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Federal High Court Upholds TAT Decision in Relation to the Constitutionality of the Income Tax (Country by Country Reporting) Regulations 2018

OALP Tax Case Alert

The Federal High Court (**FHC**) recently delivered a significant judgment in the case of Federal Inland Revenue Service v. Checkpoint Software Technologies BV Nigeria Limited, upholding the earlier decision of the Tax Appeal Tribunal (**TAT**) which nullified the Income Tax (Country by Country Reporting) Regulations, 2018 (**CbCR Regulations**) issued by the Federal Inland Revenue Service (**FIRS**).

BACKGROUND

Checkpoint Software Technologies BV Nigeria Limited ("Checkpoint") had contested administrative penalties imposed by the Federal Inland Revenue Service ("FIRS") for the late filing of its 2019 and 2020 CbCR notifications. In August 2023, the TAT ruled in favour of Checkpoint, declaring the penalties imposed under the CbCR Regulations null and void. The TAT held that the CBCR Regulations were issued in 2018 during a period when the FIRS had no validly constituted Board, contrary to the express requirements of Section 61 of the FIRS (Establishment) Act (**FIRSEA**).

Additionally, the TAT held that the CbCR Regulations, which sought to impose penalties exceeding those permitted under the FIRSEA, were unconstitutional. The TAT further ruled that the CbCR Regulations, which were based on the OECD Country by Country Multilateral Competent Authority Agreement (**MCAA**) could not be enforced in Nigeria in the absence of domestication by the National Assembly.

KEY FINDINGS OF THE FEDERAL HIGH COURT

In its recent decision, the FHC affirmed the TAT's findings, reiterating that:

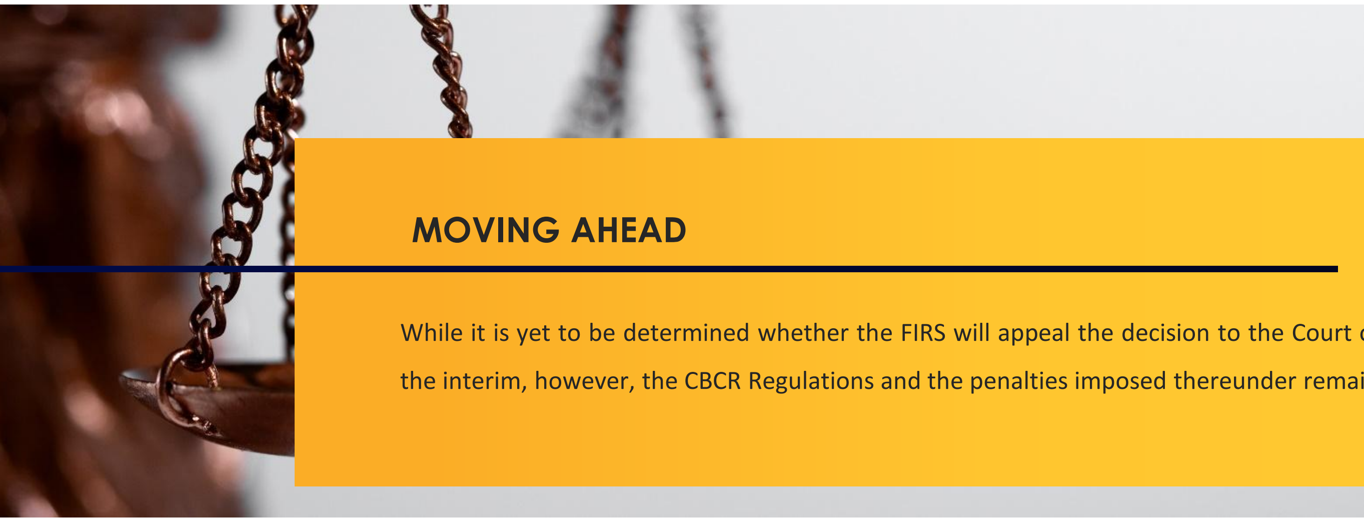
the CbCR Regulations were issued at a time when the FIRS lacked a validly constituted Board, rendering the Regulations ultra vires and of no legal effect.

the penalties imposed under the CbCR Regulations were excessive and inconsistent with the provisions of the principal tax legislation, the FIRS Act. On this basis, the penalties were declared null and void.

the legal framework upon which the CbCR Regulations were based, the OECD MCAA, had not been domesticated by the National Assembly. Accordingly, the FHC found the Regulations unconstitutional for contravening Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

IMPLICATIONS

This decision reaffirms the constitutional requirement that international agreements must be ratified and domesticated before forming the basis of binding regulatory frameworks in Nigeria. It also underscores the importance of proper delegation of statutory powers and the limitations of regulatory agencies in imposing penalties not expressly sanctioned by enabling laws.



MOVING AHEAD

While it is yet to be determined whether the FIRS will appeal the decision to the Court of Appeal, in the interim, however, the CBCR Regulations and the penalties imposed thereunder remain invalid.

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