

‘Meddling’: The House of Representatives and Tax Investigations



Introduction

In May 2012, I wrote an article, *‘Can the House of Representatives Order Tax Audits?’* where I argued strenuously that the House cannot hire consultants to conduct tax audits of erring companies. Such would, apart from being usurpation of the Federal Inland Revenue Service (FIRS) functions, be an exercise in futility. However, a recent advertisement cum public notice by the House in *The Punch*, (4th August 2020, pages 38 and 39) (**The Notice**), bore an uncanny resemblance to the ‘meddlesome interloping’ decried in the said article.

The original article is available online at: <https://lelawlegal.com/wp-content/uploads/2020/08/House-of-Representatives-and-Tax-Audits.pdf>. *The Notice* is quite surprising because, eight (8) years on, the National Assembly should typify improvements in the efficiency and focus of its oversight function. **The Notice** gives cause for concern and is therefore, the *raison d’etre* for this article.



Discourse: Issues

I believe that my arguments in my earlier article remains so pertinent against the House’s planned investigative hearing, that they could easily be repeated here *verbatim*. However, my additional perspectives are as follows:

The House’s Incompetence: Apart from the constitutional and statutory handicaps bedeviling the House in its tax investigative mission, is the very practical reality of the incompetence of the House to effectively and creditably discharge the assignment. Even if membership of the House Committee on Public Accounts comprises tax practitioners and chartered accountants, they cannot be deemed competent to painstakingly ‘audit’ the tax positions of the companies, because the garb the law sees them in, is not as tax practitioners, but as legislators. Even their access to legislative aides and research assistants will not cure this presumed incapacity, because no resources can make the House as competent as the FIRS to enforce tax obligations.

Incidentally, the ideal input from legislative aides including those with legal background should have been to advise the House to draw the attention of the FIRS to the Auditor-General’s reports so that the FIRS can take appropriate enforcement actions. And there is nothing stopping the House from, in the same breath, asking the FIRS for periodic updates, pursuant to its oversight



The Notice, issued by the House’s Committee on Public Accounts and captioned *‘Investigation on the Auditor-General’s Query on the Deliberate Refusal by Some Companies to Remit Taxes to the Federal Inland Revenue Service (FIRS) from 2015 to Date’* listed several companies allegedly in default of their tax obligations for respective periods. Providing details of the outstanding amounts under various tax subheads: Value Added Tax (VAT), Withholding Tax (WHT), Education Tax (EDT), etc.; it also listed various outstanding amounts against some companies that had not filed companies income tax (CIT) returns. Many Federal ministries, departments and agencies (MDAs) are also on the list for VAT, WHT and personal income tax (PAYE) remittance issues.

The Notice then specified that “All the above companies are hereby summoned to cause appearance before the Public Accounts Committee on Monday, 20th August 2020 at 11.00 a.m. at Meeting Room 446 House of Representatives New Building to render evidence of payment of their outstanding taxes. Please ensure that you submit a soft copy and forty-five (45) hard copies of the information /documents to the Committee Secretariat in House Hearing Room 4 on or before the close of work on Wednesday, 12th August 2020 to enable members familiarise themselves with the contents prior to your presentation at the session.”



function. That way, instead of spreading itself thin trying to engage with so many companies and MDAs, the House can interface with only with the FIRS which in any event, is better positioned to comprehensively exercise the tax enforcement functions.

Government Synergy Considerations: The three arms of government should work synergistically, with each focusing on its constitutionally assigned sphere of responsibilities, allowing for necessary collaboration (especially between the executive and legislative arms), to ensure seamless delivery of qualitative governance for the citizenry. In this regard, a resolution of the House mandating the FIRS to take up enforcement of the tax issues involving the listed companies and agencies pursuant to the Auditor-General's report and report back to the House would have sufficed.

Since the House's investigative effort will still not prevent the FIRS from conducting tax audit or initiating appropriate enforcement actions against the companies, the result is that government's efforts/resources are being wasted, through duplicative actions. It also means that the companies/agencies will be expending resources on two fronts: responding to FIRS' engagement and the House's investigative actions. Because of the conceptual difficulty of FIRS prosecuting MDAs' tax default (being part of the same government), the moral weight of the House as an institution would have been better leveraged, if it concerned itself with only the MDAs. A resolution that the MDAs comply with their tax compliance obligations seems to be a better proposition (of moral suasion) than an investigative hearing of companies' tax affairs, pursuant to the Notice.

Another way of looking at the matter is that it is better for the House to prioritize its primary role of law making. As Apostle Paul said in **1 Corinthians 6:12**, *all things may be permissible, but not all things are expedient*. In this case, it is not even lawful for the House to become tax auditor or enforcer. Is the House indirectly saying that it has no confidence in the FIRS' ability to take the necessary enforcement actions? Another scripture talks about how it is inexpedient to leave high value activity (preaching the Word) for the mundane (to serve tables): **Acts 6:2**.

Because the House was fixated on jumping into the fray, the Notice assumes that the FIRS has not done, or is not doing, anything about the issue; the better approach would have been to enquire about the tax compliance status of the organisations from the FIRS, and for FIRS to take necessary actions if indeed they are delinquent and FIRS has not yet taken action against them. Once the House realises that there are many matters calling for its attention vis a vis its limited (time) resources, it should determine on the most

optimal way to achieve desired results. Here, what should be done is to hand the matter over to the FIRS, to enable the House make better use of its time on more high impact activities.

