

CLARIFICATION ON VAT
ADMINISTRATION
BETWEEN THE ARMS OF
GOVERNMENT IN
NIGERIA

HEXALON INSIGHT

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CLARIFICATION ON VAT ADMINISTRATION BETWEEN THE ARMS OF GOVERNMENT IN NIGERIA.

Introduction

Value Added Tax (VAT) is a Consumption Tax, currently levied at the rate of 7.5% on goods and services in Nigeria. It was first introduced by France in the early 60s. VAT was introduced in Nigeria by the military regime via 1993 decree to repeal the sales taxes and decisions were taken by the central government to collect centrally and distribute with equity and fairness.

VAT Exempt Items:

Some of the VAT exempted items include:

1. All medical and pharmaceutical products;
2. Basic Food Items such as (agro and aqua based staple foods);
3. Baby products made for the use of babies from birth to 36 months old
4. Plant, machinery, and equipment purchased for the utilization of gas in downstream petroleum operations
5. Educational books and materials
6. Healthcare related equipment, services, and medicine, including for veterinary care
7. Shared passenger road transport services for public use
8. Rental of residential accommodation by persons other than corporate entities
9. Petroleum products, including aviation and motor fuels, kerosene, natural gas.
10. All exported goods and services;
11. Imported machines for use in the Export Processing Zone (EPZ) or free trade zone;
12. Fertilizer and locally made agricultural medicines and agricultural equipment;
13. Locally manufactured sanitary towels.

Nigeria became a federation in 1963 and the constitution has no provision for VAT, though there were trade and commerce taxes in the exclusive legislative list. Only the Federal Government (FG) can legislate on items on the exclusive list, both the Federal and/or the State Government (SG) can legislate on items on the concurrent list, while those items that cannot be found on both lists are particularly reserved for the State government to legislate on.

The questions are:

1. What are the current VAT issues between FG and some SG and sources of their antipathies?
2. Which arm of the governments in Nigeria is responsible for VAT collection according to the 1999 constitution?
3. Who is cheating who between the State and the Federal government of Nigeria on the current VAT collection mechanism?

4. Will there be Issues, when the states are given the autonomy to collect VAT within their state?
5. Do states currently have the capacity to collect VAT?
6. Tertiary Education Tax and VAT on import duties are provided in the Rivers and Lagos state proposed VAT laws, can these fly in the face of the current Nigerian constitution?
7. What is the effect of the VAT collected by the states on an ordinary business man?
8. What is the current sales tax collection mechanism being used by the US government and how can this be adopted into the Nigerian system.

These questions are dealt with one after the other:

What are the current VAT issues between FG and some SG and sources of the antipathies?

VAT collected by FG is shared to the states and local governments with the following allocation formula:

20% on Derivation (i.e. based on level of VAT generated)
50% on equality and
30% on population

Some state therefore felt aggrieved on the basis of what they get from VAT allocation is usually below what is presumed to have been generated from their state. Example are Rivers state and Lagos state.

Which arm of the governments in Nigeria is responsible for VAT collection according to the 1999 constitution?

VAT issue is not a question of whether the FG or SG is responsible for collection; it is a question of what the law says. It is no doubt that some of the tax laws are not clearly situated in the Nigerian constitution but however, the issues with VAT currently being dragged between some SG and FG have a clear-cut provision but administration and effectiveness in collection may be negatively impacted if this way is followed to the later.

In 1986, the military government has different sales tax collection mechanism which metamorphosed into the VAT law in 1993 but this can be found on the concurrent list which implies that both the FG and/or SG can legislate on it.

As we all know that the 1993 decree predated the activities of 1999. A gap was left during the drafting stage of the 1999 constitution on the ways the VAT was being managed, according to the 1993 decree. Perhaps, if the gap has been closed by adopting the administration on the exclusive list, the current controversy on VAT wouldn't have been heard.

Who is cheating who between the State and the Federal government of Nigeria on the current VAT collection mechanism?

In 2020 the FG collected N1.53T from VAT, out of this amount, 50% relates to VAT on international business (exclusive list item), i.e. only the FG has the jurisdictional power to earn VAT on all imports and other international businesses. Also, out of this amount, the Federal Capital Territory (FCT) collected VAT worth over N200b on FG contracts and all these put together was already worth over 60% of total VAT collection in 2020. However, The FG only retains 15% of this total VAT collected annually and share out 85% to the States and Local Governments. It will therefore be a misplaced perception to think that the FG is cheating the SGs.

