

TAXATION OF THE LEGAL PROFESSION IN NIGERIA: A LEGAL APPRAISAL*

ABSTRACT

Lawyers with practicing firms pay tax as self-employed persons based on their incomes either as individuals, partners or registered firms, others in employment pay through Pay As You Earn Scheme (PAYE). Outside the controversy as to which type of taxes should members of the legal profession ought to be subjected to, there is the major controversy of which relevant tax authority is responsible or should exercise power to collect which tax to be paid within the profession or firms registered as business name. This paper sought to unravel the particular taxes members of legal profession are to pay. The study is significant to lawyers, members of other professions, researchers and students to mention but a few. Doctrinal method of data collection was adopted using analytical and descriptive approaches in reviewing the constitution, tax laws, fiscal regulations and opinion of tax experts on the research issue. It revealed that whichever category a lawyer falls into, he must pay taxes for as long as he earns income except where the law provides otherwise. Moreover lawyers, in different fields are expected to pay or will pay different taxes. By the position of the extant laws, legal firm is not a limited liability company since the practice is under a mere registered business name as provided under Companies and Allied Matters Act. As a registered business name, a legal firm is qualified as an individual subject to personal income tax and other taxes but excludes companies' income tax.

Keywords: Legal Profession, Tax, Legal Practitioner, Legal Firm

INTRODUCTION

The liability to taxation and other revenues by legal practitioners and other citizens of the country begins with the mandatory declaration by the constitution.¹ It is obligatory that every citizen shall declare his income honestly to the appropriate and lawful agencies or authorities of the government and pay his tax promptly.² Taxation was rolled in by payment of taxes, rates and duties by the constitution and was further fortified by the provision in subsection (2)

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¹ Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended, S.24 (F) and S 44(2)(a)

² CFRN, 1999 as amended, Ibid

of section 44³ that nothing under subsection (1) shall be construed as affecting any general law for the imposition or enforcement of any tax, rate or duty.

The limits of power exercisable by the relevant tax authorities in Nigeria were also stated. The constitution⁴ specified that both the federal and state governments should regulate the taxation of incomes, profits and capital gains and others. The constitution thereby by this provision demonstrated an unwavering restriction and limitation to the taxing powers.

In the quest to ascertain the persons covered under the name legal profession, there have been several meanings elicited. A legal firm is not a company that is incorporated under part B of the companies and allied Matters Act,⁵ which is a limited liability company.⁶ In other words a legal firm or a legal practitioner is not a taxable person under the Companies' Income Tax Act and does not fall within the tax authority of the federal government.⁷ Federal Inland Revenue Services (FIRS) cannot regulate nor collect tax in respect of Companies Income Tax, Value Added Tax, Education Tax and Technology levy from the legal profession.

CONCEPTUAL CLARIFICATIONS:

Words may have a general meaning but in this research some words are given restricted meaning as it relates to taxation hereunder;

Tax

Tax is a pecuniary burden laid upon individuals or persons or property to support the government which is exacted by a legislative authority.⁸ It is a compulsory monetary charge imposed by the government on persons, entities, transactions or property to yield public revenues⁹

Whenever the issue comes up requiring a determination of whether a person either natural or artificial is liable to pay tax, the court has a duty to explore the relevant tax legislations and apply them accordingly.¹⁰ It is certain and well settled in our jurisprudence that taxation

³ CFRN, 1999 as amended, S.449(2) (a)

⁴ CFRN, 1999, as amended, concurrent legislative list, items 7-10

⁵ E C UKALA, SAN v FIRS &ANOR,2021 56TLRN1 at 62

⁶ supra,

⁷ Supra,

⁸ BA Garner (ed) Black's law Dictionary, 10th ed (USA, Thompsm Reuters, St Paul MN, 2014) 1688

⁹ Ibid,

¹⁰ Best children Int'l schools v FIRS (2019) 40 TLRN 33

issues are not an all-comers affair or an arbitrary issue. No tax can be imposed on the subject without the word in an act of parliament clearly showing an intention to lay a burden on the subjects.¹¹

Legal Profession.

