



A REVIEW OF THE TAX APPEAL TRIBUNAL 2021 RULES: THE NEW PRACTICES

INTRODUCTION

The 5th Schedule to the FIRS Establishment Act 2007 (**FIRSEA**) established the Tax Appeal Tribunal (**TAT**) to preside over disputes between an aggrieved taxpayer and tax authorities in Nigeria, giving it the right to exercise jurisdiction, powers and authority on issues of taxation.¹ These tax authorities include the Federal Inland Revenue Service (**FIRS**) and any other body responsible for the assessment and collection of taxes.²

The TAT is empowered to adjudicate on disputes and controversies arising from tax laws including the Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Petroleum Profits Tax Act, Capital Gains Tax Act and any other law contained in or specified in the First Schedule to the FIRSEA or other laws made or to be made from time to time by the National Assembly.³

The FIRSEA further grants the Minister of Finance the power to make rules prescribing the procedure to be followed in the conduct of appeals before the TAT.⁴ It is further to this power that the TAT Rules 2021 (the New Rules) was brought into force on the 10th of June, 2021, thereby revoking the TAT Rules (2010).⁵ With the enactment of the New Rules, a number of changes have been introduced to the procedure before the TAT. This article highlights the new procedures brought into force by the New Rules.

¹ Paragraph 1 of the Fifth Schedule to the FIRSEA

² Section 59 of the FIRSEA

³ Paragraph 11 of the Fifth Schedule to the FIRSEA

⁴ Paragraph 21 of the Fifth Schedule to the FIRSEA

⁵ Order 1 Rule 2 of the Tax Appeal Tribunal (Procedure) Rules 2021

PROCEDURES INTRODUCED BY THE NEW RULES

SN	Procedure	New TAT Rules 2021	Comments
1.	Commencement of an Appeal	<p>Order III Rule 4 provides for the format by which an appeal may be filed at the TAT, specifically referencing Form TAT1A which is contained in the First Schedule to the New Rules.</p> <p>Order III Rule 6 (b) further provides for the filing of the Notice of Appeal along with a deposition as in Form TAT 1B.</p>	<p>TAT1 A as provided in the First Schedule to the New Rules prescribes the form in which a Notice of Appeal is to be presented.</p> <p>The Form TAT 1B is a deposition as to the payment of security by an Appellant for pursuing the appeal.</p>
2	Electronic Filing of an appeal	Order III Rule 5 provides that a notice or process capable of being filed at the TAT may be filed by such electronic means as may be directed by the TAT.	The introduction of an e-filing system is of a great advantage to parties and the entire legal system as a whole. This will do away with unnecessary costs such as transportation to the TAT, volume of paperwork as well as saving time.
3.	Payment of Security Deposit as condition for pursuing an Appeal	Order III Rule 6 provides that for an Appeal against the FIRS or relevant tax authority, the aggrieved person shall pay 50% of disputed amount into designated account by the TAT before hearing as security for prosecuting the appeal.	<p>The provision of the New Rules in this regard seems restrictive. Under the TAT Rules 2010 (the Old Rules), an aggrieved party was allowed access to the TAT without having to pay a security deposit.⁶ The only requirement for an aggrieved party is to file his appeal within 30 days from the date of the action complained of. This is further supported by the FIRSEA.⁷</p> <p>The provisions of the New Rules will restrict an aggrieved person's access to the TAT – particularly</p>

