

A CRITICAL REVIEW OF THE JURISDICTION OF TAX APPEAL TRIBUNAL: THE IMPERATIVE FOR REFORMS*

Abstract

The Nigerian Tax Appeal Tribunal was constituted and formally inaugurated Feb. 4, 2010. Before the establishment of the Tax Appeal Tribunal in 2007 by the Federal Inland Revenue Service (FIRS) Establishment Act 2007, there were other adjudicating bodies on tax-related issues within the Nigeria tax system. But the impact was little when compared with the level of confidence reposed in the bodies by stakeholders, especially the taxpayers. These bodies were the Body of Appeal Commissioners and the Value Added Tax Tribunal. Section 53(1) of Company Income Tax Act (CITA) 1990 empowers the Minister of Finance to establish by notice in the Federal Gazette, a Body of Appeal Commissioners and the Value Added Tax Tribunal, which have been replaced by the Tax Appeal Tribunal (T.A.T). The current position seems to have done away with the state Body of Appeal Commissioners. A national tribunal (divided into zones) is now vested with the power to determine dispute arising from all federal tax legislations. This paper thus examines structural and procedural steps employed by the Tax Appeal Tribunal in the discharge of its statutory duties and the need to widen the jurisdiction of the Tax Appeal Tribunal.

Keywords: Taxation, Tax Appeal Tribunal, Nigeria, Tax evasion, withholding tax

1. Introduction

A Tax is a compulsory Levy Imposed by government for public-finance purposes,¹ or taxation is a system of raising money for the purposes of government by means of contributions from individual persons or corporate bodies.² As a matter of fact, enforcement is the major problem of the Nigeria tax system. The major reason being that many eligible Nigerians are not willing to pay, and where they pay the assessment is not done correctly. This and many other issues in many instances lead to disputes between the taxpayer and the tax collectors or tax authority. The main method of resolving legal issues or disputes, especially on revenue matters, is through litigation, which sometimes takes years to conclude.³ This and many other reasons are the rationale behind the establishment of the Tax Appeal Tribunal by the federal government. The Tax Appeal Tribunal (T.A.T) was established to adjudicate on disputes that arise from an objection to a formal demand to pay liability for a disagreeable amount in a particular period, on an income or earnings or an offset against income, or demand to pay penalty or an objectionable action by one of the parties to the dispute.⁴

Tax appeal refers to a request for adjudication by a taxpayer or a tax collector and it arises from disputes between a taxpayer and the tax authority.⁵ It is also a process whereby a taxpayer who is dissatisfied with an assessment applies to the court (in this case the tribunal) to consider and change the decision of the tax authority on certain grounds. According to former finance minister Mansur Mukhtar, while inaugurating the tribunal: 'Tax appeal is an important component of the tax administration system. This because the tax system offers a multilayered objection and appeal process which compels the complainant to go through a mechanism before gaining access to the regular court system'.⁶ The fact is that disputes will normally arise between people with different interests and they will eventually come into conflict from time to time. The recognition of this fact, among others, gave rise to the creation of an impartial body to adjudicate whenever there are conflicts of interest among the various stakeholders within the Nigerian tax system.⁷ The TAT is concerned mainly with the administration and dispensation of justice. The tribunal was set up across the six geopolitical zones in line with various government reform initiatives geared toward improving the tax administration system in Nigeria.⁸ This paper attempts an overview of the TAT under the Nigerian tax system; whether by its establishment there will be a difference between what obtained in practice before its creation. It also evaluates its impact in the existing tax regime and, most importantly, resolution of disputes arising from tax imposition. The paper concludes by preferring recommendations toward effective dispensation of justice in tax-related disputes.

