AN OVERVIEW OF THE NIGERIAN TAX SYSTEM: IMPLICATIONS FOR FOREIGN INVESTORS

BY

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1.0 INTRODUCTION

As Africa's most populous country, Nigeria boasts of the continent's second largest oil reserves and has a very promising growth outlook. Poised to eclipse Africa's largest economy by 2015, Nigeria is becoming a rather worthy recipient of foreign capital, receiving anywhere from $10-$12 billion per year. However, in order to take full advantage of what foreign investment has to offer, Nigeria has been trying to improve its economic and political climate.

For Nigeria, meaningful, long-lasting economic growth and development is almost entirely contingent upon securing substantial amounts of foreign direct investment. FDI, as it is called, is crucial for the Nigerian economy, as it permits the transfer of technology and facilitates improvements in productivity. Ultimately, this can help alleviate Nigeria's widespread poverty by increasing per capita income and elevating overall standards of living.

As a result of the Country's unique nature, there is a need for prospective investors to completely understand the business environment, particularly the legal and regulatory framework for operating within the Country. Businesses in Nigeria are unique in their processes and requirements and there is often a need to be well guided before commencing business operations. Industries such as the Oil and Gas Industry, the Mining Industry, the Telecommunications Industry and all other vibrant industries within the Nigerian economy all have their own rules and regulations which are expected to be strictly adhered to. General regulatory issues such as formal registration for all companies and individuals intending to invest, tax requirements and liaising with government agencies are all issues to which adequate attention needs to be given.

This paper therefore covers an overview of the Nigerian Tax System, the imperatives of a tax system as it relates to the tripod on which the tax system stands comprising of tax policy, tax legislation and tax administration, legal and regulatory requirements for investors as well as the use of tax incentives in attracting foreign direct investment in Nigeria.

1.1 Essence of Taxation

In order to properly understand the subject matter, let us remind ourselves about the meaning of the focal word 'tax'. Tax has been defined as 'a monetary charge imposed by the Government on persons, entities, transactions and properties to yield revenue'.

Cicero called taxes the sinews of the state. That is the primary way the society allocates the burden of government to its people. Tax is a powerful tool for achieving economic and social policy objectives of government and it is a means of transferring resources from the private to the public sector.

A standard definition of tax: "a compulsory exaction from a taxpayer paid in cash or in kind to the government to provide for the public services of common interest without particular regard to the particular benefit received by the taxpayer."

Taxation is undoubtedly a veritable instrument for national development. Apart from being a major source of revenue for government to provide goods and services needed by the people, tax policies, can and do stimulate economic growth and job creation through its impact on investment and capital formation in the economy. In this respect, reform of the tax system that ensures effectiveness, equity, and efficiency are necessary conditions for a healthy public finance

2.0 THE TRIPOD OF THE NIGERIAN TAX SYSTEM

The Nigeria tax system, like any tax system, is a tripartite structure which comprises of: Tax Policy, Tax Legislation and Tax Administration. Tax policy forms the basis for tax laws while tax administration is the implementation of the tax laws. This shows that in a bid to establish an effective and efficient tax system that will make taxation the pivot for national development, appropriate tax policies and legislations should be put in place and adequately implemented.

2.1 Objectives of a Tax System

- To promote fiscal responsibility and accountability
- To facilitate economic growth and development
- To provide the government with stable resources for the provision of public goods and services
- To address inequalities in income distribution
- To provide economic stabilization
- To correct market failures or imperfections

3.0 MEANING OF NATIONAL TAX POLICY

The National Tax Policy is a document which sets broad parameters for taxation and ancillary matters connected with taxation. It is a clear statement on the principles governing tax administration and revenue collection. It therefore, provides a set of guidelines, rules and modus operandi that would regulate taxation in Nigeria.

3.2 Objectives of National Tax Policy

The objectives of the National Tax Policy are to address the myriad of problems bedeviling the Nigerian tax system. It is aimed at creating a tax system that will contribute to the well-being of all Nigerians and taxes which are collected by Government, should directly Impact on the lives of the citizens. This can be accomplished through proper and judicious utilization of the revenues collected by government. The tax system, as envisaged by the National Tax Policy, is expected to meet the following objectives:

- To promote fiscal responsibility and accountability
- To facilitate economic growth and development
- To provide the government with stable resources for the provision of public goods and services
- To address inequalities in income distribution.
- To provide economic stabilization.
- To pursue fairness and equity.
- To correct market failures.

The Policy document was launched and given credence to in April 2012. However, in a bid to give legal backing to tax policy, there is need to fully crystalise its tenets into more tax laws enacted by the national assembly.

4.0 TAX LEGISLATION

Laws refer to a whole body of enacted acts of legislation. In the context of taxation, it is a codified system of order that describes the legal implications of taxation, i.e. government levies on economic transactions.

- Tax laws provide a well-defined legal backing to the administration of each tax type
- States in clear terms the applicable rate,
- Tax laws stipulate what constitutes offence and the appropriate sanctions to each offence.
- They enshrine best practices in terms of ethical and professional conduct.

