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Editorial services, page composition and book design, and print production by

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VII.

An Overview of Tax Appeal Tribunal in Nigeria

Hafsat Iyabo Sa'adu[1]

Abstract

The Nigerian Tax Appeal Tribunal was constituted and formally inaugurated Feb. 4, 2010. Before the establishment of the Tax Appeal Tribunal in 2007 by the Federal Inland Revenue Service (FIRS) Establishment Act 2007, there were other adjudicating bodies on tax-related issues within the Nigerian tax system. But the impact was little when compared with the level of confidence reposed in the bodies by stakeholders, especially the taxpayers. These bodies were the Body of Appeal Commissioners and the Value Added Tax Tribunal.

Section 53(1) of Company Income Tax Act (CITA) 1990 empowers the Minister of Finance to establish by notice in the Federal Gazette, a Body of Appeal Commissioners and the Value Added Tax Tribunal, which have been replaced by the Tax Appeal Tribunal (T.A.T.). The current position seems to have done away with the state Body of Appeal Commissioners. A national tribunal (divided into zones) is now vested with the power to determine dispute arising from all federal tax legislations. This paper thus examines structural and procedural steps employed by the Tax Appeal Tribunal in the discharge of its statutory duties.

Introduction

A TAX IS A COMPULSORY LEVY IMPOSED by government for public-finance purposes,[2] or taxation is a system of raising money for the purposes of government by means of con-

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2 M.T. Abdulrazaq, *Principles and Practice of Nigerian Tax Planning and Management* (Ilorin: Batay Law Publications Ltd., 1993), 1.

tributions from individual persons or corporate bodies.[3] As a matter of fact, enforcement is the major problem of the Nigeria tax system. The major reason being that many eligible Nigerians are not willing to pay, and where they pay the assessment is not done correctly. This and many other issues in many instances lead to disputes between the taxpayer and the tax collectors or tax authority. The main method of resolving legal issues or disputes, especially on revenue matters, is through litigation, which sometimes takes years to conclude.[4] This and many other reasons are the rationale behind the establishment of the Tax Appeal Tribunal by the federal government.

The Tax Appeal Tribunal (T.A.T.) was established to adjudicate on disputes that arise from an objection to a formal demand to pay tax liability for a disagreeable amount in a particular period, on an income or earnings or an offset against income, or demand to pay penalty or an objectionable action by one of the parties to the dispute.[5]

Tax appeal refers to a request for adjudication by a taxpayer or a tax collector and it arises from disputes between a taxpayer and the tax authority.[6] It is also a process whereby a taxpayer who is dissatisfied with an assessment applies to the court (in this case the tribunal) to consider and change the decision of the tax authority on certain grounds. According to former finance minister Mansur Mukhtar, while inaugurating the tribunal:[7]

> Tax appeal is an important component of the tax administration system. This is because the tax system offers a multilayered objection and appeal process which compels the complainant to go through a mechanism before gaining access to the regular court system.

The fact is that disputes will normally arise between people with different interests and they will eventually come into conflict from time to time. The recognition of this fact, among others, gave rise to the creation of an impartial body to adjudicate whenever there are conflicts of interest among the various stakeholders within the Nigerian tax system.[8]

The T.A.T. is concerned mainly with the administration and dispensation of justice. The tribunal was set up across the six geopolitical zones in line with various government reform initiatives geared toward improving the tax administration system in Nigeria.[9] This paper attempts an overview of the T.A.T. under the Nigerian tax system; whether by its establishment there will be a difference between what obtained in practice before its creation. It also evaluates its impact in the existing tax regime and, most importantly, resolution of disputes arising from tax imposition. The paper concludes

3 Lekan Soyode and S.O. Kajola, *Taxation: Principles and Practice in Nigeria* (Ibadan: Silicon Publishing Co., 2006), 3.
4 *Ibid.*, 12
5 Chartered Institute of Taxation of Nigeria (CITN), *Tax Guide 2009*, 305.
6 *Ibid.*
7 Ifeanyi Onuba, "Tax Appeal Tribunal: A Move to Engender Confidence in Nigeria's Tax System," *The Punch*, Feb. 14, 2010.
8 Matthew Emmanuel, "TAT and its Relevance to Nigeria's Tax System," *Nigerian Tribune*, May 13, 2011.
9 See section 59(1) of the amended FIRS Act 2007.

by proffering recommendations toward effective dispensation of justice in tax-related disputes.

