



# Tribunal upholds taxpayers' right to fair hearing

November 2019

[www.pwc.com.ng](http://www.pwc.com.ng)

## Background

The Tax Appeal Tribunal (Tribunal) has invalidated an Assessment Notice which was issued simultaneously with a Notice of Refusal to Amend (NORA), on the basis that it breaches the taxpayer's constitutional right to fair hearing, and the procedure for tax assessment in the tax laws.

## Facts

Ponticelli Upstream (Ponticelli), a foreign entity, was awarded a joint contract with Ponticelli Nigeria Limited (PNL) by Total E & P Nigeria Limited, for the execution of a project in Nigeria.

On review of the transfer pricing (TP) returns filed by PNL, the FIRS issued Assessment Notices to Ponticelli levying about \$3million in Companies Income Tax for the 2011 to 2015 financial years.

However, the Assessment Notices also included a paragraph communicating the FIRS' refusal of Ponticelli's purported objection, and notifying Ponticelli of its right to appeal (to the Tribunal) against the assessment.

Ponticelli appealed against the assessments on the grounds amongst others that the issuance of an assessment and a Notice of Refusal to Amend (NORA) in the same letter, breached its constitutional right to fair hearing.

On the other hand, the FIRS argued that the assessments did not double as NORAs, and that Ponticelli jumped the gun by filing an appeal against the assessments rather than objecting.

The suit was brought to the Tribunal in Ponticelli Upstream v. Federal Inland Revenue Service (FIRS).

## Issues for Determination

The Tribunal made a determination on the following issues:

1. Did the FIRS disregard Ponticelli's right to fair hearing?
2. Did the FIRS carry out a TP audit on the Ponticelli itself?
3. Did the assessment on Ponticelli properly consider the Double Taxation Agreement between France and Nigeria?

## The Decision

The appeal was decided based on issue 1 above.

The Tribunal examined the Assessment Notice and held that though the document was titled 'Notice of Additional/Amended assessments', the document contained a paragraph that referred to an objection and informed the Appellant of a refusal to amend the assessment. The letter also stated that the Appellant had the right to appeal the assessment.

The Tribunal held that the wordings were clear, and that in substance, the document doubles as an assessment and a NORA.

Therefore, the assessment/NORA disregarded the 30-day window available to taxpayers to object to assessments, as included in the Companies Income Tax Act (CITA). In addition, the assessment/NORA infringes on the taxpayer's constitutional right to fair hearing.

The Tribunal further held that where a statute provides for a course of action, any deviation from that course of action will be rendered invalid.

In line with the above, the Tribunal nullified the assessment and held that there was no need considering issues 2 and 3.

## Takeaway

This decision affirms that in raising assessments, the tax authorities must be mindful of the statutory and constitutional rights of taxpayers, as acts that curtail such rights can render an assessment invalid.

A recent case-in-point is *Polaris vs ASBIR*, where it was held that the tax authorities side-stepped statutory provisions in determining that an assessment was final, rendering the assessment null and void.

However, it would have been helpful if the Tribunal had considered the other issues, as this would have provided guidance for similar cases.



For a deeper discussion, please contact any member of our **Tax Dispute Resolution team** below or your usual contact within PwC Nigeria:

**Kenneth Erikume**  
[kenneth.y.erikume@pwc.com](mailto:kenneth.y.erikume@pwc.com)  
+234 1 271 1700 Ext 50004

**Emeka Chime**  
[chukwuemeka.x.chime@pwc.com](mailto:chukwuemeka.x.chime@pwc.com)  
+2341 2711700 Ext 54045

**Adeoluwa Akintobi**  
[adeoluwa.akintobi@pwc.com](mailto:adeoluwa.akintobi@pwc.com)  
+234 1 271 1700 Ext 50077