

**JURISDICTION, INDEPENDENCE AND OPERATIONS OF THE TAX APPEAL TRIBUNAL IN NIGERIA: CASE FOR ESTABLISHMENT OF TAX DIVISIONS AT THE SUPERIOR COURTS\***

**Abstract**

*The Tax Appeal Tribunal (TAT) was established under the Federal Inland Revenue Service (Establishment) Act, 2007 for the resolution of disputes arising from the operations of the said Act and tax statutes under the First and Fifth Schedules thereof. However, the Tribunal and its enabling law has been criticised for usurping the powers and jurisdiction of the Federal and State High Courts, the procedure for appointment of Tax Appeal Commissioners and for other operational issues. The objective of this paper is to examine the criticisms against the jurisdiction, independence and operations of the Tax Appeal Tribunal (TAT), compare same with what is obtainable in other jurisdictions and also with the National Tax Policy, 2017 with a view to making recommendations for a more effective and efficient tax dispute resolution in Nigeria. The methodology adopted in this study is doctrinal. This paper found that the criticisms against the TAT are valid and to address these shortcomings, this paper makes a case for establishment of tax divisions at the various levels of the superior courts of record in Nigeria, instead of establishment of stand-alone tax tribunals or courts which will only lead to proliferation of specialised tribunals and courts.*

**Keywords:** Tax Appeal Tribunal, Tax Courts, Tax Dispute Resolution, Jurisdiction, Independence, Nigeria.

**1. Introduction**

The era of reliance on oil as a major source of government revenue in Nigeria is gradually fading, especially in the face of its adverse effects, such as environmental pollution. Hence, the Government in Nigeria, at the Federal, State and Local levels are focusing on taxation as a veritable means of generating income needed for the running of the affairs of government. A very key consideration of the government in its bid to harness tax revenue is the tax adjudication machinery. Hence in 2007, the National Assembly enacted the Federal Inland Revenue Service (Establishment) Act, 2007,<sup>1</sup> which Act established the Tax Appeal Tribunal.<sup>2</sup> The TAT is the body, presently charged with the settlement of tax disputes in Nigeria. Specifically, the Fifth Schedule to FIRS Act empowers the TAT to exercise jurisdiction over all the laws<sup>3</sup> which the Federal Inland Revenue Service<sup>4</sup> is empowered to administer under the FIRS Act. The Act and the TAT have been criticized by several writers<sup>5</sup> for usurping the original jurisdiction of the State and Federal High Courts under the Constitution of the Federal Republic of Nigeria, 1999 (as amended),<sup>6</sup> the manner in which the Tax Appeal Commissioners are appointed which impairs their independence,<sup>7</sup> amongst other criticisms.

**2. Establishment, Jurisdiction and Powers of the Tax Appeal Tribunal**

The TAT was established under section 59 of the FIRS Act. The section provides for the establishment of the TAT as provided for in the Fifth Schedule to the Act.<sup>8</sup> The section went further to provide that the TAT shall have power to settle disputes arising from the operations of the FIRS Act and under the First Schedule. Hence, by virtue of the FIRS Act, the TAT was established, thereby replacing the Body of Appeal Commissioners established under the Companies Income Tax Act<sup>9</sup> and the Personal Income Tax Act.<sup>10</sup> Paragraph 1(1) of the Fifth Schedule to the FIRS Act, re-emphasizes the provisions of section 59 of the FIRS

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<sup>1</sup> Hereinafter referred to as 'the Act' or 'the FIRS Act'.

<sup>2</sup> Hereinafter referred to as 'the Tribunal' or 'the TAT'.

<sup>3</sup> These laws are Companies Income Tax Act Cap. C21 LFN, 2004 (as amended), Petroleum Profits Tax Act Cap. P13, LFN, 2004 (as amended), Personal Income Tax Act, Cap. P8, LFN, 2004 (as amended), Capital Gains Tax Act Cap. C1, LFN, 2004 (as amended), Value Added Tax Act Cap. V1 LFN, 2004 (as amended), Stamp Duties Act Cap. S8, LFN, 2004 and Taxes and Levies (Approved List for Collection) Act Cap. T2, LFN, 2004.

<sup>4</sup> The Federal Inland Revenue Service (hereinafter referred to as 'the Service') was established under section 1 of the Federal Inland Revenue Service (Establishment) Act of 2007 and the laws it administers are listed in the First Schedule to the said Act.

