Improving the Tax Dispute Resolution Process in Nigeria with Special Attention to the Tax Appeal Tribunal: Insights from South Africa with an Emphasis on Tax Courts

Nneka Cecilia Esomeju (ESMNNE001)

Thesis submitted to the Faculty of Law, University of Cape Town in fulfilment of the requirements for a PhD degree

March 2021

Supervisors:

Associate Professor Johann Hattingh, Department of Commercial Law, Faculty of Law, UCT

Associate Professor Tracy Gutuza, Department of Commercial Law, Faculty of Law, UCT

DECLARATION

1. I know that plagiarism is wrong. Plagiarism is to use another's work and to pretend that it is one's own.
2. I have used the footnote convention for citation and referencing. Each contribution to, and quotation in, this thesis from the work(s) of other people has been attributed and has been cited and referenced.
3. This thesis is my own work.
4. I have not allowed and will not allow anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's work, or part of it, is wrong, and declare that this is my own work.

Signature Signed by candidate March 2021

ACKNOWLEDGMENTS

I would like to thank my supervisor, Associate Professor Johann Hattingh, for guiding me all through the stages of this project, from the beginning when I had to postpone my start date to the later stages when I was located in Cape Town. I am particularly grateful for the time he devoted to reviewing chapters of the thesis promptly and giving detailed feedback.

I would also like to thank my co-supervisor, Associate Professor Tracy Gutuza, for allowing me to attend lectures on South African tax law and also for reviewing my thesis. My gratitude also goes to Dr Kelly Moult for her invaluable guidance on the empirical part of the project.

I acknowledge the management of the Federal Inland Revenue Service, Nigeria for authorising the interviewing of employees of the organisation. I would also like to thank the tax officers of the organisation for agreeing to take part in the interviews as well as my fellow legal officers for their invaluable insight in respect of the empirical part of the research.

Finally, I thank my family for all their support whilst I was completing my PhD.

ABSTRACT

The patent problems experienced in Nigeria's tax dispute resolution processes inspired this thesis. The disbanding of specialist tax tribunals by the Nigerian higher courts epitomised the disorder. The South African tax dispute resolution regime was reviewed primarily to identify practices that could be recommended to improve the Nigerian regime.

The research questions in respect of improving the tax dispute resolution system in Nigeria are the following: How has the current tax dispute resolution system in Nigeria evolved? How should it evolve further? Can South Africa provide insights about the direction it should take?

To answer the research questions, the tax dispute resolution environments in Nigeria and South Africa were assessed based on the convergent norms of good dispute resolution common to both. In this assessment of the two jurisdictions, emphasis was placed on judicial independence, access to justice, procedural fairness, administrative or judicial discretion, and timeousness. A combination of empirical and doctrinal methods was used.

The key findings were as follows: (a) some current shortcomings can be explained by the historical evolution of the Nigerian tax environment, chiefly because taxation was introduced at different periods in the different regions of Nigeria and laws were not amended in a uniform manner; (b) there is no uniform centralised in-house dispute resolution process in the Nigerian federal tax authority; (c) the federal tax authority prefers to settle disputes out of court; (d) taxpayers comply better when a diplomatic approach to settling disputes is used by the tax authority; (e) Lagos was the most tax-compliant and litigious state in Nigeria; (f) conflicting decisions by courts of commensurate rank did not change the pre-existing practices of the tax authority as the authority will continue with the practice until it is vacated by a higher court; and (g) litigation was possibly a form of tax planning for some taxpayers.

Recommendations were formulated based on the notion that convergent norms of good dispute resolution require the improvement of existing frameworks and practices. The reform of legislation and operational aspects of the Nigerian regime was also recommended. Key recommendations include (i) the retention of the TAT as a venue for the resolution of tax disputes; and (ii) the introduction of an in-house mediation process.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ADR	alternative dispute resolution
AU	Africa Union
BAC	Body of Appeal Commissioners
CA	Court of Appeal
CC	Constitutional Court
CGTA	Capital Gains Tax Act
CIT	Companies Income Tax
CITA	Companies Income Tax Act
DTA	Double Taxation Agreement
FBIR	Federal Board of Inland Revenue
FHC	Federal High Court
FIRS	Federal Inland Revenue Service
FIRSEA	Federal Inland Revenue Service Establishment Act
FSC	Federal Supreme Court
ICJ	International Court of Justice
IETO	Individual and Enterprises Tax Office
IMF	International Monetary Fund
ITA	Income Tax Act
ITMA	Income Tax Management Act
JTB	Joint Tax Board
KPMG	Klynveld, Peat, Marwick and Goerdeler
LAWASIA	Law Association for Asia and the Pacific
LTO	large tax office
MTO	medium tax office

NJC	National Judicial Council
OECD	Organisation for Economic Co-operation and Development
PAJA	Promotion of Administrative Justice Act
PITA	Personal Income Tax Act
PPTA	Petroleum Profits Tax Act
PWC	Pricewaterhouse Coopers
SARS	South African Revenue Service
SATC	South African Tax Cases
SC	Supreme Court
SCA	Supreme Court of Appeal
SDA	Stamp Duties Act
SMC	Supreme Military Council
TAA	Tax Administration Act
TAT	Tax Appeal Tribunal
TCC	Tax Clearance Certificate
TECOM	Technical Committee of the Board
TLRN	Tax Law Reports of Nigeria
UCT	University of Cape Town
VAT	Value Added Tax
VATA	Value Added Tax Act
YOA	year of assessment
YOO	year of objection

LIST OF TABLES

LIST OF FIGURES

CHAPTER 1: INTRODUCTION

1.1 Background

The Nigerian tax administrative framework has recently undergone several changes occasioned by the government's drive to diversify its revenue streams by not relying excessively on oil, but rather making taxation the main source of its revenue generation.[1] These changes include a tax reform process begun in 2004, the introduction of a tax policy document in 2012, and the promulgation of Finance Acts in 2019 and 2020 which amended certain sections of the Tax Acts, but not the dispute resolution sections.

The tax reform commenced with a study group on the Nigerian tax system that was established in 2002. The group had terms of reference comprising 11 points, and submitted its report in 2003.[2] A working group was inducted in 2004 to fine-tune the work of the study group, and the working group's terms of reference were to evaluate the recommendations of the study group, to prioritise the set of strategies required to reform the tax system, and to segment the strategies to be implemented into short-, medium- and long-term plans, ie six months, two years and five years, respectively.[3] There were areas of divergence between the study group and the working group, but the groups agreed on the need to diversify the revenue base of the country beyond oil and related sources.[4]

By August 2004, the Nigerian federal tax collecting agency, the Federal Board of Inland Revenue (FBIR), through its operational arm, the Federal Inland Revenue Service (FIRS), had developed a roadmap for the implementation of the reforms.[5] The broad strategies for reforming the tax administration system in Nigeria were autonomy, increased funding for the FIRS, and the reform of tax laws.[6] The Nigerian Federal Executive Council approved the proposal that the FIRS should be granted autonomy in the areas of recruitment, funding and

[1] Ifueko Omoigui Okauru (ed) *Federal Inland Revenue Service and Taxation Reforms in Nigeria* (2012).
[2] Dotun Phillips *Nigerian Tax Study Group Report* (2003) at 1–2.
[3] Seyi Bickersteth *Report of the Working Group on the Review of the Report of the Study Group on the Nigerian Tax Reform* (2004).
[4] Omoigui Okauru op cit note 1.
[5] Ibid. The study group also made recommendations for improving the tax environment at the state and local government levels.
[6] Ibid.

remuneration.[7] These approvals were given legal backing and captured in a new Act passed in 2007 – the Federal Inland Revenue Service Establishment Act (FIRSEA).[8]

1.2 Statement of the problem

As indicated earlier, reforms in the Nigerian tax sector have been focused on other areas of tax administration, with limited attention being paid to tax dispute resolution.[9] Improvement in tax administration occasioned by the reforms has led to improved tax collection,[10] which in turn has led to an increase in tax disputes. To elaborate on the increase in the number of tax cases: there is only one reported tax case of the Federal High Court prior to the start of the reforms in 2004, while there are 35 cases in the period 2004 to 2016. Reported cases of the Court of Appeal follow a similar pattern: there is only one reported tax case prior to 2004, while there are seven cases in the period 2004 to 2016. Tax Appeal Tribunal (TAT) cases are not included in these statistics, because the TAT was established in 2010, at least six years after the introduction of the reforms.[11]

However, the increased number of tax cases has exposed problematic issues in tax dispute resolution. For instance, there is uncertainty about the proper venue for the resolution of tax disputes, highlighted by Nigerian general courts, which have at times ruled against the specialist Tax Appeal Tribunal (TAT),[12] and have sought to disband it. Given that some tax decisions conflict in respect of determining the proper venue for the resolution of tax disputes,

---

[7] Ibid.

[8] Ibid. The other strategic goals were implemented by the FIRS successfully but are beyond the scope of this thesis and are therefore not discussed further. For views on the reform of the Nigerian tax sector, see Taiwo Oyedele *Insights on Taxation and Fiscal Policy* (2015) at 93–103; Abiola Sanni 'Multiplicity of taxes in Nigeria: Issues, problems and solutions' (2012) 3(17) *International Journal of Business and Social Science* 235.

[9] Omoigui Okauru op cit note 1 at 22–23. The reforms focused on autonomy for the Federal Inland Revenue Service, strengthening enforcement, the audit of oil and gas taxpayers as well as large taxpayers, the provision of taxpayer education and services, the automation of tax collection systems, building the capacity of staff and specialisation, and the automation of human resource processes, finance and procurement.

[10] Omoigui Okauru op cit note 1 states at xiii that 'in 2008 alone actual collection figures of 2.972 trillion Naira was over and above the cumulative collection of the 8 years immediately preceding the start of the reforms (1996–2003).'

[11] As reported in the Tax Law Reports of Nigeria: see Annexure 1.

[12] In *Stabilini Visioni Ltd v Federal Board of Inland Revenue (FBIR)* [2009] 1 TLRN, the court held that a precursor to the TAT, the Value Added Tax (VAT) Tribunal, was unconstitutional. A similar decision on the VAT tribunal was reached in *Cadbury Nigeria Plc v FBIR* [2010] 2 TLRN 16. In *TSKJ v Federal Inland Revenue Service* [2014] 13 TLRN 1, the court held that the TAT did not have jurisdiction to try corporate taxation and should be disbanded immediately. In *NNPC v TAT and 3 Others* [2013] 13 TLRN 39, the court had a slightly contrary view that, whilst the TAT was not a court, it could nevertheless adjudicate on tax matters in spite of section 251 of the Constitution, which vests exclusive jurisdiction of the adjudication on tax matters in the Federal High Courts.

there is a need to decide on the appropriate venue for the resolution of tax cases and to build expertise in tax dispute resolution.

Deciding on the venue for tax dispute resolution in Nigeria begs the question about the form of such a venue: Should the venue be a specialist Tax Court carved out from the general courts or should the TAT be retained? A further consideration is whether there should be an in-house dispute resolution process, administered by the Nigerian federal tax authority. Although the Nigerian appellate courts have by their pronouncements established an appropriate venue for the resolution of tax disputes,[13] this research seeks to recommend expanded ways of improving the tax dispute resolution process in Nigeria.

The thesis hypothesises that different areas of the Nigerian tax dispute resolution framework need improvement, including but not limited to:

(a) firmly deciding on the proper venue for resolving tax disputes, namely, whether disputes should be resolved in tribunals or courts;
(b) reducing the time required to resolve disputes, for instance, the only tax case decided at the Supreme Court with the Federal Inland Revenue Service (FIRS) as party within the review period took 23 years from the year of assessment;[14]
(c) better articulation of the forms of documents emanating from the tax authority, namely, whether documents are circulars, regulations or interpretation notes.[15]

Given the limited focus of the tax reform process, the aim of this thesis is to focus on the tax dispute resolution process in Nigeria and in this way contribute to its role as an integral part of the broader tax reform process. In this context, this thesis considers the tax dispute resolution process in South Africa, and whether any lessons can be learnt from the South African Tax Court structure.

The South African Tax Court was created in 1914,[16] and changes were made to it by the 1917, 1925 and 1941 Income Tax Acts. The Income Tax Act of 1962 consolidated all previous

[13] See note 12 above.
[14] This was the case of *Shell Petroleum Development Company of Nigeria Limited v Federal Board of Inland Revenue* [2009] 1 TLRN 218. The dispute was in respect of tax assessment for 1973 but was concluded at the Supreme Court in 1996. Tax cases in Nigeria (Supreme Court and Court of Appeal) from 1992 to 2016 are reviewed. See section 1.3.
[15] The imprecision in Federal Inland Revenue Service (FIRS) circulars is discussed in *Halliburton v FBIR* [2013] 11 TLRN 84 and *Warm Springs Water & Ors v FIRS* [2015] 20 TLRN 49. See sections 3.6.2.1 and 3.6.6.1.
[16] Eddie Broomberg 'A century of income tax jurisprudence in South Africa' in J Hattingh, JJ Roeleveld & C West (eds) *Income Tax in South Africa* (2016) 195.

amendments made to the Tax Court. The structure and processes of the Tax Court have undergone continual changes and reforms in its over-a-century existence. The most significant recent reform was the introduction of its rules in 2003. The rules are modelled on the rules of the High Court, with some differences in certain areas to make them simpler. The High Court rules govern where there is silence in the Tax Court rules, and the rules are therefore an important bridge between the Tax Court and the High Court.[17]

As indicated earlier, Nigeria's focus on tax as a major source of revenue has led to increased litigation.[18] Article 3(2) of the revised National Tax Policy Document 2017 designates the taxpayer as 'the most critical stakeholder and primary focus of the tax system'. This raises a question about the extent of the burden placed on taxpayers and how these concerns will be addressed, given that taxpayers increasingly bear the burden of generating government revenue. The Nigerian tax litigation system, compared to the South African tax litigation system, is in its early stages, as will be seen in chapters 3 to 7. Specifically, there are 36 reported tax cases of the Nigerian Federal High Court within a longer time period (1992 to 2016) compared to 92 cases reported in the South African Tax Case Reports (SATC) and 150 cases reported on the SARS website for High Courts in South Africa within a shorter time period (2003 to 2016). The figures are based on the law reports considered in the research.[19] The longer period of tax dispute resolution in South Africa could therefore prove insightful in improving the Nigerian process.

It is not envisaged that long-term taxpayer concerns in Nigeria will evolve in the same way as in South Africa. The first steps in the evolution of taxpayer concerns in Nigeria is possibly reflected in increased court processes or other forms of dispute resolution. The thesis thus focuses on taxpayer concerns in Nigeria which centre on dispute resolution.

1.3 Scope of the research

This research is limited to assessing the legal framework for dispute resolution in tax cases in Nigeria with a particular emphasis on the Tax Appeal Tribunal (TAT), while drawing insights from South Africa, particularly processes in the Tax Court, in view of its much longer tax

[17] Many of the criticisms of the Tax Court before 2003 were based on the lack of sophistication in the procedural regulations eg trial by ambush, which often occurred when the South African Revenue Service (SARS) raised wholly new arguments in hearings because there was nothing in the rules to stop it from doing so. The court itself would sometimes substitute assessments on a completely new basis that neither SARS nor the taxpayer had considered. Such unexpected features are no longer possible under the new rules. See section 6.10.
[18] See the first paragraph of section 1.2.
[19] See Annexures 1 and 2.

dispute resolution history.[20] As the research considers dispute resolution at the level of a tribunal and the Tax Courts, the scope of the research is limited in terms of the levels of courts considered.

The thesis focuses on the Nigerian federal tax collecting agency, namely, the Federal Inland Revenue Service (FIRS)[21] and considers disputes between the FIRS and taxpayers decided at the TAT. Disputes between State Boards of Internal Revenue and taxpayers are also resolved at the TAT. However, a consideration of such cases is not relevant for the purposes of this thesis as such disputes are beyond the stated scope of the thesis.

In addition to tax cases decided at the TAT, the thesis also considers the FIRS in-house dispute resolution process, and where relevant, cases between the FIRS and taxpayers decided at the Federal High Court, the Court of Appeal, and the Supreme Court. The thesis draws insights from aspects of the South African tax dispute resolution framework where relevant. The issues in South Africa that are evaluated are limited to correlated aspects that are present in Nigeria. Therefore, the following aspects of the processes and procedures in the South African Tax Court are not addressed, because they do not correspond to critical issues identified in the Nigerian tax dispute resolution process:[22]

(a) whether appeals against a disputed assessment lie or should lie on questions of law only, or on questions of fact and law;
(b) time limits for steps in the process of contestation (and the adequacy of provisions for limited extensions of time);
(c) the awarding or non-awarding of legal costs by the Tax Court;
(d) the distinction between appeal and review in the context of a disputed tax assessment that gives rise to litigation;
(e) taxpayer's right to demand reasons for the assessment; and
(f) constitutional rights in the disputation process, including the taxpayer's right to invoke professional privilege.

[20] The South African Tax Court was set up in 1914, while the Nigerian Tax Appeal Tribunal was set up in 2010.
[21] Tax is also collected by state governments in Nigeria and state Internal Revenue Services (IRSes) are established by states for the collection of tax.
[22] The following issues are examined in Nigeria: (i) the history of tax dispute resolution; (ii) the current legislative framework for tax dispute resolution; and (iii) tax case law data from 1992 to 2016. See chapters 3 to 5.

Given the continual changes to tax law legislation, the research takes account of legislation as of 31 December 2020, and considers Nigerian tax cases from 1992 to 2016 and South African cases from 2003 to 2016.

1.4 Justification for the comparative work between Nigeria and South Africa, or the relevance of the study

The choice of South Africa is informed by the fact that both countries are African countries and belong to similar regional bodies, such as the African Union. The research will add to the available information on tax conditions in both jurisdictions. Secondly, both countries have similar legal systems: Nigerian law is based mainly on English law while South African law is also partly rooted in English law (in addition to Roman-Dutch law). Thirdly, in the researcher's assessment, there are few comparative studies on tax dispute resolution in both jurisdictions.[23] The thesis contributes to the literature on the topic.

Finally, also of importance is the fact that South Africa is the only African country out of 14 with which Nigeria has a double taxation agreement, which shows the level of formal taxation between the two nations. There is a need to study the dispute resolution systems in the two jurisdictions because of the formal taxation structures between the two countries.[24]

1.5 Research questions

In assessing the development of a tax dispute resolution system in Nigeria, and in particular the role of a specialist tax tribunal in the form of the TAT, the thesis will consider the tenets of a good dispute resolution system and whether the current systems in Nigeria conform to these tenets. In doing so, the thesis will consider and compare the tax dispute resolution system in South Africa, and determine whether Nigeria can draw any insights from the South African dispute resolution process as practised by the South African Tax Court.

The research questions therefore are:

---

[23] There is a lot of literature on South African tax dispute resolution and more limited sources on Nigeria; however, there are very few comparative materials on the two jurisdictions. The dearth of information about the Nigerian tax environment is noted in the *Nigerian Tax Study Group Report* op cit note 2 at 3.

[24] Nigerian double taxation agreements (DTAs) are few when compared with South Africa, which has DTAs with at least 84 countries as of December 2020. Eight of the Nigerian DTAs are with European countries, four with Asian countries and one with North America. See https://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/default.aspx [20 January 2021]. Also see Tracy Gutuza *An Analysis of the Methods used in the South African Domestic Legislation and in Double Taxation Treaties entered into by South Africa for the Elimination of International Double Taxation* (PhD thesis, UCT, 2013) 342–347.

- How has the current tax dispute resolution system in Nigeria evolved? How should it evolve further?
- Can South Africa provide insights about the future evolution of the Nigerian tax dispute resolution system?

1.6 Structure of the thesis

This thesis comprises nine chapters. This introductory chapter provides the background to the research, states the problems that necessitated the research, provides a justification for the choice of comparative study, shows the significance of the research, and clarifies the scope and limitations of the thesis.

Chapter 2 evaluates the concept of norms of good dispute resolution as contained in the legal systems of Nigeria and South Africa. The chapter shows that there are norms common to the two jurisdictions, which are contained in the domestic laws of the jurisdictions as well as in international instruments acceded to by the two countries. By highlighting the norms of good dispute resolution common to both countries, the chapter determines the basis on which the Nigerian and South African tax dispute resolution environments are evaluated in chapters 3 to 7. The chapter also assesses the concept of courts and tribunals, different forums of tax dispute resolution including specialist tax courts, and the use of alternative dispute resolution (ADR) in the resolution of tax disputes.

Chapter 3 provides a brief history of taxation and tax dispute resolution in Nigeria, setting out the evolution of the tax dispute resolution system. The chapter examines the provisions on tax dispute resolution as provided for in the Constitution and other Tax Acts. It argues that the current problems in the Nigerian tax dispute resolution arena arise from the peculiarities of Nigerian history. Specifically, modern taxation was introduced in Nigeria in different formats in the various regions of the country, and the legislation has not been amended in a uniform manner, leading to a disordered situation. The chapter shows that the Constitution was amended in a haphazard manner with regard to taxation. The question of the constitutionality of tax tribunals in view of the fact that section 251 of the present Constitution vests exclusive jurisdiction for the resolution of tax disputes in the Federal High Courts is evaluated. The chapter assesses the structure of tax cases in Nigeria and the effect of problematic laws on the tax dispute resolution process. It also profiles tax litigants and tax case flows.

Chapter 4 reports on the empirical research conducted on the Nigerian federal tax collecting agency, the FIRS, to assist with the assessment of the Nigerian tax dispute resolution environment. The research was conducted by interviewing tax and legal officers of the FIRS.

Chapter 5 evaluates the tax dispute resolution system in Nigeria against the identified tenets of good dispute resolution, namely, judicial independence, access to justice, procedural fairness, administrative or judicial discretion, and timeousness. The tenets are assessed by means of doctrinal and empirical research, specifically by examining reported tax cases in volumes 1 to 25 of the Tax Law Reports of Nigeria (TLRN), together with the interviews of FIRS tax and legal officers.

Chapter 6 assesses the tax dispute legal framework for taxation in South Africa by examining the South African Constitutions that have been in place from 1910 to 1996, and by tracing the history, evolution, growth and reform of the Tax Court. This is achieved by appraising the dispute resolution provisions of the South African Tax Acts that have been in force from 1904 to 2011. The chapter also considers and compares the 2003 Tax Court rules with the amended Tax Court rules of 2014, finding that the calculation of time is a major concern in the new rules and time stipulations are generally reduced. However, while times for filing were reduced, times within which a taxpayer is expected to put up a defence are generally increased.

Chapter 7 evaluates the tax dispute resolution practice in South Africa against the identified tenets of a good dispute resolution system. The chapter evaluates reported cases decided in the South African Tax Court from 2003, when the Tax Court rules were introduced, to 2016. The chapter further highlights the practical aspects of implementing laws and regulations in South Africa and attempting to adhere to the tenets of a good dispute resolution system.

Chapter 8 compares the Nigerian tax dispute resolution environment with the South African environment based on issues examined in the thesis, to identify practices in South Africa that can be adopted to improve the Nigerian environment.

Chapter 9 concludes the thesis by explaining the findings and recommending improvements to the Nigerian dispute resolution process. The chapter also answers the research questions more fully.

The research method used in the thesis is mainly doctrinal with some empirical research (face-to-face interviews) being conducted. Doctrinal research was based on desk-top research which evaluated Constitutions, the legislation and case law of Nigeria and South Africa, rules issued

by the FIRS and the South African Revenue Service (SARS), international instruments, and works by writers in relevant fields.[25] The empirical research was qualitative and purposive sampling of FIRS officers was employed. While the doctrinal research evaluated written laws and literature on relevant topics, the empirical research was conducted to give more context to what has been evaluated in the doctrinal research. The combined method seeks to address the dearth of prior research about tax dispute resolution in Nigeria as well as to extrapolate maximum information on the dispute resolution process to remedy this gap. The research method is further explained in chapter 4.

[25] Cownie notes that legal research is traditionally doctrinal but has progressively moved towards a socio-legal approach; see Fiona Cownie *Legal Academics: Culture and Identities* (2004) 197. Whilst the desk-top research method used in the thesis is in the 'traditional' mould of legal research, ie evaluating legislation and case law, there is also a quantitative approach adopted to some of the data used in the thesis. For example, cases were evaluated quantitatively to determine, in sections 5.2 and 7.2, lawsuits that were decided for or against the tax authority.

CHAPTER 2: NORMS OF GOOD DISPUTE RESOLUTION (AND VENUES FOR THE RESOLUTION OF TAX DISPUTES)

2.1 Overview

A good dispute resolution system must conform to the norms provided by the rule of law.[1] Five norms are selected from the various norms: (1) judicial independence; (2) procedural fairness; (3) access to justice; (4) administrative or judicial discretion; and (5) timeousness. These norms were chosen because they are commonly cited in the instruments evaluated in this chapter and are therefore universal in nature.

Although listed as five separate norms, these norms are not mutually exclusive but interwoven. For example, the right to be represented by a lawyer, even when a person does not have the financial means to procure one, can be examined under the norms of access to justice and procedural fairness.[2] The listed norms can also be sub-classified further. For example, judicial independence can be divided into impartiality and non-bias, as provided in some international instruments.[3] The chapter addresses these norms by evaluating the provisions of good dispute resolution as contained in the domestic laws of Nigeria and South Africa, as well as the international instruments on dispute resolution to which the countries have acceded. The five norms are also individually evaluated.

The chapter appraises courts and tribunals, identifies venues for the resolution of tax disputes in Nigeria and South Africa, assesses the types of courts best suited to tax disputes, and evaluates the use of alternative dispute resolution (ADR) in resolving tax disputes. The appraisal of courts and tribunals is undertaken because deciding on the proper venue for the resolution of tax disputes is a major concern of this research.[4]

The aim of the chapter is to evaluate the five identified norms of good dispute resolution against which the Nigerian and South African tax dispute resolution environments are assessed in chapters 3 to 7, and to explore the concept of courts and tribunals.

---

[1] Tom Bingham *The Rule of Law* (2010) at 37–129, which captures the broad principles of the rule of law.
[2] Part (B): Role of Lawyers – The International Principles on Independence and Accountability of Lawyers, Judges and Prosecutors. Available at https://www.icj.org/no-1-international-principles-on-the-independence-and-accountability-of-judges-lawyers-and-prosecutors/ [14 March 2017].
[3] The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa includes a subheading on the impartiality and independence of judges. Available at http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/ [24 December 2018].
[4] See sections 1.2, 8.4 and 9.3.2.

2.2 Historical evolution of the norms of dispute resolution

Lloyd contends that values and norms differ from place to place and from period to period and that, even within a particular jurisdiction, norms are not static, but vary from one period to the next.[5] Corcodel observes that non-western legal systems are often seen as inferior and as 'the other' and are only redeemed when they adapt western values, norms or types of law.[6] Del Mar notes that for law to be considered relevant, it should comprise both primary law and secondary law (secondary law refers to rules about rules).[7]

From the literature in the preceding paragraph, it can be inferred that norms of good dispute resolution are influenced by the socio-legal history of a country. The socio-legal history could be determined by (a) the historical development of a country's legal system; (b) the particular time in history within which the norms are being assessed; (c) the legal family or type of law applicable in a jurisdiction (for example, common law, civil law or sharia law); (d) legal pluralism – dominant or non-dominant legal systems within a jurisdiction; and (e) whether a system of law is considered 'developed' when compared with other jurisdictions.

Modern Nigerian law is derived from the doctrines of English common law and equity, Nigerian legislation and subsidiary enactments, Nigerian case law or judicial precedent, and customary law rules, including Islamic law where applicable.[8] Customary law is, however, subject to the provisions of the English law.[9] English law remains a good source of Nigerian law[10] and Nigeria therefore belongs to the common-law legal family, and the norms ascribed to Nigerian law are determined by the dominant law, namely English law.[11] Furthermore, Nigerian customary law norms are not perceived to exist in a form that is familiar to western thought.[12]

---

[5] Dennis Lloyd *The Idea of Law* (1991) at 116.
[6] Veronica Corcordel *Modern Law and Otherness: The Dynamics of Inclusion and Exclusion in Comparative Legal Thought* (2019) at 17–51.
[7] Maksymilian del Mar 'Global historical jurisprudence: relating law and power in a global context' in Fabra-Zamora (ed) *Jurisprudence in a Globalized World* (2020) at 106.
[8] Abiola Sanni *Introduction to Nigerian Legal Methods* (2006) at 245.
[9] JO Asein *Introduction to Nigerian Legal System* (2005) at 5.
[10] Sanni op cit note 8 at 245–246.
[11] The norms of good dispute resolution in Nigerian customary and Islamic law could vary from the norms acceptable at common law, but since they are over-ridden by common-law norms, as stated in the Constitution, the common-law norms are examined here.
[12] Nigerian customary law is not structured, ie written, with rules on procedure. However, Islamic law is structured and is governed by rules.

Different theories of law provide for diverse interpretations of the substance of law.[13] The naturalist theory of law postulates that all humans are imbued with God-given inalienable rights or higher law, and these rights are bestowed whether or not they are codified.[14] Nigeria has a history dominated by military rule, and these military regimes have suspended sections of the Constitution providing for fundamental human rights, including the right to a fair hearing.[15] According to the naturalist theory, norms of good dispute resolution expunged by the military from the Nigerian Constitutions were always present, whether or not contained in the written law. The positivist theory, on the other hand, holds that law has to be codified before it can be properly regarded as law.[16] The first codified human rights provision in Nigeria was contained in the 1954 pre-independence Constitution and retained in the post-independence Constitutions of 1960 and 1963.[17] This provision was expunged after a military coup d'etat in 1966. In Nigerian legal history the norms of good dispute resolution were altered whenever the military was in power.[18] From the above, we find that norms are either omnipresent or not, depending on which theory is followed.

The influence of English law, and to a lesser extent customary and Islamic law, on the legal system of Nigeria[19] is captured by section 32(1) of the Interpretation Act, which provides:

> Subject to the provisions of this section and except in so far as other provision is made by any Federal law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.[20]

---

[13] Theories of law include the naturalist, positivist, rationalist, functionalist, realist and neo-realist theories. See Yemi Oke *The Law and Practice of International Institutions* (2018) at 34–44. The chapter focuses on the naturalist and positivist schools.

[14] Ibid at 46.

[15] Nigeria is a former British colony and, until independence in 1960, had very similar laws to those of the United Kingdom. Nigeria became an independent nation in 1960 and, after independence, the military governed the country for a total of 28 out of 60 years. Also see Peter Oluyede *Constitutional Law in Nigeria* (2001) at 33.

[16] Lloyd op cit note 5 at 135–136. This is seen, for instance, in the US Constitution, which codifies natural law rights.

[17] Fundamental rights modelled on the European Convention on Human Rights were first included in the Nigerian Constitution of 1954 and this was the model for codes of fundamental human rights found in many Commonwealth countries; see Anthony Lester & Tara Lyle 'History and context' in Anthony Lester et al (eds) *Human Rights Law and Practice* (2009) at 8. This could explain why, although Nigeria and South Africa have different histories, their provisions on norms of good dispute resolution are not very different.

[18] See chapter 3.

[19] Customary law guides inheritance and marriage rites while Sharia law guides the personal law of Muslims (marriage and inheritance): see sections 262, 267, 277 and 282 of the 1999 Constitution.

[20] The Nigerian Supreme Court Ordinance of 1914 further provides that 'Subject to the terms of this or any other ordinance, the rules of common law, doctrines of equity and Statutes of General Application in force on January 1st 1900 shall be in force in the jurisdiction of this court.'

It is contended that although the norms of good dispute resolution in Nigeria are premised on English law to the exclusion of other forms of law in the jurisdiction, this is justifiable because English law applies to everyone within the jurisdiction, while customary and Islamic law apply to sections of the population. This approach also eliminates the need to choose which norm(s) from the multiple sources of law would apply in a given situation.

Since the norms of good dispute resolution in Nigeria arise directly from the norms present in English common law and equity, the evolution of these norms in England is examined below. These common-law rules led to the evolution of the rule of law.[21] The term 'rule of law' was first used in Professor AV Dicey's book *An Introduction to the Study of the Law of the Constitution*.[22] Dicey explains that the law rather than individuals should rule, and that one can only breach a written and known law. According to Bingham, eight main principles of the rule of law are: (a) accessibility of the law; (b) law not discretion; (c) equality before the law; (d) reasonable exercise of power; (e) protection of fundamental human rights; (f) good dispute resolution processes; (g) fairness in trials; and (h) compliance with international law.[23]

The South African norms of good dispute resolution arise from South African common law, which has its roots in Roman-Dutch law, the doctrines of English common law and equity, and indigenous African law and custom.[24] South African common law came about as a result of the gradual fusion of Roman-Dutch law and English law in legislation and case law. Lourens du Plessis observes that some of the milestones of this coalescence are that Roman-Dutch law was

---

[21] Bingham op cit note 1 at 3.

[22] Ibid.

[23] Ibid. Bingham holds that: (a) Accessibility of the law – the law must be accessible, intelligible, clear and predictable. In terms of businesses and investment, the absence of accessible, clear and predictable laws discourages investments as 'no one would choose to do business in a country where the parties' rights are vague or undecided.' (b) Law not discretion – questions of legal rights should ordinarily be resolved by the application of the law and not the exercise of discretion. However, in spite of law best being applied by strict adherence to the letter of the law, discretion by the court is sometimes inevitable, for instance, when sentencing an offender. (c) Equality before the law – the law of the land should apply equally to all save to the extent of objective differences. Thus, there may be differences in applying the law to certain groups, including children and the mentally ill. (d) Reasonable exercise of power – Ministers and public officers at all levels must exercise the powers conferred on them in good faith without exceeding the purpose for which the powers are conferred. Furthermore, whenever ministers act outside their powers, such actions are ultra vires. (e) Protection of fundamental human rights – the law must afford adequate protection of fundamental rights to persons. (f) Good dispute resolution processes – means must be provided for the resolution of disputes without prohibitive costs or inordinate delays for disputes which the parties themselves are unable to resolve. ADR may provide additional dispute resolution options and the rules of fair hearing applicable in court should be applicable to ADR processes. (g) Fairness in trials – adjudicative procedures provided by the state should be fair in civil and criminal matters and there should also be impartiality and absence of bias in a trial. Fairness in a trial also means there should be no trial by ambush. (h) Compliance with international law – the state should comply with its obligations in the international arena, and also with international rules in respect of war and the treatment of prisoners-of-was or citizens of countries at war.

[24] Lourens du Plessis *An Introduction to Law* (1999) at 18, 50–54.

first applied in the Cape of Good Hope, now part of modern day South Africa, in 1652.[25] An English court structure was introduced into South African jurisprudence in 1795 and subsequently in 1806.[26] English law was particularly infused into the system in the sphere of company law, the law of evidence and insolvency.[27] The English court structure was introduced in 1827.[28] The adoption of British-style courts, staffed by lawyers educated in Britain, led to the adoption of certain aspects of the British court system, for instance, the court applied the *stare decisis* rule, which was unknown in Roman-Dutch law, in the *Re Taute* case in 1830.[29] The split legal profession was also adopted from the British system, where barristers appeared in courts while solicitors did all other legal work.[30]

With the enactment of the Union of South Africa Act in 1910,[31] the interaction between Roman-Dutch law and English common law continued primarily in the sphere of legislation and case law.[32] The current Constitution of the Republic of South Africa, 1996 contains a Bill of Rights against which all South African law should be measured and is a culmination of the mix of legal traditions that have given rise to tenets acceptable to the different influences in South African legal history.[33]

Although Nigeria and South Africa have followed different paths in the evolution of norms of good dispute resolution (ie the sources of law from which norms may be distilled), there is some convergence in the continental instruments endorsed by both countries about what constitute norms of good dispute resolution. The Constitutive Act of the African Union, signed by both countries, is an example of such a document and promotes the rule of law.[34] Article 4(m) of the Act lists respect for democratic principles, human rights, the rule of law and good governance as major principles of the AU. Outside Africa, norms of good dispute resolution and the rule of law are contained in the European Commission for Democracy through Law (Venice Commission)[35] checklist for the rule of law. It identifies the core elements of the rule

[25] Ibid at 51.
[26] Ibid at 50.
[27] Ibid at 246.
[28] Ibid.
[29] Ibid at 77.
[30] Ibid.
[31] The Bill was passed by Parliament on 20 September 1909 and on 20 September 1909 King Edward VII of the United Kingdom proclaimed that the Union of South Africa would be established on 31 May 1910.
[32] Du Plessis op cit note 24 at 55.
[33] Specifically, section 8(1) of the South African Constitution provides that the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
[34] Available at https://au.int/sites/default/files/pages/32020-file-constitutiveact_en.pdf [14 July 2018].
[35] Available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e [18 July 2018].

of law as (1) legality, including a transparent, accountable and democratic process for enacting law; (2) legal certainty; (3) the prohibition of arbitrariness; (4) access to justice before independent and impartial courts, including the judicial review of administrative acts; (5) respect for human rights; and (6) non-discrimination and equality before the law.

2.3 The domestic laws of Nigeria and South Africa

The Nigerian Constitution provides for norms of good dispute resolution and designates the judiciary as a third arm of government. Chapter VII of the Nigerian Constitution lists the different courts that are functional in Nigeria, and these are the Supreme Court, the Courts of Appeal, the State and Federal High Courts, the Sharia Courts and inferior courts, including magistrates' courts and area courts.

Section 153(1)(i) of the Nigerian Constitution creates the National Judicial Council (NJC), the body responsible for recommending to the President or Governors persons for appointment as federal or state judges respectively. The NJC recommends to the President or Governors the removal from office of the judicial officers when exercising disciplinary control over such officers.

The code of conduct for judicial officers in Nigeria,[36] as issued by the NJC, provides that a judicial officer should actively participate in establishing, maintaining, enforcing and observing a high standard of conduct so that the integrity of and respect for the independence of the judiciary are preserved. Other standards recommended by the code are the timeous disposition of cases, confidentiality of information garnered during proceedings, the duty of fidelity and fiduciary duties.

While the Nigerian judicial code is subsumed under the Constitution and is provided for by section 36 of Chapter 4, the South African Constitution has a Bill of Rights and provides for the judicial authority in section 165 of the South African Constitution.

The South African Constitution and the Code of Judicial Conduct[37] provide for norms of good dispute resolution. Section 165 of the Constitution states:

> (1) The judicial authority of the Republic is vested in the courts.
> (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

[36] Revised Code of Conduct for Judicial Officers in Nigeria, *Court of Appeal Handbook* (2017) at 169.
[37] Available at https://www.gov.za/documents/judicial-service-commission-act-code-judicial-conduct [5 June 2021].

(3) No person or organ of state may interfere with the functioning of the courts.
(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
(5) An order or decision issued by a court binds all persons to whom and organs of state to which it applies.
(6) The Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

The South African Code of Judicial Conduct makes recommendations about the duty of judges to act honourably, compliance with the law, equality, transparency, fairness in trial, diligence, restraint, association, recusal, the extra-judicial activities of judges on active service, reporting inappropriate conduct, and judges discharged from active service.

It is important to note that although Nigeria and South Africa have different legal histories, the provisions on the norms of good dispute resolution in their respective Constitutions are similar. The Constitutions provide for the judiciary as an independent arm of government and stipulate fair processes in the conduct of judicial proceedings. To actualise the standards to be enshrined in the dispute resolution process, both jurisdictions have a supervisory body that deals with issues pertaining to judges and sets standards with which judicial officers are expected to comply.[38]

2.4 International instruments (and principles)

International instruments are declaratory or binding.[39] Earlier instruments on norms of good dispute resolution contain standards for human rights which, in turn, stipulate standards expected in a good adjudication system.[40] Some of the earliest codified instruments and principles from different jurisdictions are the *Magna Carta, Habeas Corpus*, the Abolition of Torture, the Petition of Rights, the Bill of Rights, the United States Constitution, the French Declaration of Independence, the American Bill of Rights, the Law of War, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.[41]

[38] The National Judicial Council in Nigeria and the Judicial Service Commission in South Africa.
[39] Du Plessis op cit note 24 at 161.
[40] Ibid.
[41] Ibid at 160–164. Bingham op cit note 1 also lists the same instruments at 10–33. There are three generations of rights. Rights that deal with dispute resolution are mainly first-generation rights. First-generation rights, sometimes known as blue rights, deal with protections against the infringement of rights and developed in Europe in the 18th and 19th centuries. Second-generation rights or red rights became prominent after the Second World War and are economic and political rights. Third-generation rights are the rights to a clean environment, development, peace and social identity. See Du Plessis op cit note 24 at 168–169.

Notwithstanding the existence of several international instruments which stipulate the norms of good dispute resolution, there is no single unified document that exhaustively contains all the requirements and norms for good dispute resolution. The key international instruments on good dispute resolution are discussed in sections 2.4.1 to 2.4.9.[42]

2.4.1 African (Banjul) Charter on Human and Peoples' Rights[43]

The Banjul Charter was adopted by the Organisation for African Unity (OAU), the precursor to the African Union, on 27 June 1981 and it entered into force on 21 October 1986. Article 7 of the Charter deals with the rights of individuals to have their cases heard. It provides for individuals' right to: (1) appeal to competent national organs to enforce rights; (2) be presumed innocent until proved guilty by a competent court or tribunal; (3) defence, including defence by counsel of choice; and (d) trial within a reasonable time by an impartial court or tribunal. It also provides for individuals not to be condemned for non-codified acts or omissions as well as their rights to freedom of conscience and religion. Article 26 of the Charter provides that state parties to the Charter shall have the duty to guarantee the independence of the courts.

2.4.2 The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa[44]

The Principles were adopted as part of the African Commission's activity report at the second summit and meeting of heads of state of the African Union (AU), held in Maputo from 4 to 12 July 2003.[45] It sets standards for judicial tribunals and courts on fair and public hearings and recommends that they should be independent, impartial and have trained personnel. The document also makes recommendations on the role of prosecutors and lawyers in court, and the right of civilians not to be tried by military courts and traditional courts.

The document focuses on access to justice and the courts. Like the International Principles on Independence and Accountability of Lawyers, Judges and Prosecutors, discussed below, it provides for the expectations of not only the judge but also other officers of the court.

---

[42] Penelope Andrews 'The judiciary in South Africa: Independence or illusion?' in Adam Dodek & Lorne Sossin (eds) *Judicial Independence in Context* (2010) 473–474. Some of the instruments evaluated in this section are discussed in the book, namely, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Bangalore Principles of Judicial Conduct.

[43] Available at https://www.achpr.org/legalinstruments/detail?id=49 [26 June 2020].

[44] Available at http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/ [24 December 2018].

[45] Ibid.

2.4.3 United Nations Specific Basic Principles on the Independence of the Judiciary[46]

This code was adopted by the seventh United Nations congress on the prevention of crime and the treatment of offenders held in Milan from 26 August to 6 September 1985 and was endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.[47] It stipulates the standards to be attained by the judiciary: conditions of service and tenure, professional secrecy and immunity, discipline, suspension and removal.

A unique provision of the principles is that it refers to access to lawyers and legal services. Therefore, no matter how indigent a person is, he or she should be represented in court by a lawyer. The principles stipulate that the state should fund legal services for poorer citizens. This requirement of access to justice also applies to criminal matters. The document stipulates that persons charged with criminal matters should be informed about their rights and provided with lawyers to handle their matters.

2.4.4 The Bangalore Code[48]

This code was drafted to establish standards for the ethical conduct of judges, to provide guidance to judges, and to afford the judiciary a framework for regulating judicial conduct.[49] The code was widely disseminated among judges of both the common law and civil law systems, discussed at several judicial conferences, and eventually adopted by the United Nations.[50] The code enumerates six core values with attendant principles and implementation. These principles focus on the independence of judges: impartiality, integrity, propriety, equality, competence and diligence.[51]

The Bangalore Code specifies requirements that deal with the independence of judges. It sets parameters that would indicate whether a court is acting fairly. Thus, a core component of independence is impartiality, on which it focuses attention. The Code also focuses on competence and diligence, and stipulates that a judge should understand the law. This is a key

---

[46] Available at https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx [24 December 2018].
[47] Ibid.
[48] Available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf [14 March 2017].
[49] Ibid. See the last paragraph of the document.
[50] Ibid at 9–11. The explanatory note to the draft code clarifies that, in preparing the code, reference was made to several existing codes and international instruments, including the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria and the Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of the High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
[51] Ibid.

consideration where discretion is needed, because competence and knowledge of the law assist with good discretion.

2.4.5 The International Principles on the Independence and Accountability of Lawyers, Judges and Prosecutors[52]

These Principles were compiled by the International Commission of Jurists (ICJ), a non-governmental organisation devoted to promoting the understanding and observance of the rule of law and the legal protection of human rights throughout the world.[53] The aim of the Principles is to provide legal practitioners and policy-makers with detailed and practical international standards on the independence of the judicial system.[54] The document recommends standards for judges in the following areas: independence, impartiality, financial autonomy and sufficient funds, the fundamental freedoms of association and expression, appointment, conditions of tenure and promotion, and accountability.

The Principles are an expansion of the requirements of a good judicial system recommended in the Bangalore Code. While the Bangalore Code focuses exclusively on the judge, the Principles focus further on other officers of the court. The Principles require that cases should not be tried in tribunals but in proper courts. While some of the focus is on other instruments, a new area of focus is the financial independence of the courts.

2.4.6 The Universal Charter of the Judge[55]

This Charter was approved by the International Association of Judges on 17 November 1999.[56] It sets the standards for judicial independence and status, submission to law, personal autonomy, impartiality and restraint, efficiency, outside activity, security of office, appointment, civil and disciplinary action, associations, remuneration and retirement, support and public prosecution.

Just like the Bangalore Code, the Universal Charter of the Judge is solely focused on the requirements of a good judge. It reiterates the importance of the independence of the judge both personally and from an institutional point of view.

---

[52] International Commission of Jurists (2007) International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors. Available at https://www.icj.org/no-1-international-principles-on-the-independence-and-accountability-of-judges-lawyers-and-prosecutors/ [14 March 2017].
[53] Ibid.
[54] Ibid.
[55] Available at https://www.iaj-uim.org/universal-charter-of-the-judges/ [24 December 2018].
[56] Ibid.

2.4.7 The Burgh House Principles on the Independence of the International Judiciary[57]

The Burgh House Principles make recommendations on independence and freedom from interference, nomination, election and appointment, security of tenure, service and remuneration, privileges and immunities, budget, freedom of expression and association, extra judicial activity, past links to a case, past links to a party, interest in the outcome of a case, contacts with a party, past service limitations, disclosure, waiver, withdrawal, disqualification and misconduct.[58]

The Principles recommend standards for the international judiciary. However, the requirements are like those for domestic judicial settings, ie courts or tribunals in a given jurisdiction. The Principles list provisions that are found in other instruments. Basically, no matter the venue for dispute resolution, nationally or internationally, the requirements for a good judicial system are similar.

2.4.8 Latimer House Guidelines for the Commonwealth (of Nations) on Parliamentary Supremacy and Judicial Independence[59]

The Guidelines were adopted on 19 June 1998 at a meeting of the representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association.[60] The Guidelines provide for preserving judicial independence, appointments, funding, training, judicial ethics and accountability, and the role of judicial and non-parliamentary institutions.

Apart from the requirements for the independence of judges and other administrative matters in respect of the judiciary, the Guidelines focus on the protection of the legal profession in the administration of justice, this being a core component of the actualisation of the rule of law in any jurisdiction. Another focus of the Guidelines is access to justice for the poor by the provision of free legal services for impecunious persons.

---

[57] Available at https://www.ucl.ac.uk/international-courts/sites/international-courts/files/burgh_final_21204.pdf [24 December 2018].
[58] Ibid.
[59] Available at http://thecommonwealth.org/sites/default/files/newsitems/documents/LatimerHousePrinciplesPH7Jul17.pdf [24 December 2018].
[60] Ibid.

2.4.9 Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government[61]

This document was agreed to by the Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003.[62] It provides guidelines on the relationship between the three arms of government, the relationship between parliament and the judiciary, the independence of the judiciary, public office holders, ethical governance and accountability mechanisms.

An important provision in the Principles is that they address the relationship between the judiciary and the legislature. They therefore provide for the separation of powers not only between the executive and the judiciary, but also between the judiciary and parliament. The Principles further require an independent judiciary.

A generic assessment of the different international instruments highlighted above shows that although they were drafted at different times and for different constituencies, their requirements for norms of good dispute resolution are similar. Thus, they generally provide for the independence of the judiciary, access to justice for the indigent, procedural fairness and the correct venue for trying disputes, the competence of judges and judicial discretion, as well as the need to conclude disputes in good time.

The table below lists the above international instruments and their various provisions.

Table 2.1: International instruments and norms covered

	Instrument	Norms discussed in the thesis contained in instruments	Other provisions on norms as contained in the instruments
1.	African (Banjul) Charter on Human and Peoples' Rights	• Judicial independence • Access to justice • Timeousness	Presumption of innocence, right to counsel, codification of offences, freedom of conscience and religion
2.	Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa	• Judicial independence • Access to justice • Procedural fairness	Role of prosecutors and lawyers in court, rights of civilians not to be tried by military courts and traditional courts

[61] Available at http://www.parliament.ls/senate/images/S2%20LESOTHO%20%20Latimer%20House%20Principles%20and%20Practices.pdf [24 December 2018].
[62] Ibid.

3.	United Nations Specific Basic Principles on the Independence of the Judiciary	• Judicial independence • Access to justice	Standards to be attained by the judiciary, including conditions of service and tenure, professional secrecy and immunity, discipline, suspension and removal
4.	Bangalore Code	• Judicial independence • Procedural fairness • Discretion • Timeousness	Impartiality, integrity, propriety, equality, competence and diligence
5.	International Principles on Independence and Accountability of Lawyers, Judges and Prosecutors	• Judicial independence • Access to justice	Impartiality, financial autonomy and sufficient funds, fundamental freedoms of association and expression, appointment, conditions of tenure and promotion, accountability
6.	Universal Charter of the Judge	• Judicial independence	Submission to law, personal autonomy, impartiality and restraint, efficiency, outside activity, security of office, appointment, civil and disciplinary action, associations, remuneration and retirement, support and public prosecution
7.	Burgh House Principles on the Independence of the International Judiciary	• Judicial independence	Nomination, election and appointment, security of tenure, service and remuneration, privileges and immunities, budget, freedom of expression and association, extra judicial activity, past links to a case, past links to a party, interest in the outcome of a case, contacts with a party, past service limitations, disclosure, waiver, withdrawal, disqualification and misconduct
8.	Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence	• Judicial independence • Access to justice	Appointments, funding, training, judicial ethics and accountability, role of judicial and non-parliamentary institutions

9.	Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government	• Judicial independence • Access to justice	Guidelines on relationship between the three arms of government, ethical governance and accountability mechanisms

Source: Author

2.5 Individual norms

Having discussed the judicial norms in Nigeria and South Africa and having listed the norms covered by international instruments, this section of the thesis discusses the position and opinions of various writers on the norms of a dispute resolution system. This section sets out the roles of the norms in the tax dispute resolution systems found in Nigeria and South Africa, and in international instruments.

The norms considered are judicial independence, procedural fairness, access to justice, administrative or judicial discretion and timeousness.

2.5.1 Judicial independence

Judicial independence within any system has different components, and these include impartiality, fairness and financial autonomy.[63]

Embedded within the requirements for judicial independence is the mode of appointment of judges. The Nigerian Tax Appeal Tribunal was established by section 59 of the Federal Inland Revenue Service Establishment Act (FIRSEA) 2007.[64] The FIRSEA sets out in detail the qualifications of persons to be appointed as commissioners to the Tax Appeal Tribunal (TAT), and provides for their discipline, tenure and term. Section 2(1), (2) and (3) of the fifth schedule to the FIRSEA thus provides:

> (1) A Tribunal shall consist of five members (hereinafter referred to as 'Tax Appeal Commissioners') to be appointed by the Minister.
>
> (2) A Chairman for each zone shall be a legal practitioner who has been so qualified to practise for a period of not less than 15 years with cognate experience in tax legislation and tax matters.

[63] As shown in section 2.4 above, virtually all the international instruments establishing norms for good dispute resolution recommend that the judiciary should be independent. The Bangalore Code stipulates that impartiality, fairness and financial autonomy are integral parts of judicial independence. Furthermore, although the fairness of a judicial system can be discussed under judicial independence, it can also fall under procedural fairness. This buttresses the interrelatedness of the norms.

[64] The particulars of the tribunal are contained in the Fifth Schedule to the Act.

> (3)A person shall not be qualified for appointment as a Tax Appeal Commissioner unless he is knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria as well as persons that have shown capacity in the Management of trade or business or a retired public servant in tax administration.

Although the TAT commissioners are appointed according to strict requirements, the appointment procedures are sometimes overshadowed by the weak foundation of the tribunal ie the legal uncertainty about its constitutional status.[65]

Other aspects of an independent judiciary are the impartiality of adjudicators, the fairness of processes and financial autonomy. Some of these components could also be discussed under other headings. For example, the impartiality of the courts and the fairness of processes are discussed under procedural fairness in section 2.5.3 below. As provided for in the Nigerian Constitution, salaries of federal judges are drawn from the Consolidated Revenue Fund, which ensures that they are financially independent from the executive; however, their capital expenditure is not explicitly provided for, and this could affect the independence of the judiciary.[66]

The South African Tax Court derives its force from the Constitution. A strong, independent judiciary is one of the features of the post-apartheid 1996 Constitution of South Africa.[67] Section 166 of the South African Constitution lists courts of the Republic and paragraph *(e)* of the section provides for 'any other courts established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Court of South Africa or the Magistrates' Courts.' Section 116 of the Tax Administration Act (TAA) provides for the establishment of the Tax Court in accordance with section 166*(e)* of the Constitution. Section 116 states that 'the President of the Republic may by proclamation in the Gazette establish a Tax Court or additional Tax Courts for areas that the President thinks fit and may abolish an existing Tax Court as circumstances may require.' The Tax Court is therefore established in terms of the provisions of the South African Constitution.

Provisions of international instruments on judicial independence:

Article 26 of the African (Banjul) Charter on Human and Peoples' Rights provides:

> States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national

---

[65] See sections 3.5.4.1, 3.5.5.1 and 5.2.

[66] Peter Oluyede *Constitutional Law in Nigeria* (2001) 293. Capital expenditure refers to fixed assets like land or buildings which are not incurred on a yearly basis. Recurrent expenditure is incurred from year to year and includes expenses like salaries. The mode of funding of the TAT is discussed in section 5.2.

[67] Andrews op cit note 42 at 469. See section 2.6.1 on the nature of the Tax Court.

> institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Section 4(a) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provides:

> The independence of judicial bodies and judicial officers shall be guaranteed by the Constitution and laws of the country and respected by the government, its agencies and authorities.

In respect of impartiality (a component of judicial independence), Article 5(a) provides:

> A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

Article 1 of the Basic Principles on the Independence of the Judiciary provides that:

> The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

On impartiality, Article 2 further states:

> The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Value 1.1 of the Bangalore Principles of Judicial Conduct provides that:

> A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

On impartiality, Value 2.1 provides that 'A judge shall perform his or her judicial duties without favour, bias or prejudice.'

Article 1 of the Independence and Accountability of Judges, Lawyers and Prosecutors provides that:

> For a trial to be fair, the judge or judges sitting on the case must be independent. All international human rights instruments refer to a fair trial by 'an independent and impartial tribunal'.

Article 1 of the Universal Charter of the Judge provides that:

> The independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.

In respect of impartiality, Article 5 provides that:

> In the performance of the judicial duties the judge must be impartial and must so be seen. The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved.

The Burgh House Principles on the Independence of the International Judiciary provide at 1.1 that 'the court and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.'

2.5.2 Access to justice

Access to justice is a fundamental requirement and norm of good dispute resolution. As was noted in the South African case of *Lesapo v North West Agricultural Bank and Another*,[68] 'the right of access to court is indeed foundational to the stability of an orderly society, it ensures the peaceful, regulated and institutionalized mechanisms to resolve disputes, without resorting to self-help.' Access to justice has several dimensions: the knowledge of the right to access courts, the procedural means to access rights in court, and, very importantly, the costs in relation to obtaining justice.[69]

Section 17 of the Nigerian Constitution provides for the equality of citizens before the law and for access to the courts:

> (1) The State social order is founded on ideals of Freedom, Equality and Justice.
> (2) In furtherance of the social order – (a) Every citizen shall have equality of rights, obligations and opportunities before the law; (b) The sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced; (c) Governmental actions shall be humane; (d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and (e) The independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

In the South African context, access to justice is often dealt with in conjunction with other procedural rights contained in section 32 (access to information) and section 33 (just

---

[68] 1999 (12) BCLR 1420 (CC) para 22.
[69] This is the deduction from assessing the international instruments discussed in section 2.4 above.

administrative action) of the Constitution.[70] Access to justice is not absolute and can be limited under section 36.

Section 34 of the South African Constitution states that 'Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.' As noted earlier, cost is an important aspect of evaluating access to justice. An essential consideration in the tax dispute resolution context is whether a tax authority should shoulder the financial burden of the resolution of conflicts for taxpayers in some situations, for example, where taxpayers are financially disadvantaged. In addressing the issue of legal representation, the Constitutional Court held in *Legal Aid South Africa v Magidiwana and Others*[71] that the right to legal representation at commissions is not absolute but depends on context. The state is therefore not always obliged to provide legal aid for the indigent and each case would dictate whether a state provides aid.[72]

Provisions of international instruments on access to justice:

Article 7(1) of the African (Banjul) Charter on Human and Peoples' Rights provides that '[e]very individual shall have the right to have his cause heard'.

Article G(a) (Access to Lawyers and Legal Services) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provides:

> States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status.

Article (1)(6) (Parliament and the Judiciary) of the Commonwealth Principles on the Accountability of and Relationship between the Three Branches of Government (Latimer House Principles) provides that 'people should have easy and unhindered access to the courts particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed.'

---

[70] Beric Croome *Taxpayers' Rights in South Africa* (PhD thesis, UCT, 2008) 220. The author notes that when considering taxpayers' rights of access to information, administrative justice, and access to courts, all interested parties should take account of how the three procedural rights interact.

[71] [2014] 4 All SA 570.

[72] The financial standing of taxpayers in tax disputes is discussed in sections 5.3 and 7.3.

The Independence and Accountability of Judges, Lawyers and Prosecutors provides under (b) (role of lawyers) that:

> The right to be represented by a lawyer, even when the person has no financial means to procure one, constitutes an integral part of the right to a fair trial as recognised by international law. Individuals who are charged with a crime must at all times be represented by a lawyer, who will guarantee that his right to receive a fair trial by an independent and impartial tribunal is respected throughout the proceedings. Lawyers are the ones who will challenge the court's independence and impartiality and who will ensure that the defendants' rights are respected.

2.5.3 Procedural fairness

Procedural fairness includes all the processes put in place to ensure a fair hearing in a dispute and was previously known as natural justice.[73] Procedural fairness is addressed for the purposes of this thesis from two standpoints: (a) the common-law rules in respect of good and fair procedures in dispute resolution; and (b) the laws and rules guiding good proceedings in a court or in an administrative tribunal.

At common law, expectations of procedural fairness are captured in the Latin maxims *audi alteram partem* and *nemo iudex in sua causa. Audi alteram partem* means that both sides to a dispute should be heard and that a dispute resolution process should be fair.[74] Fairness depends on the circumstances of the dispute and the concept of proportionality is taken into account to ensure that parties have adequate time to present their cases.[75] Proportionality requires that limits are imposed, but according to preordained criteria.[76] The second maxim, *nemo iudex in sua causa*, is often referred to as the rule against bias; decision makers ought to be impartial.[77] The absence of bias could therefore be a test for judicial independence, as well as for procedural fairness.

Reasoned decisions are also an important component of procedural fairness under the common law and are considered a fundamental aspect of good administration.[78] For instance, there is an obligation to give reasons for an arrest.[79] Reasons are also significant because they are an important mechanism for making administrators accountable to the people.[80]

---

[73] Cora Hoexter *Administrative Law in South Africa* (2012) 362.
[74] Ibid.
[75] Ibid at 364.
[76] Ibid. Procedural rights in South Africa can be limited by section 36 of the Bill of Rights.
[77] Ibid at 451.
[78] Ibid at 463.
[79] Ibid at 406.
[80] Ibid.

Procedural fairness in the Nigerian tax dispute resolution arena is guided by the common-law rules on fair procedures and rules of court. Order XV of the Nigerian TAT rules provides for a hearing at the tribunal. It states that the tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensure the speedy dispensation of justice. The order further stipulates rules on the presentation of witnesses, giving oral or documentary evidence, and timelines for all processes.

In South Africa, procedural fairness is codified and contained in section 33(1) of the Constitution, which provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. To realise this constitutional requirement, the Promotion of Administrative Justice Act[81] (PAJA) was enacted. PAJA (in addition to the common-law principles/administrative law principles) in turn provides safeguards for ensuring fair procedures, including reasoned action under section 5, judicial review under section 6, and the stipulation of what amounts to fair procedure under section 3. In matters involving PAJA, the taxpayer must of necessity go straight to the High Court, because the Tax Court has no jurisdiction in this regard. Certain actions by SARS officials and certain decisions of the Tax Court are, in principle, subject to common-law review (as distinct from appeal) in the High Court in appropriate circumstances, on the basis of the principle of legality, and, in certain limited circumstances, are subject to review in terms of PAJA.[82] Therefore, save in unusual circumstances, a taxpayer aggrieved by an assessment cannot leapfrog the Tax Court and initiate proceedings in the High Court. Furthermore, internal remedies of objection and appeal need to be exhausted before PAJA is invoked.[83]

The Tax Court rules[84] also provide detailed procedures to be applied in a dispute to ensure a fair hearing between the tax authority and taxpayers. The rules provide for ADR procedures as well as procedures in the Tax Court or the Tax Board. The rules provide for processes and timelines in resolving disputes, as well as mode of commencement and appeals. Section 6 of the rules provides that the tax authority must provide reasons (in accordance with PAJA) for an assessment which would form the basis on which a taxpayer would object to an assessment.

[81] Promotion of Administrative Justice Act 3 of 2000. This Act makes civil servants accountable for their decisions and does not apply only to judges. The original source for procedural fairness in South African courts is the inherent jurisdiction of the High Court to regulate itself, which has been the arena within which practices evolved into very detailed procedural rules mostly found in the criminal and civil procedure legislation.
[82] See section 1 of PAJA for actions subject to review.
[83] See section 7 of PAJA.
[84] 'Tax Court rules' or 'rules' as used in this section refer to rules promulgated under section 103 of the Tax Administration Act 28 of 2011.

Section 44 provides in particular for procedures in the court. The South African tax dispute resolution process is structured in a way that actualises a fair procedure. Numerous reported cases deal with procedural fairness.[85]

Provisions of international instruments on procedural fairness:
Article 2 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa provides that 'the essential elements of a fair hearing include: (a) equality of arms between the parties to proceedings, whether they be administrative, civil, criminal, or military.'

Article 1 provides judicial processes should be heard publicly:

> (a) All the necessary information about the sittings of judicial bodies shall be made available to the public by the judicial body:
> (b) A permanent venue for proceedings by judicial bodies shall be established by the State and widely publicised. In the case of ad-hoc judicial bodies, the venue designated for the duration of their proceedings should be made public.

Value 2.4 of the Bangalore Principles provides that:

> A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5.4 Discretion

Discretion in tax dispute resolution arises broadly in two spheres – administratively, where tax authorities apply discretion to resolve issues with the taxpayer, and judicially, in the Tax Courts or tribunals, in relation to how courts conduct trials.[86] Judicial discretion arises when judges decide on sections of the law that have not been tested or are not very clear. Bingham posits that discretion should be applied sparingly, as the letter of the law should be supreme. Discretion is the antithesis of the rule of law, and questions of legal right and liability should ordinarily be resolved by application of the law and not by the exercise of discretion.[87] Hawkins is of the view that rules can malfunction and in such a situation discretion is helpful.[88] He further notes that rules are supreme, so discretion is limited by rules in many ways. He states

[85] See section 7.3. There is no case dealing substantively with procedural fairness in Nigeria within the review period. However, in *FIRS v General Telecom Plc* [2012] 7 TLRN 108, a generic reference was made to the possible bias of the TAT (but it was not the main issue in the dispute).
[86] The IMF/OECD Report for G20 Finance Ministers (March 2017) 48. Available at http://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf [11 August 2017]. The document also provides that 'dispute resolution in tax matters should be structured to include an independent, workable and graduated dispute resolution process comprising an administrative and a judicial stage.'
[87] Bingham op cit note 1 at 48.
[88] Keith Hawkins *The Uses of Discretion* (1992) 61–69.

that ‘discretion is the hole in the doughnut’. A summation of Hawkins’ views is that there are inevitably flaws or unforeseen circumstances in the administration and application of the law and in such circumstances the application of discretion is unavoidable.

The view expressed by Hawkins is that interpretation of legislation implies some discretion for the decision maker. However, it is argued from a positivist perspective that this is a fallacy, because the rule of law requires that rules of law, not discretion, should solve any ambiguity in legislation.

The rules of interpretation, as formulated in South Africa in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[89] and the Vienna Convention on the Law of Treaties (Articles 31–33), force the decision maker to justify the outcome in terms of predictable elements such as the apparent purpose of law; the rules do not leave room for personal or unconsummated material to determine the outcome. Hence judges must follow the rules of interpretation as expressed by the apex court. Accordingly, they cannot substitute their own views in cases of doubt. The court noted in the above case that:

> Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation.[90]

The court further stated that ‘[c]ourts do not set out to undermine legislative purpose but to give it effect within the constraints imposed by the language adopted by the legislature.’[91] Elaborating further on the need for limited use of discretion by the courts, the court noted the following:

> The sole benefit of expressions such as ‘the intention of the legislature’… is to serve as a warning to courts that the task they are engaged upon is discerning the meaning of words used by others, not one of imposing their own views of what it would have been sensible for those others to say.[92]

The departure point under a rule of law legal system is (from a positivist perspective) that judicial officers have no discretion in applying the law, unless legislation expressly confers

[89] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13.
[90] Ibid para 18.
[91] Ibid para 22.
[92] Ibid para 24.

discretionary powers. This is especially so for those operating in 'courts' established by legislation that circumscribes the powers of these particular bodies.

Nigerian Tax Acts contain numerous provisions on instances in which the tax authority applies administrative discretion in administering Tax Acts. Section 24 of the Companies Income Tax Act (CITA) lists the deductions that are allowed, and paragraph *(f)* specifically provides that:

> Bad debts incurred in the course of a trade or business proved to have become bad during the period for which the profits are being ascertained, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Board to have become bad during the said period notwithstanding that such bad or doubtful debts were due and payable before the commencement of the said period.

The tax authority also exercises discretion in section 25 on donations allowed, the Second Schedule on capital allowances, and the Fifth Schedule on bodies to which deductible donations are made.[93] Section 23 of the Federal Inland Revenue Service Establishment Act (FIRSEA) provides for refunds of tax to taxpayers on terms to be determined by the tax authority. Section 61 of the Act provides that 'the Board may with the approval of the Minister, make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.'

Order XV (Hearing) of the Nigerian Tax Appeal Tribunal rules stipulates that 'the tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensure speedy dispensation of justice.' The provision gives discretion to the tribunal to hear disputes in the way it deems fit. This implies that it may not adhere strictly to all or some of the rules if it is expedient not to do so. In the Nigerian legal system, the tribunal is lower than a court of record and this provision is reflective of the practice in the magistrates' courts, which are not bound by rigid rules of court. High Courts apply discretion in their cases, although the High Court rules do not typically provide for this blanket provision; it is more implied. However, the TAT rules are not detailed and it is argued that the provision is included to address the limited details provided in the rules. Although the Federal High Court is expected to generally conduct proceedings using discretion, the provision is not explicitly contained in the Federal High Court rules. The Federal High Court rules mention discretion only in relation to the form of commencement of proceedings under Order 3, rule 8.[94]

---

[93] The tax authority also exercises discretion in the Personal Income Tax Act – section 20 on deductions allowed and the Fifth Schedule on capital allowances – and in the Petroleum Profits Tax Act – section 10 on deductions allowed, section 20 on capital allowances, and the Second Schedule on capital allowances.

[94] The section provides that '[a] Judge shall not be bound to determine any such construction if in the Judge's opinion it ought not to be determined on originating summons but may make such orders as the judge deems fit.'

As indicated earlier, in the tax dispute resolution arena, discretion also arises where tax authorities acting in an administrative capacity, and thus bound by standards of good dispute resolution, employ discretion in accordance with Tax Acts to decide on tax issues. Silke contends that the South African Income Tax Act has many provisions that give the commissioner discretionary powers, and such powers are couched in provisions such as 'just and reasonable,' 'in the opinion of,' 'the decision of the Commissioner' and 'when the Commissioner is satisfied'.[95]

The TAA provides for discretion by the tax authority in the form of rulings and interpretation notes. Section 76 provides that the purpose of the 'advance ruling' system is to promote clarity, consistency and certainty regarding the interpretation and application of a Tax Act by creating a framework for the issuance of 'advance rulings', while section 77 provides that SARS may make an 'advance ruling' on any provision of a Tax Act.

2.5.5 Timeous resolution of conflicts

Justice delayed is justice denied. Tax disputes need to be resolved within a reasonable time; however, the length of time deemed reasonable in resolving disputes is open to debate. In order to ensure swift timelines in resolving tax disputes, the tax laws in Nigeria and South Africa, as well as the court rules, stipulate acceptable time periods for assessments, objections to assessments, the filing of processes in the courts or tribunals, and ADR.

The Nigerian Federal High Court and TAT rules provide timelines for the resolution of disputes. Section 69 of the Companies Income Tax Act provides:

> If any company disputes the assessment it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it. (2) An application under subsection (1) of this section shall *(a)* be made within thirty days from the date of service of the notice of assessment and *(b)* contain the ground of objection to the assessment.

A similar provision is contained in section 58 of the Personal Income Tax Act, while a slight departure in timelines is contained in section 38 of the Petroleum Profits Tax Act, which requires 21 days.

---

[95] S Klue et al *Silke on Tax Administration* (2010) ch 5.14. However, South African tax legislation is now being 'cleaned up' to remove any unnecessary express discretion given to tax administrators (eg changes to the transfer pricing legislation – section 31 of the ITA, which removed 'in the opinion of the Commissioner'). The reason was constitutional: the heightened separation of powers is required for the enactment of money Bills, and it was believed that awarding too much express discretion made the tax legislation susceptible to constitutional attack. The other issue is the risk of corruption.

2.5.5.1 Tax Appeal Tribunal (Nigeria)

Order III rule 2 of the TAT rules provides that '[a]n appeal under these Rules shall be filed within a period of 30 days from the date on which the action, decision, assessment or demand notice which is being appealed against, was made by the Service.' Order VII rule 1 further provides:

> A respondent shall within 30 days after the service of a notice of appeal on him enter appearance by delivering to the Secretary a respondent's reply as in Form TAT 3 to the First Schedule to the Rules acknowledging receipt of the notice of appeal and stating therein whether he contests the appeal.

The rules do not provide a timeframe for the hearing. The TAT rules are rudimentary, including the hearing requirements, so that decisions can be reached more quickly. This approach is supported by order XV, which provides that 'the Tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensure speedy dispensation of justice.' In summary, a party has a maximum of 60 days from the time of objection to the FIRS assessment to the date of hearing.[96]

2.5.5.2 Federal High Court (Nigeria)

The Federal High Court rules provide that a party shall enter an appearance within 30 days of being served an originating process. There are no strict timelines for conducting a case or for rendering judgment. Thus, from the date of objection to an assessment to the commencement of a hearing, a maximum of 60 days is allowed. This does not include the actual time for the hearing in the court.

2.5.5.3 Objections and appeals (South Africa)

The South African TAA sets the general framework for timelines to be achieved in ensuring the swift resolution of tax disputes, while the Tax Court rules include more detailed provisions on achieving the timelines. Timelines are also stipulated for the different levels of the dispute resolution process, from the time of objection to an assessment, the Tax Board, the Tax Court and ADR.[97]

---

[96] See section 5.6.

[97] The time requirement under Part F of the rules 'Applications on notice' is not included because it depends on the circumstances of each case and, although it will interrupt the periods prescribed for the purposes of proceedings under Parts A to E, it is nevertheless not mandatory.

Section 104(1) of the TAA provides that 'a taxpayer who is aggrieved by an assessment made in respect of the taxpayer may object to the assessment.' The Tax Court rules expand on this provision by providing more detailed requirements on timelines for lodging appeals against any assessment by the tax authority. Section 7(1) of the rules provides that:

> A taxpayer who may object to an assessment under section 104 of the Act, must deliver a notice of objection within 30 days after *(a)* delivery of a notice under rule 6(4) or the reasons requested under rule 6; or *(b)* where the taxpayer has not requested reasons, the date of assessment.

In terms of section 104 of the Act, this period may be extended by a senior SARS official for a good reason and generally the extension should not be for more than a period of 21 days.

Under rule 7(4), SARS is expected to notify a taxpayer within 30 days if his or her objection is invalid. Rule 7(5) provides that 'a taxpayer who receives a notice of invalidity may within 20 days of delivery of the notice submit a new objection without having to apply to SARS for an extension under section 104(4).' Rule 8 provides that substantiating documents should be provided within 30 days of lodgment of an objection and this period may be extended for not more than 20 days if good cause is shown. Rule 9 provides that SARS must decide on a taxpayer's objection within 60 days of the taxpayer's first objection (this may be extended by 45 days if the issues are determined to be complex). An extension of 45 days may be given if additional documents were requested by SARS.

From the foregoing provisions of the Act and rules, if there are no delays, ie the objection is properly filed and no additional documents are requested, the maximum number of days from the date of first objection by a taxpayer to the date of filing an appeal at the Tax Court or Tax Board is 90 days. However, practitioners are of the view that SARS always delays this process and therefore it takes longer.[98]

2.5.5.4 Alternative dispute resolution (South Africa)

The ADR processes are guided by the shortest time limits of all dispute resolution processes under the rules. Section 143 of the TAA provides that although SARS bears the duties of collecting taxes, it can resolve a dispute by settlement in situations specified in the legislation.

[98] Croome op cit note 70 at 231. Also see section 7.6.

A taxpayer can also initiate settlement as provided for in the Act. Sections 145 and 146 respectively provide for circumstances where settlement is and is not appropriate.[99]

In terms of rule 13(1), an appellant must be informed by SARS within 30 days of receipt of the notice of appeal whether the matter is appropriate for ADR. SARS must also inform the appellant about the option of ADR within 30 days of the notice of appeal if he or she is not aware of the option. Section 13(2)*(a)* provides that the appellant must, within 30 days of delivery of the notice by SARS, deliver a notice stating whether he or she agrees to ADR. Therefore, from the notice of appeal to the notice to proceed with ADR, the timeline is 60 days.

Under rule 15(3), the parties must finalise the ADR proceedings within 90 days after the commencement date referred to in sub-rule (1). ADR proceedings must therefore be concluded within a total of 150 days, unless an extension is sought. Resorting to ADR halts the resolution of disputes at the Tax Board or the Tax Court.

2.5.5.5 Tax Board (South Africa)

Section 107(1) of the Act provides that after delivery of the notice of the decision referred to in section 106(4), a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the Tax Board or the Tax Court in the manner, under the terms and within the period prescribed in this Act and the 'rules'. Section 10 of the rules provides that the taxpayer may appeal against the outcome of his or her objection to an assessment within 30 days of SARS' decision (while the period is extended by 21 or 45 business days by a SARS

---

[99] Section 145 of the TAA provides that settlement is inappropriate in the following circumstances:

> It is inappropriate and not to the best advantage of the State to 'settle' a 'dispute' if in the opinion of SARS — (a) no circumstances envisaged in section 146 exist and — (i) the action by the person concerned that relates to the 'dispute' constitutes intentional tax evasion or fraud; (ii) the 'settlement' would be contrary to the law or a practice generally prevailing and no exceptional circumstances exist to justify a departure from the law or practice; or (iii) the person concerned has not complied with the provisions of a Tax Act and the non-compliance is of a serious nature; (b) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose; or (c) the pursuit of the matter through the courts will significantly promote taxpayer compliance with a Tax Act and the case is suitable for this purpose.

Section 146 provides that settlement is appropriate in the following circumstances:

> The Commissioner may, if it is to the best advantage of the state, 'settle' a 'dispute', in whole or in part, on a basis that is fair and equitable to both the person concerned and to SARS, having regard to — (a) whether the 'settlement' would be in the interest of good management of the tax system, overall fairness, and the best use of SARS' resources;(b) SARS' cost of litigation in comparison to the possible benefits with reference to — (i) the prospects of success in court; (ii) the prospects of the collection of the amounts due; and (iii) the costs associated with collection;(c) whether there are any — (i) complex factual issues in contention; or (ii) evidentiary difficulties, which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative 'dispute' resolution procedures or the courts; (d) a situation in which a participant or a group of participants in a tax avoidance arrangement has accepted SARS' position in the 'dispute,' in which case the 'settlement' may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or (e) whether 'settlement' of the 'dispute' is a cost-effective way to promote compliance with a Tax Act by the person concerned or a group of taxpayers.

official if the circumstances permit). Rule 11*(c)* provides that if no ADR procedures are pursued, a taxpayer must, if the appeal is to be dealt with by the Tax Board, request the clerk to set the matter down before the Tax Board within 35 days of delivery of the notice of appeal.

Rule 27(4) provides that 10 days before the hearing of an appeal, the clerk of the Tax Board must deliver a dossier of the relevant documents to the chairperson. Rule 28(4) stipulates that the clerk of the board must deliver the decision of the board to the parties within ten days of the decision while subrule (5) provides that SARS should give effect to the decisions of the Tax Board within 45 days of decision.

The rules provide timelines for filing an appeal to the Tax Board, delivering a decision of the board to the parties, and SARS' execution of the board's decision, but does not stipulate the time for evidence and witnesses. In view of the informal nature of the Tax Board, it is opined that this is an avenue for delay which ultimately defeats the ends of justice. However, if strict timelines are imposed for evidence, such timelines could restrict issues that are thrown open in a dispute, which is more in line with general court rules. The non-restriction of time within which evidence is given for disputes at the Tax Board can be compared with the stricter time requirements for ADR.

2.5.5.6 Tax Court (South Africa)

Tax Court rules are the most detailed or complex of all the levels of dispute resolution processes. They do not specify a timeline within which a hearing must be concluded. However, the pre-trial stage must be concluded within strict timelines. Typically, there are five pre-hearing stages before a dispute goes to trial, namely, statements or pleadings, discovery, the set down of appeal before the hearing, pre-trial conferences, and the subpoenaing of witnesses.[100] There are overlaps in the calculation of time for some stages of the dispute resolution process. For instance, a taxpayer or SARS needs to choose a date for hearing; however, a pretrial conference should be held 60 days before the start of the hearing. Furthermore, not all the stages are compulsory, so may not add any days to the total time.

Section 115(1) of the Act provides that if the 'appellant' or SARS is dissatisfied with the Tax Board's decision or the Chairperson fails to deliver the decision under section 114(2) within the prescribed 60 business day period, the 'appellant' or SARS may, within 21 business days,

[100] SARS Dispute Resolution Guide: Guide on the Rules Promulgated in Terms of Section 103 of the Tax Administration Act at 61–67. Available at http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-TAdm-G05%20-%20Dispute%20Resolution%20Guide%20-%20External%20Guide.pdf [14 July 2017].

or within the further period as the Chairperson may on good cause shown allow, after the date of the notice referred to in section 114(3) or the expiry of the period referred to in section 114(2), require, in writing, that the appeal be referred to the Tax Court for hearing.

For the pleading stage of the dispute under rule 31, SARS must deliver to the appellant a statement of the grounds of assessment opposing the appeal within 45 days after delivery of the relevant documents. The appellant must in turn, under rule 32, deliver to SARS a statement of the grounds of appeal within 45 days after delivery of the relevant documents. Rule 33 provides that SARS may, after delivery of the statement of the grounds of appeal under rule 32, deliver a reply to the statement within 15 days after the appellant has discovered the required documents, where the appellant was requested to make discovery under rule 36(2), or 20 days after delivery of the statement under rule 32. Therefore, for this first stage of the pre-trial period, the rules recommend a maximum of 115 or 120 days.

The second stage of the prehearing period is the discovery stage.[101] Time stipulations for discovery are made under rule 36(1), (2), (3) and (4). A summary of the sub-rules is that (1) the appellant may, within ten days after delivery of the statement under rule 31, deliver a notice of discovery to SARS; (2) SARS may, in turn, within ten days after delivery of the statement under rule 32, deliver a notice of discovery to the appellant; (3) a party may within 15 days after delivery of the statement under rule 32 or 33, as the case may be, deliver a notice of discovery to the other party; and (4) a party to whom a notice of discovery has been delivered must make discovery on oath of all documents relating to a request under subrule (1) or (2) or the issues in appeal, as the case may be, within 20 days after delivery of the discovery notice. The discovery stage of the rules takes a minimum of 55 days to complete. Under subrule (6), an extra ten days may be requested by a party for discovery.

