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**LEGAL ALERT****Federal High Court Holds that it is Unconstitutional for FIRS to Collect VAT in Hotels, Restaurants and Event Centres and Upholds Consumption Tax****1. Introduction**

On 3<sup>rd</sup> October 2019, the Federal High Court sitting in Lagos in *The Registered Trustees of Hotel Owners and Mangers Association v. A.G., Lagos State and the Federal Inland Revenue Service (Suit No.: FHC/L/CS/360/2018)* declared the provisions of the Value Added Tax Act in relation to goods and services consumed in hotels, restaurants and event centres invalid and unconstitutional in view of the provisions of the Constitution of the Federal Republic of Nigeria and the Taxes and Levies (Approved List for Collection) Act. The Court also granted an order restraining the Federal Inland Revenue Service from enforcing the VAT Act with respect to goods and services consumed in hotels, restaurants and event centres.

**2. Facts of the Case**

In this case, the plaintiff approached the court by an originating summons to challenge the validity of the consumption tax imposed by the Lagos State Internal Revenue Service (LIRS) pursuant to the Hotel Occupancy and Restaurant Consumption Law 2009 and its subsidiary Regulations published in 2017. The plaintiff's contention was that the VAT Act already covered the field as it relates to taxation of consumption of goods and services in hotels, restaurants and event centres. According to the plaintiff, based on the doctrine of covering the field the consumption tax imposed by LIRS should remain in abeyance and cannot be enforced at the same time as VAT.

On the other hand, the Attorney General of Lagos State opposed the reliefs sought in the originating summons and also filed a counter claim. The A.G., Lagos State argued that in view of the fact that the Constitution of the Federal Republic of Nigeria 1999 does not make any provision for the taxation of consumption of goods and services in hotels, restaurants and event centres, the taxation of such matters is a residual matter lying within the exclusive purview of the State House of Assembly. The A.G., Lagos State further argued that the doctrine of covering the field cannot be invoked in this case because the Constitution does not empower the National Assembly to make legislation for the taxation of consumption.

Furthermore, the A.G., Lagos State argued that the Taxes and Levies (Approved List for Collection) Act by its subsidiary Amendment Order of 2015 overrides the VAT Act. According to the A.G., Lagos State, the Amendment Order of 2015, by listing Consumption Tax as one of the taxes to be collected by States, must be deemed to have repealed the VAT Act because the provisions of the two laws cannot be given effect simultaneously.

**3. Decision of the Court**

The Federal High Court held as follows:

- (a) The Exclusive and Concurrent Legislative Lists of the Constitution do not make any provision for the imposition of consumption tax on goods and services consumed in hotels, restaurants and event centres. The matter therefore falls under the residual list and is within the exclusive legislative purview of the State House of Assembly.

- (b) The Taxes and Levies (Approved List for Collection) Act and its subsidiary Amendment Order of 2015 have impliedly repealed the VAT Act because the two laws are diametrically opposed and cannot both be given effect to at the same time. By conferring on States, the power to collect consumption tax from hotels, restaurants and event centres, the Taxes and Levies Act has impliedly repealed the VAT Act to the extent that it applies to hotels, restaurants and event centres.

For the same reasons itemised above, the Federal High Court also upheld the counter claim filed by the 1<sup>st</sup> Defendant (LIRS) and held as follows:

- (a) The provisions of the VAT Act that seeks to impose tax on goods and services consumed in hotels, restaurants and event centres are invalid and unconstitutional;
- (b) That only LIRS is constitutionally empowered to impose and collect taxes for goods and services consumed in hotels, restaurants, and event centres; and
- (c) That the 2<sup>nd</sup> Defendant (FIRS) is perpetually restrained from the collection of VAT for goods and services consumed in hotels, restaurants and event centres in Lagos State.

#### **4. Implications of the judgment**

This decision will open a flood gate of other cases challenging the power of the Federal Government to collect VAT on the consumption of numerous other goods and services. This judgment has also upturned one of the fundamental assumptions of the 2020 budget of the Federal Government which is based on significant projected revenues from the proposed increased VAT of 7.5%.

Pending a decision by the Court of Appeal and the Supreme Court on this issue, we advise operators of hotels, restaurants and event centres to seek legal and tax advice on how best to arrange their affairs in the light of this judgment.

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