4.2 Tax Laws in Force in Nigeria

- Federal Inland Revenue Service (Establishment) Act No. 13 of 2007

- Companies Income Tax Act (CITA) CAP C21 LFN, 2004 (commencement 1st Jan, 1958)
- Personal Income Tax Act (PITA) CAP 8 LFN, 2004 (as amended)
- Petroleum Profits Tax Act (PPTA) CAP 13 LFN, 2004 (commencement 1st Jan, 1958)
- Deep Offshore and Inland Basin Production Sharing Contracts Act
- Value Added Tax Act (VATA) CAP D1 LFN, 2004 (commencement 1st Dec, 1993)
- Education Tax Act CAP E4 LFN, 2004 (commencement 1st Jan, 1993)
- Capital Gains Tax Act (CGT) CAP C1 LFN, 2004 (commencement 1st April, 1967)
- Stamp Duties Act CAP S8 LFN, 2004 (commencement 1st April, 1939)
- National Information Technology Development Agency Act (NITDA)
- Nigeria LNG (Fiscal Incentives, Guarantees & Assurances) Act
- Industrial Development (Income Tax Relief) Act
- Industrial Inspectorate Act
- Investment and Securities Act, 2007
- Insurance Act of 1997 (as amended)

4.3 Bases of Imposition of Tax in the Nigerian Tax System

For a good understanding of taxes payable by individuals and corporate bodies, it is essential to note the bases on which taxes are imposed in the Nigerian tax system. May I quickly point out that even though taxes are payable by individuals and corporate bodies, such taxes are not levied or imposed on such individuals and corporate bodies. Rather, taxes are levied on the incomes and transactions of these individuals and corporate bodies.

Taxes may be direct or indirect and may be imposed on individuals' incomes, corporate entities' incomes, assets and transactions. The bases of imposition are highlighted below:

- **On individuals' incomes**

Personal Income Tax – imposed on the income of all Nigerian citizens or residents who derive income in Nigeria and outside Nigeria;

Development Levy – a flat charge imposed on every taxable person typically within a state.

- **On Companies' incomes (Corporate Entities)**

Companies Income Tax – 30% imposed on the profits of all corporate entities who are registered in Nigeria or derive income from Nigeria, other than those engaged in petroleum operations;

Petroleum Profits Tax – imposed on the profits of all corporate entities registered in Nigeria or who derive income from oil and gas operations in Nigeria between 50% and 85%;

Education Tax – 2% imposed on all corporate entities registered in Nigeria;

Technology Development Levy – imposed on selected corporate entities (telecommunication companies, internet service providers, pension managers, banks, insurance companies and other financial institutions within a specified turnover range) in Nigeria to support nationwide development of technology infrastructure and capacity.

- **On Transactions**

Value Added Tax – imposed on the net sales value of non-exempt, qualifying goods and services in Nigeria, it is 5% of the value;

Capital Gains Tax – 10% imposed on capital gains derived from sales or disposal of chargeable assets;

Stamp Duties – imposed on instruments executed by individuals and corporate entities in Nigeria' the rate on Stamp duties varies;

Excise Duty – imposed on the manufacture of goods within the Government territory and collected by the Nigeria Customs Service;

Import Duty – imposed on the import of goods into the Government territory and collected by the Nigeria Customs Service; and

Export Duty - imposed on the export of goods outside the Government territory and collected by the Nigeria Customs Service.

This includes taxes such as property tax and other such taxes imposed on land or landed property.

Notwithstanding the above enumerated bases of imposition of taxes, the various tax laws provide relief and exemption to certain entities on certain incomes and activities. Again, let us note that these reliefs or exemptions are limited to the specific incomes or transactions for which they have been so granted rather than the global income or transaction of a particular entity.

To achieve the overall purposes and objectives of taxation, there is an inevitable need for a set of rules and regulations (quasi laws) to, amongst other things, give its administration a legal backing, provide ethical and professional conduct, etc. The components of the tripartite structure of a tax system will now be mentioned in relationship with the Nigerian tax system.

5.0 TAX ADMINISTRATION IN NIGERIA

The administration of taxation in Nigeria is vested in the various tax authorities depending on the type of tax under consideration.

Broadly, there are three categories of tax authorities, namely:

- Federal Inland Revenue Service,
- State Internal Revenue Service, and
- The Local Government Revenue Committee

The enabling law in respect of each type of tax will normally contain a provision as to the body charged with the administration of the tax. Each of the above mentioned tax authorities has their distinct composition, powers and functions.

LIST OF APPROVED TAXES AND LEVIES FOR THE THREE TIERS OF GOVERNMENT

A list of taxes and levies for collection by the three tiers of government has been approved by government and published by the Joint Tax Board (J.T.B.) as follows:

(A) Taxes collectible by the Federal Government

(1) Companies income tax;

(2) Withholding tax on companies;

(3) Petroleum Profit Tax;

(4) Value-added tax (VAT);

(5) Education tax;

(6) Capital gains tax - Abuja residents and corporate bodies;

(7) Stamp duties involving a corporate entity;

(8) Personal income tax in respect of:

- Armed forces personnel;
- Police personnel;
- Residents of Abuja FCT;
- External Affairs officers; and
- Non-residents.

