



Chartered Institute of Taxation of Nigeria
(Chartered by Act No. 76 of 1992)

**MEMORANDUM POSITION PAPER ON THE PROPOSED BILL FOR AN ACT ON TAX
INCENTIVES MANAGEMENT AND TRANSPARENCY BILL, 2017 (SB.331)**

FRIDAY; SEPTEMBER 22, 2017

SUMMARY

As stated the bill is intended to promote transparency in the management of incentives but the framework provided in the bill is more of a tick the box approach rather than addressing the fundamental issue around the robustness of economic planning, the quality of implementation, and consistency of monitoring and transparent reporting. Many economies are able to achieve this feat through a holistic framework in this regard rather than by simple enactment of legislation.

The following are specific observations about the bill.

1. Compliance burden should be minimized especially on taxpayers who enjoy any form of incentive. This is necessary so as not to serve as a disincentive capable of impacting negatively on the ease of doing business.
2. As a consequence of the above, the bill should provide thresholds or safe harbour to limit compliance burden. For instance, an investor who gets capital gain exemption when selling insignificant number of shares should not have to deal with this onerous requirement.
3. The reference to FIRS and Customs for filing of the returns wrongly presupposes that all incentives relate to these agencies. In addition, this could be inconsistent with fiscal federalism enunciated in the Constitution for instance where the incentive relate to a state.
4. The transition period of 15 days is grossly inadequate and inconsistent with a minimum of 3 months prescribed in the National Tax Policy.
5. The proposed Joint committee is not necessary as this will likely create avoidable overhead, increase bureaucracy and rent seeking. Rather than a standing committee, transparent reporting that is published annually will serve the purpose better while the NASS can exercise its oversight functions as may be necessary.

1.0 Introduction

The pioneer incentive and tax waiver regime in Nigeria has been at the centre of controversies overtime. It is believed that this tax expenditure has had measured impact on the various aspects of businesses where they have been applied in the country. An instant finding, in this respect, is the report of Messrs Actionaid captioned 'The West African giveaway' which indicated that tax expenditures significantly reduce domestic revenue collection and even goes further to aver that it did not necessarily attract Foreign Direct Investment (FDI).

This is corroborated by another report, this time by the Organisation for Economic Cooperation and Development (OECD) which stated the following considerations for investment by investors i.e. a predictable and non-discriminatory regulatory environment and an absence of undue administrative impediments to business more generally; a stable macroeconomic environment, including access to engaging in international trade; sufficient and accessible resources, including the presence of relevant infrastructure and human capital.

However, the economic argument in favour of pioneer schemes and other tax expenditures appear to gain traction in the face of highly competitive international markets and local availability of goods and services for fiscal conservation.

Meanwhile, the proposed bill for the establishment of a methodology for tax expenditure reporting and transparency is expected to throw light on pioneer tax concessions, tax waivers and exemptions and is, therefore, welcome in this regard. However, the bill should be carefully crafted with its words clearly spelt out in order to avoid ambiguity.

More so, the bill should not be a standalone bill but should seek domiciliation either in the existing **Industrial Development (Income Tax Relief) Act (IDITRA); 17, Laws of Federation; 2004 or the Fiscal Responsibility Act**. Since the IDITRA substantively contains incentives available to the Industrial sector, it therefore follows that other proposals for managing the incentive scheme should be found within such law. Similar case for domiciliation can be canvassed for the Fiscal Responsibility Act in the light of the openness and transparency in government dealings the Act promotes.

2.0 Economic case for Waivers and Exemptions

Generally speaking, waivers, concessions and exemptions are sound and ideal arrangements both as economic tools and, from the viewpoint of competitive international trade. This is because local businesses/industries need to be positioned for improvement of their fortunes for attainment of international competitiveness.

However, the Nigerian case appears be-dogged with lots of challenges including abuses observable to the discerning Nigerian public. A regime wherein concessions and waiver

beneficiaries are themselves inclined to abuse of same leaves a lot to be desired. Such situations and reports of indiscriminate waivers and concessionary approvals have all contributed in questioning the bearing and economic sustainability of this initiative of government.

Whilst it may, therefore, have been a good decision to suspend the issuance of import tariff waivers on new concessions and revoke all existing Exemptions and Concessions not backed by extant laws or protocol in 2015, this is not enough as Government is enjoined to investigate reasons why the schemes failed and design appropriate strategies for addressing the identified problems.

3.0 Specific recommendations to proposed bill

A quick look over of the proposed bill indicates a compliance burden on small businesses. It would appear that the intention of the bill is for the Federal Inland Revenue Service (FIRS) to give operationalization to its provisions.

This places all businesses within the regulatory purview of the Service and begs the question about the fate of small businesses whose interface substantially stops with the State Boards of Internal Revenue Service. The following amendment is therefore proposed vis:

At line 20, C2731, Relevant authority should remain but bearing the States revenue service as a relevant authority who shall forward these annual submission to the FIRS through the JTB.

