



## Tax Appeal Tribunal rules that assessments without justifiable support are invalid

### Background

The Anambra State Internal Revenue Service (ASIRS) audited MTN Nigeria Communications Limited (MTN or “the Company”) for 2001-2014 after which it assessed the Company to N1.3b WHT liability.

MTN objected to this assessment. After MTN’s objection to the third assessment by ASIRS, ASIRS issued a final assessment of N130,311,903.51. In response, MTN filed an appeal at the Tax Appeal Tribunal (TAT or the Tribunal).

### MTN’s Arguments

The Company’s key arguments were as follows:

- It had provided documents evidencing the conclusion of a tax audit for 2001-2013
- The documents submitted were not considered in the ASIRS’ final assessment of N130,311,903.51 therefore the ASIRS’ assessment was wrongful and unsupported by the law.

### ASIRS’ Arguments

The ASIRS position was that:

- MTN failed and neglected to provide evidence of Tax Audits conducted for the periods under review.
- MTN failed and neglected to make available a comprehensive list of its BTS [Base Transceiver Stations] sites in Anambra State
- The Demand Notices served on MTN were not arbitrary and were within the law, based on the information provided by the company.
- The ASIRS is just the operational arm of Anambra State Board of Internal Revenue and therefore not a juristic person that can sue and be sued in that name.

ASIRS therefore urged the tribunal to order MTN to pay the outstanding WHT liability of ₦130,311,903.51 on 489 BTS sites in Anambra State forthwith and not 251 BTS sites.

### TAT Ruling

The TAT held that:

- By virtue of the provisions of Section 55(2) PITA, the tax authority is vested with the power to carry out subsequent tax audits for an already audited period, if the tax authority discovers or is of the opinion that a taxable person has not been assessed or has been assessed for less than that which ought to have been charged.
- The basis for the ASIRS’ additional assessment on MTN Nigeria Communications Limited was not supported by documentary evidence and as such was not tenable. While MTN provided its basis for the number of BTS sites and evidence of remittance of sufficient WHT, the ASIRS was unable to back their assertions on the varying number of BTS sites alleged.

- The sole relief of MTN, which is to set aside the demand notices, be granted.

The Tribunal did not comment on the issue raised by the ASIRS that it is not a juristic person who can sue or be sued. However, this issue has been addressed in Nigerian Breweries vs Abia State Internal Revenue Service (AbSIRS), where the TAT ruled that the same section 87(1) of the PITA which establishes the Abia State Board of Internal Revenue (ASBIR) also establishes the AbSIRS. Therefore the Abia State Board of Internal Revenue that “established” AbSIRS is only a “surplusage”.

The TAT went ahead to state that states in Nigeria are at liberty to use the names interchangeably when dealing with the public. This judgement was relied upon when the same issue arose for determination in the case of Polaris Bank Plc vs Abia State Internal Revenue Authority.

### Takeaway

Based on this judgment, an important principle was reemphasised - an assessment without any valid basis in law or supported by documentary evidence will be nullified.

As part of an effective tax audit management strategy, taxpayers should respond to tax assessments within the statutory deadline and keep track of documents shared with the tax authorities either through minutes or through acknowledgment copies. These were important factors in obtaining the favorable judgment.

Finally, taxpayers are encouraged to object to assessments which are not backed by documentary evidence and seek redress in court where necessary as the revenue authorities are juristic persons.

### For a deeper discussion, please contact

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