

**IN THE TAX APPEAL TRIBUNAL  
IN THE LAGOS ZONE  
HOLDEN AT IKEJA**

**Consolidated Appeal Nos.**

TAT/LZ/EDT/049/2014;

TAT/LZ/EDT/050/2014;

TAT/LZ/EDT/051/2014;

TAT/LZ/EDT/052/2014;

TAT/LZ/EDT/053/2014;

TAT/LZ/EDT/054/2014;

TAT/LZ/CIT/055/2014;

TAT/LZ/CIT/056/2014;

TAT/LZ/CIT/057/2014;

TAT/LZ/CIT/058/2014;

TAT/LZ/CIT/059/2014;

TAT/LZ/CIT/060/2014

Between

**The American International School of Lagos**

Appellant

And

**Federal Inland Revenue Service**

Respondent

**Judgment**

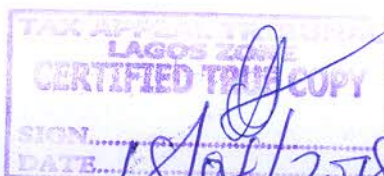
**Issues for determination**

To determine this appeal the Tribunal only has to address the following questions:

1. The Appellant is an educational institution. Is it therefore exempt from companies' income tax? If so, does exemption from companies' income tax translate automatically into exemption from education tax?
2. Must the Respondent issue a Tax Clearance Certificate to the Appellant on application, in the absence of a valid reason to refuse it?

**Facts and Proceedings**

The Respondent assessed the Appellant to additional education tax and companies' income tax for the 2008-2013 years of assessment as tabulated below.

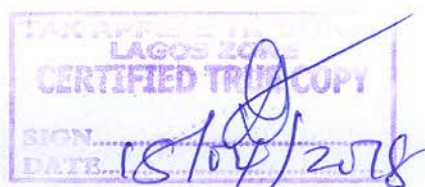


S/N	Year of Assessment	Assessment No.	=N=
1	2008	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/055E	5,207,760.00
2	2009	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/055F	4,534,300.00
3	2010	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/055D	19,885,620.00
4	2011	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/055C	14,991,780.00
5	2012	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/055B	17,333,040.00
6	2013	LTO/NON-OIL/LAG/AS PER A/C/GA/EDT/055A	17,300,700.00
7	2008	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/053A	26,038,800.00
8	2009	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/053B	22,671,500.00
9	2010	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/053C	99,428,100.00
10	2011	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/053F	110,156,690.10
11	2012	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/053E	218,800,545.60
12	2013	LTO/NON-OIL/LAG/AS PER A/C/GA/CIT/053D	212,892,734.10

The Appellant objected to the additional assessments. The Respondent refused to amend them. So the Appellant brought this action.

The Appellant filed the following:

1. Notice of Appeal dated 28 May 2014 for each of the 12 appeals, later consolidated;
2. Amended Notice of Appeal dated 12 November 2014 on the consolidated appeals;
3. Sworn witness statement for each of the twelve consolidated appeals deposited to by Mrs Oladele Otunla; and
4. Documentary exhibits.





The Respondent filed the following:

1. Reply dated 14 August 2014;
2. Sworn witness statement of Rasak Adelanwa Oki; and
3. Documentary exhibits.

### Parties' Positions

The Appellant submits that it is exempt from companies' income tax because it is engaged in educational activities of a public character.

The Appellant submits that it is CIT-exempt because section 23(1)(c) of the Companies Income Tax Act(CITA) exempts from tax *"the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character"*. The Appellant states that there is no dispute between the parties as to whether it is engaged in educational activities. Rather the Respondent's only contention is that the Appellant's educational activities are not of a public character.

The Appellant submits that its educational services are available to, and benefits the Nigerian public. The Appellant argues further that though CITA does not define the term "public character", some guidance as to its meaning is provided in the Requirements for Funds, Bodies or Institutions (under the 5th Schedule to the CITA) Regulations 2011. The Appellant says the Regulations define the term "fund, body or institution of a public character" as *"a body or institution whose activities are meant to benefit Nigerians in general and particularly the public and its profits are not available for distribution to its promoters"*. Thus, the Appellant submits that its educational activities come within the Regulations' definition of an institution of a public character.

The Appellant argues that it does not engage in any other form of trade or business apart from its principal activity of providing education to school children in Nigeria.

