



NEWSLETTER

TAX NEWS FLASH



TAX APPEAL TRIBUNAL (TAT) DECIDES THAT PROVIDERS OF NETWORK FACILITIES ARE EXEMPTED FROM THE INFORMATION TECHNOLOGY (IT) LEVY.

DEFINITION

National Information Technology Development Agency (NITDA) is a public service institution established by NITDA Act 2007 as the ICT policy implementing arm of the Federal Ministry of Communication and Digital Economy of the Federal Republic of Nigeria. It has sole responsibility of developing programs that caters for the running of ICT related activities in the country. NITDA is also mandated with the implementation of policies guideline for driving ICT in Nigeria.

THE LEGAL BASIS

Section 12 (2)(a) of NITDA Act provides that:

(2) There shall be paid and credited into the Fund established under subsection (1) of this section:

(a) A levy of one percent of the profit before tax of companies and enterprises enumerated in the Third Schedule to this Act with an annual turnover of N 100,000,000 and above and such paid by the companies shall be tax deductible.

The companies which section 12 (2) (a) above refers to are:

- GSM Service Providers and all Telecommunications companies;
- Cyber Companies and Internet Service providers;
- Pensions Managers and pension related companies;
- Banks and other Financial Institution;
- Insurance Companies;

HIGHLIGHTS

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The National Information Technology Development Agency Act's ("NITDA") levy is not applicable to network facilities providers, according to a recent ruling by the Tax Appeal Tribunal ("TAT" or the "Tribunal") sitting in Lagos.

This is a case between INT Towers and Federal Inland Revenue Service:

In order to conduct its business of infrastructure sharing and colocation, INT Towers (the "Company" or the "Taxpayer") manages telecom facilities (such as masts, towers, and related equipment) and grants telecom firms access to these facilities. In its 2021 tax return submitted electronically to the Federal Inland Revenue Service (FIRS) on Tax ProMax, the Company alerted the FIRS to the automatic assessment of the IT Levy (1% of its profits before tax).



The FIRS issued an official notice of assessment in this regard following reconciliation meetings between the two parties to which the Company objected. The FIRS refused to amend assessment and INT appealed to the TAT.

ARGUMENTS

The company disputed that:

1. In contrast to what NITDA intends, INT is neither a GSM service provider nor a telecom firm subject to the IT Levy. Instead, INT provides facilities and infrastructure support to telecom companies.
2. The Nigeria Communications Commission (NCC) granted INT a license, but the license only allowed the business to offer infrastructure sharing and colocation services, not make it a telecoms company. Similarly, receiving a Pioneer Status Incentive (PSI), which is given to the telecom sector under the Industrial Development (Income Tax Relief) Act, does not equate to becoming a telecoms business for NITDA purposes.

The FIRS argue that:

1. The Company is a telecoms company because it holds an NCC license and has utilized the PSI offered by the telecom sector.

RULING

According to the Tribunal, INT is a provider of network facilities and not a telecoms business. Therefore, the 1% of PBT NITDA levy is not due from the Company.

CONCLUSION

Further to the above ruling all network facilities providers to telecom companies are not liable to pay NITDA levy of 1% of PBT pursuant to section 12 (2)(a) and the Third Schedule of the NITDA Act subject to an appeal by the FIRS in a superior court.

It is also important to note that NITDA computations is automatic in the FIRS TaxPro Max platform for network facility providers who have been categorized as telecommunication companies on the platform. We advise such companies to engage the FIRS to provide alternative classification to their line business. We also implore the FIRS to make the platform supple enough to allow taxpayers to self-assess themselves based on their interpretation of the law.

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