

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

Consolidated Appeals Appeal No: TAT/LZ/030/2014
Appeal No: TAT/LZ/031/2014

BETWEEN:

Phillips Oil Company 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 must have been given at arm's length, and
- b) the interests must have been paid.

The Appellant Philips Oil, borrowed funds from its affiliate, Philips Petroleum Company (Philips Petroleum).

In filing its tax returns for 2006 through 2011, the Appellant deducted the interests incurred on the loans. The Respondent disallowed the deductions and assessed the Appellant to additional Petroleum Profit Tax (PPT) and Education Tax (EDT). Are the interests tax-deductible?

Introduction

The Appellant took loans of ultimately U\$200 million from Phillip Petroleum at open-market interest rate. The Appellant deducted the interest it had paid on the loans in computing its tax returns for 2006-2011. The Respondent rejected the deductions and



assessed the Appellant to additional PPT and consequently EDT liability.

Proceedings

Mr Chiwendu Enechi, the Appellant's tax consultant, testified for the Appellant. The Appellant tendered 12 documents in evidence. The Respondent neither led oral evidence nor tendered any document.

Parties' Positions

The Appellant argues that the interests were paid on intercompany loans *at arm's length* and are thus deductible under section 10(1)(g) of PPTA.

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) as restricting the ambit of section 10(1)(f), the Appellant contends that section 10(1)(g) and 13(2) of PPTA are inconsistent with each other but that section 10(1)(g) having been introduced by section 8(c) of Decree No. 30 (a more recent provision), it overrides section 13(2). Thus the Appellant argues that in the event of a conflict between two sections, the latter will supersede the former. For this proposition of law, the Appellant cites *A.G. Anambra State v A.G. Federation* [1993] 6 NWLR {Part 302} 726 and *Olu of Warri v Kperegbe* [1994] 4 NWLR {Part 339} 416.

The Appellant relies on *Nig. Agip Oil Co. Ltd v FIRS* [TAT/LZ/015/2014 & TAT/LZ/016/2014 unreported, decided 19 September 2014], where this tribunal upheld the deductions of interest paid on intercompany loans obtained at arm's length.

The Respondent counters that section 13(2) of PPTA provides an exception to the general rule in section 10(1)(g) by



disallowing deductions of interests on loans between sister companies.

The Respondent maintains that section 13(2) is extant law and contends that while section 10(1)(g) of the PPTA provides for loans between companies generally, section 13(2) provides for loans between related companies specifically.

The Respondent maintains that section 13(2) of the PPTA is not contrary to section 10 (1) (g) but operates as a proviso to limit the generality of the provisions 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 maintains and concludes that under section 13(2), interests are not tax-deductible.

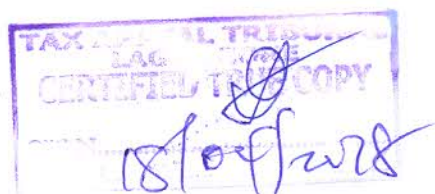
Analysis and Conclusion

Section 10(1)(g) states;

(1) In computing the adjusted profit of any company of 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 its affiliate. Section 10(1)(g) allows deduction of interest on intercompany loans



whenever those loans are obtained at arm's length. It is immaterial whether the lender and borrower are related.

Section 13(2) of PPTA relied on by the Respondent does not limit or modify Section 10(1)(g); it relates to a different provision entirely. The Appellant's loan from its affiliate company was at arm's length and therefore qualifies for interest deductions under section 10(1)(g). This conclusion is consistent with our earlier decision in *Nig. Agip Oil Co. Ltd v FIRS* [unreported, TAT/LZ/015/2014 & TAT/LZ/016/2014] and our recent decision in *Shell v FIRS*. [Unreported, Appeal No: TAT/LZ/003/2014 & TAT/LZ/006/2014].

We uphold the appeal and set aside the additional assessments.

Legal Representation:


Adewale Atake with Dipo Komolafe, Igonikon H. Whyte, Omolara Adewumi, Sesan Sulaiman and Biegbana Jaja for the Appellant.


Abisola Sodipo for the Respondent.

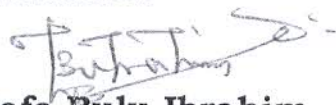
Dated at Ikeja Lagos this 11th day of February 2015


Kayode Sofola, SAN
Chairman

Chinua Asuzu
Commissioner


Catherine A. Ajayi (Mrs)
Commissioner


D. H. Gapsiso
Commissioner


Mustafa Bulu Ibrahim
Commissioner

