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SECTION ON LEGAL PRACTICE

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From the

CHAIRMAN

Welcome to yet another issue of your inspiring NBA - Section on Legal Practice Newsletter, the 13th in its series, and my first as your newly elected Chairman of the Section. It is indeed a privilege for myself, the new Executive Committee and Council of the Section to welcome all our members to another tenure of laudable interventions, incisive discussions, impactful seminars and exciting conferences.

May I use this opportunity to appreciate the President of the Nigerian Bar Association and officers of the NBA, our indefatigable Council members, SLP members and indeed all our colleagues for the confidence reposed in us in electing us to drive the affairs of the Section on Legal Practice for the next two years. I must commend the immediate past Chairperson, Mrs. Miannaya Essien SAN, CARb for setting us off on a high standard after our hiatus. Your new leadership team comprising of Chief Ferdinand Orbih SAN (Vice-Chairman), Mr. Tonye Krukru (Secretary), Mrs. Folashade Alli CARb (Treasurer), and my humble self, are committed to the objectives of your section and in the best traditions established by our predecessors, hope to bequeath a continually virile and engaging Section on Legal Practice at the end of our tenure. Your Section is arguably the largest



Oluseun Abimbola FCARB

section of the Nigerian Bar Association in terms of scope of coverage of practice areas, and relevance to the average attorney in any field of practice. Indeed, one can hardly be an all rounded practitioner without having to engage with the issues the SLP covers as a section. Issues like Law Firm Management, Professional Ethics, Continuing Professional Development, Individual Rights, etc, which matters all fall under our various committees.

Our team therefore intends to build on the laudable achievements of our predecessors and broaden our offerings in these and many other areas of practice, to deepen the skills of all lawyers, and expand the benefits the NBA offers its members through the Sections. While commending our Council members and Committee Chairmen for their sacrifices and



OBJECTIVES

The objectives of the Section as stated in Article 1 of the Section Bye laws are: -

- To promote the exchange of information and views among individuals' members of the Section and other likeminded bodies as to the laws, practices and other procedures; affecting the Section locally and internationally;
- To assist members develop and improve their legal services to the public;
- To undertake such related activities as may be approved by the Section's council from time to time;
- To promote and provide Continuing Legal Education.

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From the Chairman Continues...

commitment to expanding the scope of legal practice for practitioners through the work of our Committees, we also intend to expand our work with the creation of new committees, particularly in emerging practice areas. I invite all our registered members to get involved in the work of the section by engaging with their committee chairmen and contributing to the great work being done by those committees of the SLP.

Again, we intend to focus on building the next generation of lawyers to ensure the ethical conduct, depth of skills and knowledge, and versatility of our young practitioners, as we transit from one generation to the next. Your Section will be commencing, in partnership with the Nigerian Law School, a mentorship programme across all campuses of the Law school. This we hope to commence in the first quarter of 2020. We are also working with the new leadership of the Young Lawyer's Forum towards fostering a collaboration for hosting targeted programmes and projects that will focus on issues related to building our younger practitioners.

We are in touch with the leadership of the Section on Public Interest and Development Law (SPIDEL) and the Section on Business Law (SBL) and look forward to future collaborations with our sister Sections in furtherance of our common objectives.

This newsletter contains incisive articles and contributions including a case review on the latest pronouncement of our Courts on whether the Value Added Tax is applicable to the business of legal practice. The Court of Appeal recently answered that question in the yet to be reported suit CA/J/179/2018 (AL- MASEER V FEDERAL INLAND REVENUE SERVICE), which judgment is brilliantly reviewed by Prof Wahab Egbewole SAN in his contribution herein. Managing Partners, Principals and other fee earners will find the exposition of Osayaba Giwa-Osagie useful in his presentation on Expanding Your Legal Practice Offshore, a session this section hosted during the 2019 NBA Annual General Conference. Medicine and the Law has an equally engaging discourse in this edition. I encourage our avid followers and readers to take time out to digest this newsletter and send us your feedback at: info@nba-slp.org to ensure we maintain the excellence of our publication.

Please look out for our seminars and of course our Annual Conference in the coming year. Distinguished colleagues, this is your Section, join us!!

OLUSEUN ABIMBOLA FCARB

Chairman, NBA – Section on Legal Practice

LEGAL PRACTICE AND THE DUTY TO COLLECT AND REMIT VAT - A REVIEW OF THE CASE OF

AL-MASEER LAW FIRM V. FEDERAL INLAND REVENUE SERVICE

BY: PROF. WAHAB O. EGBEWOLE, SAN



INTRODUCTION

Value Added Tax (VAT) is an indirect tax levied on the value added as a result of the exchange of goods and services¹. It is collected at each stage of the production and distribution chain but is eventually borne by the final consumer². It is a consumption tax which cuts across all consumable goods and services (except those expressly excluded by the Value Added Act) including professional and banking transactions³. France was the first country to introduce VAT in 1954⁴. Since 1954 VAT has become a key source of government revenue around the world in both the developed and developing world⁵.

VAT was first introduced into Nigeria in 1993⁶ via the Value Added Tax Act of 1993. This tax is administered by the Federal Inland Revenue Service (FIRS) which is established by law to collect VAT⁷.

