

Tax Appeal Tribunal in Nigeria: An Interrogation of Fundamental Issues and Case for Reform

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Abstract

A taxable person that is aggrieved with the tax assessment levied on him may file a notice of objection to the relevant tax authority (RTA) to review the tax assessment. After consideration of his objection and he still feels dissatisfied, he may file an appeal to the Tax Appeal Tribunal (TAT). A further appeal from the TAT lies to the Federal High Court and subsequently to the Court of Appeal and the Supreme Court. Notwithstanding the efficiency of TAT in the adjudication of tax appeals in Nigeria, there are some fundamental issues which need to be improved on. This paper highlights some of the fundamental issues and canvasses for the establishment of an Upper Tax Tribunal which would be an appellate tax tribunal in which appeals from TAT would lie to and further appeals from the proposed Upper Tax Tribunal would lie to the Court of Appeal as it is the practice in the United Kingdom. Some of the fundamental issues raised include the appointment of the Commissioners and regulation of the procedural rules of TAT by the Minister of Finance, the provision regarding the composition of the TAT and consideration of the status of TAT. The paper adopts doctrinal methodology and observes that TAT is an administrative tribunal and its status as such should be maintained. It also observes that TAT is efficient in the adjudication of tax matters and argues that if appeals could lie from TAT to another higher tax tribunal instead of the Federal High Court, tax cases would be adjudicated upon speedily and efficiently. The paper therefore recommends amongst others for the regulation of TAT's procedural rules

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and appointment of Commissioners by the Minister of Justice, as well as establishment of an Upper Tax Tribunal with co-ordinate jurisdiction with the Federal and State High Courts. The paper concludes that implementation of the recommendations will enhance speedy and more efficient dispensation of tax matters.

Key Words: Tax Appeal Tribunal, Interrogation, Fundamental Issues, Reform, Upper Tax Tribunal and Two-Tiers-Tax Appeal System

1.0 Introduction

A taxable person that is aggrieved with the tax assessment served on him by the relevant tax authority (RTA)² may object to the RTA to review the tax assessment on certain grounds.³ Further to the above, where the taxable person still feels dissatisfied after the RTA has considered his objection, his remedy lies in an appeal to the Tax Appeal Tribunal (TAT).⁴ The Court of Appeal in *CNOOC Exploration and Production Nigeria Limited & South Atlantic Petroleum Limited v Nigerian National Petroleum Corporation & Federal Inland Revenue Service*⁵ referring to its previous decision in *Shell Nigeria Exploration and Production & 3 Ors. v Federal Inland Revenue Service & Anor.*,⁶ succinctly stipulates the procedures for the resolution of tax disputes in Nigeria by holding that:

The procedure for resolving claims and objections ... are spelt out. When an assessment is made and a party is not satisfied, it can serve a Notice of Objection with the [RTA] FIRS....

² Hereafter referred to as RTA.

³ See, Companies Income Tax Act No. 11, 2012, s 69(1); Personal Income Tax Act No. 20, 2011, s 58(1); and Tax Administration (Self Assessment) Regulations 2011, hereafter referred to as Tax Administration Regulations 2011, reg 33. See also, Etigwe Uwa & Ors. 'The Tax Disputes and Litigation Review: Nigeria' <<https://thelawreviews.co.uk/title/the-tax-disputes-and-litigation-review/nigeria>>, accessed 29 September 2021.

⁴ Hereafter referred to as TAT or the Tribunal. In *Esso Exploration and Production Nigeria Limited & Shell Nigeria Exploration and Production Company Limited v Federal Inland Revenue Service*, [2012] 8 TLRN 45 at 52. the TAT held amongst others that it is not what the taxpayer does, such as filing of returns that triggers the jurisdiction of the TAT, rather, it is what the tax collector does (such as issuing a notice of refusal to amend the tax assessment) or fails to do

⁵ [2017] 30 TLRN 01.

⁶ Unreported Judgement Appeal No. CA/A208/2012 delivered on 21 August, 2016.

The party may also then appeal against the assessment to the Tax Appeal Tribunal. If the party is still dissatisfied with the decision of the Tax Appeal Tribunal, then it can approach the Federal High Court, the Court of Appeal and the Supreme Court.⁷

The TAT was established by section 59 of the *Federal Inland Revenue Service (Establishment) Act 2007* (FIRSEA 2007).⁸ The Tribunal has the power to adjudicate on disputes and controversies arising from the operations of the FIRSEA 2007 and any of the Acts under the First Schedule to the FIRSEA 2007.⁹ Paragraph 11 of the Fifth Schedule to the FIRSEA 2007 confirms the jurisdiction of the TAT by providing that the TAT has the power to adjudicate on disputes and controversies arising from the tax laws.¹⁰ In the adjudication of tax matters before the TAT, the TAT is governed by the *Tax Appeal Tribunals (Procedure) Rules 2010*.¹¹ The Rules set out amongst others, the time within which to file an appeal, place of instituting appeals, parties and representation, service of processes, mode of entering an appearance, mode of entering of appearance, a default of appearance, discontinuance of appeals, hearing, determination of an appeal, enforcement of decision and the right of further appeals to the Federal High Court. To this effect, Order XIV of the TAT (Procedure) Rules 2010 provides that, ‘Any party dissatisfied with a

⁷ Ibid at 06 & 07. See also, the Supreme Court judgment in *Aboud v Regional Tax Board* [1] All NTC 183 at 184 lines 34-39. Furthermore, see, Tax Administration Regulations 2011 (n 2) reg 33.

⁸ See, Federal Inland Revenue Service (Establishment) Act 2007, Cap. F36, Laws of the Federation of Nigeria 2010, hereafter referred to as FIRSEA 2007, s 59(1). See also, FIRSEA 2007, 5th sch. par 1(1).

⁹ See, FIRSEA 2007, s 59(2). See also Muhammed Taofeeq Abdulrazaq, *Revenue Law and Practice in Nigeria* (3rd edn, Malthouse Press Limited 2015) ch 17 at 375. Some of the Acts under the First Schedule include the Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, Value Added Tax Act, Capital Gains Tax Act, Stamp Duty Act, Taxes and Levies (Approved List for Collection) Act and other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time.

¹⁰ Such tax laws as Personal Income Tax Act, Petroleum Profits Tax Act, Value Added Tax Act, Capital Gains Tax Act, and any other law contained in or specified under the First Schedule to the FIRSEA 2007 or other laws made or to be made from time to time by the National Assembly. See, FIRSEA 2007, 5th sch. par 11(1). See also, FIRSEA 2007, s 59(2).

¹¹ Tax Appeal Tribunals (Procedure) Rules 2010, hereafter referred to as TAT (Procedure) Rules 2010.

*decision of the [Tax Appeal] Tribunal may appeal against such decisions on a point of law to the Federal High Court....*¹²

This paper aims at interrogating some fundamental issues regarding the practices of TAT. Some of the issues noted in the paper include the appointment of the members of TAT and regulation of the rules of procedure by the Minister of Finance, the mode of hearing of appeals, and the establishment of an Upper Tax Tribunal to determine appeals lying from TAT and from which tax appeals shall lie to the Court of Appeal, and subsequently the Supreme Court if needs be. The paper argues that establishment of the Upper Tax Tribunal would enhance speedy and effective adjudication of tax matters as there would not be incessant adjournment of trials as it is common with the superior courts of record, in particular, the Federal High Court.

