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Evaluating the Purpose of the Federal Inland Revenue Service (Establishment) Act, 2007

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Abstract

The extent any statute in Nigeria conforms to the Constitution of the Federal Republic of Nigeria (As amended) 1999, (here-in-called “Constitution of Nigeria”) determines the extent the statute will be valid. This is because the constitution of Nigeria is the supreme law of the nation and no law in a nation will contravene the constitution and still stand¹. Every statute is made for a purpose which is usually indicated in the long title of the statute. Federal Inland Revenue Services (Establishment) Act, 2007 (here-in-called “FIRS Act”)² is a tax administration statute enacted in 2007 of which some of its provisions erupted thrusts of contentions among tax experts. The FIRS Act was reproached for having provisions adversative to the Constitution of Nigeria and asymmetrical with some tax statutes listed in the First Schedule to the FIRS Act. Upon that imprint, the agitators draw the conclusion that the purpose of FIRS Act is to centralize tax administration in Nigeria in the Services. This paper takes a critical expository glance into the alleged reproach by looking into the grounds upon which the agitators anchor the reproach and other relevant provisions of the FIRS Act. It accesses the provisions of FIRS Act with respect to the powers and functions of the Federal Inland Revenue Service (here-in-called “the Service”)³. This paper as well embarks on a careful scrutiny of those tax statutes listed in the First Schedule to the FIRS Act and the alleged contentious provision alongside the Long Title to FIRS Act with a view to determining the veracity or otherwise of the assertion against FIRS Act. In doing this, one research enquiry is hypothesized to guide this work: “Whether the FIRS Act by any of its provisions intend to and in actual fact centralize tax administration in Nigeria in the Service”. We adopt Doctrinal or conceptual legal research methodology in making this paper and the materials used in this work were sourced from primary, secondary and tertiary sources. This work finds out that even though some provisions of the FIRS Act were literarily inconsistent with the provisions of some tax statutes listed in the First Schedule to the FIRS Act, the alleged reproach that it centralizes tax administration in Nigeria in the Service is unfitting. This paper recommends the amendment of those contentious provisions of the FIRS Act to either make them literary in line with the purpose of the FIRS Act or create a rider to the contentious provisions for clarification purpose.

Keywords: FIRS Act, Constitution of Nigeria, tax administration, tax statutes

Introduction

Tax is a compulsory financial contribution into government pocket made by citizens directly and indirectly for the administration of government and provisions of infra and super structures in the nation⁴. It is a forceful imposition of monetary contribution on the citizens by the government. Tax is the foremost sources of internally generated revenue in a nation and is always compulsory⁵. It is not allowed to be voluntary and never voluntary all over the world. It differs from fee which is payment for a particular service received by a citizen. Every single country of the world embarks on taxing the personal income (individual, corporation, organizations and family), businesses, properties, certain activities and consumption, goods and services⁶.

Taxation is the entire revenue system; including but not limiting to the process of tax imposition and collection in a nation i.e. administration of tax on the citizenry. Due to enormous importance of taxation, every nation takes taxation very serious resulting in nations enacting statutes that impose taxes on its citizens, goods, services and properties and as well statutes for the administration of the taxes and levies imposed. In Nigeria the statute guiding administration of federal taxes is the FIRS Act. The FIRS Act became operative in 2007 and established the Service⁷ and gives it the object of controlling and administering the different taxes and laws specified in its first schedule and other laws made or to be made, from time to time, by the National Assembly or other regulations made there under by the government of the federation and to account for all taxes collected⁸.

The Service is as well given, among others, the following functions:

- a. Assess persons including Companies, 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;
- c. Collect, recover and pay to the designated account any tax under any provision of FIRS Act or any other enactment or law;
- d. Collaborate with the relevant Ministry and Agencies, in reviewing the tax regimes and promote the application of tax revenue to stimulate economic activities and development...⁹

The Service performs these functions through the Board established by FIRS Act.¹⁰

There is a widespread contention among some tax professionals that the FIRS Act contained provisions antithetical to the provisions of the

Constitution of Nigeria and also other tax laws in Nigeria and that the FIRS Act centralizes tax administration in Nigeria in the Service through its provisions. Although there are innovations made by the FIRS Act, some tax professionals insist that the FIRS Act is confrontational to the constitution and altered the existing tax system fashioned in line with the federal structure of Nigeria. Therefore, they call for amendment of the FIRS Act to bring it in line with the decentralized tax system of Nigeria in existence before the advent of the FIRS Act.

