

STAMP DUTIES IMPLEMENTATION AND EFFECTS ON STAKEHOLDERS

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INTRODUCTION

- ▶ A federal system of government is one that divides the powers of government between the National (Federal) government and State and Local governments. The Constitution established the federal system, also known as federalism.
- ▶ Under federalism, each tier of government has sovereignty in some areas and shares powers in other areas. For example: both the Federal and State governments have the power to tax. Only the federal government can declare war.
- ▶ Professor Paul Anthony Samuelson, an American economist who was awarded the Nobel Prize in Economic Sciences in 1970 said that governments have four main functions in a market economy:
 - ▶ (1) To increase efficiency. (2) To provide infrastructure (3) To promote equity, and (4) To foster macroeconomic stability and growth.
 - ▶ These functions have since been expanded to include:
 - A. The provision of security for lives and properties; and
 - B. Creation of an enabling environment for the realization by citizens of their best potentials.

▶ Governments in performing any of these functions in any Country, the world over; would obviously need funds.

▶ Countries practicing a federal system of government like Nigeria, the afore-mentioned functions are required to be performed by the governments of both the central and federating units to the extent to which powers have been constitutionally defined and demarcated between the three tiers of government.

▶ In the Nigerian federal system, the tiers of governments are three, namely: Federal, States and Local government areas, as established by sections 2, 3 and 7, respectively of the 1999 Constitution of the Federal Republic of Nigeria as amended.

▶ It has been said time and time again that a number of the States in Nigeria are not viable economically.

▶ In this context, it is trite to say that viability is a function of the relationship between the costs of running the States and the Revenue at their disposal. Each federating State in Nigeria has two visible sources of revenue namely:

I. Money from the Federation Account; and

II. Internally Generated Revenue (“IGR”).

- ▶ The survival of most of the 36 States of Nigeria is dependent on the revenue they receive from the Federation Account.
- ▶ Even though many States have expanded their scope of IGR collection within their respective territories, there is still an enormous gap, (except for Lagos and a few other States), between the expenditures and revenue of these States.
- ▶ This is why in the spirit of fiscal federalism; it is in the best interest of the States to safeguard against any erosion or usurpation of their financial powers.
- ▶ In the light of the apparent and increasing governance challenges and Nigeria being a mono-product economy, currently being affected by the vacillations in global oil market prices, the Federal Government and its agencies are daily seeking new ways to generate revenue.
- ▶ A statement credited to the Accountant General of the Federation in the month of December 2019, while addressing the Council of Legal Education, appears to confirm the belief in certain quarters that the Federal Government has commercialized its MDAs and all of them are expected to generate revenue.
- ▶ This pursuit for funds seems to be pushing the different tiers of government to trespass on one another's financial territories.

- ▶ In the light of the foregoing descriptions, we are constrained to view the recent events surrounding the passage of the **Finance Act 2019** by the National Assembly, specifically the part of the Act that has to do with the Implementation of the Stamp Duties Act, with serious apprehension and reservations for the second tier of government in Nigeria: “the States”. We resolved to present this paper for two reasons:
 - ▶ As concerned Nigerian citizens;
 - ▶ As **Technical Advisers/Consultants to some State Governments on Stamp Duties.**
- ▶ This is so because we know that the States need as much funds as they are able to generate through the implementation of the Stamp Duties Act, as it relates to the State governments.
- ▶ Following the passage of the “Finance Act 2019” by the National Assembly, some workers of the Nigerian Postal Service (“NIPOST”) protested at the National Assembly. Their complaint was that the Federal Inland Revenue Service (“FIRS”) instead of NIPOST was given the powers to collect Stamp Duties in Nigeria.
- ▶ They went on to state **erroneously though**, that: “The provisions of Stamp Duties Act, CAP S8 LFN 2004 and the NIPOST Act, CAP N127 LFN 2004, has given the sole power to collect Stamp Duties to NIPOST”.