The third stage of the pre-hearing stage is the set down of appeal for hearing before the Tax Court.[102] This stage runs concurrently with stages 1 and 2 above and does not necessarily constitute an extension of total time. Under rule 39(1)–(4) the taxpayer must apply to the registrar to allocate a date for the hearing of the appeal within 30 days after delivery of the taxpayer's statement of grounds of appeal under rule 32 or SARS' reply under rule 33, as the case may be, and give notice thereof to SARS. If the taxpayer fails to apply for the date within the period aforementioned, SARS must apply for a date within 30 days after the expiry of that

[101] Ibid.
[102] Ibid.

period, and the registrar must deliver to the parties a written notice of the time and place appointed for the hearing of the appeal at least 80 days before the hearing of the appeal. The time requirements for setting a date for hearing overlap with the other time stipulations and do not constitute a separate calculation of time.

The fourth stage is the pre-trial conference.[103] Rule 38 provides that the pre-trial conference must be held not later than 60 days before the hearing of the appeal. SARS must deliver minutes of the conference within ten days of the conclusion of the pre-trial conference. If the taxpayer does not agree with the content of the minutes, the taxpayer must deliver his or her own minutes to SARS within ten days of the date of the delivery of the minutes by SARS.

The last stage of the pre-hearing is the subpoenaing of witnesses and documentary preparation.[104] Under rule 37*(a)*, a party may not call a person to give evidence as an expert unless, not less than 30 days before the hearing of the appeal, he or she delivered a notice to the other party and the registrar of the party's intention to do so, and not less than 20 days before the hearing of the appeal delivered to the other party and the registrar a summary of the expert's opinions and the relevance thereof to the issues in appeal under rule 34. Again, this time requirement overlaps with other time provisions and does not compulsorily extend the time needed to conclude a trial.

In summary, the Tax Court rules are structured like the High Court rules – with detailed and strict time allocations. In the context of this research, however, it is important to establish how quickly disputes are resolved, taking into consideration the time stipulations of the Tax Court rules. Some practitioners are of the view that as many as two to five years may elapse from the time a case is first noted to the time of hearing.[105]

When compared directly with South Africa, the Nigerian rules at the TAT and Federal High Court are less complex and not as detailed as those of the South African tax dispute resolution processes. The South African dispute resolution process takes place at multiple levels, each of which has its own timelines. However, the simplicity of the Federal High Court and TAT rules in Nigeria is countered by the multiplicity of tax laws and timelines for objections to assessments.

---

[103] Ibid.
[104] Ibid.
[105] PJ Hattingh An overview of the court system of South Africa with emphasis on the resolution of tax disputes' (2011) 65 *Bull Intl Taxn* 3. See section 7.2.

Provisions of international instruments on timeousness:

Article 7(1)(d) of the African (Banjul) Charter on Human and Peoples' Rights provides that individuals have 'the right to be tried within a reasonable time by an impartial court or tribunal.' Value 6.3 of the Bangalore Principles of Judicial Conduct provides that '[a]judge shall perform all judicial duties, including the delivery of reserved decisions efficiently, fairly and with reasonable promptness.

2.5.5.7 Commencement of disputes

This section of the thesis sets out to determine when a dispute commences between the tax authority and the taxpayer. Since the thesis examines in-house dispute resolution in the FIRS, it is opined that a tax dispute commences when a valid objection is made to an assessment issued by the tax authority.[106] This position is taken based on the interpretation of the Tax Acts, rules and judicial precedent.[107] A dispute can also commence from the time of filing a process in a tribunal or court if external dispute resolution were to be solely evaluated.

An assessment is an evaluation made about the tax payable by a taxpayer. It can be made by the taxpayer (self-assessment)[108] or by the tax authority, particularly where the authority disagrees with a self-assessment filed by the taxpayer (additional, revised assessment).[109] An objection arises where a taxpayer disagrees with the assessment of the tax authority. A valid objection must be made within the time stipulated in the Act or rules. Thirty days' notice is required for an objection in Nigeria, except in PITA.[110] A valid objection should be formally communicated to the tax authority and can be done electronically.[111]

In South Africa, a valid objection to an assessment is provided for in section 104 of the TAA, as well as in section 7 of the rules. The extension of time for objections is also provided for in section 104.[112] This thesis considers that determining the time for the commencement of

[106] Disputes are deemed to commence in this section upon an objection by a taxpayer. However, there are numerous dispute prevention sources by tax authorities, for example, international thinking about 'dispute prevention' focuses on the pre-assessment phase. There is much advancement in this area in OECD countries. They are often referred to as cooperative tax compliance (ICAP). Available at https://www.ibfd.org/sites/ibfd.org/files/content/pdf/Austria-Belgium-Poland-The-New-Wave-of-Cooperative-Compliance-Programmes-and-the-Impact-of-New-Technology.pdf [1 January 2021]. A similar cooperative arrangement obtains in Nigeria under enhanced relationship – see the statement by TP 6 in section 5.3.
[107] This is discussed earlier: see section 2.5.5.3.
[108] See section 53 of CITA, section 44 of PITA.
[109] See sections 66 and 69 of CITA, sections 55 and 58 of PITA.
[110] See section 2.5.5.
[111] The Finance Act 2019 amended section 58 of PITA to include electronic mails.
[112] See section 2.5.5.3.

disputes is important because it shows the length of time within which a dispute must be resolved.

2.6 Courts and tribunals

The first part of the chapter identified norms of good dispute resolution to be used as benchmarks in improving the tax dispute resolution process in Nigeria. This part assesses the frameworks within which the norms operate, such as formal court structures and tribunals. This part assesses whether achieving the norms can be optimised through special tax courts, and how ADR can contribute to the actualisation of the norms. The venue for resolving disputes is an important element in the dispute resolution process, and some norms are closely related to the venue of dispute resolution. For example, procedural rules are tied to the venue of resolution.

2.6.1 Framework of courts and tribunals

Courts and tribunals are bodies set up by states to adjudicate disputes. The context and nomenclature of each depends on the jurisdiction in which the body operates. For instance, civil law jurisdictions sometimes use the two terms interchangeably. Garzon Herero and Padial note that a Spanish taxpayer may lodge an appeal with either the same authority that issued the tax assessment or the 'Economic Administrative Courts'.[113] They further explain that the Economic Administrative Courts are administrative bodies, independent of the tax agency, which belong to the Ministry of Finance and Public Administration and are not part of the judicial system. Therefore, despite being labelled a 'court', the dispute resolution body does not form part of the judiciary.

Courts are institutions created by the state for the resolution of disputes and constitute one of the three arms of government.[114] On the other hand, tribunals are special institutional mechanisms brought into existence under a statute to decide disputes arising under a particular statute or to determine any controversies arising out of administrative law.[115]

---

[113] Manuel Vicente Garzón Herrero & Luisa López-Yuste Padial 'Tax litigation before the Spanish Supreme Court' (2016) 70 (1/2) *Bulletin for International Taxation.* See also M Govindarajan 'Courts v Tribunals'. Available at https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=947 [4 April 2020].
[114] See *FIRS v General Telecom Plc* [2012] 7 TLRN at 108.
[115] Govindarajan op cit note 113.

Superior courts of record in Nigeria are listed under section 6(5) of the Constitution, while section 6(4)*(a)* provides for the creation of courts inferior to a high court.[116] There are both administrative and judicial tribunals in Nigeria. Judicial tribunals include the election petition tribunal set up under the Sixth Schedule to the 1999 Constitution which is presided over by judges. Administrative tribunals include the Investment and Securities Tribunal set up under section 274 of the Investment and Securities Act of 2007, presided over by non-judges.

The differences between courts and tribunals were evaluated in the Nigerian case of *FIRS v General Telecom Plc*[117] and can be summarised as follows:

a. Courts have inherent powers, while tribunals do not.
b. Courts are part of the judiciary and decisions of higher courts are binding on lower courts, while tribunals are part of the executive and its decisions are not binding on any courts or tribunals.
c. Courts are presided over by judges, while tribunals may be presided over by non-judges.
d. There are judicial tribunals like the election petition tribunals presided over by judges as distinct from administrative tribunals presided over by non-judges.

The attributes of a court were also highlighted in the South African case of VAT 304.[118] The Tax Court listed the attributes of a [high] court as including: (a) being a court of first instance as well as an appellate court in both civil and criminal matters; (b) exercising jurisdiction over all persons where it is located; (c) reviewing the proceedings of lower courts and administrative tribunals; (d) deciding constitutional issues except where jurisdiction is reserved to the Constitutional Court or another court; (e) having inherent jurisdiction to entertain any claim; and (f) its decisions constituting *stare decisis* ie its decisions are binding on lower courts.[119] The Tax Court rejected the argument that having powers to make orders as to costs, having published judgments or a direct right of appeal to appellate courts elevated an adjudication forum to a 'court'.

[116] The superior courts of record in Nigeria are (a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (d) the High Court of the Federal Capital Territory, Abuja; (e) a High Court of a State (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja; (g) a Sharia Court of Appeal of a State; (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja; (i) a Customary Court of Appeal of a State; (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and (k) such other court as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.
[117] *FIRS v General Telecom* supra note 114.
[118] See the SARS website at https://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/2007-2005.aspx [17 August 2020] and also [2006] 68 SATC 117.
[119] Ibid.

An assessment of the TAT and Tax Court decisions in the evaluated cases shows that the definition of courts in Nigeria and South Africa is similar; a major attribute is that they do form part of the judiciary.

The distinction between a court and a tribunal in Nigeria is important for this thesis since the research seeks to determine the best forum for the resolution of tax disputes at the federal level in Nigeria. The conclusion that can be drawn from the preceding analysis is that, while courts are regarded as the judicial arm of government, tribunals are seen as a part of the executive arm of government.

2.6.2 Venues for the resolution of tax disputes in Nigeria and South Africa

Tax disputes in Nigeria can be settled through negotiations with the taxpayer, in tribunals or in general courts.[120] The general courts include Magistrates' Courts, Federal and State High Courts, Courts of Appeal and the Supreme Court.[121] The National Industrial Court is the only specialised court in the jurisdiction.[122] However there are a number of tribunals which deal with specialised areas (see section 2.6.1 above).

Tax disputes in South Africa can be resolved through specialist courts (Tax Courts), general courts,[123] the Tax Ombud,[124] the Tax Board, ADR and through specific Tax Administration Act (TAA) provisions. These provisions include binding rulings to assist taxpayers with a certain level of certainty and in this way reduce disputes.[125] SARS also issues interpretation notes, and they do not bind the High Court (nor, by implication, the Tax Court). Interpretation notes are merely expressions of opinion of SARS on issues of interpretation. This principle is contained in *Marshall and Others v Commission for the South Africa Revenue Service*.[126]

Courts in South Africa include (a) Magistrates' Courts,[127] (b) High Courts, (c) the Supreme Court of Appeal, and (d) the Constitutional Court.[128] Specialised courts include Land Claims

---

[120] Section 69 of CITA makes provision for the revision of tax liability which may initiate some form of negotiation with the taxpayer. The TAT is set up under section 59 of the FIRSEA, while chapter VII (sections 230–254) of the Constitution sets up general courts. See note 116 above.
[121] Ibid.
[122] The court is established by the National Industrial Court Act 1 of 2006.
[123] See section 2.5.3. There are certain issues for which a taxpayer can seek relief from the High Court without first involving the Tax Court.
[124] The mandate of the Tax Ombud is limited and a complaint before it is not brought in the manner of appeals and objections, as obtains in the Tax Court. The Ombud deals with service-related issues. It does not review tax policy and legislation. See sections 15 to 21 of the TAA.
[125] See Chapter 7 of the TAA.
[126] 2018 (7) BCLR 830 (CC) para 10.
[127] These are lower courts, and their decisions do not constitute binding precedent.
[128] General courts are provided for under section 166*(a)–(d)* of the Constitution.

Courts, Water Affairs Courts, Tax Courts, Labour Courts, Competition Courts, Children's and Maintenance Courts, Courts of Chiefs and Herdsmen and Divorce Courts.[129]

2.6.3 Types of courts best suited for tax disputes

Whether disputes are best settled in specialised courts or general courts is a matter of some debate, and there are strong arguments in support of both sides of the divide. Some of the arguments in support of specialised courts are that (a) knowledgeable judges would not need to be educated on how a particular dispute fits into the broader corpus of law; (b) specialised courts devote more time to cases as they have smaller dockets; and (c) specialised courts allow for speed, efficiency and predictability.[130]

Some of the arguments against specialised courts are that (a) insularity and less searching scrutiny of arguments will result if certain classes of cases are withdrawn from the judicial mainstream; (b) general courts ensure that courts are not captured or bought over by special interests; (c) the public generally views specialised courts as inferior to general courts and as some form of tribunal; (d) there may be judicial boundary issues; (e) cases may straddle several spheres of law and cannot be neatly fit into a specialised court; and (f) specialised courts often have tunnel vision.[131]

Not all specialist courts fit into a strict 'specialist mould'. There could be hybrids in the establishment of courts, where the features of a specialist court and general court are fused in one court. An example of this is the South African Tax Court, where a generalist judge of the High Court sits in the Tax Court and is assisted by two tax specialists.[132] A similar situation is found in the High Court when a criminal matter is heard by a generalist judge who may ask two assessors 'to assist him at the trial'.[133]

---

[129] Specialised courts are provided for in section 166*(e)* of the Constitution. For more on specialised courts in South Africa, see Du Plessis op cit note 224 at 100.

[130] Ellen R Jordan 'Specialized courts: A choice' (1981–1982) 76(5) *Northwestern University Law Review* 747.

[131] Ibid. Other disadvantages of specialised courts are that they fracture areas of law and deprive them of cross-pollination, place all venues in one distant court, and stifle the orderly development of the law – Randall R Rader 'Specialized courts: The legislative response' (1991) 40(3) *American University Law Review* 1006. Available at https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1849&context=aulr [2 September 2016].

[132] See section 118 of the TAA. The Tax Court panel includes an accountant and a representative of the commercial community (registered engineer or appraiser) who assist the judge in determining factual issues concerning their respective disciplines. However, if the issue is on a question of law, the president of the Tax Court decides on the issue alone. He or she also decides if a question is one of law or fact.

[133] See section 145 of the Criminal Procedure Act 51 of 1977. The section provides that in a criminal trial, a judge may sit with not more than two assessors. An assessor is a person who, in the opinion of the judge, has experience in the administration of justice or skill in any matter being considered at the trial. An assessor must first take an

It is argued here that the greatest virtue of specialist courts is that when they are courts of first instance, the presiding officers have a better knowledge of the field and so can evaluate the facts in contention in a dispute. This can be seen for instance in a value-added tax (VAT) case, where it is helpful to understand some accounting and commercial practice, which a generalist court may not often encounter. The quality of the factual interrogation and ultimately the reasoning by the judicial officers in their decision making is better, thus resulting in greater trust in the outcome. In conclusion, the law is better developed on accommodation and convergence of the two schools of thought. While specialised courts create efficiency, they should not be isolated or too far removed from the broader pool of generalised cases, because this leads to better growth of the law.

2.6.4 ADR in tax dispute resolution

ADR is a structured dispute resolution process with third party intervention which does not impose a legally binding outcome on the parties.[134] The dispute resolution spectrum includes negotiation, mediation and conciliation, and hybrid processes.[135]

The terms 'mediation' and 'conciliation' are often used interchangeably as they both use the services of a third party in resolving a conflict. A distinction that is sometimes made between mediation and conciliation is that one process leads to written recommendations or third party settlement proposals, while the other does not.[136] Mediation is a decision-making process in which conflicting parties are assisted by someone external to the conflict, the mediator, who cannot make binding decisions for them, but assists their decision-making in various ways.[137]

As noted, there is very little distinction between those processes called mediation and those called conciliation,[138] and the term 'mediation' will be used in this section.

---

oath and is thereafter considered a member of the court. The decision of the majority of the members of the court on questions of fact is the decision of the court, except when the judge sits with only one assessor, in which case the decision of the judge, in the case of a difference of opinion, is the decision of the court. The judge alone decides on questions of law or whether any matter constitutes a question of law or fact.

[134] Karl Mackie et al *The ADR Practice Guide* (2007) 8–9. A Redfern et al *Law and Practice of International Commercial Arbitration* (2004) at 25 describes ADR as 'all methods of resolving or attempting to resolve disputes without recourse to the courts.'

[135] Ibid at 11–14.

[136] Ibid at 12.

[137] Laurence Boulle & Miryana Nesic *Mediator Skills and Technique Triangle of Influence* (2010) 1.

[138] The Nigerian Act on ADR is titled the Arbitration and Conciliation Act and no mention is made of mediation.

Negotiation is a flexible, informal, party-directed process that can be geared to each negotiating party's concerns.[139] Its flexibility encompasses time, location, subject matter and participants.[140]

A hybrid process is a process that combines one or more types of ADR. For example, a process could commence as a negotiation between disputing parties and end as mediation when a third party or a facilitator is introduced.

Negotiation usually takes place at the point where an objection has been made by a taxpayer, but before a revised assessment is issued by the tax authority. Thus section 69 of the Nigerian Companies Income Tax Act provides that the tax authority may revise an assessment in the case of an objection by the taxpayer. This informal method of resolving disputes will be explored in detail in chapter 4.[141]

An analysis of the Nigerian tax environment shows that ADR is hardly used. Generally, disputes that are not settled between the tax authority and the taxpayer go to the court or tribunal. The need for some form of ADR, including the multi-layered variety employed in South Africa, will be assessed by the end of this thesis.

In South Africa, ADR processes are provided for under the TAA and the Tax Court rules on dispute resolution. Chapter 9F of the TAA provides for the settlement of disputes. Section 143 of the TAA states that a basic principle in tax law is that it is SARS' duty to assess and collect tax according to the laws enacted by Parliament, and not to forgo a tax which is properly chargeable and payable. Circumstances may require that the strictness of this basic principle is tempered, if such flexibility is to the advantage of the state.[142] The tax authority or taxpayer could therefore, under section 144 of the TAA, initiate ADR processes to resolve any disagreements.

Rule 23(1) under Part C on the ADR rules provides for the resolution of disputes by agreement: 'A dispute which is subject to the procedures under this rule may be resolved by agreement whereby a party accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.' Negotiation is employed in processes that stop

[139] Karl Mackie et al op cit note 134 at 11.
[140] Ibid.
[141] A type of ADR employed in resolving tax disputes in Nigeria is the Mutual Agreement Procedure (MAP), typically provided for under Article 25 of Nigerian DTAs with other countries.
[142] See section 143 of the TAA.

short of external adjudication, for example, when a taxpayer objects to an assessment but before it is escalated to the Tax Court, the Tax Board or any form of ADR.[143]

The use of ADR in the Nigerian tax laws is not as detailed as in the South African statutes. There is no third party assisted resolution process as in South Africa and arbitration is never used.

2.7 Conclusion

This chapter evaluated the concept of norms of good dispute resolution with the aim of identifying and determining norms to evaluate the Nigerian and South African tax environments. Some of the issues considered were (a) what constitute norms of good dispute resolution; and (b) the evolution of the norms and where they are incorporated into the domestic laws of Nigeria and South Africa as well as international instruments. Courts and tribunals, venues for the resolution of tax disputes, specialised courts and ADR in tax dispute resolution were also evaluated.

A specific feature in the assessment of norms of good dispute resolution is that they are dynamic and are affected by the society and time in which they exist. Other factors can also affect how accepted norms are actualised or implemented. For instance, in Nigeria, the norm of a right to fair hearing was entrenched in the 1960 and 1963 Constitutions, but was suspended when military rule commenced. This raises the question of whether a norm can simply be removed by legislation (the positivist theory) or whether norms and rights flowing from them cannot be removed in a severely flawed setting, because they are God-given (the realist theory). The thesis posits that the second option is preferred and, since democracy has been in place in Nigeria since 1999, the current norms of dispute resolution in the jurisdiction are as contained in its laws.

The assessment of norms contained in international instruments and in the domestic laws of Nigeria and South Africa shows that there are many of them. This raises the question of whether there are prime norms (which are more important than others). As shown in this chapter, different instruments (which may be binding or persuasive) have different focus areas and the evaluated instruments were not exhaustive of all the instruments on the norms of good dispute resolution. It is argued, however, that judicial independence is a key norm as it is named in all the instruments evaluated in the chapter, as well as in the Constitutions and national laws of

[143] South Africa also employs MAP and arbitration in tax treaty networks (under Article 24).

Nigeria and South Africa. A question for further consideration is whether all the other norms are subsumed under judicial independence, ie judicial independence could be an umbrella under which standards for managing the judiciary are set. Access to justice and the courts is also an important norm as it is mentioned in more than half of the instruments evaluated in the chapter as well as in the Constitutions of both countries. It is opined that all the assessed norms are important and, if they are not present in a country's judiciary, this would lower the standards of the judiciary and the fundamental rights of its citizens would not be enshrined.

With regard to the current laws of Nigeria and South Africa that deal with norms of good dispute resolution, it was shown that the laws provide similar stipulations. Nigerian law is based on received English law and equity, Nigerian customary law and Islamic law, while South African law is based on Roman-Dutch, English and traditional African law. Despite these different roots, the constitutional provisions concerning the norms of good dispute resolution are parallel. It is opined that the fact that both countries are British Commonwealth countries affects the concepts contained in the laws of the two countries on good dispute resolution, and that acceptable norms are as contained in international instruments which are signed off or agreed to by different legal systems (whether common law, civil law, Sharia, etc).

One of the aims of the research is to evaluate the provisions of the South African tax adjudication framework that could be of benefit to Nigeria. This chapter showed that the South African Tax Court has many more rules than does the Tax Appeal Tribunal or even the Federal High Court. In respect of individual norms like procedural fairness, the Nigerian system relies on common-law rules, while in South Africa the Promotion of Administrative Justice Act (PAJA) makes concrete the constitutionally protected 'right to just administrative action'. However, PAJA is of general application and obtainable remedies can be invoked only when taxpayers have exhausted the internal remedies of objection and appeal (except administrative review issues).[144]

In conclusion, the norms of good dispute resolution, whilst not static, are discernible by evaluating a country's laws and international practice.

[144] PAJA is further discussed in section 7.3.

CHAPTER 3: THE LEGISLATIVE FRAMEWORK FOR AND HISTORY OF TAX DISPUTE RESOLUTION IN NIGERIA

3.1 Overview

The chapter gives context and background to the tax dispute resolution environment in Nigeria and identifies key problem areas in the system that led to this research being conducted. The aim of the chapter is to examine the tax dispute resolution process in Nigeria and to answer part of the research question, namely, ascertaining how the current tax dispute resolution system in Nigeria has evolved.

The chapter therefore examines the legal framework of taxation at different stages of Nigeria's history. For the purposes of the research, Nigerian history is divided into three stages: the pre-colonial period (before 1851), the colonial period (1851 to 1960), and the post-colonial period (1960 to the present). The chapter highlights the applicable laws for each period (the Constitution and specific tax laws) and, in appropriate cases, the case law emanating from these periods.

The chapter comprises two parts. The first part[1] illustrates that the problems in the Nigerian tax system originate from the way in which modern taxation was introduced in Nigeria, specifically in different formats in the various regions of Nigeria; in addition, amendments have not been done uniformly, leading to a disordered situation. This part also illustrates the effect of Nigeria's political history on the tax legal framework. Military rule commenced in 1966, six years after independence and a civil war broke out in 1967, a year after the commencement of military rule. It will be shown that the effect of military rule on the Nigerian tax legal framework was the enactment of conflicting and sometimes poorly drafted tax laws. The effect of the 2004 tax law reform on the tax environment is also evaluated in the first part. As a result of the reforms, dormant but conflicting tax provisions as well as poorly drafted laws were challenged by taxpayers as they were compelled to take responsibility for their tax obligations. Thus, much of the case law soon after the reforms related to the weak legal framework of taxation as contained in the Constitutions and individual Tax Acts enacted during military rule.

[1] See sections 3.2 to 3.6.

The second part of the chapter[2] profiles tax litigants and tax case flows. It examines the type of litigants that have disputes with the FIRS and the projected case flow for the near future.

3.2 Taxation in pre-colonial Nigeria (before 1851)

Sections 3.2 and 3.3 trace the history of taxation in Nigeria.

Different indigenous communities make up present-day Nigeria. The British government colonised the different communities from the mid-nineteenth century to the early twentieth century. Lagos was the first part of present-day Nigeria to be colonised. Lagos signed a cooperation treaty with Britain in 1851 and became a fully-fledged colony ten years later in 1861. Other parts of present-day Nigeria came under British rule from 1851 to 1903.[3]

The British government encountered different types of local political structures when colonising the indigenous groups that comprise present-day Nigeria. Initially the colonised territory was administered separately as protectorates of northern and southern Nigeria respectively. The northern protectorate had a predominantly Muslim population and had some form of structured taxation based mainly on Islamic law. The southern protectorate was subdivided into two main parts, the east and the west. The west had a mix of traditional African religion worshippers and a Muslim population and had some level of structured taxation but possibly not as structured as in the north. The east had mainly traditional religion worshippers and had no modern form of taxation.[4] The British government amalgamated both protectorates into one country in 1914.

Some of the pre-colonial taxes in place in northern Nigeria were *Kurdin kasa* or *Gandu*, an agricultural tax, as well as *Jangali*, a cattle tax.[5] Other northern Nigerian pre-colonial taxes were *Zakat*, a type of tax levied on Muslims for charitable, religious and educational purposes, *Shuka-shuka* (a plantation tax), *Gado* (an inheritance tax) and *Kudin sarauta* (a tax on titles).[6] In the south west, the *Ishakole* (a kind of universal land rent), *Owo ade* (tribute paid by men

[2] See section 3.7. The two parts of the chapter address different aspects of the problems in the Nigerian tax dispute resolution arena. Part 1 deals with problems arising from the legislative framework of tax laws, while part 2 assesses how best to deal with increased case flows in the FIRS since the 2004 reforms. See the first two paragraphs of section 3.7.1.

[3] See Rasheed Olaniyi *History for Senior Secondary Schools* (2017) at 14–17, 117–122, 182–184, for early Nigerian history.

[4] There was a payment levied for the conferment of chieftaincy titles in pre-colonial times in Igbo land (eastern Nigeria), but it is posited that it did not amount to formal or modern taxation – Federal Inland Revenue Service (FIRS) *A Comprehensive Tax History of Nigeria* (2012) 80.

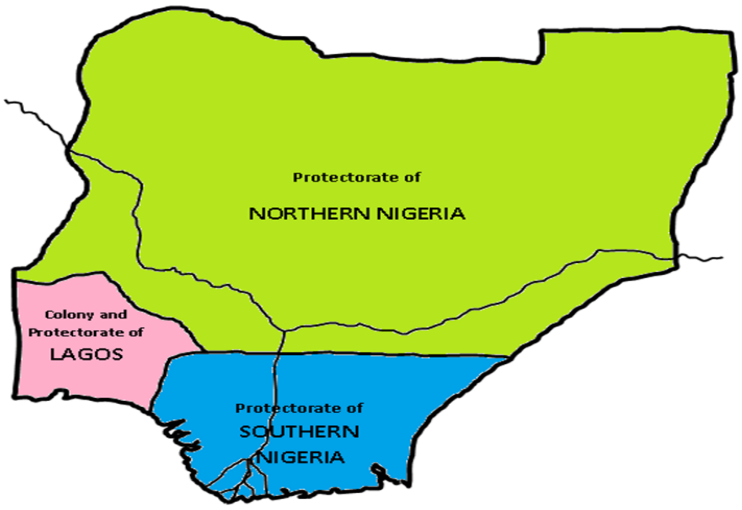
[5] Ibid at 68.

[6] Ibid at 69.

and women in cash or kind to the king) and *Owo asinghu* (personal service rendered to the king) were imposed.[7]

3.3 Taxation in colonial Nigeria (1851–1960)

Figure 3.1: Political map of Nigeria in 1914[8]



3.3.1 Legal framework for tax laws during the colonial era

The British government had introduced some form of taxation early on in Lagos, the first part of Nigeria to come under colonial rule. These taxes included a licensing fee for canoe owners introduced in 1866 as well as a fee for government-built stores, payable by traders, introduced in 1869.[9] The introduced taxes were more in the nature of duties on goods.[10]

In respect of fiscal matters, after the amalgamation of the protectorates of northern and southern Nigeria in 1914, the entity was administered as a unitary state until 1946.[11] Deviation from the unitary system of government occurred subsequently and, in 1939, Sir Bernard Bourdillon (the former Governor-General of the colony), divided the western region into two in order to

[7] Ibid at 76.
[8] Available at https://www.vanguardngr.com/2013/03/nigerias-political-system-and-the-people/ [20 May 2018].
[9] FIRS op cit note 4 at 84.
[10] Ibid.
[11] Ibid at 16.

enhance administrative efficiency.[12] In 1946, the country was formally divided into three regions, namely, the northern, western and eastern regions.[13] These regions were assigned limited responsibilities and regional revenues were designated as 'declared' and 'non-declared'.[14] Personal income tax, licences, fees, rent and property tax were exclusive to the regional authorities and were subsumed under declared revenues, while non-declared revenues were exclusive to the central government.[15]

In respect of taxation, the British colonial government based direct taxation, introduced shortly after the turn of the twentieth century, on pre-colonial taxes already in place in the northern part of Nigeria. Northern Nigeria is therefore considered the launching pad for direct taxation in the rest of Nigeria.[16] After taking an inventory of local taxes in place in northern Nigeria at the beginning of the twentieth century, the British government passed the Stamp Duties Proclamation Ordinance No 8 in 1903.[17] In 1904, the Inland Revenue Proclamation Law was introduced and it merged all existing pre-colonial taxes.[18] In 1906, the Native Revenue Proclamation Ordinance was introduced to levy and collect revenue from native sources.[19] This ordinance was the first law that was put in place to tax natives. After amalgamation in 1914, the Native Revenue Ordinance was amended in 1917 and continued to be in force in northern Nigeria. The ordinance was introduced to other parts of Nigeria in later years – the south west in 1918 and the south east in 1927.[20]

3.3.2 Tax provisions in colonial Constitutions

There were five Constitutions during the colonial era: the Lugard Constitution of 1914, the Clifford Constitution of 1922, the Richards Constitution of 1946, the Macpherson Constitution of 1951 and the Lytellton Constitution of 1954. The Constitutions contained provisions in respect of revenue collection and tax. They were initially elementary and made solely by the governor of the colony. However, with time, a legislative council was formed which made laws

---

[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid at 16–17. In 1958, the Raisman Commission was appointed to review the tax jurisdiction as well as the revenue allocation scheme from federation taxes, so that the regions would have the maximum proportion of the revenue within their jurisdiction. For the first time, the Commission recommended the creation of the Distributable Pool Account (DPA) into which a certain percentage of the federally collected revenue was paid and shared among the regions.
[16] Ifueko Omoigui Okauru (ed) *FIRS Handbook on Reforms in the Tax System* (2012) 1.
[17] Ibid.
[18] Teju Somorin *Highlights of Historical Developments of Nigerian Tax System* (2015) 3.
[19] Ibid.
[20] Ibid.

in conjunction with the governor. Relevant tax-related aspects of these Constitutions are considered below.

3.3.2.1 The 1914 Constitution (Lugard)[21]

As noted above, the governor was wholly in charge of drafting the Constitution in 1914. The Constitution was actually an order in council made in 1913. Section VIII dealt with revenue and provided:

> It shall be lawful for the governor from time to time, by ordinance to provide for the administration of justice, the raising of revenue and generally for the peace, order and good government of the protectorate …

3.3.2.2 The 1922 Constitution (Clifford)[22]

The 1922 Constitution was similar to the 1914 Constitution in respect of the governor having powers to make laws for the colony. A difference, however, was that the Constitution established a separate legislative council from the executive council. The governor was mandated to continue making laws for the northern part of Nigeria while he was to make laws in conjunction with the legislative council in the southern part of the country.

3.3.2.3 The 1946 Constitution (Richards)[23]

The 1946 Constitution brought the northern province within the competence of the legislative council, ie the governor stopped making laws for the north. Section 22 of the Constitution provided that 'no bill that *inter alia* imposed, altered or repealed any rate, tax or duty could be introduced in the legislative council without the prior consent of the governor first having been obtained.'

3.3.2.4 The 1951 Constitution (Macpherson)[24]

A notable feature of the 1951 Constitution was that it was the last Constitution that vested residual tax jurisdiction in the central legislature. In subsequent Constitutions, this provision was reversed. As from the next Constitution, which took effect in 1954, regional governments

---

[21] FIRS op cit note 4 at 36. The colonial Constitutions are named after the Governor-General of the colony of Nigeria under whom they were promulgated.
[22] Ibid at 37.
[23] Ibid at 39.
[24] Ibid at 42.

had the responsibility of imposing or collecting taxes not specifically mentioned in any of the legislative lists.[25]

3.3.2.5 The 1954 Constitution (Lytellton)[26]

The last colonial Constitution bestowed legislative competence for the residual list on the regions (which later became states). As noted above, prior to 1954, residual matters were within the purview of the federal government. Herein lies the start of the uncertainty about the relative competence of regional or central governments to impose and collect consumption taxes.[27] Another important aspect of the Constitution was that it sought to eliminate internal double taxation by residents of different regions.

3.3.3 Other tax ordinances and tax administrative structure during the colonial period

A centralised tax administration system for British West African territories was established upon the formation of the Inland Revenue Service of West Africa. The body had deputies heading each of the colonies in British West Africa and, in 1935, Mr Frank Lloyd was appointed commissioner for the protectorate of Nigeria.[28] The Nigerian Inland Revenue Service was carved out of the larger West African tax administration authority in 1943. The body was renamed the Federal Board of Inland Revenue in 1958.[29]

A feature of colonial taxation was having personal and company taxation contained in one ordinance.[30] The first law to separate company taxation from individual taxation was the Companies Income Tax Ordinance of 1939; however, it was repealed a year later.[31] In 1958 the Income Tax Administrative Ordinance was passed, which created three tax administrative bodies: the Federal Board of Inland Revenue, the Scrutineer Committee and the Body of Appeal Commissioners (BAC). Each body of BAC had a maximum of six members and a secretary; none could be a public officer.[32] The creation of BAC by the 1958 ordinance is important because it was the first specialised tax adjudication body in Nigeria and it was retained in Tax Acts passed after independence in 1960.

---

[25] Ibid at 43–44.
[26] Ibid at 44.
[27] Uncertainty about the correct tier of government to impose or collect consumption taxes and its effect on litigation in the tax arena is discussed in more detail in sections 3.5.4.1 and 3.5.5.1.
[28] FIRS op cit note 4 at 121.
[29] Ibid at 122.
[30] Omoigui Okauru op cit note 16 at 2.
[31] Ibid.
[32] Ibid.

3.4 The legal framework for taxation in independent Nigeria (1960 to the present)

Sections 3.2 and 3.3 above provided a brief history of Nigerian taxation in pre-colonial and colonial times. Sections 3.4 to 3.6 examine the Tax Acts and Constitutions passed after independence.

Nigeria became independent in 1960 and the Nigerian independence Constitution was passed in the same year. Other post-independence fully-fledged Constitutions were the 1963 republican Constitution, the 1979 Constitution and the current 1999 Constitution ie the Constitution of Federal Republic of Nigeria (CAP C23 LFN 2004).

Tax Acts were also passed close to independence or after independence. These Tax Acts include the Petroleum Profits Tax Ordinance of 1959 (later changed to an Act as from 1960), the Companies Income Tax Act of 1961, and the Income Tax Management Act of 1961 (the latter Act was in respect of individual taxation). The Income Tax Management Act was changed to the Personal Income Tax Act in 1979. The Capital Gains Tax Act was also passed after independence in 1967. Disputes arising from the administration of these taxes were to be resolved by the BAC and appeals from the BAC lay to the High Courts. The Federal Revenue Court (later changed to the Federal High Court) was created in 1973 to handle finance-related cases, including tax cases. This was later provided for in the 1979 Constitution.

The Value Added Tax Act was enacted in 1993 and disputes arising from the Act were to be resolved in the VAT tribunal;[33] appeals (initially) lay to the Court of Appeal. As will be explained in later sections of the chapter, the venue for resolving VAT disputes is a major source of instability in the Nigerian tax environment. The Taxes and Levies Approved List for Collection Act was passed in 1998. The Act stipulates which tier of government is mandated to collect particular taxes.

[33] The VAT tribunal comprised eight persons, none of whom could be a serving public officer. One of the panellists was designated as the chairman of the tribunal by the Minister. The chairman had to be a legal practitioner with not less than 15 years' experience as a lawyer. Regarding the qualifications of the other members of the tribunal, they had to have wide and expert knowledge in the areas of law, accountancy, taxation or management of trade or business. They could also be retired public servants experienced in the field of taxation. This was contained in sections 2 to 4 of the second schedule to the VAT Act; the schedule has been expunged from the VAT Act.

Table 3.1: Major Tax Acts and venues for the resolution of disputes emanating from the Acts

Tax Act	**Year of enactment**	**Former venue for resolution of disputes**	**Present venue for resolution of disputes**
Stamp Duties Act	1939	Body of Appeal Commissioners (BAC)	Tax Appeal Tribunal (TAT)
Petroleum Profits Tax Act	1959	BAC	TAT
Companies Income Tax Act	1961	BAC	TAT
Personal Income Tax Act (formerly ITMA)	1961	BAC	TAT
Capital Gains Tax Act	1967	BAC	TAT
Value Added Tax Act	1993	VAT Tribunal	TAT

Source: Author

In spite of the passage of more Tax Acts after 1960, Nigeria's tax legislation has been assessed as being in a poor state.[34] Oyewo identifies taxing and spending powers as one of the major problem areas in the Nigerian Constitution.[35] He states that 'the power to tax and spend in Nigeria is problematic and controversial in Nigeria's practice of federalism', and that 'the proper scope of each tier of government's taxing powers appear not to have been properly delineated in the Constitution.'

The problem of the poor state of the Nigerian tax legal framework starts with the Constitution and is replicated in the individual Tax Acts. Subsequent sections of this chapter will assess specific problem areas in the Nigerian Tax Acts and how they have impacted disputes that arise in the tax arena.

Furthermore, in analysing the Nigerian tax environment, the fragmented manner in which taxation was introduced brought different key problems to the fore. These problems include whether consumption tax is included in the residual list of the different Constitutions,[36] the possibility of internal double taxation by different regions (later states), a lack of clarity about

[34] Peter Harris *Review of Nigerian Income Tax Laws* (2011). Also see *Nigerian Tax Study Group Report* (2003) at 297.
[35] Oyelowo Oyewo *Constitutional Law in Nigeria* (2012) 157.
[36] FIRS op cit note 4 at 307.

the power of states to impose and collect different types of taxes (capital gains tax and income tax), and the correct tier of government for collecting and imposing consumption tax. The Federal Inland Revenue Service has had to deal with cases in respect of which tier of government should collect or impose consumption tax.[37]

3.5 Taxing provisions in post-independence Constitutions

3.5.1 Overview

Although the imposition and collection of income tax has a fragmented origin in Nigeria,[38] it is posited that it does not create as much confusion as the imposition and collection of consumption tax.

As noted earlier, Nigeria has had four fully-fledged Constitutions since independence (1960, 1963, 1979 and 1999). The Lytellton Constitution of 1954 provided that matters in the residual list were within the purview of regional (later state) legislatures. However, the military governments overlooked this and made laws at the federal level which should have ordinarily been within the purview of the state. This practice of the military government led to considerable litigating by state governments. Below are the provisions of the different post-independence Constitutions with regard to taxation.

3.5.2 1960 Independence Constitution

Tax issues under the 1960 Constitution were provided for in sections 10, 30, 57, 58, 64, 70, 76, and 130 to 134.[39] Section 64(5) provided that the legislature of a region could make laws with respect to any matter not included in the exclusive legislative list and further provided that where there is inconsistency between the laws of a region and the federal parliament, the laws of the federal parliament would prevail.

Item 38 of the exclusive legislative list provided that:

> The federal parliament shall make laws on taxes on amounts paid or payable on the sale or purchase of commodities except
>
> a. Produce
>
> b. Hides and skin

[37] Discussed in sections 3.5.4.1 and 3.5.5.1.
[38] See section 3.3.1 above. Income tax was first introduced in the north in 1906, in the west in 1918, and in the east in 1927.
[39] FIRS op cit note 4 at 46–51, where sections of the 1960 Constitution concerning taxation appear.

c. Motor spirit

d. Diesel oil sold or purchased for use in road vehicles

e. Diesel oil sold or purchased for other industrial purposes.

Item 38 illustrates the fact that under the 1960 Constitution, the federal parliament had legislative competence for consumption taxes.

The 1960 Constitution made no specific mention of the venue for the resolution of tax disputes. The structure of the courts in 1960 Nigeria was markedly different from the present structure. The superior courts at that time were the High Court of the federal capital territory (Lagos),[40] the High Courts of the regions,[41] as well as the Federal Supreme Court.[42] Appeals lay from the High Courts of Lagos and the regions to the Federal Supreme Court, while appeals from the Federal Supreme Court lay to Her Majesty in Council (the Privy Council). Tax disputes were at this period resolved at the first instance by the BAC and appeals lay to the High Courts.

3.5.2.1 Tax cases at the time of the 1960 Constitution

As a general note, cases considered are primarily those where FIRS or its predecessor, the Federal Board of Inland Revenue (FBIR), is a party. Reference may be briefly made to cases where, although FIRS is not a party, the dispute affects its responsibilities. The evaluated cases are all reported cases in the Tax Law Reports of Nigeria (volumes 1 to 25). It should be noted that these law reports do not necessarily include all the reported tax cases as some may be exclusively recorded in other law reports.

There are comparatively few reported tax cases between 1960 and 1963. None of the reported cases deals with constitutional issues of taxing rights (state or regional governments) or the venue for resolving tax disputes; rather, they deal with tax issues. An example of a case decided during this period is *Federal Board of Inland Revenue v Joseph Rezcallah & Sons Limited*.[43] Decided in 1962 by the Federal Supreme Court (FSC), the issue in this case was whether a court can question the validity of a tax assessment, having regard to the fact that the special

[40] Section 115 of the 1960 Constitution.
[41] FIRS op cit note 4 at 119.
[42] Ibid at 104.
[43] [2010] 2 TLRN 59.

procedure for appealing against an assessment had not been followed. It was held that the court could enquire into the validity of an assessment.[44]

3.5.3 1963 Republican Constitution

Tax provisions in the 1963 Constitution were provided for in sections 62, 63, 76, 136 to 139, and 142, as well as items 10 and 38 of part I to the schedule and, finally, item 28 of part II to the schedule.[45] Much of the Constitution concerning taxes was in *pari materia* to the 1960 Constitution.[46]

The 1963 Constitution provided that Nigeria is to be a republic. It abolished the monarchy, and this had the effect of changing the structure of the courts in Nigeria. The highest court was therefore the Federal Supreme Court. Section 120 of the Constitution provided that 'without prejudice to the provisions of section 101 of this Constitution, no appeal shall lie to any other body or person from any determination of the Supreme Court.'

Superior courts at the federal level in Nigeria at this time had two tiers: the High Courts and the Supreme Court. In 1973, the Federal Revenue Court was created and from that year tax cases were heard at the first instance at the BAC while appeals lay to the Federal Revenue Court. The Federal Revenue Court was renamed the Federal High Court, and this provision was later incorporated into the 1979 Constitution. As noted above, the Federal Supreme Court was still the highest court at this time so appeals went from the Federal Revenue Court to the Supreme Court. In 1976 an intermediary court, the Court of Appeal, was created, and from that year appeals went from the Federal Revenue Court to the Court of Appeal and finally to the Supreme Court.

3.5.3.1 Tax cases at the time of the 1963 Constitution

As in the 1960 Constitution, tax cases within this period dealt with core tax issues. One case decided during this period was *Shodipo & Ors v FBIR*,[47] decided in 1974. The issue was whether companies set up for charitable and ecclesiastic purposes were exempt from tax on the income received or accruing from trade carried on by them. Another case was *Western Sudan Exporters v FBIR*,[48] decided in 1973. Here the main issue was whether money given to

[44] At 59–68.
[45] FIRS op cit note 4 at 55.
[46] Ibid.
[47] [2010] 3 TLRN 61.
[48] [2010] 3 TLRN 139.

middlemen for the purchase of produce was wholly, exclusively and necessarily incurred to obtain a tax deduction. In *G. N. Everitt v FBIR*,[49] decided in 1972, the main issue was whether a United Kingdom resident (individuals or partners) was subject to Nigerian tax for income received in the United Kingdom.[50]

3.5.4 1979 Constitution

By the time the 1979 Constitution was passed, a lot had happened in Nigerian political history and these events created problems in the tax environment.

A military coup took place in 1966 and ushered in military rule. A civil war occurred from 1967 to 1970. After the war, the three former regions were split into smaller units of 12 states. This resulted in states wanting better control of the taxes arising from their territories. This led to a more detailed provision on the imposition and collection of tax in the next Constitution, which took effect in 1979.[51]

Soon after the coup of 1966, parliament was replaced by the Supreme Military Council (SMC). The SMC was responsible for making laws for the country. The SMC suspended the Constitution and passed the Constitution Suspension and Modification Decree Number 1, which provided:

> The Federal Military Government hereby decrees as follows
>
> 1(1) the Constitution of the federation mentioned in schedule 1 of this decree is hereby suspended
>
> 1(2) subject to this and any other decree, the provisions of the Constitution which are not suspended by sub section 1 above shall have effect subject to the modifications specified in schedule 2 of this decree.[52]

By suspending segments of the Constitution, the legal environment for all laws was stifled; this disregard for the sanctity of laws and the Constitution was reflected in the omission of key sections in respect of taxes in the first Constitution enacted by the military in 1979. For

---

[49] [2010] 3 TLRN 158.

[50] Another case decided while the unsuspended parts of the 1963 Constitution were in effect was *FBIR v Solanke* [2011] 4 TLRN 164 decided in 1979: the issue was whether a person who fails to appeal against an assessment can within the time prescribed by law subsequently challenge it in court. In *S E Ola v FBIR* [2011] 5 TLRN 136, decided by the Federal Revenue Court in 1974, the issue was whether additional assessment and best of judgment imposed by the tax authority are valid and not liable to be set aside. In *Mobil Oil v FBIR* [2011] 5 TLRN 167, decided by the Supreme Court in 1977, the issue was whether the power to assess a taxpayer for additional tax can be exercised only when the authenticity of the return has been disproved.

[51] See Olaniyi op cit note 3 at 237–271 for more on Nigerian history between 1966 and 1979.

[52] This part of the decree is reproduced in a book – see Malemi Ese *The Nigerian Constitutional Law* 3 ed (2012) at 74. This suspension decree is also noted in Oyewo op cit note 35 at 38.

instance, as noted above, under the 1960 and 1963 Constitutions, item 38 of the exclusive legislative list provided for the imposition of tax on sales by the federal government. This provision disappeared from the 1979 Constitution and was not provided for elsewhere. The effect of this was that since the imposition of consumption tax was not provided for anywhere, it was now a residual matter. But the military government still made laws in respect of consumption taxes, thereby confusing the situation and leading to litigation.

Sections 4, 150, and 152 of the 1979 Constitution dealt with taxation.[53] Section 4 of the 1979 Constitution provided:

> 1. The legislative powers of the federal republic of Nigeria shall be vested in a national assembly for the federation which shall consist of a senate and a house of representatives.
>
> 2. The National assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this constitution.

The exclusive legislative list referred to in section 4(2) above provided for a total of 67 items. Item 58 on the list provided that 'the federal legislature shall make laws in respect of taxation of incomes, profits and capital gains, except as otherwise prescribed by this Constitution.' However as noted above, item 38 on the exclusive legislative list for the 1960 and 1963 Constitutions was omitted from the 1979 Constitution, and not provided for elsewhere. The old (omitted) item 38 provided that the federal parliament should make laws on taxes, and on amounts paid or payable on the sale or purchase of commodities (consumption taxes) with some exceptions.

In respect of the venue for litigation, the Federal Revenue Court was created in 1973. It was renamed the Federal High Court under section 228 of the 1979 Constitution, while section 230 mandated the court to adjudicate 'in such matters connected with or pertaining to the revenue of the government of the federation as may be prescribed by the National Assembly.'

3.5.4.1 Tax cases at the time of the 1979 Constitution

The 1979 Constitution marked the start of tax disputes that questioned the constitutionality of the imposition or collection of taxes. The defects and confusion in the Nigerian taxation legal framework were tested in *Attorney General of Ogun State v Alhaji Ayinke Aberuagba & Ors*.[54]

[53] FIRS op cit note 4 at 56.
[54] [2009] 1 TLRN 81.

The case was decided shortly after the reintroduction of military rule in 1985,[55] and arose because the Constitution functioned in a defective manner at that particular point in time.

One of the major issues for determination in the *Aberuagba* case was whether tax on the sale of commodities was on the residual list by virtue of the fact that it was no longer explicitly captured in the exclusive list nor in the concurrent list.[56]

Another major issue in the dispute was whether the sales tax imposed by the Ogun State Government under section 3(1) and section 3(4)(ii) of the Ogun State Sales Tax Law could be equated with excise duty, which falls within the exclusive fiscal domain of the Federal Government.

The case dealt with many issues relevant to the development of an appropriate dispute resolution venue, including:

(a) Who is competent to legislate on sales tax – the state or federal government?

(b) Whether the omission of item 38 of the 1960 and 1963 Constitutions from the exclusive legislative list in the 1979 Constitution showed an intention to regard tax on sales as a residual subject

(c) Whether the power to legislate on all fiscal issues is vested in the Federal Government.

In deciding these issues, the Supreme Court held that:

> It is axiomatic that in the absence of any constitutional provision, express or implied, to the contrary the respective taxing power of the Federation and of a State includes sales taxing power.[57]

This quotation directly explains who is competent to legislate on sales tax (the state government or the federal government) and whether the power to legislate on all fiscal issues is vested in the federal government. The Supreme Court explained that either the federal government or the state government may make laws in respect of sales tax because the Constitution did not

[55] Between 1979 and 1983 there was a civilian administration at all levels of government in Nigeria. There was a military coup on the last day of 1983 and this case was decided in 1985, shortly after the return to military rule.
[56] The exclusive legislative list (68 items) is contained in the Second Schedule to the Nigerian Constitution. Only the federal legislature can make laws on items on the list. The concurrent legislative list is also contained in the Second Schedule to the Constitution, and both the state and federal legislatures can enact laws on items in the concurrent list. Items listed in neither the exclusive nor the concurrent legislative lists are deemed to be on the residuary list.
[57] *Aberuagba* case supra note 54 at 105.

provide that it was within the exclusive competence of either the state or the federal tier of government.

On the effect of the omission from the 1979 Constitution of item 38 of the exclusive legislative list formerly in the 1960 and 1963 Constitutions, the Supreme Court further held that:[58]

> A careful perusal and proper construction of section 4 would reveal that the residual legislative powers of government were vested in the States. … [T]his right was limited by the doctrine of covering the field and therefore a state has the power to impose tax on all matters in the Concurrent List and residuary matters. However, it must be noted that the taxing power of a state over the concurrent matters is subject to the rule of inconsistency under section 4(5) and the doctrine of covering the field.

The quote sets out the first rule that, in the particular case, a state or federal parliament may make laws in respect of sales tax. The second rule is that the state may make laws subject to the rule of inconsistency in section 4(5) of the Constitution and the doctrine of 'covering the field'. Section 4(5) of the Constitution provided:

> If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

The doctrine of covering the field provides that where laws may be made by the federal or the state government in a jurisdiction, and the federal parliament first makes a law in respect of a particular field, it is then considered to have 'covered the field' and the state government is thus barred from making laws in that field. Any laws made by a state parliament in respect of the 'covered field' are thus null and void.

In deciding whether the federal government had singular responsibility for legislating on fiscal matters and whether the right of the federal government to legislate on sales tax was covered under section 61 of the Constitution which dealt with trade and commerce, the court noted that it was of the opinion that the federal government did not have exclusive responsibility to legislate on all fiscal matters as the state and local governments also had responsibilities to enact fiscal laws.[59]

In summary, the Constitution was unclear on who should make laws on consumption taxes, particularly as item 38 had been omitted from the exclusive legislative list. Since the Constitution was silent on who should make laws on consumption taxes, it was a residuary matter and should be legislated upon by state governments. However, the power of the state

[58] Ibid at 97.
[59] Ibid at 109.

government to make laws in respect of consumption taxes was limited by the doctrine of 'covering the field'. In clarifying the term 'covering the field', the Supreme Court in *Lakanmi v Attorney General Western Region of Nigeria*[60] held that where the federal (military) government had made a law concerning particular subject matter, which law was operative throughout the country, any state enactment on the same subject matter was *ultra vires* and void under the doctrine of covering the field. In *Oseni v Dawodu*[61] the court held that where there is identical legislation on the same subject matter, the law passed by the state legislature is invalidated on the ground that the law passed by the federal legislature has covered the whole field of the subject matter. The term is therefore used where the federal legislature makes a law that should ordinarily have been made by the state legislature.

The military government disregarded the states' powers and passed a Sales Tax Act in 1986 and later the VAT Act of 1993. It is opined that if these Acts had been passed during a civilian era their constitutionality would have been challenged. It can be seen that these enactments encroached on the schedule of the states because there were few checks and balances at this point as a result of military rule.

Secondly, the military government continually encroached on the legislative competence of the states and 'covered the field' in respect of tax matters because consumption taxes became of tremendous interest to the federal government with time. This is reflected in the tax policy document that was issued by the Federal Ministry of Finance for the first time in 2012 and reviewed in 2017.[62]

---

[60] [1970] NSCC 143 at 144.

[61] [1994] 4 NWLR (PT 399) 390 at 406.

[62] The Nigerian tax policy document is issued by the Federal Ministry of Finance to articulate the approach to tax policy in Nigeria. It was produced for the first time in 2012 and reviewed in 2017 because of 'the rapidly changing commercial environment and persistent low tax to Gross Domestic Product (GDP) ratio', among other developments. The provisions of the document can be summarised as follows:
Chapter 1 identifies the objectives of the Nigerian tax system which are to guide the operation and review of the tax system; to provide the basis for future tax legislation and administration; to serve as a point of reference for all stakeholders on taxation; to provide benchmarks on which stakeholders shall be held accountable; and to provide clarity on the roles and responsibilities of stakeholders in the tax system.
Chapter 2 identifies policy guidelines, which are to have a tax system that is equitable, fair, simple, certain, clear, convenient, has low compliance and administrative costs, and is flexible, and sustainable. It states at 2.2.3 that the Nigerian tax system should focus more on indirect taxes, which are easier to collect and administer, and more difficult to evade.
Chapter 3 identifies stakeholders in the Nigerian tax system as the government, the taxpayer, revenue agencies, professional bodies, consultants and agents, media and advocacy groups. It notes that the taxpayer is the most important stakeholder.
Chapter 4 provides that tax administration in Nigeria cuts across the three tiers of government and that the tax policy document establishes clear guidelines on crucial tax administration issues.
Chapter 5 provides that the executive shall sponsor a Bill for the establishment of a tax court as an independent body to adjudicate in tax matters.

Tax cases seeking to establish the correct tier of government to impose or collect consumption taxes became even more common with the passage of the 1999 Constitution.

3.5.5 1999 Constitution

Sections 4, 24*(f)*, 163, 165, 173(4) and parts I and II of the Second Schedule to the 1999 Constitution deal with taxes.[63] Section 4 is in *pari materia* with section 4 of the 1979 Constitution cited in section 3.5.4 above. Subsection (7) vests the state Houses of Assembly with legislative powers in respect of matters in the concurrent and residual lists. But, as discussed above, the military government made laws in respect of matters that would ordinarily have been within the competence of state legislatures because they were not mentioned in the exclusive and concurrent lists and therefore fell within the residual list. The Supreme Court had validated these Acts by ruling that the federal government had covered the field.

Section 251(1)*(b)* gives the Federal High Court the sole responsibility to adjudicate tax cases and provides that the court shall have exclusive jurisdiction to deal with cases 'connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation.'

3.5.5.1 Tax cases at the time of the 1999 Constitution

Tax disputes arising from the provisions of the current 1999 Constitution can be broadly grouped into two: (a) an escalation of cases questioning the correct tier of government to collect and impose consumption taxes; and (b) as from 2004 (at the start of the reforms), cases challenging the constitutionality of tax tribunals.

As noted above, an effect of the military incursion into Nigerian political life was that laws were sometimes passed without assessing how they fitted into the wider corpus of law or without wide consultations and assessing the possible impact. An example of this in the tax arena is the repealed Sales Tax Decree Number 7 of 1986 and the present VAT Act of 1993. Under military rule, the VAT Act was further consolidated with the passage of the Taxes and Levies Approved List for Collection Act in 1998. The latter Act lists taxes that may be collected by the different tiers of government and provides that VAT shall be collected by the federal government.

---

[63] FIRS op cit note 4 at 58.

Determining the correct tier of government to impose or collect consumption tax was in issue in the 2004 case of *Eko Hotels Limited v Federal Board of Inland Revenue and Attorney General of Lagos State*.[64] The question for determination was whether the remittance of money collected as sales tax by the plaintiff (Eko Hotels) should be paid to the Federal Board of Inland Revenue (now FIRS, a federal tax collecting agency) or to the Lagos State Government further to the Value Added Tax Act or the provisions of the Sales Tax Law of Lagos State. The Federal High Court held that:

> It is my view and this I hold that the Value Added Tax Service Decree No. 12 of 1993 having imposed tax on the same goods and services imposed by the Sales Tax (Schedule Amendment) Order 2000, the Value Added Tax Decree prevails over the Sales Tax Law of Lagos state as the VAT Decree is deemed to have covered the field.[65]

The court therefore decided that FIRS was the correct body to collect taxes on consumption, which are similar to VAT. It can be concluded that the court invalidated the existing Sales Tax Law of Lagos State with its pronouncement. The court reached this decision because the VAT and Taxes and Levies Acts covered the field, as was stated in the *Aberuagba* case. The Court of Appeal confirmed this decision of the Federal High Court.[66]

Another case on the above issue was *Lagos State Board of Internal Revenue v Nigerian Bottling Co Ltd & Manufacturers Association of Nigeria*.[67] Although FIRS was not a party to the suit, the case turned on the similar issue of whether the Lagos State Government may impose sales tax. The court held that it could not.[68]

There are some cases which, although not questioning which tier of government should collect VAT, concern the issue of whether charges imposed under the law are similar to VAT, as was the case in *Princel Court Ltd v AG Lagos & 2 Ors*.[69] The issue of whether a state government could make laws on hotel occupancy was appealed to the Supreme Court in *Hon Minister of Justice and AG of Federation v Hon AG of Lagos*.[70] The Supreme Court held that the doctrine

---

[64] [2009] 1 TLRN 172.
[65] At 215.
[66] The Supreme Court also confirmed this decision although the verdict was given outside the timeframe of the cases reviewed in this research. This Supreme Court decision is reported in [2018] 36 TLRN 1.
[67] [2009] I TLRN 283.
[68] The following cases also dealt with the issue: *Mas Everest Hotels Ltd & Anor v AG Lagos State & 2 Ors* [2010] 2 TLRN 1; *Registered Trustees of Association of Fast Food Confectioners of Nigeria & 2 Ors v AG Lagos State & Anor* [2010] 2 TLRN 36; *Registered Trustees of Association of Fast Food Confectioners of Nigeria & 2 Ors v AG Lagos State & Anor* [2010] 2 TLRN (No. 2) 47; *Federal Board of Inland Revenue v Owena Motels Ltd* [2010] 2 TLRN 87; and *Mama Cass & 2 Ors v Federal Board of Inland Revenue & Anor* [2010] 2 TLRN 99.
[69] [2010] 3 TLRN 30.
[70] [2014] 14 TLRN 49.

of 'covering the field' did not apply to making laws on hotel occupancy and that the state could legislate on the issue.

The 1999 Constitution also gave rise to many cases challenging the constitutionality of tax tribunals. The earliest cases on the issue were *Stabilini Visinoni Limited v Federal Board of Inland Revenue*[71] and *Cadbury Nigeria Plc v Federal Board of Inland Revenue*.[72] In the first case, the taxpayer challenged the constitutionality of the VAT tribunal because the tribunal was in conflict with the Constitution. The Court of Appeal ruled that the VAT tribunal created a conflict with the Constitution and held that:

> On the totality of the deductions arrived at, it goes without much saying that Section 20 of the VAT Tribunal Act is very inconsistent with the Constitution and hence same cannot therefore stand and is hereby declared null and void. In other words, the VAT Tribunal had no jurisdiction to entertain this action.[73]

The *Cadbury* case turned on similar facts and was decided at the Court of Appeal. The Court of Appeal held in a similar vein that:

> The supremacy of the Constitution is entrenched in Section 1 of the 1999 Constitution of Federal Republic of Nigeria which states as follows: '1(1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void.' Section 20(1) of the VAT Act is therefore invalid in view of its inconsistency with Section 251 of the 1999 Constitution.[74]

The 2007 Federal Inland Revenue Service Establishment Act repealed the VAT tribunal and set up the TAT. A key difference in setting up the TAT was that appeals from the TAT would lie to the Federal High Court. Challenges to the constitutionality of the TAT were launched by litigants without first noting the differences between the TAT and the VAT tribunal. Thus, in *TSKJ II Construces Internacionals Sociadade Lda v Federal Inland Revenue Service*[75] the Federal High Court continued to invalidate tax tribunals and held that:

> Accordingly Section 59 (1) & (2) of the FIRS Act are therefore invalid in view of its inconsistency with Section 251 (1) (a) & (b) of the 1999 constitution, by virtue of Section 1 subsection 3 of the 1999 constitution. The cause of appellant's action falls clearly within the scope of Section 251 (1) (a) & (b) of the Constitution of the Federal (sic) of Nigeria 1999. Whilst not denying the desirability and efficacy of Tax Appeal Tribunals (TAT) in Nigeria's Tax Regime there is need for constitutional provisions to be enacted as in USA, India, Australia, China etc to give them the legitimacy they lack presently and there's no better time than now when the Nigerian Constitution is being amended or

[71] [2009] 1 TLRN 1.
[72] [2010] 2 TLRN 16.
[73] *Stabilini* case supra note 71 at 22.
[74] *Cadbury* case supra note 72 at 33.
[75] [2014] 13 TLRN 1.

> altered. The establishment of the National Industrial Court (NIC) in the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 Act No. 3 is a good example. Ground one of the Amended Notice of appeal succeeds in its entirety and enough to dispose of this appeal in favour of the Appellant …
>
> Ancillary Orders: Having regard to this Court's judgment and the earlier Court of Appeal judgments in (i*) Stabilini Visinoni Ltd v F.B.I.R* (Supra) (ii) *Cadbury (Nig) Plc V F.B.I.R* (Supra), the following ancillary orders are hereby made – (iv) That the Tax Appeal Tribunal in Nigeria created under the Respondent's (FIRS) Establishment Act 2007 are hereby restrained from adjudicating on Tax matters and Federal Revenue in relation to companies forthwith being illegal bodies having regard to section 251 (1) (a) & (b) of the Constitution of the Federal Republic of Nigeria 1999 as amended. (v) The Honourable Minister of Finance, the Federal Republic of Nigeria, is hereby ordered to disband the eight (8) Tax Appeal Tribunals recently approved and reconstituted forthwith. (vi) the Judgment and Orders of this Court made today, 30/10/2013 are to be served on the Attorney General of the Federation and the Hon. Minister of Finance.[76]

This judgment was the cause of some confusion. Some courts of commensurate rank, like the Federal High Court, ruled in directly the opposite manner to the above position. For example, in *NNPC v TAT & Ors*,[77] a Federal High Court distinguished the issues in the *Stabilini* and *Cadbury* cases and stated that the TAT had jurisdiction to hear tax cases. The court held that:

> It [TAT] is subject to appeal to the Federal High Court and is indeed supervised by the Federal High Court through judicial review as in the instant case. It is not like the Value Added Tax Tribunal that had triple jumped its decision to the Court of Appeal.[78]

On appeal, the Court of Appeal overturned the decision of the Federal High Court in *TSKJ II Construces Internacionals Sociadade Lda's case* and held that:

> It is obvious that the Tax Appeal Tribunal is an administrative tribunal, as prescribed by the enabling statute, and serves as a condition precedent to instituting an action before the Federal High Court. As a corollary to the above, I answer the question posed in this issue in the affirmative and hold that the Tax Appeal Tribunal had the jurisdiction to entertain the subject matter of this appeal. The jurisdiction of the TAT is not a usurpation of the jurisdiction of the Federal High Court. The Tax Appeal Tribunal is a condition precedent to the jurisdiction of the Federal High Court to entertain the subject matter of this appeal.[79]

It is opined that the judgment of the Court of Appeal adopts a good approach to the matter. However, the confusion in the tax litigation environment is evidenced by the fact that, before this judgment, many other cases based on the issue of whether the TAT has jurisdiction to hear

[76] At 20.
[77] [2014] 13 TLRN 39.
[78] At 94.
[79] Reported in (2017) LPELR-42868 (CA) at 50.

tax cases were heard in different venues of the Federal High Court. The cases were sometimes inter-related and consolidated by the courts or the TAT. [80]

Constitutional questions on the TAT's competence to hear tax cases in view of section 251 of the 1999 Constitution were sometimes raised in disputes between State Internal Revenue Services and taxpayers, for instance, in *Chevron Nigeria Limited v Ondo State Board of Internal Revenue*.[81]

Some of the cases dealt with the jurisdiction of tax tribunals and questioned whether cases should first be heard by tax tribunals before they were heard through the process of appeal at the Federal High Court. In two cases dealing with this issue – *Ocean and Oil Ltd v FBIR*[82] and *Ajaab Global Investment & Anor v FIRS & Anor*[83] – the court ruled that disputes should first be decided at the tax tribunals before going to the Federal High Court.

It is however of interest that there were no court challenges to the constitutionality of the VAT tribunal throughout the military era (from 1966 to 1979 and from 1983 to 1999). Challenges to the tribunal coincided with the reforms in the tax sector in 2004.[84] It is opined that this was because during the military era there was a reluctance to challenge laws, as military rule functions in an atmosphere of repression and companies are less inclined to challenge 'bad laws'. Furthermore, at this time there was very little tax collection and businesses were not properly monitored by the tax authority. According to a FIRS publication, 'in 2008 alone actual collection figures of 2.972 trillion Naira was over and above the cumulative collection of the 8 years immediately preceding the start of the reforms (1996–2003).'[85] Businesses therefore ignored the Act because although it was in place it was not fully implemented.

---

[80] Some of these cases are *FIRS v General Telecom Plc* [2012] 7 TLRN 108; *CNOOC Exploration and Production Nigeria Ltd & Anor v Federal Inland Revenue Service & Anor* [2013] 9 TLRN 28; *Esso Exploration & Production Nigeria (Deep Water) Ltd. & Anor v Federal Inland Revenue Service & Anor* [2013] 9 TLRN 140; *Shell Exploration and Production & 3 Ors v Federal Inland Revenue Service & Anor* [2013] 11 TLRN 9; *CNOOC Exploration and Production Nigeria Ltd & Anor v Federal Inland Revenue Service & Anor* [2013] 1 1TLRN 58; *Esso Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service* [2013] 11 TLRN 71; *Nigerian National Petroleum Corporation v CNOOC and Ors* [2015] 19 TLRN 32; *Nigerian National Petroleum Corporation v Tax Appeal Tribunal & Ors* [2015] 20 TLRN 1; *Nigerian National Petroleum Corporation v CNOOC Exploration and Production Nigeria Limited & Ors* [2015] 20 TLRN 17.

[81] [2015] 19 TLRN 1.

[82] [2011] 4 TLRN 135.

[83] [2011] 5 TLRN.

[84] In both *Stabilini Visinoni Limited v Federal Board of Inland Revenue* [2009] 1 TLRN 1 and *Cadbury Nigeria Plc v Federal Board of Inland Revenue* [2010] 2 TLRN 16, the taxpayer first instituted the challenge on the constitutionality of the VAT Tribunal in 2004, five years after the return of civilian rule and also at the beginning of the reform process.

[85] Omoigui Okauru op cit note 16 at xiii.

It is worthwhile considering the reasoning behind the creation of the VAT tribunal, given that there was already a Body of Appeal Commissioners (BAC). It is contended that the tribunal was created because VAT tribunals were the practice in other countries. The basis for this contention is that the creation of the Nigerian VAT tribunal coincided with the functioning of the VAT tribunal in the United Kingdom, although the latter was disbanded in 2009.[86]

In conclusion, the early stream of cases addressing the weak sections of the Constitution illuminates the flaws in Nigerian tax statutes, which should be a primary focus for further reform, as tax disputes should be concerned with tax issues and not foundational issues such as the constitutional framework.

3.6 Dispute resolution provisions in major Nigerian Tax Acts[87]

3.6.1 Overview

Dispute resolution sections in the Nigerian Tax Acts are examined with reference to objections to assessments and tax tribunal establishment provisions. Furthermore, cases emanating from specific Tax Acts are evaluated after an examination of the dispute resolution sections. Cases were previously examined with reference to constitutional issues with the aim of highlighting the effect of problematic constitutional provisions on tax cases, while cases examined under the present section highlight the FIRS practices that often led to litigation by the taxpayer.

A major area of dissonance between FIRS and taxpayers is the nature of FIRS circulars and rulings. These types of cases emanate from provisions in both the Companies Income Tax Act and the Value Added Tax Act. The issue for determination therefore is the correct status of FIRS circulars and whether they are binding on the taxpayer and the tax authority. The process for withdrawing circulars when issued and the form of FIRS publications generally must also be determined. There is confusion as to what types of documents the FIRS makes available to the public and the result is that taxpayer challenges sometimes arise from this lack of clarity. There is also little distinction made between FIRS written opinions, whether in the form of interpretation notes, any form of rulings or regulations. As a result of these distinctions not

[86] See Ault & Arnold (principal authors) *Comparative Income Taxation: A Structural Analysis* (2010) 160.
[87] There are other tax Acts which are not examined but their provisions are not as major as those of the examined Acts.

being made, some of the cases arise from FIRS not following the correct procedure to issue an opinion.[88]

With regard to the establishment of tax tribunals, the present provisions are contained in the Federal Inland Revenue Service Establishment Act (FIRSEA).[89] Section 18 of the Companies Income Tax (Amendment) Act of 2007 repealed tax appeals under the Act, while section 14 of the Personal Income Tax (Amendment) Act of 2011 also repealed appeal provisions under the Act.

The repealed sections of the Personal Income Tax Act and the Companies Income Tax Act provided that tax disputes would be resolved by the BAC and appeals lay to the High Courts – first the general court, and then, with the creation of the Federal High Court, to the Federal High Court. By examining decided tax cases, no major challenge was launched about the competency of the BAC to adjudicate tax disputes.[90]

The original VAT decree (later changed to an Act upon the commencement of civilian rule) provided that appeals lay from the tribunal to the Court of Appeal. This provision was later amended, but not before challenges were launched based on the defect of appeals going straight to the Court of Appeal instead of the Federal High Court (as discussed in section 3.5.5.1 above).

3.6.2 Companies Income Tax Act 56 of 2007

The establishment of tax tribunals under the Companies Income Tax Act (CITA) has been abolished. However, the repealed section 71 of the Act provided that 'the Minister may establish by notice in the federal gazette a Body of Appeal commissioners', while section 72(1) provided as follows:

> Any company which, being aggrieved by an assessment made upon it, has failed to agree with the Board in the manner provided in subsection 5 of section 69 of this Act, may appeal against the assessment to the Appeal Commissioners upon giving notice in writing to the Board and to the Secretary to such Appeal Commissioners within thirty days after the date of service upon such company of notice of the refusal of the Board to amend the assessment as desired.

---

[88] For example, in *Warm Springs Water & Ors v FIRS* (2015) 20 TLRN 49 the issue was that FIRS did not follow the correct procedure to amend a regulation. This mistake would have been avoided if the correct distinctions as to the status of its publications were made.

[89] Section 59(2) of FIRSEA provides that the TAT shall have power to settle disputes arising from the operations of this Act and under the First Schedule (the First Schedule lists Tax Acts in Nigeria).

[90] However, there are cases addressing whether disputes should first go to the BAC before going to the court and not addressing the competence of the BAC to decide a tax dispute – see *Ocean and Oil Limited v Federal Board of Internal Revenue* [2011] 4 TLRN 135 and *Ajaab Global Investment & Anor v FIRS & Anor* [2011] 5 TLRN 24.

In respect of objections to assessment, section 69(1) and (2) of CITA provided:

> If any company disputes the assessment it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it. (2) An application under subsection (1) shall (a) be made within thirty days from the date of service of the notice of assessment and (b) contain the ground of objection to the assessment …

3.6.2.1 Cases emanating from circulars issued under the Companies Income Tax Act

In *Halliburton v FBIR*,[91] one of the issues was whether the BAC had properly interpreted the provisions of the Companies Income Tax Act, especially section 30(1), in arriving at the conclusion that recharges by the appellant were not allowable deductions in the turnover of the appellant taxpayer, a non-resident company. A FIRS information circular stated that recharges may be treated as allowable expenses. However, the FIRS later changed its position and claimed that such recharges were not allowable. The taxpayer noted that it had computed its tax returns based on its legitimate expectation of how FIRS usually treated recharges in its information circular, namely, allowing the recharges as deductible expenses.

The controversial part of the circular read as follows:

> For a non-residential company or individual with a fixed base in Nigeria, the turnover that can be assessed is only that portion that is attributable to the fixed base. In other words it will be wrong to base the percentage considered 'fair and reasonable' on the total turnover of such a company or individual once a fixed base is established.

The taxpayer was of the opinion that the FIRS had by Information Circular 93/02 of 1993 (published by way of a public notice) excluded such payments from the income upon which a taxpayer such as the appellant was to be assessed for tax and that the public notice was in effect at all material times binding on the FIRS, while the FIRS position was that there can be no estoppel on a point of law and that the issue of whether recharges are taken into account in computing the tax liability of a non-Nigerian company is a question of law.

The court held that circulars were 'neither law nor regulation and were an interpretation of what FIRS believes the law should be.'[92] The taxpayer won the case, but not on the basis of the FIRS' lack of clarity on the status of a circular.

On appeal, the Court of Appeal overturned the verdict of the Federal High Court and held that recharges were not tax deductible.[93] On the issues of circulars, it held that 'circulars given as

[91] [2013] 11 TLRN 84.
[92] At 110.
[93] Reported as *Federal Board of Inland Revenue v Halliburton WA Ltd* [2015] 17 TLRN 1.

public notice do not qualify as a piece of delegated and subsidiary legislation.'[94] The court further held that the power to amend the Companies Income Tax Act was solely vested in the Minister.

However, the issues about the ambiguity of the status of a circular generated many other cases founded on the doctrine of legitimate expectation. In *Global Marine v FIRS*, the court explained that 'the information circular is in the nature of an explanatory note and cannot by any stretch of statutory interpretation override or supersede the clear unambiguous meaning of statutory interpretation.'[95] Based on the Court of Appeal's decision in the *Halliburton* case, the TAT's position on recharges is that a circular is not subsidiary legislation and therefore has no force of law. Even if it were subsidiary legislation, the provisions of the Companies Income Tax Act would override it.

3.6.3 Personal Income Tax Act 104 of 1993

Tax tribunal establishment provisions under the Personal Income Tax Act (PITA) have also been repealed. Thus, repealed section 60 provided for the establishment of the BAC, or the state and local government equivalents.

Section 58(1) on objections to assessments provided as follows:

> If a person disputes an assessment he may apply to the relevant tax authority by notice of objection in writing, to review and to revise the assessment, and the application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of the assessment.

In view of the fact that the FIRS collects taxes mainly from companies (not individuals), there are few cases emanating from the Personal Income Tax Act within the review period.

3.6.4 Petroleum Profits Tax Act 30 of 1999

Just as in the Companies Income Tax Act and the Personal Income Tax Act above, the tax tribunal establishment provisions under the Petroleum Profits Tax Act have also been repealed. The repealed section 41 of the Act provided that appeals to the BAC should be made within 30 days after the notice of refusal to amend, while section 42(1) provided that appeals may be made from decisions of the BAC to the Federal High Court. There is a slight departure in the

---

[94] At 38.

[95] [2013] 12 TLRN 1 at 26. The issue of information circulars based on recharges arose in several other cases: *Sedco International Incorporated v FIRS* [2015] 18 TLRN 43; *VF Worldwide v FIRS* [2016] 21 TLRN 103 and *R&B Falcon Exploration LLC v FIRS* [2016] 25 TLRN 94.

timelines for objections to assessment. Section 38(2) provided that objections to assessment should be made within a period of 21 days and not 30 days, as in the Companies Income Tax Act.

3.6.5 Stamp Duties Act 90 of 1956 and Capital Gains Tax Act 44 of 1967

The Stamp Duties Act and the Capital Gains Tax Act do not make direct reference to adjudication by the BAC. Repealed section 21 of the Stamp Duties Act provided that appeals should lie to the High Courts. The adjudication of disputes arising from the two Acts was however clearly brought within the purview of the TAT in terms of section 59(2) of the Federal Inland Revenue Service Establishment Act, which provides that the 'Tribunal shall have power to settle disputes arising from the operations of this Act and under the First Schedule.' The two Acts are in turn specifically listed in the First Schedule to the Federal Inland Revenue Service Establishment Act. There are also reported cases (not based on circulars or rulings) arising from the two Acts which were decided at the Federal High Courts.[96]

3.6.6 Value Added Tax Act 102 of 1993

The now-defunct VAT tribunal was established under the Second Schedule to the VAT Act, which stated that 'the Minister may by notice in the federal gazette establish a VAT tribunal in each zone of the Federal Inland Revenue Service.'

Section 20(3) of the Act contained a problematic provision which led to the launching of many challenges to the tribunal. The section stated that 'appeals from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal.' The hierarchy of courts in Nigeria provides that appeals to the Court of Appeal may be made from only the state or Federal High Courts, as well as the customary or *sharia* courts of appeal. Section 20(3) was therefore a troublesome provision in the original VAT Act and triggered many court cases. The VAT tribunal was not a court and should not have had its decisions appealed at the Court of Appeal.[97] Section 20(3) was later amended to provide under Order 16 that '[a]ny party aggrieved by a decision of the VAT tribunal may appeal against the decision on points of law to the Federal High Court.' This

[96] The issue in *Nigerian Liquefied Natural Gas Company v Federal Board of Inland Revenue* [2011] 5 TLRN 97 was whether FIRS had the power to assess a company for stamp duty, while in *S.G. Property Ltd & Sule Sunday Godwin (Trading in the Name and Style of Godwin & Co) v Federal Inland Revenue Service* [2015] 19 TLRN 14, the issue was whether payment made for the purchase of houses was a capital receipt or income receipt in the hands of the owners in light of section 6 of the Capital Gains Tax Act.

[97] The cases were examined above in section 3.5.5.1.

provision of the VAT Act, challenged by taxpayers on account of its purported unconstitutionality, was discussed in section 3.5.5.1 above.

3.6.6.1 Cases emanating from circulars issued under the Value Added Tax Act

In *Warm Springs Water & Ors v FIRS*[98] the issue was whether bottled water qualifies as a basic food item within the context of the VAT Act and is therefore exempt from VAT. The FIRS had issued a circular 'clarifying' items that may be included in the schedule to the VAT Act as tax exempt. It clarified that bottled water was not VAT exempt. The plaintiffs sued, claiming that the FIRS had surreptitiously sought to amend the VAT Act and that such powers should be exercised only by the Minister.

The plaintiffs sought a declaration that the offending Circular No 2007/02 was not a clarifying circular but an amendment to the VAT Act in para 2 of part 1 of the schedule to the VAT Act. They averred that it contravened section 38*(b)* of the VAT Act and that the FIRS had exceeded its powers in making regulations under section 44. The court held that the FIRS had no power to amend the list of exempt items and that only the Minister could exercise such powers.[99] The court further held that the circular was null and void and must be ignored as an ineffectual attempt to amend primary legislation by means of a circular.

However, the argument is that if the proper procedure for the issuing of circulars had been in place, the matter would most likely not have ended up in court. The FIRS would have simply gone to the Minister to issue a regulation. The error was made possible because of the lack of clarity on how to issue circulars.[100] However, it should also be noted that the courts had by their pronouncement on the matter clarified the proper structure of a FIRS circular. Another result of the lack of clarity in circulars is that the FIRS does not give information or clarify issues, to avoid being sued, and thus the courts and the TAT are overwhelmed in respect of issues that could be resolved in a less problematic manner.

In conclusion, it is suggested that it is important to give rulings a proper foundation by capturing their proper form under the law. Another notable effect of disputes emanating from FIRS circulars is that courts of commensurate rank sometimes give conflicting interpretations

[98] [2015] 20 TLRN 49.
[99] At 64–65.
[100] This decision is directly at odds with the decision in *Monamer Khod Enterprises Nigeria Limited v Federal Inland Revenue Service* (Unreported) Suit no FHC/S/CS/2005, where the Federal High Court held that bottled water producers are liable to charge and remit VAT.

as to their status. The empirical part of this thesis (chapter 4) will consider how tax offices address issues when there are conflicting directives from the courts.

