

The Tax Appeal Tribunal (Procedure) Rules 2021



Background

The Honorable Minister for Finance, Budget and National Planning (“the Minister”) recently issued new Tax Appeal Tribunal (Procedure) Rules 2021 (“the Rules”). The Rules were issued under powers in Paragraph 21 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007. The Rules replace the 2010 Rules and are intended to guide the practice and procedure of Tax Appeal Tribunal (“TAT”) proceedings.

There are a few innovations in the Rules. We have highlighted the major changes in the paragraphs below:

1. Electronic filing [Order 3 Rule 5] and service [Order 7 Rule 5]

Under the Rules, all processes / documents which may be filed at the secretariat of the TAT may be filed electronically as directed by the TAT.

Similarly, processes / documents are properly served if sent by email or any other electronic means as directed by the TAT.

Insights: These new provisions are intended to ease the administrative burden for taxpayers, revenue authorities and the TAT. The provisions also reflect the technology trend whereby documents can be sent electronically. To prevent disagreements as to filing and services, taxpayers are advised to keep records and proof (email receipts, time stamps, delivery notices etc.) of such electronic filing and service.

2. Virtual hearing of applications [Order 11 Rule 4 and 17 Rule 9]

The Rules allow for virtual proceedings particularly for delivering rulings and applications using technology or platforms recommended by the TAT.

Insights: It is likely that the TAT would adopt virtual proceedings only for non-contentious applications or motions, delivery of rulings and judgments. This saves time and cost for litigants. Though the Rules do not provide specifics on the technology platforms. It is expected that the TAT would issue further guidance on these.

3. Place of filing appeals [Order 4 Rule 2]

The TAT sits in eight zones across Nigeria. Under the Rules, appeals may be filed at the secretariat of any of the eight zones, provided the Notice of Appeal and the accompanying document are properly headed in the name of the appropriate zone of the Tribunal where the matter is to be heard. The appeal would then be transferred to the correct zone as directed by the Chairman.

Insights: The Rule will be useful where, for any reason (e.g travel restrictions, insecurity etc.), an Appellant is unable to file an appeal in the proper zone within the time prescribed by law. There is no requirement to get the TAT’s permission before relying on this provision.

4. Mandatory payment of 50% of tax assessed [Order 3 Rule 6]

This is the most fundamental change in the Rules. Now a taxpayer who intends to appeal must first pay 50% of the disputed tax into an account designated by the TAT as security for the appeal. In addition, the taxpayer must file a deposition along with the appeal to that effect.

Insights: This provision is inconsistent with similar provisions in the Federal Inland Revenue Service (Establishment) Act 2007 which gives the TAT discretion to order payment as security where a taxpayer failed to file returns, or the appeal is frivolous or an abuse, or it is expedient for a taxpayer to pay a sum as security. Therefore, the provision may be challenged on grounds of inconsistency with a statute. Furthermore, there are concerns that the provision is a bar to access to justice which is contrary to the constitutional rights of fair hearing and a fair trial.

The recent Federal High Court (Federal Inland Revenue Service) Practice Directions, 2021 also contains similar provisions. However, the FHC provisions are only applicable when a taxpayer is challenging FIRS’ applications to enforce established tax debts, for freezing orders or request for information.

5. Documents only procedure [Order 15]

Parties may dispense with oral hearing where a dispute can be resolved based on documentary evidence. In which case all that is required is for parties to file all relevant documents along with the Notice of Appeal or Reply, Witness Statement on Oath, Written Address. Etc.

Insights: This documents the existing practice whereby the TAT entertained appeals via documentary evidence or based on written briefs where facts are not in dispute and the appeal issue involves interpretation of law.

6. Summary appeal procedure [Order 16]

Parties who intend to recover a debt or liquidated money demand can now appeal via a summary appeal procedure where the Appellant believes there is no defense to the appeal. However, where the TAT is satisfied that the Defendant’s defence has some merit, it would hear the appeal on trial.

Insights: The provision can be used as an enforcement tool for a tax authority to collect a tax debt or assessment that has become final and conclusive. The provision can also be used by taxpayers who intend to enforce refunds such as overpaid tax, WHT refunds etc.

7. Cost [Order 22]

The Tribunal now has discretion to order cost against a party, its representative or a legal practitioner for any misconduct, undue delays or defaults.

Insights: Before now, the TAT could not impose costs against parties whose actions caused undue delays in the proceedings. Examples include failing to file a process within the time prescribed by the TAT, non-appearance without reasonable cause etc.

This provision is a deterrent against actions which result in undue delays of the TAT's proceedings.

8. Pre-trial conference [Order 17 Rule 2]

The TAT can order a PTC for the purpose of narrowing issues in dispute to facilitate settlement.

Insights: A PTC helps streamline the dispute, similar to how it is utilized in High Courts. It also creates opportunities for parties to agree on certain issues or altogether settle disputes.

Abuja, Lagos, North Central, North East, North West, South East, South South and South West zones

Takeaway

The new procedures took effect from 10 June 2021, but taxpayers generally became aware of it end of September 2021. The Rules are intended to make the TAT more efficient in the dispensation of justice. They are also a reflection of the current realities given the wide adoption of technology in the administration of justice. With the powers to order costs, the TAT now has powers to penalize erring parties for unprofessionalism and unnecessary delays.

One area of contention is the requirement for the payment of 50% of the disputed tax as a condition precedent to filing an appeal. As mentioned above, this provision may be challenged on grounds of inconsistency with the Federal Inland Revenue Service (Establishment) Act 2007 since it is established that rules cannot override the provisions of an Act. In addition, the provision may also be challenged on constitutional grounds where a taxpayer does not have the cash to deposit as this would be a bar on access to justice. There are also concerns that the provision is susceptible to abuse by tax authorities who may raise unreasonable assessments in the expectation that a taxpayer would pay 50% deposit. For these reasons, the TAT may choose not to enforce these provisions and apply the provisions of the FIRS Establishment Act.

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