

# Federal High Court (Federal Inland Revenue Service) Practice Directions 2021: what you need to know



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### Background

The Honourable Chief Judge of the Federal High Court, pursuant to powers Order 57 Rule 3 of the FHC (Civil Procedure) Rules 2019, recently issued the Federal High Court (Federal Inland Revenue Service) Practice Directions 2021 (PD).

### Objectives

The core objective of the PD is to help the Federal Inland Revenue Service (FIRS) enforce tax judgments or recover tax debts / liabilities which have become final and conclusive. Such enforcement or recovery could be by way of:

- interim orders for forfeiture of taxpayer's immovable property and or for freezing a taxpayer's bank account,
- *ex-parte* orders granting access to taxpayer information (kept in hard or digital / electronic formats) and / or access to business premises and / or sealing the taxpayer business premises.

Other objectives of the PD include settlement of tax debts / liabilities, effective case management, expeditious resolution of tax disputes, promote electronic service of processes. The PD apply to both civil and criminal causes relating to tax matters.

### Commencement

The PD have a commencement date of 1 June 2021.

**Insights:** The PD have been in force since the commencement date so FIRS will be able to file returns from that date.

### Overview:

The PD are divided into 8 Orders. For certain matters, the PD refer to the FHC (Civil Procedure) Rules 2019 (Rules). Therefore, the Rules would be relied on to interpret the specific matters before the FHC.

### Place of Commencement:

FIRS must file its applications in the judicial division of the FHC from which a claim arises. Where an application is filed in the wrong division, the Court may hear the application except where the Court directs otherwise or the taxpayer objects to the application being heard in the wrong division.

**Insights:** This rule provides some flexibility with respect to where an application may be heard.

### Mode of Commencement:

FIRS' application for Orders for forfeiture of taxpayer immovable property, freezing of bank account(s), access to taxpayer information / premises shall be by way of a Motion *Ex-parte*. The motion must be filed along with an affidavit and written arguments as well as relevant documentary evidence including:

- copies of assessments or demand notices served on the taxpayer,
- copies of request for access to information or premises served on the taxpayer,
- warrant of distraint / access signed by the Chairman of FIRS.

Per the PD, the judge would grant the application pending the hearing of a Motion on Notice, provided FIRS has complied with the PD. By the PD, FIRS is expected to file a Motion on Notice within 14 days of the grant of the *ex-parte* / interim Orders so that the taxpayer can be heard.

**Insights:** A Motion *Ex-parte* means a motion where the taxpayer is required to be notified or heard when the motion is being argued in court by the FIRS. Even if the taxpayer is present in court when the motion is being argued, the taxpayer would not be granted audience. By nature, Orders granted *ex-parte* are interim orders usually lasting for 14 days. The Rules allow *ex-parte* motions in situations where a party would suffer irreparable loss or damage if the motion is delayed till the other party has notice.

However, the taxpayer still has an opportunity to be heard and defend its position when the Motion on Notice comes up for argument although the taxpayer would have been denied access to its properties for at least 14 days pending a decision following the hearing of the Motion on Notice. Where the FIRS does not file a Motion on Notice within 14 days of the Order and does not request for extension of time to file same, the interim Order lapses and the taxpayer would have access to its property. The taxpayer must respond to the Motion on Notice within 14 days or ask for extension of time within the 14 days otherwise, the Orders may become absolute.

Though not stated in the PD, a judge has a discretion to refuse an application if s/he is of the opinion, considering the circumstances, that granting same would be unjust.

### Service of process:

All court documents relating to the application can be served electronically e.g. email, WhatsApp or as directed by the Court. A print-out of such service is sufficient proof that a party was served.

**Insights:** Consistent with recent legislation, recent case law<sup>1</sup> and in the light of current realities arising from Covid-19, both FIRS and taxpayers can serve provisions electronically. While there are provisions that allow for electronic service, there is still no provision that allows for applications to be filed electronically at the FHC.

### Mode of Entering Appearance:

A taxpayer who intends to challenge FIRS' application must enter appearance within 14 days of service on it of the application. Entering appearance means filing a Counter Affidavit, Written Address and any documentary evidence to be relied on. Such a taxpayer must, pending the determination of the application, pay 50% of the liability / tax debt into an interest yielding account of the FHC.

However, where a taxpayer does not intend to challenge the application, it must ask the court for permission to pay the tax debt into the designated bank account and apply for FIRS' application to be discharged.

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However, where a taxpayer does not intend to challenge the application, it must ask the court for permission to pay the tax debt into the designated bank account and apply for FIRS' application to be discharged.

**Insights:** This provision introduces a condition precedent for taxpayers who intend to challenge the tax assessment. This provision should be distinguished from a similar provision under the Federal Inland Revenue Service (Establishment) Act (FIRSEA) which requires a taxpayer, who appeals a decision of the Tax Appeal Tribunal to the FHC, to pay the tax debt / judgment sum. The rule under the PD has a wider application than the provision under the FIRSEA. The provision in the PD can be applied when:

an assessment has become final and conclusive where a taxpayer fails to object or appeal the assessment within 30 days, there is a TAT decision in favour of FIRS which the taxpayer does not intend to appeal,

In the event a taxpayer intends to appeal a decision of the TAT, the provision of the FIRSEA would apply. However, the taxpayer may apply to the FHC that, instead, payment should be made into an interest yielding account in the name of the Registrar of the FHC. This application would be at the discretion of the judge.

## Default of Appearance:

The judge has discretion to strike out or enter judgment in the absence of FIRS or the taxpayer respectively. The FHC may relist an application upon a request by FIRS.

**Insights:** Because judgments made in default of appearance are not determined on the merits of a case, they can be set aside if the defaulting party applies within 14 days of the judgment for the judgment to be set aside. See Order 8 (10) of the Rules.

## Takeaway

Without a doubt, the PD are intended to help FIRS enforce tax debts arising from court decisions or where an assessment has become final and conclusive due to the taxpayer's failure to object or appeal an assessment within a 30-day period. The new rules are a direct consequence of recent decisions striking down FIRS' attempts to freeze taxpayers bank accounts or enforcing judgments without a valid court order.<sup>2</sup> Before FIRS can rely on the Directions, assessments must have become final and conclusive.

The PD would not apply to instances where a taxpayer is appealing to the TAT or from the TAT to the FHC. In the former case, there is no requirement to pay any part of the liability while in the latter the FIRSEA applies and the taxpayer would be required to pay the tax liability / judgment sum as a precondition to the appeal.

It is also worthy of note that according to case law, PD cannot override Rules of Court so to the extent of any inconsistency between both, the Rules may apply over the PD.<sup>3</sup>

**For a deeper discussion, please contact any member of our Tax Controversy and Dispute Resolution team below or your usual contact within PwC Nigeria:**

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## References

1. Earth Moving International Ltd v. FIRS [TAT/C2/CIT/030/2018] delivered 17 September 2019
2. Ama Etuwewe Esq v. FIRS & Anor (Suit No. FHC WR/CS/17/2019), Oladotun (Liquidator, Nu Metro Retail Nigeria Ltd) v. Executive Chairman, FIRS (Suit No. TAT/LZWHT/020/2019)
3. Buhari v. INEC (2008) LPELR-814 (SC) per Niki Tobi JSC