(B) Taxes/Levies Collectible by State Governments

(1) Personal income tax:

- Pay-As-You-Earn (PAYE);
- Direct (self and government) assessment;
- Withholding tax (individuals only);

(2) Capital gains tax;

(3) Stamp duties (instruments executed by individuals);

(4) Pools betting, lotteries, gaming and casino taxes;

(5) Road taxes;

(6) Business premises registration and renewal levy;

- urban areas (as defined by each state):
    - maximum of N 10,000 for registration and N5 ,000 for the renewal per annum
- rural areas
- registration N2,000 per annum
- renewal N 1,000 per annum

(7) Development levy (individuals only) not more than N100 per annum on all taxable individuals;

(8) Naming of street registration fee in state capitals

(9) Right of occupancy fees in state capitals;

(10) Rates in markets where state finances are involved.

(C) Taxes/Levies Collectible by Local Governments

(1) Shops and kiosks rates;

(2) Tenement rates;

(3) On and off liquor licence;

(4) Slaughter slab fees;

(5) Marriage, birth and death registration fees;

(6) Naming of street registration fee (excluding state capitals):

(7) Right of occupancy fees (excluding state capitals);

(8) Market/motor park fees (excluding market where state finance are involved);

(9) Domestic animal licence;

(10) Bicycle, truck, canoe, wheelbarrow and cart fees;

(11) Cattle tax;

(12) Merriment and road closure fees;

(13) Radio/television (other than radio/TV transmitter) licences and vehicle radio licence (to be imposed by the local government in which the car is registered);

(14) Wrong parking charges;

(15) Public convenience, sewage and refuse disposal fees;

(16) Customary, burial ground and religious places permits; and

(17) Signboard/advertisement permit.

6.0 FOREIGN INVESTMENT IN NIGERIA

Investment in Nigeria is regulated by the Nigerian Investment Promotion Commission. The agency is set up to encourage and promote foreign investments in Nigeria. It serves as the regulatory agency for foreign investors operating in

Nigeria. Its registration procedures have been streamlined to further encourage inflow of direct foreign investment into the country.

It has put in place a one stop shop, which is an investment centre where thirteen (13) government agencies relevant to foreign investment, are brought under one roof in order to provide prompt and efficient services to foreign investors. Presently the following government agencies can be found in NIPC's One- Stop-Shop for the provision of their services:

i. The Nigeria Investment Promotion Commission (NIPC)
ii. The Corporate Affairs Commission (CAC)
iii. The Nigeria Immigration Service (NIS)
iv. The Nigeria Customs Service (NCS)
v. The Federal Inland Revenue Service (FIRS)
vi. The National Office for Technology Acquisition and Promotion (NOTAP)
vii. The Federal Capital Territory (FCT)
viii. The National Agency for Food, Drugs Administration and Control (NAFDAC)
ix. The Central Bank of Nigeria (CBN)
x. The Bureau of Statistics
xi. The Federal Ministry of Solid Minerals Development
xii. The Federal Ministry of Finance
xiii. The Standard Organisation of Nigeria (SON)

7.0 TAX INCENTIVES AND FOREIGN DIRECT INVESTMENT

Foreign investors are partners with the Nigerian Government and people to develop the Nigeria economy. This relationship should however be reciprocal and not exploitative. Nigerian Government guarantees security of investments, hence investors should discharge their obligations (tax, corporate social responsibility etc).

Consequently, tax incentives are special arrangements in the tax laws to attract, retain or increase investment in a particular sector with a view to stimulating growth in specific areas and assisting companies and individuals as they set up businesses. The underlying wisdom in such incentives is to bring about general growth and development across sectors and the economy at large. According to Morisset (2003), Tax incentive is a reduction in the corporate income tax rate, through tax holidays or temporary rebates for certain types of investment or companies. This is corroborated by Adegbile (2011) that Tax incentives are part of the system by developing countries and usually established by governments in order to grant foreign investors more attractive conditions to invest in their country.

The Current policy of Nigerian Government is to ensure that incentives are sector based and not granted arbitrarily. The benefit to the Nigerian economy must however exceed the cost of taxes foregone.

Incentives are reviewed regularly to Foreign Investors and if they are serving the expected purpose incentives are expected to voluntarily plough back into the Nigerian economy. The arguments against use of tax incentives for foreign investments argue against the vain objective of such effort as they condemn the strong abuse of some discretionary waivers and duty suspension schemes. However tenable their cries might be, proponents of the use of such incentives describe it as statistically significant enough to drive foreign investments in the positive direction. It is these and other reasons that we set out to explain Tax incentives, its cost and benefits with emphasis on its relevance for investors.

7.1 WHY BOTHER ABOUT TAX INCENTIVES?

The question about interest in the offer of incentives lie in the impact of foreign Direct Investment on productivity as measured by the Gross Domestic Product (GDP). This is provides ready and measurable yardstick for justification or rejection of sustenance of such regime of incentives so as to forestall economic loss and absence of resource efficiency.

