

**LIABILITY OF AN EDUCATIONAL INSTITUTION TO PAY TAX IN NIGERIA\*****Abstract**

*Every registered company in business pay taxes in Nigeria unless it is otherwise exempt. A company is to be entitled to statutory exemptions where it proves that it is a company engaged in ecclesiastical, charitable or educational activities of a public nature. Further, it has to prove that the profits it made are not profits that are derived from trade or business carried on by it. This paper seeks to establish that it is not on all occasions or in all circumstances that a company engaging in an educational activity will hide under any name or object to escape tax obligations to the state. The doctrinal method, analytical and expository approaches were used in reviewing the extant laws on taxation of a registered company, case laws and views of tax experts on the issue were also employed. The work reveals that under extant Nigerian tax laws, companies formed and registered as educational institutions are allowed to carry on business, make profits and distribute the profits except companies limited by Guarantee. Furthermore, being a school or an educational institution is not enough to exempt a company from payment of taxes unless upon meeting up with certain conditions spelt out by law.*

**Keywords: “Liability”, “Education Tax”, “Exemption”,**

**1 Introduction:**

Taxation of ecclesiastical, charitable and non-governmental organizations including educational institutions has always been very contentious owing to the fact that by the provisions of the Law,<sup>1</sup> they generally enjoy tax exemptions in Nigeria. Their exemption status is as a result of the fact that the law presumes that they engage in activities of a public character. It is also presumed that the profits they derive are not derived from a trade or business carried on by such company. It is therefore mandatory that for an organization seeking or claiming tax exemption to belong first to the class of ecclesiastical, charitable or educational activities of a public character.<sup>1</sup>

When a company registers as organization or company engaged in ecclesiastical, charitable and educational activities of a public character there are other considerations. One of them is to look at the fundamental and distinctive characteristics or qualities of a company which are in its DNA or its makeup. Under the law<sup>2</sup>, two or more persons can form and incorporate a

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<sup>1</sup> Companies Income Tax Act, (CITA) 2007, No 56, S.23 (1) (c), Personal Income Tax (Amendment) Act (PITA) 2011, S.19(1) and paragraph 13 of the third schedule to the Act, Capital Gains Tax (CGTA) cap C1 Laws of the Federation, 2004, S.26 (1) (a) and value Added Tax Act, (VAT) 2007, No 53, S.3 and First Schedule to the Act.

<sup>1</sup> *Best Children Int’l Sch. v FIRS (Supra)*

<sup>2</sup> Companies and Allied Matters Act (CAMA) Cap. C20, LFN 2004, S.18. However, the amended Company and Allied Matters Act now permit a single individual to form a company.

company by complying with the law. Companies that are formed and registered are allowed by law to carry on business, make profits and distribute the profits except a company limited by Guarantee. A company limited by shares is for profit making and must pay taxes. Hence, under the law<sup>3</sup> the fact that a company wears the toga of a school or educational institution is not enough to exempt it from payment of taxes in Nigeria.

## 2. Liability to Pay Taxes in Nigeria.

Taxation is a major issue in the economy of any Nation. When issues come up requiring a determination of whether a person either natural or artificial is liable to pay taxes, the court is duty bound to explore the relevant tax laws and apply them accordingly.<sup>4</sup> It is certain and well endorsed in our courts that taxation is not an arbitrary issue. No tax can be imposed on or collected from the subject without the words of or an Act of Parliament clearly showing an intent to lay a burden on the subject.<sup>5</sup> It is also the duty of a citizen to obey, oblige and comply with the laws of the land and it is fundamental and concomitant with the duty to pay taxes.<sup>6</sup> The essence of taxation which is to enable the state to have money to meet up with its traditional obligation of maintaining law and order, ensuring good governance and making available essential commodities for her teeming population. The Court of Appeal in *Best Children Int'l School v FIRS*<sup>7</sup> held *inter alia*:

In Nigeria as it is in all other nations of the world, the responsibility of paying taxes is on the people. One of Nigerians greatest endowments as a nation is the abundant human and natural resources. These resources when well harnessed would silence pain and poverty. The challenge therein is still our inability to harness properly what we have. If the people pay taxes, there will be money to cause prosperity not pain to flourish. By the demographic outlay of Nigeria, our human population is about 200 million people and we have also artificial persons in the name of registered companies to the tune of One Million, five hundred thousand artificial persons. If these pay their dues to the economy, we will be better for it.