Also, the paper argues that TAT is an administrative tribunal whose jurisdiction does not conflict with that of the Federal High Court regarding the adjudication on tax matters. The paper holds that the present status of the TAT as an administrative tribunal should be maintained, but the appointment of the members of TAT should be done by the Minister of Justice as opposed to the Minister of Finance that presently appoints them. More so, the rules of the procedures of TAT must be regulated by the Ministry of Justice and not the Ministry of Finance.

Furthermore, the paper argues that taxation is a technical issue and as such, appeal from TAT should lie to the proposed Upper Tax Tribunal as it is the practice in the United Kingdom. As a result of this, the paper canvasses for the establishment of the Upper Tax Tribunal with exclusive jurisdiction to adjudicate on matters regarding taxation, devoid of any strict procedural application and having a concurrent status with the Federal High Court and the State High Court. The paper recommends that the proposed Upper Tax Tribunal should be manned by legal experts in taxation consisting of both academia and practitioners.

This paper consists of seven parts. Part 1 is the introduction. Part 2 examines the composition of the TAT. This part amongst others examines

¹² Ibid, Ord XIV r 1. On the distinction between fact and law, see: MT Abdulrazaq, *Revenue Law and Practice in Nigeria* (n 8) at 377-379.

critically the provisions regarding the non-interrogation of the validity of the appointment of any of the Tax Appeal Commissioners, while considering the provision to be unconstitutional, it also recommends that since there is a lacuna in the Nigerian tax laws on how to tackle the issue save for the *Constitution of the Federal Republic of Nigeria (CFRN) 1999*,¹³ this lacuna should be legislatively provided for in order to save the constitutionality of the provision. This part reveals that TAT is mandated to have a minimum of one sitting per quarter and four sittings in a calendar year and the quorum at any sitting is three members. However, TAT may sit as often as it considers necessary to discharge its duty effectively. Also, this part observes that a tax appeal is filed in the zone it emanates from. The issue is, what happens where a tax appeal is filed and commenced in a wrong zone? Part 3 critically examines the status of the TAT and determines if TAT is not usurping the jurisdiction of the Federal High Court as a result of its (TAT) determining tax matters. After considering some legal authorities, the part reveals that TAT is an administrative tribunal and its jurisdiction and status is not in conflict with section 251(1)(b) of the CFRN 1999¹⁴ and thus cannot usurp the functions of the Federal High Court.

Part 4 considers the appointment of the members of TAT and regulation of the rules of its proceedings by the Minister in charge of Justice as opposed to the Minister in charge of Finance for proper dispensation of justice on tax matters. In part 5, the general practice regarding the hearing of tax matters on appeals is examined. This part reveals that Nigerian tax laws with the exclusion of the *Petroleum Profits Tax Act (PPTA) 2004*¹⁵ make provisions for the hearing of tax appeals in public. Although in all tax matters, a public hearing is adopted, this part recommends that the section under the PPTA 2004 which provides for hearing of an appeal in camera should be amended to reflect what operates in practice and other tax laws, except where an infant is a party or it is inappropriate to hold the appeal publicly.

Part 6 examines the two-tier-tax appeal system in the United Kingdom, after which it proposes for the establishment of the Upper Tax Tribunal

¹³ Constitution of the Federal Republic of Nigeria 1999, hereafter referred to as CFRN 1999.

¹⁴ Ibid, s 251(1)(b).

¹⁵ Petroleum Profits Tax Act 1959, as amended by Petroleum Profits Tax Act, Cap. P.13, Laws of the Federation of Nigeria 2004, hereafter referred to as PPTA 2004.

having concurrent jurisdiction with the Federal and State High Courts, manned by tax experts drawn from both academia and practitioners. The proposed Upper Tax Tribunal shall entertain appeals from the TAT while appeals from it lies to the Court of Appeal. Furthermore, this part considers if the establishment of the proposed Upper Tax Tribunal would not usurp the jurisdiction of the Federal High Court. Part 7 is the conclusion.

2.0 The Composition and Sitting of the Tax Appeal Tribunal

The Fifth Schedule to the FIRSEA 2007 vests on the Minister of Finance the discretion to specify the number of zones, matters and places to which the TAT may exercise jurisdiction by notice in the Federal Gazette.¹⁶ To this effect, TAT is presently constituted into eight (8) zones¹⁷ which are the North East Zone,¹⁸ North-West Zone,¹⁹ North-Central Zone,²⁰ South-West Zone,²¹ South-East Zone,²² South-South Zone,²³ Abuja Tax Appeal Tribunal,²⁴ and Lagos Tax Appeal Tribunal.²⁵ A Tribunal consists of five members,²⁶ and the TAT (Establishment) Order 2009 provides for the Minister to appoint the Chairman²⁷ and Commissioners of the TAT.²⁸ However, Paragraph 8 of the Fifth Schedule to the FIRSEA 2007 provides that:

¹⁶ FIRSEA 2007 (n 7), 5th sch para 1(2).

¹⁷ See generally, Tax Appeal Tribunal (Establishment) Order 2009, Cap. F36, Laws of the Federation of Nigeria 2010. Hereafter referred to as TAT (Establishment) Order 2009, ord 1.

¹⁸ The tribunal sits in Bauchi, and States covered are Adamawa, Borno, Bauch, Gombe, Yobe and Taraba.

¹⁹ States covered are Kaduna, Kano, Katsina, Kebbi, Jigawa, Sokoto, and Zamfara. The tribunal sits in Kaduna.

²⁰ The tribunal sits in Jos, Plateau State and covers Benue, Nasarawa, Niger, Kogi, Kwara and Plateau States

²¹ The tribunal sits in Ibadan, Oyo State, and covers Ekiti, Ogun, Ondo, Osun and Oyo State.

²² The tribunal sits in Enugu, and covers Abia, Anambra, Ebonyi, Unugu and Imo States.

²³ The tribunal sits in Benin City, Edo State and the States covered are, Akwa Ibom, Cross-River, Delta, Rivers and Edo.

²⁴ The tribunal sits in Abuja, Federal Capital Territory, and covers Abuja only.

²⁵ The tribunal sits in Lagos, Lagos State, and covers Lagos State only.

²⁶ See, FIRSEA 2007 (n 7) 5th sch para 2(1).

²⁷ A Chairman of each zone of the Tax Appeal Tribunal must be a legal practitioner who has been so qualified to practice for a period of not less than 15 years with cognate experience in tax legislations and tax matters. See, TAT (Establishment) Order 2009 (n 16) para 2(2).

²⁸ Ibid, ord 2. See also, FIRSEA 2007 5th sch para 2(1). It must be noted that, a person shall not be appointed as a Tax Appeal Commissioners unless such person is knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria, as well as shown capacity in the management of trade or business or a retired public servant in tax administration. See *ibid*, FIRSEA 2007, 5th sch para 3.

