

TAT affirms its jurisdiction to hear and determine issues relating to legislation enacted by States' House of Assembly

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The Tax Appeal Tribunal (TAT or "the Tribunal") sitting in Benin recently held, in the case between *Bayelsa State Board of Internal Revenue ("BSBIR" or "the Board" or "the Appellant")* and *Century Energy Services Limited ("the Company" or "CESL" or "the Respondent")* that the TAT has jurisdiction to hear and determine the claims by BSBIR for Bayelsa State Infrastructural Maintenance (BIM) Levy and Development Levy being pieces of legislation enacted by the Bayelsa State House of Assembly, and derived from the operations of the Personal Income Tax (PIT) Act (as amended).

TAT also decided that the Respondent is liable to pay the Appellant **₦264,000,000 (inclusive of interest and penalty)** for 2011 to 2018 tax years, being the best of judgement (BOJ) assessment in respect of Pay-As-You-Earn (PAYE) tax, development levy and Bayelsa State Infrastructural Maintenance levy in accordance with the provisions of the relevant laws.

Facts of the case

BSBIR alleged that CESL failed to file returns and pay its PAYE taxes, development levy, and BIM levy on behalf of its employees resident in Bayelsa State from 2011 to 2018 tax years. Consequently, the Appellant served a BOJ assessment of **₦264,000,000** on the Respondent in respect of the above tax and levies for the relevant tax years. However, following the Company's failure to pay the administrative assessment despite several notifications, demand notices and letters of invitation, the Board filed an appeal before the TAT on 20 April 2021 seeking the following reliefs:

- a. *An order that the Respondent is indebted to the Appellant to the sum of ₦264,000,000, being unremitted PAYE tax, development levy and BIM levy in accordance with Section 1(b) and (d) of the First Schedule to PIT Act, Taxes and Levies (Approved List for Collection) Act, 1998 (TLA) (as amended) and Bayelsa State Infrastructural Maintenance Levy Law, 2003.*
- b. *An order directing the Respondent to pay to the Appellant the sum of ₦264,000,000 inclusive of interest and penalties, being the assessed tax liability for the 2011 to 2018 tax years.*
- c. *An order demanding the Respondent to file its tax returns with the Board as prescribed by the relevant law.*

- d. *A declaration that the Respondent is liable to file returns and remit its PAYE tax liabilities in accordance with Sections 81(2) and 82 of PIT Act (as amended).*
- e. *A declaration that the failure, refusal and/ or neglect of the Respondent to deduct and remit PAYE tax from payments to its employees is in breach of Sections 81 and 82 of PIT Act (as amended).*
- f. *A declaration that the failure, refusal and/ or neglect of the Respondent to file tax returns and/ or pay its tax as and when due, amounts to tax evasion punishable under Section 94 of PIT Act (as amended).*
- g. *An order for the payment for cost of this action in the sum of ₦1,000,000 (two million naira) {sic}*
- h. *And for such further order(s) as this Honourable Tribunal may deem fit to make in the circumstance.*

CESL's argument

CESL argued that it neither had an office nor conducted any business activities in Bayelsa State, which should make it liable to pay any taxes to the Appellant. The Company also maintained that the Appellant had not sufficiently discharged the burden of proof to demonstrate that the administrative assessment served on it was not arbitrary but based on the volume of its economic activities in Bayelsa State.

Finally, the Company questioned the jurisdiction of the TAT to adjudicate on the claims and reliefs, i.e., BIM levy and development levy, sought by the Board in light of the Court of Appeal's decision that nullified the TLA in *Uyo Local Government vs Government of Akwa Ibom State & Anor (2020) LPELR - 49691 (CA) Page 31-36*.

Issues for determination

Based on the arguments submitted by both parties, the Tribunal adopted the following two main issues for determination:

- *Whether the Tribunal has jurisdiction to hear and determine issues relating to claims for BIM levy?*
- *Whether the Appellant has proved its case as required by law to be entitled to the reliefs sought?*

TAT's decisions

After considering the arguments of both parties, the TAT held that:

1. The TAT is a creation of the law under Section 59(1) of the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRSEAS or "the Act"). Section 59(2) empowers the TAT to adjudicate and settle disputes arising from the operations of all the Acts and tax laws listed under the First Schedule to the Act, including the PIT Act (as amended) and other laws derived from the PIT Act and domesticated by the various States.

Although the TLA (as amended) was nullified by the Court of Appeal's decision in *Uyo Local Government and Government of Akwa Ibom State & Anor based on its ouster phrase* that undermines the supremacy of the Constitution of the Federal Republic of Nigeria ("the Constitution"), the TAT noted that the Appellant did not rely solely on the TLA in its relief, but also on the Bayelsa State Infrastructural Maintenance Levy Law, 2003.

2. Item 7, Part 2 of the Second Schedule to the Constitution provides that States government have authority to collect or administer the laws imposing stamp duties, capital gains, incomes or profits of persons other than companies. Further, Section 4(7) of the Constitution empowers State Houses of Assembly to make laws on any matter not included in the Exclusive Legislative List under Part 1 of the Second Schedule to the Constitution, any matter included in the Concurrent Legislative List under Part 2 of the Second Schedule to the Constitution and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.

