

Court of Appeal Upholds ALEX Argument that the Tax Appeal Tribunal has the Jurisdiction to Determine Tax Disputes

On 10th March 2017, the Court of Appeal in *Appeal Nos CA/L/1144/2015 and CA/L/1145/2015 - CNOOC Exploration & Production Nigeria Ltd. & Anor v. Nigerian National Petroleum Corporation & Anor* upheld the jurisdiction of the Tax Appeal Tribunal (TAT) to determine tax disputes. The appeals arose from disputes over petroleum profits tax and tertiary education tax assessments issued to the Appellants by FIRS. In the course of resolving the tax disputes between the Appellants and FIRS, the Tax Appeal Tribunal (TAT) made orders joining NNPC as a party. At the TAT, NNPC objected to the orders joining it as a party and also challenged the jurisdiction of the TAT to hear the disputes on the ground that the subject matter of the dispute was within the exclusive jurisdiction of the Federal High Court. The TAT however ruled that it had jurisdiction to determine the disputes but struck out NNPC as a party.

NNPC then appealed against the rulings of the TAT striking it out as a party, contending inter alia that the TAT did not have jurisdiction to determine tax matters, as such matters were within the exclusive jurisdiction of the Federal High Court. The Federal High Court agreed with NNPC's arguments and held that the TAT lacked the jurisdiction to hear and determine tax disputes in view of Section 251(1) of the 1999 Constitution (as amended).

Dissatisfied with the judgments of the Federal High Court, the Appellants further appealed to the Court of Appeal. At the Court of Appeal, the Appellants represented by Adedapo Tunde-Olowu, FCI Arb, FCTI and his team from ALEX Law Firm, argued that the TAT's jurisdiction to determine tax disputes did not encroach upon the exclusive jurisdiction of the Federal High Court as conferred on it by section 251(1)(a) and (b) of the 1999 Constitution (as amended). The Appellants explained that institution of tax appeals at the TAT before approaching the Federal High Court was merely a condition precedent to approaching the Federal High Court and that in any event, the decisions of the TAT could be reviewed and quashed by the Federal High Court upon an application for judicial review or appeal to that Court.

The Court of Appeal agreed with the Appellants' arguments and held that the TAT has jurisdiction to adjudicate over tax related disputes.