<sup>5</sup> These writers include GA Oladele, 'Constitutionality of the Tax Appeal Tribunal in Nigeria' (2009) 3 & 4 *UILJ*, 164 and K Adedokun, 'An Analysis of the Nature and Scope of Jurisdiction Tax Appeal Tribunal in Nigeria' (2016) <[https://www.academia.edu/34293121/AN\\_ANALYSIS\\_OF\\_THE\\_NATURE\\_AND\\_SCOPE\\_OF\\_JURISDICTION\\_TAX\\_APPEAL\\_TRIBUNAL\\_IN\\_NIGERIA.docx](https://www.academia.edu/34293121/AN_ANALYSIS_OF_THE_NATURE_AND_SCOPE_OF_JURISDICTION_TAX_APPEAL_TRIBUNAL_IN_NIGERIA.docx)> accessed on 19 July 2021.

<sup>6</sup> Hereinafter referred to as 'the Constitution.'

<sup>7</sup> IA Akinloye, 'Appraising the Constitutionality and Independence of the Nigerian Tax Appeal Tribunal' (2017) 8 (2) *GRBPL*.

<sup>8</sup> Section 59(1).

<sup>9</sup> Cap. C20, Laws of the Federation of Nigeria, 2004 (as amended) (hereinafter referred to as 'the CITA').

<sup>10</sup> Cap. P8, Laws of the Federation of Nigeria, 2004 (as amended) (hereinafter referred to as 'the PITA').

Act by providing that ‘there shall be established a Tax Appeal Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Schedule and under the First Schedule.’ Specifically, paragraph 11 of the Fifth Schedule to the Act provides that the Tribunal shall have power to adjudicate disputes, and controversies arising from the following tax laws: Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act<sup>11</sup>, Value Added Tax Act<sup>12</sup>, Capital Gains Tax Act<sup>13</sup> and any other law contained in or specified in the First Schedule to the Act or other laws made or to be made from time to time by the National Assembly. The First Schedule made reference to all the laws mentioned in paragraph 11 of the Fifth Schedule and in addition, mentioned the following laws: the Stamp Duties Act<sup>14</sup> and the Taxes and Levies (Approved List for Collection) Act.<sup>15</sup> The TAT has powers to summon and enforce the attendance of any person and examine him on oath; require the discovery and production of documents; receive evidence on affidavits; call for the examination of witnesses or documents; review its decisions; dismiss an application for default or deciding matters ex parte; and do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under the Schedule.<sup>16</sup> On composition and appointment of members of the TAT, paragraph 2(1) of the Fifth Schedule to the FIRS Act, provides that the TAT shall consist of five members (referred to as ‘Tax Appeal Commissioners’) to be appointed by the Minister of Finance. Additionally, paragraph 8 of same Fifth Schedule provides that the question as to the validity of the appointment of any person as a Tax Appeal Commissioner shall not be the cause of any litigation in any court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal.

### 3. Criticisms of the Tax Appeal Tribunal and its Enabling law

The major criticisms against the establishment of the Tax Appeal Tribunal are set out and discussed below.

#### Encroachment on the Jurisdiction vested on the Federal High Court

As regards the jurisdiction of the Federal High Court, the criticisms against the jurisdiction of the Tribunal revolves around section 251(1)(a) and (b) of the Constitution. The said subsections provides that the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party; and connected with the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation. However, as noted earlier, the Federal Inland Revenue Service (Establishment) Act,<sup>17</sup> on the other hand, set out the scope of the jurisdiction of the Tribunal to cover all federal tax legislations listed in paragraph 11 of the Fifth Schedule and the First Schedule to the FIRS Act. Other pertinent issues about the jurisdiction of the Tribunal are the provisions of paragraphs 17 and 20(3) of the Fifth Schedule to the Act. While paragraph 20(3) ‘deemed’ the Tribunal, ‘a civil court for all purposes’ and that all its proceedings shall be deemed to be judicial proceedings, paragraph 17(1) and (3) of the Fifth Schedule to the Act provides that the decisions of the Tribunal shall be appealable only on points of law to the Federal High Court. This provision deprives the Federal High Court of the jurisdiction to decide appeals from the Tribunal on issues of both law and fact. This apparent conflict in jurisdiction of the Federal High Court and that of the TAT has been the subject of several litigations and judicial pronouncements, at the TAT, Federal High Court and the Court of Appeal. A few of these cases shall be discussed. In *FIRS v General Telecom*,<sup>18</sup> the Tribunal was called upon to decide whether its jurisdiction conflicted with that of the Federal High Court. The Tribunal held that its jurisdiction did not conflict with that of the Federal High Court on the ground that the Tribunal is not a court as envisaged under section 251 of the Constitution. The Tribunal noted that paragraph 20(3) deemed the TAT to be a court because it is not a court.