*By **David Andrew AGBU, LLB, BL, LLM, MILR, PhD**, Associate Professor and Head, Department of Public and International Law, Nasarawa State University Keffi, He is a Member Chartered Institute of Taxation of Nigeria (CITN) and can be contacted at davidmaisongo2@gmail.com

¹ M.T., Abdulrazaq, *Principles and Practice of Nigeria Tax Planning and Management* (Ilorin: Batay Law Publications Ltd, 1993), 1.

² L. Soyode and S. O. Kajola, *Taxation: Principles and Practice in Nigeria* (Ibadan: Silicon Publishing Co., 2006), 3.

³ *Ibid.*, 12

⁴ Chartered Institute of Taxation of Nigeria (CITN), *Tax Guide 2009*, 305.

⁵ *Ibid*

⁶ I. Onuba, 'Tax Appeal Tribunal: A Move to Engender Confidence in Nigeria's Tax System,' *The Punch*, Feb. 14, 2010

⁷ M. Emmanuel, 'TAT and its Relevance to Nigeria's Tax System,' *Nigerian Tribune*, May 13, 2011.

⁸ See section 59(1) of the amended FIRS Act 2007

2. Establishment of Tax Appeal Tribunal (TAT)

The Tax Appeal Tribunal is a statutory creation of the Federal Inland Revenue Service (Establishment) Act⁹ and is vested with the power to settle tax disputes arising from the operation of laws in the First Schedule to the Act.¹⁰ Consequently, the Tribunal has powers to adjudicate over disputes arising from the operation of all federal taxes. The Tribunal replaced the Body of Appeal Commissioners and is decentralized, with zones throughout the country. Tax Appeal Tribunal (TAT) is established in accordance with Section 59(1) of the FIRS (Establishment) Act, 2007. TAT formally took off pursuant to the Tax Appeal Tribunals (Establishment) Order 2009 issued by the Minister of Finance, Federal Republic of Nigeria as published in the Federal Government Official Gazette.¹¹ By this enactment, TAT replaces the former Body of Appeal Commissioners (BAC) and Value Added Tax (VAT) Tribunals. Section 59(1) provides that a Tax Appeal Tribunal is established as provided in the Fifth Schedule to the Act. Subsection 2 of section 59 provides that the Tribunal shall have power to settle disputes arising from the provisions of the Act and the First Schedule. The First Schedule of the Act list out the various tax laws and regulations administered by FIRS which the tribunal has the power to adjudicate on any dispute arising from the provisions of the tax laws and regulations. The classical function of tax is raising revenue for government to enable it discharge its duties of providing basic social amenities to its subjects.¹² Although as earlier mentioned this is not the main aim of tax. As it is evident in our nation monies generated from taxation have been used to actualize certain government objectives such as construction of good roads, hospitals, schools and defense. it is pertinent to note that, government decides the way and manner the tax collections are expended in providing certain basic facilities and amenities in accordance to priority at any given time, thus a citizen has no right known to law to demand for a refund of tax paid because he does not find a particular amenity in the area where he resides.¹³ The redistribution of wealth is an objective of tax that much emphasis has been placed in modern times.¹⁴ In order words, it provides the mechanism for achieving equitable distribution of income, influencing consumer demand and providing incentives for production, investment and savings.

The Second leg presupposes that the present distribution is unjust; although this assertion is difficult to justify.¹⁵ This second arm concludes that the rich should be taxed until the pips squeak.¹⁶ Tax is distributed or imposed in proportion to the income of taxpayer.¹⁷ The Drafters of the tax legislatures intends the wealthy to pay more taxes than the poor, the principle is based on the fact that the rich earn more income and as such have more ability to pay. But the reality is that the rich begin to run away from paying tax by employing various means of evading or avoiding payment of tax as the case may be, thereby negating the above stated intendment of tax statues. Thus, the idea is to redistribute the wealth in such a way that the poor is not unduly burdened. Another objective of taxation is the management of the economy. This probably accounts for the usual fiscal policy issues raised in the budget.¹⁸ In fact, as earlier noted the 2022" budget is said In Nigeria, it would appear that greater emphasis is placed on the use of monetary policies in the management of the economy.¹⁹ However, it would seem that the tax system is more than a matter of economics. It has been described as the most pervasive and privilege exercise of the policy power in determining the direction in which people may become wealthy by determining the directions in which they may not.²⁰ The foregoing further reinforces the fact that tax is not a means for obtaining revenue but can be used for more specific purposes such as discouraging the use of alcohol or the purchase of cigarettes.²¹ Taxation is used to fight inflation and deflation, to allocate resources in a socially desirable manner to encourage and protect new industries within a country and to ensure that the balance of payments of a country is in a healthy position.²² At this juncture it is worthy to note that most citizens all over the world consider tax not as a civic duty but as an unwanted burden regardless of the above mentioned advantages of taxation.²³

