

## A LEGAL APPRAISAL OF THE IMPACT OF TAX INCENTIVES ON INVESTMENT IN NIGERIA: THE PIONEER STATUS PERSPECTIVE\*\*\*\*\*

### Abstract

*To encourage foreign direct investment for the expansion and improvement of the Nigerian economy, the Nigerian government provides tax reliefs or exemptions to qualified multinational investment projects or companies whose income or profits are derived from, brought into, accruing in, or received in Nigeria. Nigeria offers a number of incentives to promote foreign direct investment. The Pioneer Status Incentive is one of the various incentives offered in Nigeria to stimulate foreign direct investment. These incentives are in place to promote investments across a range of economic sectors. The tax incentive programs offered in Nigeria have recently undergone a number of adjustments. Some of these changes were made possible by the Finance Acts (F.A.), which amended several primary tax laws. This paper therefore is an appraisal of the pioneer status incentive on investment in Nigeria viz a viz the recent amendment in the tax laws on this subject. The method of data collection adopted is the doctrinal method using analytical approach to review the various statutes, decided cases, journals and internet materials on the subject. The article will also look at the impact of tax incentives on investment promotion in Nigeria and recommend reforms to increase transparency and a favorable investment climate in Nigeria.*

**Keywords:** Tax, Incentives, Pioneer Status, Nigerian Investment

### 1. Introduction

Tax incentives are any tax provision granted to a qualified investment project that represents a favorable deviation from the provisions applicable to investment projects in general.<sup>1</sup> United Nations Conference on Trade and Development (UNCTAD) defines tax incentives as instruments that reduce the tax burden for a party to induce it to invest in particular projects or sectors.<sup>2</sup> According to the International Monetary Fund (IMF), tax incentives are provisions in the tax code that reduce the tax liability of certain taxpayers under certain conditions.<sup>3</sup> Also, according to Slemrod, tax incentives are government policies that alter the relative prices of goods and services through the tax system.<sup>4</sup>

The Collins English Dictionary defines tax incentives as “a reduction made by the government in the amount of tax that a particular group of people or type of organization has to pay or a change in the tax

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<sup>1</sup> K Fletcher, Tax incentives for business investment: A primer for policy makers in developing countries. United Nations Conference on Trade and Development (2002)

<sup>2</sup> UNCTAD. (2003). Investment Policy Review: Nigeria. United Nations Conference on Trade and Development. <[https://unctad.org/system/files/official-document/iteipcmisc3\\_en.pdf](https://unctad.org/system/files/official-document/iteipcmisc3_en.pdf)> Accessed 3 August 2023.

<sup>3</sup> International Monetary Fund. (2019). Tax incentives: How much is too much? *Fiscal Monitor*, 18(1), 1-34. Accessed 3 May 2023.

<sup>4</sup> J Slemrod, (1990). Optimal Taxation and Optimal Tax Systems. *Journal of Economic Perspectives*, 4(1), 157-178.

system that benefits those people.<sup>5</sup> An IMF working paper by Keen and Mansour defines tax incentives as all measures that provide for a more favorable tax treatment of certain activities or sectors compared to what is granted to general industry.<sup>6</sup>

On the other hand, the Pioneer Status Incentive (PSI) is a tax incentive in Nigeria that allows companies in industries designated as pioneers to be relieved from paying company income tax in their formative years to enable them to make a considerable profit for re-investment into the business.<sup>7</sup> Pioneer Status Incentive (PSI) is a form of tax exemption that is granted to companies that participate in **promoted activities** or produce **promoted products**.<sup>8</sup> It is usually given for a period of **3 to 5 years**, depending on the country and the industry.<sup>9</sup> It is a reward provided to organizations who take on the risk of implementing new technology or starting new businesses in undiscovered areas with the intention of fostering innovation and economic progress. It is a type of incentive designed to get companies to take the risk involved with pioneering new technology or business ventures.<sup>10</sup> The Pioneer Status Incentive (PSI) is one of the available tax incentives in Nigeria aimed at attracting investment into critical sectors of the Nigerian economy. It was created under the Nigerian Industrial Development (Income Tax Relief) Act (IDA) to incentivize qualifying entities.<sup>11</sup>

The Pioneer Status Incentive (PSI) is a tax holiday granted to qualifying industries from the payment of corporate income tax for an initial period of three years, extendable for one or two additional years.<sup>12</sup> Companies qualified for pioneer status also enjoy the benefits of exemption from 10% withholding tax on dividends paid out of business profits.<sup>13</sup> Depending on the nation or location, having pioneer status may come with a variety of advantages and incentives. The following are a few benefits of having pioneer status: Grants and Subsidies, Investment Allowances, Tax Exemptions or Reductions, Import Duty Exemptions or Reductions.

