

The Federal High Court (FHC) sitting in Lagos, recently upheld the ruling of the Tax Appeal Tribunal in favour of JGC Corporation (the Appellant) in its case against the Federal Inland Revenue Service (FIRS). The thrust of the case is whether the Appellant has a fixed base in Nigeria.

The Appellant had entered into a contract with Mobil Producing Nigeria Unlimited (MPNU) for the offshore aspect of the Engineering, Procurement and Construction of Bonny Terminal Project (the Project). It should be noted that two separate contracts were executed by MPNU, one with the Appellant for the execution of the offshore aspect of the project and the other with JGC Nigeria Limited and Daewoo Nigeria Limited for the onshore aspect.

The FHC concluded that the determination of whether a company has a fixed base of business in Nigeria involves an examination of the following amongst others:

- i) the nature of the activities which the foreign company carries on in Nigeria
- ii) how the activities are carried on (for example whether employees or representatives of the company physically enter into Nigeria for the purpose of the foreign company's business, and
- iii) whether the foreign company owns any business assets in Nigeria or operates from a physical location in Nigeria

Ultimately, the FHC, based on the evidence provided, held that the Appellant does not have a fixed base in Nigeria and is not liable to Companies Income Tax.

It is important to note that the facts of this case are materially different from that of *Saipem Contracting Nigeria Limited & 2 Ors vs FIRS & 2 Ors*. In the Saipem case, both the offshore and onshore aspects of the contract were stated on a single document, thus the Court ruled that they were part of a single contract liable to tax in the country.

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