3.6.7 Federal Inland Revenue Service Establishment Act of 2007

The Federal Inland Revenue Service Establishment Act establishes the Tax Appeal Tribunal. Section 59 provides that '[a] Tax Appeal Tribunal is established as provided for in the fifth Schedule to this Act. The Tribunal shall have power to settle disputes arising from the operations of this Act and under the first schedule.'

The rules of the tribunal are provided for under the Fifth Schedule to the Act and state that appeals lie to the Federal High Court. Order 17(1) provides:

> Any person dissatisfied with a decision of the Tribunal constituted under this Schedule may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary to the Tribunal within 30 days after the date on which such decision was given.

Provisions on the composition of and qualifications for membership of the TAT are contained in sections 2 and 3 of the fifth schedule to the FIRSEA. In respect of membership, the tribunal must consist of five members, to be appointed by the Minister. The tribunal has eight zones, and the chairman for each zone must be a legal practitioner who has been so qualified to practise for a period of not less than 15 years, with cognate experience in tax legislation and tax matters. The chairman must preside at every sitting of the tribunal and, in his absence, the members must appoint one of them to be the chairman. The quorum at any sitting of the Tribunal is three members.

Concerning the qualifications to be a member of the TAT, a nominee must be knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria. He or she must also have shown capacity in the management of a trade or business or be a retired public servant in tax administration. A Tax Appeal Commissioner shall hold office for a term of three years, renewable for another term of three years only, and no more.[101]

[101] See the fifth schedule to the FIRSEA and section 2.5.1 on the composition and schedule of the TAT. The TAT has a smaller panel than the defunct VAT tribunal – five members instead of eight. See note 33 on the composition of the VAT tribunal. However, the qualifications for membership of both panels are similar.

3.7 Profile of tax litigants and tax case flows

3.7.1 Overview

The first part of this chapter addressed issues in Nigeria that focused on the legislative development of the tax dispute resolution environment ie the Constitution and Tax Acts. It also assessed the regulatory practices of the FIRS in respect of notices emanating from the tax authority by way of circulars. The aim was to identify problem areas that have rendered the tax dispute resolution environment problematic and ineffective.

The aim of the second part of this chapter is to evaluate how the 2004 reforms are reflected in tax dispute resolution (eg increased numbers in tax disputes), and to determine how best to deal with the increasing number of cases involving the FIRS. A further purpose of this part is to assess how the increase in tax cases should impact the mode of resolving disputes. Should the increased numbers lead to the introduction of another layer in the internal dispute resolution process? Both parts of the chapter constitute different components of the key problem areas in the tax dispute resolution process in Nigeria within the period reviewed in the thesis.

This part of the chapter thus deals with the current case flow of the FIRS and the profile of tax litigants. The section shows the total number of pending FIRS cases as at the time of writing,[102] the type of cases dealt with, ie the parties to the suit, and whether the disputes are criminal or civil in nature. It also shows the incidence of the withdrawal of cases before conclusion in the courts or tribunals.

As noted in sections 3.5.4.1 and 3.5.5.1, the initial cases involving the FIRS after the reforms arose from weaknesses in the legal framework. These weaknesses were challenged in court and the courts have largely addressed the problems with their pronouncements and through judicial law-making. Cases after the reforms (arising from the weak legal framework in the tax environment) were mostly brought by oil and gas companies. However, a major aim of the reforms, which was to diversify the revenue sources of the Nigerian economy by improved tax collection, is gradually being achieved as cases concluded after 2014 are increasingly indicative of the involvement of the non-oil sector.[103] Some peculiarities of the Nigerian situation are also highlighted – for instance, the fact that the FIRS sometimes has disputes with different tiers of government.

[102] December 2017.
[103] As noted in section 1.1, both the study and working groups converge on their assessment of the need to diversify the revenue base of the country beyond oil and related sources.

3.7.2 Profile of litigants

In assessing FIRS case flows or the evaluation of cases a cut-off date was decided on. Evaluations are made from 1993 with the introduction of the VAT Act to mid-2016, for cases decided in the Federal High Court, the Court of Appeal and the Supreme Court,[104] and from 2011 to mid-2016 for cases decided at the TAT (the TAT was constituted in 2010 and the earliest cases were concluded in 2011). The cases are reported in the Tax Law Reports of Nigeria (volumes 1 to 25). Many cases based on structural defects in the Nigerian tax arena arose after 1993, specifically in respect of the correct tier of government to legislate on consumption taxes as well as the constitutionality of VAT tribunals.[105]

A broad review of tax appeals in Nigeria within the identified timeframe indicates that they arise from a narrow pool of taxpayers, usually oil and gas companies.[106] They sue in a multiplicity of cases on very similar facts. These suits are often consolidated at a later date. For example, suits on whether the TAT has jurisdiction to hear tax disputes were instituted by roughly the same oil companies suing in different venues of the TAT or courts on the same issues (discussed in section 3.5.5.1).[107]

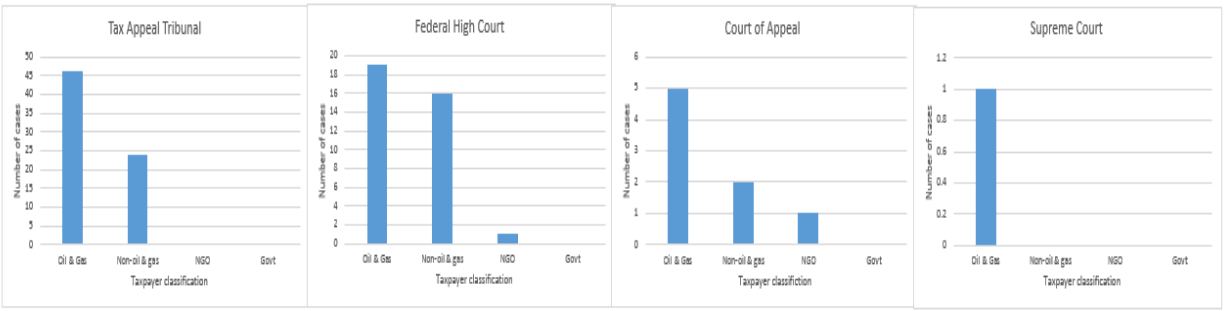
Distilled data from law reports show that from 2011, when the first TAT cases were concluded, to mid-2016, 70 cases in which the FIRS was a party were decided by the tribunal. Forty-six of these cases were in respect of disputes by oil and gas companies while 24 were disputes by non-oil and gas companies. The data from disputes decided at the Federal High Court is similar. A total of 36 cases were decided from 1993 to mid-2016, and of this number 16 were decided before 2011 and 20 after 2011. Twenty of the cases were in respect of oil and gas companies, 15 in respect of non-oil and gas companies, and one case was instituted by a not-for-profit organisation. The Court of Appeal heard a total of eight cases within the period: five were instituted by oil and gas companies, two by non-oil and gas companies, while one was instituted

[104] Federal High Court cases are sometimes evaluated from 2011 to mid-2016. See figure 3.2 below.
[105] See sections 3.5.4.1 and 3.5.5.1 above.
[106] That is, based on the law reports. This will be explored in more detail in chapter 5.
[107] These companies include CNOOC Exploration and Production Nigeria Ltd, Esso Exploration & Production Nigeria (Deep Water) Ltd, Shell Exploration and Production Ltd, Nigerian National Petroleum Corporation, Agip Exploration and Production Ltd, Total Exploration and Production Ltd, Oando Plc, Mobil Producing Nigeria Unlimited, Chevron Nigeria Ltd and South Atlantic Petroleum Ltd. The related cases include *CNOOC Exploration and Production Nigeria Ltd & Anor v Federal Inland Revenue Service & Anor* [2013] 9 TLRN 28; *Esso Exploration & Production Nigeria (Deep Water) Ltd & Anor v Federal Inland Revenue Service & Anor* [2013] 9 TLRN 140; *Shell Exploration and Production & 3 Ors v Federal Inland Revenue Service & Anor* [2013] 11 TLRN 9; *CNOOC Exploration and Production Nigeria Ltd & Anor v Federal Inland Revenue Service & Anor* [2013] 11 TLRN 58; *Esso Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service* [2013] 11 TLRN 71; *Nigerian National Petroleum Corporation v Tax Appeal Tribunal & 3 Ors* [2013] 13 TLRN 39.

by a state government. The lone Supreme Court case in which the FIRS was a party was in respect of an oil and gas company. Another notable feature is that there are few criminal tax cases.[108] The law reports further indicate a progressive shift in taxpayer disputes with the FIRS, from oil and gas companies to non-oil and gas companies. Later cases, ie after 2014, show an increased representation of non-oil and gas companies.

Attached as Annexure 1 is a list of cases decided at the TAT from 2011 to mid-2016 and also tax-related cases decided at the Federal High Court, the Court of Appeal and the Supreme Court from 1993 to mid-2016, as reported in the Tax Law Reports of Nigeria, showing the names of the parties, the party for whom judgment was made in favour, the location of the court or tribunal where the suit emanated, the issue(s) in contention, the type of taxpayer (including whether it is an oil and gas company or not), the year of assessment, the date of judgment and the length of time that it took to resolve the dispute.

Figure 3.2: Graphs showing the number of cases decided at the TAT, the Federal High Court, the Court of Appeal and the Supreme Court during the review period in respect of different types of litigants (oil and gas/non-oil and gas companies/not for profit organisations/government).



Source: Author

As a result of this shift, projections as to the volume and type of cases that will be deliberated upon by the TAT in the near future is undertaken in section 3.7.3 dealing with case flow projections. The projections are based on data collected from the legal department of the FIRS, showing ongoing cases at the TAT or the courts. Therefore, the information is not in the public domain, but it is essential to make projections into the near future based on the figures. It should also be noted that these cases may not run their full course as some could be settled out of court.

[108] This issue is discussed in more detail in section 3.7.3 (case flow projections).

For instance, there were many cases pending at the Federal High Court between the FIRS and local governments on the remittance of VAT and some of these disputes were settled out of court.[109] The list of the legal department's pending cases is included in Annexure 1.

Another notable issue on the structure of cases is that, as at December 2017, the cases pending at the Supreme Court were filed as early as 2012, although this issue will be discussed in more detail when evaluating the timeousness of the dispute resolution processes in section 5.6.[110]

3.7.3 Case flow projections

Projections for tax dispute resolution in Nigeria do not constitute a definite linear line. This statement is made based on an assessment of pending cases before the courts and the TAT – there is no discernible pattern. There are now more cases than before the advent of the tax reform process, but internal circumstances also affect the growth and evolution of the tax dispute resolution process. For instance, the TAT was inaugurated in 2010 and the three-year tenure of the members expired in 2013.[111] The panel was not re-inaugurated soon afterwards and the increase in numbers seen in the pending cases between 2011 and 2012 was not sustained in 2013. There was another surge in cases in 2015, but the number of cases fell again in 2016 as a result of the lapse of the second term of the TAT members. Another factor that affected the fluctuating figures was that High Court judgments sometimes suspended the sitting of the TAT and at such times, depending on when an Appeal Court overturned the decision, disputes were not filed at the TAT.[112] Notable trends based on pending cases on the legal department's register are discussed below.

---

[109] An explanatory note to the 2013 list indicates that a state government had interceded on behalf of all the local governments within its territory, to the effect that outstanding tax payments by the local governments would be paid by the state government and that disputes between the FIRS and the local governments would be withdrawn from court.

[110] These cases include *Stabilini Visinoni Limited v Federal Board of Inland Revenue* [2009] 1 TLRN 1; *Cadbury Nigeria Plc v Federal Board of Inland Revenue* [2010] 2 TLRN 16; *Eko Hotels Limited v Federal Board of Inland Revenue and Attorney General of Lagos State* [2009] 1 TLRN 172.

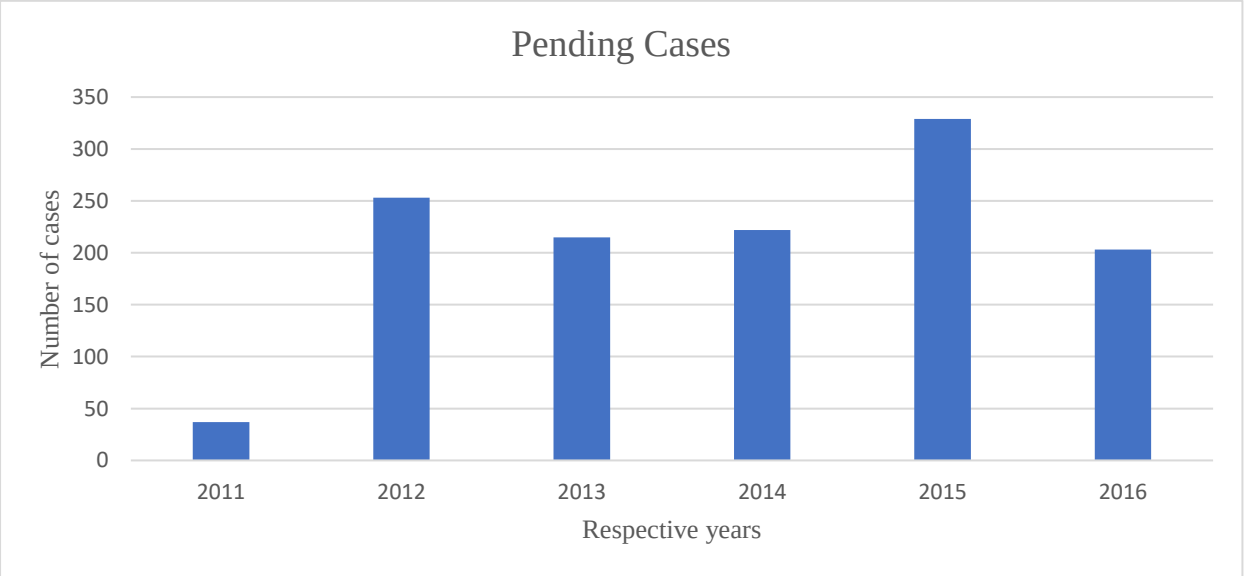
[111] Rule 4, Fifth Schedule to the FIRSEA provides for a three-year term for TAT members.

[112] The judgment disbanding the TAT in *TSKJ II Construces Internacionals Sociadade LDA v Federal Inland Revenue Service* [2014] 13 TLRN 1 was given in October 2013. This suspension explains why the number of cases filed at the TAT in 2013 fell to 200 from a total of 244 in 2012.

3.7.3.1 Total numbers

In terms of total numbers, tax disputes in the formal arena grew from the first recorded date in 2011.[113] There were a total of 37[114] cases in 2011: two at the Supreme Court, five at the Court of Appeal, 14 at the Federal High Court (including four criminal cases), one at the Industrial Court and 15 at the TAT. There was a remarkable increase in 2012, with the total figure for the year being 253. The case load decreased in 2013, with only 215 cases. In 2014 there were 222 cases. There was an increase in 2015 with a total number of 329 cases. The case load decreased again in 2016 with a total of 203 cases. A remarkable feature of the 2016 cases is that there were many more cases at the Federal High Court compared to the TAT, mainly because the TAT was not inaugurated for much of 2016 and therefore disputants were forced to institute their cases at the Federal High Court.

Figure 3.3: Graph showing total number of pending cases in the legal department register from 2011 to 2016



Source: Author

[113] In line with the reforms commenced in 2004 and the autonomy granted in the FIRSEA of 2007, the FIRS recruited its pioneer legal officers in 2010. Prior to this period lawyers were seconded from the Federal Ministry of Justice. The pending cases referred to were instituted from the time that the FIRS had full-time legal officers recruited solely to work for the FIRS. See section 3.7.2 above for the parameters used in evaluating cases.

[114] The accuracy of all the figures is not guaranteed as the numbers from the legal department were not cross-checked at the courts or the TAT. There are also noted repetitions in some of the reported cases, thereby increasing the overall figures.

3.7.3.2 Parties

The reported cases in the Tax Law Reports of Nigeria within the review period show a predominance of oil and gas cases. This trend is not sustained in the pending cases, as there are more disputes from non-oil and gas companies. However, the oil companies still dominate at the appellate courts, because oil and gas companies are early starters in tax dispute resolution and therefore their disputes had a head start in going on appeal to the higher courts. The two tax-related cases at the Court of Appeal in 2011 were in respect of oil and gas companies; the predominance is maintained in 2012. Of the seven tax-related cases, five involve oil and gas companies. The numbers are sustained in 2013: of the 11 tax-related cases, ten involve oil and gas companies. From 2014 to 2016 oil and gas companies predominate in suits dealing with tax issues at the Court of Appeal.[115]

A second notable feature of pending tax disputes is that many are between the FIRS and local government councils. As a result of the fact that VAT and tax on companies (in terms of the Companies Income Tax (CIT)) are collected by the FIRS, other tiers of government are expected to remit VAT and withhold and remit CIT to the FIRS. A look at the disputes suggests that local governments do not always do this, resulting in lawsuits. There is a Joint Tax Board (JTB) which should harmonise tax collection between tiers of government, but an assessment of the number of cases involving government agencies suing each other suggests that this arrangement does not always work. It is suggested that this feature of local governments having tax disputes with the FIRS should be of utmost concern to the JTB and it should intensify its efforts to settle disputes with the FIRS in venues outside the TAT. Again, some of the disputes disappear from the legal department roster from year to year. In 2012 some suits were withdrawn because state governments offered to settle the outstanding tax liabilities of local governments within their territories, but there is no explanation as to why some local government suits (from another state) fell off the roster in 2015.

Thus, in 2012, there were a total of 13 disputes with local governments, 12 at the Federal High Court and one in the TAT. In 2013 there were 21 local government disputes, all in the Federal High Court. There were ten and 13 disputes with local governments in 2014 and 2015 respectively; there is no record for 2016.[116] Apart from local government councils, government

[115] Six out of nine core tax cases in 2014, seven out of ten in 2015, and seven out of 16 in 2016.

[116] Harris op cit note 34 at 15. He recommends that a way of simplifying tax collection between the arms of government in Nigeria is to have a national revenue service that would combine the federal and state revenue services as well as the custom service into one organisation. Also see Seyi Bickersteth *Report of the Working Group on the Review of the Report of the Study Group on the Nigerian Tax Reform* (2004) at 3.

bodies are also expected to withhold and remit CIT and VAT to the FIRS. The pending government bodies' cases with the FIRS suggests that the bodies do not do so. It is very undesirable for government departments to be in court with the FIRS over the remitting of taxes.[117]

3.7.3.3 Tax criminal cases

A final feature of the pending tax cases in the FIRS is that relatively few are criminal matters although the figures show a progressive increase. More focus is placed on collecting tax without necessarily pursuing the criminal aspects. Furthermore, many of the criminal cases are in respect of tax officers forging Tax Clearance Certificates or theft and are not direct criminal cases between the FIRS and taxpayers.[118] There were four pending criminal cases in 2011, 64 in 2012, one in 2013, one in 2014, 48 in 2015 and 35 in 2016.

3.7.4 Analysis of case flow projection

There has been growth in the number of tax cases in courts and the TAT. The cases also indicate an increase in non-oil and gas disputes which indicates that a major purpose of the reform, diversifying FIRS collection streams, is gradually being achieved. Of more importance is the need to ensure that the TAT is always functioning administratively in order to develop tax dispute resolution structures and to avoid instances where disputes are instituted at the Federal High Court because the TAT is not in session. Federal High Court decisions clearly stipulate that the Federal High Court should sit in an appellate jurisdiction and is not a court of first instance in tax disputes.[119] By not ensuring that disputes first go to the TAT, as recommended by court pronouncements, the FIRS is failing in its administrative duties. However, the findings in the empirical part of the thesis (chapter 4) show that taxpayers sue the FIRS first in most cases and are thus partly responsible for 'leapfrogging' the TAT. In view of the increasing overall number of cases an important question to answer is whether there is a need for a second

[117] Government bodies had 12 pending cases with FIRS in 2012, 13 in 2013, five in 2014, eight in 2015, and four in 2016.

[118] In view of the fact that the cases have not been concluded by the courts, it is premature to name them. Whilst the non-criminal cases are identified, it is opined that the litigants may be negatively affected if they are named in the criminal cases.

[119] In *Ocean and Oil Limited v Federal Board of Internal Revenue* [2011] 4 TLRN 135, the court directed that it was compulsory for tax disputes to first go to the BAC before being tried in the Federal High Court. The court held that 'the applicant has jumped the stile as stated in the above case or the hurdle which is the Body of Appeal Commissioners by coming to the Federal High Court. The case is therefore premature and is accordingly struck out.' This position was reiterated by the Federal High Court in *Ajaab Global Investment & Anor v Federal Inland Revenue Service & Anor* [2011] 5 TLRN 24. The court held that VAT disputes should first be decided by the TAT.

level of dispute resolution in the FIRS. This question will be addressed in the concluding part of the thesis.

3.8 Conclusion

This chapter evaluated the Nigerian tax dispute resolution environment, showing its history and evolution, and also highlighting key problematic areas that led to this research. These problematic issues include:

(a) The structural problems in the Constitution caused the disputes and created inefficiency. The chapter found that tax disputes should not be about design flaws in a Constitution.

(b) The ambiguity in the legal framework for taxation was also shown to be present in the Tax Acts. There is confusion about the correct venue for deciding tax cases as a result of the design of the legal framework. This has also led to a multiplicity of cases.

(c) The correct nature of FIRS publications: are the disseminated documents circulars, regulations, interpretation or practice notes?

(d) The incidence of increased case flows in the FIRS since the 2004 reforms.

A holistic evaluation of the Nigerian tax dispute resolution process will be undertaken at the end of chapter 5. The issues identified above are included in the evaluation.

CHAPTER 4: THE FIRS INHOUSE DISPUTE RESOLUTION PROCESSES

4.1 Overview

This chapter sets out the results of an empirical assessment of the inner workings of the dispute resolution process of the Federal Inland Revenue Service (FIRS). The aim of the chapter is to ascertain how the FIRS deals with resolving disputes in-house, in order to better assess its practices *vis a vis* the identified norms of dispute resolution discussed in chapter 2, and the structural issues identified in chapter 3. In respect of the research question the chapter shows how the internal dispute resolution process in the FIRS has evolved.

Two sets of FIRS officers were interviewed, namely, tax officers and legal officers. Tax officers were interviewed to understand the negotiation process of the tax authority and to determine whether there are written, documented processes guiding the negotiation process, or whether the process is ad hoc. The legal officers were interviewed to obtain a practical view of the tenets of good dispute resolution in the Nigerian dispute resolution process and to collate added information on the litigation environment distinct from what is discernible in the law reports. Also, responses from legal officers helped to triangulate the information that is obtainable in law reports on how quickly cases are concluded and the reasons for first commencing the litigation in a particular venue, as this information is not captured in the law reports.

4.2 Ethical considerations

The empirical component of this research was approved by the Ethics Committee, Faculty of Law, University of Cape Town and in compliance with the University of Cape Town's ethics policy. The participants were assured that the information provided by them would be presented in a confidential manner in the thesis.[1]

4.3 Research method(s)

The interviews were face-to-face and a tape recorder was used as a recording tool. The interviews were fully transcribed and analysed for commonalities or differences within the

[1] The ethics committee approval is included in Annexure 3.

existing literature and practice.[2] Although the two sets of officers were interviewed for different purposes, in evaluating the tenets of good dispute resolution in chapter 5, there is cross-referencing between the two different sets of officers. The interviews were conducted in the offices of the participants. The questions were semi-structured and open-ended. The officers were asked some main questions and, where their responses were limited, further probing questions were asked.[3]

Tax officers were selected based on spread, ie to represent different regions of the Nigerian political landscape,[4] and tax thresholds, ie small, medium or large tax offices. The interviewees were heads of tax offices in the different zones of the country, namely, the south west (Lagos), the south east (Enugu) and the north central (Abuja). They were also in charge of different sizes of tax offices – individual and enterprises tax (IETO), small and micro tax, medium tax and large tax (for both oil and non-oil companies). The IETO offices are for individual taxpayers and are found only in Abuja as the FIRS collects tax from individuals only in the Federal Capital Territory.[5] The small tax offices have a collection threshold of less than 200 million Naira (₦200M), medium tax offices have a threshold of 200 million to less than a billion Naira, while the large tax offices have thresholds of above a billion Naira.

The legal department has its headquarters in Abuja, with branches in the south west, the south east and the north central. Interviewed legal officers were stationed in Abuja, the south east and the south west.

4.4 Limitations of the qualitative research

Fourteen persons in three geopolitical zones of Nigeria were interviewed for the research. The initial plan was to interview a total of 17 persons (ie 3 more tax officers), based in three more geopolitical zones. However, this was not possible for several reasons. First, there were security concerns in accessing the north east geopolitical zone of Nigeria when the interviews took place from December 2017 to January 2018. Furthermore, no cases emanated from two of the regions

[2] The term 'commonalities and differences' in analysing data was borrowed from K Moult et al *You Have to Make a Judgment Call* Gender, Health and Justice Research Unit, UCT (2016).
[3] See Annexure 3 for the questionnaires used for the interviews.
[4] Nigeria is made up of 36 states and the Federal Capital Territory. It can be grouped for political and economic assessments into two regions, namely, north and south. It can also be grouped into three regions: north, east and west (east and west are part of the south). However, currently it is mostly grouped into six geopolitical zones, namely, south east, south west and south south (all in the south), and north east, north west and north central (all in the north).
[5] The collection of personal income tax from individuals is now (as from 2018) carried out by the Federal Capital Territory Internal Revenue Service (FCTIRS).

where the interviews did not take place within the period reviewed in the thesis. The zones where the officers were interviewed had the most cases: Lagos had the greatest number of disputes, followed by Abuja (see Annexure 1). Abuja was also selected because it is the administrative headquarters of the FIRS.

The number of interviewees was based on the Nigerian Public Service command structure where heads of functions sign off on issues in their domain and are expected to be conversant with matters within their schedule. Therefore, irrespective of the FIRS staff strength at the time of the interviews, only heads of functions were selected. Organograms showing the number of heads of functions are provided in figures 4.1 and 4.2. There were five heads of functions for the tax officers and four for the legal officers, making a total of nine when the interviews took place. However, a legal officer with a non-head function was interviewed and she provided good insight into the dispute resolution process.

Another limitation was that whilst practices in Nigeria were tested or triangulated by means of face-to-face interviews with officers of the FIRS, this was not possible in the case of South Africa. However, there is a large amount of information about SARS in the public domain. This can be established by looking at the SARS website. The FIRS website is not as detailed and retrieving information from it for the outsider researcher is difficult. Furthermore, non-heads of functions were sometimes interviewed because the heads of functions were not willing to be interviewed or were not available for the interviews.

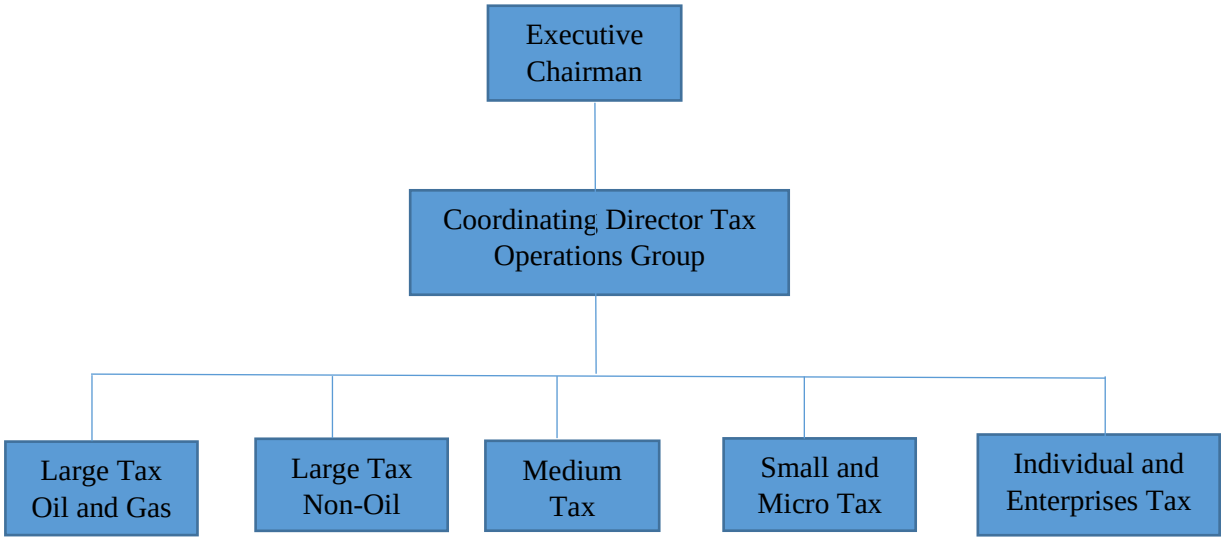
Finally, the officers interviewed might have cast their practices in a ‘good’ light, thereby glossing over some of the less satisfactory aspects of their practices. Nevertheless, in spite of these limitations the researcher is of the view that good data was still retrieved.

4.5 Tax officers

Nine tax officers were interviewed for the research. The participants are designated Tax Participants 1 to 9 (TP 1 to 9). One of the participants declined to be recorded (TP 9). The interviews were conducted by asking nine major questions. The officers were asked to explain the process of tax dispute resolution, to name the documents used in the negotiation process and to state whether they prefer having disputes resolved in court or in-house in tax offices. They were asked to explain the practice of negotiation or settlement of tax disputes at the tax office level as well as their preferred forum for litigation. They were also asked to identify what

they regarded as shortcomings in the tax litigation process. Below is an organogram of the FIRS tax collecting offices as at the time of writing (December 2017).

Figure 4.1: Organogram of the FIRS tax collecting group



Source: Author

The organogram shows that the tax collecting group comprises five broad offices and is headed by a coordinating director. The offices are delineated based on tax threshold. The highest paying taxpayers are grouped under large taxes and this may be for oil and gas or non-oil and gas taxes.[6] Other thresholds of taxpayers which are grouped as offices are the medium taxpayers, small and micro taxpayers, as well as individual and enterprises taxpayers.

Persons interviewed in the tax collecting group were drawn from each office of the group and from three geopolitical zones of Nigeria. The head of a large tax office for non-oil and gas in the north of the country and the head of a tax office for oil and gas in the south were also interviewed, as well as tax officers from a medium tax office, a micro and small tax office, and an individual and enterprises tax office.

4.5.1 Profile of participants

The most senior participant was a director and state coordinator in charge of several tax offices in a region. The most junior participant was a manager in charge of a small tax office. Some of the participants were chartered accountants and all had been employed by the FIRS for at least

[6] Large tax offices are not located in all the geopolitical zones of Nigeria but only in large commercial centres like Lagos, Abuja and Port Harcourt.

ten years. The participants had also been moved from one zone of the country to the other during their employment in the FIRS, so had experience in tax practices in different parts of the country. For instance, a participant from the south east had once overseen a tax office in the south south. As a general observation, it was noted that the most senior participants had the most detailed answers in respect of the processes, while relatively lower ranks were not as detailed in their answers. Also, participants from Lagos had the most experience with referring disputes to tribunals or courts while participants outside Lagos had less experience.

The researcher acknowledges that the answers given to the questions by the nine participants were based on their experience and perceptions, and that the responses might have been different if a different set of participants had been interviewed.

4.5.2 Process of tax dispute resolution

The participants exhibited different levels of awareness of the internal dispute resolution process. Some mentioned that there were different levels of internal dispute resolution processes in the FIRS, ie first within the tax office, then the different state coordination offices, then a reconciliation committee and, finally, the chairman of the FIRS. Some were completely silent about negotiations with the taxpayer in the tax office or only mentioned this when prompted. As noted, the most senior participant (TP 6) mentioned all the stages of the dispute resolution process, while the most junior (TP 4) shared the least detailed process. TP 6 explained:

> Dispute resolution should start from field level or tax office level. Where a taxpayer is dissatisfied with a particular decision between him and any inspector in that office, he can escalate it to the tax controller. The tax controller is in a position to resolve the matter. Where that fails, the taxpayer can escalate it to the state coordination office. I have a technical desk headed by a deputy director and he can also be part of the decision making in a case. If he is not satisfied at that point we prepare our reports and document all the steps we have taken and escalate to the headquarters. At the headquarters, there is a level the coordinating director can also handle such resolutions by inviting the company and he has his own team to attend to the aggrieved taxpayer. After that level the next level is getting the chairman involved and then the board technical committee (TECOM), thereafter whatever they rule becomes the FIRS position on that issue. If the taxpayer is dissatisfied at that highest level, he is expected to file an appeal at the TAT.

TP 4 stated:

> Disputes normally arise when an assessment is raised on a taxpayer and the taxpayer objects to that assessment. There is a procedure to determine whether that objection is valid or not valid, if the taxpayer has met the requirement for that objection to be valid, that is (1) that the taxpayer has raised the objection within the statutory period stated by the law being 30 days and (2) provides some alternative information which may lead to a revised assessment by FIRS, you can consider that assessment as valid. But whereby

> even if a valid objection is received but there is disagreement between the FIRS and the taxpayer, the taxpayer has the option to rush to the TAT. He can file his case there if he cannot win there the only place he can appeal to is the Supreme Court and you know the decision of the Supreme Court is final.

There are also different names for the higher levels of internal dispute resolution. Some participants referred to state coordinators and then the chairman, while TP 5 referred to 'higher authorities' and, when asked to explain, he stated that it referred to the coordinating director and chairman. However, the process he described is conducted by means of a memo, which gives it a non-negotiation framework, so it is more like an administrative process. All the participants were aware that the TAT is the first level for resolution of disputes externally as they all mentioned this.

The deduction from the responses to the question is that the participants had some idea about an internal process for dispute resolution but their knowledge about how it works is limited. It can also be deduced that because of the varied knowledge, the internal process is implemented differently by different offices and there is no unified format. Widespread knowledge about the TAT, on the other hand, suggests that it is firmly established.

4.5.3 Limited knowledge of the law by tax officers

Although the tax officers are very knowledgeable about their duties as tax officers, they have limited knowledge of some aspects of the law. As indicated above, TP 4 stated that cases go from the TAT to the Supreme Court, while TP 3 accurately named the correct hierarchy of courts but stopped at the Court of Appeal. This point explains some of the disputes the FIRS has had with taxpayers, since the tax officers opined that they look at the law directly to apply the Tax Acts. One stated in particular that he looks at judicial precedents to apply the law. Thus TP 1 stated: 'but the tax law is our Bible and FIRS extant laws and policies. We apply the tax law. There are no variances in the way we resolve disputes with other departments.' TP 8 stated:

> We look at judicial precedents ourselves and these are some of the issues we take before the taxpayers. We don't give court decisions to the lawyers to go through. I'm a chartered accountant and you should know the tax law more than your Bible. You must know all the sections of the tax law.

However, the limitations of the tax officers in respect of the law were highlighted by the fact that they did not understand the legal questions about assessing the FIRS dispute resolution process based on the tenets of good dispute resolution.

4.5.4 Documents for tax dispute resolution

All the participants spoke about using the tax law as their guide. TP 1 and TP 8, as shown in the quotes above, specifically referred to the tax law as their Bible. Most of the participants also referred to a manual of the FIRS. The manual provides that at the tax office level, disputes with taxpayers should be handled by the taxpayer services unit and may be taken up to the tax controller. Other documents mentioned by the participants were circulars and regulations. Most of the participants were of the opinion that there was no discrepancy in the way in which dispute resolution is handled by different tax offices.

The responses of the participants to the question about the documents used for in-house dispute resolution suggest that although there is a manual on how to resolve disputes with taxpayers at the tax office level, it is applied differently across different offices. There is a need to centralise practices so that, as TP 6 observed, 'it constitutes a reference point to our officers so that when they run into similar situations, they do not start afresh but rely on what has been decided in the past.'

4.5.5 Preferred venue for the resolution of tax disputes

Most of the tax officers expressed reservations about going to court. They noted that it is time-consuming and negatively affects overall tax collection. TP 1 stated that 'it's not always good to go to court. If we can resolve it internally, we prefer it unless where we cannot.' TP 4 noted: 'I will prefer [that] the dispute is settled here at the tax office. The litigation process may take time, so I personally prefer issues to be resolved here.'

TP 3 and TP 8 noted that although going to court slows down collection, there are positive aspects as a precedent is set and the law is tested. TP 3 thus stated:

> The other side is that if you send cases to the courts it will be by way of testing certain aspects of the tax law that are not operational or really difficult to operate. You can test the veracity of the tax law; it could have an advantage although it may delay collection, a principle is established.

TP 8 stated in respect of the same issue: 'But at the end of the day, the time the cases are decided in court, we get more revenue. A precedent is set.'

Also of note are the habits of big companies, including oil companies. TP 6 and TP 8 noted that they are tax compliant and do not want to pay more or less tax than they should. They also

engage large audit firms which they both referred to as the 'Big Four'.[7] TP 6 noted that the oil companies are also most likely to sue (and this is reflected in the law reports). He stated:

> Multinational companies try to do it right at any point in time by getting qualified people in tax to man their tax departments. They engage the services of big audit and consulting firms. They mostly use the Big Four ie KPMG, PWC, Akintola Williams and Ernst and Young. They have integrity, and some of them because they consult for the parent companies in the home countries of most of these multinationals so they are more or less compelled to use them locally here.

Concerning the issue, TP 8 noted:

> We are in the middle of large tax office and micro tax office, so we have a mixture of the two. They are sophisticated at some level and unsophisticated at some other level. So those of them that have huge turnover like multinationals or offshore company connections may like to hire some of the Big Four KPMG, Deloitte, PWC, Ernst and Young. Foreign entities may insist on the big 4. Compliance level here is very high.

4.5.6 Level of tax compliance when liabilities are negotiated outside the court

The participants generally believed that taxpayers would comply better if a non-high-handed approach is used. They recommended moral persuasion. TP 5 stated: 'Yes, they are [more likely to be tax compliant] and that is the approach we are using now to ensure that we discuss this liability at the tax office level so that we mutually agree, and compliance becomes easy and getting collection is easy.' TP 7 said: 'Nobody wants to go to court so they will prefer to settle the issue within the tax office and pay what they are asked to pay.' However, TP 6 noted that some recalcitrant taxpayers may not pay tax unless stringent measures are used.

4.5.7 Record keeping

The participants were of the view that there should be better records of the processes used in resolving in-house dispute resolution so that there is uniformity. They were also of the view that keeping records would grow the process of internal dispute resolution. TP 3 stated:

> Most of the time when issues are resolved some offices do not keep records of such issues and how they are resolved so that people that are coming after them can learn from them. Secondly if you look for data on the tax forgone in terms of waivers that have been granted you do not find them because the records are not there and the only sad part of it and I think we can do better by building up such information in the data … so that people coming behind you can learn, and the system can grow.

[7] The audit firms identified as the Big Four by the two participants differed slightly. TP 6 identified the Big Four as KPMG, PWC, Akintola Williams and Ernst & Young, while TP 8 identified KPMG, Deloitte, PWC and Ernst & Young as the Big Four.

On the same issue TP 6 noted: 'We need to document and publish cases more and more so that it serves as a learning tool for upcoming officers in the future.'

4.5.8 Highest tax collecting and tax compliant zones

Some zones of the country were noted by the participants to be largely tax compliant, while others were observed to be non-compliant and to have limited knowledge of the law. The south west (Lagos) was noted to be tax compliant while the south east was largely non-compliant. As noted in earlier quotes,[8] Lagos taxpayers were largely tax compliant and employed good tax advisors. Concerning low tax compliance in the south east, TP 1 stated: 'Tax evasion is high here and I don't know why. Lack of understanding of tax laws is high too. I held a workshop for stakeholders, consultants, my colleagues, when I arrived here, to correct it. From that month compliance improved.' Lagos was also observed to be a high tax collection centre. In respect of this, TP 7 stated:

> Lagos is the centre of business. This is where most of the taxes come from. About 75 to 80 per cent of taxes are generated from Lagos. We have two Large Tax Offices here (oil and gas upstream and downstream), manufacturing and other line of businesses, financial institutions, construction. In Lagos Island, we have three small and micro tax and six medium tax offices ...

4.5.9 How FIRS handles conflicting judgments from courts of commensurate rank

TP 8 explained how FIRS tax officers handle issues where there are conflicting decisions by courts of commensurate rank. He noted that the officers continued using their prior practices until a decision is handed down by a higher court. 'Well, when there is a conflict the case has not been formally decided so the assessment is still pending in our own records until we have a judgment which vacates the assessment. So FIRS carries on with its prior practice until vacated by a superior court.'

4.5.10 Actual experience with referring cases to courts

Many of the participants had no experience of referring disputes to the TAT or the courts. This was mostly the situation in Abuja. A participant from Enugu noted that there were hardly ever cases referred to the courts or the TAT for adjudication. TP 4 (in Abuja) stated: 'From experience the litigation process takes a longer time so in most cases I don't have experience with a particular taxpayer having [a] dispute or going to TAT for adjudication.' TP 5 (in Abuja) stated: 'To the best of my knowledge in the LTO here we have not had a case of going to court

[8] The quotes are provided in section 4.5.5.

or even TAT with any of our large taxpayers.' TP 2 (in Enugu) noted: 'The cost of maintaining legal officers is high. Legal cases don't come all the time, it is ok to have one or two legal officers to cover the entire region, and it will lead to cutting of costs.'

4.5.11 Audit function

Audit functions are carried out in separate offices in the FIRS. Although an audit may be a first step in the dispute resolution process with the taxpayer, it was observed by the participants to be carried out in different offices from the main tax office. TP 2 stated:

> Now currently the tax office and tax audit are seated differently and then the reconciliation is seated at the headquarters ie in three different places. The negotiation we do here [tax office] is not in respect of disputes from tax audit. Audit and reconciliation were domiciled in the same office up till July 2015. Reconciliation was not a unit.

TP 9 stated: 'We do desktop audit[s] only. Audit functions in FIRS [are]s done in different offices. Files are selected and taken to the audit office for audit. There are certain red flags that prompt FIRS to audit a company through desk top audit[s].'

4.5.12 Tax planning

TP 8 observed that taking the FIRS to court is a form of tax planning by some taxpayers to ease any cash flow problems:

> I don't want to speak for them, but I believe that sometimes this is a form of tax planning because they [taxpayers] think by the time they go to TAT it will take time, so by that time they have time for cash flow and begin to pay the tax in dispute. You know once it's in dispute, you can't do anything on that assessment until it is resolved.

4.5.13 Summary of the major points from the interviews with tax officers

- There is a varied understanding of the process of internal dispute resolution within the FIRS.
- There is a limited understanding of the hierarchy of courts, but a full understanding of the existence of the TAT.
- There is some loose knowledge about the manuals for internal dispute resolution. A comprehensive compilation of all the documents that may be used for dispute resolution is varied. Tax officers often apply the law directly because it is their 'Bible'.

- The manuals are applied differently in different tax offices and the decisions based on the manuals are not circulated to other tax offices to keep them informed on how particular issues were handled in the past.
- Tax officers have reservations about settling disputes in court. They are of the view that it is time-consuming and increases the cost of tax collection. They would rather resolve disputes internally outside the courts.
- The officers are of the view that force and a hard stance should not be the first approach in dealing with taxpayers; a diplomatic approach should be used and if it does not work, a harder stance and a court process may then be applied.
- Large firms, including oil companies, were generally described as tax compliant and wished to pay the correct amount of tax, no more and no less. They generally also have better tax advisors and employ big accounting firms to deal with their tax issues. Lagos is generally the most tax compliant region, while the south east is the least tax compliant.
- When there are conflicting court judgments by courts of commensurate rank, the FIRS continues with its prior practice until the decision is vacated by a higher court.
- Going to court is a form of tax planning for some taxpayers.

4.6 Legal officers

Five legal officers were interviewed for the research. They were designated Legal Participant 1 to 5 (LP 1 to 5). They were asked six main questions and, based on their responses, further probing questions were sometimes asked. The questions were about their preferred venues for the resolution of disputes, the documents used by the legal department as guidelines for the resolution of disputes, and their views on how well the tenets of good dispute resolution are implemented in the Nigerian tax dispute resolution process. They therefore gave their assessments on judicial independence, access to justice, procedural fairness, administrative and judicial discretion, and timeousness.

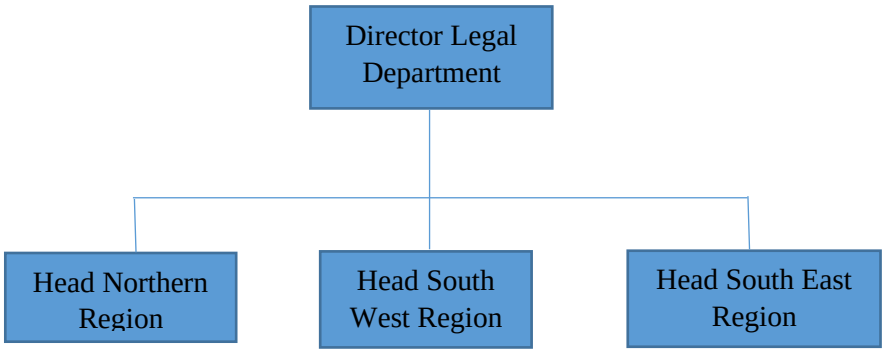
The interviews with the legal officers were conducted to give practical context to the information that is contained in the law reports. For instance, the law reports indicate that Lagos

zone has the greatest number of cases,[9] while the interviews explain the reasons why some cases are instituted directly in the Federal High Court and not first in the TAT. Furthermore, some tenets of good dispute resolution (assessed in the next chapter) are better evaluated with the aid of oral interviews. Some tenets are not easily discernible from the law reports. For instance, aspects of judicial or administrative discretion are not captured in the law reports as their assessment is subjective.

The researcher takes cognisance of the fact that in assessing the tax dispute resolution process only lawyers of the FIRS were interviewed. Questioning private tax lawyers on the issue would conceivably have given a different perspective to the interviews. Furthermore, just as in the interviews of tax officers, the researcher is aware that interviewing a different set of FIRS lawyers may have provided a different view of the process; nevertheless, the data collected is still relevant to the research.

Below is an organogram of the FIRS legal department as at the time of writing (December 2017).

Figure 4.2: Organogram of the FIRS legal department



Source: Author

4.6.1 Profile of participants

The participants were drawn from the directorate, the managerial and the officer cadre of the legal department. They were heads of legal sections of the department in different geopolitical zones of the country, namely, north central, south west and south east. Some of the participants

[9] See Annexure 1.

were heads of litigation in the respective regions. They had been employed in the FIRS for between seven and ten years.

4.6.2 Preferred venue for litigation

Four of the five participants preferred the TAT to the Federal High Court. However, their reasons for preferring each venue differed. They were mostly of the opinion that cases were concluded faster at the TAT, particularly because it was an administrative body or some form of inferior court. The lone participant who preferred the Federal High Court did so because she was of the opinion that procedures used by the court were more varied than what was obtainable at the TAT. By using the term 'varied', the officer meant that actions may be commenced by originating summons and not only by notice of appeal as obtains in the TAT. In addition, they may also commence an action by filing through the undefended list.

In respect of the issue LP 1 stated: 'Why we prefer TAT is the fact that it's quicker. They undertake summary trial instead of the Federal High Court where they go into full trial for tax matters.' LP 3 opined: 'I know that the Federal High Courts are quite loaded, so I prefer the TAT because they are experts, and they are not as loaded with cases as the regular courts.' LP 5 noted:

> When we file at TAT generally, we get more speed in respect of resolution of cases. At the Federal High Court, it is more procedural and takes more time for us to resolve our cases. But because the TAT is quasi-judicial in nature, the decisions are more summary, and we get judgment faster.

The only participant to prefer litigating at the Federal High Court, LP 2, stated: 'I prefer handling cases at the Federal High Court because I find it faster, and the procedures there are more varied. The judges know more about the law and the technicalities ...'

4.6.3 Documents for choosing a venue

Two of the participants noted that there were no written directives on choosing a venue for litigation. The other participants did not give an answer about the documents for choosing a venue. LP 1 stated: 'Well there is no directive from director of legal because we know the rules guiding when the matter is ripe for trial', while LP 5 noted: 'We do not have a formal directive as to where to pick our venues but lawyers at the legal department generally file first at the TAT because the processes are simpler and not so complicated, so we believe our cases get done faster.'

4.6.4 Zones with the most cases and knowledgeable tax advisors

There was convergence with tax officers in the observation that Lagos had the most knowledgeable taxpayers and advisors, while Enugu had the least knowledgeable taxpayers and tax advisors. Lagos was also identified as having the greatest number of cases. Identifying Enugu as having problematic taxpayers, as was acknowledged by TP 1, LP 2 stated: 'That's the problem I have with taxpayers. I find myself often explaining to taxpayers what taxes they are supposed to have paid and even helping them to calculate their taxes. They do [hire lawyers] and the lawyers have no idea about the tax laws.'

In respect of identifying the region with the most tax disputes, LP 3 stated:

> We have the most cases in Lagos, that's where the multinationals and all the big companies are. … 54% of VAT is collected from Lagos state. [We have] 500 cases, all over the country. Mostly in Lagos but scattered. The volume depends on the number of businesses done and the number of companies.

LP 5 noted that 'most of the cases emanate from Lagos. I will say 70 per cent emanate from Lagos.

The legal officers' assessment tallies with reported cases. Of the 70 decided and published TAT cases within the review period, 65 are from Lagos, four from Abuja and one from the south south zone. Reported Federal High Court cases follow a similar pattern: of the 36 cases, 21 were decided in Lagos.

4.6.5 Tax criminal cases

LP 4 proposed that the FIRS should sue defaulting taxpayers more for evasion and other criminal breaches. She observed that there were very few cases on criminal breach of tax obligations and opined that the FIRS should sue more often. She stated: 'We need to do more criminal matters. The tax law provides for this. I feel that if we sue on criminal matters more, we will have more compliance.'

The legal officers are correct. As at the time of writing (December 2017), there is no concluded reported criminal case involving a taxpayer. The pending criminal cases relate to former employees who have forged Tax Clearance Certificates and do not involve errant taxpayers.

4.6.6 Forum shopping

Some of the participants explained that they chose venues for litigation based on what benefits they hoped to gain, and implied that the taxpayers also did so. (The information about private

tax lawyers also forum shopping was not verified.) It is contended that forum shopping is not a negative aspect of the Nigerian tax dispute resolution process, as venue selection is motivated by what the taxpayer hopes to achieve ie based on the relief sought. LP 4 stated:

> Yes, we have also discussed it in meetings but there are cases based on [certain] processes [where] we go to the Federal High Court. Cases on originating summons, we don't call witnesses but go to the Federal High Court so that it's faster. Once the court pronounces on the issues, that's it. Ie for cases on interpretation of the law.

LP 1 noted:

> Well, we always file first in TAT or if the amount is so high we may decide to go to Federal High Court. If we feel it is not contentious, we go to Federal High Court. When we feel the defendant cannot raise issues that will involve full trial we can go under the undefended list. We go to TAT for contentious matters because it is tried in a summary manner. We also go to TAT because the panelists are more knowledgeable, we have accountants, lawyers, auditors who are experienced in tax matters.

LP 5 observed: 'The reasons we consider are expediency and speed. When we file at TAT generally, we get more speed in respect of resolution of cases. At the Federal High Court, it is more procedural and takes more time for us to resolve our cases.' On whether taxpayers forum shop, he stated:

> It depends on what the taxpayer is hoping to achieve. If he believes he has a good case and he wants quick justice, he generally goes to the TAT but if he believes that what serves him is to drag the case as far as possible, he goes to the Federal High Court where he can make many applications to drag out the case.

4.6.7 Who sues first?

The legal officers noted that in most of the cases, taxpayers take the FIRS to court first. This view is shared by some of the tax officers, as TP 1 also noted that taxpayers sue first. With regard to this issue, LP 4 stated: 'In [the] majority of cases, it is the taxpayer that goes to the tribunal first.' LP 3 agreed with the position, stating: 'Well it all depends on the taxpayer because they take us to court in some cases.'

The FIRS officers' position aligns with the law reports. The tax authority sued first in only 11 out of 70 reported cases at the TAT and nine out of 36 reported cases at the Federal High Court within the review period.

4.6.8 Administrative panel

Some of the participants considered the TAT to be an administrative panel. LP 2 noted: 'But if you go to the TAT, it's more of an arbitral panel. They really want to go about it to talk about it which really the law doesn't allow them to do but they want to do so; it's arbitration and

mediation.' LP 5 opined: 'Because the TAT is quasi-judicial in nature, the decisions are more summary, and we get judgment faster. Probably a judgment that would have taken over one year or two years can be obtained in six months at the TAT.'

4.6.9 Tenets of dispute resolution

4.6.9.1 Judicial independence

All the participants assessed the TAT panel and Federal High Court judges as being generally independent. Some of the participants noted that both venues were equally independent. However, some participants noted that the fact that the TAT and the FIRS were supervised by the same ministry would give the Federal High Court more of an appearance of independence. LP 1 stated: 'TAT members are paid by FIRS; Federal High Court judges are paid from funds collected by the federal government, so they have to be unbiased. Well, I think Federal High Court judges must be more independent by virtue of their oath of office.' LP 2 gave a detailed explanation as to why she believed that the TAT panellists were as independent as Federal High Court judges:

> I would say that they are equally independent, although the TAT is paid by FIRS, I notice that they really do strive to maintain independence ie the commissioners. For instance, I had a training recently where I met a fellow lawyer from a different state coordination office, and she said the commissioners do not even speak to the lawyers once they are outside the tribunal. She particularly met one of them somewhere outside office hours, and she went and greeted him and once he realised who it was, he quickly ended the conversation and moved away.

LP 3 assessed the independence of the TAT panel by noting that, since the TAT had the same supervising ministry as the FIRS, it appeared to reduce the independence of the panel. He stated: 'The courts are more independent because our supervising minister also appoints the commissioners. So there is a kind of relationship between the two. In fact, we and the TAT are of the same parents.' LP 4 noted that both venues were equally independent although litigants may be quick to claim bias where they lose a case: 'There is no reason to be swayed one way because one person pays your salary. You have to do justice. Litigants may be quick to assume bias where they lose a matter. Losing a matter does not mean a judge has been compromised.'

Speaking in a similar vein, LP 5 noted: 'So generally taxpayers, especially when they lose, believe it's because the TAT is not fully independent of the FIRS.' He also raised the issue of the FIRS funding the TAT:

> There is a presumption of independence when it comes to both venues, the fact of the matter however is that the TAT is fully funded by the FIRS including its commissioners,

> staff and paraphernalia. The Federal High Court is funded by the government independent of the FIRS, so in fact it would appear that judges at the Federal High Court are more independent than commissioners of TAT.

4.6.9.2 Access to justice

The participants noted the divide in the different regions where they were stationed. The Enugu participants noted that they mostly dealt with low-end, ill-informed taxpayers. The Lagos participant noted that he dealt with high-end taxpayers that also generally had the capability to sue at the highest courts. There was some convergence with some of the observations of the tax officers as TP 6 stated that big companies pay the correct tax, no more or no less, and if their tax liabilities are not correctly computed, they sue as they have the means to do so. This aligns with the observation of LP 5 stationed in Lagos.

At the time of writing, both LP 1 and LP 2 were stationed in Enugu. LP 1 noted: 'We have lower end taxpayers, because high end taxpayers have the money and pay their tax more than low end taxpayers.' LP 2 stated:

> We tend to have cases more with low end taxpayers here ... The issue I find with them is that they really don't know the law and their duties and responsibilities. They are not aware they are to pay this or that kind of tax and so many times you have a case against them and they come to court and are befuddled. They feel the system is cheating them.

LP 4 said: '[We have] high end, especially in Lagos. They have awareness and often sue us on allowable expenses, recharges etc.' LP 5 stated: 'The high end taxpayers actually take FIRS to court more because they understand their rights and liabilities better and employ good hands as tax advisers.'

4.6.9.3 Procedural fairness

The participants observed that TAT proceedings were summary in nature but were useful in reducing resolution times, as elaborate court rules often led to lengthened resolution times. LP 1 noted: 'They are the same thing because at the TAT they carry notices just like in Federal High Court. No marked difference, and you can always appeal.' LP 3 stated: 'Like I said the TAT is not tied down by rules of evidence they always get their facts from any source they want to get.' LP 5 observed: 'Well, I think there's fairness on both sides because the procedures are spelt out in the rules.'

4.6.9.4 Discretion

Most of the participants opined that discretion was better used in the court than in the TAT. LP 3 noted: 'Under our judicial system a judge sits alone but there are four or five people at the TAT. A lot of discretion comes into play. Everyone will want to have their own say, so there is room for accommodation of other opinions other than yours, so there is more latitude for discretion.' LP 4 observed: 'It's better utilised in court. For instance, where the TAT gives an order, you cannot enforce it unless you go to the Federal High Court to ratify it, but once a judge makes a pronouncement, it's as good as the law.' LP 5 stated: 'The judges at the Federal High Court are more experienced in law and legal procedures and also in when to utilise discretion. I believe they have a better handle on the use of discretion than the commissioners at the TAT.'

4.6.9.5 Timeousness

Four of the five participants were of the view that the TAT was a faster venue for the resolution of disputes than the Federal High Courts (see section 4.6.2 above). LP 4 also gave timelines for filing court or TAT processes: 'The rules of court have laid down the procedure, 30/20 days. If you fail to file there are penalties. ₦200 in the court, from the first day that you refuse to file, you continue paying. So the rules of court and TAT have made provisions.'

4.6.10 Summary of findings on interviews with legal officers

- Most of the lawyers prefer litigating at the TAT because it is believed to be faster than the Federal High Court.
- There is no directive on where to commence cases. FIRS lawyers, however, do not always have control over where cases are first instituted because most cases are brought by the taxpayer and that determines where disputes are commenced.
- Most of the interviewees viewed both the TAT and the Federal High Court as being independent but noted that because of the separate funding and supervision of the Federal High Court from the FIRS, it is more independent.
- The participants were satisfied with the summary nature of TAT proceedings as this often led to quicker resolution times.

- The participants' views on the category of taxpayers that have disputes with FIRS tallied with the assessment of tax officers. Disputes were with high income taxpayers in Lagos, and with low income taxpayers in Enugu.
- The legal officers were mostly of the opinion that discretion was better utilised at the Federal High Court.

4.7 Conclusion

The chapter has assessed the Nigerian environment by interviewing tax and legal officers of the federal tax collecting agency, the FIRS.

The interviews of tax officers showed that in-house dispute resolution was mainly ad hoc, there being limited rules on how it should be carried out. This was evident in their answers to questions about the tax dispute resolution process and the documents for the process. This also exposed a lack of record keeping by the tax authority. Interviews of the tax officers showed regional differences in taxpayers' understanding of the dispute resolution process: high net worth companies stationed in Lagos understood the issues surrounding taxation and the mode of resolving disputes better than lower income taxpayers. The underlying disclosure from the interviews of tax officers was that they preferred resolving disputes outside the formal adjudication process, whether courts or tribunals, as they believed that resolving disputes in courts or tribunals slowed down the tax collection process.

The legal officers were interviewed in order to assess their views on how well the tenets of good dispute resolution examined in chapter 2 were adhered to in the Nigerian process. The participants generally viewed the TAT panellists as independent, because the TAT is established by statute, and commented favourably on the integrity of the members in ensuring they were impartial. However, they noted that since the source of funding of the TAT was indirectly tied to the FIRS, this made the panellists appear to be less independent than judges of the Federal High Court. In respect of access to justice, the interviewees felt that while filing at the TAT was cheap and encouraged access to the tribunal by all levels of taxpayers, as a result of the limited understanding of the tax process, many of the taxpayers were nevertheless still not availed of the services of the tribunal. There was a general view that the procedures at the TAT were simple and beneficial as cases were tried in a summary manner. The respondents were of the view that discretion was not so well utilised at the TAT since not all the panellists

were lawyers. Finally, concerning timeousness, they were all of the view that the process at the TAT was faster.

The interviews of the two cadres of officers are cross-referenced in a holistic assessment of the Nigerian environment in the next chapter.

CHAPTER 5: THE NIGERIAN TAX DISPUTE RESOLUTION ENVIRONMENT MEASURED AGAINST THE NORMS OF GOOD DISPUTE RESOLUTION

5.1 Overview

This chapter assesses the norms of good dispute resolution in Nigeria based on the norms earlier identified in the second chapter, namely, judicial independence, access to justice, procedural fairness, discretion and timeousness. To achieve this, reported cases of the Tax Appeal Tribunal (TAT) as well as tax-related cases of the Federal High Court, and in relevant instances, the Court of Appeal and the Supreme Court are evaluated. The empirical research in chapter 4 is also employed in assessing the Nigerian environment. Therefore, the interviews of the legal and tax officers are juxtaposed with what is contained in the law reports.

The aim of this chapter is to conclude the discourse on Nigeria and to give a fuller assessment of the tax dispute resolution environment in order to make recommendations in the final chapter on the direction in which the jurisdiction should move. In respect of the interviews, the expressed views of the legal officers of the FIRS often tallied with what is contained in the law reports, with a few exceptions. For instance, the legal officers were mostly of the view that disputes were more quickly concluded in the TAT than in the Federal High Courts, but the law reports reveal that cases within the review period were concluded more quickly at the Federal High Courts. Some of the tenets of good dispute resolution are easily determinable as the indices for determining how well they function can be assessed with ease, while other tenets are more implicit and not as easy to measure. Tenets like timeousness and judicial independence are consequently clearly calculated, while access to justice, procedural fairness and discretion are not so easily measured. The individual tenets are measured in sections 5.2 to 5.6.

5.2 Judicial independence

As noted in section 2.5.1, the TAT is set up under section 59 of the Federal Inland Revenue Service Establishment Act (FIRSEA) 2007. Some of its structural weaknesses were highlighted in section 3.5.5.1, but the body has functioned well, despite these perceived shortcomings. The TAT will be further assessed in this section in respect of the other components of judicial independence: (a) financial autonomy; (b) impartiality; (c) mode of appointment of members; and (d) the secretariat of the tribunal.

It is suggested that there is no definite way of assessing the impartiality of members of the TAT panel. One school of thought is that a tax panel's impartiality can be assessed from the fact that most disputes are decided against the tax authority.[1] This argument is not an unassailable indication of the impartiality or otherwise of a panel. The tax authority could lose most of its cases simply because it had a bad case in the majority of the disputes, or the taxpayers had better lawyers or better representation. It cannot be assumed that cases must go against the tax authority for a court to be deemed impartial, but it could to some extent be an indicator of the fairness of a tax adjudication panel.

In respect of financial autonomy, section 84(2) of the 1999 Constitution provides that the remuneration of judges (recurrent expenditure) shall be by a charge on the consolidated revenue fund of the federation. Oyewo and Oluyede argue that capital expenditure is not explicitly provided for and that this reduces the independence of the judges.[2]

The TAT panel does not include any serving member of the judiciary and the (non-judge) panellists will be assessed. The panel is appointed by the Minister of Finance and remunerated through the same ministry with the approval of the Revenue Mobilisation Allocation and Fiscal Commission. Paragraph 6 of the Fifth Schedule to the Federal Inland Revenue Establishment Act (FIRSEA) provides:

> The salary and allowances payable to and the terms and conditions of service of the Tax Appeal Commissioners shall be determined by the Revenue Mobilisation Allocation and Fiscal Commission and shall be prescribed in their letters of appointment.

The financial provision for the remuneration of the TAT panel is removed from the FIRS, but this has not eliminated the perception that the TAT is somehow financially closely tied to the FIRS.[3] While the provision above provides for sums payable to the TAT panellists, it is silent on the source of funding for the salaries. The perception of the TAT being closely tied to the FIRS could reduce its independence as perceptions sometimes cloud reality. The interview with a legal officer reinforced this, as the officer described the TAT and the FIRS as having the same parents.

---

[1] Mukesh Butani *Tax Dispute Resolution Challenges and Opportunities for India* (2016) 102. The author opines that the fact that most disputes in tax cases at the Indian High Courts and Supreme Court are resolved in favour of the taxpayer is a good indication of the impartiality of judges.

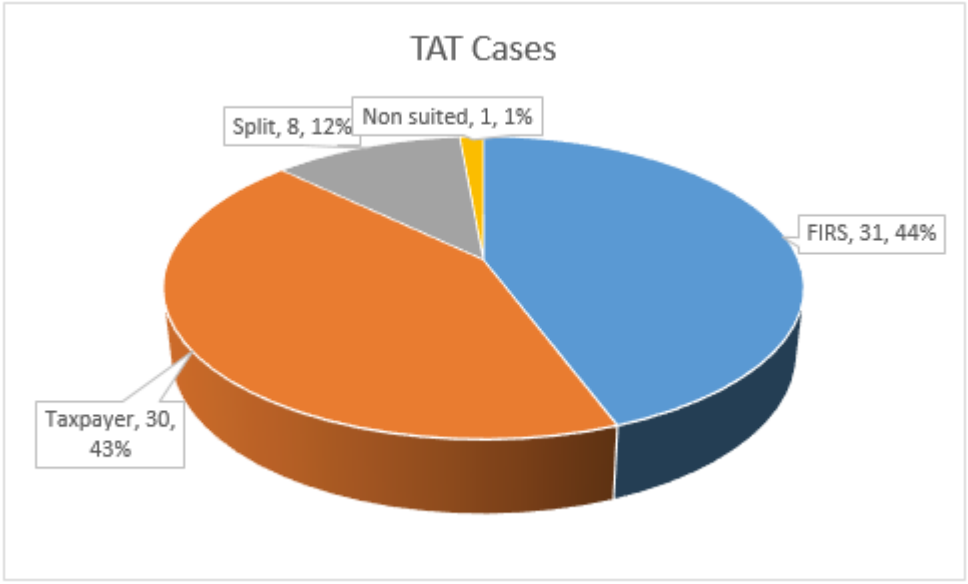
[2] See Oyelowo Oyewo *Constitutional Law in Nigeria* (2012) 103 and Peter Oluyede *Constitutional Law in Nigeria* (2001) 293.

[3] See *FIRS v General Telecom Plc* [2012] 7 TLRN 108. The issue of the TAT panel being paid by the FIRS was raised in this case.

As noted in section 4.6.9.1, the legal participants generally were of the view that the TAT was independent; however, they also noted the fact that the TAT panel sometimes appeared to be not as independent as the Federal High Court as a result of their being supervised by the same parent ministry as the FIRS (LP 1) or being fully funded by the FIRS (LP 5). However, one of the participants also went to great lengths to show why she believed the panellists were independent because they avoided socialising outside the tribunal (LP 2). However, the TAT members work and need to be paid, so it is suggested that the source of the payments should be moved as far away from the FIRS as possible.

Another component of judicial independence is impartiality. A total number of 70 cases (with the FIRS as a party) were decided by the TAT from 2011 to mid-2016 (volumes 1 to 25 of the Tax Law Reports of Nigeria). Of this number, 31 were decided in favour of the FIRS, 30 in favour of the taxpayer, eight had mixed outcomes, and one was non-suited. The tally for and against the tax authority was therefore close.

Figure 5.1: Reported cases of the Tax Appeal Tribunal showing cases in favour of the FIRS, the taxpayer, and mixed outcomes



Source: Author

The independence of the TAT has also been challenged by some litigants. In *FIRS v General Telecom Plc*,[4] one of the issues for determination was whether the composition of the TAT violated the rule against bias. The court held that:

> By their very definition, administrative tribunals are appointed by the ministry, department or agency of the executive branch that needs them to facilitate statute administration. Often the members are appointed from within the relevant department without violating the nemo judex dogma. In the case of TAT, the minister of finance went the extra mile to secure the independence and impartiality as required by the Constitution by inviting applications from the general public of lawyers, accountants and tax experts for the position of tax appeal commissioners. None is a staff of FIRS or the ministry of finance …[5]

Another aspect of the assessment of judicial independence for the TAT is the composition of the secretariat. The secretariat of the TAT is made up of FIRS staff and this could diminish its independence. However, realistically, the secretariat should work closely with the staff of the tax authority as all cases in a Tax Court or tribunal emanate from the tax authority and, in this instance, the FIRS. The TAT was set up specifically to handle tax cases and FIRS members of staff are well positioned to work as secretariat staff of the tribunal.

In conclusion, despite some of its noted constraints, the TAT has shown itself to be largely independent. It is suggested that questions about its independence and impartiality are usually raised when litigants lose a case and they stay silent when they win. As earlier noted by LP 4: 'Litigants may be quick to assume bias where they lose a matter. Losing a matter does not mean a judge has been compromised.'

5.4 Procedural fairness

Nigerian tax disputes were dominated by constitutional issues about the correct tier of government to collect consumption taxes and also whether the TAT was constitutional. This has left limited challenges to the procedural means to access justice in the courts or the TAT. As noted above, procedural flaws in the TAT may only become an issue with time. The TAT rules were evaluated in section 2.5.5.1 and were found to be very basic.[6]

Another reason why the TAT procedure was usually not challenged is that it is seen to be either an administrative tribunal[7] and thus not bound by the strict rules of evidence, or an inferior court and also not bound by strict procedures. As noted in the preceding paragraphs, only LP

[4] *FIRS v General Telecom Plc* supra note 3.
[5] At 130.
[6] See sections 2.5.5.1 and 2.5.5.6. The TAT rules were found to be basic when compared to the Tax Court rules.
[7] This was the pronouncement of the court in *FIRS v General Telecom Plc* supra note 3.

2 preferred the procedures of the Federal High Court. All the other legal officers saw the advantages of the fluid nature of the procedures at the TAT. LP 3 noted: 'I prefer the TAT because the commissioners are experts and they understand the technicalities involved in tax law interpretation.' He further described the TAT as an inferior court, stating: 'They are not tied down by the technical rules of evidence and they are also not bound by judicial precedence because they are inferior courts.' LP 5, who is stationed in Lagos, cited the congestion of the courts as one of the major problems of tax dispute resolution: 'At the Federal High Court there is the issue of high work load for the judges. The judges are overworked and cases take so long ...'

The officers also spoke about the issue of forum shopping. They explained that they often chose a venue based on what they hoped to achieve. For instance, they may choose to litigate first at the Federal High Court if the disputed tax is high or the matter is not contentious. They also sue at the Federal High Court where the taxpayer has little defence to a suit and the matter is commenced through the undefended list, but they litigate at the TAT for contentious matters because disputes are tried in a summary manner.

The expertise of the TAT panel in respect of factual matters (as opposed to matters turning on the law) is also highlighted. The TAT rules make a distinction between issues turning on law and fact. Thus, order XXIV of the rules provides: 'Any party dissatisfied with a decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary within 30 days from the date on which such decision was given.' The TAT panellists were therefore assessed by legal officers to be efficient on questions turning on facts about which there is no right of appeal in accordance with the TAT rules.

TAT proceedings are open to the public and its decisions are published, showing the names of the parties. Within the review period there were no cases dealing with challenges to the confidentiality and privacy of taxpayer information.

In conclusion, the TAT procedures, although summary in nature, are often beneficial, especially in respect of the speedier resolution of disputes. However, the Federal High Court is a better venue if there is a need for varied processes, eg the undefended list, originating summons (as opposed to notice of appeal).

5.3 Access to justice

Access to justice can be evaluated by assessing (a) knowledge of the right to access courts or tribunals; (b) the procedural means to access the rights; and (c) the costs of obtaining justice. The reported tax cases in the Tax Law Reports of Nigeria show that oil and gas companies or high income taxpayers use the courts or tribunals the most to resolve disputes. They also sometimes initiate some form of ADR to resolve disputes. TP 6 explained that an oil company initiated an 'enhanced relationship' with the FIRS where the FIRS and the oil company engaged on a quarterly basis on issues of dispute resolution.

In terms of assessing how knowledgeable Nigerian taxpayers are about the different means of resolving tax disputes, the answer depends on who is polled. There was convergence in the assessment of legal officers and tax officers that knowledge of tax dispute resolution processes available to taxpayers is directly related to where a taxpayer is stationed. Lagos taxpayers, in particular, who pay the most tax, are the most knowledgeable about their rights and how to enforce them. Enugu taxpayers and their tax advisors, on the other hand, are the least knowledgeable. Apart from regional variations in taxpayer enlightenment, oil and gas companies are also very knowledgeable about their rights.

As earlier noted, TP 8, who is based in Lagos stated: 'They [taxpayers] are aware of our internal processes. Before you say anything, they have reported you to the state coordinator or written to the management so they are aware ...'. TP 6 also identified Lagos taxpayers as being knowledgeable about tax issues. Legal participants stationed in Lagos, or who had at some time been stationed in Lagos, spoke in a similar vein. LP 4 noted that taxpayers were aware of their right to recompense. She stated: 'High end [taxpayers], especially in Lagos, have awareness and often sue us on allowable expenses, recharges etc.'

On the other hand, Enugu was said to have low tax compliance and low awareness of dispute resolution options. TP 1 stationed in Enugu noted that tax evasion was high in the area. Agreeing with the assessment of a lack of tax awareness in Enugu, LP 2 explained her frustration at the very limited understanding of tax laws and dispute resolution mechanisms flowing from it.

The observations of the participants are correct because of the 70 reported cases from the TAT within the review period, 65 are from Lagos and there are no cases from Enugu. However, there are pending cases from Enugu on the legal department roster. There is therefore a vague

understanding of the dispute resolution processes in the least tax compliant region of Enugu, while there is the most awareness in the highest tax compliance region of Lagos.

In respect of the segment (as opposed to the region) of taxpayers that are most aware of their rights, it can be inferred that for now the oil and gas taxpayers are most aware. Of the 70 reported cases of the TAT within the review period, the oil and gas companies are parties in 46 cases. However, disputes with non-oil and gas taxpayers have shown a steady increase and dominate the pending cases. The legal department register at the time of writing (December 2017) indicates that there were a total number of 440 cases pending between the FIRS and non-oil and gas companies between 2012 and 2016, while there were 176 cases with oil and gas companies within the same period. The deduction that can be made from the figures is that taxpayer awareness on tax and tax dispute resolution is generally on the increase.

In respect of the adequacy of the TAT rules, although this will be evaluated in more detail below (section 5.4), this will be partly addressed here. So far, the rules of the TAT have not been in issue. In fact, some of the participants repeatedly stressed that the rules are clear and certain abuses cannot arise in the system because of the provisions in the rules. LP 3 stated: 'They [TAT] open their doors wide for taxpayers to complain. So [an] approach to the tribunal is more elastic than that of the courts.' LP 4 stated: 'The rules of court have laid down the procedure. If you fail to file there are penalties. ₦200 in the court, from the first day that you refuse to file, you continue paying.'

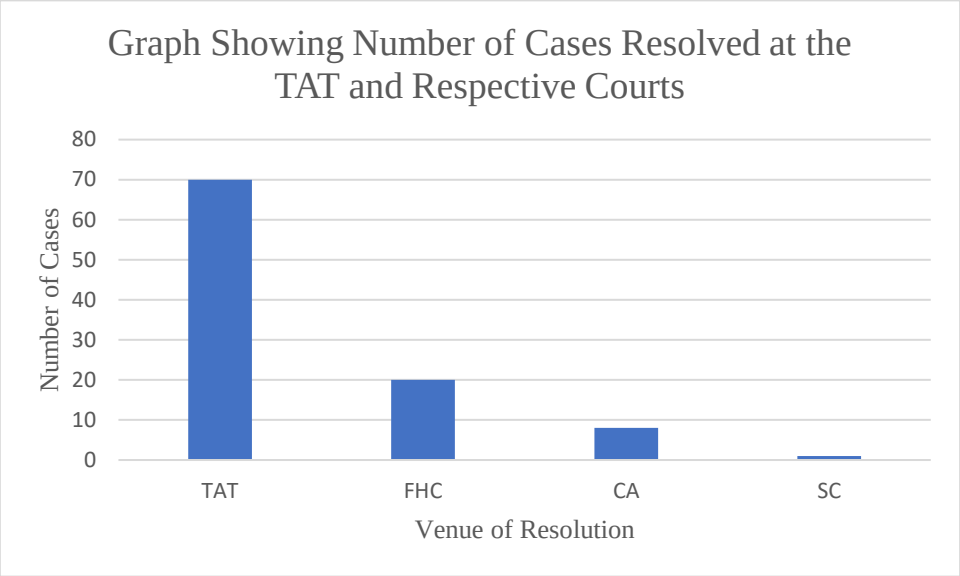
Evaluating whether the TAT rules are adequate will only arise with time, however, ie when the TAT runs continually and develops, and the flaws inherent in the system become more discernible.

In respect of the costs of dispute resolution at the TAT, four of the five legal participants noted that it is faster to resolve disputes at the TAT than in the Federal High Court (this is discussed in more detail in section 5.6). The costs of the resolution of a dispute are affected by whether it goes on appeal. There is no restriction on appealing to the Nigerian Supreme Court for tax matters; in spite of this, there was only one reported concluded case within the review period in which the FIRS was a direct party.

Eight cases were resolved in the Court of Appeal and 20 cases in the Federal High Court, as from 2011 when the first TAT cases were concluded. Also worthy of note is that most of the cases on appeal involve oil and gas companies. This indicates that at the time of writing the big

oil and gas companies were best placed to sue in the appellate courts (see Annexure 1 for details of cases decided at the TAT or in the legal department register within the review period).

Figure 5.2: Number of tax cases decided at the Tax Appeal Tribunal and the Federal High Court from 2011 to mid-2016, and the Court of Appeal and the Supreme Court from 1993 to mid-2016



Source: Author

In conclusion, tax dispute resolution is generally at a rudimentary stage in Nigeria.[8] As LP 3 noted, tax dispute resolution is still in its infancy in Nigeria and needs to be developed. Furthermore, there is reasonable knowledge about the tax dispute resolution options although there is room for improvement in taxpayer awareness, especially in regions of the country that are not as tax compliant as other regions, like the south east.

5.5 Discretion

Discretion arises administratively where tax authorities apply it to resolve issues with the taxpayer, and judicially in Tax Courts or tribunals in respect of how trials are conducted.[9] An aspect of administrative discretion by the FIRS was examined in respect of the issuance of

[8] Although South Africa will be examined in chapters 6 and 7, an assessment of Annexures 1 and 2 shows that there are many more cases decided in the South African tax dispute resolution arena when compared to Nigeria. The higher number of cases is reflected in all the forums in the Annexure, including the Tax Court/TAT, the High Court/Federal High Court or even the SCA/Court of Appeal.

[9] The IMF/OECD Report for G20 Finance Ministers for March 2017 at 48, available at http://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf [11 August 2017]. The document also provides that 'dispute resolution in tax matters should be structured to include an independent, workable and graduated dispute resolution process comprising an administrative and a judicial stage.'

rulings clarifying the law, and FIRS practice has so far led to lawsuits (see sections 3.6.2.1 and 3.6.6.1). Also, as noted in section 2.5.4, discretion is applied by the tax authority in practically every aspect of its functions and this is reflected in phrases repeatedly found in Tax Acts, such as 'in the opinion of the Commissioner', 'to the satisfaction of the Commissioner' and 'what the Commissioner considers just and reasonable'. Therefore, administrative discretion by the tax authority arises even when deciding to accept or reject a filed return, as well as when issuing a ruling.

The interviews with tax officers described in what circumstances they need to apply discretion. TP 3 stated that his duties include deciding allowable and non-allowable deductions. These decisions may lead to litigation and the resolution of disputes in the TAT or the courts, for instance, whether they accept or reject a tax return and re-compute to figures deemed more probable, whether to accept a taxpayer's grounds and reasons for objection to a re-computation, whether to audit a taxpayer if there are red flags on his returns, whether to call for a reconciliation meeting, and what sum to accept as tax after reconciliation or another type of resolution.

Decided TAT and Federal High Court cases show what decisions of the tax authority are most challenged. As noted in earlier sections, some of the issues in the courts or the TAT are not in respect of tax issues but address foundational or constitutional issues. Listed below are the issues on which decided tax cases at the TAT are mostly based.

The major issues of dispute at the TAT are:[10]

a. Assessments – when is an assessment final and conclusive, what constitutes fair assessments, additional assessments, and best of judgment?

b. Allowable deductions – is interest on loans from a related party at arm's length and therefore deductible?

c. Non-resident companies – recharges, turnover assessments for non-resident companies.

d. Procedural issues – pre-action notice, stay of execution of judgment or proceedings, joinder of parties.

[10] Compiled from reported cases of the Tax Law Reports of Nigeria, volumes 1 to 25, and listed in order of summarised 'issues' that occur the most in the reports. Also see Annexure 1.

e. VAT – is the taxpayer liable for VAT and at what rates, the effect of not filing VAT returns, is the destination principle applicable in Nigeria?

f. Does the TAT violate section 251 of the Constitution?

g. Should the crude oil price be at realisable price or official price?

h. What amounts to a fixed base for non-residents?

i. Can a Petroleum Sharing Contract override the provisions of the Petroleum Profits Tax Act?

j. Withholding tax.

k. Tax laws being in conflict with tax incentive Acts.

l. Taxation of dividends and royalties and the appropriate rate for same.

m. Tax exemptions.

n. Who should remit Pay as You Earn (PAYE)?

o. Res judicata.

Administrative discretion by the FIRS as opposed to judicial discretion by the TAT will be evaluated later in this section; however, by assessing the issues in dispute at the Federal High Court, it can be deduced that many of the cases do not address challenges to TAT procedures or discretion.

