



THE ROLE OF THE TAX OMBUDSMAN UNDER THE PROPOSED FISCAL REFORMS LAWS IN NIGERIA

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Introduction

Nigeria currently has four executive bills before the National Assembly which are the Nigeria Tax Administration Bill, the Nigeria Tax Bill, the Joint Revenue Board (Establishment) Bill, and the Nigeria Revenue Service (Establishment) Bill.

The Joint Revenue Board (Establishment) Bill, 2024 seeks to establish the Joint Revenue Board, the Tax Appeal Tribunal and the Office of the Tax Ombud, for the harmonisation, coordination and settlement of disputes arising from revenue administration in Nigeria.

Tax legislations generally impose obligations on individuals to remit specific percentage of their earnings to the government through the tax authority. The mode of giving effect to the letters of these legislations often times result in a deadlock as the taxable persons and the tax authorities are likely to disagree on these issues.

In appreciation of the likelihood of divergence which would give rise to tax disputes, the Joint Revenue (Establishment) Board Bill, 2024¹ established the office of the **Tax Ombud**.

The Role of Ombudsman in Resolution of Tax Disputes

As part of the efforts to give effect to the objectives of the Joint Revenue Board (Establishment) Bill, 2024 for efficient dispute resolution and promotion of the rights of taxpayers,² the office of a Tax Ombud was created. Just as the name implies in its literal sense, Ombudsman is a public officer acting as an independent arbiter and saddled with the responsibility of dealing with public complaints against a public authority and organisations. In this regard, the Tax Ombud is imbued with power to receive, review and investigate complaints against tax officials, tax authorities and agencies, and strive to resolve the dispute through mediation or conciliation.

Also, the Ombud has the powers to make recommendations of its findings to the revenue authorities and other government agencies on matters relating to taxes, levies, charges and

¹ Section 40

² Section 1(b)(c)

fees, for implementation, institute legal proceedings on behalf of the taxpayer at no cost to the taxpayer, provide information on functions of the tax authorities and raise awareness of taxpayer rights and obligations. The Tax Ombud also has power under the Joint Revenue Board (Establishment) Bill to issue guidelines, directives or orders for the resolution of complaints or the implementation of its recommendations and as well serve as a watchdog against any arbitrary fiscal policy of the government or by any of its agency and report such policy to the National Assembly.³

The aforementioned powers and roles are conferred on the Tax Ombud to enable him or her carry out the functions of the office effectively and efficiently. The creation of this office can be considered a testament of the commitment of Nigerian government is promoting amicable and seamless dispute resolution mechanism in tax related disputes, and as well upholding the right of taxpayers to challenge the arbitrary actions of tax authorities. This creation is a right step in a right direction which will set the ground for accountability on the part of tax authorities, knowing that the office of Tax Ombud postures as a watchdog over its activities.

The Bindingness of the Decision of Ombudsman and the Limitations Thereto

The relief that the creation of the office of Tax Ombud brings to taxpayers is such that could be likened to a Greek gift as it conspicuously appears to be tricky with no coercive effect on the concerned tax authorities. The office of the Tax Ombud is conferred with so much powers but lacks the coercive might to implement same. In fact, the Joint Revenue Board (Establishment) Bill, 2024⁴ placed some limitations on the authority conferred on the Tax Ombud in the same Bill.⁵

Notwithstanding the enabling provisions in the Joint Revenue Board (Establishment) Bill empowering the Tax Ombud to receive complaints against tax authorities and investigation of the complaints, the Bill on another hand proceeded to erode the jurisdiction of the Tax Ombud to determine any tax liability, duty or issue tax assessment, interpret tax legislations, unless the interpretation is in relations to operational, procedural or administrative issues arising from the application of any tax law.⁶ With these clipping provisions barring the Tax Ombud from interpreting tax legislation and determining tax liability or duty or assessment of taxpayers who are complainants before it, one would be left to wonder how the Tax Ombud would be able to conduct its investigation without juxtaposition of the facts of each complaint with its perceived interpretation of the relevant tax law.

It therefore appears here that the creation of the office of Tax Ombud may be cosmetic and a paper tiger as the draftsmen have shown that the provisions of the Joint Revenue Board

³ Section 40(1)(i)(k)

⁴ Section 42

⁵ Section 40

⁶ Section 42(a)(c)

(Establishment) Bill, is a mere administrative formality that possesses no coercive power to compel any tax authority to perform an act even where the outcome of the investigation shows acts of arbitrariness on the part of a tax authority.

Furthermore, there is no obligation placed on a taxpayer to first lodge a complaint with the Tax Ombud, rather it is entirely discretionary. In essence, an aggrieved taxpayer who cannot reach settlement with the tax authorities can proceed to the Tax Appeal Tribunal created under Section 23 of the Bill.⁷ Furthermore, the Tax Ombud does not have power to stay the activities or actions of a tax authority. Essentially, the submission of a complaint by a taxpayer and the commencement of an investigation by the Tax Ombud would not interfere with the actions of the tax authority. The implication of this is that a tax authority can disregard the office of a Tax Ombud and proceed with its perceived arbitrary actions against a taxpayer.

Generally, an aggregation of these concerns leaves one to wonder whether the office of Tax Ombud is a necessary creation or another proliferation of office that serves no utilitarian value.

⁷ Joint Revenue Board (Establishment) Bill, 2024