⁶ Order III Rule 1 of the TAT Rules 2010

⁷ Paragraph 13 (1) and (2) of the Fifth Schedule to the FIRS Establishment Act

			<p>where he cannot afford to pay the 50% security deposit.</p> <p>Further, we note that where a subsidiary legislation is inconsistent with an Act, the provisions of such subsidiary legislation shall be void to the extent of such inconsistency.</p>
4.	Place of instituting Appeals	Order IV Rule 2 provides that a Notice of Appeal may be filed at the secretariat of any zone but shall be headed in the name of the appropriate zone where such matter will be heard.	This is a welcome provision as it serves to assist an aggrieved person who is not within the jurisdiction of the appropriate TAT to still file his appeal, which will be transmitted to the appropriate TAT for hearing.
5.	Electronic Service	Order VII Rule 3 provides that a notice shall be deemed to have been properly served if sent by email or such other electronic means as the TAT may direct or permit.	The electronic service is once again a welcome provision. This is particularly in light of the COVID19 pandemic as well as cost of service. This will also do away with difficulty in serving processes on a party.
6.	Default of Appearance	Order IX Rule 2 provides that when an appeal has been struck out owing to the non-appearance of the Appellant, the TAT may, upon application by the Appellant, direct the appeal to be re-listed for hearing, if the TAT considers that such application for relisting of the appeal has merit.	The provision of the New Rules in this regard is different from the old rules in that the Old Rules subjected the relisting of an appeal to the discretion of the TAT. It presupposes that under the Old Rules, an Appellant did not necessarily need to apply for relisting an Appeal.
7.	Virtual Hearing	Order XI Rule 4 provides that the hearing of applications and delivery of rulings may be held remotely, via virtual means, using such communication technology or application as may be directed by the TAT to ensure fair hearing.	We assume that this is a typical response to the recent realities, particularly in light of the COVID19 pandemic. This will save time, allow parties who are not physically present to still

			<p>participate in the hearing process.</p> <p>We also note that there are disadvantages to this such as technology savviness of parties as well as internet disruptions.</p>
8.	Applications in Chambers	Order XI Rule 5 provides that the TAT may take ex-parte and non-contentious applications in Chambers and may adjourn such proceedings from Chambers to TAT or vice versa.	This will also assist the TAT in making quick decisions.
9.	Documents-only Procedure	Order XV provides for a document only procedure, stating that at any time before the commencement of trial, the Parties may apply for a Documents-Only Procedure through Form TAT 6 and in doing so agree for the appeal to be decided by such procedure.	This is a welcome procedure as it will dispense with parties having to present their cases orally to the TAT. A Documents-Only procedure will limit the time spent in court and fast-track the TAT's decision making.
10.	Summary Appeal Procedure	Order XVI provides for a Summary Appeal Procedure. Requires filing a Notice of Appeal and an affidavit stating that there is no defence.	A Summary Appeal Procedure (same as a Summary Judgment procedure, where a Respondent/Defendant has no defence) will serve to reduce the time spent in the TAT.
11.	Pre-trial Conference	Order XVII Rule 2 provides that the TAT shall have the powers to conduct a pre-trial conference for the purpose of narrowing down the issues before trial and facilitate settlement.	A pre-trial conference which is seen in typical court settings has now also been adopted by the TAT. This will assist the TAT as well as the Parties in narrowing down issues in dispute and consequently saving time.
12.	Dates	Order XVIII provides that the Secretary upon direction of the Chairman shall fix hearing dates for appeals and issue hearing notices as in Form TAT 11 of the First Schedule to the Rules	The Old Rules prescribed Notices in Form TAT 8, but this has been replaced by the New Rules which prescribes that same be done in Form TAT 11

