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NIPOST/FIRS DISPUTE OVER STAMP DUTY COLLECTION: AN END IN SIGHT

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INTRODUCTION

The Nigerian Postal Service (NIPOST) and the Federal Inland Revenue Service (FIRS) have been locked in a controversy regarding which of the agencies is charged with the responsibility to collect stamp duties on receipts, electronic transfers, and teller deposits on behalf of the Federal Government under the Stamp Duties Act, Cap S8 Laws of the Federation of Nigeria, 2004 (As amended by the Finance Act 2019 and 2020) (Stamp Duties Act).

This controversy has been the subject matter of disputes before the courts [1] and has, in some cases, received judicial pronouncements [2]. The controversy was further deepened by the directives issued by the Central Bank of Nigeria (CBN) mandating Deposit Money Banks and other Financial Institutions (“DMBOFI”) to charge stamp duty of N50 in respect of electronic transfer and teller deposit from N1,000 and above and remit same to a NIPOST designated account [3].

Interestingly, with the recent passage of the Nigerian Postal Service (Repeal and Re-enactment) Bill, 2021 (the “NIPOST Bill 2021”) [4] by the Nigerian Senate, this battle between both Federal Government agencies appears to have an end in sight.

THE AGENCY RESPONSIBLE FOR COLLECTION OF STAMP DUTIES UNDER THE EXTANT LAWS

In determining the agency charged with the responsibility to collect stamp duties on receipts, electronic transfers and teller deposits, it is important to consider the relevant provisions of the Nigerian Postal Services Act, Chapter N127, Laws of the Federation of Nigeria, 2004 (NIPOST Act); Stamp Duties Act, Chapter S8 Laws of the Federation of Nigeria, 2004 (As amended by the Finance Act 2019 and 2020) (Stamp Duties Act); and the Federal Inland Revenue Service (Establishment) Act (As amended by the Finance Act 2020) (FIRS Act).

NIPOST

As it pertains to NIPOST, Section 1 (2) of the NIPOST Act provides that NIPOST shall have the exclusive privilege of-

(a) conveying all letters from one place to another where postal communication have been established; and

[1] Retail Supermarket Nigeria Limited v. Nigerian Postal Service & 3 Others – Suit No: FHC/L/CS/547/16
[2] Standard Chartered Bank v Kasmal International Services Limited – Appeal No: SC/524/2016 delivered on April 21, 2016; Retail Supermarkets Nigeria Limited v. Citibank Nigeria Limited & Central Bank of Nigeria – Suit No: FHC/L/CS/126/2016 delivered on 13 March 2017.
[3] The directive was issued through CBN circular: CBN/GEN/DMB/02/006 – Collection and Remittance of Statutory Charges on Receipts to Nigerian Postal Service under the Stamp Duties Act dated 15 January 2016
[4] This is an amendment to the Nigerian Postal Services Act, Cap. N127, Laws of the Federation of Nigeria, 2004

(b) performing all the incidental services of receiving, collecting, sending, des-patching and delivering written and printed matter, parcels and like materials, from anyone place to another, where postal communications shall have been established.

Additionally, Sections 4 and 5 of the NIPOST Act which provide for the functions and powers of the NIPOST respectively, limit the powers of NIPOST to providing various types of mailing services; collection and delivery of mails; provision of postage stamp and other evidence of payment of postages and fees; provision of philatelic services; as well as other miscellaneous services as may be authorized by the Federal Government, among other powers.

Specifically, section 5 (c) and (d) of the NIPOST Act provides as follows:

“In the exercise of its functions under this Act, the Postal Services shall have the following specific powers:

(c) to prescribe the amount of postage stamps and the manner in which it is to be paid

(d) to provide postage stamps and other stamped papers, cards and envelopes and to provide such other evidence of payment of postage and fees as may be necessary or desirable”

From the above, it appears that NIPOST’s power pertains to production, sale of postage stamps and providing evidence of payment of postage and fees [5] as there is no express provision in the NIPOST Act empowering NIPOST to collect stamp duties. This notwithstanding, NIPOST has interpreted the above provisions, among others, as empowering it to collect stamp duties in respect of all receipts, electronic transfers, and teller deposits on behalf of the Federal Government.

FIRS

Section 4(1) and (2) of the Stamp Duties Act states the responsibility for collection of duties on corporate instruments as follows:

“(1) The Federal Inland Revenue Service shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instruments relates to matters executed between a company and an individual, group or body of individuals;

(2) The relevant tax authority in a State 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”

Furthermore, Section 8 of the FIRS Act clearly empowers the FIRS to assess, collect, account and enforce payment of taxes as may be due to the Federal Government or any of its agencies as it concerns taxes; and to collect any tax under any provision of the FIRS Act or any other

[5] Section 64 of the NIPOST Act defines “Postage article” to include any letter, postcard, newspaper, book, parcel, package or other article whatsoever transmissible by post.

enactment or law. For the avoidance of doubt, tax is defined in Section 69 of the FIRS Act to include “*any duty, levy or revenue accruable to the government in full or in part under this Act, the laws listed in the First Schedule to this act or any other enactment or law*”.

