FHC rules that Finance Act amendments should not apply to income earned prior to enactment

July 2022

Introduction

The Finance Act 2019 ("FA 19") was signed into law on 13 January 2020. One of the FA 19 amendments was the removal of the Minimum Tax exemption previously granted in Section 33(3)(b) of the Companies Income Tax Act ("CITA"), to companies with at least 25% imported equity (i.e foreign ownership). The question that then arose was how to determine the accounting period covered by FA 19.

Facts

Accugas Limited ("Accugas"), a company with at least 25% foreign ownership and with a January to December financial year (FY), filed its 2019 FY returns in June 2020. On this basis, Accugas wrote to the Federal Inland Revenue Service ("FIRS") to confirm that the minimum tax exemption still applied to its 2019 FY returns, since the amendments became effective in January 2020. The FIRS refused the request, stating that the law change affects returns due after the effective date, notwithstanding that the FY was before the amendment. To avoid interest and penalty, Accugas filed its tax return and paid the minimum tax. Accugas thereafter filed an appeal at the Federal High Court ("FHC").

Accugas' arguments

- By virtue of Section 6(1)(b) and (c) of the Interpretation Act, the deletion by FA 19 of section 33(3)(b) of CITA on 13 January 2020 cannot deprive Accugas of its right to enjoy the 2019 FY minimum tax exemption, on the basis of its 25% foreign ownership.
- A statute cannot apply retroactively except there are express words in the statute in this regard.
- Applying FA 19 to transactions, activities, and income earned before 13 January 2020 will amount to giving a retroactive effect to the deletion of section 33(3)(b) of CITA which is wrong and has no basis in law.
- By the doctrine of vested rights, the deletion of section 33(3)(b) of CITA on 13 January cannot deprive Accugas of its vested rights to enjoy the exemption from minimum tax for the income earned in the 2019 FY. Therefore the applicable law for the taxation of Accugas' income is the law in force when Accugas earned the income.

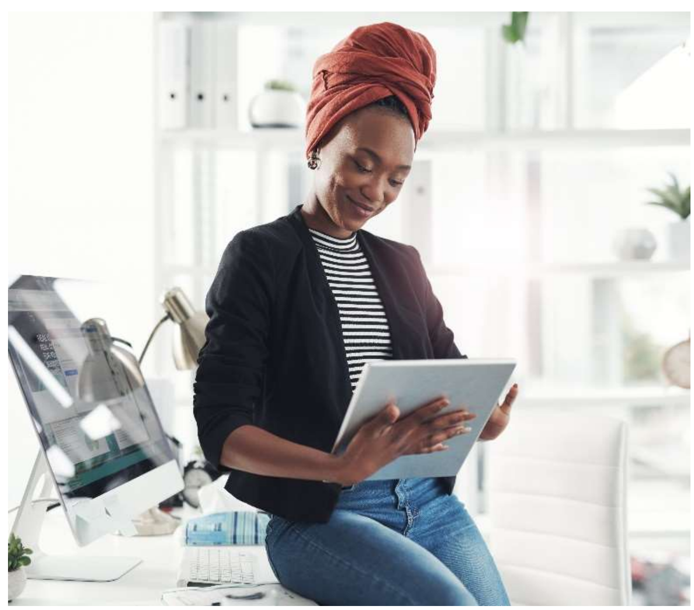
FIRS' arguments

- Tax is assessed on a preceding year basis and accounts are required to be filed within 6 months after a company's accounting year.
- The amendments introduced by FA 19 apply to Accugas' tax returns for the 2020 year of assessment (YOA), i.e., for the income earned between January 2019 to December 2019 because the returns in respect of the year of assessment became due for filing after the passage of FA 19.
- The doctrine of vested rights is inapplicable in this case as the income earned in the 2019 accounting year is taxable in 2020 and not 2019.

Decision

The FHC accepted Accugas' arguments and ruled that FA 19 did not apply to income earned before its enactment, and that based on the Interpretation Act, an action carried out under a repealed law subsists even after the law is repealed.

The FHC held that it had been settled in many cases that the law that applies to a cause of action is the law that was in force when the cause of action arose, even if the law is revoked when the action is being tried. As the intention of the legislature was not to make FA 19 apply retroactively, FA 19 could not be given retroactive effect. Therefore, the FIRS acted unlawfully by applying FA 19 to periods, transactions, activities and income of Accugas earned in the 2019 FY, and Accugas had a right to enjoy the exemption from minimum tax on its income for this period as provided for in Section 33(3)(b) of CITA pre-FA 19.



pwc

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 296,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com