SECTION 2: DEFINITION OF 'STAMP'

- Section 2:** **Section 2** of the Stamp Duties Act, defines 'stamp' to mean a stamp impressed by means of a die or as an adhesive stamp for denoting any duty or fee. By this definition: the 'stamp' in the Stamp Duties Act, means that a stamp may be impressed on a document through either of two methods:
1. Through a "die impressed" stamp; or
 2. Through an "adhesive" stamp.
- ▶ This law does not define 'stamp' anywhere to mean or include 'postage' stamp. What it envisaged was that instruments which will be presented for Stamp Duty will fall into two categories.
 - ▶ These are documents evidencing transactions between a company and any one (Companies and an individual, group or body of individuals, in line with Section 4(1)) and those between persons or individuals in line with Section 4(2).
 - ▶ With this distinction, the law factored in fiscal federalism when in Section 4, sub-section 2, it provides as follows:
 - ▶ "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."
 - ▶ The message from the above section is that Stamp Duties are not revenue collectible by the Federal Government alone. The States, by Constitutional entitlement, have vested interests in who collects Stamp Duties.

- ▶ Again, this law did not contemplate the Nigerian Postal Service (NIPOST) or whatever name it had then as this agency had been in existence before the enactment of the Stamp Duties Act. It is therefore unfortunate that NIPOST is bent on appropriating to itself the powers that it does not have to the detriment of the States.
- ▶ On Tuesday May 8, 2018 a Bill sponsored by NIPOST was passed by the National Assembly and thereafter was communicated to President Muhammadu Buhari for assent.
- ▶ The President, upon the advice of Minister of Justice and Attorney General of the Federation, Mr. Abubakar Malami, SAN, refused to sign the Bill into law.
- ▶ The advice was anchored on a reading of the Stamp Duties Act, which the Attorney General rightly interpreted as revenue legislation having nothing to do with NIPOST.
- ▶ As a matter of fact, this is not the first time that NIPOST's leadership would show a determination to take over the administration of the Stamp Duties Act, by all means.

- ▶ They have deployed administrative and judicial means in the past to arrive at the same end, but all these had failed woefully. Nigerians would recall that in January 2016, Nigerian commercial banks sent out electronic notices informing their customers that with effect from January 15, 2016, (as directed by the Central Bank of Nigeria (CBN) for Nigerian banks to comply with the Stamp Duty Act, and Federal Government Financial Regulations, 2009), they would commence collection of Stamp Duty charges on electronic transfers and teller deposits from N1,000.00 and above
- ▶ We thought that the ghost of the attempted hijack of statutory powers had been laid to rest until the recent drama over the Finance Act, 2019.
- ▶ Another significant issue that must be swiftly settled is whether or not NIPOST has the power to collect Stamp Duties. It is our humble considered position that NIPOST does not have such powers.
- ▶ As an agency of the Federal Government established by law, the functions and powers of NIPOST are as clearly stated under Sections 4 and 5 of NIPOST Establishment Act, Cap N127 LFN 2004, respectively. The sections are reproduced hereunder for ease of reference:

SECTION 4: FUNCTIONS OF THE POSTAL SERVICE

Section 4:

Section 4: Functions of the Postal Service

The functions of the Postal Service shall include:-

- ▶ To develop, promote and provide adequate and efficiently coordinated and economic postal services at fair and reasonable rates and fees;
- ▶ To maintain an efficient system of collection, sorting and delivery of mail nationwide;
- ▶ To provide various types of mail services to meet the need of different categories of users;
- ▶ To establish and maintain postal facilities of such character and in such location consistent with reasonable economics as will enable the generality of the public to have ready access to essential postal services.

SECTION 5: POWER OF THE POSTAL SERVICE

Section 5:

In the exercise of its functions under this Act, the Postal Service shall have the following specific powers, that is:-

- ▶ To provide for the collection, handling, transportation, delivery, forwarding, returning and holding of mail and for the disposal of undeliverable mail;
- ▶ To determine the need for post offices, postal facilities and equipment and to provide such offices, facilities and equipment as it may determine;
- ▶ To prescribe the amount of postage stamps and the manner in which it is to be paid;
- ▶ 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;
- ▶ To provide philatelic services;
- ▶ To establish and review postal tariff;
- ▶ To explore additional sources of postal revenue;
- ▶ To maintain international relations with other postal administrations and international bodies;
- ▶ To provide and establish non postal or similar services;
- ▶ To investigate postal offences and civil matters relating to the Postal Service;
- ▶ To provide such miscellaneous services as may be authorized by the Federal Government; and
- ▶ To carry out such other activities as are necessary or expedient for the discharge of its responsibilities under this Act.

