



Tax Alert

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Tax Appeal Tribunal delivers judgement on the issuance of tax assessments for periods that are statute-barred

The Tax Appeal Tribunal (TAT or “the Tribunal”) sitting in Enugu State delivered judgement last month in favour of Polaris Bank Plc (“the Appellant”) in its lawsuit against the Abia State Board of Internal Revenue (“the Respondent”).

The Respondent had conducted a tax audit on the records of the Appellant for 2006 to 2011, and issued additional assessments amounting to ₦1.5 billion in respect of Pay-As-You-Earn (PAYE) taxes, Staff Development Levy, and Business Premises Levy. The Appellant objected to the assessments but agreed to an undisputed PAYE tax liability of ₦39 million, which it later paid. The Respondent subsequently demanded ₦254 million as part-payment of the alleged liability. This was purportedly based on the outcome of the Respondent’s tax reconciliation meeting with the Appellant. However, the Appellant refused to pay the revised assessment, as a result of which the Respondent issued a further revised Demand Notice in which it reverted to its earlier assessment of ₦1.5 billion. The Respondent also failed to take cognizance of the undisputed tax liability payment made by the Appellant.

Dissatisfied with the position of the Respondent, the Appellant brought the following key issues for determination before the Tribunal:

- Whether the Respondent adhered to statutorily stipulated procedure in the circumstances of the case;
- Whether the Respondent can validly impose Development and Business Premises Levies on the Appellant;
- Whether the Respondent can validly assess the Appellant for taxes allegedly outstanding and statute-barred;
- Whether a tax assessment can become final and conclusive before the resolution of the objection to the assessment by the taxpayer under the provisions of the Personal Income Tax Act (PITA) Cap P8, Laws of the Federation of Nigeria, 2004 (as amended);
- Whether the Respondent can validly impose interests and penalties on the Appellant.

The TAT resolved the above issues in favour of the Appellant. In particular, the TAT held that:

- The Respondent did not follow the relevant provisions of PITA, particularly Section 58 of the Act, which require the Respondent to take certain steps upon receipt of objection from the Appellant.
- The Respondent does not have the statutory power to impose Development and Business Premises Levies on the Appellant. The TAT noted that, although these levies were listed in the Taxes and Levies (Approved List for Collection) Act as part of those collectible by State Governments, there is no primary tax legislation in Abia State providing for the imposition, assessment, collection, and accounting of the taxes or levies.
- Since the precise date in which the tax audit was conducted on the Appellant could not be determined from the exhibits presented by the parties, the year in which the Respondent issued the tax assessments would be deemed to be the year in which the tax audit was conducted (i.e. 2017). Consequently, the tax assessments relating to 2006 to 2010 were statute-barred, as the years were deemed to have been audited by the Respondent after the 6-year period stipulated in Section 55 of the PITA. Most importantly, the TAT held that simply describing an exercise as a “tax investigation” – presumably to circumvent the 6-year limitation period – would not be sufficient as the whole exercise and related documentation must support this.
- The assessments were not final and conclusive as the Appellant objected to the assessments within 30 days in line with the provisions of PITA.

- Interest and penalties would not apply to the alleged tax liabilities to the extent that they were statute-barred.

We will issue a newsletter on the judgment in due course.

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