Though the VAT Act has a wide coverage in respect of goods and services, yet there have been debates within the legal profession on whether legal practitioners or a firm of legal practitioners are taxable persons, therefore, obligated to charge and remit VAT on professional fees obtained in the course of rendering legal services⁸. This matter has tentatively been put to rest by the decision of the Court of Appeal in *Al-maseer Law Firm vs. Federal Inland Revenue Service*⁹.

In the following sections, an overview of the provisions of the Value Added Tax Act shall be undertaken followed by a brief summary of the facts and the decision of the Court of Appeal in the case of *Al-maseer Law Firm vs. Federal Inland Revenue Service*¹⁰ and finally a review of the Court of Appeal's decision.

1.1 AN OVERVIEW OF THE VALUE ADDED TAXACT

Prior to the enactment of the Value Added Tax Act of 1993 (hereinafter referred to as the VAT Act), each state in the federation imposed sale taxes on the sale of some specified goods and on services rendered by registered hotels, motels and similar establishments,¹¹ which was administered in accordance with the provisions of the Sales Tax Decree No. 7 of 1986¹². However, with the enactment of the VAT Act taxes are now charged on the supply of all goods and services within Nigeria except those expressly exempted by the VAT Act¹³. Nigeria has a single VAT rate of 5% of the value of all taxable goods and services¹⁴. This percentage was recently proposed for increment to 7.5%.

However, before VAT may be charged for goods and services, the following conditions must be satisfied in relations to the good or service:

1. The transaction must amount to a supply¹⁵.
2. The supply must be for a consideration¹⁶.
3. The supply must constitute a supply of goods or services¹⁷.
4. It must be a taxable supply¹⁸.

In respect of the first condition, section 46 of the VAT Act defines supply to mean any transaction, whether it is a sale of goods or the performance of a service for a consideration that is for money or money's worth. Therefore supply would presuppose a relationship with two parties wherein one party furnishes the other party with goods or services¹⁹.

On the second condition, the supply must be made in exchange for consideration. Consideration is not restricted to money but includes money, barter and could also be partly in money and partly in kind²⁰.

On the third condition, the subject matter of supply must be goods or services. Where the subject matter is goods, VAT would potentially apply to the supply where the transaction either transfers or contemplates the transfer of the whole property in the goods²¹. In respect of services, any service which is provided for a consideration would potentially be subject to VAT.

Finally, the supply of the goods or service must be a taxable supply. Section 46 of the VAT Act makes any supply of goods and service which is not listed in the First Schedule of the Act taxable goods and services. The First Schedule of the VAT Act exempts certain goods from taxation such as:

- a. All medical and pharmaceutical products.
- b. Basic food items.
- c. Books and educational materials.
- d. Baby products.
- e. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
- f. All exports.
- g. Plant and machinery or goods imported for use in export processing zones or free trade zones provided 100% of the product is for export.
- h. Plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operation.
- i. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.
- j. While the service exempted from VAT are:
 - a. Medical services
 - b. Services rendered by community Banks, Peoples Banks and Mortgage Institutions
 - c. Plays and performance conducted at educational institution as part of learning.
 - d. All exported services.

It follows that any other good or service which is not mentioned in the First Schedule is taxable. But there are certain goods or services which are zero-rated. They are non-oil exports, goods and services purchased by diplomats and goods purchase for use by humanitarian donor-funded project²². These supplies are treated as though they are taxable supplies charged at a nil rate²³.

VAT is often collected through registered persons called taxable persons²⁴. A taxable person has been defined under section 46 of the VAT Act to includes'

an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity'.

Taxable persons are obliged to register with the board of Federal Inland Revenue Service (FIRS) for VAT collection within six months of commencing his business²⁵. Where a taxable person fails or refuses to register with the Board within the time specified by the VAT Act, he would be liable to pay a penalty of N10,000 for the first month in which the failure occurs and N5000 for each subsequent failure²⁶. Also, a taxable person who fails to register is guilty of an offence and liable to a fine of N5000, if after one month of conviction the person refuses to register then the premises where he carries out business should be sealed²⁷.

A taxable person shall render returns of all taxable goods and services purchased or supplied by him on or before the 21st of day of the month of all goods and services purchased or supplied by him during the preceding month²⁸. Where a taxable person fails to remit the tax within the time stated above, a sum equal to five percent per annum of the tax remittable will be added to the tax in addition to other penalties and interest prescribed by the Act²⁹. Also a penalty of 150% of the amount not collected plus a 5% interest above the Central Bank of Nigeria rediscount rate is imposed on persons who fail to collect VAT³⁰.

Where a taxable person fails to render returns or renders an incomplete or inaccurate return, the Board has the power to assess to the best of its judgment the amount of tax due on the taxable goods and services purchased or supplied by the taxable person³¹.

Having given a brief overview of the Value Added Tax Act, in the next section an analysis would be made of the applicability of the Value Added Tax Act to Legal practice. This analysis would be made through the examination of the case of *Al – Maseer Law Firm v. Federal Inland Revenue Service*³²

1.2 THE CASE OF AL-MASEER LAW FIRM V. FEDERAL INLAND REVENUE SERVICE

In this case the plaintiff/appellant a legal practitioner (who engages in providing legal services to members of the public) was served with a letter by the defendant sometimes in May titled the Non-Rendition of VAT Return where he was required to

charge his client 5% of his professional fee as VAT. This letter was followed by another letter where she was required to pay the sum of N100, 000.00 as the best of its judgment assessment. The Plaintiff/appellant also alleged that she never registered with the defendant as a VAT collecting agent of the defendant, though this fact was disputed by the defendant.

