

Dividend from gas profit is liable to WHT but balancing charge is not liable to Education Tax - TAT



The Tax Appeal Tribunal (TAT) reaffirms previous decisions on deductibility of interest on related party loans, applicability of WHT to gas profits amongst other issues.

For a deeper discussion, please contact any of the persons below or your usual contact with PwC Nigeria:

Taiwo Oyedele

+234 1 271 1700 Ext 50002
taiwo.oyedele@ng.pwc.com

Ugochukwu Dibia

+234 1 271 1700 Ext 50008
ugochukwu.dibia@ng.pwc.com

Folajimi Olamide Akinla

+234 1 271 1700 Ext 52008
folajimi.akinla@ng.pwc.com

Questions before the TAT

In Total E&P Nigeria v Federal Inland Revenue Service (FIRS), the issues before the Tax Appeal Tribunal (TAT) were:

1. Whether interest paid on related party loans are tax deductible.
2. Whether dividends from gas income is subject to withholding tax (WHT) under the Companies Income Tax Act (CITA).
3. Whether balancing charges are applicable to assets acquired and disposed of in the same year and for which no capital allowance has been claimed.
4. Whether reference to 'any allowance' due in paragraph 9 of the 2nd Schedule to the Petroleum Profits Tax Act (PPTA) includes Petroleum Investment Allowance (PIA).
5. Whether balancing charge is a profit subject to Education Tax (ET).

Decision of the TAT

The TAT resolved questions 1, 3, 4 and 5 in favour of the Appellant while issue 2 was in favour of FIRS. For issue 1, it held that provided the loans were under arm's length interest was deductible.

On issue 2 it held that since the Appellant did not separate its gas

income from petroleum income it would rely on FIRS' diligence and fairness mechanism to arrive at dividends paid on gas profits which should attract WHT.

For issue 3 it held that no balancing charge should be computed on assets on which capital allowance was not claimed.

For issue 4, the TAT held that the express mention of annual allowance in paragraph 9 of the 2nd Schedule to the PPTA meant PIA was excluded from 'any allowance' used in the paragraph and lastly on Issue 5 it held that ET could not be imposed on balancing charge since the tax is imposed on assessable profits which does not include balancing charge.

Takeaway

The TAT relied on its previous decisions in resolving all the issues therefore, taxpayers can take some comfort in TAT's consistency.

In relation to issue 2, oil and gas companies may have to delineate their operations including the respective profits and dividends so as to prevent the TAT from relying on FIRS' analysis in attributing profits and dividends between oil and gas for tax purposes.