POWER SECTOR

FISCAL

INCENTIVES

The FGN recognises that fiscal incentives are necessary to attract much needed investment in the power sector and ameliorate the cost of doing business in Nigeria.

The following are some of the fiscal policies applicable to the power sector;

Pioneer Status (S. 10 Industrial Development (Income Tax Relief) Act 1970)

This is a tax incentive scheme governed by the Industrial Development (Income Tax Relief) Act (IDITRA). Pioneer status is designed to reduce the cost of doing business in Nigeria by providing corporate income tax relief to companies operating in designated pioneer industries and or producing pioneer products.

Companies granted pioneer status are entitled to income tax holiday for up to three (3) years in the first instance, renewable for an additional maximum period of two (2) years. In addition to the income tax holiday, pioneer companies enjoy other benefits such as the exemption of dividends paid out of pioneer profits from withholding tax.

The following industries in the power sector may benefit from the pioneer status tax holiday:

- Manufacturers of electrical appliances/components and parts i.e. generators, transformers, meter control, switch gears, test equipment and conductors;
- Manufacturers of solar energy powered equipment and gadgets i.e. solar panels.
- Manufacturers of cables i.e. electrical and other cables.
- Providers of utility services i.e independent power generation using gas, coal and renewable energy sources.
- Manufacturers of steam generators.

Gas Utilisation – Downstream Operations (S. 39 (3) Companies Income Tax Act)

S. 39 (3) of the Companies Income Tax Act (CITA) defines gas utilisation as the marketing and distribution of natural gas for commercial purposes and also includes power plants, liquefied natural gas, gas to liquid plant, fertilizer plant, transmission and distribution pipelines.

The incentives for downstream gas utilisation are provided under S. 28 (g) of CITA as amended and are as follows:

- Tax Holiday

Three (3) year tax holiday which may be renewed for a further two (2) years subject to satisfactory performance of the business. In the alternative, a company may claim a 35% investment allowance (IA) on qualifying capital expenditure incurred in respect of the project which allowance shall not reduce the value of the asset for the purpose of computing capital allowances.

- Tax Deductible Interest on loans

Interest payable on any loan obtained for a gas project with the prior approval of the Minister of Petroleum is tax deductible.

- Tax-free dividends

Tax-free dividends during the tax holiday provided that the downstream investment was made in foreign currency or provided that plant and machinery imported during the tax-free period for the purpose of the project account for not less than 30% of the company's equity.

- Accelerated capital allowances

After the tax holiday, an IA of 90% of capital expenditure on plant and machinery and an additional IA of 15% which shall not have the effect of reducing the value of the asset. A company which has opted for the 35% IA is not entitled to claim the additional 15% IA.

- VAT Exemption on Plant and Machinery

As a further incentive, VAT exemption is granted in respect of plant and equipment purchased in connection with the utilisation of gas in downstream petroleum operations. Machinery, equipment or spare parts imported into Nigeria in connection with the processing of gas or the conversion of such gas into electric power is also exempted from custom duty.

All imported services are also exempted from VAT

Customs Duties Exemption

Section 5 of the Customs, Excise Tariff etc. (Consolidation) Act 1995 provides for custom duties exemption on any machinery, equipment and spare parts imported for power generation into Nigeria by an industrial establishment engaged in the exploration, processing or power generation through the utilisation of Nigerian gas for its operation. Solar cells or panels imported into Nigeria are also exempted from custom duty.

Investment guarantees, transfer of capital, profits and dividends

Section 24 of the NIPC Act guarantees a foreign investor in a Nigerian enterprise unconditional transferability of funds through an authorised dealer in freely convertible currency of dividends or profits (net of taxes) attributable to the investment, payments in respect of loan servicing where a foreign loan has been obtained and the remittance of the proceeds (net of all taxes) and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

Guarantees against expropriation

By virtue of S. 25 of the NIPC Act, no enterprise shall be nationalized or expropriated by any Government of the Federation of Nigeria except the acquisition is in the national interest or for a public purpose and under a law which makes provision for fair and adequate (and immediate compensation) and right of access to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled. Furthermore, no foreign investor shall be compelled by law to surrender his interest in the capital of any enterprise to any person.

Labour intensive mode of production

Industries with high labour/capital ratio are entitled to tax concessions. These are industries with plants, equipment and machinery which are essentially operated with minimal automation. Where there is automation, such automation should not be more than one process in the course of production. The rate is graduated in such a way that an industry employing one thousand persons or more will enjoy 15% tax concession while an industry employing one hundred will enjoy only 6%, while those employing two hundred will enjoy 7%, and so on.

Investment in economically disadvantaged areas

Without prejudice to the provision of the pioneer status enabling law, a pioneer industry sited in an economically disadvantaged Local Government Area is entitled to 100% tax holiday for seven years and additional 5% depreciation over and above the initial capital depreciation allowance.