

Tax Appeal Tribunal (TAT) upholds the six-year limitation period for the issuance of tax assessments by authorities and rules that there is no statutory restriction on delegation of tax investigation to third parties

Background

Lafarge Africa Plc ("Lafarge" or "the Company") was subjected to a tax investigation by the Ogun State Internal Revenue Service ("OGIRS") spanning 2010 to 2014. In response, OGIRS issued an assessment of ₦1,285,227,910.43 in November 2018. The Company appealed to the TAT in December 2019.

During the appeal process, reconciliatory meetings occurred, resulting in an out-of-tribunal settlement. Following this, OGIRS issued a revised assessment of ₦191,723,626.08 in May 2020, which was duly settled by the Company. Subsequently, in August 2020, OGIRS requested an additional payment of ₦20,452,659.71, which was also promptly paid. However, in January 2021, OGIRS issued another revised assessment of ₦347,738,894.24, asserting its connection to untaxed expatriate income.

The Company raised objections, contending that OGIRS had violated the terms of the settlement agreement established after the 2020 assessment. Furthermore, the company challenged the 2021 assessment, arguing that it exceeded the prescribed six-year limitation period specified in section 55 of the Personal Income Tax Act ("PITA"). In addition to these objections, the company asserted that OGIRS had unlawfully delegated its responsibilities to a private entity, thereby rendering the assessment invalid.



Company's Arguments

- The revised assessment of ₦347,738,894.24, issued in January 2021, surpassed the six-year limitation period specified in Section 55 of PITA, and OGIRS failed to establish that the Company committed fraud, wilful default or neglect which are the only grounds for issuing assessments outside the statutory limitation period.
- OGIRS unlawfully delegated its statutory duties, powers and responsibilities of tax audit, examination, investigation and tax assessment to a private firm contrary to section 88(3) and (4) of PITA. As such, the further revised assessment of ₦347,738,894.24 dated 27 January 2021 arising from the delegation is invalid, void and of no effect.

Where powers are to be validly delegated, such delegation must be by gazette or other document, and OGIRS failed to provide the same.

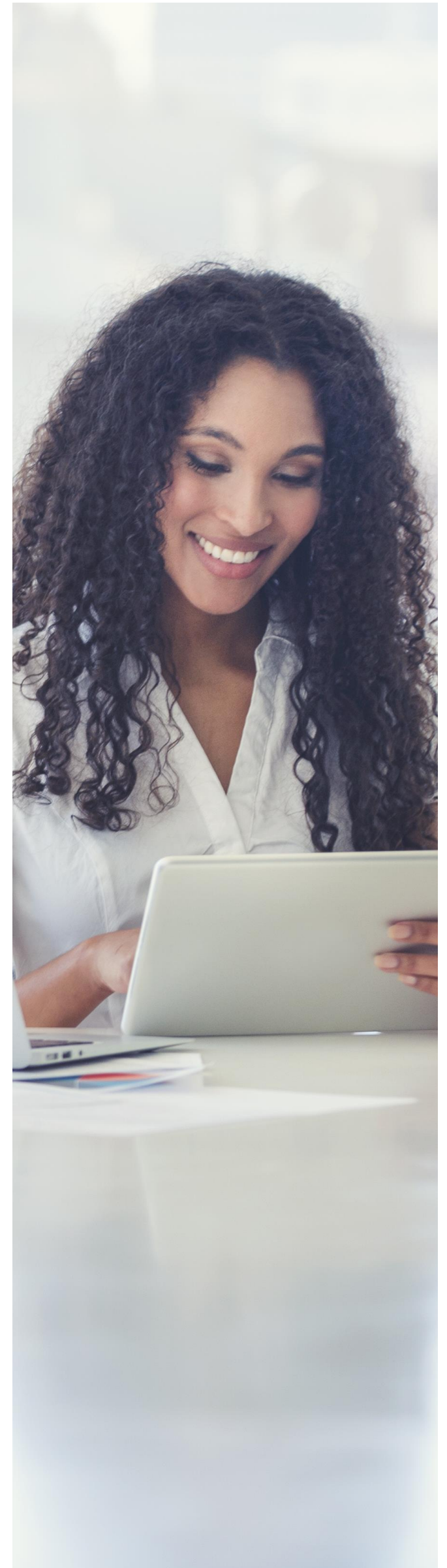
- The Company and OGIRS entered into an out-of-tribunal settlement agreement to resolve their dispute and the further revised assessment of ₦347,738,894.24 dated 27 January 2021 was a derogation from this agreement. OGIRS acted in bad faith and is restricted in law from issuing further assessments on the Company contrary to the out-of-tribunal settlement agreement.