A test of this relationship is contained in CBN Journal of Applied Statistics wherein results from the impact of foreign direct investment (FDI) and economic growth using a combination of Conitegrated Vector Autoregressive and Granger causality analysis to assess FDI and its impact on economic growth as measured by Gross Domestic Product (GDP). These methods test data from 1970 – 2009 and produced the tables below:

Table: Johansen Test for Cointegration Rank

Rank	Eigenvalue	Trace test	p-value	Lmax test	p-value
0	0.57922	58.311	(0.0032)	32.895	(0.0071)

1	0.57922	25.417	(0.1515)		(0.3782)
2	0.2055	11.406	(0.1903)		(0.3154)
3	0.06769	2.663	(0.1027)		(0.1027)

Source: Abdullahi F. Z et al; CBN Journal of Applied Statistics

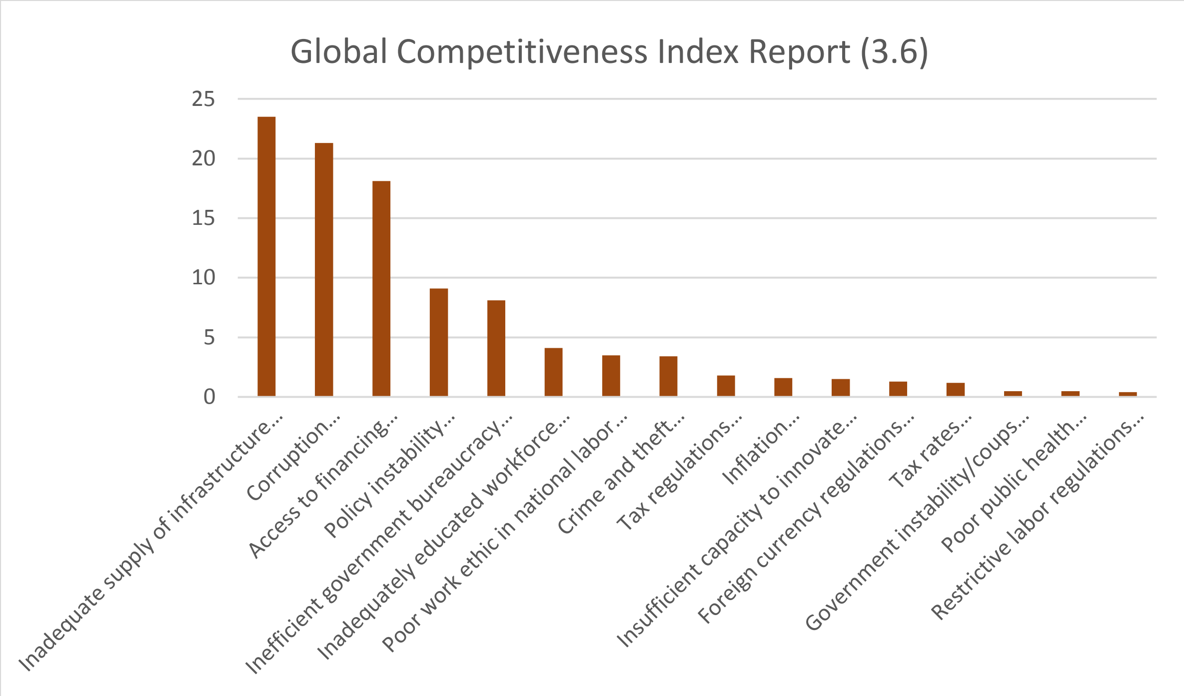
The result of this test showed that the cointegration relation with restricted constant is: GDP = 1.168FDI + 0.195IFR – 1.5588INR

The implication of this model is that Gross domestic product not only has a positive relationship with Foreign Direct Investment but also leads to a 1.168 percentage GDP growth from a percentage increase in Foreign Direct Investment. Inferentially and at 2012 Gross Domestic Product and foreign direct investment levels, GDP rises by USD558 Million with rise of USD89 Million in foreign direct investment.

Though tax incentive is not the only stimulant of foreign direct investment, reports of revenue losses in the sum of N100 Billion yearly to waivers and other taxes becomes dimmed by the growth prospects that the incentive brings at the end of the day.

Below is a graphical representation of the survey for the most problematic factors for doing business in Nigeria. Ranked as 120th out of 148th position in world rankings of Global competitiveness in doing business for the year 2012/ 2013, it can be noted that while the country's Tax rates continue to remain competitive being 4th least responsive problem for businesses, Tax regulation on the other hand stands in the middle of the pack due perhaps largely to various interpretations and confusions that sometimes characterizes administration and implementation of Tax laws by issuance of vague guides and explanatory notes.

Since the general trajectory of Tax incentives is to assist firms to birth their ideas, bringing their innovations to limelight as well creating the conducive environment for self-sustenance by the instrumentality of fiscal policy of government, such incentives contributes to bringing down general tax burdens to such establishments making them just as competitive as their pairs in other parts of the world.

