



THE TAX APPEAL TRIBUNAL (PROCEDURE) RULES 2021

The Honorable Minister for Finance, Budget and National Planning ("the Minister") recently issued new Tax Appeal Tribunal (Procedure) Rules 2021 ("the Rules"). The Rules were issued pursuant to the powers in Paragraph 21 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007. The Rules replace the 2010 Rules and are intended to guide the practice and procedure of Tax Appeal Tribunal ("TAT") proceedings.

There are a few innovations in the Rules. We have highlighted the major changes in the paragraphs below:

1. Virtual hearing of applications [Order 11 Rule 4 and 17 Rule 9]

The Rules allow for virtual proceedings particularly for delivering rulings and applications using technology or platforms recommended by the TAT.

2. Electronic filing [Order 3 Rule 5] and service [Order 7 Rule 5]

Under the Rules, all processes / documents which may be filed at the secretariat of the TAT may be filed electronically as directed by the TAT. Similarly, processes / documents are properly served if sent by email or any other electronic means as directed by the TAT.

3. Mandatory payment of 50% of tax assessed [Order 3 Rule 6]

This is the most fundamental change in the Rules. Now a taxpayer who intends to appeal must first pay 50% of the disputed tax into an account designated by the TAT as security for the appeal. In addition, the taxpayer must file a deposition along with the appeal to that effect.

4. Place of filing appeals [Order 4 Rule 2]

The TAT sits in eight zones across Nigeria. Under the Rules, appeals may be filed at the secretariat of any of the eight zones, provided the Notice of Appeal and the accompanying document are properly headed in the name of the appropriate zone of the Tribunal where the matter is to be heard. The appeal would then be transferred to the correct zone as directed by the Chairman.

5. Documents only procedure [Order 15]

Parties may dispense with oral hearing where a dispute can be resolved based on documentary evidence. In which case all that is required is for parties to file all relevant documents along with the Notice of Appeal or Reply, Witness Statement on Oath, Written Address. Etc.

6. Summary appeal procedure [Order 16]

Parties who intend to recover a debt or liquidated money demand can now appeal via a summary appeal procedure where the Appellant believes there is no defense to the appeal. However, where the TAT is satisfied that the Defendant's defence has some merit, it would hear the appeal on trial.

7. Cost [Order 22]

The Tribunal now has discretion to order cost against a party, its representative or a legal practitioner for any misconduct, undue delays or defaults.

8. Pre-trial conference [Order 17 Rule 2]

The TAT can order a PTC for the purpose of narrowing issues in dispute to facilitate settlement.

COMMENTARY

The new procedures are a welcome development as it is a reflection of the post pandemic world which has seen the wide adoption of technology in the administration of justice. They are also intended to make the TAT more efficient in the dispensation of justice.

While we applaud the new procedures, an area of concern would be the requirement for the payment of 50% of disputed tax as a condition precedent to filing an appeal. There are several concerns in this regard which include that in the case of a taxpayer who is unable to deposit the said amount, the provision may constitute a hindrance to justice. The provision is also inconsistent with the Federal Inland Revenue Service (Establishment) Act 2007 as rules cannot override the provisions of an Act.

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