At the Federal High Court level, the Court handed down two conflicting decisions. The first was in *TSKJ II Construces Internacionals Sociadade LDA v. Federal Inland Revenue Service*,<sup>19</sup> decided by the Federal High

<sup>11</sup> Cap. P13, LFN, 2004 (as amended).

<sup>12</sup> Cap. V1 LFN, 2004 (as amended).

<sup>13</sup> Cap. C1, LFN, 2004 (as amended).

<sup>14</sup> Cap. S8, LFN, 2004.

<sup>15</sup> Taxes and Levies (Approved List for Collection) Act Cap. T2, LFN, 2004. This law was declared void by the Court of Appeal for being inconsistent with the Constitution in the case of *Uyo Local Government Council V. Akwa Ibom State Government & Anor* (2020) LPELR-49691 (CA).

<sup>16</sup> The FIRS Act, 5<sup>th</sup> Schedule, paragraph 20(2).

<sup>17</sup> The FIRS Act, section 59(1) and (2).

<sup>18</sup> 8 All NTC 135.

<sup>19</sup> (2014) 9 All NTC 101.

Court, Abuja Division which held that the Tribunal's jurisdiction conflicted with that of the Federal High Court under section 251 of the Constitution. The court declared Section 59(1) and (2) of the FIRS Act void for being inconsistent with Section 251(1)(a) & (b) of the 1999 Constitution as amended, by virtue of Section 1(3) of the 1999 Constitution. The second was the case of *Nigerian National Petroleum Corporation v. Tax Appeal Tribunal & Ors*,<sup>20</sup> where the Federal High Court, Lagos Division, held that the jurisdiction of the Federal High Court is to the exclusion of any other court. The court held further that the Tribunal not being a court, the jurisdiction conferred on the Tribunal by its enabling law did not conflict with the jurisdiction conferred on the Federal High Court, more so, where appeals lie from the Tribunal to the Federal High Court. In *CNOOC Exploration and Production (Nig) Ltd & Anor v. NNPC & Anor*,<sup>21</sup> CNOOC and South Atlantic Petroleum Limited (the contractors/Appellants) and the Nigerian National Petroleum Corporation (NNPC) are partners to OML 130 Production Sharing Contract (PSC) aimed at conducting petroleum operations in the contract area. Under the PSC, the contractors bear the full cost of operations, prepare the petroleum profits tax returns on behalf of the PSC parties and determine the lifting allocation of available crude oil between the parties. The NNPC is required to file the petroleum profits tax (PPT) returns prepared by the contractors with the FIRS. The appellants prepared the petroleum tax returns and forwarded same to the NNPC for delivery to the FIRS. However, the NNPC filed different tax returns. The FIRS made assessments for Tertiary Education Tax and Petroleum Profit Tax on the appellants and being dissatisfied with the assessments, they filed notices of objection and upon issuance of notices of refusal to amend the assessments, the appellants appealed to the Tribunal. At the Tribunal, the NNPC (1<sup>st</sup> respondent) challenged the jurisdiction of the Tribunal to hear the appeal on the ground that the subject matter of the dispute was within the ambit of the exclusive jurisdiction of the Federal High Court. The Tribunal held that it had jurisdiction relying on *FIRS v General Telecom*.<sup>22</sup> 1<sup>st</sup> Respondent appealed against the ruling on same grounds urging the Federal High Court to set aside the decision of the TAT. The Federal High Court held that the Tribunal by exercising jurisdiction in matters that relate to the taxation of companies had encroached upon the exclusive jurisdiction of the Federal High Court. The Appellants being dissatisfied appealed to the Court of Appeal. Amongst other issues, the Court of Appeal considered the issue as to whether the jurisdiction of the Tax Appeal Tribunal to entertain the Appellants' appeals as provided under paragraph 20(3) of the Fifth Schedule to the Act encroached on the exclusive jurisdiction of the Federal High Court under section 251 of the Constitution. The Court of Appeal while relying on its two earlier decisions in *Esso Exploration and Production Nig. Ltd & Anor v. NNPC*<sup>23</sup> and *SNEPCO v. NNPC*<sup>24</sup>, answered the question in the negative, holding that the Tribunal's jurisdiction as set out in the Act does not infringe on the exclusive jurisdiction of the Federal High Court under section 251(1) of the Constitution because an appeal to the Tribunal is a condition precedent to filing an action at the Federal High Court. Although the reasoning of the Tribunal and the Courts on the above issue are commendable, it does not take away the fact that the word 'deemed' as used under paragraph 20(3) of the Fifth Schedule to the Act, operates to confer on the Tribunal the status of a court. The word 'deemed' has been defined as 'to treat (something) as if (1) it were really something else, or (2) it has qualities it does not have.'<sup>25</sup> This is evident in proceedings in our courts, where processes although not properly filed and served are deemed to have been properly filed and served upon an application to regularize such processes. Hence, a document which otherwise would not be regular before the court becomes regular. Secondly, the Federal High Court does not have complete appellate jurisdiction over appeals from the Tax Appeal Tribunal because paragraph 17 of the Fifth Schedule to the Act restricts appeals to issues of law. Thirdly, section 4(8) of the Constitution prohibits the National Assembly from making laws which ousts or purports to oust the jurisdiction of the courts. Paragraph 17 of the Fifth Schedule clearly ousted the jurisdiction of the Federal High Court on issues of law.