NIPOST FUNCTIONS AND STAMP DUTIES ACT

Note

- ▶ It is clearly very obvious that none of the above stated functions and powers have any relationship with Stamp Duties Act.
- ▶ To those who equate the ‘stamp’ in the Stamp Duties Act, with the ‘stamp’ that NIPOST sells, it is important to state here categorically that they are not the same.

Section 5: Duties Chargeable

- ▶ NIPOST sells ‘postage’ stamps while the Stamp Duties Act, provides for the use of ‘adhesive’ stamps.
- ▶ (Adhesive Revenue Stamps) Section 5 of the Stamp Duties Act, provides that all duties chargeable under the Act shall be paid and denoted, except where express provision is made to the contrary, by impressed stamps only.

STATE GOVERNMENTS AS MAJOR STAKEHOLDERS

- ▶ Stamp Duties Act, recognizes State Governments as major stakeholders in its Implementation. Apart from the provisions of Section 4(2) earlier mentioned;
- ▶ Section 6 confers State Governors with powers to appoint Commissioners of Stamp Duties who are charged with the care and Management of Stamp Duties under the Act that are due to their States, in the same way as the President Appoints Federal Commissioners of Stamp Duties.
- ▶ Stamp duty collected by the FIRS is to be returned to the States in equal proportion of the net proceeds of the duty that are derived from each State. And
- ▶ Section 3 (2) provides that the duties charged under this Act shall be accounted for by the Minister of Finance in consultation with the Governors of the States as to the amount collected by the FIRS.

▶ Section 4 (1) of the Stamp Duties Act provides thus:

▶ ***“The Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act, if such instrument relate to matters executed between a company and an individual, group or body of individuals”.***

▶ Section 53 (a) of the Finance Act 2019, amended Section 4 (1) above to now read:

▶ ***“The Federal Inland Revenue Service shall”***

▶ Section 4 (2) of the Stamp Duties Act provides thus:

▶ ***“The State Governments 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”.***

▶ Section 53 (b) of the Finance Act 2019, amended Section 4 (2) above to now read:

▶ ***“The Relevant Tax Authority in a State Shall”***

POWER OF THE GOVERNOR OF A STATE TO MAKE REGULATIONS

Section 115 provides that in addition to the powers conferred on him by Sections 15 and 105 of this Act, the Governor of a State may make regulations relating:-

- ▶ To the custody of the dies to be used under this Act;
- ▶ To the circumstances in which allowance shall be made for spoiled stamps;
- ▶ To the accounting for the revenue derived from stamp duties;
- ▶ To the substitution of adhesive stamps or of impressed stamps for adhesive stamps, or **of revenue stamps for postage and revenue stamps**;
- ▶ To the manner in which and the persons by whom impressed stamps shall be affixed to documents; and
- ▶ To the further and better carrying into effect of the objects and purposes of this Act.

The 1999 Constitution of the Federal Republic of Nigeria provides in Section 162, for **Distributable Pool Account**, known as and called the “ the Federation Account” where all public funds are paid into and distributed thereafter through the advice from the “Revenue Mobilization, Allocation and Fiscal Commission”.

In Section 163, it provides for “Allocation of Other Revenues” and Item D, Part II, Second Schedule, clearly stated what the other revenues are.

It is obvious that the 1999 Constitution recognized and made provisions for Two types of Revenues, one is to be treated as “**Public Revenue**” under Distributable Pool Account; while the other is to be treated as **Consolidated Revenue Fund of a State**.

The Constitution in Section 163 (b) went on to state very clearly that: “Where such Tax or Duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State a sum equal to the proportion of the net proceeds of such Tax or Duty that are derived from that State.