Some other tax incentives available in Nigeria besides the Pioneer Status Incentive (PSI) include:

1. **Tax holidays:** Companies investing industrial activities may be granted tax holidays<sup>14</sup> Examples of economic activities that may be granted a tax holiday include glass of fertilisers, and steel manufacturing and glassware manufacturing, A new company that engages in the mining of solid minerals is exempt from tax for the first three years of its operation. Small or medium sized companies engaged in primary agricultural production are eligible for an initial tax-free period of

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<sup>5</sup> 'Definition of Tax Incentive' (*Collinsdictionary.com* 3 May 2023)

<<https://www.collinsdictionary.com/dictionary/english/tax-incentive>> accessed 3 August 2023.

<sup>6</sup> A Klemm, Causes, Benefits, and Risks of Business Tax Incentives

< <https://www.imf.org/external/pubs/ft/wp/2009/wp0921.pdf> >Accessed 3 August 2023.

<sup>7</sup> K Fletcher, Tax Incentives in Cambodia, Lao PDR, and Vietnam

<<https://www.imf.org/external/pubs/ft/seminar/2002/fdi/eng/pdf/fletcher.pdf>> Accessed 3 August 2023.

<sup>8</sup> PricewaterhouseCoopers, 'Tax Incentives' (*PwC2019*) <<https://www.pwc.com/my/en/publications/mtb/tax-incentives.html>> accessed 3 August 2023.

<sup>9</sup> 'Pioneer Status Incentive' (*Nigerian Investment Promotion Commission* 10 January 2019)

<<https://www.nipc.gov.ng/pioneer-status-incentive/>> accessed 3 August 2023.

<sup>10</sup> C Davies, & K Bilbija, (2017). Pioneer Status Incentives in Practice: A Study of Five Countries < <https://www.accaglobal.com/gb/en/student/exam-support-resources/professional-exams-study-resources/p6/technical-articles/pioneer-status.html>> Accessed 4 August 2023

<sup>11</sup> Seun Timi-Koleolu, 'Tax Incentives in Nigeria: Pioneers Status' (*Mondaq.com* 13 October 2020)

<<https://www.mondaq.com/nigeria/tax-authorities/993986/tax-incentives-in-nigeria-pioneers-status>> accessed 3 August 2023.

<sup>12</sup> (*Nipc.gov.ng* 2023) <<https://www.nipc.gov.ng/pioneer-status-incentive/>> Accessed 3 August 2023.

<sup>13</sup> Industrial Development (Income Tax Relief) Act Cap 17 LFN 2004, S17.

<sup>14</sup> *Ibid* S.10

four years, which may be extended for an additional two-year period, subject to satisfactory performance.

2. **Export incentive:** Profits of any Nigerian company in respect of goods exported from Nigeria are exempt from tax, provided that the proceeds from such exports are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment, and spare parts.<sup>15</sup> This exemption does not apply to companies in the oil and gas industry (upstream, midstream, and downstream).<sup>16</sup>
3. **Export Processing Zones (EPzs) And Free Trade Zones (Ftzs):** The federal government of Nigeria has classified certain places as free zones where export trade activities can be conducted without being subject to taxes or restrictions on foreign currency. These areas are known as export processing zones (EPZs) and free trade zone (FTZs). A business that invests in its qualifying buildings and plant equipment while participating in a permitted manufacturing activity in an EPZ is eligible for a 100% capital allowance in the year of assessment. Additionally, a firm that is entirely focused on exports but is not located in an EPZ will benefit from a three-year tax vacation provided that it was not created by the division or reconstruction of an existing company and that at least 75% of its revenue comes from exports. Profits of businesses that only provide inputs to the production of goods for export are exempt from taxation. In order to claim a tax exemption, such businesses are required to get a proof of purchase of the input from the exporter. When plant and machinery are transferred to a new company, the tax written-down value of the transferred asset cannot be greater than twenty-five percent of the new firm's total plant and machinery value. In order to be eligible for a tax holiday, the company must also repatriate at least 75% of the export proceeds to Nigeria and deposit them in a Nigerian domiciliary account.
4. **Export Expansion Grant (EEG) Scheme:** The EEG Scheme grants the Export Credit Certificate (ECC) as an incentive that can be used to buy government bonds, pay off government credit facilities. To promote non-oil exports and increase the competitiveness of Nigerian goods and commodities on the global market, this act was revised in 1992.<sup>17</sup> Exporters are categorized into four categories with maximum applicable EEG rates as follows in order to promote the export of value-added and processed/manufactured products: Fully manufactured products: 15%, Semi-manufactured products 10%, Processed/intermediate products: 7.5% and Merchants/primary agricultural commodities: 5%.<sup>18</sup> The EEG Scheme is a post-shipment incentive that provides qualified exporters with a portion of the annual export value based on their product category.<sup>19</sup> The Nigerian Export Promotion Council (NEPC)<sup>20</sup> oversees the EEG Scheme and develops rules and procedures for the efficient operation of the program.

