

THE PLACE OF TAXATION IN MODERN LAW PRACTICE***Abstract**

Traditionally, commercial transactions were undertaken with the traditional perception of market in mind and taxation of those activities has been a source of government revenue. Global industrialization and efficiency in the factors of production and distribution of goods and services have significantly altered the primordial perception of market to include legal practice apart from being a designated location for exchange of goods and services. So, digitalization has led to tremendous transaction requiring every sector including law practice to be taxed, to generate revenue for the government¹. The practice of law has continued to undergo fundamental changes necessitated by the emergence of new developments in law and of which taxation is taking a toll on modern law practice just like the ICT. This paper therefore interrogates and encapsulates the role or place of taxation in modern law practice and whether law firms or legal practitioners should be taxed or exempted from paying taxes, difficulties being encountered in enforcing tax payments or e-tax payments on lawyers, and law firms alike, examination of relevant case laws, statutes including tax laws, and legislative amendments. It is against this backdrop that this paper sets out to distill, discuss and proffer panacea to front burner issues within the purview of taxation as it relates to modern law practice.

Keywords: Value Added Tax, Income, Revenue, Taxation, Jurisdiction, legal practice and legislative amendment

1. Introduction

Tax as defined by the Black's law dictionary² is 'a monetary charge imposed by the Government on the income of an individual, entity corporation sole, or trust as well as the value of an estate or gift. The objective in assessing the tax is to generate revenue to be used for the needs of the public.' At this point, it is imperative to consider the concept of taxes. Taxes are non-penal payments made by individuals and corporate bodies. In the society, state has jurisdiction to collect tax on the basis of presumed social contract that exists between the government and the tax payer. It is conceived as the compulsory extraction of money for public purposes³. Certainly if the government is doing what they are supposed to do in terms of providing social amenities⁴, basic infrastructure to the people and the quality of Governance in the polity is good and commendable, individuals, corporate bodies, law firms and any other person whether in paid employment or not, whether in private sector or not, will be happy to perform his or her civic responsibility i.e. payment of tax as at and when due. Obviously, if things are being equal, it is sacrosanct to pay tax. This is the basis for taxation. Beyond this, it is imperative to note that tax is backed by law, it is compulsory; it is levied on audit⁵ inter alia because tax ought to be levied from its essential characteristics rather than its name⁶. Thus, types of taxes include: Companies

* **By E.Q. OKOLIE, PhD**, Associate Professor of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Anambra State. This is a paper presented on the occasion of the 3rd law week of Nigerian Bar Association, Ihiala Branch at the Eagle Destiny Hotels, Ihiala on the 02-12-2020. The author may be contacted at enrightque@gmail.com; +2348033762068.

¹ See NIBSS, Nigeria's e-payment transactions hit N56.85 trillion available at <http://www.vanguardngr.com/2019/01/nigeria's-e-payment-transactions-hit-n56.58trn-reports> (assessed on the 19th November 2020). Tapping into opportunity would aid revenue generation and subsequently a bloom in our GDP

² Bryan A. Garner 8th ed, p. 1496.

³ Ibid

⁴ See generally, A. Ipaye, 'Philosophy and functions of the Tax system' (assessed on the 28th November 2020).

⁵ S.O. Mohammed, 'law of Taxation – National Open University of Nigeria <http://ngex.com/business> (assessed on the 23-11-2020)

⁶ A. Ipaye, 'Overview of the tax environment: issues and challenges' in Abelu (eds) *GTN Nigerian tax guide and statute* (2nd edition) Lagos, Chartered Institute of Nigeria 2002

