



## Implications of Taxation of Educational Activities on Educational Development in Nigeria

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### ABSTRACT

*This study examined the implications of taxation of educational activities on educational development in Nigeria. Taxation of income of individuals and corporate organizations would remain a veritable source of revenue for provision of public goods for common good. There has been persistent debate as to whether income from educational activities should be subjected to tax. Secondary data were used to realize the objective of our study. The study concludes that while tax exemption for educational institutions can boost educational development, the onus of proof of whether an educational institution is tax exempt lies with the claimant (the owner). It is recommended, among other things, that descendible line be drawn between educational activities exempted from tax and profits from trade or business to enable the relevant tax authorities collect taxes from the aspect that has to do with trade or business.*

**Keywords:** Taxation; Educational Activities; Exemption Clauses; Nigeria

## 1. Introduction

Every human organization including government conducts its affairs with the aid of financial resources. One of the major sources of finance for running governments is funds from taxation of incomes for both taxable individuals and corporate organizations. Most countries have taxes as their major sources of income (Ajibade, Akintoye & Tayeoba, 2018). Since corporate organizations entail entities authorized by the State for certain purposes, it can be inferred that educational activities are usually carried out by incorporated organizations.

The importance of education to human development cannot be over emphasized. Little wonder Tony Blair (former British Prime Minister) maintains “ask me my three main priorities for government and I tell you, education, education, and education.” (<https://www2.deloitte.com>articles>). This underscores the need for education and the critical roles expected of Government. It is claimed that Nigeria’s literacy rate stands at 69.1%, and 54% of her citizens are between the ages of 15-39 (<https://www2.deloitte.com>articles>). It appears the leading role of Government in ensuring quality education is not being met as because various communities are full of dilapidated infrastructures and poor educational materials. The converse is true for the privately-owned educational institutions, which seems to record high patronage at the expense of public (government-owned educational) institutions regardless of exorbitant tuition and other sundry charges by these private schools. Incidentally, parents or guardians who bear the financial burdens do so on the premise that private schools cover the gaps created by inefficiencies prevalent in public schools. The interventionist roles being played by the private sector in educational development, notwithstanding, Lawal, Adebumiti, Njoku and Agboluaje (2020) argue their operations are encumbered by heavy tax burden orchestrated by various agencies of government across the federation. The tax burden come as business premises, waste management, and local

government levies, or emblem fees for school buses, signage fees, among others.

While it can be argued that the revenues realized by government from these taxes are deployed for providing services of general nature, the above scenario has provoked the debate as to whether educational institutions should pay tax in Nigeria at all. This paper therefore seeks to explore whether it is a welcome idea for income from educational activities, which are part of income meant for funding government operations, should be liable to taxes. In order to achieve our aim, this paper, apart from the introduction, has been detailed to address the conceptual issues, implication of taxation on educational development, conclusion and recommendations.

## 2. Conceptual Review

### 2.1.1 Taxation

Taxation is the system whereby taxes are levied on some type of income, earnings, or purchases. It is one of the sources through which various governments get funding for their operations. To achieve this, the 1999 Constitution of the Federal Republic of Nigeria requires citizens to honestly declare their income and pay tax appropriately. Taxation has been defined by many authorities from different perspectives. According to Lapai (2019), taxation is a tool through which government achieves the objectives of raising revenue for financing public expenditures and influencing activities of government through, among other things, stimulation of economic growth, the achievement of equitable distribution of income, wealth creation and employment. Umar (2016) in Lapai (2019) defines tax as a compulsory contribution from a person to the government to defray expenses incurred in the common interest of all without references to special benefit conferred. However, taxation is not merely compulsory contribution by a person as captured above. It is a process whereby a percentage of income of individual, group of individuals or corporate organization is compulsorily transferred to the government without necessary equal service in return (Lapai, 2019). The corporate organization under reference here includes institutions carrying out educational activities. This study attempts to ascertain whether institutions carrying out educational activities should be liable to tax.

### 2.1.2 Business Incorporation vis-a-vis Educational Institutions

No company or entity is authorized to commence business activity without first being registered. The formation of a company must be in line with the provision of Companies and Allied Matters Act (CAMA C20 LFN 2004, s.35). Person(s) seeking to register their company are required to deliver all necessary documents to the Corporate Affairs Commission (CAC) for registration according to the provisions of CAMA. A company may be registered as ‘limited by shares’, ‘limited by guarantee’ or ‘unlimited’ (CAMA, sections 21(1) a-c). For a company limited by shares, the liability

of its members are limited by memorandum to the amount unpaid on the shares respectively held by them, if any; for company limited by guarantee, the liability of its members are limited by memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of being wound up; for unlimited company, the liability of its members has no limit (CAMA, sections 21(1) a-c).

What is the nexus among the above provisions, educational activities and educational institutions? For an educational institution to operate, it must have been registered or incorporated. The nexus is that the status of registration or incorporation must first be used to determine whether it is limited by shares, guarantee or unlimited. Therefore, the status of incorporation is what the relevant tax authority will focus on to form an opinion on the taxability or otherwise of an educational institution carrying out educational activities.

