



Review of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024

Introduction

On February 28, 2024, President Bola Ahmed Tinubu issued the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc) Order, 2024 (the “**Order**”). The Order provides for certain fiscal incentives aimed at supporting companies within the Nigerian oil and gas industry. The incentives include tax credits to promote non-associated gas greenfield development, investment allowances to support gas utilization companies operating in the midstream oil and gas industry, and other proposed incentives specifically targeted at deep-water oil and gas projects.

In this note, we examine the key provisions of the Order and its possible impacts on the Nigerian oil and gas industry.

Tax Credits for Non-Associated Gas Greenfield Development

The Order grants specific tax credit incentives to non-associated gas (“**NAG**”) greenfield developments in onshore and shallow water locations, with first gas production on or before January 1, 2029.¹ These tax credit rates vary based on the Hydrocarbon Liquids (“**HCL**”) contents. In cases where the HCL contents do not exceed 30 (thirty) barrels per million standard cubic feet, companies are eligible for a gas tax credit at the rate of US\$1 (One Dollar) per thousand cubic feet or 30% (thirty *per cent*) of the fiscal gas price, whichever is lower.²

The Order also grants NAG greenfield projects with first commercial production after January 1, 2029, with a gas tax allowance at a rate of US\$0.50 (Fifty Cents) per thousand standard cubic feet or 30% (thirty *per cent*) of the fiscal gas price, whichever is lower. However, it is important to note that the HCL contents must not exceed 100 barrels per million standard cubic feet.³ Tax allowances refer to deductions that can be made from gross income when calculating taxable income. This effectively reduces the amount of income subject to taxes.

The HCL contents in a non-associated gas field shall be determined by guidelines issued by the Nigerian Upstream Petroleum Regulatory Commission (“**NUPRC**”).⁴

The gas tax credit shall apply for a maximum duration of ten years, after which it shall transition into a gas tax allowance. The allowance can be claimed on the condition that where the HCL contents do not exceed 30 (thirty) barrels per million standard cubic feet, there shall be a gas tax credit at the rate of US\$1 (One Dollar) per thousand cubic feet or 30% (thirty *per cent*) of the fiscal gas price, whichever is lower.⁵

Further, the Order stipulates that the gas tax credit any company is entitled to shall not exceed the income tax payable by the company for that year.⁶ In addition, the gas tax credit shall not be combined with the Associated Gas Framework incentives for the same greenfield NAG project. The Associated Gas Framework Agreement, 1992 (“**AGFA**”), introduced fiscal incentives by the Federal Government to national gas producers aimed at reducing gas flaring by allowing oil companies to offset their investments in gas projects from oil revenues.

¹ Paragraph 1(1), the Order. Tax credits refer to the amount of money that taxpayers can subtract directly from the taxes they owe. Tax credits reduce the amount of income tax payable by a company. The tax credits provided for by the Order significantly reduce the tax liabilities of gas companies, thereby increasing profits and enhancing the company’s financial position.

² Paragraph 1(2), the Order.

³ Paragraph 1(3), the Order.

⁴ Paragraph 1(4), the Order.

⁵ Paragraph 1(5), the Order.

⁶ Paragraph 1(6), the Order.

Moreover, the Order allows companies to carry forward to the next year a gas tax credit surplus. However, the tax credit surplus can only be carried forward for a maximum of three (3) years.⁷ The fiscal price for calculating a gas tax credit under the Order shall be the same price used for determining royalties under the Petroleum Industry Act.⁸

Midstream Capital and Gas Utilization Investment Allowance

Another category of incentives provided by the Order is the Midstream Capital and Gas Utilization Investment Allowance. According to the Order, a gas company will be eligible for a gas utilization investment allowance on qualifying expenditure on plant and equipment incurred by the company in respect of any new and ongoing project in the midstream oil and gas industry, subsisting on the effective date of the Order⁹ (the “**Investment Allowance**”).

