

**BRIEF NOTES ON THE ADJUDICATION OF TAX DISPUTES IN NIGERIA:  
THE TAX APPEAL TRIBUNAL PERSPECTIVE**

**1. General Background**

Perhaps, it may be a good starting point to state the philosophy behind the establishment of **The Nigerian Tax Appeal Tribunal [TAT]** is basically to resolve disputes and controversies relating to tax issues between the parties who appear before the TAT, which invariably mean the tax authority and the taxpayer, as quickly and as friendly as possible. Before the establishment of the Tax Appeal Tribunal all tax matters went to the Nigerian Federal High Court by virtue of section 251 of the Nigerian Constitution. But it had long been realized that the traditional or conventional law courts are not only overburdened with cases which on the average take about 12 years, to move from High Court to Supreme Court, but additionally that the courts do not have the skills and competencies to deal specialized matters like taxation. Against this background, inter alia, the Nigerian Government thought it fit to establish the Tax Appeal Tribunal.

**2. Establishment of Tax Appeal Tribunal**

The Tax Appeal Tribunal was established [commencement date 16<sup>th</sup> April, 2007] pursuant to Section 59[1] of the Federal Inland Revenue Service [Establishment] Act, 2007, which states:

“The Tax Appeal Tribunal is established as provided in the fifth schedule of this Act”

Section 59[2] states, inter alia, the mandate of the TAT in relation to adjudication of tax matters. It provides thus:

“The Tribunal shall have powers to settle disputes arising from the operations of this Act and under the first schedule”

The legislations listed under the first schedule are:

1. Companies Income Tax Act Cap. 60 LFN, 1990.
2. Petroleum Profits Tax Act Cap. 354 LFN, 1990.
3. Personal Income Tax Act No. 104, 1993.
4. Capital Gains Tax Act Cap. 42 LFN, 1990.
5. Value Added Tax Act 1993 No. 102, 1993
6. Stamp Duty Act Cap. 411 LFN, 1990.
7. Taxes and Levies [Approved List for Collection] Act 1998 No. 2, 1998.
8. All regulations, proclamation, government notices or rules issued in terms of these regulations.
9. Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to those laws, conferring any power, duty and obligation on the Service.
10. Enactment or Laws imposing Taxes and Levies within the Federal Capital Territory.
11. Enactment or Laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licences, fees for Oil Exploration Licence [OEL], Oil Mining Licence [OML], Oil Production Licence [OPL], royalties, rents [productive and non-productive], fees for licences to operate

drilling rigs, fees for oil pipeline licences, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

### **3. Power To Appeal To Tax Appeal Tribunal By The Parties**

Both the tax authority and the taxpayer are allowed by the 5<sup>th</sup> schedule of the Federal Inland Revenue Service [Establishment] Act, 2007, to appeal to the TAT if they are aggrieved by the action or decision of either party.

For example, Section 13[1] of the 5<sup>th</sup> schedule of the Act allows a person who is aggrieved by an action, assessment or demand notice made on him by the tax authority to appeal against that decision or action or assessment and by Section 13[2] the appeal must be done within 30 days of receipt of such action or assessment or demand notice necessitating the appeal. Where the taxpayer fails to comply within the period allowed and has not given sufficient cause for the delay, the assessment or demand notice or action by the tax authority would become final and conclusive and so the tax authority may go after him/her to recover the outstanding tax liabilities and may charge interest and impose penalties [see Sub Section 3].

Similarly, by virtue of Section 14 of the said 5<sup>th</sup> schedule, the tax authority if aggrieved by the non-compliance of a taxpayer may appeal to the jurisdiction of the TAT where the taxpayer is resident for the prosecution of the defaulting taxpayer.

Please note that where in the cause of the proceedings the TAT discovers evidence of crime, it ~~should~~<sup>would</sup> decline jurisdiction [since its jurisdiction is limited to civil matters] and report such crime or fraud to the

appropriate law enforcement agency such as the Office of the Attorney-General or the Police for prosecution. [see Section 12 of the 5<sup>th</sup> schedule].

#### **5. Administrative Steps By The TAT Secretariat Before Hearing**

The process for filing of processes by the Appellant is commenced by a Notice of Appeal as in Form TAT 1 at the Tribunal Zone where the action complained about emanated. The Notice of Appeal shall state the following:

- i. The ground of Appeal
- ii. Whether the whole or part only of a decision is contested [indicating such part]
- iii. The exact nature of the relief sought and
- iv. The names and addresses of all parties directly affected by the appeal.
- v. The address for the service on the appellant and the respondent must be endorsed on the Notice of Appeal.

The Notice of Appeal shall be filed along with the list of witnesses to be called at the hearing of the appeal, written statement on oath of the witnesses and copies of every document to be relied on at the trial.

It must be noted that all persons who have an interest or some right in the subject matter of an appeal may jointly file an appeal as co – appellant. Similarly where the complaint of an appellant is against several persons, the appeal may be filed jointly against such several persons as co - respondent.

Upon receipt of the Notice of Appeal the Secretary to the Tribunal of the Zone shall stamp the copies with the official stamp showing the date on

which the documents were received and a copy is served on the Respondent or the person representing him at the hearing.

The Respondent shall within thirty [30] days of receiving the Notice of Appeal acknowledge receipt of it by completing Form TAT 3 stating in the reply whether he intends to contest the appeal or not. Where he/she is contesting, he/she is enjoined to give reasons for so doing.