The House's Incapacity to Administer Sanctions: Assuming some companies refuse to honour the House's summons, on the grounds that such is in excess of its jurisdiction, what could be the probable outcomes? Or if the House reaches some conclusions that some companies are respectively not happy with? As a matter of fact, in the first scenario, they can obtain declaratory and injunctive reliefs against the House summons as undue interference in their tax regulatory compliance issues, which is under the exclusive oversight of the FIRS. In the second scenario, if the companies refuses to comply with any resolution of the House on the same grounds, they are likely to find sympathetic ears of the courts. My respectful view is that the investigative hearing is also an abuse of power under the **Legislative Houses (Powers and Privileges) Act**.

Planned Hearing is Ultra vires: The House, as the junior arm of our federal bicameral legislature, is vested with legislative powers under **section 4, and Parts I and II, Second Schedule 1999 Constitution**; its constitutionally enshrined powers of legislative oversight does not permit "helping with" performance of executive functions. In my view, the tax investigative hearing is exactly that. A less controversial approach would be to refer the Auditor-General's report to the FIRS and ask FIRS to act on it; incidentally the FIRS was not invited to the scheduled hearing. It is a notorious fact that the courts have not been shy of restraining or declaring acts in excess of jurisdiction void: we envisage the same here if any of the companies or even the FIRS were to challenge the House's planned hearing. If the House jealously guards its jurisdiction, why would it want to go on frolic into another arm's territory?

Efficiency vs Inefficiency: Obviously the hearing cannot be concluded in one day, given the number of companies/MDAs invited and presumably the volume of their individual documentary submissions. Many of the companies will incur costs in sending their representatives to attend the hearing and its subsequent sessions: travel related (direct or monetary) costs; and opportunity costs of their representatives attending to an unnecessary process at the detriment of their core functions that helps the companies make taxable income from which the government would be otherwise entitled.



Ultimately, these are antithetical to government's goal of improving ease of doing business which is meant to help project Nigeria's investment attractiveness. Having to deal with unnecessary regulatory engagement, smacking of regulatory harassment constitutes a burden that will weigh businesses down. It should be the case that the days of mindless weight throwing is over, otherwise that is a negative for our economy.

Impact on Pending or Judicially Determined Tax Disputes: Where some of these companies are currently in tax disputes with the FIRS over these alleged tax amounts, or the disputes have subsequently undergone statutory tax resolution treatment the outcomes of which both they and the FIRS have abided with, what purpose is the House's intervention meant to serve in such context? It is trite that the House cannot sit as an appellate forum over judicial determination of tax disputes.

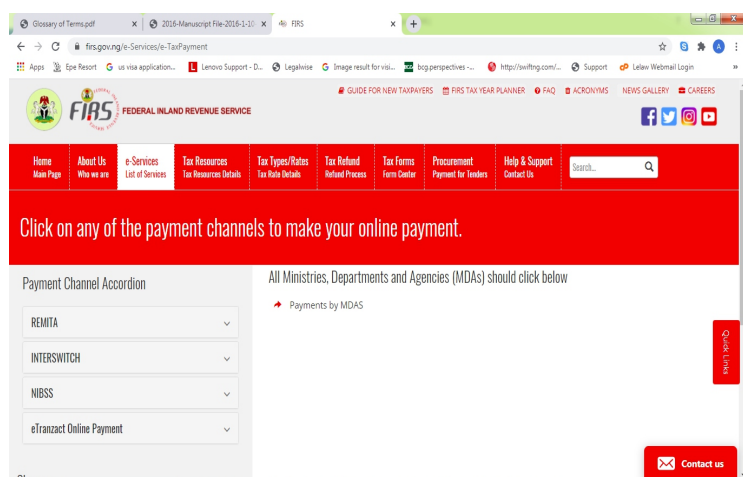
And if judicial proceedings are ongoing, any purported interference by the House with the subject matter of such disputes would be subjudice, an unacceptable invasion of jurisdiction. It is trite that no other arm of government can purport to be concerned with determining what is already before the courts for adjudication; in order to stand, any overreach or overturn of court's decisions must be justifiable on constitutional grounds.



Conclusion

This article by no means seeks to excuse flagrant non-compliance with extant tax laws by erring tax payers. But by the same token (what is good for the goose being good for the gander), the House as an arm of the legislature that made the tax laws must also comply therewith, recognising their exclusive vesting of the FIRS with powers to administer federally applicable tax legislation. The **1999 Constitution** recognises that too many cooks will spoil the broth, hence there are demarcation of powers and functions amongst the arms of government.

The House (and the National Assembly generally) needs to be mindful and focused in exercising their legislative oversight for valid purposes, to obviate them becoming so distracting and vexatious to businesses that, oversight actions are almost perceived as 'irritants.' That would be diminishing the hallowed status of the legislature, and should be an impression that the legislature itself should be the most zealous to prevent. The House should be more adept at enacting transformative legislation to accelerate national development, and impact driven legislative oversight, rather than dabbling into "executive" functions.



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