers

The implied legislative powers contained in Items 62 (trade and commerce clause), 68 (incidental and supplementary clause), and 60(a) of the Exclusive Legislative List be interpreted to restrict the Federal Government's powers to only inter-state and international transactions. This would ensure that the Federal Government's exercise of taxing powers is limited to areas that are truly federal in nature.

Constitutional Amendment

Amending the Constitution to take away the powers of State Governments to exercise legislative powers over VAT matters in intra-state transactions is not the proper way to go. Instead, any constitutional amendment in favor of the Federal Government should be restricted to inter-state and international transactions. This approach would help to maintain the balance of power between different levels of government and ensure that State Governments continue to have a meaningful role in taxation.

By implementing these recommendations, Nigeria can establish a more coherent and effective system for taxation, one that balances the needs of

different levels of government and promotes economic growth and development.

CONCLUSION

The recent decision of the Federal High Court (FHC) in Attorney General of Rivers State vs. Federal Inland Revenue Service & Attorney General of the Federation has reignited the debate on fiscal federalism in Nigeria. This ruling underscores the importance of adhering to the constitutional boundaries that define the legislative powers of the Federal Government and the National Assembly, ensuring that these powers do not encroach upon those reserved for the States.

Our analysis has highlighted several loopholes in the FHC's decision, and we have discussed the correct positions of the law in relation to taxation powers in Nigeria. Furthermore, we have provided recommendations aimed at resolving the current legal impasse and promoting fiscal federalism within the country's federal arrangement. A fundamental principle guiding our recommendations is the need to respect the residual powers reserved for State Governments, as intended by the drafters of the Constitution. Given that Nigeria's federal constitution follows the US model, it is essential to uphold the autonomy of States and avoid judicial interpretations or constitutional amendments that could erode these powers and transform Nigeria into a de facto unitary state.

Notably, the Federal Inland Revenue Service (FIRS) has filed an appeal against the FHC's decision, which may ultimately lead to a definitive ruling by the appellate courts in the course of time. We anticipate that the appellate courts will seize this opportunity to provide clarity on the constitutionality of the Value Added Tax (VAT) Act and settle the long-standing controversy surrounding taxation powers in Nigeria. Although the journey to a final resolution may be protracted, spanning several years, one certain outcome is that Nigerian citizens and corporate entities will ultimately be relieved of the burden of double taxation. This outcome would be a significant step towards establishing a more coherent and equitable tax system in Nigeria, one that balances the needs of different levels of government and promotes economic growth and development.