The Nigerian Tax Regime before the FIRS Act

Nigeria operates a federal system of government and prior to the birth of the FIRS Act, tax administration system in Nigeria is decentralized. Each level of government – Federal, State and Local Government – had its own tax administrative machineries that access and collect taxes under its jurisdiction as assigned to it by the Constitution and other tax statutes¹¹. The Constitution of Nigeria, Taxes and Levies (Approved List for Collect) Act and other tax laws have decentralized arrangement where each federating unit have its own tax window where it is legally permitted to impose and collect taxes. The Constitution for example provides for Exclusive Legislative List and Concurrent Legislative List¹². The Exclusive Legislative List contains some items that are exclusively meant for the federal government of Nigeria to legislate on at the exclusion of state and local government. This is the principle enunciated in the famous case of *Attorney General of Ogun State vs. Aberuagba*¹³ where the court held that Ogun state cannot make law on interstate commerce outside its jurisdiction and within the exclusive preserve of the federal government.

The Concurrent Legislative List contains items of which both the federal and state government can legislate on. Consequently, the federal and state government can legislate on items in the Concurrent Legislative List. The Nigerian Constitution went further to state that where the law made by the state government conflicts with the law made by the federal government, the law made by the federal will prevail and render the state law null and void and of no effect to the extent of its inconsistency with the federal law.¹⁴ Any other item not included in the exclusive legislative list and concurrent legislative lists is referred to as ‘residual list’. Residual list is the preserve of the state government only but the list is not provided in the Constitution¹⁵.

The tax related items contained in the Exclusive List are as follows:

1. Custom and Excise Duty¹⁶.
2. Export Duty¹⁷.
3. Stamp Duty¹⁸.
4. Taxation of Incomes, Profit and Capital Gain¹⁹.

The state government does not have direct competence to legislate on the items on the exclusive legislative list unless a federal statute assigns the power to them. In that case, the state when legislating must confine itself to the prescription of the empowering statute which granted them the power to either legislate or collect taxes on any of these areas. Failure to confine itself to the prescription of the enabling statute will render any law made by the state under the empowering statute void.

The “Concurrent Legislative List”²⁰ which contains items meant for the federal and state to legislate is found at Part II of the Second Schedule to the Constitution of Nigeria. For the purpose of clarity and easy reference we shall reproduce relevant part of the Second Schedule, legislative powers, Part II of the Concurrent Legislative List that tabulates items which the federal and state government has concurrent taxing powers.²¹

Part II of the Second Schedule, Concurrent Legislative List.

1. Taxation of incomes²²;
2. Profits²³;
3. Capital gains, except as otherwise prescribed by this constitution²⁴.
4. Stamp Duty²⁵.

The Taxes and Levies (Approve List for Collection) Act (TAL Act)²⁶ is a tax statute existing before the FIRS Act was enacted in 2007. It was enacted by the National Assembly and makes a tripartite arrangement and graphically divides Taxes and Levies collectable by the three units of the federation of Nigeria i.e. the Federal, the State and the Local Government. The TAL Act cautions against interference into another units of the federation taxing window. The TAL Act at its 1st Schedule divides the taxes and Levies among the three units of the federation into three parts as follows:

- a. Part I contains list of taxes and levies collectable by the Federal Government.
- b. Part II contains list of taxes and levies collectable by the State Government.
- c. Part III contains list of taxes and levies collectable by the Local Government.

In 2015 the TAL Act and its Schedule was amended and the Amended reads “Taxes and Levies (Approve List for Collection) Act, (Amendment) Order, 2015.”²⁷ The 2015 amendment order at its Schedule amends the already existing Part I, II and III and creates a new part IV.

Other tax statutes contained in the Schedule to FIRS Act include:

- a. Companies Income Tax Act (CITA)²⁸,
- b. Capital Gains Tax Act (CGTA)²⁹,
- c. Personal Income Tax Act (PITA)³⁰,
- d. Value Added Tax Act (VATA)³¹,
- e. Education Tax Act (ETA)³²,
- f. Petroleum Profit Tax Act (PPTA)³³ and
- g. Stamp Duties Act (SDA)³⁴

All these tax statutes were made by the National Assembly at different times pursuant to the Constitution of Nigeria and were in existence before the advent of FIRS Act. Some of the tax statutes like PITA, CGTA and SDA have dual provision for its administration by the federal and state government while the rest are collectable by the federal government only through the Service because they contained items within the exclusive preserve of the federal government³⁵. Under PITA federal government through the Service has the responsibility of the administration of personal income tax of some category of persons and corporate bodies. The category of persons that pays income tax to the Service includes:

- i. Resident of Federal Capital Territory,
- ii. Members of the Nigeria Police Force (the Army, Navy and Air Force)
- iii. Members of the Armed Forces of Nigeria
- iv. Staff of the Ministry of Foreign Affairs and Non-Residents³⁶

The state government has the responsibility to collect income tax of other persons residing within its jurisdiction except from the category of persons listed above. The Service collects Stamp duties from companies register in Nigeria and document of properties, instrument, parchment and other legal document prepared in the Federal Capital Territory. The SBIR collects stamp duties for Instruments, Parchments, Receipts and other legal documents for properties in the state.³⁷

What Is the Fault of the FIRS?

