

December 3, 2018

LEGAL ALERT**High Court Holds that the TAT is the Proper and Only Venue to Commence an Action Challenging Any Tax Assessment Arising from the Personal Income Tax Act****1. Introduction**

On 13th November 2018, the High Court of Lagos State in *LIRS v. Ecoserve Limited (Suit No.: LD/REV/239/2013)*, held that any taxpayer aggrieved with a personal income tax assessment is expected to exhaust all internal administrative remedies set out under the Personal Income Tax Act (PITA) before approaching the regular courts. Such administrative remedies include filing an appeal at the Tax Appeal Tribunal (TAT). The court also held that the High Court does not have original jurisdiction to entertain any action challenging a personal income tax assessment.

Lagos State Internal Revenue Service (LIRS) commenced this action pursuant to Section 104 of PITA to enforce the payment of taxes from Ecoserve Limited. In response, Ecoserve Limited filed a statement of defence and a counter-claim. LIRS, subsequently, discontinued its suit leaving the counter-claim filed by Ecoserve Limited as the only matter to be resolved by the court. The counter-claim sought *inter alia* to restrain LIRS from taking steps to distrain the premises/property of Ecoserve Limited.

At the hearing of the counter claim, the learned Judge invited counsel to the parties to address the court on whether the court has jurisdiction to hear the counter-claim in view of the provisions of PITA on tax assessments and appeals.

2. Decision of the Court**(i) Procedure for Challenging a PITA Assessment**

The court summarised the procedure for challenging a tax assessment under PITA as follows:

- within 30 days of being served with a tax assessment, an aggrieved taxpayer is expected to object to the assessment by serving the tax authority with a notice of objection seeking to set aside or revise the tax assessment;
- the tax authority may upon review of additional information set aside or amend/revise the assessment;
- where, the taxpayer and the tax authority does not agree with the grounds set out in the notice of objection, the tax authority may issue the taxpayer with a notice of refusal to amend (NORA); and
- pursuant to Section 60 PITA the aggrieved taxpayer who has received a NORA shall file an appeal at the TAT, if he is desirous of challenging the NORA.

(ii) The High Court does not have original jurisdiction to hear appeals arising from tax assessment made pursuant to PITA

The High Court held that it does not have the jurisdiction to at first instance hear appeals arising from tax assessment made pursuant to PITA. According to the court the only PITA issue which the regular courts have power to entertain at the first instance is enforcement procedure set out under Section 104

of PITA. The court held that the failure of the Counter-claimant to exhaust the administrative remedies set out under PITA rendered the tax assessment against the Counter-claimant final and conclusive.

(iii) A taxpayer cannot file a counter claim in respect of an assessment which has become final and conclusive and where the tax authority has commenced an action to distrain the property of the taxpayer

The court also held that once the tax authority has commenced enforcement proceedings under Section 104 of PITA, the taxpayer cannot validly file a counter claim against such action. According to the court, the rationale for the above is that at the tax enforcement stage i.e. action to distrain, *“the role of the taxpayer is expected to be limited to defend the enforcement and not to make claims in the suit.”*

3. Implications of the judgment

- Based on this decision, taxpayers aggrieved with any assessment made pursuant to PITA is expected to commence any appeal challenging the assessment at the TAT and not at the High Court.
- This decision is at variance with the earlier decision of the Lagos State High Court in Chemiron International Limited v. LIRS (SUIT NO: LD/3246CMW/2017) case where the Court held that an action challenging the PAYE tax assessment imposed by LIRS which was commenced by a taxpayer at first instance at the High Court is competent based on Section 272 of the Constitution of the Federal Republic of Nigeria, 1999. It is important to note however, that the facts of Chemiron case are distinguishable from the facts of this case. Chemiron filed its action at the High Court upon being served with a notice of intention to distrain by LIRS. Thus, even though the substantive prayers were directed against the tax assessment, the cause of action itself arose from the notice of distrain that was served on Chemiron. Chemiron did not also in that case file a counter-claim. Based on the above, the decision in this case may not affect the overall validity of the decision in Chemiron.
- The above notwithstanding, the question of whether appeals against assessments imposed pursuant to PITA can be commenced at the State High Court will continue to be hotly debated issue until it is settled by a higher court.

Maxwell Ukpebor
+234 803 960 0520

Olumayowa Oluwole
+234 803 689 9189

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