Chartered Institute of Taxation of Nigeria (CITN)

(Chartered by Act No. 76 of 1992)

POSITION PAPER ON PROPOSED AMENDMENTS TO THE COMPANIES INCOME TAX ACT; CAP C.21, LAWS OF FEDERATION, LFN 2004

ON FRIDAY, SEPTEMBER 22; 2017

SUMMARY

The proposed bill seeks to relax the eligibility requirements for rural investment incentives and at the same time increase the rate and duration of the incentive.

We observe that there is no empirical data to justify the proposals especially regarding the performance, cost and benefits of existing rural investment incentive. Without this, the country may simply be losing money through the grant or expansion of arbitrary incentives.

The proposal to grant a higher investment allowance and at the same time a 10-year tax holiday is duplicative. These moves are capable of further eroding the country's tax base without commensurate economic benefit.

Alternatively, government should develop a framework for infrastructure relief which caps the tax incentive to the maximum of money spent to avoid abuse.

In addition, we believe further amendments are required to the Companies Income Tax Act and should not be restricted to only these provisions. The Mining and Gas incentives should also not be carried out in isolation but in conjunction with other key issues affecting the sectors.

1.0 Introduction

The Institute is in receipt of a proposed bill by the National Assembly to amend the Companies Income Tax Act, Cap. C21, LFN 2004. The bill, which is being sponsored by Senator Emmanuel Andy Uba seeks to, among other things, make for tax incentives for economic growth and creation of employment opportunities.

The bill, therefore, proposes 6 main amendments to various sections of the Act and would be cited as the Companies Income Tax Act (Amendment) Bill, 2015, if finally passed and assented to.

2.0 Current state of play around Incentives in the Principal Act - Rural Investment Allowance, Initial and Annual Allowance

We recall the Act allows a company rural investment allowances if it incurs capital expenditure on the provision of facilities such as electricity, water or tarred roads for the purpose of its trade or business which is located at least 20 kilometres away from such government-provided facilities. The proposed bill seeks to reduce the distance to 10 kilometres.

A company which is granted rural investment allowance is however precluded from claiming investment allowance but can claim initial and annual allowances. We note that the bill has not proposed otherwise.

Institute's Comment

The provisions, as proposed in the bill, is capable of expanding and facilitating relief for investment burdens on businesses for such qualifying capital expenditure, who were not covered, previously and is therefore welcome. A cost benefit analysis of existing provisions could, however, provide objective perspective to the bill.

3.0 Proposal for extended Tax holidays

The current amendment to the principal Act being sought to increase the tax free periods for new companies and companies in mining of solid minerals, gas utilization (downstream operations) to five or ten years do not meet any test of consistency with the provisions of the Industrial Development (Income Tax Relief) Act (IDITRA), Cap. I7, LFN 2004.

Indeed, arguments that the provisions of IDITRA are tailored towards grant of pioneer status on commodities/product lines may appear tenable, but lack of supporting evidence for the business case for extending tax holidays beyond those in IDITRA, under this bill, prevents the Institute from backing these proposed amendments.

Institute's Comment

At best, the provisions should be amended and brought in consistency with extant provisions in IDITRA.

4.0 Restriction of claim of Investment Allowance

The provisions of Section 40(11) places restrictions to claim of investment allowance granted by the preceding subsection (10) under that Section. This provision, therefore, does not anticipate full recovery of qualifying capital expenditures on investments such as construction of tarred road at the current rate of 15% and even at the new proposed rate of 20% as half of this expenditure still stands in the book of the provider by the end of the terminal period imposed.

Institute's Comment

The decision to allow the investment allowance terminate as with the residual tax written down value required of other qualifying assets that have enjoyed full capital allowance should be incorporated in this proposed bill to incentivize businesses in line with the spirit of the current amendment to this Act.

5.0 Conclusion

It is the considered view of the Institute that amendments to the substantive provisions of CITA, Cap. C21, LFN 2004 is a welcome development.

We however charge the National Assembly to do more as other amendments to the principal Act are long overdue. While the Institute has provided responses relevant to the substance of the current bill, as proposed, we look forward to an invitation to participate in a holistic amendment process in no distant time.