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The High Road? Why Companies Should Actively Pursue the Infrastructure Tax Credit Scheme

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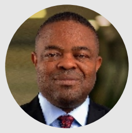
Key Contacts



Dr. Jude Odinkonigbo
Counsel
jude.odinkonigbo@templars-law.com

Collins Ogbu
Associate
collins.ogbu@templars-law.com

Introduction

The Nigerian Government seeks to utilise tax revenue for the good of society and to encourage voluntary tax compliance. One avenue for the realisation of the public good goals of taxation is through the introduction of the Infrastructure Tax Credit Scheme[1]. In particular, President Muhammadu Buhari relying on the powers conferred on him by Section 23(2) of the Companies Income Tax Act, promulgated the Executive Order Number 007, 2019 known as the Companies Income Tax (Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme) Order, 2019 (the "Scheme"). The Scheme will be in force for a period of ten (10) years from the date of commencement. This means that the Scheme will cease to be available by 25 January 2029, unless renewed[2].

Primarily, the Scheme was introduced to encourage private sector participation in the construction and development of key road infrastructures in Nigeria. The introduction of the Scheme is considered a step in the right direction towards bridging the road infrastructure gap in the country. Nigeria has only about 60,000 km of road network paved, out of a total road network of about 195,000 km. Despite this, majority of the so-called paved roads are littered with potholes generally considered unsafe for commuters. Having realised that it cannot go it alone, the government decided to lure deep pockets companies to participate in the project of fixing our roads with its attendant tax advantages.

Overview of the Scheme

The Scheme is a type of public private partnership whereby a private company, a group of companies operating through a Special Purpose Vehicle (SPV) or an institutional investor (altogether referred to as "Participants") will be able to finance construction or refurbishment of certain federal roads designated as "Eligible Roads"[3].

[1] See the preamble to the Executive Order No. 007 of 2019.
[2] Exactly ten (10) years from the date of its execution by the President. See Paragraph 1(3) of Presidential Executive Order, No. 007, 2019.
[3] Eligible roads are roads approved by the President on the recommendation of the Minister of Finance, published according to the Order and duly notified to Participants of the Scheme. See Paragraph 5 of the Order.

Afterwards, the Participants are allowed, under the Scheme, to recoup the approved total costs expended on the construction or refurbishment as tax credits against their annual Companies Income Tax.

The recovery or recouping of the approved total costs expended on the construction or refurbishment shall be subject to the utilisation of a maximum annual tax credit of 50% of the total accessed Companies Income Tax for each year 0f assessment.

However, a Participant that engages in the construction or refurbishment of roads in areas designated by the President as 'Economically Disadvantaged Areas'[4] is entitled to utilise an annual tax credit that covers up to 100% of the total accessed Companies Income Tax for each year 0f assessment.

Any unutilized credit within the year of assessment can be carried forward by a Participant to subsequent tax years until the credit is fully utilised. It is also transferrable for utilisation as tax credit in the subsequent years of assessment until the costs have been fully recovered by a Beneficiary.

Generally, the tax credit qualifies as an asset in the Participant's financial records, which means that the Participant must comply with the requirements of the International Financial Reporting Standards in reporting the tax credit.

Furthermore, the tax credit is tradable on any stock exchange in which it is registered. It can be transferred to other taxable companies in Nigeria by the Participant, where the company to which it is transferred shall be regarded as a Beneficiary of the Scheme. However, the Participant intending to trade the tax credit shall do so only with the consent and approval of the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee (“Committee”).

An additional incentive available to a Participant is the grant of a single non-taxable uplift. The applicable percentage of this grant is the prevailing Central Bank of Nigeria's Monetary Policy Rate plus 2% of the Project Cost. Since the uplift does not constitute a taxable income in the hands of a Participant or Beneficiary, *it is utilised as a credit against a Participant's Companies Income Tax*.[6]

Practical Application of the Scheme:

Recently, Dangote Cement Plc has been one of the major beneficiaries of the infrastructure tax credit under the scheme. In particular, Dangote Cement Plc constructed roads along the Apapa-Oworoshoki-Ojota expressway in Lagos and the 43km Lokoja-Obajana-Kabba expressway connecting Kogi and Kwara states, which are valued at N21.6 billion (approx. USD $52.4 million) and N721 million (approx. USD $1.75 million) respectively. Following the construction of the above road networks, the FIRS, through its tax operations group, issued a tax credit certificate to Dangote Cement Plc covering a total of N22.32 billion (approx. USD $54.1 million) which can be utilized to reduce the company's annual Companies Income Tax payable in the subsequent years of assessment until the amount is fully utilised.

