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Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme [Executive Order No.007] ("The Scheme")

On Friday 25 January 2019, the President of the Federal Republic of Nigeria signed the Executive Order 007 2019 on Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme ("The Scheme").

The Scheme aims for a public-private partnership (PPP) by providing opportunity to the private sector to commence the construction and refurbishment of eligible road infrastructure projects as a way of narrowing the road infrastructure gap in the country. As an incentive for these private companies, the Scheme assures a full and timely recovery of the project costs through a tax credit mechanism.

The Federal Government had, in the past through the Companies Income Tax (Exemption of Profits) Order of 2012 and Road Trust Fund of 2017, attempted to increase private sector participation in the provision of public infrastructure by motivating the companies via the assurance of a tax credit. The Order of 2012 provided that any company that incurred expenditure on infrastructure was entitled to an exemption from income tax of an additional 30% of the cost of the provision of the infrastructure. The new Scheme modifies the previous attempts as it tends to be more encouraging since companies may recover 100% of the total cost incurred on the project as opposed to the prior limited cost recovery system in place.

To ensure the smooth implementation of the Scheme, the Road Infrastructure Refurbishment and Development Tax Credit Scheme Management Committee ("the Committee") has been created and is saddled with the responsibility of seamlessly administering the Scheme. Interested participants are required to submit a proposal to the Federal Government through the Committee and qualified applicants would be selected by the President.

Ten Major Highlights of the Scheme

1. To be in force for a period of 10 years from the date of commencement.
2. Open to every Nigerian company acting on its own or in conjunction with other Nigerian companies.
3. Qualified participants are entitled to recover the total project costs incurred by them in the course of the project as a tax credit against their Income Tax payable.
4. A Road Infrastructure Tax Credit Certificate ("the Certificate") is to be issued to a Participant annually, upon approval of the Committee.
5. The Certificate is to signify the project cost incurred by the participant in the relevant fiscal year (to be certified by the Committee), and the tax credit due to the participant based on the certified project cost.
6. Utilization of Tax Credit is limited to 50% of Income Tax payable in that year, but tax credit in respect of roads in economically disadvantaged areas will have no such restriction.

7. Indefinite carry forward of unutilized tax credit.
8. Tax credit is transferable - a participant may sell its tax credit as a security to an interested party or transfer for use of another company in its group.
9. Tax Credit could attract a one-time (tax free) appreciation/interest at CBN Monetary Policy Rate plus 2%, calculated on the project cost.
10. Gains made from sale or transfer of tax credit shall attract Capital Gains Tax.

Tax Credits to be Marketable Securities

Apart from an apparent privatization of the development, construction and rehabilitation of federal roads in Nigeria, the Scheme has undoubtedly created a new market for the trading of tax credit certificates, with the designation of FMDQ Over-The-Counter (OTC) as "the Exchange" where companies can sell and purchase unused tax credits. The Exchange is saddled with the responsibility of maintaining a register of every Certificate registered and traded on the Exchange.

It is in the view of the above that the government expects that companies will not only bid to construct roads within their area of operation, rather to view participation in the Scheme as financial investment which does not only yield interest but also generates a financial asset that is easily converted to cash in the Exchange.

Our Comments

The development of road infrastructure is a vital component for economic growth in the country as it improves the conditions for business operations and profitability, and thus, making the Scheme a welcome strategy. The Scheme, undoubtedly, is a policy to source alternative funding for infrastructure, evidencing the Federal Government's acknowledgement of its lack of capacity thereby leveraging on the private sector's capital and efficiency. Also, it is expected that the allocation initially purposed for road projects will now be redirected to boost other sectors of the economy.

The institution of a broad-based Management Committee to oversee the Scheme indicates government's commitment to transparency in implementing the Scheme and this should ultimately lead to good quality roads at lower costs.

Though the Scheme allows for the carry forward to subsequent years any unused tax credit in a given fiscal year, until fully utilized, it is silent on the fate of the tax credit after the expiration of the Scheme itself, that is, in 2029. This is a major concern as road construction and refurbishment projects are time-intensive, and participants may not complete these projects until years into the Scheme, thereby leaving only a few years to utilize the tax credit obtained. This, in addition to the pegging of the utilization of the tax credit to 50% of tax payable in any given year puts the participating companies in a rather risky position. We hope that the Federal Government will provide more information in this regard.

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