Composition of Membership of Tax Appeal Tribunal

TAT consists of five members known as Tax Appeal Commissioners appointed by the Minister of Finance. The composition and membership of each zone of the Tribunal are five members. The chairman of each zone of the Tax

⁹ (n151).

¹⁰ Section 50 FIRS (Establishment) Act 2007.

¹¹ No. 296, Vol. 96 of 2nd December, 2009.

¹² Op. Cit.

¹³ O. Akanle, *Tax Law & Tax Administration* Op. Cit.

¹⁴ W. T. Abdulrazag *Nigerian Revenue Law*, Op. Cit.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ J. F. Due, *Taxation and Economic Development in Tropical Africa*: Harvard University Press (1963).

²¹ Ibid.

²² O. S. Abioio, 'An Examination of the Significance and Objectives of Taxation in Nigeria' fine Advocate! Vol. 18, *International Journal of the Law Students' Society*, Obafemi Awolowo University, Ile-Ife, 1997.

²³ Ibid.

Appeal Tribunal is a legal practitioner who has been so qualified to practice for a period not less than 15 years with cognate knowledge and experience in tax legislation and matters. A person shall not be qualified for appointment as a Tax Appeal Commissioner unless he is knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria as well as persons that have shown capacity in the management of trade or business or a retired public servant in tax administration.²⁴ A Tax Appeal Commissioner shall hold office for a term of three years and renewable for another term of three years and no more from the day in which he assumes office or he attains the age of 70, whichever is earlier. The tribunal is a 5-man panel referred to as tax appeal commissioners, headed by a legal practitioner who has been qualified to practice for a period of not less than 15 years with cognate experience in tax legislation and tax matters, providing expert-based adjudication of tax disputes.²⁵ It is important to note that these tax appeal commissioner are usually appointed by the minister of finance after meeting the requisite qualification standard as stipulated in the Act²⁶, and a quorum at any sitting of the tribunal shall be three members.

The tribunals are further set up across the six (6) geo-political zones of the country with two (2) additional Tribunals in Lagos and Abuja, meaning the TAT is an amalgam of eight (8) Zonal Tribunals and a Coordinating Secretariat for easy adjudication of matters and dispensation of justice. A Tax Appeal Commissioner may by notice in writing under his hand addressed to the Minister resign his office provided that the Tax Appeal Commissioner shall, unless he is permitted by the Minister to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier. On the other hand, a Tax Appeal Commissioner may be removed from office by the Minister on the grounds of gross misconduct or incapacity after due inquiry has been made and the Tax Appeal Commissioner concerned has been informed of the reasons for his removal and given an opportunity of being heard in respect of the reasons.²⁷

