



# VAT Collection Agent Appointment and Tax Appeal Tribunal (TAT) Ruling: FIRS vs. Bolt

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## Introduction

On 26 May 2023, the Tax Appeal Tribunal ('TAT' or 'the Tribunal'), Lagos, Nigeria recently decided a contentious matter between the Federal Inland Revenue Service ('FIRS' or 'the Service') being the respondent and Bolt Operations OU ('Bolt' or 'the Company') being the appellant. The core of the dispute revolved around the appointment of a Value Added Tax (VAT) collection agent, shedding light on the intricate landscape of tax regulations in the dynamic digital economy. The tribunal decided the case in favour of the FIRS and annulled the Company's position.

In this article, we have explored the facts of the case, analyzed the conclusions reached by the tribunal and provided our thoughts on the case.

## Background to the Case

Bolt is a non-resident mobility service company providing a range of services including ride-hailing and food delivery services. These services are provided through its application platform by connecting independent businesses and individuals with consumers in several countries including Nigeria. The company disclosed that the only taxable supply is the service provided through the application platform and that the company is fully compliant with the applicable sections of the VAT Act. Value Added Tax (VAT) is a consumption tax levied on the value of goods and services at each stage of production or distribution. In Nigeria, the Federal Inland Revenue Service (FIRS) is responsible for the administration and collection of VAT.

The controversy between the FIRS and Bolt arose when the FIRS sought to appoint Bolt as a VAT collection agent, requiring the platform to collect VAT from its drivers and remit it to the tax authorities. Bolt challenged this appointment, asserting that the drivers who make use of the platform are not employees of the Company but independent operators providing cab driving services. The Company also posited that it operates primarily as a provider of a technology platform which facilitates the connection between drivers and passengers, and should not be burdened with the responsibility of collecting and remitting VAT. The FIRS however insisted that the appointment of the company as a VAT collection agent is not outside the scope of its power enabled by the FIRS Establishment Act as well as the VAT Act.

Based on the FIRS' unwavering position, the Company filed an appeal with the Tribunal.

## Matters for Determination by the Tribunal

The following issues were identified from the case presented by both parties for determination:

- Did the Respondent commit a legal error by appointing the Appellant, a Non-Resident Supplier, as the agent responsible for charging, collecting, and remitting VAT on supplies made by Nigerian resident suppliers to their customers using the Appellant's platform?
- Are the Respondent's Guidelines, which designate the Appellant as the Supplier and the primary entity responsible for charging, withholding, and remitting VAT on taxable supplies made by resident Nigerian suppliers on-boarded on the Appellant's platform, in violation of **Section 10 of the VAT Act**?
- Is it lawful to appoint the Appellant as the party responsible for charging taxable supplies made by Nigerian resident suppliers who are exempted from VAT obligations as per **section 15(1) of the VAT Act**?

- Did the Respondent commit a legal error by imposing an agency arrangement between the taxable suppliers and the Appellant for the purpose of charging VAT, even though no such agency arrangement had been voluntarily entered into by both parties?

The Nigerian TAT was presented with several key issues for determination as listed above in the dispute between the FIRS and Bolt, a prominent ride-hailing platform. The TAT's ruling on these matters carries significant implications for the interpretation of tax regulations and the evolving role of digital platforms in tax collection.

## Technical Analysis of the Issues

### 1. Issue One

**Did the Respondent commit a legal error by appointing the Appellant, a Non-Resident Supplier, as the agent responsible for charging, collecting, and remitting VAT on supplies made by Nigerian resident suppliers to their customers using the Appellant's platform?**

The first issue at hand involves the Appellant's challenge against the decision of the Respondent to appoint the Appellant, a Non-Resident Supplier, as the agent responsible for charging, collecting, and remitting VAT on all invoices processed through its platform, which is made available to Nigerian resident suppliers for their customers' use. The Respondent's appointment was based on the provisions outlined in Section 10(3) of the VAT Act, and the corresponding Guidelines were issued in accordance with Section 10(6) of the VAT Act. The Appellant strongly contends that the Respondent's issuance of the Guidelines and the appointment in question constitute a legal error.

By the provisions of **Section 10 (3) of the VAT Act** (as amended) which provides that "The taxable person to whom a taxable supply is made in Nigeria, OR such other person as may be appointed by the Service shall withhold or collect the tax, as the case may be, and remit same to the Service". The provision creates an obligation to collect and remit VAT through the Respondent acting in two capacities viz:

- a. As a taxable person to whom a taxable supply is made in Nigeria; or
- b. Such other person as may be appointed by the Service...

Equally, **Section 10 (6) of the VAT Act** provides that "*The Service may issue a guideline for the purpose of giving effect to the provisions of this section, including the form, time and procedure for filing returns and payment by non-resident suppliers appointed by the Service under subsection (3)*"

Based on the aforementioned provision, it is evident that, concerning the first aspect of Section 10(3) of the VAT Act, the suppliers of goods (such as Food Vendors) or services (such as Ride-hailing) listed on the Appellant's platform offer taxable goods or services, which necessitates the obligation to withhold and remit VAT on such taxable goods and services provided by them to the Federal Government of Nigeria.

