

The Statutory Body Vested with the Powers to Assess Tax Liabilities of Entities And to Make a Demand Thereon

THE FEDERAL HIGH COURT AFFIRMS JUDICIAL INTOLERANCE FOR EFCC'S REGULATORY OVERREACH IN AMADEUS MARKETING NIGERIA LIMITED V. ECONOMIC AND FINANCIAL CRIMES COMMISSION

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INTRODUCTION

The Federal High Court, Abuja Division, coram *Egwuatu, J.* recently rendered its decision in an action challenging the Economic and Financial Crimes Commission's powers ("EFCC" or "Defendant") to assess the Plaintiff's tax liabilities, and in pursuance of such assessment, issue a notice of demand for payment of such tax liabilities and to threaten enforcement based on those assessments.

BACKGROUND

The Plaintiff, a company registered under Nigerian law—engaging in the business of marketing and distributing Amadeus IT Group's products in Nigeria commenced this suit, challenging the vires of the Defendant to assess its VAT liabilities, and in pursuance of such assessment, issue a notice of demand for payment of such VAT liabilities and threat of enforcement by the Defendant. The Plaintiff sought declaratory and injunctive reliefs against the Defendant inter alia (a) a declaration that the Defendant does not have the vires to assess the Plaintiff's VAT liabilities or other tax liabilities or otherwise issue an assessment and demand notice for payment of such tax liabilities; and (b) an order of perpetual injunction restraining the Defendant from assessing or further assessing the Plaintiff to VAT or other tax liabilities.

DECISION OF THE FEDERAL HIGH COURT

In resolving the sole question for determination—which challenges the Defendant's vires to assess the tax liabilities of the Plaintiff and make a demand for payment of same, the Court clarified that the Plaintiff's case does not challenge the powers of the Defendant to investigate tax evasion or other financial crimes, but rather challenges the powers of the

Defendant to assess the Plaintiff's tax liabilities, and in pursuance of such assessment, issue a demand for payment of such VAT liabilities as well as the Defendant's threat of enforcement.

The Court opined that the Defendant's powers provided for under Section 6 of the EFCC Act—its powers to investigate financial crimes including money laundering and tax evasion were not contested in the suit. The Court made clear that the Plaintiff's case does not contest the broad powers of the Defendant. Rather, the narrow question submitted by the Plaintiff for the Court's determination in the suit was whether the Defendant could validly assess the tax liabilities of the Plaintiff, and in pursuance of such assessment, issue a demand for payment of such tax liabilities.

The Court also considered the Defendant's notice of tax assessment and demand for payment to the Plaintiff in its decision, and agreed with the Plaintiff's submissions that the said demand notice qualifies as an assessment and a demand for payment of the Plaintiff's VAT because it computed the Plaintiff's tax liabilities and provided specific bank account details where the Plaintiff was required to make the payment into.

The Court also considered Sections 38(1)(2) and 7 of the EFCC Act and Section 24 of the Money Laundering Act which the Defendant relied on in issuing the Demand notice and held upon examination, the Court has come to a determination that those provisions do not in any manner or form vest powers on the Defendant to assess the tax liabilities of any entity including the Plaintiff and to issue a demand for payment of same, and that the step taken by the Defendant beyond the scope of its powers is ultra vires.



COMMENT

This decision follows a similarly decided decision of this honourable court in **Wheatbaker Investments Properties Limited v. EFCC** (Unreported: Suit No. FHC/L/CS/244/21) wherein the court held that the powers to assess, demand, collect and enforce taxes in Nigeria are statutorily vested only in the FIRS and not the EFCC.

The decision of the court reiterates a foundational principle of Nigerian administrative and constitutional law which provides that a statutory body can only act within the powers expressly conferred on it by statute. By holding that the EFCC’s issuance of a tax assessment and demand notice was ultra vires, the Court reinforces judicial intolerance for regulatory overreach by public authorities. This is particularly important in a regulatory environment where enforcement agencies often rely on broad investigative mandates to justify actions that, in substance, amount to the exercise of powers reserved for other institutions. By nullifying the EFCC’s assessment and demand notice, the Court safeguards taxpayers’ rights to have tax liabilities determined through statutorily prescribed processes, including access to objection procedures and tax appeal tribunals. This reinforces fairness and transparency in the tax system and ensures that coercive enforcement does not precede lawful assessment. \

The Court agreed with the Plaintiff’s submissions that, pursuant to Sections 8(a) and (b) of the Federal Inland Revenue Service (Establishment) Act and Section 7(1) of the VAT Act, the Federal Inland Revenue Service (FIRS) is the statutory body vested with the exclusive authority to assess tax liabilities and issue demand notices. Accordingly, the Court held that if the Defendant had reason to believe that the Plaintiff was yet to make payments of outstanding taxes due to the Federal Government of Nigeria or underpaid any taxes due to the Federal Government, the proper course of action would have been to provide such information to the FIRS to enable it to issue the appropriate demand for payment, rather than the Defendant independently assessing the Plaintiff’s tax liabilities, issuing a demand notice, or taking steps to enforce payment before the relevant tax tribunal.

In sum, the Court on the narrow point that the Defendant has no statutory powers to assess the VAT liabilities of the Plaintiff or issue a demand notice for payment of such tax liabilities.

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