

Banks' Tax Reporting Obligations and Privacy Concerns in Nigeria: A Look at ACCION Microfinance Bank vs. Anambra State IRS

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Introduction

In today's financial landscape, Nigerian banks face a complex array of responsibilities, particularly in terms of regulatory compliance and tax transparency. The **Personal Income Tax Act (PITA) of 2004 (as amended)**, grants the Relevant Tax Authority (RTA) the authority to gather necessary financial details from both individuals and companies, ensuring all income is accurately reported and taxed.¹ This requirement to provide additional information complements the taxpayer's mandatory annual obligation to file tax returns as prescribed by the RTA.²

The Impact of the Finance Act on Banking Operations

The **Finance Act (FA) 2019** established the requirement for banks to obtain a Tax Identification Number (TIN) from new customers upon account opening.³ Moreover, bank officials are required to compile and submit detailed returns that include the names and addresses of new account holders. While these submissions were initially required on a monthly basis, the **FA 2021** amended this to a quarterly schedule, thereby streamlining the process.⁴ Reports for individual clients are directed to the respective state tax authorities, while data regarding corporate clients are filed with the Federal Inland Revenue Service (FIRS).⁵ This procedural integration ensures that tax obligations are embedded right from the start of a banking relationship, enhancing compliance and oversight.

The FA 2021 also brought a significant change: the transition from criminal penalties to civil repercussions for non-compliance.⁶ This amendment specifies that banks failing to meet their

¹ Section 47 PITA, 2004 as amended, see also section 60 Company Income Tax Act (CITA) as amended.

² See sections 41 and 81(2) PITA 2004 as amended for Individuals and employers of labour and section 52 and 55 CITA as amended.

³ Amending Section 49(1) of the PITA

⁴ F. A, 2021 which further amended Section 49 (4A) of the PITA 2004 (as amended).

⁵ Section 49 (2) PITA 2004 as amended.

⁶ Section 49 (4) PITA 2004 as amended by the Finance Act 2021.

reporting duties will incur a substantial penalty of ₦1,000,000 per oversight. This shift from potential criminal charges to a straightforward civil penalty streamlines enforcement.

Case Spotlight: ACCION Microfinance Bank vs. Anambra State Internal Revenue Service

The case of ACCION Microfinance Bank (the "Appellant" or "Bank") vs Anambra State Internal Revenue Service (the "Respondent")⁷ illustrates these principles in action. It highlights the consequences banks face for non-compliance, not in terms of tax liability but as a clear-cut statutory penalty. This distinction is crucial for financial institutions navigating the interplay between banking operations and tax regulations.

In the above case, the Anambra State Revenue Service demanded that the Bank provide customer tax returns from its database in compliance with the relevant provisions of PITA. The bank's failure to comply prompted the Anambra State Revenue Service to leverage its authority to levy a best judgment assessment of ₦36 million against the Bank for not filing customer returns as required.

The Bank contested the tax liability for the period from 2016 to 2021, arguing that non-compliance with Section 49 of PITA should not trigger a tax liability necessitating an assessment by the State Revenue Service. The Bank contended that prior to the FA 2021, penalties for such non-compliance were limited to fines following a conviction, not tax assessments. Conversely, the Anambra State Revenue Service argued that the bank's failure to submit the required returns under Section 49 PITA constituted a tax liability, justifying their use of a best judgment assessment to determine the dues owed by the Bank.

The Tribunal clarified that banks act as agents of the tax authority and that penalties incurred under Section 49 of PITA are considered civil liabilities, not tax liabilities. It also noted that the FA 2021 revised Section 49 of PITA, shifting from criminal to civil penalties. As a result, for the bank's non-compliance in 2022, the Tribunal imposed a civil penalty of ₦1 million under the amended provision. This ruling highlights the transition from criminal to civil penalties for non-compliance in tax legislation and underscores the importance of strict adherence to tax reporting requirements by banks.

⁷ **ACCION Microfinance Bank (Appellant) vs Anambra State Internal Revenue Service (Respondent) in Tax Appeal No. Appeal TAT/SEZ/ 001/2023.**

Comparative Analysis with Other Jurisdiction: The United States Context

In the United States, the Internal Revenue Service (IRS) holds substantial authority under IRC Section 7602(b) and its related regulations. This legal framework empowers the IRS to summon witnesses, demand the production of documents, and gather data relevant to tax investigations.⁸ This power is multi-faceted, enabling the IRS to verify the accuracy of tax returns, prepare returns when they are not submitted, ascertain tax liabilities, and investigate potential tax-related offenses, whether they are criminal or civil in nature.

A case highlighting these powers is *Poliselli v. Internal Revenue Service*, which reaffirmed the IRS's ability to issue summons for taxpayer information without prior notice. This ruling emphasizes the IRS's comprehensive role in ensuring compliance and enforcing tax laws through broad investigative powers.⁹ However, despite these extensive powers, there are significant safeguards in place to protect taxpayer rights. For instance, Section 7609(a)(1) IRC (US) mandates that individuals identified in third-party summons be notified within three days of issuance, and at least 23 days before any examination. This notification allows them the opportunity to initiate proceedings to quash the summons, if necessary, as detailed in *United States v. Clarke*¹⁰. These protective measures strike a balance between the IRS's enforcement capabilities and the rights and interests of taxpayers.