A list of the most litigated issues at the Federal High Court is as follows:[11]

a. Who is the correct party to collect consumption tax: the FIRS or state governments?

b. Can the TAT adjudicate on a dispute in view of section 251 of the Constitution?

[11] Compiled from the reported cases of the Tax Law Reports of Nigeria, volumes 1 to 25, and listed in order of summarised 'issues' that occur the most in the reports (see Annexure 1). Issues at the Court of Appeal also show a predominance of constitutional issues, while the lone decided Supreme Court case within the period is about allowable deductions. The issues at the Court of Appeal concern:

a. Is the VAT tribunal unconstitutional in light of section 251 of the Constitution?
b. Assessments, capital allowance.
c. Allowable deductions.
d. Does the FBIR have the power to impose penalty and interest on VAT?
e. Taxability of non-resident companies.
f. Procedural issues.
g. Can tax disputes be arbitrated?

c. Procedural issues of execution, pre-action notice, *locus standi* and joinder of parties.

d. Assessments – when is an assessment final and conclusive, additional assessments, best of judgment?

e. What transactions or services are subject to VAT?

f. Should disputes first go to the BAC before going to the Federal High Court?

g. Can tax disputes be arbitrated?

h. Allowable deductions – recharges.

i. What is the correct way of pricing crude: at realisable price or official price?

j. Turnover tax for non-resident companies.

k. Capital allowance claims.

l. Taxation of dividends.

m. Are transactions of a capital or revenue nature?

n. Fixed base.

o. Tax incentives.

In respect of judicial discretion, not many cases at the Federal High Court challenge the TAT discretion. However, the interviewed FIRS lawyers listed what they deemed to be the weak and strong points of the TAT panel. They noted that although the panel was very efficient with regard to tax matters, not all the panellists were lawyers; therefore, procedural issues, including the use of discretion, were not addressed as efficiently as at the Federal High Court.

Particularly in respect of discretion, the lawyers noted the following. LP 5 stated: 'The judges at the Federal High Court are more experienced in law and legal procedures and also in when to utilise discretion. I believe they have a better handle on the use of judicial discretion than the commissioners at the TAT.' LP 4 observed: 'It is better utilised in court. For instance, where the TAT gives an order, you cannot enforce it unless you go to the Federal High Court to ratify it, but once a judge makes a pronouncement, it's as good as the law.' LP 3 did not view discretion solely on the basis of where it is better applied, but rather in terms of numbers. He was of the view that because there are more people at the TAT, there is a wider pool of persons applying discretion to a case:

> Under our judicial system a judge sits alone but there are four or five people at the TAT. A lot of discretion comes into play. Everyone will want to have their own say so there is room for accommodation of other opinions other than yours, so there is more latitude for discretion.

In conclusion, the FIRS' use of discretion has often been appealed against at the TAT and in the Federal High Court. However, the TAT has not been challenged about its use of discretion and this indicates that it has not veered from its mandate.

5.6 Timeousness

As a general observation, the parameters for defining the calculation of time for tax cases are hard to frame (as distinct from measuring the time). Once the parameters are defined, the time is clearly measurable. The calculation of time for resolving tax cases can be done based on the year of assessment (YOA) or the year of objection (YOO). Year of assessment refers to the tax year for which the assessment arose, while year of objection refers to the year when the taxpayer objected to an assessment by the tax authority. It is contended that the calculation of time based on the year of assessment is not the best parameter because disputes do not always arise soon after a year of assessment. The calculation of time based on the YOO, it is opined, is a better parameter as it more accurately indicates the start of a tax dispute. In this section time is also calculated based on the time of filing an appeal at the tribunal or court.

The parameters used in calculating time for the resolution of tax cases are largely dependent on what is contained in the law reports. The Tax Law Reports of Nigeria indicate when a case is filed at the TAT, but they do not always indicate the YOA and they indicate the YOO in even fewer instances. The calculation of time based on the YOA is employed so as to directly compare the calculation of time for the resolution of tax disputes in Nigeria with South Africa.[12] Secondly, the calculation of time based on the year of filing was employed in order to determine whether resolving disputes at the TAT from the time of filing was faster than resolving this at the Federal High Courts. The calculation of time for the resolution of disputes in this section was therefore done from the year of assessment or filing to the year of judgment.

An observation on the time taken for the resolution of tax cases in Nigeria is that it takes a long time to resolve disputes if the resolution times at the appellate courts are included. As at the time of writing, only one reported tax case directly involving the FIRS had been concluded at the Supreme Court within the period under review – specifically, the case of *Shell Petroleum*

[12] This is addressed in chapter 8.

Development Company of Nigeria Limited v Federal Board of Inland Revenue.[13] The case was filed in the Supreme Court in 1994 and concluded in 1996. However, the dispute was in respect of the 1973 year of assessment. So, going by the YOA for calculating time, the case was concluded after 23 years.[14]

Furthermore, the pending disputes in the legal department roster show that some of the cases, particularly on the constitutionality of the TAT (and the now disbanded VAT tribunal), have been at the Supreme Court since 2009 and are yet to be concluded. As noted earlier, the cases may never be concluded as they could be withdrawn before conclusion. The case of *Stabilini Visioni Limited v Federal Board of Inland Revenue*[15] was instituted at the Supreme Court in 2009 and, as at the time of writing, has yet to be concluded. The matter deals with VAT returns for the 2000 year of assessment; therefore, if the calculation of time were based on the YOA, the time period would amount to a total of 17 years and counting. The case was first filed at the VAT tribunal in 2004 and, if the year of filing was employed, the time period would amount to 13 years and counting.[16]

Time calculations at the TAT show that, based on the YOA, cases were concluded on average under the five year mark in 2011 (4.5 years), above 5 years but under 6 years in 2014 (5.8 years), 2015 (5.8 years) and 2016 (5.06 years) and above 6 years in 2012 (6.5 years) and 2013 (7 years). The TAT has been in existence only since 2010 and the time periods reflect this (cases were assessed up to middle of 2016). It is not expected that there would be many cases decided beyond the six-year mark, except for carryover cases from earlier tax tribunals, namely, the BAC and the VAT tribunal.

The TAT should mainly be assessed on how quickly matters are resolved once filed in the tribunal. The FIRS should be answerable as to why time periods (based on the YOA) are so lengthy. This could be a reflection of the poorly coordinated in-house dispute resolution process. In addition, taxpayers tend to sue FIRS first and may thus be responsible for the late

---

[13] [2009] 1 TLRN 218.

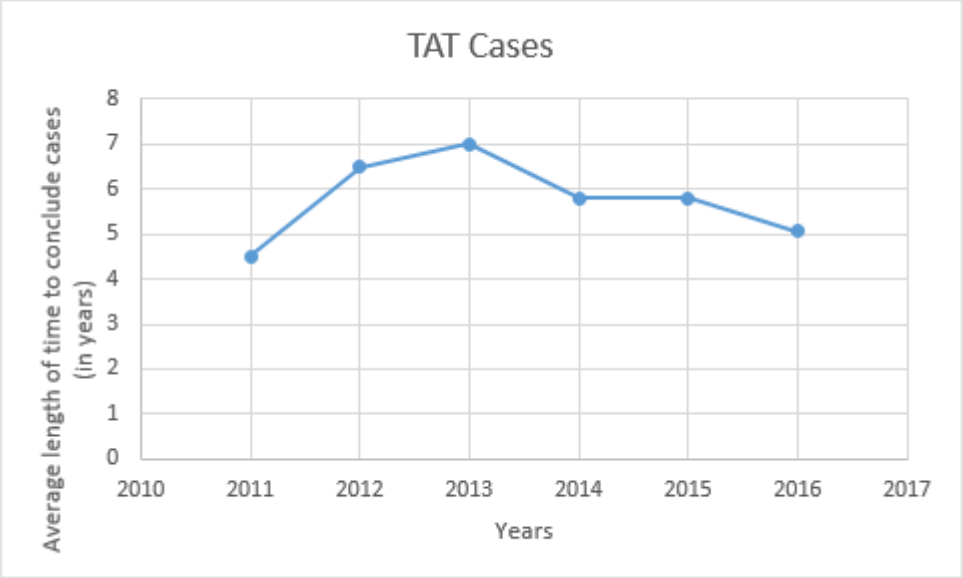
[14] In another Supreme Court case, *Honourable Minister of Justice and Attorney General of the Federation v Honourable Attorney General of Lagos State* [2013] 12 TLRN 55, the matter was filed by originating summons in 2010 and concluded in 2013 ie a period of three years. The FIRS was not a direct party in the suit, but the subject matter touched on levies collectible by the federal or state government. A second case was decided at the Supreme Court but was concluded outside the timeframe of cases reviewed in this research. This case is *Attorney General, Lagos State v Eko Hotels Limited & Federal Board of Inland Revenue* [2018] 36 TLRN 1.

[15] [2009] 1 TLRN 1.

[16] The case of *Cadbury Nigeria Plc v Federal Board of Inland Revenue* [2010] 2 TLRN 16 follows a similar pattern. It was instituted at the Supreme Court in 2007 but dropped off the legal department register in 2015. It is also not in the law reports.

filing of suits. As noted by TP 8, some taxpayers sue as a form of tax planning, so that they can delay the payment of their tax liabilities. The TAT can only act on a matter when it is filed and has no responsibility for how long it takes before a matter is brought before it. (See Annexure 1 for details of cases concluded at the TAT within the review period.)

Figure 5.3: Time periods for resolving cases at the Tax Appeal Tribunal based on YOA



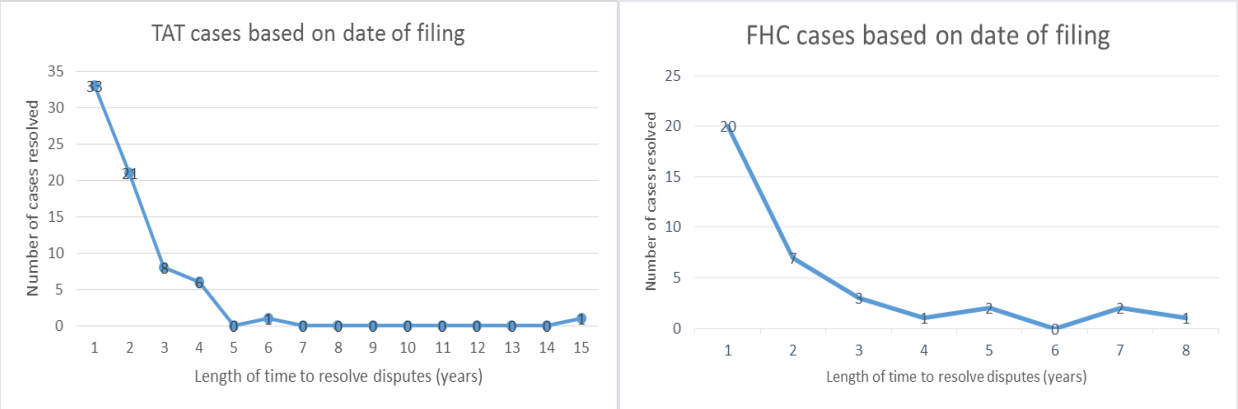
Source: Author

Seventy reported cases within the review period indicate when they were filed at the TAT and, of this number, 33 were concluded within a year (47 per cent), 21 within two years (30 per cent), eight within three years (11.4%), six within four years (8.57%), one within six years (1.43 per cent), and one case was a carryover from the BAC and was concluded within 15 years (1.43 per cent).

Thirty-six cases show their time of filing at the Federal High Court within the review period, and of this number 20 were concluded within a year (56 per cent), seven within two years (19 per cent), three within three years (8.3 per cent), one within four and eight years (2.8 per cent), and two within five and seven years (5.6 per cent). (LP 4 noted that the case of *Warm Springs Water & Ors v FIRS* decided at the Federal High Court was concluded within a year.)

A graphic representation of the time periods discussed in the preceding paragraphs appears below.

Figure 5.4: Time periods for resolving cases at the Tax Appeal Tribunal and the Federal High Court based on year of filing



Source: Author

Based on the above, the contention by most legal officers (shown below) that disputes are resolved more quickly at the TAT is inaccurate, although some of the cases are on appeal from the TAT and are therefore more likely to be concluded within a short time. Furthermore, many of the cases at the Federal High Court are procedural matters on points of law on appeal from the TAT and therefore take little time and the difference in resolution times is not substantial. There are also many consolidated cases and these generally take a short time.[17]

Legal officers of the FIRS evaluated the TAT as having shorter resolution times than the Federal High Court. LP 1 stated: 'At the Federal High Court [a case] will last for two years. But in TAT, a case can be disposed under 6 months or 1 year at most.' LP 3 observed that the TAT was faster. Giving specifics on the expected time period for the resolution of cases, LP 5 stated: 'A typical case at the TAT would take about 6 months but the same case at the Federal High Court would take up to 2 to 2 and a half years.'

In conclusion, the TAT has so far concluded its cases within reasonable periods of time.[18] As shown in figure 4.4, 47 per cent of cases filed at the TAT within the review period were concluded within a one-year period. However, the time period includes a much longer period than when a matter is filed in court. A dispute starts much earlier, possibly from the time of a taxpayer's objection to an assessment. This thesis deals primarily with the TAT, so not much focus was placed on appellate cases, but if those are factored in, then the time period is very

[17] Discussed in section 3.5.5.1.
[18] See the fifth paragraph of section 7.8 on what may be regarded as 'reasonable time' in the resolution of tax disputes.

long: 23 years for the lone Supreme Court case discussed earlier. Although the TAT time periods as at the time of writing are reasonable, there is a need to avoid the buildup of cases by always having the TAT in session. Furthermore, the assumption that the Federal High Court is slow is not correct. However, the court has by its pronouncements reiterated that tax cases should always be tried at the tax tribunals first, so even if Federal High Court time periods are good, this should not be a reason to file cases first in the court and thus 'leapfrog' the TAT.

5.7 Conclusion

The Nigerian tax dispute resolution environment has been examined in the last three chapters. Chapter 3 evaluated the legislative framework of the jurisdiction and issues that have been problematic in relation to the laws guiding dispute resolution. These issues include the undefined structure of the taxing powers of states and the federal government in the Constitution. Chapter 3 also described the uncertainty about the correct venue for adjudicating tax cases, which arises from the undefined and conflicting provisions in the Constitution and the Tax Acts. The second part of chapter 3 showed the increased cases in the jurisdiction and the type of taxpayers that predominantly have disputes with the FIRS since the reforms were introduced (non-oil and gas companies). Chapter 4 reported on an empirical survey of FIRS tax officers and legal officers, which showed the fluid and indeterminate nature of in-house dispute resolution processes. The chapter further examined FIRS officers on whether the dispute resolution process measures up to the norms of good dispute resolution as evaluated in the thesis. Chapter 5 evaluated the norms of good dispute resolution in Nigeria, taking into consideration the five tenets discussed in the research.

Sections 5.7.1 and 5.7.2 set out an overall evaluation of the environment, highlighting challenges and successes in the jurisdiction.

5.7.1 Challenges

The greater Nigerian tax environment has undergone sustained major changes since the last reforms of 2004. As noted in chapter 1, the changes were focused on areas of the tax environment other than dispute resolution. The reforms were centred on how to have an administratively efficient system that would lead to improved revenue. As shown in chapter 3, the increase in the number of cases is a reflection of improved tax collection. One of the aims of the reforms has therefore been achieved. Furthermore, FIRS tax disputes have steadily risen with regard to non-oil and gas companies, which indicates that another aim of the reforms has

been achieved. To support these assertions, some figures can be provided. There was only one reported case at the Federal High Court before 2004, while there were 35 after 2004 (see the Tax Law Reports of Nigeria). The Federal High Court was in existence before 2004 so the increase is easily assessed. There were 400 pending cases in the legal department register during the period under review in the thesis and by 2014 most of the cases were being instituted by non-oil and gas companies (see Annexure 1).

The fact that the reforms paid little attention to dispute resolution is not surprising since there were few cases at that point. The reforms changed that situation. As the tax authority became more efficient in tax collection, disagreements arose and some of its actions were challenged by taxpayers. This has exposed weaknesses in the legal framework for taxation. The weaknesses are contained in the Constitution and individual Tax Acts and were partly fostered by military rule which left a legacy of passing laws that did not fit into the wider range of laws in place at any given time.

With regard to the Constitution the major issue was determining the correct tier of government to collect consumption taxes. Judging by the evolution of Nigerian Constitutions, the states (formerly regions) had the authority to impose and collect these taxes. The federal (military) government had over the years overridden this by enacting Tax Acts to address consumption taxes. This has not been accepted by the states and there have always been challenges to this position. The *Aberuagba* case, discussed in section 3.5.4.1, illustrates this. As early as 1985, the states challenged the collection of consumption taxes by the federal government. The states have continued to challenge this position even when overruled by the courts. Again, in the *Aberuagba* case, the Supreme Court noted that even if there was a lack of clarity about who should collect consumption taxes in Nigeria, by passing laws on it, the federal government had covered the field. Many later cases questioned the competency of the federal government to enact Acts on consumption taxes. The cases during the period covered in the thesis include *Eko Hotels Limited v Federal Board of Inland Revenue and Attorney General of Lagos State*[19] and *Mama Cass & 2 Ors v Federal Board of Inland Revenue & Anor*.[20] In both instances, the courts held that the federal government was competent to make laws on consumption taxes.

The second type of problem that arose from the legal framework of taxation in Nigeria was that tax tribunals were challenged by taxpayers as from 2004: first, the VAT tribunal and then,

[19] [2009] 1 TLRN 172.
[20] [2010] 2 TLRN 99.

much later, the TAT. The VAT tribunal challenge stemmed from provisions that allowed for the leapfrogging of the Federal High Court because appeals lay to the Court of Appeal. The courts correctly decided that this was unconstitutional. However, the disbandment of the TAT based on its unconstitutionality calls into question the judicial understanding of tax tribunals.

Another issue arising from the legal framework for taxation is the nature of some of the disputes, ie different tiers of governments or government organisations in disputes with the federal government tax agency. This creates dissonance. Government departments have difficulty in properly remitting taxes to the right tax authority or government departments disagree about taxes. This should be reevaluated or corrected, since it goes to the root of the tax environment in Nigeria. There needs to be a means of seamlessly collecting revenue within government departments; the possibility of a centralised tax collecting agency that collects at both the state and federal levels should be considered.

Aside from the legal framework for tax dispute resolution, the examination of the Nigerian environment revealed that it takes a long time to resolve disputes. The increase in the number of cases filed at the tribunal has led to the lengthening of the time periods for the resolution of disputes at the tribunal. What needs to be considered is how the increase in Nigerian tax cases should be addressed to improve efficiency while ensuring that the tenets of good dispute resolution are maintained. An inspection of the decided cases (Annexure 1) shows that disputes were concluded typically within a year of filing in 2011 but the time period for resolution had increased to four years in 2016. Although the thesis is mainly focused on dispute resolution at the TAT, the slow pace of resolution of tax cases is further reflected in the dearth of decided Supreme Court tax cases. While tax cases were filed and sometimes concluded in the Court of Appeal, they are not quickly resolved when they reach the apex court. It takes too long for tax cases to be resolved in the apex court, and this time period needs to be reduced, as it adds to the overall resolution time of tax disputes. Ways of improving resolution times for tax cases up to the apex court will be addressed in the concluding chapter.

Another reason for the increased time periods for the resolution of disputes is the fact that the TAT did not continually function during the period under review. The TAT functions in fits and starts, and this will affect its long-term growth or lack thereof. There is need to prioritise TAT functionality by always ensuring it is quickly reconstituted whenever the tenure of members lapses. While the FIRSEA provides for the reconstitution of the panel, it does not provide time limits within which to do so, and the Act needs to be amended to address this

omission. The erratic functioning of the TAT encourages forum shopping, as shown in the empirical research. Litigants would be unable to forum shop if the TAT were always in session, and if it functioned on a continual basis it would be more difficult to alternate venues for the litigation of tax disputes. This aligns with court directives that tax disputes should always be commenced at the TAT.

The empirical research shows that there are varying practices concerning in-house dispute resolution in different FIRS offices. As the number of cases increases, there will be a need to standardise processes across the regions. FIRS internal processes on dispute resolution also need to address the undue emphasis on the high yielding tax areas of the country. Focusing on all segments or geographical locations in the country should lead to better engagement with all taxpayers.

The FIRS' communication procedure with taxpayers and the wider public was also examined, ie whether documents are circulars, interpretation notes, regulations or practice notes. This was a veritable area of disagreement with the taxpayer as the improperly defined nature of FIRS documents was often a basis upon which taxpayers instituted lawsuits. The FIRS will be better served if its rulings, circulars and interpretation notes are better communicated to taxpayers.

5.7.2 Successes

Although the above challenges in the taxation legal framework as presently constituted are noted, the system has functioned and self-corrected in spite of its many limiting factors. In respect of the issues discussed above, the courts have mostly addressed lacunae and problem areas. Judicial law making to address issues in the system has not always gone smoothly; there have been 'bumps' and 'hiccups' but ultimately unclear sections of Tax Acts have been clarified, whether in the establishment and functioning of tax tribunals or in determining the correct tier of government to impose consumption taxes. For instance, most of the cases on the constitutionality of the TAT were ruled on at the Court of Appeal, the TAT is functioning based on those judgments, and there is no reason to think that the Supreme Court will deviate from the position of the Court of Appeal. The many challenges launched on the TAT by taxpayers were a result of the perception that it encroached upon the jurisdiction of the Federal High Court initially and this led to judgments that threatened its functioning. This leads to a consideration of how challenges to the constitutionality of tax tribunals should be addressed. Whilst judicial pronouncements on it are commendable, it is better practice to implement changes through amendments to the Constitution as well as to the Tax Acts.

In terms of TAT procedure, there are no privacy and confidentiality restraints, and its proceedings are open to the public; in addition, its decisions are published. This gives the tribunal the features of a court of record even though it is not. This is a commendable feature as its open procedure ensures that reports on tax cases are available to the wider public.

In conclusion, the Nigerian tax dispute resolution arena has been invigorated by the reforms. There have been many ‘wins’ but clearly there is still room for improvement. In answering the research question regarding the direction in which the Nigerian tax dispute resolution process should be headed; it should be headed towards improvement. How the improvements should be implemented will be addressed in the final chapter, after assessing the South African tax environment in the next two chapters.

CHAPTER 6: THE LEGISLATIVE FRAMEWORK FOR AND HISTORY OF TAX DISPUTE RESOLUTION IN SOUTH AFRICA

6.1 Overview

This chapter addresses the research question about whether South Africa can provide insights on the direction that the Nigerian tax environment should take. It assesses the tax dispute resolution environment in South Africa based on the correlated problematic areas in Nigeria, from which Nigeria could draw insights. The chapter traces the history and evolution of tax dispute resolution in South Africa and highlights the different aspects of that evolution, including the provisions of different Constitutions in respect of taxation as well as legislative changes to the tax dispute resolution sections of Tax Acts. It further describes peculiar problems in Tax Court procedure and how they were rectified by the introduction of Tax Court rules. The aim of the chapter is to evaluate selected issues in the tax dispute resolution environment in South Africa that could benefit Nigeria.[1]

In tracing the legislative history of the South African tax dispute resolution environment, the chapter assesses taxation and tax dispute resolution prior to Union in 1910. It evaluates why Tax Courts, initially known as special courts for hearing income tax appeals, were set up. (In this work, the term 'Tax Courts' will be used in the evaluation of the court formerly called 'the special court for hearing income tax appeals'). The chapter examines the South African constitutional provisions on taxation from 1910 to 1996, as well as the Tax Acts passed from 1904 to 2011. The chapter considers the changes made in 1993 when settlement powers were introduced, and in 2003 when Tax Court rules which were in line with the High Court rules were also introduced. The chapter examines the amendments made to the rules in 2014 and compares them with the 2003 rules.

[1] As noted in section 1.3, the following aspects of the processes and procedures in the Tax Court are not addressed, because they do not correspond to critical issues identified in the Nigerian tax dispute resolution process:

(a) whether appeals against a disputed assessment lie or should lie on questions of law only, or on fact and law;
(b) time limits for steps in the process of contestation;
(c) awarding or non-awarding of legal costs;
(d) distinction between appeal and review in the context of a disputed tax assessment that gives rise to litigation;
(e) taxpayer's right to demand reasons for the assessment; and
(f) constitutional rights in the disputation process, including the taxpayer's right to invoke professional privilege.

The chapter evaluates earlier procedural problems of the Tax Court and analyses specific cases that were emblematic of issues like trial by ambush and substitution of issues by the Tax Court with issues previously uncanvassed. The said problems were corrected by the introduction of the Tax Court rules. The chapter assesses cases decided under PAJA and their impact on tax disputation.

6.2 Early years of tax dispute resolution in South Africa

Various forms of taxes and taxation existed early in South Africa's history. The first European styled taxes were introduced by the Dutch and continued after British occupation, first in 1795 and later in 1803.[2] These earlier taxes included indirect taxes, land taxes and taxes payable to the Dutch East India Company.[3] The early taxes also included the *ambtgeld* levied on Dutch officials in the Cape, a tax on male residents of the Orange Free State, and a tax on various mining activities.[4] Other types of taxes imposed in earlier times in present day South Africa were taxes on gold mining in Transvaal as well as taxes on diamond mining introduced in the Orange River Colony in 1907.[5]

In respect of the venue for the resolution of tax disputes, the records suggest that tax-related cases were resolved in regular courts until special courts for hearing tax disputes were created. The case of *Re insolvent estate of Buissine, Van De Berg and Meyer v Sequestrator and Attorney General*[6] was first submitted to the court of justice for its sanction, and the dispute was decided at the Supreme Court in 1828. An issue for determination in the suit was whether the government had a legal hypothec over all the property of those officers who were employed in the collection of revenue.

In another tax-related case *Villiers Commissaries of Verdue v Sequestrator Commissionaires of Cape District and Stellenbosch*[7] the dispute was in respect of land tax and was first decided in a regular court. It went on appeal to the Supreme Court in 1829. Twenty years later, in 1849,

---

[2] Peter Harris 'Importing and exporting income tax law: The international origins of SA Income Tax Act' in J Hattingh, JJ Roeleveld & C West (eds) *Income Tax in South Africa: The first 100 years 1914–2014* (2016) 3.
[3] Ibid.
[4] Enelia van Rensburg 'The history of income taxation in the Cape Colony: A story of dangerous beasts and murderous fathers' in J Hattingh, JJ Roeleveld & C West (eds) *Income Tax in South Africa: The first 100 years 1914–2014* (2016) 26–28. Some of the early taxes were general taxes to be used throughout the colony, while special or local taxes were used for the purposes of any particular district for which they were collected. The local taxes in turn were divided between ordinary and extraordinary taxes. *Opgaaf* was the lion and tiger money tax, collected for killing wild beasts.
[5] Harris op cit note 2 at 12.
[6] Volume I Menzies Report at 318–320.
[7] Volume I Menzies Report at 370.

tax-related disputes were tried at some point in the magistrates' courts. In *Chiappini and Co v Field Collector of Customs*,[8] the Supreme Court heard an appeal from the magistrate's court of Cape Town. The appellant claimed that the collector of customs owed him the sum of 4 pounds 6 shillings. In the past, tax disputes in South Africa were decided in general courts. The progression of specific statutes dealing with tax issues in this early period is addressed.

Various taxes existed in the different areas of South Africa: income tax was introduced and repealed at different times in some of the colonies that now make up South Africa. Income tax was introduced in the Cape of Good Hope in 1814, repealed in 1840 and reintroduced in 1904, while a Natal Income Tax Act was passed in 1908.[9] Furthermore, during this earlier period, the different colonies – Natal, the Orange Free State and the *Zuid Afrikaansche Republiek* – had various revenue streams from different types of taxes and levies.[10] The different revenue streams were mining taxes, licence fees, stamp duties, transfer duties and similar levies.[11] At this stage of income tax introduction one of the major considerations for lawmakers was determining who would be eligible to be taxed.[12] There was a general agreement that 'poor men would not be taxed' and therefore a relatively high bar of 1 000 pounds was set as the threshold for income tax.[13]

The unification of provinces in 1910 led to a unified Tax Act for the whole country. Provincial laws relating to the payment of royalties including the payment of taxes in Transvaal (gold) and Orange River (diamonds) were repealed.[14] The unified Act stipulated a 10 per cent rate for profits from the mining of gold and diamonds. The dominant influence in the South African Income Tax Act of 1914 was the Cape Income Tax Act of 1904 which was, in turn, based on the Income Tax Act of New South Wales.[15] The Income Tax Act was introduced on 20 July 1914. The Mining Tax Act of 1910 and the Income Tax Act of 1914 were consolidated in 1917 under the Income Tax Consolidation Act.[16] Research suggests that the reasons for the introduction of income tax in various parts of the union were mainly to raise more revenue and

[8] Volume III Menzies Report at 549.
[9] Harris op cit note 2 at 2.
[10] SARS 'The evolution of SARS 1994-2014' in J Hattingh, JJ Roeleveld & C West (eds) *Income Tax in South Africa: The first 100 years 1914–2014* (2016) 381.
[11] Ibid.
[12] See the Parliamentary Debates of 1907 at 273.
[13] Ibid. In 1914 under the parliamentary debates for the whole country some of the same arguments still held sway. For instance, the threshold for taxation was still set at 1 000 pounds.
[14] Harris op cit note 2 at 15.
[15] Van Rensburg op cit note 4 at 50.
[16] SARS op cit note 10 at 383.

to finance the activities of government.[17] For instance, there was a recurring deficit of three years prior to the introduction of the Income Tax Act in 1914.[18] It is likely that with the increased and better collection of taxes came more objections to assessments, which ultimately needed to be resolved in Tax Courts.[19]

6.3 Legal framework for taxation in South Africa from 1904 to 2011

Section 6.2 above briefly evaluated taxation in South Africa's earlier history. The rest of the chapter (including the present section) evaluates the legal framework of taxation in more recent times in the jurisdiction.

The legal framework for taxation in South Africa is based on the provisions of the Constitution and the Tax Acts. The South African Constitutions from 1910 to 1996 are assessed. There have been five Constitutions in South Africa since Union in 1910: the 1910, 1961, 1983, 1993 and 1996 Constitutions.

In respect of individual Tax Acts, the assessment commences from Acts passed in the Cape of Good Hope (the Cape) shortly before Union. Therefore, the Cape Income Tax Acts of 1904 and 1908 are evaluated, because the Income Tax Act for the whole country borrowed heavily from the Cape Act of 1904. The analysis of the Tax Acts is focused on the provisions that deal with dispute resolution ie objections to assessments and Tax Court establishment provisions.

The various South African Constitutions and their provisions on tax are described in sections 6.3.1 to 6.3.5 below.

6.3.1 The Union of South Africa Act, 1909[20]

Section 60 of the Constitution on money bills provided:

> (1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.
> (2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

[17] Parliamentary Debates of 1907 op cit note 12. For example, according to the Parliamentary Debates of 1907 in connection with the amendment of the 1908 Cape Act, a reason for the introduction of the tax was to show English financiers that the Cape could 'pay its way'. There were some sanctioned loans by Parliament which could not be floated in the London Stock Exchange.
[18] Ibid.
[19] SARS op cit note 10 at 380. In 1914, for instance, the revenue authority collected a total of 482 000 pounds.
[20] Effective 31 May 1910.

> (3) The Senate may not amend any Bill so as to increase any proposed Charges or burden on the people.

In respect of the hierarchy of courts, section 95 provided that the Supreme Court of South Africa was the apex court in the nation. The section stated:

> There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the provinces.

The procedure for appeals from the inferior to the superior courts was contained in section 105, which provided:

> In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a superior court in any of the Colonies, the appeal shall be made to the corresponding division of the Supreme Court of South Africa; but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

6.3.2 1961 Constitution[21]

Tax matters were incorporated in revenue matters under Part VIII and had the heading of 'Finance and Railways'. Section 97 provided: 'All revenues of the Republic, from whatever source arising, shall vest in the State President.' Section 98 provided:

> There shall be a Consolidated Revenue Fund into which shall be paid all revenues raised or received by the State President, other than the revenues referred to in section *ninety-nine*, and such fund shall be appropriated by Parliament for the purposes of the Republic in the manner prescribed by this Act, and subject to the charges imposed thereby.

Concerning the hierarchy of courts, the Constitution provided that the Supreme Court of South Africa was the apex court in South Africa and also that the judicial capital of the republic was Bloemfontein. Section 94 thus provided:

> (1) The judicial authority of the Republic shall be vested in a Supreme Court to be known as the Supreme Court of South Africa and consisting of an Appellate Division and such provincial and local divisions as may be prescribed by law.
> (2) The said Supreme Court shall, subject to the provisions of section *fifty-nine*, have jurisdiction as provided in the Supreme Court Act, 1959.
> (3) Save as otherwise provided in the Supreme Court Act, 1959, Bloemfontein shall be the seat of the Appellate Division of the Supreme Court of South Africa.

[21] Act 32 of 1961.

6.3.3. 1983 Constitution[22]

Tax matters were contained in sections 80 and 81 of the 1983 Constitution. Section 80 provided: 'All revenues of the Republic, from whatever source arising, shall vest in the State President.' Section 81(1) provided: 'There shall be a State Revenue Fund, into which shall be paid all revenues as defined in section 1 of the Exchequer and Audit Act, 1975.'

There was no change in respect of the hierarchy of courts, and thus section 68 was in *pari materia w*ith section 94 of the 1961 Constitution above.

6.3.4 1993 Interim Constitution[23]

Tax matters were captured under chapter 12 (Finance), and section 185 provided:

> (1) There is hereby established a National Revenue Fund, into which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the national government, and from which appropriations shall be made by Parliament in accordance with this Constitution or any applicable Act of Parliament, and subject to the charges imposed thereby.

Section 190 of the Constitution specifically provided for the taxation of elected representatives and provided: 'Without derogating from the Receiver of Revenue's powers and functions, the Receiver of Revenue shall annually assess the income tax returns of all elected representatives at all levels of government.'

The 1993 Constitution established a new court, the Constitutional Court, as the highest court in respect of constitutional matters. Section 98 of the Constitution focused on the hierarchy of courts dealing with tax matters and provided:

> (1) There shall be a Constitutional Court consisting of a President and 10 other judges appointed in terms of section 99.
>
> (2) The Constitutional Court shall have jurisdiction in the Republic as the court of final instance over all matters relating to the interpretation, protection and enforcement of the provisions of this Constitution …

The Supreme Court of Appeal was provided for under section 101:

> (1) There shall, subject to sections 241 and 242, be a Supreme Court of South Africa, which shall consist of an Appellate Division and such provincial and local divisions, and with such areas of jurisdiction, as may be prescribed by law.

---

[22] Act 110 of 1983.
[23] Act 200 of 1993.

Other courts were provided for under section 103: '(1) The establishment, jurisdiction, composition and functioning of all other courts shall, subject to sections 241 and 242, be as prescribed by or under a law.'

Under the interim Constitution, the Constitutional Court was the highest court in South Africa in respect of matters regarding the interpretation of the Constitution, while the Supreme Court of Appeal remained the apex court for all other cases without a constitutional basis.

6.3.5 1996 Constitution[24]

Sections 213 to 230 deal with financial matters and section 213(1) provides: 'There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament.' The modalities for the allocation of revenue between the spheres of government are provided for under section 214:

> (1) An Act of Parliament must provide for—
>
> *(a)* the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
> *(b)* the determination of each province's equitable share of the provincial share of that revenue; and
> *(c)* any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made.

Section 166 deals with hierarchy of courts, and lists the courts in the Republic in order of hierarchy:

> The courts are–
>
> *(a)* the Constitutional Court;
> *(b)* the Supreme Court of Appeal;
> *(c)* the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;
> *(d)* the Magistrates' Courts; and
> *(e)* any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts.

6.4 Analysis of constitutional provisions on taxation in South Africa from 1910 to 1996

The constitutional evolution of taxation in South Africa has not presented any major problems. Tax provisions have focused on different considerations as time passed. For instance, in the

[24] Constitution of the Republic of South Africa, 1996.

1910 Constitution, the focus was the appropriate body of parliament to pass Tax Bills, whether the House of Assembly or Senate. By the time of the 1961 Constitution, tax matters were subsumed under revenue matters. All revenues collected irrespective of their source were vested in the State President. This position was maintained under the 1983 Constitution. By the time of the enactment of the 1993 Constitution, the provisions on tax were more detailed. Although tax matters were still generally contained under finance matters, there was a distinct provision for the taxation of elected representatives. Finally, under the present Constitution, the provision for the equitable distribution of revenue raised nationally between the local government, provincial government and national government is captured.

In respect of the hierarchy of courts to deliberate on tax disputes, the Supreme Court of Appeal was the highest court up until 1993 when disputes about the interpretation of the Constitution had the Constitutional Court as the apex court. The mandate of the Constitutional Court was expanded in 2012; however, very few tax cases have so far been decided by the Constitutional Court, when compared to the cases that have been decided by the Supreme Court of Appeal.[25]

6.5 Evolution of Tax Acts from 1904 to 1962

As noted above, the Cape Tax Acts of 1904 and 1908 enacted shortly before Union are evaluated in the thesis, because the 1914 Income Tax Act for the whole country borrowed heavily from the Cape Act of 1904. This analysis of the Tax Acts is focused on the provisions that deal with dispute resolution, particularly objections to assessments and Tax Court establishment provisions.

6.5.1 The Cape Act of 1904[26]

The Tax Act of 1904 applied in the Cape of Good Hope and was titled the Additional Tax Act. The preamble to the Act provided that its purpose was ‘to impose excise duty upon beer and spirits and to provide for the taxation of income.’ Below are key sections of the 1904 Act in

[25] The mandate of the Constitutional Court was expanded by section 3 of the Constitution Seventeenth Amendment Act of 2012. Therefore, under section 167(3)(iii) of the Constitution, the court can deliberate on any other matter, if it grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that court, and the court makes the final decision whether a matter is within its jurisdiction. Between 2003 and 2016, only four cases were decided by the Constitutional Court in both the SATC reports and on the SARS website, compared to 100 and 110 in both sets of reports. See figure 7.2.

[26] Act 36 of 1904.

respect of dispute resolution which were replicated (and improved upon) in subsequent Acts for the whole country.

Section 72 dealt with objections to assessments, while section 73 provided for dispute resolution.

Section 73(1) provided:

> A taxpayer may within 30 days after the notice for assessment of income tax or of any altered, amended or corrected assessment has been given appeal therefrom to a court specially constituted upon a proclamation upon the ground that he is not liable for the tax or to any part thereof or that the amount of such assessment is excessive. Every notice shall be commenced by such notices and in such manner as may be prescribed.

Section 73(3) provided that 'the sitting of the court shall not be public'. This provision for the privacy of court sittings was retained in later Acts. Section 73(5) provided that 'the court may on its own alter the assessment book.' This feature was retained in one form or another until 2003 when strict Tax Court rules were introduced. Section 74 provided that on questions of law an issue may be sent to the Supreme Court for a case stated and its pronouncements shall be final on the issue. This feature of making a distinction between issues based on facts and those based on law was retained in later Acts.

Section 80 dealt with refunds and the commissioner's powers to apply discretion in determining amounts refundable as tax. The section provided that 'if it is so proved to the satisfaction of the commissioner that the amount paid is in excess of the amount properly chargeable, the commissioner shall refund the amount in each case to the taxpayer.'

As will be seen in the subsequent Acts, many of the provisions of the 1904 Cape Act were expanded upon and fine-tuned.

6.5.2 The Cape Act of 1908[27]

The Cape Act of 1908 amended the principal Act of 1904. The 1908 Act made changes to some dispute resolution sections, ie section 73(2), which was substituted with a new section 73(2). The amended section read:

> Notice of the time and place of the sitting of the court to hear appeals shall be given in English and Dutch in the gazette and in a newspaper or newspapers circulating in the district in which such place is situated at least ten clear days before the date appointed. In addition to such notice there shall be given to every person who has appealed notice in writing of the time and place approved for the hearing.

[27] Act 21 of 1908.

A change was also made in the mode and venue for the determination of issues turning on the law. The 1908 Act made it compulsory for such issues to be resolved by the Supreme Court. Section 12 of the Act provided:

> Where any question of law shall arise in regard to any matter under this Act, instead of appealing under section 73 of the principal Act, the commissioner may within 30 days after the date of assessment, altered, amended or additional assessment in connection with which such question shall have arisen at his own motion or at the request of a party concerned in the matter state a case for determination by a judge of the Supreme Court in chambers.

The import of the changes made to the 1908 Cape Act was an increase in the time period for the hearing, ie having a compulsory ten-day waiting period before the hearing commenced from the time of publication of a notice in a gazette or newspaper, and also the compulsory resolution of questions of law in the Supreme Court.

6.5.3 Act of 1914[28]

The Income Tax Act of 1914 was the first Act enacted after Union. It was much more detailed than the Cape Acts and bears more of a resemblance to the later Income Tax Acts and the present Tax Administration Act. Specifically, it had six chapters and 49 sections.[29] Objections to assessments and dispute resolution were contained in chapter IV (sections 23 to 28). Section 23 provided that objections to assessments should be made in the prescribed form within 21 days of the assessment notice. The time limit for objections in the Act was 21 days, thus shorter than the present time requirement of 30 days.[30]

Section 24 set up the Tax Court and contained nine subsections. The enacting provision – section 24(1) – provided:

> Any taxpayer dissatisfied with the commissioner's decision as notified in the notice of alteration or reduction of an assessment or disallowance of an objection may appeal therefrom to a special court which the Governor-general is hereby authorized to constitute by proclamation in the Gazette. Unless the taxpayer gives notice of such appeal within the period prescribed in subsection (3), his objection shall be deemed to be determined.

The section referred to a special court to be set up by proclamation in the gazette. The 1904 Act also referred to a court set up by proclamation but, as noted above, the Act of 1914 is

---

[28] Act 28 of 1914.

[29] Chapter 1 was on administration, Chapter 2 on rate of income and deduction, Chapter 3 on returns and assessments, Chapter 4 on objections and appeals, Chapter 5 on payment and recovery of tax, and Chapter 6 on general and supplementary matters.

[30] Rule 7(1) of the Rules Promulgated Under Section 103 of the Tax Administration Act, 2011 (Act 28 of 2011).

deemed to have set up the first Tax Court in South Africa because it was set up after the Union of 1910.

Section 24(2) introduced a new feature that was not present in the 1904 Cape Act. It provided that:

> One or more courts may be set up from time to time to hear and determine such appeals. A court (hereinafter referred to as the court) so constituted shall consist of three persons, one of whom shall be a barrister, and another an accountant, each of not less than 10 years standing, designated in the proclamation.

The subsection for the first time introduced a panel to the Tax Court. This feature has been retained in present Acts. However, as will be shown later in this section, the membership of the panel got more specific and detailed in subsequent Acts. At this early stage of the formation of the Tax Court the legislation provided for the presence of tax-knowledgeable persons.

Section 24(6) provided that the sitting of the court shall be in secret. This is a feature that is retained in a modified form in the current Acts.[31] Section 24(8) provided that the court may on its own alter the assessment book. This feature of the court altering the assessment book on its own was present in the Act of 1904.

Section 28(9) provided that any decision of the court shall, subject to the provisions of section 25, be final. Therefore, where there is no objection based on law, the pronouncement of the Tax Court was final.

6.5.4 Act of 1917[32]

The Act of 1917 was a major departure from earlier Tax Acts and changed the format for the taxation of income substantially. The memorandum on the budget proposals for the taxation of incomes, dividends and excess profits had the aim of 'placing upon a common basis the taxation of all profits whether derived from mining, industrial or other sources.'[33] Some of the new features introduced in the Act were that companies and individuals would pay normal tax, while company income tax would be further subdivided into normal tax and dividend tax.

---

[31] Section 124(1) of the TAA provides that the sitting of the Tax Court is not public. Subsection (2), however, provides that '[t]he president of the Tax Court may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting but may do so only after taking into account any representations that the "appellant" and a senior SARS official, referred to in section 12 appearing in support of the assessment or "decision", wishes to make on the request.'

[32] Act 41 of 1917.

[33] Memorandum on the budget proposals for the taxation of incomes, dividends and excess profits of 1917.

The 1917 provisions in respect of dispute resolution followed a similar path to those in the Act of 1914. Part III of Chapter 5 of the Act dealt with objections and appeals. The procedure and processes for objections were contained in section 82 and, like the 1914 Act, contained five subsections. Basically, no major change was made to the section. A new provision contained under section 83 and not included in prior Acts was that the burden of proof for disputed tax liability would be on the taxpayer.

Section 84 dealt with appeals to the Tax Court and contained nine subsections. The provision was similar to the 1914 Act with the exception that subsection (2) (equivalent to section 24(2) of the 1914 Act) contained an alteration to the composition of the panel for the Tax Court. The 1914 Act provided that the panel would be constituted by 'three persons, one of whom shall be a barrister, and another an accountant, each of not less than 10 years standing'.

Section 84(2) of the 1917 Act provided:

> A court (hereinafter referred to as the court) so constituted shall consist of an advocate of one of the divisions of the Supreme Court and an accountant (each of not less than ten years standing) and a representative of the commercial community. Provided that in all appeals related to the business of mining, such third member shall be a qualified mining engineer.

The amended section stipulated more comprehensive requirements for membership. The 1914 Act provided for two named professions, namely, accountants and lawyers; it was silent on the profession of the third member. The 1917 Act provided for three professions: lawyers, accountants, and a member of the commercial community. The broad stipulation about being a member of the legal profession was altered to being an advocate of a particular division of the Supreme Court. The requirement for the lawyer member at this stage did not, however, include being a judge – that provision came up much later in the 1949 Act.

Specific provision for membership of the panel by a member of the commercial community might have been included to ensure wider diversification of the members of the panel. This is further borne out by the fact that in mining cases a mining engineer was specifically required.

6.5.5 Act of 1925[34]

The Act of 1925 continued in the tradition of being more detailed and providing more descriptions and requirements in respect of objections to and appeals against assessments. There was no major change from the 1917 Act on the time and manner of lodging an appeal

[34] Act 40 of 1925.

nor in the burden of proof in disputing taxes due. The headings for processes were precisely captured before the substantive provisions in the sections and therefore a heading titled ‘appeal to a specially constituted court against commissioner’s decision’ preceded section 58 of the Act. The section on the processes for filing appeals at the Tax Court greatly increased from nine subsections in the 1914 and 1917 Acts to 17 subsections. The following were some of the changes.

Section 58(2) was not wholly new, but some new features were introduced. For the first time the law provided that the advocate member of the panel shall be the president of the court. It is posited that this feature was inserted at this point to ensure that the court was always headed by a lawyer. Section 58(5) provided for the mode of appointment of Tax Court members. While the older Acts named the disciplines or professions of the members, the 1925 Act went further and provided for a five-year term of office of the members with the possibility of the extension of tenure.

Section 58(6) stated that ‘every notice of appeal shall be filed in writing and lodged within 30 days after the date of the notice of objection mentioned in section 56(4). No appeal will be of effect unless the time stipulations are adhered to.’ This was one of the extended time periods for settling disputes gradually being introduced in the Act. The prior Acts provided for a compulsory 21-day period between objection and commencement of hearing, as well as a 10-day notice period for the commencement of a hearing (to be published in a newspaper or gazette). The new provision extended the time for the commencement of a hearing to 61 days.

Section 58(15) provided that ‘any decision of the court shall be registered in the register of assessments.’ This was a new provision not contained in earlier Acts. Section 58(16) was also new; it provided that ‘the court shall not make any order as to costs save when the claim of the commissioner is held to be unreasonable or the grounds of appeal therefrom to be frivolous.’

Section 60 dealt with appeals on a question of law and was increased to three subsections. The major addition was subsection (3), which provided for a 30-day period within which any appeal could be lodged to a superior court for a case stated. This did not extend the time period for the resolution of disputes as it was not mandatory that the court had to state a case to a superior court.

6.5.6 Act of 1941[35]

The 1941 Act is the parent Act of the present legislation and was consolidated by the Act of 1962. The Act amended the rate of tax, introduced anti-avoidance provisions, and contained amendments to sections on dispute resolution. Section 77 dealt with the time and manner of lodging objections and was extended from five subsections in the earlier Acts to seven subsections. Specifically, subsections (2) and (3) were new provisions and dealt with who was competent to file an objection in the case of a private company. Section 77(2) thus provided:

> If the taxable income or income subject to supertax of a private company has been apportioned in terms of section thirty seven, the public officer of that company shall be the person entitled to make an objection in terms of subsection 1 against the decision of the commissioner …

Subsection (3) also gave the shareholder of a private company the right to object to an assessment by the commissioner. Section 79 dealing with appeals to a specially constituted court against the commissioner's decisions retained 17 subsections and did not contain any major departure from the 1925 Act.

6.5.7 Act of 1945[36]

The Act of 1945 effected the following amendments to section 81 (the dispute resolution section) of the 1941 Act. Subsection (1) was substituted with the following subsection:

> There shall be no right of appeal against any decision of the special court on a question of fact but upon the determination of an appeal by the special court, the appellant or the commissioner, if dissatisfied with that determination as being erroneous in law, may require the special court by notice in writing addressed to the register of the court to state a case setting forth the facts the contentions of the parties and the determination of the court for an appeal.[37]

---

[35] Act 31 of 1941.

[36] Act 39 of 1945.

[37] The rest of the section provided: '(a) to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area in which the sitting of the special court was held and (b) if the appellant and the commissioner lodge their written consent thereto to the register of the special court, to the appellate division of the Supreme Court of South Africa without any intermediate appeal to such provincial or local division. And the provincial and local division as the case may be may upon the hearing of the appeal decide any question of law which was or could have been properly raised before the special court, and reverse, affirm or amend the determination of the special court or remit the matter to the special court with such instructions as the said division may think fit to give or make such other order as it may think fit and (b) by the deletion in subsection (3) of the words after the words "decision of the special court" (2) the amendments referred to in subsection (1) shall apply in respect of every appeal against the determination of the special court, where the determination is made on or after the commencement date of this act and shall also apply in respect of any appeal against any such determination made before that date if the parties lodge written consent to the application of the said amendments with the register of the special court.'

This express prohibition on appeal based only on questions of fact in the section could have been inserted to reduce unnecessary challenges and the lengthening of tax disputes in view of the fact that the panel comprised members from different disciplines. The major change here was that it was clearly stated that there shall be no appeal on questions of fact. The 1941 Act was silent on whether one could appeal on questions of fact. The 1925 Act was silent on whether decisions on questions of fact were final: it simply stated that appeals on questions of law could be made to a higher court. The 1917 Act was similar in wording to the 1925 Act, ie there was no clear prohibition on appealing questions of fact. The 1914 Act did not expressly prohibit appeals on questions of fact.

The 1941 Act contained three brief subsections, while the 1945 amendment had two very long subsections. Subsection (1) was split into very long parts contained in paras *(a)* and *(b)*.

6.5.8 Act of 1949[38]

The changes made in respect of dispute resolution generally were that if there was a lack of clarity on whether an issue was a question of fact or law, that lack of clarity would be resolved by the president of the court and other members would have no voice in such a decision. Changes were also made to subsection (5) in respect of posting more judges to divisions of the Tax Court.

In particular, section 79(2) of the principal Act of 1941 was amended by the substitution of the words 'an advocate of the Supreme Court of the Union of not less than 10 years standing' with the words 'a judge of the Supreme Court'.[39] The headship of the Tax Court was now more in line with regular courts, as a judge of the Supreme Court was required, not just an advocate.

Subsection (5) was expanded in terms of who was seconded to the Tax Court and thus a new paragraph *(b)* was included, which stated:

> The judge president of the provincial division of the Supreme Court having jurisdiction in the area a court has been constituted shall nominate and second a judge or acting judge of such division to be president of such court, and such secondment shall be for a period or for the hearing of such cases as the said judge president shall determine.

The subsection inserted after subsection (14) on determination of whether an issue turned on the facts or law read as follows: 'any matter of law arriving for decision before the court and

[38] Act 45 of 1949.
[39] Clause 15 of the explanatory memo to the 1949 amendment states that section 79 of the Act is amended with effect from 1 January 1950 to have a judge sit on the Tax Court panel, but does not explain the reason for this change.

any question as to whether a matter for decision is a matter of fact or a matter of law shall be decided by the president of the court and the other members shall have no voice in such decision.'

6.5.9 Act of 1962[40]

Many of the provisions contained in Tax Court processes had been established by the time of the enactment of the 1962 Act. The provisions were either adjusted or expanded, but by this time the Tax Court was functioning in a manner similar to what obtains presently. Objections and appeals in the Act were contained in chapter III under sections 81 to 88. Section 83(3) modified section 79(3) of the 1941 Act slightly by changing 'Governor-General' to the 'State President': 'the State President may by proclamation constitute Tax Courts'. The provision became necessary because the country became a Republic in 1961 so the Governor-General (representing the English Crown) was no longer relevant.

A new section 84 was introduced and it dealt with the 'summoning of witnesses and penalty for non-attendance'. Reference was made for the first time to regulations, ie a supplementary set of rules for running the courts as distinct from what was contained in the Act. Section 84(1) provided that 'the commissioner or the president of the special court may procure the attendance of any witness (whether residing or for the time being within the area of the jurisdiction of that court or not) in the manner prescribed in the regulations'.

Section 85 was new and dealt with contempt of special court. It provided that 'anyone who is found in contempt of the special court may be liable to three months' imprisonment or R100 fine and the order is to be carried out as if it were an order made by the magistrate's court.'

6.6 Analysis of changes made to the Tax Court legislation from 1904 to 1962

A general analysis of the changes to the dispute resolution sections of Tax Acts in South Africa from 1904 to 1962 reveals that the rules became more complex and sophisticated as the years advanced. Changes to the dispute resolution requirements were made in all major Tax Acts between 1914 and 1962. Changes were also made to the dispute resolution sections of the Acts in some other years within the period.

Furthermore, an appraisal of Tax Acts during the period shows that certain features were continually changed, while others were inserted and very few changes were made to them in

[40] Income Tax Act 58 of 1962.

subsequent Acts. For instance, there were continual changes to the panel of the Tax Court and also on whether issues of law and fact were appealable, while there were limited changes to other issues, including the privacy and secrecy of the panel, time requirements, the burden of proof in cases, the registration of decisions and orders as to costs.

Particular issues that were continually amended in the Acts are discussed below.

6.6.1 Appealing questions of law and fact

The Cape Tax Act of 1904 provided that questions of law may be sent to the Supreme Court for a case stated and that its pronouncements shall be final on the issue. It was silent on whether appeals could be made on questions of fact. The 1908 Act made it compulsory that questions based on law would be resolved at the Supreme Court by a judge in chambers. The Act of 1945 for the first time expressly prohibited appeals based on questions of fact (earlier Acts from 1904 had been silent on the right of appeal based on questions of fact). The 1949 Act provided that if there was no clarity as to whether an issue was a question of law or fact, the judge sitting alone could decide. This issue was therefore amended four times, starting from the Cape Act of 1904 to the 1949 Act and was of great importance to the reformers. As noted earlier, limiting and expressly prohibiting appeals based on questions of fact may have been motivated by the need to limit appeals emanating from the Tax Court.

6.6.2 Composition of the Tax Court

The Cape Acts of 1904 and 1908 made no mention of a Tax Court panel. A panel for the Tax Court was first included in the 1914 Act, which simply provided for a three-man panel comprising a barrister, an accountant and one other named professional. The composition was modified in the 1917 Act when it was provided that the lawyer member should be an advocate of the Supreme Court, while the third member previously undesignated in the 1914 Act was to be a member of the commercial community, including a mining engineer in mining disputes. The 1925 Act provided that the advocate member should be the president of the court. By 1949, the Income Tax Act (ITA) stipulated that the president of the Tax Court should be a judge and not simply an advocate of the Supreme Court of South Africa. This issue was amended as often as the provision on appealing on the law and facts. The need to have a knowledgeable Tax Court panel became more evident with time and drove the amendments.

6.6.3 Time stipulations

Time stipulations in earlier Tax Acts were not dramatically changed until the introduction of the Tax Court rules in 2003. In the 1914 Act, objections to assessments were to be made in the prescribed form within 21 days of the assessment notice. This time period was increased to 30 days in the 1925 Act, and the 30-day requirement remained in place until the Tax Court rules were put in place. As will be shown in section 6.9, the introduction of the Tax Court rules increased the time periods in the tax dispute resolution arena. Furthermore, the rules provided for time periods in ADR which also lengthened the overall time periods.

6.6.4 Privacy of Tax Court proceedings

The privacy of Tax Court proceedings was contained in the 1904 Cape Act. It was retained in the 1914 Act and the provision was not substantially altered in subsequent Acts. It is still retained in the 2011 Act.

6.7 Dispute resolution rules from 1962 to 2011

Section 6.5 above evaluated the legislative changes made to the Tax Court during its earlier years, ie from 1904 to 1962. This section evaluates South African tax dispute legislation in later years, ie from 1962 to 2011.

Between 1962 and the enactment of the Tax Administration Act (TAA) in 2011, the major change to tax dispute resolution by way of statutory amendment was the introduction of settlement arrangements in section 61 of the ITA in 1993, first in respect of tax avoidance schemes. The settlement scheme marked the start of ADR in the South African Tax Acts. This was later broadened to include varied circumstances in the form of fully-fledged ADR provisions and a tiered dispute resolution process.[41] A second major change to tax dispute resolution in South Africa between 1962 and 2011 was the introduction of Tax Court rules in 2003 as supplementary rules to statutory provisions. The introduction of the Tax Court rules for the first time eliminated some of the earlier criticisms, such as trial by ambush, ie the substitution of issues by the court of issues previously uncanvassed by the parties.[42]

The dispute resolution sections of the ITA were also greatly reformed by the introduction of the Tax Board and settlement in respect of tax avoidance schemes. The Tax Board was

[41] SARS op cit note 10 at 438.
[42] See section 6.10 below. Issues of trial by ambush are discussed by Luke Connell 'Trial by ambush: Litigation in the Tax Court' (2003) 120 *South African Law Journal* 558–579.

introduced in 1992 as a less formal forum to consider disputes that originally involved less than R20 000.[43] The explanatory memorandum to the Income Tax Bill in 1992 states that 'the board was introduced in view of the increase in tax disputes and limited number of judges available, there was a need to devise a resolution forum that was swift and afforded taxpayers a chance to resolve their disputes.'[44]

Section 61(1) of the 1993 amendment to the ITA in respect of settlement arrangements thus provided:

> The Minister of Finance if he considers it to be in the best interest of the state that disputes with taxpayers regarding the application of any provision of the principal Act to certain tax avoidance schemes be settled, make regulations authorizing the commissioner for inland revenue to enter into agreement with any taxpayer for the settlement of any such dispute. Provided that no such agreement shall be so entered into after 28 February 1994.

The section further provided that any such agreement shall be binding on both the taxpayer and the state. The changes that were introduced to tax dispute resolution between 1962 and 2011 could be summarised fundamentally as adding more layers to the process. At least two distinct layers were added – the Tax Board and ADR. Furthermore, the ADR process can be divided into resolution by agreement or resolution by settlement.[45] The dispute resolution process was reformed to constitute its present makeup within the said years. However, the changes could in fact slow down and lengthen the process, thereby making it more cumbersome.

6.8 The Tax Administration Act of 2011

A stand-alone tax administrative Act, the Tax Administration Act (TAA), was enacted in 2011. The TAA incorporates into one piece of legislation certain generic administrative provisions, which were duplicated in different Tax Acts.[46] Consequently, over a quarter of the ITA consisting of administrative provisions was moved to the TAA.[47] The aim of the TAA is to provide greater coherence in South African tax administration law, eliminate duplication, remove redundant requirements in tax administration and align disparate requirements that had

[43] SARS op cit note 10 at 438. The Tax Board may currently adjudicate disputes under R500 000.
[44] Ibid.
[45] Rules Promulgated Under s 103 of TAA, 2011 (Rules 23 and 24) op cit note 30.
[46] Administrative sections of the following Acts were incorporated into the TAA: the Transfer Duty Act, 1949 (Act 40 of 1949), the Estate Duty Act, 1955 (Act 45 of 1955), the Income Tax Act, 1962 (Act 58 of 1962), the Value-Added Tax Act, 1991 (Act 89 of 1991), the Skills Development Levies Act, 1999 (Act 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act 4 of 2002), the Diamond Export Levy (Administration) Act, 2007 (Act 14 of 2007), the Securities Transfer Tax Administration Act, 2007 (Act 26 of 2007) and the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act 29 of 2008). See the Memorandum on the Objects of the Tax Administration Bill, 2011, available at https://www.sars.gov.za/Legal/Preparation-of-Legislation/Pages/Explanatory-Memoranda.aspx [3 August 2020].
[47] Ibid.

previously existed in a number of different Tax Acts.[48] The TAA also aims to align SARS with international best practice as well as to achieve a balance of rights and obligations between SARS and the taxpayer.[49]

Dispute resolution provisions in the TAA take up a chapter of the Act and comprise six parts and 75 sections. The chapter is also supported by the dispute resolution rules. The need to continually amend and improve dispute resolution provisions can be discerned from the evolution and improvement of the South African Tax Act provisions on dispute resolution, ie from five sections in the maiden Act of 1914 to 75 sections in the current Act. A brief overview of the dispute resolution provisions contained in chapter 9 of the TAA follows.

Part A[50] is the general section of the chapter. It contains definitions of terms, the burden of proof and makes provision for rules of dispute resolution to be made by the Minister.

Part B[51] deals with assessments and appeals. It provides a mode of making objections to assessments and some timelines for objections. However, the time stipulations are more particularly provided for in the rules. This part of the Act had been in place in earlier Acts, but the provisions in the 2011 Act are the most exhaustive so far. Part B also provides for forums for making an objection, the responsibility of the South African Revenue Service (SARS) to respond to an objection, and the taxpayer's right to appeal against an objection to the Tax Board or Tax Court.

Part C[52] deals with the Tax Board. This part establishes the Tax Board and contains provisions to support its functions, including jurisdiction, functioning, the clerk of the board, decisions of the board and appeals to the Tax Court. As noted above, the Tax Board was first introduced in the 2003 Act to handle disputes of a lower threshold and to lessen pressure on the Tax Court. Although this is a good innovation to reduce the docket of the Tax Court, it adds too many layers to the whole dispute resolution process.

Part D[53] sets up the Tax Court. It provides for the jurisdiction and constitution of the court. Administrative matters concerning the running of the court are provided for, including the nomination of the president and the members of the court, the registrar, and conflicts of interest

[48] See the SARS website, available at https://www.sars.gov.za/Media/MediaReleases/Pages/Commencement-of-the-Tax-Administration-Act.aspx [3 August 2020].
[49] Ibid.
[50] Sections 101–103 of the TAA.
[51] Sections 104–107.
[52] Sections 108–115.
[53] Sections 116–132.

of the members. The part contains procedural matters on the functioning of the court, including the sitting of the court, the subpoenaing of witnesses, contempt of court and orders for costs. This part of the chapter is the oldest as the provisions were present in the Acts before 1962, except for the objections and appeals part. The current Act expands on the provisions nevertheless.

Part E[54] covers appeals against Tax Court decisions. It details the processes to be followed when appealing against decisions of the Tax Court. It includes notices of intention and leave to appeal against Tax Court decisions, notices in respect of the time to appeal Tax Court decisions, time to appeal to the Supreme Court of Appeal, and cross-appeals. It also includes records of appeal and abandonment of judgment. Part E is the most overhauled part of the chapter. Earlier Acts had only one section on appeals to higher courts, while the 2011 Act makes copious provisions for appeals requirements. This was the result of the Tax Court rules now closely resembling the rules of the High Court; the provisions on appeals against a Tax Court decision therefore reflect the process for appeals from a High Court to a higher court.

Part F[55] deals with the settlement of disputes. The part makes provision for ADR processes and includes the initiation of settlement procedures, the circumstances in which settlement may or may not be appropriate in dispute resolution, the finality of assessment where settlement is employed, the registering of settlements and the reporting and alteration of settlements or decisions on assessment. This part of the chapter is the most recent addition to the dispute resolution process, and it was first introduced in 2003. It is contended that Part F was included to try to resolve disputes in a non-adversarial manner. It is also one of the layers of the dispute resolution process.

6.9 Comparison of the 2003 and 2014 Tax Court Rules

A comparison of the Tax Court rules of 2003 and the revised rules of 2014 involves various considerations. Time periods are a major concern in the new rules and time stipulations are generally reduced. The review is in line with the need to adhere to reduced timelines in dispute resolution. However, while times for filing were reduced, times within which a taxpayer is expected to put up a defence are generally increased, thereby ensuring more fairness to the

[54] Sections 133–141.
[55] Sections 142–150.

taxpayer. Another increase in time requirements is in the area of ADR, to advance ADR as a quicker and simpler process of resolving disputes.

Some procedural issues concerning dispute resolution have also been changed, particularly procedures dealing with choosing a facilitator. Finally, confidentiality and the publishing of Tax Court cases have changed in the new rules. The previous rules stipulated that the president of the Tax Court would decide on which cases to publish, while the new rules provide that all cases will be published but in such a way as not to reveal the identity of the parties.

Table 6.1: Instances where time periods are reduced in the new rules[56]

S/N	**Previous rule/ITA**	**New rule/TAA**	**Provision**
1.	Rules 3(1)*(b)* and 3(3)	Rules 6(3) and (5)	Reduces the time for giving reasons for assessment or grounds of assessment from 60 to 45 days.
2.	ITA section 81(2)	TAA section 104(5)	Reduces time for lodging a complaint from 30 to 21 days.
3.	Rule 5(1)	Rule 7(4)	Reduces time within which SARS must inform a taxpayer that his or her objection is invalid from 60 to 30 days.
4.	Rule 5(2)*(a)*	Rule 8(1)	A taxpayer is allowed to furnish additional documents for a reduced time of 30 days from the previous time allowance of 60 days.
5.	Rule 5(2)*(b)*	Rule 8(2)	The additional documents in section 8(1) should be delivered within a period of 30 days, compared to 60 days under the previous rules.
6.	Rule 5(2)*(c)*	Rule 8(3)	SARS may extend the period within which the documents in section 8(1) may be provided by 20 days (60 days in the previous rules).
7.	Rule 5(3)	Rule 9(1)	SARS may disallow the objection and inform the taxpayer within 45 days of the documents requested (reduced from 90 days in the previous rules).

[56] Rules Promulgated Under Section 103 of the TAA op cit note 30 at 80–90. The document contains a table comparing the old and new Tax Court rules. Some of the differences contained in this section are drawn from the table.

8.	Rule 5(4)	Rule 9(2)	SARS may extend the period within which it may advise the taxpayer of the outcome of the objection by 45 days (90 days in the previous rules).
9.	Rule 7(7)*(c)*	Rules 23(3) and 24(3)	Where an agreement is reached SARS must give effect to the agreement within 45 days – a reduction of 15 days from the previous rule's provision of 60 days.
10.	Rule 8(2)	Rule 26(1)	SARS must set down a matter for hearing at the Tax Board 30 days after receipt of a notice by appellant; this is a reduction of ten days from the previous rule's provision of 40 days.
11.	Section 83A(13)*(a)* and *(b)* ITA	Section 115 of TAA	A party dissatisfied with the Tax Board's decision may appeal within 21 days to the Tax Court; this was 30 days under the previous rules.
12.	Rule 10(1)	Rule 31(1)	Statement of grounds of assessment opposing the appeal must be delivered within 45 days of certain events. The previous rules provided for 90 days.
13.	Rule 11(1)	Rule 32(1)	Taxpayer must deliver statement of grounds of appeal within 45 days after certain events. The previous rules provided for 60 days.
14.	Rule 14(2)	Rule 36(4)	Party to whom notice to discover has been delivered must make discovery within 20 days after delivery by that party of that notice. The previous rules provided for 40 days.

Table 6.2: Time periods are extended in the following instances in the new rules[57]

S/N	**Previous rule/ITA**	**New rule/TAA**	**Provision**
1.	Rule 7(1)*(a)*	Rule 13(1)	SARS must inform appellant by notice within 30 days of receipt of the notice of appeal whether the matter is appropriate for ADR. The previous rules provided for

[57] Ibid.

			20 days; therefore, there has been an increase of 10 days.
2.	Rule 7(1)*(b)*	Rule 13(2)	Where the taxpayer did not request ADR, and SARS is of the opinion that the matter is appropriate for ADR, it must inform the taxpayer within 30 days of receipt of the notice of appeal, and appellant must within 30 days of delivery of notice by SARS deliver a notice stating whether the appellant agrees. The time periods are increased by 20 days in each of the instances above. The previous rules provided for ten days in the two instances.
3.	Rule 8(3)*(a)*	Section 114(2) of TAA	Chairperson of Tax Board must prepare a written statement of the Tax Board's decision within 60 days after conclusion of the hearing. The previous rules provided for 30 days, so there has been an increase of 30 days.
4.	Rule 17(2)	Rule 39(4)	Registrar must deliver to the parties a written notice of the time and place appointed for the hearing of the appeal at least 80 days before the hearing of the appeal. The previous rules provided for 40 days.

Table 6.3: Other notable changes or differences between previous rules and new rules[58]

S/N	**Previous rule/ITA**	**New rule/TAA**	**Provision**
Rules about facilitator			
1.	Rule 3 – Schedule	Rule 18(3)	Formerly only SARS could remove a facilitator on the request of the facilitator or by agreement of the parties. Under the new rules, either party can request the removal of the facilitator due to bias.
2.		Rule 21(2)	Provides that a facilitator must deliver his or her recommendation within 30 days after termination of

[58] Ibid.

			proceedings unless parties agree to an extension of this period. The previous rule is silent about the time within which recommendations may be made. It is opined that this provision is to ensure that the process is not left unfinished.
Replacement of member of Tax Court			
3.	Section 83(5)*(a)* of ITA	Section 120(4) of TAA	Under the previous rules the president could replace a member of the Tax Court for any reason he or she considered good and sufficient but under the new rules he or she may remove a member only for misconduct, incapacity or incompetence. This provision is more in line with judicial independence.
Confidentiality or privacy of dispute resolution process			
4.	Section 83(11) of ITA	Section 124(2) of TAA	Under the previous rules the sitting of the Tax Court was not public and the president could remove any person whose presence was not necessary to the hearing. Under the new rules the president may allow a person to attend the sitting of the Tax Court after taking into account any representations that the appellant or SARS wishes to make on request. This provision is a limited way of opening the Tax Court to public attendance.
5.	Section 83(19) of ITA	Section 132 of TAA	Publication of all judgments of the Tax Court is compulsory but in a form that does not reveal the appellant's identity. Under the previous rules the president of the court decided which cases could be published.
Costs by Tax Court			
6.	Section 83(17)*(b)* of ITA	Section 130(3) of TAA	The Tax Court may make an order of costs if the grounds of appeal of the appellant are held to be unreasonable. The previous rules provided that costs would be awarded if the grounds of appeal were frivolous.

6.10 Problematic areas of Tax Court procedure

As shown in sections 6.5 to 6.9 above, the South African tax dispute resolution environment has been improved by continual legislative amendments and consolidations of Tax Acts. However, a problem area of the Tax Court in the past was in respect of procedural issues. This concerned where the court could substitute issues previously uncanvassed with new issues, while the taxpayer was prevented from altering his or her grounds of objection. In other words, the tax authority had more leeway to substitute assessments at any time.[59] Connell called this situation trial by ambush.[60] This section of the chapter assesses these formerly problematic areas by evaluating cases decided before the introduction of the Tax Court rules, which addressed the defects.

Therefore, before the promulgation of the Tax Court rules, the Tax Court procedure was weighted in favour of the tax authority. This position is countered when the Tax Court procedure is assessed from the perspective of the revenue authority.[61] When viewed from the perspective of the tax authority, the peculiarities of the Tax Court made it necessary for trials to be conducted in a manner that did not allow the taxpayer to abuse its position.[62] Connell argues that there are important differences between pleadings, statutory objection letters and disallowance letters. Before the introduction of the Tax Court rules, 'civil requests for further particulars [were] foreign to Tax Court procedure.'[63] Since discovery in the context of civil procedure was not present in the Tax Court procedure, the court sometimes handled cases in order to cure the defect of non-availability of discovery and this sometimes led to criticism.

---

[59] Older Tax Acts generally allowed the substitution of previously uncanvassed issues with new issues by the Tax Court and restriction of the taxpayer's grounds of objection. For instance, section 82(4) of the 1917 Act provided that 'on receipt of a notice of objection to an assessment, the commissioner may reduce or alter the assessment or may disallow the objection and send the taxpayer notice of such alteration', while section 84(8) provided that 'the court may alter or order the alteration of the assessment book in order with the decision given on any appeal'. The provisions may largely be seen to be in line with the tax authority's powers to regulate the payment of taxes. However, while these provisions were generally retained in the 1925 Act, a new provision which restricted the taxpayers' rights while retaining the powers of the tax authority was introduced. Thus section 58(7) provided 'at any such appeal the taxpayer shall be limited to the grounds stated in his notice of objection'. Under the current 2014 rules, the taxpayer is given room to correct improperly filed objections and SARS is obliged to inform him or her if his or her objection is improperly filed – rule 7(4), (5) and (6). Furthermore, even when issues have been determined, the taxpayer can amend his or her statement of grounds of appeal as contained under rule 35 which states '(1) the parties may agree that a statement under rule 31, 32 or 33 be amended. (2) If the other party does not agree to the amendment, the party who requires an amendment may apply to the Tax Court under Part F for an order under rule 52.'

[60] Connell op cit note 42 at 579.

[61] Ibid.

[62] Ibid.

[63] Ibid at 569.

The cases below were decided in 1974 and in 2001, closer to the introduction of the Tax Court rules in 2003.

(i) IT 1280 (1974) 40 SATC 259 (T)

This case focused mainly on the procedure of the Tax Court and the taxpayer not being entitled to discovery but rather to a dossier prescribed by regulation B3 of the ITA. The facts of the case were that, in respect of the tax year ended 28 February 1966, the secretary issued the taxpayer, a private company, with a revised assessment and the taxpayer objected to this assessment. Its objection having been disallowed, the taxpayer noted an appeal to the Tax Court.

In a letter to the taxpayer acknowledging the noting of the appeal, the secretary included a statement which usually accompanies such an acknowledgement to the effect that:

> Any reasons or explanations which may have been given in support of the disallowance of the objection are without prejudice to any additional reasons or explanations which may be advanced by the secretary for Inland Revenue at the hearing of the appeal.[64]

Before the Tax Court, it was submitted on behalf of the taxpayer that both justice and the necessity to avoid surprise (and by implication trial by ambush) at the hearing required that all relevant documents be available to litigants prior to the hearing, that this principle should equally apply in an income tax appeal, and that, inasmuch as no specific provision for discovery is made in the Income Tax Act Regulations, the provision of regulation B4 should be read as introducing the procedure prescribed by rule 23(1) of the Magistrates' Courts rules.[65]

With regard to this argument, the court held as follows:

> The nature of the hearing before the Special Court as discussed above indicates that it is not a trial of an action. There are no pleadings which define the issues before the court as in a trial. There is no joinder of issue defined by pleadings as in a trial. The Special Court can, as we have seen, find that the taxpayer is liable to tax on grounds which differ from those of the Secretary. The dossier is placed before the Special Court. This contains only what is prescribed by regulation B3. Those requirements cannot be said to constitute pleadings. Furthermore the Secretary need not be specific about his case. He is not as it were limited by pleadings. This is always emphasized by him. In this case it appears from his letter of 21 January 1970. The Secretary is at large in these hearings. It is only the litigant who is limited to the grounds stated in his notice of objection. This appears from s 83(7) (b) of the Income Tax Act 58 of 1962.[66]

The analysis of the court's judgment is to the following effect:

---

[64] IT 1280 (1974) 40 SATC 259 (T) at 261.
[65] At 262.
[66] At 263.

> In the light of the time periods respectively prescribed in regulation B3 and in rule 23(1) of the Magistrates' Court Act makes it apparent that the discovery procedure of such last – mentioned rule is not intended to be imported by regulation B4.[67]

The court concluded by stating that 'the Secretary was therefore correct in contending that the taxpayer was only entitled to be provided with a copy of the dossier prescribed by regulation B3. The application for discovery was accordingly dismissed.'[68]

This case exposes the fact that before the introduction of the Tax Court rules, the taxpayer was limited to the grounds stated in his or her objection to the tax authority's assessment, while the tax authority was not confined to the facts and contentions previously communicated to the taxpayer. This situation existed despite the fact that it could spring a surprise on the taxpayer at the trial, and, as noted above, was one of the reasons for the reform of Tax Court procedure and the introduction of the Tax Court rules.

(ii) IT 1736 (2001) 64 SATC 465

The major issue for determination in this case was Tax Court procedure (discovery) in respect of Regulation B4 made pursuant to section 107 of the Income Tax Act 58 of 1962. The facts of the case were that the taxpayer had objected to a tax assessment in which his claim that certain severance payments should be treated as capital was declined by the SARS. In the course of the trial, the SARS representative issued a notice in terms of rule 23(1) of the Magistrates' Court rules calling for discovery to be made under oath.

The court held that 'discovery is by its nature an extremely important aspect of our litigation procedure. It entitles a party to prepare properly by knowing what documents and other discoverable items are in existence.'[69]

The court held further that:

> It was further pointed out that in terms of s 81 of the Act, the Commissioner, when faced with an objection, is entitled to request further and better information. For the same reasons this right does not equate to or provide a substitute for formal discovery before a court such as this…
>
> As I have already said, discovery is a completely different procedure from that which may be allowed to the Commissioner in terms of the Act to enable him to investigate the taxpayer's liability for tax. Discovery is a particular type of procedure which is used in litigation and not in the normal course of tax assessment.[70]

---

[67] At 260.
[68] At 261.
[69] IT 1736 (2001) 64 SATC 465 at 467.
[70] At 468.

The court concluded by stating that:

> In my view, discovery before this court should not be a matter which is automatic and which should apply in every single case. In other words, I am of the view that discovery may be a practice and procedure which is applicable in certain cases but that it ought not to be a tool or a device which is automatically open to either party to use simply by serving a notice. This court has for many years, in my experience, operated quite successfully and efficiently without discovery and whilst it is clear that there are cases where discovery can well be applicable, I rule that discovery is not of general application.[71]

In this 2001 case, the court ruled that discovery was not applicable nor of general application in the Tax Court. This position has been amended by the Tax Court rules, as rule 36 of the present rules explicitly provides for discovery.

6.11 Conclusion

This chapter evaluated the legislative framework for and history of tax dispute resolution in South Africa and its various regions from 1904 to 2011. The constitutional basis for taxation was shown to have not been problematic. The spheres of government had defined roles around taxation and, consequently, there were no disputes concerning the collection or imposition of taxes by the different spheres, despite the very large number of cases within the review period (see Annexure 2). The Tax Acts as examined in the chapter showed progressive and sustained amendments to dispute resolution sections, predominantly centred around appealing questions of law and fact, the composition of the Tax Court panel and time periods. The rules were continually amended whenever there were gaps. An assessment of the legislative basis for taxation therefore is that it was not particularly problematic.

There were issues nevertheless with the tax dispute resolution process in the jurisdiction as can be seen in the Tax Court procedure and the cases that challenged some of these procedures. A holistic assessment of the South African environment will be undertaken at the end of the next chapter, which will also address the above issues in more detail.

[71] At 469.

CHAPTER 7: ASPECTS OF THE SOUTH AFRICAN TAX DISPUTE RESOLUTION ENVIRONMENT IN CORRELATION WITH THE NORMS OF GOOD DISPUTE RESOLUTION EXAMINED IN NIGERIA

7.1 Overview

This chapter examines the South African tax dispute resolution environment against the selected norms of good dispute resolution identified in chapter 2: judicial independence, access to justice, procedural fairness, discretion and timeousness. The chapter also evaluates the practical aspects of implementing the norms in the jurisdiction. The chapter concludes with a holistic assessment of the South African environment as discussed in chapters 6 and 7.

The aim of the chapter is to assess the correlated aspects of the South African environment in more detail in order to gain a better understanding of it and, based on the findings, to make suggestions (in chapters 8 and 9) about how to improve the Nigerian system. The assessment addresses the research question of whether South Africa can provide insight into where the Nigerian tax environment should be headed by providing deeper insights into the environment. The norms of good dispute resolution are assessed in sections 7.2 to 7.6.

7.2 Judicial independence

As noted in section 2.5.1, the South African tax dispute resolution process has a solid foundation. The Tax Court is properly set up under section 166 of the Constitution and section 116 of the Tax Administration Act. This section of the research further assesses the South African environment in respect of the other components of judicial independence, including (a) impartiality; (b) financial autonomy; (c) mode of appointment of judges; and (d) secretariat of the court.

As noted in section 5.2, if impartiality is measured by assessing whether cases are decided in favour of or against the tax authority, there is a close tally between cases decided for and against the South African Revenue Service (SARS), based on the reported cases examined in the thesis. The cases reviewed in the research are from the South African Tax Cases (SATC) and the SARS website and were decided from 2003 to 2016. The researcher does not assume that the cases in the two sets of reports reflect all the reportable tax cases but, for the purposes of the research, reports from the two sources are evaluated. Furthermore, some of the cases overlap:

some cases are reported only in SATC or on the SARS website, while others are reported in both sets of reports.

