

TAT rules against the unilateral transfer of taxpayers' files based on FIRS guidelines and regulations.

KPMG in Nigeria
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The Tax Appeal Tribunal (TAT or "the Tribunal") sitting in Lagos recently held, in the case between *Little Company Nigeria Limited ("LCN" or "the Company" or "the Appellant")* and *Federal Inland Revenue Service ("FIRS" or "the Service" or "the Respondent")*, that the transfer of the Appellant's file between tax offices, based on FIRS Guidelines and Regulations, without due consideration to the Company's registered address was in violation of the law.

Facts of the case

LCN was incorporated in 2017 and has its registered office at Flat 10, Bayview 303 Close, 3rd Avenue, Banana Island, Lagos. The Company registered for taxes and maintained its tax profile with the FIRS Ikoyi II Medium-Sized Tax Office (MSTO), which also has jurisdiction for taxpayers with registered office in the same location as LCN. In 2021, the Tax Controller of Ajah 2 MSTO unilaterally transferred the Appellant's tax file from Ikoyi II MSTO to Ajah 2 MSTO, on the basis that one of the Appellant's business outlets - Jara Beach Resort, is within the jurisdiction of Ajah 2 MSTO.

Subsequently, the Ajah 2 MSTO raised a Best of Judgment (BOJ) VAT assessment for 2021 financial year on the Appellant and placed a notice of non-compliance at LCN's Jara Beach Resort. The Company objected to the transfer of its tax profile from Ikoyi II MSTO to Ajah 2 MSTO stating that it had filed its tax returns at the Ikoyi II MSTO. After a meeting between the parties, it was agreed that the Appellant should pay the BOJ VAT assessment as a condition precedent to removing the notice of non-compliance at its Resort and return of its tax profile to Ikoyi II MSTO. After the Company had paid the BOJ VAT assessment, the Respondent

renewed on the agreement to return the Company's tax profile to its original tax office.

Dissatisfied with the events and actions taken by the Respondent, the Appellant filed a Notice of Appeal on November 21, 2022, before the Tribunal for adjudication.

Issues for determination

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

1. *Whether the Respondent in its administrative power can mandate officers of Ajah 2 MSTO to monitor, conduct tax drive and serve the Appellant tax notices and assessments at Jara Beach Resort operated by the Appellant in accordance with the tax laws.*
2. *Whether the Respondent acted within its administrative mandate when it transferred the Appellant's file to Ajah 2 MSTO in line with FIRS guidelines and regulations on segmentation.*
3. *Whether the Appellant is entitled to the Reliefs sought in this suit.*

LCN's argument

The appellant argued that the "*FIRS Taxpayer Guidelines*" and "*Circular on Filing Returns with the nearest Tax Office*" require taxpayers to register for and remit taxes at the tax office closest to their business locations. The Company noted that it had registered with Ikoyi II MSTO for tax compliance purposes because its registered office which is in Banana Island also serves as its operational base and centre of management.

The Appellant also refuted the Respondent's allegation of tax evasion noting that representatives from both the Ikoyi II MSTO and Ajah 2 MSTO had made unannounced visits to its registered office in Ikoyi without any hindrance. Therefore, there was no basis to unilaterally transfer the Company's tax file to Ajah 2 MSTO. Further, the absence of any witness to corroborate the claim that the Appellant's Ikoyi office was inaccessible cast doubts on the allegation of tax evasion as the basis for moving the Company's profile to Ajah 2 MSTO.

The Appellant also noted that, in its engagement with the FIRS, it was agreed that the Respondent should transfer the Company's tax profile back to Ikoyi II MSTO upon payment of the VAT assessment. The Company argued that the doctrine of legitimate expectation should apply in the instant case to preclude the FIRS from renegeing on their agreement.