The Respondent cites section 9(1)(d) and (f) of CITA, which imposes CIT *"upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of fees, dues and allowances (wherever paid) for services rendered"* as the basis upon which the Appellant is liable to pay CIT, since the Appellant collects "fees" for the provision of the educational services it renders to students.

The Respondent argues that the Appellant does not qualify as an educational institution of public character under section 23(1)(c) of CITA because the services provided by the



Appellant cannot be said to be available for all Nigerians to use, share or enjoy since its services are not available free of charge.

For the definition of *public*, the Respondent relies on Black's Law Dictionary (9th edition), which defines "public" as "*Relating or belonging to an entire community, state, or nation. Open or available for all to use, share or enjoy*".

**The Appellant states that it is not liable to Education Tax.**

The Appellant submits that once the Tribunal finds that it is not liable to tax under CITA, there will be no basis for the assessment to education tax because the Education Tax Act provides that education tax is assessed at 2% of a company's assessable profits.

The Respondent submits that section 1 of the Education Tax Act renders the Appellant liable to Education Tax. The Respondent asserts that the company being a registered company in Nigeria has no excuse not to pay education tax.

**The Appellant contends that it is entitled to a Tax Clearance Certificate.**

The Appellant submits that in responding to its application for a Tax Clearance Certificate (TCC), the Respondent was bound, under section 101 of CITA, to either (a) grant the application and issue a TCC; or (b) deny the application and state the reason for refusing the application.

The Respondent opines that the Appellant having refused to discharge its tax liability is not entitled to TCC under the directive principles of section 101 of CITA. Thus, the Respondent is not under obligation to issue the TCC.

### **Analysis and Decision**

The Appellant is a not-for-profit entity, established as a company limited by guarantee. The object of the Appellant is the provision of educational services to school children in Nigeria.

The parties are not in dispute that the Appellant renders educational services or carries out educational activities. But while the Appellant feels that its educational services are of public character and falls within the ambit of section 23(1)(c), the Respondent insists





that the Appellant's educational services are for an exclusive class of Nigerians and are therefore not of a public character. Thus, the Respondent thinks that the Appellant's activities are within the overriding provisions of section 9(1)(d) and (f).

For its position that the Appellant is a taxable entity, the Respondent relies on section 9(1)(d) and (f) of CITA. But section 9 is a general provision on the imposition of tax on companies, and "fees" in that provision does not contemplate tuition fees. And section 23 limits section 9 and provides specific exemptions. Thus, we find section 23(1)(c) more useful to the determination of this appeal.

Section 23(1)(c) visualizes the accruing of profit to a company engaged in educational services of a public character and yet only tolerates taxation of profits from trade or business carried on by such a company. Thus, the charging of fees for educational services is not strange to the income generation activities of a school. The Respondent's argument that the rate of fees limits the Appellant's services to select few and thus strips the school from being of public character is futile.

The Respondent did not provide any evidence that any segment of the Nigerian public is excluded from benefiting from the educational services of the Appellant, or that any profits or incomes are distributed to the Appellant's directors or guarantors, or that the Appellant derives any income or profits from sources other than the provision of educational services. Thus, the school generates income from educational services to provide educational services. We find no contradiction with section 23(1)(c) in the Appellant's activities.

#### Conclusion:

We nullify all the Additional Assessments issued against the Appellant.

Since the Appellant's income is not taxable under CITA, we find no basis for assessable profit to subject to education tax by the Respondent.

Accordingly, we order the Respondent to issue a Tax Clearance Certificate to the Appellant as rightly demanded.

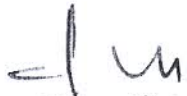


**Legal Representation**

Chukwuka Ikwuazom Esq., Shehu Mustafa Esq. , and Mrs Oluwafikayomi Ogunrinde for the Appellant.

Mrs Mofoluwake Foresythe for the Respondent.

**DATED AT LAGOS THIS 29TH DAY OF JULY 2015**



**Kayode Sofola, SAN**

Chairman



**Catherine A. Ajayi (Mrs)**

Commissioner



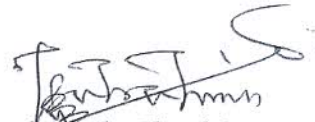
**Chinua Asuzu**

Commissioner



**D. H. Gapsiso**

Commissioner



**Mustafa Bulu Ibrahim**

Commissioner

