

FEDERAL HIGH COURT (TAX APPEAL) RULES 2022: WHAT TAXPAYERS MUST KNOW



“Tax debtors are now mandated to deposit 100% of the judgment sum into an interest-yielding account...”

The new Federal High Court (Tax Appeal) Rules (“the Rules”) have become operational, effective from 10 January 2022. The Rules, which repeal the Federal High Court (Tax Appeal) Rules of 1992, serve as a guide on procedures for an appeal against decisions of the Tax Appeal Tribunal (TAT) at the Federal High Court (“the Court”).

Five Highlights of the Rules

i. Security Deposit of Judgement Sum: Tax debtors are now mandated to deposit the judgement sum in an interest yielding account, failing which the tax appeal shall not be heard at the Court, and may be struck out or dismissed.

ii. Leveraging of Technology: The Rules now permit the use of electronic means of serving Court processes and hearing notices. Permitted platforms include WhatsApp, emails, SMS, and others.

iii. Accelerated Hearing: The Rules provide that a judge to whom a tax appeal case is assigned is expected to give same 'accelerated hearing.' Although what constitutes accelerated hearing is not defined in the Rules, it infers that such cases are to be expedited and accorded some urgency to ensure that justice is not delayed unduly, given the typical timeline of the Nigerian justice system.

iv. Part-Heard Matters not Affected: Provisions of the Rules are not to apply to matters which have been part-heard by the Court. That is, where hearing has commenced in a tax appeal, the matter will be concluded based on the previous guidelines. On the other hand, matters which are currently pending at the Court will be subject to the provisions of the new Rules.

v. Reduction of Timeline for Service of Briefs: The timeline for filing and service of both Appellant's and Respondent's Briefs has now been reduced to 15 days each, compared to the



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previous 30-day timeline. That is, the Appellant has 15 days within the service of the record of appeal, to file his written brief of argument and serve same on the respondent. Similarly, the respondent has 15 days to file and serve his brief on the appellant.

introduction of new procedures under the Rules. This will guarantee that ongoing causes are not needlessly delayed.

generated a lot of controversy amidst taxpayers and other stakeholders and put an additional burden on taxpayers whilst impacting on their right to fair hearing.

However, despite these creditable provisions, it is worrisome that taxpayers would now be required to deposit the judgement sum, as determined by the TAT, into an account to be maintained by the Chief Registrar of the Court. This is a prerequisite to hearing the appeal as the Rules expressly state that where there is no evidence of such deposit, the matter will not only remain unheard, but be struck out or dismissed.

Provisions of this nature will in no small measure put unwarranted constraints on the taxpayer who is at the appeal court to seek redress from an unfavourable decision of the TAT. The requirement to deposit 100% of the amount, which may turn out to be frivolous, without first considering the merits of the case is not only retrogressive, but punitive.

It will also be recalled that the Federal High Court (Federal Inland Revenue Service) Practice Directions of 2021 had previously provided for the deposit of 50% of the assessed amount by the taxpayer into an interest yielding account of the Court, pending the determination of the application. This provision

Therefore, while we commend the Court for endeavouring to make the tax appeal process smoother, we hope that the rigid requirement to deposit the total judgement as a precondition for hearing an appeal is expunged, so as not to produce a counter-productive result and uphold taxpayers' rights.

OUR COMMENTS

The issuance of the Rules is indeed commendable following the 30-year reign of the 1992 rules. Notable changes which are expected to ensure that taxpayers can seamlessly and speedily appeal against unfavourable decisions of the TAT include electronic service of processes, reduction in service timelines, and the accelerated hearing status of tax appeal cases. Also laudable is the fact that matters which have been partly heard will not be obstructed by the



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