

Doing Business in Nigeria:

Frequently Asked Questions - Part 1

The Nigerian economy is attracting significant attention worldwide. Various establishments including rating agencies, investment banks, analysts, foreign and local investors regularly make enquiries on how to set up businesses in Nigeria and the incentives for investment in Nigeria. Commencing from this edition, PUC Journal will publish a series of articles which is intended to inform our audience on the various legal and regulatory issues which may impact on an investor's decision to establish a business in Nigeria as well as the incentives available to them. This first segment focuses on the incentives available to investors by providing brief responses to some of the frequently asked questions.

1. What fiscal incentives are available for companies?

Some of the fiscal incentives which facilitates quick return on investment for eligible companies include

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i. Tax incentives

Tax incentives as provided under the Companies Income Tax Act ("CITA"), Cap C21, Laws of the Federation of Nigeria ("LFN") 2004 and the Capital Gains Tax Act, Cap C1, LFN 2004 are applicable to all incorporated companies and include the following:

- a) zero tax on profits accruing from export of goods provided the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plants, equipment and spare parts;
- b) zero tax on gains from the sale of shares and stocks;

- c) bonus of 1% of tax payable if tax returns are filed within 6 months after the end of a company's accounting year;
- d) dividends which have been subjected to withholding tax are not subject to further tax ;
- e) CITA permits a 10% Investment Allowance for capital expenditure incurred by a company on plant and machinery;
- f) a company replacing plant and machinery is permitted to take a capital allowance of 95% of the qualifying expenditure in the first year with a 5% retention at its book value until disposal;
- g) the interest payable in respect of a loan granted to a Nigerian company by a foreign bank or foreign company may be exempted from tax depending on the amount and the tenor of the loan;

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Headquartered in Lagos, Nigeria, our global outlook enables us to offer best-in-class professional services that meet the needs of the international business community. We offer our clients rewarding legal partnership which they require to become and remain industry leaders. We earn their trust by consistently delivering timely, personalised services that keep them ahead.

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- Project Finance
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- Advocacy and Dispute Resolution Practice
- Communications Law

Practice

- Maritime and Environment Law Practice.

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- h) manufacturers and purchasers of local plant and machinery are entitled to a 25% investment credit convertible to 15% investment allowance;
- l) dividends from companies in the manufacturing sector with a turnover of less than N1, 000,000.00 (One Million Naira) are exempted from paying tax for the first 5 years of their operation.

ii. Pioneer Status

Pioneer status is a 100% tax free holiday for a maximum of 5 years granted to eligible industries located anywhere in Nigeria. A beneficiary company will be exempt from companies' income tax throughout the tax holiday period, and dividends paid by the company within the holiday period will not be subject to tax. To be eligible, the company must produce products declared as "pioneer products" under the Industrial Development (Income Tax Relief) Act, Cap 17, LFN 2004. At the moment, there is a list of 69 approved industries declared pioneer industries, which can benefit from this tax relief.

iii. Duty Drawback/Suspension Scheme

The Scheme allows an investor to claim a refund on imported raw materials and is available only if the enterprise is involved in manufacturing for domestic and export purposes. The Scheme was set up under the Customs and Excise Management Drawback (Customs) Regulations, Cap C45, LFN 2004 (CEMA).

iv. Tax relief for Research and Development

Profits reserved by a company for purposes of research and development are exempted from tax provided such reserves do not exceed 10% of the total assessable profits of that company. Companies and other organizations engaged in research and development activities for commercialization are allowed a 20% investment tax credit on their qualifying expenditure for that purpose.

v. Approved User Scheme

Manufacturers of certain items for which imported raw materials are required may be granted either a concessionary rate or complete relief from import duty for a period not exceeding 3 years. To qualify for the relief the importer must comply with certain statutory requirements including obligation to use any materials imported under this scheme strictly for the purpose for which they were imported.