It is the submission of this paper that the provisions of the Act providing for the jurisdiction of the TAT are *ultra vires* the Constitution.

### **Encroachment on State High Courts' Original Jurisdiction**

The jurisdiction of State High Courts over revenue and State taxes can be gleaned from a combined reading of section 251(a) and (b) and section 272(1) of the Constitution. The later section provides that:

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<sup>20</sup> (2014) 9 All NTC 119.

<sup>21</sup> (2017) LPELR-43800(CA).

<sup>22</sup> *Supra*.

<sup>23</sup> Unreported Appeal No CA/A/507/2012 delivered on 22/7/2016.

<sup>24</sup> Unreported Appeal No. CA/A/208/2012 delivered on 31/8/2016.

<sup>25</sup> B Garner, *Black's Law Dictionary* (8<sup>th</sup> edn, New York: Thompson West, 2004) p.477.

Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

By the above provision, which is subject to section 251 of the Constitution, any other matter which is outside the exclusive jurisdiction of the Federal High Court, in this case the taxes and revenue of States, persons subject to State taxation and disputes involving agencies of State governments on tax or revenue matters, fall under the original exclusive jurisdiction of State High Courts. A careful reading of the FIRS Act reveals that State High Court was never mentioned in the said law. Specifically, paragraph 17 of the Fifth Schedule to the FIRS Act provides that appeals shall lie from decisions of the Tribunal on points of law to the Federal High Court. The Act therefore failed to recognize that State High Courts' jurisdiction over disputes relating to some aspects of personal income tax and capital gains tax for individuals. This is more worrisome in view of the decision of the Lagos State High Court in *LIRS V Ecoserve Ltd*,<sup>26</sup> where it was held that jurisdiction to determine disputes relating to personal income tax assessments is vested in the TAT, not the State High Court, by virtue of sections 58-60 of the PITA. The implication of this decision is that State High Courts have been divested of their sacrosanct jurisdiction under the Constitution.<sup>27</sup> Umenweke and Ezeibe have observed that the provisions of Section 60 of PITA ceding to Tax Appeal Tribunal without any qualification, powers to entertain all cases arising from the operations of the Personal Income Tax Act is contrary to the Constitution.<sup>28</sup> Once again, by paragraph 17 of the Fifth Schedule to the Act, even if appeals were to go to State High Courts, they would only be on points of law, contrary to provisions of section 272 of the Constitution. Again, States do not have an input by way of consultations in the establishment of the Tribunal, the appointment of Tax Appeal Commissioners and the running of the Tribunal. To address the above issue, it has been suggested that the Act ought to have provided for establishment of appeal tribunals for States.<sup>29</sup> However, this position is not tenable from an economic point of view, especially in this era of economic recession where State governments rely heavily on allocations from the Federal Government and yet find it difficult to pay State workers' salaries.<sup>30</sup> Additionally, this would lead to proliferation of tax tribunals.