A total of 124[1] Tax Court cases were reported in SATC between 2003 and 2016. Of this number, 55 were in favour of SARS, 53 were in favour of the taxpayer, 12 were split decisions, ie neither wholly in favour of the tax authority nor the taxpayer, and four did not go in favour of either party. The court ruled in these instances that the matter was beyond the jurisdiction of the court, that there was no *lis* between the parties, or the dispute was postponed *sine die*.

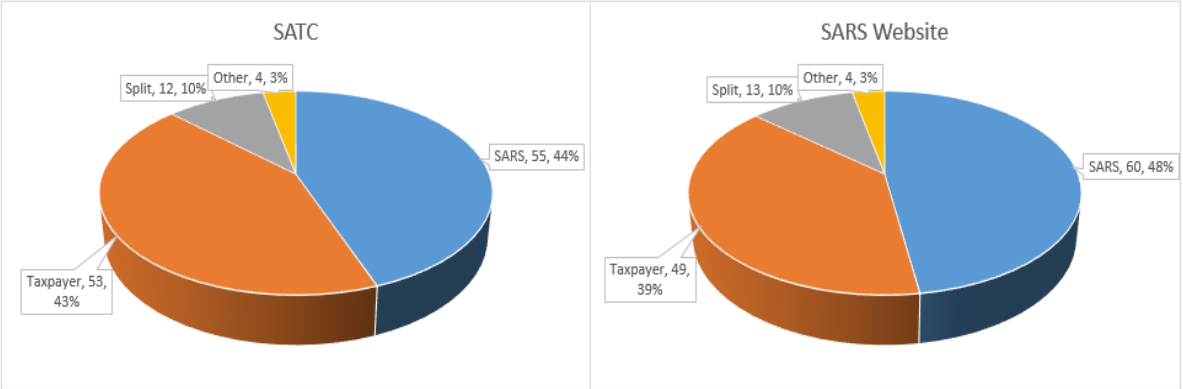
Reported cases on the SARS website during the period show that a total of 126 Tax Court cases were decided. (Prior to the review of the Tax Court rules in 2014, the judge president decided which cases were to be reported.) Of the cases reported, 60 were wholly in favour of SARS, 49 were in favour of the taxpayer, and 13 were split decisions, ie partly in favour of the taxpayer and partly in favour of the tax authority. Two cases were reported in a language other than English, the court declined to adjudicate on a particular case as it ruled that the issues raised were beyond its jurisdiction, and another case was a separation application and was not decided in favour of either party.[2]

Annexure 2 provides a list of Tax Court cases from 2003 to 2016, as reported in SATC and on the SARS website, showing the names of the parties, the party for whom judgment was in favour, the location of the Tax Court where the suit emanated, the issue(s) in contention, the type of taxpayer, the year of assessment, the date of judgment and the length of time it took to resolve the dispute.

[1] As contained in volumes 65 to 79 of the SATC, available at https://www.mylexisnexis.co.za/Index.aspx [27 July 2017]. Also see Annexure 2.

[2] Available at http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/default.aspx [27 to 29 July 2017]. It is not indicated why the court marks some cases as reportable and some cases as not reportable. From 2014 to 2016, when the reporting of cases was made compulsory, a total of 34 cases (SARS website) were attended to: 15 of the cases were in favour of SARS, 14 in favour of the taxpayer and five had mixed outcomes.

Figure 7.1: Tax Court cases as reported in SATC and on the SARS website showing percentage of cases in favour of SARS, the taxpayer and mixed outcomes[3]



Source: Author

The secretariat of the Tax Court is also assessed for indicators of independence. The secretariat comprises employees of SARS and it is worth considering whether it would be better practice if the secretariat were staffed by employees outside SARS to give the court even more of an appearance of independence and of not being too closely associated with the tax authority. However, all the cases in the court emanate from SARS and it is contended that it is more administratively efficient if SARS officials also act as the secretariat of the court, particularly because when cases go on appeal, a new set of secretarial staff with no links to the tax authority will deal with the cases.

In terms of the financial autonomy of the system, section 10 of the Superior Courts Act 10 of 2013 provides that '[e]xpenditure in connection with the administration and functioning of the Superior Courts must be defrayed from moneys appropriated by Parliament',[4] while section 54(1) and (2) of the same Act further provides:

> The Minister must consider and address requests for funds needed for the administration and functioning of the Superior Courts, as determined by the Chief Justice after consultation with the other heads of Court, in the manner prescribed for the budgetary processes of departments of state.
>
> The Secretary-General, as accounting officer of the Office of the Chief Justice in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Superior Courts, and must cause the necessary accounting and other related records to be kept, in terms of that Act.

[3] Some of the cases overlap: some cases are reported solely in SATC or on the SARS website, while others are reported in both sets of reports.
[4] The judges of the Tax Court are drawn from the South African judiciary and therefore the financial provisions of the Superior Courts Act apply to them.

Hoexter and Olivier are of the view that the judiciary should be even more independent and be entirely financially divorced from the executive. They note that:

> The governance of the South African judicial system has always been somewhat opaque. Traditionally the executive has been responsible not only for the magistracy but for the administration of the superior courts with regards to finance, support staff and logistics, while matters relating more specifically to adjudication such as allocation of judges to cases, have been the province of the senior judiciary: the chief justice, judges president and other heads of court. But there has never been a comprehensive and methodological treatment of the subject in legislation or anywhere else.[5]

Although it is expected that judges that have been selected through the normal vetting process are independent, there are sometimes suggestions that being too independent prevents a potential judge from being selected.[6] Flowing from the observation of the distinguished authors, therefore, the selection process for judges in South Africa is not perfect, so being selected as a judge does not indicate that the judge is always impartial.

In conclusion, the Tax Court in South Africa is generally independent as it scores well in markers for assessing judicial independence – the judges are appointed through the normal judicial process. The court is funded independently of the tax authority and its establishment flows from the Constitution.

7.3 Access to justice

As noted in section 2.5.2, access to justice has several dimensions: (a) the knowledge of the right to access courts; (b) the procedural means to access rights in court; and (c) costs in relation to obtaining justice. Access to justice in this section is assessed based on the above criteria; the classification of taxpayer types that litigate with SARS is also evaluated as it reflects awareness of the right to redress by different types of taxpayers.

The tax dispute resolution process in South Africa has evolved to cater to all segments of the taxpaying population. For instance, disputes of R500 000 and below are handled at the Tax Board, and ADR is vigorously promoted, as the tax authority is obliged to inform the taxpayer if the dispute is suitable for ADR and if he or she is willing to submit the dispute to it.[7] The tiered system ensures that smaller claims are taken to the Tax Board where the costs of dispute

---

[5] Cora Hoexter & Morne Olivier *The Judiciary in South Africa* (2014) 28.

[6] Ibid at 179. The authors are of the view that candidates for judicial posts who express robust views may not find favour with the Judicial Service Commission (JSC). The same applies to candidates who have expressed strong views or ruled against the JSC in the past.

[7] Rule 13(2)(A) of the Rules Promulgated Under Section 103 of the Tax Administration Act, 2011 (Act 28 of 2011).

resolution are lower. It is contended that tax disputes are brought by the taxpaying public; segments of the population that do not pay tax at all would not have tax disputes; and those who pay tax are generally aware of their rights to dispute resolution. The cases evaluated below include customs and excise disputes and although they are not solely in respect of taxes, the appeals are against the Commissioner of SARS and some of the issues are interlinked with other taxes.

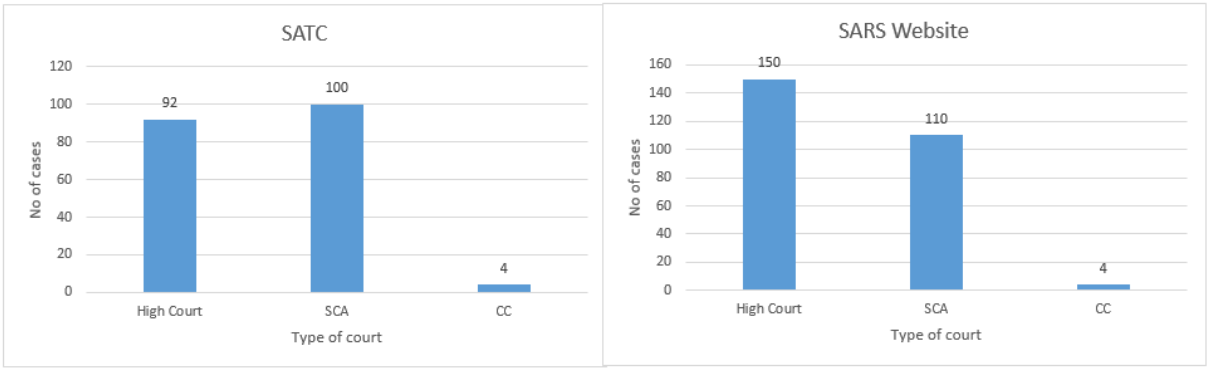
From the reported SATC cases of appeals emanating from the Tax Court to the superior courts, 92 were decided at the High Courts, 100 at the Supreme Court of Appeal, and four at the Constitutional Court. The figures support the above argument that generally taxpayers who sue have the means to go to the higher courts. It is not clear why there are more cases at the SCA than at the High Courts. It could be that more SCA cases were reported since the SARS website shows more cases decided at the High Courts than at the SCA, although by a narrow margin. However, this could also be reflective of section 133*(b)* of the Tax Administration Act (TAA) which provides for direct appeals from the Tax Court to the SCA in certain circumstances. The section provides that appeals against decisions of the Tax Court lie to the Supreme Court of Appeal 'without an intermediate appeal to the Provincial Division, if '(i) the president of the Tax Court has granted leave under the "rules"; or (ii) the appeal was heard by the Tax Court constituted under section 118(5).'

The SARS website indicates that 150 cases were attended to on appeal at the High Courts from 2003 to 2016. The Supreme Court of Appeal handled 110 tax cases within the same period, ie not a major decrease from the cases filed at the High Courts, while the Constitutional Court heard one tax-related dispute in 2007, 2011, 2013 and 2016, making for a total of four cases within the period.[8]

Included in Annexure 2 is a list of tax cases decided at the High Courts, the Supreme Court of Appeal and the Constitutional Court from 2003 to 2016, as reported in SATC and on the SARS website, showing the names of the parties and the type of taxpayer.

[8] There are sometimes barriers to appealing tax cases to the highest courts. In some jurisdictions, permission must be obtained before appeals are made to the higher courts. In the United Kingdom, permission must be obtained from the appellate court before a tax case is brought before the Supreme Court: see M Gammie 'Tax appeals in the UK Supreme Court' (2016) 70(1/2) *Bull Intl Taxn*. This could reduce the number of cases that reach the Supreme Court.

Figure 7.2: Tax-related cases as reported in SATC and on the SARS website showing the number of cases decided at the High Courts, the Supreme Court of Appeal and the Constitutional Court[9]



Source: Author

A second thread of access to justice is the cost of obtaining justice. As noted earlier, smaller disputes are settled by the Tax Board or ADR. More financially secure taxpayers can appeal to the Tax Court, while even more affluent taxpayers can appeal further to the higher courts. An issue for evaluation is whether the state is obliged to pay for indigent taxpayers who have disputes with SARS. It is argued that lower-income taxpayers have access to avenues to resolve their disputes without incurring too much expense, by going to the Tax Board or using ADR. However, having such options may not lead to satisfaction on the part of the taxpayer as he or she could believe that much of the process is still in the hands of SARS if he or she does not pay for legal services.

Furthermore, the fact that just administrative action can be challenged in tax cases by questioning the administrative actions of SARS is a good indication of access to redress and justice.[10] Challenges to Tax Court decisions at the High Court show that some are based on the rights of redress under the Promotion of Administrative Justice Act (PAJA). PAJA is of general application and employed to enforce rights in tax and non-tax cases.

Section 1 of the Act provides:

> (i) 'administrative action' means any decision taken, or any failure to take a decision, by— (a) an organ of state, when— (i) exercising a power in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation; or

[9] As was noted in figure 7.1, some of the cases overlap – some cases are reported solely in SATC or on the SARS website, while others are reported in both sets of law reports.

[10] Sections 32 and 33 of the Constitution deal with access to information and just administrative action respectively.

> (b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person, and which has a direct, extremal legal effect …

According to this provision, SARS administrative actions are subject to PAJA. Certain requirements must be met before a taxpayer can seek relief under the Act. For instance, internal remedies must be exhausted before seeking PAJA relief.[11] Six cases within the review period deal with disputes where PAJA relief was sought.[12]

In particular, the case of *New Adventure Shelf 122 (Pty) Ltd v Commissioner of the South African Revenue Service*[13] shows the internal remedies that must be exhausted before PAJA is invoked. The taxpayer had referred the dispute to the Tax Ombud, and later unsuccessfully approached the Legal Delivery Unit of SARS. Subsequently, the matter was referred for consideration to an 'internal committee' at SARS. When the taxpayer failed to obtain its preferred relief, it gave notice as required in terms of s 11(4) of the TAA of its intention to institute proceedings by approaching the High Court for relief, and an application for a review. Two substantive issues with regard to the review were in contention: (i) whether the application should be entertained in view of the fact that it was brought out of time; and (ii) whether it had any merits. Regarding the first issue, the court was 'persuaded that it would be in the interests of justice to entertain the review application out of time notwithstanding, as will become apparent, [its] adverse opinion as to its merits.' In respect of the second issue, the court refused the application for review with costs. The internal remedies that were exhausted before the matter was heard for PAJA relief at the High Court were the Tax Ombud, the Legal Delivery Unit of SARS and an 'internal committee' at SARS.

The fact that PAJA can be employed to review SARS actions raises the issue of its importance or relevance. It is opined that its relevance lies in the fact that it is an added avenue of seeking relief for the administrative action of entities, including the tax authority. South African tax practitioners can therefore rely on PAJA when SARS provides inadequate reasons for any

---

[11] See section 7 of PAJA.

[12] The other cases on PAJA show how successful the taxpayer has been in suing for relief under PAJA. In *Chittenden NO and Kestrel Network Solutions Pty Ltd v SARS* [2014] 76 SATC 397, the applicant was not granted a tax clearance certificate and he sued for a review. The application was struck off with costs. In *SARS v Prudence Forwarding Pty Limited* [2015] 78 SATC 119, the taxpayer lost. *Ackermans Ltd v SARS* [2015] 77 SATC 191 was not decided on the merits and both sides won. *MTN International (Mauritius) Limited v SARS* [2013] 75 SATC 171 was appealed to the SCA and the taxpayer still lost. In *Zikhulise Cleaning Maintenance and Transport CC v CSARS* [2012] ZAGPPHC 91 the taxpayer won. Of the six cases, SARS won four, the taxpayer won one, and one case was not decided on the merits so neither party won or lost the case.

[13] [2016] 78 SATC 190.

decision affecting taxpayers.[14] Another issue requiring consideration is why the matter was determined at the High Court rather than the Tax Court. The reason is that the 'next step' after the afore-mentioned internal remedies is adjudication at the High Court in line with the provisions of section 105 of the TAA, which provides that a taxpayer may dispute an assessment only in terms of Chapter 9 of the Act (namely, objection or appeal), 'or by application to the High Court for review'.[15] The Tax Court had heard the matter and a review of its decision should be handled by another court. The Tax Court would then not be seen to be reviewing its own decision.

While PAJA enables the taxpayer to seek relief for administrative action by SARS, it should be employed with care and not frivolously. In view of the interrelatedness of cases under the Bill of Rights, the above cases can also be evaluated in terms of procedural fairness.

7.3.1 Classification of taxpayer types that litigate against SARS

Section 7.3 above evaluated the number of cases decided at the Tax Court, the High Courts, the SCA and the Constitutional Court. This section assesses the class of taxpayers that have the most disputes with SARS (companies, individuals, close corporations, trusts, not-for-gain organisations or partnerships). As a result of the redacted nature of reported Tax Court cases it is not always evident what type of taxpayers litigate against SARS. Many of the reported SATC cases clarify the nature of a taxpayer. Therefore, a taxpayer is described as a company, holding or subsidiary, a close corporation, a trust, an individual or, on very few occasions, a not-for-profit organisation or partnership. However, sometimes the law reports do not identify the nature of a taxpayer and use the pronoun 'it', 'he' or 'she.'[16] The pronouns are used to protect the identity of a taxpayer. 'It' may refer to a company but may also be used for a close corporation. The specific nature of the taxpayer is thus not known where 'it' is used consistently in a law report. The identification of individual taxpayer litigants is more definite as 'he or she' is used exclusively for natural persons as opposed to legal entities.

---

[14] The TAA and Tax Court rules make adequate provisions for SARS to give reasons for its actions: see section 2.5 and the Tax Court rules (promulgated under section 103 of the TAA). Furthermore, as examined in the thesis, a request for reasons is one of the issues most litigated on by taxpayers: see section 7.5 below.

[15] Supra note 13 para 23.

[16] In ITC 1892 [2016] 79 SATC 105, the taxpayer was duly registered as a VAT vendor and 'contracted with fast food outlets and takeaway restaurants to advertise their menus in a booklet or catalogue, which "it" had printed and distributed to households in the areas in which it made deliveries.' In the body of the report, a contract between the entity and contractors had identified the taxpayer as a company, but it is not clear if this was included to obscure the identity of the entity.

Taking the above into consideration, litigating taxpayers in the Tax Courts as reported in the SATC are predominantly companies, followed by individuals, close corporations, trusts, not-for-gain organisations and partnerships. Some of the companies are holding companies or subsidiaries and on a few occasions are identified as multinationals with a foreign parent company or as having been registered outside South Africa.[17] The predominance of companies litigating against SARS is sustained at the High Courts and the SCA; however, Constitutional Court cases have a predominance of individuals as the litigating party. Annexure 2 lists the types of entities litigating with SARS at the Tax Court, the High Courts, the SCA and the Constitutional Court from 2003 to 2016 (according to the SATC and the SARS website).

There are sometimes multiple categories of taxpayers suing SARS in a particular case. For instance, an individual and a company could sue SARS in a specific case.[18] In such a situation, the taxpayers are counted differently under the respective categories into which they fall. It was not possible to identify the nature of some taxpayers and, in these cases, the taxpayers were not added to the tally.

Very few tax cases in South Africa involve a government body. The case of *Uitenhage Transitional Local Council v South African Revenue Service*[19] is a notable exception. According to the SARS website, companies constitute the largest group of taxpayers litigating against SARS. The reported cases on the website were more definite in identifying the nature of litigants in reports for the later years within the review period (2003–2016).[20] As a result of the difficulty in ascertaining the type of taxpayers suing SARS in reports prior to 2008, taxpayer classification from 2003 to 2007 is not included in the graph below. From 2008 to 2016, the majority of litigants were companies, followed by individuals, close corporations, trusts and not-for-gain organisations.

---

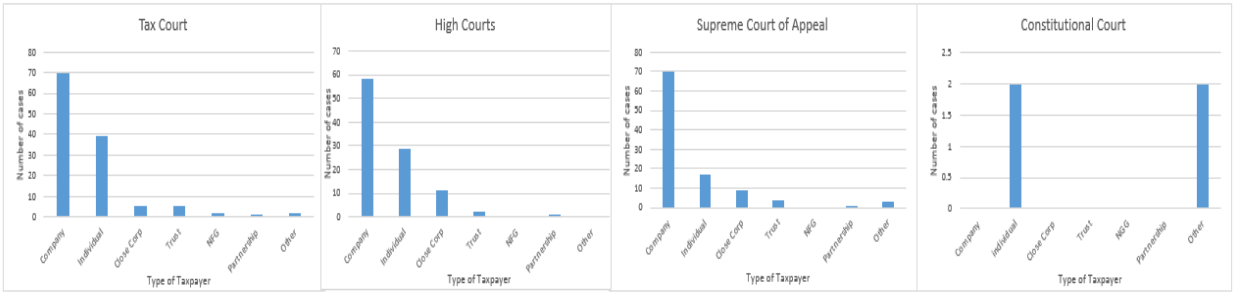
[17] In ITC 1888 [2016] 79 SATC 23 the appellant ABC (Pty) Ltd was described as being 'a wholly-owned subsidiary of DX Ltd (Australia)', while in ITC 1878 [2015] 77 SATC 349, the appellant was incorporated in the USA and was an advisory group with a global reach. It had come to South Africa to perform certain services for company X. In ITC 1808 [2006] 68 SATC 163 the appellant was a wholly-owned subsidiary of an off-shore parent company, GKN Netherlands (GKN), a Dutch registered company.

[18] In *Chittenden NO and Another v Commissioner for South African Revenue Service and Another* [2014] 76 SATC 397, the parties suing SARS included a company and an individual.

[19] [2003] 66 SATC 265. The taxpayer was a shell company and the suit was a disagreement between SARS and the municipal council on the ratio of funds to be paid to SARS and the council respectively in relation to funds recovered from the liquidated shell company on its winding up. The suit was therefore not directly a suit of a council demanding tax from SARS.

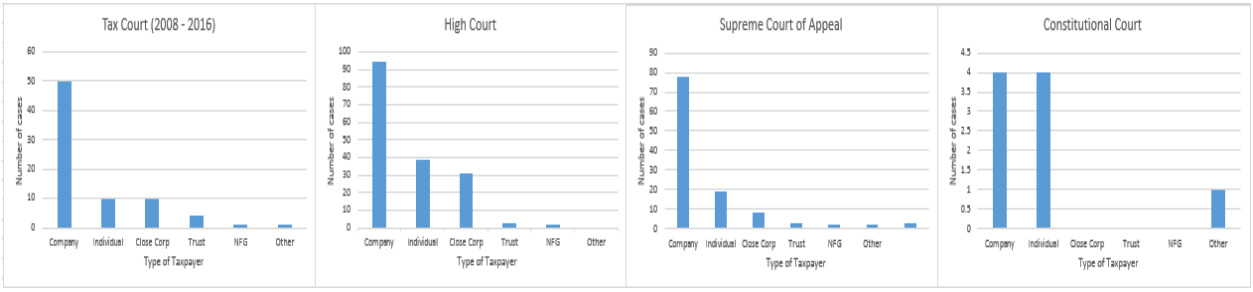
[20] Cases that were reported from 2008 to 2016 identify taxpayers with abbreviations such as AB/XYZ (PTY) Limited, close corporations are identified as close corporations, while trusts are identified as trusts (family or *inter vivos*). The reports from 2003 to 2007 often refer to a taxpayer as 'appellant' (all through the body of the report) and this makes it difficult to accurately establish the nature of the taxpayer.

Figure 7.3: Taxpayer types that sue or are sued by SARS in the Tax Court, the High Courts, the Supreme Court of Appeal and the Constitutional Court (SATC)



Source: Author

Figure 7.4: Taxpayer types that sue or are sued by SARS in the Tax Court, the High Courts, the Supreme Court of Appeal and the Constitutional Court (SARS website)



Source: Author

7.4 Procedural fairness

Procedural fairness within the South African tax dispute resolution regime has been a matter of great focus and has led to major reforms within the system (see section 6.10). Procedural aspects in the Tax Court were discussed in section 7.3 in the context of taxpayers' rights to challenge SARS administrative action. This section focuses on Tax Court procedure in relation to privacy and confidentiality.

Black's Law Dictionary defines confidentiality as secrecy and 'the state of having the dissemination of certain information restricted.'[21] It further describes privacy as 'the quality, state or condition of being free from public attention to intrusion into the interference with

[21] *Black's Law Dictionary* 14 ed (2014).

one's acts or decisions.' Privacy and confidentiality in tax matters therefore refer to the restriction of public access to taxpayers' information. From the above definitions, confidentiality in Tax Court proceedings concerns documents while privacy concerns the secrecy of Tax Court sittings. The privacy and confidentiality of Tax Court proceedings tie in with the wider issue of how much taxpayer information should be in the public domain or how much information should be available on an open access basis.[22] This has been an issue for discourse at the national and supranational levels in institutions such as the Organisation for Economic Co-operation and Development (OECD) and the European Union (EU).[23] The focus is how to balance the levying of taxes by tax authorities against the privacy and confidentiality rights of taxpayers.[24]

International tax-related agreements often provide for the protection of taxpayer information. The protection extends to the handling of exchanged tax information in courts of contracting jurisdictions. Article 26(2) of the OECD Model Tax Convention provides that information received by a contracting state shall be treated as secret in the same manner as information obtained under the domestic laws of that state and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment and collection of tax and the enforcement or prosecution of tax defaulters.[25] Article 8 of the Model Agreement on Exchange of Information on Tax Matters (TIEA) contains a similar provision and provides that information received by a contracting party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the contracting party concerned with the assessment and collection of tax and the enforcement or prosecution of tax defaulters.[26] Secrecy in tax matters is contained in Article 22 of the multilateral convention on Mutual Administrative Assistance in Tax Matters and it provides that information obtained by a party under the convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that party.[27] We can deduce from the confidentiality and secrecy provisions of the above instruments that confidentiality is expected in court

[22] See JD Blank 'In defence of individual tax privacy' (2011) 61 *Emory Law Journal* 265.
[23] E Kristofferson et al (eds) *Tax Secrecy and Tax Transparency* (2012) at iii.
[24] Ibid at 1.
[25] See 'Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes', available at https://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm [10 August 2020].
[26] Ibid.
[27] Ibid.

proceedings and tax information exchanged across jurisdictions should be treated as confidentially as that within a jurisdiction.

Privacy and confidentiality provisions in tax matters are also contained in domestic law. In particular, South African law makes provisions for taxpayer privacy and confidentiality. Section 14 of the Constitution provides that everyone has the right to privacy, which includes the right to not have their person, home or property searched, their possessions seized, or the privacy of their communications infringed. Section 124 of the TAA provides that

> Tax Court sittings for purposes of hearing an appeal under section 107 are not public. (2) The president of the Tax Court may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting …

Concerning confidentiality, Chapter 6 of the TAA provides that SARS in the course of its duties should ensure confidentiality for the taxpayer.[28] Furthermore, data protection is reinforced by the mandatory protection of SARS' records by section 35(1) of the Promotion of Access to Information Act 2 of 2000.[29] However, these privacy and confidentiality provisions are sometimes waived in certain contexts, for instance, in criminal investigations.[30] The above provisions of South African law show that there are expectations of privacy and confidentiality in taxpayer information except in limited situations.

Tax Court sittings before the passage of the TAA were completely private. However, an amendment in the TAA provided that the court may direct, on application by any party and under exceptional circumstances, that a sitting be held in public.[31] With regard to confidentiality, the TAA provides that all Tax Court judgments are to be published, albeit in a redacted manner.[32] In light of the provisions in the TAA concerning privacy and confidentiality, the current position is that while there is an expectation of privacy and confidentiality in taxpayer information generally, in terms of Tax Court procedure, there is a gradual easing of privacy and confidentiality. Taxpayer confidentiality and secrecy are required in OECD countries and the South African situation reflects this.[33]

---

[28] This is contained in the following sections: 67: General prohibition of disclosure; 68: SARS confidential information and disclosure; 69: Secrecy of taxpayer information and general disclosure; 70: Disclosure to other entities; 71: Disclosure in criminal, public safety or environmental matters; 72: Self-incrimination; 73: Disclosure to taxpayer of own record; 74: Publication of names of offenders.

[29] See 2.6.6 of the Memorandum on the Objects of the Tax Administration Bill, 2011. Available at https://www.sars.gov.za/Legal/Preparation-of-Legislation/Pages/Explanatory-Memoranda.aspx [4 August 2020].

[30] Ibid.

[31] Ibid at 2.2.9.9.

[32] Ibid at 2.2.9.11.

[33] See paragraph 3 of subsection 7.4.

An issue for assessment is the evolution of privacy and confidentiality in taxpayer information which is maintained when there are disputes in court, as well as the reasons for the requirements. Historical records show that tax confidentiality and secrecy were codified in statutes in Prussia and New Zealand as early as the mid-nineteenth century.[34] With regard to the United States, Blank notes that upon the introduction of income tax in 1861, taxpayer returns were open to the public but this was revised with time as the need arose.[35] Access to taxpayer information is affected by the impact that the accessibility will have on taxpayer behaviour ie whether it will make the taxpayer comply better with tax laws or negatively affect his or her behaviour. Open access and transparency are often premised on the assumption that the more the public can see the work of the tax administration and the courts, the less the risk of corruption and arbitrariness.[36] On the other hand, a major motivation for restricting public access by some jurisdictions is that it can be abused. In other words, taxpayer information should be open to the public with a specific aim in mind and not to satisfy people's 'morbid curiosity' or for frivolous reasons, such as allowing people check their neighbour's lifestyle compared to the taxes they pay.[37] There are valid reasons therefore why jurisdictions elect to maintain tax secrecy and confidentiality, and also in relation to Tax Court procedure.

In conclusion, it is posited that South Africa has provided for privacy and confidentiality in tax matters to suit its preferences.[38] There was more restrictions in the past and a measured opening in more recent times. Furthermore, taxpayer privacy and confidentiality are driven by the fact that confidentiality and secrecy provisions vary from one jurisdiction to another.

7.5 Discretion

Discretion in tax dispute resolution arises broadly in two spheres – administratively, where the tax authorities apply discretion to resolve issues with the taxpayer, and judicially, in Tax Courts or tribunals – and pertains to how courts conduct trials.[39] Discretion can therefore be applied

[34] Kristofferson et al op cit note 23 at 4.
[35] Blank op cit note 22 at 275.
[36] Kristofferson et al op cit note 23 at 24.
[37] Blank op cit note 22 at 276, 309 and 313. Taxpayer information in the wrong hands could lead to certain abuses like kidnap or blackmail. See Kristofferson et al op cit note 23 at 27.
[38] The tax dispute resolution environments in Nigeria and South Africa are compared in the next chapter. There is no privacy requirement in TAT proceedings. Restricted access to Tax Court proceedings is evaluated in the section to highlight the divergence with Nigeria.
[39] The IMF/OECD report for G20 Finance Ministers for March 2017 at 48, available at http://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf [11 August 2017].

by way of tax rulings, audit practices and the granting of tax incentives.[40] Judicial discretion in South African tax disputes was analysed earlier in the thesis while reviewing the early procedural problems of the Tax Court, including trial by ambush and the unilateral substitution of issues with new ones by the Tax Court (see section 6.10).

In the context of the discretionary powers of the tax authority, most actions of a tax authority involve some form of discretion since they are regulators of revenue collection; consequently, wide powers of discretion are typically given to tax authorities. In the South African Tax Acts these powers are captured in language such as 'just and reasonable', 'in the opinion of', 'the decision of the Commissioner', and 'when the Commissioner is satisfied'.[41] A particular type of discretion of the tax authority which will be assessed in greater detail (see section 7.7 below) is the discretion granted to the Commissioner to settle anti-avoidance disputes.

There are generally three types of discretionary powers of the tax authority: (a) discretionary powers specifically made subject to objection and appeal; (b) powers that specifically exclude the right of objection and appeal; and (c) powers where objection and appeal are neither expressly granted nor excluded.[42] An examination of the reported cases of the Tax Court reveals that taxpayers regularly challenge SARS decisions as a result of the discretion employed in administering the Tax Acts. The particulars of the cases may differ but the general principles on which the challenges are based are similar.

Based on the keywords used in SATC (volumes 65 to 79 ie 2003 to 2016), the following are the most litigated issues in South African Tax Courts:

a. Deductions.

b. Definition of gross income.

c. Tax administration – assessments, objections to assessments.

d. VAT – input and output tax, zero rating, penalty and interest, services.

e. Are expenses of a capital or a revenue nature?

f. Capital gains tax – disposal of shares.

g. Employees' tax.

---

[40] Ibid at 20.
[41] S Klue et al *Silke on Tax Administration* (2010) ch 5.14. For more details on this, see section 2.5.4 above.
[42] Van der Walt J in *KBI v Transvaalse Suikerkorporasie* 1987 (2) SA 123 (A), 49 SATC 11.

h. Set-off of losses.

i. Tax avoidance.

j. Tax Court procedure.

k. Trading stock.

l. Secondary tax on companies.

m. Recoupment.

n. Provisional tax.

o. Double taxation agreements.

p. Interpretation of judgment.

q. Stamp duties.

r. Estate duty.

s. Exempt income.

The SARS website has the following issues as the most litigated based on keywords:[43]

a. Definition of 'gross income'– whether proceeds from sales are of a capital or a revenue nature.

b. Allowable and non-allowable deductions.

c. VAT – what services are subject to VAT, and which VAT transactions should be zero rated?

d. Requirement for claiming an input tax credit.

e. When may the Commissioner allow carry forward of losses?

f. Correct rate of stamp duty payable for certain transactions.

g. When may additional tax be levied?

[43] The list was summarised by evaluating the keywords of the published Tax Court cases on the SARS website from 2003 to 2016 (available at http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/) and also by reading the cases to ascertain the major issues in dispute. Furthermore, as noted in sections 7.2 and 7.3 above, a list of Tax Court cases in SATC and on the SARS website is attached as Annexure 2.

h. Request for reasons.

i. Trusts; distribution of losses; whether an *inter vivos* trust was carrying on public benefit activities.

j. Tax amnesty.

In conclusion, discretion is applied in line with SARS' statutory powers and taxpayer challenges to discretion do not indicate the extraneous application of SARS' powers.

7.5.1 Rulings

Discretion also arises in the South African tax administration arena in the form of advanced tax rulings. There are three types of rulings: (a) binding general ruling – binding on the Commissioner and cited by any party, including the Commissioner, in any proceedings before the Commissioner or a court of law;[44] (b) binding private ruling – binding on the Commissioner in respect of an applicant and co-applicant, for the ruling in question to the extent that the ruling is actually applicable to the applicant or co-applicant;[45] (c) binding class ruling – an advance tax ruling regarding the application or interpretation of a Tax Act with regard to a specific class of persons in respect of a proposed transaction that is issued in accordance with the requirements of section 78 of the TAA in response to an application by an applicant. The purpose of a binding class ruling is to relieve each participant in a transaction from applying for a binding private ruling.[46]

Other notable prerequisites of rulings in South African law[47] are that an application must be made in the prescribed form and manner, including vital information about the applicant, such as name, email address or tax reference number. SARS may reject an application for an advance ruling for certain reasons, for example, where the application is in respect of a hypothetical transaction. The Commissioner may by public notice prescribe fees for the issuance of any form or ruling. A ruling is void *ab initio* in certain circumstances, for instance, where there is fraud. SARS may withdraw or modify an advance ruling at any time. A person applying for a ruling must consent to the publication of the ruling in accordance with sections 79 to 85 of the TAA.

---

[44] Klue et al op cit note 41 at ch 6.4. Available at https://www.mylexisnexis.co.za/Index.aspx [22 July 2017].
[45] Ibid at ch 6.5.
[46] Ibid at ch 6.6.
[47] The prerequisites as listed in this paragraph are summarised from the provisions of sections 79 to 87 of the TAA.

Few cases of the Tax Court within the review period arise substantially as a result of disputed rulings.[48] It is argued that this is because the ruling system in South African is very well structured. A great distinction is made between binding and non-binding rulings, as well as between rulings and practice notes.[49]

7.6 Timeousness

The time required before tax disputes can be properly filed in the South African Tax Court increased gradually with each amendment to the Tax Act. The Cape Acts of 1904 and 1908 had a time period of 31 days from the date of the first noting of a case to the time of hearing. The 1925 Act increased the time period before the hearing to 61 days, and the present Act has an elaborate time period for each layer of the dispute resolution process.[50] The early shortcomings of the Tax Court were corrected by putting in place a more structured arrangement including set time periods. On the negative side, however, the tax dispute resolution process became very lengthy.

Time periods in South Africa are assessed based on the year of assessment (YOA) because all the reported cases in both SATC and on the SARS website indicate the YOA. Time periods for the resolution of disputes are therefore calculated from the YOA to judgment. Time periods in this section are based on the information provided in the law reports. For instance, only 34 of the 126 reported Tax Court cases within the review period (2003 to 2016) include the date of hearing (SARS website). The date of hearing means the date on which the matter was heard in court, while the date of judgment refers to the date on which the judgment was read by the same court. The SATC also does not typically include the time of hearing, but rather includes the date(s) of judgment. The longest time period from time of hearing to judgment was ten months, while the shortest time was within a day, ie the case was heard and judgment was given on the same day. However, a lot happens before the hearing and if the entire time were included, this would give a truer picture of how long it takes to resolve a dispute already filed in the Tax Court. Before a case is actually heard in the Tax Court, it goes through pre-trial stages that

---

[48] Klue et al op cit note 41 at ch 6.10. They are of the view that a decision by SARS to withdraw or modify a binding private ruling and binding class ruling constitutes administrative action as defined in PAJA. However, none of the reported Tax Court cases on PAJA was in respect of the withdrawal of a ruling by SARS. An appeal against a ruling could however form one of the grounds of appeal, as in IT 11398 (SARS website): the appellant included the fact that SARS did not follow Interpretation Note 15 which it issued before a decision was taken on aspects of the dispute.

[49] Non-binding opinions and written statements are commonly known as interpretation and practice notes. These notes do not have the force of law. See Klue et al op cit note 41 at ch 6.14.

[50] Discussed in sections 6.5.1, 6.5.2, 6.5.5 and 6.8.

include statements, discovery, set down of appeal for hearing, pre-trial conference, subpoena of witnesses and documentary preparation. The time periods for these stages are not in the public domain. Therefore, all of the above were taken into consideration in basing South African time periods on the YOA.[51]

Apart from the considerations above, different factors affect time periods for tax cases in South Africa. For example, a civil tax dispute could arise after a criminal case has run its course. In ITC 1792,[52] the appellant declared certain share-dealing profits as forming part of his gross income in his tax returns and later submitted amended tax returns for the same tax years excluding the said profits, on the ground that the amounts did not constitute part of his 'gross income' as they were not beneficially received. He worked as a stockbroker and was a member of a stockbroking firm on the then Johannesburg Stock Exchange. However, during the years 1990 and 1991 he became involved in a syndicate that manipulated certain share transactions. He was convicted of fraud and sentenced to imprisonment. He made full restitution of the illegal profits to his employer with interest in October 1992. The fact that the income was secretly earned meant that it was not taxed until much later (thus extending the time period used in evaluating total time in the research). Therefore, although the YOA was 1991, the civil element of the case, ie determining his tax liability for the secretly earned income, was assessed after the criminal element was concluded.

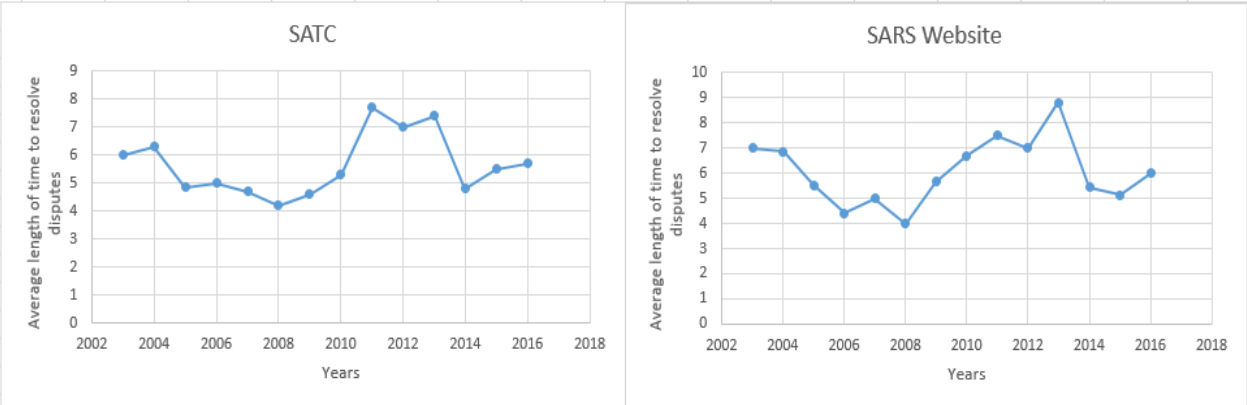
Time periods could also be lengthened because of prolonged desk top audits. In ITC 1785,[53] SARS raised assessments in 1993 against an appellant for the years of assessment 1991 to 1992. The appellant first objected in 1993, and SARS requested certain information in respect of the matter in 1994. The requested information and/or documentation was not furnished, and the objection was disallowed by SARS. The appellant raised objections in subsequent years in a back and forth with SARS, ie in 1996, 2000 and 2001. All the objections were disallowed by SARS. Finally, the appellant filed a notice of appeal in 2003, nine years after his first objection. However, the case was tried twice because it was tried *de novo*. This also explains why it continued for so long.

During the period under review, there is no upward or downward trend in the length of time for deciding cases. Some years with the longest resolution times are found in the middle of the

[51] The report of the Office of the Ombud shows some of the internal workings at SARS on why time periods are extended. See section 7.7 below.
[52] [2005] 67 SATC 236.
[53] [2004] 67 SATC 98.

review period. The average times for resolving disputes based on YOA are shown graphically below.

Figure 7.5: Average length of time to resolve cases in the Tax Court based on YOA for the years 2003 to 2016 as reported in SATC and on the SARS website



Source: Author

7.6.1 Notable facts (including shortest and longest cases)

Some of the shortest cases were concluded in slightly more than a year from the YOA. In ITC 1829,[54] the taxpayer was incorporated on 3 June 2005. Its principal business was manufacturing, distributing and installing diesel tracker anti-fuel-theft device units. It obtained a VAT registration number on 15 July 2005. The dispute was centred on the taxpayer's non-issuance of tax invoices from July 2005 to January 2006. The matter was decided in a Durban Tax Court on 15 November 2007. Therefore, the length of time from the period of assessment to the conclusion of the matter was more than a year but less than two years.

In ITC 1808,[55] the first appellant registered the transfer of its shares to the second appellant on 22 January 2002, and the subsequent transfer to the third appellant in its share register. On 23 January 2002, the appellants applied to SARS for a ruling to the effect that the transfers were part of a rationalisation scheme as defined, and therefore each transfer was exempt from the payment of stamp duty. SARS issued a ruling to the effect that the transfers did not constitute a rationalisation scheme as defined. On 1 April 2004, SARS issued a stamp duty assessment in respect of the three transfers of shares. The matter was decided on 24 November 2005 and 16 March 2006, less than two years after the date of assessment.

[54] [2007] 70 SATC 106.
[55] [2006] 68 SATC 163.

A third case decided within a short period was ITC 1796.[56] The appeal was based on employees' tax and remuneration, specifically whether the taxpayer was an independent contractor during the 2001, 2002 and 2003 years of assessment and was therefore entitled to deduct certain expenditure from her income. The matter was decided on 2 and 29 June 2005, 18 months after the last YOA.

At the opposite end, some of the longest cases based on YOA are prolonged because of intervening factors like criminality, which is decided before a civil dispute. ITC 1792 discussed above illustrates this (ie the stockbroker who engaged in criminal activity). The initial appeal was in respect of SARS disallowing an objection by the taxpayer to the 1990 to 1991 years of assessment. The matter was concluded in 2005, a total of at least 14 years from the last disputed YOA.

Going by the cases assessed in this thesis (see Annexure 2), income tax cases take the longest time to resolve, while other tax cases have shorter resolution times. The shortest cases discussed above addressed VAT, stamp duties, and employees' tax respectively, while the two longest cases were income tax disputes. Furthermore, some of the cases reported on the SARS website show that interlocutory applications are concluded within a short period of time.[57]

Time periods in South African tax cases may be better evaluated if compared with time periods in the general courts. It is beyond the scope of this thesis to determine how long the general courts in South Africa take to conclude cases. Timeousness is an important issue in achieving best practices in the tax arena.[58] Lengthy dispute resolution processes are a major driver of uncertainty and are of major concern to businesses.[59]

In conclusion, there are wide disparities in the conclusion times of disputes as some took more than ten years to conclude, while others were concluded in less than two years. The graphs above show that the average length of time to conclude cases for some years (2013) was rather

---

[56] [2005] 67 SATC 303.

[57] In ITC 13380, available at http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/2016-2014.aspx [26 August 2017]. The case was a procedural issue of a point argued *in limine*. It was first filed at the court in November 2015 and concluded in January 2016 (a period of two months). The matter was therefore not decided on the merits. Another procedural case that took a relatively short time to conclude was ITC 0038/2015: the matter was based on the taxpayer seeking an extension of the period allowed to object to an assessment. An objection was filed against the SARS assessment on 5 June 2015 and judgment was given on 4 March 2016 ie a period of nine months.

[58] IMF/OECD Report op cit note 39 at 48. The Report stipulates that dispute resolution mechanisms should be fair, independent from audit activities, accessible to taxpayers and effective in resolving disputes in a timely manner.

[59] Ibid at 25.

long.[60] The average time period was 7.4 years (SATC) and 8.8 years (SARS website). On the positive side, nine of the 14 reviewed years in the SATC suggest that disputes were concluded (based on YOA) close to the five-year mark, ie more than four years but less than six years. Considering the earlier argument that disputes commence much later that the documented YOA, the real time within which a dispute is resolved is shorter.

Delays are not always a result of the sluggishness of the administrative system. Circumstances could dictate that the time for dispute resolution is prolonged. For instance, a taxpayer who goes through all the stages of the dispute resolution process will inevitably prolong the process. New facts previously unknown to the tax authority or the taxpayer could also affect the overall resolution time of a dispute.

7.7 Practical aspects of implementing the norms of good dispute resolution in the South African tax environment

The South African tax environment has put in place a regulatory framework including laws, regulations and rules to guide tax dispute resolution. This section will examine aspects of the implementation of laws in the environment that have been criticised and where changes have been recommended. The focus is on issues that affect the norms as evaluated in the thesis, including timeousness, access to justice and discretion.

7.7.1 Issues on achieving timeousness

The Tax Ombud's Systemic Investigations Report investigated complaints that SARS fails to adhere to the dispute resolution timeframes prescribed by the TAA and the Dispute Resolutions Rules promulgated under the TAA.[61] The report found that:

- Indeed in several respects SARS fails to adhere to the timeframes prescribed by the TAA and the Dispute Resolution Rules promulgated under the Act.
- In other instances the fault lies with the taxpayer, such as when documents are not submitted in time or when taxpayers use incorrect source codes.
- However more blame lies with SARS as it is in an unequal relationship with the taxpayer.

In shedding light on the relationship between SARS and the taxpayer the report states:

> When it comes to the different steps of an objection, we must consider that there is a great imbalance in the powers between SARS and a taxpayer. An assessment has already

[60] For arguments on what is considered a long or short time to resolve disputes, see the conclusion.
[61] Tax Ombud's Systemic Investigations Report in terms of Section 16(1)(B) of the Tax Administration Act at 30, available at http://www.taxombud.gov.za/Documents/SYSTEMICINVESTIGATIONREPORT2020.pdf [27 August 2020.

> been raised and the 'pay now argue later rule' is applicable, so a taxpayer is subject to a threat of collection steps being taken. Due to this imbalance, it would be understandable for a taxpayer to simply let SARS's non-compliance with the timeframes in the DR Rules slide without insisting on an application for condonation. It would also be easy for SARS to capitalise on this imbalance by simply continuing with the procedures at its own pace because very few taxpayers would approach the Tax Court to compel compliance with the DR Rules ...[62]

Stipulated timelines as contained in the TAA and the dispute resolution rules were examined in sections 2.5.5 and 7.6 above. The Tax Ombud's report exposes lapses that are attributable to SARS in dispute resolution. Therefore, while the rules contain set timelines, the implementation is prolonged as a result of SARS practices. There is consequently a mismatch between what is contained in the regulatory environment and SARS implementation.

7.7.2 'Pay now argue later' rule and issues on access to courts (justice) and discretion

The 'pay now argue later' rule in the South African tax dispute resolution framework means that if a taxpayer enters into a formal stage of dispute with SARS concerning its tax liability, the payment of tax is not suspended until the dispute is resolved.[63] In other words, the taxpayer is obliged to pay the disputed tax pending resolution and, if eventually it is found not liable, it may be reimbursed with interest.[64] The rule was provided for in section 36 of the VAT Act 89 of 1991 and is currently provided for in section 164 of the TAA.[65] Section 164(1) of TAA provides:

> Payment of tax pending objection or appeal.—
> (1) Unless a senior SARS official otherwise directs in terms of subsection (3)—
> (*a*) the obligation to pay tax; and
> (*b*) the right of SARS to receive and recover tax,
> will not be suspended by an objection or appeal or pending the decision of a court of law pursuant to an appeal under section 133.

The main aim or thrust of the principle is to ensure that SARS is not 'out of pocket during the process of appeal or review'.[66] However, the implementation of the rule has been contentious and is highlighted in the *locus classicus* case of *Metcash Trading Limited v Commissioner,*

---

[62] Ibid at 50.
[63] See SAICA's Official Taxation Newsletter *General 1795 Pay now, argue later* December 2009 – Issue 124. available at https://www.saica.co.za/integritax/2009/1795_Pay_now_argue_later.htm [25 August 2020].
[64] See Beric Croome 'Payment of tax during an objection regulated' available at https://www.bericcroome.com/search/label/pay%20now%20argue%20later [3 September 2020].
[65] C Keulder '"Pay now, argue later" rule – before and after the Tax Administration Act' (2013) 16(4) *PER.* Available at https://www.ajol.info/index.php/pelj/article/view/99732 [14 August 2020].
[66] The Davis Tax Committee Report on Tax Administration for the Minister of Finance 2017 at 74, available at https://www.hoganlovells.com/en/publications/davis-tax-committee-report [28 August 2020].

South African Revenue Service, and Another.[67] The case concerned the constitutional validity of sections 36(1) and 40(2)*(a)* and (5) of the Value-Added Tax Act 89 of 1991. A major issue for determination was whether the provisions unjustifiably limited the right of access to courts protected by section 34 of the Constitution.

The dispute was initially instituted in the Johannesburg High Court and was heard by Snyders J, who delivered a reserved judgment. The learned judge found that the relevant sections of the Act infringed the fundamental right of access to courts afforded to everyone by section 34 of the Constitution. She relied heavily on the judgment of the Constitutional Court in *Chief Lesapo v North West Agricultural Bank and Another*[68] to arrive at her decision. She ruled that the actions of SARS juxtaposed with section 36 of the Constitution were neither reasonable nor justifiable. She accordingly declared the challenged provisions of the Act invalid and made ancillary orders, including an interdict preventing the Commissioner from enforcing payment of the assessed tax pending conclusion of Metcash's appeal to the Tax Court.

The Constitutional Court overturned the judgment and held as follows:

> These views point consistently to the conclusion that none of the sections challenged, either singly or in combination, constitutes a constitutionally offensive limitation of the right of access to the courts that is guaranteed by section 34 of the Constitution. In other words the pay now, argue later rule applicable to a vendor who is aggrieved by an assessment under our VAT legislation does not infringe such vendor's constitutional right to due adjudication or if it does, the limitation is justified.

The Constitutional Court judgment has attracted a lot of criticisms. Distinctions have been made based on the fact that it concerns a VAT case, which is different from income tax. Therefore, for practical purposes VAT is a self-assessment system and the principles in the case should not apply to an income tax case.[69] There is also a discussion about challenging SARS powers by way of administrative review (discussed below).

The Davis Committee's *Report on Tax Administration* 2017 recommends a review of the pay now argue later rule so that taxpayers have the right not to pay the tax amounts in dispute before an impartial review. The report notes that–

---

[67] 2001 (1) SA 1109 (CC), 63 SATC 13.

[68] 1999 (12) BCLR 1420 (CC). The Constitutional Court held in the *Lesapo* case that a provision in a bank's Articles allowing the bank to dispose of a debtor's property without the court's intervention was invalid. The court stated at para 32: 'It is legitimate for the Bank to enforce a legal claim, but not by by-passing the courts at the expense of the constitutional rights of the debtor …'

[69] See Kriegler J's views on *Metcash* 2001 (1) SA 1109 (CC), 63 SATC 13.

> the 'pay now argue later' principle is applied by the SARS savagely, regardless of the fact that its constitutionality has not been tested ... This rule also has the effect or discouraging taxpayers from engaging in appeal or review processes against SARS as, psychologically the taxpayer would have 'lost' the money already … In order to strike a balance between the taxpayer's right not to pay amounts in dispute before the matter has been heard by an impartial tribunal and SARS powers to collect taxes without the impediment of frivolous objections, it is recommended that taxpayers be required to pay a portion of the tax claim in dispute … The Committee recommends that the amount be set at 40% of the claim by SARS.[70]

On the need to regulate the SARS' enforcement of the pay now argue later rule and the consequential result of limiting access to the courts, Keulder notes that 'the legislature has failed to make productive use of the opportunity to draft legislation that would achieve a balance between SARS's duty and a taxpayer's right of access to the courts.'[71] Silke states that 'the effect of the "pay now, argue later" rule on individual taxpayers was ameliorated by the power conferred upon the Commissioner to suspend its operation. It was not absolute but subject to suspension in circumstances where the Commissioner considered it appropriate.'[72] Croome opines that 'I would advise an aggrieved taxpayer to challenge, on administrative law grounds, the Commissioner's decision to refuse to defer the payment of tax pending the hearing of an appeal. This is preferable to seeking the striking down of the pay now argue later provisions contained in the various fiscal statutes.'[73]

From the views described above, support for the pay now argue later rule is premised on the fact that the actions of the Commissioner can be challenged by way of administrative action eg through PAJA (Croome, Silke, Williams) while arguments against its application are centred on the fact that the *Metcash* case, which ruled the rule to be constitutional, is a VAT case and its constitutionality has not been tested on income tax cases (Croome, Keulder). The criticism of the rule is also centred on the way in which the Commissioner applies his or her discretion (Silke). The concept of paying some taxes pending the determination of a tax dispute is found in many jurisdictions and not only South Africa.[74]

---

[70] Davis Committee Report op cit note 66.
[71] Keulder op cit note 65.
[72] Jonathan Silke 'Pay now argue later' available at https://www-mylexisnexis-co-za.ezproxy.uct.ac.za/Index.aspx [7 September 2020].
[73] Beric Croome *Taxpayers' Rights in South Africa* (PhD thesis, UCT, 2008) 226.
[74] See Silke op cit note 72. This also obtains in Nigeria ie a deposit of a portion of tax in the course of disputation applies in Nigerian tax law. The main distinction, however, is that discretion on the percentage of tax to deposit lies with the TAT and not with the FIRS. A comparison of the Nigerian and South African tax environments is undertaken in the next chapter. However, section 15(7) of the Fifth Schedule to FIRSEA makes provision for the deposit of a proportion of tax as determined by the TAT before a taxpayer can appeal an assessment in certain

It is opined that the pay now argue later rule is necessary to meet the financial needs of the state. This means that tax is a source of revenue for the state and the rule ensures that taxpayers do not employ the litigation process to retain revenue that should ordinarily accrue to the state. However, the rights of the taxpayer to pay only the correct amount of tax should be ensured by SARS, by guaranteeing that only an agreed percentage is paid by the taxpayer before determination in court. The improvement of the applicability of the rule is necessary as it can impact the norms of dispute resolution as examined in the thesis, including access to justice and discretion.

In conclusion, the pay now argue later rule was examined to show that while a good regulatory framework is necessary for tax dispute resolution, it is equally important to ensure that it is properly implemented. The thesis argues that getting the legal framework right is a good first step, but implementing it fairly is key. This can be achieved by allowing for payment of only a percentage of the disputed tax, as recommended by the Davis Committee.

7.8 Conclusion

This analysis of the South African environment focused on issues that have close parallels with the Nigerian environment, and it does not address all the issues present in the South African arena.

South African tax dispute resolution processes have been in existence since 1914 and have evolved in different spheres, including a continually improving legal framework. The Constitutions have had clear provisions as to the legal framework for taxation and there is no conflict between the spheres of government. Legislative changes to the dispute resolution sections of South African Tax Acts have been consistent. From 1914 to 1962, the dispute resolution sections of Tax Acts were amended at least six times, in 1917, 1925, 1941, 1945, 1949 and 1962. The overall assessment of the legislative framework for dispute resolution in South Africa is that it is seamless and well-functioning.

While the legislative framework for the resolution of tax disputes is not problematic, the situation for Tax Court procedure is different. It was earlier perceived to operate largely in favour of the tax authority and this was addressed by the introduction of Tax Court rules which are similar to the High Court rules. Dissatisfaction with the Tax Court procedure as examined

---

circumstances. The insight for Nigeria is the need to focus on the implementation of rules as much as on the amendment of the regulatory framework.

in the thesis was present as early as 1917,[75] while the rules were introduced in 2003. Therefore, it took some time for the procedure to be addressed by the introduction of rules. Challenges to the Tax Court procedure led to the promulgation of the Tax Court rules which led to better procedures in the court. The rules are detailed and address the different tiers of the dispute resolution process: ADR, the Tax Board and the Tax Court.

The South African tax dispute resolution process addressed necessary changes with regard to the volume of cases, by introducing a tiered process. As the number of tax disputes increased, provision was made for more steps in the dispute resolution process. These expanded venues and methods include the Ombud, the Tax Board and ADR. Also of note is the fact that some of the expanded methods were intended specifically for smaller tax cases, ie the Tax Board. They were introduced to ensure more speedy resolution as their procedures were simpler. However, introducing these simpler means of dispute resolution did not lead to a reduced number of disputes or indeed faster resolution times, as some litigants preferred to go through all the dispute resolution options.

The South Africa environment showed varied times for the resolution of disputes – sometimes less than a year and sometimes as much as 14 years (see Annexure 2). An issue arising from the resolution times is what should be regarded as a long or reasonable time to resolve disputes. It is arbitrary to suggest that disputes should be resolved within a set time, whether a month or a year from when it first arose, but it is opined that resolving a tax dispute ten years or even longer after it arose is lengthy. This position is taken considering the consequential effects of such a delay on the disputed sum, such as penalties and interest or even inflation. In terms of averages, figure 7.5 showed that the longest time taken to resolve tax disputes within the review period was 7.8 and 8.8 years, while the shortest time was 4 years. These times were calculated from the YOA and, as noted earlier, the actual dispute might have arisen much later than the YOA. The total time for the resolution of disputes using the methods employed in the thesis was therefore often lengthy. As noted, these extended times were sometimes a result of taxpayer behaviour ie wanting to go through all the stages and alternatives in the dispute resolution process. Furthermore, some disputes took a long time to resolve because of the peculiar nature of the case, for instance, as a result of a random audit or delaying tactics by the taxpayer.

[75] See chapter 6, note 59.

The South African tax dispute resolution environment is protective of taxpayer privacy and confidentiality. This echoes practices present in OECD jurisdictions. These privacy and confidentiality provisions are reflected in the redacted nature of law reports and the closed nature of Tax Court proceedings. As examined in this thesis, there are numerous reasons why taxpayer information is protected in this way. For instance, the need to preserve trade secrets could necessitate closed proceedings in the Tax Court as well as redacted reported cases. Is there a need to revise these considerations? What will be the effect of less privacy and confidentiality? It is opined that a delicate balance must be sought between having an open access practice and preserving the confidentiality and privacy needs of taxpayers. South African practice has followed the requirements of the jurisdiction ie strict confidentiality and privacy provisions which have been relaxed with time.

In respect of SARS practices as examined in the thesis, the ruling system was assessed as being structured, detailed and clear. The different types of rulings and whom they bind, whether the tax authority or the taxpayer, are distinct. As a result of this clarity, few reported cases of the Tax Court are based on a contested ruling. The SARS website is also detailed and easy to navigate, making it convenient for a taxpayer and other persons interested in getting information from it to do so. However, the researcher notes that SARS was reticent to engage with her, and simply directed the researcher to the website for any needed information, which was already in the public realm.

While dispute resolution processes in South Africa were assessed in the thesis to be generally good, section 7.7 considered the importance of applying the provisions in the regulatory environment properly in order to ensure that the norms of good dispute resolution are always actualised.

The findings on South Africa can be summarised as follows: (a) Tax Court cases were roughly evenly decided in favour of the taxpayer and the tax authority; (b) there was not a major reduction in cases appealed at the High Court and the Supreme Court of Appeal – a reduction in tax appeals was substantial only at the Constitutional Court; (c) companies had the most disputes with the tax authority, followed by individuals, close corporations and trusts; (d) based on YOA, most cases from 2003 to 2016 were concluded within a five-year period.

In conclusion, the South African environment in respect of issues that also arise in Nigeria is advanced; this flows from the much longer period of its existence. The South African tax environment has had to deal with some thorny issues in its evolution, including areas which

are problematic in Nigeria as well. The insights that could be drawn from the South African environment are addressed in the next chapter.

CHAPTER 8: INSIGHTS FROM SOUTH AFRICA

8.1 Introduction

This chapter compares the Nigerian tax dispute resolution environment with the South African environment based on the issues examined in this thesis, in order to ascertain whether aspects of the South African practice can be adopted to improve the Nigerian environment. The chapter also specifically compares the selected norms of good dispute resolution in Nigeria with South Africa. The aim of the chapter is to identify South African practices in tax dispute resolution that could be used to improve the Nigerian environment and also to address the research question of whether South Africa can provide insights on improving the Nigerian process.

The examination of the Nigerian and South African environments in the thesis has shown very divergent settings in both jurisdictions. The divergence is evident in the legal framework, the case law and the historical evolution of both jurisdictions. For instance, the large number of cases that were present in South Africa at some point led to the introduction of a tiered system, which could provide insights to Nigeria on how to deal with the greatly increasing number of cases, as evaluated in section 3.7. However, it is opined that no matter how much two jurisdictions have in common, there are differences that make the adaptation of regimes challenging.[1]

The comparison of the regimes in Nigeria and South Africa in this chapter is based on historical context, the legal framework, the venue of resolution and in-house dispute resolution processes, the structure and functionality of the TAT and the Tax Court, the nature of Federal Inland Revenue Service (FIRS) publications and the information supplied by the tax authority, and norms.

[1] For example, although Nigeria is a former colony of Britain, its tax dispute resolution environment is very different from Britain's. Tax appeals in the United Kingdom go as far back as 1805, while Nigeria's appeals date back to 1958. It will therefore be 'taxing' to adapt issues from the UK environment for Nigeria. In the UK prior to 2009, appeals in most direct tax cases lay in the first instance to the commissioners for the general purposes of the income tax (the 'General Commissioners'), a part-time lay body of ancient origins that was organised into several hundred districts around the United Kingdom and advised by a legally qualified clerk. More complex direct tax appeals would be heard at first instance by the commissioners for the special purposes of the Income Tax Acts (the 'Special Commissioners'), a small cadre of legally qualified tax judges, created in 1805. Tax litigation is commenced in tribunals in the UK and there is a two-tier tribunal to resolve tax disputes, namely, the First-tier Tribunal (Tax Chamber) (FTT) and an Upper Tribunal (Tax and Chancery Chamber) (UT). Appeals from the First-tier Tribunal lie to the Upper Tribunal. Appeals from the Upper Tribunal (with permission) lie to the Court of Appeal and finally to the Supreme Court. See M Gammie 'Tax appeals in the UK Supreme Court' (2016) 70(1/2) *Bull Intl Taxn* at 2.

8.2 Historical context

Nigeria is a member of the British Commonwealth of Nations, and its legal system has roots in English common law and equity, traditional African law and custom, and Islamic law. English law is dominant as it applies to the general population, whilst the other genres of law apply to limited segments of the population. Concerning tax dispute resolution, the first specialised tax adjudicating panel was established in 1958. There are few cases before the 2004 reforms, and an increasing number since 2004. The limited number of tax disputes before 2004 was mainly the result of limited collection by the tax authority. Tax was not a veritable source of revenue and few cases emanated from taxation as a result.

South Africa is also a member of the Commonwealth, but its legal system is rooted in the Roman-Dutch, English and African systems of law. It has a much longer history of tax dispute adjudication. The present Tax Court was established in 1914, although there were Tax Courts in the separate areas of South Africa before 1914. There is also a much greater volume of tax cases in the jurisdiction (at the High Courts, 92 in the SATC and 150 on the SARS website from 2003 to 2016, compared to 35 at the Nigerian Federal High Court from 2004 to 2016).[2] The Nigerian tax dispute resolution environment has been in existence for about 60 years, compared with South Africa's environment, which has existed for over 100 years. A deduction from this is that the South African environment is much more developed than Nigeria's.

In conclusion, although the two jurisdictions have different sources of law, their legal systems are both based largely on western law.[3]

8.3 Legal framework

The Nigerian environment, as shown in chapter 3, had problems with the legal framework of taxation (Constitution and individual Tax Acts) which led to numerous cases. The 1960 and 1963 Constitutions were clear regarding taxation. Problems arose as from 1979 and continued under the 1999 Constitution. The issue in these Constitutions was determining the correct tier of government to impose and collect consumption taxes, as reflected in case law – see the 1985 Supreme Court case, *Attorney General of Ogun State v Alhaji Ayinke Aberuagba & Ors.*[4] The case arose directly from the interpretation of the 1979 Constitution. Furthermore, seven of the

[2] As reported in the South African Tax Cases (SATC) and on the South African Revenue Service (SARS) website and the Tax Law Reports of Nigeria. Also see Annexures 1 and 2.
[3] This means common or civil law or a combination of both.
[4] [2009] 1 TLRN 81.

70 TAT cases (10 per cent) and seven of the 36 Federal High Court cases (19 per cent) reviewed in the thesis were based on constitutional challenges to the legal framework of taxation. As argued in section 3.5.5.1, tax cases should be based on tax issues and not on constitutional or legal framework issues. Therefore, there is a need to eliminate or reduce the incidence of disputes based on the legal framework of taxation.

Unclear sections of individual Tax Acts were also problematic and contributed to instability in the tax arena. An issue arising from the Value Added Tax (VAT) Act was whether the VAT tribunal and later the TAT were constitutional in view of section 251 of the Constitution. Numerous cases were based on the question of whether tax tribunals were constitutional. Tax Acts in Nigeria and, more particularly, the dispute resolution sections were seldom amended. For instance, major Nigerian Tax Acts were passed in 1961 and included the Companies Income Tax Act and the Personal Income Tax Act. The Acts provided that tax disputes were to be resolved by the Body of Appeal Commissioners (BAC). There was no amendment to the sections until 2007 (46 years later) upon the creation of the Tax Appeal Tribunal (TAT) and the abolition of the BAC. Although the Value Added Tax (VAT) tribunal was created on passage of the Value Added Tax Act in 1993, it did not make any changes to the BAC, but further complicated the dispute resolution process by providing that tax disputes should be resolved at the VAT tribunal and appeals lay to the Court of Appeal, contrary to section 251 of the Constitution, thus causing a major area of conflict.

The legal framework for taxation in South Africa is clear and unambiguous. No major case as reviewed in the thesis was based on the legal framework for taxation. In respect of individual South African Tax Acts, the dispute resolution sections are continually amended, specifically six times in the first 58 years of existence of the Tax Court (1914 to 1962).[5] As a result, the situation in Nigeria, which was mainly because of unreviewed sections of Tax Acts, did not arise in South Africa. Although the South African regulatory framework is continually amended, there are sometimes complaints about the implementation of rules and regulations by SARS, as examined in section 7.7.

The major insight from South African regarding the legal framework for taxation are clarity and continual, seamless amendment of the Tax Acts, including the dispute resolution sections.

[5] The dispute resolution sections of the Tax Acts were amended in 1917, 1925, 1941, 1945, 1949 and 1962.

This would reduce pressure on the TAT and the Federal High Court, freeing them from addressing extraneous non-tax matters and rather enabling them address tax issues.

8.4 Venue of resolution and in-house dispute resolution processes

Nigeria has higher and lower courts. The lower courts include the magistrates' courts, the customary courts and the *sharia* courts, while the higher courts include the High Courts (federal and state), the Court of Appeal and the Supreme Court. Tax cases are first adjudicated externally at the TAT and appealed exclusively at Federal High Court, and further at the Court of Appeal and the Supreme Court. There is no restriction on appealing to the Supreme Court, however, as will be discussed in section 8.7.5, very few cases with the FIRS as a direct party have been concluded at the Supreme Court. As shown in the empirical study, in-house dispute resolution is not structured and practices vary from one region to the other. The TAT has no serving judge as a member, although there are Nigerian tribunals that have serving judges as members, like the Election Petition Tribunal. The TAT is also not a 'court' of record, its decisions are only binding on disputing parties, and it does not create precedent.

South Africa has higher courts, lower courts and specialised courts. Magistrates' courts are lower courts. Specialised courts include the Land Claims Courts, Water Affairs Courts, Tax Courts, Labour Courts, Competition Courts, Children's and Maintenance Courts, Courts of Chiefs and Herdsmen, and Divorce Courts. The superior courts include the High Courts, the Supreme Court of Appeal and the Constitutional Court. Tax cases are resolved at first instance in a multitude of venues, depending on the disputed sum and preference. Tax disputes can therefore be resolved at first instance at the Tax Board, through ADR or in the Tax Court. The Tax Court panel includes a presiding serving judge, but it is not a court of record. Its decisions are binding only on the disputing parties and do not constitute precedent. Appeals lie from the Tax Court to the High Court, but in certain instances could lie straight to the Supreme Court of Appeal (section 133 of the TAA). Tax appeals terminate at the SCA, except for matters that have a constitutional component.

The assessment of venues for tax dispute resolution in Nigeria and South Africa showed that both jurisdictions have higher and lower courts and specialised tribunals or courts to adjudicate tax cases. However, the South African tax dispute resolution arena has a much more complex tiered process and a wider range of options for the commencement of disputes. Apart from the Tax Court, there are three other venues for the commencement of tax disputes. The insight for Nigeria is that venues for the resolution of disputes could be expanded, particularly as the case

load is increasing, as shown in section 3.7. South African venues were expanded as the need arose and this should be done in Nigeria as well. A further reason for expanding the options in Nigerian venues is to standardise in-house dispute resolution processes as there are wide variances in procedure, as shown in the empirical research. Another issue for Nigeria to consider is the type of resolution vehicle to establish (tribunal or court), whether it should be a South African type with a serving judge, whether to retain the present format of having non-serving judges on the TAT, or whether tax cases should be resolved at specialised Tax Courts with inherent powers which form part of the judicial system. This will be addressed in the final chapter: the advocated system will not be identical to that in South Africa, but will be tailored to fit the circumstances in Nigeria.

8.5 Structure and functionality of the TAT and the Tax Court

The TAT was shown to function in fits and starts. The panel is not reconstituted soon after the lapse of the tenure of members, leading to the commencement of disputes at the Federal High Court, contrary to court directives that tax cases should always be commenced in tax tribunals.[6] The TAT rules do not provide for timelines for reconstituting the panel. The recommendation that tax cases should always be commenced at the TAT cannot be implemented if the TAT is not always in session. Forum shopping is employed by litigants: the chosen venue for adjudication is influenced by what relief the litigants hope to obtain.

The South African Tax Court has functioned without major interruptions. The wide variety of venues to commence dispute resolution could encourage some form of forum shopping or 'forum testing' ie litigants going through a wide range of venues leading to prolonged cases (discussed in section 8.7.5 below). In terms of structure, the Tax Court has a serving judge on the panel, but sits with members specialised in different fields. As noted above, its decisions are binding on the litigants only.

The major insight for Nigeria from South Africa regarding the functionality of the tax tribunal is in its continuous operation. A system of swiftly reconstituting the TAT needs to be put in place. This could be effected by providing timelines for its reconstitution under the law.

[6] See *Ocean and Oil Ltd v FBIR* [2011] 4 TLRN 135 and *Ajaab Global Investment & Anor v FIRS & Anor* [2011] 5 TLRN.

8.6 Nature of the FIRS publications and information supplied by the tax authority

FIRS notices were found to be improperly articulated. There was opaqueness about the nature of documents emanating from the tax authority, and who was empowered to make them. In particular, little distinction was made between rulings, circulars, regulations, interpretation and practice notes, binding and non-binding rulings. This has led to some major challenges and litigation by taxpayers.[7] The FIRS website was also found not to contain reported tax cases.

The South African ruling system, on the other hand, distinguishes between the types of documents issued by SARS and who is bound by them. As a result of this structured system, few cases were based substantially on contested rulings. Furthermore, the SARS website contains detailed information and decided tax cases of the Tax Court, the Supreme Court of Appeal and the Constitutional Court.

The South African rulings system and the mode of dissemination of information on its website is an obvious area of adaptation for Nigeria.

8.7 Norms

8.7.1 Judicial independence

The TAT was found to be properly set up, having been established under an Act of the National Assembly. However, the thesis showed that there was a perception that it was unduly tied to the tax authority.[8] This perception should be remedied by enacting a stand-alone Act. The TAT was found to be impartial. Seventy cases (with FIRS as a party) were decided by the TAT from 2011 to mid-2016. Of this number, 31 were in favour of FIRS, 30 were in favour of the taxpayer, eight had mixed outcomes and one was non-suited. Salaries for the TAT panellists are approved by the Revenue Mobilisation Allocation and Fiscal Commission and the secretariat is staffed by FIRS employees.

The Tax Court is set up under an Act of Parliament. With regard to cases decided for and against the tax authority, of a total of 124 cases reported in the South African Tax Cases (SATC), 55 were in favour of SARS, 53 were in favour of the taxpayer, 12 were split decisions, and four did not go in favour of either party. The SARS website reported 126 cases: 60 were in favour of SARS, 49 were in favour of the taxpayer, 13 were split decisions, two cases were

[7] See sections 3.6.2.1 and 3.6.6.1.
[8] See *FIRS v General Telecom Plc* [2012] 7 TLRN 108. Also see the statement by LP 5 in section 4.6.9.1.

reported in a language other than English, and two cases were not in favour of either party. The Tax Court judges are funded in terms of the Superior Courts Act and the secretariat is staffed by SARS employees.

The TAT generally scored well on judicial independence, as reviewed in the research. However, the structural issues in the legal framework for taxation sometimes 'spilled over' and resulted in the questioning of its independence. The tally for reported cases in favour of or against the tax authority was close in the Nigerian Tax Law Reports (30/31) and in the SATC (55/53), but the SARS website reports a slightly higher number in favour of the tax authority (60/49).

Based on the assessed parameters, the environments in the two jurisdictions were not very different.

8.7.2 Access to justice

Awareness of tax dispute resolution processes depends to a large extent on the region of Nigeria in which a taxpayer is located. There was a great awareness of tax dispute resolution processes in Lagos and very limited awareness in Enugu. Furthermore, oil and gas companies utilised the processes the most and were more likely to sue. Oil and gas companies were parties in 46 of the 70 reported cases within the period reviewed in the thesis, although the pending cases show a shift in favour of non-oil and gas companies. The FIRS sometimes had disputes with different tiers of government over the remittance of taxes.

Reported tax cases in South Africa showed a high incidence of taxpayer litigation, both at the Tax Court and the appellate courts. The numbers litigated at the High Courts sometimes surpassed the numbers at the Tax Court. The case load also revealed the utilisation of relief under the Promotion of Administrative Justice Act (PAJA). In the two sets of law reports reviewed in the thesis, companies sued the most, followed by individuals, close corporations, trusts, not-for-profit organisations and then partnerships. There was no reported dispute between spheres of government.

In both jurisdictions, companies sued the most. However, since the FIRS collects tax mainly from companies, it follows that most of its cases are with companies.

8.7.3 Procedural fairness

The rules of the TAT were assessed to be basic but unproblematic. The interviews also showed that the participants largely found the procedures to be convenient because they led to faster resolution times. The Federal High Court rules were slightly more complex than the TAT rules as there were varied means of commencing an action. Forum shopping was found to be practised by litigants looking for the best relief.

The South African Tax Court rules were problematic earlier in its history. The rules were often deemed to be weighted in favour of the tax authority. The introduction of rules more in line with the High Court rules has to a large extent addressed the issue. The PAJA can also be used to challenge Tax Court procedures. A moot point is whether Nigeria could be assisted in the tax dispute resolution arena by an Act comparable to the PAJA.

Although Nigerian rules were judged to be adequate, the argument was presented that reservations on the adequacy of the rules were likely to arise with time. On confidentiality and privacy, the Nigerian practice differs from the South African practice and there are reasons for both approaches, which work for their respective environments. There is no privacy of TAT proceedings while Tax Court proceedings are restricted. TAT cases are published with the names of the parties while Tax Court cases are redacted. The evaluation of privacy and confidentiality provisions (section 7.4) showed that jurisdictions determine the level of privacy and confidentiality in their tax environment based on their preferences. It is opined that although the Nigerian environment provides little privacy and confidentiality guarantees in tax dispute resolution, the arrangements could be reviewed if there is a perceived need for this.

8.7.4 Discretion

Challenges to TAT discretion at the Federal High Court were not common. None of the 36 cases shows a challenge to TAT discretion. FIRS discretion was challenged at the TAT by taxpayers querying FIRS decisions in carrying out its mandate. The most challenged issues were assessments, allowable deductions, non-resident companies, procedural issues (pre-action notices, stays of execution of judgments or proceedings, joinder of parties) and VAT issues. The constitutionality of the TAT was the sixth most challenged issue.

The discretion of the South African Tax Court was challenged through its rules which were often weighted in favour of the tax authority. The most challenged issues in the SATC were deductions, the definition of gross income, tax administration (assessments), VAT, whether

expenses were of a capital or revenue nature, and capital gains tax (disposal of shares). On the SARS website the most contested issues were definition of gross income, allowable and non-allowable deductions, VAT, input tax credits, carry forward of losses, and the correct rate of stamp duty for certain transactions.

TAT discretion was not often challenged, while the Tax Court challenges came by way of contestation of the Tax Court rules. Tax authority decisions challenged at the TAT and the Tax Court were largely identical. Allowable and non-allowable deductions were the second most litigated issues, both at the TAT and the Tax Court, while VAT issues also scored high in both jurisdictions. VAT was the third and fourth most litigated issue in South Africa while it was the fifth most litigated issue in Nigeria. The issue of whether income is of a capital or revenue nature was the most litigated issue on the SARS website and the second most litigated issue in the SATC; it was in issue in only one of the cases in Nigeria within the review period.

8.7.5 Timeousness

Time periods in Nigeria were measured based on the year of assessment or filing at the TAT or the courts. The year of assessment was employed to measure time in order to compare the time spent on resolving disputes at the TAT with the time spent in the Tax Court. The ascertainment of the year of filing of TAT cases was done to compare time periods in the TAT with time periods in the Federal High Courts. The average cumulative time for resolving cases for the six years reviewed in Nigeria (2011 to 2016) was 5.8 years. The shortest average (2011) was 4.5 years, while the longest average (2016) was seven years. Cases were more quickly resolved at the Federal High Court than at the TAT, contrary to the perception of interviewees. At the Federal High Court, 56 per cent of cases were resolved within the first year, compared to 47 per cent at the TAT. The most problematic area for the resolution of tax disputes in Nigeria, however, is in appellate cases. Only one case with the FIRS as a party had been concluded at the Supreme Court within the review period.[9] There are pending tax cases at the Supreme Court in the legal department register, some filed as early as 2007. How to reduce resolution times at the appellate courts needs to be examined. (This is addressed at the end of the section).

[9] That is, *Shell Petroleum Development Company of Nigeria Limited v Federal Board of Inland Revenue* [2009] 1 TLRN 218. A second case, *Attorney General of Lagos State v Eko Hotels Limited & FIRS* [2018] 36 TLRN 1, was reported outside the review period.

The South African environment was measured based on the year of assessment. The average cumulative time for resolving disputes for the reviewed years (2003 to 2016) was 5.6 years (SATC) and six years (SARS website). The shortest time period was 4.2 years in 2008 (SATC) and four years, also in 2008 (SARS website), while the longest average per year was 7.7 years in 2011 (SATC) and 8.8 years in 2013 (SARS website).

The Nigerian environment was shown to have passable indices in most of the tenets of good dispute resolution, apart from timeousness. Therefore, in spite of the fact that the TAT operated mostly in an unstable environment due to ceaseless attacks on its constitutionality within the review period (including being disbanded at one point), it still managed to function. Its procedures were also found to be convenient. However, the TAT time periods for resolving disputes need improvement. As noted in section 7.8, while no stipulated time can be regarded as 'ideal' for resolving disputes, a decade is in the opinion of the researcher too long. The resolution times for disputes at the TAT showed an upward trajectory: while cases instituted in 2010 were typically concluded within a year, by 2016, many cases were concluded within six years of the date of filing. This represents an increase of one year for every year of the TAT's existence.