Objectives for the Establishment of Tax Appeal Tribunal

The new tax policy offers a step-by-step objection and appeal process, giving the complainant the chance to explore other dispute resolution mechanisms before being granted access to the normal court system. Tax Appeal Tribunal is a crucial part of the tax system. The Establishment Act states that the appeal process may be started by either the taxpayer or the appropriate tax authority. It is the expectation of all stakeholders that the broad objectives for the establishment of the TAT will include to reduce the incidence of tax evasion and ensure fairness and transparency of the tax system; to adjudicate on all tax disputes arising from operations of the various tax laws spelt out in the First Schedule to the FIRS (Establishment) Act 2007; to prioritize facts over legal technicalities and to facilitate early and swift decision-making while maintaining the value of justice and fairness; to boost trust on the part of taxpayers in the tax system; and to provide the opportunity for expertise in tax dispute resolution and avenue for effective involvement of parties.²⁸

Jurisdictions and Rules of Procedures of Tax Appeal Tribunal

As part of the ongoing reforms of the tax systems in Nigeria. TAT is set up by the federal government to adjudicate all tax disputes arising from operations of the various tax laws as spelt out in the fifth schedule to the FIRS (Establishment) Act 2007. Specifically, the Fifth Schedule states that the TAT has jurisdiction over disputes arising from the under-listed laws; Companies Income Tax Act (CITA); Petroleum Profit Tax Act (PPTA); Personal Income Tax Act (PITA); Capital Gains Tax Act (CGT); Stamp Duties Act (SDT); Value Added Tax Act (VAT); and Taxes and Levies (Approved list for collection) Act as well as other laws, Regulations, Proclamations, Government notices or Rules related to these Acts.²⁹ Accordingly, TAT adjudicates on all tax disputes arising from operations of the various tax laws as spelt out in the Fifth Schedule to the FIRS Establishment Act and is established in eight zones to cover the six geopolitical zones in Nigeria. Specifically, it is located in the following cities: Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi while the Coordinating Secretariat located in Abuja, Nigeria is the central coordinating office which renders support services and facilitates the operations of the respective zones.³⁰ Paragraph 21 of the Fifth Schedule to the FIRS (Establishment) Act, 2007 empowers the Minister of Finance to make rules prescribing the procedure to be followed in the conduct of appeals before the Tribunal In light of the above provision, the Minister of Finance made the Tax Appeal Tribunal (Procedure) Rules, 2010 to regulate the conduct of appeal before the tribunal.

²⁴ Fifth Schedule of the FIRS (Establishment) Act, 2007.

²⁵ Ibid, Fifth Schedule, Para 2(2)

²⁶ Ibid, Fifth Schedule, Para 3.

²⁷ Ibid.

²⁸ Tax Appeal Tribunal: Available at <https://tat.gov.ng/executive-brief/> accessed 5th July, 2023

²⁹ Ibid, Fifth Schedule, Para 11(1)

³⁰ TAT website at <https://tat.gov.ng/> accessed 15th June, 2023.

The Rules contains twenty-four Orders which regulates the conduct of proceedings at the tribunal starting from form and commencement of appeal,³¹ place of instituting the appeal,³² services of processes,³³ to hearing of appeal,³⁴ determination of appeal,³⁵ enforcement of decision,³⁶ and right of appeal to the Federal High Court³⁷ Etc. The Tax Appeal Tribunal hears cases as a form of the first instance. It has the responsibility of settling disputes between taxpayers and the Services over income tax assessment in appropriate cases. It may accordingly increase, reduce, confirm or annul and assessment. The Tribunal shall have the power to perform the following functions: summon and enforce the attendance of any person and examine him on oath; require the discovery and production of documents; receive evidence on oath; call for the examination of witnesses or documents; review its decision; dismiss an application of default or decide matter ex-parte; set aside any order or dismiss any application for default or any order passed ex-parte; do anything which in the opinion of the Tribunal is incidental or ancillary to its functions.

