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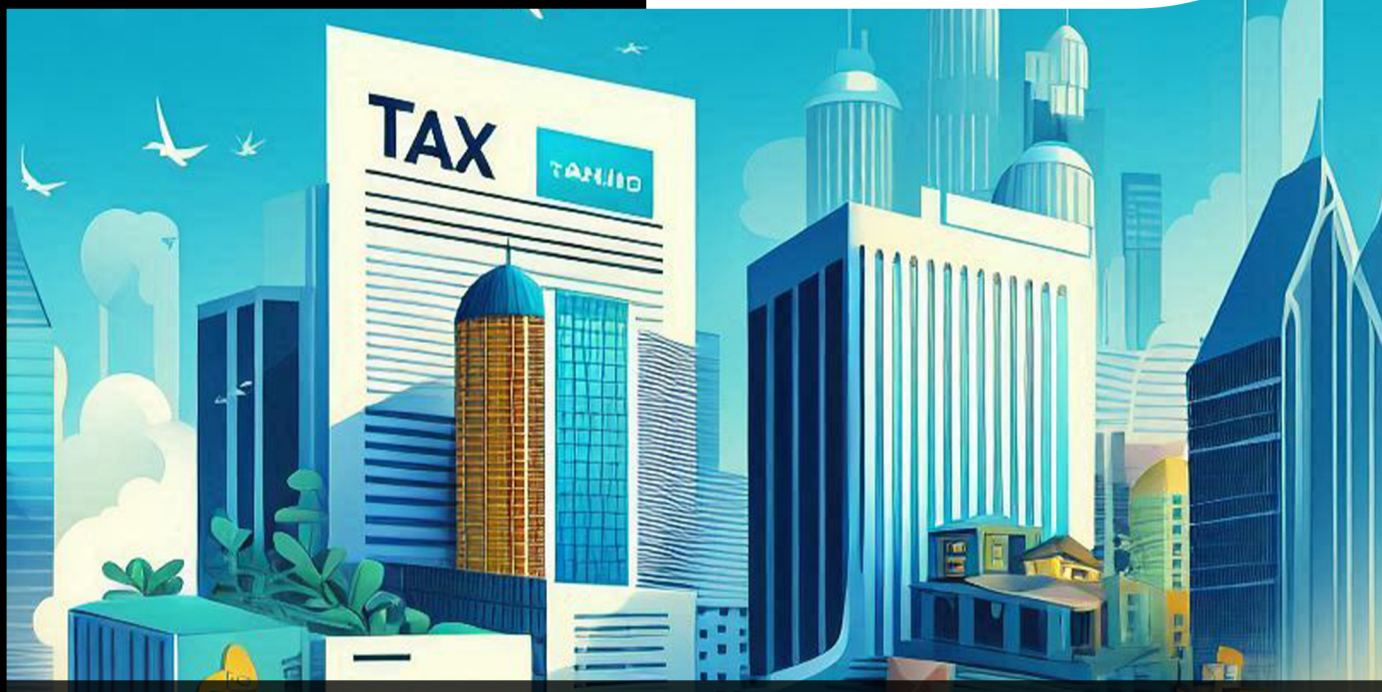

WHEN BANKS AND OTHER CUSTODIANS BECOME UNWITTING TAX AGENTS: SECTION 60 OF THE NTAA

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INTRODUCTION

As Nigeria moves toward a more structured and assertive tax administration regime, Section 60 of the Nigeria Tax Administration Act, 2025 (NTAA), emerges as one of its most consequential and closely examined provisions. The provision empowers the tax authority to appoint agents who must remit a taxpayer's outstanding liabilities directly from funds or assets in their possession, without first obtaining an order of the High Court. While intended to reinforce compliance, this power raises important questions on due process, constitutional safeguards, and the scope of administrative discretion.

This article examines Section 60 within the framework of the NTAA, its implications for taxpayers' rights, and how it should be interpreted to balance enforcement efficiency with constitutional limits. At its core, the section effectively turns banks and other custodians into involuntary tax collectors, liable for a taxpayer's unpaid tax merely because they hold the taxpayer's funds. This transformation of third parties into extensions of the tax authority highlights why Section 60 warrants close scrutiny.

Section 60 in Context

The power of substitution is not a novel feature of Nigeria's tax regime. Under the Federal Inland Revenue Service (Establishment) Act, 2007, Section 31 authorized the Service to appoint agents (most frequently banks) to recover unpaid taxes directly from money held on behalf of taxpayers. While effective in practice, that provision offered limited safeguards, it omitted any reference to judicial oversight, and exposed agents to direct liability in the event of default.

The Nigeria Tax Administration Act, 2025, preserves this mechanism but extends its reach. Under Section 60, the relevant tax authority may, without an order of the High Court and by notice in writing, appoint any person to be the agent of a taxable person where- (a) any tax has become due and payable and the taxable person has refused or failed to pay; or (b) the agent appointed is in possession or is expected to be in possession of the money, funds or assets of the taxable person.

Once appointed, the agent must remit the tax directly to the authority. If he fails to do so, all enforcement measures, including distrain, may be applied against him as though he were the taxpayer.

