

**MEMORANDUM SUBMITTED BY LAGOS STATE  
GOVERNMENT TO THE FINANCE COMMITTEE OF THE  
FEDERAL HOUSE OF REPRESENTATIVES, NATIONAL  
ASSEMBLY, ABUJA**

**ON THE  
FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT)  
ACT (AMENDMENT) BILL**

**1.1 Introduction**

1.2 The Lagos State Government has no objection to the proposed amendments to the Federal Inland Revenue Service Establishment Act ('FIRSE Act') as contained in the Federal Inland Revenue (Establishment) Amendment Bill ('the Bill'), insofar as the remittances to be enforced via the proposed section 2(1) are within the jurisdiction of the FIRS. It should however be noted that the Nigerian Constitution recognizes the Consolidated Revenue Fund, rather than 'Consolidated Account' as stated in the Bill.

**2.1 Need for further amendments**

2.2 The Lagos State Government strongly recommends a further review of the Bill in order to take care of more fundamental defects of the FIRSE Act.

2.3 In our view, these defects are in the provisions which purport to centralize tax administration in Nigeria and have delivered a negative impact on tax administration at the State Government level. The provisions include Sections 2, 8, 25, 26, 59 and 68 of the FIRSE Act.

### **3.1 Implementation and Enforcement of the Tax Acts**

3.2 Nigerian legislations on income taxation, capital gains taxation and stamp duty are Acts of the National Assembly because of the historical need for uniform rules and a harmonized approach to their implementation. However, the actual implementation of those Acts and collection of the taxes charged have always been carried on concurrently by the Federal and State Taxing Authorities. The State Boards of Internal Revenue are fully in charge of implementation and collection from resident individuals and unincorporated bodies while the FIRS focused on incorporated companies, members of the Police Force and Armed Forces, residents of the FCT Abuja and foreign residents.

3.3 In this regard, it is important that the States implement the Acts and collect these taxes for their own account, not as agents of the Federal Government. That is to say that the proceeds are paid directly into the State's Consolidated Revenue Fund. The collection or expenditure of these taxes are supervised by State Houses of Assembly, not the Federal Government or any of its agencies.

3.4 Surprisingly, under the FIRSE Act which came into force on the 16<sup>th</sup> April 2007, the FIRS was wrongly empowered exclusively to implement and enforce all the Federal Tax Acts, including the Personal Income Tax Act, Capital Gains Tax Act and Stamp Duties Act. See Sections 2, 6 and 68 as well as the First Schedule to the Act.

3.5 As stated above, State Boards had hitherto always implemented in their own behalf and for their own account these Acts as far as non-corporate residents were concerned and there was no basis for conferring exclusive authority to administer the Acts on the FIRS.

3.6 Unfortunately, by virtue of Section 8 in particular, FIRS is currently vested with the exclusive power to;

- (a) Assess persons including companies and enterprises chargeable with tax.
- (b) Assess, collect, account and enforce payment of taxes as may be due to the government or any of its agencies. The Act in section 69 defines 'government' to include government of a State).
- (c) Collect, recover and pay to designated account any tax under the provisions of the Act or any other enactment or law.

3.7 Also, by Section 26(1) of the Act, the FIRS was given **exclusive** power;

(1) For the purpose of obtaining full information in respect of the profits or income of any person, body corporate or organization, give notice to the person, body corporate or organization requiring him or it within the time specified by the notice to:-

- (a) Complete and deliver to the service any return specified in such notice;
- (b) Appear personally before an officer of the service for examination with respect to any matter relating to such profits or income;

(c) Produce or cause to be produced for examination books, documents and other information at the place and time stated in the notice, which time may be from day-to-day, for such period as the service may deem necessary;

#### **4.0 Nullification of Parts of Personal Income Tax Act**

4.1 It is pertinent to note that Section 68(2) of FIRS Act also stipulates that provisions of the Personal Income Tax Act 2004 (PITA) (which confers power on State Boards of Internal Revenue) shall to the extent of its inconsistency with the FIRS Act be void.

4.2 The implication of this is that all the provisions of PITA that vest power of assessment and collection on State tax authorities have been ***impliedly repealed*** since the same is now the exclusive preserve of the FIRS. Therefore, the State no longer possesses the power to administer Personal Income Taxation, Stamp Duty and Capital Gains Taxation.

4.3 Indeed, the FIRS Act, as it currently stands, has called into question the relevance and legitimacy of the State Boards of Internal Revenue. These provisions of the FIRS Act purport to completely wipe out the division of tax administrative responsibilities that hitherto existed (and currently continues to exist in fact) between the Federal Inland Revenue Services (FIRS) for the Federal Government and each State Board of Internal Revenue (SBIR) for the State under the Personal Income Tax Act 2004.

## **5.0 Undue Centralization of Appeal Process**

5.1 Furthermore, section 59(2) of the FIRS (Establishment) Act gives the Federal Tax Appeal Tribunal exclusive jurisdiction over disputes arising under the statutes listed in the First Schedule of the FIRSE Act. This Schedule includes all matters of personal income tax, capital gains tax and stamp duty (see also paragraph 11(1) of the 5th Schedule). No limitation is indicated as to the nature of such disputes. This means that State Governments can no longer set up Bodies of Tax Appeal Commissioners to settle disputes arising from the administration of income tax within the States.

5.2 Following intensive protest by the States, the FIRS has not yet attempted to exercise its new powers in this regard. However, if the FIRS Act is left as it is, there might be nothing to stop FIRS directing all the States of the Federation and their tax Authorities to disengage from assessment, collection, and enforcement of taxes. The State will then have to depend on the Federal Government for allocation or distribution of the tax or revenue so collected, which is the very antithesis of federalism. The States will, at the same time, face the prospects of inefficient collection, incomplete remittance or withholding of allocations at the discretion of the Federal Government.