The advent of FIRS Act in 2007 sparked agitation that the FIRS Act centralizes tax administration in Nigeria. The agitators claimed that some sections of the FIRS Act is asymmetrical with the provisions of the Constitution of Nigeria and existing tax statutes and that the FIRS Act centralizes tax administration in Nigeria in the Service through its sections. If this is true, it pre-supposes that since the FIRS Act came into being, only the Service administers those taxes and levies listed in the Schedule to the FIRS Act at the exclusion of the State Board of Internal Revenue (SBIR)

and Local Government Revenue Committee (LGRC) which are institution responsible for collection of taxes and levies for the state and local government respectively.

This accusation against FIRS Act falsely draws the impression that since the inception of the FIRS Act, the SBIR and LGRC of various states and local governments no longer collect the taxes and levies under the statutes listed in the Schedule to the FIRS Act. Is this really the truth of the Nigerian tax system since inception of the FIRS Act in 2007? The agitators' argument is that sections 2, 25 (1) and 68 (1) and (2) are the crucial asymmetric sections of the FIRS Act and these sections are the pivot of their accusation or contention. For clarity of understanding, we shall reproduce the provisions of sections 2, 25 (1) and 68 (1) and (2) of the Act and the enactments listed under the First Schedule to the FIRS Act for which the Service is empowered to administer.

Section 2 of the FIRS Act provides as follows:

The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time by the National Assembly....³⁸

Section 25 (1) of the FIRS Act provides as follows:

the Service shall have power to administer all the enactment listed in the First Schedule to this Act and any other enactment or law on taxation in respect of which the National Assemble may confer power on the Service³⁹

Section 68 (1) of FIRS Act provides as follows:

Notwithstanding the provisions of this Act, the relevant provisions of all existing enactment including, but not limiting to, the laws in the first Schedule shall be read with such modifications as to bring them into conformity with the Act.

Section 68 (2) provides thus:

If the provisions of any other law, including the enactment in the First Schedule are inconsistent with the provision of this Act, the provision of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistent be void⁴⁰.

Legislations of which the Service is empowered to administer as contained under the First Schedule to FIRS Act:

1. Company Income Tax Act.⁴¹
2. Petroleum Profit Tax Act.⁴²
3. Personal Income Tax Act.⁴³

4. Value Added Tax Act.⁴⁴
5. Stamp Duty Act.⁴⁵
6. Taxes and Lives (Approved List for Collection), Act.⁴⁶
7. All Regulations, Proclamation, Government Notices or Rules issued in terms of this legislation.
8. Any other Law for the assessment, collection and accounting of the revenue accruable to the government of the federation as may be made by the National Assembly from time to time or Regulations incidental to these laws, conferring any power, duty and obligation on the Service.
9. Enactment or laws imposing taxes and Levies within Federal Capital Territory.
10. Enactment or laws imposing collect of taxes, fees and levies collected by other government agencies and companies including bonus, pipeline fees, penalty for gas flare, depots levies and licenses, fees for Oil Exploration License (OEL), Oil Mining License (OML). Oil Production License (OPL), royalties, rents (production and non-productive), fees for licenses to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industries but not limited to the above listed.⁴⁷

Now having reproduced these provisions which the agitators use to reproach the FIRS Act of having amalgamated tax administration in the Service and the legislations administered by the Service as listed under the First Schedule to FIRS Act, let us first of all present the details of the agitators' allegations against the FIRS Act.

The agitators accuse FIRS Act of having come with the purpose to centralize tax administration in Nigeria⁴⁸. They hinge their stance on section 2, 25 (1) and 68 (1) and (2) of the FIRS Act. Equally, they anchor their reason on the preamble to the brief that accompanied the draft Federal Inland Revenue Service bill to the National Assembly which reads as follows:

The FIRS Bill seek to confer on the Service a composite set of powers for the holistic enforcement of all tax types⁴⁹.

Although this preamble truly accompanied the FIRS draft bill, seeking the amendment of Personal Income Tax Act (PITA) to effect centralization of the collection of personal income tax but, it has no bearing on real making of FIRA Act.