Where the respondent desires to rely on evidence at the hearing of the appeal, he shall file along with the respondent's reply list of witnesses to be called at the hearing of the appeal, written statements on oath of the witnesses and copies of every document to be relied on at the hearing. All processes shall be signed by the respondent or his legal practitioner, chartered accountant or adviser.

The Tribunal Secretary shall upon receiving the memorandum of appearance or reply of the respondent, stamp the process as received and record it in the Cause Book, and cause a copy of it to be served on the appellant. At this stage, the appeal is ripe for hearing and determination.

## **6. Actual Hearing Of Appeal**

It is important to note that in hearing appeals, the TAT is guided by a number of Laws and Rules which include but not limited: the Nigerian Constitution, the FIRS Act, the relevant Tax Laws and of course the TAT Rules of Procedure. The TAT Rules are like typical High Court Civil Procedures Rules, which most commonlaw jurisdictions are used to.

There are 8 zones of the TAT and each zone is headed by a Chairman and 4 Commissioners/Members who do not necessarily have to be lawyers but vast in the knowledge of tax laws, and tax administration, policy and practice. What you find out invariably is that most Commissioners are lawyers. All Chairmen are not just lawyers, but lawyers of long standing at the Bar and with deep and vast knowledge of Tax Laws, tax administration and practice. The quorum for every sitting is three with the Chairman presiding and in his absence, an Acting Chairman would be appointed by the Commissioners present.

The TAT Rules provide that when an officer of the Tribunal or a party has effected service, he must complete an affidavit of service form as in Form TAT 2 and swear to it before the Tribunal Secretary. The production of the proof of service is a prima facie evidence of service. The Secretary to the Tribunal shall give seven [7] clear days' Notice of Hearing of the date and place fixed for the hearing of the appeal using Form TAT 8.

At the hearing, the Tribunal shall have the power to conduct its proceeding in a manner it deems fit to ensure speedy dispensation of justice thus, placing more emphasis on substance rather than form or technicalities. The Tribunal is at liberty to adopt an alternative dispute resolution mechanism [e.g. negotiation/out of tribunal settlement] in resolving tax disputes. Where this fails or not acceptable to the parties, full civil litigation procedure as in the conventional Law Court would follow. We are not saying here that negotiation or out of tribunal settlement shall be a condition precedent for full-blown civil litigation hearing of the dispute. But if the essence of setting up the tribunal is to achieve speedy, friendly, fair and firm dispensation of

justice to all who appear before the tribunal and not to fall into the same delays experienced by the traditional court, and unnecessary technicalities, there is no justification in not adopting this option. This is in tandem with the aims and objectives of setting up the tribunal in the first place. Where negotiation/out of tribunal settlement option is adopted, the parties would draw up terms of settlement which, if found not to be tainted with fraud or illegality, would be adopted by the tribunal and it would form the decision/judgment of the tribunal. This we call Consent Judgment.

The hearing of the appeal is usually commenced by the appellant who presents his documents or statement which he intends to rely upon as well as witnesses he desires to call.

On the other hand, the respondent or his representative may in like manner, present any document or statement he intends to rely upon as well as witnesses he desires to call.

In both instances, the Tribunal is required to admit all evidence produced by the parties, oral and documentary provided it is relevant to the matter. The oral evidence by a witness will be limited to confirming his sworn deposition and may thereafter be cross – examined by the opposing party and then re – examined by the party who called him.

The Tribunal may if it deems necessary require from either parties to produce additional evidence or call additional witness to enable it to issue proper direction or orders.

Where the Tribunal deems it necessary, it shall order the parties to file and adopt their written addresses and may also grant them leave to make oral arguments to emphasize and clarify their written addresses.

At this stage of the hearing, the Tribunal would then determine the appeal by giving its decision/judgment or ruling based on the evidence presented before it.

#### **6. Decision/Judgment Of The Tax Appeal Tribunal**

The Tribunal can only give its decision/judgment after the hearing of all the evidence and adoption of the written addresses of the parties if any. Where the negotiation or out of tribunal settlement option is adopted, it dispenses with leading evidence, except in so far as to state that the terms of settlement were freely entered into, cross-examination, re-examination, written addresses, etc. This decision/judgment may be unanimous or taken by a majority of the Commissioners and it shall be recorded as such. Where there is a tie, the Chairman would have a casting vote.

The decision/judgment of the Tribunal may be to confirm, reduce, increase or annul the assessment in contention or make any such other order[s] as it deems fit. Every decision/judgment or ruling shall be recorded in a document which except in instances of decision by consent judgment, shall contain a statement of the reasons of the decision and it shall be signed by the chairman. The Chairman is the only person empowered by statute to sign judgments.



Every interested party may apply to the Secretary of the Zonal Tribunal for a certified true copy of the judgment or ruling within thirty [30] days of the date of the judgment/decision.

#### **7. Enforcement Of Judgment**

The judgment of the TAT Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of the judgment or award with the Chief Registrar of the Federal High court by the party seeking to enforce the award or judgment.

However, where the tax authority or any person is dissatisfied with a decision/judgment of the Tribunal, an appeal against such decision/judgment on point of law lies to the Federal High court upon giving notice in writing to the Secretary to the Zonal Tribunal within thirty [30] days after the date on which the decision/judgment was delivered. The Secretary shall upon receipt of the Notice of Appeal cause the notice to be given to the Chief Registrar of the Federal High Court along with the exhibits tendered at the hearing before the Tribunal. Where a party is dissatisfied with the decision/judgment of the Federal High Court, he/she may appeal to the Court of Appeal and may even go up to the apex court – the Supreme Court of Nigeria.

**Many thanks for listening.**

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