



## TAXATION OF EDUCATIONAL INSTITUTIONS UNDER THE FINANCE ACT, 2021.

### INTRODUCTION.

Schools under various tax laws, were exempted from tax liability under section 23(1)(c) of the Companies and Allied Matters Act (CITA). The act included among others, educational services of a public character, as activities exempted from Companies Income Tax (CIT). The rationale posed was that schools are incorporated as a company limited by guarantee or Incorporated Trustees, being a company not capable of making profit.

This position enjoyed unchanged status till the enactment of Finance Act 2021. Courts in a plethora of cases gave life to the principle of the law that schools are exempted from CIT liability as encapsulated under section 23(1)(c) CITA Supra. This was demonstrated in the case of **American International School Lagos (AIS) vs Federal Inland Revenue Service (FIRS)** where the Court dismissed the FIRS arguments and held that American International School of Lagos is registered as a company limited by guarantee, and therefore qualifies for the exemption provided by Section 23 (1)(c ) of CITA.

Before the enactment of Finance Act 2021, Educational Institutions engaged in ecclesiastical, charitable or educational activities of a public character, its income are exempted from CIT liability under CITA. The guiding principle is that such Educational Institution must be incorporated as company limited by guarantee and engage in educational activities of a public character. It does not matter if the company is a school, it must be incorporated as a company limited by guarantee to qualify for CIT exemption under section 23(1)(C) Supra. In **Best Children International School Limited (BCIS) vs FIRS** the Court of Appeal held that BCIS is a profit making company, limited by shares, and does not qualify for CIT exemption under CITA. Public Character is not defined in either CITA or in Territory Education Trust Fund (Establishment, Etc) Act 2011. FIRS determines public character as defined in Paragraph 9 of the Requirements for Funds, Bodies or Institutions Regulations, 2011, issued pursuant to FIRS Establishment Act. The regulation defined 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. FIRS in several occasions review educational institutions returns in determining whether such institutions activities are of public character. Where such services is not of public character, such institution will be assessed and liable to tax.

### TAX IMPLICATION ON EDUCATIONAL ACTIVITIES UNDER THE FINANCE ACT 2021.

As emphasized earlier, before the advent of finance act 2021, incomes of educational institutions engaging in educational activities of public character were exempted from

companies income tax under section 23(1)(c) CITA. Finance act 2021 amended section 23(1)(c) CITA by omitting educational activities as list of activities exempted from CIT.

Relying on the provisions of the Finance Act 2021, all schools incorporated in whatever form, provided it is incorporated as an incorporated entity, is subject to companies' income tax. However, schools registered as a partnership are exempted from Companies Income Tax under **section 9 of the Companies Income Tax Act**.

The Corporate Affairs Commission on Friday being 04 March, 2022 issued a circular directing that Schools, Academies and such other institutions of learning are no longer allowed to register or operate under a Business Name in Nigeria. The Commission decision is predicated on the fact that an institution is body corporate with perpetual succession, capable of contracting and issuing certificates in its own name, which attributes are absent in a Business Name. In view of this, it is pertinent to note that schools can no longer be registered or operated under Business Name in Nigeria.

### **TAKE HOME.**

Schools in Nigeria are now required to pay Companies Income Tax on any income generated from educational activities. The era of exemptions are over, the fact that such schools are incorporated as a company limited by guarantee or Incorporated Trustee engaging in educational activities of a public character, is no longer a bulwark for CIT liability neither does it qualify such entity for exemptions under the amended section 23 (1) (c) of CITA.

Hence, companies or schools engaging in the service of educational activities of a public character should bear in mind its liability in CIT on its income generated from its engagement in educational activities.

The position is not the same for schools registered as Limited Liability Partnership, as a matter of fact, such schools are not taxable under Companies income Tax Act, from the date of incorporation till cessation of business. Section 9 Companies Income Tax Act, Supra.

Provided that such schools registered as a Limited Liability Partnership, remains in business under the same form or nature of business. Where it to re-register or convert to any form of business under Part A or Part C of the Companies and Allied Matters Act 2020, the school will be taxed and liable to Companies Income Tax under CITA. Section 9 CITA Supra.

### **CONCLUSION.**

The rate of education system in the country presently is not deserving for tax exposure as now provided in the amended section 23(1)(c) CITA as this will alarm the ill state of education in Nigeria.

While cost of living is increasing, our educational sector should have been protected from tax exposures by maintaining tax exemptions or incentives, which encourages public private partnership and private sector participation in our educational sectors.

The reality now remains that schools incorporated under either part A or C of CAMA are subject to Companies income tax. Regrettably, in view of the Corporate Affairs Commission recent circular of 04 March, 2022, Schools can no longer be registered as a Business Name in Nigeria.

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