Chukwuma⁵⁰ and Awa⁵¹ are very prominent in the wave of the agitation. They anchor their reasons on sections 2, 25 (1) and 68 (1) and (2) of the FIRS Act and argue that the FIRS Act completely wipes out the division of

tax administration as contained in the Constitution and other tax statutes in Nigeria that exists and divides taxing powers administration among the Service, SBIR and the LGRC before the passing of the FIRS Act. They further contend that, although the FIRS Act recognizes the SBIR but just as a clerical outfit created only to assist the Service to sue taxpayers in Nigeria⁵².

As convincing as this contention may seem, and with all sense of respect, we assert that their view is not very correct in that it is based on a faulty interpretation of section 2, 25 (1) and 68 (1) and (2) FIRS Act. It is faulty because they took the part of literal interpretation of the wording of the alleged sections and consequently arrived at a faulty conclusion that the FIRS Act through those sections centralizes tax administration in Nigeria in the Service. Their conclusion is quite conflicting with the existing Nigerian tax regime which survived the FIRS Act unscathed till date, which is a clear indication that the accusation against the FIRS Act of having centralized tax administration in Nigeria is faulty.

The issue that becomes relevant at this point of which we want to determine is: whether the FIRS Act by its provisions in sections 2, 25 (1) and 68 (1) and (2) of the FIRS Act intend to centralize and in fact really centralizes tax administration in Nigeria in the Service? That is to say whether the advent of FIRS Act has essentially altered the existing tax regime that here thereto in existence before the FIRS Act. A proper interpretation of sections 2, 25 (1) and 68 (1) and (2) of the FIRS Act in conjunction with the long title to FIRS Act will lend help to determine this issue.

Interpreting Sections 2, 25 (1) and 68 (1) And (2) of FIRS Act

Every statute is enacted to serve a purpose. The FIRS Act like every other statute came to serve a purpose. In *Kabo Air Ltd v Oladipo*⁵³ and *Adewole v Adesanoye*⁵⁴ it was held that the cardinal rule of interpretation of statutes is to construe them according to the intention expressed in the statutes themselves. This means that it is the words of the statute that best declare the intention of the lawmaker and court will not read into any enactment or statute words or meaning which are not found therein. It is as well trite on the authority of the case of *Akinola v Adegbenro* that when the law is clear and unambiguous, literary interpretation will be given to it⁵⁵. If however, the words of the statute is unclear, confusing and or ambiguous, the court will embark on the voyage of discovery to find out the intention of the law framers or the purpose for which the law was made. This principle received judicial blessing in the famous American case of *Pepper (Inspector of Taxes) v. Hart*⁵⁶. Every interpretation of any statute (including FIRS Act) must locate the purpose of the statute. When the wordings of the statute is clear and unambiguous, ordinary interpretation will be employed to render

interpretation to the statute. When, however, the wording of the statute is unclear and or ambiguous like in the present situation of sections 2, 25 (1) and 68 (1) and (2) of FIRS Act then, a voyage of discovering the purpose or intention of the framers becomes imperative to determine the intent of legislature.

In the determination of the right approach to the interpretation of a statute, the court in the case of *Pepper (Inspector of Taxes) v. Hart*⁵⁷ states as follows:

Having regard to the purposive approach to the construction of legislature the courts had adopted in order to give effect to the true intention of the legislature, the rule prohibits the Courts from referring to parliamentary material as an aid to statutory construction should, subject to any question of parliamentary privilege, be relaxed so as to permit reference to parliamentary material...

The dictum of the court stated above is a demonstration of statute interpretational wisdom and at the same time a highlight on the essence of locating the purpose of a statute in giving the said statute proper interpretation. The purpose of the statute is more superior to the wordings of a particular section of the statute. It is more important than any provision of the statute. The purpose of a statute is the foremost intent of the statute, the reason for the existence of the statute, the symbol, the desired result and reasoning of the statute. This means that the provision of any section of a statute cannot contravene or override the purpose of the statute as designated in the long title of the statute.

Statutes essentially do have a long title. FIRS Act has a long title located at its beginning. The long title to a statute encapsulates the purpose and spirit of the statute⁵⁸. One has to read the Long title to the FIRS Act cautiously in order to capture the intention of the law framer in enacting the FIRS Act and then use it to interpret the provisions of sections 2, 25 (1) and 68 (1) and (2) of FIRS Act. This will help to reset and reposition the real meaning of the sections in discuss. Before the intention of the statute will be determined, there must be a recourse to the long title of the statute. Apart from the fact that the long title enfolds the purpose of the statute, it is superior to any other provision of the statute, in the present case sustains a glowing herald superior to section 68 or any other section of the FIRS Act. Every law is read through its long title to grasp its purpose. The long title sometimes (and as in the case of FIRS Act,) is a reflection of the constitutional strength of the statute⁵⁹. The long title of any statute is to that extent therefore sacrosanct.