Organizational Structure of the Tax Appeal Tribunal Membership

The T.A.T. has a total number of forty tax appeal commissioners.[10] Its members are drawn from the six geopolitical zones, with a maximum of five members per zone.[11] However, the chairman of the tribunal is appointed from any of the zones. The minister of finance is empowered to appoint the chairman and commissioners of the tribunal.[12] The chairman of the tribunal, who shall be a legal practitioner of not less than fifteen years post-call experience. None of the commissioners must be a public officer. Any three or more commissioners may hear and decide an appeal, and in the event that the number is insufficient to hear one or more appeals, ad-hoc appointments will be made by the minister to sit in on the appeal process.[13] The term of an appointee is three years and is renewable for another term of three years only. A person who has knowledge of law, regulations, norms, practice and substantial trade or business or exercise of the profession of law or accountancy in Nigeria or a retired public servant in tax administration is eligible for appointment.

Tribunal members take oath of office and of allegiance to the Republic on assumption of office. Declaration of assets as related to public officers does not apply to members of the tribunal.[14] The rationale behind this provision of the law is not clear, but it is not good enough. Tribunal members must be made to declare their assets as applicable to public office holders as there are no special differences in their structure requirements, or even tenureship.

The salary and allowances payable to and the terms and conditions of service of the tax appeal commissioners shall be determined by the Revenue Mobilization Allocation and Fiscal Commission and shall be prescribed in their letters of appointment.[15]

> Any member of the Tribunal who wishes to resign his office may do so by notice in writing under his hand addressed to the minister; but subject to permission by the minister to relinquish his office sooner, he will continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes office or until the expiry of his term of office, whichever comes earlier.[16]

The requirements of Section 5 of the fifth schedule to the FIRS (Establishment) Act 2007 that subjected the resignation of the tribunal members to the permission by the minister to relinquish office sooner is not too good for effective dispensation of justice. More so, that the law provides for a tax commissioner to continue to hold office until the expiry of three months or until a person duly appointed to succeed him assumes

10 *Punch*, Feb. 14, 2010.
11 North-Central, North-East, North-West, South-East, South-West, and South-South.
12 Tax Appeal Tribunal (Establishment) Order, 2009.
13 *Tax Guide*, 313.
14 *Ibid.*, 314.
15 Section 6 of the fifth schedule to the FIRS Act 2007.
16 *Ibid.*, section 5.

office. What about a situation of infirmity?[17] It is submitted that once a member of the tax tribunal expresses the desire to resign, it is imperative and most reasonable to allow such person to immediately cease to be a member. The three months' window period to release him/her that has voluntarily resigned is uncalled for.

Tax commissioners may be removed from office by the minister on the grounds of gross misconduct or incapacity, after due inquiry has been made and the member concerned has been informed of the reason for his removal and given an opportunity to being heard in respect of the reasons.[18] In addition, the minister shall appoint a secretary for each zone of the tribunal to carry out the functions and duties of keeping records of the proceedings of the tribunal, among others. The official address of the secretary appointed for each zone shall be published in the *Federal Gazette*.[19] Section 9 of the FIRS Act empowers the minister to remove from office any member of the tax appeal commissioners on the grounds of misconduct or incapacity after due inquiry has been made. This section provides further that the member concerned must be informed of the reason for his removal and an opportunity of being heard in respect of the reasons.

