

Tax Alert

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Federal High Court Adopts New Tax Appeal Rules

The Chief Judge (CJ) of the Federal High Court (FHC), Honorable Justice J.T. Tsoho, recently approved the FHC Tax Appeal (Procedure) Rules, 2022 ("the Rules"), pursuant to his powers under Section 44(1) & (2) of the FHC Act and Paragraph 17(5) of the Fifth Schedule to the Federal Inland Revenue Service (FIRS) (Establishment) Act. This follows the FHC (FIRS) Practice Directions, 2021 issued by the CJ in May 2021.

The Rules repeals the FHC (Tax Appeal) Rules, 1992 effective 10 January 2022, and provides guidance on the preparation of notices of appeal against decisions of the Tax Appeal Tribunal ("TAT"), and other issues relating to the commencement and prosecution of tax appeals at the FHC.

The most significant change introduced by the Rules is the requirement under Order V, Rule 1 for tax debtors to deposit any judgment debt from the TAT's ruling in an interest yielding account of the FHC as a security deposit for prosecuting an appeal. Rule 1 also provides that an appeal may be struck out or dismissed where a taxpayer fails to make such security deposit.

Some other notable changes introduced in the Rules include:

1. Provision for accelerated hearing of tax appeals and limitation of oral arguments to clarification of points in parties' briefs of argument;
2. Introduction of electronic means for service of court processes and hearing notices such as SMS, emails, WhatsApp or other platform as advised by the Court.
3. Reduction of timelines for the service of appellants' and respondents' written briefs from 30 days each to 15 days each.
4. Specification of timelines for transmission of records of appeal to the FHC.
5. Update of the definition of some of the terms in the Rules.

Comments

The downturn in global petroleum markets in recent years and its attendant impact on the Nigerian economy has caused the Nigerian government to pay closer attention to generating revenue from non-oil sources. This is evidenced by the consistent and incremental updates made to existing tax laws by the Finance Acts 2019, 2020 and 2021. The amendment of the FHC (Tax Appeal) Rules aligns with the overall policy direction of the government in improving tax administration in Nigeria.

However, the requirement for taxpayers to pay TAT judgment debts into court before appeals can be heard would likely fetter the right of aggrieved taxpayers to lawfully challenge the TAT's adverse decisions. Given the current economic climate, taxpayers may be constrained by business exigencies

from depositing such economic lifelines to court. Indeed, it is arguable that this requirement may be a breach of taxpayers' fundamental right to fair hearing guaranteed under the 1999 Constitution, given that the FIRS would not be required to make similar deposits to court.

Some of the innovations under the new Rules, such as the provision for electronic service of documents and accelerated hearings, are commendable because they aim to ease adjudication of tax disputes.

However, the Rules can go further by including provisions for electronic payments for filings and virtual/online court proceedings, to keep in tune with the current realities.

Undoubtedly, the Rules has some merits for its intended purpose of expediting the tax litigation process and revenue generation in challenging times such as this. However, it is hoped that the CJ would revisit the Rules to ensure that the rights of taxpayers are balanced in an equitable manner against the revenue generation drive of the government.

Our views do not constitute a legal or actionable advice. Hence, our readers should consult their legal advisors to address their concerns.

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

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