Income Tax (CIT) Value Added Tax⁷, Personal Income Tax⁸ (PIT). For our purposes, we shall consider few of these as they affect lawyers or firm of lawyers. But note further that in Nigeria tax appears on the concurrent legislative list thereby empowering both the Federal and State Governments to levy and collect taxes within defined jurisdiction and across different tax types. Therefore, the Federal Board of Inland Revenue and the various States' Board of Inland Revenue are saddled with the legal responsibilities to impose tax on its citizens and corporate entities, both in public and private sectors of the economy including law firms. The tax authority now has autonomy to assess, collect and record. This enabling environment which came into being on the basis of section 8(q) of the FIRS Establishment Act 2007 has led to an improvement⁹ in the tax administration in the country. But for our purposes, it is important to further note that President Muhammadu Buhari on Monday 13, January, 2020, that is this year, signed the Finance Bill into law which is designed to create an enabling environment for businesses and investments by those in the private sector comprising law firms. This bill was earlier on presented to the Joint Session of the National Assembly by the President of Federal Republic of Nigeria on the October 14, 2019. In a statement released by the President, this new Finance Act 2020 is to amend existing tax laws namely, Petroleum Profit Tax Act, Customs and Exercise Tariff Act, Companies Income Tax Act, Value Added Tax Act, Capital Gains Tax Act and Stamp Duties Act, to bring them in harmony with the global best practices. This 2020 Act expands VAT coverage addressing critical issues like taxation of the digital economy. We shall come to this later in this paper!

Finance Act, 2020 also by amending sections 8 and 35 of the Value Added Tax, it increases the penalty for late filing of returns to ₦50,000 for the first month of default and subsequent months ₦25,000.00 the same fees apply for failure to register VAT¹⁰.

Therefore, in view of the above elucidation and background,

The following features are noteworthy of tax:

1. It is usually imposed by Government
2. It is mandatory
3. It must have legislative authority
4. It is usually meant to support Government, and
5. It is for public purposes

2. The Legal Basis for Imposing Taxes on Lawyers and Law Firms

One will ask, what is the legal basis for imposing taxes on lawyers, law firms or, where has the tax man derived his powers to tax lawyers and law firms? The answer is found in the following litany of laws and it is *in tadem* with the emerging trend in legal practice.

1. Constitution of Federal Republic of Nigeria 1999 (as altered)¹¹
2. Personal Income Tax Act¹²
3. Value Added Tax Act¹³
4. Stamp Duties Act¹⁴
5. Capital Gains Tax Act¹⁵

⁷ The value Added Tax (VAT) was introduced in Nigeria in 1993 by the Federal Government. Before then, sales tax under the jurisdiction of the states and generally poorly administered with the marginal contribution in terms of revenue. The idea of introducing VAT was recommended by the study group set up by the Federal Government in 1991 to review the tax system of the federation as a replacement of sales Tax. After extensive deliberation and consultation, VAT was introduced on the 24th August, 1993 as a Federal tax by the value Added Tax Decree. See further Prof. A. Sanni, 'current law and media in Nigeria', British Journal of Arts and Social Sciences No. 5 No. 2 (2012)

⁸ According to Federal Inland Revenue Services. <http://ngex.com/business/legal/tax/commentary> (assessed on the 19th November, 2020).

⁹ This mandates the (FIRS) IRS to assess persons including lawyers, law firms, companies, enterprises chargeable tax inter alia. This was by the Federal High Court in Theodak Nigeria Limited v. FIRS where the court stated that section 30(1)(a) allows FIRS to assess and tax companies, business names, including law firms.

¹⁰ Ibid

¹¹ The *Grundnorm*

¹² Cap P8 LFN, 2004

¹³ cap 41 vol 1 LFN, 2004

¹⁴ Cap 58 LFN, 2004

¹⁵ Cap C1, LFN, 2004

6. Companies Income Tax Act¹⁶
7. Customs & Excise Management Act¹⁷
8. Taxes and levies (Approved list for collection) Act¹⁸
9. Local Government bye-laws¹⁹
10. FIRS Establishment Act²⁰
11. Deep Offshore and inland Basins²¹

We shall be looking at the way some of the taxes affect the lawyers and their law firms.