The above provisions of the law look a bit satisfactory in respect of the offences but not adequate because it is only the minister who can remove the members of the tribunal from office. Other people could be appointed to form a committee to be chaired by the minister in taking such decision.

Jurisdiction

Section 6 of the 1999 Constitution provides that judicial powers are vested in the various courts in the country, while section 36 provides that other bodies besides the regular courts could adjudicate on matters affecting the rights of citizens. For instance, section 36 provides that in the determination of civil rights and obligations by or against the government, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law. However, the tribunal shall have power to adjudicate on disputes and controversies arising from the relevant existing statutes or legislation.[20] The tribunal shall apply such provisions of the tax laws as may be applicable in the determination/resolution of any dispute or controversy before it.[21] By the power vested in the T.A.T., it can only adjudicate on civil matters. Where in the course of its adjudication the tribunal discovers element of criminality, it is obliged to forward such case to the appropriate prosecuting authorities, such as the office of the federal or state Attorney-General any State, or any relevant law enforcement agency.[22]

17 It is inability to perform due to a person's state of mind or body.

18 Section 9 of the fifth schedule to the FIRS Act.

19 See section 9, *ibid.*

20 Section 59 of the Act empowers the minister of finance to establish a Tax Appeal Tribunal. The Act specifically extends the tribunal's jurisdiction under section 11(1) of the Act in the following tax laws: Companies Income Tax Act, CAP 60 LFN 1990; Personal Income Tax Act No. 104, 1993; Petroleum Profits Tax Act CAP, 354, LFN 1990; Value Added Tax Act No. 102, 1993; Capital Gains Tax Act, CAP 42, LFN, 1990.

21 See further M.T. Abdulrazaq, *Revenue Law and Practice in Nigeria* (2nd ed., Lagos: Malthouse Press, 2010), 326.

22 Section 12, FIRS Act 2007.

Process and Procedures

Proceedings of the T.A.T. are deemed to be judicial and the tribunal shall be deemed to be a civil court for all purposes.[23] Tax appeal ordinarily will arise where there is a dispute in the demand of tax liability by the relevant tax authority in a particular period, usually a fiscal year.[24] Though the Act allows both the taxpayer and relevant tax authority to initiate the appeal process, a person who is aggrieved by an assessment (government- rather than self-assessed),[25] or a demand notice made upon him by the service, or aggrieved by any action or decision of the service under the provision of the tax laws administered by the service, may appeal against such assessment or demand, action or decision within the period of 30 days and file an appeal at the appropriate zone of the tribunal.

To properly initiate the possible process of appeal, a tax assessment has to be raised and this must be buttressed by exchange of correspondence, documents and oral discussions. The tax assessment must be notified to the taxpayer properly on an appropriate form.[26] In the event of failure to resolve differences between the taxpayer and the tax authority, the authority as a last resort shall communicate to the taxpayer through a notice of refusal to re-assess. The notice of refusal to amend assessment form is a very important document for the process of tax appeal.[27]

The procedure of the T.A.T. relates to its powers to make rules relating to its functions. The tribunal shall, for the purposes of discharging its functions under this schedule, have power to[28]—

i. summon and enforce the attendance of any person and examine him on oath;
ii. require the discovery and production of documents;
iii. receive evidence on affidavits;
iv. call for the examination of witnesses or documents;
v. review its decisions,
vi. dismiss an application for default or deciding matters *ex-parte*;
vii. set aside any order or dismissal of any application for default or any order passed by it *ex-parte*; and
viii. do anything which in the opinion of the tribunal is incidental or ancillary to its functions under this schedule.

