

Tax Appeal Tribunal delivers Split Judgment in China National Offshore Oil Corporation (CNOOC) Stamp Duty Dispute, sets aside FIRS Assessment in part

In a significant judgment with wide-ranging implications for Nigeria's upstream petroleum sector, the Tax Appeal Tribunal (Lagos Zone) delivered a split decision in CNOOC Exploration and Production Nigeria Limited v. Federal Inland Revenue Service (Appeal No: TAT/LZ/SD/042/2024), partially setting aside the Federal Inland Revenue Service's (FIRS) stamp duty assessment of USD 214,469,303.42 against the oil and gas major while affirming key aspects of the Revenue Service's position. The decision addresses fundamental questions regarding the characterisation of Production Sharing Contract (PSC) interests for stamp duty purposes, the territorial reach of the Stamp Duties Act (SDA), the applicability of limitation periods to tax assessments, and the proper statutory regime for imposing penalties and interest.

Background

CNOOC Exploration and Production Nigeria Limited, a multinational company engaged in petroleum exploration and production pursuant to Production Sharing Contracts (PSC) entered into with the Nigerian National Petroleum Corporation Limited (NNPC), came under the scrutiny of the FIRS following a referral from the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC). Production Sharing Contract (PSC) interests

The investigation revealed that the company had allegedly failed to remit stamp duties on its acquisition of interests in Oil Mining Leases (OMLs), particularly OML 130.



By a letter dated 24 June 2024, the FIRS demanded evidence of payment of stamp duties pursuant to CNOOC's acquisition of interests in OML 130, 138 and 154. Following exchanges of correspondence and the Appellant's objections, the FIRS issued a further letter dated 27 November 2024, refusing to amend or set aside the assessment and demanding the sum of USD 214,469,303.42 comprising unpaid stamp duty, penalty and interest. Aggrieved, CNOOC filed a Notice of Appeal dated 4 December 2024, advancing four grounds of appeal challenging the FIRS's position.

Key Issues and Tribunal's Findings

1. Whether Transfer of PSC Participatory Rights Constitutes a “Conveyance on Sale”

CNOOC argued that the Deed of Assignment (DoA) transferring funding obligations under the PSC did not constitute a conveyance on sale under the SDA. The company contended that contractors under a PSC acquire no proprietary or equitable interest in the OML, as legal title remains vested in the Federal Government through NNPC. Accordingly, it was argued that the instrument should attract only nominal duty applicable to agreements.

The FIRS countered that the DoA transferred valuable, definable and monetizable rights, including the right to participate in petroleum operations, recover costs, and share in profit oil rights which constitute assignable economic interests of a proprietary nature.

The Tribunal resolved this issue in favour of the FIRS. Relying on sections 52 and 58 of

the SDA, the Tribunal held that a “conveyance on sale” is not confined to land or tangible property but extends to any instrument whereby property, rights, or interests are transferred for consideration. The Tribunal drew guidance from the Conveyancing Act 1881 and the UK Stamp Act 1891, noting that “property” includes “anything in action” (choses in action), encompassing enforceable contractual rights.

The Tribunal further stated that tax authorities are entitled to look beyond the nomenclature of a transaction to its true legal and economic substance, citing *FIRS v. Tetra Pak West Africa Ltd* (2018) 16 TLRN 1. However, the Tribunal noted that the consideration for the transaction had not been disclosed or sufficiently established on the record. During cross-examination, the Appellant's witness admitted that consideration was furnished but not reflected in the DoA. Consequently, while the Tribunal held that the DoA was liable to ad valorem stamp duty, it was unable to determine the precise quantum payable.

2. Whether SPA Executed Outside Nigeria is Liable to Stamp Duty

CNOOC argued that the Sale and Purchase Agreement (SPA) was executed outside Nigeria and never brought into or received in Nigeria and therefore fell outside the scope of the SDA. Reliance was placed on sections 23(3) and (4) of the SDA, which provide that instruments executed outside Nigeria only become liable to stamping obligations upon their first receipt in Nigeria.

