

IN THE TAX APPEAL TRIBUNAL  
LAGOS ZONE  
SITTING AT LAGOS

TAT/LZ/025/2012

Between

Chevron Nigeria Limited (Chevron)

Appellant

And

Federal Inland Revenue Service (FIRS)

Respondent

**Judgment**

**Issue for Determination**

Section 32 of Companies Income Tax Act (CITA) provides 10% investment allowance to companies that incur costs on plant and equipment. The Appellant incurred costs on its Escravos Gas Project Phase 3 (EGP3 project), a joint-venture project with the Nigerian National Petroleum Corporation (NNPC). The Appellant claimed 10% investment allowance for costs it incurred from 1998 to 2004 and 2005 to 2008. The Respondent disallowed the deductions.

*Is the Appellant entitled to investment allowance under CITA?*

**Introduction**

The Appellant deducted 10% of its costs on the EGP3 Gas Project as Petroleum Investment Allowance. When the Respondent discovered this deduction in Appellant's returns, the Respondent reduced it to 5%. The Appellant claims it is entitled to Petroleum Investment allowance of 10% based on the provisions of CITA, its Carry Agreement with NNPC, the Ministry of Finance's letter, and the Nigerian President's approval.

**Facts and Proceedings**

The Appellant and NNPC embarked on 2 gas projects in Nigeria: the Escravos Gas-to-Liquid Project (EGTL) and EGP3 projects. The Appellant executed the Heads of Agreement for the EGTL Project (Exhibit 7) and a Carry Agreement for EGTL (Exhibit E8). The Head of Agreement provides that the Appellant will fund the project 100%. In the Carry Agreement, the Appellant also undertook to provide NNPC equity funding.

The EGP3 and EGTL projects are based on Federal Government's policy discouraging gas flaring in Nigeria. By its letter of 13 August 2001 (Exhibit E11), the Minister of Finance confirmed the Carry Agreement. NNPC also confirmed the alternative funding arrangement



contained in the carry agreement (Exhibit E9). The President of the Federal Republic of Nigeria approved this in his letter to the Appellant (Exhibit E10). The Appellant then embarked on the project.

In the Appellant's returns (Exhibits E12A-E), it deducted 10% Petroleum Investments Allowance for 1998 to 2008.

But the Respondent rejected the Appellant's 10% deduction. The Respondent reduced the rate to 5%. It then assessed the Appellant to additional tax of US\$6,402,452 for 2004 (covering 1998-2004) {Exhibit E1} and US\$54,187,021 for 2008 (covering 2005-2008) {Exhibit E2}.

The Appellant objected to the Respondent's 5% rate. It requested a review of the additional assessments (Exhibit E3 and E4). The Respondent refused (Exhibit E5 and E6). Unhappy with the Respondent's decision, the Appellant appealed to this Tribunal. The Appellant and the Respondent called 2 witnesses each. They also filed depositions and introduced documentary evidence.

#### Parties' Positions

The Appellant argues that the 10% Petroleum Investment Allowance it claimed on the EGP3 Project is based on section 32 of CITA.

Section 32(1) of CITA provides investment allowance for companies that have incurred expenditure on plant and equipment. Under section 32(2), investment allowance is 10%.

The Appellant contends that since the EGP3 Project complements its gas-to-liquid EGTL Project in accordance with section 11 of the PPTA, the costs it incurred on the project qualify the Appellant for investment allowance under CITA.

The Appellant adds that a legitimate expectation was created in its favour by Federal Government's representations to it. And since the Respondent is an agency of the Federal Government, the Federal Government cannot benefit from its own wrong.

The Respondent disagrees, pointing out that Petroleum Investment Allowance is not provided for under CITA but under PPTA at 5% rate for onshore petroleum operations, not 10%.

The Respondent counters that the issue before this Tribunal is not about the Appellant's entitlement or lack of it to any investment allowance under CITA but the *rate of Petroleum Investment Allowance* which the Appellant is entitled to.

The Respondent also counters that the Appellant's tax liability cannot be varied by any agreement between the Appellant and the Federal Government with its agencies since tax payable by companies is imposed by statutes.





## Analysis

### Is the Appellant entitled to investment allowance under CITA?

The Appellant claims 10% *Petroleum Investment Allowance* under section 32 of CITA. The Respondent says *Petroleum Investment Allowance* is not claimable under CITA but under the PPTA at 5% rate for onshore petroleum operations.

Section 32(1) and (2) of CITA provides 10% investment allowance as incentives for companies that have incurred expenditure on plant and equipment.