A profession is a job, a specific job for which a person has taken a few years to learn, perhaps at a college or university.¹² Legal profession refers to the whole of occupational roles purposely oriented towards the administration and maintenance of legal system including judges, lawyers, counselors as well as experts of legal education and scholarship.¹³

In the legal profession, lawyers possess training, skills and position which give them immense power and which raise enormously complex moral inherent in the work itself. Legal profession enables legal practitioners to practice as barristers and solicitors when their names are on the roll.¹⁴

As a corollary, members of the legal profession derive their income from both in private practice or self-employment and/or the lawyers who are employees, are expected to pay tax within the ambit of the law.¹⁵

Legal Practitioner

A legal practitioner is a person whose name is on the roll after he had been called to the Bar by the Bench and he produces a certificate of his call to the Bar to the Registrar.¹⁶ He is someone who has been licensed to practice law and is qualified to advise people about legal matters, prepare contracts and other legal instruments and moreover represent people in court.

He is a person who because of his or her high ethical standards and knowledge gained through education and experience meets the requirements of a state regulatory body and receives a licence to practice law in the state.

Legal Firm

¹¹ A Authority v Regional Tax Board (1970) All NLR 177, VODACOM Business Nig Ltd v FIRS (2018) 35 TLRN 01 at 18

¹² A JM Agbonika and JAA Agbonika, understanding the ABC of Taxation: the Nigeria perspective in JAM Agbonika et al, (ed) *Topical issues on Nigeria Tax Laws and Related Areas*, volume 2, (Ibadan, Ababa press Ltd: 2018) 1-92

¹³ A Kharel, *The Concept of Legal Profession*, Research Gate, SSRN Electronic journal

¹⁴ Legal practitioners Act (LPA) cap L11, LFR, 2004, S.2(1)

¹⁵ Personal Income Tax Act (PITA), 2011, s3(1)(a)&(b)

¹⁶ LPA, Cap L11, LFN 2004, S 7 (a) (b)

A law firm is a business entity formed by one or more lawyers to engage in the practice of law. The primary service rendered by a law firm is to advise clients about their legal rights and responsibilities. It is a company that provides legal services and employs many lawyers.

A legal firm is not a limited liability company under the law but a registered business name and does not have a managing director, any director or company Secretary.¹⁷ The remuneration for firms, partnership and individual legal practitioners are provided for under the Act.¹⁸ In *Al-Maseer law firm v FIRS*¹⁹ it was held that a lawyer or firm of lawyers in private practice undoubtedly supplies legal services to the public for a fee and so caught by the provision of the Value Added Act and bound to charge and remit to respondent value added tax as stipulated by the Value Added Tax Act on the fees they charge their clients.

Liability of Legal Profession or Legal Firms to Taxation.

Income of legal firm involved in legal practice, carrying on a profession is chargeable to tax.²⁰ This is a duty placed on the citizens to declare their income honestly to the appropriate and lawful agencies and pay their tax promptly.²¹

Lawyers work as either employees or self-employed persons.²² They usually practice as sole proprietorships or partners or registered firms. The rates of tax differ among these categories. This should be noted as horizontal equity and vertical equity demand that lawyers on same income level pay same tax while those on different income levels pay different taxes. Whichever category a lawyer falls into it is imperative that he must pay taxes for as long as he earns income except where the law provided otherwise. By extension, lawyers in different fields will pay different taxes.

¹⁷ EC Ukala, *SAN v FIRS & Anor* supra at 54

¹⁸ LPA, SS.19 (3) (4), 15 and 16

¹⁹ (2019) 12 NWLR (pt. 1687) 555 at 572

²⁰ PITA, 2011,s.3(1)

²¹ CFRN, 199 as amended, S.24 (f). Various tax laws constitute the basis for taxation of lawyers amongst other citizens.