In the suit before the Federal High Court the plaintiff argued that she never registered as a VAT collecting agent for the defendant and that as a legal practitioner she is not captured in the definition of Taxable persons under the VAT Tax Act since legal practice is not a business venture or trade or a person carrying on business or trade within the meaning of the VAT Tax Act and therefore need not register with the defendant. The Federal High Court dismissing the suit of the plaintiff/appellant held that the plaintiff/appellant being a legal practitioner who provides legal services to her client for profit was not exempted from registering with the defendant for the purpose of charging and collecting VAT on her professional fee and that the defendant had the statutory power of demanding payment of VAT from her.

Dissatisfied with the ruling of the Federal High Court, the plaintiff/appellant appealed to the Court of Appeal. The Court of Appeal reaffirmed the decision of the Federal High Court held as follows:

1. That the VAT Act does not limit the duty to collect and to remit VAT to suppliers of goods only but also extends the same duty to suppliers of services. Therefore, a lawyer or a firm of lawyers which supplies legal services to the public for a fee are bound to charge and to remit VAT on the fees they charge their clients.
2. That section 8 of the VAT Act makes registration of taxable persons like Legal practitioners mandatory.
3. Legal Practitioners are not listed among goods and services exempted from collecting VAT in the first schedule of the VAT Act and by the rule of interpretation when something is specifically mentioned in a statute its intendment is to exclude whatever is not mentioned.
4. There is nothing in the VAT Act that makes registration by a taxable person a precondition for the payment of VAT and or the duty to pay VAT does not arise until a taxable person is registered.

1.3 A REVIEW OF THE CASE OF *AL-MASEER LAW FIRM V. FEDERAL INLAND REVENUE SERVICE*

The decision of the Court of Appeal in this case revolved around two issues:

1. Whether the trial court was right when it held that the plaintiff/appellant is not exempted from registration with the FIRS for the purpose of collecting and remitting VAT?
2. Whether the trial court was right when it held that the FIRS had statutory powers to demand of VAT from the plaintiff/appellant?

On the first issue, it is clear that the VAT Act intends to bring all supplies of goods and services in exchange for monetary or money's worth under the ambit of the VAT Act³³. Only those goods and services which are expressly exempted are excluded from VAT³⁴. Though VAT attaches to all supply of non-exempted goods and services (Taxable goods and services), the VAT Act places a mandate on persons who it refers to as Taxable persons to collecting and make returns on VAT³⁵. It is such Taxable persons that are required to be registered with the Board³⁶.

Therefore, it is essential to identify the parameters for determining who a taxable person is? In this case, the plaintiff/appellant argued that in order for a person to qualify as a Taxable person under s. 46 VAT Act, he must be engaged in an activity relating to the production, distribution and consumption of goods and services and that a person would only be considered as such if he engages in the business of buying and selling goods and services.

The plaintiff/appellant seems to have relied on the definition of Taxable persons contained in the VAT Act before its amendment in 2007³⁷. Prior to the 2007 amendment a Taxable person was defined as '*a person who independently carries out in any place an economic activity as producer, wholesale trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business and includes an agency of government acting in that capacity*'.

Under the pre-2007 definition of a Taxable person, supplier of services are included in the definition of Taxable persons. However, does the word supplier of services refer specifically to the activities mentioned thereafter such as 'mining and other related activities'? The word 'including' which precedes these words does not limit the word 'services' to

activities in mining or other related activities it merely incorporates these activities into the natural import of the word 'services'³⁸.

The VAT Act does not contain any special definition of the word services, therefore the word must be given its ordinary meaning. The Oxford Advanced Learner's Dictionary defined services as 'the particular skill or help that a person is able to offer'³⁹. The New International Webster's Comprehensive Dictionary of The English Language defined services to mean 'assistance or benefit afforded another'⁴⁰.

It is a notorious fact that legal practitioners in the course of their practice provide assistance to clients in order to resolve legal issues and their skill and labour is expedient on behalf of their client in order to enforce or defend the rights of their clients. Therefore a legal practitioner comes within the meaning of one that supplies services.

The question which arises is whether the services provided by legal practitioners constitutes an economic activity? This question will be answered after a consideration of the definition of Taxable persons under Section 12 Value Added Tax (Amendment) Act⁴¹.

The definition of Taxable person as mentioned above was amended by Section 12 Value Added Tax (Amendment) Act⁴² and it defines a Taxable person to include '*an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity*'.

This is the provision that the Court of Appeal mentioned while trying to determine whether the plaintiff/appellant is a Taxable person within the meaning of the VAT Act. S. 12 of the Value Added Tax (Amendment) Act clearly establishes that a Taxable person may be an individual or a body of persons either corporate or unincorporated⁴³ or an agency of government⁴⁴. But in order for such a person to fall under the definition of a Taxable person, such a person must be one who engages in either one of the following activities:

1. He should be one that carries out in a place an economic activity; or
2. Exploits a tangible or intangible property for the purpose of obtaining an income by way of trade or business.