For clarity of understanding, we shall reproduce the Long title to the FIRS Act and then make community reading of same together with sections 2, 25 (1) and 68 (1) and (2) of the FIRS Act.

The long title of FIRS Act is as follows:

An Act to provide for the establishment of the Federal Inland Revenue Service charged it with the power of assessment, collection of and accounting for revenue accruable to the government of the federation; and for related matters⁶⁰

If one carefully reads the long title to FIRS Act, one will unequivocally settle to the point that the purpose of the FIRS Act is to establish the Service (i.e. Federal Inland Revenue Service) for the purpose of collection of revenue accruable to government of the federation. The FIRS Act specifically confines the revenue collectable by the Service to those revenue accruable to government of the federation not the state or local government.

The Constitution of Nigeria⁶¹ did not directly interpret government of the federation but the interpretation of “government” gives support to a conclusion that government of the federation refers to federal government as opposed to state and local government. The constitution defines “Government”:

...to include the Government of the Federation, or of any state, or of a local government council or any person who exercises power of authority on its behalf⁶².

The constitution went further to define federation as follows: “Federation” means the Federal Republic of Nigeria⁶³. A community reading of the constitutional interpretation of “Government” and “Federation”, reveals without doubt that “government of the federation” as used in the long title of the FIRS Act unequivocally referred to federal government of Nigeria as opposed to government of various federating states and local governments of Nigeria.

Let us now juxtapose each of the contentious sections of the FIRS Act with the long title. Section 2 of FIRS Act resounds that the object of the Service shall be “to control and administer different tax laws specified in the First Schedule of FIRS Act or other laws made or to be made from time to time by the National Assembly”. On its own part, section 25 (1) empowers the Service to “administer all the enactment listed in the First Schedule to the FIRS Act and any other enactment or law on taxation in respect of which the National Assemble may confer power on the Service”⁶⁴. A combined reading of section 2 and 25 (1) of the FIRS Act to realize the purpose and spirit of FIRS Act as condensed in the long title, yield to no contradiction of

the fact that the laws specified in the First Schedule without doubt explicitly refer to all the sections of those laws specified in the First Schedule to FIRS Act as they relate to government of the federation excluding the state and local government. Any interpretation outside this defeats the purpose of FIRS Act.

The agitators of the view that the FIRS Act amalgamates tax administration in Nigeria in the Service trust heavily on the provisions of section 68 (1) and (2) of the FIRS Act, resonating the section to have given the SBIR and LGRC a decent burial⁶⁵. Section 68 (1) reiterates that the relevant provisions of all existing enactment including, but not limited to, the laws in the first Schedule shall be read with such modifications as to bring them into conformity with the FIRS Act.

Section 68 (2) on its own part provides that if the provisions of any other law, including the enactment in the First Schedule are inconsistent with the provision of this FIRS Act, the provision of this FIRS Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void⁶⁶. As reminiscent as the provisions of section 68 (1) and (2) of the FIRS Act may seem, to the claim that FIRS Act amalgamated tax administration in Nigeria in the Service, the long title of FIRS Act is a crucial barometer or acid test of section 68 (1) and (2) of the FIRS Act. This is because section 68 cannot function or exert any effect independent of the purpose, spirit and intention of the legislature as enshrined in the long title.

Section 68(1) and (2) raise serious inquest into the power of the FIRS Act to divest the state and local government their constitutional powers of tax collection. Section 68 (1) and (2) shall endure the measurement of long title before it will stand. If section 68 is to be strictly applied, it will wipe the SBIR and LGRC of their constitutional powers to collect the taxes listed in PITA, SDA and the TAL Act which is not the intent of the FIRS Act. Sensibility, therefore, requires that the application or the interpretation of these sections should be restricted to the purpose of the FIRS Act. In that respect, section 68 (1) of the FIRS Act having not accurately represented the purpose of the FIRS Act as contained in the long title, must be given purposeful interpretation to bring it to the intent of the FIRS Act⁶⁷.