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.²⁹

As noted above, the first limb of paragraph 8 provides that, the validity of the appointment of any Commissioner shall not be the cause of any litigation in any court or tribunal. Although the provision may be for the sake of preserving the autonomy of TAT, neither the FIRSEA 2007 nor its Fifth Schedule makes any provision for resolving any issue regarding the validity of the appointment of any Commissioner where it occurs. Based on this, it is recommended that there should be a procedure wherein any party identifying this default may petition the appropriate authority for such default, and in the absence of any amendment to such appointment, the aggrieved party should have the right to a court or tribunal for the determination of the validity of such appointment.

Furthermore, the second limb of paragraph 8 stipulates that ‘... *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*’. It is proposed that this provision needs a second thought based on the following premises. First, as known in legal practice, lack of jurisdiction to entertain a suit emanating as a result of subject matter, personal, territorial etc. is very fundamental. Thus, whatever affects the composition of a court, being an adjudicating body automatically renders that court to lack jurisdiction in such matter as such proceeding would eventually be rendered a nullity. In *TSKJ II Construces Internacionals Sociedade LDA v Federal Inland Revenue Service*,³⁰ the court held amongst others that, ‘*the issue of jurisdiction and its lack on proceedings is fundamental in nature, as its absence renders proceedings how well conducted anullity*’.³¹

This principle should apply to the TAT as an adjudicating body, such that once there is any defect in the appointment of any Commissioner or composition of the TAT, any act or proceedings before such tribunal

²⁹ See *ibid*, FIRSEA 2007 5th sch para 8.

³⁰ [2014] 13 TLRN 1. See also, [9] All NTC 101.

³¹ *Ibid* at 04 & 17.

should be questioned because its constitution or membership goes to the root of the jurisdiction of the constituted tribunal.

Second, Paragraph 8 of the Fifth Schedule to the FIRSEA 2007 contradicts section 4(8) of the CFRN 1999 which provides that:

Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law.³²

As a result of its inconsistency with the above provisions of the Constitution, Paragraph 8 of the Fifth Schedule to the FIRSEA 2007 is therefore void in accordance with section 1(3) of the CFRN 1999. According to Idowu Akinloye, if paragraph 8 is challenged in the court, '*it will be an herculean task*' for it to pass the test of constitutional validity.³³

According to the TAT (Procedure) Rules 2010, an appeal to the tribunal is filed in the zone from which it emanates in accordance with Paragraph 1 of the TAT (Establishment) Order 2009.³⁴ Order 1 of the TAT (Establishment) Order 2009 was confirmed in *Nigeria Agip Exploration Limited & Anor. v Federal Inland Revenue Service* where it was held that, '*an appeal emanates from the zone in which the district or location of the local tax authorities that issued the assessment, took the action, or made the decision appealed is situated*'.³⁵ Nevertheless, where an appeal is commenced in a wrong zone, such appeal shall not be heard, but be transferred to the appropriate zone upon the direction of the Chairman of the zone where it is commenced.³⁶ It must be noted that the TAT has

³² CFRN 1999 (n 12), s 4(8).

³³ See, Idowu Akinloye, 'Appraising the Constitutionality and Independence of the Nigerian Tax Appeal Tribunal', [June 2017] 8 (2) *GRBPL*, 148 at 152.

³⁴ See, TAT (Procedure) Rules 2010 (n 10), Ord IV, r 1. See also, TAT (Establishment) Order 2009 (n 16), par 1(i)-(viii) and notes 16 to 24, for the division of the Zones.

³⁵ [7] All NTC 401 at 12.

³⁶ TAT (Procedure) Rules 2010, ord IV, r 2. See *ibid*, *Nigeria Agip Exploration Limited & Anor. v Federal Inland Revenue Service* at 409, lines 10-12.

power to make rules regulating its procedures, and the provisions of the Statute of Limitation does not apply to any appeal brought before the tribunal.³⁷

The TAT is mandated to have a minimum of one sitting per quarter and four sittings in a calendar year. However, it may sit as often as it considers necessary to discharge its duty effectively.³⁸ The Chairman presides at every sitting of the tribunal and in the absence of the Chairman, the members shall appoint one of them to be the Chairman and the quorum at any sitting shall be three members.³⁹ In *Reiss & Co. (Nigeria) Limited v Federal Board of Inland Revenue*,⁴⁰ it was held amongst others that, where three members heard all the evidence and signed the judgment, the absence of one of them during the trial will not render the proceedings a nullity, except where a miscarriage of justice has occurred.⁴¹

3.0 The Status of the Tax Appeal Tribunal

The jurisdiction and status of the TAT unveil the attitude of courts of superior records regarding the adjudication of taxation matters. Statutorily, the TAT is empowered to adjudicate on disputes and controversies arising from the operations of the FIRSEA 2007, PPTA 2004, and any of the Acts under the First Schedule to the FIRSEA 2007.⁴²

Indicating the purpose of the TAT, it was held in *Addax Petroleum Development (Nigeria) Limited v Federal Inland Revenue Service*,⁴³ that, ‘the Tax Appeal Tribunal is an administrative tribunal set up to determine the correctness of assessment to tax without undue fixation with formality’.⁴⁴ Furthermore, the TAT in *Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service*⁴⁵ stated the status of TAT thus: ‘The TAT is the last fact finding tribunal comprising a panel of experts who determine the appropriate tax liability on all available data without undue

³⁷ See, FIRSEA 2007 (n 7) 5th sch paras 20(1) & 19 respectively.

³⁸ TAT Order 2009 (n 16) ord 4.

³⁹ FIRSEA 2007 (n 7) 5th sch para 2(3) & (4).

⁴⁰ [2] All NTC 307.

⁴¹ Ibid at 318.

⁴² FIRSEA 2007, s 59(2). See also, ibid 5th sch para 11(1).

⁴³ [2012] 7 TLRN 74.

⁴⁴ Ibid at 85.

⁴⁵ [2015] 17 TLRN 73.

adherence to strict application of the Evidence Act while ensuring compliance with the principles of fair hearing'.⁴⁶

In the exercise of its jurisdiction, one legal issue that always arises and in particular, when the affected party is a company is about the usurpation of the jurisdiction of the Federal High Court by the TAT. The principal issue for consideration is, does the status of TAT as an administrative tribunal conflict with section 251(1)(b) of the CFRN 1999, thereby usurping the function of the Federal High Court regarding adjudication on tax matters? There have been several controversies as regards this issue. While some taxpayers have challenged the jurisdiction of TAT to adjudicate on tax matters, some decisions of the superior courts have said that TAT's jurisdiction on tax matters is unconstitutional, and conflicts with section 251 of the Constitution, while many decisions of the superior courts of record held that, TAT did not usurp the jurisdiction of the Federal High Court, and thus TAT's jurisdiction on tax matters does not conflict with section 251 of the Constitution. According to Abiola Sanni:⁴⁷

