

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

CONSOLIDATED APPEALS: APPEAL NO. TAT/LZ/CIT/043/2014
 APPEAL NO. TAT/LZ/EDT/044/2014
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 APPEAL NO. TAT/LZ/EDT/046/2014
 APPEAL NO. TAT/LZ/EDT/047/2014

Between

CITIBANK NIGERIA LIMITED

Appellant

And

FEDERAL INLAND REVENUE SERVICE

Respondent

Judgment

Introduction:

The Appellant challenges the Additional Companies Income Tax (CIT) and Education Tax (EDT) Assessment for 2009, 2010 and 2011 years of assessment issued on it by the Respondent on 19 February 2014. The Appellant requests the Tribunal to discharge these CIT and EDT Notices of Additional Assessment.

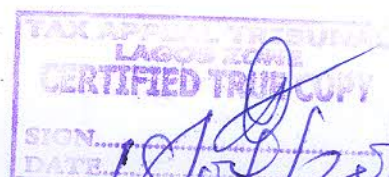
Issue for determination:

The sole issue for determination in this appeal is:

Does trading in FGN Bonds before their maturity convert them to short-term instruments? If so, are the income or profits from such trading taxable under CITA?

Facts and Proceedings:

Following a tax audit of the Appellant for 2008-2010 accounting years, the Respondent assessed the Appellant to additional CIT and EDT inclusive of penalty and interest. These are set out in the Notices of Additional Assessment dated 19 February 2013 as tabulated below.



S/N	Year of Assessment	Assessment No.	=N=
1	2009	LTO/NON-OIL/LI/GA/AUD/032A	243,775,667.00
2	2010	LTO/NON-OIL/LI/GA/AUD/ET/008B	25,472,002.00
3	2010	LTO/NON-OIL/GA/AUD/032B	398,911,745.00
4	2009	LTO/NON-OIL/LI/GA/AUD/ET/008A	15,565,985.00
5	2011	LTO/NON-OIL/LI/GA/AUD/ET/008C	72,067,671.00
		TOTAL	755,793,070.00
		Less Undisputed portion of Item 5 already paid	27,009,765.09
			728,783,304.91

The Appellant objected to the additional assessments by its letters dated 19 March, 2013 and 4 October 2013. The Respondent rejected the objection by its letter of 9 January 2014.

The Appellant filed the following:

1. Five separate Notices of Appeal dated 13 May 2014, subsequently consolidated;
2. Rejoinder dated 29 September 2014 to Respondent's Replies to the Notices of Appeal;
3. Five separate Written Statements on Oath dated 10 May 2014 for each of the five appeals and Additional Written Statement on Oath dated 29 September 2014 by Mr Adebayo Ajayi; and
4. Documentary exhibits.

The Respondent filed the following:

1. Five separate Respondent's Replies dated 20 August 2014;
2. Amended Respondent's Reply dated 19 November 2014;
3. Amended Witness Statement dated 19 November 2014 by Uche Ahaaiwe; and
4. Documentary exhibits.

Parties' Positions:

The Appellant submits that the FGN Bonds in contention in these appeals are long term instruments because they have maturity periods of 3-20 years. The Appellant further asserts that dealings in these bonds before they mature does not change their long-term character. Thus, the gains or profits derived from trading in such bonds are not taxable under section 9(1)(g) of the Companies Income Tax Act (CITA), which expressly governs short term instruments. The section provides as follows:



"9(1) Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in section 40(1) of this Act upon the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of-

(g) any amount of profits or gains arising from acquisition and disposal of short term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds."

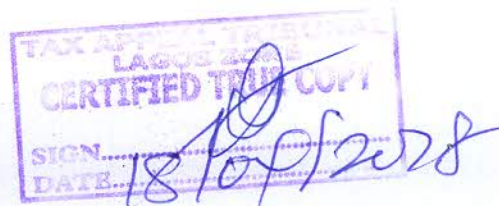
The Appellant asserts that section 9(1)(g) of CITA does not impose a requirement that long term instruments must be purchased from the primary market or be held till maturity for profits or gains from their acquisition or disposal to be tax-exempt.

The Appellant argues that the *"express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been included by implication"* as expressed in the maxim *"expression unius est exclusio alterius"*; In support of this maxim and proposition, the Appellant cites *Ojukwu v. Yar'Adua* [2008] 4 NWLR (Part 1078) 435 at 461. The Appellant concludes that the express mention of short-term money instruments in Section 9 (1)(g) of CITA necessarily excludes long term money instruments such as FGN bonds.

The Appellant also commends to this Tribunal the Supreme Court decision in *Abubakar v. Yar'Adua* [2009] 5 W.R.N. 1 at 121, para. 5 (per Tobi JSC) and the Court of Appeal decision in *Ahmadu v. Gov. of Kogi State* [2002] 3 NWLR (Part 755) 502, 522 B-E.

The Appellant's witness, Mr Adebayo Ajayi states in paragraph 10 of his witness statement that *"... as a matter of policy, Citibank maintains different portfolios for its FGN bonds. These include: (a) Available for Sale (AFS) portfolio consisting of FGN bonds purchased with the intent to hold them for an indefinite period of time; and (b) Trading Account (Trading) portfolio consisting of bonds purchased with a view to profit maximisation through market appreciation and resale. This policy was explained to the Respondent during its audit exercise"*.

