

TAT says it is illegal to impose tax based on Taxes and Levies Act without a primary taxing law; and an assessment that does not follow due process is invalid



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Background

The Tax Appeal Tribunal (TAT or Tribunal), in *Polaris Bank v. Abia State Board of Internal Revenue* has made certain pronouncements in respect of different tax matters including the limitation period for assessments, the position of the Taxes and Levies (Approved List for Collection) Act and final and conclusive assessments.

Facts

In 2017, the Abia State Board of Internal Revenue ("ASBIR") issued a demand notice of about N1.5 billion on Polaris Bank ("Bank") with respect to 2006 – 2011 years of assessment. The assessment included business and development levies charged under the Taxes and Levies (Approved List for Collection) Act 2004 as amended. The Bank objected but admitted a liability of about N39 million which it paid. None of the Bank's objections was addressed by the ASBIR.

Subsequently, ASBIR issued another assessment of about N255 million, directing the Bank to pay this sum as a condition for attending a reconciliation meeting. The Bank did not make the payment. At the reconciliation meeting, ASBIR offered a 20% rebate directing payment within 48 hours otherwise the assessment would become final and conclusive. After the Bank requested for a revised assessment in line with section 58 of the Personal Income Tax Act (PITA), ASBIR reverted to the initial assessment of N1.5 billion and demanded payment within seven days. The Bank appealed the assessment.

Decision

Seven issues were distilled by the Tribunal. Some of the most important issues and decisions are summarized below:

1. Whether the procedure followed by ASBIR is consistent with the law

The Tribunal held that ASBIR failed to follow the procedure relating to objections under section 58 of PITA. Particularly, ASBIR did not address any of the objections raised by the Bank. Under section 58 a tax authority can request further information, accept the taxpayer's position and issue a revised assessment or reject the taxpayer's position by issuing a notice of refusal to amend an assessment.

The Tribunal also found that the demand notices issued by ASBIR were invalid as they were not compliant with PITA.

2. Whether the assessment (of the ASBIR) was final and conclusive

The Tribunal held that because the Bank objected within 30 days, the assessment was not final and conclusive.

3. Whether ASBIR can impose Development and Business Premises Levies based on the Taxes and Levies Act

The Tribunal held that the Taxes and Levies (Approved List for Collection) Act is not a primary tax legislation. It merely allocates taxing rights between the three levels of government. Therefore, ASBIR was wrong to rely on it for imposing business and development levies. In the absence of a principal law, ASBIR could not collect the tax. This means where there is no existing primary tax law, the relevant law making body such as the State House of Assembly of a state needs to legislate on the specific tax or levy before the relevant tax authority can administer them.

4. Time limit for a back duty tax audit or investigation

The Tribunal held that by virtue of section 55 of PITA, ASBIR did not have the authority to conduct a tax audit outside six years except on grounds contained in section 55 (fraud, willful default or neglect). Further, even though the exercise was labelled a tax investigation it was a mere audit which could not go beyond six years.

Takeaway

Section 55 requires assessments to be made within 6 years. It does not refer to audits as ruled by the Tribunal. So, a tax authority may carry out audits without any time limitations but must issue limit its assessments to a period of six years except on grounds of fraud, willful default or neglect. Also, tax authorities are required to demonstrate the existence of any of the grounds before going outside the six-year limitation period. It is not enough to merely refer to an audit as an investigation. More generally, tax authorities need to follow the provisions of the law or face the risk of the Tribunal nullifying their assessments.

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

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