[T]ax-payers had raised preliminary objections that the TAT had no jurisdiction to hear and determine their cases on the basis that section 59 of the FIRSEA was inconsistent with the provisions of section 251(a) & (b) of the 1999 Constitution. Yet, the TAT held in those cases that it had jurisdiction to determine them and that its jurisdiction was not inconsistent with that of the Federal High Court principally on the basis that it was not a court.⁴⁸

Providing the rationale behind the position of TAT, the learned writer further said that, '*Basically, the position of TAT was that there is no inconsistency between section 59 of the FIRS Act and section 251(a) and*

⁴⁶ Ibid at 82. See also, *Esso Exploration and Production Nigeria Limited & Shell Nigeria Exploration and Production Company Limited v Federal Inland Revenue Service* [2012] 8 TLRN 45 at 53; and PwC, 'Tax Appeal Tribunal Affirms Itself as an Administrative Body not Bound by Strict Court Rules' (January 2016) <<http://www.mondaq.com/Nigeria/x/462308/tax+authorities/Tax+Appeal+Tribunal+Affirms+Itself+As+An+Administrative+Body+Not+Bound+By+Strict+Court+Rules>>, accessed 18 March 2021, 1-2.

⁴⁷ Abiola Sanni is a Professor of Tax in the Faculty of Law, University of Lagos, Nigeria.

⁴⁸ See, Abiola Sanni, 'CITN Position on the Conflicting Decisions on the Federal High Courts on the Constitutionality or Otherwise of the Tax Appeal Tribunal'.

(b) of the 1999 Constitution, the TAT not being part of the judiciary but an administrative tribunal established by the Minister of Finance'.⁴⁹

On the side of the superior courts, in *Shell Nigeria Exploration and Production & 3 Ors v Federal Inland Revenue Service & Anor.*,⁵⁰ the Court of Appeal laid its support to the TAT by holding that an aggrieved party not satisfied with the position of the tax authority may appeal against the tax assessment to the TAT and if still dissatisfied with the decision of TAT, then it can approach the Federal High Court, the Court of Appeal and the Supreme Court.⁵¹ This decision invariably supports the fact that the TAT does not usurp the jurisdiction of the Federal High Court because whatever is decided at the Tribunal is still subject to appeal at the Federal High Court.

Also, in *Oando Plc. v Federal Inland Revenue Service*,⁵² the Federal High Court held amongst others that:

... the Constitution has defined 'courts' as those courts established by the Constitution. See section 6 (5) (a) of the Constitution The Tax Appeal Tribunal is not one of the courts created or recognized by the Constitution. Furthermore, if the Tax Appeal Tribunal is shown to have been conferred with jurisdiction to exercise without the right to appeal to Federal High Court against the decision of the Tribunal, then it can safely be argued that the Tax Appeal Tribunal would not have jurisdiction over taxation⁵³

The court went further to state that if the legislature had wanted administrative bodies like TAT to be among the courts excluded by section 251(1), it would have specifically made provision to that effect in

⁴⁹ Ibid.

⁵⁰ [N 5].

⁵¹ Ibid at 85.

⁵² [2015] 17 TLRN 50.

⁵³ Ibid at 67-68. In *Chevron Nig. Ltd. v Ondo State Board of Internal Revenue* [2015] 19 TLRN 1 at 7 & 8, it was held amongst others that TAT is also clothed with jurisdiction to hear and determine cases relating to Pay-As-You-Earn (PAYE) amongst other taxes. To buttress this, the Tribunal referred to section 11 of the Fifth Schedule to FIRSEA 2007, section 60 of the Personal Income Tax Act (As Amended) 2011 and the decision of the Federal High Court in *NNPC v TAT & 3 Ors.*[2013] 13 TLRN 39.

section 251(1) of the Constitution, based on the legal ground that, where a Statute specifically mentioned certain things, those things not mentioned are excluded.⁵⁴ To make its decision uncontroversial, the Federal High Court distinguished the present case of *Oando Plc. v Federal Inland Revenue Service* from that of *Stabilini v Federal Board of Internal Revenue*⁵⁵ where the court in Stabilini's case held the tribunal not to be recognized under the law. Broadly distinguishing this case from Stabilini's case, the Court held that:

A careful reading of the case of Stabilini would show that it was heard by the Value Added Tax Tribunal. By virtue of paragraph 24 of the Second Schedule to the Value Added Tax Act, appeal from the decision of the Value Added Tribunal lies to the Court of Appeal, and not to the Federal High Court.

This therefore means that the Value Added Tribunal has in a way usurped the exclusive nature of the Federal High Court's jurisdiction on matters of taxation on revenue of the Federal Government. This feature makes the Stabilini case quite distinguishable from the present case where appeal lies to the Federal High Court.⁵⁶

Prior to the decisions in all the above cases, the TAT in 2012 held amongst others in *Shell Nigeria Exploration & Production Co. Ltd. & Ors. v Federal Inland Revenue Service & Anor*⁵⁷ that the TAT has jurisdiction to entertain tax matters because, it is not within the contemplation of '... to the exclusion of any other court' as enshrined under section 251 of the Constitution. The Tribunal concluded that the courts referred to are those listed in the hierarchy of courts set out in the Constitution. The Tribunal went further to state that paragraph 20(3) of the Fifth Schedule to the FIRSEA 2007 states that 'Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes' merely deem TAT as a court, and that if an

⁵⁴ Ibid at 68.

⁵⁵ [2009] 1 TLRN 1.

⁵⁶ (N 51) at 55 & 68.

⁵⁷ [9] All NTC 175 at 175, lines 10-19.

institution is a court, one would not have to deem it a court. Thus, the deeming clause is an acknowledgement that TAT is not a court.⁵⁸

Also, in *Nigerian National Petroleum Corporation v Tax Appeal Tribunal & 3 Ors.*⁵⁹ Justice Buba of the Federal High Court, Lagos Judicial Division upheld the creation and establishment of the TAT amongst others, to the effect that:

Even if the Tax Appeal Tribunal is manned by legal minds, it does not enjoy the status of a Court Apart from the fact that Tax Appeal Tribunal is not a Court, it is subject to appeal to the Federal High Court and is indeed supervised by the Federal High Court through judicial review It is not like the Value Added Tax Tribunal that had triple jumped its decision to the Court of Appeal.⁶⁰

One of the very few decisions that held that it is a usurpation of jurisdiction for TAT to adjudicate and determine matters connected with the taxation of Nigerian companies is the judgment delivered by Justice M.B. Idris of the Federal High Court in the case of *Nigerian National Petroleum Corporation v CNOOC Exploration Nigeria Limited & 2 Ors.*⁶¹ The Court in 2015 specifically held in the case that, since petroleum profits tax is a tax payable to the revenue of Federal Government for petroleum operations of companies, TAT cannot rightly adjudicate over and or determine any dispute relating to petroleum profit tax assessment which will necessarily/directly affect the Federal Government.⁶²

The above decision by Justice M.B. Idris was based on the exclusive jurisdiction of the Federal High Court which makes other courts to be

⁵⁸ Ibid at 176.

⁵⁹ [2014] 13 TLRN 39. See also, [9] All NTC 119.