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<sup>15</sup> Ibid.

<sup>16</sup> Revised Guidelines on Export Expansion Grant Scheme < [https://pwc-nigeria.typepad.com/files/pwc-tax-alert\\_revised-export-expansion-incentive-guidelines\\_oct2017.pdf](https://pwc-nigeria.typepad.com/files/pwc-tax-alert_revised-export-expansion-incentive-guidelines_oct2017.pdf)> Accessed 4 August 2023.

<sup>17</sup> Revised Guidelines on Export Expansion Grant Scheme < [https://pwc-nigeria.typepad.com/files/pwc-tax-alert\\_revised-export-expansion-incentive-guidelines\\_oct2017.pdf](https://pwc-nigeria.typepad.com/files/pwc-tax-alert_revised-export-expansion-incentive-guidelines_oct2017.pdf)> Accessed 4 August 2023.

<sup>18</sup> Export (Incentives and Miscellaneous Provisions) Act, No. 65 of 1992, Cap. E19, LFN 2004.

<sup>19</sup> Revised Guidelines on Export Expansion Grant Scheme - <[https://pwc-nigeria.typepad.com/files/pwc-tax-alert\\_revised-export-expansion-incentive-guidelines\\_oct2017.pdf](https://pwc-nigeria.typepad.com/files/pwc-tax-alert_revised-export-expansion-incentive-guidelines_oct2017.pdf)> Accessed 4 August 2023.

<sup>20</sup> Export Incentives – Nigerian Investment Promotion Commission. <<https://www.nipc.gov.ng/compendium/5-export-incentives/>> Accessed 4 August 2023.

**5. Gas utilisation incentives:** Gas utilisation incentives are tax incentives that are granted to companies that use Nigerian gas in producing power or other downstream petroleum operations. These incentives are meant to promote the growth of the gas industry and lessen gas flaring in Nigeria. The Companies Income Tax Act (CITA), as updated by the Finance Act 2020, is the legal framework that establishes gas utilisation incentives. Companies that utilize gas have the following entitlements:

- A tax-free term of up to five years, which may be extended for an additional two years if performance is good.
- Accelerated capital allowance, which enables them to write off the entire cost of their eligible assets in one year following the tax-free period.
- Dividends that are tax-free for shareholders during the tax-free period, meaning that shareholders do not pay taxes on the dividends they receive from the company.- The exclusion of plant, equipment, and spare parts purchased in connection with the use of gas in downstream petroleum operations or the conversion of such gas into electric power from value added tax (VAT) and customs duty.<sup>21</sup>

The Finance Act 2020 did, however, impose some limitations on the gas utilisation incentives, including:

- The incentives do not apply to the entire company; rather, they are only applicable to certain operations. This means that the tax benefits apply exclusively to money obtained from gas utilisation operations; all other income streams are subject to regular taxation
- The tax benefits cannot be used in conjunction with other unique tax benefits for the same assets. This means that a company cannot transfer the same assets to another business or special purpose vehicle and then receive gas utilisation incentives if it has already benefited from a tax holiday under the pioneer status programme or any other scheme.<sup>22</sup>
- The Minister of Finance must approve the incentives after consulting with the Minister of Petroleum Resources.<sup>23</sup>

**6. Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme:** The purpose of the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme is to enable the Federal Government of Nigeria to leverage on private sector funding for the construction or refurbishment of eligible road infrastructure projects in Nigeria. The Scheme also aims to create value for money through private sector discipline and guarantee participants timely and full recovery of funds provided for the projects.<sup>24</sup> The Scheme is intended to support the development of the road transportation sector, promote national integration, and enhance economic activities.<sup>25</sup> According to the Executive Order No. 007 of 2019 that established the Scheme, it shall be in force for a period of ten (10) years from the date of commencement of the Order, which was

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<sup>21</sup> CITA 2004 (As Amended) S. 28 (g).

<sup>22</sup> *ibid*

<sup>23</sup> Finance Act Restricts Gas Utilization Incentives To Specific Operations. <<https://bizwatchnigeria.ng/finance-act-restricts-gas-utilization-incentives-to-specific-operations/>> Accessed 4 August 2023

<sup>24</sup> CITA (Road Infrastructure Scheme) Executive Order, <<https://www.nbcc.org.ng/download/CITA%20%28Road%20Infrastructure%20Scheme%29%20Executive%20Order.pdf>> Accessed 5 August 2023.