The second part of **Section 10(3) of the VAT Act** gave the Respondent power to appoint "*such other person as may be appointed by the Service*". According to this provision, it is indisputably evident that the Respondent possesses the authority to designate any other individual or entity for the collection and remittance of VAT to the Federal Government of Nigeria. The discretion to make such appointments of "such other person" without any specified criteria solely rests with the Respondent, and therefore the Respondent has duly exercised that discretion.

Based on the information provided, it is evident that the Respondent's decision to appoint the

Appellant as the agent responsible for withholding, collecting, and remitting VAT to the Service was made in accordance with the authority granted under **Section 10(3) of the VAT Act**, as determined by this esteemed Tribunal. Considering the above, it is clear that the Respondent exercised its discretion to appoint the Appellant based on the statutory provisions and the obligations imposed by the Act.

## **2. Issue Two**

**Are the Respondent's Guidelines, which designate the Appellant as the Supplier and the primary entity responsible for charging, withholding, and remitting VAT on taxable supplies made by resident Nigerian suppliers on-boarded on the Appellant's platform, in violation of Section 10 of the VAT Act?**

By the provision of **Section 10(6) of the VAT Act**, the Service may issue a guideline for the purpose of giving effect to the provisions of this section, including the form, time and procedure for filing returns and payment by non-resident suppliers appointed by the Service under **subsection (3)**.

The above provision is about the guideline the Respondent should issue to give direction to the person appointed under the provision of **Section 10(3) of the VAT Act** on how returns will be made as to the form, time and procedure for filing returns and payment by non-resident suppliers appointed by the Service.

The Respondent has therefore exercised its powers as provided in the extant law.

## **3. Issue Three**

**Is it lawful to appoint the Appellant as the party responsible for charging taxable supplies made by Nigerian resident suppliers who are exempted from VAT obligations as per section 15(1) of the VAT Act (as amended)?**

In issue 3, the respondent raised concerns regarding the appellant's standing (locus standi) in this matter. The pertinent question to consider is: "Who is adversely affected or aggrieved in this situation?" Interestingly, it is not the appellant who is directly impacted. The locus or legal standing to challenge the decision appointing the appellant as the collection agent based on the exemption of goods and services supplied does not lie with the appellant, but rather with the food vendors and ride-hailers themselves.

Furthermore, our position is that both **Section 31 of the FIRSEA** (Federal Inland Revenue Service Establishment Act) and **Section 49 of CITA** (Companies Income Tax Act) grant the FIRS (Federal Inland Revenue Service) the authority to appoint any person, through written notice, as an agent of a taxpayer when that person holds money belonging to or owed to the taxpayer. Such an appointed agent can be required, through the notice, to use the taxpayer's funds in their custody to pay any tax that the taxpayer owes to the FIRS. The question however is, are these food vendors and ride-hailers expected to charge VAT? Section 15(1) of the VAT Act requires only taxable persons with taxable supplies of N25million and above in any calendar year to charge and collect VAT. The appellant may not have the locus standi to have brought up the matter, but it was a necessary ingredient that should be considered by both the TAT and the FIRS. The ride-hailers and food vendors may resist the appellant from VAT collection on this basis and this may affect the business operations of the appellant. We expect the FIRS to set further guidelines and certainty in respect of this matter.

#### **4. Issue Four**

**Did the Respondent commit a legal error by imposing an agency arrangement between the taxable suppliers and the Appellant for the purpose of charging VAT, even though no such agency arrangement had been voluntarily entered into by either party?**

**Section 10(3) of the VAT Act** did not impose any condition precedent before the Respondent can invoke its powers to appoint “*such other persons as may be appointed by the Service...*”

Since the provision that granted the power to appoint did not impose any condition before the power can be exercised, it is immaterial to the issue at hand, whether there existed an agency arrangement willfully entered into between both parties or not. The agent so appointed can be regarded as an agent of necessity.

It is therefore our considered opinion that the Respondent validly exercised its powers under the law to appoint the Appellant as agent of collection of the Value Added Tax from both the activities of the Food vendors and the Ride-hailers.

### **The Decision of the Tribunal**

Accordingly, the Honorable Tribunal having resolved all the issues in favour of the Respondent, states that the Respondent acted within the provisions of the law, and accordingly dismisses the Appeal and consequently sets aside the Appeal of the Appellant.

### **Our Thoughts**

The Tax Appeal Tribunal's decision in the FIRS vs Bolt case, specifically regarding the appointment of a VAT collection agent, has triggered extensive discussions and debates concerning the tax responsibilities of platform-based businesses operating in Nigeria. In an era of ongoing digital transformation, both tax authorities and businesses face the challenge of striking a delicate balance between adhering to regulatory requirements and promoting innovation with expansion.

Bolt is likely to file an appeal in a higher court of jurisdiction regarding the judgement. We will closely monitor any future developments resulting from this ruling.

This ruling emphasizes the significance of adjusting tax policies to align with technological progress, even while guaranteeing a just and effective tax framework that benefits all relevant stakeholders.

## **Contacts**

Ajibola Sogunro,  
Senior Manager, Tax and Regulatory Services, Mazars  
[Ajibola.Sogunro@mazars.com.ng](mailto:Ajibola.Sogunro@mazars.com.ng)

Oluwatobi Olafaju,  
Manager, Tax and Regulatory Services, Mazars  
[Oluwatobi.Olafaju@mazars.com.ng](mailto:Oluwatobi.Olafaju@mazars.com.ng)

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