### Independence of the Tax Appeal Tribunal

Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides thus:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or *other tribunal established by law* (emphasis ours) and constituted in such a way as to secure its independence and impartiality.

The focus here is on the phrase 'other tribunal established by law and constituted in such a way as to secure its independence and impartiality.' The above provision of the Constitution embodies the twin pillars of justice which are *audi alteram partem*<sup>31</sup> and *nemo iudex in causa*.<sup>32</sup> The second pillar of justice, which means that one should not be a judge in his case, is apposite to this study. On composition and appointment of members of the Tribunal as can be seen from paragraph 2(1) of the Fifth Schedule to the Act, which provides as follows: 'A tribunal shall consist of five members (hereinafter referred to as 'Tax Appeal Commissioners')

<sup>26</sup> Unreported Suit No. LD/REV/239/2013, judgment delivered on 13/11/2018.

<sup>27</sup> Andersen Tax LP, 'Lagos State High Court Rules That The Tax Appeal Tribunal Has Original Jurisdiction To Determine Matters Relating To Personal Income Tax' (2018) <<http://www.mondaq.com/Nigeria/x/763328/tax+authorities/Lagos+State+High+Court+Rules+that+the+Tax+Appeal+Tribunal+has+Original+Jurisdiction+to+Determine+Matters+Relating+to+Personal+Income+Tax>> accessed on 19 July 2021.

<sup>28</sup> MN Umenweke and KK Ezeibe, 'Nigerian National Petroleum Corporation (NNPC) v Tax Appeal Tribunal & 3 Others – The Constitutionality of the Jurisdiction of The Tax Appeal Tribunal Revisited', (2015) 3 (2) *Int. J. Business Law & Research*. <<http://seahipaj.org/journals-ci/june-2015/IJBLR/full/IJBLR-J-7-2015.pdf>> accessed on 25 July 2021.

<sup>29</sup> Sa'adu, *art cit*, p.115.

<sup>30</sup> It was in the news recently that the Edo State governor, Mr. Godwin Obaseki revealed that the Central Bank of Nigeria had to print about N60 billion naira notes to disburse to States as federal allocation for the month of March, 2021 on account of inadequacy of funds. How then can States manage the establishment of their own appeal tribunals, pay the tax commissioners and staff when it is presently battling to pay State workers? See *The Nigerian Tribune* of April 16, 2021, available at <<https://tribuneonlineeng.com/n60bn-printed-money-controversy-monetary-rascality-must-be-stopped-obaseki-tells-fg/>> accessed on July 8, 2021.

<sup>31</sup> This is a Latin maxim which means 'hear both parties.'

<sup>32</sup> This is a Latin maxim which means 'one cannot be a judge in his own case.'

to be appointed by the minister'. The Minister here is the Minister of Finance.<sup>33</sup> The Minister of Finance is an agent of the executive arm of the Federal Government, while the Federal Inland Revenue Service (FIRS) which is an agency of the Federal Government is an agency under the Ministry of Finance. Again, the FIRS will always be an appellant or a respondent in any of the appeals before the Tax Appeal Tribunal, yet members of the Tribunal are exclusively appointed and removed by the Minister of Finance. To further reinforce the provisions of paragraph 2(1) of the Fifth Schedule, paragraph 8 thereof further provides that the question as to the validity of the appointment of any person as a Tax Appeal Commissioner shall not be the cause of any litigation in any court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal. This provision visibly ousted the jurisdiction of our courts to determine questions as to the validity of appointment of members of the Tribunal and clearly offends the provisions of section 4(8) of the Constitution, which prohibits the National Assembly from making laws which ousts or purports to oust the jurisdiction of the courts. The question then is 'Can the Tax Appeal Tribunal be truly independent where the Tax Appeal Commissioners are appointed and removed singlehandedly by the Minister of Finance, who is the supervising Minister of the Federal Inland Revenue Service?' In essence, is the Minister indirectly the umpire at the Tribunal, acting through the Tax Appeal Commissioners, thereby making the said Commissioners, judges in their own cause? It is our submission that the provisions of paragraph 2(1) of the Fifth Schedule which empowers the Minister of Finance to unilaterally appoint and remove members of the Tribunal violates the spirit of the Constitution as enshrined under Section 36(1), because a tribunal so constituted cannot by any means be independent and impartial, after all, he who pays the piper determines the tune.