<sup>25</sup> Harnessing the Nigerian Government's Tax Incentives for Road Construction. <<https://news.bloombergtax.com/daily-tax-report-international/harnessing-the-nigerian-governments-tax-incentives-for-road-construction>> Accessed 5 August 2023.

on 25 January 2019.<sup>26</sup> Therefore, the Scheme will expire on 25 January 2029, unless it is extended or revoked by the President. Under this Scheme, the President has the authority to provide tax credits to any business that invests in public infrastructure or facilities that he has approved. When the project is finished, the tax credit must be deducted from the company's income tax liability, and it must do so every year after that until full cost recovery is realized.<sup>27</sup>

- 7. Interest Incentives:** Interest accruing on deposit accounts of a non-resident company is tax-exempt, provided the deposits are made by transfer of funds to Nigeria on or after 1st January 1990 and the depositor does not become non-resident after making the deposit while in Nigeria.<sup>28</sup> Interest on foreign-currency domiciliary accounts is also tax-exempt. Interest on any foreign loans, and interest on any loan granted by a bank for the purpose of manufacturing goods for export, is exempt from tax<sup>29</sup>

The list of all the tax incentives available in Nigeria is obviously not exhausted in this paper, but of important notice is the recently deleted tourism tax, investment allowance and Rural Investment Allowance incentives in Nigeria. It is noteworthy that the tax exemption of 25% of income in convertible currencies set aside as reserved funds for hotel infrastructure development in Nigeria is abolished as of September 1, 2023.<sup>30</sup> Also, Taxpayers can no longer claim the additional investment allowance of 10% on qualifying expenditure incurred on plant and equipment.<sup>31</sup> This does not affect qualifying assets acquired on or before 28 May 2023.<sup>32</sup> The Rural Investment Allowance which allowed companies that builds and develops public infrastructures such as roads, electricity, or water, some allowance to be deducted from their profits, has also been repealed.<sup>33</sup> Companies already enjoying the incentive before 28 May 2023 are allowed to continue claiming the allowance until it is fully utilized.

## 2. Legal Framework for Pioneer Status in Nigeria

The Industrial Development (Income Tax Relief) Act (IDITRA)<sup>34</sup> largely regulates the legal foundation for pioneer status in Nigeria. This law outlines the criteria and rules for giving pioneer status to qualified businesses in order to encourage investment and economic growth in particular industries. Other legal frameworks that guide pioneer status in Nigeria include the Nigerian Investment Promotion Commission (NIPC) Act<sup>35</sup>, the Companies Income Tax Act<sup>36</sup>, the Finance Act<sup>37</sup>, Customs and Excise Management Act<sup>38</sup>. In general, a variety of laws and rules that are intended to draw in investment, foster economic development, and support the establishment of specific industries in Nigeria make up the legal framework for pioneer status. However, for purposes of this write-up, the IDITRA and NIPC Acts shall be considered.

<sup>26</sup> Para 1(3) of Presidential Executive Order, No. 007, 2019; Nigeria signs Road Infrastructure Development and Refurbishment – EY< [https://www.ey.com/en\\_gl/tax-alerts/nigeria-signs-road-infrastructure-development-and-refurbishment-investment-tax-credit-scheme](https://www.ey.com/en_gl/tax-alerts/nigeria-signs-road-infrastructure-development-and-refurbishment-investment-tax-credit-scheme)> Accessed 5 August 2023.

<sup>27</sup> S.23(2) of the Companies Income Tax Act, as amended by the Finance Act 2020.

<sup>28</sup> Personal Income Tax Act Cap P8 LFN 2004, Sch 3(6)(1)(a-e).

<sup>29</sup> Ibid Sch 3(7).

<sup>30</sup> S.37 CITA repealed by S. 8 of the Finance Act 2023.

<sup>31</sup> S.32 CITA repealed by S.6 of Finance Act 2023.

<sup>32</sup> Ibid

<sup>33</sup> S.34 CITA repealed by S.7 of Finance Act 2023

<sup>34</sup> Cap 17 Laws of the Federation of Nigeria, 2004 (As Amended).

<sup>35</sup> Cap N117, LFN, 2004.

<sup>36</sup> Cap C21, LFN 2004 ( as amended).

<sup>37</sup> The Finance Acts 2019, 2020, 2021, 2022 and 2023.

<sup>38</sup> Cap C45, LFN 2004.