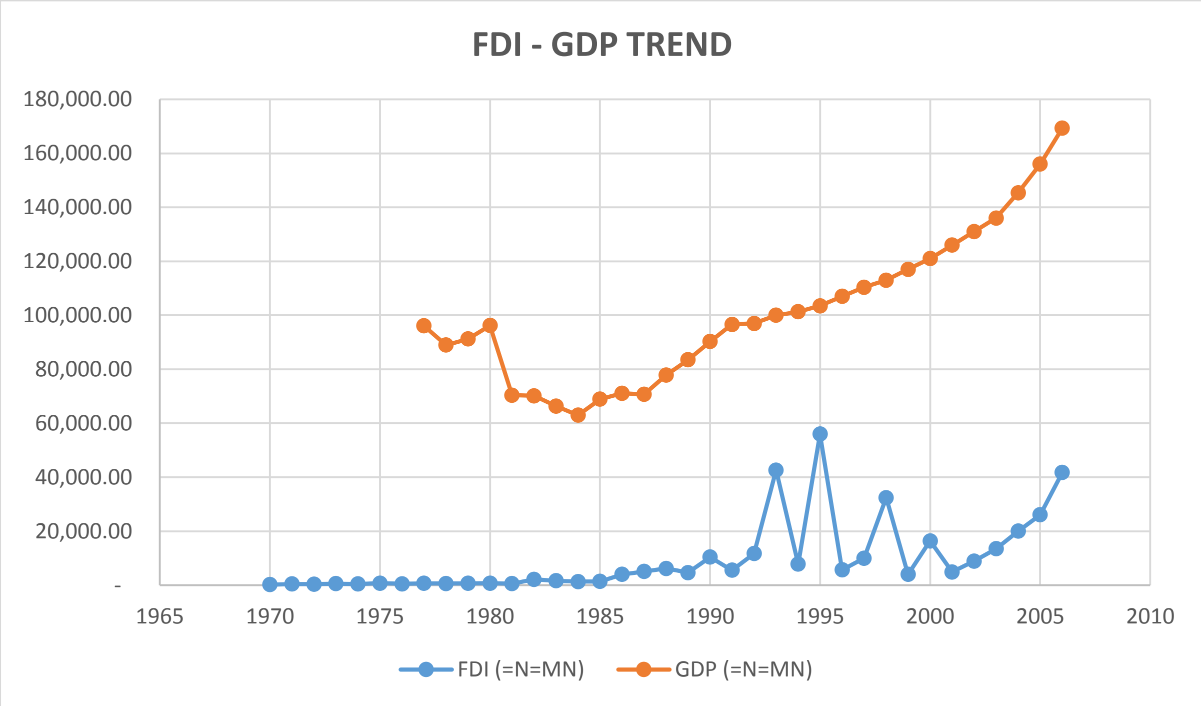


Source: World Economic Forum (2012/ 2013)

Another graphical representation of note is the effect/ impact of Foreign Direct Investment on Gross Domestic Product (GDP). This is explained hereinafter thus:

YEARS	FDI (=N=MN)	GDP (=N=MN)
1970	251.00	
1971	489.60	
1972	432.80	
1973	577.80	
1974	507.10	
1975	757.40	
1976	521.10	
1977	717.30	96,100.00
1978	664.70	89,000.00
1979	704.00	91,200.00
1980	786.40	96,200.00
1981	584.90	70,400.00
1982	2,193.40	70,200.00
1983	1,673.60	66,400.00
1984	1,385.30	63,000.00
1985	1,423.50	68,900.00
1986	4,024.00	71,100.00
1987	5,110.80	70,700.00
1988	6,236.70	77,800.00
1989	4,692.70	83,500.00
1990	10,450.20	90,300.00
1991	5,610.20	96,600.00
1992	11,730.70	97,000.00
1993	42,624.90	100,000.00
1994	7,825.50	101,300.00
1995	55,999.30	103,500.00
1996	5,672.90	107,000.00
1997	10,004.00	110,400.00
1998	32,434.50	113,000.00
1999	4,035.50	117,000.00
2000	16,453.60	121,000.00
2001	4,937.00	126,000.00
2002	8,988.50	131,000.00
2003	13,531.20	136,000.00
2004	20,064.40	145,400.00
2005	26,083.70	156,000.00
2006	41,734.00	169,304.00

Source: Central Bank of Nigeria



Though the famous quote by a serving Military Head of State has rang through time and summed up the irony of Nigerians suffering in the midst of plenty when he said "that the problem that Nigeria has is not that of lack of money, but how to spend money". Its wider ramifications for the country's need over 40 years later is best encapsulated per the data and graph represented above with respect to Foreign Direct Investment flows.

We observe from 1971 – 1975 and 1976 - 1980 an almost flattened growth trajectory of FDI as this period was that of surplus in government budgeting also witnessing the government's Indigenization and Import substitution policies which were not Foreign Direct Investment friendly. More particularly, the growth rate of Foreign Direct Investment inflow for this 5-year periods were 54.70% and 50.91% respectively. The period 1981 – 1985 and 1986 – 1990 shows some better performance at 143.37% and 159.70% growth rates respectively. This comes as no surprise for two reasons that can be readily adduced. Firstly, the period 1981 – 1985 was a period of return to civilian administration, majorly, and relaxation of Military-led indigenization programmes while the Structural Adjustment Programme (SAP) came on stream from 1986, during the General Babaginda administration, bringing about greater liberalization and better degree of openness.

