



TAT Affirms its Authority to Grant Interim and Interlocutory Reliefs in Tax Disputes

The Lagos Zone of the Tax Appeal Tribunal (TAT or “the Tribunal”) has ruled, in the case between CNOOC Exploration and Production Nigeria Limited (CNOOC)/Nexen Petroleum Nigeria Limited (“NEXEN”) (both referred to as “the Companies”) and Federal Inland Revenue Service (FIRS), that the TAT has the authority to grant interim and interlocutory reliefs, such as injunctions, in appropriate tax disputes.

The TAT also clarified that an abuse of court process generally arises where there is a multiplicity of proceedings on the same or similar subject matter, with the intent to overreach or annoy the other party.

→ Background

The Companies, both related entities, were assessed to stamp duties by the FIRS. The Companies objected to the assessments and consequently filed an appeal at the TAT, praying the Tribunal to discharge the assessment raised by the FIRS. The Companies also filed originating summons at the Federal High Court (FHC) seeking interim injunctive relief against the FIRS. The application sought to restrain the FIRS from enforcing the disputed tax liability, particularly through the distraint of the Companies’ assets, pending the determination of the appeals before the TAT.

In response, the FIRS raised a preliminary objection before the TAT, alleging that the Companies’ actions, that is, filing originating summons before the FHC seeking interim injunctive relief while simultaneously pursuing reliefs at the TAT to vacate the FIRS’s assessment, amounted to an abuse of judicial processes. The FIRS, therefore, requested that the appeal at the TAT be dismissed.

→ TAT’s ruling

The Tribunal considered the issues raised by the FIRS and ruled that an abuse of court process generally arises where there is a multiplicity of proceedings on the same or similar subject matter, with the intent to overreach or annoy the other party. The Tribunal stated that the abuse of court process does not lie in the mere exercise of a legal right, but rather in the manner and multiplicity of its exercise.

The TAT further noted that, where multiple proceedings constitute an abuse of court process, it should be the latter of the two proceedings that is liable to be struck out - in this case, the proceedings filed at the FHC.

The Tribunal, therefore, ruled that the appeal filed by the Companies before the TAT did not constitute an abuse of court process given that the proceedings before the TAT and the FHC were not on the same subject matter.



More importantly, the Tribunal clarified its own powers and jurisdiction in tax-related matters. It stated that, beyond the Federal High Court, the TAT possesses the authority to grant interim and interlocutory reliefs, such as injunctions, in appropriate tax disputes. In support of its ruling, the TAT referenced several authorities, such as the omnibus clause in the 5th Schedule of the FIRS Establishment Act (FIRSEA) that gives the Tribunal the power to take whatever steps are in its opinion necessary to carry out its functions of adjudicating on tax disputes, even if those steps aren't specifically listed elsewhere in the law¹. The TAT also cited Order XI of the TAT (Procedural) Rules 2021 ("2021 rules") which gives the Tribunal the authority to entertain interlocutory applications, including those seeking stays or protective reliefs that are incidental to its functions. To further reinforce their position, the Tribunal referenced the case of *Mgbodu v Mgbodu* (2015)², wherein the Court of Appeal clarified that a court 'may grant a relief that is incidental to the issues before it, if such is necessary for a just determination of the cause'. Lastly, the Tribunal reiterated its jurisdiction as the first point of contact for the resolution of tax-related disputes.

→ Insights

Prior to this ruling, the authority to grant interim or equitable reliefs was primarily understood to be vested in the conventional courts. Consequently, taxpayers seeking to restrain the FIRS from distraining their assets pending the resolution of tax disputes would typically file an action at the Federal High Court on the premise that such reliefs lie exclusively within the conventional courts and not the TAT.

The ruling by the TAT establishes a significant precedent, demonstrating that the avenues for obtaining relief in tax disputes are not confined solely to the Federal High Court. Under the authority granted by the Federal Inland Revenue Service (Establishment) Act, the TAT possesses both the jurisdiction and the procedural flexibility to adjudicate tax disputes effectively. Moreover, the powers of the TAT to adjudicate on tax disputes would be gravely whittled down if the TAT cannot grant consequential orders restraining either party from taking any further steps in a matter. The Tribunal has now clearly affirmed that it has the power to grant an application for an interim or interlocutory injunction as protective or equitable reliefs with respect to tax disputes brought before the Tribunal.

With this development, taxpayers will no longer have to bear the extra cost of filing two simultaneous actions in tax disputes: a tax appeal at the TAT and an application for injunction at the FHC. Both the appeal and application for injunction can now properly be filed at the TAT.

Please note that the above ruling is the TAT's view of its own jurisdiction in granting injunctive reliefs. Hopefully, a Federal High Court or a higher court will confirm/corroborate this position by ruling in the same manner as the TAT. This will provide additional comfort to taxpayers on the subject matter.

¹ This is replicated in Paragraph 13(2)(h) of the Second Schedule of the Joint Revenue Board Establishment Act

² 12 NWLR (Pt. 1474) 415 at 440

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