OGIRS' Arguments

- Tax authorities are statutorily empowered to issue revised or additional assessments on taxpayers in the event of their becoming aware of additional information that necessitate such additional or revised assessments.
- Taxpayers have a constitutional obligation to pay tax liabilities and cannot escape this obligation by reliance on computation errors by the tax authority.
- The Company was guilty of fraud through its use of mirror accounts for channelling payments to its expatriate staff and this provided an exception to the statutory limitation period for the issuance of assessments.
- Section 88(3) of PITA empowers the Tax Authority to empower any person to perform any function or duty conferred on it. Section 88(4) of PITA does not preclude the engagement of professionals by a tax authority to perform its functions even though it forbids the delegation of the Tax Authority's function or power. Furthermore, since the assessments were issued on the letterhead of the Tax Authority and under the hand of its Executive Chairman, they were therefore validly issued.
- No out-of-tribunal agreement, contract or terms of settlement was entered into or executed by the parties neither was a consent judgement issued. In the absence of these, the Tax Authority was not restricted in its power to issue additional assessments on the Company.

Tribunal Decision

- **On limitation period for issuance of revised assessment** - The Tribunal held that section 55(1) of PITA imposed a 6-year limitation period for the issuance of assessments against a taxpayer after the expiration of the relevant year of assessment. The exceptions to the issuance of assessment outside the limitation period are where the taxpayer had committed fraud, wilful default or neglect. These exceptions were not proved by the Tax Authority in the instant case.



- **On whether OGIRS was stopped from issuing revised or additional assessments** - The Tribunal held that there was no binding agreement between the Company and the Tax Authority to restrict the Tax Authority from issuing additional or revised assessments. Tax Authorities are statutorily empowered to review back taxes in determining the actual liability of a taxpayer and can issue revised assessments as many times as may be necessary to assess the taxpayer for the purpose of making good any loss of tax. The statutory power to issue revised or additional assessments cannot be fettered by the novelty or otherwise of information that forms the basis of the reassessment. The statutory powers can also not be limited by any agreement between a taxpayer and a tax authority or by the doctrine of estoppel.

- **On the delegation of statutory duties by the Tax Authority** -The Tribunal, in interpreting the provision of section 88(4) of PITA, held that there is no statutory restriction on the delegation of the power of tax investigation. The power restricted by section 88(4) of PITA from delegation was the power of “verifying by tax audit”. Therefore, the function of conducting investigations may be said to come under the Tax Authority’s general power to authorise any person to perform or exercise on its behalf, any function, duty or power conferred on it under section 88(3) of PITA.

Analysis and Takeaway

1. Revised assessments by tax authorities and the exceptions to the limitation. The Tribunal revalidated the decisions given by other zones of the TAT on this point, particularly the decisions in Citibank Nigeria Ltd v Rivers State Board of Internal Revenue, Ecobank v Delta State Board of Internal Revenue and DeltaAfrik Engineering Limited v Akwa Ibom State Board of Internal Revenue. The Tribunal relied on its own precedents when delivering its decision. This helps with certainty, unlike some decisions in the past where the Tribunal deviates from its past decisions.
2. A noteworthy aspect of this judgement is the validation of the tax authority's power to delegate its investigative functions to qualified third-parties. The Tribunal seemed to differentiate between tax investigation and tax audit, by stating that tax audits cannot be delegated, but delegating investigative functions is permissible.

However, this aspect of the decision is unclear because:

- a. The limited timeframe affirmed in the present case applies specifically to additional assessments resulting from a tax audit. If the essence of the case suggests that the assessment should not have surpassed the six-year limitation, it inherently implies that a tax audit assessment was conducted. Consequently, such an exercise should not be delegable.

- b. In practical terms, tax investigations are more detailed audits that typically involve a more detailed process in gathering the facts and evidence, especially in cases involving established instances of fraud, wilful neglect, or default. Given the heightened duty of care associated with such investigations, it becomes arguable that they should not fall under the general powers that can be delegated.
3. Taxpayers and tax authorities should also be aware that parties cannot agree to restrict or limit the tax authority from performing its statutory responsibilities or limit the taxpayer’s obligation to pay taxes. The Tribunal has held that such agreements or settlement terms are unlawful and cannot be validly enforced. Therefore, it is key to ensure that such agreements are brought before the Tax Appeal Tribunal to be entered as consent judgements of the Tribunal.

In view of the above established precedents, tax authorities are prompted to exercise diligence and timeliness when issuing assessments and pursuing potential tax liabilities from taxpayers.

At the same time, taxpayers are encouraged to remain vigilant and enforce their rights, which includes a right not to be subjected to endless audits, outside the prescribed time in the law.

PwC is pleased to have represented the Company in this successful appeal.

Contact details

Kenneth Erikume
Partner
kenneth.y.erikume@pwc.com

Ugochi Ndebbio
Associate Director
ugochi.ndebbio@pwc.com

Emmanuel Akpeme
Manager
emmanuel.akpeme@pwc.com