The citizens of Nigeria are obligated or are legally responsible to pay tax. It therefore means that payment of tax or who is entitled to pay tax is a matter of law and not of law and not agreement, contract or compromise.<sup>8</sup> The constitution places the duty on every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.<sup>9</sup> The power to impose tax is inherent in sovereignty and unlimited in the absence of constitutional restrictions but subject to the discretion of the authorities in whom it is

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<sup>3</sup> CITA, 2007, S.23 (1) (c).

<sup>4</sup> *Best Children Int'l Sch. v FIRS*, *Supra* at 43

<sup>5</sup> *A Authority v Regional Tax Board* (1970) All NLR 177, *Scottish Widows Plc & Ors v Commissioner for Her Majesty Revenue and Customs* (SCOTLAND) & ors (2011) LPELR – 17822 (UKSC), *VODACOM BUSINESS Nig Ltd v FIRS* (2018) 35 TLRN.01 at 18.

<sup>6</sup> *Best Children Int'l Sch. v FIRS* (2019) 40 TLRN 33

<sup>7</sup> *Supra*.

<sup>8</sup> *Mattschappij B.V. v FIRS* (2011) 4 TLRN 97, *ADDAX V FIRS* (2012) 7 TLRN 74 at 85. However, see

*Imprest Bakolori v FBIR* (2010) 3 TLRN 168 where tax rates were based on a budget speech

<sup>9</sup> Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended, S.24 (F)

reposed.<sup>10</sup> The appropriate arm of the sovereign, reposed with the power of imposing taxes is the legislature. Unless the legislature makes a law on the payment of a particular tax, such tax should not be due for payment by the tax payer or even be demanded by the government.

### **3 Distribution of Taxing Powers in Nigeria.**

#### **3.1 Federal Taxing Powers**

The Constitution<sup>11</sup> provides that:

The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this Constitution.

The items under the exclusive legislative list expressly relating to taxation are as follows:

- item 16 – customs and exercise duties
- Item 25 – Export duties
- Item 58 – Stamp duties
- Item 59 – Taxation of incomes, profits and Capital Gains except as otherwise prescribed by the constitution.

The federal legislature has the exclusive powers to legislate on the items listed above.

#### **3.2 State Taxing Powers**

The States have not been conferred with taxing powers directly, rather impliedly the states' taxing powers are derived from the general provision. The general provision in section 4 (7) of the Constitution grants the states plenary powers to make laws on any subject matter not on the exclusive list or in the concurrent legislative list that is not reserved for the Federal or upon which the Federal have not acted on Definitely the states can only act on the Residual list.<sup>12</sup>

Moreover, the state taxes are contained in item D paragraph 7 of part 11 of the second schedule to the constitution which grants states powers of collection of taxes on personal income tax, stamp duties on documents and transactions.<sup>13</sup>

#### **3.3 Local Government Taxing Powers:**

The special type of Nigeria Federation excluded Local Government from partaking in legislative powers,<sup>14</sup> The States are however mandated to confer on the Local government through the laws of the State Houses of Assembly some functions in addition to those specified under the fourth schedule to the Constitution.<sup>15</sup>

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<sup>10</sup> F Kehinde ; 'Taxing Powers in Nigeria-Time for a new Approach in *Modern Practice Journal of Finance and Investment Law (MPJ FIL)* Vol. 3 No 2, p 269

<sup>11</sup> CFRN, 1990 as amended, S.4 (2)

<sup>12</sup> *AG Ogun State V Aberuagba & ors* (1985) 1 NSCC 487.

<sup>13</sup> Note, the concurrent legislative list is titled, "Extent of Federal and State legislative powers and in item D which was titled "collection of taxes" and not imposition of taxes read thus:

In the exercise of its powers to impose any taxes or duty on:-

- a. Capital gains, incomes or profits or persons other than companies; and
- b. documents or transaction by way of stamp duties, the National Assembly may, subject to such conditions as it may be prescribed, provide that the collection of any such tax or duty or the administration of the Government of a state or other authority of a State

<sup>14</sup> CFRN, 1999 as amended, S.2(2) provides that Nigeria shall be a Federation consisting of states and Federal - Capital Territory

<sup>15</sup> *Ibid*, S.7 (1)

#### **4 Charging Clauses under the Tax Laws:**

The tax laws<sup>16</sup> enacted in consonance with the constitution have spelt out in their charging sections or clauses the liability of a taxpayer to pay tax. It means the taxpayer must be in receipt of income chargeable, that is not exempt. This liability is on income, profit or gain that either arises in Nigeria or abroad and is remitted or brought into Nigeria. Hence all global income or profit derived from, brought into or received in Nigeria is taxable.

