

# TAT rules on the validity of tax assessments following taxpayer's failure to object within the statutory period

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KPMG Nigeria



**The Tax Appeal Tribunal (TAT or “the Tribunal”) Lagos Division recently delivered a judgement in favour of the Federal Inland Revenue Service (FIRS or “the Appellant”) in its tax appeal against New Cross Petroleum Limited (NCPL, “the Company” or “the Respondent”) on the validity of its tax assessments, including interest and penalties, following the Respondent’s failure to object to the assessments within the statutory period.**

## Facts of the case

On 13 May 2013, the Nigerian Investment Promotion Council (NIPC), following the approval of the Honourable Minister of Finance, issued NCPL a five-year Pioneer Status Certificate (PSC) commencing 1 January 2008 to 31 December 2012. NCPL duly notified the FIRS of its Pioneer Status Incentive (PSI) status and submitted its self-assessed income tax returns without remitting any taxes thereon. However, on 26 January 2015, the NIPC notified NCPL of a reduction in the PSI duration from five years to three years, effectively ending NCPL’s pioneer status on 31 December 2010. Subsequently, the FIRS issued assessment notice and demand note dated 29 January and 30 January 2015, respectively, to NCPL, comprising Petroleum Profit Tax (PPT), Tertiary Education Tax (TET), and Capital Gains Tax (CGT) liabilities totalling **US\$5,095,361.22** on its profits of 2011 and 2012 tax years.

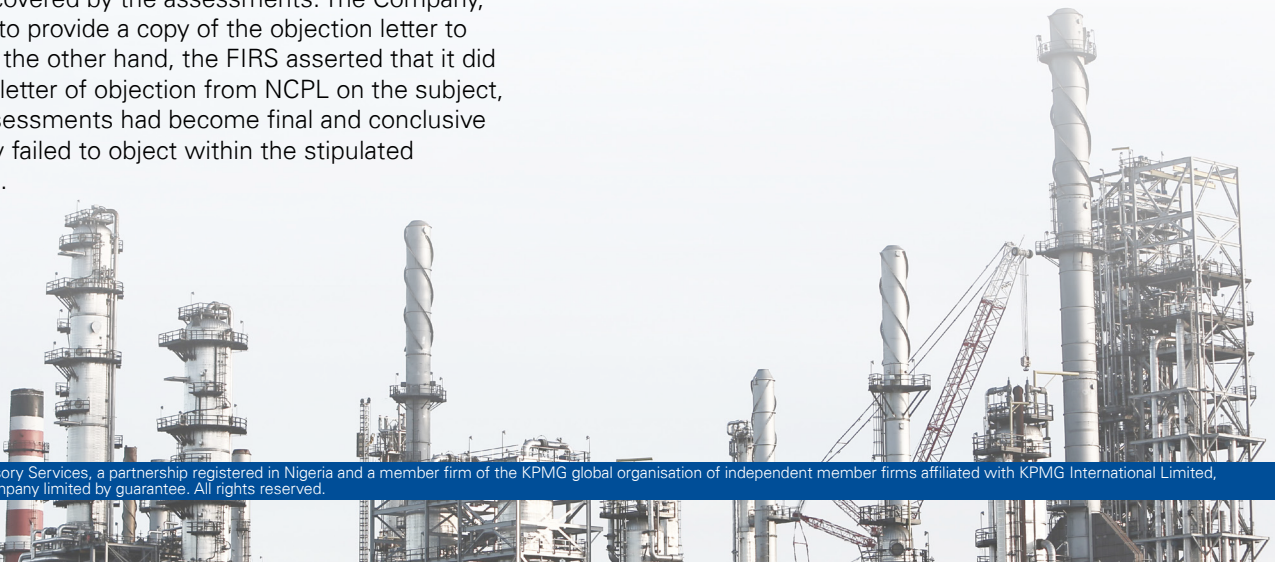
NCPL maintained that the five-year PSC was legal because it was approved by the Minister of Finance for 22 oil production companies, including NCPL, following the recommendation of the Inter-Ministerial Committee on Implementation of Pioneer Status Scheme in relation to oil producing companies. NCPL further alleged that it submitted an objection letter on 24 February 2015 to the FIRS stating that the Company was not liable to pay the additional tax assessments since its PSC was still valid for 2011 and 2012 tax years covered by the assessments. The Company, however, failed to provide a copy of the objection letter to the Tribunal. On the other hand, the FIRS asserted that it did not receive any letter of objection from NCPL on the subject, and that the assessments had become final and conclusive as the Company failed to object within the stipulated statutory period.

