Tax Alert

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FHC judgement on appointment of Banks as agents for tax collection

The Federal High Court (FHC) recently delivered judgement in the case between Ama Etuwawe Esq. (Plaintiff) and the Federal Inland Revenue Service (FIRS) and Guaranty Trust Bank Plc ("the Bank") (jointly referred to as the Defendants) that it is unlawful for the FIRS to appoint the Bank as its collecting agent to recover alleged Companies Income Tax (CIT) liability from the Plaintiff.

The FHC further held that the Plaintiff is not liable to pay CIT, being an individual who carries on legal practice in its name, and issued an order of perpetual injunction restraining the FIRS, its agents, privies, employees, etc., from demanding the payment of CIT from the Plaintiff. The FHC also awarded monetary sum as damages against the Defendants for illegal and unlawful freezing of the Plaintiff's bank account.

Comments

In 2018, the FIRS commenced the issuance of Letters of Substitution to banks in Nigeria, pursuant to Section 49 of the Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004 (as amended) and Section 31 of the Federal Inland Revenue Service Establishment Act, 2007. By the letter, the FIRS alleged that certain listed customers ("affected companies") maintaining bank accounts with such banks failed to fulfil their tax obligations, and therefore appointed the banks as tax collecting agents for the deduction and remittance of the alleged tax liabilities. The FIRS also requested the banks to "freeze" the accounts of affected companies and demanded that the banks should not execute any mandate on those accounts without its prior approval.

Following the above, KPMG issued a Newsletter – issue 2.5 of February 2019 highlighting key issues that the FIRS should consider before implementing its directive to the banks, some of which the FHC addressed in this judgement.

The FHC judgement declaring the FIRS' action as "unlawful, null and void" is, therefore, not surprising given the plethora of issues associated with the FIRS' directive, some of which we had highlighted in the Newsletter mentioned above. For instance, the judgement confirms that the FIRS'

appointment of banks as agent for collection/remittance of taxes when the taxes are not proven to be due is premature and exposes the banks to risk if such taxes are not actually due, or are lesser than the sum actually paid to the FIRS. The FIRS must also demonstrate that the alleged liability is final and conclusive, and that the taxpayer has failed to pay the liability within the statutory time limit before it can validly appoint an agent of collection for that purpose. In any case, such enforcement must be limited to the amount of the valid liability and not the total funds in the affected taxpayer's bank account.

The FHC judgement further demonstrates that a risk of exposure in the form of an award of damages may crystalize on the banks where the freeze order is determined to have been wrongly issued and executed, especially where the bank failed to obtain adequate comfort from the FIRS that the liability is indeed final and conclusive before executing the lien.

While the FIRS must be commended for its various initiatives to expand the tax net and improve voluntary compliance level, such actions must be within the confines of the law. Banks must protect their fiduciary obligations to their customers, failing which the customers have a right in law to seek legal redress whenever they perceive a breach of their statutory rights. Taxpayers must also ensure that they promptly fulfil their civic obligations by paying the right amount of taxes and complying with all statutory filing requirements as and when due. This will, expectantly, engender trust in the Nigerian tax system.

Please click the following links to access our earlier publications on the subject:

KPMG newsletter on FIRS' appointment of banks for the recovery of alleged tax liabilities

KPMG Tax Alert on FIRS' suspension of its freeze order

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