In the case of *Al-Maseer Law Firm v. Federal Inland Revenue Service*⁴⁵ the Court of Appeal failed to draw this distinction even when the definition was muddled up by the Respondent which quoted the section as saying that a Taxable person is 'a body of individuals or person who carries out in a place an economic activity for the purpose of obtaining an income therefrom by way of trade or business'. This quotation is not accurate and it fails to recognize that there are two distinct circumstances listed in this provision. The first circumstance is a person who carries out in a place an economic activity while the second refers to a person who exploits a tangible or intangible property for the purpose of obtaining an income by way of trade or business.

Following from the failure of the Court of Appeal to make this distinction, the Court of Appeal also failed to state into which of the two specified categories a legal practitioner falls into. It rather seems to have largely defined a Taxable person as one who supplies Taxable goods and services provided they do not fall under the goods and services exempted under schedule I. In the reasoning of the Court of Appeal, it stated that the '*VAT Act does not limit the duty to collect and to remit VAT to suppliers of goods only but also extends the same duty to suppliers of services. Therefore a lawyer or a firm of lawyers which supplies legal services to the public for a fee are bound to charge and to remit VAT on the fees they charge their clients*' the court also opined that '*Legal practitioners and Law firm is not mentioned here (the exempted good and services*⁴⁶), therefore the specific mention in a statute the intendment is that it excludes whatever is not mentioned'.

It is our humble view that this should not have been the order in which the Court should have decided whether or not a person or a class of person fall within the definition of 'Taxable person'. The Court of Appeal should have first determined whether legal practitioners fall within the meaning of Taxable persons under s. 12 of the VAT Amendment Act, it is only having made a positive determination in that regard could the Court proceed to determine whether the services supplied by this Taxable person are exempted under the VAT Act. This position is informed by the same principle of *expressio unis*.

Coming to the definition contained under section 12 of the VAT Amendment Act, one of the criteria for determining whether or not a person is a Taxable person as mentioned above is whether he is carrying in a place an economic activity. Neither the VAT Act nor the Court of Appeal's decision defined what constitutes an 'economic activity'. The Business Dictionary defines economic activity to mean the



actions involved in the production, distribution and consumption of goods and services⁴⁷. The Oxford Dictionary of Economics defines Economic activity to mean the production and consumption of goods and services⁴⁸. In understanding what constitutes economy activity it may be helpful to seek guidance from other jurisdictions due to the absence of any definition under Nigerian law.

Under the European Union competition law, undertakings are defined as any entity that engages in economic activities, irrespective of its form and method of financing⁴⁹. As to what constitutes an economic activity in the context of competition law, case law seem to establish in the Tobacco Product case⁵⁰, that economic activities refer to activities of '*an industrial or commercial nature by offering goods or services on the market*'. This definition seems to be apposite as it lines up with the definitions contained in the Oxford dictionary of Economic and the Business Dictionary cited earlier, in that the production of goods refers to the industrial component of economic activities, while the distribution and consumption of goods and service is the commercial component of economic activity.

It is clear that the legal profession is not industrial in nature but could it be said to be of a commercial nature? There is no Nigerian case law on this point but guidance could be sought from the Indian case of *M.P. Electricity Board & Others v Shiv Narayan and Another*.⁵¹ In this case, the appellant charged the respondent (a legal practitioner) for electricity consumption at the rate applicable for commercial consumers. The respondent lived in a property which he rented until he moved into his own house, however, he maintained his office in the rented property. The appellant alleged that the premises was being used for commercial purpose and should be charged at a commercial rate. The Indian Supreme Court in determining whether the respondent used the property for commercial purpose opined as follows: the practice of a profession is distinct from

commercial. A profession involves a certain amount of skill as against commercial activity where it is more of a matter of things or business activity. A person who practices a profession works for his livelihood while in a commercial activity one works for gain or profit. The Court further decided that it does not require any strong argument to justify the conclusion that the office of a lawyer or a firm of a lawyer is not a shop. It is trite that traditionally lawyers do not carry on a trade or business nor do they render services to customers.

The reasoning of the Indian Supreme Court seems to be very sound as the legal profession cannot be said to be of a commercial nature. Lawyers do not practice for the purpose of making profit as those who operate in the commercial world but rather to make a livelihood. Therefore, the legal profession cannot be said to be of either of an industrial nature or a commercial nature.

However, where a person does not fall into the first category by engaging in an economic activity, he may, however, be a Taxable Person where he falls into the second category. The second category refers to a person who exploits a tangible or intangible property for the purpose of obtaining an income by way of trade or business. The word tangible property means 'property that has physical form'⁵², while intangible property is 'property that lacks a physical exercise e.g. stock option and business goodwill'⁵³. A legal practitioner does not obtain his income by exploiting tangible or intangible property by way of trade or business, therefore the practice of a legal practitioner cannot be said to fall under this category. This position would be the same even under the pre-2007 VAT Act which has similar requirements as s.12 of the VAT (Amendment) Act 2007.

It is submitted that contrary to the finding of the Court of Appeal, a legal practitioner cannot be said to be a Taxable person since his legal practice is neither an economic activity nor an exploitation of tangible or

intangible property for by way of trade or business to obtain an income. Therefore Legal practitioners need not register with the Federal Board of Inland Revenue Services under s. 8 of the VAT Act since they are not taxable persons within the definition of s.46 VAT Act. Also by implication, a legal practitioner should not charge and collect VAT from their clients since they are not Taxable person within the context of the law therefore the duty under s. 14 of the VAT Act to collect VAT from their clients do not apply because being a Taxable Person is a condition precedent to the collection of VAT. However, there is an existing judgment which must be complied with until a contrary decision on appeal.

