

**IN THE TAX APPEAL TRIBUNAL
LAGOS ZONE
SITTING AT LAGOS**

Appeal No: TAT/LZ/013/2014

Between

Weatherford Services S.D.E.R.L. (WSSDRL)

Appellant

And

Federal Inland Revenue Service

Respondent

Judgment

Issue for determination

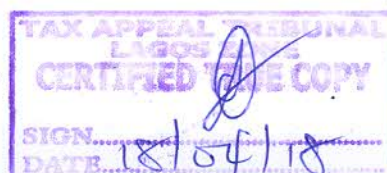
Weatherford and Weatherford Nigeria Ltd (WNL) jointly provide services to Nigerian customers and share the income: dollar receipts to Weatherford, naira to WNL. Whenever WNL's share falls below 5% profit, Weatherford makes up the difference, but WNL must pay all taxes on Weatherford's make-up contribution. In filing its tax returns for 2007, 2008, 2010, and 2011, Weatherford deducted its contributions to WNL.

Are Weatherford's deductions allowable?

Introduction

Weatherford and WNL have a service contract under which they jointly perform services for Nigerian customers and share the income. Weatherford takes all the dollar billings, while WNL takes all the naira billings. Under the contract, whenever WNL's naira billings fall below its contractually guaranteed net profit margin of 5%, Weatherford must cede some of its dollar revenue to make up for the shortfall in WNL's receipts, with WNL bearing all tax liability on the ceded amount.

In 2007, 2008, 2010, and 2011, Weatherford ceded some revenue to WNL and filed tax returns reflecting a deduction of the ceded amounts from Weatherford's total turnover. When FIRS discovered the deductions, FIRS made



additional assessments that included the deductions, effectively disallowing them.

Facts and Procedural History

FIRS served Weatherford with a notice of additional assessment for 2007, 2008, 2010, and 2011. The analysis of the assessment follows:

Assessment no	Year of assessment	Recharges (\$)	Deemed profit (\$)	CIT @ 30% (\$)	Penalty @ 10% (\$)	Interest @ 5% per annum (\$)	Total Additional Tax (\$)
PBDA 402	2007	4,773,820.95	954,764.19	286,429.26	28,642.93	85,928.78	401,000.96
PBDA 401	2008	2,191,752.28	438,350.46	131,505.14	13,150.51	32,876.28	177,531.93
PBDA 400	2010	4,529,423.66	905,884.73	271,765.42	27,176.54	40,764.81	339,706.77
PBDA 399	2011	7,827,316.95	1,565,463.39	469,639.02	46,963.90	46,963.90	563,566.82
						TOTAL	1,481,806.49

Weatherford objected to this assessment, claiming that its arrangement with WNL was not a 'recharges arrangement' as FIRS alleges but a simple revenue-sharing arrangement (with a minimum-profit-guarantee clause).

FIRS responded with a notice of refusal to amend. Weatherford then filed a notice of appeal backed by:

- Mr Adewale Ajayi's witness statement;
- a list of documents;
- Mr Adewale Ajayi's further witness statement; and
- a further list of documents.

FIRS filed its reply.

Parties' Positions

Weatherford argues that it should not pay tax for the portion of turnover it ceded to WNL.



Weatherford contends that the additional assessments issued to it amounted to double taxation on the same income stream because WNL had already paid tax on the amount assessed- the amount Weatherford had ceded to WNL to make up its contractually guaranteed 5% profit margin.

Weatherford argues that FIRS was wrong to reject Weatherford's adjustments for the portion of its dollar receipts ceded to WNL.

On penalty and interest, Weatherford submits that even if the additionally assessed liability is valid, the statutory pre-condition for interests and penalty (failure to object or appeal) has not been satisfied.

FIRS says that the Weatherford-WNL accord has no bearing on their tax liabilities.

FIRS argues that Weatherford is not entitled to any other deduction than the 80% deemed cost under the *deemed profit mode* of assessment in section 30(b) of the Companies Income Tax Act (CITA). FIRS submits that the agreement between Weatherford and WNL cannot supersede the law.

On penalty and interest, FIRS submits that since section 66(1) of CITA treats additional assessments in like manner as regular assessments, failure to pay tax as and when due attracts penalty and interest.

Conclusion

In *Halliburton*¹, the Court of Appeal held that all of a foreign company's Nigerian-derived tax was taxable in Nigeria, irrespective of any make-up contributions to the foreign company's Nigerian subsidiary.

Weatherford is liable to tax for all income derived from its operations in Nigeria through its Nigerian affiliate WNL. The ceded sums form part of Weatherford's Nigerian-derived income and is thus assessable.

Interests and penalties on overdue tax start to run when the taxpayer does not object or appeal within 2 months. Weatherford objected in this window.

We uphold the additional assessments minus interests and penalties.

Legal Representation:

¹ Appeal # CA/L/320/2009, decided on 2 December 2014.



T. Krukrubo Esq. with C. Ikwuazom Esq., I. Ekpen Esq. & D. Obidiegwu Esq. for the Appellant

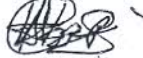
Miss A. Sodipo for the Respondent.

Dated at Ikeja Lagos this 11th day of December 2014

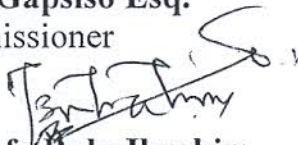
Kayode Sofola, SAN
Chairman



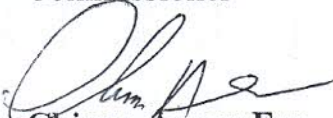
Catherine A. Ajayi (Mrs)
Commissioner



D. H. Gapsiso Esq.
Commissioner



Mustafa Bulu Ibrahim
Commissioner



Chinua Asuzu Esq.
Commissioner