FIRS' argument

FIRS, on the other hand, argued that the Service had the legal authority to unilaterally transfer a taxpayer's profile to the appropriate tax office based on its segmentation policy. The Respondent cited its circulars and public notices that require taxpayers to file returns at the tax office nearest to their operational base. The FIRS maintained that the Appellant failed to register with the nearest tax office, and its operational base was not properly disclosed. Further, the FIRS (Establishment) Act, 2007 (FIRSEA) empowers it to control and administer various taxes, including assessment, collection, and accounting for taxes due to the Federal Government of Nigeria. Consequently, tax drives, monitoring exercises, and serving tax



notices at the operational business address is within its administrative powers.

The Respondent further raised concerns about the Appellant's intentions; suggesting that the Company's actions might indicate a structure designed to evade legitimate taxes. Therefore, according to the FIRS, its segmentation policy was essential for proper tax administration, and to ensure appropriate allocation and uniformity in tax matters, notwithstanding that such changes in tax office allocation might cause some inconvenience to the taxpayer. The Service also clarified that the Appellant's request to transfer its tax file back to Ikoyi II MSTO was considered; however, the request was not approved due to non-compliance and discrepancies in tax filings by the Company.

TAT's decision

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

1. Section 7(1)(a), (b), and (f) of the FIRSEA empowers the FIRS to provide policy guidelines, oversee revenue matters, and undertake necessary actions for effective administration of various tax laws listed under the relevant provisions of the FIRSEA. The jurisdictional policy that categorizes taxpayers as *Large, Medium, and Small*, and reallocates taxpayers' tax offices using their registered addresses and business locations is within the rights of the FIRS. However, the interpretation of the jurisdictional policy must be based on the fact that all communications, including tax assessments, must be sent through the registered address of the Company.

The Supreme Court has set precedent for the determination of the official residence of a company or corporation for the purpose of service of process. For instance, in the case between *Kraus Thomson Organisation and University of Calabar (2004) 9 NWLR (879) 631*, the Apex Court clarified that: "...the residence of a corporation is the place of its central management and control. This is the place where the Board of Directors functions or the place of business of the Managing Director or that of the parent company and not a branch office or liaison office...". Further, Section 78 of the Companies and Allied Matters Act, 1990 (CAP C20, LFN 2004) provides that a service on a company must be made to its registered address or head office directed to its Director, Trustee, Secretary, or other principal officer of the company.

2. Guidelines and policies are tools that aid the FIRS in fulfilling its administrative mandate under the law. However, such tools should not override the provisions of the law. The Respondent's action of transferring the Appellant's file based on its Guidelines and Regulations contradicts the law and is invalid.

Based on the above, the Tribunal condemned the unilateral relocation of the Company's tax records from Ikoyi II MSTO to Ajah 2 MSTO by the Tax Controller contrary to the provisions of the law and the agreement between both parties. Therefore, the TAT resolved all issues in favour of the Company.

Commentaries

The TAT's judgment highlights the careful balance between administrative guidelines and legal mandates in taxation matters. While the TAT acknowledged FIRS's authority under the FIRSEA to establish policy guidelines, oversee revenue matters, and take actions for efficient tax law administration, including the categorization of taxpayers and the relocation of tax offices based on geographic factors, it was quick to clarify that such guidelines must align with the extant laws and established legal principles.

It is evident the FIRS jurisdictional policy was introduced to facilitate efficient and effective administration of its duties of monitoring and overseeing tax issues. Nonetheless, the policy and its interpretation must also consider the canon of convenience which provides that taxes should be administered in such a manner that it provides the greatest convenience to both the taxpayer and government. Therefore, treating a branch office or an outlet of a company as its registered address contradicts the law, FIRS segmentation policy and the canon of convenience. The impact of such action is more dire where a company has multiple outlets within a state or scattered across the country.

Further, the TAT's decision is very instructive as it clarifies the extent of the FIRS's authority to independently move taxpayer's file and the role that legal provisions play in shaping such actions, given that this practice has been the status quo for a while. Therefore, taxpayers can choose a tax office closest to its place of central management and control for convenience, as allowed by law, without any interference from the FIRS.

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