Section 68 (2) permits a modified reading of the statutes listed in the first schedule to bring it in conformity with provisions of the FIRS Act. This section is far-reaching and an affront to the purpose of the FIRS Act. Furthermore, we should not forget that the long title of FIRS Act is part of the provisions of FIRS Act. Without conceding but, assuming the provisions of all the laws in the First Schedule to FIRS Act is to be read with the modification entreated by the provisions of section 68 (2), the SBIR and LGRC will journey into extinction contrary to the provisions of the

constitution of Nigeria. In order to avoid this atrocity, the word “conformity” as used in section 68 (2) should be interpreted purpose wise to mean the conformity to the long title of FIRS Act. Anything outside this will amount to interpreting the section out of context. This is because the long title indicates the purpose of the FIRS Act, all other sections of FIRS Act are tools employed to achieve the purpose of the FIRS Act and their interpretations must reckon with the purpose of the FIRS Act. This being the position, it is our candid submission that the provisions of PITA, SDA, CGTA and TAL Act⁶⁸ should be read with such modifications as to bring them into conformity with the spirit and intent of the FIRS Act as captured in the long title of the FIRS Act, which is: “... assessment, collection of and accounting for revenue accruable to the government of the federation...”

Sections 2, 25 (1) and 68 (1) and (2) of the FIRS Act can't safely ignore the spirit and intent of the FIRS Act and still stand. It cannot as well on its own embark on an assignment antithetical to the long title to FIRS Act. Its existence can only be taken to be a “legislative mishap” or mere “legislative flamboyant expression” not intended to apply strictly and must be ignored if the FIRS Act is to be workable and serve the intent and spirit of its existence as encapsulated in the long title to FIRS Act and in line with the spirit of fiscal federalism as provided in the Constitution of Nigeria.

It has to be noted also that all the statutes listed in the Schedule to the FIRS Act are made by the National Assembly pursuant to the Constitution which they have the power to make under the Constitution of Nigeria for the peace, order and good governance of the federation with respect to any matter included in the Exclusive list and Concurrent list⁶⁹. Some of the statutes in the 2nd Schedule to FIRS Act that provides for state and local government imposition and collection of certain taxes merely reiterate constitutional provisions examples: PITA, TAL Act and SDA. The statutes therefore are valid to the extent its provisions relates to state and local government powers to collect taxes under them. Besides the FIRS Act didn't abolish the SBIR and LGRC; they therefore still exist. For example, the provision in PITA that creates the SBIR and LGRC and gives those powers and functions⁷⁰, the powers and functions are represented in some of the laws listed in the First Schedule to FIRS Act of which section 68 (1) and (2) purport to have directly aborted.

The local government under the Constitution of Nigeria has the power to collect taxes and rates under the Constitution of Nigeria⁷¹. In consideration of legal position on interpretation of statute and the facts as we have stated above, it is the submission of this paper that any section of any statute (FIRS Act inclusive) that skid off the intention of the long title of the statute, should be void *ab initio* and of no effect to the extent of its inconsistency

with the long title. Flowing from this aphorism, this paper proclaims that sections 2, 25 (1) and 68 (1) and (2) of the FIRS Act having contravene the purpose of FIRS Act is void to the extent of its inconsistency with the purpose of the FIRS Act.

The principle of “Nemo dat quid non habet” applies in the interpretation of the statute too. Nemo dat quid non habet is a common law principle that formed part of our law. It means: “one cannot give what one does not have”. Applying this principle to this discuss, this paper yields to the fact that the National Assembly have power to make law for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List and Concurrent List⁷², the constitution of Nigeria⁷³ gives the National Assembly power to make law with respect to any matter in the Concurrent List as follows:

- (a) any matter 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; and
- (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

From the above stated relevant provisions of the constitution in respect to the powers of the National Assembly to make laws for the nation, it's glaring that the National Assembly though can make law in respect of items in the Exclusive Legislative List and Concurrent Legislative List, nevertheless, it is charged to make such law in accordance with the provisions of the Constitution of Nigeria. In that regard, the National Assembly does not have power to make law that ousts the power of the state and local government to collect taxes. They do not have the power to use any statute or section of a statute to divest the SBIR and LGRC of its powers and functions under the Constitution of Nigeria. If the provisions of the FIRS Act in sections 2, 25 and particularly section. 68 (1) and (2) of the FIRS Act are to apply literally then, the SBIR and LGRC has been shot out of tax collection in Nigeria completely since under these sections, the Service is to collect all taxes under these laws. This is against the spirit and intent of the FIRS Act.

The National Assembly does not equally have the power to bequeath the Service taxing powers constitutionally granted to the SBIR and LGRC. That is why section 2, 25 (1), 68 (1) and (2) of the FIRS Act should be regarded as “Legislative Mishap” or “Legislative Flamboyant Expression”. This fact seems to be known to the National Assembly and may perhaps be the reason they did not abolish the provisions that created the SBIR and LGRC and empower same to collect certain taxes under the statute listed in the FIRS Act.