⁶⁰ Ibid at 93-94. The judgment was delivered on 3 December 2013. The review power of the Federal High Court on TAT has been in existence for many years back before the given of the new names under which both institutions are known today. On 31 March 1977, the Supreme Court in *Mobil Oil (Nig.) Ltd. v Federal Board of Inland Revenue (Case 2)* [2] All NTC 203 (SC) at 226-228 held amongst others that, the Federal Revenue Court has the power to vary the judgment of the Appeal Commissioners if it is shown to be manifestly wrong or excessive or based on the wrong principle of law. See, lines 2-3, 21-29, 28-31 & 42-43. See also, *Reiss & Co. v Federal Board of Inland Revenue* (n 42) at 343, lines 16-22.

⁶¹ [2015] 20 TLRN 17 at 39-40.

⁶² Ibid at 42. The case was an appeal from TAT to the Federal High Court. The TAT in its holding held that TAT has tax jurisdiction to entertain matters on taxation and that TAT is not a court. See, [[8] All NTC 345 at 348-349.

precluded from exercising original jurisdiction over the same matter and because TAT is statutorily considered as a civil court. The court in trying to justify its decision stated that in so far as paragraph 20(3) of the Fifth Schedule to the FIRSEA 2007 deems the TAT to be a civil court for all purposes, the National Assembly has thereon introduced statutory fiction, thereby making TAT amongst other adjudicating bodies to proceed on the assumption that such a state of affairs exists from the date the legislation took effect.⁶³ The Court amongst others held that:

[f]rom the date the legislation took effect, parliament required the TAT to be treated as if it were a civil court for all purposes. Indeed, paragraph 20(3) of the Fifth Schedule to the FIRS Act is consistent with section 6(5)(j) of the 1999 Constitution, which places in the hierarchy of courts ‘such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters in respect of which the National Assembly may make laws’.

I hereby find that by deeming the TAT to be a Civil Court for all purposes, parliament requires it to be treated as a Court for the purpose of exercising jurisdiction, the hearing and determination of cases and the delivery of decisions/judgments. That being the case, the TAT is to be treated as a Civil Court to exercise jurisdiction in respect of disputes arising out of the tax laws listed in paragraph 11 of the Fifth Schedule to the FIRS Act.⁶⁴

The Court, therefore, held that, since the TAT is to be treated as a civil court for all purposes, where it exercises jurisdiction in a matter that relates to the revenue of the Federal Government, and pertains to, or connected with the taxation of a Nigerian company, TAT encroaches upon the exclusive jurisdiction vested on the Federal High Court.⁶⁵

⁶³ See, *ibid* at 39.

⁶⁴ *Ibid* at 40.

⁶⁵ The Federal High Court in the case may have relied on its earlier decision in *TSKJ II Construces Internacionals Sociedade LDE v Federal Inland Revenue Service* (n 29) at 17-19, where Justice Ademola of the Federal High, Federal Capital Territory Division, Abuja held amongst others on 30 October 2013 that section 59(1) & (2) of FIRSEA 2007 are invalid because of its inconsistency with section 251(1)(a) & (b) of the Constitution of the Federal Republic of Nigeria, 1999, by virtue of section 1(3) of the Constitution. See also, [9] All NTC 101.

However, an appeal was filed against the judgment of the Federal High Court to the Court of Appeal, and the judgment of the Federal High Court was set aside.⁶⁶ The Court of Appeal held amongst others that, the jurisdiction of the TAT to entertain tax appeals relating to the revenue of the Federation and income of companies, including the petroleum upstream companies does not violate Section 251(1) of the Constitution of the Federal Republic of Nigeria.⁶⁷ The Appeal Court referred to the judgment in *Shell Nigeria Exploration and Production & 3 Ors. v Federal Inland Revenue Service & Anor.*,⁶⁸ and held that the recognition of the TAT by the Court of Appeal in the case,⁶⁹ as a vital step towards the resolution of tax-related disputes shows that the TAT has jurisdiction over such matter. The Court therefore clearly states the position of the two institutions thus:

Section 251(1)(b) of the Constitution ... gives exclusive jurisdiction to the Federal High Court in civil causes and matters connected with, or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation. It may be added that in respect of the petroleum profit tax, it is after ... an appeal to the Tax Appeal Tribunal that a person may approach the Federal High Court.⁷⁰

Following this dispensation, in 2017, the Court of Appeal held in *Federal Inland Revenue Service v TSKJ Construcoes Internacional Sociedade Unipersoal LDA*⁷¹ that, ‘*The jurisdiction of the TAT is not a usurpation of the jurisdiction of the Federal High Court, the Tax Appeal Tribunal is a precedent to the jurisdiction of the Federal High Court to entertain the subject matter of [the] appeal*’.⁷²

⁶⁶ See, *CNOOC Exploration and Production Nigeria Ltd & South Atlantic Petroleum Limited v Nigerian National Petroleum Corporation & Federal Inland Revenue Service* [2017] 30 TLRN 1 (CA).

⁶⁷ Ibid at 26-27.

⁶⁸ (N 5).

⁶⁹ Ibid.

⁷⁰ Ibid at 26-27.

⁷¹ [2017] 32 TLRN 58 (CA).

⁷² Ibid at 66 & 91.

Stemming from the consensus of the above decisions, TAT is statutorily and judicially recognized, although, not as a court of law,⁷³ but as a competent administrative tribunal.⁷⁴ As noted from the above cases, the only judgments that support the usurpation of the functions of the Federal High Court by TAT are two judgments of the Federal High Court⁷⁵ and these judgments have been set aside by the various judgments of the Court of Appeal.⁷⁶ Therefore, it can be authoritatively asserted that the jurisdiction of TAT does not conflict with that of the Federal High Court.

It must be noted that the usefulness of TAT cannot be over emphasized, in particular, with the technical nature of taxation. TAT has been so effective in many ways regarding the adjudication of tax disputes. Accordingly, TAT helps to reduce the caseload of the over-laden regular courts by providing less formal, quicker and cheaper resolution of tax disputes to which speedy results are in the public interest. Therefore, sound policy demands the establishment of TAT⁷⁷ because of the specialized nature of taxation.⁷⁸ Based on the technical nature of taxation, it is recommended that TAT should continue being an administrative body to hear and determine tax disputes at first instance.

As a result of the status of TAT, where in the course of its adjudication, the tribunal discovers evidence of possible criminality, it is obliged to pass such information to the appropriate criminal prosecuting authorities such as the office of the Attorney-General of the Federation or Attorney-General of any State of the Federation or any relevant enforcement agency.⁷⁹

⁷³ See, CFRN 1999 (n 12) s 295.

⁷⁴ See also, *Federal Inland Revenue Service v TSKJ Construcoes Internacional Sociedade Unipessoal LDA* (N 70) at 90-91.

⁷⁵ *TSKJ II Construcoes Internacionais Sociedade LDE v Federal Inland Revenue Service* (n 29), delivered on October 2013; and *Nigerian National Petroleum Corporation v CNOOC Exploration Nigeria Limited & 2 Ors.*, (n 63), delivered in 2015.