vi. Export Incentives

A Nigerian company wishing to export its products from Nigeria may be able to take advantage of one of a variety of export promotion measures available to exporters as provided under the Export (Incentives and Miscellaneous Provisions) Act, Cap19, LFN 2004. This Act provides for the establishment of various funds by exporters, such as the Export Development Fund, which helps cover the costs of export promotion activities and the Export Adjustment Scheme Fund, which subsidizes production costs of exports. There is also an Export Credit Guarantee and Insurance Scheme, which insures exporters against various risks including political risk and the risk of payment defaults. The Manufacture-in-Bond Scheme is designed to encourage manufacturers to import raw materials inputs and other intermediate products duty-free for the production of exportable goods.

vii. Investment in Infrastructure

This incentive is granted to industries that provide certain infrastructure such as access road, pipe borne water, electricity etc that ordinarily should have been provided by government. 20% of the cost of providing these infrastructural facilities is tax deductible.

viii. Minimum Local Raw Materials Utilization

A tax credit of 20% is granted for 5 years to industries that attain the prescribed minimum level of local raw material sourcing and utilization. The prescribed minimum level of

local raw material sourcing and utilization by sectors are: Agro-allied – 70%; Engineering - 60%; Chemicals - 60%; Petro-chemicals – 70%.

ix. Protection From Double Taxation

Nigeria has tax treaties with a number of countries which offers protection against double taxation. These agreements provide relief from double taxation in relation to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the laws of the country concerned. Some of the countries include the United Kingdom, France, the Netherlands, Belgium, Canada and Pakistan.

2 Are there any restrictions on the transfer of funds/repatriation of profits?

- i. Foreign investors are guaranteed freedom to transfer or repatriate funds with regards to both capital and earnings from Nigeria in freely convertible currency, through an authorized dealer, usually a bank so accredited by the Central Bank of Nigeria (“CBN”). Both the Nigerian Investment Promotion Commission (“NIPC”) Act, Cap N117, LFN 2004 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (“FEMMPA”) Cap F34, LFN 2004 guarantee unrestricted remittance of earnings, profit and dividends (net of tax such as withholding and personal income tax) as well as capital repatriation where the company decides to disinvest.
- ii. Capital importation
Investors could under FEMMPA pay for foreign equity shares by importation of equipment, spare parts, machinery or other business assets.
- iii. Foreign currency domiciliary account
Companies and individual are permitted to operate domiciliary account in any bank in any convertible currency of their choice. The enabling law guarantees such accounts against forfeiture or expropriation by the government or its agencies. – NIPC Act and the FEMMPA.

3. Are there any restrictions on foreign ownership of a business?

The NIPC Act allows 100% ownership of businesses in Nigeria by foreign investors and empowers such investors to invest and participate in the operation of any business enterprise in Nigeria except the prescribed industries (production of arms, ammunition etc.; production of and dealing in narcotic drugs and psychotropic substances; production of military and paramilitary wears including those of the Police and the Customs, Immigration and Prison Services) where special approvals/licences are strictly required. The foreign investor is required to incorporate a local vehicle to be able to carry on business in Nigeria or exercise any of the powers of a registered company.

4. What is the procedure for foreign investors wishing to establish/acquire a business in Nigeria? Are there any particular local requirements that investors should be aware of?

Subject to the provisions of the NIPC Act, a foreign investor intending to establish an enterprise in Nigeria is required for the time being to:

- incorporate a company in accordance with the Companies and Allied Matters Act;
- register the company in accordance with the NIPC Act;
- comply with immigration requirements as provided under the Immigration Act, Cap 11, LFN;
- apply for and obtain licence (where applicable) e.g. the Petroleum, Banking and Insurance sectors. Banks and Other Financial Institutions Act, B3, LFN 2004;
- apply for and obtain Business Permit, Residence Permit and Expatriate Quota approvals from the Federal Ministry of Internal Affairs and the Nigerian Investment Promotion Commission.
- apply for and obtain approval for capital importation. FEMMPA.

(To be continued)