It is important to note that the emphasis is that all incomes, profit or gain are taxable. A receipt or accruable income is taxable income under applicable laws in Nigeria whether it is legally or illegally acquired or whether the company is properly incorporated or not.<sup>17</sup>

#### **5 Incomes Exempt under the Nigerian Law:**

To exempt means to be free or to be released from a duty or liability to which others are held. Blacks' Law Dictionary<sup>18</sup> defines exemption from tax to mean an amount allowed as a deduction from adjusted gross income used to determine taxable income. In *Northern Nigeria Investment Ltd v FBIR*<sup>19</sup> the Court defined the expression exempt income to mean income primarily subject to tax but exempt under another provision of the law. The true position is not that exempt income is not subject to tax. Hence exempt income is income subject to tax under a particular provision of the law, but only taken out of the taxing law by the relevant exempting provision. Under the Nigeria tax laws<sup>20</sup> the following are tax exempt.

##### **5.1 Capital Gains Tax**

Under the Capital Gains Tax Act<sup>21</sup> income exempt are headed exemption for charities, e.t.c Subject to subsection 2<sup>22</sup> of this section, a gain shall not be chargeable if it accrues to:

- a. an ecclesiastical, charitable or educational institution of a public character; (b) any statutory or registered friendly society.
- b. any trade union registered under Trade Unions Act; The law however places as a condition that the exemption stands only if the gain is not derived from any disposal of any assets acquired in connection with any trade or

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<sup>16</sup> See Personal Income Tax (Amendment) Act, S.3 (1), Companies Income Tax Act, 2007, S.9 (1), Value Added Tax Act, 2007 S.2, Stamp Duties Act, Cap 58, LFN 2004, S.3 and Capital Gains Tax Act, Cap C1 LFN 2004, S.2

<sup>17</sup> *CIR v Dela Goa Bay Gigarette C Ltd* (1918) TPD 391, *Tsky 11 & 2 ors v FIRS* (2012) 7 TLRN 48 at 59.

<sup>18</sup> B A Garner (ed), *Black's Law Dictionary*, 7<sup>th</sup> ed, (USA: West Publishing Co; 1999) 593

<sup>19</sup> (1976) FRCR 93 (FRC/L/2A/75p 57, Also see *Australian mutual Provident Society v IRC* (1962) AC 135

<sup>20</sup> CGTA, Cap C 1 2004, S.26(1), CITA, 2007, S.23(1), PITA, 2011 S. 19 (1), VAT, 2007, S.3

<sup>21</sup> CGTA, Cap C1, 2004, S.26(1)

<sup>22</sup> CGTA, 2004 Subsection 26 (2) referred to provides;

If any property to which subsection (1) of this section relates which is held on trust ceases to be subject to such trust.

- a. the trustees shall be treated as if they had disposed of and immediately re-acquired the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to the institution or society and;
- b. if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to such institution or society and notwithstanding anything in this Act limiting the time for making assessments, any assessment to capital gains tax chargeable by virtue of paragraph (b) of this subsection may be made at any time not more than three after the end of the year of assessment in which the property ceases to be subject to such trusts.

business carried on by the institution or society and the gain is applied purely for the purposes of the institution or society as the case may be.

## **5.2 Companies Income Tax Act.**

Under the Companies Income Tax Act, it carries the heading profits exempted". The following profits are exempt from tax;

- a. the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;
- b. the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or interest possessed by that company as in a trade or business in Nigeria carried on by some other persons or authority.
- c. the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company.<sup>25</sup>

## **5.3 Personal Income Tax Act (PITA).**

The income exempted under PITA<sup>26</sup> is specified in the third schedule to the Act. They include amongst others;

The Income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution.

## **5.4 Value Added Tax Act (VAT)**

Under the VAT,<sup>27</sup> the income of Non-governmental and religious organizations and the likes were not expressly exempt. However, they are classified as zero rated goods and services.

