

# The Power of The FIRS To Order 'The Freezing' of Bank Accounts Belonging to Defaulting Tax Payers



Nigeria has witnessed a drive by the Federal Government to generate more revenue from taxation. As part of its efforts to encourage the payment of tax and broaden the tax base, the Federal Government launched the Voluntary Asset and Income Declaration Scheme (VAIDS) in July 2017 as a tax amnesty programme. The objective of the VAIDS was to boost compliance and it was reported to have recovered N30 billion from voluntary declarations. The amnesty programme provided under VAIDS is now over, and the Federal Inland Revenue Service (FIRS) has resorted to an unconventional approach in the collection of tax from defaulting taxpayers.

The FIRS recently issued letters appointing several banks as Collecting Agents for the recovery of alleged tax debts and directing that activity on the bank accounts of certain taxpayers be restricted for failure to pay their taxes. banks are required to "set aside the alleged outstanding tax and pay same to the credit of the taxpayer in full or partial amortization of the tax debt". In addition, the banks are required to submit bank statements and financial records of the taxpayer to the FIRS.

There are several questions which have arisen from this enforcement approach:

## **Does the FIRS have the power to issue a distraining order against the bank accounts of defaulting taxpayers without a Court Order?**

The FIRS is not empowered by any tax laws to issue a distraining order against taxpayers' bank accounts without a court order. The FIRS is relying on the provisions of Section 31 of the Federal Inland Revenue Service (Establishment) Act 2007 and Section 49 of the Companies Income Tax Act (CITA) which grants it the power of substitution. This power of substitution gives the FIRS the right to appoint any person, by a notice in writing, as an agent of a taxable person where it is expedient to do so. The appointed agent may then be required to pay any tax payable by the taxable person from any money which may be held by the agent. The FIRS may also require such an agent to give information about the money or assets held, or which may become due from the agent to the taxable person. Where the agent fails to do so, the agent becomes liable to pay the tax for such taxable person. Similar provisions are also in the Personal Income Tax Act and the Value Added Tax Act. In the case of *Peniel Apartment Limited v. FIRS & Standard Chartered Bank Nigeria Limited* (2014) 15 TLRN 100, the Federal

High Court held that the FIRS' action in appointing the bank as a tax collecting agent was valid because it became obvious that Peniel Apartment Limited had neglected, failed and/or refused to pay its reconnected and agreed liabilities.

Whilst the current approach by the FIRS is to appoint banks, the wording of the Act does not limit the category of those that may be appointed agents. As such, any person who holds any money for a defaulting taxpayer can be appointed an agent of the FIRS.

The application of Section 31 by the FIRS is, however, contentious, as the Section refers to "taxes payable". Under the Nigeria's tax laws, a tax becomes payable only after a final and conclusive assessment has been made by the relevant tax authority. Where an assessment is in dispute and is challenged, the taxpayer is not required by law to make any payment until a decision is reached by the Tax Appeal Tribunal. Section 49 of CITA goes further to state that the agent may be required to pay any tax which "is or will be payable" by the taxpayer.

The questions raised by Section 31 and 49 are whether the FIRS has the right to instruct the banks to place a restriction on the accounts of taxpayers in the absence of a final and conclusive assessment, and whether the relevant tax authority can unilaterally reach a decision on the quantum of taxes payable in the future.

## **Are the banks obliged to comply with the directive of the FIRS?**

Any bank appointed as an agent of the taxpayer has the right to challenge its appointment by filing an objection to its appointment as provided in section 31(5) of the FIRS Act. The bank is therefore under no compulsion to accept the appointment as the taxpayer's agent.

A bank appointed as an agent may choose to comply with the directive of the FIRS if a taxpayer is proved to have neglected, failed and/or refused to pay final and conclusive tax liabilities. It is advisable that the banks request evidence that the taxpayer is indeed indebted to the FIRS otherwise, the bank stands the danger of being in breach of its obligations to the taxpayer, who is its customer.

## **What steps can a taxpayer take when the taxpayer's bank account is restricted following a distraining order by the FIRS?**

An affected taxpayer should seek professional assistance regarding the steps to take in resolving its tax issues with the FIRS.

More importantly, taxpayers should take the following preventive steps:

- I. Ensure that tax returns are up to date and obtain a Tax Clearance Certificate from the FIRS;
- II. Ensure that Value Added Tax and Withholding Tax remittances are up to date;
- III. Ensure that all communications with the tax authorities are in writing and duly acknowledged by the relevant tax authority;
- IV. Contact every bank where the company holds an account and inform them to immediately contact the company if they receive a letter from the FIRS ordering the bank to put a restriction on the company's account.

Should you have any questions or require clarification regarding this or any other developments, please contact the following people:



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