### 2.1.3 Exemption Clauses as it Relates to Educational Institutions

Exemption entails the act of freeing or the position of being free from liability or obligation imposed on other person or persons. According to Blacks' Law Dictionary, exemption from tax means an amount allowed as a deduction from adjusted gross income used to determine taxable income. However, in Northern Nigeria Investment Ltd vs FBIR, the Court define the expression exempt income as income primarily subject to tax but exempt under another provision of the law. Hence, the Capital Gains Tax Act (CGTA), Companies Income Tax Act (CITA), Personal Income Tax Act (PITA) and Value Added Tax (VAT) Act have adequate provisions on tax exemptions as it relates to educational institutions.

Highlights of exemption clauses, among others include: (i) CGTA, s.21 provides that a gain shall not be chargeable if it accrues to an ecclesiastical, charitable or educational institution of public character; (ii) CITA, s.23(1) states, inter alia, that 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; (iii) PITA, 2011, specifies in the third schedule to the Act, among other things, that 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.

The question is how we determine educational activities of public character. Abdul (2019) drawing from decision of Tax Appeal Tribunal (TAT) concludes that an educational institution that has not been shown to exclude any segment of the populace from attending the institution can be said to be of public character. In addition, VAT Act (2007) provides that the services of non-governmental and religious organizations and the likes are classified as zero rated services. Based on aforementioned provisions, it can be inferred that educational institutions may be exempted from tax subject to fulfilling certain conditions which include basically the status of its registration or incorporation.

### 2.1.4 Taxation and Educational Activities

Taxation of educational activities has continued to be a controversial issue. By the provisions of the laws referenced above, educational institutions are exempted from tax payment on the condition that they meet certain requirements. These include the fact that the educational activities must be of public character/public benefit, and that the profits must not be derived from trade or business carried on by the organization (Erikume & Odekuma, n.d). For the exemption to be allowed, the above two conditions must jointly be met taking for granted that such institution was incorporated as a company limited by guarantee. It has to be noted that if the same educational institution that met the above conditions and qualifies for exemption from payment of taxes goes ahead to carry out another trade or business that generates income or profit within the institution, such profit or income must attract tax. For proper guidance of our educational institutions, the views expressed by Balogun (2019) is apt; he avers that:

*Educational institutions must now be more deliberate about the operational and structural considerations of their organizations. It would be very appropriate for schools to seek professional counsel, to consider reviewing their current legal, operational and extraction structures with a view to structuring appropriately, for tax-exemption, to the extent that tax exemption aligns with the overall strategy of the promoters.*

The above wise counsel by Balogun is important because apart from the generally held view that educational institutions providing educational services are tax exempt, the courts keenly look into the mode of registration, mode of distribution of profit and public character/benefit aspect.

### 3. Implications of Taxation on Educational Development

Nigeria has a population of over 200 million people with majority being youths of school age. Regrettably, out of that rough estimate (demography), there seems a larger percentage of out of school children in need of education. The sad reality, according to Taiwo (n.d) is that without education the cycle of ignorance and poverty may continue until next generation. In spite of the large numbers of universities, many of which are privately owned, polytechnics, colleges of education, secondary schools, primary and kindergarten schools, there still exist shortfalls in number of schools to cater for ever growing population of school age in Nigeria. As at now, the number of private universities, polytechnics, colleges of education, secondary, primary and nursery schools are growing in leaps and bounds and there are still room for more. For example, out of 170 universities in Nigeria as at end of 2020, 79 were private universities and this translated to 46.47% ([www.statista.com](http://www.statista.com)>statistics>numb...). In our view, this is significant when it is noted that the remaining 53.53 % covers both federal and state universities. If the data for other tertiary institutions, post-primary schools and others were considered, similar scenario would likely play out. The reality today in Nigeria is that private educational institutions are thriving at the expense of the public schools to the regrettable extent that some public primary and secondary schools are shadow of themselves (<https://www2.deloitte.com>>articles). Therefore, the worsening infrastructural deficits existing in many public schools do not support the government in taxing educational institutions.

The efforts directed toward bridging the gap in availability of educational opportunities for our growing population by the private sector cannot be over-emphasized. For instance, private sector participations in educational activities are noteworthy (Adekugbe, Ige, Oluwadara, Onunkwo, Jeje, Onamakinde, Adeoye & Gracia, n.d). The sector's participation is also considered interventional toward advancing the cause of society and preventing further damage to educational development of the country. In view of that, there is need for government to encourage such interventions by the private sector, and the simplest way is through tax exemptions as allowed by our extant laws. Since our laws recognize importance of the private sector in its interventional roles in educational matters, there is need to make these laws more robust to encourage more participation in the sector. However, the challenge here is abuse of the exemption clauses by proprietors of private schools. Their attitudes have a lot of implications both for the government and the private sector, and the ultimate effect is on our educational system.

On the part of proprietors, tax exemption will encourage them and attract more investments thereby expanding the availability of educational opportunities to absorb the many youths seeking education. With this in place, we will have a more enlightened population that will be capable of coping with challenges of feeding our industries and in the process reduce the biting unemployment. A society peopled by educated citizens is a recipe for development and Nigeria as a nation becomes the greatest beneficiary.