However, there were amendment of the 2010 Rules of procedures. The Minister issued new Tax Appeal Tribunal (Procedure) Rules in 2021. The Rules were issued under powers in paragraph 21 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act. The Rules, which override the 2010 Rules, are meant to direct Tax Appeal Tribunal hearing in terms of practice and procedure. The new innovations contained in the rule includes electronic filing: According to the Rules, all processes and documents to be submitted to the TAT secretariat may be submitted electronically if so requested by the TAT.³⁸ Similar to this, processes and papers are correctly served when sent electronically, as specified by the TAT, whether by email or another method,³⁹ virtual hearing of application: the Rules allow for virtual proceedings particularly for delivery rulings and applications using technology or platforms recommended by the TAT;⁴⁰ place of filing appeal: According to the Rules, appeals may be submitted in any of the secretariats of the eight zones as long as the Notice of Appeal and any supporting documentation are correctly headed with the name of the relevant zone of the Tribunal where the matter is to be heard. The appeal would subsequently be moved to the appropriate zone in accordance with the Chairman's instructions.⁴¹ Pre-trial conference: The TAT may order a pre-trial conference to help resolve disputes by focusing on fewer topics.⁴² Mandatory payment of 50% of tax assessed: A taxpayer who intends to appeal must first deposit 50% of the tax that is being contested into an account that the TAT has designated as security for the appeal. The taxpayer must also submit a deposition to that effect together with the appeal;⁴³ documents only procedure: Where a dispute may be settled through documentary evidence, the parties may forgo an oral hearing. Then all the parties need to do is submit any pertinent paperwork with the Notice of Appeal or Reply, Witness Statement on Oath, Written Address.⁴⁴ Costs: The Tribunal now has discretion to order cost against a party, its representative or a legal practitioner for any misconduct, undue delays or defaults.⁴⁵

Base on the foregoing on the issues of jurisdiction and rules of the TAT, cases decided by the tribunal have been admired as the set precedence on tax issues in Nigeria. A key decision in recent times is the case of *Emenite Limited v Firs*⁴⁶ which was predicated on Nigerian taxpayers being unclear about the mandatory 50% payment of tax before their matter is to be heard by the TAT. Questions as to whether the requirement was a discretionary requirement in statutorily defined situations that needed to be proven to the satisfaction of the Tribunal, or if it was an obligatory condition precedent to the competence of tax appeals to the TAT arose. The Tribunal in its infinite wisdom clarified how to correctly interpret the relevant clauses of Order III Rule 6(a) of the TAT (procedure) Rules 2021 and paragraph 15(7) of the Fifth Schedule to the FIRS (Establishment) Act 2007. In this pivotal case, the TAT decided that the provisions of Order III Rule 6(a) of the TAT Rules are not enforceable against taxpayers and that the security deposit requirement for prosecution of tax appeals to the Tribunal is not mandatory under the FIRS Act.

Also, another case is the case of *Investment Holdings Limited Vs FIRS*⁴⁷ where the Tax Appeal Tribunal held the same. This development has provided relief to taxpayers who had previously complained about the TAT's earlier view of the security deposit requirement as mandatory and a condition precedent to the competence of tax appeals to

³¹ORDER III TAT (Procedure) Rules, 2010.

³²ORDER IVTAT (Procedure) Rules, 2010.

³³ORDER VIITAT (Procedure) Rules, 2010.

³⁴ORDER XVTAT (Procedure) Rules, 2010.

³⁵ ORDER XIXTAT (Procedure) Rules, 2010.

³⁶ ORDER XXTAT (Procedure) Rules, 2010.

³⁷ ORDER XXIVTAT (Procedure) Rules, 2010.

³⁸ Tax Appeal Tribunal (procedural) Rules 2021, Order 3 Rule 5.

³⁹ Ibid, Order 7 Rule 5.

⁴⁰ Ibid, Order 11 Rule 4.

⁴¹ Ibid, Order 4 Rule 2.

⁴² Ibid, Order 17 Rule 2.

⁴³ Ibid, Order 3 Rule 6.

⁴⁴ Ibid, Order 15.

⁴⁵ Ibid, Order 22.