⁷⁶ See, *CNOOC Exploration and Production Nigeria Ltd & Anor. v Nigerian National Petroleum Corporation & Anor.* (n 65); and *Federal Inland Revenue Service v TSKJ Construcoes Internacional Sociedade Unipessoal LDA* (n 70), all delivered in 2017. See also, *Shell Nigeria Exploration and Production & 3 Ors. v Federal Inland Revenue Service & Anor.*, (n 5).

⁷⁷ See, *Federal Inland Revenue Service v General Telecom Plc.* [2013] 1 NRLR 44 at 48 & 62.

⁷⁸ See, AR Ipaye, 'Overview of the Tax Environment: Issues and Challenges' in MT Abdulrazaq, A. Sanni, & Ors (eds) *CITN: Nigerian Tax Guide and Statutes* (2nd edn, LexisNexis, CITN, 2010) 1 at 19.

⁷⁹ FIRSEA 2007 (n 7) 5th sch para 12.

4.0 Appointment of Members and Regulation of the Rules of Tax Appeal Tribunal

Statutorily, it is provided that the Minister may make rules prescribing the procedure to be followed in the conduct of appeals before the TAT.⁸⁰ To this effect, the TAT (Procedure) Rules 2010 were made and the Rules apply in all proceedings of the TAT.⁸¹ Similarly, Paragraph 2(1) of the Fifth Schedule to the FIRSEA 2007 provides that members of the TAT are to be appointed by the Minister.⁸² The issue is, what is the portfolio of the Minister that is vested with the responsibility of appointing members of the TAT and making the rules that prescribe the procedure to be followed by the TAT in the conduct of its appeals? Is it the Minister in charge of Justice or what?

According to the definition section of the FIRSEA 2007, 'Minister' is defined to mean, the Minister of Finance, and Ministry as considered accordingly.⁸³ Accordingly, the TAT website provides that, '*Tax Appeal Tribunal has a total of forty (40) Tax Appeal Commissioners appointed by the Ministry of Finance*⁸⁴'⁸⁵ The above premises show that the Minister of Finance is the Minister being referred to under the tax Acts,⁸⁶ the TAT (Establishment) Order 2009, and the TAT (Procedure) Rules 2010.⁸⁷ Therefore, the rules prescribing the procedure to be followed by the TAT in the conduct of its appeals and appointment of its members are done by the Ministry of Finance and not the Ministry of Justice.

⁸⁰ Ibid, para 21.

⁸¹ See, TAT (Procedure) Rules 2010 (n 10) the Preamble & r 1.

⁸² See, FIRSEA 2007 (n 7) 5th sch para 2(1).

⁸³ See *ibid*, s 69.

⁸⁴ Emphasis supplied.

⁸⁵ Tax Appeal Tribunal, 'TAT Structure' < <https://tat.gov.ng/tat-structure/>>, accessed 28 September, 2021.

⁸⁶ For instance, under section 2 of the PPTA 2004, 'Minister' is defined to mean '*the Minister charged with the responsibility for matters relating to taxes on incomes and profits.*' It is a known fact that taxes on incomes and profits are discourse under finance, and so the Minister being referred to is the Minister in charge of Finance.

⁸⁷ See, the Preamble to the TAT (Procedure) Rules 2010 (n 10) wherein the former Minister of Finance in 2010, Olusegun Aganga reiterated the provisions of the Fifth Schedule to the FIRSEA 2007 which vested him with powers to make the TAT (Procedure) Rules 2010. See also, Dr. Mansur Murtar, another former Minister of Finance reiterating the same in the preamble to the TAT (Establishment) Order 2009.

In order to achieve the mission of the TAT ‘to resolve tax disputes on a basis that is just, flexible, speedy, convenient and affordable’,⁸⁸ it is desirable that members of this administrative body be appointed and its rules regulated by the Ministry of Justice.⁸⁹

Notwithstanding the fact that the Office of the Accountant General of the Federation (OAGF) is not the supervisory unit of the TAT, the position under our tax laws and practice wherein ‘the Minister’ in relation to any TAT issue means the Minister of Finance should be revised statutorily and in practice, so that members of the TAT would be appointed and regulated by the Ministry of Justice. This is because, the Minister of Justice knows better as regards the legal ethics as well as quick dispensation of justice which may be driving forces for members of TAT appointed by him to work towards achieving more efficient, effective and speedy dispensation of justice. Accordingly, TAT should be ‘accountable to the Minister of Justice for their own performance and that of their Office...’⁹⁰ because it will aid the independence and accountability of the tribunal.⁹¹

5.0 Statutory Reflection of Practices on Public Hearing of Tax Appeal

Paragraph 15(5) of the Fifth Schedule to the FIRSEA 2007 stipulates that all appeals before the Tax Appeal Commissioners shall be held in public. Also in practice, all tax appeals by the Commissioners and further appeals to the Federal High Court, Court of Appeal, and the Supreme Court are heard in public. While these are applicable provisions and practices regarding almost all the tax laws, the PPTA 2004 provides that appeal before the TAT shall be held in camera⁹² and appeals to Federal High Court against the decision of TAT ‘shall be heard in camera, unless the Judge shall on the application of the appellant, otherwise direct’.⁹³

⁸⁸ Tax Appeal Tribunal (TAT), ‘Mission of TAT’ < <https://tat.gov.ng/mission-vision/> >, accessed 03 October 2021.

⁸⁹ See also, Olujimi Adedotun, ‘Tax Appeal Tribunals – Slow Pace of Justice’ *This Day* (8 August 2013).

⁹⁰ See, Olumide Obayemi, ‘An Assessment of the Nigerian Tax Appeal Tribunal and the Need for a Speedier and More Efficient System’ [2015] 6 (6) *Research Journal of Finance and Accounting*, 11 at 40.

⁹¹ Ibid.

⁹² PPTA 2004 (n 14), s 41(6).

⁹³ Ibid s 42(11).

The provision of the PPTA 2004 regarding the hearing of tax matters in camera must be amended to reflect what operates in practice. Although the FIRSEA 2007 is the most recent in comparison with the PPTA 2004, a thorough examination of the *Finance Act 2019* and the *Finance Act 2020* (which are the latest of all tax laws and which seek to amend all tax laws) reflects that none of the two Acts amends section 41(6) of the PPTA 2004. Thus, this paper recommends that hearing of all tax appeals should be in public except where minors are involved, or where publicity might affect a fair and just hearing. In the United Kingdom, where appeal proceeds to a tribunal hearing, either the First Tier or Second Tier tribunal, it will probably be heard in public, except where ‘*minors are involved, or for the protection of one’s private life, or because publicity might affect a fair and just hearing.*’⁹⁴ Thus, public hearing of tax matters in Nigeria, and exceptional situations to allow for hearing in camera must be reflected in all our tax laws.