Though the period of offer of a potpourri of conscious tax incentives to stimulate Foreign Direct Investment date back since 1958, another conscious and vigorous effort at reigniting same again could arguably be traced back to the mid 1990s when the Military introduced Tax holidays to attract investment in the oil and gas sector. This initiative has since led to investment of that sector among other sectors where investments are badly needed. It can also be seen from the graph that the nation also enjoyed some elevated flow of Foreign investment into the country from the 1990s and beyond also at an average growth rate of 76.46%.

7.1 TAX EXEMPTIONS AND INCENTIVES

Tax laws provide various incentives to companies carrying on businesses and these Incentives may be granted on industry basis or on tax type and may include:

- Exemption from payment of taxes
- Reduction in rate of tax to be paid
- Grant of allowances and deductions from profits subject to tax etc

The President has broad powers to grant tax incentives to any company or individual.

1. **Under the Industrial Development Act**, Pioneer Status is granted to qualifying companies and/or products and services resulting in 3-5 year tax holiday. Qualifying industries include; Mining, manufacture of cement, glass and glassware, lime from limestone, ceramic products, rubber, leather textile etc and other areas of industry that are of economic benefit to the country.

   Tax Incentives are also granted to companies in certain industries where it is deemed that:

   - the industry is not being carried on in Nigeria on a scale suitable to Nigeria's economic requirements or at all, or there are favourable prospects of further developments in Nigeria
   - it is in public interest to do so from payment of taxes

   The Incentives attract tax exemption for a three year period in the first instance and a maximum of five years in total. Also tax free dividends during pioneer period, and carry forward of losses made and capital allowances (on assets) incurred during the pioneer period.

2. **Under the Companies Income Tax Act**: The Companies Income Tax Act has been amended in order to encourage potential and existing investors and entrepreneurs. The current rate in all sectors, except for petroleum is 30%.

   Dividends interest, rent or royalty earned by companies outside Nigeria and brought in through specified channels are exempt from tax. Interest earned by a foreign company on its bank deposits in Nigeria are exempt from tax.

Nigerian companies with a minimum of 25% foreign equity and within their first four years of operation are exempt from payment of minimum tax.

The President of the Federal Republic of Nigeria in April 2012 signed into law an Order for the part exemption of profits of companies from tax. The order is to last for five assessment years from the effective date and is definitely aimed at stimulating employment of fresh graduates and school leavers, as well as to encourage the channeling of private sector investment in critical public infrastructure.

The tax incentives contained in the Order can be classified under the following headings:

(a) Employment Tax Relief (ETR)

The relief claimable is 5% of the assessable profits of a company subject to a maximum of 100% of the gross salaries of the qualifying employees. The relief is available if the company has a minimum net employment of 10 employees (counting two employees from the same immediate family as one). Not less than 60% of the new employees must have had no previous work experience and must have graduated from school or vocation within 3 years of assessment. The employees must be Nigerians in first-time full- time employment of the company. The relief must be utilized in the year of assessment in which the company qualifies and any unutilized amount cannot be carried forward.

Companies claiming this relief would be expected to furnish the tax authority with a list of joining and leaving employees during the year, their qualifications, year of graduation and gross salaries earned during the year, together with the PAYE tax paid on such salaries.

(b) Work Experience Acquisition Programme Relief (WEARP)

This relief is claimable at the rate of 5% of the assessable profits of a company subject to a maximum of 100% of the gross salaries of the qualifying employees. The relief is available if the company has a minimum net employment of 5 new employees (counting two employees from the same immediate family as one). Such employees must be Nigerians in first-time full- time employment by the company and must be retained for a minimum of 2 years from the year of assessment the employees were first employed. Also, this relief must be utilized in the year of assessment in which the company qualifies and any unutilized amount cannot be carried forward.

Companies involved in HR outsourcing could generate good tax savings from claiming this relief so long as they are able to retain the same personnel on their contracts for the mandatory two-year period. The inability to carry forward the relief also means that new companies would not be able to claim the relief unless they record taxable profits by their third year of commencement.

(c) Infrastructure Tax Relief (ITR)

The relief claimable shall be 30% of the cost of providing completed infrastructure/facilities of a public nature, for use by the company and the public except where it is impracticable to be used by the public or an exemption from public use has been obtained from the Minister of Finance.

The qualifying infrastructure (facilities) include power/electricity, roads and bridges, water, health, educational and sports facilities and others as may be specified by an order issued by the Minister of Finance. The relief shall be treated as additional deduction/expense in arriving at the assessable profit of the company. Any amount that cannot be utilized is available for carried forward for a maximum of two assessment periods.
This relief appears to be a duplication of the Rural Infrastructure Relief in Section 29 of CITA, except that the qualifying infrastructure has been expanded in the order and the limitations in Section 29 (such as the nearness to Government infrastructure), which are not mentioned in the order. This means that companies can claim both reliefs within the same tax return.

3. **Incentives under the Personal Income Tax Act**: Non-Nigerian employees of foreign companies in Nigeria may be exempt from tax in Nigeria, where they spend a cumulative period of less than 183 days in Nigeria during a 12 months period and their income is subject to tax in their home country. The Minister of Finance also has wide powers to grant exemptions to any person based on a treaty entered into with Nigeria.