Personal Income Tax Act

This law makes provision for the imposition of tax on all incomes of Persons, this includes lawyers. This is in line with section 3(1) of Personal Income Tax²². The sources of income includes: (a) gains or profits from any trade, business, profession or vocation. (b) Remuneration (salary, wage, fee, allowance, gain or profit, benefit, etc) of any employment excluding sums paid to the employee: i. In reimbursement of expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gain. ii. In respect of medical or dental expenses incurred by the employee, iii. In respect of any passage to or from Nigeria incurred by the employee, iv. In respect of the maintenance or education of a child, if any provision of this Act provides that any such sums received by the employee during a year of assessment shall be granted to him for the next following year; v. So much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under section 4 of the Act²³.

Value Added Tax Act

The Value Added Tax Act²⁴ includes lawyers in the payment of VAT. Section 2 of the Act²⁵ charges VAT on the supply of goods and services. The recent Tax amendment Act²⁶ puts VAT at 7.5% and the revenue generated from VAT is shared among the three tiers of Government; 15% to Federal Government, 50% to the State Governments and 35% to the Local Governments. Default attracts five thousand naira penalty per each month of default. However, there has been debate in some legal circles as to whether a lawyer or firm of lawyers are duty-bound to pay value added tax (VAT) to the Federal Inland Revenue Service (FIRS) as stipulated by sections 14(1) and 15(1) of the VAT Act, 1993 (as amended), for legal services they provide their clients. It now appears that this issue is settled in the recent Court of Appeal Judgment in *Al-Masser Law firm v Federal Inland Revenue service*²⁷. The brief facts of AL-Maseer's case is simply that sometime in May 2016, FIRS wrote AL-Maseer a letter captioned 'Non-remittance of VAT Returns; wherein the law firm was notified of their duty under the VAT Act to pay a certain amount as VAT to the FIRS for the legal services they provided their clients. AL-Maseer disputed that such duty was cast on it and approached the Federal High Court in Bauchi by way of Originating Summons to determine whether a lawyer and/or law firm is a taxable person within the meaning of Sections, 2,3, 14(1), 15(1) and 46 of the VAT Act, liable to pay VAT to the FIRS for legal services they provide their clients. Al-Maseer argued that legal practice is not a business venture or trade within the meaning of Section 46 of the VAT Act, and further contended that the duty to remit VAT to FIRS is only applicable to persons that engage in trade or business activities for profit. In response, FIRS argued that AL-Maseer as a law firm was engaged in providing legal services to her clients for profit, and that it is, therefore, 'a taxable person within the meaning of Sections 2, 3, 14(1),

¹⁶ Cap C21, LFN, 2004

¹⁷ Cap C45, LFN, 2004

¹⁸ Cap T2 CFN, 2004

¹⁹ Ibid

²⁰ No. 13 2007

²¹ PSC (Amendment) Act

²² Ibid

²³ Personal income Act cap P8 LFN 2004

²⁴ Cap 41 vol. 1 LFN 2004 (now amended)

²⁵ Finance Act 2020 following a Bill presented to the Joint Session of the National Assembly, on the October 14, 2019 by President of Federal Republic of Nigeria

²⁶ Ibid

²⁷ Appeal no. CA/J/179/2018 (unreported) delivered on the 24th May 2019 by Hon. Justice B.M. Ugo (JCA), Court of Appeal Bauchi Judicial Division.

15(1) and 46 of the VAT Act, especially since legal services are not exempted under the first Schedule of the VAT Act. The Federal High Court agreed with FIRS and dismissed AL-Maseer's claims on the ground that the list of 'services' exempt from paying VAT in the first Schedule of the VAT Act did not include 'legal service'. The Federal High Court further held that legal services, unlike medical services and other exempted goods and services under the first schedule of the VAT Act, are chargeable for the purpose of payment of VAT. Dissatisfied, AL-Maseer appealed to the Court of Appeal.

Court Of Appeal's Decision on whether Lawyers/Law Firms Should Pay VAT

The Court of Appeal upheld the decision of the Federal High Court and dismissed the Appeal after considering sections 1, 2, 3, 14(1), 15(1) and 46 of the VAT Act, that respectively provides as follows:

1. There is hereby imposed and charged a tax to be known as the Value Added Tax (in this Act referred to as 'the Tax') which shall be administered in accordance with the provisions of this Act.
2. The tax shall be charged and payable on the supply of all goods and services (in this Act referred to as 'Taxable goods and services') other than those goods and services listed in the first schedule of this Act.
3. There shall be exempt from the tax the goods and services listed in the first Schedule to this Act.