Reading Section 60(2) shows that either condition alone can trigger the power to appoint an agent. Paragraph (b) is noteworthy because it appears to rest solely on the agent's position and does not require any prior failure by the taxpayer. Is it sufficient that the agent merely "is in possession or is expected to be in possession" of the taxpayer's funds or assets? This means the authority's discretion no longer depends on any proven non-compliance but instead turns on whether the agent has access to assets that can satisfy the outstanding tax obligations. From an analytical perspective, this expands administrative discretion and reflects a pragmatic, pre-emptive approach to tax recovery. It creates a tangible risk of premature or overly assertive action, which highlights the need to interpret Section 60 alongside Sections 67 and 68.

Prima facie, Section 60 appears to confer expansive discretion, potentially enabling abrupt interference with third-party relationships. However, the NTAA qualifies this power through its broader recovery structure. Section 67 establishes the general pathway for recovery. It provides that once tax becomes due, it is deemed a debt owed to the authority, and where payment is not made within 30 days, the authority may issue a formal demand notice for the payment of the tax plus the penalty and interest due. If default persists, the authority may then invoke any of the enforcement powers conferred by the Act, including but not limited to legal action before a court.

Section 68 goes further by permitting the relevant tax authority, in defined circumstances, to assign outstanding tax debts to accredited third parties such as banks, financial institutions, or debt-recovery practitioners. Such assignment is permissible only where-

(a) all legal steps for tax debt recovery under the Act have been exhausted, including notifications, payment demands, and enforcement actions; And

(b) the debt to be recovered is deemed to be of significant value and has been outstanding for a period considered appropriate by the relevant tax authority.

The use of "and" in subsection (2) above establishes a conjunctive threshold, as neither condition is independently sufficient and both must co-exist before an assignment can lawfully occur.

This legislative structure signals a conscious intent to confine third-party intervention to exceptional circumstances, thereby ensuring that assignment functions as a carefully measured step rather than a routine administrative shortcut. Importantly, the reliance on what the authority "deems" significant, and what it considers an "appropriate" period of outstanding debt, introduces an evaluative discretion that must be exercised reasonably and in good faith. While the Act does not define these terms, the requirement that both conditions be met places an implied duty on the authority to articulate, at least inferentially, why a particular debt satisfies these qualitative thresholds in the circumstances. The Act also requires that the taxpayer be formally notified of the assignment, and the authority retains the discretion to reverse it where necessary. The policy rationale behind Section 60 is clear. Tax authorities often face situations where taxpayers maintain sufficient funds or assets with third parties yet fail or refuse to settle outstanding liabilities. Substitution therefore operates as a statutory check against asset dissipation and strategic default, ensuring that taxes already due and payable can be recovered efficiently from accessible sources.

Section 60 and Procedural Safeguards

To interpret Section 60 correctly, it must be read alongside Sections 67 and 68. Read harmoniously, Section 60 functions as a calibrated enforcement tool that should be activated only after preliminary statutory steps have been followed. It is not designed to circumvent them. This not only preserves the structural coherence of the Act but also reinforces the constitutional right of fair hearing under Section 36 of the 1999 Constitution (as amended).

Nigerian courts have repeatedly emphasized that administrative convenience cannot override due process. In Ama Etuwewe & Co. v. FIRS, the Federal High Court ruled that freezing a bank account without judicial oversight or an opportunity to be heard violated constitutional safeguards, though the NRS (currently FIRS) had broad agent powers. Jurisdictions such as the United States and South Africa also empower their revenue authorities to reach taxpayers' funds through third-party avenues, subject to mandatory notice and clear procedural safeguards. Against this backdrop, Section 60(5) extends the Act's objection and appeal procedures to any notice issued under the substitution arrangement, treating it as an assessment or demand notice and allowing the affected party to pursue dispute resolution. This ensures that third parties are not exposed to immediate liability without recourse and that taxpayers retain the right to be heard before their funds are indirectly accessed.

Implications and Risks

Proponents of Section 60 may argue that its purpose is to secure funds quickly before taxpayers dissipate or conceal assets. While this rationale has merit, efficiency must not come at the cost of legal or constitutional compliance. Sudden exposure to liability may disrupt commercial operations and erode trust between financial institutions and their customers. The absence of judicial oversight could also invite constitutional challenges on grounds of violation of fair hearing.

Section 60 may also raise significant concerns relating to taxpayers' privacy and data protection rights. By allowing the tax authority to require banks and other custodians of financial information to disclose and remit funds belonging to a taxable person, the provision triggers the handling of sensitive financial data, often without a prior judicial order. While the Nigeria Data Protection Act permits public bodies to process personal data in the exercise of statutory functions, such processing must follow principles of necessity, proportionality, and data minimization. A broad or unjustified invocation of Section 60 could therefore conflict with constitutional privacy rights under Section 37 and with statutory data protection standards.

Conclusion

Section 60 ultimately reflects the delicate balance between efficient tax recovery and the protection of taxpayers' rights. Properly situated within the broader recovery framework, it should function not as a bypass of established procedures but as a disciplined enforcement measure activated only after the Act's preconditions have been satisfied. When applied with transparency and restraint, it can enhance compliance while preserving constitutional safeguards around fair hearing, privacy, and commercial stability. The real test, however, lies not in the wording of the statute but in how faithfully its limits are observed in practice. Will its use strengthen trust in the tax system or strain it?

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