Nigerian Investment Promotion Commission releases Pioneer Status Incentive Regulations

Executive summary

The Nigerian Investment Promotion Commission (NIPC), in exercise of its powers under section 30 of the NIPC Act, has released the Pioneer Status Incentive Regulations (Regulations) with an effective date of 30 January 2014.

All companies seeking pioneer status incentive starting from 30 January 2014 are subject to the provisions of these Regulations.

The Regulations offer detailed steps, requirements and processes involved in the issuance of the pioneer status incentive. It introduces grounds for disqualification of the application; a service charge; and grounds for the revocation of the certificate among which is the failure of a company to utilize the tax savings accruing to it as a result of the incentive.

The legal basis for the Regulations may be challenged as section 30 of the NIPC Act gives the NIPC powers to make regulations for the administration of the NIPC Act and not for the administration of Pioneer Status tax Incentive Regime.

The principal legislation on pioneer status is the Industrial Development and Income Tax Relief Act (IDITRA). No reference to this legislation is made in the Regulations and certain paragraphs of the Regulations contradict the IDITRA.

However, given that the relevant Minister may have delegated his functions relating to award of pioneer status certificates to the NIPC, it is expedient for taxpayers to be aware of the Regulations and comply with the provisions.

Detailed discussion

Application procedures

The Regulations stipulate further conditions for the application of a pioneer status. Among these are the requirement for the applicant to be a corporate body registered in Nigeria and show evidence of capital expenditure of not less than N10,000,000 (approximately US$61,000). This is contrary to the principal legislation on pioneer status, IDITRA which allowed an application to be made on behalf of a company yet to be incorporated.
It also requires the payment of a non-refundable fee of N200,000 (approximately US$1,200).

**Grounds for disqualification**
An application may be disqualified if:

- The applicant’s qualifying share capital is less than N10m.
- The applicant provides misleading or false information for the consideration of NIPC.
- There is an established case of abuse of incentive.

**Additional cost to applicants - payment of service charge**
The Regulations introduce a 2% service charge to be determined from the applicant’s estimated tax savings resulting from the incentive. An applicant is required to submit its five-year financial projections along with the application to the NIPC to enable it to determine the estimated tax savings.

Where the financial projections indicate a loss position for an applicant, the service charge shall be on the higher of 0.5% of the applicant’s net assets or 0.25% of its turnover.

After payment of the service charge, the NIPC would issue an approval letter which must be sent to the Industrial Inspectorate Division (IID) of the Federal Ministry of Industry, Trade and Investment for use in processing a production certificate.

A pioneer certificate is issued after the NIPC receives the production certificate.

**Application submission**
Under the Regulations, the application for a pioneer status certificate must be submitted within one year of commercial production. The IDITRA is silent on the timeframe for the pioneer status application.

**Impact assessment of incentive and utilization of tax savings**
A significant change to the pioneer status regime is the requirement to demonstrate that the incentive is utilized for the intended purposes. The IDITRA does not include a similar provision and it would appear that once pioneer profits are ascertained and earmarked as required under the IDITRA, an unrestricted distribution of the profits to shareholders would be in order.

The Regulations however provide that following the grant of the incentive, the NIPC would from time to time, evaluate the utilization of tax savings resulting from incentives in an attempt to measure the effectiveness of the resultant incentives and ensure the savings are being utilized for intended purposes.

This suggests that the NIPC would require the applicant to commit to an incentive utilization plan. It is uncertain how this would apply in practice. Whether a utilization of tax savings would impact the company’s ability to distribute dividends from pioneer status depends on the utilization plan approved by the NIPC.

**Suspension of incentive tenure due to extenuating circumstances**
The Regulations also allow the suspension of the tenure of the certificate where a company is unable to maximize the benefits of and fully utilize its pioneer status as a result of some extenuating circumstances such as natural disasters, host community hostility, strikes and insurgency.

In such cases, the Regulations state that the affected company should notify the NIPC and the commission shall in turn verify the accuracy of the company’s notification report and in liaison with the Federal Inland Revenue Service, subsequently suspend the tenure of the incentive.

**Revocation of a pioneer certificate**
The Regulations state that the pioneer certificate can be revoked in the following circumstances:

- Contravention of the provisions of the NIPC Act.
- Tax evasion perpetuated under the auspices of pioneer status incentive.
- Manipulation of financial books with the intent to reduce the service charge.
- Default in the commitment to utilize tax savings accruing from the incentive.
Implications

The requirement to pay a service charge calculated on the basis of the five-year financial projection means that the determination of service charge could be subjective. The applicant would be inclined to adopt a conservative approach. There could be consequences if the NIPC does not agree with the applicant’s assumptions.

The requirement to comply with a commitment to utilize tax savings may impact on the ascertainment of profits that would be available for distribution to shareholders.

It is also imperative that companies seek the timely advice of their tax consultants as the pioneer status applications must be made within one year of commercial production.

The Regulations have taken a significant step forward from the IDITRA. The validity of those provisions that contradict the IDITRA remains a legal issue but it is expected companies will comply if they want to obtain the pioneer status certificate. Furthermore, the legal basis for the Regulations is not clear from the provisions of the NIPC Act. Section 30 of the Act relied upon in making the Regulations does not expressly grant NIPC the power to make regulations on pioneer status. This calls into question the validity of the Regulations.

In summary, while the principal legislation on pioneer status is the IDITRA, it is apparent that effective January 2014, a company intending to obtain and enjoy the benefits of the pioneer status would need to comply with the Regulations as failure to comply could lead to a revocation of the certificate.

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