Pedabo
▪ Tax ▪ Audit ▪ Advisory

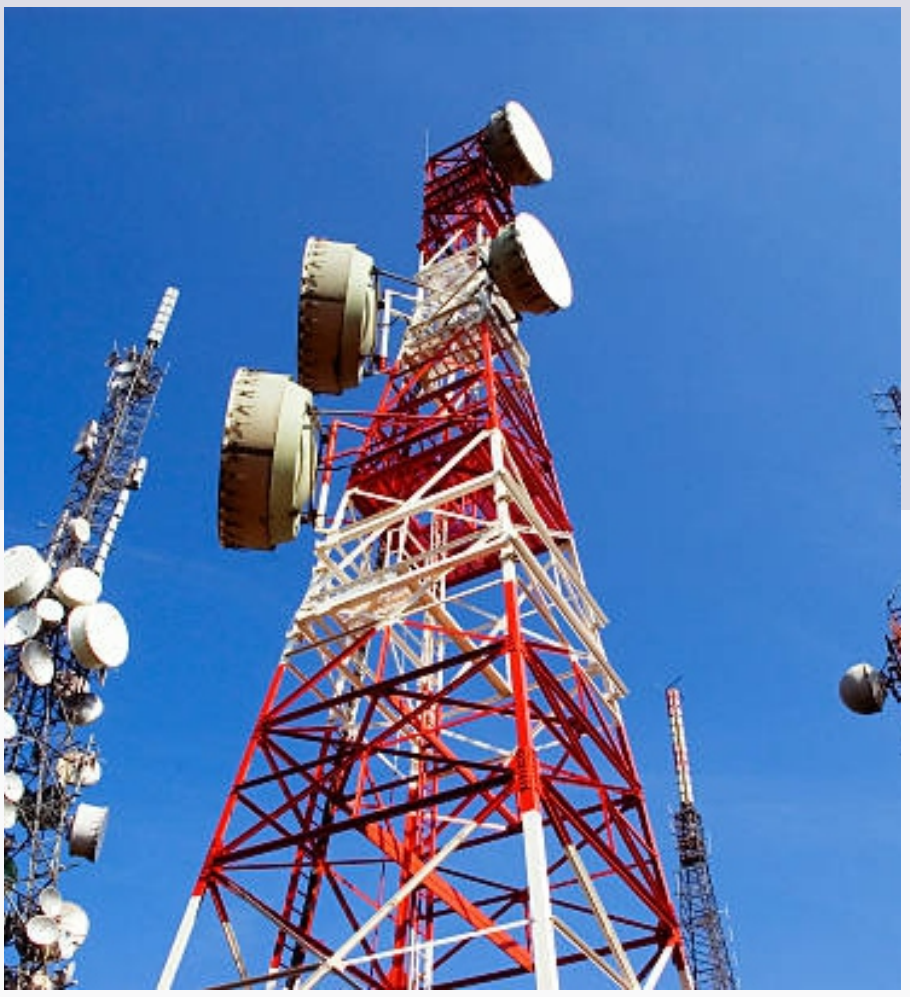
NewsLetter

PKC/TEC/23/02/24/001

TAT Rules that NITDA Levy not Applicable to Network Facilities Providers

Friday, 24th February, 2023

The Tax Appeal Tribunal ("TAT") in Lagos, has held in the case of INT Towers Limited ("INT Towers" or "the Company") v. Federal Inland Revenue Service ("FIRS") that network facilities providers are not telecommunication companies and as such, are not liable to pay the National Information Technology Development Agency (NITDA) Levy.



Highlight of the Case

INT Towers Limited is a telecommunication infrastructure support service provider. The Company has been filing its annual tax returns since it commenced business as a telecoms support service provider without the NITDA Levy. However, upon filing the 2021 YOA returns via FIRS TaxProMax platform, the Company was charged 1% of its profit before tax as NITDA Levy under the provisions of the NITDA Act, on the basis that the entity is a telecommunications company.