As noted above, the main problem in the tax dispute resolution timeframe in Nigeria is at the appellate courts. It is argued that reducing the resolution times at the apex court in Nigeria could be addressed by adopting a novel approach – an option that is not present in South Africa but beneficial to Nigeria. Resolution times for tax disputes at the appellate courts could be reduced by introducing thresholds for disputes heard at the apex court.[10] Therefore, a dispute tabled before the Supreme Court must be for a set amount, to be determined and changed by regulation of the Minister. The restriction of cases being brought to the Nigerian Supreme Court is not new to the Nigerian legal structure. Before the Constitution was amended, electoral

[10] This system is adopted in some Commonwealth countries. For instance, it is contended that a key feature of the Canadian dispute resolution system that is of interest to Nigeria is the filtering of cases and leave to appeal tax disputes at the highest court. Tax disputes in Canada are resolved in the Tax Court, which is a superior court of commensurate rank with the Federal Court, the court martial and the provincial superior court. Appeals from the Tax Court lie to the Federal Court of Appeal, while appeals from the Federal Court of Appeal lie to the Federal Supreme Court. See http://law.indiana.libguides.com/ld.php?content_id=9855595e [8 November 2018]. Despite the fact that tax cases can ultimately be appealed up to the Supreme Court of Canada, in practice, the Federal Court of Appeal is often the ultimate arbiter of disputes in the tax arena. See http://law.indiana.libguides.com/ld.php?content_id=9855595e [8 November 2018]. Leave to appeal can be granted by the Supreme Court and technical requirements before leave is granted are that: the Federal Court of Appeal thinks the matter is one that should be decided at the Supreme Court or the Supreme Court believes the issue decided is of national importance. See M Rothstein 'An overview of the Supreme Court of Canada' (2016) 70(1/2) *Bull Intl Taxn* at 6.

disputes regarding Governorships, the State Houses of Assembly, the Senate and the House of Representatives ended at the Court of Appeal, in terms of section 246(1)*(b)* and (3) of the 1999 Constitution. Filtering tax cases and having the Court of Appeal as the court of last instance in most tax disputes would greatly reduce the time periods for the conclusion of cases. It is however suggested that tax cases should be appealed up to the apex court if they concern constitutional issues, irrespective of the disputed amount.

Table 8.1: Issues in Nigeria, insights from South Africa (where applicable) and observations

S/N	Nigeria	South Africa	Observations
	Historical context		
1	Its legal system has roots in English common law and equity, traditional African law and custom and Islamic law. The first specialised tax adjudicating panel was established in 1958. There were limited number of cases before the 2004 reforms.	Its legal system is rooted in Roman-Dutch, English and African systems of law. The Tax Court was first established in 1914. It has a much greater volume of tax cases.	Both are Commonwealth countries.
	Legal framework		
2	Based on the Constitution and individual Tax Acts. Later Constitutions 1979, 1999 were problematic, particularly on the issue of the correct tier of government to impose and collect consumption taxes. Led to much litigation, even between tiers of government. Tax Acts also problematic particularly on the legality of the tax tribunal. Dispute resolution sections of Tax Acts hardly amended.	Based on the Constitution and individual Tax Acts. Tax provisions on the Constitution clear and unambiguous. No tax disputes between spheres of government. Dispute resolution provisions in Tax Acts reviewed regularly: in the first 58 years of the existence of the Tax Court (1914 to 1962) dispute resolution sections were amended at least six times.	Clarity of tax provisions in South Africa as well as the constant amendment of dispute resolution sections are obvious areas of adoption for Nigeria.
	Venue of resolution and in-house dispute resolution processes		
3	Superior courts include the federal and state High Courts, the Court of Appeal, and the Supreme Court. The	Superior courts include the High Courts, the Supreme Court of Appeal, and the Constitutional	The tiered nature of tax dispute resolution in South

	TAT is the venue for first level external adjudication; cases are appealed exclusively at the Federal High Court, and further at the Court of Appeal and the Supreme Court. Disputes sometimes commenced at the Federal High Court contrary to court directives. Forum shopping present whenever the TAT is not in session.	Court. Tax cases are resolved at first instance in a multitude of venues, including the Ombud, the Tax Board, ADR or the Tax Court. The Tax Court is not a court of record. Appeals lie from the Tax Court to the High Court but in certain instances could lie directly to the Supreme Court of Appeal. Wide variety of options for instituting tax cases, sometimes leading to forum shopping.	Africa should be adopted in Nigeria. The increase in the number of cases also justifies the adoption. Tax cases should however continue to be decided at the TAT. Reasons to be explained further in the final chapter.
Structure and functionality of the TAT and the Tax Court			
4	The TAT panel has no serving judge as member but is made up of a variety of disciplines, including a lawyer, a person knowledgeable in the management of a trade or business, and a retired public servant in tax administration. The tribunal may present issues on points of law only to the Federal High Court and does not try criminal matters. The secretariat comprises employees of FIRS and the TAT's decisions are published. It is established under the Federal Inland Revenue Service Establishment Act, has few rules and tries disputes in a summary manner. Its sitting is open to the public and it is always located in a different location from all FIRS offices.	The Tax Court panel is made up of a variety of disciplines including a serving judge president (lawyer), an accountant, and a member of the commercial community. May present issues on points of law only to the High Courts. Does not try criminal matters. The secretariat of the court comprises employees of SARS. Decisions of the court are published (in redacted form). It is established under the Tax Administration Act. It has detailed rules similar to the rules of the High Court. Its sitting is closed to the public. It is often located within the premises of SARS.	The major insight for Nigeria is in the non-interruption of Tax Court functions. Interruption of TAT functions can be addressed by providing a time limit for the reconstitution of the panel under the law.

	Functions in fits and starts and no provision in the law for the reconstitution of the panel when the tenure of members lapses.	The South African Tax Court has functioned without major interruptions.	
Nature of FIRS publications and information supplied by the tax authority			
5	FIRS notices are poorly articulated. Little distinction is made between circulars, regulations, interpretation notes, practice notes, binding and non-binding rulings. The FIRS website does not include reported tax cases.	Good articulation of notices from SARS. Distinctions are made between different types of documents and who is bound by them. Tax cases are reported on the SARS website.	Better articulation of the nature of publications from the FIRS as well as dissemination of information on its website to be adopted.
Norms			
6	Despite sometimes challenging circumstances, the Nigerian environment scored well on a majority of norms. There is a need for improved resolution times, however, especially at the appellate courts.	The South African tax environment showed dynamism in challenging areas of its evolution. For instance, the Tax Court rules were introduced to address specific problems.	Timelines at the appellate courts in Nigeria can be improved by the introduction of thresholds for cases that are heard at the apex court.

Source: Author

8.8 Conclusion

This chapter conducted a parallel assessment of the tax dispute resolution environments in Nigeria and South Africa, focusing on areas that were problematic in Nigeria and in need of improvement. The aim of the assessment was to provide insight into how changes in Nigeria might be achieved.

A general evaluation of the dispute resolution process in South Africa is that it is much better developed than the process in Nigeria, as evidenced in how long the tax dispute resolution

process has been in place, the number of cases and even the perceptions of interviewees. The South African process provided good insights and a possible model for adoption in most assessed indices, apart from timeousness. The South African environment, while not free of problems, mostly provides good suggestions for improvements in Nigeria.

The research and assessment were based on parameters determined by the researcher, but other criteria could also be used. Furthermore, the shortcomings in Nigeria as described are in respect of the particular period evaluated. It is likely that as the tax process as a whole becomes more developed, new issues will arise that will also need to be addressed.

Finally, while the chapter has compared Nigeria and South Africa with regard to a broad number of issues, recommendations on improving the Nigerian process will be made in the next chapter based only on the problematic areas of Nigerian tax dispute resolution.

CHAPTER 9: FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

9.1 Overview

This thesis set out to study the dispute resolution process for tax cases at the federal level in Nigeria, to identify the challenges in the process, and, based on the findings from the assessment, to make recommendations on how to improve the process. Research on the tax dispute resolution process was motivated by the large-scale reform of the tax sector in Nigeria, which focused on different facets of the sector, but did not address dispute resolution mechanisms. The road map for the reform of the Nigerian tax sector was contained in a detailed 324-page document prepared by the study group on the reform of the tax sector, in which cursory reference of half a page was made to dispute resolution issues and termed 'judicial inconsistencies'. The aim of this thesis is to make recommendations for improving the tax dispute resolution process.

To achieve this aim, the research examined a number of salient issues in the previous eight chapters. Chapter 1 laid the groundwork for the research by noting the research problem,[1] identifying the scope of the thesis,[2] and stating the research questions. The research questions were to ascertain how the current tax dispute resolution system in Nigeria has evolved, and to determine how it must evolve in the future. A second research question was whether South Africa can provide insights on the future direction of the Nigerian dispute resolution process. The chapter explained why South Africa was being used on a comparative basis: the two jurisdictions are both African, have similar legal systems, have a structured tax agreement in the form of a formal Double Taxation Agreement (DTA), and comparative research on the two countries has been limited.

Chapter 2 investigated the norms of good dispute resolution against which the thesis examined the Nigerian and South African tax environments. Five norms were selected, based on their ubiquity in the documents examined, and these were judicial independence, access to justice, procedural fairness, administrative or judicial discretion, and timeousness. The chapter argued that the norms of dispute resolution in any jurisdiction have evolved organically based on the

[1] See para 4 of section 9.1 and section 1.2.
[2] The scope is to assess the legal framework for tax dispute resolution in Nigeria with a particular emphasis on the Tax Appeal Tribunal (TAT), while drawing insights from South Africa, particularly processes in the Tax Court. Also see section 1.3.

country's socio-legal history. The chapter suggested that even though the military in Nigeria had at certain junctures removed accepted norms from the law books, this had not stopped the jurisdiction from actualising acceptable norms after military rule. The chapter also considered the concept of courts and tribunals.

Nigeria was discussed in chapters 3 to 5. The chapters showed how tax dispute resolution has evolved in Nigeria. Chapter 3 set out issues that were problematic in Nigeria and that motivated the research. The first problematic issue is the poor legal framework for taxation, leading to problems of ascertaining which tier of government must impose and collect consumption taxes. The poor legal framework led to challenges to the constitutionality of tax tribunals. Second, the fluid and undocumented methods of in-house dispute resolution create problems. Third, tax law amendments take a long time. Fourth, resolving tax disputes at the apex court also takes a long time. Fifth, certain Federal Inland Revenue Service (FIRS) practices lead to litigation by the taxpayer. Empirical research of FIRS tax and legal officers was carried out in chapter 4. The aim was to expose the internal workings of dispute resolution in the FIRS by showing what inhouse processes occur before disputes go to court or to the tribunal. Chapter 5 evaluated the Nigerian tax dispute resolution arena based on the five norms discussed in the thesis. The examination drew on the issues discussed in chapter 3, the interviews with tax and legal officers in chapter 4, as well as case law as reported in the Tax Law Reports of Nigeria. The chapter concluded that the Nigerian environment had encountered challenges[3] and successes[4] in its evolution. The chapter also concluded that improvements to the problematic areas of tax dispute resolution in the country would be better assessed by evaluating the South African environment.[5]

South Africa was discussed in chapters 6 and 7. The chapters lay the foundation for answering the research question of whether South Africa could provide insights on how to improve the Nigerian environment. The examination of the South African environment was centred on correlated areas discussed in Nigeria.[6] Chapter 6 assessed the legislative framework of tax dispute resolution in South Africa, while chapter 7 examined the environment based on issues discussed in the research as well as case law reported in the South African Tax Cases (SATC) reports and on the South African Revenue Service (SARS) website. The thesis posited that the South African tax dispute resolution process was much more advanced as a result of its much

[3] See section 5.7.1.
[4] See section 5.7.2
[5] See section 5.7.2.
[6] See sections 1.3 and 6.1.

greater number of cases and the fact that it had been in existence for longer.[7] The thesis also argued that the jurisdiction scored well on all the norms of dispute resolution, apart from timeousness.[8]

Chapter 8 compared the two environments and outlined the areas in which the Nigerian environment can borrow from South Africa. The chapter suggested that South Africa can provide insights to Nigeria in the following areas: having a clear and continually amended legal framework for taxation, certainty about the venue of resolution, continual functioning of the Tax Court, and clarity in the documents issued by SARS (eg circulars, regulations, practice notes).[9]

This chapter concludes the thesis by employing the research findings to address the research question about the future development of the Nigerian tax environment.

9.2 Research findings

A doctrinal analysis of the Nigerian Constitution, Tax Acts, cases and regulations discloses that there has been a marked increase in the number of disputes in the Nigerian tax dispute resolution environment since its reform.[10] It was further established that cases at the Tax Appeal Tribunal (TAT) were decided evenly between the tax authority and the taxpayer.[11] An examination of the cases decided formally at the TAT revealed that oil and gas companies had the most disputes with the Nigerian federal tax authority soon after the start of the reforms, while most of the disputes from 2014 were with non-oil and gas companies.[12] Furthermore, within the period reviewed in the thesis, a sizeable proportion of tax disputes stemmed from the weak legal framework for taxation: ten per cent of Tax Appeal Tribunal (TAT) cases and 19 per cent of Federal High Court cases were based on constitutional challenges to the legal framework of taxation.[13] It was found that the FIRS rarely institutes criminal cases against taxpayers; instead, it focuses on civil cases aimed at the recovery of taxes.[14]

---

[7] See Annexures 1 and 2 on the number of cases decided in the two jurisdictions within the review period (1992 to 2016 in Nigeria and 2003 to 2016 in South Africa).
[8] See section 7.8.
[9] See section 8.7 (table 8.1).
[10] See Annexure 1. There is one reported tax case of the Federal High Court prior to the start of the reforms in 2004, while there are 35 cases from 2004 to 2016. There is also one reported tax case of the Court of Appeal prior to 2004, and seven cases from 2004 to 2016.
[11] See section 5.2 (figure 5.1).
[12] See section 3.7.3.2.
[13] See Annexure 1.
[14] See section 3.7.3.3.

In respect of the length of time taken to resolve disputes, cases were concluded more quickly at the Federal High Courts when compared to the TAT.[15] The average time for the resolution of tax cases at the TAT, starting from the date of filing, has shown a gradual increase from one year in 2011 to six years in 2016.[16] However, the slow pace of resolving tax disputes is most noticeable at the Nigerian Supreme Court. The lone Supreme Court case decided within the period evaluated in the thesis took 23 years from the year of assessment.[17]

There is a lacuna in the TAT rules in respect of how quickly the panel is reconstituted.[18] This has led to the loss of time in reconstituting the panel, leading to the TAT functioning in fits and starts.

There is a lack of clarity about the types of documents issued by the FIRS – whether these documents are circulars, regulations or interpretation notes – and also about the correct way to issue and withdraw the documents.[19]

Empirical research on the FIRS officers revealed that the FIRS inhouse dispute resolution processes are fluid and undocumented, resulting in multiple styles being implemented in the different regions of the country.[20] This is partly the result of the absence of documented directives on inhouse dispute resolution. Using the formal processes of dispute resolution was viewed as slowing down the process of tax collection. Consequently, there is a preference for resolving disputes outside the formal court structure.

There were regional differences in taxpayer behaviour.[21] Lagos was the most tax-compliant and litigious state in Nigeria. Taxpayers comply better when a diplomatic approach to settling disputes is used by the FIRS. Conflicting decisions by courts of commensurate rank did not change the pre-existing practices of the FIRS as the FIRS continued the practice until the latter was vacated by a higher court, and litigation was a form of tax planning for some taxpayers.

The doctrinal assessment of South African Constitution, Tax Acts, case law and regulations within the review period found the following. Tax Court cases were more or less evenly decided

---

[15] See section 5.6 (figure 5.4): 56 per cent of cases were decided within the first year at the FHC, compared to 47 per cent at the TAT.
[16] See Annexure 1.
[17] *Shell Petroleum Development Company of Nigeria Limited v Federal Board of Inland Revenue* [2009] 1 TLRN 218. A second case, *Attorney General of Lagos State v Eko Hotels Limited & FIRS* [2018] 36 TLRN 1, was also decided at the apex court but falls outside the period covered by the thesis.
[18] See sections 3.7.3 and 8.5.
[19] See sections 3.6.2.1 and 3.6.6.1.
[20] See section 4.5.
[21] See section 4.5.

in favour of the taxpayer and the tax authority.[22] There was not a major reduction in cases appealed at the High Court and the Supreme Court of Appeal; a reduction in tax appeals was substantial only at the Constitutional Court.[23] Companies had the most disputes with the tax authority, followed by individuals, close corporations and trusts.[24] Based on the year of assessment, from 2003 to 2016, most cases were concluded within a five-year period.[25]

9.3 Recommendations

The recommendations answer the research question about how the Nigerian tax dispute resolution environment should develop in the future by showing how improvements can be made. Recommended improvements are based on identified and assessable norms. The recommendations are tailor-made for Nigeria, based on its past history and current situation.

9.3.1 Change in the design of the legal framework

Chapter 2 argued that judicial independence is the most important norm of dispute resolution and that other norms are subsumed within it. Based on this, changes are recommended for the improvement of the Nigerian environment that will strengthen the judicial independence of the TAT. The TAT should be mentioned in the Constitution, in the same way as other Nigerian tribunals, like the Election Petition Tribunal and the Code of Conduct Tribunal, are mentioned. Section 285 of Part II of the 1999 Constitution provides for the establishment of two tribunals to resolve election disputes, which are the National Assembly Election Tribunal and the Governorship and Legislative Houses Election Tribunal. The composition of the tribunals is provided for in the Sixth Schedule to the Constitution. The Code of Conduct Tribunal is provided for in the Fifth Schedule to the Constitution. Clear provisions in the Constitution would give the TAT a strong legal framework, and would eliminate the possibility of taxpayers arguing that it is unconstitutional as has been the situation in many of the cases challenging its competence to try tax disputes.[26]

Although the courts (of appeal) have by their pronouncements ruled that the TAT is competent to try tax cases, it would be preferable to have the laws amended to reflect this position. In

[22] See section 7.2 (figure 7.1).
[23] See section 7.3 (figure 7.2).
[24] See section 7.3.1 (figures 7.3 and 7.4).
[25] See section 7.6.
[26] See section 3.5.5.1. The cases include *Stabilini Visinoni Limited v Federal Board of Inland Revenue* [2009] 1 TLRN 1; *Cadbury Nigeria Plc v Federal Board of Inland Revenue* [2010] 2 TLRN 16 and *TSKJ II Construces Internacionals Sociadade Lda v Federal Inland Revenue Service* [2014] 13 TLRN 1.

addition to being mentioned in the Constitution, the details on how the TAT functions should be addressed in a separate statute. The TAT is presently set up under the Federal Inland Revenue Service Establishment Act of 2007. Excising sections of the Act that deal with the TAT and having them in a separate statute would give the TAT the appearance of more distance from the tax body. Furthermore, since the government is focusing attention on non-oil revenue and is seeking to make tax the focus of the alternative quest for revenue generation, strengthening laws dealing with taxation is a good starting point. It is imperative to treat the amendment of tax statutes as a priority.

In addition to including the TAT specifically in the Constitution, the collection of taxes by the various tiers of government should be fine-tuned within the provisions of the Constitution. Parts I and II of the Second Schedule to the Constitution which deal with the appropriate tier of government responsible for collecting particular taxes need redrafting. The earlier argument applies here too. Although the Taxes and Levies Act of 1999 states which tiers of government collect different taxes, it is preferable to have this included in the Constitution.

9.3.2 Retention of the TAT as a venue for the resolution of tax disputes

A major issue in the Nigerian tax dispute resolution environment, as discussed in chapter 3, is uncertainty about the venue for resolution of disputes; this uncertainty has driven many cases. Deciding on an appropriate venue for the resolution of tax disputes would aid the entrenchment of norms closely tied to venue, like procedural fairness. Adequate and necessary rules can be developed only when a venue for the resolution of disputes is chosen.

There are several options for deciding on an appropriate venue for the resolution of tax disputes in Nigeria. These options include: (a) the South African model of having a serving judge sit on a panel that is knowledgeable about tax; (b) a new option of carving out a tax division within the Federal High Court; and (c) retaining the present structure of having a panel that is knowledgeable about tax, with no serving judge.

Although the first option has worked in South Africa, as examined in the thesis, its limitations have been noted over time and addressed. For instance, the formerly fluid nature of its rules was changed by the introduction of Tax Court rules. Wholly adopting the model in Nigeria could expose issues that will become apparent only on its application. For instance, as examined in the thesis, the functionality of the TAT is affected by how quickly the panel is reconstituted, and it was argued that the administrative head of the TAT (the coordinating

secretary) should ensure the continual operation of the Tribunal by informing the Minister about the expiry of the tenure of its members. If the same South African set up were adopted, there might still be time lapses in the functioning of the panel where the judge is posted out, retires or has to manage other non-tax dockets. Furthermore, the court may not sit whenever the judge president is indisposed (presently, if the TAT chairman is not in attendance, he or she is replaced by another member of the panel). Although the South African model is a good option, retaining a system that has been tried and its flaws noted and corrected is a better option.

The second option of carving out a tax division at the Federal High Court can be considered, but as with the first option, the pros and cons of this option have not been explored in the research. Having the Federal High Court as a court of first instance will mean that tax cases are tried with rigid court rules of court that apply in courts of record and this could affect the time taken to resolve the disputes. Although the research showed that the time periods are shorter at the Federal High Court than at the TAT, it must be remembered that many of the cases were on appeal on points of law only. If they were to be tried *de novo* this would affect the overall time periods.

Clause 5(1)(iii) of the National Tax Policy document 2017 provides that 'the Executive shall sponsor a bill for the establishment of a tax court as an independent body to adjudicate in tax matters.' However, the provision is declaratory and does not give details on how the court will be established. There is no clarity about whether the court would be a starting point for the adjudication of tax disputes, ie it would replace the TAT, or whether it would hear appeals from the tax tribunal. The document also refers to state and federal executives so it is not clear whether there should be state tax courts and federal tax courts.[27]

The third option is to retain the present structure of resolving tax disputes at first instance at the TAT, but with improvements as examined in this research. This third option is the recommended one for Nigeria. The reason for advocating this option is that the TAT has been in place in Nigeria since 2010 and, as shown in the thesis, has in place the requisite norms of good dispute resolution, like an impartial panel.[28]

---

[27] With regard to the provisions of the Tax Policy document, an option is to retain the TAT while appeals are made to the proposed tax court (at the federal level). The advantage of this option is that expertise of the TAT panellists is maintained, coupled with the appellate tax court being a court of record and having the ability to make binding decisions. The court should also decide only on points of law, thus keeping resolution times short. However, as noted above, the provision for a tax court in the Tax Policy document is vague and does not provide enough information about how it should be structured.

[28] See section 5.2.

9.3.3 Introduction of an in-house mediation process

The introduction of an inhouse mediatory process by the FIRS addresses the norm of access to justice.[29] Another layer of less formal, faster dispute resolution process will address the lack of understanding of the formal dispute resolution processes for lower income taxpayers and ensure better access to justice for a wider range of taxpayers. The South African tax dispute resolution environment is multi-layered and has many options for the resolution of disputes for different types of taxpayers. For example, the Tax Board can be accessed by lower income taxpayers who are disputing lower amounts of tax.

The lack of understanding of dispute resolution mechanisms was clear from the interviews with FIRS officers. The costs of dispute resolution should be borne by the FIRS. The mediator should not be an employee of FIRS. The process should be focused mainly on mediation and should be headed by a person with mediation and accounting skills primarily, although legal skills would also be helpful. The process should be concluded within a set time period so that it does not unduly lengthen the resolution time of disputes. Decisions arising from the mediatory process should not be binding. Appeals from this new layer of dispute resolution should lie to the TAT. The number of mediatory processes put in place should reflect the number of disputes emanating from each geopolitical zone of Nigeria.[30] Since Lagos has the greatest number of taxpayers and tax disputes, it should have several of these mediatory processes while regions with fewer cases and taxpayers should have one mediator each.[31]

9.3.4 Introduction of uniform practice and publication of TAT decisions on the FIRS website

The FIRS should put in place internal practices to reduce conflict with taxpayers based on identified actions that often result in litigation.[32] An example of this is an explanation of the differences between rulings, circulars, regulations, interpretation and practice notes, binding and non-binding rulings. The proper articulation of documents emanating from FIRS would ensure improved administrative discretion on how the FIRS regulates the tax environment. This clarity would reduce a major source of disputes in the FIRS. Furthermore, decided cases should

[29] See section 3.7.4. The issue of whether there should be another layer of dispute resolution process in view of the increased cases in Nigeria was mooted.
[30] Nigeria has six geopolitical zones and 36 states.
[31] Ie several mediators should be assigned to the Lagos Zone so that numerous disputes can be mediated at the same time by each mediator.
[32] See sections 3.6.2.1 and 3.6.6.1.

be published on the FIRS website. Interested parties could thus refer to any of the Nigerian law reports as well as the FIRS website.

9.3.5 Timely reconstitution of the TAT panel

The research found that there is often a time lapse between the reconstitution of TAT panels.[33] Rule 1(1) and (2) of the Fifth Schedule to the Federal Inland Revenue Service Establishment Act on the establishing of the TAT provides that the minister may set up different zones of the TAT. Rule 4 of the same schedule provides that Tax Appeal Commissioners shall hold office for a term of three years, renewable for another term of three years. The rules are silent on how quickly the TAT panel should be reconstituted after the lapse of tenure of all the members. Including clear provisions on how quickly the TAT should be reconstituted would ensure that the norm of timeousness is better achieved as delays in reconstituting the panel contribute to the lengthening of time periods within which disputes are resolved.

The failure to specify how quickly the TAT panel should be reconstituted can be addressed by providing for this in the TAT rules. This will reduce the possibility of not having the TAT function for a relatively long period of time. The coordinating secretary[34] of the TAT should always inform the Minister when the tenure of TAT members is reaching an end so that there is never a long period of time between the reconstitution of panels. This would also reduce the possibility of disputes being instituted at the Federal High Court when the TAT is not in session for a long period.

Federal High Court judges should discourage the leapfrogging of the TAT. This can be achieved by organising workshops for judges or by means of internal circulars or inclusion in the Federal High Court rules. Therefore, if any non-criminal tax-related disputes are filed before the courts, the judges should refer these back to the TAT for hearing. Training for judges on tax-related matters would assist the judges in applying their discretion.

9.3.6 Reduction of length of time to resolve disputes (introduction of leave to appeal and the filtering of cases)

The thesis showed that while many of the evaluated tenets were found to be unproblematic in Nigeria, the norm of the timeous disposal of cases was largely unmet. It is recommended that timeousness can be achieved by restricting or filtering cases being brought to the apex court.

---

[33] See section 3.7.3.
[34] The coordinating secretary of the TAT is a member of staff of the FIRS.

This feature was formerly present in electoral disputes so is known to the Nigerian legal environment. Before the system changed, electoral disputes about Governorships, States' Houses of Assembly, Senate and House of Representatives positions ended at the Court of Appeal, as provided by section 246(1)*(b)* and (3) of the Constitution. The appeal of tax cases should be filtered by the introduction of thresholds. Therefore, before a dispute is tabled before the Supreme Court it should be for a set amount to be determined and amended by the Minister through regulations. This will reduce the period of time within which tax disputes are resolved. Filtering tax cases and having the Court of Appeal as the court of last instance in most tax disputes would greatly reduce the time taken to conclude cases. However, if tax cases border on constitutional issues they can be appealed up to the Supreme Court, irrespective of the disputed amount.

9.4 Conclusion

This thesis has examined the Nigerian tax dispute resolution arena to highlight the issues that have been problematic. The dispute resolution arena has been in a state of great change, much like the larger tax arena. While ways of improving the system have been suggested, improving the environment should always be aligned with the norms of good dispute resolution, so that changes are not effected without reference to norms. The research noted that the burden placed on the taxpayer to be the main source of government revenue must be based on fair means of ensuring fair processes of dispute resolution. The thesis has therefore argued that, as stipulated in the Nigerian tax policy document, the taxpayer is the most important stakeholder in the tax environment and his or her interests should be protected in the dispute resolution arena by ensuring that the process always adheres to the tenets of good dispute resolution.

The thesis showed that the evolution of dispute resolution in each jurisdiction is organic and influenced by the wider environment within that jurisdiction; however, the growth of the Nigerian environment must take cognisance of issues that even though not yet problematic, would prove thorny in time if not addressed. For example, the FIRS interviewees viewed the procedures at different forums as adequate. However, the processes and procedures in FIRS actions should be guided by detailed rules to ensure fair procedures, whether in resolving disputes or in issuing directives to the wider public, as occurs in South Africa.

The thesis concludes that the tax dispute resolution system in Nigeria should evolve further by adopting areas for improvement as discussed above. The further conclusion is that the South

African tax dispute resolution system provides insight into a good legal framework for resolving tax disputes, which includes certainty about the venue of resolution.

In the course of this research some issues were evaluated as being beyond the scope of the thesis. These areas could be worthy of further research and include:

The nature of cases between taxpayers and State Boards of Internal Revenue decided at the TAT. In section 1.3 the scope of the thesis was stated to be limited to disputes between the FIRS and taxpayers decided at the TAT. The TAT also adjudicates disputes between taxpayers and any one of the 37 state revenue collecting agencies, including the Federal Capital Territory Internal Revenue Service (FCTIRS) in Nigeria. An examination of the nature of the cases between taxpayers and state revenue agencies would expose tax administration modalities at the subnational level in Nigeria.

How were the other strategic goals of the FIRS reforms implemented? Chapter 1 listed the strategic goals of the 2004 reforms as including improved autonomy for the FIRS, strengthening enforcement, auditing oil and gas as well as large taxpayers, providing taxpayer education and services, automating tax collection systems, building the capacity of staff and specialisation, and automating human resource processes, finance and procurement. The level of achievement of these goals can be examined to determine whether they have been successfully carried out.

How long does it take the general courts in South Africa to conclude cases? In section 7.6.1 the length of time taken to conclude cases in the general courts in South Africa was stated to be outside the scope of the thesis. Ascertaining the length of time taken to conclude disputes in the general courts in South Africa will place the resolution times for disputes in the Tax Court in better perspective.

LIST OF REFERENCES

Nigeria

Primary sources

Statutes

Arbitration and Conciliation Act 11 of 1988 (CAP A18 LFN 2004).

Capital Gains Tax Act 44 of 1967 (CAP C1 LFN 2004).

Companies Income Tax Act 56 of 2007 (CAP C21 LFN 2004).

Constitution of Federal Republic of Nigeria 1999 (CAP C23 LFN 2004).

Constitution of Federal Republic of Nigeria 1979.

Constitution of Federal Republic of Nigeria 1963.

Constitution of Nigeria 1960.

Constitution (Suspension and Modification) Act 1 of 1966.

Deep Offshore and Inland Basin Production Sharing Contracts Act 9 of 1999 (CAP D3 LFN 2004).

Federal Inland Revenue Service Establishment Act 13 of 2007 (CAP F36 LFN 2004).

Freedom of Information Act of 2011.

Income Tax Administrative Ordinance of 1958.

Industrial Inspectorate Act of 1970 (CAP 18 LFN 2004).

Industrial Development Income Tax Relief Act 30 of 1966 (CAP 17 LFN 2004).

Investment and Securities Act of 2007 (CAP 124 LFN 2004).

National Information Technology Development Agency Act 28 of 2007 (CAP N156 LFN 2004).

Nigerian Export Zone Processing Act 63 of 1992 (CAP N 107 LFN 2004).

Nigerian Interpretation Act 1 of 1964 (CAP 123 LFN 2004).

Nigerian Supreme Court Ordinance of 1914.

Oil and Gas Export Free Zone Act 8 of 1996 (CAP OS LFN 2004).

Personal Income Tax Act 104 of 1993 (CAP P8 LFN 2004).

Petroleum Profits Tax Act 30 of 1999 (CAP P13 LFN 2004).

Stamp Duties Act 90 of 1956 (CAP S8 LFN 2004).

Taxes and Levies Approved List for Collection Act 2 of 1998 (CAP T2 LFN 2004).

Tertiary Education Trust Fund (Establishment Etc.) Act of 2011.

Value Added Tax Act 102 of 1993 (CAP V1 LFN 2004).

Venture Capital (Incentives) Act 89 of 1993 (CAP V2 LFN 2004).

Secondary legislation

Code of Conduct for Judicial Officers in Nigeria.

Federal High Court Civil Procedure Rules 2009.

FIRS information circular 93/02 of 1993.

FIRS information circular 2007/02 of 2007.

FIRS Notice on Recharges.

FIRS Notice on VAT Exempt Products.

National Tax Policy Document 2017.

Nigerian Tax Study Group Report 2003.

Report of the Working Group on the Review of the Report of the Study Group on the Nigerian Tax Reform 2004.

Tax Appeal Tribunal Rules 2010.

Cases

Addax Petroleum Nigeria Limited v Federal Inland Revenue Service [2012] 7 TLRN 74.

Addax Petroleum Services Limited v Federal Inland Revenue Service [2013] 9 TLRN 126.

Ajaab Global Investment & Anor v Federal Inland Revenue Service & Anor [2011] 5 TLRN 24.

Attorney General of Lagos State v Eko Hotels Limited & Federal Board of Inland Revenue [2018] 36 TLRN 1.

Attorney General of Lagos State v Eko Hotels Limited and Anor [2009] 1 TLRN 193.

Attorney General of Ogun State v Alhaji Ayinke Aberuagba & Ors [2009] 1 TLRN 81.

Biwater Nigeria Limited v Federal Inland Revenue Service [2016] 25 TLRN 69.

Botro Marine and Oil Services Limited v Federal Inland Revenue Service [2014] 13 TLRN 95.

Botro Marine & Oil Services Limited v Federal Inland Revenue Service [2016] 21 TLRN 1.

Brasoil Oil Services Company (Nigeria) v Federal Inland Revenue Service [2016] 24 TLRN 24.

British American Tobacco Marketing Nigeria Ltd v Federal Inland Revenue Service [2011] 5 TLRN 54.

Cadbury Nigeria Plc v Federal Board of Inland Revenue [2010] 2 TLRN 16.

Chevron Nigeria Limited v Federal Inland Revenue Service (EGP3 Appeal) [2016] 21 TLRN 53.

Chevron Nigeria Limited v Federal Inland Revenue Service (EGTL Appeal) [2016] 21 TLRN 26.

Chevron Nigeria Limited v Federal Inland Revenue Service [2016] 22 TLRN 1.

Chevron Nigeria Limited v Federal Inland Revenue Service [2016] 22 TLRN 120.

Chevron Nigeria Limited v Federal Inland Revenue Service [2016] 23 TLRN 56.

Chief Victoria Ogundana Adedotun & Anor v Federal Inland Revenue Service & Anor [2011] 4 TLRN 88.

CNOOC Exploration & Production Nigeria Limited v AG Federation & 2 Ors [2011] 4 TLRN 185.

CNOOC Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service [2012] 7 TLRN 1.

CNOOC Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service & Anor [2013] 9 TLRN 28.

CNOOC Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service & Anor [2013] 11 TLRN 58.

Eko Hotels Limited v Federal Board of Inland Revenue and Attorney General of Lagos State [2009] 1 TLRN 172.

Esso Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service [2012] 8 TLRN 45.

Esso Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service [2013] 11 TLRN 71.

Esso Exploration and Production Nigeria (Deep Water) Limited & Anor v Federal Inland Revenue Service & Anor [2013] 9 TLRN 140.

Esso Exploration & Production Nigeria Limited & Anor v Federal Inland Revenue Service [2015] 17 TLRN 83.

Federal Board of Inland Revenue v Cityspace International [2013] 11 TLRN 22.

Federal Board of Inland Revenue v Confidence Insurance Plc [2010] 2 TLRN 95.

Federal Board of Inland Revenue v Halliburton West Africa Limited [2015] 17 TLRN 1.

Federal Board of Inland Revenue v Integrated Data Services Limited [2010] 3 TLRN 1.

Federal Board of Inland Revenue v Joseph Rezcallah & Sons Limited [2010] 2 TLRN 59.

Federal Board of Inland Revenue v Lotatronics Limited [2014] 14 TLRN 163.

Federal Board of Inland Revenue v Owena Motels Ltd [2010] 2 TLRN 87.

Federal Board of Inland Revenue v Phillips Oil Company Nigeria Limited [2010] 2 TLRN 76.

Federal Board of Inland Revenue v Solanke [2011] 4 TLRN 164.

Federal Inland Revenue Service v Chi & Mark Limited [2012] 8 TLRN 35.

Federal Inland Revenue Service v Gazetta Communication Limited [2013] 10 TLRN 1.

Federal Inland Revenue Service v General Telecom [2012] 7 TLRN 112.

Federal Inland Revenue Service v General Telecom Plc [2014] 14 TLRN 1.

Federal Inland Revenue Service v Kandelite Engineering Company Limited [2015] 17 TLRN 41.

Federal Inland Revenue Service v Luri Oil & Gas Nigeria Limited [2016] 24 TLRN 88.

Federal Inland Revenue Service v Mega Tech [2012] 7 TLRN 67.

Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 4 Ors [2012] 6 TLRN 1.

Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 2 Ors [2012] 6 TLRN 87.

Federal Inland Revenue Service v Omega Savings and Loans Limited [2014] 13 TLRN 109.

Federal Inland Revenue Service v Omega Savings and Loans Limited [2014) 14 TLRN 152.

Federal Inland Revenue Service v Omega Sunshine International Venture [2011] 4 TLRN 131.

Federal Inland Revenue Service v TSKJ 11 Construces Internacionals Sociadade Unipessoal Lda [2014] 14 TLRN 158.

Federal Inland Revenue Service v Vital Need Engineering Services Limited [2016] 23 TLRN 83.

Gazprom Oil & Gas Nigeria Limited v Federal Inland Revenue Service [2015] 19 TLRN 66.

Gilat Satcom Nigeria Limited v Federal Inland Revenue Service [2016] 25 TLRN 29.

Global Scansystems Limited v Federal Inland Revenue Service [2016] 22 TLRN 14.

Global Marine International Drilling Corporation v Federal Inland Revenue Service [2013] 12 TLRN 1.

G.N. Everitt v Federal Board of Inland Revenue [2010] 3 TLRN 158.

Gulf Oil Company (Nigeria) Limited v Federal Board of Inland Revenue [2012] 7 TLRN 163.

Halliburton Energy Services Nigeria Limited v Federal Inland Revenue Service [2012] 8 TLRN 15.

Haliburton West Africa Limited v Federal Board of Inland Revenue [2012] 7 TLRN 16.

Halliburton West Africa Limited v Federal Board of Inland Revenue [2013] 11 TLRN 84.

Honourable Minister of Justice and Attorney General of the Federation v Honourable Attorney General of Lagos State [2013] 12 TLRN 55.

Honourable Minister of Justice and Attorney General of the Federation v Honourable Attorney General of Lagos State [2014] 14 TLRN 49.

JGC Corporation v Federal Inland Revenue Service [2014] 15 TLRN 105.

JGC Corporation v Federal Inland Revenue Service [2016] 22 TLRN 37.

Lagos State Board of Internal Revenue v Nigerian Bottling Co Ltd & Manufacturers Association of Nigeria [2009] I TLRN 283.

Lakanmi v Attorney General Western Region of Nigeria [1970] NSCC 143.

Mama Cass & 2 Ors v Federal Board of Inland Revenue & Anor [2010] 2 TLRN 99.

Mas Everest Hotels Limited & Anor v AG Lagos State & 2 Ors [2010] 2 TLRN 1.

Mobil Producing Nigeria Unlimited v Federal Board of Inland Revenue [2013] 11 TLRN 1.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service [2012] 6 TLRN 119.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service [2015] 17 TLRN 73.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service [2015] 18 TLRN 35.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No. 2) [2015] 18 TLRN 53.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No. 3) [2015] 18 TLRN 85.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No. 4) [2015] 18 TLRN 115.

Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service [2016] 23 TLRN 40.

Mobil Production Nigeria Unlimited v Federal Inland Revenue Service (No. 2) [2016] 25 TLRN 39.

Monamer Khod Enterprises Nigeria Limited v Federal Inland Revenue Service (Unreported) Suit no FHC/S/CS/2005.

Nigerdock Nigeria Plc-FZE v Federal Inland Revenue Service [2016] 24 TLRN 1.

Nigerian Agip Oil Exploration Limited & Anor v Federal Inland Revenue Service [2011] 4 TLRN 141.

Nigeria Agip Oil Company Limited v Federal Inland Revenue Service [2014] 16 TLRN 25.

Nigerian Breweries Plc v Federal Inland Revenue Services [2016] 24 TLRN 40.

Nigerian Liquefied Natural Gas Company v Federal Board of Inland Revenue [2011] 5 TLRN 97.

Nigerian National Petroleum Corporation v CNOOC and Ors [2015] 19 TLRN 32.

Nigerian National Petroleum Corporation v CNOOC Exploration and Production Nigeria Limited & Ors [2015] 20 TLRN 17.

Nigerian National Petroleum Corporation v Tax Appeal Tribunal & Ors [2014] 13 TLRN 39.

Nigerian National Petroleum Corporation v Tax Appeal Tribunal & Ors [2015] 20 TLRN 1.

Nirvana Oil Field Services Limited v Federal Inland Revenue Service [2013] 9 TLRN120.

Oando Plc v Federal Board of Inland Revenue [2009] 1 TLRN 60.

Oando Plc v Federal Board of Inland Revenue [2013] 10 TLRN 91.

Oando Plc v Federal Inland Revenue Service [2013] 11 TLRN 31.

Oando Plc v Federal Inland Revenue Service No. 2 [2013] 11 TLRN 169.

Oando Plc v Federal Inland Revenue Service [2014] 16 TLRN 99.

Oando Plc v Federal Inland Revenue Service [2015] 17 TLRN 50.

Oando Plc v Federal Board of Inland Revenue [2015] 18 TLRN 1.

Oando Supply and Trading Limited v Federal Inland Revenue Service [2011] 4 TLRN 113.

Ocean and Oil Limited v Federal Board of Internal Revenue [2011] 4 TLRN 135.

Olokun Pisces Limited v Federal Inland Revenue Service [2016] 23 TLRN 1.

Oseni v Dawodu [1994] 4 NWLR (PT 399).

Peniel Apartment Limited v Federal Inland Revenue Service & Anor [2014] 15 TLRN 100.

Princel Court Ltd v AG Lagos & 2 Ors [2010] 3 TLRN 30.

R & B Falcon Exploration Company LLC v Federal Inland Revenue Service [2016] 25 TLRN 94.

Registered Trustees of Association of Fast Food Confectioners of Nigeria & 2 Ors v AG Lagos State & Anor [2010] 2 TLRN 36 (No 1).

Registered Trustees of Association of Fast Food Confectioners of Nigeria & 2 Ors v AG Lagos State & Anor [2010] 2 TLRN 47 (No. 2).

Saipem Contracting Nigeria Limited & 2 Ors v Federal Inland Revenue Service & 2 Ors [2014] 15 TLRN 76.

SE Ola v Federal Board of Inland Revenue [2011] 5 TLRN 136.

Sedco International incorporated v Federal Inland Revenue Service [2015] 18 TLRN 43.

SG Property Ltd & Sule Sunday Godwin (Trading in the Name and Style of Godwin & Co) v Federal Inland Revenue Service [2015] 19 TLRN 14.

Shell Petroleum Development Company of Nigeria Limited v Federal Board of Inland Revenue [2009] 1 TLRN 218.

Shell Petroleum Development Company of Nigeria Limited v Federal Inland Revenue Service [2015] 18 TLRN 67.

Shell Nigeria Exploration and Production Company Limited and Ors v Federal Inland Revenue Service [2016] 21 TLRN 41.

Shell Nigeria Exploration and Production Company Limited & 3 Ors v Federal Inland Revenue Service [2012] 8 TLRN 59.

Shell Nigeria Exploration and Production & 3 Ors v Federal Inland Revenue Service & Anor [2013] 11 TLRN 9.

Shell Petroleum International Maatschappij BV v Federal Board of Inland Revenue [2011] 4 TLRN 97.

Shell Petroleum International Maatschappij v Federal Board of Inland Revenue [2011] 5 TLRN 114.

Shell Petroleum Development Company of Nigeria Limited v Federal Inland Revenue Service [2016] 21 TLRN 64.

Shell Petroleum Development Company of Nigeria Limited v Federal Inland Revenue Service [2016] 21 TLRN 86.

South Atlantic Petroleum Limited and Ors v Federal Inland Revenue Service [2016] 23 TLRN 92.

Statoil (Nigeria) Limited & Anor v Federal Inland Revenue Service [2016] 24 TLRN 13.

Shell Nigeria Exploration and Production Co. Ltd & 3 Others v Federal Inland Revenue Service [2016] 24 TLRN 51.

Shodipo & 2 Ors v Federal Board of Inland Revenue [2010] 3 TLRN 61.

Stabilini Visinoni Limited v Federal Board of Inland Revenue [2009] 1 TLRN 1.

Star Deep Water v Federal Inland Revenue Service [2016] 23 TLRN 14.

Tetra Pak West Africa Limited v Federal Inland Revenue Service [2016] 24 TLRN 95.

Total E & P Nigeria Limited v Federal Inland Revenue Service [2015] 18 TLRN 73.

TSKJ II Construces Internacionals Sociadade LDA & Anor v Federal Inland Revenue Service [2012] 7 TLRN 25.

TSKJ II Construces Internacionals Sociadade LDA & 2 Ors v Federal Inland Revenue Service [2012] 7 TLRN 48.

TSKJ II Construces Internacionals Sociadade LDA v Federal Inland Revenue Service [2014] 13 TLRN 1.

VF Worldwide Holdings Limited v Federal Inland Revenue Service [2016] 21 TLRN 101.

Vodacom Business Nigeria Limited v Federal Inland Revenue Service [2016] 23 TLRN 72.

Warm Springs Water & Ors v Federal Inland Revenue Service [2015] 20 TLRN 49.

Western Sudan Exporters v Federal Board of Inland Revenue [2010] 3 TLRN 139.

South Africa

Primary sources

Statutes

Cape of Good Hope Additional Tax Act 36 of 1904.

Cape of Good Hope Income Tax Act 21 of 1908.

Constitution of South Africa, Act 32 of 1961.

Constitution of South Africa, Act 110 of 1983.

Constitution of South Africa, Act 200 of 1993.

Constitution of the Republic of South Africa, 1996.

Criminal Procedure Act 51 of 1977.

Income Tax Act 28 of 1914.

Income Tax Consolidation Act 41 of 1917.

Income Tax Act 40 of 1925.

Income Tax Act 31 of 1941.

Income Tax Act 39 of 1945.

Income Tax Act 45 of 1949.

Income Tax Act 58 of 1962.

Judicial Finance Act 28 of 2003.

Promotion of Administrative Justice Act 3 of 2000.

South African Revenue Service Act 34 of 1997.

Tax Administration Act 28 of 2011.

Union of South Africa Act 1909.

Secondary legislation

Code of Judicial Conduct of South Africa.

Explanatory Memorandum to the 1949 Income Tax Act Amendment.

Memorandum on the Budget Proposals for the Taxation of Incomes, Dividends and Excess Profits of 1917.

Parliamentary Debates of 1907.

Public Notice 550 - ADR rules under section 103 TAA (GG 37819 of 11 July 2014).

Rules Promulgated Under Section 103 of the Tax Administration Act, 2011 (Act No 28 of 2011).

SARS Dispute Resolution Guide: Guide on the Rules Promulgated in Terms of Section 103 of the Tax Administration Act.

Cases

3M South Africa Pty Ltd v Commissioner for South African Revenue Service [2010] 72 SATC 216.

A Company and Others v Commissioner for South African Revenue Service [2014] 76 SATC 321.

Abraham Krok Trust v Commissioner for South African Revenue Service [2010] 73 SATC 105.

Ackermans Ltd v Commissioner for South African Revenue Service 2010 (1) SA 1 (SCA) [2010] 73 SATC 1.

Ackermans Ltd v Commissioner for South African Revenue Service [2015] 77 SATC 191.

AM Moolla Group Ltd and Others v Commissioner for South African Revenue Service and Others [2003] 65 SATC 414.

AMI Forwarding (Pty) Ltd v Department of Customs and Excise and Another [2010] 72 SATC 268.

Anglo Platinum Management Services (Pty) Ltd v Commissioner for South African Revenue Service [2015] 78 SATC 73.

Anglovaal Mining Limited v Commissioner for South African Revenue Service [2009] 71 SATC 293.

Appollo Tobacco CC and Others v Commissioner for South African Revenue Service [2012] 74 SATC 204.

Aquazania (Pty) Ltd v Commissioner for South African Revenue Service [2011] 76 SATC 54.

Armgold/Harmony Freegold Joint Venture (Pty) Ltd v Commissioner for South African Revenue Service [2012] 74 SATC 351.

Association of Meat Importers and Exporters and Others v International Trade Administration Commission and Others [2013] 76 SATC 9.

Auto Haus Car Hire and Tours (Pty) Ltd v Commissioner for South African Revenue Service and Another [2015] 77 SATC 248.

Avenant v Commissioner for South African Revenue Service [2016] 78 SATC 343.

Baking Tin (Pty) Ltd v Minister of Finance No and Another [2006] 69 SATC 171.

Barclay v Road Accident Fund 2012 (3) SA 94 (WCC) [2011] 74 SATC 253.

Bos v Commissioner for South African Revenue Service [2008] 70 SATC 187.

Bosch and Another v Commissioner for South African Revenue Service [2012] 75 SATC 1.

BP Southern Africa (Pty) Ltd v Commissioner for South African Revenue Service [2007] 69 SATC 79.

Capstone 556 (Pty) Ltd v Commissioner for South African Revenue Service [2014] 77 SATC 1.

Capstone 556 (Pty) Ltd and Another v Commissioner for South African Revenue Service and Another 2011 (6) SA 65 (WCC) [2011] 74 SATC 20.

Carmel Trading Company v Commissioner for South African Revenue Service and Others [2007] 70 SATC 1.

CBM Hot X-Press CC and Another v Commissioner for South African Revenue Service and Others [2006] 68 SATC 273.

Chiappini and Co v Field Collector of Customs Volume 3 Menzies Report 549.

Chipkin (Natal) (Pty) Ltd v Commissioner for South African Revenue Service [2005] 3 All SA 26 (SCA) [2005] 67 SATC 243.

Chittenden No and Another v Commissioner for South African Revenue Service and Another [2014] 76 SATC 397.

CIR v Lunnon 1924 AD 516.

City of Cape Town and Another v Robertson and Another 2005 (2) SA 323 (CC), 2005 (3) BCLR 199 (CC), 67 SATC 176.

Coconut Express CC v South African Revenue Service (Customs and Excise) and Others 78 SATC 297 [2016] 2 All SA 749 (KZD).

Colgate Palmolive (Pty) Ltd v Commissioner for South African Revenue Service [2006] 69 SATC 43.

Coltrade International CC v Commissioner for South African Revenue Service [2014] 77 SATC 48.

Commissioner for Inland Revenue v Bobat and Others [2003] 67 SATC 47.

Commissioner for South African Revenue Service v Africa Cash and Carry (Pty) Ltd and Others [2014] 77 SATC 242.

Commissioner for South African Revenue Service v Airworld CC and Another [2007] 70 SATC 48.

Commissioner for South African Revenue Service v Akharwaray [2005] 68 SATC 41.

Commissioner for South African Revenue Service v Beginsel No and Others 2013 (1) SA 307 (WCC) 75 SATC 87.

Commissioner for South African Revenue Service v Ben Nevis Holdings Ltd and Others [2003] 66 SATC 71.

Commissioner for South African Revenue Service v Bosch and Another [2014] 77 SATC 61.

Commissioner for South African Revenue Service v BP South Africa (Pty) Ltd [2006] 68 SATC 229.

Commissioner for South African Revenue Service v Brown [2016] 78 SATC 255.

Commissioner for South African Revenue Service v British Airways Plc [2005] 67 SATC 167.

Commissioner for South African Revenue Service v Brummeria Renaissance (Pty) Ltd and Others [2007] 69 SATC 205

Commissioner for South African Revenue Service v Capstone 556 (Pty) Ltd [2015] 78 SATC 231.

Commissioner for South African Revenue Service v C-J Van Der Merwe (In Re: Commissioner for South African Revenue Service v GW Van Der Merwe and Others) [2014] 76 SATC 138.

Commissioner for South African Revenue Service v C-J Van Der Merwe [2016] 77 SATC 405 [2015] 3 All SA 387 (SCA).

Commissioner for South African Revenue Service v Colgate-Palmolive (Pty) Ltd [2011] 74 SATC 157.

Commissioner for South African Revenue Service v Coltrade International CC [2016] 78 SATC 216.

C*ommissioner for South African Revenue Service v De Beers Consolidated Mines Ltd* [2012] 3 All SA 367 (SCA) [2012] 74 SATC 330.

Commissioner for South African Revenue Service v Duro Pressings (Pty) Ltd [2008] 71 SATC 88.

Commissioner for South African Revenue Service v Estate Late He Streicher [2004] 66 SATC 282.

Commissioner for South African Revenue Service v Fascination Wigs (Pty) Ltd [2010] 72 SATC 112.

Commissioner for South African Revenue Service v Fastmould Specialist CC [2011] 73 SATC 284.

Commissioner for South African Revenue Service v Formalito (Pty) Ltd [2005] 67 SATC 251.

Commissioner for South African Revenue Service v Foskor (Pty) Ltd [2009] 72 SATC 174.

Commissioner for South African Revenue Service v Founders Hill (Pty) Ltd [2011] 73 SATC 183.

Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd and Hawker Aviation Services Partnership and Others [2004] 67 SATC 107.

Commissioner for South African Revenue Service v Hawker Air Services (Pty) Ltd and Hawker Aviation Services Partnership and Others [2006] 68 SATC 141.

Commissioner for South African Revenue Service v Higgo [2006] 68 SATC 278.

Commissioner for South African Revenue Service v I-Net Bridge (Pty) Ltd [2010] 73 SATC 141.

Commissioner for South African Revenue Service v Kluh Investments (Pty) Ltd [2016] 78 SATC 177 [2016] 2 All SA 317 (SCA).

C*ommissioner for South African Revenue Service v Komatsu Southern Africa (Pty) Ltd* [2006] 69 SATC 9.

Commissioner for South African Revenue Service v Krok and Another [2014] 76 SATC 119.

Commissioner for South African Revenue Service v Labat Africa Ltd [2009] 72 SATC 75.

Commissioner for South African Revenue Service v Labat Africa Ltd [2011] 74 SATC 1.

Commissioner for South African Revenue Service, Gauteng West v Levue Investments (Pty) Ltd [2007] 69 SATC 85.

Commissioner for South African Revenue Service v LG Electronics SA (Pty) Ltd [2010] 73 SATC 326.

Commissioner for South African Revenue Service v Marshall No and Others [2016] 79 SATC 49.

Commissioner for South African Revenue Service v Marula Platinum Mines Ltd [2016] 79 SATC 127.

Commissioner for South African Revenue Service v Marx No (2006 (4) SA 195 (CPD) [2006] 68 SATC 219.

Commissioner for South African Revenue Service v Megs Investments (Pty) Ltd and Another [2004] 66 SATC 175.

Commissioner for South African Revenue Service v Metlika Trading Ltd and Others [2010] 72 SATC 241.

Commissioner for South African Revenue Service v Metlika Trading Ltd and Others [2003] 66 SATC 345.

Commissioner for South African Revenue Service v Miles Plant Hire (Pty) Ltd [2013] 76 SATC 1.

Commissioner for South African Revenue Service v Mobile Telephone Networks Holdings (Pty) Ltd [2014] 76 SATC 205.

Commissioner for South African Revenue Service and Others v Moresport (Pty) Ltd and Others [2009] 71 SATC 232.

Commissioner for South African Revenue Service v Motion Vehicle Wholesalers (Pty) Ltd [2006] 68 SATC 307.

Commissioner for South African Revenue Service v Multichoice Africa (Pty) Ltd and Another [2011] 73 SATC 209.

Commissioner for South African Revenue Service v Nashua Ltd [2004] 67 SATC 64.

Commissioner for South African Revenue Service v NWK Ltd [2010] 73 SATC 55.

Commissioner for South African Revenue Service v Plasmaview Technologies (Pty) Ltd [2011] 2 All SA 235 (SCA) [2010] 73 SATC 338.

Commissioner for South African Revenue Service v Pretoria East Motors (Pty) Ltd [2014] 76 SATC 293.

Commissioner for South African Revenue Service v Prudence Forwarding (Pty) Ltd and Another [2015] 78 SATC 119.

C*ommissioner for South African Revenue Service v SA Silicone Products (Pty) Ltd* [2004] 66 SATC 131.

Commissioner for South African Revenue Service v Saira Essa Productions CC and Others [2010] 73 SATC 202.

Commissioner for South African Revenue Service v Saleem [2008] 70 SATC 115.

Commissioner for South African Revenue Service v Smith Mining Equipment (Pty) Ltd [2012] 74 SATC 312.

Commissioner for South African Revenue Service v South African Custodial Services (Pty) Ltd 2012 (1) SA 522 (SCA) [2011] 74 SATC 61.

Commissioner for South African Revenue Service v Sprigg Investment 117 CC T/A Global Investment [2010] 73 SATC 114.

Commissioner for South African Revenue Service v Stand Two Nine Nought Wynberg (Pty) Ltd and Others [2005] 67 SATC 275.

Commissioner for the South African Revenue Service v Stepney Investments (Pty) Ltd [2015] 78 SATC 86.

Commissioner for South African Revenue Service and Another v Sterling Auto Distributors CC: In Re Bayerische Motoren Werke and Another v Sterling Auto Distributors CC and Others [2005] 68 SATC 241.

Commissioner for South African Revenue Service v Terraplas South Africa (Pty) Ltd [2014] 76 SATC 377 [2014] 3 All SA 11 (SCA).

Commissioner for South African Revenue Service and Another v TFN Diamond Cutting Works (Pty) Ltd [2005] 67 SATC 171.

Commissioner for South African Revenue Service v The Baking Tin (Pty) Ltd [2007] 69 SATC 220.

Commissioner for South African Revenue Service v Tiger Oats Ltd [2003] 2 All SA 604 (SCA) [2003] 65 SATC 281.

Commissioner for South African Revenue Service v Tradehold Ltd [2012] 74 SATC 263.

Commissioner for South African Revenue Service v Tradex (Pty) Ltd and Others [2014] 77 SATC 121.

Commissioner for South African Revenue Service v Trend Finance (Pty) Ltd and Another [2007] 69 SATC 120.

Commissioner for South African Revenue Service v Van Der Merwe No and Others [2016] 79 SATC 283.

Commissioner for South African Revenue Service v Van Kets [2011] 74 SATC 9.

Commissioner for South African Revenue Service v Wooltru Property Holdings (Pty) Ltd [2008] 70 SATC 223.

Commissioner for South African Revenue Service v Wyner [2003] 4 All SA 541 (SCA) [2003] 66 SATC 1.

Commissioner of Inland Revenue v Namsov Fishing Enterprises (Pty) Ltd [2008] 71 SATC 16.

Commissioner of Taxes and Another v Process Automated (Pty) Ltd [2007] 71 SATC 9.

Computek (Pty) Ltd v Commissioner for South African Revenue Service [2012] 75 SATC 104.

COT v Booysens Estate Ltd 1918 AD 576.

Dale v Aeronastic Properties Ltd and Others [2016] 79 SATC 12.

Davis v Commissioner for South African Revenue Service 2010 (5) SA 540 (KZD) [2010] 72 SATC 253.

Defy Ltd v Commissioner for South African Revenue Service [2010] 72 SATC 99.

Desmonds Clearing & Forwarding Agents CC v South African Revenue Service (Customs & Excise) [2004] 67 SATC 215.

Director of Public Prosecutions, Western Cape v Parker [2014] 77 SATC 224 [2015] 1 All SA 525 (SCA).

Distell Ltd v Commissioner for South African Revenue Service [2011] 73 SATC 265.

Distell Ltd v Commissioner for South African Revenue Service [2012] 74 SATC 272.

Distell Ltd and Another v Commissioner for South African Revenue Service and Another [2006] 69 SATC 15.

Distell Ltd and Another v Commissioner for South African Revenue Service [2011] 1 All SA 225 (SCA) [2010] 73 SATC 148.

DKR Auto CC v Commissioner for South African Revenue Service [2014] 76 SATC 279.

Durban North Turf (Pty) Ltd v Commissioner for South African Revenue Service [2011] 1 All SA 525 (KZP) [2011] (2) SA 347 (KZP) [2010] 73 SATC 349.

Ernst Bester Trust v Commissioner for South African Revenue Service [2008] 70 SATC 151.

Eveready Property Ltd v CSARS [2012] 74 SATC 185.

Fascination Wigs (Pty) Ltd v Commissioner for South African Revenue Service [2008] 71 SATC 72.

Fastjet Holdings (Pty) Ltd v the Minister of Finance and Others [2015] 77 SATC 337.

Faynaz Import and Export Enterprises CC v Commissioner of Customs and Excise and Others [2009] 71 SATC 205.

First South African Holdings (Pty) Ltd v Commissioner for South African Revenue Service [2011] 73 SATC 221.

Gaertner and Others v Minister of Finance and Others [2013] 75 SATC 184.

Gaertner and Others v Minister of Finance and Others [2013] 76 SATC 69.

Gainsford No and Others v Commissioner for South African Revenue Service and Another [2015] 77 SATC 375.

GB Mining and Exploration SA (Pty) Ltd v Commissioner for South African Revenue Service [2014] 76 SATC 347.

Grundlingh v Commissioner for South African Revenue Service [2009] 72 SATC 1.

Gud Holdings (Pty) Ltd v Commissioner for South African Revenue Service [2007] 69 SATC 115.

Hella South Africa (Pty) Ltd v Commissioner for South African Revenue Service [2003] 65 SATC 401.

Huang and Others v Commissioner for South African Revenue Service [2014] 77 SATC 283.

Income Tax Case No 1280 [1974] 40 SATC 259.

Income Tax Case No 1736 [2001] 64 SATC 465.

Income Tax Case No 1754 [2003] 65 SATC 325.

Income Tax Case No 1760 [2003] 65 SATC 445.

Income Tax Case No 1764 [2003] 66 SATC 93.

Income Tax Case No 1771 [2004] 66 SATC 205.

Income Tax Case No 1772 [2004] 66 SATC 211.

Income Tax Case No 1773 [2003] 66 SATC 251.

Income Tax Case No 1774 [2003] 66 SATC 255.

Income Tax Case No 1775 [2003] 66 SATC 259.

Income Tax Case No 1776 [2003] 66 SATC 296.

Income Tax Case No 1777 [2004] 66 SATC 328.

Income Tax Case No 1778 [2004] 66 SATC 334.

Income Tax Case No 1779 [2004] 66 SATC 353.

Income Tax Case No 1780 [2004] 66 SATC 360.

Income Tax Case No 1781 [2003] 66 SATC 363.

Income Tax Case No 1783 [2003] 66 SATC 373.

Income Tax Case No 1784 [2004] 67 SATC 40.

Income Tax Case No 1785 [2004] 67 SATC 98.

Income Tax Case No 1786 [2004] 67 SATC 138.

Income Tax Case No 1787 [2005] 67 SATC 142.

Income Tax Case No 1788 [2004] 67 SATC 161.

Income Tax Case No 1789 [2005] 67 SATC 205.
Income Tax Case No 1790 [2004] 67 SATC 221.
Income Tax Case No 1791 [2005] 67 SATC 230.
Income Tax Case No 1792 [2005] 67 SATC 236.
Income Tax Case No 1793 [2005] 67 SATC 256.
Income Tax Case No 1794 [2005] 67 SATC 262.
Income Tax Case No 1795 [2004] 67 SATC 297.
Income Tax Case No 1796 [2005] 67 SATC 303.
Income Tax Case No 1797 [2005] 67 SATC 377.
Income Tax Case No 1798 [2005] 68 SATC 9.
Income Tax Case No 1799 [2005] 68 SATC 25.
Income Tax Case No 1800 [2005] 68 SATC 34.
Income Tax Case No 1801 [2005] 68 SATC 57.
Income Tax Case No 1802 [2005] 68 SATC 67.
Income Tax Case No 1803 [2005] 68 SATC 83.
Income Tax Case No 1804 [2005] 68 SATC 105.
Income Tax Case No 1805 [2006] 68 SATC 110.
Income Tax Case No 1806 [2005] 68 SATC 117.
Income Tax Case No 1807 [2006] 68 SATC 154.
Income Tax Case No 1808 [2006] 68 SATC 163.
Income Tax Case No 1809 [2005] 68 SATC 169.
Income Tax Case No 1810 [2006] 68 SATC 189.
Income Tax Case No 1811 [2005] 68 SATC 193.
Income Tax Case No 1812 [2005] 68 SATC 208.
Income Tax Case No 1813 [2005] 68 SATC 255.
Income Tax Case No 1814 [2005] 68 SATC 297.
Income Tax Case No 1815 [2006] 68 SATC 312.
Income Tax Case No 1816 [2006] 69 SATC 62.
Income Tax Case No 1817 [2006] 69 SATC 95.
Income Tax Case No 1818 [2006] 69 SATC 98.
Income Tax Case No 1819 [2007] 69 SATC 159.
Income Tax Case No 1820 [2006] 69 SATC 163.

Income Tax Case No 1821 [2006] 69 SATC 194.

Income Tax Case No 1822 [2006] 69 SATC 200.

Income Tax Case No 1823 [2006] 69 SATC 226.

Income Tax Case No 1824 [2007] 70 SATC 27.

Income Tax Case No 1825 [2006] 70 SATC 68.

Income Tax Case No 1826 [2006] 70 SATC 72.

Income Tax Case No 1827 [2007] 70 SATC 81.

Income Tax Case No 1828 [2007] 70 SATC 91.

Income Tax Case No 1829 [2007] 70 SATC 106.

Income Tax Case No 1830 [2007] 70 SATC 123.

Income Tax Case No 1831 [2008] 70 SATC 132.

Income Tax Case No 1832 [2007] 70 SATC 171.

Income Tax Case No 1833 [2008] 70 SATC 238.

Income Tax Case No 1834 [2008] 71 SATC 24.

Income Tax Case No 1835 [2008] 71 SATC 105.

Income Tax Case No 1836 [2008] 71 SATC 115.

Income Tax Case No 1837 [2009] 71 SATC 177.

Income Tax Case No 1838 [2009] 72 SATC 6.

Income Tax Case No 1839 [2009] 72 SATC 61.

Income Tax Case No 1840 [2009] 72 SATC 79.

Income Tax Case No 1841 [2009] 72 SATC 92.

Income Tax Case No 1842 [2010] 72 SATC 118.

Income Tax Case No 1843 [2010] 72 SATC 229.

Income Tax Case No 1844 [2010] 73 SATC 45.

Income Tax Case No 1845 [2010] 73 SATC 80.

Income Tax Case No 1846 [2010] 73 SATC 96.

Income Tax Case No 1847 [2010] 73 SATC 126.

Income Tax Case No 1848 [2010] 73 SATC 170.

Income Tax Case No 1849 [2010] 73 SATC 176.

Income Tax Case No 1850 [2011] 73 SATC 228.

Income Tax Case No 1851 [2010] 73 SATC 241.

Income Tax Case No 1852 [2011] 73 SATC 253.

Income Tax Case No 1853 [2011] 73 SATC 293.

Income Tax Case No 1854 [2011] 74 SATC 42.

Income Tax Case No 1855 [2010] 74 SATC 58.

Income Tax Case No 1856 [2011] 74 SATC 76.

Income Tax Case No 1857 [2011] 74 SATC 115.

Income Tax Case No 1858 [2011] 74 SATC 173.

Income Tax Case No 1859 [2012] 74 SATC 213.

Income Tax Case No 1860 [2012] 74 SATC 371.

Income Tax Case No 1863 [2012] 75 SATC 125.

Income Tax Case No 1864 [2012] 75 SATC 233.

Income Tax Case No 1865 [2012] 75 SATC 250.

Income Tax Case No 1866 [2012] 75 SATC 268.

Income Tax Case No 1867 [2013] 75 SATC 273.

Income Tax Case No 1868 [2013] 75 SATC 303.

Income Tax Case No 1869 [2013] 75 SATC 329.

Income Tax Case No 1870 [2013] 76 SATC 97.

Income Tax Case No 1871 [2013] 76 SATC 109.

Income Tax Case No 1872 [2014] 76 SATC 225.

Income Tax Case No 1873 [2014] 77 SATC 93.

Income Tax Case No 1875 [2014] 77 SATC 161.

Income Tax Case No 1876 [2014] 77 SATC 175.

Income Tax Case No 1877 [2015] 77 SATC 269.

Income Tax Case No 1878 [2015] 77 SATC 349.

Income Tax Case No 1879 [2014] 78 SATC 64.

Income Tax Case No 1880 [2014] 78 SATC 103.

Income Tax Case No 1881 [2016] 78 SATC 132.

Income Tax Case No 1882 [2016] 78 SATC 165.

Income Tax Case No 1883 [2016] 78 SATC 225.

Income Tax Case No 1884 [2016] 78 SATC 272.

Income Tax Case No 1887 [2016] 78 SATC 375.

Income Tax Case No 1888 [2016] 79 SATC 23.

Income Tax Case No 1889 [2016] 79 SATC 39.

Income Tax Case No 1890 [2016] 79 SATC 62.

Income Tax Case No 1892 [2016] 79 SATC 105.

Income Tax Case No 1893 [2016] 79 SATC 159.

Income Tax Case No 1894 [2016] 79 SATC 167.

Income Tax Case No 1895 [2016] 79 SATC 179.

Income Tax Case No 1897 [2016] 79 SATC 224.

Income Tax Case No 1898 [2016] 79 SATC 266.

Income Tax Case No 1899 [2016] 79 SATC 315.

International Trade Administration Commission v Scaw South Africa (Pty) Ltd and others 72 SATC 135.

Island View Storage Ltd v Commissioner for South African Revenue Service [2014] 76 SATC 285.

Kadodia v Commissioner for South African Revenue Service [2013] 75 SATC 313.

KBI v Transvaalse Suikerkorporasie [1987] (2) SA 123 (A), 49 SATC 11.

King v Commissioner for South African Revenue Service [2009] 71 SATC 261.

Kluh Investments (Pty) Ltd v Commissioner for South African Revenue Service [2014] 77 SATC 23.

KNA Insurance and Investment Brokers (Pty) Ltd (In Liquidation) v South African Revenue Service and Another [2009] 71 SATC 155.

Krok and Another v Commissioner for South African Revenue Service [2015] 78 SATC 1.

Legal Aid South Africa v Magidiwana and Others [2014] 4 All SA 570.

Lesapo v North West Agricultural Bank and Another 1999 (12) BCLR 1420 (CC).

Lever Ponds (Pty) Ltd and Another v Commissioner for Customs and Excise [2003] 66 SATC 225.

LG Electronics SA (Pty) Ltd v Commissioner for South African Revenue Service [2009] 71 SATC 275.

Liberty Investors Ltd (In Members' Voluntary Liquidation) v Commissioner for South African Revenue Service [2005] 67 SATC 313.

Lifman and Others v Commissioner for South African Revenue Service and Others [2015] 77 SATC 383.

Maguire v Commissioner for South African Revenue Service [2008] 71 SATC 41.

Malema v Commissioner for South African Revenue Service [2016] 78 SATC 279.

Marshall and Others v Commission for the South Africa Revenue Service 2018 (7) BCLR 830 (CC).

Marshall NO and Others v Commissioner for South African Revenue Service [2015] 77 SATC 395.

Master Currency (Pty) Ltd v Commissioner for South African Revenue Service [2013] 75 SATC 113.

Masango v Road Accident Fund [2016] 79 SATC 295.

Medox Ltd v Commissioner for South African Revenue Service [2014] 76 SATC 369.

Medox Ltd v Commissioner for South African Revenue Service [2015] 77 SATC 233.

Metcash Trading Ltd v Commissioner for South African Revenue Service [2000] 62 SATC 84.

Metcash Trading Limited v Commissioner, South African Revenue Service, and Another [2001] (1) SA 1109 (CC) 63 SATC 13.

Metlika Trading Ltd and Others v Commissioner for South African Revenue Service [2004] 4 All SA 410 (SCA) 67 SATC 15.

Metlika Trading Ltd and Another v Commissioner for South African Revenue Service and Others [2012] [2004] 74 SATC 289.

Metropolitan Life Ltd v Commissioner for South African Revenue Service [2008] 70 SATC 162.

Mobile Telephone Networks Holdings (Pty) Ltd v Commissioner for South African Revenue Service [2011] 73 SATC 315.

Modibane v South African Revenue Service [2011] 74 SATC 398.

Moresport (Pty) Ltd v Commissioner for South African Revenue Service and Others [2008] 71 SATC 133.

MP Finance Group CC (In Liquidation) v Commissioner for South African Revenue Service [2007] 69 SATC 141.

MTN International (Mauritius) Ltd v Commissioner for South African Revenue Service [2013] 75 SATC 171.

MTN International (Mauritius) Ltd v Commissioner for South African Revenue Service [2014] 76 SATC 217.

New Adventure Shelf 122 (Pty) Ltd v Commissioner for South African Revenue Service 78 SATC 190 [2016] 2 All SA 179 (WCC).

Ntsanwisi v Khoza and Others [2016] 79 SATC 325.

Oceanic Trust Co Ltd No v Commissioner for South African Revenue Service [2011] 74 SATC 127.

Omnia Fertilizer Ltd v Commissioner for South African Revenue Service [2003] 65 SATC 159.

Pahad Shipping CC v Commissioner for South African Revenue Service [2009] 72 SATC 35.

Pick 'n Pay Retailers (Pty) Ltd v Commissioner for South African Revenue Service and Others [2008] 71 SATC 52.

Plasma View Technologies (Pty) Ltd v Commissioner for South African Revenue Service [2008] 72 SATC 44.

Progress Office Machines CC v South African Revenue Service and Others [2007] 69 SATC 231.

Rane Investment Trust v Commissioner for South African Revenue Service ([2003] 3 All SA 39 (SCA)) [2003] 65 SATC 333.

Re insolvent Estate of Buissine, Van De Berg and Meyer v Sequestrator and Attorney General Volume I Menzies Report 318.

Respublica (Pty) Ltd v Commissioner for South African Revenue Service [2016] 78 SATC 368.

Rossi and Others v Commissioner for South African Revenue Service [2011] 74 SATC 387.

Sallies Ltd v Commissioner for South African Revenue Service [2007] 70 SATC 39.

Sepataka v Commissioner for South African Revenue Service [2010] 72 SATC 279.

Shuttleworth v SA Reserve Bank and Anor [2013] 76 SATC 60.

Shuttleworth v South African Reserve Bank and Others [2014] 77 SATC 145.

Singh v Commissioner for South African Revenue Service [2003] 65 SATC 203.

Smartphone SP (Pty) Ltd v Absa Bank Ltd and Another 2004 (3) SA 65 (WLD) [2003] 66 SATC 241.

Smith Mining Equipment (Pty) Ltd v Commissioner for South African Revenue Service [2013] 76 SATC 49.

South African Reserve Bank and Another v Shuttleworth and Another [2015] 78 SATC 23.

South African Revenue Service (Customs & Excise) v Desmonds Clearing and Forwarding Agents CC [2006] 68 SATC 181.

South Atlantic Jazz Festival (Pty) Ltd v Commissioner for South African Revenue Service [2015] 77 SATC 254.

Stabilpave (Pty) Ltd v South African Revenue Service [2013] 75 SATC 347.

Standard General Insurance Co Ltd v Commissioner for Customs and Excise [2004] 66 SATC 192.

Stellenbosch Farmers' Winery Ltd v Commissioner for South African Revenue Service [2003] 74 SATC 235.

Stevens v Commissioner for South African Revenue Service [2006] 69 SATC 1.

TCT Leisure (Pty) Ltd v Commissioner for South African Revenue Service [2009] 72 SATC 187.

Terraplas South Africa (Pty) Ltd v Commissioner for South African Revenue Service [2013] 75 SATC 319.

Trend Finance (Pty) Ltd and Another v Commissioner for South African Revenue Service and Another [2005] 67 SATC 334.

Uitenhage Transitional Local Council v South African Revenue Service (2004 (1) SA 292 (SCA)) [2003] 4 All SA 37 (SCA) [2003] 66 SATC 265.

Vacation Exchanges International (Pty) Ltd v Commissioner for South African Revenue Service [2009] 71 SATC 249.

VAT 304 [2006] 68 SATC 117.

Villiers Commissaries of Verdue v Sequestrator Commissionaires of Cape District and Stellenbosch Vol. I Menzies Report 370.

Volkswagen of South Africa (Pty) Ltd v Commissioner for South African Revenue Service [2008] 70 SATC 195.

Warner Lambert SA (Pty) Ltd v Commissioner for South African Revenue Service [2003] 65 SATC 346.

Weare v Commissioner for South African Revenue Service [2004] 4 All SA 520 (SCA) [2004] 67 SATC 31.

Welch's Estate v Commissioner for South African Revenue Service [2004] 2 All SA 586 (SCA) [2004] 66 SATC 303.

Western Platinum Ltd v Commissioner for South African Revenue Service [2004] 4 All SA 611 (SCA) [2005] 67 SATC 1.

Wingate-Pearse v Commissioner for South African Revenue Service [2016] 78 SATC 360.

WJ Fourie Beleggings CC v Commissioner for South African Revenue Service [2007] 70 SATC 8.

WJ Fourie Beleggings v Commissioner for South African Revenue Service [2009] 71 SATC 125.

Wong and others v Commissioner for South African Revenue Service [2003] 65 SATC 431.

Xo Africa Safaris CC v Commissioner for South African Revenue Service [2016] 79 SATC 1.

International instruments

African (Banjul) Charter on Human and Peoples' Rights.

Asia-Pacific Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region.

Bangalore Draft Code on Judicial Conduct.

Basic Principles on the Independence of the Judiciary.

Burgh House Principles on the Independence of the International Judiciary.

Charter of Fundamental Rights of the European Union.

Commonwealth Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence.

Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government.

Constitutive Act of the African Union.

Council of Europe Specific Standards on the Independence of Judges, Lawyers and Prosecutors.

Double Taxation Agreement between South Africa and Switzerland.

IMF/OECD report for G20 Finance Ministers for March 2017.

International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors.

OECD Document on Improving the Resolution of Tax Treaty Disputes 2007.

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

United Nations Specific Standards on the Independence of Judges, Lawyers and Prosecutors.

United Nations (UN) Basic Principles on the Independence of the Judiciary.

Universal Charter of the Judge.

Secondary sources

Books and chapters in books (cited in the body of the thesis)

Andrews, Penelope 'The judiciary in South Africa: Independence or illusion' in Adam Dodek & Lorne Sossin (eds) *Judicial Independence in Context* (2010) Irwin Law Incorporated, Toronto.

Asein, John *Introduction to Nigerian Legal System* (2005) Ababa Press Limited, Lagos.

Ault, Hugh J & Brian J Arnold (Principal Authors) *Comparative Income Taxation a Structural Analysis* 3 ed (2010) Kluwer Law International, The Hague.

Bingham, Tom *The Rule of Law* (2010) Allen Lane, London.

Black's Law Dictionary 14 ed (2014) West Publishing, St Paul's.

Boulle, Laurence & Miryana Nesic *Mediator Skills and Technique Triangle of Influence* (2010).

Butani, Mukesh *Tax Dispute Resolution Challenges and Opportunities for India* (2016) LexisNexis, Gurgaon, Haryana, India.

Corcordel, Veronica *Modern Law and Otherness: The Dynamics of Inclusion and Exclusion in Comparative Legal Thought* (2019) Edward Elgar Publishing, Cheltenham.

Cownie, Fiona *Legal Academics: Culture and Identities* (2004) Hart Publishing, Oxford.

Ese, Malemi *The Nigerian Constitutional Law* 3 ed (2013) Ikeja, Lagos, Nigeria.

Fabra-Zamora (ed) *Jurisprudence in a Globalized World* (2020) Edward Elgar Publishing, Cheltenham, Northampton, Massachusetts.

Federal Inland Revenue Service *A Comprehensive Tax History of Nigeria* (2012) Safari Books, Ibadan.

Harris, Peter *Review of Nigerian Income Tax Laws* (2011).

Hattingh, Johann, Jennifer Roeleveld & Craig West (eds) *Income Tax in South Africa: The First 100 Years 1914–2014* (2016) Juta, Cape Town.

Hawkins, Keith *The Uses of Discretion* (1992) Oxford, Clarendon.

Hoexter, Cora *Administrative Law in South Africa* (2012) Juta, Cape Town.

Klue, S, RC Williams & JA Arendse *Silke on South African Income Tax* (2011) LexisNexis, Durban.

Anthony Lester & Tara Lyle (eds) *Human Rights Law and Practice* (2009) Lexis Nexis, London.

Lloyd, Dennis *The Idea of Law* (1991) Penguin Books Limited, Harmondsworth Middlesex.

Mackie, Karl, David Miles, William Marsh & Tony Allen *The ADR Practice Guide* 3 ed (2007) Bloomsbury Professional.

Okauru, Ifueko Omoigui (ed) *Federal Inland Revenue Service and Taxation Reforms in Nigeria 2004 – 2011* (2012) Safari Books Ltd, Ibadan.

Oke, Yemi *The Law and Practice of International Institutions* (2018) Princeton & Association Publishing Co. Ltd, Lagos.

Olaniyi, Rasheed *History for Senior Secondary Schools* (2017) Bounty Press Limited, Ibadan.

Oyedele, Taiwo *Insights on Taxation and Fiscal Policy* (2015) Bloomsbury Publishing, Croydon.

Oyewo, Oyelowo *Constitutional Law in Nigeria* (2012) Kluwer Law International, Alphen aan den Rijn.

Oluyede, Peter *Constitutional Law in Nigeria* (2001) Evans Brothers, Ibadan.

Redfern, A *Law and Practice of International Commercial Arbitration* (2004) Sweet & Maxwell, London.

Revised Code of Conduct for Judicial Officers in Nigeria *Court of Appeal Handbook* (2017) Panaf Press, Abuja.