### **2.1 The Industrial Development (Income Tax Relief) Act (IDITRA)<sup>39</sup>**

The main law governing pioneer status in Nigeria is the Industrial Development (Income Tax Relief) Act, Cap. I7, Laws of the Federation of Nigeria, 2004. The Act stipulates that businesses engaged in qualifying activities or producing qualifying goods will be given tax advantages. The legislation offers tax reliefs to businesses working to improve Nigeria's industrial base. Additionally, the Act creates the Industrial Development Coordinating Committee (IDCC) to supervise the award of pioneer status and guarantee adherence to pertinent regulations. The Act was enacted in 1971 and has undergone several amendments over the years to reflect the changing economic landscape of the country. The Act underwent its most recent amendment in 2011.

The purpose of the legislation is to provide tax relief for companies engaged in pioneer industries or products that are deemed to be important for the development of the Nigerian economy.<sup>40</sup> The Act's primary goal, in other words, is to promote industrial growth in Nigeria by offering tax breaks to businesses that make investments there. A variety of tax incentives are included in the Act, including as tax holidays, accelerated depreciation allowances, and investment tax credits.

One of the Act's most important components is the tax holiday, which enables qualified enterprises to benefit from a period of tax exemption for a predetermined duration.<sup>41</sup> Another important provision of the Act is the accelerated depreciation allowance, which allows companies to claim a higher rate of depreciation on their capital assets.<sup>42</sup> This provision is designed to encourage companies to invest in new equipment and machinery, which can help to increase productivity and competitiveness.

Companies must fulfil specific requirements, such as being registered with the Nigerian Investment Promotion Commission (NIPC)<sup>43</sup> and having a minimum amount of local content in their activities, in order to be eligible for the tax advantages offered under the Act.<sup>44</sup> A company must also adhere to many social and environmental norms as well as other legal restrictions.<sup>45</sup>

Finally, it should be noted that the Industrial Development (Income Tax Relief) Act, Cap. I7, Laws of the Federation of Nigeria, 2004, is a significant piece of law that offers tax breaks to businesses involved in Nigerian industrial development. The Act aims to foster economic growth and development as well as investment in the nation. Overall, the Act defines the legal framework for the award of pioneer status in Nigeria and details the requirements, procedure, and advantages of pioneer status.

### **2.2 Nigerian Investment Promotion Commission (NIPC) Act<sup>46</sup>**

The Federal Government of Nigeria passed the Nigerian Investment Promotion Commission Act in 1995, and it was updated in 2004 to attract and promote investment in the Nigerian economy. The Nigerian Investment Promotion Commission (NIPC) was created under the Act as a body corporate with perpetual succession and a common seal, in charge of carrying out the Commission's duties.

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<sup>39</sup> (n.13)

<sup>40</sup> N.13, S. 1

<sup>41</sup> Ibid S.10

<sup>42</sup> Ibid, S14

<sup>43</sup> Ibid S.3 (a)

<sup>44</sup> ibid

<sup>45</sup> ibid

<sup>46</sup> Cap N117, LFN, 2004.

The Act also specifies the organization, duties, authority, personnel, funding, and tax incentives for foreign investment in Nigeria.

The functions of the NIPC include: initiating and supporting measures that enhance the investment climate in Nigeria; providing and disseminating up-to-date information on incentives available to investors; assisting incoming and existing investors by providing support services; registering and keeping records of all enterprises to which the Act applies; identifying specific projects and inviting interested investors for participation; advising the Federal Government on policy matters relating to investment; and coordinating, monitoring, and evaluating investment promotion activities in Nigeria.<sup>47</sup>

A guarantee against expropriation or nationalization of their businesses, unconditional transferability of funds through a licensed dealer in freely convertible currency, the ability to settle disputes through negotiation, conciliation, arbitration, or litigation, assistance with obtaining land, work permits, licenses, authorizations, or approvals, and affordable access to raw materials, inputs, and utilities are just a few of the incentives that the Act offers to investors in Nigeria.<sup>48</sup>

Therefore, the Nigerian Investment Promotion Commission Act is a comprehensive legal framework designed to promote an environment that is favorable for investment in Nigeria and advance the country's economic growth and diversification.

### 3. Eligibility Criteria for Pioneer Status Incentive in Nigeria

To qualify for the Pioneer Status Incentive (PSI), a company must meet the following requirements:

3.1 Engaged in a pioneer industry or product: The Company must be engaged in an activity listed as a pioneer industry or product.<sup>49</sup> Companies that engage in any of the industries below may apply for the PSI as based on the official gazette published by the Federal Government of Nigeria in 2017 and approved by the federal executive council.<sup>50</sup> These industries and their abbreviated list of applicable subsectors are as follows:

- a. Agriculture: The sub-sector includes Crop Production, Livestock, Fishing and Forestry
- b. Mining and Quarrying: The sub-sector includes mining of coal, mining of metal ores, quarrying and mining of other minerals.
- c. Manufacturing: Manufacturing: This sub-sector includes a wide range of industries such as refining of crude oil and gas production, manufacture of refined petroleum products, manufacture of basic chemicals and fertilizers, manufacture of paints, varnishes and printing ink, manufacture of pharmaceuticals and medicinal chemicals, manufacture of rubber and plastic products, manufacture of glass and glass products, manufacture of cement, lime and plaster, manufacture of fabricated metal products, manufacture of machinery and equipment, manufacture of electrical equipment, manufacture of motor vehicles and trailers, manufacture of furniture, manufacture of paper and paper products, manufacture of textiles, wearing apparel and leather products.
- d. Electricity and Gas Supply: The sub-sector includes electricity and gas supply

<sup>47</sup> Nigerian Investment Promotion Commission Act. < <https://www.nipc.gov.ng/wp-content/uploads/2021/10/NIPC-ACT.pdf>.> Accessed 2 September 2023.

<sup>48</sup> *ibid*

<sup>49</sup> Government Notice, No. 171, Application Guidelines For Pioneer Status Incentive, Guideline 3.0(3.1) (3.1.2)(This Guideline was issued by Minister of Industry, Trade and Investment).

<sup>50</sup> Government Notice 164, List of Pioneer Industries and Products, 2017.

- e. Waste Management: The pioneer industry includes Waste treatment, disposal and material recovery.
  - f. Construction: The sub-sector includes Civil Engineering works development and operations through PPP and BOT arrangements and Construction of building.
  - g. Trade: which sub-sector includes E-commerce Services.
  - h. Information and Communication: The sub-sector includes Publishing of books, Software development and publishing, Motion picture, video and television programme production, distribution and exhibition, Music production, publishing and distribution and telecommunication.
  - i. Professional Services which include photographic photography services.
  - j. Financials: The sub-sectors include real estate investment trust (REITs) and Mortgage backed securities.
  - k. Administrative Services which subsector include business process outsourcing and transportation.
- 3.2 Physical long-term assets: A non-current tangible asset of over one hundred million naira (N100 million) shall be deemed as satisfiable<sup>51</sup>.
- 3.3 Positive impact on the Nigerian economy: 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.<sup>52</sup>
- 3.4 Application process: The Company must apply for pioneer status within one year of commencement of commercial production or operation.<sup>53</sup>
- 3.5 The company must have incurred capital expenditure of not less than N10 million.<sup>54</sup>

#### **4. Application Process For The Grant Of Pioneer Status Incentive In Nigeria**

A corporation must take these actions in order to submit an application for pioneer status incentive under the Industrial Development (Income Tax Relief) Act, Cap 17 Laws of the Federation of Nigeria, 2004:

- 4.1 In the first year of commercial production or service, the company must submit a written application to the Nigerian Investment Promotion Commission (NIPC) for pioneer status. All necessary legal and regulatory compliance papers, such as a business plan, tax clearance certificate, certificate of incorporation, audited financial statements, etc., must be submitted with the application.<sup>55</sup>
- 4.2 The company must prepare a project presentation that outlines the objectives, scope, benefits, challenges, and feasibility of the project, as well as the projected financial statements and cash flow analysis. The NIPC website has both the application form and the instructions for project presentation.<sup>56</sup>
- 4.3 NIPC provides feedback and requests payment of application and due diligence fees within a week.<sup>57</sup>

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<sup>51</sup> Application Guidelines For Pioneer Status Incentive, Guidelines 3.0(3.1) (3.1.3).

<sup>52</sup> Ibid, Guidelines 3.0(3.1) (3.1.5).

<sup>53</sup> Ibid, Guidelines 3.0(3.1) (3.1.5).

<sup>54</sup> Incentives Pioneer Status Incentives <<https://www.nipc.gov.ng/pioneer-status-incentive/>> Accessed 20 August 2023.

<sup>55</sup> n.53.

<sup>56</sup> Ibid, Guidelines 3.4, n.53

<sup>57</sup> Pioneer Tax Incentive Service Fees Schedule < <https://www.nipc.gov.ng/ViewerJS/#./wp-content/uploads/2019/01/Pioneer-Status-Incentive-Fee-Schedule-010118.pdf>> Accessed 20 August 2023.