Further, in 2020 the VAT generated from Rivers State was 42b but they got was 39b from federal allocation. The questions here are:

- ✓ Does Rivers State government get adequate return on the VAT generated from the state, owing to the fact that the FG was responsible for the cost of collection?
- ✓ Also, if this collection were left solely into the hands of the Rivers, would they be able to collect as much as 39b VAT from the state?

Will there be Issues, when the states are given the autonomy to collect VAT within their state?

The simple answer to this question is yes as there would be a whole lot of issues and all will be centered on reconciliation and double taxation.

The following are the issues;

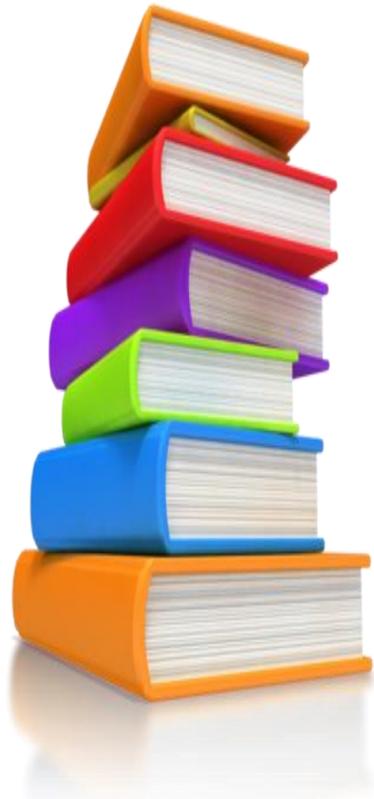
- ✓ Current State Tax Collection capacities
- ✓ Issues reconciling Interstate transactions
- ✓ Business Headquarters effect
- ✓ Turnover Divisibility into owned state transactions
- ✓ Issues reconciling International Transactions
- ✓ Usage of Input VAT generated from other states

Do the states have the collection capacities?

The state currently does not have the technical and man capacities to collect VAT from the states, especially from the international guys such as google, amazon e.t.c and as seen, the proceed from VAT may not be sufficient for states to develop such capacities within a short period because the pool has been divided. Also as said earlier, that even when the states are given the VAT collection autonomy, the FG will still be paid the most significant portion of the VAT revenue, going by the items on the exclusive legislative list. Despite the quantum of revenue been generated by the FIRS, it has taken then 28years to go this far and in all fairness, they have done a lot.

Tertiary Education Tax (TET) and VAT on import duties are provided in the Rivers and Lagos state proposed VAT laws, can these fly in the face of the current Nigerian constitution?

Even if the states are given the autonomy to collect VAT in their states, TET and VAT on international business will still be administered by the FG as these items are only in the exclusive legislative list.



What is the effect of the VAT collected by the states on an ordinary business man?

The effects of this on the ordinary business man are reconciliation of sources of sales and double taxation.

When a business man makes income from all states in the federation, Registration, administration and reconciliation of all revenue with the States Internal Revenue Services will pose lot of difficulties.

For instance, it's acceptable on certain nature of business to pay VAT only on gross profit due to the provision of input VAT in the VAT Act. Input VATs are VATs paid on qualified purchases. When these purchases are made in Kano and the sales are executed in Ogun State, the input VAT verification and acceptance will be very difficult and this effectively means that the business will pay all over again, such taxes already paid to the Kano state government to Ogun state.

What is the sales tax collection mechanism used by the US government and how can this be adopted into the Nigerian system?

It can be argued that the US currently uses the state system to collect their sales tax and why can't the Nigeria System adopt this. The US database system is so structured compared with the Nigerian system such that the tax agencies in Nigeria need a specialized tool and human capital to manage their system of tax.

RECOMMENDATION

The FIRS should remain the body collecting VAT but the sharing formula should be reviewed to favour the states generating the major VAT revenue and there are two(2) ways this can be achieved:

- 1) The sharing formula can be changed to:
50% on Derivation (i.e. based on level of VAT generated)
25% on equality and
25% on population or
- 2) VATs items on the concurrent legislative list, collected by the FG should be allocated to various states based on 100% derivation while other VATs items on the exclusive legislative list should be shared with the current allocation formula;
20% on Derivation (i.e. based on level of VAT generated)
50% on equality and
30% on population.



VISION STATEMENT

To be a pre-eminent Audit/Assurance, Accounting, Taxation and Advisory services firm in Nigeria, with deliverable value within and outside the country.

The firm will be an institution synergistically larger than its complement of Partners and staff at any time, and will cultivate and maintain a culture of excellence which will endure over generations.