Also, the minister of finance may as well make rules prescribing the procedure to be followed in the conduct of appeal before the tribunal.[29]

Section 18 of the Act further provides that a complainant or appellant may either

23 *Ibid.*, section 20(3).
24 *Tax Guide*, 306.
25 Government assessments are in two forms—best of judgment and additional assessments. Objections to these assessments may lead to dispute, and failure to resolve amicably will make an aggrieved party to file necessary documents before the tribunal. But in most cases, self-assessment does not lead to dispute in the first instance until the filer rescinds on the undertaking in the form filled for no acceptable reason.
26 The forms vary depending on the type of tax e.g. Companies Income Tax, Petroleum Profits Tax, Value Added Tax, etc.
27 See the Fifth Schedule to FIRS Act, and the *Tax Guide 2009*, 306.
28 Section 20 FIRS Act 2007.
29 *Ibid.*, section 21.

appear in person or authorize one or more legal practitioners or any of its officers to represent him in his case before the tribunal. Every individual or company can as well be represented in any matter before the tribunal if she/he/it is unable to attend for good cause.

Judgment/Appeals

Section 19 provides that the provisions of any statute of limitation shall not apply to any appeal brought before the tribunal. T.A.T. decides cases on facts and law as pleaded by the parties in dispute. The tribunal is empowered to reduce, increase, annul or confirm the amount in dispute based on the evidence before it. Immediately a judgment is pronounced, the judgment liability crystallizes and has to be paid even if one of the aggrieved parties intends to go on appeal to a higher judicial authority.[30] The amount of tax determined by the tribunal shall become payable within thirty days from the date the notice was served on the parties by the Board of Revenue. The award or judgment of the tribunal is regarded as equivalent to that of the Federal High Court, once it has been registered with the chief registrar.[31]31 Furthermore, where any person still remains unsatisfied with the judgment or decision of the tribunal, such a person may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to secretary to the tribunal within thirty days after the date of the decision.[32] An aggrieved party can further appeal to the Court of Appeal. The FIRS Act is silent on whether appeal can progress further from the Court of Appeal to the Supreme Court.

Overview of its Relevance

The relevance of T.A.T. to the Nigerian tax system cannot be overemphasized. This is because the tribunal is designed to be a vital component of the tax system, which gives the taxpayer an avenue to object and appeal through a dispute-resolution mechanism on issues arising from a formal demand to pay tax, among others. In case the complainant is not satisfied, then the matter could be taken to the regular court for adjudication. However, a lot of issues have generated serious excitement and the positions are not clear when taking a close look at the tax system vis-à-vis the Federal Board of Inland Revenue (Establishment) Amended Act 2007, which empowers the tribunal to settle disputes arising from the operations of the Act, as spelt out in the fifth schedule to the Act.[33] There is no doubt that the main rationale behind the establishment of T.A.T. is to strengthen the tax system and build stakeholder confidence in the system. The question being raised here is whether the balance in the system is geared toward balancing the percentage of who is appealing. The issue is that it becomes a problem when over 90 percent of the cases before the tribunal are instituted by the tax authority against the taxpayer. It is not a good thing when most of the cases are against multinationals and big companies. This simply leaves out other taxpayers who are aggrieved but may find it intimidating and ridiculous going to the tribunal given the class of cases earlier insti-

30 *Tax Guide*, 313, and section 16(3) FIRS Act 2007.
31 *Ibid.*, section 16.
32 *Ibid.*, section 17, fifth schedule.
33 Section 59(2).

tuted.[34] This and many other related issues may jettison the reason behind the creation of the tribunal, as well as impinge on the confidence of taxpayers in a negative manner.[35]

Apart from the above, there are other germane issues that their existence may serve as obstacles in the realization of the set objectives of the setting up of the tribunal. The first is the place of the state in the tribunal. The FIRS Act fails to incorporate the state Board of Inland Revenue (SBIR) in its operations. It seems to have wiped out the administrative responsibility that already existed between the federal and state agencies. Unlike previous tax legislations[36] that clearly specified responsibilities that hitherto existed between the FIRS and the SBIR, this new Act does not recognize the existence of the SBIR as a revenue collection agency. The Act only recognizes the SBIR in section 8(1)(q) as an agency created to assist the FIRS in issuing taxpayer identification number (TIN) to every taxable person in Nigeria.[37]