The other issue arising from the judgment of the Court of Appeal is whether registration as a Taxable person is condition precedent to the duty to pay VAT? The Court of Appeal held in the negative that registration is not a precondition to the payment or the duty to collect VAT. The question that arises from this decision is what purpose does the registration of Taxable person serve under the VAT Act?

Section 8 (1) VAT Act provides that 'a Taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the Board for the purpose of the tax'. Therefore registration is not a fanciful requirement it is put in place for the purpose of the tax. The question that arises therefrom is what purpose does it serve in relations to the tax? Section 11 VAT Act seems to suggest that the duty to keep records and books of all transactions, operations, import and other activities relating to a taxable goods and services as are sufficient to determine the correct amount of the tax due under the Act does not arise until a person is registered. Section 13 (A) of the VAT Act also makes it mandatory for a Taxable person who makes a supply to furnish the purchaser with a tax invoice containing inter alias; the taxpayer's identification number and VAT registration number. These two information cannot be obtained without registration. Therefore the section 13 (A) of the VAT Act by implication makes it mandatory for a Taxable person to register with the Federal Inland Revenue Service and obtain a VAT registration number before he may collect VAT from a purchaser for services supplied by him. This position is further strengthened by the fact that the consequence for non-registration stated under the VAT Act is not a Best Judgment Assessment but the payment of a penalty of N10000 for the first month of the default and N5000 for each subsequent months⁵⁴. Also, section 32 VAT Act also makes it an offence not to register under the Act for which the offender on conviction is liable to a fine of N5000, and if after one

month, the person does not register the premises where he carries out business will be sealed.

The imposition of a penalty, fine and the sealing of the business premises of defaulters, serves as a strong deterrent which helps to ensure that Taxable persons get registered in order to enable the collection and remittance of VAT.

Based on the submissions presented above, the decision of the Court of Appeal which dispenses with registration as a precondition for the collection VAT seems to be a wrong interpretation of the law.

CONCLUSION

As it stands the decision of the Court of Appeal in *Al-Maseer Law Firm V. Federal Inland Revenue Service*⁵⁵ seems to have settled beyond doubt that legal practitioners or a firm of legal practitioner are Taxable persons within the meaning of section 46 of the VAT Act and therefore are mandated to register with the Federal Inland Revenue Service for the purpose of collecting and remitting VAT. Also that a legal practitioner or a firm of legal practitioners need not be registered with the Federal Inland Revenue Service before he becomes liable to pay VAT as the case of *Al-Maseer Law Firm V. Federal Inland Revenue Service*⁵⁶ firmly establishes that registration is not a precondition for the collection and remittance of VAT.

It is, however, submitted that the Court of Appeal seems to have taken a wrong approach in determining who a taxable person is. The Court of Appeal should have based its determination on the analysis of the definition of Taxable persons provided in section 46 of the VAT Act rather than infer that any person who supplies services for consideration is a taxable person as long as the service is not exempted under the VAT Act. Also, the decision of the Court that registration is not a condition precedent for the collection of VAT is curious as stated earlier, this is because the duty to keep a record of transactions does not begin until registration. Also, the invoice which the law requires a supplier to furnish his purchaser must have a taxpayer identification number and a VAT registration number. It is possible for a knowledgeable purchaser to refuse to pay VAT where the supplier fails to present evidence of registration. Also, it is necessary to ensure that suppliers are registered in order to assure purchasers of goods and services of the authenticity of any demand by the supplier in respect of the VAT. It is hoped that the Supreme Court would rectify the decision of the Court of Appeal along the lines canvassed in this work.