⁴⁶ *Emenite Limited v FIRS* (2022) 4 NTTLR 159

⁴⁷ *Investment Holdings Limited v FIRS* (2022) 5 NTTLR 252

the Tribunal. To this end, the Tax Appeal Tribunal is empowered pursuant to paragraph 20(2) of the Fifth Schedule of the FIRS (Establishment) Act, to require the discovery and production of documents; receive evidence on affidavits; dismiss an application for default or deciding matters ex-parte; summon and enforce the attendance of the person and examine him on oath; set aside any order or dismiss any application for default or any order passed by it ex-parte; call for the examination of witnesses or documents, review its decisions; and do anything which in the opinion of the Tribunal is incidental or ancillary to its functions.

3. Issues and Challenges in the Establishment of Tax Appeal Tribunal

The amendment to the laws establishing the Tax Appeal Tribunal is highly welcome because as a Tribunal, it is expected that members are to be independent in the execution of their duties. The Personal Income Tax (Amendment) Act 2011 deleted Sections 61 to 67 of the principal Act. The Sections provided for the time limit for appeal, notice to be given to relevant tax authority in respect of the appeal, the procedure to be followed before Appeal Commissioners, the procedure of allowing decisions of Appeal Commissioner, Appeals to Court, the finality and conclusiveness of assessment and the appeal provisions of Companies Income Tax Act which is to apply with certain exemptions. It is, however, confusing that the Personal Income Tax (Amendment) Act 2011, after the deletion of the above-stated Sections, does not provide for a procedure which aggrieved taxpayers or relevant tax authorities will follow to pursue their grievances at the Tax Appeal Tribunal to be established pursuant to Section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007. It is also not stated if the procedure for dispute resolution in the Tax Administration (Self-Assessment) Regulation 2011 shall be followed by aggrieved parties. It does, however, appear that an aggrieved taxpayer or aggrieved relevant tax authority who approaches the Tax Appeal Tribunal for a dispute arising from the assessment will follow the dispute regulation in the Tax Administration (Self-Assessment) Regulation 2011.

The enactment of the Federal Inland Revenue Service (Establishment) Act, in 2007 did not only usher in a new regime of tax administration in Nigeria, but it also revolutionized the nation's tax disputes resolution system. A major aspect of the Act is the establishment of the Tax Appeal Tribunals (hereinafter referred to as TAT), which is vested with jurisdiction to resolve all tax disputes arising from the above-named tax statutes. The fundamental effect of the creation of TAT is the abolition of the Body of Appeal Commissioners (BAC) and the Value Added Tax Tribunal (VAT-T) established by the Companies Income Tax Act and the Value-Added Act respectively. Speedy disposition of tax disputes appears to be the overriding consideration in the establishment of the TAT. Tax disputes, now being resolved by the TAT have hitherto been majorly handled by the Federal High Court by virtue of Section 251 of the 1999 Constitution. But it is commonplace that the traditional or conventional law courts are not only over-burdened with cases, which take a long to adjudicate but also some of them lack the requisite skills and competencies to deal with specialised matters like taxation.

4. Reforms and Recommendations

Reforms in dispute resolution systems globally are tilting towards the specialization of courts which is a way of achieving excellence and thoroughness. Judicial specialization in a specific type of conflict has become necessary to improve performance and reach timely, just ruling in an environment marked by increasing conflict proliferation and diversification. Quite often, the advantages of specialized tribunals can be seen in terms of the problems they are set up to resolve. Consequently, the creation of a specialised tribunal with jurisdiction over tax disputes can be seen as solving certain basic problems that have hindered the efficient disposition of tax disputes before the High Courts. Tax cases, like other cases, before the regular courts take long to dispose of, and the courts are deprived of the benefits that come with specialization. Both the taxpayer and tax authority can commence proceedings at the TAT. Section 14 of the Fifth Schedule to the Act provides that any person who is aggrieved by an action, assessment, or demand notice made on him by the tax authority may appeal against that decision or action or assessment within 30 days of receipt of such action or assessment or demand notice necessitating the appeal. Where the taxpayer fails to comply within the period allowed and does not give sufficient cause for the delay, the assessment or demand notice or action by the tax authority would become final and conclusive. Similarly, by virtue of Section 14 of the Fifth Schedule to the Act, the tax authority, if aggrieved by the non-compliance of a taxpayer, may appeal to the division of the TAT where the taxpayer is resident for the prosecution of the defaulting taxpayer. A major concern with the new regime of tax disputes resolution is that by the conferment on the TAT jurisdiction to settle all disputes arising from the operation of the Act and all other tax statutes administered by FIRS is whether or not, the Federal High Court was forthwith ceased of jurisdiction to entertain such matters. This concern has caused raging controversies on the constitutionality of TAT.

