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Pioneer Status to 27 Industries in Nigeria: A Quick Insight into the Policy and How You Can Benefit from It

by Ademola Adeyoju

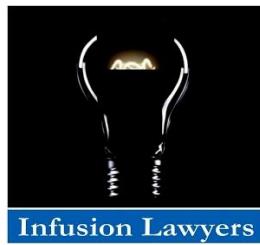
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Image source: Connectnigeria.com

The Nigerian Government approved a new Pioneer Status Incentive policy on 7 August 2017. This came following a meeting of the Federal Executive Council (FEC) in the Federal Capital Territory, Abuja. As part of the new regime, a revised list of 27 industries and products were declared eligible for *pioneer status*, bringing the total number to 71. New guidelines for pioneer status incentives (PSI) application have also been issued for prospective investors in the country.

Recall that the Federal Government had earlier in September 2015 imposed an administrative suspension on the processing of PSI application, in order to effect a comprehensive review and reform of the incentive regime, increase transparency



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and efficiency in the process, and improve the ability of the government to measure the impact of the incentive.

Over the past decades, governments all over the world have been actively promoting their countries as investment locations so as to attract scarce private capital and associated technology and managerial skills. They have increasingly adopted measures to facilitate local investments and induce the entry of foreign direct investment (FDI). Tax incentives are an important part of these promotional efforts.¹ The new pioneer status incentive recently approved in Nigeria *is* a form of tax incentives.

Now, before I delve into the nitty-gritty, here is a disclaimer: This article is a result of extensive research and I believe that the contents represent the true state of the law. But this piece is not legal advice, and I am not your attorney. If you need legal counsel, you should consult a qualified attorney who can properly address the peculiarity of your case.

Now, what qualify as PSI or tax incentives?

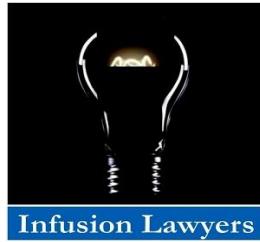
There's no easy way to discuss PSI without a modest understanding of the concept of tax incentives. So, put succinctly, tax incentives are departures from the benchmark, granted only to those investors or investments that satisfy prescribed conditions. They are used to encourage domestic industries and to attract foreign investment, and they come in different forms. Tax holidays, investment tax relief, and rural investment allowances are only a few of them.²

What is Pioneer Status Incentive (PSI)?

Companies are expected to pay income tax on their profits accruing in, derived from, brought into, or received in Nigeria. PSI is a form of tax incentive exempting qualified companies in certain industries and service sectors from paying company

¹ See UNCTAD/ITE/IPC/Misc.3. 'Tax Incentives and Foreign Direct Investment: A Global Survey' World Investment Report,' 2000, 11

² See Eric Zolt 'Workshop on Tax Incentives and Base Protection' New York, 23–24 April 2015, 3



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income tax in their formative years so as to boost investment and enable them make appreciable profit. Pioneer Status is a major investment incentive which effectively operates as a tax holiday. Some writers use the words Pioneer Status and Tax Holiday interchangeably. As an incentive, it exempts qualified companies from corporate-income taxes for an initial 3-year period. This period can be renewed for one or 2 years.

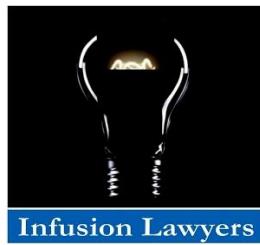
But, in practice, Nigeria Investment Promotion Council (NIPC) had, in the last 14 years, granted pioneer status to successful applicants for a straight period of 5 years. This practice evolved because of the need to eliminate a renewal/extension process that had become a maze of bureaucratic bottlenecks and constraints with such concomitant effects as: increase in the cost of doing business; exposure of sincere investors to a difficult investment experience; and poor competitiveness of Nigeria relative to major countries in Africa as an investment destination.

What law governs the issue of PSI in Nigeria?

The primary legislation that provides for the pioneer-incentive scheme is the Industrial Development (Income Tax Relief) Act, No 22 of 1971. The whole purpose of the incentive, according to the Ministry of Industry, Trade, and Investment, is “to give tax holidays to industries that we consider pioneer, not mature, to enable them to grow and attract investment.”

As provided in the Industrial Development Act, an industry or product is designated as pioneer if:

- It is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria; or
- It is expedient in the public interest to encourage the development or establishment of such industry in Nigeria.