Following an impasse after several negotiation meetings between the parties, the FIRS filed a notice of appeal with the Tribunal on the grounds that the NIPC was not empowered by the Industrial Development (Income Tax Relief) Act, Cap 17, LFN, 2004 (as amended) (IDA) to issue a five-year PSI to NCPL, and that the assessments had become final and conclusive as no valid objection was received from the Company. The Respondent argued that the TAT lacked the jurisdiction to determine the validity of the PSI which was the basis of the appeal filed with the Tribunal by the FIRS.

After reviewing the arguments of both parties, the TAT, on 21 December 2020, ruled that while it did not have the power and jurisdiction to investigate the administrative competence of the NIPC to issue a PSI to the Respondent/Applicant, it could determine the Respondent’s liability to the assessments raised by the Appellant.

## Issues for determination

Based on the arguments submitted by the parties, the TAT formulated only one key issue for determination, namely, *“whether the Respondent is liable to pay the assessed PPT, TET and CGT for the 2011 and 2012 years of assessment and the attendant interest and penalty”*



## TAT's decision

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

1. Since the extension of NCPL's PSI after the initial period of 3 years was yet to be resolved by the requisite government agencies, it (the TAT) must distance itself from adjudicating on the appropriateness or otherwise of the PSI granted to the affected oil and gas companies. Consequently, the TAT maintained that it would only limit its decision to its powers, jurisdiction and obligation as contained in the FIRS (Establishment) Act, 2007.
2. By virtue of the NIPC's letter of 26 January 2015 that reduced the period for the PSI granted to NCPL from five to three years, the PSI granted to NCPL lapsed effectively on 31 December 2010. Therefore, the FIRS was within its rights to assess NCPL to additional PPT, TET and CGT for 2011 and 2012 years of assessment (YOAs) of US\$5,095,361.22 based on its profits for those years.
3. A taxpayer that is dissatisfied with an assessment raised by the tax authorities should file an objection to the assessment, or an appeal at the Tribunal, within the period specified in the tax laws. Notwithstanding NCPL's claim that it submitted an objection letter within the statutory timeline, the Company failed to present a copy of the objection letter to the Tribunal, nor served a notice to the FIRS to produce the said letter prior to the hearing of the appeal. Therefore, NCPL's allegation of a missing objection letter was a mere assertion and insufficient without credible and substantiated evidence.

Consequently, the TAT concluded that the alleged objection letter of 24 February 2015 did not exist and deemed the FIRS' assessments of PPT, TET and CGT for 2011 and 2012 YOAs, including the related interest and penalty, of US\$5,095,361.22 as final and conclusive.

4. Based on the provisions of the IDA, the oil and gas industry does not qualify as one of the pioneer industries for PSI purpose. Further, there is no curative attempt as at the date of the judgement aimed at amending the existing legislation to accommodate specific players in the oil and gas industry. Notwithstanding, the Tribunal reiterated that it lacked the jurisdiction to investigate the authority of the NIPC to issue a PSI to an applicant and, therefore, could not make any decision in that regard.

## Commentaries

The legality of the grant of PSI to some exploration and production (E&P) companies by the NIPC, including the single five-year term, has been a subject of lingering debate, especially following the retrospective reduction of its duration to 3 years. This has resulted in legal disputes between some of the affected E&P companies and the FIRS regarding the tax holiday claimed for the years cancelled by NIPC.

The FIRS' has always argued that Section 10 of the IDA only provides for an initial 3-year tax holiday, which can be renewed for additional one (1) or two (2) years. Further, Section 25 of the IDA defines the "Principal Act" as the Companies Income Tax Act (CITA). Relatedly, the IDA, PSI Regulations and List of Pioneer Industries and Products (as amended in 2017) do not include E&P activities as part of either pioneer companies or products for PSI purpose. Consequently, oil and gas E&P companies, which are taxable under the PPTA, are not entitled to PSI.

The TAT's decision that uncontested demand notice is deemed final and conclusive is in line with the provisions of the PPT Act, Tertiary Education Trust Fund (Establishment, etc) Act and CGT Act. The judgement further reiterates several court decisions that tax assessments that are not objected to within the timeline provided by extant tax laws are final and conclusive. Therefore, any taxpayer who disputes any additional tax assessment by the tax authorities must ensure that the appropriate objection is submitted within the statutory timeline and in the format prescribed by the extant tax laws. Failure to file such objection as and when due, or in the prescribed format, may result in the assessment becoming final and conclusive.

## Conclusion

The TAT's decision upholding the FIRS' assessment serves as a caution to taxpayers who are remiss in challenging a tax assessment, as the appeal might have decided differently had NPCL provided an acknowledged copy of its objection letter.

With the recognition of courier service, emails and other electronic means as approved channels for the issuance of notices of assessment by the FIRS and submission of notices of objection by taxpayers under Finance Act, 2020, taxpayers can now leverage technology to promptly respond to communications from the tax authorities and avoid the costly consequences of failing to do so.

# For further enquiries, please contact:

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