6.0 Establishment of the Upper Tax Tribunal

As noted above, appeals from the TAT lies to the Federal High Court and from there to the Court of Appeal, and the last resort is made to the Supreme Court as the final arbiter of justice in Nigeria. It is noted that in the adjudication of matters at all superior courts of record, there exist administrative bottlenecks and focus on legal technicalities which delay matters unnecessarily, and tax matters inclusive. The delay of the superior courts of record in finalizing the disputes in tax matters affects the financial status of the tax payer as well as that of the government. In the first instance, the delay may not allow the taxpayer pay attention to other matters which can upgrade his financial status. On the other hand, inability of a tax payer to pay attention to his business invariably affects the tax returns he will file in the next financial year with the government as well as the inability of the government to make recoveries of payable taxes sooner than later.⁹⁵

⁹⁴ Low Income Tax Reform Groups, ‘Tax Appeals’ <<https://www.litrg.org.uk/tax-guides/tax-basics/enquiries-penalties-appeals-complaints-and-debt/tax-appeals#how-does-the-tribunal-system-work>>, accessed 05 October 2021.

⁹⁵ See also, Olujimi Adedotun, ‘Tax Appeal Tribunals – Slow Pace of Justice’, (n 88).

The challenges associated with the courts of record are what necessitated the establishment of the TAT. While re-emphasizing the rationale behind the establishment of TAT, Bolanle Hajara Oniyangi⁹⁶said:

It is the expectation of all stakeholders that the establishment of the TAT would reduce the incidence tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in the adjudication of tax matters in traditional court system, improve the tax payers' confidence in our tax system, provide the expertise in tax dispute resolution, provide avenue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity....⁹⁷

Tribunals are known for their efficiency and working towards achieving their objectives. The appeal tribunal of tax matters is not left out of this attributes. While inaugurating the TAT in 2010, the former Minister of Finance, Mansur Muhtar noted:

This government is committed to making Nigeria a preferred destination for both local and foreign investors by making the economy more investment friendly. You will agree with me that today's event is a step in the right direction towards the attainment of that objective. The responsibility being entrusted to you is indeed enormous, but I have no doubt in my mind that given your qualifications and experiences in both the public and private sectors of the economy you will discharge this responsibility creditably.⁹⁸

⁹⁶ Bolanle Hajara Oniyangi is the Coordinating Secretary of TAT.

⁹⁷ BH Oniyangi, 'Tax Appeal Tribunal: Executive Brief' <<http://tat.gov.ng/executive-brief/>>, accessed 02 October, 2021.

⁹⁸ See, National Information Technology Development Agency (NITDA), FG Establishes Tax Tribunals (27 February 2010) <<https://economicconfidential.com/2010/02/fg-establishes-tax-tribunals/>>, accessed 06 October 2021. See also, Agbonika Josephine Aladi Achor, 'Tax Dispute Resolution in Nigeria: A Storm in a Tea Cup' [2014] 29 *Journal of Law, Policy and Globalization*, 147 at 149.

While the challenges that necessitated the establishment of TAT are avoided at TAT, any appeal to the Federal High Court would be met with those challenges. According to Newman Richards, ‘*The advantage of TAT is that it will ensure speedy resolution of tax matters and help to decongest the Federal High Court [amongst others].*’⁹⁹ In order to avoid the challenges associated with appealing to the Federal High Court, this writer canvasses for the establishment of the Upper Tax Tribunal as operated in the United Kingdom.

6.1 Tax Appeal Systems in the United Kingdom

In the United Kingdom, Her Majesty’s Courts and Tribunals Service (HMCTS),¹⁰⁰ an agency of the Ministry of Justice administers a two-tier tribunal systems for taxation: First-tier Tribunal and an Upper Tribunal, both of which are split into chambers and are independent of the government.¹⁰¹ The two-tier tribunal systems in the United Kingdom is with effect from 1 April, 2009.¹⁰²

On the one hand, the First-tier Tribunal system can be likened to the Nigerian TAT and it adjudicates on tax cases and also hears appeals from citizens against decisions made by Government departments or agencies, such as the Her Majesty’s Revenue and Customs (HMRC).¹⁰³ On the other hand, the Upper Tribunal being the Second-tier adjudicating body on tax matters reviews and decides appeals arising from the First-tier Tribunal for cases regarding tax amongst others. The Upper Tribunal in the United Kingdom is couched as the Upper Tribunal (Tax and Chancery Chamber)

⁹⁹ NU Richards, ‘An Examination of Tax Dispute Resolution Mechanisms in Nigeria: A Case for the Adoption of Alternative Dispute Resolution Methods’ [2017] 1 *Uniport Law Review*, 195 at 199.

¹⁰⁰ Hereafter referred to as HMCTS.

¹⁰¹ Courts and Tribunals Judiciary, ‘Introduction to Tribunal’ <<https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/tribunals/>>, accessed 05 October 2021.

¹⁰² See, Gillian Latimer, ‘Understanding the new tax appeals procedure’ in *In Practice* (April 2009) at 24. See also, <<https://www.google.com/search?q=Gillian+Latimer%2C+%E2%80%98Understanding+the+new+tax+appeals+procedure%E2%80%99&og=Gillian+Latimer%2C+%E2%80%98Understanding+the+new+tax+appeals+procedure%E2%80%99+&aqs=chrome..69i57.1947j0j15&sourceid=chrome&ie=UTF-8>>, accessed 03 October 2021.

¹⁰³ Courts and Tribunals Judiciary, ‘Introduction to Tribunal’, (n 100). See also, Gov.Uk, ‘Appeal to the Tax Tribunal’ <<https://www.gov.uk/courts-tribunals/first-tier-tribunal-tax>>, accessed 05 October 2021.

and it is the first and only tribunal having the power of judicial review on taxation.

The Upper Tribunal in the United Kingdom consists of tax experts and their expertise assists in the effective and efficient administration of tax matters in the United Kingdom. This system aids the United Kingdom in effective and efficient tax adjudication. In the United Kingdom, although an appeal from the HMRC lies to the tax chamber of the First-tier Tribunal, however, in an exceptional cases, tax appeals may be heard by the Upper Tribunal (by bypassing the First-Tier Tribunal) if the law involved is particularly complex.¹⁰⁴ The procedural rules governing the First-Tier Tribunal in the *Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273)*¹⁰⁵ while the Upper Tribunal is guided by the *Tribunal Procedure (Upper Tribunal) Rules 2008* and the tribunal's practice directions.¹⁰⁶

6.2 Adopting the Tax Appeal Practice in the United Kingdom in Nigeria

As noted above, it is observed that disputes are adjudicated at a slow pace in the Nigeria superior courts of record and these include tax matters.¹⁰⁷ Matters are adjourned for months, and some for year(s). The slow pace may be due to many reasons amongst which are many assigned cases to handle, lack of expertise in the area of the dispute before the Justice(s), administrative bureaucracy and human error. The slow pace by which tax matters are adjudicated at the appellate courts, in particular, the High Courts of the Federal and States is greatly on lack of expertise on tax matters.

Therefore, in order to have a more speedy and effective dispensation of justice on tax matters, it is desirable that the tax appeal tribunal system as it exists in the United Kingdom be adopted in Nigeria. To this effect, this writer canvasses for the establishment of a tax appellate tribunal with the

¹⁰⁴ Low Income Tax Reform Groups, 'Tax Appeals', (n 93).

