# Tax Alert

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## **Corrigendum:** TAT rules that service provided by a Nigerian company for a related non-resident company is VATable

The Tax Appeal Tribunal (TAT or "the Tribunal") sitting in Lagos on Wednesday, 13 November 2019, delivered judgement in the case between *Allan Gray Investment Management Nigeria Limited ("the Appellant") and the Federal Inland Revenue Service*.

The main issue for determination was whether the services rendered by the Appellant to its non-resident parent company qualified as "exported services" under the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004 ("VAT Act") and, therefore, exempted from VAT.

The Appellant had executed a marketing and distribution agreement with its parent, Allan Gray International (Pty) Limited (AGI), an investment management company incorporated and resident in

South Africa. The agreement required the Appellant to market and distribute AGI's African Equity Funds in Nigeria for a fee. The Appellant, therefore, considered its services to AGI as exported services which should be exempted from VAT.

Having considered arguments of both parties, the TAT held that:

- AGI is effectively carrying on business in Nigeria based on its appointment of the Appellant as the sole and exclusive local representative of its African Funds in Nigeria.

- Although AGI is not physically present in Nigeria, it is legally present through the appointment of the Appellant as an agent to market and distribute its services in Nigeria.

- Hence, the services performed by the Appellant in Nigeria on behalf of its related non-resident parent company do not qualify as exported services and are, therefore, liable to VAT in Nigeria.

The judgement raises fundamental questions on when a non-resident company will be characterized as legally present or doing business in Nigeria, and what will qualify a service performed by a Nigerian company for a non-resident company as an exported service for VAT purposes.

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