

Know and Exercise Your Tax Right to Fair Hearing



The Nigerian tax laws provide a taxpayer (individual or corporate) the right to fair hearing as enshrined in the constitution. The Federal Inland Revenue Service (FIRS) however has previously been confronted for allegedly undermining this provision and finalising an assessment without allowing tax payers this right. Perhaps, some taxpayers have been made to pay excess tax liability due to repudiation of their rights to object an assessment.

Positive News

The Tax Appeal Tribunal (TAT) sitting in Lagos on September 27, 2019 in the case of Ponticelli Nigeria Limited (PNL) versus the Federal Inland Revenue Service (FIRS) has re-affirmed the position of the law. In raising a tax assessment, the authority must be mindful of the statutory and constitutional rights of taxpayers to fair hearing, as any act that frustrates such rights can invalidate an assessment.

Facts of the Case

The FIRS reviewed the Transfer Pricing (TP) returns filed by PNL and raised an additional assessment of about \$3million in respect of Company Income Tax (CIT) for the 2012 to 2016 years of assessment. The Service included in the same notice of assessment a paragraph of its intention not to entertain any objection regarding the assessment and notified PNL of its right to appeal to the TAT. PNL did appeal against the assessment to the TAT on the strength that, among other things, the communication of a "Notice of Refusal to Amend" together with a "Notice of Assessment" in one and same letter worded as 'Notice of Additional/Amended Assessment' is a breach of its constitutional right to fair hearing.

TAT's Decision

Three issues were tabled for determination by the TAT:

1. Whether or not the FIRS disregarded Ponticelli's right to fair hearing under the law;
2. Whether or not the FIRS carried out a TP audit on Ponticelli itself and;
3. Whether or not the assessment on Ponticelli took cognisance of the Double Taxation Agreement between Nigeria and France.

The TAT considered only number one from the above issues and held that the "Notice of Assessment" doubled as "Notice of Refusal to Amend" and as such disregarded the 30-day period allowed to taxpayers to object against an assessment as provided under section 69(1&2) of the CITA. The Tribunal therefore annulled the assessment and held that it was needless to consider issues 2 and 3.

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