4. **Under the Capital Gains Tax Act**: Foreign companies carrying on business in Nigeria are exempted from capital gains tax on disposal of assets, except such proceeds are brought into Nigeria.

5. **Incentives under the Value Added Tax Act:** Import of several items exempted from value added tax. Exported goods and Import and Export Duty Exemptions services also exempted from value added tax and Reductions .Import and export duty exemptions and reductions are available for several items. List of exempt items and rates is reviewed

annually based on economic considerations and developments in the Nigeria economy.

6. **Incentives under the Petroleum Sector:** The incentives in this sector are granted to companies that are into joint ventures with the Nigerian National Petroleum Corporation and have signed Memorandum of Understanding. The incentives are:
    - Guaranteed minimum margin of USS2.50bl;
    - Accelerated capital allowances which provides that the capital allowances can be carried forward indefinitely;
    - Graduate royalty rates approved for oil companies.
    - Onshore production in territorial waters and continental shelf areas beyond 100 meters.

Investment tax allowances (ITA) is granted to a company in respect of any asset for the accounting period. The ITA is graduated as follows:

On shore - 5%
Off shore in depth of up to 10m - 10%
Off shore in depth of between 100-200m - 15%
Off shore in depth of over 200m - 20%

7. **TAX INCENTIVES TO GAS INDUSTRY**

In view of the enormous potentials in this sector, Government approved the following fiscal incentives:

a. **GAS PRODUCTION PHASE**
Applicable tax rate is the same as the company income tax which is currently at 30%
Capital allowance at the rate of 20% per annum in the first four years, 19% in the fifth year and the remaining 1% in the books
Investment tax credit at the current rate of 5%
Royalty at the rate of 7% on shore and 5% off shore

b. **GAS TRANSMISSION AND DISTRIBUTION**

- Capital allowance as in production phase above
- Tax rate as in production phase
- Tax holiday under pioneer status

c. LNG PROJECTS

-Applicable tax rate under PPT is 45%
- Capital allowance is 33% per year on-straight line basis in the first three years with 1% remaining in the books
- Investment tax credit of 10%
- Royalty 7% on-shore 5% off-shore, tax deductible

d. GAS EXPLOITATION (UPSTREAM OPERATION)

Fiscal arrangements are reviewed as follows:

-All investments necessary to separate oil from gas from reserves into suitable product is considered part of the oil field development.
- Capital investment facilities to deliver associated gas in usable form at utilization or transfer points will be treated for fiscal purposes as part of the capital investment for oil development.
- Capital allowances, operating expenses and basis for assessment will be subjected to the provisions of the PPT Act and the revised Memorandum of Understanding (MOU).

e. GAS UTILISATION (DOWN STREAM OPERATAION)

Companies engaged in gas utilization are to be subjected to the provisions of the Companies Income Tax Act (CITA)

- An initial tax free period of three years renewable for an additional two years
- Accelerated capital allowances after the tax-free period in the form of 90% with 10% retention in the books
- 15% investment capital allowance, which shall not reduce the value of the asset.

In 1998, the government approved additional incentives to support the gas industry in the following areas:
- All gas developmental projects, including those engaged in power generation, liquid plants, fertilizer plants, gas distribution/transmission pipelines are taxed under the provisions of Companies Income Tax (CITA) and not the Petroleum Profit Tax;
- All fiscal incentives under the gas utilization downstream operations since 1997 are to be extended to industrial projects that use gas i.e. power plants, gas to liquids plants, fertilizer plants, gas distribution/transmission plants;
- The initial tax holiday is to be extended from three years to five years;
- Gas is transferred at 0% PPT 0% Royalty;
- Investment capital allowance is increased from 5% to 15%;
- Interest on loan on gas project is to be tax deductible provided that prior

approval was obtained from the Federal Ministry of Finance before taking the loan; and
- All dividends distributed during the tax holiday shall not be taxed.

8. Incentives under the Tax Free Zones and Export Processing Zones.

There are laws creating tax free zones and export zones, which exempt companies operating in those areas from tax obligations in Nigeria for operations carried out in the zones ◦ Companies are required to register before enjoying the benefits and all activities must be performed exclusively within the zones - activities outside the zones will be subject to tax. Tax free status is continuous as long as activities are restricted to the zones.

Some of the incentives are as follows:

• Complete tax holiday for all Federal, State and Local Government taxes, rates, custom duties and levies.

• One-stop approval for all permits, operating licences and incorporation papers.

• Duty-free, tax-free import of raw materials for goods destined for re-export.

• Duty-free introduction of capital goods, consumer goods, components, machinery, equipment and furniture.

• Permission to sell 100% of manufactured, assembled or imported goods into the domestic Nigerian Market.

• When selling into the domestic market, the amount of import of import duty on goods manufactured in the free zones is calculated on the basis of the value of the raw materials or components used in assembly not the finished product.

• 100% foreign ownership of investments.

• 100% repatriation of capital, profits and dividends.

• Waiver of all import and export licenses.

• Waiver on all expatriate quotas for companies operating in the zones.

• Prohibition of strikes and lockouts.

• Rent-free land during the first 6 months of construction.

Government may however review the status of the zones based on economic considerations.

