

Legal Alert **Lagos State Consumption Tax Law**

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Legal Alert for September, 2009 ? Lagos State Consumption Tax Law

Declining oil revenues with declining infrastructural facilities that are unable to match an over-populated State, etc has led to the Lagos State Government passing into Law the Lagos State Hotel Occupancy, Restaurants and Events Centres Consumption Tax Law, 2009 (the Lagos State Consumption Tax). This Law imposes a five per cent (5%) tax on all goods and services consumed in Hotels, Restaurants and Events Centres' situated within the territory of Lagos State. Despite the five per cent (5%) charge being excluded from being charged on the existing five per cent (5%) Value Added Tax charge (and service charge), establishments in the Hospitality, Tourism and entertainment industries are opposed to this tax on legal and cost-of-doing business grounds.

This Alert considers what the Consumption Tax provides for, with the grounds of the opposition to it. This will keep you informed on how it affects you, the final consumer.

The Consumption Tax

The five per cent (5%) consumption tax, which excludes the existing charge on VAT and service charge, is charged on the consumer of goods and services in hotels, restaurants and events centres which operate within the territory of Lagos State. The Owner, Manager or Controller of these kinds of business establishments are mandated to collect this tax on behalf of the Lagos State Government and remit the tax collected to the Lagos State Inland Revenue Service (LIRS). All Hotels, Restaurants and Events Centres affected by this Law must within a period of thirty (30) days of the commencement of this Law or the commencement of the business of the operators of such an establishment, register with LIRS for the application of the provisions of this Law.

All consumption tax collected must be reported and remitted to LIRS on or before the 20th day of each calendar month. Failure to make a return or effect a remittance, or where a return or a remittance are not substantiated by the record of the business establishment concerned, LIRS may use its best of judgement to estimate the amount of the consumption tax payable for the relevant period, and the estimate must be paid by the collecting owner/agent within twenty-one (21) days of the service of the order on the collecting owner/agent.

Any Consumption Tax that is not remitted within the prescribed period shall in addition to other penalties prescribed by the Consumption Tax Law bear interest at the rate of five per cent (5%) per annum above the Central Bank of Nigeria (CBN) minimum rediscount rate as is determined by the CBN at the time of the actual remittance. A collecting owner/manager/agent who in addition fails to file a report and remit the consumption tax collected within the time required is in addition liable to pay a further penalty of ten per cent (10%) of the amount due. A Director, Manager, Officer, Agent or employee who fails to comply with this Law is equally guilty of an offence and liable on conviction to a penalty of six (6) months imprisonment or a fine of N2,000,000 (Two Million Naira) or to both the term of imprisonment and the fine.

Any owner, manager, controller or collecting agent has a right to appeal in the first instance to the Chairman of LIRS within seven (7) days of his receipt of a consumption tax assessment requesting the revenue service to review, amend or reverse the assessment. Where the appeal fails, the Owner or the collecting agent has the right of further appeal against such a decision to the Lagos State High Court.

The Lagos State Sales Tax Law is exempted from applying to the premises to which the Lagos State Consumption Tax Law already applies; i.e. Hotels, Restaurants and Events Centres'.

VAT vs. Lagos State Consumption Tax Law

To prevent multiple taxation and the anarchy associated with it, the old Sales Tax Act was abrogated and in its place, Value Added Tax (VAT) was introduced for application to the entire federation (and states) of Nigeria. VAT, which is also a consumption tax, is charged and paid on the supply of all goods and services other than such goods and services which are expressly exempted under the VAT Act.

VAT, like the Lagos State Consumption Tax, is charged at the flat rate of five per cent (5%) of the goods or services enjoyed by the ultimate consumer. Unlike the Lagos State Consumption Tax which is solely for the benefit of the Lagos State Government, VAT is administered by the Federal Government of Nigeria Agency, the Federal Board of Inland Revenue (FBIR), with the proceeds of VAT being distributed under an agreed formula by the 36 States of the Federation of Nigeria. It has been contended that firstly, VAT as presently administered, is against the principle of federalism and secondly that its distribution formula is extremely inequitable in the light of the fact that a large percentage of VAT collected in Nigeria is from businesses situated in Lagos State. The Taxes and Levies (Approved List for Collection) Act, 1998 also does not accommodate State Governments enacting for their own States, a separate Consumption Tax. The Supreme Court decision in *Attorney General of Ogun State v. Alhaja Ayinke Aberuagba* (1997) 1 NRLR (part 1) 51 @ 60 held that a State Law on consumption tax might be void on the ground of covering the

field where identical legislations, without any inconsistency on the same subject matter, were made by a State and by the Federal Government. In such a situation, the State Law must give way to the Federal legislation. However, the Ogun State Sales Tax Law was declared null and void by the Supreme Court in this case because the Law imposed a tax on goods and services brought into the State which was a matter of inter-state trade and commerce which is within the exclusive legislative power of the Federal Government.

The Taxes and Levies (Approved List for Collection) Act, 1998 was not applicable at the time the Aberuagba matter was decided by the Supreme Court. Equally instructive on this matter are the provisions of the 1999 Constitution of the Federal Republic of Nigeria, 2nd Schedule (part II) paragraphs 9, 18 and 19, which authorises a State House of Assembly to make laws for the collection of any tax, fee or rate, or to make laws for the industrial, commercial or agricultural development of a State. Section 4 (7) of the 1999 Constitution also empowers a State House of Assembly to make laws for the peace, order and good government of the State in respect of any matter that is not included in the exclusive legislative list, or any matter included in the concurrent list or any other matter with respect to which it is empowered to make laws by the provisions of the 1999 Constitution.

Conclusion

It is arguably the case that Nigeria is one of the countries in the world that is perceived to have some of the highest cost of doing business as a result of the lack of basic infrastructural facilities and multiple taxation. The co-existence of VAT with the Lagos State Consumption Tax will only exacerbate these perceptions to the further peril of all the economies, State or Federal, in the Federation of Nigeria. The inability to equitably restructure the distribution of VAT proceeds, or to increase its charging rate while reducing the tax rates for personal and corporate taxes makes a strong case for the transfer of its administration to each individual State in the Federation of Nigeria for VAT to be charged on goods and services distributed within that State while the Federal Government administers VAT on goods and services within its direct jurisdiction, i.e. matters on the exclusive legislative list.

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