#### **Delay in Appointment of Tax Appeal Commissioners**

Closely related to issue of independence of the Tribunal is delay in appointment of Tax Appeal Commissioners. Thus, aside the fact that the appointment of Tax Appeal Commissioners is left solely at the discretion of the Minister of Finance, the appointment of the present Tax Appeal Commissioners was delayed for over two years.<sup>34</sup> Akintobi<sup>35</sup> has observed the TAT was inactive for about two and half years after the tenure of the last set of Commissioners expired in June 2016, despite repeated calls by taxpayers and tax practitioners to the Minister of Finance and the Federal Government to appoint new commissioners and reconstitute the Tribunal. He noted that during this period, taxpayers continued to file appeals at the registries of the different zones of the Tribunal but those appeals could not be heard. He observed that subject to a renewal of their tenure for another final term of three years, the tenure of the present Commissioners will expire in November 2021.

#### **Timeline for Decisions/Rigorous Tax Appeal Process**

A thorough reading of both the Fifth Schedule to the Act and the Tax Appeal Tribunal (Procedure) Rules, 2010, shows that there are no provisions as to timeline for the Tribunal to deliver its decisions on appeals before it. This is in contrast with what is obtainable in some climes<sup>36</sup> and is likely to result in delays which will defeat one of the reasons for which such special tribunals are established. In addition, the decisions of the TAT are subject to review by the Federal High Court and subsequently to the Court of Appeal and by virtue of Section 233(2) and (3) of the Constitution, to the Supreme Court. This in addition to delays already encountered at the FIRS level results in delays in adjudication of tax disputes in Nigeria.

#### **Limited Geographical Spread**

As at today, the Tax Appeal Tribunal has only eight zonal offices serving the whole federation. It is submitted that the geographical spread of the Tribunal is poor as parties may have to travel across several States to reach the closest Tax Appeal Tribunal's zonal office. This is not healthy for the country's tax dispute resolution system.

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<sup>33</sup> The FIRS Act, section 69.

<sup>34</sup> A Akintobi, 'Appointment of Commissioners of the Tax Appeal Tribunal: the Need for Change' 2 June, 2020. <<https://www.linkedin.com/pulse/appointment-commissioners-tax-appeal-tribunal-need-change-akintobi->> accessed on 5 July, 2021.

<sup>35</sup> Ibid.

<sup>36</sup> In Kenya, appeals filed at the Kenyan Tax Appeals Tribunal are to be heard and determined within 90 days of filing.

### **The TAT is not a tax court as required by the National Tax Policy (NTP)**

The Nigerian government recognizes the pivotal role of taxation in Nigeria's revenue structure. Hence, the National Tax Policy (NTP)<sup>37</sup> was first published in 2012, as part of efforts to entrench a robust and efficient tax system in Nigeria.<sup>38</sup> The NTP provides that the Executive shall sponsor a bill for the establishment of a tax court as an independent body to adjudicate in tax matters.<sup>39</sup> However, the said bill is yet to be sponsored and Nigeria operates the specialized tribunal system instead of the specialized tax court system contrary to Nigeria's policy direction on tax administration.

### **4. Ethos from Some Other Jurisdictions**

The jurisdictions considered are the United States of America, The United Kingdom, Italy and Kenya.

#### **The United States of America (USA)**

Krebs *et al*<sup>40</sup> noted that taxes in the USA can be imposed at each of the federal, state and local levels and each of the 50 states in the USA has its own set of distinct income taxation rules, as well as rules of tax litigation practice and procedure. This is not the position in Nigeria where the National Assembly has by the provisions of sections 59, paragraphs 11 and 17 of the Act, excluded the original jurisdiction of States to adjudicate over tax disputes. In the USA, federal tax controversies can be litigated within the U.S. Tax Court, the U.S. Court of Federal Claims or the Federal District Courts.<sup>41</sup> This goes to show that there are a number of forums where tax payers can have their tax grievances addressed. This is unlike the position in Nigeria where the Tax Appeal Tribunal has only eight zonal offices, making it difficult for tax payers to access them. The US Tax Court is a court of record.<sup>42</sup> Members of the Tax Court are the chief judge and the judges of the Tax Court. The Tax Court is composed of 19 presidentially appointed judges who have expertise in tax law and their appointment is subject to confirmation by the Senate.<sup>43</sup> This provision ensures the independence of the US Tax Court judges because their appointment is subject to confirmation by the Senate.

