

Introduction.

Taxation is a statutory contract between a government and its citizens, for the citizen's proportionate financial contributions with which public services that will enhance development and general well-being are provided.

Like all contracts, the statute of limitation rule also applies to tax and pension matters.

A Statute of Limitation is the time limit or period within which a claim can be asserted or insisted upon. Some of the reasons for the statute of limitation rule include the need for claims to be timely and diligently pursued or presented while the evidence and the witnesses are available, and their memory of the facts and events are fresh.

A further reason for the statute of limitation rule is that it brings predictability and finality to claims within a reasonable period of time.

Statute of Limitation in Tax Matters.

Under the Companies Income Tax Act and the Personal Income Tax Act, the limitation period for asserting tax claims is six (6) years from the date when the final tax assessment became due for payment.

The statute of limitation rule will not however apply where the tax payer is guilty of fraud, wilful default or neglect in the settlement of a tax assessment. These very wide exemptions to the limitation period rule continues to be used by the tax authorities to deprive tax payers of claiming relinquishment of 'stale' tax assessments under this six (6) years rule.

What is Fraud, Wilful Default or Neglect?

Fraud is the deliberate misrepresentation or perversion or concealment of the truth with the intention that another person will rely on such misrepresentation, perversion or concealment, to his, or her, or its detriment or prejudice.

Wilful Default on the other hand is the voluntary and intentional omission to carry out a duty.

Neglect is the omission to pay proper attention.

Pre-Action Notice and Statute of Limitation

By Section 12 (2) of the Education Tax Act, legal actions against the Education Trust Fund, its Board of Trustees and other senior officers of the Education Trust Fund must be commenced within three (3) months after the infringing act, neglect or default has occurred. Where the damage or injury is of a continuing nature, legal action must be commenced within six (6) months after the continuance complained about ceased.

To commence a legal action against the Education Trust Fund, a one (1) month pre-action notice must be served on this Fund. And the pre-action notice must disclose the name and place of abode of the complainant, the particulars of the injury, the neglect or default complained about, and the reliefs intended to be claimed as a result.

Under the Pension Reform Act 2014, a pre-action notice of thirty (30) days is also required to be served on the National Pension Commission before any law suit can be validly commenced.

Conclusion

A judicial pronouncement on what amounts to wilful default or neglect in asserting a tax claim that is unpaid six (6) years after the final assessment

was issued will be very helpful in reconciling the current practice where the interpretation of what amounts to wilful default or neglect by the tax authorities administratively holds unchallengeably.

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