5.3 Further, the FIRSE Act as it stands creates considerable confusion in the minds of taxpayers, investors and other stakeholders on the applicable legal regime in the areas of personal income tax, capital gains tax and stamp duties payable by individuals and un-incorporated bodies.

## **6.0 Our recommendations**

6.1 In view of the foregoing, we recommend that:

1. Sections 2, 8, 25, 26, 59 and 68 of the FIRSE Act be amended to expressly exclude those aspects of Personal Income Tax Act, Stamp Duties Act and Capital Gains Tax in respect of which State Boards of Internal Revenue have been statutorily designated as the appropriate tax authorities.
2. Items 3, 4 and 6 of the First Schedule and paragraph 11(1) (ii) (v) and (vi) of the Fifth Schedule be amended in line with our recommendation (1) above.

Dated this 7<sup>th</sup> day of February, 2010

FOR: LAGOS STATE GOVERNMENT  
Ade Ipaye  
Special Adviser (Taxation & Revenue)

**MEMORANDUM SUBMITTED BY LAGOS STATE  
GOVERNMENT TO THE FINANCE COMMITTEE OF THE  
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**ON THE**

**THE TAXES AND LEVIES (APPROVED LIST FOR  
COLLECTION) AMENDMENT ACT**

**1.0 Introduction**

1.1 The Taxes and Levies (Approved List for Collection) Act Cap. T2, Laws of the Federation of Nigeria 2004, limits the assessment and collection of taxes and levies to the relevant tax authority only and forbids the use of road blocks by tax collectors. It also provides that members of the Nigeria Police Force can only be used for tax enforcement in accordance with the provisions of the tax laws. Offences and penalties are then created in accordance with the foregoing legal prescriptions (section 3).

1.2 By these provisions, the Act restricts the scope of tax agents and consultants, as they can no longer participate in assessment and collection. It also prohibits the use of touts.

1.3 Perhaps most importantly, the Act has a single Schedule with three separate Parts. Each Part lists the taxes and levies to

be collected by the Federal, State and Local Governments respectively. Under section 2(1) of the Act, it is an offence for any person or authority to collect any tax or levy outside these lists.

1.4 The Taxes and Levies Act was first promulgated as a Decree during the military era (September 30, 1998) and it was made "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria, 1979."

## **2.0 Need for Amendment**

2.1 We believe that the Act is due for amendment in many respects. At the time it was first promulgated, the provisions of the Constitution did not matter as the Federal Military Government could make law for any part of Nigeria on any subject whatsoever. However, since we have returned to Constitutional rule, it is now imperative to align its provisions strictly with those of the 1999 Constitution.

2.2 Section 1(1) of the 1999 Constitution provides that the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Section 1(3) adds that if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency.

2.3 As it currently stands, the Taxes and Levies Act purports to prohibit states and local governments from collecting taxes other than those listed in their favour in Parts 2 and 3 of the Schedule. In that process, it subverts the concurrent and residual taxing powers of State Houses of Assembly, which are guaranteed by the Constitution. Note that if a State cannot collect a tax, it



follows that it cannot or should not impose it; neither can the State delegate to local government authorities powers which the State has lost.

2.4 The legislative scheme adopted by the Constitution (see section 4 and Schedule 2) suggests the contrary as it leaves some matters to the jurisdiction of State Houses of Assembly in so far as those matters were not on the exclusive list or reserved to the federal legislature under the concurrent list.

2.5 While federal taxing powers are stated on the Exclusive Legislative List, State taxing powers are residual and they are left to be limited or regulated solely by the State House of Assembly. This position is borne out by section 4(7) and Part 2 of Schedule 2 to the Constitution:

4(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say –

- (a) Any matter **not included** in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution;
- (b) **Any matter included in the Concurrent Legislative List** set out in the first column of Part II of the Second Schedule to this Constitution **to the extent prescribed** in the second column opposite thereto;
- (c) Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

2.6 This position is made exceptionally clear by item D9 on the Concurrent Legislative List (Schedule 2 Part II to the Constitution)

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**"9. A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council."**

2.7 These provisions make it abundantly clear that the regulation of State and Local Government taxes and levies is clearly a function of State Houses of Assembly.

2.8 If further support is needed, that is easily found in section 7 of the Constitution which provides as follows:

"7(1). The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the **Government of every State** shall, subject to section 8 of this Constitution, ensure their existence **under a Law which provides for the establishment, structure, composition, finance and functions** of such councils."

2.9 It is therefore not enough for the National Assembly to remove the offending words "Notwithstanding anything contained in the Constitution . . ." It must go further to remove the constitutional infringement which that phrase was intended to cover up.

2.10 That obvious constitutional infringement is the listing of State and Local Government Taxes, which are matters within the residual and concurrent legislative jurisdiction of the State Houses of Assembly.

2.11 In this regard, it should also be noted that the manner of administering State and local Government taxes is to be prescribed by the relevant State legislature. This cannot be otherwise under a constitutional and democratic federalism such as ours where the oversight functions and supervision of the State and Local Government executives belong to the House of Assembly.

### **3.0 Our recommendation**

3.1 Our recommendation is that Parts 2 and 3 of the Schedule to the Taxes and Levies Act be expunged as they relate to matters within the legislative jurisdiction and under the oversight function of the State Houses of Assembly.

3.2 We agree that the phrase "Notwithstanding anything contained in the Constitution . . ." should be expunged. However, in view of explanations already given above, the suggested replacement phrase will not serve any useful purpose.

Dated this 7<sup>th</sup> day of February 2010.

FOR: LAGOS STATE GOVERNMENT  
Ade Ipaye  
Special Adviser (Taxation & Revenue)