9. Nigeria's Double Tax Treaty

This network offers significant incentives to investors, there is considerable room for further expansion subject to development of a clear tax treaty strategy. Nigeria has existing treaties with:

- UK;
- France;
- Netherlands;
- Belgium;
- Pakistan;
- Canada;
- Czech Republic;
- Philippines; and
- Romania.

Negotiations are in progress at various stages with other countries like Turkey, Russia, India, and Korea.

Other countries have indicated their interest to commence negotiation of tax treaties with Nigeria. As a concession to Nigeria's treaty partners, government has approved a lower treaty rate of 7.5 on dividends, interest, rent and royalties when paid to a bonafide beneficial owner of a treaty country.

10. OIL AND GAS FREE ZONE

The Oil and Gas Export Free Zone Act No. 8 of 1996 established an Oil and Gas Free Zone Authority to manage, control and co-ordinate all the activities within the zone. This zone encompasses three oil and gas service centres around the ports of Onne (near Port Harcourt), Calabar and Warri. All three ports have enhanced stacking and warehousing facilities awaiting subscribers. Incentives and fiscal measures approved by government that favour and encourage large investments in the region include:

• No personal income tax

• 100% repatriation of capital and profit

• No pre-shipment inspection for goods imported into the free zone.

11.TELECOMMUNICATIONS

Government provides non-fiscal incentives to private investors in addition to a tariff structure that ensures that investors recover their investment over a reasonable period of time, bearing in mind the need for differential tariffs between urban and rural areas. The tariff structure as approved by the regulatory authority, Nigerian Communication Commission, also provides adequate cross-subsidy between the profitable trunk and local calls of the urban and non-profitable operation of the rural areas.

Other Incentives in place are:-

a) Manufacture/installation of telecommunications related equipment is considered as pioneer activity. As a result, they enjoy 5 to 7 years tax holiday depending on location.

b) Taxes and duties do not exceed those charged on essential electrical goods.

12. INVESTMENT PROMOTION AND PROTECTION AGREEMENT (IPPA)

As part of additional effort to foster foreign investors' confidence in the Nigeria economy, Government continues to enter into bilateral investment promotion and protection agreements (IPPAs) with countries that do business with Nigeria. The IPPA helps to guarantee the safety of the investment of the contracting parties in the event of war, revolution, expropriation or nationalisation. It also guarantees investors the transfer of interests, dividends, profits and other incomes as well as compensation for dispossession or loss. To this end, Nigeria has concluded and signed IPPAs with:

- France;
- United Kingdom;
- Netherlands;
- Romania;
- Switzerland;
- Spain;
- South Africa; etc.

Negotiations with the United States of America, Belgium, Sweden and the Russian Federation are at various stages.

13. LIBERALISATION OF OWNERSHIP STRUCTURE

The government in repealing the Nigerian Enterprises Promotion Act of 1972 (Amended in 1977 and in 1989) and promulgating the Nigerian Investment Promotion Commission Act of 1995 has liberalized the ownerships structure of business in Nigeria. The implication of this is that foreigners can now own 100% shares in any company as opposed to the earlier arrangement of 60%-40% in favour of Nigerians.

14. REPATRIATION OF PROFIT

Under the provisions of the Foreign Exchange (Monitoring & Miscellaneous Provision Act No. 17 of 1995), foreign investors are free to repatriate their profits and dividends net of taxes through an authourised dealer in freely convertible currency.

15. GUARANTEES AGAINST EXPROPRIATION

The Nigerian Investment Promotion Commission Act guarantees that no enterprise shall be nationalized or expropriated by any government in Nigeria.

8.0 MULTI-LEVEL TAXES

There is often a problem of multiple taxes for businesses, at the federal, state and local government levels. Investors are therefore advised to engage the services of professional tax advisors in dealing with this problem.

8.1 INVESTORS RELATIONSHIP WITH CHARTERED TAX PRACTITIONERS

Members of CITN are the only statutorily recognized tax professionals in Nigeria. They add value to businesses by their professional and ethical handling of tax matters. Whether they work in-house as tax managers or outside as tax consultant, they help their firms/ clients in tax planning, advisory services, compliance issues and tax dispute resolutions. Therefore Investors are strongly advised to work hand in hand with CITN certified professional tax practitioners in the bid to ensure tax compliance in their firms.

Conclusion

The Nigerian economy and system of government are dynamic and evolving at a rapid rate. The government is also working extremely hard towards eradicating corruption with the establishment of the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) which are statutory bodies charged with prosecuting cases of corruption in the Country. Nigeria is the Country to invest in now. Any disciplined and law abiding citizen will be able to settle into the Nigerian business environment and conduct business satisfactorily.

References

M.A.C Dike (2013): An overview of the Nigerian Tax System and the Taxes payable by individuals and Corporate Bodies.

Ifueko Omoigui Okauru (2012): “Tax Incentives for Foreign Investors in Nigeria” at The Nigeria Investors Business Forum in Berne Switzerland

Nigerian Investment Promotion Council- www.nipc-nigeria.org/FAQ.htm

The Nigerian Investment Promotion Council Act

New Tax Incentives for Nigerian Companies by Pedabo