

APPLICABILITY OF VAT TO LEASES AND EFFICACY OF FIRS CIRCULARS

Proem

The Tax Appeal Tribunal, Lagos Zone (“TAT”), on September 10, 2020, decided in **Ess-Ay Holdings Limited v Federal Inland Revenue Service**¹ (the “Decision”) that the lease of real property (commercial or residential) and payment of rent thereof, does not fall within the ambit of supply of goods or services for Value Added Tax (“VAT”) purposes. The TAT also pronounced that information circulars issued by the Federal Inland Revenue Service (“FIRS”), are mere tools for administrative information to the general public. The TAT concluded that information circulars issued by the FIRS are not subsidiary legislation, and as such, do not have the force of law, and shall be construed and deemed to be null and void to the extent of their inconsistency with any existing law. It was also hinted that the power of the Minister of Finance (the “Minister”), under section 38

¹ (Unreported judgment of the TAT, delivered on September 10, 2020, in Appeal No. TAT/LZ/VAT/029/2019).



of the VAT Act, to amend the list of items exempt from VAT under the First Schedule thereof; offends against the constitutional doctrine of separation of powers, and thus null and void.

Commentary

The Decision that FIRS’ information circulars are not subsidiary legislation, and do not have the force of law, is unassailable, and is in tandem with the Court of Appeal’s decision in **FBIR v Halliburton (WA) Ltd.**²

It is noteworthy that section 46 of the Finance Act 2019 has amended the VAT

² (2014) LPELR-24230(CA).

Act to recognise incorporeal rights as taxable “goods” for VAT purposes. The definition of intangible “goods” in the Finance Act excludes “interest in land”. Accordingly, the TAT’s apparent sweeping statement that incorporeal rights exceed the scope of the VAT Act, cannot survive under the Finance Act regime. The pronouncement may need to be qualified to capture the present VAT regime, to the effect that incorporeal rights now constitute taxable goods for VAT purposes, whilst interest in land is excluded. We however doubt that the exemption can be stretched to exempt from VAT, transactions for the acquisition of participating interest in an oil field or acreage.

We salute the judicial activism and bold stride of the TAT in expounding and clarifying the remit of our VAT regime, but caution against sweeping statements, which may occasion any ambiguities or uncertainties.



- *Click here to read our [Tax Alert 12](#) on the Ministerial Order expanding the list of items exempt from VAT in Nigeria.*
- *Click here to read our [Tax Alert 14](#) on FIRS’ Information & Clarification Circular on VAT Regime under the Finance Act 2019.*

The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo.

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EDITORIAL TEAM

Ken Etim
(Managing Partner)
ketim@banwo-ighodalo.com

Abimbola Akeredolu, SAN, FCI Arb.
(Partner)
aakeredolu@banwo-ighodalo.com

Azeezah Muse-Sadiq
(Partner)
asadiq@banwo-ighodalo.com

Oluwatoba Oguntuase
(Practice Support Lawyer)
ooguntuase@banwo-ighodalo.com

Emmanuel Onyeabor
(Associate)
EOnyeabor@banwo-ighodalo.com

Enquiries:
taxteam@banwo-ighodalo.com

OUR OFFICES

48, AWOLOWO ROAD,
SOUTH WEST IKOYI
LAGOS, NIGERIA

AFRI-INVESTMENT HOUSE
50, AGUIYI-IRONSI STREET, MAITAMA
ABUJA, NIGERIA

234 9060003561-
2; 8050875883; 8092714452;
9020524921
(ABUJA - 09 2912127)
banwigho@banwo-ighodalo.com
www.banwo-ighodalo.com