Sanni, Abiola *Introduction to Nigerian Legal Methods* (2006) Obafemi Awolowo University Press, Ile-Ife.

Books and chapters in books (consulted but not cited in the body of thesis)

Adegbite, Samuel *Current Developments in Nigerian Commercial Law* (1998) Throne of Grace, Lagos.

Albi, Ibanez Emilio *The Elgar Guide to Tax Systems* (2012) Edward Elgar, Cheltenham.

Arogundade, Joseph *Nigerian Income Tax and Its International Dimension* (2005) Spectrum Books Limited, Ibadan.

Azinge, Epiphany *Plea Bargaining in Nigeria: Law and Practice* (2012) Nigerian Institute of Advanced Legal Studies, Lagos.

Babbie, Earl & Johann Mouton *The Practice of Social Research* (2001) Thomson Learning, London.

Bentley, Duncan *Taxpayer Rights: Theory, Origin and Implementation* (2007) Kluwer Law International, The Netherlands.

Croome, Beric & Lynette Olivier *Tax Administration* (2015) Juta, Cape Town.

Du Plessis, Lourens Marthinus *An Introduction to Law* 3 ed (1999) Juta, Cape Town.

Emslie, Trevor *Income Tax: Cases and Materials* (2012) The Taxpayer, Cape Town.

Gordon, Roger H *Taxation in Developing Countries* (2010) Columbia University Press, New York.

Harris, Edwin *Canadian Income Tax* (1979) Butterworth's & Co, Canada.

Harris, Peter *Income Tax in Common Law Jurisdictions* (2012) Cambridge University Press, Cambridge.

Haupt, Phillip *Notes on South African Income Tax* (2014) H & H Publishing, Cape Town.

Haupt, Phillip *Fundamentals of South African Income Tax* (2011) H & H Publications, Cape Town.

Hogg, Peter W, Joanne E Magee & Jinyan Li *Principles of Canadian Income Tax Law* 4 ed (2002) Carswell, Toronto.

Kirchler, Erich *The Economic Psychology of Tax Behavior* (2008) Cambridge University Press, Cambridge.

Krishna, Vern *The Fundamentals of Canadian Income Tax* 7 ed (2002) Carswell, Toronto.

Kristofferson, E et al (eds) *Tax Secrecy and Tax Transparency* (2013) Peter Lang, GmbH Frankfurt.

McDaniel, Paul R *The Proper Tax Base* (2012) Series on International Taxation.

Ocheni, Stephen *Public Sector Management Principles and Practice* (2014) Spectrum Books Limited, Ibadan.

Ocheni, Stephen *Tax Administration and Management in Nigeria* (2010) Spectrum Books Limited, Ibadan.

Ocheni, Stephen *Principles and Practice of Taxation in Nigeria* (2010) Spectrum Books Limited, Ibadan.

Parsons, Shaun *Advanced Questions on South African Tax* (2016) Juta, Cape Town.

Riley, Carpenter *Fundamentals of South African Income Tax* (2016) H & H Publishing, Cape Town.

Russell, Peter H & David M O'Brien (eds) *Judicial Independence in the Age of Democracy Critical Perspectives from Around the World* (2001) The University Press, Virginia, Charlottesville.

Russo, Raffaele *A Decade of Case Law* (2008) IBFD, Amsterdam.

Scholars and Practitioners in Dialogue (2012) Cambridge University Press, Cambridge.

SAIT Compendium of Tax Legislation (2009) Juta, Cape Town.

Tamanaha, Brian Z, Caroline Sage & Michael Woolcock *Legal Pluralism and Development* (2012) Cambridge University Press.

Terra, BJM *European Tax Law* (2012) Kluwer Law International, The Netherlands.

Thuronyi, Victor *Comparative Tax Law* (2003) Kluwer Law International, The Hague.

Tiley, John *Advanced Topics in Revenue Law* (2012) Hart Publishing, Oxford.

Shetreet Shimon & Jules Deschenes (eds) *Judicial Independence: The Contemporary Debate* (1985) Martinus Nijhoff Publishers, The Netherlands.

Veitch, Scott, Emilios Christodoulidis & Lindsay Farmer *Jurisprudence: Themes and Concepts* (2012) Routledge, New York.

Williams, Robert C *Income Tax in South Africa: Cases and Materials* (2009) LexisNexis, Durban.

Yin, Robert K *Case Study Research: Design and Methods* 2 ed (1994) Thousand Oaks: Sage Publications.

Online books

Benetello, Michele in *Silke on International Tax* (chapter 10.10) https://www.mylexisnexis.co.za/Index.aspx

Brand, Alwina & Ana-Celia Mendes in *Silke on International Tax* (chapter 39.1) https://www.mylexisnexis.co.za/Index.aspx

De Koker Alwyn *Silke on International Tax* (chapter 1.2) https://www.mylexisnexis.co.za/Index.aspx

Silke on Tax Administration chapter 6.4 https://www.mylexisnexis.co.za/Index.aspx

Silke on South African Income tax chapter 19.32 https://www.mylexisnexis.co.za/Index.aspx

Online journal articles

Fogg, K 'The United States Tax Court: A court for all parties' (2016) 70(1/2) *Bull. Intl. Taxn.* Journals IBFD https://online.ibfd.org/document/bit_2016_01_us_1 [31 May 2016].

Gammie, M 'Tax appeals in the UK Supreme Court' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_uk_1 [21 May 2016].

Garzón Herrero, MV & López-Yuste Padial, L 'Tax litigation before the Spanish Supreme Court' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_es_1 [19 April 2018].

Ghyselen, M & Bernard Peeters 'The Court of Cassation as the supreme body of the Judiciary in Belgium' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_be_1 [23 April 2018].

Liptak, Ed 'The New GAAR 10 Years on – Part II: Mistakes and Missed Opportunities' http://www.thesait.org.za/news/326188/The-New-GAAR-10-Years-On--Part-II-Mistakes-and-Missed Opportunities-.htm [23 March 2018].

Martin, Philippe 'The French Supreme Administrative Tax Court' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_fr_1 [23 April 2018].

Mellinghoff, R 'The German Federal Fiscal Court: An overview' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_de_1 [18 April 2018].

Pagone, GT 'Tax litigation in the Federal Court of Australia' (2016) 70(1/2) *Bull. Intl. Taxn.* Journals IBFD https://online.ibfd.org/document/bit_2016_01_au_1 [21 May 2016].

Persson Österman, R 'The Swedish Supreme Administrative Court: Adjudicating in tax matters' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_se_1 [20 April 2018].

Rothstein, M 'An overview of the Supreme Court of Canada' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_ca_1 [21 May 2016].

Scuffi, M. 'Tax litigation before the Italian Supreme Court of Cassation: An overview' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_it_1 [19 May 2018].

Stadelmann, T 'Tax litigation before the Swiss Supreme Court' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_ch_1 [20 April 2018].

Wattel, PJ 'Tax litigation in last instance in the Netherlands: The Tax Chamber of the Supreme Court' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_nl_1 [19 April 2018].

Wattel, PJ 'Very Small General Report' (2016) 70(1/2) *Bull. Intl. Taxn*, Journals IBFD https://online.ibfd.org/document/bit_2016_01_int_4 [19 May 2016].

Other online sources

Croome, Beric 'Payment of tax during an objection regulated' https://www.bericcroome.com/search/label/pay%20now%20argue%20later [3 September 2020].

Govindarajan, M. *Courts v Tribunals* https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=947 [4 April 2020].

Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes. https://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm [10 August 2020].

Keulder, C ' "Pay now, argue later" rule – before and after the Tax Administration Act' (2013) 16(4) *PER* https://www.ajol.info/index.php/pelj/article/view/99732 [14 August 2020].

Memorandum on the Objects of the Tax Administration Bill, 2011 https://www.sars.gov.za/Legal/Preparation-of-Legislation/Pages/Explanatory-Memoranda.aspx [3 August 2020].

SAICA's Official Taxation Newsletter: *General 1795 Pay now, argue later* December 2009 - Issue 124 https://www.saica.co.za/integritax/2009/1795_Pay_now_argue_later.htm [25 August 2020].

Silke, Jonathan 'Pay now argue later' https://www-mylexisnexis-co-za.ezproxy.uct.ac.za/Index.aspx [7 September 2020].

Tax Ombud's Systemic Investigations Report in Terms Of Section 16(1)(B) Of The Tax Administration Act http://www.taxombud.gov.za/Documents/SYSTEMICINVESTIGATIONREPORT2020.pdf [27 August 2020].

The Davis Tax Committee Report on Tax Administration for the Minister of Finance 2017. https://www.hoganlovells.com/en/publications/davis-tax-committee-report [28 August 2020].

Journal articles

Blank, J 'In defence of individual tax privacy' (2011) 61 *Emory Law Journal* 265.

Connell, Luke 'Trial by ambush: Litigation in the Tax Court' (2003) 120(3) *South African Law Journal* 558–579.

Hattingh, Johann 'An overview of the court system of South Africa with emphasis on the resolution of tax disputes' (2011) 65(3) *Bull. Intl. Taxn.*

Jordan, Ellen R 'Specialized courts: A choice' (1981–1982) 76(5) *Northwestern University Law Review* 747.

Moult, Kelley et al *You Have to Make a Judgment Call* Gender, Health and Justice Research Unit, UCT (2016).

Rader, Randall R 'Specialized courts: The legislative response' (1991) 40(3) *American University Law Review* 1003–1014.

Sanni, Abiola 'Multiplicity of Taxes in Nigeria: Issues, Problems and Solutions' (2012) 3(17) *International Journal of Business and Social Science* 229–236.

Theses (cited in the research)

Croome, Beric *Taxpayers' Rights in South Africa* PhD thesis, UCT, 2008.

Gutuza, Tracy *An Analysis of the Methods Used in the South African Domestic Legislation and in Double Taxation Treaties Entered into by South Africa for the Elimination of International Double Taxation* PhD thesis, UCT, 2013.

Theses (consulted but not cited in the research)

Afinowi, Olubunmi *An Outline and Critical Assessment of the Role of Planning Laws in the Regulatory Framework of Climate Change Adaptation in South Africa and Nigeria* PhD thesis, UCT, 2018.

Britz, Jaco *Does the Tax Administration Act Sufficiently Protect the Taxpayers' Right to Privacy or Provide the Taxpayer with a Right to be Informed?* Master's thesis, UCT, 2014.

Kujinga, BT *A Comparative Analysis of the Efficacy of the General Anti-Avoidance Rule as a Measure against Impermissible Tax Avoidance in South Africa* LLD thesis, University of Pretoria, 2013.

Onyeka, Suzzie *Developing a Legal and Institutional Framework for Witness Protection in Nigeria: Reflections from International Perspectives* PhD thesis, UCT, 2019.

Stewart, Fiona Isabel *Substance and Form in South African Revenue Cases* thesis, UCT, 1997.

Tseisi, Hulisani *A Critical Analysis of the Implementation of the 'Pay Now, Argue Later' Principle by SARS as Provided by Section 164 of the Tax Administration Act 28 of 2011* Master's thesis, UCT, 2017.

Open UCT

Chamberlain, Doubell *Recent Findings on Tax Related Burdens: Regulatory Burdens On SMMEs in South Africa* (2007) UCT Development Policy Research Unit, Cape Town.

Websites

http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e at 7 (18).

http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

https://www.icj.org/no-1-international-principles-on-the-independence-and-accountability-of-judges-lawyers-and-prosecutors/

https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/soaf120&id=584

http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/

https://www.mylexisnexis.co.za/Index.aspx

http://law.ato.gov.au/atolaw/view.htm?DocID=LIT/ICD/NT2005/7/00001

http://www.ibfd.org

http://www.kpmg.com/ng

http://www.pwc.com/ng

http://www.sars.gov.za

http://www.firs.gov.ng

Annexure 1

Tax Appeal Tribunal cases

2011									
S/N	***Case***	***In Favour Of***	***Location of TAT***	***Taxpayer Type***	***Issue***	***Last Year of Assessment***	***Year of Filing***	***Year Of Judgment***	***Time to Resolve Dispute Based on Year of Assessment (YOA) and (Year of Filing)***
1	Oando Supply v FIRS (2011) 4 TLRN 116	Taxpayer	Lagos	Company (oil and gas)	*Whether the Appellant, a taxpayer, can commence an appeal at the Tax Appeal Tribunal against a tax assessment while the objection to the assessment has not been resolved by the tax authority?*	2008	2010	2011	3 (1)
2	Nigerian AGIP Oil Exploration Ltd & Anor v FIRS (2011) 4 TLRN 141	FIRS	Lagos	Company (oil and gas)	*Whether, having regard to the provisions of Order IV Rules 1 and 2 of the Tax Appeal Tribunal [Procedure] Rules 2010 and the facts deposed to in the supporting affidavit and the counter-affidavit, the Lagos zone of the Tax Appeal Tribunal has jurisdiction to hear the appeal?*	-	2010	2011	(1)
3	British American Tobacco Marketing Nigeria Limited v FIRS (2011) 5 TLRN 54	FIRS	Lagos	Company (non-oil and gas)	*Whether this appeal should not be transferred to the Tax Appeal Tribunal, Abuja Zone in view of the fact that the Notices of Assessment and Notice of Refusal*	2005	2011	2011	6 (1)

					to Amend were issued by the Respondent's office in Abuja/				
4	FIRS v General Telecom (2012) 7 TLRN 112	FIRS	Lagos	Company (non-oil and gas)	*Whether, in light of the provisions of the Constitution, the Tribunal has jurisdiction over this tax case; and whether the composition of the Tribunal does not violate the rule against bias (nemo judex in causa sua)?*	-	2010	2012	(2)
5	Nirvana Oil Field Services Limited v Federal Inland Revenue Service (2013) 9 TLRN120	FIRS	Abuja	Company (oil and gas)	*Whether the Applicant is entitled to the grant of an application for stay of proceeding pending appeal on issue of jurisdiction in action commenced by the Applicant?*	-	2011	2011	(1)
						-			**Total (YOA) 9/2 = 4.5**
2012									
6	Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (2012) 6 TLRN 119	Taxpayer	Lagos	Company (oil and gas)	*Whether the non- joinder of the Attorney General of the Federation as necessary party is fatal to the appeal; whether from the facts and circumstances of the appeal, force majeure is applicable so as to defeat the appeal in limine?*	-	2011	2012	(1)
7	CNOOC Exploration and Production Nigeria Ltd & Anor v Federal Inland Revenue Service (2012) 7 TLRN 1	Taxpayer	Lagos	Company oil and Gas	*Whether or not NNPC is a necessary party in a tax appeal involving parties in a production sharing contact with NNPC, under the Deep Offshore Act. Whether or not an assessment under the PSC has become final and conclusive?*	-	2012	2012	(1)
8	TSKJ II Construcoes Internacionais & Anor v Federal Inland Revenue Service (2012) 7 TLRN 25	FIRS	Abuja	Company (non-oil and gas)	*Whether the Respondent could properly include as part of the Appellant's taxable revenue further to Section 26 of the Companies Income Tax Act, sums paid to TSKJ Nigeria Ltd. Whether the Appellant*	-	2010	2012	(2)

					having filed its return under section 26 of the Companies Income Tax Act, is entitled to any tax deduction from it turnover?				
9	TSKJ II Construces & 2 Ors v Federal Inland Revenue Service (2012) 7 TLRN 48	FIRS	Abuja	Company (non-oil and gas)	*Same as above*	-	2010	2012	(2)
10	FIRS v Mega Tech (2012) 7 TLRN 67	FIRS	Lagos	Company (non-oil and gas)	*Whether the Respondent is liable to pay the outstanding VAT liabilities with accruing interest and penalty?*	1999	2010	2012	13 (2)
11	Addax Petroleum Nigeria Limited v FIRS (2012) 7 TLRN 74	FIRS	Lagos	Company (oil and gas)	*Whether the Respondent's assessment of the Appellant to tax is premised on an inaccurate RP's basis such that all the Assessments are liable to be set aside?*	2006	2011	2012	6 (1)
12	Halliburton Energy Services Nigeria Limited v Federal Inland Revenue Service (2012) 8 TLRN 15	Taxpayer	Lagos	Company (oil and gas)	*Whether the Terms of Settlement and Non-Prosecution Agreement entered into between the Federal Government of Nigeria and Halliburton Energy Services does not preclude FIRS from making the assessment that is the subject matter of the appeal? Whether the assessment issued by the Respondent and served on the Appellant was valid?*	-	2011	2012	(1)
13	Federal Inland Revenue Service V Chi Chi & Mark Limited (2012) 8 TLRN 35	Taxpayer	Lagos	Company (non-oil and gas)	*Whether the Respondent is liable to pay the outstanding VAT liabilities with accruing interest and penalty?*	2004	2010	2012	8 (2)
14	Esso Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service (2012) 8 TLRN 45	Taxpayer	Lagos	Company (oil and gas)	*Whether the Appellants have the necessary standing to initiate the proceedings bearing in mind the Production Sharing Contract and the applicable legislation?*	2010	2010	2012	2 (2)
15	Shell Nigeria Exploration and Production Company	Taxpayer	Lagos	Company (oil and gas)	*Whether the contractors to the Production Sharing Contract involving the NNPC has the locus standi to bring*	2010	2010	2012	2 (2)

	Limited & 3 Ors v Federal Inland Revenue Service (2012) 8 TLRN 59				*the appeal where the disputed assessments were made on NNPC?*				
16	Addax Petroleum Services Limited v Federal Inland Revenue Service (2013) 9 TLRN 126	Split	Lagos	Company (oil and gas)	*Does the Appellant, a foreign company, have a fixed base in Nigeria so as to be liable to local taxation at all, in light of section 13(2) of the Companies Income Tax Act (CITA)?*	2004	2011	2012	8 (1)
									Total (YOA) 39/6 = 6.5
2013									
17	CNOOC Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service & Anor (2013) 9 TLRN 2	Split	Lagos	Company (oil and gas)	*In light of section 251 of the Constitution reserving to the Federal High Court exclusive jurisdiction over Federal tax matters, does the Tribunal have jurisdiction over this Federal tax matter?*	-	2012	2013	(1)
18	Esso Exploration & Production Nigeria (Deep Water) Limited. & Anor v Federal Inland Revenue Service & Anor (2013) 9 TLRN 140	Split	Lagos	Company (oil and gas)	*In light of section 251 of the Constitution reserving to the Federal High Court exclusive jurisdiction over Federal tax matters, does the Tribunal have jurisdiction over this Federal tax matter?*	-	2012	2013	(1)
19	Mobil Producing Nig. Unlimited v Federal Board of Inland Revenue (2013) 11 TLRN 1	FIRS	Lagos	Company (oil and gas)	*Whether the Appellant by 2008, still enjoyed the tax deductions allowed by the Memorandum of Understanding which the Appellant signed with the Federal Government of Nigeria and the Nigerian National Petroleum Corporation (NNPC) in 2000?*	2008	2011	2013	5 (2)

20	Shell Exploration and Production & 3 Ors v Federal Inland Revenue Service & Anor (2013) 11 TLRN 9	FIRS	Lagos	Company (oil and gas)	*Whether, in the circumstance of this case, the Tax Appeal Tribunal has jurisdiction to entertain the Appellants' Appeal?*	-	2012	2013	(1)
21	Federal Board of Inland Revenue v Cityspace International (2013) 11 TLRN 22	FIRS	Lagos	Company (non-oil and gas)	*Whether the tax assessments raised on the Respondent were validly raised, final and conclusive?*	2006	2012	2013	7 (1)
22	Oando Plc v Federal Inland Revenue Service (2013) 11 TLRN 31	FIRS	Lagos	Company (oil and gas)	*Whether the N1.2 billion obtained by the Appellant in August 2002 from NAL Bank Plc was for the purpose of replenishing the Appellant's working capital and if so, whether interest arising from the loan is not an allowable deduction in the year of assessment?*	-	2012	2013	(1)
23	CNOOC Exploration and Production Nigeria Ltd & Anor v Federal Inland Revenue Service & Anor (2013) 11 TLRN 58	FIRS	Lagos	Company (oil and gas)	*Whether the Tribunal has jurisdiction to entertain the tax matter before it having regard to section 251 of the 1999 Constitution which confers exclusive jurisdiction to the Federal High Court on all tax matters?*	-	2012	2013	(1)
24	Esso Exploration and Production Nigeria Limited & Anor v Federal Inland Revenue Service (2013) 11 TLRN 71	FIRS	Lagos	Company (oil and gas)	*In light of section 251 of the Constitution reserving to the Federal High Court exclusive jurisdiction over Federal tax matters, does the Tribunal have jurisdiction over this Federal tax matter?*	-	2012	2013	(1)
25	Oando Plc v Federal Inland Revenue Service No 2 (2013) 11 TLRN 169	FIRS	Lagos	Company (oil and gas)	*Whether the Appeal is precluded in limine by the doctrine of res judicata in view of the decision of the Federal High Court in Oando v Federal Board Of Inland Revenue (2009) 1 TLRN 61?*	-	2012	2013	(1)
26	Global Marine International Drilling Corporation v Federal	FIRS	Benin	Company (oil and gas)	*Should 'Recharges' be included as part of the turnover of a non-resident company, including the Appellant, for the purposes of*	2004	2011	2013	9 (2)

	Inland Revenue Service (2013) 12 TLRN 1				*assessment to tax on a deemed profit basis and taxed as part of the taxable revenue of the non-resident Company?*				
									Total (YOA) 21/3 = 7
2014									
27	Botro Marine and Oil Services Limited v Federal Inland Revenue Service (2014) 13 TLRN 95	FIRS	Lagos	Company (oil and gas)	*Whether the Respondent has filed any valid response before the TAT? Whether the Appellant is entitled to a refund of all its unutilized Advanced Tax?*	2008	2013	2014	6 (1)
28	Federal Inland Revenue Service v Omega Savings and Loans Limited (2014) 13 TLRN 109	FIRS	Lagos	Company (non-oil and gas)	*Whether the Respondent is liable to pay the outstanding Companies Income Tax and Education Tax liabilities for the 2004, 2005, 2007 and 2008 years of assessment with accruing interest and penalty as claimed by the Appellant?*	2008	2011	2014	6 (3)
29	Federal Inland Revenue Service v Omega Savings and Loans Limited (2014) 14 TLRN 152	FIRS	Lagos	Company (non-oil and gas)	*Whether the Respondent is liable to pay the outstanding Companies Income Tax and Education Tax liabilities for the 2004, 2005, 2007 and 2008 years of assessment with accruing interest and penalty as claimed By the Appellant?*	2008	2013	2014	6 (3)
30	Federal Inland Revenue Service v General Telecom Plc (2014) 14 TLRN 1	Taxpayer	Lagos	Company (non-oil and gas)	*Whether a best of judgment assessment can be raised after a tax audit has been conducted on the taxpayer?*	2002	2010	2014	12 (4)
31	Federal Board of Inland Revenue v Lotatronics Ltd (2014) 14 TLRN 163	FIRS	Lagos	Company (non-oil and gas)	*Whether tax assessments is Final and Conclusive where taxpayer fails to file a defence to an action for recovery of the tax?*	2005	2010	2014	9 (4)
32	JGC Corporation v Federal Inland Revenue	FIRS	Lagos	Company (non-oil and gas)	*Whether the Appellant has a fixed base and therefore is liable to pay tax in Nigeria?*	2008	2012	2014	6 (2)

	Service (2014) 15 TLRN 105								
33	Nigeria Agip Oil Company Limited v Federal Inland Revenue Service (2014) 16 TLRN 25	Taxpayer	Lagos	Company (oil and gas)	*Under the Petroleum Profits Tax Act (PPTA), can a corporate taxpayer deduct interests it incurred on loans obtained at arm's length from a sister company?*	2013	2013	2014	1 (1)
34	Oando Plc v Federal Inland Revenue Service (2014) 16 TLRN 99	FIRS	Lagos	Company (oil and gas)	*Whether the provisions of section 19 of the Companies Income Tax Act, Cap C21, Laws of the Federation, 2004 is ambiguous and should be interpreted in favour of the taxpayer?*	2013	2013	2014	1 (1)
35	Federal Inland Revenue Service v Kandelite Engineering Company Limited (2015) 17 TLRN 41	FIRS	Lagos	Company (non-oil and gas)	*Whether the Applicant is entitled to the grant of stay of judgment?*	-	2011	2014	(3)
36	Mobil Production Nigeria Unlimited v Federal Inland Revenue Service (2015) 17 TLRN 73	FIRS	Lagos	Company (oil and gas)	*Can an officer of the FIRS tender a minute of meeting between the FIRS and the tax payer, which the officer did not personally attend?*	-	2014	2014	(1)
37	Esso Exploration & Production Nigeria Limited & Anor v Federal Inland Revenue Service (2015) 17 TLRN 83	Split	Lagos	Company (oil and gas)	*Was FIRS correct in disallowing certain expenses as deductible expenses in a Production Sharing Contract?*	2006	2013	2014	8 (1)
38	The Shell Petroleum Development Company of Nigeria Limited v Federal Inland Revenue Service (2015) 18 TLRN 67	Taxpayer	Lagos	Company (oil and gas)	*Whether the sum of US $94,707,348 and US $2,228,408 being interest paid by the Appellant on intercompany loan are deductible within the meaning of Section 10(1)(g) of the Petroleum Profit Tax Act?*	2011	2014	2014	3 (1)
									Total (YOA)

									58/10 = 5.8
2015									
39	Mobil Producing Nigeria Unlimited v FIRS (2015) 18 TLRN 35	Taxpayer	Lagos	Company (oil and gas)	*Whether the mechanism for determining the sale prices for crude oil sold in the 2007 and 2008 accounting periods was Realizable Price or Official Selling Price?*	2008	2013	2015	7 (2)
40	Sedco Forex International Incorporated v Federal Inland Revenue Service (2015) 18 TLRN 42	FIRS	Lagos	Company (non-oil and gas)	*Should recharges be included as part of the turnover of the Appellant, a non-resident company for the purposes of assessment to tax on a deemed profit basis, and taxed as part of the taxable turnover of the Appellant?*	2013	2013	2015	2 (2)
41	Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No 2) (2015) 18 TLRN 53	Taxpayer	Lagos	Company (oil and gas)	*Is realizable price the correct mechanism for determining the fiscal value of crude oil sold in the 2005 accounting year?*	2014	2014	2015	1 (1)
42	Total E & P Nigeria Limited v Federal Inland Revenue Service (2015) 18 TLRN 73	Taxpayer	Lagos	Company (oil and gas)	*Whether the proper pricing methodology for calculating PPT is the Realizable Price or Official Selling Price?*	2008	2013	2015	7 (2)
43	Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No 4) (2015) 18 TLRN 115	Taxpayer	Lagos	Company (oil and gas)	*Whether the payment made by the Appellant for gas flaring without certificate issued, is tax deductible under Section 10(1) of the Petroleum Profits Tax Act?*	2008	2013	2015	7 (2)
44	Gazprom Oil & Gas Nig. Ltd v Federal Inland Revenue Service (2015) 19 TLRN 66	Taxpayer	Abuja	Company (oil and gas)	*Whether by virtue of the provisions of the Value Added Tax Act, the "Destination Principle" is applicable in Nigeria?*	2011	2014	2015	4 (1)
45	Chevron Nigeria Limited v Federal Inland Revenue Service (EGTL Appeal) (2016) 21 TLRN 26	Split	Lagos	Company (oil and gas)	*Under CITA and PPT, is a company engaged in gas utilization entitled to any investment allowance or deductions; if so, at what rate?*	2008	2012	2015	7 (3)

46	Shell Nigeria Exploration and Production Company Limited and Ors v Federal Inland Revenue Service (2016) 21TLRN 41	Taxpayer	Lagos	Company (oil and gas)	*Must the FIRS include the names and addresses of assessed companies in its Notices of Assessment and does the non-inclusion invalidate an assessment? Should appellants pay penalty and interests on the assessment?*	2006	2014	2015	9 (1)
47	Chevron Nigeria Limited v Federal Inland Revenue Service (EGP3 Appeal) (2016) 21 TLRN 53	Taxpayer	Lagos	Company (oil and gas)	*Under CITA and PPT, is a company engaged in gas utilization entitled to any investment allowance or deductions; if so, at what rate?*	2008	2012	2015	7 (3)
48	The Shell Petroleum Development Company of Nigeria Limited v Federal Inland Revenue Service (2016) 21 TLRN 64	FIRS	Lagos	Company (oil and gas)	*Whether the Appellant is entitled to claim tax deductions in respect of the expenses which the Appellant claimed were incurred in the course of its petroleum operations?*	2011	2014	2015	4 (1)
49	Shell Petroleum Development Company of Nigeria Limited v Federal Inland Revenue Service (2016) 21 TLRN 86	Taxpayer	Lagos	Company (oil and gas)	*Are payments made by the Appellant in respect of the gas flaring a penalty? Is Appellant entitled to make deductions on sums paid for gas flaring for the period 2006 to 2008? Was FIRS right to have issued the Additional Assessments for the 2006-2008 YOA?*	2008	2013	2015	7 (2)
50	VF Worldwide Holdings Limited v Federal Inland Revenue Service (2016) 21 TLRN 101	FIRS	Lagos	Company (non-oil and gas)	*Is the appellant taxable on turnover assessment and if so is the amount taxed excessive? Is appellant entitled to legitimate expectation based on FIRS prior practice in respect of recharges?*	2007	2012	2015	8 (3)
51	Chevron Nigeria Limited v Federal Inland Revenue Service (2016) 22 TLRN 1	Taxpayer	Lagos	Company (oil and gas)	*Whether the Respondent was right to have disallowed payments made by the Appellant for gas flaring gas on the ground that the expense amounts to gas flaring penalties under the provisions of the Petroleum Profits Tax Act?*	2008	2013	2015	7 (2)

52	Global Scansystems Limited v Federal Inland Revenue Service (2016) 22 TLRN 14	Split	Lagos	Company (non-oil and gas)	*Is a company issued pioneer status under IDTRA supposed to pay tax?*	2010	2013	2015	5 (2)
									Total (YOA) 82/14 = 5.8
2016									
53	Chevron Nigeria Limited v Federal Inland Revenue Service (2016) 22 TLRN 120	Taxpayer	Lagos	Company (oil and gas)	*Whether based on the provisions of the PPTA and not the MOU, the RP is the appropriate methodology for determining the fiscal value of crude oil in the year ended 31 December 2007?*	2008	2013	2016	8 (3)
54	Olokun Pisces Limited v Federal Inland Revenue Service 23 TLRN 1	FIRS	Lagos	Company (non-oil and gas)	*Stay of Execution of Monetary Judgment Applicant – Need to Show special and exceptional circumstances?*	2012	2014	2016	4 (2)
55	Star Deep Water v Federal Inland Revenue Service 23 TLRN 14	Taxpayer	Lagos	Company (oil and gas)	*Best of Judgment Assessment – When may it be Final and Conclusive?*	2009	2012	2016	7 (4)
56	Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (2016) 23 TLRN 40	Split	Lagos	Company (oil and gas)	*Does FIRS failure to issue notice of refusal to amend render subsequent assessments invalid?*	2012	2013	2016	4 (3)
57	Chevron Nigeria Limited v Federal Inland Revenue Service (2016) 23 TLRN 56	Taxpayer	Lagos	Company (oil and gas)	*Is intangible drilling cost a deductible expense in the absence of modified carry agreement?*	2011	2014	2016	5 (2)
58	Vodacom Business Nig. Ltd v Federal Inland Revenue Service (2016) 23 TLRN 72	FIRS	Lagos	Company (non-oil and gas)	*Is destination principle under VAT applicable in Nigeria? What services are Vatable in Nigeria?*	-	2015	2016	(1)

59	Federal Inland Revenue Service v Vital Need Engineering Services Limited (2016) 23 TLRN 83	FIRS	Lagos	Company (non-oil and gas)	*Are tax assessments on the taxpayer valid, final and conclusive, particularly as taxpayer did not object within time?*	2013	2014	2016	3 (2)
60	South Atlantic Petroleum Limited And Ors v Federal Inland Revenue Service (2016) 23 TLRN 92	Taxpayer	Lagos	Company (oil and gas)	*Is the Respondent right to have disallowed the Appellant's tax treatment of costs incurred for petroleum operation on the ground that they are individual party's costs which are not recoverable under cost oil allocation under OML 130 PSA?*	2011	2015	2016	5 (1)
61	Nigerdock Nigeria Plc – FZE v Federal Inland Revenue Service (2016) 24 TLRN 1	Non suited	Lagos	Company (non-oil and gas)	*Whether the incomes derived by the Appellant on the services rendered to Total Exploration & Production Limited and Mobil Nigeria Unlimited are subject to tax under the relevant tax laws?*	2013	2015	2016	3 (1)
62	Statoil (Nigeria) Limited & Anor v Federal Inland Revenue Service (2016) 24 TLRN 13	Taxpayer	Lagos	Company (oil and gas)	*Can an assessment notice without taxpayer names be final and conclusive? Can FIRS depend on NNPC figures for the purposes of tax assessment?*	2012	2012	2016	4 (4)
63	Brasoil Oil Services Company (Nigeria) v Federal Inland Revenue Service (2016) 24 TLRN 24	Taxpayer	Lagos	Company (oil and gas)	*Is Appellant liable to pay VAT on reimbursement of expenses incurred by a third party on behalf of the Appellant? Is the Appellant liable to deduct WHT on salaries? Are VAT and WHT applicable to expenses incurred outside Nigeria? Is the Appellant liable to interest and penalties after validly objecting to the Respondent's assessments?*	2012	2015	2016	4(1)
64	Nigerian Breweries Plc v Federal Inland Revenue Services (2016) 24 TLRN 40	Taxpayer	Lagos	Company (non-oil and gas)	*Whether a company's expenses outside Nigeria on another company's behalf are not allowable deductions under the CITA regime?*	2014	2015	2016	2(1)

65	Shell Nigeria Exploration and Production Company Ltd & 3 Others v Federal Inland Revenue Service (2016) 24 TLRN 51	Taxpayer	Lagos	Company (oil and gas)	*Whether the Respondent applied the law correctly in its treatment of expenses incurred by the Appellants? Whether the Respondent's calculation of capital allowance was correct in law?*	2010	2012	2016	6(4)
66	Federal Inland Revenue Service v Luri Oil & Gas Nigeria Limited (2016) 24 TLRN 88	Taxpayer	Lagos	Company (oil and gas)	*Are the additional tax assessments for 2009 and 2010; and the tax assessment for 2012, valid, final, and conclusive?*	2012	2012	2016	4(4)
67	Tetra Pak West Africa Limited v Federal Inland Revenue Service (2016) 24 TLRN 95	Taxpayer	Lagos	Company (non-oil and gas)	*Do invoices and instructions for payments constitute sufficient evidence of revenue received from exported services? Do penalties and interests begin to accrue from assessment years or from the date additional assessments become final and conclusive?*	2012	2015	2016	4(1)
68	Gilat Satcom Nigeria Limited v Federal Inland Revenue Service (2016) 25 TLRN 29	Split	Lagos	Company (non-oil and gas)	*Whether the Additional Value Added Tax Assessments, with accruing interest and penalty, raised by the Respondent were validly raised?*	2011	2014	2016	5(2)
69	Biwater Nigeria Limited v Federal Inland Revenue Service (2016) 25 TLRN 69	Taxpayer	Lagos	Company (non-oil and gas)	*Whether the additional assessment should not be quashed or set aside in whole or in part for being unreasonable and without any legal and/or factual basis?*	2013	2015	2016	3(1)
70	R & B Falcon Exploration Company LLC v Federal Inland Revenue Service (2016) 25 TLRN 94	FIRS	Lagos	Company (oil and gas)	*Are "recharges" made by the Appellant Company to its local logistic support Company R & B Falcon Nigeria LLC deductible in assessing the Appellant's tax under the deemed profit of assessment?*	2001	2005	2016	15 (11) Carry over from BAC
		FIRS 31 Taxpayer 30 Split 8	**Lagos 65 Abuja 4 Benin 1 Total 70**	**Non-oil and Gas 24 Oil and gas 46**					**Total (YOA) 86/17 = 5.06**

		Non-suited 1 Total 70		**Total 70**					
In respect of time of filing, all 70 cases indicate time of filing at the Tax Appeal Tribunal. Of this number 33 were concluded within a year or less, 21 within 2 years, 8 within 3 years, 6 within 4 years, 1 within 6 years, and a case was concluded in 15 years. Some of the cases that had early filing dates were carry overs from the Body of Appeal Commissioners.									

Federal High Court cases

S/N	***Case***	***In favour of***	***Location of TAT***	***Taxpayer Type***	***Issue***	***Last Year of Assessment***	***Year of filing***	***Year of judgment***	***Time to resolve dispute based on YOA and (Year of filing)***
1998									
1	Shell Petroleum International Mattscgappij BV v Federal Board of Inland Revenue (2011) 4 TLRN 97	Split	Lagos	Company (oil and gas)	*Is appellant liable to Nigerian tax? What is the correct rate of tax on turnover – 7.5% or 10%?*	1988	1996	1998	10 (2)
2004									
2	Eko Hotels Limited v Federal Board of Inland Revenue and Attorney General Of Lagos State (2009) 1 TLRN 172	-	Lagos	Company (non-oil and gas)	*Action instituted in the Federal High Court by a Party against the Federal Government and a State Government in respect of whom to pay consumption tax, whether competent. Whether remittance of money collected as tax by Plaintiff on its sales to its consumers should be paid to FBIR or Lagos State Government further to the VATA*	-	2004	2004	(1)

					and the provisions of the Sales Tax Law, CAP 175 and Sales Tax (Schedule Amendment) Order 2000-of Lagos State?				
					2005				
3	FBIR v Texaco (Nigeria) Plc (2010) 3 TLRN 72	Taxpayer	Benin	Company (oil and gas)	*Whether the Defendant is liable to pay the sum of N981, 770.00 being claimed as indebtedness by the Defendant for filling its VAT returns late and for interests and penalty imposed?*	1998	2000	2005	7 (5)
					2006				
4	Federal Board of Inland Revenue v Confidence Insurance Plc (2010) 2 TLRN 95	Taxpayer	Akure	Company (non-oil and gas)	*Whether defendant is liable to pay the sum of N2, 911,288.31 being unpaid Company Income Tax and Education Tax from 1993 to 1998 plus interest and penalty, the plaintiff having orally agreed to accept a lesser sum?*	1998	1999	2006	8 (7)
5	Mama Cass & 2 Ors v Federal Board of Inland Revenue & Anor (2010) 2 TLRN 99	FBIR	Lagos	Company (non-oil and gas)	*Whether the Federal High Court has jurisdiction to entertain an action that borders on who to pay consumption taxes to between taxing authorities?*	-	2004	2006	(2)
6	Halliburton West Africa Limited v Federal Board of Inland Revenue (2013) 11 TLRN 84	Taxpayer	Lagos	Company (oil and gas)	*Whether the BAC properly interpreted the provisions of CITA especially section 30 (1) in arriving at the conclusion that recharges by the appellant were not allowable deduction in the turnover of the appellant?*	2002	2005	2006	4 (1)
					2007				
7	Federal Board of Inland Revenue v Owena Motels Ltd [2010] 2 TLRN 87	FBIR	Akure	Company (non-oil and gas)	*Whether the best of judgment on the defendant for the sum of N2, 013,535.48 being debt due and payable by the defendant to the*	1998	1999	2007	9 (8)

					Federal Government of Nigeria under the Companies Income Tax Act is not final and conclusive and therefore liable to be paid by the defendant?				
8	FBIR v Akwa Ibom Water Company Limited (2010) 3 TLRN 113	FBIR	Uyo	Company (non-oil and gas)	*Whether the 1st and 2nd Respondents can lawfully impose, assess and collect taxes and levies outside the one stipulated by the Taxes and Levies (Approved List for Collection) Act Cap T2 LFN, 2004?*	2003	2004	2007	4 (3)
9	Ocean & Oil Limited v Federal Board of Inland Revenue (2011) 4 TLRN 135	FIRS	Abuja	Company (oil and gas)	*Can the Federal High Court entertain at first instance matters that deal with taxation? Or should such disputes first be decided by the BAC?*	-	2000	2007	(7)
10	Haliburton West Africa Limited v Federal Board of Inland Revenue (2012) 7 TLRN 16	Taxpayer	Lagos	Company (oil and gas)	*Whether compliance with the provision of section 162 of the 1999 constitution suffices as special circumstance to warrant the grant an order for stay of execution of judgment ordering the FIRS to refund excess tax paid?*	1999	2005	2007	8 (2)
					2008				
11	Oando Plc v Federal Board of Inland Revenue 1 TLRN 60	Taxpayer	Lagos	Company (oil and gas)	*Whether a company engaged in the business or trade of blending of lubricant and grease is not entitled to claim full capital allowance as a bonafide manufacturing company further to the provision of section 24 (7) of CITA? Whether the dividend paid by the Appellant is liable to tax at the rate set out in section 19 of CITA?*	2004	2006	2008	4 (2)

12	Federal Board of Inland Revenue v Phillips Oil Company (Nigeria) Ltd (2010) 2 TLRN 76	FBIR	Lagos	Company (oil and gas)	*Whether the BAC was not in error to have set aside the Appellant's Assessment No PPTBA 7 dated 17th June, 1997 in the sum of US $3,365,320 for 1996 year of Assessment, the Appellant having failed to fulfil the condition precedent to claiming the Reserve additional Bonus?*	1996	2005	2008	12 (3)
13	Chief Victoria Ogundana Adedotun & Anor v FIRS & Anor (2011) 4 TLRN 88	FIRS	Akure	Company (non-oil and gas)	*Is there need for a pre action notice when suing the FIRS?*	-	2008	2008	(1)
2009									
14	Registered Trustees of Association of Fast Food Confectioners of Nigeria & 2 Ors v AG Lagos State & Anor (2010) 2TLRN (No 1) 36	-	Lagos	Not for profit	*Whether the plaintiffs/applicants are entitled or made a case for a grant of interlocutory injunction against the 1st defendant/respondent to restrain same from carrying into effect the provision of the Hotel Occupancy and Restaurant Consumption Law of Lagos State, 2009?*	-	2009	2009	(1)
15	Federal Inland Revenue Service v Omega Sunshine International Venture (2011) 4 TLRN 131	FIRS	Akure	Company (non-oil and gas)	*Should motion for amendment by the applicant be granted?*	-	2008	2009	(1)
16	Oando v Federal Board of Inland Revenue (2013) 10 TLRN 91	Split	Lagos	Company (oil and gas)	*On whether a taxpayer (a Judgment Debtor) is entitled to grant of an application for stay of execution of Judgment?*	-	2006	2009	(3)
2011									
17	CNOOC Exploration & Production Nigeria Limited v AG Federation	Taxpayer	Abuja	Company (oil and gas)	*What constitutes service under VATA?*	-	2007	2011	(4)

	& 2 Ors 4 TLRN 185								
18	Ajaab Global Investment & Anor v Federal Inland Revenue Service & Anor (2011) 5 TLRN 24	FIRS	Gusau	Company (non-oil and gas)	*Whether the Federal High Court has jurisdiction to entertain disputes on Value Added Tax assessments having regard to the provisions of Section 20 (2) of the Value Added Tax Act; Section 59 of the Federal Inland Revenue Service (Establishment) Act and Section 251 (1) (b) of the Constitution of the Federal Republic of Nigeria, 1999?*	-	2010	2011	(1)
2012									
19	Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 4 Ors (2012) 6 TLRN 1	FIRS	Abuja	Company (oil and gas)	*Whether the Federal High Court has jurisdiction to adjudicate on the disputes between NNPC and its contractors in respect of the provisions of the Production Sharing Contracts executed by them which is a subject matter of arbitration? Whether the Arbitral Tribunal in the matter of arbitration between; (1) Shell Nigeria Exploration and Production Limited (2) ESSO Exploration And Production (Deepwater) Limited (3) Nigerian Agip Exploration Limited; (4) Total E & P Nigeria Limited, and Nigerian National Petroleum Corporation, has jurisdiction to determine the subject matter of Arbitration which deals with taxation of the Defendants by the Federal Inland Revenue Service?*	-	2011	2012	(1)

20	Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 2 Ors (2012) 6 TLRN 87	FIRS	Abuja	Company (oil and gas)	*Whether the Plaintiff has locus standi to institute this suit considering the fact it was not a party to the Production Sharing Contract and the Arbitral proceedings?*	-	2011	2012	(1)
				2013					
21	Federal Inland Revenue Service v Gazetta Communication Limited (2013) 10 TLRN 1	FIRS	Abuja	Company (non-oil and gas)	*Whether the tax assessment conducted by the plaintiff was proper and valid or an imposition of the amount being claimed?*	2005	2012	2013	8 (1)
22	TSKJ II Construces Internacionals Sociadade LDA v Federal Inland Revenue Service (2014) 13 TLRN 1	Taxpayer	Abuja	Company (non-oil and gas)	*Whether on the state of the law, the Tribunal had the jurisdiction to entertain this matter ab initio? If the answer to issue (a) is in the affirmative; whether the TAT properly interpreted the provisions of CITA especially section 26(1) in arriving at the conclusion that recharges by the appellant were not allowable deductions in the turnover of the appellant?*	-	2012	2013	(1)
23	Nigerian National Petroleum Corporation v Tax Appeal Tribunal & 3 Ors (2013) 13 TLRN 39	FIRS	Lagos	Company (oil and gas)	*Whether the Applicant has the standing to issue proceedings for judicial review? Whether the 1st Respondent has jurisdiction to determine the tax appeal instituted by the 2nd and 3rd Respondent against the 4th?*	-	2013	2013	(1)
				2014					
24	Federal Inland Revenue Service v TSKJ 11 ConstrucesInternacionals Sociadade Unipessoal Loa (2014) 14 TLRN 158	FIRS	Abuja	Company (non-oil and gas)	*Whether in the circumstances of this application, the applicant is not entitled to a grant of stay of execution of the judgment of the Federal High Court?*	-	2012	2014	(2)

25	Saipem Contracting Nigeria Ltd & 2 Ors v Federal Inland Revenue Service & 2 Ors (2014) 15 TLRN 76	FIRS	Lagos	Company (non-oil and gas)	*Whether the 1st Defendant - the tax authority - is estopped from resiling from its earlier written representation to the Plaintiff's consultants that they are not liable to pay Value Added Tax, Withholding Tax and Company Income Tax respectively?*	-	2009	2014	(5)
26	Peniel Apartment Limited v Federal Inland Revenue Service & Anors (2014) 15 TLRN 100	FIRS	Lagos	Company (non-oil and gas)	*Whether the Chairman of the FIRS acted ultra vires his power under section 31 of the FIRSEA when he appointed the Bankers to the Appellant in default of payment of tax as tax collecting agent of the FIRS?*	-	2013	2014	(1)
27	Oando Plc v Federal Inland Revenue Service (2015) 17 TLRN 50	FIRS	Abuja	Company (oil and gas)	*Whether on the state of the law, the Tax Appeal Tribunal had jurisdiction to entertain the suit?*	2003	2012	2014	11 (2)
28	Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No 4) (2015) 18 TLRN 85	FIRS	Lagos	Company (oil and gas)	*What is the applicability of certain clauses in a contract to the relationship between the tax authority and taxpayer vis a vis PPTA Act of 1959 as amended?*	-	2013	2014	6 (1)
29	SG Property Ltd & Sule Sunday Godwin (Trading in the Name and Style of Godwin & Co) v Federal Inland Revenue Service (2015) 19 TLRN 14	Taxpayer	Abuja	Company (non-oil and gas)	*Whether the payment made for the purchase of each of the said properties is a capital receipt in the hand of the owners, having regard to the fact that the owners are not persons engaged in the business of buying and selling of properties?*	2008	2013	2014	6 (1)
2015									
30	Nigerian National Petroleum Corporation v CNOOC and Ors (2015) 19 TLRN 32	Taxpayer	Lagos	Company (oil and gas)	*Whether the Appellant has the locus standi to initiate the appeal? Whether the TAT has the jurisdiction to entertain the 1st and 2nd Respondents 2012 EDT?*	2012	2014	2015	3 (1)

31	Nigerian National Petroleum Corporation v Tax Appeal Tribunal & Ors (2015) 20 TLRN 1	FIRS	Lagos	Company (oil and gas)	*Whether the Tax Appeal Tribunal can be construed as a court with respect to its powers to adjudicate on tax disputes?*	2009	2014	2014	5 (1)
32	Nigerian National Petroleum Corporation v CNOOC Exploration and Production Nigeria Limited & Ors (2015) 20 TLRN 17	Taxpayer	Lagos	Company (oil and gas)	*Whether the Nigerian National Petroleum Corporation has the locus standi to institute the appeal before the Federal High Court; and whether the Tax Appeal Tribunal has jurisdiction to entertain dispute arising from Petroleum Profits Tax assessment?*	-	2013	2015	(2)
33	Warm Spring Waters Nigeria Limited and Ors v Federal Inland Revenue Service(2015) 20 TLRN 49	Taxpayer	Lagos	Company (non-oil and gas)	*Whether Bottled Water qualifies as basic foodstuff within the context of the Value Added Tax Act and therefore exempted from Value Added Tax?*	2013	2015	2015	2 (1)
34	Botro Marine & Oil Services Limited v Federal Inland Revenue Service (2016) 21 TLRN 1	FIRS	Lagos	Company (oil and gas)	*Whether the Respondent has a valid reply to acknowledging receipt of Notice of Appeal which the Respondent can rely on in reply to the Appeal before the Tax Appeal Tribunal?*	2008	2014	2015	7 (1)
35	JGC Corporation v Federal Inland Revenue Service (2016) 22 TLRN 37	Taxpayer	Lagos	Company (non-oil and gas)	*Whether having regard to the fact that the Tribunal failed to consider and evaluate pieces of evidence placed before it and which were material to the just determination of the Appeal, the judgment of the Tribunal should be set aside? Whether having regard to the evidence before the Tribunal, the Tribunal rightly held that the Appellant had a fixed base in Nigeria and was therefore liable to*	-	2014	2015	(1)

					be assessed to tax under section 30 (1) of the Companies Income Tax Act?				
2016									
36	Mobil Producing Nigeria Unlimited v Federal Inland Revenue Service (No 2) (2016) 25 TLRN 39	Taxpayer	Lagos	Company (oil and gas)	*Did the lower tribunal give a proper interpretation to the correspondence between the Oil Producers Trade Section (OPTS) (which includes the Appellant) and the Federal Government of Nigeria, to come to the conclusion that the official selling price is the methodology for determining the fiscal value of crude oil in 2008?*	2008	2015	2016	8 (1)
All 36 cases indicate time of filing at the Federal High Court. Of this number, 20 cases were concluded within a year or less, 7 cases were concluded within 2 years, 3 cases within 3 years, 1 case in 4 years, 2 cases in 5 years, 2 cases in seven years and one case in eight years. Location: Lagos 21, Abuja 8, Akure 4, Benin 1, Gusau 1, Uyo 1. Litigants Oil and gas companies -19. Non-oil and gas companies -16. Not for profit organisation 1. Total 36.									

Court of Appeal cases

S/N	***Case***	***Taxpayer Type***	***Location of Court***	***Issue***
1997				
1	Gulf Oil Company (Nigeria) Limited v Federal Board of Inland Revenue (2012) 7 TLRN 163	Company (oil and gas)	Lagos	*Whether the charges or commissions paid by the appellant to the Central Bank of Nigeria as a result of the Federal Government's directive that the appellant's tax be paid into an account abroad instead of in Nigeria were not expenses wholly, exclusively and necessarily incurred for the purpose of the appellant's petroleum operations within the meaning of section 10(1) of the Petroleum Profits Tax Act?*
2007				

2	Attorney General Of Lagos State v Eko Hotels Limited And Anor (2009) 1 TLRN 193	Government	Lagos	*Whether the Federal High Court has jurisdiction to entertain the Plaintiff's action as constituted when the judge failed to follow the judgment of a superior court showing that the Appellant had obtained judgment in respect of the subject matter of the proceeding? Whether the learned trial judge was right when he held that the Value Added Tax (Decree) Act has covered the field of Sales Tax and that the Plaintiff is a taxable or remitting agent to only the Federal Board of Inland Revenue (2nd Respondent) in respect of tax on sales to its customers and that it would amount to double taxation to require the Plaintiff to yield to the demands of both 2nd Respondent and the Appellant at the same time?*
2009				
3	Stabilini Visinoni Limited v Federal Board Of Inland Revenue (2009) 1 TLRN 1	Company (oil and gas)	Ibadan	*Whether the Value Added Tax Tribunal set up further to the provision of the Value Added Tax Act is not unconstitutional in view of the provision of Section 251 of the Constitution of the Federal Republic of Nigeria, 1999?*
4	Cadbury Nigeria Plc v Federal Board of Inland Revenue (2010) 2 TLRN 16	Company (non-oil and gas)	Ibadan	*Whether in the light of Section 251 (1) (a) and (b) of the 1999 Constitution, the Value Added Tax Tribunal established by the Honourable Minister of Finance further to the provision of the Value Added Tax Act has or lacks jurisdiction to entertain issues relating to the recovery of Value Added Tax?*
5	FBIR v Integrated Data Services Ltd. (2010) 3 TLRN 1	Company (non-oil and gas)	Ibadan	*Whether the tax authority has powers under the Value Added Tax Act No 102 of 1993 to impose penalty and interest on a taxable person for failure to file tax returns and remit the tax when due? Whether the trial court was right in holding that the Defendant was not proved to be a subsidiary of N.N.P.C.? Whether the trial court was right when it held that "the action is therefore not statute barred?*
2012				
6	Shell Petroleum International Mattscgappij v Federal Board of Inland Revenue (2011) 5 TLRN 114	Company (oil and gas)	Lagos	*Whether the learned Judge was right in law in holding that appellant is liable to tax under s 8 of the Companies Income Tax Act, Cap 60 ("CITA") and Pay income tax under CITA merely by its rendering of services to SPDC and receiving fees invoiced on a cost recovery basis? Whether the learned Judge was right in law in taking the view that by the nature of its business and how it was carried on, the Appellant had a fixed base of business in Nigeria so*

				as to render it liable to tax on the basis of a deemed profit under s 26 (1) (b) of CITA as amended?
2014				
7	Federal Board of Inland Revenue v Halliburton (WA) Limited (2015) 17 TLRN 1	Company (oil and gas)	Lagos	*Whether it was a misdirection for the court below to rely on the decision in Ibori v Agbi (2004) 6 NWLR (pt.868) 78 to set aside a finding of fact made by the Body of Appeal Commissioners and if the answer is in the affirmative, whether the Respondent could take advantage of an illegal contract (Grounds (i), (ii) and (iii)?*
2015				
8	Oando Plc v FBIR (2015) 18 TLRN 1	Company (oil and gas)	Lagos	*Whether the Federal High Court was right to have held that the Appellant is only entitled to claim full capital allowance on 5 percent of its assessable profits, having also held that the law does not impose any condition of threshold on the level of manufacturing activity that a company is required to meet in order to be exempted from the restriction imposed under paragraph 24(7) of the second schedule to CITA?*
Total: oil and gas 5, non-oil and gas 2, government 1				

Supreme Court cases

S/N	***Case***	***Taxpayer Type***	***Time Line***	***Issue***
1	Shell Petroleum Development Company Nigeria Limited v Federal Board Of Inland Revenue (2009) 1 TLRN 218	Company (oil and gas)	Year of Assessment: 1973 Filed: 1994 Judgment: 1996 Total time based on YOA: 23 years Total time based on time of filing: 2 years	*Whether the Exchange losses incurred by the Appellant in meeting its contractual obligation to the Federal Government is not an allowable deduction for the purpose of Petroleum Profit Tax? Whether the Central Bank Commission incurred by the Appellant in meeting its contractual obligation to the Federal Government is not an allowable deduction for the purpose of Petroleum Profits Tax? Whether the expenses incurred by the Appellant in meeting its statutory obligation in relation to Scholarship expenses is not an allowable deduction for the purpose of Petroleum Profits Tax?*

Link to pending cases on FIRS register
https://drive.google.com/file/d/1uZz__iMwxNyDUXdCE4bLkqz6yCyM7Jns/view?usp=sharing

Annexure 2

Tax Court cases as reported in SATC from 2003 to 2016

2016								
S/N	***Case No/Name***	***In favour of***	***Location of Tax Court***	***Taxpayer Type***	***Issue***	***Last Year of Assessment***	***Year of Judgment***	***Length of Time to Resolve Disputes/Average Length of Time to Resolve Disputes Each Given Year***
1	Income Tax Case No 1899 79 SATC 315	SARS	Port Elizabeth	Company	*Provisional tax – Underestimation penalty – Paragraphs 20(1) and 20(2) of the Fourth Schedule to the Income Tax Act 58 of 1962*	2010 (Year of Objection [YOO] 2012)	2016	6
2	Income Tax Case No 1898 79 SATC 266	Taxpayer	Cape Town	Trust	*Capital Gains Tax – Disposal of shares – Proceeds from – Reduction of – Calculation of liability for –*	-	2016	-
3	Income Tax Case No 1897 79 SATC 224	SARS	Cape Town	Close Corporation	*Value-Added tax – Input tax deduction*	2011	2016	5
4	Income Tax Case No 1895 79 SATC 179	SARS	Cape Town	Individual	*Deduction – Interest – Section 11(a) of the Income Tax Act 58 of 1962*	2012	2016	4
5	Income Tax Case No 1894 79 SATC 167	SARS	Cape Town	Company	*Employees' tax – Employment – Fringe benefits – Expatriate employees*	2010	2016	6

6	Income Tax Case No 1893 79 SATC 159	SARS	Port Elizabeth	Company	*Capital and Income – Government grants – Whether such a grant, constituted gross income or was a receipt or accrual of a capital nature*	2010	2016	6
7	Income Tax Case No 1892 79 SATC 105	SARS	Cape Town	Company	*Value-Added Tax – Output tax – Delivery charges – Whether vendor accountable for VAT on – Sections 7(1)(a), 7(2) and 10 of the Value-Added Tax Act 89 of 1991*	2011	2016	5
8	Income Tax Case No 1890 79 SATC 62	Split	Cape Town	Company	*Deduction – Future expenditure on contracts – Allowance for – Section 24C ITA Act 58 of 1962 – Whether Appellant entitled to claim allowance for such expenditure in terms of s 24C of ITA*	2011 (Audit 2014)	2016	5
9	Income Tax Case No 1889 79 SATC 39	Taxpayer	Cape Town	Company	*Value-Added Tax – Input tax deduction – Payment of full consideration in respect of a taxable supply for purposes of s 22(3) of the Value-Added Tax Act 89 of 1991 – Meaning of 'payment'*	2009 (Audit 2013)	2016	7
10	Income Tax Case No 1888 79 SATC 23	Taxpayer	Cape Town	Company	*Tax avoidance – Assessed losses of companies – Section 20(1) of the Income Tax Act 58 of 1962*	2011	2016	5
11	Income Tax Case No 1887 78 SATC 375	Taxpayer	Cape Town	Company	*Deduction – Ships – Reserve for future repairs – Section 14(1)(c) of the Income Tax Act 58 of 1962*	2011	2016	5
12	Income Tax Case No 1884 78 SATC 272	Split	Durban	Company	*Value-Added tax – Penalty and interest – Failure to pay tax – Section 39(1) and 39(7) of the Value-Added Tax Act 89 of 1991*	2012	2016	4
13	Income Tax Case No 1883 78 SATC 225	SARS	South Gauteng	Company	*Tax administration – Assessment – Objection against – Extension of period of objection*	([YOO 2015 Audit 2014)	2016	-

14	Income Tax Case No 1882 78 SATC 165	Split	Johannesburg	Individual	*Tax administration – Penalties – Additional tax – Section 76 of the Income Tax Act 58 of 1962*	2009 (YOO 2011)	2016	7
15	Income Tax Case No 1881 78 SATC 132	Taxpayer	Durban	Company	*Additional assessments – Prescription – Assessments raised more than three years from the date of the original assessment – Section 79 of the Income Tax Act 58 of 1962*	2006 (Audit 2009)	2016	10
		SARS 7, TP 5, Split 3		Company 11 Trust 1 CC 1 Individual 2				**Total 75/ 13 = 5.7**
2015								
16	Income Tax Case No 1878 77 SATC 349	SARS	Johannesburg	Company	*Double Taxation Agreement – Interpretation of*	2009	2015	6
17	Income Tax Case No 1877 77 SATC 269	SARS	Cape Town	Company	*Deduction – Research and development expenditure – Computer programmes – Section 11D of the Income Tax Act 58 of 1962*	2010 (YOO 2011)	2015	5
		SARS 2		Company 2				**Total 11/ 2 =5.5**
2014								
18	Income Tax Case No 1880 78 SATC 103	SARS	Johannesburg	Individual	*CGT- Disposal of shares, proceeds from, reduction of*	2008	2014	6
19	Income Tax Case No 1879 78 SATC 64 CASE NO VAT 1005	Taxpayer	Johannesburg	Company	*VAT- zero rating, housing subsidy scheme, payments made in respect of*	2010 (YOO 2011)	2014	4
20	Income Tax Case No 1876 77 SATC 175	Taxpayer	Western Cape	Company	*Tax Court Rules – Statement of grounds of assessment – Amendment of – Rule 10 of the procedures to be observed in lodging objections and noting appeals under s 107A of the Income Tax Act 58 of 1962*	2008	2014	6

21	Income Tax Case No 1875 77 SATC 161	Split	Gauteng	Company	*Deduction – Trading stock – Acquisition or disposal of – Application of s 23F(2) of the Income Tax Act 58 of 1962 – Section 11(a) of the Act*	2009	2014	5
22	Income Tax Case No 1873 77 SATC 93	Taxpayer	Western Cape	Individual	*Farming – Produce – Meaning of – Wine farming – Valuation of produce on hand at the beginning and end of the year of assessment – Section 26(1) of the Income Tax Act 58 of 1962*	2010	2014	4
23	Income Tax Case No 1872 76 SATC 225	Split	Cape Town	Trust	*Public benefit organisation – Trust – Exemption from income tax in terms of section 10(1)(cN) of the Income Tax Act 58 of 1962*	2010	2014	4
		SARS 1, TP 3, Split 2		Company 3 Trust 1 Individual 2				**29/6 = 4.8**
2013								
24	Income Tax Case No 1871 76 SATC 109	SARS	Western Cape	Company	*Value-Added Tax – Input tax – Requirement for deduction –*	2007 (YOO 2009)	2013	6
25	Income Tax Case No 1870 76 SATC 97	Taxpayer	Johannesburg	Company	*Tax Court – Judgment – Supreme Court of Appeal – Interpretation of – Interpretation of a judgment handed down by the Supreme Court of Appeal*	2002	2013	11
26	Income Tax Case No 1869 75 SATC 329	SARS	Western Cape	Company	*Farming Operations – Plantation – Disposal of – Whether proceeds of a disposal of a plantation by the taxpayer had been correctly included in its gross income in the relevant year of assessment*	2010	2013	3
27	Income Tax Case No 1868 75 SATC 303	SARS	Pretoria	Company	*Value-Added Tax – Assessment – Notice of objection*	2004 (ADR initially employed)	2013	9

28	Income Tax Case No 1867 75 SATC 273	Split	Western Cape	Company	*Capital and Revenue – Shares – Acquisition and disposal of*	2005	2013	8
		SARS 3, TP 1, Split 1		Company 5				**37/ 5 = 7.4**
2012								
29	Income Tax Case No 1866 75 SATC 268	Beyond Jurisdiction of Court	Pretoria	Individual	*Value-Added Tax – Tax Invoice – Concession in regard to*	2006	2012	6
30	Income Tax Case No 1865 75 SATC 250	SARS	South Gauteng	Company	*Value-Added Tax – Output tax – Failure to pay –*	2008	2012	4
31	Income Tax Case No 1864 75 SATC 233	SARS	South Gauteng	Individual	*Tax avoidance – Trust – Section 103(1) of the Income Tax Act 58 of 1962 –*	2001	2012	11
32	Income Tax Case No 1863 75 SATC 125	SARS	Pretoria	Company	*Income tax – Deduction – Fair Value Adjustment – Section 11(a) of the Income Tax Act 58 of 1962*	2006	2012	6
33	Income Tax Case No 1860 74 SATC 371	Taxpayer	South Gauteng	Close Corporation	*Deduction – Small Business Corporation – Meaning of*	2006	2012	6
34	Income Tax Case No 1859 74 SATC 213	Taxpayer	Johannesburg	Company	*Capital Gains Tax – Capital losses determined in respect of disposals to certain connected persons – Paragraph 39(1) of the Eighth Schedule to the Income Tax Act 58 of 1962*	2003	2012	9
		SARS 3, TP 2, Other 1		Company 3 CC 1 Individual 2				**Total 42/ 6 = 7**
2011								
35	Income Tax Case No 1857 74 SATC 115	SARS	South Gauteng	Company	*Value-Added Tax – Zero-rating of services – Whether services rendered in the duty-free area of the airport were to be VAT zero-rated or not*	2005	2011	6

36	Income Tax Case No 1856 74 SATC 76	Taxpayer	Western Cape	Individual	*Share options acquired by an employee –Taxation of benefits accruing to participants in such a scheme*	2006	2011	5
37	Income Tax Case No 1853 73 SATC 293	Taxpayer	Western Cape	Company	*Value-Added Tax – Imported services – Input tax – Whether certain services acquired by the vendor from a foreign supplier were 'imported services'*	2002	2011	9
38	Income Tax Case No 1852 73 SATC 253	Taxpayer	Western Cape	Company	*Value-Added Tax – Services – Supply of – Value-Added Tax Act 89 of 1991*	1999	2011	12
39	Income Tax Case No 1850 73 SATC 228	Split	Western Cape	Company	*Capital and income – Compensation for the premature termination of a distribution agreement*	1999	2011	12
40	Income Tax Case No 1854 74 SATC 42	SARS	Johannesburg	Company	*Mining – Set-off of operating loss of one mine against taxable income derived from non-mining activities – Interpretation of ss 36(7E) and 36(7F) of the ITA*	2004	2011	7
41	Income Tax Case No 1858 74 SATC 173	SARS	Pretoria	Individual	*Pension Fund – Lump-sum benefit from a 'public sector' fund paid to member-Such benefit constituting gross income in the hands of the member if received or accrued after 28 February 1998 –*	2008	2011	3
		SARS 3, TP 3, Split 1		Company 5 Individual 2				**54 divided by 7 = 7.7**
2010								
42	Income Tax Case No 1855* 74 SATC 58	Taxpayer	Pretoria	-	*Assessment – Meaning of – Prescription – Section 79A of the Income Tax Act 58 of 1962*	2007	2010	3
43	Income Tax Case No 1851 73 SATC 241	Taxpayer	Eastern Cape	Company	*Trading stock – Value of – Whether trading stock in issue acquired for no consideration as envisaged in s*	2004	2010	6

					22(4) of the Income Tax Act 58 of 1962			
44	Income Tax Case No 1849 73 SATC 176	Taxpayer	Pretoria	Individual	*Deduction – Expenditure incurred by taxpayer in acquiring certain shares – Whether of a capital or revenue nature*	2008	2010	2
45	Income Tax Case No 1847 73 SATC 126	Split	Gauteng	Company	*Gross Income – Accrual – Time of*	2002	2010	8
46	Income Tax Case No 1846 73 SATC 96	No Lis Between The Parties	Johannesburg	Company	*Value Added Tax – Input tax credit – Capture of valid claim in respect thereof – Section 16(3) of the Value Added Tax Act 89 of 1991*	2005	2010	5
47	Income Tax Case No 1845 73 SATC 80	SARS	Pretoria	Company	*Trading stock – Construction work in progress – Cost price of trading stock –Sections 22(2A) and 22(3A) of the Income Tax Act 58 of 1962*	2004	2010	6
48	Income Tax Case No 1844 73 SATC 45	Taxpayer	South Gauteng	Individual	*Payment of tax – Amnesty – Foreign assets and income derived therefrom – Application of the Exchange Control Amnesty and Amendment of Taxation Laws Act 12 of 2003*	2007	2010	3
49	Income Tax Case No 1843 72 SATC 229	SARS	Johannesburg	Company	*Tax court – Procedure – Rules promulgated under s 107A of the Income Tax Act 58 of 1962 – Rule 10 of the Tax Court Rules – Statement of grounds of assessment*	2002	2010	8
50	Income Tax Case No 1848 73 SATC 170	Taxpayer	Cape Town	Company	*Capital Gains Tax – Deemed disposal by taxpayer of an asset*	2004	2010	6
51	Income Tax Case No 1842 72 SATC 118	Split	South Gauteng	Company	*Deduction – Audit fees incurred by taxpayer-company relating to revenue from dividends as well as revenue from interest*	2004	2010	6
		SARS 2, TP 5,		Company 7 Individual 2				**Total 53/10 = 5.3**

		Split 2, Other 1						
2009								
52	Income Tax Case No 1841 72 SATC 92	SARS	Gauteng	Not For Gain Association	*Value-Added Tax – Input tax credits – Association not for gain –*	2007 (YOO 2007)	2009	2
53	Income Tax Case No 1840 72 SATC 79	SARS	Gauteng	Trust	*Donations tax – Donations made by taxpayer trust – Sections 54, 56 and 56(1)(l) of the Income Tax Act 58 of 1962*	2006	2009	3
54	Income Tax Case No 1839 72 SATC 61	SARS	South Gauteng	Company	*Deduction – Contingent liabilities – Sale of a business as a going concern*	2004	2009	5
55	Income Tax Case No 1838 72 SATC 6	Taxpayer	Western Cape	Company	*Deduction – Incorporeal property – Trade marks*	2001 (SARS Assessment 2008)	2009	8
56	Income Tax Case No 1837 71 SATC 177	Taxpayer	Cape Town	Individual	*Deduction – Legal Costs – Sections 11(a) and 11(c) of the Income Tax Act 58 of 1962*	2004	2009	5
		SARS 3, TP 2		Company 2 Individual 1 Trust 1 NFG 1				**Total 23/5 = 4.6**
2008								
57	Income Tax Case No 1836 71 SATC 115	Taxpayer	Gauteng	Company	*Trading stock – Section 22 of the Income Tax Act 58 of 1962 read with the definition of 'trading stock' in s 1 of that Act*	1999	2008	9
58	Income Tax Case No 1835 71 SATC 105	Taxpayer	Kimberley	Trust	*Capital Gains Tax – Loan Account – Award of to a trust as sole heir*	2005 (Year of Death 2003)(Resolutio	2008	3

						n initially attempted at the Tax Board)		
59	Income Tax Case No 1834 71 SATC 24	SARS	Pretoria	Company	*Secondary Tax on Companies (STC) – Determination of amount of STC payable in respect of relevant distribution – Section 64B ITA*	2006 (YOO 2006)	2008	2
60	Income Tax Case No 1833 70 SATC 238	Taxpayer	Gauteng	Company	*Tax avoidance – Simulated transactions – What constitutes*	2003 (Audit 2004)	2008	5
61	Income Tax Case No 1831 70 SATC 132	Split	Cape	Company	*Employees' tax – Taxable benefit as defined in the Seventh Schedule to the Income Tax Act 58 of 1962*	2006	2008	2
		SARS 1, TP 3, Split 1		Company 4 Trust 1				**Total 21/5 = 4.2**
2007								
62	Income Tax Case No 1832 70 SATC 171	SARS	Gauteng	Company	*Deduction – Loss incurred on the sale of shares – Whether of a capital or revenue nature – Section 11(a) read with s 22 of the Income Tax Act 58 of 1962*	1999	2007	8
63	Income Tax Case No 1830 70 SATC 123	SARS	Gauteng	Company	*Assessed loss – Set-off of – Interpretation of ss 20(1) and (2) of the Income Tax Act 58 of 1962 –*	2004	2007	3
64	Income Tax Case No 1829 70 SATC 106	SARS	Durban	Company	*Value-Added tax – Schemes for obtaining undue tax benefits – 'Scheme' within the meaning of s 73(1) of the Value-Added Tax Act 89 of 1991*	2006	2007	1
65	Income Tax Case No 1828 70 SATC 91	SARS	Gauteng	Trust	*Transfer duty – Trust – Whether transfer duty was payable by a trust on the value of the property in issue*	2002	2007	5

66	Income Tax Case No 1827 70 SATC 81	Taxpayer	Gauteng	Partnership (Medical)	*Deduction – Interest on loans – Section 11(a) of the Income Tax Act 58 of 1962 – Whether payment of interest was an expenditure in the production of income and therefore deductible in terms of s 11(a) and s 23(g) of ITA 58 of 19*	2001	2007	6
67	Income Tax Case No 1824 70 SATC 27	Taxpayer	Cape	Company	*Gross income – Accrual – Definition of 'gross income' in s 1 of the Income Tax Act 58 of 1962*	2001 (YOO 2005, An arbitration ended in 2004 in respect of the matter)	2007	6
68	Income Tax Case No 1819 69 SATC 159	SARS	Orange Free State	Individual	*Double taxation agreement – Profits of an enterprise – South Africa and Lesotho – Article 7 thereof*	2003	2007	4
		SARS 5, TP 2		Company 4 Individual 1 Trust 1 Partnership 1				**Total 33/7 = 4.7**
2006								
69	Income Tax Case No 1826 70 SATC 72	Taxpayer	Cape	Company	*Recoupment – Determining taxable entity which could recoup certain allowances in terms of s 8(4)(a) of the Income Tax Act 58 of 1962*	2001	2006	5
70	Income Tax Case No 1825 70 SATC 68	SARS	Gauteng	Individual	*Additional Tax- nature of penalty*	1998 (Initially resolved at the Tax Board)	2006	8

71	Income Tax Case No 1816 69 SATC 62	Taxpayer	Gauteng	Individual	*Income and capital – Restraint of Trade Agreement*	2000 (YOO 2004)	2006	6
72	Income Tax Case No 1817 69 SATC 95	SARS	Cape	Close Corporation	*Deductions – Personal Service Company – Definition of – Paragraph 1 of Part 1 of the Fourth Schedule to the Income Tax Act 58 of 1962*	2003	2006	3
73	Income Tax Case No 1818 69 SATC 98	Postponed Sine Die	Gauteng	Company	*Tax Court – Postponement of appeal – Principles governing*	2000	2006	6
74	Income Tax Case No 1820 69 SATC 163	SARS	Gauteng	Company	*Deduction – Interest incurred on loan – Whether taxpayer entitled to deduct the interest incurred by it in respect of amount borrowed by it in order to acquire certain shares – Sections 11(a) and 23(f) of the Income Tax Act 58 of 1962*	2000 (SARS Assessment 2004)	2006	6
75	Income Tax Case No 1821 69 SATC 194	Taxpayer	Pretoria	Individual	*Additional assessment – Fraud or misrepresentation by taxpayer – Section 79 of the Income Tax Act 58 of 1962*	1998 (Audit 2002, ADR initially employed)	2006	8
76	Income Tax Case No 1822 69 SATC 200	Taxpayer	Pretoria	Company	*Deduction – Licence fee – Whether of a capital or revenue nature*	1999	2006	7
77	Income Tax Case No 1823 69 SATC 226	SARS	Gauteng	Individual	*Deduction – Repayment by taxpayer of certain remuneration received in advance to former employer*	2002	2006	4
78	Income Tax Case No 1810 68 SATC 189	Taxpayer	Eastern Cape	Individual	*Gross income – Accrual – Interest –*	2001	2006	5

79	Income Tax Case No 1815 68 SATC 312	SARS	Durban	Company	*Gross income – Accrual – Settlement discounts*	2003	2006	3
80	Income Tax Case No 1805 68 SATC 110	Taxpayer	Gauteng	Individual	*Gross income – Accrual – Taxpayer receiving lump sum amount from his employer's provident fund on his early retirement –*	2002	2006	4
81	Income Tax Case No 1807 68 SATC 154	Taxpayer	Cape	Individual	*Gross income – Fringe benefit – Residential accommodation – Usual place of residence – Para 9(7) of the Seventh Schedule to the Income Tax Act 58 of 1962*	2003	2006	3
82	Income Tax Case No 1808 68 SATC 163	Taxpayer	Natal	Company	*Stamp duty – Two separate transfers of shares – Calculation of –*	2004	2006	2
		SARS 5 TP 8 Other 1		Company 6 Individual 7 CC 1				**Total 70/14 = 5**
2005								
83	Income Tax Case No 1798 68 SATC 9	SARS	Cape	Company	*Deductions – Expenditure – Nature of – Royalty payments in terms of a Trademark License Agreement*	1999	2005	6
84	Income Tax Case No 1799 68 SATC 25	Taxpayer	Gauteng	Individual	*Capital and revenue – Restraint of trade undertaking*	2000 (First went to the Tax Board)	2005	5
85	Income Tax Case No 1800 68 SATC 34	Split	Cape	Individual	*Gross income – Pension fund lump sum payment – Paragraph (e) of the definition of 'gross income' in s 1 of the Income Tax Act 58 of 1962*	2001	2005	4
86	Income Tax Case No 1801 68 SATC 57	Taxpayer	Gauteng	Company	*Deduction – Acquisition of trade mark – Expenditure incurred on – Section 11(gA) of the Income Tax Act 58 of 1962*	2000	2005	5

87	Income Tax Case No 1802 68 SATC 67	SARS	Gauteng	Company	*Assessed Loss – Set-off – Carrying on a trade – Requirement of – Sections 11 and 20 of the Income Tax Act 58 of 1962*	2001	2005	4
88	Income Tax Case No 1803 68 SATC 83	Taxpayer	Cape	Individual	*Capital and revenue – Restraint of Trade – Payments received in respect of*	2001	2005	4
89	Income Tax Case No 1804 68 SATC 105	SARS	Gauteng	Company	*Deduction – Depreciation – Plant – Section 12C of the Income Tax Act 58 of 1962*	2003	2005	2
90	Income Tax Case No 1806 68 SATC 117	The Tax Court therefore did not have jurisdiction to decide on the constitutionality of an Act of Parliament	Gauteng	Company	*Tax Court – Procedure – Power of to make costs orders – Section 83(17) of the Income Tax Act 58 of 1962*	2003	2005	2
91	Income Tax Case No 1809 68 SATC 169	Taxpayer	Gauteng	Company	*Tax Court – Procedure – Appeal – Statement of Grounds of*	1999	2005	6
92	Income Tax Case No 1811 68 SATC 193	Taxpayer	Gauteng	Individual	*Tax Court – Procedures – Request for reasons for Commissioner's assessment – Rules 3(1)(a), 3(2) and 26(1)(b) of the Rules prescribing the procedures to be observed in lodging an objection*	2001	2005	4
93	Income Tax Case No 1812 68 SATC 208	SARS	Cape	Company	*Value-Added Tax – Imported services – Sections 7(1)(c) and 14(5)(b) of the Value-Added Tax Act 89 of 1991*	2001	2005	4

94	Income Tax Case No 1813 68 SATC 255	Split	Gauteng	Individual	*Capital and revenue – Restraint of Trade agreements –*	1998	2005	7
95	Income Tax Case No 1814 68 SATC 297	SARS	Eastern Cape	Individual	*Deductions – Losses – Section 11(a) of the Income Tax Act 58 of 1962*	2000	2005	5
96	Income Tax Case No 1787 67 SATC 142	Taxpayer	Free State	Company	*Employees' tax – Remuneration – Independent contractors and employees – Distinction between – Definition of 'remuneration' in para 1 of the Fourth Schedule to the Income Tax Act 58 of 1962*	2000	2005	5
97	Income Tax Case No 1789 67 SATC 205	SARS	Natal	Company	*Gross income – Whether amounts paid by investors in a fraudulent and unlawful pyramid scheme to the taxpayer were received as gross income within the meaning of s 1 of the Income Tax Act 58 of 1962*	2002	2005	3
98	Income Tax Case No 1791 67 SATC 230	Taxpayer	Gauteng	Individual	*Gross income – Interest free loan – Right of use of*	1998	2005	7
99	Income Tax Case No 1792 67 SATC 236	Taxpayer	Gauteng	Individual	*Gross income – Whether receipt of secret profits by an agent falls within the 'gross income' of the agent*	1991 (Longest running case within reviewed period. A criminal trial was first concluded thus stretchin	2005	14

						g the time count)		
100	Income Tax Case No 1793 67 SATC 256	SARS	Gauteng	Trust	*Capital gains tax – Deemed disposal – Discharge of a debt in last will and testament – Paragraph 12(5) of the Eighth Schedule to the Income Tax Act 58 of 1962*	2003	2005	2
101	Income Tax Case No 1794 67 SATC 262	Taxpayer	Cape	Individual	*Deduction – Partnership losses – Persons carrying on trade or business in partnership*	2001	2005	4
102	Income Tax Case No 1796 67 SATC 303	SARS	Gauteng	Individual	*Employees' tax – Remuneration*	2003	2005	2
103	Income Tax Case No 1797 67 SATC 377	Taxpayer	Cape	Individual	*Gross income – What constitutes – Annuity – Paragraph (a) of the definition of 'gross income' in s 1 of the Income Tax Act 58 of 1962*	1998	2005	7
		SARS 8, TP 10, Split 2, Other 1		Company 9 Individual 11 Trust 1				**Total 102/21 = 4.85**
2004								
104	Income Tax Case No 1784 [2004] 4 All SA 520 (SCA) 67 SATC 40	SARS	Gauteng	Company	*Recoupment – Disposal by taxpayer of a portion of its interest in a partnership – Whether such disposal gave rise to a recovery or recoupment in terms of s 8(4)(a)of the Income Tax Act*	1992	2004	12
105	Income Tax Case No 1785 67 SATC 98	Taxpayer	Natal	Individual	*Assessments – Objection and appeal – Sections 81(1) and (2) of the Income Tax Act 58 of 1962*	1996	2004	8
106	Income Tax Case No 1786 67 SATC 138	Taxpayer	Cape	Individual	*Donations tax – Exemptions – Section 56(1)(d) of the Income Tax Act 58 of 1962*	-	-	-

