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**THE NEW TREND OF MEDIA
PROSECUTION OF TAX
DEFAULTERS – THE FIRS
CONSOLIDATED LIST**



Following the recent 'naming and shaming' of tax defaulters and their bankers by the Federal Inland Revenue Service ('FIRS' or "the Service", used interchangeably) on the official website of the FIRS and its wide circulation via social media/the internet, very important questions of law arise that necessitate the justification for the publication. It is important to consider under what legal platform the FIRS is able to perform such administrative power and what procedure has been adhered to that may invariably lead to the conclusion that there is a justification for such publication.

Currently, there are 19,901 names on the list released by the FIRS published alongside their bankers. It stands to reason on what the legal basis for this action is, as well as the steps that statutorily ought to be taken to make such publication of alleged tax defaulters. If the laid out steps were not followed, as seems to be popular opinion, can an action be maintained in constructive libel against the FIRS? Does the FIRS have the statutory powers to mandate a bank for the purpose of deduction from the accounts of tax defaulters as compared, this being placed side by side with the banking institutions duty of confidentiality in maintaining banker-customer relationship? These questions and others agitate legal minds and come up when faced with the reputational consequences that affected persons/corporate structures are being confronted with in the eyes of investors and other interested persons.

The Legal Basis for Publication of Defaulters

The **Federal Inland Revenue Service (Establishment) Act, Cap. F36, L.F.N. 2010 ("FIRSEA")**, **Section 27 (2)** provides that where a tax is not paid at the due date as provided by any enactment, the Service shall make a demand from the defaulter, and where such tax is in not paid after demand has been made, the defaulter shall, in addition to the 100% of tax due and payable, also be liable to a penalty equal to the amount of tax due and payable.

The effect of this provision is that where a person or corporate body has been identified by the Service as a defaulter, a demand shall be delivered by the Service to such person or corporate body for payment of outstanding tax liabilities. And where a defaulter refuses to meet the demand, a monetary penalty in the same value as the tax liabilities shall be imposed on the defaulting party.

Furthermore, **Section 28 (2) of the FIRSEA** also provides that the Service may give notice to any person including persons engaged in banking business in Nigeria to provide within a stipulated time, information including the name and address of any person specified in the notice for the purpose of obtaining information relative to taxation.

The above suggests that the Service may mandate a bank, as likely done in this instance, to provide

information of its customers for the purpose of obtaining facts relevant to customers' tax status and not more. A contravention of this provision by a bank results in incurring penalties of ₦500,000 on corporate customers and ₦50,000 in the case of individual customers.

Section 2 (6) of the **CBN (Consumer Protection Framework) 2016 ("The Framework")** provides that all data of customers shall be protected at all times except as required by law. **Section 2 (6) (2) of the Framework** further provides that financial institutions shall not reveal consumers/customers information to a third party except, among others, as required by the CBN or other regulatory bodies.

Section 31 of **FIRSEA** also states that the Service may by notice in writing appoint *any person* to be the agent of a taxable person. The agent appointed may be required to pay any tax payable by the taxable person from any money which may be held by the agent of the taxable person and where the agent defaults, the tax shall be recoverable from him. The definition section of the FIRSEA defines "**any person**" to include a company or body corporate and any unincorporated body of persons, which may also be a bank or other financial institution. This goes to say that the Service may designate a bank or other financial institution to deduct tax liabilities from defaulters' accounts and this will not constitute a breach of the banker-customer relationship.

Does the law however, permit publication of alleged defaulters' names in any public gazette or platform? The **FIRSEA** makes point of a number of ways payment of tax may be enforced against a defaulting party. Among this is that the management Board of the Service may distrain the taxpayer by his goods or other chattels, bonds or other securities and distrain upon any land, premises, or place in respect of which the taxpayer is the owner and recover the amount of tax due by sale of anything so distrained.

Also, **Section 34** of the FIRSEA provides that any amount due by way of tax shall constitute a debt due to the Service and may be recovered by a civil action brought by the Service.

Further, **Section 49 (2)** provides that where an offence under the Act is committed by a body corporate or firm or other association of individuals;

- (a) every director, manager, secretary or other similar officer of the body corporate;
- (b) every partner or officer of the firm;
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in any capacity, commits an offence and shall be liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

It is however, pertinent to note that while the above provisions empower the Service to recover tax, none allows it to publish names of defaulters as a punitive measure. Presently, there is public concern by companies that claim to have no tax liability whatsoever due to their unwavering compliance with tax remittances and yet have their names published in the list. For instance, a published defaulter, the Assemblies of God Church Nigeria, claims that being a religious organization, they are not subject to payment of tax in Nigeria. Hence from a risk assessment perspective, a business whose name was wrongly listed and is compliant could see good reason to challenge the publication of its name in Court and seek damages among others, in reputational damage.

Conclusion:

While the FIRS is empowered to recover taxes on behalf of the Federal Government of Nigeria, it is also expected to follow due procedure in the recovery of these taxes. From the analysis above, the Service may rightly recover tax via service of notice demands, exercise of their power to distrain by goods, chattels, bonds or other securities as well as lands and premises and even the imposition of additional monetary penalties. The current media prosecution may open the flood gate of litigations against the Service and for which tax payers' money would be impacted negatively.

For further information on the foregoing (none of which should be taken as legal advice), please contact: **Amaka Ukuta** (Amaka.ukuta@ao2law.com) or **Kitan Kola-Adefemi** (Kitan.kola-adelemi@ao2law.com) with the subject: **The New Trend of Media Prosecution of Tax Defaulters – The FIRS Consolidated List.**