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MINING ROYALTIES IN NIGERIA – WHO HAS THE TAXING POWERS?

Introduction

In a recent development, the Federal Government of Nigeria issued a stern warning to states and local governments, cautioning them against the collection of royalties and taxes from licensed miners operating within their jurisdictions.¹ This decision has elicited discussions on which tier of government has the taxing power to collect mining royalties. This briefing note provides an analysis as to which tier of government has taxing powers with respect to mining royalties in Nigeria.

Ownership of Mineral Rights in Nigeria

By virtue of Section 44(3) of the Nigerian Constitution, ownership and control of mineral resources is vested on the Federal Government of Nigeria. Section 1(1)&(2) of the Nigerian Minerals and Mining Act further provides that:

“(1) The entire property in and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and watercourses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.

(2) All lands in which minerals have been found in commercial quantities shall, from the commencement of this Act be acquired by the Government of the Federation in accordance with the provisions of the Land Use Act.

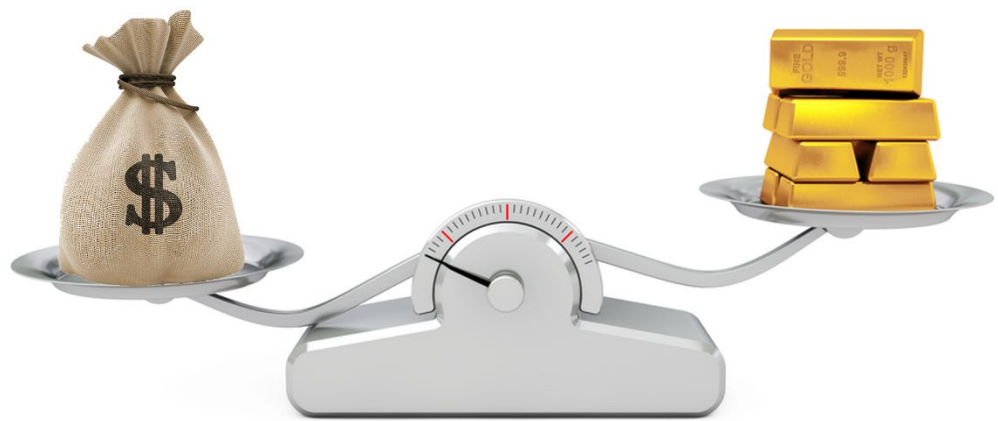
Who has the Taxing Powers?

A useful statute that typically provides guidance as to the taxing powers of the various tiers of government is the Taxes and Levies (Approved List for Collection) Act (the “Taxes and Levies Act”) which clearly enumerates the various taxes the Federal, State and Local Government are entitled to collect. The Taxes and Levies Act does not state who has the

¹ <https://punchng.com/fg-bars-states-from-collecting-mining-royalties/#:~:text=Minister%20of%20Solid%20Minerals%20Development%2C%20Dele%20Alake.&text=Kindly%20share%20this%20story%3A,miners%20operating%20in%20their%20domains.>

taxing powers for mining royalties. The argument for this exclusion would be on the jurisprudential premise that royalties are not taxes, but consideration paid for the use of an asset such as land as in the case of mining. This argument essentially means that a person's entitlement to royalties is co-terminus with ownership of an asset.

Thus, since it has been established that ownership of minerals is vested in the Federal Government of Nigeria, the Federal Government of Nigeria has the appropriate taxing powers to collect mining royalties.



Furthermore, the Exclusive Legislative List² of the Nigerian Constitution, categorizes mining activities as the exclusive responsibility of the Federal Government of Nigeria. In addition, the Mineral and Mining Act saddles the Mining Cadastre Office which is a federal agency the responsibility for collecting royalty on any minerals obtained in the course of a mining operation.

The States' Perspective

States, in times past, might have misconstrued their authority over mining royalties, particularly due to the ownership provision of the Land Use Act. Section 1 of the Land Use Act 1978 which provides that: *"Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation is hereby vested in the Governor of that State, and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act."* Governors, holding the reins of land ownership, may have assumed this authority

² Section 4(1) 1999 Constitution

extended to the minerals beneath the land. This historical misunderstanding has potentially fueled conflicts between state and federal authorities.

While the Land Use Act vests ownership of land in State Governors in trust for the Nigerian people, it does not expressly grant ownership and control of the minerals beneath the land on the State Governors. It is arguable that ownership of land and the minerals beneath is vested in the Governor of a state based on the latin maxim "*quid quid plantatur solo solo cedi*" which means what is affixed to the land (including minerals beneath) belongs to the land hence giving Governors' ownership of minerals beneath the land. This argument is fundamentally flawed based on the supremacy of the Nigerian Constitution to any other law in Nigeria. As mentioned in preceding paragraphs, the Constitution the Nigerian constitution expressly grants ownership of minerals in the Federal Government of Nigeria and on the basis of the Constitution's supremacy over other laws, the argument of "*quid quid plantatur solo solo cedi*" will fail.

Exploring the past reveals instances where states, motivated by the desire for increased revenue or a belief in their ownership claims, might have overstepped their bounds with respect to mining royalties. While their intentions may have been driven by a desire to harness resources for local development, these actions have raised questions about the alignment of state practices with the constitutional provisions that clearly place mineral resources under the control of the Federal Government.

Recent Warnings by the Federal Government and Its Implications

In response to historical and potential conflicts arising from state interference, the Federal Government has issued a stern warning against the collection of mining royalties by states. This warning serves as a timely reminder of the established legal framework and the need for all levels of government to adhere to constitutional provisions.

The implications of the warning are manifold. Firstly, it reinforces the Federal Government's commitment to upholding its constitutional authority over mineral resources. By signaling a zero-tolerance approach to unauthorized state collections, the warning aims to create a deterrent effect, discouraging any further overreach by states into federal jurisdiction.

Secondly, the warning underscores the importance of regulatory clarity in the mining sector. Clarity is not only essential for preventing conflicts but also for fostering a conducive environment for mining operations. Investors, both local and international, rely on a stable regulatory environment for making long-term commitments. The Federal Government's stance seeks to reassure investors that the regulatory landscape is grounded in legal certainty.

Thirdly, the warning prompts a necessary dialogue between federal and state authorities to address any underlying issues that may have led to the historical misunderstanding. Collaborative efforts are crucial for achieving a balanced approach that recognizes the states' legitimate interests while respecting the constitutional authority of the Federal Government.

Conclusion

In conclusion, the warning from the Federal Government serves as a pivotal moment for reflection and correction within Nigeria's mining sector. The legal foundations, including the Constitution, Nigerian Minerals and Mining Act, the Land Use Act, provide a clear roadmap for the jurisdictional boundaries in the exploitation and management of mineral resources. The historical context of state collections highlights the potential pitfalls of misinterpretation and the need for a concerted effort to align practices with constitutional provisions.

As the nation navigates the complexities of mining regulations, cooperation between federal and state authorities becomes paramount. It is not merely a matter of enforcing the law but also fostering an environment where both levels of government can collaborate to harness the economic potential of mineral resources for the benefit of the entire nation. In doing so, Nigeria can ensure a harmonious and efficient management of its valuable mineral resources, laying the foundation for sustainable economic growth.