The FIRS contended that the SPA related to property situate in Nigeria and that CNOOC, having obtained ministerial consent from the Department

of Petroleum Resources (now NUPRC), had submitted itself to Nigerian jurisdiction. The Tribunal accepted the Appellant's position. It held that the SDA, particularly Section 23, contemplates physical stamping by impressed stamp, thereby presupposing the physical receipt of the instrument within jurisdiction. No evidence was led by the FIRS to show that the SPA had been received or brought into Nigeria to trigger the imposition of stamp duties. The Tribunal accordingly resolved this issue in favour of CNOOC.

3. Whether the Assessment was Statute-Barred

CNOOC contended that by virtue of section 114 of the SDA, any proceedings for the recovery of duties must be commenced within five years from the date the liability arose. Since the transaction occurred in 2006, the assessment was, in its view, statute barred.

The FIRS argued that section 35(2) of the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA) grants unlimited investigative powers which exist in perpetuity and override the limitation contained in the SDA by virtue of the “notwithstanding” clause.

The Tribunal resolved this issue in favour of the FIRS. It held that “proceedings” under section 114 of the SDA are properly construed as formal recovery proceedings before a court of law or competent tribunal, and do not extend to antecedent processes of investigation, assessment, or demand. The Tribunal further noted that it was the Appellant, not the FIRS, that initiated proceedings by filing the appeal. A plaintiff cannot deploy a limitation provision as a sword rather than as a shield, relying on the Court of Appeal's decision in *Omosho v. B.O.N. Ltd* (2006) 9 NWLR (Pt. 986) 573.

The Tribunal also cited the Federal High Court decision in *West African Exploration and Production Company Limited v. EFCC & Anor*, which held that section 114 does not bar investigations or demands for payment after five years, but only bars court proceedings to enforce such payment.

4. Whether Penalties and Interest were Rightly Imposed

CNOOC submitted that penalties and interest cannot validly arise until a tax liability has been properly assessed and has become final and payable. In the alternative, the company argued that if penalties were applicable, the governing regime was section 23 of the SDA, not the FIRSEA.

The FIRS relied on sections 32 and 40 of the FIRSEA to justify the imposition of penalties and interest.

The Tribunal held that penalties and interest constitute statutory incidents of tax default, accruing where tax duly assessed and payable remains unpaid within the time prescribed by law. Relying on *Rand Merchant Bank Nigeria Limited v. FIRS*, the Tribunal affirmed that penalties and interest accrue from the date the tax liability becomes due, not from the date of final determination of the assessment following objection or appeal proceedings.

On the applicable statutory regime, the Tribunal found that section 40 of the FIRSEA is limited in scope to withholding tax offences and is triggered upon conviction, making it inapplicable to stamp duty liabilities.

However, by virtue of section 68 of the FIRSEA, which provides that the FIRSEA prevails in the event of inconsistency with any other enactment, the Tribunal held that section 32 of the FIRSEA (providing for a 10% penalty plus interest at the prevailing rate) applies, not section 23 of the SDA.

Tribunal's Orders

In its judgment, the Tribunal made the following orders:

1. AN ORDER setting aside the Appellant's Appeal dated 4 December 2024 as it was a deliberate attempt to continuously evade payment of taxes.
2. AN ORDER setting aside in part the assessment made by the Respondent dated 27 November 2024.
3. AN ORDER directing the Appellants to, within 14 days of the delivery of this judgment, furnish the Respondent with credible and verifiable evidence of the consideration paid in respect of the Deed of Assignment, for reassessment of the stamp duty payable, failing which the Respondent shall be entitled to proceed to reassess the Appellant's to stamp duties on a reasonable best of judgment basis.
4. AN ORDER directing the Respondent to reassess the interest and penalty due and payable by the Appellant in line with the provisions of Section 32 of the FIRSEA, a flat penalty rate of 10% plus the applicable prevailing interest rate, and not a daily interest as computed by the Respondent. The parties were ordered to bear their costs.