107	Income Tax Case No 1788 67 SATC 161	SARS	Gauteng	Not for Gain	*Exempt income – Special bodies and institutions – Section 10(1)(cA) of the Income Tax Act 58 of 1962*	1997 (Letter from taxpayer's lawyer in 2001)	2004	7
108	Income Tax Case No 1790 67 SATC 221	SARS	Cape	Individual	*Gross income – Ex-gratia payment received by taxpayer as an option holder of certain options in terms of an Employees' Share Incentive Scheme*	2001	2004	3
109	Income Tax Case No 1795 67 SATC 297	SARS	Gauteng	Individual	*Assessment – Objection to – Condonation for late filing of – Sections 81(1) and (2) and 83(1A) of the Income Tax Act 58 of 1962*	1992 (Back and forth with SARS)	2004	12
110	Income Tax Case No 1771 66 SATC 205	SARS	Gauteng	Company	*Deduction – Irrecoverable loss on loan – Section 11(a) of the Income Tax Act 58 of 1962*	1997	2001	4
111	Income Tax Case No 1772 66 SATC 211	SARS	Gauteng	Company	*Deduction – Licence fee – Section 11(gA) of the Income Tax Act 58 of 1962*	1994	2004	10
112	Income Tax Case No 1777 66 SATC 328	SARS	Natal	Individual	*Objections and appeals – Period for lodging of – Section 81 of the Income Tax Act 58 of 1962*	1998 (YOO 1999)	2004	6
113	Income Tax Case No 1778 66 SATC 334	Taxpayer	Gauteng	Individual	*Gross income – Whether amounts accrued to taxpayer in years of assessment in issue*	2002 (YOO 2003)	2004	2
114	Income Tax Case No 1779 66 SATC 353	Taxpayer	Cape	Individual	*Assessed loss – Set-off against income in terms of s 20(1) of the Income Tax Act 58 of 1962 –*	2002	2004	2
115	Income Tax Case No 1780 66 SATC 360	SARS	South Eastern Cape	-	*Employees' tax – Fringe benefits – Medical benefits – Paragraph 2(1) of*	2000	2004	4

					the Fourth Schedule to the Income Tax Act 58 of 1962 –			
		SARS 8, TP 4		Company 3 Individual 7 NFG 1				**Total 70/11 = 6.3**
2003								
116	Income Tax Case No 1764 66 SATC 93	Taxpayer	Cape	Company	*Deduction – interest*	1993	2003	10
117	Income Tax Case No 1773 66 SATC 251	SARS	Gauteng	Individual	*Estate duty – Deduction – Section 4(b) of the Estate Duty Act 45 of 1955*	Year of death 1999	2003	4
118	Income Tax Case No 1774 66 SATC 255	SARS	Gauteng	Close Corporation	*Tax avoidance – Assessed loss – Section 103(2) of the Income Tax Act 58 of 1962*	2000	2003	3
119	Income Tax Case No 1775 66 SATC 259	Taxpayer	Gauteng	Company	*Value-Added Tax – Services – Supply of – Section 7(1)(a) of the Value-Added Tax Act 89 of 1991*	1998	2003	5
120	Income Tax Case No 1776 66 SATC 296	Taxpayer	Natal	Company	*Additional assessment – Section 79(1) of the Income Tax Act 58 of 1962*	1993 (Letter of dispute 1998)	2003	10
121	Income Tax Case No 1781 66 SATC 363	SARS	Gauteng	Company	*Secondary Tax on Companies (STC) – Exemption from – Distribution of profits of a capital nature – Section 64B(5)(c) of the Income Tax Act 58 of 1962*	2000 (Notice of appeal 2001)	2003	3
122	Income Tax Case No 1783 66 SATC 373	SARS	Gauteng	Company	*Deduction – Expenditure – Meaning of – Whether taxpayer had incurred 'expenditure' as envisaged either in s 11(a) or s 11(gA) of the Income Tax Act 58 of 1962*	1996	2003	7
123	Income Tax Case No 1754 65 SATC 325	Taxpayer	Cape	Company	*Recoupments – Scientific research expenditure claimed by taxpayer in*	1995	2003	8

					terms of s 11(p)(i) of the Income Tax Act 58 of 1962 –			
124	Income Tax Case No 1760 65 SATC 445	Taxpayer	Natal	Individual	*Value-Added Tax – Input tax – Permissible deductions in respect of – Motor vehicles – Section 17(2) of the Value-Added Tax Act 89 of 1991*	1999	2003	4
		SARS 4, TP 5		Company 6 Individual 2 CC 1				**Total 54/9 = 6**
		SARS 55 TP 53 Split 12 Other 4 Total 124		**Company 70 Ind 39 CC 5 Trust 5 NFG 2 Partnership 1 Other 2 Total 124**				

Tax Court cases as reported on SARS website from 2003 to 2016

2016								
S/N	***Case No/Name***	***In favour of***	***Location of Tax Court***	***Taxpayer Type***	***Issue***	***Last Year of Assessment***	***Year of Judgment***	***Length Of Time To Resolve Dispute/Average Length of Time to Resolve Disputes Each Given Year***
1	IT 13935	Split	Cape Town	Trust	*Income tax; Assessed loss; Bad debts, USP; Whether the Appellant was entitled to an assessed loss, bad debts and other expenses to be deducted*	-	2016	-
2	IT 13791 & 13792	SARS	Cape Town	Individual	*Income tax; Section 11(a); interest income; home loan*	2012	2016 (Heard 2	4

							and 3 June 2016)	
3	IT 12821	SARS	Johannesburg	Individual	*Income tax; Exception; valid assessment; dividend*	2000	2016	6
4	IT 14027	SARS	Port Elizabeth	Company	*Income tax; tax administration; Exception; Amendment to Grounds of Objection*	2010	2016 (Heard 21 November 2016)	6
5	IT 13772	Split	Cape Town	Company	*Income tax; tax administration; section 24C of the Income Tax Act; future expenditure; section 222 of the Tax Administration Act; whether the Appellant was entitled to deduct future expenditure in terms of section 24C of the Income Tax Act*	2011	2016	5
6	IT 13164	Taxpayer	Cape Town	Company	*Assessed losses; tax avoidance; whether section 103(2) of the Income Tax Act was applicable to assessed losses carried forward by the Appellant*	2008	2016	8
7	VAT 1247	Taxpayer	Cape Town	Company	*Value-Added Tax; invoice; section 22(3); crediting of loan account; whether section 22(3) of the VAT Act was applicable in respect of an invoice relating to input tax claimed by the Appellant*	2009	2016	7
8	IT 13539/13673	SARS	Port Elizabeth	Company	*Income tax; whether amounts received in terms of a productive asset allowance scheme were taxable as "gross income" as being revenue in nature*	2010	2016	6

9	VAT 1345	SARS	Cape Town	Close Corporation	*Value-Added Tax; motor car deduction*	2011	2016	5
10	IT 13753	Taxpayer	Cape Town	Company	*Income tax; section 14(1)(c); ship repairs*	2010	2016	6
11	IT 13635	SARS	Gauteng	Close Corporation	*Tax administration; whether the Appellant was entitled to condonation for the late filing of an objection*	2011	2016	5
12	IT 13775	SARS	-	Company	*Income tax; taxable benefit; paragraph 2(e) of the Seventh Schedule; whether taxable benefits were granted to expatriate employees or not in terms of section 1 and the Seventh Schedule of the Income Tax Act*	2009	2016	7
13	VAT 1237	Taxpayer	-	Company	*Value-added tax; remission of interest*	2010	2016	6
14	IT 0038/2015	SARS	Gauteng	Company	*Tax administration; exceptional circumstances; objection*	2014	2016	2
15	IT 13380	Taxpayer	-	Individual	*Income tax; tax administration; whether the court should remit a penalty in terms of section 76 of the Income Tax Act, 1962 as read with section 129(2)(b) of the ITA*	2009	2016	7
16	IT 12951 & VAT 855	Taxpayer	Durban	Company	*Income tax; value-added tax; whether the provisions of sections 11(a)(i) &22(1) of the Income Tax Act, 3 of the Skills Development Levies Act, 6 of the Unemployment Insurance Contributions Act, 10(13) & (18) and 17(2) of the Value-*	2006	2016	10

					Added Tax Act were applicable in respect of certain deductions, input tax, output tax etc.			
		SARS 8, Taxpayer 6, Split 2		***Company 10, Individual 3, Trust 1, CC 2***				***Total 90/15 = 6***
2015								
17	IT 13285	SARS	Johannesburg	Close Corporation	*Income tax; The meaning of deemed dividends in terms of s 64(B)(2)(g) of the Income Tax Act with regard to interest-free loans made by the Appellant to its sole shareholder or connected person*	2011	2015	4
18	VAT 1129	SARS	Johannesburg	Individual	*Value-Added Tax; Input tax; Appellant did not discharge the onus of proving the input tax claims made in respect of construction business*	2011	2015	4
19	VAT 867	Split	Bloemfontein	Individual	*Value-Added Tax; Input and output tax; Appellant did not discharge onus of proving the input tax claims; but did so for output tax claims; the appeal was partially allowed*	2007	2015 (Heard 17 February 2015)	8
20	IT 13276	SARS	Johannesburg	Company	*Income tax; DTA between RSA and USA; OECD Model Tax Convention; Article 5; whether amount agreed upon between USA and RSA companies was taxable; permanent establishment*	2009	2015	6

21	IT 13541	SARS	Cape Town	Company	*Income tax; Section 11D; whether research and development costs in respect of computers were deductible income or not*	2010	2015 (Heard 10 November 2014)	5
22	VAT 969	SARS	Cape Town	Close Corporation	*Value-Added Tax; Section 11(2)(l); whether goods or services contractually supplied to persons outside the Republic ought to be zero-rated or standard-rated*	2010	2015	5
23	IT 13512	Taxpayer	Johannesburg	Company	*Income tax; Section 64B(2) read with sections 64C(2)(g) and 64B(9); whether STC ought to be levied on the Appellant in relation to interest free loans which the Respondent claims to be deemed dividends*	2011	2015	4
		SARS 5, Taxpayer 1, Split 1		***Company 3, Individual 2, CC 2***				***Total 36/7 =5.14***
2014								
24	VAT 1005	Taxpayer	Johannesburg	Close Corporation	*Value-Added Tax; Section 11(2) and (5); Whether an amount in respect of building houses ought to be zero-rated or standard-rated*	2010	2014	4
25	IT 13132	Taxpayer	Cape Town	Individual	*Income tax; Whether an amount should be included in the Appellant's "gross income"; relating to value of wine grapes harvested and being "wine-in-process" and how such amount ought to be*	2008	2014	6

					computed; paragraphs 2, 3(1) and 9 of the First Schedule			
26	IT 13238 and IT 13164	Taxpayer	Cape Town	Company	*Income tax; tax administration; Application on whether SARS could amend its Rule 10 statement pertaining to a s.103 case and counter application to strike out certain words*	2008	2014	6
27	IT 13472	Split	Johannesburg	Individual	*Income tax; tax administration; Whether the appellant proved that the proceeds it received from the disposal of shares should be reduced as per paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962; whether additional tax was payable in relation thereto (s.89quat)*	2008	2014 (Heard 5,6,and 7 November 2014)	6
28	VAT 1132	Taxpayer	Johannesburg	Company	*Value-Added Tax; Whether the appellant was liable for 200% additional tax where the appellant under-declared its output tax; no supporting documentation presented during the audit*	2011	2014 (Heard 12 November 2014)	3
29	VAT 1015	SARS	Gauteng	Company	*Value-Added Tax; Whether the appellant was entitled to deduct input tax in respect of accommodation and food in terms of section 17(12)(a)*	2009	2014	5
30	IT 12984	SARS	Gauteng	Company	*Income tax; Seventh Schedule - Whether employees elected benefit of company motor vehicle as part of their*	2008	2014	6

					remuneration package; whether accruals were part of taxable value of benefits; salary sacrifice			
31	IT 13410	Split	Gauteng	Company	*Income tax; Section 23F(2) - Mineral bearing ore - requirements of trading stock and acquisition*	2009	2014	5
32	VAT 1069	Taxpayer	Durban	Close Corporation	*Value-Added Tax; 200% additional tax as per section 60(1)(a) - as repealed by section 271 of the Tax Administration Act, 2011*	2010	2014	4
33	IT 12466	Taxpayer	Cape Town	Company	*Income tax; Capital Gains Tax; realisation of capital gain on disposal of shares or capital loss; paragraphs 25(1), 26(1), 26(3) and 29(7) of the Eighth Schedule*	2003	2014	11
34	IT 13254	Taxpayer	Cape Town	Trust	*Income tax; Section 30(3) - Whether an inter vivos trust was carrying on public benefit activities*	2010	2014	4
		SARS 2, Taxpayer 7, Split 2		***Company 6, Individual 2, Trust 1, CC 2***				***Total 60/11 = 5.45***
2013								
35	VAT 759	SARS	Pretoria	Close Corporation	*Whether the Tax Court was empowered to alter, confirm or refer back an assessment; whether the capital amount was in dispute when it was not raised in the notice of objection*	2003	2013	10

36	13003	Taxpayer	Cape Town	Company	*Definition of "gross income"; s. 1; whether proceeds from the sale of certain shares are of a capital or revenue nature; consequently whether certain deductions are permissible*	2005	2013	8
37	13002	SARS	Cape Town	Company	*Income Tax Act, 1962 Section 26(1); Deeming provisions; whether proceeds from "pastoral, agricultural or farming operations" are taxable or not*	2004	2013	9
38	VAT 872	SARS	Cape Town	Company	*Value-Added Tax Act, 1991 Definition of "input tax" - deduction of input tax in respect of supplies by sponsors of an event*	2007	2013	6
39	13356	Taxpayer	Johannesburg	Company	*Income Tax Act, 1962 Interpretation of SCA judgment - s.11(bA)*	2002	2013	11
		SARS 3, Taxpayer2,		***Company 4, CC 1***				**Total 44/5 = 8.8**
2012								
40	12644	Taxpayer	Johannesburg	Company	*ITA Disallowance of capital loss; 'clogged loss'; redemption of loss; preference shares; meaning of 'recovery'; paragraphs 20(3) and 39(1) of the Eighth Schedule*	2003	2012	9
41	VAT 889	SARS	Pretoria	Close Corporation	*Imposition of VAT and 200% penalties; fraudulent invoices; s.31; credibility of witness in question*	2004	2012	8
42	12860	Taxpayer	South Gauteng	Close Corporation	*ITA Whether taxpayer a small business corporation or personal service company;*	2006	2012	6

					meaning of 'consulting'; s.12E(4)(a)			
43	12906	SARS	Pretoria	Company	*Capital gains tax; disposal of mineral rights; fair value adjustment; section 11(a) deduction of management fees and travel expenses; donations tax; penalties*	2006	2012	6
44	VAT 789	Issue beyond the jurisdiction of the tax court	Pretoria	Close Corporation	*Exercising of Commissioner's powers in terms of section 20(5) not subject to objection and appeal; any review of this application should be launched in the High Court*	- (SARS audit 2008)	-	-
45	VAT 847	SARS	Johannesburg	Company	*Value-Added Tax Act, 1991 Sections 7(1)(a) and 9(1); whether through leasing properties, supplies were made and output tax was under-declared*	2007	2012	5
46	12697	Taxpayer	Cape Town	Company	*ITA 1962 Section 103; implications for company buying its own shares from subsidiary company*	2008	2012	4
47	12524	SARS	Johannesburg	Individual	*ITA 1962 Inter vivos trust; service agreement; whether a scheme in terms of s.103 and remuneration paid by trust taxable as gross income*	2001	2012	11
		SARS 4, Taxpayer 3, Other 1		***Company 4, Individual 1, CC 3***				***Total 49/7 =7***
2011								
48	VAT 179	Taxpayer	Cape Town	Company	*Whether the receipt of an amount in respect of a termination agreement was*	1999	2011	12

					subject to VAT at the standard rate or at the zero rate			
49	11470	Split	Cape Town	Company	*ITA 1962 Section 1; definition of 'gross income'; whether an amount received in respect of a termination agreement was capital or revenue in nature*	1999	2011	12
50	VAT 382	Taxpayer	Cape Town	Company	*VAT Act, 1991 Whether certain services were subject to VAT in terms of s.7(1)(c); buying back of shares; whether services could be set off against input tax credit*	2002	2011	9
51	12895	SARS	Pretoria	Company	*ITA, 1962 Definition of "gross income" in s.1 - par.(e) v par.(eA); application on pre-retirement withdrawal from Municipal Pension Fund*	2008	2011	3
52	12856	SARS	Johannesburg	Company	*ITA 1962 Whether loss of mining income can be set off against taxable income derived from non-mining activities or whether it has to be deducted from income derived from profitable mines; ss.11 and 83; interpretation of s.36(7E) and s.36(7F)*	2004	2011	7
53	12760, 12828 and 12756	SARS	Cape Town	Individual	*ITA 1962 Deferred delivery share incentive scheme; ss.8A and 8C; par.2(a) of the Seventh Schedule*	2006	2011	5
54	VAT 712	SARS	Johannesburg	Company	*VAT Act, 1991 Sections 7, 11, 12 and the proviso to section 2(1); whether currency exchange services rendered in the duty free area of the*	2005	2011	6

					airport are to be VAT zero-rated			
55	VAT 741 and 12008	Split	Pretoria	Company	*VAT Act, 1991 and ITA 1962 Sections 20(8) and 55; whether appellant is entitled to input tax despite failing to meet requirements of section 20(8) (VAT) Sections 11(a) and 73(a); whether appellant is entitled to deductions of section 11(a) despite lack of proof (Income Tax)*	2005	2011	6
		SARS 4, Taxpayer 2, Split 2		***Company 7, Individual 1***				***Total 60/8 = 7.5***
				2010				
56	12401	Split	Gauteng	Company	*ITA 1962 Deduction of audit and professional fees*	2004	2010 (Heard 11-13 May 2009)	6
57	VAT 189	SARS	Johannesburg	Company	*VAT Act, 1991 Procedure; request for the setting aside of the Statement of Grounds of Assessment (rule 10) due to non-compliance with Tax Court rules. Validity of ex post facto expanding the reasons given for the assessment*	2002	2010	8
58	12656	Split	Pretoria	Company	*ITA 1962, Tax amnesty; s.8A; gain on exercise of option in foreign company's share incentive scheme*	2002	2010	8
59	VAT 399	Split	Johannesburg	Company	*VAT Act, 1991 Procedure; criteria for capturing of a valid VAT input tax credit*	2004	2010	6

					claim. Removal from the roll due to the fact that there was no dispute between the parties relating to the period under appeal			
60	11038	Split	Pretoria	Company	*ITA 1962 Gross income; whether proceeds from sale of shares were revenue or capital in nature; non-disclosure - 200% additional tax*	2000	2010	10
61	12576	Split	Pretoria	Company	*ITA 1962 Public Private Partnerships; capital or revenue and trading stock; deduction in terms of section11(a) read with ss.11(x), 23(f) and 22(2A)*	2004	2010	6
62	12886	SARS	Pretoria	Individual	*ITA 1962 Capital vs revenue; deductions in terms of ss.11(a) and 22(2)*	2008	2010	2
63	12441	Taxpayer	Port Elizabeth	Company	*ITA 1962 Trading stock; Appellant claiming deduction in terms of s.22(4) on basis that trading stock acquired for no consideration; (2); Reasonable grounds envisaged by s.89quat(3) established; Appellant absolved from paying interest*	2004	2010 (Heard 21 & 22 September 2010)	6
64	12432	Taxpayer	Cape Town	Company	*ITA 1962 Section 1 - definition of 'resident'; paragraphs 2 and 12 of the Eighth Schedule; article 13 of the DTA between Luxembourg and South Africa; whether taxpayer is liable for CGT*	2003	2010 (Heard 18, 19, 20 &21 October 2010)	7

65	12262	Taxpayer	Johannesburg	Company	*ITA 1962 Gross income (accrual) and s.23F; Deductions(excessive expenditure) ss.11(a) and 23(g)*	2002	2010 (Heard 8-10, 12 November, 2010)	8
		SARS 2, Taxpayer 3, Split 5		***Company 9, Individual 1***				**Total 67/10 = 6.7**
2009								
66	11537	*Afrikaans*	Cape Town	*Afrikaans*	*ITA 1962 Definition of 'gross income'; under-declaration of income; Commissioner justified in levying 200% additional tax*	2002	2009	7
67	11486	Taxpayer	Cape Town	Company	*ITA 1962 Section 11(gA); trademark deduction*	2001	2009	8
68	12323 and 12324	SARS	Johannesburg	Company	*ITA 1962 Deductibility of expenditure attendant to the sale of a business*	2004	2009	5
69	VAT 711	SARS	Johannesburg	Not for Gain	*VAT Act, 1991 Requirement for claiming an input tax credit; expenditure should have been incurred in furtherance of an enterprise*	2007	2009	2
70	12167	SARS	Johannesburg	Trust	*ITA 1962 Donations tax and interest thereon*	2006	2009	3
71	11038 (Application)	Separation Application	Johannesburg	Company	*ITA 1962 Tax Court procedure; application for re-enrolment of tax appeal*	2000	2009	9
		SARS 3, Taxpayer 1, Other 2		***Company 3, NFG 1,Trust 1, Other 1***				***Total 34/6 = 5.67***
2008								
72	12244	SARS	Cape Town	Company	*ITA 1962 Whether the awarding of points by the*	2006	2008	2

					Appellant to its employees, which allowed them to utilise holiday resorts free of charge constituted a fringe benefit or not; paragraph (i) of the definition of 'gross income'			
73	11345	Taxpayer	Johannesburg	Company	*ITA 1962 Deduction of interest from income; s.11(a)*	2003	2008	5
74	12236	SARS	-	Company	*ITA 1962 Secondary Tax on Companies; s.64(5)(c)*	2006	2008	2
75	12246	Taxpayer	Port Elizabeth	Trust	*ITA 1962 Definition of 'gross income'; s.25B; whether income is taxable in the trust or in hands of beneficiaries*	2005	2008	3
76	12399	Taxpayer	Northern Cape	Trust	*ITA 1962 Capital Gains Tax; par.12(5) of the Eighth Schedule*	2005	2008	3
77	12463	Taxpayer	Johannesburg	Company	*ITA 1962 Trading stock; phosphate bearing ore*	1999	2008	9
		SARS 2, Taxpayer 4		***Company 4,Trust 2***				***Total 24/6 = 4***
2007								
78	11961	Taxpayer	Pretoria	-	*ITA 1962 Whether two amounts had been received by or accrued to the Appellant in terms of the definition of 'gross income'*	2001 (Was initially subject to arbitration)	2007	6
79	11691	Taxpayer	Johannesburg	-	*ITA 1962 Whether the Commissioner was correct in disallowing the payment of interest as a deduction from the income of the Appellant; ss.11(a) and 23(g*	2001	2007	6
80	12158	SARS	Bloemfontein	-	*ITA 1962 Whether the income (profits) received by the*	2003	2007 (Heard	4

					Appellant as practicing attorney from a partnership in Lesotho was correctly taxed in South Africa and providing a credit to the Appellant for taxes already paid in Lesotho		22 March 2007)	
81	11623	Taxpayer	Durban	-	*ITA 1962 Section 11(e)(ii) - whether certain wear and tear or depreciation allowances in respect of certain assets can be claimed*	2000	2007	7
82	11773	SARS	Megawatt Park	-	*ITA 1962 Whether the Commissioner was correct in contending that the Appellant was not entitled to carry forward the balance of assessed loss for the 2004 year of assessment; s.20(1) and (2)*	2004	2007 (Heard 9 and 10 May 2007)	3
83	11283	SARS	-	-	*ITA 1962 Whether the sale of certain shares at a loss by the Appellant was deductible; ss.11(a) and 22*	1999	2007	8
84	11286	SARS	Johannesburg	-	*ITA 1962 As a result of the change in identities of the beneficiaries and trustees of a trust, a new trust came into existence and accordingly transfer duty became payable by the new trust; ss.1, 2 and 5*	2002	2007	5
85	VAT 616	SARS	Durban	-	*VAT Act, 1991 Whether the Commissioner was correct in disallowing the taxpayer's notional input tax claim based on the fact that the transaction giving rise to the claim, was a*	2006	2007	1

					scheme as contemplated by s.73			
		SARS 5, Taxpayer 3						***Total 40/8 = 5***
					2006			
86	11253	Taxpayer	Cape Town	-	*ITA 1962, Amounts paid for accommodation; whether taxable in terms of paragraph (c) of the definition of 'gross income' in section 1 or alternatively, taxable benefits in terms of paragraph 2(d) of the Seventh Schedule read with paragraph (i) of the definition of 'gross income' in s.1*	2003	2006 (Heard 20 October 2005)	3
87	VAT 144	SARS	Cape Town	-	*VAT Act 1991, Whether imported services are zero-rated or not; s.11(2)(k)*	2001	2006 (Heard 19 October 2005)	5
88	11449	Taxpayer	Durban	-	*ITA 1962, Correct rate of stamp duty payable on the transfer of marketable securities; Schedule 1; item 15(3)(h)(i)(a)*	2004	2006 (Heard 24 November 2005)	2
89	11483	SARS	Port Elizabeth	-	*ITA 1962, Whether an amount accrued and the deductibility of a loss; ss.1 and 11(i)*	2001	2006	5
90	11661	SARS	Durban	-	*ITA 1962, Definition of "gross income"; whether certain "settlement discounts" granted by the Appellant during a year "accrued" to the Appellant during that year*	2003	2006	3
91	11935	SARS	Cape Town	-	*ITA 1962, Whether the Appellant is a 'personal*	2003	2006 (Heard 9	3

					service company' as defined in paragraph 1 of Part 1 of the Fourth Schedule		October 2006)	
92	11641	SARS	Megawatt Park	-	*ITA 1962 Additional tax is a penalty of an administrative nature which cannot be equated with a fine imposed by a criminal court; ss.7(1)(a) and 76(1)(a)*	1998	2006	8
93	11986	Taxpayer	Cape Town	-	*ITA 1962, Recoupment of leasehold allowances; s.8(4)*	2001	2006	5
94	11711	Taxpayer	-	-	*ITA 1962, Inclusion of restraint of trade payments into the gross income of the taxpayer in terms of paragraph (c) of the definition of "gross income"*	2000	2006	6
		SARS, 5 Taxpayer 4						***Total 40/9 =4.4***
2005								
95	11247	SARS	Natal	-	*ITA 1962, Whether amounts paid by investors can be said to have been received as 'gross income'; s.1*	2002	2005	3
96	11410	SARS	Gauteng	-	*ITA 1962, Whether bequest is a discharge of a debt for no consideration; paragraphs 12(5) and 40(2) of the Eighth Schedule*	2003	2005	2
97	11337	Taxpayer	Cape Town	-	*ITA 1962, Disallowance of certain partnership losses claimed by Appellant in respect of his share of losses; whether proceeds of sale of unit trusts acquired by*	2001	2005 (Heard 18/11/2004 – 19/11/2004)	4

					Appellant should be included in gross income			
98	11282	Taxpayer	Johannesburg	-	*ITA 1962, Whether certain fraudulent share dealing profits constituted part of 'gross income' or not; s.1*	1991	2005	14
99	11553, 11554 and 11555	Taxpayer	Johannesburg	-	*ITA 1962, Whether income received as part of a life right forms part of 'gross income' or not; s.1*	1998	2005 (Heard 11 March 2005)	7
100	11398	SARS	Johannesburg	-	*ITA 1962, Whether to open an assessment based on an objection received after the prescribed period within which to lodge an objection; s.79*	1992	2005 (Heard 18 November 2004)	13
101	11362	*Afrikaans*	*Afrikaans*	-	*Whether amounts paid are deductible in terms of s.11(a)*	*Afrikaans*	-	-
102	11024	Taxpayer	Pretoria	-	*ITA 1962, Whether a person is a money lender or not and whether expenses are deductible; s.11(a)*	2000	2005 (Heard 21 October 2004)	5
103	11564	SARS	Pretoria	-	*ITA 1962, Additional assessments; whether the Appellant was an independent contractor and entitled to deduct certain expenditure or whether the Appellant received 'remuneration' as defined in the Fourth Schedule; whether another was a 'personal service company' within the meaning of the term as used in the Fourth Schedule; whether the*	2003	2005 (Heard 2 June 2005)	2

					Commissioner was entitled to apply s.76			
104	11220	Split	Johannesburg	-	*ITA 1962, Whether three separate restraint of trade payments received are taxable or not; definition of "gross income"*	1998	2005	7
105	11329	SARS	Johannesburg	-	*ITA 1962, What constitutes 'trade' for purposes of ss.11 and 20*	2001	2005	4
106	11283	Taxpayer	-	-	*ITA 1962, Whether the sale of a shareholding in a company is deductible or not; s.22(2)*	1999	2005	6
107	11135	Taxpayer	Cape Town	-	*ITA 1962, Whether monthly payments constituted annuities; paragraph (a) of definition of 'gross income'*	-	2005 (Heard 17 August 2005)	-
108	11515	SARS	Cape Town	-	*ITA 1962, Whether lump sum benefit is taxable in hands of taxpayer; paragraph (e) of the definition of 'gross income'*	2001	2005 (Heard 19 August 2005)	4
109	11454	SARS	Cape Town	-	*ITA 1962, Whether royalty payments made to an off shore parent company are deductible; s.11(a)*	1999	2005 (Heard 24 August 2005)	6
110	VAT 304	Taxpayer	Pretoria	-	*VAT Act 1991, Whether tax court has jurisdiction to decide on constitutionality of an Act of Parliament*	2000	2005	5
111	11466	Taxpayer	Cape Town	-	*ITA 1962, Whether moneys paid constituted non-taxable capital amounts or not*	2001	2005 (Heard 16 May 2005)	4
112	4/2005	Taxpayer	Johannesburg	-	*ITA 1962 and VAT Act, 1991 Request for reasons for assessment*	2001	2005	4

113	11423	SARS	Johannesburg	-	*ITA 1962, Allowances; s.12C(1)(b)*	2001	2005 (Heard 3 June 2005)	4
		SARS 8 Taxpayer 9, Split 1, Other 1						**Total 94/17 = 5.52**
2004								
114	1990	SARS	Johannesburg	-	*ITA 1962, Disposal of a portion of an interest in a partnership leading to a recoupment; s.8(4)(a)*	1991	2004 (Heard 21 November 2003)	13
115	10999	SARS	Johannesburg	-	*ITA 1962, Expenditure regarding know-how in terms of ss.11(a) and 11(gA)*	1996	2004 (Heard 20 November 2003)	8
116	11156	SARS	Cape Town	-	*ITA 1962, Deduction of a loss, trade carried on outside South Africa; s.20(1)(b)*	2002	2004	2
117	11011	SARS	Eastern Cape	-	*ITA 1962, Reimbursement by employer of employees' medical costs in an in house medical scheme; paragraph 2 (1) of the Fourth Schedule*	2000	2004	4
118	11372	Taxpayer	Cape Town	-	*ITA 1962, Whether exemption provisions of s.56(1)(d) applied to an inter vivos donation, the payment of which was postponed until death of the donor*	-	2004 (Heard 23 August 2004)	-
119	11045 and 11046	Taxpayer	Durban	-	*ITA 1962, Whether a taxpayer can rely on his own mistake as a basis for objection; s.81; whether the Commissioner's decision to apply s.102 is reviewable*	1993	2004	11

120	10849	SARS	Pretoria	-	*ITA 1962, Whether a person is entitled to tax exemption status in terms of s.10(1)(cA); whether the term 'any law' includes 'foreign law'*	1997	2004	7
121	11134	Taxpayer	Cape Town	-	*ITA 1962, Taxation of ex-gratia payments*	2001	2004 (Heard 17 November 2004)	3
		SARS 5, Taxpayer 3						**Total 48/7 = 6.86**
2003								
122	10956	Taxpayer	Cape Town	-	*ITA 1962, Whether scientific research expenditure constitutes gross income; ss.1, 8(a) and 11(p)(i)*	1995	2003 (Heard 7 November 2003)	8
123	10969	SARS	Johannesburg	-	*ITA 1962, Deductions; loss on loan; s.11(a)*	1997	2003 (Heard 7 February 2003)	6
124	ED 79	SARS	Johannesburg	-	*Estate Duty Act, 1955 Whether debts are due debts or not; s.4(b)*	1999	2003 (Heard 27 January 2003)	4
125	10699	SARS	Pretoria	-	*ITA 1962, Deductions; licence fee and legal fees; s.11(a) and (gA)*	1997	2003	6
126	10919	SARS	Johannesburg	-	*ITA 1962, Trusts; distribution of losses; ss.25B(3) and 89quat(3)*	1992	2003 (Heard 15 November 2002)	11
		SARS 4, Taxpayer 1						***Total 35/5 = 7***
		Grand total SARS 60		***Company 50***			***Total number of***	

		Taxpayer 49, Split 13, Other 4, Total 126		***Individual 10 CC 10 Trust 4 NFG 1, Other 1***			***cases showing time of hearing 34***	

Tax related appeals at the High Court and Supreme Court of Appeal as reported in SATC from 2003 to 2016

	High Court			***Supreme Court of Appeal***	
S/N	***Case No/Name***	***Taxpayer Type***	***S/N***	***Case No/Name***	***Taxpayer Type***
	2016			2016	
1	Ntsanwisi v Khoza And Others 79 SATC 325	Individual	1	Commissioner For South African Revenue Service v Van Der Merwe No And Others 79 SATC 283	Individual/Company
2	Masango v Road Accident Fund 79 SATC 295	Individual	2	Commissioner For South African Revenue Service v Marula Platinum Mines Ltd 79 SATC 127	Company
3	Dale v Aeronastic Properties Ltd And Others 79 SATC 12	Individual/Company	3	Commissioner For South African Revenue Service v Marshall No And Others 79 SATC 49	Trust
4	Respublica (Pty) Ltd v Commissioner For South African Revenue Service 78 SATC 368	Company	4	XO Africa Safaris CC v Commissioner For South African Revenue Service 79 SATC 1	Close Corporation
5	Coconut Express CC v South African Revenue Service (Customs And Excise) And Others 78 SATC 297 ([2016] 2 All SA 749 (KZD))	Close Corporation	5	Wingate-Pearse v Commissioner For South African Revenue Service 78 SATC 360	Individual
6	Malema v Commissioner For South African Revenue Service 78 SATC 279	Individual	6	Avenant v Commissioner For South African Revenue Service 78 SATC 343	Individual

7	Commissioner For South African Revenue Service v Brown 78 SATC 255	Individual	7	Commissioner For South African Revenue Service v Capstone 556 (Pty) Ltd 78 SATC 231	Company
8	New Adventure Shelf 122 (Pty) Ltd v Commissioner For South African Revenue Service 78 SATC 190 ([2016] 2 All SA 179 (WCC))	Company	8	Commissioner For South African Revenue Service v Coltrade International CC 78 SATC 216	Close Corporation
	2015				
9	Commissioner For South African Revenue Service v Prudence Forwarding (Pty) Ltd And Another 78 SATC 119	Company	9	Commissioner For South African Revenue Service v Kluh Investments (Pty) Ltd 78 SATC 177 ([2016] 2 All SA 317 (SCA))	Company
				2015	
10	Marshall No And Others v Commissioner For South African Revenue Service 77 SATC 395	Trust	10	Commissioner For The South African Revenue Service v Stepney Investments (Pty) Ltd 78 SATC 86	Company
11	Lifman And Others v Commissioner For South African Revenue Service And Others 77 SATC 383	Individual/ Close Corporation	11	Anglo Platinum Management Services (Pty) Ltd v Commissioner For South African Revenue Service 78 SATC 73	Company
12	Gainsford No And Others v Commissioner For South African Revenue Service And Another 77 SATC 375	Trust	12	Krok And Another v Commissioner For South African Revenue Service 78 SATC 1	Individual/Trust
13	Fastjet Holdings (Pty) Ltd v The Minister Of Finance And Others 77 SATC 337	Company	13	Commissioner For South African Revenue Service v C-J Van Der Merwe 77 SATC 405 ([2015] 3 All SA 387 (SCA))	Individual

14	South Atlantic Jazz Festival (Pty) Ltd v Commissioner For South African Revenue Service 77 SATC 254	Company	14	Medox Ltd v Commissioner For South African Revenue Service 77 SATC 233	Individual
				2014	
15	Auto Haus Car Hire And Tours (Pvt) Ltd v Commissioner For South African Revenue Service And Another 77 SATC 248	Company	15	Director Of Public Prosecutions, Western Cape v Parker 77 SATC 224 ([2015] 1 All SA 525 (SCA))	Individual
16	Ackermans Ltd v Commissioner For South African Revenue Service 77 SATC 191	Company	16	Shuttleworth v South African Reserve Bank And Others 77 SATC 145	Individual
	2014				
17	Huang And Others v Commissioner For South African Revenue Service 77 SATC 283	Individual	17	Commissioner For South African Revenue Service v Bosch And Another 77 SATC 61	Individual
18	Commissioner For South African Revenue Service v Africa Cash And Carry (Pty) Ltd And Others 77 SATC 242	Company	18	Commissioner For South African Revenue Service v Terraplas South Africa (Pty) Ltd 76 SATC 377 [[2014] 3 All SA 11 (SCA)]	Company
19	Commissioner For South African Revenue Service v Tradex (Pty) Ltd And Others 77 SATC 121	Company	19	Gb Mining And Exploration Sa (Pty) Ltd v Commissioner For South African Revenue Service 76 SATC 347	Company
20	Coltrade International CC v Commissioner For South African Revenue Service 77 SATC 48	Close Corporation	20	Commissioner For South African Revenue Service v Pretoria East Motors (Pty) Ltd 76 SATC 293	Company

21	Kluh Investments (Pty) Ltd v Commissioner For South African Revenue Service 77 SATC 23	Company	21	MTN International (Mauritius) Ltd v Commissioner For South African Revenue Service 76 SATC 217	Company
22	Capstone 556 (Pty) Ltd v Commissioner For South African Revenue Service 77 SATC 1	Company	22	Commissioner For South African Revenue Service v Mobile Telephone Networks Holdings (Pty) Ltd 76 SATC 205	Company
				2013	
23	Chittenden No And Another v Commissioner For South African Revenue Service And Another 76 SATC 397	Company/Individual	23	Smith Mining Equipment (Pty) Ltd v Commissioner For South African Revenue Service 76 SATC 49	Company
24	Medox Ltd v Commissioner For South African Revenue Service 76 SATC 369	Company	24	Association Of Meat Importers And Exporters And Others v International Trade Administration Commission And Others 76 SATC 9	Company
25	A Company And Others v Commissioner For South African Revenue Service 76 SATC 321	Company	25	Stabilpave (Pty) Ltd v South African Revenue Service 75 SATC 347	Company
26	Island View Storage Ltd v Commissioner For South African Revenue Service 76 SATC 285	Company	26	Master Currency (Pty) Ltd v Commissioner For South African Revenue Service 75 SATC 113	Company
				2012	
27	DKR Auto CC v Commissioner For South African Revenue Service 76 SATC 279	Close Corporation	27	Computek (Pty) Ltd v Commissioner For South African Revenue Service 75 SATC 104	Company
28	Commissioner For South African Revenue Service v C-J Van Der Merwe (In	Individual	28	Armgold/Harmony Freegold Joint Venture (Pty) Ltd v Commissioner For	Company

	Re: Commissioner For South African Revenue Service V GW Van Der Merwe And Others) 76 SATC 138			South African Revenue Service 74 SATC 351	
29	Commissioner For South African Revenue Service v Krok And Another 76 SATC 119	Individual	29	Commissioner For South African Revenue Service v De Beers Consolidated Mines Ltd ([2012] 3 All SA 367 (SCA)) 74 SATC 330	Company
	2013				
30	Commissioner For South African Revenue Service v Miles Plant Hire (Pty) Ltd 76 SATC 1	Company	30	Distell Ltd v Commissioner For South African Revenue Service 74 SATC 272	Company
31	Shuttleworth v SA Reserve Bank And Anor 76 SATC 60	Individual	31	Commissioner For South African Revenue Service v Tradehold Ltd 74 SATC 263	Company
32	Terraplas South Africa (Pty) Ltd v Commissioner For South African Revenue Service 75 SATC 319	Company	32	Eveready Property Ltd v CSARS 74 SATC 185	Company
				2011	
33	Kadodia v Commissioner For South African Revenue Service 75 SATC 313	Individual	33	Commissioner For South African Revenue Service v Colgate-Palmolive (Pty) Ltd 74 SATC 157	Company
34	Gaertner And Others v Minister Of Finance And Others 75 SATC 184	Individual/Company	34	Commissioner For South African Revenue Service v South African Custodial Services (Pty) Ltd (2012 (1) SA 522 (SCA)) 74 SATC 61	Company
35	MTN International (Mauritius) Ltd v Commissioner For South African Revenue Service 75 SATC 171	Company	35	Commissioner For South African Revenue Service v Labat Africa Ltd 74 SATC 1 Income Tax Case No 1861 74 SATC 383	Company

	2012				
36	Commissioner For South African Revenue Service v Beginsel No And Others (2013 (1) SA 307 (WCC)) 75 SATC 87	Company	36	Commissioner For South African Revenue Service v Multichoice Africa (Pty) Ltd And Another 73 SATC 209	Company
37	Bosch And Another v Commissioner For South African Revenue Service 75 SATC 1	Individual/Company	37	First South African Holdings (Pty) Ltd v Commissioner For South African Revenue Service 73 SATC 221	Company
38	Commissioner For South African Revenue Service v Smith Mining Equipment (Pty) Ltd 74 SATC 312	Company	38	Commissioner For South African Revenue Service v Founders Hill (Pty) Ltd 73 SATC 183	Company
				2010	
39	Metlika Trading Ltd And Another v Commissioner For South African Revenue Service And Others 74 SATC 289	Company	39	Commissioner For South African Revenue Service v Plasmaview Technologies (Pty) Ltd ([2011] 2 All SA 235 (SCA)) 73 SATC 338	Company
40	Appollo Tobacco CC And Others v Commissioner For South African Revenue Service 74 SATC 204	Close Corporation/Individual	40	Commissioner For South African Revenue Service v LG Electronics SA (Pty) Ltd 73 SATC 326	Company/Individuals
	2011				
41	Aquazania (Pty) Ltd v Commissioner For South African Revenue Service 76 SATC 54	Company	41	Commissioner For South African Revenue Service v Saira Essa Productions CC And Others 73 SATC 202	Close Corporation
42	Modibane v South African Revenue Service 74 SATC 398	Individual	42	Distell Ltd And Another v Commissioner For South African Revenue Service ([2011] 1 All SA 225 (SCA)) 73 SATC 148	Company
43	Rossi And Others v Commissioner For South	Company/Individual	43	Commissioner For South African Revenue Service v Sprigg Investment	Close Corporation

	African Revenue Service 74 SATC 387			117CC T/A Global Investment 73 SATC 114	
44	Barclay v Road Accident Fund (2012 (3) SA 94 (WCC)) 74 SATC 253	Individual	44	Abraham Krok Trust v Commissioner For South African Revenue Service 73 SATC 105	Individual
45	Oceanic Trust Co Ltd No v Commissioner For South African Revenue Service 74 SATC 127	Company	45	Commissioner For South African Revenue Service v NWK Ltd 73 SATC 55 Income Tax Case No 1844 73 SATC 45	Company
46	Capstone 556 (Pty) Ltd And Another v Commissioner For South African Revenue Service And Another (2011 (6) SA 65 (WCC)) 74 SATC 20	Company	46	Ackermans Ltd v Commissioner For South African Revenue Service (2010 (1) SA (1) SCA) 73 SATC 1	Company
47	Commissioner For South African Revenue Service v Van Kets 74 SATC 9	Individual	47	AMI Forwarding (Pty) Ltd v Department Of Customs And Excise And Another 72 SATC 268	Company
48	Mobile Telephone Networks Holdings (Pty) Ltd v Commissioner For South African Revenue Service 73 SATC 315	Company	48	3M South Africa (Pty) Ltd v Commissioner For South African Revenue Service And Another 72 SATC 216	Company
49	Commissioner For South African Revenue Service v Fastmould Specialist CC 73 SATC 284	Close Corporation	49	Commissioner For South African Revenue Service v Fascination Wigs (Pty) Ltd 72 SATC 112	Company
50	Distell Ltd v Commissioner For South African Revenue Service 73 SATC 265	Company	50	Defy Ltd v Commissioner For South African Revenue Service 72 SATC 99	Company
	2010			2009	
51	Durban North Turf (Pty) Ltd v Commissioner For South African Revenue Service ([2011] 1 All SA	Company	51	TCT Leisure (Pty) Ltd v Commissioner For South African Revenue Service 72 SATC 187	Company

	525 (KZP)) ([2011] (2) SA 347 (KZP)) 73 SATC 349				
52	Commissioner For South African Revenue Service v I-Net Bridge (Pty) Ltd 73 SATC 141	Company	52	Commissioner For South African Revenue Service v Foskor (Pty) Ltd 72 SATC 174	Company
53	Sepataka v Commissioner For South African Revenue Service 72 SATC 279	Individual	53	Pahad Shipping CC v Commissioner For South African Revenue Service 72 SATC 35	Close Corporation
54	Davis v Commissioner For South African Revenue Service (2010 (5) SA 540 (KZD)) 72 SATC 253	Individual	54	Anglovaal Mining Limited v Commissioner For South African Revenue Service 71 SATC 293	Company
55	Commissioner For South African Revenue Service v Metlika Trading Ltd And Others 72 SATC 241	Company	55	Commissioner For South African Revenue Service And Others v Moresport (Pty) Ltd And Others 71 SATC 232	Company
	2009				
56	Commissioner For South African Revenue Service v Labat Africa Ltd 72 SATC 75 Income Tax Case No 1839 72 SATC 61	Company	56	WJ Fourie Beleggings v Commissioner For South African Revenue Service 71 SATC 125	Company
				2008	
57	Grundlingh v Commissioner For South African Revenue Service 72 SATC 1	Individual	57	Maguire v Commissioner For South African Revenue Service 71 SATC 41	Individual
58	LG Electronics SA (Pty) Ltd v Commissioner For South African Revenue Service 71 SATC 275	Company	58	Commissioner Of Inland Revenue v Namsov Fishing Enterprises (Pty) Ltd 71 SATC 16	Company

59	King v Commissioner For South African Revenue Service 71 SATC 261	Individual	59	Ernst Bester Trust v Commissioner For South African Revenue Service 70 SATC 151	Trust
60	Vacation Exchanges International (Pty) Ltd v Commissioner For South African Revenue Service 71 SATC 249	Company	60	Commissioner For South African Revenue Service v Saleem 70 SATC 115	Individual
				2007	
61	Faynaz Import And Export Enterprises CC v Commissioner Of Customs And Excise And Others 71 SATC 205	Close Corporation	61	Commissioner Of Taxes And Another v Process Automated (Pty) Ltd 71 SATC 9	Company
62	KNA Insurance And Investment Brokers (Pty) Ltd (In Liquidation) v South African Revenue Service And Another 71 SATC 155	Company	62	Commissioner For South African Revenue Service v Airworld CC And Another 70 SATC 48	Close Corporation
	2008				
63	Plasma View Technologies (Pty) Ltd v Commissioner For South African Revenue Service 72 SATC 44	Company	63	Carmel Trading Company v Commissioner For South African Revenue Service And Others 70 SATC 1	Company
64	Moresport (Pty) Ltd v Commissioner For South African Revenue Service And Others 71 SATC 133	Company	64	BP Southern Africa (Pty) Ltd v Commissioner For South African Revenue Service 69 SATC 79	Company
65	Commissioner For South African Revenue Service v Duro Pressings (Pty) Ltd 71 SATC 88	Company	65	Commissioner For South African Revenue Service, Gauteng West v Levue Investments (Pty) Ltd 69 SATC 85	Company

66	Fascination Wigs (Pty) Ltd v Commissioner For South African Revenue Service 71 SATC 72	Company	66	Commissioner For South African Revenue Service v Trend Finance (Pty) Ltd And Another 69 SATC 120	Company
67	Pick 'N Pay Retailers (Pty) Ltd v Commissioner For South African Revenue Service And Others 71 SATC 52	Company	67	MP Finance Group Cc (In Liquidation) v Commissioner For South African Revenue Service 69 SATC 141	Close Corporation
68	Commissioner For South African Revenue Service v Wooltru Property Holdings (Pty) Ltd 70 SATC 223	Company	68	Commissioner For South African Revenue Service v Brummeria Renaissance (Pty) Ltd And Others 69 SATC 205	Company
69	Volkswagen Of South Africa (Pty) Ltd v Commissioner For South African Revenue Service 70 SATC 195	Company	69	Commissioner For South African Revenue Service v The Baking Tin (Pty) Ltd 69 SATC 220	Company
70	BOS v Commissioner For South African Revenue Service 70 SATC 187	Individual	70	Progress Office Machines CC v South African Revenue Service And Others 69 SATC 231	Close Corporation
				2006	
71	Metropolitan Life Ltd v Commissioner For South African Revenue Service 70 SATC 162	Company	71	Stevens v Commissioner For South African Revenue Service 69 SATC 1	Individual
	2007				
72	Sallies Ltd v Commissioner For South African Revenue Service 70 SATC 39	Company	72	Commissioner For South African Revenue Service v Komatsu Southern Africa (Pty) Ltd 69 SATC 9	Company
73	WJ Fourie Beleggings CC v Commissioner For South African Revenue Service 70 SATC 8	Close Corporation	73	Commissioner For South African Revenue Service v Hawker Air Services (Pty) Ltd And Hawker Aviation	Company/ Partnership

				Services Partnership And Others 68 SATC 141	
74	Gud Holdings (Pty) Ltd v Commissioner For South African Revenue Service 69 SATC 115	Company	74	South African Revenue Service (Customs & Excise) v Desmonds Clearing And Forwarding Agents CC 68 SATC 181	Close Corporation
	2006				
75	Distell Ltd And Another v Commissioner For South African Revenue Service And Another 69 SATC 15	Company	75	Commissioner For South African Revenue Service v BP South Africa (Pty) Ltd 68 SATC 229	Company
76	Colgate Palmolive (Pty) Ltd v Commissioner For South African Revenue Service 69 SATC 43	Company	76	Commissioner For South African Revenue Service v Motion Vehicle Wholesalers (Pty) Ltd 68 SATC 307	Company
				2005	
77	Baking Tin (Pty) Ltd v Minister Of Finance No And Another 69 SATC 171	Company	77	Commissioner For South African Revenue Service v British Airways Plc 67 SATC 167	Company
78	Commissioner For South African Revenue Service v Marx No (2006 (4) SA 195 (CPD)) 68 SATC 219	Individual	78	Commissioner For South African Revenue Service And Another v TFN Diamond Cutting Works (Pty) Ltd 67 SATC 171	Company
79	CBM Hot X-Press CC And Another v Commissioner For South African Revenue Service And Others 68 SATC 273	Close Corporation/ Company	79	Chipkin (Natal) (Pty) Ltd v Commissioner For South African Revenue Service ([2005] 3 All SA 26 (SCA)) 67 SATC 243	Company
80	Commissioner For South African Revenue Service v Higgo 68 SATC 278	Individual	80	Commissioner For South African Revenue Service v Formalito (Pty) Ltd 67 SATC 251	Company
	2005				
81	Commissioner For South African Revenue Service v Akharwaray 68 SATC 41	Individual	81	Commissioner For South African Revenue Service v Stand Two Nine	Company

				Nought Wynberg (Pty) Ltd And Others 67 SATC 275	
82	Commissioner For South African Revenue Service And Another v Sterling Auto Distributors CC: In Re Bayerische Motoren Werke And Another v Sterling Auto Distributors CC And Others 68 SATC 241	Close Corporation	82	Liberty Investors Ltd (In Members' Voluntary Liquidation) v Commissioner For South African Revenue Service 67 SATC 313	Company
				2004	
83	Trend Finance (Pty) Ltd And Another v Commissioner For South African Revenue Service And Another 67 SATC 334	Company	83	Western Platinum Ltd v Commissioner For South African Revenue Service [2004] 4 All SA 611 (SCA) 67 SATC 1	Company
	2004				
84	Commissioner For South African Revenue Service v Hawker Air Services (Pty) Ltd And Hawker Aviation Services Partnership And Others 67 SATC 107	Company/Partnership	84	Metlika Trading Ltd And Others v Commissioner For South African Revenue Service [2004] 4 All SA 410 (SCA) 67 SATC 15	Company
85	Desmonds Clearing & Forwarding Agents CC v South African Revenue Service (Customs & Excise) 67 SATC 215	Close Corporation	85	Weare v Commissioner For South African Revenue Service [2004] 4 All SA 520 (SCA) 67 SATC 31	Individual
	2003				
86	Hella South Africa (Pty) Ltd v Commissioner For South African Revenue Service 65 SATC 401	Company	86	Commissioner For South African Revenue Service v Nashua Ltd 67 SATC 64	Company

87	Wong And Others v Commissioner For South African Revenue Service 65 SATC 431	Individual	87	Commissioner For South African Revenue Service v SA Silicone Products (Pty) Ltd 66 SATC 131	Company
88	Commissioner For Inland Revenue v Bobat And Others 67 SATC 47	Individual	88	Commissioner For South African Revenue Service v Megs Investments (Pty) Ltd And Another 66 SATC 175	Company
89	Commissioner For South African Revenue Service v Ben Nevis Holdings Ltd And Others 66 SATC 71	Company	89	Standard General Insurance Co Ltd v Commissioner For Customs And Excise 66 SATC 192	Company
90	Lever Ponds (Pty) Ltd And Another v Commissioner For Customs And Excise 66 SATC 225	Company	90	Commissioner For South African Revenue Service v Estate Late HE Streicher 66 SATC 282	Estate
91	Smartphone SP (Pty) Ltd v Absa Bank Ltd And Another (2004 (3) SA 65 (WLD)) 66 SATC 241	Company	91	Welch's Estate v Commissioner For South African Revenue Service [2004] 2 All SA 586 (SCA) 66 SATC 303	Estate
				2003	
92	Commissioner For South African Revenue Service v Metlika Trading Ltd And Others 66 SATC 345	Company	92	Commissioner For South African Revenue Service v Wyner [2003] 4 All SA 541 (SCA) 66 SATC 1	Individual
	Total number of cases 92 Classification of taxpayer types that litigate with SARS: **Company 58** **Individual 29** **Close Corporation 11** **Trust 2** **Partnership 1**		93	Uitenhage Transitional Local Council v South African Revenue Service (2004 (1) SA 292 (SCA)) [2003] 4 All SA 37 (SCA) 66 SATC 265	Local Government Council
			94	Omnia Fertilizer Ltd v Commissioner For South African Revenue Service	Company

				65 SATC 159	
			95	Singh v Commissioner For South African Revenue Service 65 SATC 203	Individual
			96	Commissioner For South African Revenue Service v Tiger Oats Ltd ([2003] 2 All SA 604 (SCA)) 65 SATC 281	Company
			97	Rane Investment Trust v Commissioner For South African Revenue Service ([2003] 3 All SA 39 (SCA)) 65 SATC 333	Trust
			98	Warner Lambert SA (Pty) Ltd v Commissioner For South African Revenue Service 65 SATC 346	Company
			99	AM Moolla Group Ltd And Others v Commissioner For South African Revenue Service And Others 65 SATC 414	Company
			100	Stellenbosch Farmers' Winery Ltd v Commissioner For South African Revenue Service 74 SATC 235 (2012)	Company
				Total number of cases 100 Classification of taxpayer types that litigate with SARS: **Company 70** **Individual 17** **Close Corporation 9** **Trust 4** **Partnership 1** **Other (Estate/Govt) 3**	

Tax related appeals at the High Court and Supreme Court of Appeal as reported on the SARS website from 2003 to 2016

	High Court			***Supreme Court of Appeal***	
	2016			***2016***	
S/N	***Case No/Name***	***Taxpayer Type***	***S/N***	***Case No/Name***	***Taxpayer Type***
1	Van der Merwe GW NO & Others v Zonnekus Mansion (Pty) Ltd, CSARS & Others	Individual	1	Marshall AG & Others v CSARS	Individuals
2	Lifman MR v The Business Zone 983 CC & CSARS and Others	Trust	2	XO Africa Safaris CC v CSARS	Close Corporation
3	Nkhoma DT & 4 Others v Zonnekus Mansion (Pty) Ltd (In Liquidation), CSARS & Standard Bank of SA Ltd	Individuals	3	CSARS v Van der Merwe LDR & Others	Company/Close Corporation/Individuals
4	Dale PA v Aeronastic Properties Ltd	Individual	4	CSARS v Marula Platinum Mines Limited	Company
5	Ntsanwisi v Khoza & Others		5	Martin Fraser Wingate-Pearse v CSARS	Individual
6	Respublica (Pty) Ltd v CSARS	Company	6	Dr HC Avenant v CSARS	Individual
7	New Adventure Shelf 122 (Pty) Ltd v CSARS	Company	7	Coltrade International CC	Close Corporation
	2015				
8	CSARS v Prudence Forwarding (Pty) Ltd and Grovemaster Trading Enterprises 136 CC	Company/ Close Corporation	8	CSARS v Kluh Investments (Pty) Ltd	Company
9	Gavin Cecil Gainsford NO and Two Others (Joint Trustees of Tannenbaum, BD Estate) v CSARS and Anor	Individual and Trust	9	CSARS v Capstone 556 (Pty) Ltd	Company
				2015	
10	Fastjet Holdings (Pty) Ltd v the Minister of Finance, CSARS	Company	10	Anglo Platinum Management Services (Pty) Ltd v CSARS	Company
11	Mark Lifman & Others v CSARS and Ors	Individual/ Close Corporation	11	CSARS v Stephney Investments	Company
12	Alan George Marshall NO & Others v CSARS	Individual	12	Mark Krok (and Jucool Enterprises Inc) v CSARS	Individual/Company
13	Auto Haus Car Hire and Tours (PVT) Ltd v CSARS and Anor	Company	13	Miles Plant Hire (Pty) Ltd v CSARS	Company

14	Ackermans Limited v CSARS	Company	14	CSARS v Candice-Jean Van Der Merwe	Individual
15	South Atlantic Jazz Festival (Pty) Ltd v CSARS	Company	15	Medox Limited v CSARS	Company
	2014			2014	
16	Van Der Merwe, LDR NO & Five Others v UTI South Africa (Pty) Ltd and Others	Company/Individual	16	CSARS v Bosch, M (from Foschini Group Schemes)	Individual
17	Clive Boustred		17	Porritt & Another v The NDPP, CSARS & Others	Individual
18	CSARS v Africa Cash & Carry (Pty) Ltd & 18 Others	Company/ Individual	18	CSARS v Pretoria East Motors (Pty) Ltd	Company
19	Coltrade International CC v CSARS	Close Corporation	19	CSARS v Terraplas South Africa (Pty) Ltd	Company
20	CSARS v Tradex (Pty) Ltd & Two Others	Company/ Individual/ Close Corporation	20	GB Mining and Exploration SA (Pty) Ltd v CSARS	Company
21	Kluh Investments (Pty) Ltd v CSARS	Company	21	MTN International (Mauritius) Ltd v CSARS	Company
22	Capstone 556 (Pty) Limited v CSARS	Company	22	CSARS v Mobile Telephone Networks Holdings (Pty) Ltd (MTN)	Company
				2013	
23	Huang & Others (Incl. Mpisi Trading 74 (Pty) Ltd v CSARS	Individual/Company	23	Master Currency (Pty) Ltd v CSARS	Company
24	A Company & Two Others v CSARS	Company	24	Ben Nevis (Holdings) Limited & Metlika Trading Limited v The Commissioners for HMRC (Her Majesty's Revenue and Customs) [2013] EWCA Civ 578	Company
25	DKR Auto CC v CSARS	Close Corporation	25	Association of Meat Importers v ITAC (769, 770, 771/2012) [2013] ZASCA 108	Not For Gain
26	CSARS v Van der Merwe, GW and 20 Others	Individual/Trust	26	Stabilpave (Pty) Ltd v CSARS	Company
27	Medox Limited v CSARS	Company	27	Smith Mining Equipment (Pty) Ltd v CSARS	Company
				2012	

28	Chittenden NO and another v CSARS and Ors	Company/Individual	28	Eveready (Pty) Ltd v CSARS	Company
29	Van der Merwe, GW and 12 Others v CSARS and Ors	Individual/ Company	29	CSARS v Tradehold Ltd	Company
30	CSARS v Krok, Mark and Anor	Individual/Company	30	Stellenbosch Farmers' Winery Limited v CSARS	Company
31	Island View Storage (Pty) Ltd v CSARS	Company			
	2013				
32	MTN International (Mauritius) Limited v CSARS	Company	31	Distell Limited v CSARS	Company
33	Terraplas South Africa (Pty) Ltd v CSARS	Company	32	CSARS v De Beers Consolidated Mines Limited	Company
34	Kirsten and Thomson CC t/a Nashua East London v CSARS and Anor	Close Corporation	33	Mohammed Cassimjee v Min of Finance	Individual
35	Kadodia, ME v CSARS	Individual	34	Armgold Harmony/Freegold Joint Venture(Proprietary) Limited v CSARS	Company
36	Gaertner, PLM and Two Others (incl. Orion Cold Storage) v CSARS and Ors	Individual	35	HR Computek (Pty) Ltd v CSARS	Company
				2011	
37	The State v Delport, HF, Pickard, CA and Six Others	Individual	36	Multichoice Africa (Pty) Ltd	Company
38	CSARS v Miles Plant Hire (Pty) Ltd	Company	37	Founders Hill (Pty) Ltd	Company
39	Clear Enterprises (Pty) Ltd v CSARS, ITAC and Others	Company	38	First South African Holdings (Pty) Limited	Company
	2012				
40	Apollo Tobacco CC and Ors v CSARS	Close Corporation	39	Engelbrecht v The State	Individual
41	Oosthuizen, MJ v CSARS and Ors	Individual	40	Labat Africa Limited	Company
42	CSARS v Smith Mining Equipment (Pty) Ltd	Company	41	South African Custodial Services (Pty) Ltd	Company
				2010	
43	CSARS and Ors v Aranda Textiles Mills (Pty) Ltd and Ors	Company	42	CSARS v Fascination Wigs (Pty) Ltd	Company
44	Zikhulise Cleaning Maintenance and Transport CC v CSARS	Close Corporation	43	TCT Leisure (Pty) Ltd v CSARS	Company

45	Metlika Trading and Ben Nevis Holdings Ltd and Anor v CSARS and Ors	Company	44	Defy Ltd v CSARS	Company
46	HMRC and Another v Ben Nevis (Holdings) Ltd and Another [2012] EWHC 1807 (Ch)	Company	45	3M South Africa (Pty) Ltd v CSARS and anor	Company
47	CSARS v Beginsel, MB and Others	Individual/Company	46	CSARS v Foskor Ltd	Company
48	Bosch and McClelland -v CSARS	Individual	47	AMI Forwarding (Pty) Ltd v Department of South Africa, dept. of customs and excise and anor	Company
	2011				
49	GKD Buismet (Pty) Ltd v CSARS	Company	48	CSARS v LG Electronics (Pty) Ltd	Company
50	Pitro Rossi and ors v CSARS	Individual	49	CSARS v Colgate-Palmolive (Pty) Ltd	Company
51	Edrees Ahmed Hathurani v CSARS and Anor	Individual	50	Distell Limited (and Stellenbosch Farmers' Winery Limited) v CSARS	Company
52	Aquazania (Pty) Ltd v CSARS	Company	51	CSARS v Plasmaview Technologies (Pty) Ltd	Company
53	CSARS and Ors v Eastern Eagle Home Textiles (SA) CC	Close Corporation	52	Ackermans Limited (and Pep Stores (SA) Limited) v CSARS	Company
54	Distell Limited v CSARS	Company	53	Puma AG Rudolf Dassler Sport v CSARS and ors	Company
55	CSARS v DC King	Individual	54	The Abraham Krok Trust v CSARS	Trust
56	Nutec Southern Africa (Pty) Ltd v CSARS	Company	55	CSARS v Saira Essa Productions CC	Company
57	The Oceanic Trust Co. Ltd N.O. v CSARS	Company	56	CSARS v NWK Limited company	Company
58	Capstone 556 (Pty) Ltd and Kluh Investments (Pty) Ltd v CSARS and anor	Company	57	CSARS v Sprigg Investment 117 CC t/a Global Investment	Close Corporation
				2009	
59	Mobile Telephone Networks Holdings (Pty) Ltd v CSARS	Company	58	WJ Fourie Beleggings v CSARS	Company
60	CSARS v Fastmould Specialist CC	Close Corporation	59	CSARS and ors v Moresport (Pty) Ltd and ors	Company

61	Enkanini Investments CC t/a Papera Africa v CSARS	Close Corporation	60	Anglovaal Mining Ltd v CSARS	Company
62	Trudy Trading CC t/a Mecca Motors v CSARS	Close Corporation	61	Pahad Shipping CC v CSARS	Close Corporation
				2008	
63	CSARS v Werner Van Kets	Individual	62	Ernst Bester Trust v CSARS	Trust
	2010				
64	Peter Davis v CSARS	Individual	63	CSARS v Saleem, A	Individual
65	M Cassimjee v Hon Minister of Finance	Individual	64	RF Maguire v CSARS	Not For Gain
66	CSARS v Metlika Trading Limited and Others	Company	65	Min of Finance and Anor v Paper Manufacturers Association of South Africa (PAMSA)	Individual
				2007	
67	West Trucking (Botswana) (Pty) Ltd v CSARS and Ors	Company	66	BP Southern Africa (Pty) Ltd v CSARS	Company
68	Durban North Turf (Pty) Ltd v CSARS	Company	67	CSARS v Levue Investments (Pty) Ltd	Company
69	Sikander Trading Company Ltd v Govt of SA and Ors	Company	68	Clearing Agents, Receivers & Shippers (CARS) v CSARS and Ors	Not For Gain
70	CSARS v I-Net Bridge (Pty) Limited	Company	69	MP Finance Group CC v CSARS	Close Corporation
71	Cadac (Pty) Ltd v Weber Stephen product company and Ors	Company	70	CSARS v Brummeria Renaissance (Pty) Ltd	Company
72	Bafana Bafana and Others v CSARS and Ors	Close Corporation /Individual	71	CSARS v The Baking Tin (Pty) Ltd	Company
73	Saficon Industrial Holdings (Pty) Ltd v SARS	Company	72	CSARS v Trend Finance (Pty) Ltd	Company
74	C Drahtseilwerk Saar GmbH v International Trade Administration Commission	Individual	73	CSARS v Trend Finance (Pty) Ltd	Company
	2009				
75	LG Electronics SA (Pty) Ltd v CSARS	Company	74	Progress Office Machines CC v CSARS and Ors	Close Corporation
76	Faynaz Import and Export Enterprises CC	Close Corporation	75	CSARS v Airworld CC & JH Retief (Com) Inter CC	Close Corporation
77	Golden Arrow Bus Services (Pty) Ltd v Min of Transport for SA and Ors	Company	76	Shaikh, M.A.Y. v CSARS and anor	Individual

78	3M South Africa (Pty) Ltd v CSARS and Anor	Company	77	Carmel Trading Company Ltd v CSARS and ors	Company
				2006	
79	Distell Limited (and Stellenbosch Farmers' Winery) v CSARS and Ors	Company	78	CSARS v Desmonds Clearing and Forwarding Agents CC	Close Corporation
80	KNA Insurance and Investment Brokers (Pty) Ltd (in liquidation) v CSARS	Company	79	CSARS v Hawker Air Services (Pty) Ltd and Others	Partnership/Company
81	Smith Mining Equipment (Pty) Ltd v CSARS	Company	80	CSARS v BP South Africa (Pty) Ltd	Company
82	Clear Enterprises (Pty) Ltd v CSARS	Company	81	CSARS v Komatsu SA (Pty) Ltd	Company
83	Vacation Exchanges International (Pty) Ltd v CSARS	Company	82	CSARS v Motion Vehicle Wholesalers (Pty) Ltd	Company
84	Diesel Tracker CC v CSARS	Close Corporation	83	Stevens, CDN v CSARS	Individual
85	Golden Arrow Bus Services (Pty) Ltd v Min of Transport for SA and Ors	Company			
				2005	
86	Multichoice Africa (Pty) Ltd and Anor v CSARS	Company	84	CSARS v British Airways Plc	Company
87	Grundling, JJ v CSARS	Individual	85	CSARS and Anor v TFN Diamond Cutting Works (Pty) Ltd	Company
88	Saira Essa Productions CC and Ors v CSARS	Close Corporation /Individual	86	Chipkin (Natal) (Pty) Ltd v CSARS	Company
89	Far Eastern Garments Manufacturers (Pty) Ltd v CSARS	Company	87	CSARS v Formalito (Pty) Ltd	Company
90	CSARS v Labat Africa Limited	Company	88	CSARS v Stand Two Nine Nought Wynberg (Pty) Ltd and Ors	Company/Individual
91	Stabilpave (Pty) Ltd v CSARS	Company	89	Liberty Investors Ltd (in members' Voluntary Liquidation) v CSARS	Company
92	Apollo Tobacco CC and ors v CSARS	Close Corporation/Company/Individual	90	AM Moolla Group Limited v The Gap Inc	Company
	2008			2004	
93	Moresport (Pty) Ltd v CSARS	Company	91	CSARS v SA Silicone Products (Pty) Ltd	Company

				1. Heher 2. Cloete	
94	Roche Products (Pty) Ltd v CSARS	Company	92	The Director-General: DTI and Another v Shurlock International (Pty) Limited	Company
95	Gharafory Enterprises CC t/a AG's Distributors and Ors v CSARS	Close Corporation/Individual	93	CSARS v Megs Investment (Pty) Ltd	Company
96	Volkswagen of South Africa (Pty) Ltd v CSARS	Company	94	Standard General Insurance Company Limited v commissioner of Customs and Excise	Company
97	Pick 'n Pay Retailers (Pty) Ltd v CSARS and Ors	Company	95	Estate RF Welch v CSARS	Estate
98	Metropolitan Life Limited v CSARS	Company	96	CSARS v Estate Late HE Streicher	Estate
99	Shoprite Checkers (Pty) Ltd v CSARS and Ors	Company	97	Western Platinum Ltd v CSARS	Company
100	L&G Tools and Machinery Distributor Ltd v CSARS	Company	98	Weare, M v CSARS	Individual
101	Ashwood Trading (Pty) Ltd v CSARS v CSARS	Company	99	Metlika Trading Ltd v CSARS	Company/Partnership
102	Pahad Shipping CC v CSARS	Close Corporation	100	AM Moolla Group Limited and Others v Gap inc and Ors	Company
103	CSARS v Wooltru Property Holdings (Pty) Ltd	Company	101	CSARS v Nashua Limited	Company
				2003	
104	Fascination Wigs (Pty) Ltd v CSARS	Company	102	Omnia Fertilizer Ltd v CSARS	Company
105	Plasmaview Technologies (Pty) Ltd v CSARS	Company	103	AM Moolla Group Ltd and Others v CSARS and Ors	Company
106	CSARS v Duro Pressings (Pty) Ltd	Company	104	Sing, A v CSARS	Individual
107	AMI Forwarding (Pty) Ltd	Company	105	CSARS v Tiger Oats Ltd	Company
	2007				Company
108	Discovery Promotions CC v CSARS	Close Corporation	106	Warner Lambert SA (Pty) Ltd v CSARS	Company
109	GUD Holdings (Pty) Ltd v CSARS	Company	107	Rane Investment Trust v CSARS	Trust
110	SNT (Pty) Limited v CSARS and Anor	Company	108	Uitenhage Transitional Local Council v CSARS	Government

111	Degussa Africa (Pty) Ltd	Company	109	Certain Underwriters of London v Theresa Harrison	Individual
112	WJ Fourie Beleggings CC v CSARS	Close Corporation	110	CSARS v Wyner, CM	Individual
	2006			**Total number of cases 110** Classification of taxpayer types that litigate with SARS: **Company 78** **Individual 19** **Close Corporation 8** **Trust 3** **Not for Gain 2** **Partnership 2** **Other (Estate/Govt) 3**	
113	Telkom SA Ltd v CSARS	Company			
114	CSARS v RMS Marx NO	Individual			
115	The Baking Tin (Pty) Ltd v CSARS and Anor	Company			
116	CSARS v May Garments Company (Pty) Ltd and Ors	Company			
117	CBM Hot X-Press CC and West Trucking (Botswana) Pty Ltd	Close Corporation/Company			
118	Duro Pressing (Pty) Ltd v CSARS	Company			
119	Mohammed Amin Yusuf Shaikh t/a Young American	Individual			
120	CSARS v GH Higgo	Individual			
121	Jazz Cellular CC v CSARS and Ors	Close Corporation			
122	Quick Step (Pty) Ltd v CSARS	Company			
123	Distell Limited a v CSARS and Anor	Company			
124	A Saleem v CSARS and Anor	Individual			
125	Faurecia Autoplastics (Pty) Ltd (previously known as SAI Automotive Autoplastics (Pty) Ltd) v CSARS	Company			

	2005				
126	Exclusive Tobacco Products (Pty) Ltd and Anor v CSARS and Anor	Company/Close Corporation			
127	Komatsu Southern Africa (Pty) Ltd v CSARS	Company			
128	Motion Vehicle Wholesalers v CSARS	Not For Gain			
129	Frans Edward Prins Roothman and Ors v CSARS	Individual			
130	Zamekile Lulu Mnqayi NO v CSARS	Individual			
131	Trend Finance (Pty) Ltd and Anor v CSARS	Company			
132	Savanna Tobacco Company (Pty) Ltd	Company			
133	Progress Office Machines CC v CSARS and Ors	Close Corporation			
134	Sterling Auto Distributors CC	Close Corporation			
135	Clearing Agents, Receivers & Shippers (CARS)	Not For Gain			
136	Saxton Trading (Pty) Ltd t/a KDG Auto Export v CSARS and Ors	Company			
137	CSARS v Akharwaray, GH	Individual			
	2004				
138	Desmonds Clearing and Forwarding Agents CC v CSARS	Close Corporation			
139	Morgan Brent Marketing CC v CSARS	Close Corporation			
140	Telkom SA Ltd v CSARS	Company			
141	Danfen Motors CC	Close Corporation			
142	CBM Hot X-Press and West Trucking (Botswana) (Pty) Ltd v CSARS and Anor	Company			
	2003				
143	Trend Finance (Pty) Ltd and Anor v CSARS	Company			
144	Hella South Africa (Pty) Ltd v CSARS	Company			

145	TFN Diamond Cutting Works (Pty) Ltd v CSARS and Anor	Company			
146	Formalito (Pty) Ltd	Company			
147	Nashua Limited v CSARS and Anor	Company			
148	Sterling Auto Distributors CC v CSARS	Close Corporation			
149	Lever Ponds (Pty) Ltd and another	Company			
150	CSARS v Shoprite-Checkers (Pty) Ltd	Company			
	Total number of cases 150 Classification of taxpayer types that litigate with SARS: **Company 94** **Individual 39** **Close Corporation 31** **Trusts 3** **Not for Gain 2**				

Tax Related Appeals At The Constitutional Court As Reported In SATC From 2003 To 2016

S/N	***Case No/Name***	***Year***	***Taxpayer Type***
1	South African Reserve Bank And Another v Shuttleworth And Another 78 SATC 23	2015	Individual
2	Gaertner And Others v Minister Of Finance And Others 76 SATC 69	2013	Individual
3	International Trade Administration Commission v Scaw South Africa (Pty) Ltd And Others 72 SATC 135	2010	Company
4	City Of Cape Town And Another v Robertson And Another (2005 (2) SA 323 (CC)) (2005 (3) BCLR 199 (CC)) 67 SATC 176	2004	Individual
			Total Number Of Cases 4 **Individual 2** **Government 2**

Tax related appeals at the Constitutional Court as reported on the SARS website from 2003 to 2016

S/N	***Case No/Name***	***Year***	***Taxpayer Type***
1	CSARS v Commission for Conciliation, Mediation and Arbitration & Others	2016	Individual/Commission
2	Patrick Lorenz Martin Gaertner & Others (including Orion Cold Storage) v the Minister of Finance, SARS & Others	2013	Individual/Company
3	Minister of Safety and Security v GW Van Der Merwe and 14 Others	2011	Individual/Company
4	Van Der Merwe, GW and Another v Inspector Taylor, CSARS and Ors	2007	Individual/Company
			Total Number Of Cases 4 **Individual 4** **Company 3** **Other 1**

Annexure 3

Interview schedule for tax officers of the Federal Inland Revenue Service

S/N	Question
1.	Which department do you work for and what is your role? (state/region)
2.	Please describe in detail the process of tax dispute resolution, reconciliation and audit of tax liability with taxpayers.
3.	Tell me about the documents you must use in the dispute resolution process. *Probe* • *How is the process implemented in other offices within your department and group?* • *What are the noted differences between how the dispute resolution process is implemented in your office as compared to how it is implemented in other offices within your department or group?*
4.	What are your opinions on the desirability or otherwise of having guidelines on the process? *Probe* • *How would an organic process for each office work, taking into consideration the culture and business practice of each locality?*
5.	Tell me about the referral process of tax disputes to the legal department *Probe* • *Can you compare the pros and cons of resolving disputes in tax offices with resolving them at the tribunal or courts?* • *What impact does resolving disputes at the tribunal or courts have on achieving your targets?*
6.	In your opinion how would an efficient negotiation/reconciliation/tax audit process affect the number of cases referred to TAT for prosecution?
7.	Please give your views on whether taxpayers are more likely to be tax compliant in the future if their liabilities are negotiated and resolved at the tax office level? *Probe* • *What other considerations would play a role in deciding to take disputes to the tribunal or courts e.g. to make taxpayers sit up and not take meeting up their tax obligations with levity? For FIRS to be taken more seriously? To charge repeat offenders and taxpayers who often neglect to pay their taxes?*
8.	Are there any important issues relating to dispute resolution and the tax reconciliation and audit process which we have not discussed so far?
9.	In conclusion, please tell me your general views and experience with dispute resolution as well as tax audit and reconciliation with the taxpayer.

Interview schedule for legal officers of the Federal Inland Revenue Service

S/N	Question
1.	Which region of the legal department are you in charge of and what is your role?
2.	What are your reasons for choosing any venue for filing a tax case? *Probe* • *Are there considerations that pertain to time, cost of prosecution, value of dispute or taxpayer being dealt with?*
3.	Tell me about the documents you must use in the deciding to choose a particular venue for filing a case. *Probe* • *Tell me how you may use your gut instinct to choose a venue.* • *What are the noted differences between how you choose a venue as compared to how heads of other legal regions choose a venue?*
4.	What are your opinions are on the desirability or otherwise of having guidelines on the process?
5.	Can you tell me any other issues pertaining to handling cases at the tribunal and courts that we have not addressed in this interview?
6.	Please give your general views on tax dispute resolution in the high court and tribunals respectively taking into consideration: a. Timeousness b. Judicial independence c. Judicial discretion d. Procedural fairness e. Access to justice

Ethics clearance

Faculty of Law

Research Ethics Committee

Private Bag X3 ▪ Rondebosch ▪ 7701 ▪ South Africa
Room 6.29 ▪ Kramer Building ▪ Middle Campus
Tel: +27 021 650 3080 Fax: +27 021 650 5660 Fax2Email : 086 572 1093
E-mail: lamize.viljoen@uct.ac.za
Internet: www.law.uct.ac.za

06 October 2017

Ms Nneke Esomeju
c/o Prof J Hattingh's office
Commercial Law Department
Level 5, Kramer Law Building, Faculty of Law
UCT

Contact information
Telephone number: +27 786 183320 Email: nesomeju@gmail.com

Dear Ms Esomeju

Re: Clearance Process Report for L0058-2017 (Expedited): *"Improving the Dispute Resolution Process for Tax Disputes in Nigeria and South Africa with Emphasis on Tax Courts"*

Thank you for your revised application submitted. The Law Faculty's Research Ethics Committee very much appreciates the considerable effort put into the documentation.

This study has been carefully considered and confirm that all ethical issues have been adequately addressed.

Ethics clearance is hereby granted as of **02 October 2017** and is subject to renewal for another 12 months.

Please note that any material changes to the proposal will need to be cleared as an amendment.

Please do quote reference number above on all communication to the committee.

With best wishes,

Signature Removed

pp
Associate Professor Julie Berg
REC: CHAIRPERSON

cc: Prof J Hattingh, Commercial Law Dept, UCT