

MTN Nigeria Communications Plc Vs FIRS: The Tax Appeal Tribunal Decides



The Tax Appeal Tribunal (TAT) last week ruled on a matter between MTN Nigeria Communications Plc (“MTN”) and the Federal Inland Revenue Service (“FIRS”).

Penalties on Infractions Disallowed, but some Penalties could be Allowable:

The TAT held that deducting the penalty imposed by the Nigerian Communications Commission (NCC) was erroneous as it did not pass the WREN (Wholly, Reasonably, Exclusively and Necessary) test. This is as a result of the fact that the said penalty was due to an infraction which was not necessary for the business and could have been avoided. Notwithstanding, the TAT stated that it should not be assumed that all penalties are as a matter of fact disallowed, but rather the deductibility should be determined on the merit of each case.

Input VAT on Interconnect Fees are Recoverable:

The TAT agreed that input VAT on interconnect charges are deductible from output VAT. It however ruled against FIRS’ demand for additional VAT on interconnect charges from MTN on the basis that FIRS lacked

documentation to prove its demand. The additional VAT assessment on interconnect fees was therefore discharged.

Asset Swaps are liable to VAT:

An asset swap typically consists of two services; the supply of old assets in exchange for an upgrade and the supply of the upgraded assets, both of which are subject to VAT. Although MTN had argued that the upgrade was done at no additional cost and in line with the company's Assets Upgrade Policy, there was no documentary evidence adduced to the effect, and as such this could not be determined.

FIRS had on its part demanded for VAT on both the old and the upgraded assets, but the TAT held that MTN is only responsible for VAT on the transfer of its old assets, which amounts to a disposal to the Original Equipment Manufacturer (OEM), while the VAT on the receipt of the upgraded version remains the responsibility of the other party to the swap (the OEM).

Interest and Penalty on VAT Liability Effective from the Date of Obligation to Pay:

The application of interest and penalty on MTN's outstanding VAT liability was deemed appropriate since an outstanding VAT liability attracts interest and penalty from the time it becomes due and ought to be remitted. Therefore, the TAT held that charging interest and penalty is not contingent on the tax liability being final and conclusive. FIRS is therefore entitled to charge interest and penalty on the VAT payable on the market value of MTN's old fixed assets exchanged for the upgraded version.

Conclusion

This judgment coming on the heels of the Finance Act 2019 will surely have a positive impact on the resolution of future disputes with FIRS and other tax authorities in Nigeria. It highlights the duty of the tax authority to use its discretionary powers with a sense of responsibility, while also restricting taxpayers from the use of special transaction structures as tax avoidance tools.

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