The items classified as zero rated goods and services include;

- a. Non-oil exports
- b. Goods and services purchased by diplomats
- c. Goods purchased for use in humanitarian donor funded projects.<sup>28</sup>

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<sup>25</sup> CITA, s.23(1)(c).

<sup>26</sup> PITA, 2011, S.19(1)

<sup>27</sup> VAT Act, 2007, S.3, Part 111 of the schedule to the Act.

<sup>28</sup> Note that the Act explained humanitarian donor funded projects to include projects undertaken by Non-Government organizations and religious and social clubs or societies recognized by law whose activity is not for profit and in the public interest.

## **6 Incorporation of Companies for Business in Nigeria**

Every company must be formed in the manner set out in the Companies and Allied Matters Act.<sup>29</sup> The first step in company formation is for the person charged with the responsibility to take down all information necessary for the preparation of the requisite documentation. The documents of incorporation shall then be delivered to the Corporate Affairs Commission for registration. It is to be noted that any two or more persons may form and incorporate a company.<sup>30</sup> A registered company may be:

1. a company limited by shares<sup>31</sup>
2. a company limited by guarantee<sup>32</sup>
3. an unlimited company<sup>33</sup>

Notably,<sup>34</sup> Companies are classified as either a company;

- a) having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (that is referred to as a company limited by shares” or
- b) having the liability of its members limited by memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up called a company limited by guarantee or
- c) not having any limit on the liability of its members (an unlimited company).

Further up, the incorporated name of a company shall be in the following forms:<sup>35</sup>

- i. The name of a private company limited by shares shall end with the words “limited”<sup>36</sup>
- ii. The name of a company limited by guarantee shall end with the words (limited by guarantee) in brackets,<sup>37</sup>
- iii. The name of an unlimited company shall end with the word “unlimited”.<sup>38</sup>

However, a company is permitted under the law<sup>39</sup> to use the abbreviations “Ltd”, “Plc”, “Ltd”/”Gte” and “Ulted” for the words limited, public limited company, (Limited by Guarantee) and unlimited respectively in the name of the company. Again, the distinctions between companies limited by shares and company limited by Guarantee<sup>40</sup> is as stated above. A School set up as a Company limited by Shares, - whether it can claim Exemption Status under section 23 (1) of CITA. A company limited by shares is for profit making and must pay taxes. The fact that a company is a school or an educational institution is not enough to exempt it from payment of taxes under section 23 (1) of CITA. It will be difficult for a

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<sup>29</sup> CAMA C20 LFN 2004, S.35

<sup>30</sup> *Ibid* S.18. The 2020 amendment to the Act now allows a single individual to form a company.

<sup>31</sup> *Ibid* S.21 (1) (a)

<sup>32</sup> *Ibid* S.21 (1) (b)

<sup>33</sup> *Ibid* S.21 (1) (c)

<sup>34</sup> *Ibid* S.21 (1) (a-c)

<sup>35</sup> CITA, s.29

<sup>36</sup> *Ibid*, s.29 (1)

<sup>37</sup> *Ibid*, s.29 (2)

<sup>38</sup> *Ibid*, s.29 (3)

<sup>39</sup> *Ibid*, s.29 (5)

<sup>40</sup> *Ibid*, s.26 (1) where a company is to be formed for promoting commerce, art, science, religion, culture, education, research, charity or other similar objects and the income and property of the company are to be applied solely towards the promotion of its objects and no portion thereof is to be paid or transferred directly or indirectly to the members be registered as a company limited by shares by may be registered as a company limited by Guarantee.

company to hide under a name or object to escape its tax obligations to the state except it meets up with certain conditions.

Tax exempt status can provide complete non-payment of taxes or certain reliefs from taxes obtained in the form of reduced rates on certain items contained in a tax statute.<sup>41</sup> The companies Income Tax Act<sup>42</sup> provided exempt status for certain organizations that ordinarily would be liable to tax.