The gamut of the arguments against the establishment of TAT is that Section 59 of the Act, which established the Tribunal offends the overriding provisions of Section 251(1) (a), (b), and (c) of the 1999 Constitution which confers exclusive jurisdiction on the Federal High Court in respect of civil cases and matters relating to the revenue of the Government of the Federation. In other words, the matters now being entertained by the TAT are within the exclusive jurisdiction of the Federal High Court. The controversy has since been resolved by the Federal High Court, Lagos

Division in *Nigerian National Petroleum Corporation v. Tax Appeal Tribunal & 3 Ors*⁴⁸, where the issue that arose was whether the Tax Appeal Tribunal is a court within the context of the provisions of the Federal Inland Revenue Service (Establishment) Act. The court held thus; therefore, this court has no doubt that the Tax Appeal Tribunal is not a court within the meaning of court in the Constitution. The Tax Appeal Tribunal is not part of the judiciary. It is established by the Minister of Finance. The court further stated that even if the Tax Appeal Tribunal is manned by legal minds, it does not enjoy the status of the court. It is like a retired justice of the Supreme Court heading an arbitration. It does not elevate him to any status more than an arbitral tribunal. In *Federal Inland Revenue Service V. General Telecom Plc*⁴⁹, the Tax Appeal Tribunal, Lagos Zone confirmed the status of the Tax Appeal Tribunal in the following words:

... a factor which in addition necessitates and compels its existence and rationale is that many, perhaps most of the case that comes before this Tribunal cannot even be commenced at the Federal High Courts at the phase they are brought here. There are cases that are not ripe for litigation. An example is where a taxpayer appeals here against an assessment by the FIRS without first filing an objection to its assessment, let alone waiting for Notice of Appeal to amend. A normal court would jettison such a claim as premature.

In the performance of its duties, the Tax Appeal Tribunal has been consistent in checking tax avoidance and evasion schemes. In a plethora of cases, the Tribunal has had cause to pronounce against tax avoiders and evaders. In *Federal Inland Revenue Service V. Citibank Nigeria Limited*⁵⁰, the appellant imposed an additional tax on the respondent based on assessment for the years 2008-2010. The respondent challenged those taxes in the Tax Appeal Tribunal. The Tribunal dismissed the respondent's appeal and allowed the additional assessment. The respondent was dissatisfied and appealed to the Federal High Court which allowed the appeal and set aside the additional assessment. The appellant then appealed to the Court of Appeal. The Court of Appeal allowed the appellant's appeal and confirmed the decision of the Tribunal on the ground that the transaction of the respondent was an attempt to evade tax. In *Global Marine v Federal Inland Revenue Service* No. 1⁵¹, the Tax Appeal Tribunal rejected the argument that the taxation of parts of an enterprise's turnover more than once amounted to double taxation. According to the Tribunal that submission was potentially a tax evasion scheme since taxation of payment made by the appellant to their subsidiary subcontractor can rightly be subjected to tax in the hand of the subcontractor who for all purposes, in this case, was not different from other employees of the appellant. The fact, therefore, is that the Tax Appeal Tribunal has maintained a zero-tolerance attitude towards tax evasion. It is also recommended that there is a need for further review of the powers and jurisdiction of the Tax Appeal Tribunal where Tax Appeal Tribunal should be regarded as other tribunals under the constitution. Where appeals from Tax Appeal Tribunals should be filed at the court of appeal instead of Federal High Court.

