



Tax Alert

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Minister of Finance approves TAT (Procedure) Rules, 2021

The Honourable Minister of Finance, Budget and National Planning, Mrs. Zainab Shamsuna Ahmed, on 10 June 2021 approved the Tax Appeal Tribunal (TAT) (Procedure) Rules, 2021 ("the Rules"), pursuant to her powers under Section 61 of the Federal Inland Revenue Service (Establishment) Act, 2007 (as amended).

The Rules, which replaces the defunct TAT (Procedure) Rules, 2010, enables the Tribunal to deal justly, fairly and expeditiously with appeals and encourages and promote the settlement of disputes among parties.

We have highlighted below some key changes to the Rules as follows:

- Requirement for taxpayers to pay 50% of any disputed amount into a designated account of the TAT as security for prosecuting an appeal, prior to commencement of appeals.
- Modification of some old definitions, and interpretation of additional terms such as "*appeal*", "*notice of appeal*", "*decision of the Tribunal*" etc.
- Recognition of service of documents or processes carried out by email or such other electronic means as the Tribunal may permit.
- Recognition of virtual/ remote hearing of applications and delivery of rulings by the Tribunal.
- Introduction of a six-month timeframe from the date of commencement of trial for the TAT to conclude and provide a decision.

- Provisions for hearing of ex-parte and non-contentious applications in Chambers as well as summary appeal procedure for liquidated money demands.

Although the TAT (Procedure) Rules, 2010 is effectively replaced, the Rules allows for “*anything done*” under the defunct 2010 Rules to remain valid, as long as such is not inconsistent with the provisions of the new Rules, thereby grandfathering existing matters and ensuring a smooth transition.

Comments

The implementation of the new Rules emphasizes the Federal Government’s commitment to improving Nigeria’s tax landscape, which commenced with the enactment of Finance Acts, 2019 and 2020. The amendments to the TAT (Procedure) Rules, which is the initial forum for formal tax adjudication in Nigeria, align with changes in global tax administration systems and would ensure that the TAT’s procedures are up to date and give taxpayers increased confidence in the system.

However, the introduction of a blanket requirement for taxpayers to make a 50% deposit of disputed amounts to the TAT may act as a clog in the wheels of justice and discourage taxpayers from pursuing recourse from the TAT. This requirement also deviates from the provisions of the Section 15(7) of Federal Inland Revenue (Establishment) Act that permits such deposits only on certain circumstances. Further, there is a risk that the blanket requirement may make the TAT more litigious in its outlook, and takes it away from the less formal dispute resolution framework it was designed to be. It may also increase the risk of tax disputes being resolved based on rules of court or technicality, rather than substantive justice, a weakness of the formal court system which the TAT is set up to provide.

The role of the Tax Commissioners are not those of “*judges*” in the constitutional sense and so, rather than becoming a part of the judiciary, the TAT should be preparatory to, and supplementary to the formal judicial system. Therefore, the changes may revive the challenges on the legality of the TAT and its encroachment on the constitutional preserve of the Federal High Court on revenue and taxation issues.

The Honourable of Minister should, therefore, consider making the TAT Rules less litigious or court-like to ensure the TAT maintains its edge as a speedy and non-litigious tax dispute resolution forum.

Please click [here](#) to download a copy of the Rules

For further enquiries, please contact:

Wole Obayomi
ng-fmtaxenquiries@ng.kpmg.com

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