THE LAGOS STATE HOTEL OCCUPANCY AND RESTAURANT CONSUMPTION (FISCALISATION) REGULATION.

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Introduction

The Lagos State Internal Revenue Service (LIRS) issued the Hotel Occupancy and Restaurant Consumption (Fiscalisation) Regulation ("the Regulation") in December 2017. The Regulation was made pursuant to Section 9 of the Hotel Occupancy and Restaurant Consumption Law, Cap. H8, Laws of Lagos State 2015 ("the Principal Law") which gives the LIRS the power to make rules and regulations for the collection and remittance of taxes, and the proper administration of the law.

The Regulation applies to all persons who own, manage, or control any business, or supply any goods or services chargeable under the Principal Law such as hotels, restaurants, nightclubs, fast food outlets, bars, and event centres.

The Regulation aims to give the LIRS an oversight over all sales transactions by businesses covered under the Principal Law and ensure compliance with remittance of Consumption Tax through the use of a mandatory Electronic Fiscal Device.

Some of the key provisions of the Regulation are presented below.

Introduction of "Collecting Agents"	The Regulation provides that owners of businesses covered under the Principal Law would act as "collecting agents" of the LIRS. To this end, the affected businesses are to install on their premises an Electronic Fiscal Device (EFD) through which all transactions with customers would be conducted. All such EFDs are to be registered with the LIRS who shall issue to the collecting agent a unique registration number, which is to be marked on a conspicuous place on the body of the device.
Obligations of Collecting Agents	In addition to installing the EFD, registering it with the LIRS and ensuring that all transactions with customers are

recorded in the EFD, collecting agents are also required to comply with the following under the Regulation:

1. Generate receipts/invoice to be issued to customers using the EFD after a sales or refund transaction. This applies whether the customer forgets to ask for or collect the receipt. In such instance, the collecting agent is still required to generate the receipt and retain it.

   Every receipt/invoice generated by the EFD must contain specific mandatory information, such as: the name and address of the collecting agent, the consumption tax registration number of the collecting agent, the name of the person operating the electronic fiscal device, and the means of payment.

2. Collecting agents shall allow the EFD to connect to the LIRS central system through such means prescribed by the LIRS; and ensure that all their business transactions are electronically transmitted to the LIRS central system.

3. Where the EFD fails to operate for any reason, the collecting agent shall report the incident to the LIRS, and in such a case would be allowed to use an alternative electronic device.

4. A collecting agent shall not transfer its registered EFD to another agent.

5. The EFD is to be placed in such a manner that it is easily accessible and can be seen by the customers.

6. Collecting agents are to ensure that all records generated by the EFD are kept safe and are not tampered with.

Obligations of the Customer	The Regulation mandates customers to ask for a receipt after every sales or refund transaction. The customer is also under an obligation to report to the LIRS any mismatch between the sales data and data on the receipt and a failure of the EFD to verify the receipt.
Powers of the LIRS	The LIRS is empowered under the Regulation to enter into any business premises to inspect the installation and functioning of the EFD and enforce strict compliance with the Regulation. The LIRS also has the power to investigate any collecting agent where it has reasons to believe that the conduct of the collecting agent in using the EFD is contrary to the Regulation. It may also seize the EFD to further the investigation where necessary.
Sanctions	A collecting agent who fails to comply with the provisions of the Regulation would, on conviction, be liable to the appropriate penalty under the Principal Law; which is 10% of the tax due or interest rate at 5% above the Central Bank of Nigeria's minimum rediscount rate.

Conclusion

In furtherance of the Regulation, the Lagos State Government held a stakeholder meeting with hotel and business owners in the hospitality and tourism sector of the state on the 22nd of February 2018. At the meeting, the LIRS unveiled the Electronic Revenue Assurance (ERA) System, a form of EFD which issues invoices and receipts bearing a unique Quick Response (QR) code to customers.

According to the Chairman of the LIRS, the commencement of the ERA system would take off immediately, and the LIRS' officers would be visiting eligible hospitality and tourism businesses to install the system and train their staff on the use of the device. However, the business owners would have to purchase the ERA system themselves.

It is worthy to mention that the Registered Trustees of Hotel Owners and Managers Association of Lagos have filed an action in court challenging the validity of the Regulation. They argue that the installation of the EFD in their systems violates their right to privacy and could compromise the confidential data of their customers. The court has granted an injunction restraining the Lagos State Government from further enforcing the Regulation until the final determination of the suit.

If you would like to get more information on this, you may contact the Tax Practice Group of the firm through its email address: taxgroup@aelex.com.

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