

June 24, 2019

## **TAX APPEAL TRIBUNAL RULES THAT GRATUITIES ARE NOT TAXABLE UNDER PITA**

### **Introduction**

On 20<sup>th</sup> June 2019, the Tax Appeal Tribunal (TAT), South-East Zone (in **Appeal Number: TAT/SEZ/002/2017 between Nigerian Breweries Plc v. Abia State Board of Internal Revenue**) held that gratuities are wholly exempt from personal income tax.

The respondent subjected the gratuities the appellant paid to its former employees to personal income tax (PIT), on the basis that Paragraph 18(b) of the 3<sup>rd</sup> Schedule to the Personal Income Tax Act (PITA) provides that gratuities above N100,000 shall be subject to tax. The appellant objected to the assessment contending that gratuities are wholly exempt from tax following the amendment of section 3(1) of PITA by the Finance (Miscellaneous Taxation Provisions) (No. 3) Decree No. 32 of 1996. The amendment deleted gratuities from the list of incomes subject to personal income tax. The appellant argued that in view of the conflict between section 3(1) of PITA (the principal Act) and Paragraph 18(b) of the 3<sup>rd</sup> Schedule to PITA, the provisions of the principal law must prevail.

### **Decision**

The TAT held as follows:

- (i) Gratuities are not taxable under PITA because section 3(1) of PITA which is the charging section of the PITA no longer set out gratuities among the incomes that are subject to PIT. The position of the TAT is that any income which is not included among the incomes that are subject to tax under the charging section cannot be subjected to tax by any other provision of PITA. Furthermore, the TAT held that where there is a conflict between the provisions of a taxing law, the interpretation favourable to the taxpayer should be adopted. The TAT held that by deleting gratuities from the list of incomes subject to PIT under section 3(1) of PITA, it was the intention of the Legislature to wholly exempt gratuities from personal income tax.
- (ii) The TAT also held that the competence of the appeal is not affected by the fact that it was commenced against “Abia State Board of Internal Revenue”. According to the TAT, the “Abia State Board of Internal Revenue” and the “Abia State Internal Revenue Service” are recognised by law as referring to the respondent.

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