The Court had severally given the provision a literal interpretation, on the principle that, when the wordings of a statute is clear and unambiguous, the intention of the legislature will be pursued giving the words used its simple natural and ordinary meaning. In line with *Basinco Motors Ltd v Woermann Line & Anor*,<sup>43</sup> the Court held:

The rules or principles governing the interpretation of statutory provisions are as follows;

1. It is the intention of the legislature that should be sought and same is to be ascertained from words of the statute alone and not from other sources.
2. Where the word used in the provisions of a statute are simple, and unambiguous they should be given their simple, natural and ordinary meaning.
3. The Court is not concerned with the result of its interpretation that it, it is not the court's province to pronounce on the wisdom or otherwise of the statute but only to determine its meaning.
4. The court must not import into a legislation words that were used by the legislature and which will give a different meaning to the text of the statute as enacted by the legislature.
5. The court must not bring to bear on the provision of a statute its prejudices as to what the law should be, but rather should interpret the law from the clear words used by the legislature.
6. The Court must not amend the statute to achieve a particular object or result.

In *Vodacom Business Nig Ltd v FIRS*<sup>44</sup> the Court on the interpretation of the taxing statute held thus;

A tax statute is to be strictly construed for understanding that no one shall be taxed without clear words for that

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<sup>41</sup> CITA section 23(1), paragraphs A – F and H to L. However, see section 23 (1) (n) which provides that nothing in the section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or so of the Act which applies to a dividend, interest, rent, royalty which is a part of the profits or income referred to in section 1 (a) to (F) and h to l of the section.

<sup>42</sup> Section 23 (1) (c) headed “profits exempted” provides that there shall be exemption from tax. The profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company.

<sup>43</sup> (2009) 13 NWLR (pt.1157) 149, *Aqua Ltd v Ondo State Sports Council* (1988) 4 NWLR (pt. 665) 481, *Ubrda v Alkes* (1988) 2 NWLR (pt.622) 91, *Fawehinmi v IGP* (2000)7 NWLR (pt. 537) 328, *Awolowo v Shagari* (1979) 6-9 SC 51, *Adeleke v Osha* (2011) 16 NWLR (pt. 1006) 608.

<sup>44</sup> (2018) 35 TLRN 01 at 18, *Halliburton West Africa Ltd v FBIR* (2006) 7 CLRN 138=

purpose in the statute; and also every Act of parliament must be read according to the natural construction of its words. It is settled law that statutes are to be strictly construed and there is no equity in tax provision. It is sound of public policy that a court of law should interpret the law in a just a way and to serve public interest.

Further in *ABEDC Plc v Abuja Municipal*,<sup>45</sup> the Court held:

There is no common law of taxation, neither is there any equity or presumption regarding taxation and a judge saddled with a tax dispute is obligated to look merely at what is clearly said in the tax statute. Being an imposition on the citizen, tax liability cannot be inferred but must be directly provided for in a statute and even at that, a clear and direct nexus must be shown to exist between the charging provision in a tax statute and the intended taxpayer before any tax liability can be said to have arisen. The overarching proposition is that all charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties; the subject, is not to be taxed unless the language of the statute clearly imposes the obligation even as it is well settled that no pecuniary burden can be imposed upon the citizens of this country by whatever name it may be called (tax, levy, due, rate or toll) except upon the clear and distinct legal authority established by those who seek to impose them.

It all means that the tax statutes are to be strictly constructed and the interpretations in a just way to serve public interest.<sup>46</sup> In the case of *Best Children International Schools v FIRS*,<sup>47</sup> the appellant, a company limited by shares duly registered under the Companies and Allied Matters Act is an academic institution. The appellant as an educational institution claimed to engage in educational activities of public character and inspite of the fact that the Respondent placed demand for all kinds of taxes on the appellant disregarding the claim of the appellant to be tax exempt under section 23 (1) (c) of the Companies Income Tax Act. The appellant being a responsible company had paid its educational tax, withholding tax and pay as you earn tax as and when due. However, in a letter dated 1<sup>st</sup> September 2014, the respondent demanded among others the following taxes from the appellant:

i. Company Income Tax for the year 2008, 2009, 2010, 2011 and 2012 amounting to a total of ₦28,917,318.98k

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<sup>45</sup> (2018) 35 TLRN 35 at 54-55. However, where the provisions of a tax statute are ambiguous and capable of two interpretations, a construction most favourable to the taxpayer should be but the strictness of interpretation of the language of a tax statute may not always ensure to the benefit or advantage of the taxpayer, for if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind. As a matter of public policy however, unless there are clear provisions to the contrary, the courts are enjoined to construe a tax statute in favour of the revenue by giving due regard to the cause and necessity of the particular tax statute and put upon it such construction as would promote its purpose and arrest the mischief intended to clear.