CONCLUSION

In conclusion, this paper postulates that sections of the FIRS Act should be given exclusive purposeful interpretation, particularly the provision of section 68 (1) and (2). The tax administrative system of Nigeria still remain tripartite as it has been before the advent of the FIRS Act. From the actual implementation of the FIRS Act, there has not be any attempt by the Service to legislate and collect taxes under Parts II and III of the TAL Act or collect the taxes provided by other statutes listed in the schedule to the FIRS Act meant for the state. Above all the SBIR and LGRC are still functioning as if the provisions sections 2, 25 (1), 68 (1) and (2) of FIRS Act do not exist. Besides, the failure of FIRS Act to abolish SBIR and LGRC is a clear indication that the provisions of sections 2, 25 (1), 68 (1) and (2)⁷⁴ merely serve the purpose of bringing into effect every relevant sections of FIRS Act to the intent and purpose of the FIRS Act as captured in the long title and not to centralize tax administration in Nigeria in the Service. The applicability of any section of the FIRS Act should be to the extent of the length and breadth of the long title to the FIRS Act which unequivocally aligns itself with the federal status of Nigeria. The FIRS Act does not, therefore, centralize tax administration in Nigeria in the Service.

RECOMMENDATION

Although this paper advanced the view that the FIRS Act does not centralize tax administration in Nigeria in the Service, contrary to the view of some tax experts, it is not in the labor room of denial of the fact that the FIRS Act is not a perfect piece or cannot be improved upon. It has some leaden provisions that need to be improved or re-organized to bring it to the clear purpose of the legislature. On this backdrop, and in the spirit of understanding of the enormous functions of the FIRS Act as a statute for tax administration, and in consideration of its very vital role in the determination of the effectiveness of federal tax administration in Nigeria, coupled with the need to have a clear and unambiguous statute, this paper recommends as follows:

1. Amendment of section 68 (1) and (2) to bring it in line with the purpose, intent and spirit of the legislature as captured in the long title to FIRS Act.
2. A proviso preceding section 68 (2) to be designated as section 68 (3) that will expressly limit or reinstate that notwithstanding the provisions of section 68 (1) and (2) the powers of the SBIR and LGRC to collect taxes under relevant tax statutes listed at the Schedule to FIRS Act still remain intact and shall not be affected in any way by section 68 (2).

Endnotes

1. Section 1 of the Constitution of Nigeria.
2. Cap F 36 LFN, 2004. The FIRS Act was signed into law in May 2007 by the President Olusegun Obasanjo.
3. The Federal Inland Revenue Service is created by s 1 of the FIRS Act as a body responsible for collection any revenue accruable to the government of the federation i.e. federal government as opposed to the state and local government.
4. WH Chris and SB Elizabeth, *Revenue Law; Principle and Practice*, 8th Edition (Butterworth's Publishers, 2001) 1: The need for redistribution of income and discouragement of the consumption of certain goods and services resulted in the government taxing certain goods and services and passing of tax laws like Value Added Tax Act and Sales Tax Laws of various States.
5. IA Ayua, *The Nigerian Tax Law*, (Ibadan: Spectrum Law Publishing 1996), 3.
6. Income taxes are referred to as direct taxes while other taxes are indirect taxes.
7. FIRS Act 2007, s 1.
8. *ibid.* s 2.
9. *ibid.*, s 8 (1).
10. *ibid* s 3 (1).
11. History of the Federal Inland Revenue Service', obtained online a <History%20of%20FIRSv1.0.pdf> on 1 July, 2022. The tax laws include PITA, SDA, TAL Act, and CGTA.
12. Constitution of Nigeria, 2nd Schedule, Part 1 and 11.
13. (1985) 1 NWLR (Pt. 3) 395.
14. Constitution of Nigeria, s. 4 (5). This is made possible by virtue of *doctrine of covering the field*, meaning that the federal law has covered the field.
15. *ibid* s. 4 (7); 2nd Schedule to the Constitution, Part I, II and III. Odinkonigbo opines that residual list is erroneously called. According to

him “there is nowhere in the constitution or outside it where the phrase “residual list” is used. Indeed, residual matters, which are matters that are outside the exclusive and concurrent legislative list, could not have been associated with the word ‘list’ because there is nowhere you will find that word in the Constitution. Of course the word “list” suggests numbered items that are limited and easily countable. Residual matters, it is arguable, may be difficult to tabulate as listed items.... the idea behind the reservation of matters to the state government is based on the principle of federalism. JJ Odinkonigbo ‘Tax Statutes as Instrument for Compliance and Enforcement: An Examination of the Complications Orchestrated by the Scramble for More Taxing Powers by the Different Levels of Government in Nigeria’ *Contemporary Issues in Taxation Law in Nigeria*, (Ekwenze Ed.) (Snaap Press Nigeria Ltd, Enugu 2014), 109 and 110

16. Constitution of Nigeria, 2nd Schedule, Legislative powers, Part 1 Item 16.

17. *ibid*, item 25.