HEXALON will always strongly emphasize long-term Client-Firm relationships, constantly evolving in order to meet growing client needs and requirements.

MISSION STATEMENT

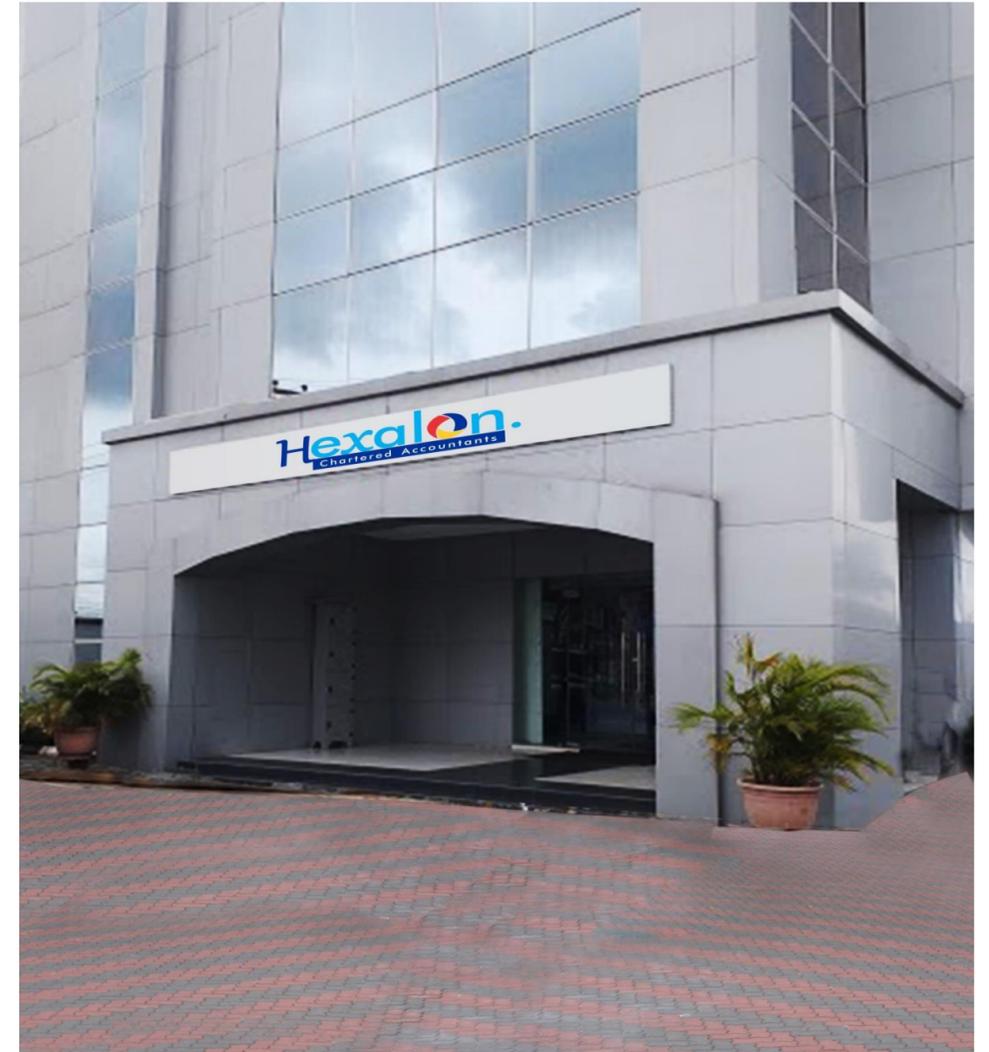
Our mission is to provide comprehensive, affordable and value-adding professional services to all clients with complete independence and integrity, in an efficient and effective manner, whatever their size and wherever they are located.

PASSION

We have an appetite for progress. We strive to exceed our clients' expectations by being responsive, by being creative and by going the extra mile to deliver superior outcomes. We require our people to continue to grow personally and professionally by providing opportunities and training. We embrace diversity and respect individual and cultural differences. Foremost we encourage everyone at HEXALON to love what they are doing and to reflect this in their client relationships. At HEXALON, we are very much like a family.

INTEGRITY

Our individual voice defines us in our communities and local markets but our collective integrity is what sets us apart. We have shared standards and mutual respect for entrepreneurs and influential leaders, which extends our voice and reach. There is recognition of the individual partner who represents our firm and a strong sense of support and encouragement to make things happen, together.



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