#### **The United Kingdom (UK)**

The UK operates a two tier tribunal system – the First Tier Tribunal and the Upper Tribunal (both referred to as 'the Tax Tribunals'). The First-Tier Tribunal is the first-instance tribunal for most jurisdictions. The Tribunal system is organised into specialist divisions or 'chambers'. Judges can sit alone, or with up to two other judges. The typical panel comprises of a chairperson and a panel member. Panel members will not necessarily be lawyers but do usually hold one or more tax qualifications. Appeals from decisions of the First-Tier Tribunal go to the Tax and Chancery Chamber of the Upper Tribunal. The UK just like Nigeria practices the tribunal system. However, the UK has a specialized appellate tribunal – the Tax Chamber of the Upper Tribunal. Additionally, all judges and members of both the First-tier and Upper Tribunals are appointed by an independent body – the Judicial Appointments Commission.<sup>44</sup> This makes for the independence of the judges and members.

#### **Italy**

Italy maintains a tax court system as against the tribunal system in Nigeria. According to Monte and Antonini,<sup>45</sup> the tax courts in Italy are:

- i. the provincial tax court (first instance) of the territory where the tax office issuing the challenged deed is located;

<sup>37</sup> National Tax Policy (2017), available at <<https://pwc-nigeria.typepad.com/files/fec-approved-ntp---feb-1-2017.pdf>> accessed on July 25, 2021.

<sup>38</sup> *Ibid*, p.1.

<sup>39</sup> *Ibid*, p.11.

<sup>40</sup>HP Krebs, *et al*, 'Tax Litigation in the United States: Overview' March 1, 2018 <[https://uk.practicallaw.thomsonreuters.com/5-6235066?\\_lrTS=20201219220138718&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/5-6235066?_lrTS=20201219220138718&transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed on 2 July, 2021.

<sup>41</sup>D Klasing, 'Which Federal Court should I Litigate my Tax Issue In?' 25 March, 2014. <<https://klasing-associates.com/question/federal-court-chose-litigate-tax-issue/>> accessed on 2 July, 2021.

<sup>42</sup> Section 7441 of Title 26 of the United States Internal Revenue Code established the US Tax Court as a court of record under article 1 of the Constitution of the United States.

<sup>43</sup> United States Tax Court <[https://en.wikipedia.org/wiki/United\\_States\\_Tax\\_Court](https://en.wikipedia.org/wiki/United_States_Tax_Court)> accessed on 14 July, 2021.

<sup>44</sup> G. Drewry, 'The Judicialisation of 'Administrative' Tribunals in the UK: From Hewart to Leggatt' (2009) 28 E SI *Transylvanian Review of Administrative Sciences*, 55. <[https://www.researchgate.net/publication/292518662\\_The\\_Judicialisation\\_of\\_%27Administrative%27\\_Tribunals\\_in\\_the\\_Uk\\_From\\_Hewart\\_to\\_Leggatt](https://www.researchgate.net/publication/292518662_The_Judicialisation_of_%27Administrative%27_Tribunals_in_the_Uk_From_Hewart_to_Leggatt)> 6 July, 2021.

<sup>45</sup> G Monte and M Antonini, 'Snapshot: Tax Litigation in Italy' October 13, 2020 <<https://www.lexology.com/library/detail.aspx?g=0f82e17e-7050-45d5-9a1f-928e91330230>> accessed on 2 July, 2021.

- ii. the regional tax court (second instance), which can overrule judgments issued by the provincial tax courts located in the relevant region; and
- iii. the Supreme Court - Tax Chamber of the Civil Supreme Court (third and final instance), which rules on decisions issued by the regional tax court, but only on legal grounds and also where there is lack of examination on a decisive fact of the dispute.<sup>46</sup>

The supervision over tax judiciary and the management activities (transfer of judges, assessments of incompatibility, disciplinary measures, professional training) belong to the High Council for Tax Judiciary, a self-governing body.<sup>47</sup> It is observed that contrary to the position in Nigeria, Italy operates a specialized tax court system up to the Supreme Court level and the judges of these courts are appointed by an independent body - High Council for Tax Judiciary.