- 4.4 Upon the applicant's payment of the required fees, Submit the first part of the application form (NIPC Form 2) along with the supporting documents, such as certificate of incorporation, memorandum and articles of association, feasibility study report, evidence of land ownership or lease agreement, and evidence of payment of application fee, to the secretary of NIPC.<sup>58</sup>
- 4.5 After reviewing the application and conducting any necessary legal, regulatory, and compliance investigations, NIPC asks for a date for the verification visit.<sup>59</sup>
- 4.6 Await the consideration stage, when NIPC will carry out a due diligence inspection to confirm the data supplied by the company and determines whether the project is eligible and suitable for pioneer status.<sup>60</sup>
- 4.7 The NIPC decides on the application following a verification visit, informs the company of its decision, and asks for the service charge deposit to be paid within a week.
- 4.8 The NIPC issues a letter of approval in principle to the company after receiving the service charge deposit from the company and forward its application to the Industrial Inspectorate Department (IID) for verification.
- 4.9 The applicant completes the second part of the application form (NIPC Form 3) and submits it to the Industrial Inspectorate Department (IID) along with a project presentation that demonstrates its compliance with the criteria for pioneer status.
- 5.0 Within 90 days of receiving the application, the IID will perform an inspection visit to the applicant company's facilities to determine production day and submit a report to the NIPC.
- 6.0 The IID shall provide a Production Day Certificate to the applicant and inform the NIPC of the issuance after determining a project's production day.<sup>61</sup>
- 7.0 Finally, upon receipt of the copy of the production day certificate from the IID, the NIPC will review the IID's report and issue a Final Certificate (**Pioneer Status Incentive Certificate**)<sup>62</sup> to the applicant and sends a copy to the FIRS and the IID. The Pioneer Certificate will state the period of which the pioneer status incentive is valid.
- 8.0 The beneficiaries of pioneer status must also abide by the requirements of the Industrial Development (Income Tax Relief) Act and other NIPC regulations during the pioneer period, as well as submit an annual performance report to the NIPC for monitoring and evaluation purposes

## 5. Duration of Pioneer Status Incentive In Nigeria

Incentives for pioneer status in Nigeria have a three-year tax break that can be extended for an extra one or two years if certain requirements are completed. This indicates that for a maximum of five years, qualified businesses are exempt from paying corporate income tax.<sup>63</sup>

The conditions for extending pioneer status according to the *Application Guidelines for Pioneer Status Incentive* are:<sup>64</sup>

<sup>58</sup> n.50, Guidelines 3.4.

<sup>59</sup> Ibid Guideline 3.6(3.6.1)

<sup>60</sup> Ibid.

<sup>61</sup> Ibid, Guideline 3.7(3.7.1)

<sup>62</sup> ibid

<sup>63</sup> Pioneer Status Incentive - Nigerian Investment Promotion Commission. <<https://www.nipc.gov.ng/pioneer-status-incentive/>> Accessed 20 August 2023.

<sup>64</sup> Federal Republic of Nigeria Official Gazette. <<https://nipc.gov.ng/wp-content/uploads/2020/08/Pioneer-Status-Application-for-Guidelines-Final.pdf>> Accessed 20 August 2023.

- The applicant must apply for an extension no later than one month after the expiration of the initial tax relief period of three years or an extension of one year.
- The applicant must demonstrate that it has met the performance indicators and conditions stipulated in the approval letter and service level agreement.
- The applicant must show evidence of compliance with all its statutory obligations, including payment of taxes, levies, fees, and other charges due to the federal, state, and local governments.
- The applicant must submit an audited financial statement for the tax relief period and a projection for the extension period.
- The applicant must provide a detailed report on the impact of its activity on the Nigerian economy, including employment generation, skills and technology transfer, export development, import substitution, and contribution to sectoral development.<sup>65</sup>

## **6. Pioneer Status Incentive and The Impacts On Investment In Nigeria**

No doubt, the pioneer status incentive is aimed at encouraging and promoting investment in the Nigerian economy, especially in sectors that are considered as priority areas or have favourable prospects of further development.<sup>66</sup> First of all, the government forgoes some potential corporate income tax revenue because the pioneer status incentive lowers the tax liabilities of the qualified businesses. The advantages of additional investment, employment, output, exports, and other favourable spillovers that may emerge from the incentive may, however, outweigh this. Additionally, the government may continue to levy additional fees and taxes on the pioneer businesses, including value-added tax, withholding tax (apart from dividends), customs charges, stamp duties, etc. Again, the pioneer status incentive gives a competitive edge to the eligible companies over their counterparts that are not enjoying the incentive. This may enable them to reduce their costs, increase their profits, reinvest in their businesses, expand their operations, improve their products and services, and gain more market share. The incentive may also attract more foreign direct investment and technology transfer to Nigeria, which may enhance the capacity and efficiency of the local industries.

