Introduction - Taxation of Educational Institutions

It is a commonly held public opinion that Educational Institutions are not liable to pay, suffer or bear any form of tax on their profits or income.

The decision of the Tax Appeal Tribunal ("TAT") in Ikeja, Lagos in 2014, in the matter of **the American International School of Lagos v. Federal Inland Revenue Service** is sometime relied upon as the legal basis for the view that Educational Institutions are not liable to pay any Tax on their profits and or income.

An examination of the TAT's above decision is necessary to verify the credence of the Public Opinion that Educational Institutions' income and or profits are not liable to bear any tax obligation?

The TAT Judgment - The American International School of Lagos v. Federal Inland Revenue Service

The contention of the Educational Institution in this case was that it is exempted from paying Companies Income Tax ("CIT"), and Tertiary Education Tax ("TET"), on the grounds that it is an Educational Institution, Incorporated, Limited by Guarantee, engaged solely in educational activities of a public character.

The defence of the Respondent Tax Authority in this case was that the fees charged by the Appellant Educational Institution were not affordable by many Nigerians. The Respondent therefore contended that the Appellant Educational Institution did not qualify as an Educational Institution of a Public Character under Section 23 (1)(c) of the Companies Income Tax Act (as amended).

The final decision of the Tax Appeal Tribunal, in this case, was that as the Appellant is a not-for-profit registered company, Limited by Guarantee, with no evidence that its profits or other income were distributed among the Appellant Educational Institution's Directors or Guarantors, the Appellant is exempted from Companies Income Tax and Tertiary Education Tax obligations. The Tax Appeal Tribunal also held that the Respondent Tax Authority's contention that the School Fees charged by the Appellant Educational Institution is only affordable by a select few, and therefore not of a general public nature or character, was discountenanced as the Tax Authority did not tender any evidence in support of this allegation.

The Tax Appeal Tribunal accordingly ordered the Respondent Tax Authority to issue to the Appellant Educational Institution the necessary Tax Clearance Exemption Certificate.

TAT Judgment - *Ratio Decidendi and Obiter Dictum*

The legal basis for the Tax Appeal Tribunal decision in the above matter was that because the Appellant Educational Institution was a Not-For-Profit registered Company Limited by Guarantee, whose profits cannot be distributed among the Appellant's Directors or Guarantors, the Appellant Educational Institution is exempted from corporation tax.

The decision of the Tax Appeal Tribunal in the above referenced case would have been different if the Appellant Educational Institution was not a Company Limited by Guarantee, with no share capital, whose income, profits or assets are not distributable or transferable among the persons who control the Educational Institution, either directly or indirectly.

An Educational Institution that is not Limited by Guarantee or registered as a non-governmental charitable organisation, under Sections 26 and 370 of the Companies and Allied Matters Act respectively will find it very difficult to claim tax exemption under Section 23 (1) of the Companies Income Tax Act (as amended). The TAT Passing Remarks, which is what Lawyers call *Obiter Dictum*, that it is not strange that Educational Institutions generate their income from educational services that they provide, did not form the legal basis for the TAT's bottom-line Ratio Decidendi decision.

Conclusion

Existing Laws already require all registered legal entities, including tax exempted Limited Liability by Guarantee Companies, and Registered Trustees who are more commonly known as NGOs, to file at the end of each financial year, an Annual Return to which must be annexed a Certified Income Statement containing the particulars of their indebtedness and the landed properties held, mortgages and charges, etc. Unfortunately, the enforcement of these statutory requirements by the Tax and Corporate Affairs Commission authorities remains very poor.

Subject to when the existing statutes are amended, some regulatory Guidelines on how the assets, income and the remuneration of the officers who control a tax-exempted entity in Nigeria are administered, is urgently required in order for there to be a fair playing field between the tax-exempted entities and the entities that do not enjoy Tax exemption.

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