Another important issue is the place of the state in T.A.T. on matters arising from the administration of Personal Income Tax Act (PITA) at the state level. For instance, the Act provides in sections 2, 25 and 68 of the FIRS Act for effective administration of PITA and other tax laws. The sections have taken over the control and administration of taxes and laws specified in several legislations listed in the Act. Prior to the Act, FIRS was wholly responsible for the administration of the Companies Income Tax Act (CITA), Petroleum Profit Tax Act and Value Added Tax (VAT) Act; on the other hand, SBIRs were responsible for the administration of PITA, with the exception of certain categories of taxpayer reserved for the FIRS. Then Capital Gains Tax Act and the Stamp Duties Act were administered by both FIRS and SBIR.[38] If the FIRS is allowed to collect personal income tax without restraint as implied by the Act, the revenue arising from this function goes into the Federation Account and is shared out like any other revenue paid into it, such that no revenue from this end will accrue to SBIRs.[39]

The recent passage of the PITA amendment bill by the National Assembly has even aggravated the situation, because the rate of tax alone may reduce the income of some states by as much as 60 percent. It has also been argued that the continued existence of the SBIRs may not make sense.[40]

According to Abiola Sanni,[41]

> *There are too many practical issues posed by the administration of PITA which are not captured by the PIT Amendment Bill. Work should begin on holistic review of PITA and other tax laws. Most importantly, they must focus on issues of fiscal federation, without which ... our federal experiment cannot deliver at the optimum level.*

34 *Nigerian Tribune*, *op. cit.*
35 *Ibid.*
36 Wahab Shittu, "Federal Inland Revenue Act and Implication on Tax Administration," *The Punch*, Mar. 10, 2008.
37 *Ibid.*
38 *Ibid.*
39 *Ibid.*, and section 162(1) of 1999 Constitution.
40 Abiola Sanni, "Government Should Abolish Special Taxes." *Nigerian Tribune*, Jun. 17, 2011.
41 Tax law lecturer at University of Lagos, in *Nigerian Tribune*, Jun. 17, 2011.

Conclusion/Recommendations

Tax appeal involves adjudication on tax matters. The tribunal is an administrative/quasi-judicial body established for quick dispensation of tax disputes. The procedure decongests the law courts. Those who avail themselves of it receive independent judgment and thereby contribute to developing the tax system. Appeal by parties to the dispute from T.A.T., usually manned by knowledgeable persons on tax matters, should not be thwarted by adjudicators who are not versed in the knowledge of taxation.

The present position is that appeal from T.A.T. goes to Federal High Court on matters of law (tax law and related laws). Therefore, there is need for the establishment of a specialized tax and finance court at the level of high court, and subsequently appeals court, to handle strictly taxation and finance cases. The eligible persons to sit in these courts would be lawyers who specialize in tax and/or finance through training and practice, with cognate experience of many post-qualification years and membership of associated professional institutes.[42]

The FIRS Act 2007 should be reviewed in a way to accommodate the states on revenue matters. The said review should empower the individual states to constitute appeal tribunals to adjudicate on tax disputes. The Joint Tax Board (JTB), an encompassing body of all state Internal Revenue Services, should have been more positive on this matter.

Also, section 251 of the Constitution has not been repealed to effect a change, though section 36 allows government to establish the tribunal, to what extent can we marry this with section 251, which confers jurisdiction of civil causes and matters relating to revenue of government on the Federal High Court.

Finally, litigation on tax is generally affected by the recurring challenges facing our judicial system. These include delay in determination of cases, corruption, technicalities of the law, among others. It is therefore suggested that in order to make tax litigation effective and result-oriented, there is need to ensure prompt delivery of judgment/award/ruling, adequate staffing, provision of requisite infrastructures, qualified and efficient personnel to man the tax tribunals. These and other issues raised will assist in alleviating the avoidable challenges that are confronting the operations of the T.A.T.

42 *Tax Guide*, 315.