### **Kenya**

In Kenya, tax disputes can be litigated in three different forums. A person dissatisfied with the decision of the Kenya Revenue Authority may appeal same to the Tax Appeals Tribunal. A party is further at liberty to file an appeal to the High Court of Kenya only on points of law and thereafter to the Court of Appeal.<sup>48</sup> Ohaga *et al* noted that the Tax Appeals Tribunal comprises a chairperson and no less than 15 but no more than 20 other members appointed by the Cabinet Secretary upon such terms and conditions of service as the Cabinet Secretary may determine. Additionally, appeals are heard and determined within 90 days from when the appeal is filed with the Tribunal.<sup>49</sup> As regards the appointment of members of the Kenyan Tax Appeal Tribunal, the position is same with Nigeria, because the members of the Tribunal are appointed by the Cabinet Secretary, which is an equivalent of a Minister in Nigeria. However, to reduce delays in tax litigations, Nigeria could adopt timelines for decisions in tax matters as is obtainable in Kenya.

### **5. Conclusion and Recommendations**

This paper has examined the TAT's jurisdiction in the light of the jurisdiction conferred on the Federal and State High Courts under the Constitution,<sup>50</sup> the provisions of the FIRS Act bordering on the mode of appointment of Tax Appeal Commissioners, as well as other criticisms against the TAT and its operations. This paper found that the jurisdiction granted to the Tribunal encroached on that of the Federal and State High Courts and that the procedure for appointment of members of the Tribunal does not make for their independence. Additionally, the paper found that the geographical spread of the Tribunal is limited, that there are delays in appointment of Tax Appeal Commissioners and delays in litigating tax disputes in Nigeria. Finally, it was also found that contrary to the National Tax Policy, Nigeria operates a specialized tax tribunal system instead of a tax court system. The study also found that allowing states to establish tax tribunals may not be economically ideal for States because the country is presently going through economic recession which is compounded by the Covid-19 pandemic. This work also studied other jurisdictions and based on the research findings makes the following recommendations in line with best practices in other jurisdictions. The Tax Appeal Tribunal be disbanded and in its place, Tax Divisions be established at the various Divisions of State and Federal High Courts, the Court of Appeal and the Supreme Court in line with what obtains in the United Kingdom and specifically in Italy. This will ensure that the State and Federal High Courts' jurisdiction over tax disputes is preserved and also ensure that the tax court is closer to the people. Hence, venue will no longer a clog in the wheel of justice. In appointments to the Bench of the State and Federal High Courts, the Court of Appeal and the Supreme Court, the government and the National Judicial Council should ensure lawyers who are versed in tax law and practice are appointed as judges to these courts. These judges will then be deployed to man the tax divisions. This will ensure that the needed tax expertise is available at all levels in the court system in line with what obtains in Italy. It will also ensure that the judges are independent and will dispense justice without fear or favour. The Constitution should also be amended to designate time limits for disposal of tax disputes at all levels of the superior courts above mentioned. It is suggested that a maximum of three months be prescribed. This is in line with what is obtainable in Kenya where the Kenyan Tax Appeal Tribunal has ninety days to dispose of cases. This will ensure that all tax disputes are disposed of within a calendar year and all manner of delays are avoided.

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<sup>46</sup> *Ibid.*

<sup>47</sup> M Scuffi, 'The Tax Court System in Italy : An Overview', A paper presented at the Rome symposium on September 29, 2017 by Massimo Scuffi, Presiding Judge, member of the Italian High Council for Tax Judiciary <file:///C:/Users/ADMINI~1/AppData/Local/Temp/SCUFFI-Tax\_Court\_system-\_\_Italy\_\_red\_\_summary-1.pptx> accessed on 2 July, 2021.

<sup>48</sup> *Republic v Kenya Revenue Authority Ex-parte Neolife International Limited* [2018] eKLR cited in BG Kanyi, 'Kenya's Tax Dispute Resolution System: A dispute System Design Evaluation' (Thesis, Strathmore University, 2019) <<http://su-plus.strathmore.edu/handle/11071/6627>> accessed on 7 July, 2021.

<sup>49</sup> *Ibid.*