¹⁰⁵ See, the United Kingdom Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273).

¹⁰⁶ See, the Tribunal Procedure (Upper Tribunal) Rules 2008 which makes provisions amongst others for procedure for cases in the Upper Tribunal, judicial review proceedings, hearing, decisions, correcting, setting aside, reviewing and appealing decisions of the Upper Tribunal. See also, 'Legislation.Gov.Uk' <<https://www.legislation.gov.uk/uksi/2008/2698/contents>>, accessed 04 October 2021.

¹⁰⁷ See, 6.0.

nomenclature of ‘Upper Tax Tribunal’ or any other name with same jurisdiction in Nigeria. The establishment of an Upper Tax Tribunal in Nigeria would ensure speedy resolution of tax matters and assist in decongesting the Court of Appeal just as the TAT assists in decongesting the Federal High Court in matters concerning taxation. Also, it is recommended that the proposed Upper Tax Tribunal should have exclusive jurisdiction to hear and determine tax issues, with an appeal from it to the Court of Appeal, and finally to the Supreme Court. The proposed tribunal should be devoid of any strict procedural application as customarily done in the superior courts of record.¹⁰⁸

It must be noted that the importance of having a tax appellate body which adjudicates on appeals from TAT in Nigeria is recognised by stakeholders, such as the Ministry of Finance. The Ministry amongst others recommended for the establishment of tax court as provided for under Paragraph 5.1 of the Revised National Tax Policy 2017 to the effect that, ‘*The Executive shall sponsor a bill for the establishment of a tax court as an independent body to adjudicate in tax matter*’.¹⁰⁹ Notwithstanding the recommendation, till today being October 8, 2021, the proposal has not been implemented.

Although, the question may arise if the establishment of the Upper Tax Tribunal will not eventually result in the usurpation of the jurisdiction of the Federal High Court? This question is responded to negatively because it is also recommended that the Nigerian Constitution must be reviewed to vest the Upper Tax Tribunal with the same status as vested in the State High Court and the Federal High Court, and having exclusive jurisdiction on tax-related matters. Thus, section 251 of the CFRN 1999 must be amended so that appeal against TAT’s decision regarding Government’s revenue concerning taxation should lie to the Upper Tax Tribunal, then to the Court of Appeal, and finally to the Supreme Court

As a result of the specialized nature of taxation, it is recommended that the Upper Tax Tribunal must be manned by knowledgeable tax experts consisting of both academia and practitioners, and are ‘*more likely to appreciate the commercial context of the Tax Appeal [Court] processes,*

¹⁰⁸ See, BH Oniyangi, ‘Tax Appeal Tribunal: Executive Brief’, (n 96).

¹⁰⁹ See, Revised National Tax Policy 2017 < <https://pwcnigeria.typepad.com/files/fec-approved-ntp---feb-1-2017.pdf>>, para 5.1(iii), accessed 08 October 2021.

both from the taxpayers' and government's perspectives'.¹¹⁰ The establishment of the Upper Tax Tribunal will aid the efficient dispensation of justice, reduces unnecessary appeal, increases the level of expertise in the area,¹¹¹ and above all, enhances revenue generation of the Nigerian Government derived from taxation. This is because a speedy adjudication of tax matter will allow the aggrieved tax payer to know the amount of tax to be paid to the coffer of the government and this will increase government's revenue sooner than later.

It must be noted that although the establishment of an Upper Tax Tribunal is canvassed for, this paper is not recommending the scrapping of TAT. It is rather stating that administrative appeals from the decision of the RTA should lie to the TAT, from where a further appeal lies to the proposed Upper Tax Tribunal, then to the Court of Appeal, and finally to the Supreme Court. Furthermore, it is recommended that the composition and appointment of members of the proposed tribunal must be made by the National Judicial Council.

Conclusion

The status and jurisdiction of the TAT have been established and thus not in conflict with the jurisdiction of the Federal High Court. However, the rate at which matters are adjourned by the superior courts of record on tax matters, in particular, by the Federal High Court is generally known. In view of this, it is recommended that, for judicious, efficient and effective dispensation of tax matters, a specialized tax court with the nomenclature of 'Upper Tax Tribunal' being a tax appellate tribunal, having the same status with the State and Federal High Courts, and having exclusive jurisdiction to hear and determine tax issues should be established in each zones of the Federation. The tribunal should adhere majorly to substantive rather than forms of appeal. Allowing the Upper Tax Tribunal to be flexible against the procedural complications of the conventional courts will deter representatives of parties who may seek to take advantage of certain legal provisions or procedural demands in Statutes to stall proceedings and complicate disputes to avoid or delay the resolution of tax disputes based on facts.

¹¹⁰ O Adedotun, 'Tax Appeal Tribunals: Slow Pace of Justice', (n 88).

¹¹¹ It must be noted that the establishment of the National Industrial Court as an appellate court on labour matters emanating from the Industrial Arbitration Panel results in speedy dispensation on labour matters and it avoids unnecessary appeal to the Court of Appeal.

Also, the proposed Upper Tax Tribunal should be manned by professionals in tax matters such as legal experts drawn from both academic and legal practice. This is because taxation is a technical issue, as well as having specialized nature, and its resolution and determination should be handled by professionals. Further appeal from this court should lie to the Court of Appeal, and subsequently to the Supreme Court.

To realize the above recommendation, the establishment of the Upper Tax Tribunal should be constitutionally provided for and as such, there is the need for the amendment of section 251(1) of the CFRN 1999 and in particular, the deletion of section 251(1)(b) to confer the proposed Upper Tax Tribunal the exclusive jurisdiction to entertain and adjudicate on matters relating to taxation without conflicting with the exclusive jurisdiction of the Federal High Court. Knowing full well that the procedure for the amendment of any written Constitution is cumbersome, expensive, and time-consuming, it is recommended that the amendment regarding the conferment of exclusive jurisdiction of taxation matters on TAT and Upper Tax Tribunal be done through alteration to the Constitution in a similar manner that the establishment of the National Industrial Court (NIC) is provided for in the CFRN (Third Alteration) Act No. 3, 2010.¹¹²

However, the recommendation for the establishment of the Upper Tax Tribunal is not to jettison the operation of TAT, but to be a body from where appeal from TAT lies before further appeal to the Court of Appeal, and finally to the Supreme Court. This is because the sustenance of TAT is germane to the effective dispensation of tax matters and so, the tribunal must be more empowered and allowed for its flexibility for non-adaptation to rules of superior courts of record without jeopardizing the principles of fairness and reasonableness. More so, the composition and appointment of the members of the TAT must be under the control of the Ministry of Justice, and not the Ministry of Finance as it is presently. Also, the rules guiding its procedure must be regulated by the Ministry of Justice.

It is believed that if the above recommendations are implemented, it will aid a more efficient, speedy dispensation of justice and revenue generation to the government.

¹¹² See, CFRN (Third) Alteration, Act No. 3, 2010. See also, *TSKJ II Construces Internacionals Sociadadelde v Federal Inland Revenue Service* (n 29) at 21.