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**L E G A L
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**CAN THE FEDERAL INLAND REVENUE SERVICE AMEND
THE CONSTITUTION BY A MERE PUBLIC NOTICE?**



**STAMP
DUTY**



INTRODUCTION

The procedure for constitutional amendment or any other Act in Nigeria is cumbersome and can only be made by the National Assembly in compliance with the provisions of section 9 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). In this situation, no individual, ministries and agencies of government are empowered to embark on such duty as the role is constitutionally arrogated to the legislature in line with section 4 of the 1999 Constitution.

This article looks at the constitutionality of the information as contained in the Public Notice issued by the Federal Inland Revenue Service on the 20th day of July 2020 wherein, the agency claimed to be exclusively in charge of stamp duties collected by banks in respect of all banking transactions.

THE PUBLIC NOTICE

The Public Notice entitled **"Clarification on the Administration of Stamp Duties in Nigeria"** was issued by the Federal Inland Revenue Service (FIRS) on 20th July, 2020. Paragraph 5 of the Circular with the heading **"Administration of Stamp Duties in Nigeria"** is set out below for the purpose of emphasis.

"5. Administration of Stamp Duties in Nigeria.

- i. Section 4(1) of the Stamp Duties Act provides that the Federal Inland Revenue Service shall be the only Competent Authority to impose, charge and collect duties upon instruments where such instruments relate to matters executed between a company and any person.
- ii. Section 4(2) of the Stamp Duties Act provides that the relevant authority of a state shall collect duties in respect of instruments executed between individuals.
- iii. In respect of banking transactions, the FIRS is vested with the powers to collect stamp duties on all banking transactions.
- iv. As such, the powers given to the State Government through their respective revenue authorities to administer stamp duties by ensuring the assessment, collection and accounting for stamp duties between individuals into the State Government revenue accounts does not include banking transactions.
- v. The Stamp Duty Commissioner is appointed by the relevant tax authority (Federal or State) as prescribed by jurisdictional authority to administer the Act. The Function of the Commissioner is to administer the provisions of the Act and to supervise Stamp Duties office; adjudicating/assessment, stamping, the imposition of penalties where necessary, ensuring the security of stamped instruments, and account for duties collected".



It is the writer's opinion that the Federal Inland Revenue Service by the said Public Notice has unjustly appropriated to itself powers that are constitutionally allocated to States of the Federation. A quick reference to section 163 of the 1999 Constitution will be of help in this regard. It provides as follows:

Section 163-

Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly –

- (a) Where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of the State.
- (b) Where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.

The above constitutional provisions are clear and devoid of any ambiguities as to the power of States to administer taxes in their domains and where taxes by virtue of any Act are collected on behalf of the States by the Federal government through the FIRS, a proportionate sum as derived from each State is to be paid to that State as part of its own share.

With respect to Stamp Duties, the power to administer it is provided for by the Stamp Duties Act Cap.S8, LFN, 2004 (as amended). Section 4 of the Act which shares the power between the Federal Government and States provides as follows:



Section 4.

- (1) The Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instrument relates to matters executed between a company and an individual, group or body of individuals.
- (2) The State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.

However, despite the clear provisions of the Stamp Duties Act as reproduced above, the FIRS in its circular of 20th July, 2020 insisted that States have no right or power to collect stamp duties on banking transactions even where such transactions are between individuals. With all due respect to the FIRS, this move is an attempt to usurp the constitutional duty of the legislature to amend the clear provisions of section 163 of the 1999 Constitution and section 4(2) of the Stamp Duties Act which give to States the power to administer stamp duties in their respective jurisdictions with regard to transactions involving individuals.

It is trite that taxes and their administration are statutory and in fact, no tax can be imposed without an enabling legislation. In this situation, one wonders where the FIRS derives its powers to exclusively collect/or administer stamp duties on banking transactions as against the spirit of the referenced provisions of the Act which share that power between the Federal Government and States. Tax legislations are usually straight, strict and devoid



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of any room for speculations or conjectures. In the case of **Ahmadu v. Governor of Kogi State (2003) 3 NWLR (Pt. 755) 502 @ 522**, the Court of Appeal succinctly stated the law in the following words:

The law in question is, in its nature, a law which imposes pecuniary burden and is, under the rules of interpretation, subject to the rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties; the subject is not to be taxed unless the language of the statute clearly imposes the obligation. Russel v. Scott (1984) A.C. 422 per Lord Simonds. Language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words. In a taxing legislation, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption about a tax. Nothing is to be read in and nothing is to be implied. One can only look fairly at the language used.

There is nowhere in section 4 or any other provisions of the Stamp Duties Act that the Federal Government is given exclusive power to collect stamp duties on all banking transactions. Banks are only collecting agencies and as such there is no legal basis for FIRS to collect all stamp duties that pass through the banks irrespective of the parties involved in these transactions. The said Public Notice has no place in tax legislations.



It should be noted that transactions between individuals and banks such as loans or mortgages are different from normal banking transactions between individuals. In case of the former, banks are regarded as companies over which the FIRS has exclusive power to administer stamp duties but, in the case of the latter, States have the right to also exclusively administer stamp duties. To take away the power of States to administer stamp duties in respect of transactions involving individuals, section 4 of the Stamp Duties Act must be amended and until that is done; the move by FIRS would remain unconstitutional, null and void.



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