

**IN THE TAX APPEAL TRIBUNAL
LAGOS ZONE
SITTING AT LAGOS**

Consolidated Appeals Appeal No: TAT/LZ/003/2014
Appeal No: TAT/LZ/006/2014

Between

The Shell Petroleum Development Company of Nigeria Limited Appellant

And

Federal Inland Revenue Service

Respondent

Judgment

Issue for determination

Section 10(1)(g) of the Petroleum Profits Tax Act (PPTA) allows deduction of interests on intercompany loans. The conditions for deductibility include: (a) the loans were secured at arm's length; and (b) the interests have been paid.

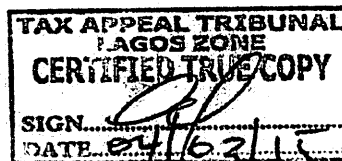
In filing its tax returns for 2007-2011, the Appellant deducted interest it had paid on loans from sister companies. The Respondent disallowed the deductions and assessed the Appellant to additional petroleum profits tax (PPT) and education tax (EDT).

Are those deductions valid?

Introduction

Under the Appellant's joint venture with the Nigerian National Petroleum Corporation (NNPC), NNPC had some financial obligations. The joint venture provides that should NNPC fail to meet these obligations, the Appellant should take measures to fill the funding gaps. NNPC did indeed fail to meet these obligations. Then the Appellant got loans from two sister companies: Shell Petroleum N.V and Shell Oman Trading Limited.

In computing its tax returns for those years, the Appellant deducted interest it had paid on the loans. Rejecting these deductions, the Respondent assessed the Appellant to additional PPT and subsequently EDT liability. The amounts due are US \$94,707,348 and US \$2,228,408 respectively.



Parties' Positions

The Appellant argues that it is not liable to pay additional PPT and EDT because the deductions the Respondent disallowed were valid as they are allowed under section 10 (1) (g) of PPTA.

In answer to the Respondent's invocation of section 13(2) of PPTA, the Appellant traces the legislative history of sections 10(1)(g) and 13(2) of PPTA. It submits that section 13(2) existed before section 10(1)(g) was introduced into PPTA in 1999. It argues that the sections conflict and thus section 13(2), being the earlier clause, ought to have been repealed. The Appellant therefore urges the Tribunal to invoke the doctrine of implied repeal to exclude the application of section 13(2) of PPTA.

The Appellant argues that even if section 13(2) of PPTA were in force, at best it modifies section 10(1)(f) of PPTA not section 10(1)(g).

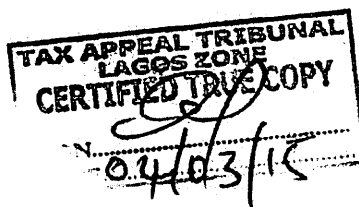
The Appellant relies on *Nigerian Agip Oil Company Ltd v FIRS* (TAT/LZ/015/2014 & TAT/LZ/016/2014 Unreported, decided 19 September 2014), where this Tribunal upheld the deductions of interests paid on intercompany loans obtained at arm's length.

The Respondent contends that while section 10(1)(g) of PPTA provides for loans between companies generally, section 13(2) provides for loans between *sister* companies specifically.

The Respondent maintains that section 13(2) of PPTA operates as a proviso to limit the generality of section 10(1) (g) of PPTA. The Respondent argues that section 10(1)(g) does not apply here because the borrower and lender are related companies. The provision that governs loans between related entities is section 13(2), not 10(1)(g), the Respondent insists. And under section 13(2) interests are not tax deductible.

Section 10(1)(g) states;

- (1) In computing the adjusted profit of any company for any accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing-



(g) all sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is the London Inter-Bank Offer Rate, by companies that engage in crude oil production operations in the Nigerian Oil Industry...

The Appellant borrowed the funds from two sister companies. Section 10(1)(g) allows deduction of interest on intercompany loans whenever those loans are obtained at arm's length. It says nothing about the relationship between lender and borrower.

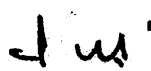
The Appellant's loans from its sister companies were at arm's length and therefore qualify for interest deductions under section 10(1)(g). This conclusion is consistent with our earlier decision in *Nigerian Agip Oil Company Ltd v FIRS* (TAT/LZ/015/2014 & TAT/LZ/016/2014, Unreported, decided 19 September 2014).

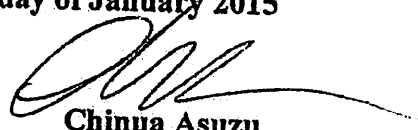
We set aside the 2007-2011 PPT Notice of Additional Assessment no. PPTBA 95 and EDT Notice of Additional Assessment no. PPTBA/ED 87.

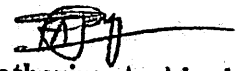
Legal Representation:

Chukwuka Ikewuzom Esq. with Shehu Mustafa Esq. and Mrs O. Ogunrinde
for the Appellant
Iriogbe A.A. (Mrs) for the Respondent.

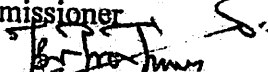
Dated at Ikeja Lagos this 22nd day of January 2015


Kayode Sofola, SAN
Chairman


Chinua Asuzu
Commissioner


Catherine A. Ajayi (Mrs)
Commissioner


D. H. Gapsiso
Commissioner


Mustafa Bulu Ibrahim
Commissioner