End Notes

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- 3 Abdulrazaq M.T. 'Introduction to VAT in Nigeria' (Ababa Press Ltd, 2nd ed., Ibadan, 2011) p. 2
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- 5 Tuan Minh Le 'Value Added Taxation: Mechanism, Design and policy Issues' (Paper prepared for the World Bank Course on Practical Issues of Tax Policy in Developing Countries) (Washington D.C. 28th April -1st May 2003) p. 3 available online at <<https://pdfs.semanticscholar.org/8299/9e12b5369c6239bed2b0421896ee33221690.pdf>> last accessed on the 20th of October, 2019
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- 7 Section 7 (1) & (2) Value Added Tax Act
- 8 OLISAAGBOKOBALEGAL, Lawyers/Law Firms are Taxable Persons Liable to pay VAT- Conclusion from Al-Masser vs. FIRS (30th September, 2019) Available online (Unreported) Suit No. (CA/J/179/2018)
- 9 (Supra)
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- 11 Obatola O.S. The Rudiments of Nigerian Taxation (ASCO Publishers, Lagos 2014) p. 316
- 12 Section 2 of the Value Added Tax Act
- 13 S.4 VAT Act
- 14 Abdulrazaq M.T. Revenue Law and Practice in Nigeria (Malthouse Press Ltd, 3rd ed., 2015) p.311
- 15 Ibid.
- 16 Ibid
- 17 Ibid
- 18 Ibid p 312
- 19 Ibid. p 314. See Section 46 definition of Supplies
- 20 Section 46 definition of supply of goods
- 21 Part III of the First Schedule Value Added Tax Act
- 22 M.T. Abdulrazaq 'Taxation system in Nigeria' (Gravitas Legal & Business Resources Ltd, 2016) p.5
- 23 S.14 (1) -VAT Act
- 24 S. 8 (1) VAT Act
- 25 S.8 (2) (a) & (b) VAT Act
- 26 S. 32 VAT Act
- 27 S. 15 (1) VAT Act
- 28 Section 19 (1) VAT Act
- 29 Section 34 VAT Act
- 30 Section 18 VAT Act
- 31 (Supra)
- 32 Section 2 Value Added Tax Act. See also section 46 Value Added Tax Act under the definition of supplies.
- 33 Section 3 Value Added Tax Act
- 34 Section 14 & 15 Value Added Tax Act
- 35 Section 8 Value Added Tax Act
- 36 Section 12 Value Added Tax (Amendment) Act No.12 2007 amended the definition of Taxable persons contained in the Value Added Tax Act N. 102, 1993
- 37 LexisNexis 'Words and Phrases Legally Defined' (David Hay Ed.) (LexisNexis India, 2013) p. 1178
- 38 The Oxford Advanced Learner's Dictionary (Oxford University Press, 2010) p. 1349
- 39 The New International Webster's Comprehensive Dictionary of The English Language- Encyclopaedic Edition (Standard International Media Holdings, 2013) p.1149
- 40 Value Added Tax (Amendment) Act No.12 2007 amended the definition of Taxable persons under s.46 of the VAT Act
- 41 Value Added Tax (Amendment) Act No.12 2007
- 42 Abdulrazaq M.T. 'Taxation System in Nigeria' (Gravitas Legal & Business Resources Ltd, Lagos 2016) p. 3
- 43 See the definition of Taxable person under s. 12 Value Added Tax (Amendment) Act No.12 2007
- 44 (Supra)
- 45 Add by the author to aid understanding
- 46 Business Dictionary Available online at <<http://www.businessdictionary.com/definition/economic-activity.html>> last accessed on the 24th of October, 2019
- 47 Oxford Dictionary of Economics 3rd ed. (Oxford University Press, Oxford 2012) p. 120
- 48 Case C-41/90 Hofner and Elser v. Macrotron EU: C: 1991: 161 para 21. See also Kloosterhuis E. 'Defining non-economic activities in competition law' (2017) 13 (1) European Competition Journal p. 117
- 49 Case C-118/85 Tobacco Product EU:C1985:283 para.7
- 50 Civil Appeal No.1065 of 2000 (24/8/2005)
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- 53 Section 8 (2) VAT Act
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THE DOCTOR'S RIGHTS VS. THE PATIENT'S RIGHTS

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INTRODUCTION

The Doctor–Patient Relationship is a contract, thus whenever a doctor accepts to treat a patient, the law assumes that a contract has been created between them. A contract is a voluntary agreement whereby a person undertakes to perform an act for a reward. It is legally binding, before a contract can be said to be valid, there must be:

1. **An offer-** an expression of willingness to contract.
2. **Acceptance-** accepting the terms of the offer.
3. **Consideration-** Price/ fee

In Medical Law, the offer is made when the patient requests medical treatment, the initiation of care e.g issuance of patient's card is regarded as the acceptance, while the Patient's submission to treatment and payment of the medical bill is consideration.

The terms of a contract between a doctor and his patient is either expressed or implied the example of expressed terms are the consent forms prepared

by the doctor and signed by the patient, while an example of the implied terms is that the doctor will use reasonable care and skill in discharging his obligations to his patient.

The doctor-patient relationship is also governed by legal rights and responsibilities, this article will focus on the legal rights of the doctor and patient with special emphasis on the Doctors' rights. The emphasis on Doctors' rights is imperative by virtue of the fact that patients' rights are usually discussed on various platforms; this is in contradistinction to the rights of the Doctor which is seldom discussed.

The author is of the opinion that most medical practitioners are not even aware of their legal rights in the doctor-patient relationship.

WHAT ARE THE RIGHTS OF THE NIGERIAN DOCTOR?

1. The right to exclusively practice medicine.
2. The right against injury or damage to the person and property of the Doctor.

3. The right against disease transmission in the course of work.
4. The right to be indemnified by an employer for costs incurred after successfully defending any allegations while working underemployment.
5. The right to conscientious exemption: The law appears to recognize that some doctors may have a conscientious objection to participating in some procedures that are nonetheless lawful, it is thus a manifestation of the religious and cultural belief for doctor. However, there is the need to balance doctors' freedom with the rights of patients to receive appropriate treatment in a suitably non-judgmental fashion.

Do You Know That a Doctor Can Refuse To Treat Patients Under The Following Conditions?

- a. Under the newly passed National Health Act, the health care provider has a right to refuse to treat a patient who is physically or verbally abusive or who sexually harasses any health worker, the only exception to this right are psychiatric patients.
- b. The Doctor may refuse to give fresh treatment to a patient if he had previously had a bad experience with the patient.
- c. If there is no legal obligation to answer a call to visit the patient at his or her place of residence, the doctor is not bound to attend to such persons.
- d. A Doctor treats a patient in an emergency on ethical grounds. It does not mean that he has accepted the patient. He may advise that patient to go to some hospital or a specialist for further treatment.
- e. If the doctor himself is not well or free, he has a right to decline treatment.
- f. If a patient does not agree with the method of treatment or fee asked, the doctor is empowered to decline treatment.
- g. If in the doctor's honest opinion, he feels

that he is not in a position to treat a patient because of non-availability of certain facilities, instruments, medicines, staff etc. he may refer the patient to a suitable place.

