

Tribunal rules on PAYE remittance and the service of objection letters



April 2022

Background

The Lagos State Board of Internal Revenue (LBIR) conducted an audit on Mega Trust Insurance Brokers Limited (MTIBL) for the 2015 financial period, and issued a demand notice for personal income tax, withholding taxes, development levies and business premises levies. LBIR alleges that MTIBL failed to object to the assessment within the 30-day period allowed by the Personal Income Tax Act (PITA), upon which it then issued a letter of intention to obtain a warrant of distraint, and subsequently instituted this appeal at the Tax Appeal Tribunal (TAT).

Parties' Arguments

LBIR

- Failure to object to an assessment within the legally stipulated time frame renders the assessment final and conclusive
- The Chairman and Managing Director are employees of MTIBL, and MTIBL is liable to deduct tax from income or benefits paid to such individuals.
- MTIBL is obligated to file annual income tax returns of its employees, and since it failed to include the names of the Managing Director and the Chairman, LBIR is empowered to issue additional assessments by adding the Chairman and Managing Director to the payroll.
- MTIBL failed to serve its objection on the Executive Chairman of LBIR who is the only legitimate officer to receive such an objection.

MTIBL

- The Chairman and Managing Director did not earn any salary from MTIBL. As such, there was no need to file tax returns on their behalf, or any basis for the LBIR to issue an assessment in respect of these individuals.
- As at the time of the audit, MTIBL only had 2 full time employees whose taxes were duly deducted and remitted.
- Service of the objection within the 30-day timeline on a legitimate agent of LBIR other than the Executive Chairman, is good and legitimate service. MTIBL therefore objected to the assessment in a timely manner and as such, the assessment could not be regarded as final and conclusive.

Decision

The service of an objection letter on a staff of the tax authority is good service. Therefore, the assessment did not automatically become final and conclusive after 30 days. Notwithstanding that the objection was not addressed to the office of the Executive Chairman but to the Station Manager at the City Hall office, a separate office of the LBIR carrying the seal of the Lagos State Internal Revenue Service is a legally recognized agent of the Lagos State Government for revenue purposes.

The TAT buttressed this point by alluding that the demand notice issued by the LBIR was signed by an agent of the Executive Chairman and not the Chairman himself.

In addition, before a PAYE liability can be claimed by the relevant tax authority under PITA, 2 basic conditions must be fulfilled. They are:

- a. The taxpayer/employee must be a resident of the relevant tax authority (*sic*); and
- b. The taxpayer/employee has earned a taxable income.

These two pre-conditions must be satisfied at all times as PAYE is not a tax imposed on a company but rather the employee, and it is only after the liability of the taxpayer has been determined, that the responsibility of the employer to deduct and remit PAYE to the relevant tax authority arises.

As the Chairman and Managing Director on whose account the additional assessments were issued did not earn any income from MTIBL, same which was not contradicted by LBIR, there was no basis for the additional assessments. LBIR has therefore exercised its best of judgment discretion arbitrarily, and not based on the documents provided by MTIBL.

Takeaway

The decision of the TAT reiterates the position in earlier judgments of various courts with respect to the tax authority's exercise of its best of judgment discretion. The prevailing position is that a tax authority must not be dishonest, arbitrary or capricious in exercising these powers. The tax authority can apply its best judgment against a taxpayer who is in default of supplying relevant information. However, where the taxpayer has provided the relevant information requested to the tax authority, the assessment must be based on such information, except there is a valid reason for not doing so..

Finally, the TAT reiterated the long standing agency rule that the acts of a dependent agent bind the principal. In this case, service on the Station Manager at the City Hall office of LBIR was deemed to operate as service on the Executive Chairman of the LBIR. The objection was therefore valid and operated to ensure that the assessment did not become final and conclusive.

For a deeper discussion, please contact:

Kenneth Erikume
Tax Partner
kenneth.y.erikume@pwc.com

Emeka Chime
Associate Director
chukwuemeka.x.chime@pwc.com

Moshood Quadri
Senior Associate
moshhood.quadri@pwc.com