

TAX RECOVERY IN NIGERIA: A SECOND WINTER APPROACHES



In the last part of 2018 the Federal Inland Revenue Service (FIRS) wrote to several banks in Nigeria to appoint them as collection agents in respect of taxpayers considered by the FIRS to be in default of tax payments. To achieve this, the FIRS directed those banks to freeze the accounts of taxpayers considered to be in default, in order to disallow them from withdrawing money from their accounts, which

the banks did, without prior notice to the bank account holders. The FIRS took this step pursuant to its statutory power under section 31 of the Federal Inland Revenue Service Act (FIRS Act) and 49 of the Companies Income Tax Act (CITA), which empowers the FIRS to appoint a person as an agent of a taxpayer for the purpose of recovering tax payable by that taxpayer. It has been reported that several thousand bank accounts were subject of this effort by the FIRS which, on 15th February, 2019, was suspended by the FIRS for thirty days. As a result, a second wave of bank account restrictions are expectedly imminent, upon the expiry of the thirty-day suspension period.

There are a myriad of serious legal issues that have arisen from the FIRS' exercise of its powers under sections 31 and 49 of the FIRS Act and CITA respectively, some of which include:

- a) Whether those provisions actually empower the FIRS to direct the banks to freeze the entire account of a taxpayer where the account holds funds in excess of the amount said to be due and payable to the FIRS as tax or even at all;
- b) Whether the FIRS can validly exercise this statutory power, where the time window within which the taxpayer may raise an objection to a notice of assessment served on it has not elapsed and the assessment is yet to become final and conclusive as against the taxpayer;
- c) Whether the bank account of a taxpayer can be frozen and unilaterally debited in favour of the FIRS, without any prior notice to the taxpayer;

- d) Whether the banks that have been appointed by the FIRS as agents of the taxpayers and, consequently owe those taxpayers a fiduciary duty, are not potentially liable to the taxpayers for damages in respect of-
 - i. any misstep in the process of enforcing the directions of the FIRS against the taxpayer; or
 - ii. any ultimate decision that the taxes in relation to which the bank accounts were frozen are not due and payable under the relevant tax statutes; and
- e) Whether as an agent of a taxpayer, a bank appointed by the FIRS does not owe a duty of care to the taxpayer on whose behalf he was appointed to ensure that, in favour of the taxpayer, it raises objections to any ultra vires steps taken by the FIRS.

The FIRS is ostensibly well-intentioned in the steps it has been and continues to take in order to increase tax revenues across the country, in accordance with its statutory mandate. However, there is no doubt that the FIRS' powers are entirely donated to it by applicable statutes and must be exercised within the boundaries of the provisions of those statutes. This will serve to avoid a scenario in which it exposes itself, and indeed the banks, to a deluge of avoidable litigations arising from tax disputes that are resolvable amicably, as is increasingly the trend.

In any event, it is important that every taxpayer ensures that it pays, as and when due, the correct amount of taxes and files the relevant tax returns with the tax authorities, as this will stand it in good stead should it be necessary to raise an objection or challenge to any missteps by the FIRS or even the banks. On the part of the banks, in view of the sheer volume of accounts involved and potential for an avalanche of claims by account holders for breaches of fiduciary duties, it is critical that every step taken in relation to their appointments as agents of taxpayers is advised and defensible.

Where a taxpayer believes that its account has been unlawfully frozen, the procedure for redress requires a careful and considered response, in respect of which early legal counsel is invariably crucial and any taxpayer in this position should consider carefully the legal remedies available to them.