<sup>46</sup> *HIS Nig Ltd v AG Federation & 4 ors* (2018) 39 TLRN 59.

<sup>47</sup> *Supra*



- ii. Education Tax for the year ~~₦~~2008, 2009, 2010, 2011 and 2012 amounting to a total of ₦2,006,122.49k
- iii. Others, (WHT) for the year 2009, 2010 and 2011 amounting to total of ₦33,250.00
- iv. PAYE for the year 2009, 2010 and 2011 amounting to a total of ₦1,807,644.40k

At the trial Court, it was held that the appellant is not exempted from payment of company income tax by section 23 of CITA. The Court in its decision relied on *FBIR v Integrated Data Service Ltd.*<sup>48</sup> On Appeal, the Court of Appeal relied on the decision in *Russel v Scot*<sup>49</sup> which held *inter alia* that in a taxing legislation, one has to look merely at what is clearly said; there is no room for any intendment, there is no equity about a tax and there is no presumption about a tax, nothing is to be read in and nothing is to be implied. One can only look fairly at the language used.

The Court held that the company income exempt is about the profit of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company. Hence for a company to be entitled to the statutory exemptions the following conditions must be met;

- i. The company must be engaged in ecclesiastical, charitable or educational activities.
- ii. The profits she made are not profits that are derived from a trade or business carried on by her.
- iii. The company's activities must be of a public character.

The onus of proving that the profit of a company is exempt from paying tax rests on the company claiming exemption status. In determining whether the appellant in the instant case discharged the burden, the Court of Appeal held that in determining whether the appellant enjoys the exemption from tax, the court looked at the fundamental and distinctive characteristics or qualities of a company which are in it's DNA or for clarity, it's make up. The question is how did the company came into being and by which form of company it is? In resolving the above issues, the Court found out the following;

- i. The appellant never disclosed that she is a company limited by Guarantee.
- ii. The appellant presented before the Court that it is a company registered as a company limited by shares.

Discovering the issues, the Court held that as a company limited by shares, although the particulars of its registration reveals it as an academic institution, is a company registered as profit making venture, hence the appellant was not exempted from tax. The reasoning is that the appellant at the beginning was formed as a company to make profit therefore it cannot be allowed to escape the liability of paying tax.

## **7 Conclusion and Recommendation**

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<sup>48</sup> (2009) LPELR-8191 (CA), *Russell v Scot* (1984) AC 422,

<sup>49</sup> *Supra*

It is not enough for a company to hide under any name or object to escape its tax liabilities to the state. The burden of proof of tax exempt status of a school rests on the person claiming the exemption status as the law places the burden on the person asserting the affirmative not the negative to prove same<sup>23</sup>.

Therefore, for any educational institution claiming exempt status, there is need to present facts to prove that it is of a public character to be entitled to statutory exemption under section 23(1) of CITA.

Moreover, the status of the Registration or the foundation of a company should be the first consideration. For an educational institution to be entitled to the tax exemption under section 23(1) (c) of CITA, the school must have been registered or incorporated as company limited by Guarantee not a company limited by shares.

Furthermore, the educational institution registered as company limited by Guarantee should also live up to certain statutory conditions to be tax exempt which includes;

- i. The company must be engaged in ecclesiastical, charitable activities.
- ii. The company's activities must be of a public character.
- iii. The profits made by the company are not profits that are derived from a trade or business carried on by her.

Following from the above, the following are highlighted;

- i. A company which is not for profit making to be derived from its business or trade is to be registered as a company limited by Guarantee.
- ii. Schools and other educational institutions should always strive to make their activities be in a public character.
- iii. Health, Educational and other social and friendly societies established by churches and other organizations should be revisited in order to change their incorporation status and be exempt from tax considering the current move by tax authorities to get more taxpayers into the tax net in order to increase tax yield.

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<sup>23</sup> *Owur & ors v Idu & ors* (2002) FWLR (pt.94) 66, *Onyenge & ors v Ebere & ors* (2004) All FWLR (pt.219) 981. *Ogbu v Wokoma* (2005) 6 SC (pt 11) 123; *WACC Ltd v Caroline Paroline Paltry Farm Ltd* (2000) 2 NWLR (pt. 644) 1971, *Sommer & ors v FHA* (1992) 1 NWLR (pt. 218) 548 and *Braimor v Abasi* (1998) 13 NWLR (pt.581) SC 167.