Comparison with Nigeria

In contrast to the United States, Nigeria's regulatory approach under Section 49 of PITA imposes more stringent demands on financial institutions without comparable procedural safeguards. Nigerian bank officers are compelled to provide customer information upon summons without any prior notice and lack the ability to challenge these requests before they must comply.

Furthermore, the scope of information that Nigerian tax authorities can summon is also more restricted. Unlike the IRS in the U.S., which is authorized under 26 U.S.C. §7602(a) to summon extensive details including account balances, Nigerian authorities are confined to requesting only basic details such as the names and addresses of new customers. This limitation excludes potentially critical financial data like account balances, which could provide a fuller picture of a taxpayer's financial status.

⁸ IRC Section 7602 (a)

⁹ 578 US delivered on 18 May, 2023.

¹⁰ 573 U.S 248 (2014), see also *Tiffany Fine Arts, Inc. v United States IRS* 469 U.S. 310 (1985).

Implications for Nigerian Tax Law

The U.S. model offers a valuable framework for Nigeria, illustrating potential benefits of integrating similar taxpayer protections into its tax law framework. By introducing measures that allow taxpayers and third parties to be informed and challenge summonses, Nigeria could enhance the fairness and transparency of its tax enforcement processes. This adjustment could improve compliance and taxpayer trust in the system, while still empowering tax authorities with the tools necessary to ensure accurate tax collection and compliance.

Privacy and Data Protection Considerations

In Nigeria, the Nigeria Data Protection Act (NDPA) and the Nigeria Data Protection Regulations (NDPR) grant both banks and the tax authority the authority to exchange taxpayer information without consent solely for tax purposes. These laws mandate that the information must not be used for other purposes and emphasize the need for securing and maintaining the integrity of the data owner's information.

Section 25 of the NDPA¹¹ outlines conditions under which data processing is permissible, such as for legal compliance, tasks in the public interest, or the legitimate interests of the data controller or a third party. Importantly, it safeguards individual rights by stipulating that processing interests are not legitimate if they infringe upon the fundamental rights and freedoms of the data subject. This provision aids tax authorities and banks in managing personal data within legal bounds while ensuring that privacy is protected.

Evolving Legal Regulatory Framework

The shift from criminal to civil liability for non-compliance in section 49 of PITA, as demonstrated in the ACCION Microfinance Bank case, reflects a global norm. Currently, banks are only required to report names and addresses, but there is potential for this to expand to include full account details in the future. This change highlights the evolving relationship between tax authorities and banks concerning the disclosure of information.

To prevent potential misuse of section 49 PITA and to align with practices similar to those under the U.S. IRS's IRC Sections 7602 (a) and (b) and 7609, further amendments might be necessary to

¹¹ Section 25 (1) (b) (ii), (iv), and (v) NDPR

specify exceptions for releasing information and reinforce protections against the unauthorized use of data.

Practical Compliance Strategies for Banks

To navigate the regulatory framework effectively, banks should consider the following strategic approaches:

1. **Automated Compliance Tools:** Implement advanced software solutions that automate data collection, processing, and reporting. These tools can reduce human error and ensure timely compliance with reporting requirements.
2. **Regular Compliance Training:** Conduct regular training sessions for all relevant staff, focusing on the latest regulatory changes and compliance requirements.
3. **Compliance Checklists:** Develop comprehensive checklists based on the updated regulations to guide compliance officers through the compliance process.

Anticipating Common Pitfalls

Awareness of potential pitfalls is crucial for maintaining compliance and avoiding penalties. Common issues include:

1. **Data Accuracy:** Inaccurate or incomplete data collection can lead to non-compliance. Banks should implement double-check systems and data verification processes to maintain data integrity.
2. **Misinterpretation of Regulations:** Misunderstanding new rules can lead to incorrect implementation strategies. It is vital to have clear internal documentation and access to legal counsel for clarifying complex regulatory language.
3. **Deadline Management:** Missing reporting deadlines can result in hefty fines. Setting up advanced reminders and timeline management systems can help ensure that all submissions are made on time.

Anticipated Amendments and Regulatory Evolutions

As the tax and banking landscape continues to evolve, it is crucial for stakeholders to stay informed about potential legislative changes that could impact operational requirements. We

anticipate possible amendments to the PITA that might include more stringent data reporting requirements, such as the inclusion of account balances along with customer names and addresses.

Enhancing Tax Compliance and Strategy

Given the rapid advancements in technology and data management, stakeholders should anticipate shifts in compliance technologies and regulatory focus. Banks should consider investing in scalable compliance infrastructures that can quickly adapt to new requirements. Additionally, continuous training for compliance personnel will be essential to remain agile in a dynamic regulatory environment.

At SimmonsCooper Partners, we recognize the challenges that businesses face with the evolving tax landscape and provide businesses with the necessary insights and tools for effective tax compliance. To inquire about our tax compliance services, please contact info@scp-law.com or samuel.oyenitun@scp-law.com.