18. *ibid*, item 58.

19. *ibid*, item 58.

20. *ibid*, 2nd Schedule, Legislative powers, Part 11.

21. Second Schedule, Exclusive Legislative List, Part 1, items 58 and 59.

22. *ibid*, item 7 (a).

23. *ibid*.

24. *ibid*, item 7 (a).

25. *ibid*, item 7 (b).

26. Cap T2 L.F.N, 2004. This is a tax law made by the National Assembly. It shares taxes collectable in Nigeria among the three federating units of Nigerian.

27. The commencement date for the 2015 Amended Schedule was 26th day of 2015.

28. Cap C--- LFN, 2004.

29. Cap, C1, LFN, 2010.

30. Cap P8, LFN, 2004.

31. Cap V1, LFN, 2004,

32. Cap T2, LFN, 2004.
33. Cap P13, LFN 2004.
34. Cap S8, LFN, 2004.
35. Constitution of Nigeria, 2nd Schedule, Part I, items 1, 3, 5; TAL Act, Part 1, items 1, 2, 3, 4, 5 and 6.
36. Personal Income Tax Act, P8 LFN, 2010, s 88.
37. Constitution of Nigeria, Second Schedule, Part 11, Concurrent Legislative List item 3.
38. FIRS Act s 2.
39. FIRS Act s. 25 (1).
40. FIRS Act s. 68 (2).
41. Cap C21 LFN, 2004.
42. Cap P13 LFN, 2004.
43. Cap P8 LFN, as amended 2012.
44. Cap V1 LFN, 2004.
45. Cap S8 LFN, 2004
46. Cap T2 LFN, 2004.
47. FIRS Act, First Schedule. This Schedule contains legislation administered by the Service.
48. I Awa, "Federal Inland Revenue Service (Establishment) Act, 2007: matters arising" Assessed from [http://www. ICMA.service.com](http://www.ICMA.service.com), on 20th July, 2022; A Chukwuma "An Examination of the Contentious Provisions of the Federal Inland Revenue Service (Establishment) Act, 2007, As a harbinger of Constitutional Crisis: A Call for Amendment" *Contemporary Issues in Taxation Law in Nigeria*, (Ekwenze Ed.) (Snaap Press Nigeria Ltd, Enugu, 2014) 75-80.
49. (n Awa 46)
50. (n Chukwuma 46).
51. (n Awa 46)
52. (n Chukwuma 46) 76-80; FIRS Act, s 8 (q).

53. (1999) 10 NWLR (Pt. 623) 517.
54. (1988) 3 NWLR (Pt. 541) 176.
55. (1963) A.C. 614; *Magor and St. Mellons Rural District Council v Newport Corporation* (1952) A.C. 189.
56. (1993) 1 All E.R.810.
57. *ibid.*
58. *Pepper (Inspector of Taxes) v. Hart* (1993) 1 All E.R.810.
59. Constitution of Nigeria, s 4 (2) and (3).
60. FIRS Act 2007, s 1.
61. The Constitution, Part IV, Interpretation, Citation and commencement, s 318 (1).
62. *ibid.*
63. *ibid.*
64. FIRS Act s. 25 (1)
65. (*n Chukwuma* 52) 76-79
66. FIRS Act s. 68 (2)
67. The case of *Pepper (Inspector of Taxes) v. Hart* earlier cited is instructive here.
68. Each of these four statutes contains provisions allowing SBIR and LGRC to collect taxes and levies as stated in the laws. Apart from these three laws, the rest of the taxes in other laws are exclusive preserve of the federal government to collect. It therefore gives no challenge in the interpretation of section 2, 25 (1) and 68 (1) and (2) of FIRS Act.
69. Constitution of Nigeria, Part 11, Powers of the Federal Republic of Nigeria, s 4 (2), (3) and (4) (a).
70. PITA, s 88 and 91.
71. Constitution of Nigeria, Fourth Schedule, Functions of a Local Government Council, 1 (b).
72. PITA, s 88 and 91, Constitution of Nigeria, Part 11, Powers of the Federal Republic of Nigeria, s 4 (2), (3) and (4) (a).

73. Constitution of Nigeria Part 11, Powers of the Federal Republic of Nigeria, s 4 (4) (a)

74. This section provides that if the provisions of any other law, including the enactment in the First Schedule are inconsistent with the provision of this Act, the provision of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void.

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