14(1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the rate specified in section 2 of this Act.

15(1) A taxable person shall render to the Board, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.

46. In this Act, unless the context otherwise requires —

'Supply of services' means any service provided for consideration; 'Taxable goods and services' means the goods and services not listed in the first schedule to this Act; 'Taxable person' includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible and intangible property for the purpose of obtaining income there from by way of trade or business or a person or agency of Government acting in that capacity.

In delivering its judgment, the Court of Appeal held that a lawyer or firm of lawyers in private practice provides legal services for a fee, and so are taxable persons bound by sections 1, 2, 3, 14(1), 15(1) and 46 of the VAT Act to pay VAT to the FIRS for legal services they provide. In the words of the Court of Appeal,

Section 46 of the VAT Act (as amended) puts this issue beyond doubt by its definition of the terms 'supply of services', 'taxable goods and services' and 'taxable person' which it defined thus: 'Supply of services' means any service provided for consideration; 'Taxable goods and services' means the goods and services not listed in the first Schedule to this Act, and 'Taxable person' includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible and intangible property for the purpose of obtaining income there from by way of trade or business or a person or agency of Government acting in that capacity.'

By way of contrast, the Court considered the services that are exempted from payment of VAT under the first Schedule of the Act (i.e. medical services; services rendered by community; banks, people's bank and Mortgage institutions; plays, concerts, and performances conducted by educational institutions as part of learning and all export services), and held that since legal practitioners and law firms are not mentioned therein, that legal practitioners and law firms are taxable persons within the

meaning of Section 46 of the VAT Act, for purpose of paying VAT to the FIRS for the legal services they provide.

Lessons from the Court Of Appeal Judgment in *Al-Maseer's Case*

It is therefore safe to say that the notion that lawyers or law firms are not bound to pay VAT to FIRS or their relevant IRS in the areas of their practice for legal services they provide to their clients has been dispelled by the Court of Appeal in *Al-Maseer's* case. In effect, the judgment is strong on the point that lawyers and/or law firms are taxable persons within the meaning of sections 1, 2, 3, 14(1), 15(1) and 46 of the VAT Act, for purpose of paying VAT to the FIRS or their relevant IRS within the area or demand of their practice for legal services they provide.

How Do We Then Calculate VAT?

To calculate VAT, one must first ascertain if the goods or services are not exempted by the Act under the first Schedule to the Act. Where not exempted, by virtue of Section 4 of the Act²⁸, 5% now 7.5% of the consideration of the service would be the amount of VAT payable by the client to the legal practitioner which the legal practitioner would now remit to the FIRS, or relevant IRS in the state of his practice.

For example, if a legal practitioner charges ₦1, 000,000 for any service he renders to a client, the client would pay a total of N 1,050,000. The additional N 50,000 is the VAT which the legal practitioner must pay to FIRS, or his state IRS where he resides or carries on his legal practice. Court of Appeal Judgment in *Al-Maseer Law Firm v Federal Inland Revenue Service*,²⁹ asserts that Law firms should pay VAT on monies collected for services rendered, to their clients.

The Next Question we need to ask ourselves is Whether Registration with FIRS or IRS of the State, a Pre-Condition for the Payment of VAT

This was answered in *Al-Maseer's* case where Court of Appeal further, held that registration under the Value Added Tax Act³⁰, (as amended) (VAT act or the Act), is not per se a precondition for payment of VAT. The implication of this decision is that the FIRS may issue a demand notice on a legal practitioner or any other taxable person to make returns on VAT; it is immaterial whether the taxable person is registered as a VAT collection agent and/or collected VAT from the consumers of his goods and services.

