



## TAX UPDATE

# TAX DISPUTES IN NIGERIA: THE TAX APPEAL TRIBUNAL RULES THAT 50% DEPOSIT BY TAXPAYERS NO LONGER A MATTER OF COURSE

In a recent decision that was handed down on the 13<sup>th</sup> of May 2022, the Tax Appeal Tribunal, South East Zone (“the TAT or the Tribunal”) ruled that the provisions of Order 3 Rule 6(a) of the Tax Appeal Tribunal (Procedure) Rules, 2021 (“TAT Rules”) are in conflict with the provisions of Paragraph 15 (7)(c) of the Fifth Schedule to the Federal Inland Revenue (Establishment) Act 2007 (“the FIRS Act”) and on this basis, refused to mandate the appellant in that case, Emenite Limited (“Emenite”), to pay 50% of the disputed tax assessment into a designated account of the TAT before the hearing of its appeal as security deposit for prosecuting the appeal. The TAT further noted that the provisions of the TAT Rules are different from and not complementary to the statutory provisions contained in Paragraph 15(7) of the FIRS Act, contrary to the contention of the Federal Inland Revenue Service (“FIRS” or “the Service”) that both provisions are not inconsistent but complement each other. On this basis, the TAT agreed with Messrs. Udo Udoma & Belo-Osagie, counsel to Emenite, that Order 3 Rule 6(a) of the TAT Rules cannot override the provisions of Paragraph 15(7)(c) of the Fifth Schedule to the FIRS Act as rules of procedure cannot override statutory provisions of the law.

The Tribunal also held that it is the provisions of Paragraph 15 (7)(c) of the Fifth Schedule to the FIRS Act that are relevant for purposes of determining whether an appellant should be mandated by the Tribunal to pay security deposit for prosecuting an appeal. In this case<sup>1</sup>, however, the Tribunal found that the FIRS failed to establish any of the conditions stipulated under Paragraph 15(7) (c) of the FIRS Act, and accordingly, refused to mandate the appellant to pay a security deposit to the FIRS, as requested by the latter in an application made pursuant to Paragraph 15 (7) of the FIRS Act. The TAT specifically ruled that:

1. Paragraph 15(7)(c) of the Fifth Schedule to the FIRS Act does not make the payment of security deposit a condition precedent to the prosecuting of an appeal by a taxpayer.

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<sup>1</sup> Emenite Limited vs. FIRS - TAT/SEZ/012/2021

2. A taxpayer would only be ordered by the TAT to pay the security deposit required under Paragraph 15(7)(c) of the Fifth Schedule to the FIRS Act where the FIRS is able to establish to the satisfaction of the TAT any of the 3 (three) conditions stipulated in Paragraph 15 (7) (c) of Fifth Schedule to the FIRS Act, namely, that: (a) the appellant has for the year of assessment concerned, failed to prepare and deliver to the Service returns required to be furnished under the relevant provisions of the tax laws (b) the appeal is frivolous or vexatious or is an abuse of the appeal process (c) it is expedient to require the appellant to pay an amount as security for prosecuting the appeal.
3. In the instant case, the FIRS failed to satisfy any of the requirements prescribed under Paragraph 15(7) (c) of the FIRS Act to invoke the TAT's powers to order Emenite to provide security deposit for prosecuting the appeal.

### Comments

As rightly held by the Tribunal, the TAT Rules were made by the Minister of Finance pursuant to the powers granted to her under Paragraph 21 of Fifth Schedule to the FIRS Act. Being a subsidiary legislation, the Rules cannot prescribe conditions for the grant of an application for the payment of security deposit that are inconsistent with those stipulated in Paragraph 15(7) (c) of the FIRS Act. Also, the conditions in Paragraph 15 (7) (c) must be proven to the Tribunal's satisfaction before an order for deposit of security can be granted.

The Tribunal's decision in this case on the effect of Paragraph 15 (7) of the Fifth Schedule to the FIRS Act marks a departure from and blunts the effect of the earlier decision of the Lagos Zone of the TAT in the matter between Multichoice Nigeria Limited and FIRS<sup>2</sup>, delivered on 24th August 2021, where it was held that payment of the security deposit required under Paragraph 15 of the Fifth Schedule to the FIRS Act constitutes a condition precedent to the hearing of an appeal.

The implication of this decision is that going forward, a taxpayer who intends to challenge a tax assessment imposed by the FIRS would no longer have to worry about the burdensome requirement of payment of 50% of the disputed tax under Order 3 Rule 6 (a) of the TAT Rules. Furthermore, where the FIRS or any taxing authority wishes to rely on Paragraph 15(7)(c) of the Fifth Schedule to the FIRS Act to urge the TAT to mandate an aggrieved taxpayer to pay deposit as security for prosecuting the appeal, such order can no longer be made by the TAT as a matter of course as suggested by the decision in the *Multichoice case*. FIRS must prove the existence of the conditions stipulated in Paragraph 15(7)(c) of the Fifth Schedule to the FIRS Act before an appellant can be ordered to pay a deposit as security for prosecuting an appeal.

Click [here](#) for more details on this matter.

*This update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how this update could apply to you or your business, please contact [taxteam@uubo.org](mailto:taxteam@uubo.org).*

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<sup>2</sup> Unreported decision of the TAT, Lagos Zone in Appeal No. TAT/LZ/CIT/062/2021.