

EMERGING ISSUES ON TAX PRACTICE: FACTS

EVIDENCE AND STRATEGIES

BEING PAPER PRESENTED

BY

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AT STAKEHOLDERS DIALOGUE ORGANISED BY ICAN

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1.0 Protocols

2.0 Worrisome development - ICAN members' right to practice tax withdrawn by FIRS

- A letter was written by FIRS to CITN dated 23rd April, 2018 wherein it was expressly stated that professionals will now be required to affix CITN seal to tax returns prepared and submitted to FIRS on behalf of taxpayers with effect from 2nd January, 2019.

Why the decision by FIRS?

- According to FIRS letter, the decision was premised on court judgements and the exclusion clause in CITN Act which was sent to them through a correspondence dated 20th October, 2017.

- Consequently, CITN had placed a public notice to publicize the FIRS decision. They have requested all non-CITN members in practice to come and regularise their membership and obtain their practising licence and seal. This has generated confusion and panic amongst members of ICAN.

Major concern

- (i) A Letter was written by CITN since October, 2017 (9 months ago) against ICAN and nobody leaked the information despite the fact that we have a lot of ICAN members in the service of FIRS. This shows that management is a little bit far from members particularly those in key organisations who can protect the interest of the Institute and her members.
- (ii) Management has not issued a counter public notice or even exchange any correspondence with members to allay their fears since the letter by FIRS was made public since April, 2018 (3 months ago).

Suggestions

- (i) Management should be close to members working in key government agencies to get timely information for decision making.
- (ii) Management should be more prompt in responding to issues bothering on welfare of members.

3.0. What is the position of law on the right of ICAN members to practice tax?

- (i) Provisions of CITA NO 11 2012 – According to Section 55, sub section 6(b) “a tax representative shall be a person who is knowledgeable in the field of taxation as may be approved, from time to time, by the Service”. So, by this provision, an ICAN member is capable of being a tax representative because he/she is knowledgeable in tax matters.
- (ii) FIRS regulations – As a follow up to CITA, FIRS defined tax

representatives as practitioners holding practicing licences of any of ANAN, CITN and ICAN. The service also spelt out the procedure to remove any practitioner from the list of those who can file tax returns on behalf of company. So, members of ICAN in practice can practice tax according to the regulations of FIRS.

4.0. What about judicial pronouncements up to Appeal Court?

(i) High court judgement delivered on 12th March, 2007

The right of ICAN members to practice tax was removed. CITN was granted right to regulate tax and ICAN members who are not members of CITN barred from tax practice. However, the judgement of the high court has been superseded.

(ii) Appeal court judgement delivered on 15th February, 2013

The jurists separated the ruling into two and gave judgements differently.

a. CITN was granted right to regulate tax

b. ICAN members can practice tax without joining CITN

The judgement was not ambiguous and not contradictory. It gave victory to ICAN members and it was a big relief.

5.0. What happened thereafter?

APBN brokered out of court settlement between ICAN & CITN which led to the signing of terms of settlement on the 12th February, 2015. The terms of settlement was registered with the Supreme Court of Nigeria. It is now being referred to as the judgement of the Supreme Court.

Summary of the terms of settlement

(i) CITN was given right to regulate tax practice. This is in line with appeal court;

(ii) The right of ICAN members to practice tax without joining CITN was completely taken away. This is against the appeal court judgement. It brought ICAN back to the defeat suffered at the High Court. This is highly unfortunate.

(iii) To add salt to the injury, ICAN legal department added what was not expressly contained in the terms of settlement to it. They hosted a document on the Institute's website asking members who are desirous of tax practice to obtain practice licence from CITN before they can do so.

However, there are still some lacunas in the terms of settlement which can be capitalised upon by ICAN at least to free our members from the burden of having to obtain CITN practice licence and seal before they can engage in tax practice.

The lacunas there are two;

(i) ICAN members in practice only needs to fill CITN membership form to become member of CITN and to engage in tax practice.

(ii) There was no date or year indicated as the terminal date so any member of ICAN who holds ICAN practicing licence only needs to fill CITN practicing licence to engage in tax practice. The provision is there in perpetuity because there was no clear cut date or year in the terms of settlement.

So, as long as a member of ICAN can wait to obtain ICAN practicing licence, he only needs to fill CITN membership form to qualify to practice tax.

That means ICAN members in practice now and those who will yet be in practice do not require CITN seal and stamp to engage in tax practice as long as they have filled CITN membership form ONLY.

6.0. Strategies to address the worrisome development

Short term strategies

- (i) Send messages to members to remain calm and assure them that their rights will be protected;
- (ii) Institute legal action at a Federal High Court against FIRS to;
 - a. Restrain them from implementing their decision to exclude ICAN members from tax practice.
 - b. Ask the court to interpret the terms of settlement (Supreme Court Judgement)

The b aspect of the suit is to contest the decision of FIRS which says ICAN members require CITN seal and stamp to engage in tax practice.

(iii) The institute establish close rapport with JTB and FIRS where decisions on tax matters are taken in order to safeguard the interest of ICAN members. We should always make our views known to them on critical tax issues such as tax laws and policies. The Institute should be a focal voice on tax matters and tax related matters in the Country.

(iv) The institute should be weary of attempt to amend the definition of a tax representative or agent in the tax law particularly in CITA.

(v) The institute should investigate the complaints by some of our members that they are not allowed to include tax practice as object clause by Corporate Affairs Commission, Abuja when registering their firms.

Cautions

The institute should not engage FIRS and CITN in any dialogue on this issue for the following reasons;

- (i) We will be negotiating from the position of weakness;
- (ii) It will portray ICAN as a weak Institute because the information has gone viral;
- (iii) It may not achieve any tangible result and even if it did, CITN will still continue to pursue the drive endlessly;
- (iv) If legal action is not taken, individuals may be forced to resort to self help by going to court which may put the Institute as uncoordinated organization.

Long term strategy

The Institute should take the bull by the horn to approach the national assembly once again to seek amendments to the ICAN Act No 15 of 1965. This is the only way to legalize all the services being rendered by our members to the public and also to incorporate the areas of coverage of the Institute.

This has to be accomplished to free the Institute and members from overzealous institutes competing for relevance.

We should take a cue from ICAEW which ensured that its original Acts of 1880 was amended to bring in taxation and other services in 1948.

VALUE ADDED TAX TRIBUNALS RULES, 2003

[S.I. 14 of 2003.]

[]

[Commencement.]

ORDER 1

Citation, Application, etc.

1. Interpretation

In these Rules, unless the context otherwise requires-

“**Act**” means the Value Added Tax Act;

“**Accountant**” means a qualified Chartered Accountant;

“**Applicant**” means a person who brings a complaint to the Tribunal;

“**Board**” means the Federal Board of Inland Revenue;

“**Chairman**” in relation to a meeting of members of the Tribunal, means a person appointed to be the Chairman in a zone in accordance with section 3 of Schedule 2 to the Act;

“**issuing**” Office in relation to any appeal against an assessment or demand notice means the Federal inland Revenue Local VAT Office from which the notice of assessment or demand notice was issued;

“**legal**” practitioner means any barrister and solicitor of the Supreme Court of Nigeria and includes any law officer to whom the Law Officers Act applies;

“**member**” means a person appointed under section 4, Schedule 2 to the Value Added Tax Act;

“**Pre-hearing review**” means a review of the application that may be held at a time set before the hearing of the substantive application;



CONCLUSION

I hereby express my appreciation to the leadership of the Institute for the opportunity given to me to give my views on this burning issue.

Thank you.

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