Analysis and takeaway

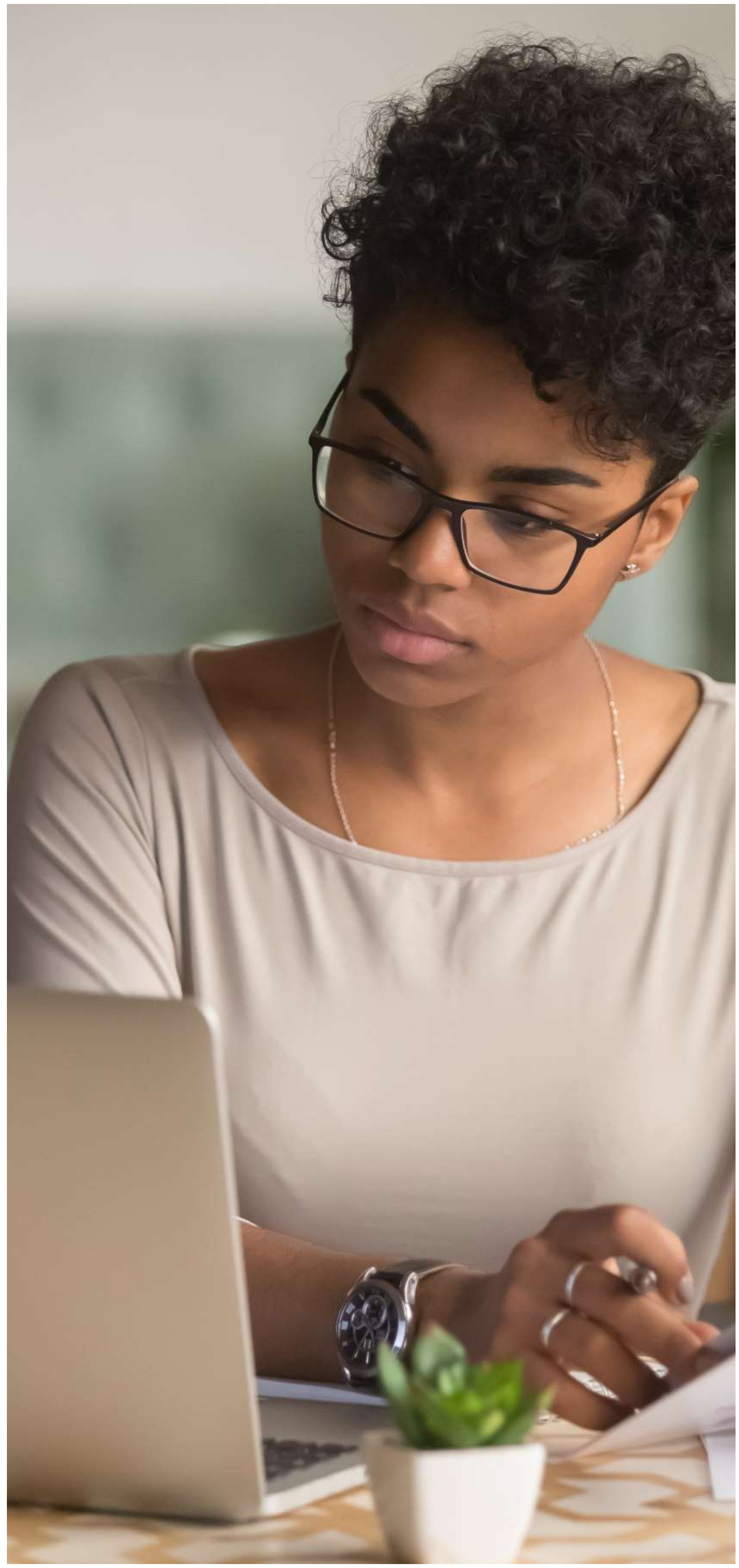
The judgement raises interesting questions with respect to the application of FA changes. The Interpretation Act clearly supports that laws are effective until they are repealed or amended, and that rights, privileges, or obligations arising under such laws are preserved. It is also logical to restrict tax law changes to commercial activities that occur after the effective date.

The alternate view is that CIT is assessed on a Preceding Year Basis (PYB) in Nigeria. This means that CIT returns due in an assessment period, ordinarily relate to the previous FY. Could this have been analysed in more detail vis-a-vis the Interpretation Act? A number of companies also claimed CIT incentives introduced by the Finance Acts but relating to the previous FY, in line with the general practice. Examples include Covid-19 palliatives and other reliefs such as CIT exemption/reduction for small and medium companies, excess dividends tax reliefs, exemption of small companies from education tax, among others. Based on this judgement, such reliefs may be withdrawn and restricted to the FY after the FA change. The purpose of a disaster-relief for example (which can only be introduced after the fact) may be defeated if it does not apply to the affected FY.

The general notion that laws cannot be applied retrospectively, is not exactly accurate. Laws can generally apply retroactively where the language of the statute clearly intends so, and this was highlighted in the judgement. We recommend that future Finance Acts define the applicable year of assessment for CIT-related changes.

Finally, there should be a fiscal plan in respect of impending tax law changes, especially significant updates like rate changes, withdrawal of incentives, and so on. This is in line with international best practice. It is inequitable for such changes to be introduced with little time for taxpayers to prepare accordingly. A comparison with other countries shows that such changes are communicated 2 to 3 years ahead.

Companies are encouraged to review how the judgement could impact their historic tax returns and what their approach should be if the FIRS appeals the judgement.



For a deeper discussion, please contact:

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

Emeka Chime
Associate Director
chukwuemeka.x.chime@pwc.com

Moshood Quadri
Senior Associate
moshood.quadri@pwc.com

© 2022 PricewaterhouseCoopers Nigeria. All rights reserved. In this document, "PwC" refers to the Nigeria member firm, and may sometimes refer to the