²² E.C Ukala v FIRS & Anor, supra at 62

REGULATION OF LIABILITY OF LEGAL FIRMS TO PAY TAX

The constitution spelt out federal taxes which are customs and excise duties, export duties, stamp duties, taxes on corporate profits and gains respectively.²³ The state taxes spelt out as personal income tax and stamp duties on documents and transactions²⁴ and the local government taxes are in the form of rates and liceness as stipulated in paragraph 1 (6) of the fourth schedule.

Lawyers with practicing firms will pay as self-employed persons based on their incomes either as individuals, partners or registered firms. The Act²⁵ provided that tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year from a source inside and outside Nigeria including without restricting the generality of the forgoing, gain or profit from any trade, business, profession or vocation for whatever period of time such trade; business, profession or vocation may have been carried on or exercised.

The consent of the parliament having been reduced in the statutes or Acts of the parliament, there is also separation of taxing powers on the three tiers of government; it is the State Board of Internal Revenue (SBIR)²⁶ that is conferred with the authority to regulate payment of tax by a legal firm. The earned income of a legal firm does not come within the purview and scope of income arising and derived from the operations of a limited liability company; hence it is not within the authority of the FIRS.

Lessons from decisions in *Al-Masser Law firm v FIRS*²⁷ and *EC Ukala & Co v FIRS*.²⁸

In *Al-Masser Law firm v FIRS*²⁹ the appellant claimed that it does not engage in any kind of business for the purpose of making profit thus it does not need to register as a VAT collecting agent. But the respondent in May 2016 served it with a letter title Non-remittance of VAT Return, wherein the appellant was required to charge VAT at 5% of the professional fees. Further letter was served on the firm and was required to pay a whopping sum of N100,000.00 as Best of Judgment Assessment (BOJ). The appellant as plaintiff took out originating summons and sought amongst others that by virtue of the provisions of sections 2

²³ CFRN, 1999 as amended, part 1, exclusive legislative list, items 16, 25, 58, 59

²⁴ Ibid, part 11, concurrent legislative list, second schedule, item D paragraph 7

²⁵ Personal Income Tax Act, (PITA) 2011, S.3 (1) (a)

²⁶ PITA, 2011, S.2(1)(a) and s.88(1)

²⁷ (2019) 12 NWLR (PT 1687) 555

²⁸ (2021)56 TLRN 01

²⁹ Value Added Tax (VAT) Act, 2007, SS 2, 3, & 15

and 46 of the VAT Act, the plaintiff as a legal practitioner was not a taxable person within the contemplation of the Act and is not under any obligation to render any VAT or any other return to the board.

The respondent submitted that the Appellant being a legal practitioner and engaged in providing services to her client for profit, is taxable within the meaning and context of the provisions of the Value-Added Act.³⁰ It is also contended that the service rendered by the Appellant is not one of the services specified in the Act.³¹ The Court of Appeal in a considered judgment held amongst others thus;

- i. The value Added Tax Act does not limit itself to only supplier of goods but extends the duty of collection and remission of VAT to also those who supply services.
- ii. A lawyer or firm of lawyers in private practice undoubtedly supplies legal services to the public for a fee and so caught by the provisions and bound to charge and remit to the FIRS Value Added Tax as stipulated by Value Added Tax Act on the fees they charge their clients.
- iii. By virtue of the Value Added Tax Act, the Federal Inland Revenue shall be responsible for the administration of Value Added Tax Act, the Federal Inland Revenue Service shall be responsible for the administration of value Added Tax Act.

In *EC Ukala, SAN v FIRS*,³² the 1st defendant by its letter of 12th February, 2020 addressed to the managing Director, EC. Ukala and company under the caption; EC Ukala & co, Tax Audit exercise (2013 to 2018 accounts). The 1st defendant indicated that the plaintiff's company (firm) has been referred for routine tax audit. The audit will cover all taxes (VAT/PAYE/Company income Tax/Capital Gain Tax/Education Tax, Technology Levy) administered by the Federal Inland Revenue Service and that a team of tax audit inspectors from the 1st defendant's office will be visiting the plaintiff's office/company on 3rd March 2020 at 10:00am prompt for the exercise.