I have reproduced Section 163 of the 1999 Constitution of the Federal Republic of Nigeria for ease of reference:

Constitutional Provisions On Stamp Duties

▶ **Section 163 of the 1999 Constitution of the Federal Republic of Nigeria provides thus:**

▶ “Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly: –

▶ where such tax or duty is collected by the Government of a State or other authority of the State (IRS in this case), the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;

▶ where such tax or duty is collected by the Government of the Federation or other authority of the Federation, (FIRS in this case) there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.”

► For all intents and purposes, imposition of duty on documents or transactions by way of Stamp Duty is on **item D of Part II of the Second Schedule to the 1999 Constitution.**

► What the Constitution provides is that Stamp Duties, (though some are collected by the Federal Government through FIRS), **are Revenue for the States and NOT Revenue for the Federal Government.**

THE NEED FOR THE BANKS TO COMPLY WITH THE CLEAR PROVISIONS OF THE ACT AND STOP CLAIMING TO BE A PARTY TO A TRANSACTION BETWEEN TWO INDIVIDUALS:

The Banks should stop claiming to be a party in a transaction between two individuals that maintain accounts with the banks as doing so is absolutely in contravention of the clear provisions and letters of the Act.

▶ Let it be clearly known and understood that by virtue of Sections 52 and 53 of the NIPOST Act, the agency is allowed to keep and expend all its Revenue and apply same for its own purposes.

▶ No kobo coming into NIPOST goes anywhere else, certainly not into the Consolidated Revenue Fund of the States, thereby denying the States that are the rightful owners of the money from benefitting from it.

▶ Supposed it is legitimate for those in NIPOST to seek ways of saving the agency from total collapse, it will be unacceptable to natural justice to seek to achieve this goal at the expense of struggling State Governments that have a legitimate Constitutional claim to the proceeds of Stamp Duties.

▶ It must be understood by all relevant authorities that by allowing NIPOST to collect Stamp Duties on any document evidencing transactions will amount to an act of unjust enrichment at the expense of the citizens of the States from where the duties are derived.

▶ **In the light of the foregoing, it is our position that NIPOST is an interloper as far as the Stamp Duties Act is concerned.**

PROFESSIONAL STATEMENT OF RESPONSIBILITY

- ▶ It is therefore our Professional Opinion and Position that giving powers to NIPOST to collect Stamp Duties on any transaction whatsoever would amount to robbing the State Governments of their legitimate right and will surely lead to Constitutional Crisis.
- ▶ Stamp Duty is a Constitutional matter and its implementation should be carried out as provided by both the Act and Constitution.
- ▶ Collection and distribution of Stamp Duties Revenue are provided for in the 1999 Constitution of the Federal Republic of Nigeria and any implementation of the clear provision of the Stamp Duties Act to the contrary is in total breach of the Constitution and should be stopped and reversed.

PROFESSIONAL STATEMENT OF RESPONSIBILITY

- ▶ It is pertinent to note with regret that those carrying out the implementation of Stamp Duties in Nigeria chose to do so without proper reference to the provisions and letters of the Stamp Duties Act and the 1999 Constitution of the Federal Republic of Nigeria.
- ▶ This in our opinion can only happen as a result of two things:
 1. It is either they adopted to negate and ignore the clear provisions and letters of the Stamp Duties Act and the 1999 Constitution and decided to follow their mind on how they believe Stamp Duties should be implemented or,
 2. They do not possess the necessary knowledge and understanding of the provisions and letters of the law and therefore require the necessary training on the subject matter, which can be obtained through CITN Tax Academy.

NOTICE TO THE NATIONAL ASSEMBLY AND THE MINISTER OF FINANCE

► The National Assembly and the Minister of Finance are hereby put on notice that there is great danger should they decide to tinker with the Finance Act, 2019, and succeed in conferring on NIPOST with powers to collect Stamp Duties and the President assents to the amended Act, the State Governors would not hesitate to direct their Attorney Generals' to challenge this obvious Constitutional breach without any delay.

**Thank you for listening and
God bless you all!**

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