On the part of government, the implications relate to the fact that government benefits handsomely from interventions of the private sector through augmentation of the obvious deficit in providing for educational infrastructures and opportunities by government. However, the government has continually witnessed lots of revenue losses occasioned by fraudulent attitude of some proprietors who hide under the exemption clauses and engage in businesses, earn profit and refuse to pay tax in the pretext that they are educational institutions carrying out educational activities. To prevent this unwholesome behavior, descensible line should be drawn between educational activities exempted from tax and profits from trade or business to enable the relevant tax authorities collect taxes from the aspect that has to do with trade or business. All in all, it can be asserted that there is a positive relationship between intervention in educational activities by the private sector and educational development.

### 4. Conclusion

In conclusion, the onus of proof of whether an educational institution is tax exempt lies with the claimant (the owner). Apart from proving that the educational institution is registered as a company limited by guarantee, it must be engaged in ecclesiastical and charitable activities; it must be of public character and the profits made by the institution must not be derived from trade or business activities carried on by the institution (Bielu, 2020). In all, sustaining the tax-exempt status of educational institutions is a veritable means of encouraging educational development in Nigeria since the obvious gap arising from government's inability to cope with expanding demand for education by the populace has remained unabated.

## 5. Recommendations

In view of the foregoing, it is recommended that: (i) educational institutions should ensure that their registrations are perfected to reflect their status as companies limited by guarantee; (ii) since educational activities are of public character and public benefit, proprietors should ensure that they are involved in purely educational activities; (iii) to prevent people from hiding under the cloak of 'public character and public benefit' provision, government should give a universal and acceptable definition of the term 'public character'. Furthermore, excessive fees and super profit by educational institutions should be viewed as lack of public character and public benefit and as such consideration could be given for withdrawal of tax exemption under that condition (Adekugbe, etal, n.d.); (v) now that some educational institutions diversify into trade or business, it is further recommended that descendible line be drawn between educational activities exempted from tax and profits from trade or business to enable the relevant tax authorities collect taxes from the aspect that has to do with trade or business, and (vi) as many educational institutions as meet the above minimum requirements should be encouraged by government by extending robust tax exemptions since it is obvious that their interventions have brought about progress in educational development in Nigeria.

## References

- Abdul A. S. (2019), Tax liabilities of educational institutions in Nigeria - The Public Character Twist. [www.tekedia.com>tax-liabilities-of...](http://www.tekedia.com>tax-liabilities-of...) Accessed on 19/5/2021.
- Adekugbe, M., Ige, M., Oluwadara, N., Onunkwo, T., Jeje, O., Onamakinde, D., Adeoye, T. & Gracia, B. (n.d). CIT Obligations of Nigerian Educational Institutions. <https://www.taxcluboau.com.ng>cit...> Accessed on 19/05/2021.
- Ajibade, A.T., Akintoye, I.R. & Yayeoba, O.O. (2018), Enhancing tax revenue for economic growth in Nigeria: A case study of Lagos State. *Journal of Taxation and Economic Development*
- Balogun, H. (2019). Schools & other educational institutions may now be subject to corporate taxes In Nigeria. <https://balogunharold.com>leg...> Accessed on 19/05/2021.
- Bielu, K.J. (2020). Liability of an educational institution to pay tax in Nigeria. *NAUJILI*, 11 (2).
- Blair, T. (n.d), CIT obligations of Nigerian educational institutions. <https://www.taxcluboau.com.ng>cit...> Accessed on 19/5/2021.
- Capital Gains Tax Act (CGTA) Cap. C1, LFN, 2004*
- Companies and Allied Matters Act, c20 LFN, 2004 as amended.*
- Companies Income Tax Act (CITA) 2007, No. 56 s. 23(1)*
- Constitution of the Federal Republic of Nigeria, 1999 (as amended), s.24(F)*
- Erikume, K. & Odekuma, O. (n.d), Income tax treatment of educational institutions insights from the courts, PWC Tax Bites.
- Private educational institutions: Why are they not taxable. <https://www2.deloitte.com>articles>. Accessed on 19/05/2021.
- Lapai, M.I. (2019). Nigeria personal income tax made easy, Kaduna, Nigeria: Everd'Lord Press and Publishers.
- Lawal, I., Adebumiti, A. & Njoku, L. (2020), Multiple taxation crippling private Schools as operators demand review. <https://m.guardian.ng>features>amp>. Accessed on 19/05/2021.
- Personal Income Tax (Amendment) Act (PITA), 2011 s.19(1) and para. 13 of the Third Schedule to the Act
- Taiwo, (n.d), CIT Obligations of Nigerian educational institutions. <https://www.taxcluboau.com.ng>cit...> Accessed on 19/05/2021.
- Umar, Y.M. (2016). Enlightenment on taxation of contract and direct labour procurement of MDAs and local governments in Nigeria in Lapai M.I (2019), Nigeria personal income tax made easy. Kaduna, Nigeria: Everd'Lord Press and Publishers.
- Value Added Tax (VAT) 2007 s.3