The BIM Levy Law, 2003 is a valid law enacted by Bayelsa State government. Therefore, to the extent that it does not contradict the provisions of the PIT Act (as amended), and has not been repealed or declared null, it remains valid for the administration of levies/ taxes such as the development levy and infrastructural maintenance levy in the State.

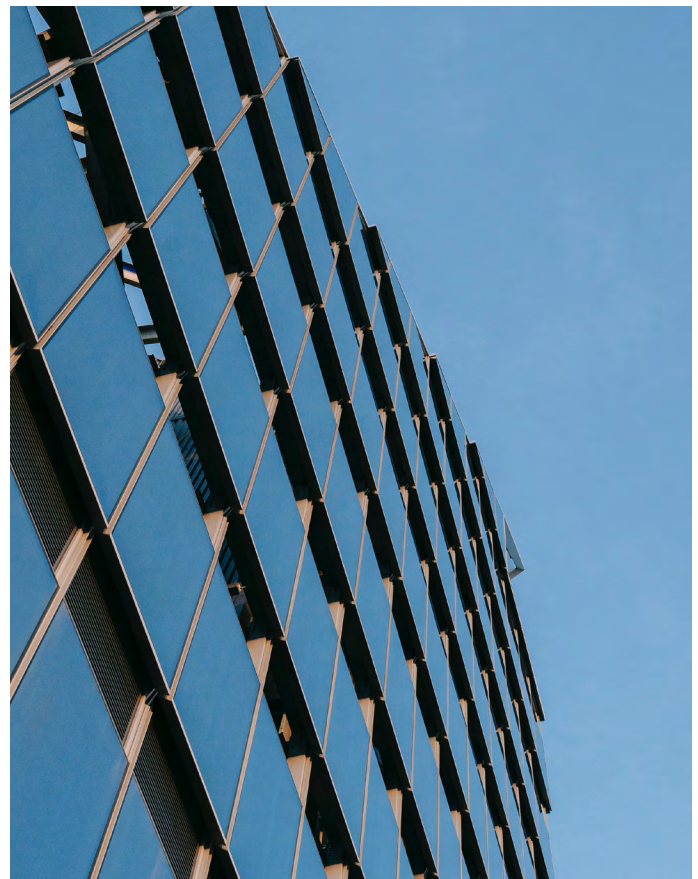
Consequently, the TAT has jurisdiction to adjudicate on claims arising from the Bayelsa State Infrastructural Maintenance Levy Law 2003 and the operation of the entire PIT Act (as amended).

3. While the Company is not a "taxable person" as defined in Section 108 of the PIT Act (as amended), Section 81 of the PIT Act obligates it to deduct PAYE taxes from its employees and remit same to the relevant tax authority where the employees are resident and/ or are itinerant workers.

From a review of the documents presented to the Tribunal, the Company and its related parties entered into various contracts with Century Exploration and Production Limited, the technical service provider in the joint venture (JV) operations of OML 46 in Atala field, Bayelsa State. One key contract was for the supply of manpower for security and surveillance services on the 60-man houseboat used in the JV operations. Thus, the Respondent was actively involved in providing services to OML 46 in the Atala fields located in Bayelsa State. The Tribunal, therefore, concluded that the Respondent carried out business activity through its employees or itinerant workers in Bayelsa State during the relevant period.

The TAT also clarified that Section 81(2) of the PIT Act requires every employer to file a return with the relevant tax authority of all emoluments paid to its employees. The Tribunal noted that the respondent was given sufficient time to provide the Appellant with relevant documents and information on the emoluments of its employees in the State, which it failed to oblige, leading the Appellant to issue a BOJ assessment in line with Section 54 of PIT Act.

Consequently, the TAT found merit in the Appellant's claim and ruled in its favor.



Commentaries

The jurisdiction of the TAT to adjudicate on certain matters has been a subject of debate in several tax cases. Thus, the clarification provided by the TAT on the relevant legislation under which it can hear and make decisions in the instant case is commendable. Specifically, Paragraph 11 of the Fifth Schedule to the FIRSEA stipulates the relevant tax laws which the TAT has power to adjudicate on, including the PIT Act (as amended) and other laws derived from the PIT Act and domesticated by the various States of the Federation.

The TAT also clarified that, although the TLA (as amended) has been declared null and void by previous court judgments, primarily because of its ouster phrase - *“Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria”*, which undermines the supremacy of the Constitution, States still have the powers to enact laws on the taxes and levies listed in the TLA provided that such enactments are within their legislative competence, in line with the provisions of the Constitution.

Further, the decision of the Tribunal to uphold the BOJ assessment of ₦264,000,000 (inclusive of interest and penalties) on the Company for failure to provide the documents requested by the Board is very instructive. The TAT held that the BOJ provisions in the PIT Act is relevant to guide against such non-compliance by organisations with request for information by any tax authority. Therefore, taxpayers must use their best endeavours to ensure that information and documents requested by tax authorities are provided promptly to avoid being assessed to BOJ for non-compliance.

Finally, it is important for companies to properly track and monitor the duration of stay of their out-of-station employees for compliance with the itinerant worker provision. Under the law, an itinerant worker is any employee that works in any state for a minimum of 20 days in at least 3 months of every assessment year. In addition, timely engagement with the tax authorities is important to avoid unnecessary back duty assessment and related interest and penalty.



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