



A Review of the Federal High Court Tax Appeal Rules 2022

On 1 February 2022, the Honourable Chief Judge of the Federal High Court, Honourable Justice John Terhamba Tsoho issued the Federal High Court Tax Appeal Rules 2022 (the “Rules”) pursuant to his powers under Section 34(1)(2) of the Federal High Court Act and paragraph 17(5) of the Federal Inland Revenue Service (Establishment) Act (FIRS Act).

The Rules which became effective on 10 January 2022 repeals the Federal High Court Tax Appeal Rules 1992 and introduces far-reaching changes to the tax appeal procedure before the Federal High Court (“FHC”). Most notably, the Rules require a taxpayer to deposit the judgment sum in court, introduces electronic filing and service of processes, and stipulates terms for the expeditious determination of tax appeals.

This newsletter discusses the most pivotal of these changes.

Security Deposit for Prosecuting Appeal

One of the most critical changes contained in the Rules is the provision of Order V of the Rules which requires a taxpayer challenging the decision of the Tax Appeal Tribunal (“Tribunal”) to deposit the judgment debt in an interest yielding account maintained by the Chief Registrar of the Court failing which the appeal will not be heard. The Rules further provide that the appeal may be struck out or dismissed if the appellant fails to deposit the judgment sum as provided in Order V.

Part Heard Matters Are Excluded From The Application Of The Rules

Order X of the Rules provides that Rules will not apply to part heard matters. Although the Rules does not state what constitute “part heard” matters, courts have defined part heard matters to mean matters in respect of which hearing has commenced as opposed to matters which are

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pending before the court but in respect of which hearing is yet to commence. This means that the Rules would apply to all matters pending before the FHC except for matters in respect of which hearing has commenced.

Other notable provisions of the Rules include:

Appeal to be on points of law: the Rules provide that appeals against the decision of the Tribunal shall be on points of law.¹ Although this provision was already included in the FIRS Act², it is curious that the FHC has chosen to include this requirement in appeals over tax matters considering that the Constitution grants the FHC original jurisdiction over matters relating to taxation.

Expeditious determination of tax appeals: by Order V Rule 6 of the Rules, a judge to whom a tax appeal is assigned shall give the appeal accelerated hearing. The Rules further empower a judge before whom a tax appeal is brought to abridge the time for doing an act under the Rules. These provisions are commendable as they would ensure that justice is dispensed expeditiously in tax appeal matters and would ultimately improve the tax administration system in Nigeria.

Electronic service of processes: court processes and hearing notices may now be served by electronic means including Short Message Service (SMS), emails, WhatsApp or as may be directed by the court³. This provision allows for the adoption of digital solutions in justice administration through the application of modern technologies and will improve the justice administration system for tax appeals.

Reduction of timeline for service of brief of arguments: the time for service of appellant and respondent briefs have been abridged by the new Rules. an appellant is required to file and service a written brief of argument on the respondent within fifteen (15) days of service of the records of appeal on him⁴. This is different from the thirty (30) days provided by the repealed Rules. similarly, a respondent on whom the appellant's brief is served is required to file and serve his brief of argument within 15 days of the service on him of the appellant's brief⁵.

The Rules further provide that the appellant is entitled to file a reply within seven (7) days of the service on him of the respondent's brief⁶.

Conclusion

The new Rules undoubtedly contain laudable provisions such as the provisions relating to expeditious determination of tax appeals and application of modern technologies in service of court process, which altogether ultimately improve the administration of justice in tax appeals.

However, the requirement for a taxpayer challenging the decision of the Tribunal to deposit the judgment debt into court as a condition precedent to hearing of its appeal will undoubtedly create additional difficulties for taxpayers who seek justice. In recent times, the rules of procedure relating to tax appeals have imposed onerous obligations on taxpayers seeking to challenge tax assessments. For example, in 2021, the Chief Judge of the FHC issued the Federal High Court (Federal Inland Revenue Service) Practice Directions 2021 which requires a taxpayer to deposit 50% of the disputed amount as a condition precedent to being heard by the court. The Tax Appeal

¹ Order 1 Rule 1.

² Paragraph 17(1) FIRS Act.

³ Order VII(1)(d).

⁴ Order IV(2)(d).

⁵ Order IV(2)(e).

⁶ Order IV(3)(III).

Tribunal (Procedure) Rules issued by the Minister of Finance in the same year had similar provisions. These provisions have generated controversy and has been described by tax practitioners and taxpayers as infringing on the right to fair hearing and access to court.

It is hoped that the Rules will be revisited and amended to relax provisions which make it difficult for the taxpayer to access the court to challenge the decisions of the Tribunal.