A DOCTOR CAN ALSO LIMIT HIS ROLE

- I. A doctor has the right to make various types of reasonable limitations on his doctor-patient relationship. e.g. specialists.
- II. A doctor can also limit the relationship in other ways e.g. gender preference, some refuse to treat patients outside the hospital environment including the times and frequency of appointments.
- III. A consulting physician who examines a patient but does not intend to continue to treat the patient is not legally obligated to do so.

RESTRICTIONS ON THE RIGHTS OF THE DOCTOR

A doctor cannot voluntarily leave a patient in the middle of an operation, the doctor is required to notify the patient through a reliable and verifiable source that they will cease treatment of the patient in a reasonable amount of time (1 week to 1 month is probably good), and that the patient must seek help elsewhere.

THE PATIENTS' RIGHTS

1. The Patient's Right to Life: The constitution guarantees every person the right to life, and no one shall be deprived intentionally of his life, with the exception of a court sentence. This provision obliges the doctor to take all necessary measures and precautions to safeguard the life of his patient. This constitutional safeguarded right also makes euthanasia a crime in Nigeria.
2. The Patient's Right to Dignity of Human Person: This requires a duty on the part of the doctor to respect and promptly attend to the patient's needs.

3. The Patient's Right to Personal Liberty: the provision criminalizes the unlawful detention of patients because of their inability to pay medical bills.
 4. The Patient's Right to Privacy: The Doctor is only expected to disclose aspects of a patient's information in the interest of public safety, public health or a court order.
 5. The Patient's Right to accept or refuse medical treatment even if he or she knows that such refusal will lead to death. For this right to be enforceable the patient must be an adult with competent mental faculty.
 6. The Patient's Right to free choice in the selection of his physician.
 7. The Patient's Right to a second medical opinion.
 8. The Patient's Right to refuse to be informed about his medical condition.
 9. Right to continuity of medical care.
- d. To utilize the health care system properly and not abuse it.
 - e. To know his or her local health service and what they offer.
 - f. To provide health care providers with relevant and **accurate information** for diagnostic, treatment, rehabilitation or counselling purposes.
 - g. To advise the health care providers on his or her wishes with regard to his or her death.
 - h. To comply with the prescribed treatment or rehabilitation procedures.
 - i. To enquire about the related costs of the treatment and / or rehabilitation and arrange for payment.
 - j. To take care of health records in his or her possession.

PATIENT'S RESPONSIBILITIES

- a. To take care of his or her health.
- b. To care for and protect the environment.
- c. To respect the rights of other patients and health providers.

CONCLUSION

With the constant and steady increase in allegations of medical malpractice against Nigerian Doctors, it has become imperative for Doctors, Patients and most importantly Lawyers to understand the legal and medicolegal principles guiding medical practice in Nigeria.



EXPANDING YOUR LEGAL PRACTICE OFFSHORE

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Being a paper presented at the 2019 NBA Annual Conference
(Section on Legal Practice Breakout Session)



Generally, legal practice is national in character because a lawyer enrolled to practice law in one jurisdiction does not have an automatic right to practice law in another jurisdiction. The legal position in Nigeria is that no foreign lawyer can engage directly in any form of legal practice in Nigeria except he has been enrolled in the Supreme Court of Nigeria to practice in Nigeria. Therefore, legal practice is restricted to lawyers enrolled at the Supreme Court of Nigeria.

From my experience, most of the foreigners and Firms intending to do business in Africa prefer to go through the foreign law firms they have worked with or foreign networks as an avenue to obtaining legal services in Africa. Some foreign law firms have established in their offices, an African desk responsible for developing and expanding their practices into Nigeria and other major African countries.

Being a member of a Legal Network is a way of expanding your legal practice offshore. Legal networks are organizations consisting of independent law firms. The common purpose is to expand the resources available to each member for

providing services to their clients. Some legal networks offer their members territorial exclusivity, that is, another firm cannot be admitted within their exclusive territory. Such an arrangement ensures maximum referral opportunities and minimal conflicts of interest.

International Networks often have practice groups for specialization; have cross-border postings or secondments in member firms, regular conference calls and ensure that all firms within the network maintain a high standard of practice and performance. Be prepared to invest a lot of money in marketing, attending seminars, workshops, trainings and networking events. Major International Law Firms that have adopted this approach include Clifford Chance, Hogan Lovells, to mention but a few.

There are many International and Regional Legal Networks. The major legal networks are as follows:

- ADVOC
- ALFA International
- Ally Law
- First Law International
- Globalaw
- IR Global

- Lawyers Associated Worldwide
- Legalink
- LEXWORK International
- Mackrell International
- Nextlaw Referral Network LLC
- Pacific Rim Advisory Council
- The Harmonie Group. Canadian Litigation Counsel (CLC)
- International Business Law Consortium
- International Lawyers Network
- Legal Network International(LNI)
- LEGUS International Network of Law firms
- MSI Global Alliance
- SCG Legal
- The Law Firm Network
- Lex Mundi
- African Legal Network
- DLA Piper Africa
- Lex Africa
- Miranda Alliance
- VdA Legal Partners
- Primerus

How do you become effective within a Network?