Under the PPTA, section 11(1) also provides incentives to companies that utilize associated gas. Paragraph 5 of the Second Schedule to PPTA entitles a company that has incurred any qualifying capital expenditure wholly, exclusively, and necessarily *for the purposes of petroleum operations* to an allowance called *Petroleum Investment Allowance* at the appropriate rate contained in Table I to the Schedule.

Table I sets out the chargeable rates as follows:

- Onshore operations: 5%
- Operations in territorial waters and continental shelf areas up to and including 100 metres of water depth: 10%
- Operations in territorial waters and continental shelf areas in water depth between 100 metres and 200 metres: 15%
- Operations in territorial waters and continental shelf areas beyond 200 metres of water depth: 20%.

The EGP3 Project is an onshore project. This is why the Respondent has relied on the PPTA provision above to apply *Petroleum Investment Allowance* of 5% in its additional assessments of the Appellant.

But because the EGP3 project is a gas project which complements the gas-to-liquid EGTL Project, it is not subject to the provisions of the PPTA. Only companies that have incurred any qualifying capital expenditure *for the purpose of petroleum operations* are entitled to *Petroleum Investment Allowance* under the PPTA.

**Since the Appellant claims *Petroleum Investment Allowance*, is the Appellant entitled to investment allowance under CITA?**

The Appellant used the term *Petroleum Investment Allowance* (not 'investment allowance') in its amended Notice of Appeal, depositions, and amended final address. In Ground 1 and Ground 2 of the Appellant's amended Notice of Appeal, the Appellant did not invoke section 32 of CITA, the section that entitles the Appellant to investment allowance of 10% for investment in plant



and equipment. Instead, Ground 1 is based on the incentives provided for in section 11(1) of the PPTA. Ground 2 is also based on legitimate expectations allegedly created by the Federal Government in Appellant's favour.

In the Appellant's amended Final Address, it argues that it used *Petroleum Investment Allowance* to denote the investment-allowance rate that applies to the EGP3 Project since *Petroleum Investment Allowance* is the nomenclature used in the project agreement (Exhibits E7 and E8). But the Appellant's address cannot substitute evidence.

The appeal before us is formed on the basis of Petroleum Investment Allowance. It challenges the additional assessments served on the Appellant by the Respondent for disallowing Petroleum Investment Allowance of 10%. The Appellant's witnesses' statements on oath attest to this fact. None of the 2 grounds mentioned above contain the provisions of section 32 of CITA in support of the appeal.

But the Appellant's appeal is saved by Ground 3 of the Appellant's amended Notice of Appeal, invoking section 32 of CITA as a basis for deducting 10% allowance. Though the Appellant still used the term *Petroleum Investment Allowance* as also used in the Head of Agreement and Carry Agreement executed by the Appellant and NNPC (Exhibits E7 and E8), in substance it is investment allowance under section 32 of CITA that applies to EGP3 Project. The rate is 10%.

Having determined that the Appellant is entitled to investment allowance under CITA, the issue of legitimate expectations need not be decided. This Tribunal has considered the investment allowance that applies to the EGP3 Project and the rates as well.

## Conclusion

The Appellant's EGP3 Project is an onshore project which complements its EGTL gas-utilization project in the downstream sector. The Appellant is entitled to claim 10% investment allowance for costs incurred on plant and equipment for the project. We discharge the Respondent's Notice of Assessments PPTBA 60 and PPTBA 85 for 1998-2008 years of assessment. We order the Respondent to serve reviewed Notices of Assessment allowing investment allowance of 10% under section 32(1) and (2) of CITA.

## Legal Representation:

Mrs Olufunke Adekoya, SAN with T.I. Emuwa Esq. O. Adebisi Esq. M. Ukpebor Esq. and S. Esuga Esq. I. Berenibara Esq. Ms A. Adewusi, J. Akhator Esq. M. Oluwole Esq. Ms A. Ezegbulam and Ms O. Olowu for the Appellant.



B. H. Oniyangi (Mrs) with Bright Igbinosa Esq. and B. D. Akintola (Mrs) for the Respondent.

DATED THIS 29TH DAY OF OCTOBER 2015

  
KAYODE SOFOLA, SAN (Chairman)

  
CATHERINE A. AJAYI (MRS)  
Commissioner

D. HABILA GAPSISO  
Commissioner

  
MUSTAFA BULU IBRAHIM  
Commissioner

  
CHINUA ASUZU  
Commissioner