In arriving at its decision and dismissing the Appellant's appeal, we observed that Court of Appeal like the Federal High Court (the lower Court), failed to consider the issue of registration which formed the fulcrum of the Appellant's application challenging the demand notice issued on her by the FIRS. It is my view the Court of Appeal ought to have resolved the issue of registration raised by the parties before proceeding to determine the liability of the Appellant to the notice served on her by the FIRS. It is not a recondite principle of law that the provisions of a statute should not be read in isolation of the other parts of the statute. This is because in order to determine the intendment of the makers of a statute, the statute should be read as a whole, and each clause constructed together in ensuring the discovery of a consistent meaning of the whole.

Extrapolating from the foregoing, the decision of the Court of Appeal in *Al-Maseer law firm v FIRS*, to the effect that registration per se is not a precondition for VAT collection and return, is founded on a sinking and hasty construction of the intendment of the VAT Act. Under the VAT Act, whereas registration is not a precondition for payment of VAT, it is, however, a precondition for VAT collection and returns by a taxable person, which was one of the issues in *Al-Maseer's* case. It is hoped that if and when the Supreme Court is called upon, the apex Court would answer this question definitively and

²⁸ Op. Cit

²⁹ Supra

³⁰ Ibid

leave no room for doubt or speculation as the decisions of the lower Court and the Court of Appeal had done.

3. The Impact of Taxes on Legal Practice as it relates to Law Firms in Anambra State

The Chief Tax Authority in Anambra State is the internal revenue whose operational arm is the Anambra State internal revenue service. The chief tax authority is responsible for collecting tax from individuals in the states including those in law firms. S.44 of the Personal income TAX ACT (as amended)³¹, requires every citizen who resides in Anambra state and earns income, to pay tax to the state government within 90 days in every new assessment year (Jan-March). Every establishment, including Law firm is expected to register their establishment/firms with the P.A.Y.E Department in AIRS and ensure they remit their VAT payment as at and when due. If the tax payer pays tax voluntarily, the chief tax authority may reassess him and either concludes that he over paid or under paid. If over paid, he would be refunded but if he under paid, tax from the staff, including lawyers who are under his pay roll. The law firm or lawyer should also pay his own personal income tax and VAT so long as he resides in Anambra state and makes profit. Making profit is verifiable through audit which is done routinely by AIRS. The tax and levies (approved list for collection) is as shown in the Amendment Act³². The Act also stipulates what all tiers of government should collect. AIRS is responsible for state and L.G.A. Under the Stamp Duties Act, 2004, taxes are paid when perfecting documents. Thus, any lawyer involved in the perfection of documents will be liable to pay this tax. Under the Capital Gains Tax Act, 2004 (as amended), taxes are paid when a gain is made during the disposal of an asset. Any lawyer that is involved with real estates as one of the lines of their businesses will pay this tax³³.

Importance of Payment of Tax by Lawyers and their Law Firms

It is contended that the payment of tax by a practicing lawyer cannot be overemphasized. To prosecute any criminal matter in our courts, for instance, he must among other things, show evidence of income tax payment or tax receipts/certificate which must be within the area or domicile of his practice for a period of 3 years preceding his application, before the Hon. Attorney General of Anambra State issues him with the Hon. Attorney General's fiat. Also, under the 2018 Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria made pursuant to section 19(7) (d) of the Legal Practitioners Act,³⁴ Any applicant for the inner bar must submit himself for income tax payment as at and when due, and present evidence of income tax payment receipt and clearance certificate, which must also cover his place of practice domicile for a period of 3 years preceding his application.

4. Service of Notice

The Board is duty bound to serve on the taxpayer company, individual, law firms lawyer the notice of assessment. The operative word used in the Act is 'Shall', which makes it mandatory and compulsory for the service of notice of assessment to be effected on the taxpayer³⁵. In *Lanto v. Wowo*³⁶ the court held that in determining whether taxes are paid as and when due, the notice of assessment must be served on the taxpayer. In other words, a person cannot be held not to have paid his taxes as and when due, if notice of assessment has not been served on him. The court in *Iluomala v. Ige*³⁷ had a similar reasoning. In *Fashogbon v. Layade*³⁸, the court in construing the provision of section 56 of the Personal Income Tax Act (now section 57 PITA) which is substantially the same provision with section 68 of CITA, (except that the former deals with taxation of persons and unincorporated companies and the latter deals with registered companies), the Court of Appeal, Ibadan Division, had this to say, per Olagunju L.C.A. From the steps that must be taken before the tax payable is evolved, to argue that serving notice of assessment on the taxpayer is not part of the procedure under the Act is unthinkable. It