It was further recommended that there is a need for sensitization and public awareness of Nigerians on the role and jurisdiction of Tax Appeal Tribunal because there is lack of education of taxpayers by the various tax authorities. In fact, there is total absence of tax education and public enlightenment for taxpayers at the grass root level. The result of this due to the high level of illiteracy is the prevailing ignorance about taxes, rates and levies imposed by the various tax authorities. Often times, the procedure for assessment, and objection to assessments, appeals and tax payers' rights are unknown to taxpayers. In the ongoing reform at the FIRS, tax payers' education and enlightenment are a priority as FIRS has unveiled new tax payment system through the use of Tax Payer Identification Number (TIN), electronic cards, issuance of e-tickets and on-line payment aimed at improving tax administration in Nigeria. It is clear from this research that tax education -and public enlightenment by the FIRS is far below expectation particularly the activities of TAT. Consequently, there is gross ignorance about taxation in areas such as VAT, company taxation, stamp duties, Capital Gains etc. There is a need for proper Tax education and enlightenment so as to build up a culture of voluntary compliance through the process of subliminal perception-a process where the subconscious picks up a message that is constantly repeated. In other words, lack of public enlightenment and education on tax would create an in-effective administration of taxes and would occasion a loss in revenue to government. Where a tax payer does not understand his tax liability easily and correctly his chances of complying would be very low. That has been the reason why people don't understand the role and importance of Tax Appeal Tribunal which generally affects the operation of the tribunal.

5. Conclusion

This Rule of procedures took effect from 10 June 2021 and it intends to improve the Tax Appeal Tribunal's ability to administer justice. Given the widespread use of technology in the delivery of justice, they also reflect the reality of the day. The TAT now has the ability to punish negligent parties for lack of professionalism and unneeded delays

⁴⁸ (2014) 13 TLRN 93-94.

⁴⁹ (2012) 7 TLRN 108 at 134.

⁵⁰ (2019) 46 TLRN 1 at 26.

⁵¹ (2013) 12 TLRN 1 at 23.

thanks to the ability to order expenses.⁵² Although, one point of controversy is the requirement that 50% of the tax in question must be paid before an appeal can be filed. Since it is established that regulations cannot supersede an act's provisions, this provision may be contested on the grounds that it is inconsistent with the Federal Inland Revenue Service (Establishment Act 2007). However, the recent judicial decision made by the Tax Appeal Tribunal in the *Emenite Limited v FIRS*, places the security deposit requirement for tax appeals to the TAT as discretionary and that the Tribunal may only require an appellant to pay the deposit if the FIRS files an application with proof of the necessary statutory circumstances that is satisfactory to the Tribunal. In order to provide an opportunity for experts to resolve tax disputes, Section 2(2) of the Federal Inland Revenue Service (Establishment) Act provides that to be appointed as Tax Appeal Commissioner, one must have knowledge of tax laws, regulations, norms, practices and operation of taxation in Nigeria or must have shown capacity in the management of trade or business or a retired public servant in tax administration. The fact that the determination of who has knowledge in tax law is not specifically provided for but left to the discretion of the Minister of Finance may provide a leeway for appointment of the people without knowledge in tax law and administration. This has the potentials to impact negatively on the performance of the Tribunal in checking tax abuses. Again, the fact that the Tax Appeal Tribunal has jurisdiction to resolve only cases that are not yet ripe for litigation by the courts has the capacity to remove many tax avoidance and evasion cases from the jurisdiction of the Tribunal.

⁵² Order 22 Op cit