

Tax Limitation Period in Nigeria – Is the taxpayer deriving any benefit?

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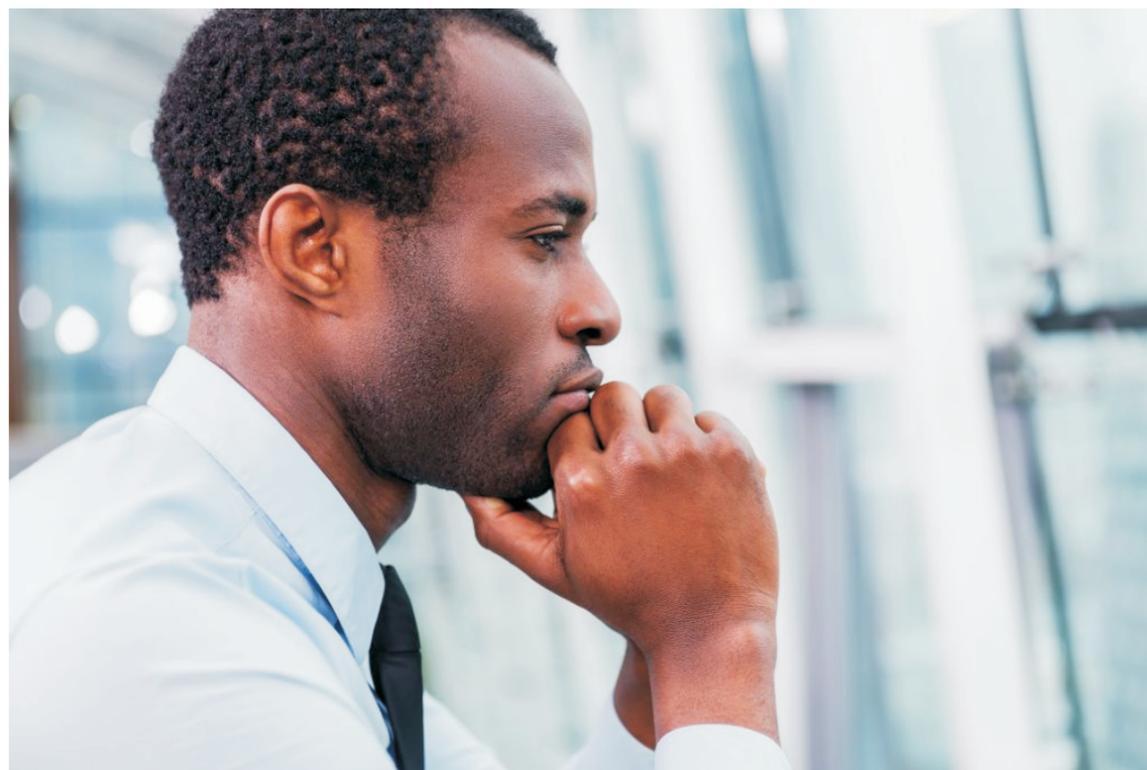
Certainty is one of the hallmarks of a good tax system. In this regard, a taxpayer should know the timeframe within which he can be held responsible for previous non-compliance.

This is probably one of the reasons the National Tax Policy (NTP) canvasses for periodic and timely audit by tax authorities of returns filed by taxpayers. It notes that this would ensure that difficulties associated with recovery of relevant information/documents by taxpayers due to passage of time (loss or deterioration of information, deliberate destruction of information in line with taxpayer's policy, staff movement, liquidation of taxpayer etc.) is minimised.

This perspective is consistent with the provisions of the Companies Income Tax Act (CITA), the Personal Income Tax Act (PITA) and the Petroleum Profit Tax Act (PPTA) which prescribe that taxpayers have an opportunity to recover any overpayment of tax within a six year period. Thus, the tax laws impose a six year limitation (from the relevant year of assessment) on the timeframe within which the tax authority may raise additional assessment in connection with the returns filed by the taxpayer. The Federal Inland Revenue Service (Establishment) Act (FIRSEA) further stipulates that no officer shall make a demand for an under-assessment or erroneous repayment of tax after five years.

Therefore, it is logical that where the tax authorities have not carried out an audit on a taxpayer for a period of more than six years (or five years in the case of under-assessment or erroneous repayment of tax), the period beyond six or five years (as applicable) becomes statute barred.

Ordinarily, the above, should bring some form of comfort to the taxpayer. However, tax authorities are usually not open to precluding any assessment year for tax audit even



the taxpayer. Timely periodic tax audit exercises will render such steps moot.

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Whatever the case is, the limitation period provisions of the tax laws do not apply to collection by tax authorities of pending or outstanding valid assessment notices against a taxpayer. This should however not be a basis for the tax authorities to neglect to pursue timely recovery of valid but unpaid assessments. This will ensure that the taxpayer does not become frustrated by the challenge of stale and forgotten assessments.

where the relevant periods have become statute barred. The legal weapon used by the tax authorities to open the barred period is a recovery of tax on the basis that the taxpayer has probably been fraudulent in the tax returns filed or has wilfully defaulted or neglected to file appropriate returns with the tax authorities or otherwise has actively facilitated the circumstances from which he now seeks to benefit.

This triggers a tax investigation on the basis of an alleged tax evasion rather than a routine or normal audit. Tax evasion is a criminal offence and therefore not statute barred. Hence, where at any time and as often as necessary the tax authorities are 'of the opinion' that fraud, wilful default, neglect or misinformation has been committed by the taxpayer, it may commission an investigation to recover any lost tax.

Depending on the direction of interpretation, a review of the provisions around a taxpayer's right

to reclaim excess taxes either shows a strict six year window (according to CITA) or a refund after a proper audit by the tax authority and eligibility rules and conditions, though subject to the approval of tax authority's management board (according to FIRSEA). Obviously, when the provisions of any of the tax laws are inconsistent with the provisions of the FIRSEA, the FIRSEA prevails.

But then, is there a risk that a taxpayer who fails to institute a tax recovery process within the six year window would be exposed to a forfeiture of excess taxes paid to the tax authorities? What happens if the overpayment was due to an ambiguity in the law which is subsequently clarified in favour of the taxpayer by the judiciary?

The current state of play may warrant:

- Tax authorities to carry out an immediate review of all taxpayer records with a view to identifying

open years of audit. In this case, where there are open years identified and an investigation is commissioned, the tax authorities should be flexible when reviewing years that are 'statute barred' especially when information supporting the relevant years are not easily retrievable.

- Tax authorities to provide or continue to provide clear information on the reasons for an investigation. Furthermore, interpretation of "wilful default or neglect" should be clear in relation to the tax laws. This would provide the needed transparency and certainty in the tax system.
- Taxpayers to keep relevant evidence as long as reasonable with consideration for attendant costs. While it may not be practicable to keep huge paper archives, advances in information technology has made it possible to keep digital copies of documents for quite a long period of time. But this is usually at additional cost to

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Oluseye Arowolo
Partner | Tax & Regulatory Services
oarowolo@deloitte.com

Fatai Folarin
Lead Partner | Tax & Regulatory Services
ffolarin@deloitte.com