The Company objected to the assessment on the ground that the FIRS has misconceived its nature of business since it is merely an infrastructure service provider and does not render any telecom service whatsoever. Amongst other issues, the Company prayed the TAT to determine whether the Company is a telecoms company and whether it is liable to payment of the Levy computed at 1% of PBT in line with the provisions of the NITDA Act.

On the other hand, FIRS argued that the Company was a licensee of the Nigerian Communications Commission (NCC) and also a beneficiary of the pioneer status incentive under the telecoms industry. According to FIRS, the combined effect of these is that INT Towers qualifies as a telecoms company which is subject to the provisions of the NITDA Act, and by extension liable to pay the NITDA Levy.

In determining the case, the TAT held that the Company's license is to provide infrastructure sharing and colocation services as a network facilities provider, thus merely a service provider to entities operating in the telecoms sector, and not in itself a telecoms company. Consequently, the assessment raised by FIRS in this regard was discharged.

OUR COMMENTS

The crux of the case is determining whether or not the network facilities providers, such as INT Towers in this case, which typically provide collocation services, are to be considered as telecommunications companies liable to pay the NITDA Levy.

Generally, the NITDA Act provides for the payment of a Levy of 1% of PBT of specific companies and enterprises with an annual turnover of ₦100m and above. These companies listed in the Third Schedule to the Act are:

- GSM Service Providers and all Telecommunication Companies
- Cyber Companies and Internet Providers
- Pension Managers and Pension-related Companies
- Banks and other Financial Institutions
- Insurance Companies

From the above specification, it is clear that FIRS had categorized INT Towers as a telecommunication company which has a responsibility to pay the Levy. This brings us to the question: are network facilities providers the same as network service providers?

"it is important that the Taxpromax platform be reconfigured to ensure that only qualifying companies are charged the NITDA Levy..."

The Nigerian Communications Act 2003 defines a 'network facilities provider' as 'a person who is an owner of any network facilities', while defining 'network facilities' as 'any element or combination of elements of physical infrastructure used principally for or in connection with the provision of services...'. These definitions do not infer the provision of 'network service' which was distinctly defined as 'a service for carrying communications by means of guided or unguided electromagnetic radiation'.

The above-quoted definitions prove that network facilities providers differ from network service providers, and the TAT in the instant case agrees.

This judgement is instructive as we align with the thoughts of the TAT in this regard. Based on the provisions of the relevant extant laws and even the nature of activities carried out by the entity, it is clear that INT Towers as well as other entities carrying out similar services cannot be deemed to be telecommunication companies and as such not required to pay the NITDA Levy.

The main distinction to note here is the fact that a service provider's clientele portfolio consists entirely of entities within a particular sector, does not by implication qualify the service provider as a company within the sector to which it renders services. This reasoning can be stretched further in comparing "insurance companies" mentioned in the law, to "insurance brokers" not mentioned.

Therefore, following the literal rule of interpretation of statutes, the NITDA Act only imposes the Levy on GSM service providers and telecommunications companies and not network facilities providers such as INT Towers.

We hope that the rationale behind this judgement is adopted and that the provisions of the law are strictly adhered to by the tax authority, to ensure that taxpayers are not exposed to tax liabilities to which they have no obligation. The classification of taxpayers on the Taxpromax has resulted to various disputes arising from wrong imposition of taxes on the entities. In order to avoid unnecessary disputes between the taxpayers and the tax authority, it is important that the Taxpromax platform be reconfigured to ensure that only qualifying companies are charged the NITDA Levy as well as other industry-specific taxes/levies.

Finally, taxpayers are implored to seek professional advice where there is uncertainty with regards to their tax obligations and responsibilities to avoid running afoul of the law.

Fidelis Chukwu
Partner

Oluwasanmi Ogunsanwo
Assistant Manager

Oyeyemi Aduloju
Senior Associate

Lagos Office:
67, Norman Williams Street
South West, Ikoyi
Lagos, Nigeria
Tel: 01-2919041; 0808 820 8747
info@pedabo.com
www.pedabo.com

Abuja Office:
4th Floor, Grand Square
Mohammed Buhari Road
Central Business District,
Abuja
Tel: 09-8707692

For enquiries: technical@pedabo.com