The law firm therefore sought amongst other reliefs in court that there is no constitutional basis for the imposition, demand and collection of Value Added Tax (VAT) by the

³⁰ VAT Act, 2007, First schedule of the Act

³¹ (2021) 56 TLRN 1

³² CFRN, 1999, as amended, exclusive legislative list, second schedule part 111, items 67 and 68

defendants from the plaintiff being that the 1st defendant lacks the constitutional powers and competence under 1999 Constitution of the Federal Republic of Nigeria.

The 1st defendant contended that the plaintiff is a legal personality as such the plaintiff is not an unincorporated body. Further on the validity of the defendant being responsible for the collection and demand of VAT from the plaintiff, the 1st defendant asked the court to be guided by the constitution,³³ *AG Lagos State v Eko Hotels Ltd*³⁴, *AG, Ondo State v AG Federation and Olafisoye V FRN*³⁵.

In the judgment of court, the court held amongst other decision thus:

- i. It is clear as crystal that the 1999 constitution expressly prohibits the National Assembly from enacting a law on other head of revenue or taxation except for capital gains, incomes of profits of person and payment of stamp duties on documents and transactions.
- ii. The constitution in items 9 and 10 of the concurrent legislative list draws a Berlin Wall of separation between what the constitution authorizes the National Assembly to do and what states Houses of Assembly should do
- iii. The delegation of the power to collect any tax or duty or administration of the law imposing it on private citizens and/or corporate organization such the Federal Inland Revenue Service is unconstitutional, unlawful and null and void.
- iv. Lawyers with practicing firms will pay tax as self-employed person based on their incomes either as individuals, partners or registered firms.
- v. Income derived from a private legal practice as an individual and the legal practitioner is within the ambit of section 3 (1) of paragraph (a) of Personal Income Tax Act

From the forgoing, it is pertinent to note the following;

- i. Legal firms are not limited liability Company but can at best be a registered firm.
- ii. Payment of taxes by legal practitioners or legal firms is with the jurisdiction of State Board of Internal Revenue and not Federal Inland Revenue Service.

³³ (2018) 9 NWLR (pt.1619) 518

³⁴ (2002) 9 NWLR (pt.772) 222

³⁵ (2004) 4 NWLR (PT. 864) 580

- iii. By the insight in *E.C Ukala, SAN v FIRS*³⁶ it should be construed as a better decision than the reasoning in *Al-Massers Law Firm v FIRS*.³⁷
- iv. By the provisions of the 1999 Constitution, fiscal federalism requires that states should be allowed to exercise power within the ambit of the provisions of the constitution.
- v. Legal practitioners or legal firms should not be subjected to payment of Companies Income Tax, Value Added Tax, Education tax and Technology levy to Federal Inland Revenue Service

CONCLUSION AND RECOMMENDATIONS

It is now without ambiguity that legal firms are not companies registered or incorporated under part B of companies and Allied Matter Act as such not a limited liability company. It follows that legal firms or members of the legal profession ought to pay tax as prescribed by the constitution. Legal firms are not taxable persons under the Companies Income Tax Act and do not fall within the Tax authority or jurisdiction of the Federal Inland Revenue Service but the State Board of Internal Revenue.

It is therefore recommended as follows;

- i. The jurisprudence of tax law is that parliament whose consent is deduced in the tax statutes should strive to pass the laws within the provisions of the constitution that sets out the basis for the tax.
- ii. Tax law allocating powers of the state relevant tax authority to the federal tax authority should be declared inconsistent with the provisions of the constitution
- iii. Value Added Tax, Personal Income Tax, Capital Gains tax and Stamp Duty tax to be paid by a legal firm should be collected by the state revenue authority
- iv. Section 7 of the Value Added Tax Act should be amended to reflect that the Federal Inland Revenue Service and State Board of Internal Revenue be responsible for the administration of it as provided under section 2 of the Personal Income Tax Act.

³⁶ Supra

³⁷ Supra