BLACKWOODSTONE
TAX LAW FIRM

A Review of the TAT Ruling in Dangote Industries Limited V. Federal Inland Revenue Services (2022): Lessons for Tax Payers

Background

In 2017, the Federal Inland Revenue Service (FIRS) conducted a Tax audit on the business of Dangote Industries Limited (the "Company") for the period between 2013 – 2015. Pursuant to the Audit, it adjusted and recomputed the Company's tax liabilities on the basis, amongst others, of the inclusion of costs and expenses which are not wholly, reasonably, exclusively and necessarily incurred for the running of the business and that the company did not fully remit the Withholding Tax (WHT), Value Added Tax (VAT) and Stamp Duties (SD) on some qualifying transactions as at when due. In light of this readjustment, the FIRS issued a Notice of Assessment and requested the Company to pay additional taxes in the sum of N10,982,876,078.00.

However, upon receipt of the Notice of Assessment, the Company objected to the Assessment on the grounds that the audit process did not follow the law; the tax liabilities were still disputed and that it intended to issue a more detailed letter of objection and additional documents. However, notwithstanding the Company's objection and following several Reconciliation meetings held, the FIRS issued its final Notice of Refusal

to Amend (NORA) and on that basis, the Appellant filed an Appeal at the Tax Appeal Tribunal (TAT).

Determination of the Issues

The first issue which arose relates to the question of whether the FIRS breached the Company's right to fair hearing when it issued a revised amendment simultaneously with a NORA without giving the Company an opportunity to object. In resolving this issue, the TAT noted that in the instant case, the Company had been invited and attended several reconciliation meetings and was given ample opportunity to present its case and resolve all issues. It noted that the requirement for fair hearing is ordinarily satisfied where a party is given a fair opportunity to present its case and have it resolved. It further held that once a party has been afforded the opportunity to present its case and he fails to take advantage of it, he cannot be heard to complain that his right to fair hearing has been bridged.

Furthermore, the Company also contended that the FIRS acted illegally and unlawfully in assessing the Company to tax in the said sum for CIT, WHT and TAX. In response, the FIRS noted that it gave the Appellant ample opportunities to present documents to support its claim but it failed to provide any documents until the Appeal was filed and even during the pendency of the Appeal before the Tribunal. As such the FIRS concluded that the Documents were either unavailable or the Company was unwilling to make them public. It reiterated that it had the power to assess a Company as many times as possible in line with the provisions of the Companies Income Tax Act (CITA).

On this point, the TAT noted that pursuant to the provisions of the CITA, the FIRS is empowered to call for, or give notice to any person to complete and deliver any returns and relevant information as many times as possible for the purpose of obtaining full information with respect to the profits of a company within the time specified by the notice to any person. It also noted that in the instant case, the FIRS gave the Company ample time and opportunity to substantiate its objections with verifiable documents, however, the Company failed to provide any verifiable documents. It noted that the FIRS cannot consider documents or ascribe any value to documents it cannot see. The TAT relied on the decision of the Supreme Court in **Abubakar v. Waziri & Ors (2008)** where it was held that where a party leads evidence as to the existence of a document in proof

of his case, the document must be tendered. The Tribunal therefore held that the Company failed to provide critical and relevant documents required to substantiate its claims to the FIRS.

In addition, the Company noted that the FIRS charged VAT on reimbursable expenses such as salaries, rents and bank charges made by the Company on behalf of its subsidiaries and vendors. Agreeing with the Company, the TAT ruled that VAT should not apply on the reimbursement of costs such as salaries, rents and bank charges paid by the Company on behalf of subsidiaries.

Another significant issue which arose in the determination of this Appeal was with regards to the provision of Section 19 of the CITA on the question of whether the Company's Pioneer Profits and Franked Investment Income for the relevant years were liable to Excess Dividend Tax. A review of Section 19 of the CITA is to the effect that where dividend paid out by a company in a year of assessment exceeds its total profit/taxable profit for the year, then the dividend paid out will be regarded as the total profit and taxed accordingly. The Tribunal noted that generally, the source of the profit out of which the dividend is paid is not relevant as long as the dividend exceed the taxable profit of the Company and would only amount to double taxation if the same income is taxed more than once in the hand of the same taxpayer.

In reaching its decision, the TAT referred to the provision of Section 80(1) of the CITA which establishes that where a dividend becomes due from or payable by a Nigerian company to any company or person to whom the Personal Income Tax Act applies, the Company paying such dividend has an obligation to deduct a 10% tax and pay same to the FIRS. However, Section 80(3) of the CITA provides that dividend received after deduction of tax stipulated in Section 80(1), is to be regarded as Franked Investment Income of the Company receiving the dividend and is exempt from further tax as part of the profit of the receiving company. The Tribunal also referred to the provisions of Section 14 of the Industrial Development (Income Tax) Act which exempts profits from Income Tax of Pioneer Companies.

In light of the above provisions, the Tribunal was of the view that the Franked Investment Income and Pioneer Profits of the Company were exempt from additional tax. The Tribunal however noted that prior to and pending the Appeal, the Company failed to

provide any documents, despite clear requests by the FIRS, to substantiate its claim that it had pioneer profits and Franked Investment Income which the FIRS failed to consider.

The Tribunal's Decision

On the basis of the above, the Tribunal ruled that the Company must provide all requested documents, within two weeks from the date of the Ruling, to enable the FIRS review and make the necessary adjustments to the assessment in contention. It further directed that where the Company fails to provide said documents, the assessment would be deemed final and conclusive.

Lessons for Taxpayers

From the above review, it is clear that a few notable points are worthy of note by tax payers in order to avoid some of the pitfalls of the Company in this Appeal. The following points are worth noting:

1. A taxpayer must ensure the full disclosure of all and any information and documents which it deems important to substantiate any of its claims or objection to an assessment by the FIRS.
2. The FIRS cannot charge VAT on reimbursable costs. However, note that consumers of taxable supplies (for cross-border transactions) in Nigeria where no tax is charged now have an obligation to self-account for the VAT pursuant to the amendment to the VAT Act by the provisions of Section 37 of the Finance Act 2019.
3. The TAT's ruling on Excess Dividend Tax complies with the amendment contained in the Finance Act 2019 which clearly exempts franked investment income and pioneer profits from Excess Dividend Tax.

In conclusion, these points must be noted by taxpayers as a failure to make full and frank disclosures may result in avoidable tax liabilities.

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