

January 15, 2019

**LEGAL ALERT**

**COURT OF APPEAL HOLDS THAT A COMPANY LIMITED BY SHARES THAT IS ENGAGED IN EDUCATIONAL ACTIVITIES IS NOT EXEMPTED FROM INCOME TAX UNDER SECTION 23(1)(c) OF CITA**

**1. Introduction**

On 11<sup>th</sup> of December 2018, the Court of Appeal affirming the decision of the Federal High Court, in **Best Children International Schools Ltd v. Federal Inland Revenue Services (Appeal No. CA/A/393/2016)**, held that an educational institution that is not registered as a company limited by guarantee but as a company limited by shares is not necessarily entitled to enjoy the exemption from income tax under Section 23(1)(c) of the Companies Income Tax Act (CITA)

The Appellant, a company limited by shares is an academic institution duly registered under the Companies and Allied Matters Act (CAMA). The Appellant had commenced the action at Federal High Court (trial court) seeking to prohibit/restrain Federal Inland Revenue Service (FIRS) from imposing income tax on the Appellant on the ground that the Appellant is an educational institution and is therefore exempted from income tax and related taxes under Section 23(1)(c) of CITA. The trial court ruled in favour of FIRS. The trial court held that the Appellant is registered as business venture as a company limited by shares and therefore cannot be exempted under Section 23(1)(c) of CITA. Dissatisfied the Appellant filed this appeal at the Court of Appeal, sitting in Abuja.

**2. Issues for Determination**

The Court of Appeal distilled two issues for determination:

- i. Whether the trial court erred in the construction of Section 23(1) of CITA.
- ii. Whether the trial court misdirected itself, when it relied on the fact of registration of the appellant as a private company limited by shares in determining whether it falls under Section 23(1)(c) of CITA.

**3. Position of the Appellant**

The case of the Appellant is that:

- as a company that provides educational activities that are open to members of the public, it is entitled to claim exemption under Section 23(1)(c) of CITA. The

**Adebisi Tax & Legal**

House 20, Wema Terrace, Udi Street, Osborne Estate, Ikoyi, Lagos. Tel: +234 90600 02330

[www.adebitaxandlegal.com](http://www.adebitaxandlegal.com)

Appellant's schools have pupils/students for both primary and secondary schools and who are also boarders;

- the Appellant only provides educational services for members of the public and that the Appellant does not carry on any other trade or business; and
- the fact that the Appellant is registered as a company limited by shares is not sufficient to subject the income derived by it from educational activities to income tax.

#### **4. Position of the Respondent**

The Respondent on the other hand, contended that all registered companies in Nigeria are under the obligation to pay tax on its global income. The Respondent further stated that the only companies that are exempted from payment of income tax under Section 23(1)(c) of CITA are companies limited by guarantee as provided for in Section 26 of CAMA.

#### **5. Decision of the Court**

The Court of Appeal ruled in favour of FIRS. In dismissing the appeal, the Court of Appeal held inter alia as follows:

- For the Appellant to be entitled to the exemption set out under Section 23(1)(c) of CITA, it must prove that it is engaged in ecclesiastical, charitable or educational activities of a public character and further that the profits it makes are not profits that are derived from a trade or business carried on by it.
- Under the applicable laws, companies formed and registered are allowed to carry on business, make profits and distribute the profits except a company limited by guarantee.
- FIRS in their presentation before the trial court presented the Appellant as a registered company limited by shares. A company limited by shares is for profit making and must pay taxes.
- The singular fact that the Appellant is a school or an educational institution is not enough to exempt it from payment of tax.
- A company cannot hide under any name or object to escape its tax obligations

## 6. Implications of Judgment

The judgment of the Court of Appeal has clearly set a limit on the nature of companies that can take advantage of the provision of Section 23(1)(c) of CITA. A company limited by shares cannot claim exemption under Section 23(1)(c) of CITA based on this decision. Based on the above, to avoid a situation whereby the taxman visits you with an assessment, it is advisable that such a venture be registered as a company limited by guarantee if the object of any venture is to register a company that would be engaged in educational activities of a public character.

However, we do not agree with the position that once it is established that a company is registered as a private company limited by shares it cannot take advantage of the provision of Section 23(1)(c) of CITA. The exemption set out in Section 23(1)(c) of CITA is for “*any company*” including a company limited by shares that is engaged in ecclesiastical, charitable or educational activities of a public character so far as much profits are not derived from a trade or business carried on by such a company.

Maxwell Ukpebor  
+23408039600520

Samuel Akpologun  
+23408036899189

Samuel Esuga  
+2348037403389

**This Legal Alert contains information on tax/legal issues. It does not constitute legal of professional advice on such issues. Where specific legal advice is needed, the services of a tax solicitor/adviser should be sought**