Mr Ajayi adds in paragraph 11 that *"Although some of the FGN bonds in issue derived from the Trading portfolio, a substantial number of them derived from the AFS portfolio. Unlike the Trading portfolio, the bonds in the AFS are not bought with a view to trading in them. Quite to the contrary, they are purchased with the intention that they are held to maturity but are available for sale to effectively manage interest rate exposure, and meet the liquidity needs of the Appellant."*



The break-down of the two portfolio components are given below:

GL Code	GL Description	2008 N	2009 N	2010 N	Total N
442301105	Gain/Loss on FGN bonds in Trading Portfolio	900,638,299	252,300,897	838,038,371	1,990,997,567
445250402	Gain/Loss on FGN bonds in AFS Portfolio	(219,823,158)	866,126,223	1,144,225,234	1,790,528,299

The Respondent argues that “when bonds are disposed off [sic] before maturity date or purchased from the secondary market, there is premium and discount income [sic] to be earned by either party [sic] to the transaction - one party earning premium (gain) and the other party incurring discount (loss)”. The Respondent maintains that its tax stake in the transaction is the net gain arising from the aggregation of the gains and losses on the FGN bonds trading.

The Respondent submits that the income made from trading in FGN bonds is an income from sale transaction. The Respondent adds that regardless of its being sale of FGN bonds, it must be subjected to tax like any income arising from trading or sale transactions.

The Respondent argues that Federal Government Securities are advisedly listed under section 9(g) of CITA. The legislature could not have intended that a long-term security whose tenure is abbreviated by the holder should retain the character of long-term instrument, thus escaping taxability and leading to revenue loss to the Federal government.

On the EDT assessment, the Appellant submits that once this Honourable Tribunal finds that there are no additional gains/profits which are liable to tax under CITA, there will be no basis for the assessment of additional Education Tax (EDT).

Analysis and Decision:

The FGN bonds in dispute in these consolidated appeals are clearly long-term instruments both in substance and form. And long-term FGN bonds are not within the contemplation of section 9(1)(g) of CITA) for tax purposes. It is common ground between



the parties that the bonds are long-term instruments. Their point of departure is what impact sale before maturity would have on their long-term character: while the Appellant maintains that that character is retained even after a premature sale, the Respondent submits that a premature sale would result in a loss of the long-term character.

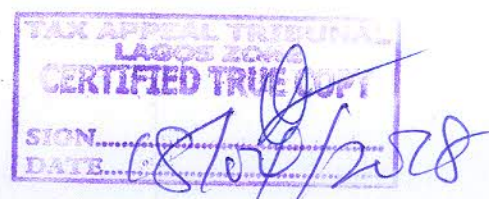
But the bonds are long-term because of their tenures. For the bond to maintain its long-term character, the holding period of 3 years must apply. There must be clear proof that the holder has the initial intention of holding it as an investment till the end of the tenure unless the advent of unforeseen compelling circumstances renders it saleable. On the other hand, if the purpose of holding the bonds is to meet short term obligations as they arise in the ordinary course of business, then they are not any different from short term securities. Depending on the intention of the holder, the FGN bonds in contention are as convertible as short-term securities.

The Appellant reveals that its FGN bonds portfolio is categorised into two:

- (a) Available for Sale (AFS) portfolio consisting of FGN bonds purchased with the **intent** to hold them for an indefinite period of time; and
- (b) Trading Account (Trading) portfolio consisting of bonds purchased with a view to profit maximisation through market appreciation and resale.

The description of Available for Sale portfolio shows that there is no intention to sell the bonds before the expiration of the tenure except for reasons of interest rate exposure and liquidity needs. Interest-rate exposure and liquidity needs are volatile in a banking business and can render the sales frequency of long-term bonds to short-term character. Thus, interest rate exposure and liquidity needs of a banking business are clearly of short-term nature. It is therefore, impracticable to manage or cushion the volatility of interest rate and liquidity with any long-term debt instruments without the latter transforming its character to that of the former. Available for Sale portfolio are saleable on the promptings of interest rate and liquidity factors which are constantly changing factors in the banking industry. Interest rate and liquidity requirements may influence sale of the bonds as regularly as sale of trading portfolio. We view the distinction in the Appellant's categorisation of its bond portfolio into Available for Sale and Trading as merely a matter of style rather than of substance. We are not convinced that the bonds are not robbed of their long term attributes.

The Trading portfolio as described by the Appellant is no more than a trading chattel or trading stock. Long-term bonds instruments, property, plant, or equipment traded upon by a company in the ordinary course of business are treated as trading stock, convertible to cash and cash equivalent within an accounting year. Conversely, if the company



decides to use them as fixed assets, so they will be. Thus, the FGN bonds having been purposely converted to trading portfolio lose their long-term attributes. The Appellant has elected to characterise its FGN bonds as trading instruments. And as trading instruments the bonds are as convertible to cash as short term securities. Since the intention and purpose of holding the trading portfolio are not long-term, the bonds in the portfolio cannot be classified as long-term.

Accordingly, we find the gains in the bonds transactions falling within the ambit of section 9(1)(g) of CITA) and the Respondent is entitled to tax the Appellant for CIT and EDT.

Conclusion:

We uphold the additional CIT and EDT assessments and order the Appellant to pay the 2008 to 2010 assessments of N728,783,304.91.

Legal Representation:

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

Mrs Ukpi Awashima for the Respondent.

DATED AT LAGOS THIS 29TH DAY OF OCTOBER, 2015



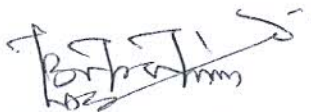
KAYODE SOFOLA, SAN (*Chairman*)



CATHERINE A. AJAYI (MRS)
Commissioner



D. HABILA GAPSISO
Commissioner



MUSTAFA BULU IBRAHIM
Commissioner



CHINUA ASUZU
Commissioner

