Are Governments Really Empowered to Outsource Tax Collection?

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Outsourcing the corporate tax compliance function, thereby enabling organisational focus on core growth drivers, is increasingly popular, given the efficiency and strategic business benefits. This column examines its more controversial cousin - the outsourcing of tax administration. The propriety of this (particularly tax assessment and collection) had been brought into bold relief by divergent practices of consultants variously engaged to help shore up internally generated revenues (IGRs) from taxes, rates and levies. This trend seemed to have started in early 1990s: as a result of low revenues, Governments were attracted by proposals from consultants to help actualise accelerated IGR potential collections. Indeed, prior to return of civilian administration in 1999, almost all the Governments (including Federal) had signed on tax consultants to boost their revenues. Allegations of high handedness, especially sealing of offices whilst tax liabilities were still being disputed by tax payers, were common. There were also issues on the typical compensation model: consultant take was a percentage of the IGR collected.

The Debate: Proponents and Naysayers

If Government can engage consultants to work for them in other areas and thereby enhance their governance capacity, why not in tax, absent any specific prohibition? A responsible government would be interested in boosting its IGR within the confines of the law, in order to meet developmental goals and deliver 'democracy dividends'. Why shouldn't consultants enjoy the benefits of their ideas and value added – in identifying and implementing IGR optimisation opportunities? On an overall basis, tax administration reportedly benefits from the involvement of consultants: what is important is to design a workable and fair system. Naysayers opine that involvement of consultants should be limited to contributing intellectual capital towards enhancing systems and processes of the Revenue for optimal tax administration, e.g. training and IT systems support. Outsourcing assessment and collection is inconsistent with the 'coercive' nature of taxing rights, are meant to be strictly construed. Further, giving consultants a percentage of taxes paid to Government is offensive: 'reasonable' lump sum with fee caps represents a better proposition; conflicts of interest may inhibit the negotiating ability of government officials when engaging consultants, especially where, there was no competitive bidding process. Space constrains discussing other practical issues that have also been raised.

The Law

Section 12(4) of the FIRS Establishment Act 2007 provides that the FIRS "may appoint and employ such consultants including Tax consultants or accountants and agents to transact any business or to do any act required to be transacted or done in the execution of its functions under the Act: provided that such consultants shall not carry out duties of assessing and collecting tax or routine responsibilities of tax officials." It is arguable that such restriction on outsourcing applies to State Boards of Internal Revenue (SBIRs) but not so much to Local Government (LG) Councils. Thus section 102 Personal Income Tax Act (PITA) defines 'tax collector' as "a duly authorised official" of the SBIR or the FIRS. Effectively, this means that agents or tax consultants are not "tax collectors" for the purpose of enjoying the "Powers of tax collectors" in Part XII of PITA. But section 24(2) and (3) PITL Rivers State suggests that 'consultants' may be regarded as 'staff' of the SBIR to "enjoy such terms … of services as the Board may… determine." Section 88(3) PITA provides that subject to 88(4), the SBIR may delegate the performance of any function, duty or power conferred on the Board, to any person by notice in writing or in the Gazette. However, section 88(4) PITA precludes the Board from delegating all critical functions such as assessment or exercise of discretion vested in the Board for the determination of tax liability, etc. Further, a typical PITL provision (exemplified by section 4(4) PITL, Lagos) is that the Governor may by notice in the Gazette or in writing authorise any person to perform or exercise on behalf of the Board, any power or duty conferred on the Board by the enabling Law. Surely, where such function is of the nature that has been reserved as non-delegable by PITA, the delegation would be null and void. In practice, many SBIRS engage consultants to conduct audits, whilst assessment is done by the SBIR. Section 90 & 91(1) PITA establishes the LG Revenue Committee, with mandate to "be responsible for the assessment and collection of all taxes, fines and rates … and shall account for all amounts so collected in a manner to be prescribed by the Chairman of the LG." Furthermore, by section 91(2), "the Revenue Committee shall be autonomous of the LG treasury and shall be responsible for the day to day administration of the Department which forms its operational arm." Does the provision for "a manner to be prescribed by the Chairman of the LG" permit delegation to tax consultants? Arguably, section 91(2) contemplates that "the Department" would perform, and not delegate the functions of "assessment and collection of all taxes, fines and rates under" the Committee's "jurisdiction". However, the absence of express provision against delegation (unlike with SBIR under section 88), strengthens the argument that delegation by LG is not prohibited. LG 'tax consultants' are perceived negatively as 'irritants' to businesses, issuing questionable assessments for levies and rates, inconsistently with constitutional provisions (see 2nd Schedule, Item 7, Concurrent Legislative List, 1999 Constitution) and of the Approved List of Taxes Act.

The consultant typically attaches an introductory letter from the LG together with their assessment. In practice, change of administration at the LG results in change of consultants - it is common for both current and erstwhile consultants to demand the same levies, from taxpayers. Also, some LG consultants request that cheques for payment of assessments be raised in their name. Undoubtedly, the prudent approach (where applicable) is to issue cheques in favour of the LGC and taxpayers can insist that any other arrangement is impermissible under their governance rules: assessments can only be paid to the (ultimate) issuing authority. Some of these issues also arise in non-Nigerian context. A recent study on the performance of privatised tax collection in seven LGCs in Tanzania with respect to revenue generation, administration, and accountability concluded that "outsourcing offers no 'quick-fix' neither to increasing local government revenues nor to reducing tax administrative problems. While collection has increased and become more predictable in some councils…, others have experienced substantial problems with corruption and exceptionally high profit margins for the private agents at the expense of accomplishing a reasonable return to the respective LGCs. However, when appropriately managed and monitored, outsourced revenue collection may establish a foundation for more effective and efficient local government revenue administration."

Conclusion

From a practical perspective, aggrieved citizens have found challenging the validity of the rates or assessment, rather than the capacity of the agent that is acting on behalf of the taxing authority, more effective strategy. If the challenge is successfully sustained, it disposes of the issue once and for all, whereas a successful challenge of the capacity of the agent , does not relieve the tax payer of the obligation to pay - as the authority, assuming validity of rate is not in issue, can then seek to enforce payment directly.