At line 4, C2732, Include phrase to state that the States shall forward same to the FIRS of submissions received at that level through the JTB.

At line 1, C2732, 'annual' should be inserted between 'relevant' and 'tax returns'

At line 9 and 12, C2732, include State Boards of Internal Revenue.

At line 11, C2732, delete 'of'

At line 16, C2732, 'annual' between 'filed' and 'tax returns'

At line 19, C2732, 'annual' should be inserted between 'filing of' and 'tax returns'.

3.1 Under Penalties for Non-Compliance

Include that Directors/Promoters of such companies also stand to be held jointly and severally liable for such non-compliance with amounts prescribed in addition to whatever the business is to pay.

3.2 Under Funding

The provisions for funding and the ministry, department or agency being funded is not clear in the bill. It is necessary to clarify same in order to avoid ambiguity.

3.3 Ministry with powers to administer the Bill

The Ministry and Minister with the powers to action this bill and prescribe subsequent amendments thereto have not been clearly stated. Subsidiary legislations may be required for the good and continuance of the provisions of the law, if passed.

While the legislature may be correct in instituting an oversight committee that would monitor implementation, it does not estop the bill from putting a Ministry and its Minister in substantive charge of implementation in order to avoid its implementation running amok.

4.0 General recommendations for future Policy and Procedural engagements on Grant of Incentives

Recommendations for appropriate strategies include:

1. Sunset clause must always accompany any incentive regime as viable sectors are not expected to require sustained economic subsidies in perpetuity.
2. Regular review of concession, exemption and waiver policies with a view to integrating key stakeholders' viewpoints into their provisions.
3. Allowing concessions and waivers to flow from clearly thought strategy and specific objectives of government. Government should ensure proper implementation of such policies with a view to identifying genuine manufacturers/importers who ought to be the beneficiaries of these incentives.
4. Provision of platform for a sector-focused transparent and broad based grant of waivers and concessions over selectivity among companies in the same sector thereby putting one at undue advantage over the others.
5. For purpose of proper identification of genuine businessmen, the role of Associations like Manufacturers Association of Nigeria (MAN), Nigeria Chambers of Commerce, Industries Mines and Agriculture (NACCIMA), etc. should not be overlooked.
6. Grants of concessions, exemptions and waivers should be strictly controlled but with due regard to the following:
 - a. The Country's comparative advantage.
 - b. The fiscal and monetary policies in place.

- c. Export subsidization and support.
 - d. Import control measures.
 - e. Development of local industries.
 - f. Attraction of foreign and local investors.
 - g. Beneficiaries of the incentives.
7. The introduction of a 2-stage Approach to the grant and administration of concession is canvassed with the first being the issuance of Conditional Duty Exemption/ Concession certificate from Ministry of Finance and second being the introduction and application of a “Non-Use tax” Act. This tax type is seemingly the opposite of the “Use Tax” as operated in the United States as a type of excise tax levied by numerous state governments assessed upon tangible personal property purchased by a resident of the assessing state for use, storage, or consumption in that state, regardless of where the purchase took place.
- a. The second part of this Act would serve pursuant to the first part, if passed. The first part is to be administered on the Nigeria Customs Service for implementation after approval by the Federal Ministry of Finance for clearance of cargo at the port with the Tax Identification Number of the said company correctly indicated on the certificate.
 - b. The second is a trigger and only sets in if and when it cannot be proven by the beneficiary of a concession that the equipment or plant for which the concession was given was never commissioned nor put into use.
 - c. The item enjoying concession must be clearly defined for purpose of this process.
 - d. The Federal Inland Revenue Service should be empowered to administer this second part of the process as it should be saddled with the responsibility of collecting an amount no less than the equivalent value of the duty concessioned or waived where the beneficiary company fails to render a valid return in that regard.
 - e. The said company shall be forwarded to the Ministry of Finance department which shall recommend its blacklisting where sufficient evidence abound that the company did not utilise such concessions for the intended purpose it obtained same.
 - f. All goods subject to concession/ waivers must be processed as valid for foreign exchange and the CBN department responsible shall forward the duly validated

import documents after import and clearance of cargo and schedule thereof to the Ministry of Finance department mentioned above.

8. Chartered Institute of Taxation of Nigeria, being the professional body charged with the responsibility of regulating the tax profession and which is statutorily empowered to advice government on fiscal policy regimes from time to time, should be considered in the membership of any future group or sub-committee established to review the concessions, exemptions and waivers and other relevant import tariffs.

5.0 Conclusion

The Institute is of the considered view that this bill is a step in the right direction in order to finally lay to rest the scope and nature of opacity that had characterised tax expenditure reporting which had been virtually non-existent before now. It is hoped that stakeholders would rally round same and lend their full support in its implementation for good governance and transparency.