³¹ Op Cit

³² Ibid P. 56

³³ A. Uvioma 'DO lawyers pay too, much' 2007 [https://www.Nigerialawgaru.com/articcles/general 100% 20 pay %20 100% much % 20 tax, pdf](https://www.Nigerialawgaru.com/articcles/general%20pay%20100%20tax.pdf) accessed on the 20th November, 2020.

³⁴ Cap L 11 LFN, 2004

³⁵ Section 68 CITA.

³⁶ (1999) 7 NWLR (pt 610), P. 227

³⁷ (1992) 4 NWLR (pt 236) p. 511

³⁸ (1999) 1 NWLR (pt 628) p. 543 at 551-552; (2000) 1 N.R.L.R. 143

is like 'staging a Romeo without a Juliet'. On the other hand to say that the taxpayer whom by operation of the Personal Income Tax Act is legally indebted to the tax authority for the assessed income tax, is not entitled to be informed of the assessment of the income tax payable would be an imposition, an arbitrary act that affects his civil right, and therefore, impinges upon his right of fair-hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999. That leads me to the conclusion that assessment of tax payable on a taxable income of all persons is an essential requirement of the Personal Income Tax Act and proof of service upon the tax payer of the Notice of Assessment as prescribed by section 56 therefore, is a condition sine qua non for establishing liability for non-payment of income tax 39 under PITA³⁹.

This will also apply to the interpretation of any other legislation that makes non payment of income tax, a disability or a disqualification⁴⁰. It is made clear and unambiguous in the foregoing case that service of notice of assessment to the taxpayer under section 57 of the PITA, which provision is *in pari materia* with section 68 of the CITA is a sine qua non for a tax liability to be due, when the liability to pay taxes become due, non payment of the said tax, within the appropriate time after service of the notice of assessment attracts tax penalty of 10% of the taxes due.

5. Conclusion and Recommendations

It is clearly seen that payment of tax should not have a negative impact on law firms, or lawyers so long as they earn income and make profit. If their audit reports show that they make losses, they will not be taxed. Taxes are just a percentage of earned income which is arrived at, after deduction of Consolidated Relief Allowances. As a matter of law and obligation, every individual whether a lawyer or not, whether resident in Nigeria or not, persons in paid employment (including Magistrates, Presidents of Customary Court and Judges of Superior Court of record, or other persons in business or operating with business names like law firms, corporate bodies that operate in Nigeria or any other persons who makes profit or claim their income in Nigeria, are all taxable persons and so are liable to pay tax as at and when due. So failure to deduct and remit tax or failure to pay taxes of any kind as the case may be, is a quasi-criminal offence which attracts punitive sanctions, fines, imprisonments, which can be enforced against any person in default including law firms and lawyers. Again, there are mixed reactions in Nigeria in respect of the Amendments, which increase VAT in Nigeria to 7.5% but the advantages of this new Act⁴¹ outweighs its disadvantages. The revenue generated by the Government through these amendments are expected to be used to boost the economy by improved Government spending on infrastructures while the amended CITA and VAT will also assist the small businesses to grow faster as any company with less than ₦25,000 (about 79,000 USA Dollar) turnover in a year is completely exempted from payment of income tax. Therefore in keeping abreast with the emerging trends in legal practice, legal practitioners and in deed their law firms including the 8 Branch Chairmen of Nigerian Bar Association and their members in Anambra State and of other jurisdictions are enjoined to ensure compliance with the payment of tax including VAT payment to their relevant IRS in their various states of domicile-or practice to avoid being embarrassed by the tax man.

³⁹ Ibid at 551-552

⁴⁰ *Fashogbon v. Layade* (2000) 1 N.R.L.R. 143 and 156

⁴¹ Op cit (Finance Act 2010)