

TAT agrees with PwC on deductibility of expenses incurred outside Nigeria



The TAT agreed with PwC's argument and held that section 27(i) only applies where a company incurs an expense outside Nigeria for and on behalf of another company.

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On 31 May 2016, the Tax Appeal Tribunal (TAT) sitting in Lagos ruled that under the provisions of section 27(i) of the Companies Income Tax Act (CITA), an expense that is wholly, reasonably, exclusively and necessarily incurred for the generation of taxable profits of a company can only be disallowed if the expense was incurred on behalf of another company.

The Appellant had paid buying commission and handling charges to a related foreign company for the procurement of goods from outside Nigeria. While submitting its tax returns it took deductions for the buying commission and handling charges. The FIRS disallowed the deductions relying on section 27(i) of CITA and raised additional assessments for Companies Income Tax and Education Tax. The Appellant objected and appealed to the Tax Appeal Tribunal.

Section 27(i) of CITA disallows “*any expense of any description incurred outside Nigeria for and on behalf of any company except of a nature and to the extent that the Board (“FIRS”) may consider allowable*”

PwC argued on behalf of the Appellant that section 27(i) does not apply to an expense that is incurred for the business of the company but rather applies to expenses incurred on behalf of another company. The FIRS countered by submitting that the section applies to expenses incurred for the company and

expenses incurred for another company.

The TAT agreed with PwC's argument and held that section 27(i) only applies where a company incurs an expense outside Nigeria for and on behalf of another company.

Put differently, section 27 precludes a company from taking deductions if expenses incurred were on behalf of another company. Therefore, it would not apply where the expenses were incurred by the company for its own benefit.

The Tribunal reaffirmed the general test for tax deductibility which is that the expense must be incurred wholly, reasonably, exclusively and necessarily for the generation of taxable profits (the WREN test). According to the Tribunal, to remove any expense from the ambit of this general rule will require a specific provision of the law. In this case, section 27(i) is not that specific provision.

Takeaway

This decision provides clarity on the interpretation of section 27(i) of CITA in respect of expenses incurred outside Nigeria. This decision goes against the long-accepted interpretation adopted by the FIRS.

Where there is sound legal basis, taxpayers should not hesitate to challenge the interpretation of tax statutes by tax authorities.