13.	Time Limit for determination of an Appeal by the TAT	Order XXI Rule 1 provides that appeals before the TAT shall be heard, concluded and decision given within a period not exceeding six months from the date of commencement of trial or within such a time as the TAT may determine.	The New Rules have prescribed that an appeal shall be concluded within 6 months from the date trial was commenced. This will save time as well as reduce the backlog of cases that have been pending at the TAT.
14.	Review of TAT's Decisions	<p>Order XXI Rule 6 provides that the TAT may <i>suo moto</i> (on its own) or on the application of a party review and correct, rescind or vary its decisions if it is satisfied that-</p> <ul style="list-style-type: none"> a) The decision contains an ambiguity, patent error or omission but only to the extent of such ambiguity, error, or omission; b) The decision of the TAT was obtained by fraud. <p>This provision goes further to state that parties to such decision shall have the opportunity to be heard by the TAT</p> <p>Order XXI Rule 7 provides that an application for a review of the TAT's decision shall be brought within 14 days from the date it was delivered.</p>	This will save time and effort which would have ordinarily been used in an Appeal to the Federal High Court. Where the conditions for a review have been proved by a Party, such decision given by the TAT will be subject to a review.
15.	Settlement	Order XXI Rule 9 provides that where Parties have indicated their desire to explore settlement of their dispute, the TAT may adjourn the matter to enable the parties explore such settlement. Parties are also required to report progress on	The New Rules also give parties an opportunity for settlement. Where parties have settled outside the TAT, the TAT shall adopt the terms of settlement as its decision in the matter.

		<p>the settlement at such date as directed by the TAT.⁸</p> <p>The Rules further provide that upon parties reaching terms of settlement, both parties shall sign same and file with the TAT, which shall adopt the terms of settlement as its decision by consent of the parties.⁹</p>	
16.	Costs	<p>Order XXII provides that parties shall bear their own cost except where costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any misconduct or default, then the TAT may award costs against any person responsible.</p>	<p>This is again another point of inconsistency between the New Rules and the FIRSEA. The Act provides that parties shall bear their own costs.¹⁰</p> <p>We note that where a subsidiary legislation is inconsistent with an Act, the provisions of such subsidiary legislation shall be void to the extent of such inconsistency.</p>
17.	Appeal to Federal High Court	<p>Order XXVII Rule 1 provides that a party dissatisfied with a decision of the TAT may appeal on point of law to the Federal High Court by filing a Notice of Appeal at the TAT within 30 days from the date such decision was given.¹¹</p> <p>The Secretary of the TAT is mandated to transmit to the Chief Registrar of the Federal High Court within 14 days, record of proceedings and all exhibits tendered at hearing before the TAT.¹²</p>	<p>We note that there is an inconsistency between the provisions of the FIRSEA and the New Rules. Paragraph 16 (3) of FIRSEA requires that notwithstanding an appeal at the Federal High Court, tax shall be paid in accordance with the decision of the TAT within one month. The New Rules are silent on this position as they do not specify that tax should be paid before an appeal commences at the Federal High Court.</p>

⁸ Order XXI Rule 9 (2) of the TAT Rules 2021

⁹ Order XXI Rule 9 (3) of the TAT Rules 2021

¹⁰ Paragraph 22 of the Fifth Schedule to the FIRS Establishment Act

¹¹ Order XXVII Rule 1 of the TAT Rules 2021

¹² Order XXVII Rule 2 of the TAT Rules 2021

CONCLUSION

The New Rules contain several provisions which are a reflection of the current realities and which will aid in a speedy dispensation of justice. The adoption of an e-filing, e-service and e-hearing process will go along way in assisting the TAT as well as parties in speedily resolving their disputes.

However, there are provisions which are a cause for concern – such as the provisions of Order III Rule 6 which requires an aggrieved tax-payer who wishes to appeal an assessment from a tax authority to make a deposit of 50% of the amount in dispute. This condition will seriously hamper an appellant's access to the TAT and also engender abuse of power or corruption on the part of tax authorities, seeing that the doors of the TAT have been semi-shut to tax-payers.

We also note the inconsistency between the provisions of the New Rules and the FIRSEA in this regard, and restate that as the FIRSEA has not provided for payment of any security deposit by Appellant (except in Paragraph 15 (7), on which certain conditions have to be fulfilled by the FIRS before an order for such payment is made), the Rules cannot on its own prescribe the payment of a security deposit. Accordingly, we recommend that this provision be amended to do away with the security deposit as condition for an appeal as same is contradictory with the Act from which it emanates and from which power is even granted to the Minister of Finance to make the Rules.

For further information on the foregoing (none of which should be construed to be an actual legal advice), please contact:



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