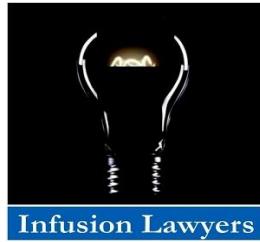
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Note that several agencies and organs of government are involved in the administration, approval, and formulation of the pioneer incentive scheme (PSI). For brevity, they are the Federal Executive Council (FEC), Federal Ministry of Industry, Trade and Investment (FMITI), Nigerian Investment Promotion Commission (NIPC), Industrial Inspectorate Department of FMITI (IID), and Federal Inland Revenue Service (FIRS).³

List of New Pioneer Industries/Sub-Industries

1. Business process outsourcing
2. E-commerce services
3. Manufacture of starches and starch products
4. Manufacture of animal feeds
5. Manufacture of leather footwear, luggage and handbags
6. Manufacture of household and personal hygiene paper products
7. Manufacture of paints, vanishes and printing ink
8. Manufacture of plastic products (builders' plastic ware) and moulds
9. Manufacture of batteries and accumulators
10. Manufacture of steam generators
11. Manufacture of railway locomotives, wagons and rolling stock
12. Manufacture of metal-forming machinery and machine tools
13. Manufacture of machinery for metallurgy
14. Manufacture of machinery for food and beverage processing
15. Manufacture of machinery for textile, apparel and leather production
16. Manufacture of machinery for paper and paperboard production
17. Manufacture of plastics and rubber machinery
18. Mining and processing of coal
19. Mortgage-backed securities under the Investment and Securities Act
20. Motion picture, video and television programme production, distribution, exhibition and photography

³ See generally the 'Application Guidelines for Pioneer Status Incentive' issued August 2017



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21. Music production, publishing and distribution
22. Processing and preservation of meat/poultry and production of meat/poultry products
23. Processing of cocoa
24. Real estate investment vehicles under the Investment and Securities Act
25. Software development and publishing
26. Tanning and dressing of leather
27. Waste treatment, disposal and material recovery

What are the criteria for becoming eligible for the pioneer status?

To be considered eligible for the pioneer status, an applicant must fulfil the following conditions:

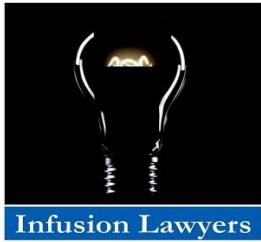
1. An applicant must make an application in the first year of production/service and must apply for an extension no later than one month after the expiration of the initial tax relief period of 3 years or an extension of one year;
2. An applicant must be engaged in an activity listed as a pioneer industry or pioneer product; and
3. An applicant must demonstrate the tangible impact its activity (project) will have on Nigeria's economic diversity and growth, industrial and sectoral development, employment, skills and technology transfer, export development, and import substitution.⁴

So how do interested businesses apply for pioneer status?

Easy.

Okay, maybe not so easy. According to the new application guidelines, the process of application is expected to take about 25 weeks. Right. That's 6 months!

⁴ 'Application Guidelines for Pioneer Status Incentive' issued August 2017



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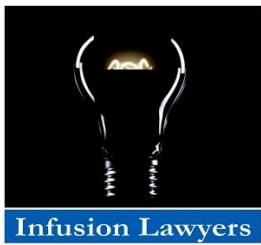
Following notification of a company's interest to make a new PSI application, the company will be required to make a project presentation to NIPC. After this presentation, NIPC will provide feedback on the project to the company. Then, NIPC will require payment of fees and submission of relevant application form and supporting documents.

After evaluating the company's application, NIPC staff will visit the company's project to verify the information provided in its application. If qualified, NIPC will issue a pioneer certificate to the company and request for the company to elect to receive the original copy of the certificate by courier or to collect it in person. The pioneer certificate will state the period over which the PSI is valid.

How exactly is this policy going to impact the Nigerian economy? What is the point?

Honestly, it can be difficult to estimate the benefits resulting from pioneer status incentive, or indeed any other form of tax incentives with any degree of certainty. Still, if properly implemented, the policy can stimulate investment and attract foreign direct investment (FDI). FDI inflows, for instance, are believed to not only bring capital and (high-wage) jobs to a country, it can also spur competition and increase the efficiency of domestic markets, thus contributing to a country's overall economic development. Some commentators view tax incentives as desirable, in that without government intervention the level of FDI will be sub-optimal.

Also, the incentive has the apparent advantage of simplicity for both the enterprise and the Nigerian tax authorities. As it obtains in many developing countries, tax-holiday regime provides not only that no tax is payable during the holiday period, but also that taxpayers are not required to file information or tax returns.



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Again, the policy is an expedient means of stabilizing the effect of market forces on production and consumption.⁵

Now, the 'Big But'

The cost of tax incentives are wide-ranging and go beyond any immediate revenue loss. Apart from revenue losses, they include distortions to the economy as a result of preferential treatment of investments qualifying for incentives, administrative costs from running and preventing fraudulent use of incentives schemes, and social costs of rent-seeking behaviour, including possibly an increase in corruption.⁶

Conclusion

The new pioneer status incentive policy is beautiful, but its implementation may be undermined by weak institutions, poor infrastructural facilities, inadequate policy monitoring/evaluation, poor regulatory/supervisory framework, corruption, and unfavourable political climate.

But the challenging factors above don't stop interested businesses from taking full advantage of the policy. Not to be philosophical, but the stars are never going to fully align, and the circumstances are never going to be perfect. Savvy investors know this.

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⁵ 'The Impact of Tax Incentives on Economic Development in Nigeria (Evidence of 2004–2014)', International Journal of Economics, Commerce and Management, United Kingdom, Vol. IV, Issue 3, March 2016, 722 and 723

⁶ Alexander Klemm, 'Causes, Benefits, and Risks of Business Tax Incentives,' IMF Working Paper 2000, 11