

TAT rules on the employer's exposure to penalties and interest and its jurisdiction on state laws

Background

In a series of judgements released by the Tax Appeal Tribunal (TAT) in April, the Tribunal has emphasised the employer's exposure to penalties and interest where it defaults in its obligation as well as its lack of jurisdiction to legislate on laws promulgated by the State Houses of Assembly.

The common appellant in all 4 suits was the Lagos State Board of Internal Revenue (LSBIR" or "the Revenue"). The Revenue had instituted independent suits against the following Respondents:

- Rosana Clinic Limited- TAT/LZ/PIT/017/2021
- Cradle Productions and Services Limited- TAT/LZ/PIT/054/2021
- Eddie Scob Suites Limited- TAT/LZ/PIT/055/2021
- Petro-Pride Subsea Limited- TAT/LZ/PIT/036/2021

Facts

The Appellant, LSBIR had instituted actions against all four Respondents for failure to deduct and remit the Personal Income Tax (PIT) of their employees, Withholding Tax from qualified transactions as well as Development and Business Premises levies. The Appellant had carried out tax audit exercises where it established the various outstanding tax liabilities and shared corresponding demand notices; highlighting its findings with the Respondents.

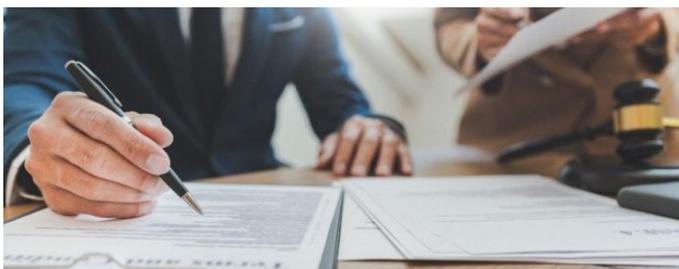
Cradle Productions failed to respond to the assessment issued by the Appellant. The Respondents in the other 3 suits objected to the initial assessment issued by the Revenue but failed to present additional documentary evidence requested by the LSBIR to establish their assertions. These actions triggered the issuance of the Notices of Refusal to Amend (NORA) by the LSBIR. Upon the Respondents' further refusal, the LSBIR exercised its rights under PITA and filed Notices of Appeal at the TAT.

Issues for Determination

All 4 suits had similar issues for determination as outlined below:

1. Whether the Appellant has fulfilled all the statutory conditions to enable the Tribunal grant the Appellants all the reliefs sought; and
2. Whether the Respondents are liable to pay the penalty and interest for failure to remit tax under PAYE and WHT, non deduction or remittance of Development and Business Premises levies.

In all suits, the Respondents did not file a reply to the Notice of Appeal or enter an appearance before the Tribunal to join issues.



Decision

The TAT established the following points in all the judgements given:

1. The employer by virtue of Section 82 of PITA as an agent of the tax authority will be answerable for any tax it fails to deduct or properly account for on its employees' emolument as well as the ensuing interest and penalties.
2. Liabilities in respect of strict State taxes and levies like the Development and Business Premises levies are outside the jurisdiction of the Tribunal.
3. Tax assessments would be deemed final and conclusive where the taxpayer has failed to exercise its rights to object with substantiating evidence within the timeline and mode specified by law.

Takeaway and Conclusion

Based on PITA, employers of labour have the primary obligation to calculate, deduct and remit the applicable tax on employees' emolument. Any default in compliance exposes the employer to the ensuing penalty and interest as delineated by PITA. In addition to this, once the tax liability has been tagged as final and conclusive in line with the extant laws, the Revenue may pursue its right to distrain under the law.

On the other hand, the TAT's jurisdiction is clearly defined in the Fifth schedule of the FIRSEA and it does not extend to actions relating to laws legislated by the State Houses of Assembly. These claims fall within the purview of the State High Court (SHC) and should be rightly directed.

This creates a dilemma with the tax appeal process. Practically, it is unlikely that appellants would consider separating appeals when multiple taxes are under consideration. Levies like Development and Business Premises usually do not constitute significant demand sums. It would be quite inefficient to institute independent suits at the TAT and SHC to address multiple taxes from a single demand notice administered by the same Revenue body. As a solution, aggrieved parties can consider instituting their appeals at the SHCs instead of the TAT. The SHCs clearly have jurisdiction over all the taxes and levies accruing to the State Governments and do not face the restrictions of the TAT.

Overall, the TAT plays a crucial role in the tax litigation space. It is however very important for taxpayers to carefully consider the issue of jurisdiction before instituting actions so that cases are not dismissed on technical grounds, which could be counterproductive for the tax justice process.

For a deeper discussion, please contact:

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