

AELEX

ARTICLE SERIES

**AELEX SECURES LANDMARK JUDGEMENT ON WHETHER
LEGISLATION SHOULD APPLY TO TRADING CONDUCTED
PRIOR TO ITS ENACTMENT, EVEN IF TAX FILINGS ARE MADE
AFTER ENACTMENT**

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On 27 June 2022, AELEX secured a landmark judgment for Accugas Limited (“**Accugas**”) at the Abuja Division of the Federal High Court (“the “**FHC**”) by moving the FHC to hold that the Finance Act, 2019 (“**FA 2019**”), which was assented to on 13 January 2020 should not apply to trading activity conducted by Accugas between January and December 2019 even if the returns reporting the trading activity were filed after 13 January 2020.

FA 2019 deleted section 33(3)(b) of the Companies Income Tax Act, which exempted from the payment of minimum tax a company with at least 25% imported equity capital. As Accugas met this threshold, it wrote to the Federal Inland Revenue Service (the “**FIRS**”) to seek confirmation that notwithstanding the deletion of section 33(3)(b), it could claim, in its returns, the minimum tax exemption in respect of trading activity conducted between January and December 2019. The FIRS took the view that because the returns were filed in July 2020, after FA 2019 had become law, Accugas had lost its entitlement to the minimum tax exemption.

To avoid the imposition of penalty and interest, Accugas complied with the FIRS’s position and paid the minimum tax even though it felt it should enjoy the exemption. Accugas then instructed AELEX to challenge the FIRS’ position in court.

In its recent judgement, the FHC upheld AELEX’ arguments that by virtue of section 6(1)(b) and (c) of the Interpretation Act and the doctrine of vested rights, Accugas’ entitlement to the minimum tax exemption in respect of trading activity conducted between January and December 2019 subsists notwithstanding that the returns reporting the trading activity were filed after FA 2019 had become law. The FHC accordingly ordered the return to Accugas of the tax already paid by it.

In view of the recent annual amendments to Nigeria’s fiscal legislation, the FHC’s judgment is significant as it provides taxpayers with certainty that, unless express language is used, any amendment to fiscal legislation will not be applied retroactively regardless of the time of filing tax returns.

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