

Legal Alert – March 2015 – Entertainment and Events Centres Tax

Introduction – FCT Entertainment and Events Centres Tax

To aid the development of Tourism Infrastructure in the Federal Capital Territory (“FCT”), the Federal Capital Territory Authority (“FCTA”) recently published the Entertainment and Events Centres Fees Regulations 2014 (“the Entertainment Fees Regulations 2014”).

The Entertainment Tax Act, Cap. 498 Laws of the FCT Nigeria 2007, which is the principal statute from which the FCT Minister derived the authority to publish the Entertainment Fees Regulations 2014, authorises the FCTA to require the proprietors of commercial entertainment establishments to charge the Patrons or Customers of such establishments, on behalf of the FCTA, an Entertainment Tax, which is charged at the rate of 5% of the total invoice issued to a customer, to the exclusion of the 5% Value Added Tax Charge.

An Entertainment Tax is not charged on the net proceeds of an entertainment activity devoted entirely to educational, artistic, literary, scientific, philanthropic or other charitable objectives. An Exemption Certification from the FCT Minister is however required for the exempted matters not to be charged to this tax.

Penalties and Fines

Some of the penalties for non-compliance with this Law include; not charging and remitting this Tax to the FCTA designated bank accounts; obstructing a Police Officer or other Officer from the FCTA from entering into the entertainment location to check on the property’s due compliance with this Law; fraud or forgeries of any paper-work relating to this Tax; etc.

Fines and Terms of imprisonment apply to any non-compliance with the provisions of this Law. Also, where either the Owner or the Manager of the entertainment establishment, and the patron or customer do not charge and pay the entertainment tax on the goods and services provided in such establishment, all the parties connected to the transaction are jointly and severally liable for any non-compliance with the provisions of this Law.

Entertainment and Events Centres Fee Regulations, 2014

Pursuant to Section 11 of the FCT Entertainment Tax Act, Cap. 498, the Minister for the FCT has now published the Entertainment and Events Centres Fees Regulations, 2014 (“the Entertainment Fees Regulations 2014”). The commencement date for these Regulations is 1st February, 2013.

The Entertainment Fees Regulations imposes on every patron or customer who uses or derives any benefit from any goods or services provided in a hospitality or leisure establishment in the FCT, a Five Per Cent (“5%”) Entertainment Fee on the total bill or invoice to the exclusion of the 5% Value Added Tax (“VAT”) on the same bill or invoice.

The goods and services contemplated in the Entertainment Fees Regulations includes the use of any Hotel, other Hospitality or Leisure Facilities or other Events Centres; and any goods and services consumed in any Restaurant; or the subscription to any paid television network, internet facilities or travelling agency services.

Registration, Collection and Remittance of Entertainment “Fees”

The Owner, Manager or Controller of any hospitality or other leisure business in the FCT is statutorily appointed as the Collecting Agent of this “Fee” on behalf of and to the sole benefit of the FCTA without any deductions made from the fee/tax.

All Hospitality establishments in the FCT are therefore required to, within a period of thirty (30) days of their commencement of business, register with the FCTA Entertainment and Events Centres Unit as a Collection Agent under these Regulations.

All Collecting Agents are also required to keep, maintain and preserve all their transaction records using an electronic billing and payment system; and to remit to the FCTA designated bank account, all the Entertainment Fees collected for the preceding week, on or before the close of business of the Monday of the following week.

All Entertainment fees are deemed to be a debt due from the Collecting Agent to the FCTA and are recoverable by the FCTA through the normal debt recovery process.

Penalties for Non-Compliance

Where a Collecting Agent fails to file a Return and remit the Entertainment “fees” collected within seven (7) days of such

collection, as is required by the Entertainment Fees Regulations, such a Collecting Agent shall suffer a penalty of Ten Per Cent (“10%”), plus a additional fine of Five Per Cent (“5%”) on the interest charged Per Annum, over and above the prevailing Central Bank of Nigeria Minimum Rediscount Rate on the amount of the Entertainment fees due for payment.

Also, any Director, Manager, Senior Officer, Agent or employee of a Collecting Agent who connives to breach any of the provisions of the Entertainment Fees Regulations shall on conviction be guilty of an offence and liable on conviction to a term of imprisonment of Six (6) months, or to a fine of Two Million Naira (₦2,000,000.00), or to both the fine and the term of imprisonment.

Appeals, Jurisdiction and Distrain.

Any person aggrieved with an entertainment tax assessment issued under the Entertainment Tax Act, must within Seven (7) days of the receipt of the assessment, appeal to the FCTA for a review, amendment or reversal of the assessment. Where the application for a review of the assessment is refused by the FCTA, the Complainant is entitled to institute a law suit against such an assessment at the High Court of Justice in the FCT. If no law suit or other challenge is lodged within Seven (7) days of the service of the assessment, the assessment shall be deemed to be final and conclusive.

The FCTA is empowered to seal and confiscate by distrain, the movable goods and other property of any defaulter to the registration, filing of returns and remittance(s) of the Entertainment Tax to FCTA. Where the assets distrained are of an immovable nature, an Order from a FCT High Court must be obtained before such immovable goods or property can be sold to satisfy such a final and conclusive entertainment tax assessment.

A Critic of the Entertainment Tax Act and Regulations.

A Tax or a Fee? The Entertainment Fees Regulations, 2014 changed the word “Tax”, which is the word used in the Entertainment Tax Act, to “Fees”. In addition to the absurdity of a Regulation(s) seeking to amend a Statute from which the Regulations was made, a fee is a terminology that is unknown to any Tax Law as a Fee can only be charged for a service rendered.

Constitutionality of Consumption Tax Laws -The power to pass any law imposing any form of tax must be derived or obtained from the Constitution.

It is therefore a matter of contention whether under the 1999 Constitution of the Federal Republic of Nigeria, and the Taxes and Levies (Approved List for Collection) Act, States Houses of Assembly have the taxing powers to legislate on Consumption and other Leisure Taxes as the Value Added Tax and the Taxation of Incomes, Profits and Capital Gains remains under the Exclusive Legislative List over which only the National Assembly, to the exclusion of the States Houses of Assembly, can enact laws.

Double Taxation? It is our further opinion that until the 1999 Constitution of the Federal Republic of Nigeria is again amended, all States and FCT Consumption Taxes in Nigeria, that are charged along-side Value Added Tax, infringe the double taxation rule; as the same subject matter or tax base should not incur a tax twice or multiple times. The latter practice is a very strong disincentive to voluntary tax compliance; and increases the prices of goods or services which impede the growth of commerce in an economy with a very weak consumer purchasing power.

Private Tax Collectors -Though the Federal Government has reportedly banned the use of private Tax Consultants or Collectors to collect taxes, their continuing use to the detriment of enhancing the infrastructure and other efficiency of the Federal and States Inland Revenue Services, is also a matter of much concern. This is especially when only the Inland Revenue Service of a State or of the Federal Government has the exclusive statutory authority to control **the assessment, collection and accounting for all the taxes accruable to the relevant Government.**

The guess that these private tax consultants are appointed under the delegative authority allowed for none core tax responsibilities under the First Schedule of the Companies Income Tax Act and Section 88 of the Personal Income Tax Act (as amended) is very doubtful as in practice, these private tax consultants are performing the exclusive core functions of the Inland Revenue Service.

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