In addition, Section 25(1) of the FIRS Act clearly empowers the FIRS to administer all the enactments listed in the First Schedule to the FIRS Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the FIRS. It is pertinent to note that the Stamp Duties Act is one of the legislations listed under item 6 of the First Schedule to the FIRS Act.

Furthermore, Section 2 of the Stamp Duties Act defined “*instrument*” to include “*every written document and electronic documents*”. Thus, receipts, electronic transfers, and teller deposits will qualify as instruments over which the FIRS is vested with authority to collect duties.

Consequently, from the combined reading of the provisions of Sections 2 and 4(1) of the Stamp Duties Act as well as Section 8, Section 25(1), and Section 69 of the FIRS Act, it is clear that the agency responsible for collecting tax, including stamp duties on any transaction involving companies, on behalf of the Federal Government is the FIRS.

Thus, it is the view of this author that the controversy between NIPOST and FIRS on this subject is unnecessary, as the position of the relevant laws appear to be clear on the agency that is charged with the duty to collect taxes, including stamp duties, on behalf of the Federal Government. Although, the CBN circular: CBN/GEN/DMB/02/006 requested that stamp duties on electronic transfer and teller deposit be remitted to a NIPOST designated account, it appears to contradict the provisions of the law on the agency responsible for collecting stamp duties.

POSSIBLE RESOLUTION PROVIDED BY THE NIPOST BILL 2021

On Tuesday, 8 June 2021, the Nigerian Senate passed the Nigerian Postal Service (Repeal and Re-enactment) Bill, 2021 (The Bill). The Bill appears to, among other things, restrict NIPOST’s authority to postal operations in Nigeria; thereby putting an end to the lingering controversy between NIPOST and FIRS regarding the agency that is statutorily empowered to collect stamp duties on behalf of the Federal Government [6]

Although, the Bill makes no provision regarding which agency is to collect stamp duties, Section 2 (1) – (3) of the Bill barred NIPOST from engaging in tax collection. For ease of reference, Section 2 of the Bill reads as follows:

[6]<https://nairametrics.com/2021/06/08/just-in-senate-passes-bill-to-unbundle-nipost-restricts-its-operations/>

“There is hereby established a body to be known as the Nigerian Postal Service (hereby designated as the Public Postal Operator) which (a) shall be a body corporate with perpetual succession and a common seal...

“The Postal Operator shall be charged with the responsibility of providing Universal Postal Service in Nigeria.

*“In carrying out its Universal Postal Service Obligations, **the provisions of any enactment, law or regulation relating to taxation of companies, agencies or trusts funds shall not apply to the Public Postal Operator** save for its obligation as a collecting agent of Government.” [Emphasis mine]*

From the quoted provisions of the Bill, it appears that the long-standing controversy between NIPOST and FIRS over the agency with the responsibility to collect stamp duties on behalf of the Federal Government has been laid to rest in favour of FIRS. The Bill is awaiting harmonisation by the National Assembly and assent by the President. Indeed, there is an end in sight.

CONCLUSION

The dispute between NIPOST and FIRS on the right to collect Stamp duties in respect of all receipts, electronic transfers, and teller deposits has been fierce and intense over the years and the issue of whether NIPOST can collect such stamp duties at all and/or retrospectively is currently pending before the Supreme Court.

Even though the CBN circular: CBN/GEN/DMB/02/006 deepened the rift between both agencies, this dispute appears settled in the light of relevant provisions of the NIPOST Act, Stamp Duties Act, FIRS Act, and Finance Acts 2019 & 2020—whose combined effect recognises FIRS as the agency that is statutorily empowered to collect the stamp duties. However, the changes introduced by the NIPOST Bill 2021, if passed into law, may introduce more clarity to the law, especially as it relates to the function of NIPOST as a postal agency.

The Bill further reaffirms the current position of the extant laws regarding the agency clothed with the statutory powers to collect stamp duties on behalf of the Federal Government. It is believed that this clarification and reaffirmation would now give both warring agencies clarity of purpose and the opportunity to focus on their respective statutory mandates.

Similarly, if eventually signed into law, the Bill would affect a lot of actions that are currently pending before the court on this subject matter. Most of the issues raised in those actions would have become mere academic exercise, as the question for which they sought answers would have been answered by the “new law” and so would be finally laid to rest.



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