Furthermore, another positive impact of PSI on investment in Nigeria is that pioneer status incentive gives a competitive edge to the eligible companies over their counterparts that are not enjoying the incentive. This may enable them to reduce their costs, increase their profits, reinvest in their businesses, expand their operations, improve their products and services, and gain more market share. The incentive may also attract more foreign direct investment and technology transfer to Nigeria, which may enhance the capacity and efficiency of the local industries.<sup>67</sup>

The pioneer status incentive is designed to support the development of sectors and regions that are considered as strategic or underdeveloped in Nigeria. These include manufacturing, solid minerals, pharmaceuticals, information and communication, trade, construction, waste management, electricity and gas supply, tourism, infrastructure, etc. The incentive may stimulate more investment and innovation in these sectors and regions, which may contribute to their growth and

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<sup>65</sup> Tax Incentives in Nigeria – Pioneer Status – IOC LAW. <<https://ioclaw.com/tax-incentives-in-nigeria-pioneer-status/>> Accessed 20 August 2023.

<sup>66</sup> Nigeria: The Principle Of Tax Incentives In Nigeria (Pioneer Status).<<https://www.mondaq.com/nigeria/income-tax/1075238/the-principle-of-tax-incentives-in-nigeria-pioneer-status>> Accessed 20 August 2023.

<sup>67</sup> Principle of tax incentives in nigeria- pioneer status - Lexology.<<https://www.lexology.com/library/detail.aspx?g=9f77880a-44d3-49be-8bf4-f19c75aa3f20>> Accessed 20 August 2023

diversification. The incentive may also create more linkages and synergies among different sectors and regions, which may foster economic integration and development.<sup>68</sup>

By increasing employment opportunities, raising income levels, decreasing poverty and inequality, enhancing access to goods and services, enhancing environmental sustainability, encouraging social inclusion and empowerment, etc., the pioneer status incentive may have favorable social effects on Nigerian citizens. These effects may vary according to how well the pioneering businesses abide by Nigeria's social responsibility norms and laws.

Finally, the pioneer status incentive is a tool for policy that intends to encourage investment and economic growth in Nigeria by providing tax reduction to eligible businesses and goods. Numerous factors, including revenue, competitiveness, sectoral and regional growth, and social welfare, can be used to assess the incentive's effects. The success of the incentive's execution and administration by the NIPC and other pertinent agencies may, however, have an impact on how the incentive is perceived overall.

## 7. Conclusion

Nigeria's Pioneer Status Incentive Program is intended to boost economic growth and attract investment in particular industries. The administration of this incentive, however, faces a number of difficulties. Firstly, as has been shown in this article, Pioneer status application and approval procedures can be drawn-out and cumbersome. Potential investors who require assurance and prompt decision-making before allocating their money may become discouraged by this.

Again, there have been occasions where several government organizations manage and interpret the pioneer status program in different ways. This inconsistent approach might cause confusion and impair investment choices. For example, there are some conflicts between the *Pioneer Status Incentive Regulations (PSIR), 2014 made pursuant to industrial Development (Income Tax Relief) Act (IDITRA)* and the *Application Guidelines for Pioneer Status Incentive (AGPSI), 2017* (by the Ministry of Industry, Trade and Investment MITI) made pursuant to Industrial Development (Income Tax Relief) Act (IDITRA). Even though the latter seeks to impose order and discipline on the PSI regime in terms of the manner of application for pioneer certificates, etc., and the money payable, the issue of which type of law, legislative provision or subsidiary legislation, has precedence arises.

Furthermore, the pioneer status reward program only focuses on a few industries at the moment, thus it might not cover all prospective investment fields. This constrained scope can deter investment in other industries that could promote economic growth. Only 71 industries are included in the PSI, which may not accurately reflect the demands and possibilities of the Nigerian economy today. While some of the industries are absent, underrepresented, or underdeveloped, others are out-of-date, obsolete, or oversaturated.

## 8. Recommendations

For enhancing the pioneer status incentive program and bringing in more investment in Nigeria, the following suggestions are paramount,

<sup>68</sup> Nigeria: Tax Incentives In Nigeria: Pioneers Status – Mondaq<. <https://www.mondaq.com/nigeria/tax-authorities/993986/tax-incentives-in-nigeria-pioneers-status>> Accessed 20 August 2023.

- i. The process for requesting and receiving pioneer status should be streamlined and made simpler. This would entail cutting down on red tape and streamlining the procedure to provide prospective investors clarity and assurance.
- ii. To choose which companies or sectors qualify for pioneer status, there needs to be a defined set of rules and standards that are both precise and detailed. This would assist remove uncertainty and guarantee consistent decision-making when awarding rewards for pioneer status.
- iii. The pioneer status program could be broadened to include other industries and areas. This will encourage economic diversification in Nigeria and draw investment to a wider range of sectors.
- iv. The decision-making process of the pioneer status incentive should be more transparent in order to increase investor confidence. This would entail making certain that there are clear reporting procedures, prompt communication, and responsibility for the approval procedure. The websites ought to have current information.
- v. The pioneer status incentive system should be regularly evaluated and monitored in order to pinpoint any areas that need development and gauge how it affects foreign investment in Nigeria.