[4]Economically Disadvantaged Areas are locations or areas in any State or geopolitical zone designated to be so by the President on the advice of the Minister of Finance. See Paragraph 5 of the Order.
[5]See Paragraph 4(3) of the Order.
[6]See Paragraph 2(2)&(3) of the Order.

Companies Jostling to Benefit from the Scheme

The Scheme's potential for success is made manifest through the jostle amongst private sector participants to take advantage of the Scheme. For instance, through a bidding process, MTN and BUA Group were selected to construct federal roads that form part of the Eligible Roads under the Scheme[7]. Other private sector firms such as Access Bank, Transcorp Group, GZI Industries and Mainstreet Energy have also participated in the construction or refurbishment of Eligible Roads under Scheme[8]. Through their participation in the Scheme, MTN will construct 110km Enugu-Onitsha road in Anambra State; BUA Group will construct Bode-Saadu-Lafiagi road; Eyinkorin road and bridge and Okura Road which links the Benin Republic with Osun State; the Transcorp Group will construct the Oyinbo-Izuoma-Mirinwayi-Oklama-Afam Road; Access Bank will refurbish the 5km Oniru axis of VI-Lekki circulation road in Lagos State; GZI Industries will reconstruct Umueme village road, Abia State; and Mainstreet Energy is will construct Malando-Garin Baka-Ngwaski Road and rehabilitate the Mokwa-Nasarawa Road both in Niger State.

After the construction, refurbishment or repairs of the respective roads, the Participant company will obtain a tax credit which will be evidenced through a tax credit certificate issued by the FIRS based on the approval of the Committee.

How to benefit from the Scheme

- The first step is to verify that the company or group of companies are eligible to participate in the Scheme.
- The second step is ensuring that the road network contemplated for construction or refurbishment qualifies an Eligible Road under the Scheme. If such road network does not qualify as an Eligible Road, then the company may apply to the Committee to review the list of Eligible Roads to include the road network that it is interested in.
- Afterwards, the company or group of companies shall engage with the Federal Government on the proposal for the funding of the construction or refurbishment of the road network for the Eligible Road under the Scheme.
- Subject to compliance with the relevant Public-Private Partnership requirements such as competitive bidding, priority projects consideration, execution of concession agreements (in this case, a Memorandum of Understanding), etc, the company shall proceed to construct or refurbish the selected Eligible Road(s).
- The company shall make an application to the Committee for tax credit to cover the costs of the construction or refurbishment of the selected Eligible Road(s).
- Upon the approval by the Committee of the tax credit, the FIRS shall issue a tax credit certificate to the company on an annual basis which shall be utilised for recouping of the costs from the Companies Income Tax payable for each year of assessment until the total costs of the constructio0n or refurbishment of the Eligible Roads are fully recouped.

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[7] **'Dangote, MTN, BUA, Access to build 794km of roads'-**
Retrieved from: <https://pmnewsnigeria.com/2021/08/20/dangote-mtn-bua-access-to-build-794km-of-roads/?amp=1> on 23 August 2021.
[8] **'MTN, BUA, Access Bank Get Tax Credit For Road Construction'-**
Retrieved from: <https://bizwatchnigeria.ng/mtn-bua-access-bank-gets-tax-credit-for-road-construction/ > on 23 August 2021.

- Any other company interested in acquiring the tax credit without engaging in the construction or refurbishment of Eligible Roads may negotiate the transfer of the tax credit to it, in whole or part, from a Participant. However, such transfer shall be with the consent and approval of the Committee and must be carried out at arm's length transaction, even if conducted between related parties.

Conclusion

This Newsletter shows that the Scheme is a viable avenue through which qualified companies may decide where and how to use its tax expenses – especially in constructing roads near them. The additional grant of a single non-taxable uplift-- which is at the prevailing Central Bank of Nigeria's Monetary Policy Rate plus 2% of the Project Cost, is a fiscal advantage to a Participant. In case, a Participant wants immediate recoupment, the credit is tradeable and/or transferable. Indeed, the Scheme provides a win-win situation, especially for companies operating in areas plagued with road infrastructure deficits. It enables qualified companies to solve road infrastructural problems affecting them directly and also confers on them the advantage of recouping the costs expended in the project.

However, it is recommended that companies intending to engage in this Scheme should conduct proper due diligence and seek legal advice to ensure seamless participation in the program.