Legal Principles Reinforced

- 1. Substance over Form:** Tax authorities are entitled to look beyond the nomenclature of a transaction to its true legal and economic substance. The characterisation of an instrument for stamp duty purposes depends on what it effects, not what it is called.
- 2. Broad Conception of Property:**

“Property” for stamp duty purposes extends beyond tangible assets to encompass enforceable rights, including contractual rights and choses in action. PSC participatory rights, being valuable, definable and assignable economic interests, constitute proprietary interests capable of transfer.

3. Territorial Scope of Stamp Duties:

Instruments executed outside Nigeria are only liable to stamp duty upon first receipt in Nigeria. Given that the SDA provides for physical stamping, the duty becomes payable only when there is clear proof that the document arrived in the country; otherwise, no duty is owed.

4. Limitation Periods and Enforcement:

Section 114 of the SDA bars recovery proceedings, not investigations, assessments, or demands. The provision cannot be deployed by a taxpayer who has initiated proceedings as a sword to defeat an assessment.

5. Statutory Override: Where inconsistencies exist between the SDA and the FIRSEA, the FIRSEA prevails by virtue of section 68 of the FIRSEA.

6. Penalties and Interest Accrue from Due Date:

Penalties and interest are statutory consequences of non-compliance and accrue from the date the tax liability becomes due, not from the date of final determination following objection or appeal.

Practical Implications

For Oil and Gas Companies: This judgment clarifies that PSC participatory rights constitute proprietary interests chargeable to ad valorem stamp duty upon transfer.

Companies in the upstream petroleum sector should ensure that Deeds of Assignment and similar instruments effecting transfers of PSC interests are properly stamped, and that consideration is adequately disclosed in transaction documents.

On Documentation and Record-Keeping:

The Tribunal's insistence on evidence of consideration underscores the importance of maintaining comprehensive transaction records. The failure to disclose consideration in the DoA left the Tribunal unable to determine the precise quantum of duty, resulting in a reassessment order.

For Offshore Transactions: The judgment affirms that instruments executed offshore and retained offshore are not liable to Nigerian stamp duty absent physical receipt in Nigeria. This provides clarity for cross-border transactions and may influence structuring decisions.

On Limitation Defences: Taxpayers should be cautious in deploying limitation arguments, particularly where they have initiated proceedings. The Tribunal's characterisation of section 114 as a shield, not a sword, limits its utility as a defence strategy.

For Revenue Authorities: The judgment affirms the FIRS's broad investigative powers under section 35(2) of the FIRSEA and confirms that limitation periods do not constrain assessments or demands. However, the Tribunal's rejection of the daily interest computation and its limitation of penalties to the section 32 regime serve as a check on excessive enforcement measures.

Comment

The Tribunal's split judgment in *CNOOC v. FIRS* represents a nuanced balancing of taxpayer rights and revenue interests. While the Tribunal affirmed the FIRS's broad investigative powers and the proprietary characterisation of PSC interests, it also provided significant relief to the Appellant by holding that the offshore SPA was not liable to stamp duty and by setting aside the daily interest computation.

The decision reinforces that taxation remains a creature of statute, not administrative discretion. Tax authorities must exercise their powers within statutory boundaries, and taxpayers must ensure proper documentation and disclosure of transaction details. The judgment also highlights the growing sophistication of the Tax Appeal Tribunal in handling complex tax disputes involving the petroleum sector, with the Tribunal drawing on both domestic and foreign jurisprudence to arrive at its conclusions.

For businesses operating in Nigeria's upstream petroleum sector, the case serves as a timely reminder of the importance of proactive tax compliance, comprehensive documentation, and a thorough understanding of the stamp duty implications for PSC transactions.

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