1. Legal Networks build on trust and knowledge of members of the networks having known them over a period of time.
2. They hold annual conferences and AGMs in different parts of the world.
3. Members are encouraged to make presentations about their countries e.g investment opportunities, the legal system of their countries, the capabilities of their firms amongst others.
4. Some networks publish articles regularly.
5. Some networks have practice groups specialising in particular areas of practice.
6. Some networks organize exchange programs whereby a lawyer from one firm may go to another firm on cross-border posting.
7. Some firms also have joint marketing events e.g joint seminars offshore.
8. Participate actively in the activities of the Network.
9. Be capable of making necessary contacts and introductions with highly placed government officials and influential men and women in your country, if so required.

Membership selection process

Quite often, the selection process into networks is by recommendations and not by formal applications. Therefore, it is very important that you have a good reputation in your country and outside your country particularly as a professional.

To qualify for membership, a lawyer/ law firm will need to take cognizance of the following:

1. Infrastructure

The Law firm in setting up its office must ensure that the office meets international standards which are based on the following criteria:

- (i) The Location of the Firm
- (ii) Client Base
- (iii) Available Facilities: The firm should have a good library, spacious size, steady power supply and internet connections and ensure that emails are received timely and responses sent out timely as well.
- (iv) Status and number of lawyers in the firm
- (v) A team of efficient/competent trained support staff.

2. Quality of your work must be high

The quality of your work must be of a high standard. You must ensure that the legal advice you give is accurate and you must show that thorough research has been carried out.

A wrong legal advice can have a permanent negative effect on the reputation of the firm. The work sent out must be properly proofread for typographical errors. As the saying goes '*the devil is in the details*'.

The presentation of the work is also very important. Generally, clients want to receive opinions that are easy to read, comprehend and straight to the point.

The quality of English language used must also be impeccable. You should not create the impression that lawyers from your firm have bad writing skills.

Therefore, grammatical and typographical errors must be avoided at all cost, otherwise, this will put the image of the law firm at risk, as the clients can easily conclude from such errors that the law firm is of a very low standard.

3. Turn-around Time

Most foreign clients require a short turn-around time for the completion of legal tasks. Therefore, you must be knowledgeable in the areas of law in which you are rendering advice. Always remember to sign an agreement with your client in advance to avoid any dispute in future, also collect a deposit.

4. Branding

This involves building a positive image of your firm to the world at large. You should endeavour to have an international outlook, be well-cultured and at ease when dealing with foreign lawyers and clients. Have a very strong brand; develop your website, letterheads, stationeries, and prepare a good firm's profile. It will also be important if the Partners and Associates in the firm write articles in international journals and are listed in international law directories which will confirm that they are recognized as Specialists/Authorities in selected areas of law.

5. Regular Interactions with foreign clients

In order to maintain a thriving offshore practice, it is important to have a good communication avenue with your clients... Keep in touch regularly e.g by sending updates on recent developments in your local laws as it may affect their operations in Nigeria. It will be advisable to have regular interactions and meetings with foreign clients in order to understand their cultural orientation, work ethics and what they expect from you. Developing a relationship with foreign clients should be viewed in a long term manner. Have your International Passport with visas to the major foreign countries ready as you may be required to travel at short notice.

A client once informed me that he travelled to Khartoum, Sudan to have a meeting with some lawyers and in less than 1 hour after the commencement of the meeting, the Senior Partner of the firm informed him that he was on his way to the airport to catch a flight to Paris. Imagine how disappointed such a client would have been.

6. Integrity

You must have an impeccable reputation and be without any blemish. We have cases in Nigeria where lawyers steal clients' money, some local lawyers inflate contract prices and keep the

difference or simply spend monies due to their clients. If you have such a tendency, forget about International clients because they can easily blacklist you forever if you engage in fraudulent practices.

You should be very transparent in your dealings with foreign clients, do not be greedy and be reasonable in billing your foreign clients. Your professional fees must be reasonable and commensurate with the work you have done. We handled a case for almost 2 years and billed \$500 yearly until the big break came many years later.

7. Administration

You must also be able to run your practice at a high international standard and level. Your lawyers and administrative staff must strive to have a good and high delivery standard. The lawyers should be very knowledgeable in their areas of practice and be able to showcase such expertise when required. It is important to engage lawyers with the proper training on the ethics of the profession in order to minimize incidents of professional misconduct with international clients. The lawyers must be trained to be diligent in their work and advice being given. The key is to be very thorough in your work.

It is also advisable to have a professional indemnity policy in place even if not a local requirement as it gives confidence to most foreign clients in their dealings with your firm.

In conclusion, the need to seek global relevance and co-operation has become particularly necessary in the face of fierce competition in the Nigerian legal arena given the large number of legal practitioners. The increase in cross-border transactions and the quest for high quality legal services by investors has made it imperative that your standard of work must be high. A lawyer who knows his onions and intends to remain relevant in the legal market/industry must, therefore, explore offshore opportunities.

Thank you very much for your kind attention.

OSAYABA GIWA-OSAGIE

End Notes

1 Assisted by Osemudiamen Okhuegbe.

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UPCOMING EVENTS

- Civil Litigation/Law Firm Management Committee Seminar proposed in collaboration with the NBA Young Lawyers' Forum **(Date to be announced later)**
- Committee Seminars and Roundtables **(Date to be announced later)**
- Moot and Mock Competition **(Date and sponsors to be announced later)**
- 2020 NBA – SLP Annual General Conference - *Date: 2nd quarter of 2020*