The Investment Allowance will be granted as a deductible expense from the assessable profits of the company from the year of purchase of the relevant plant and equipment. This allowance will be in addition to other available allowances and incentives permissible under the law. Furthermore, the Investment Allowance shall not be taken into account in the calculation of the remaining qualifying expenditure incurred on such plant and equipment.¹⁰

The Investment Allowance rate is set at 25% (twenty-five *per cent*) of the actual expenditure incurred on qualifying plant and equipment.¹¹ The implementation of the Investment Allowance shall be overseen by the Federal Inland Revenue Service (“**FIRS**”), in collaboration with the Nigerian Midstream and Downstream Petroleum Regulatory Authority (“**NMDPRA**”), within 15 days from the date of the Order.¹² The Investment Allowance will only be granted after the expiration of the tax-free period provided to gas utilization companies under s. 39 of Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria, 2004 (“**CITA**”).¹³

The Order sets out some exemptions to the applicability of the Investment Allowance. First, the Investment Allowance will not apply to any qualifying expenditure incurred on plant and equipment within a period of five years from the date of expenditure, if the company sells or transfers the asset to a person not acquiring it for the same or related business purpose or for scrap.¹⁴ Second, the allowance will not be applicable if the plant and equipment are appropriated for a purpose unrelated to gas utilization.¹⁵ Third, the allowance will not be granted for expenditures incurred in a manner other than as a *bona fide* transaction, or if the said transaction is artificial or fictitious.¹⁶

The purchaser or transferee of an asset in respect of which the Investment Allowance has been claimed is required to provide information as may be requested by the FIRS on the sale and transfer of the asset.¹⁷ Further, a plant or expenditure on which the Investment Allowance has been claimed will not be eligible for another Investment Allowance by the acquiring entity or any subsequent purchaser.¹⁸

⁷ Paragraph 2, the Order.

⁸ Paragraph 3, the Order.

⁹ The effective date of the Order is February 28, 2024.

¹⁰ Paragraph 4 (2), the Order.

¹¹ Paragraph 5, the Order.

¹² Paragraph 6, the Order.

¹³ Paragraph 4(3), the Order.

¹⁴ Paragraph 7(a), the Order.

¹⁵ Paragraph 7(b), the Order.

¹⁶ Paragraph 7(c), the Order.

¹⁷ Paragraph 8(a), the Order.

¹⁸ Paragraph 8(b), the Order.

Notwithstanding the provisions of the Order, the value of any asset eligible for capital allowance under CITA shall not be restricted or reduced by the Investment Allowance available to be claimed by the company.¹⁹ In addition, the company claiming the Investment Allowance will continue to enjoy the applicable capital allowance under CITA, and other allowable deductions, allowances, and incentives available under other laws. This offers the companies a wide array of incentives.

Incentives for Deep Water Oil and Gas Projects

This is the third category of incentives under the Order. The Order empowered the Minister for Finance to introduce incentives to ensure that investments for deep water oil and gas projects achieve a competitive internal rate of return (the “**Deep-Water Oil and Gas Incentives**”).²⁰ It further mandates the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated to take steps to procure the Nigerian National Petroleum Company Limited to consider and recommend commercial enablers for new investments in the deep water pending the time the Deep-Water Oil and Gas Incentives are introduced.²¹

Further, the Minister of Finance is empowered to issue implementation guidelines for the provisions of the Order in collaboration with the FIRS, NMDPRA, NUPRC, and other relevant stakeholders.

Recommendations and Conclusion

We strongly recommend that the FIRS, the NMDPRA, NUPRC, and other relevant stakeholders should take prompt and purposeful steps toward implementing the provisions outlined in the Order in order to achieve the desired outcome. The collaborative effort of the regulators is very key to the successful implementation of the Order. It is hoped that the Ministry of Finance will introduce the incentives for deep water oil and gas projects sooner than later.

The issuance of the Order marks a significant step towards attracting much-needed investments to bolster the Nigerian oil and gas sector. We commend the Nigerian Government for taking this initiative. The provision of these fiscal incentives is expected to attract more participants and enhance growth and investment in the oil and gas industry, thereby contributing to the nation’s economic development.

¹⁹ Paragraph 9(1), the Order.

²⁰ Paragraph 10, the Order.

²¹ Paragraph 11, the Order.

Authors



Stephen Chima Arubike
Partner
steve.arubike@gelias.com



Emeka Ezekwesiri
Senior Associate
emeka.ezekwesiri@gelias.com



Ayomide Abiodun
Associate
ayomide.abiodun@gelias.com

LOCATIONS

LAGOS OFFICE

6 Broad Street
Lagos, Nigeria

T: +234 (1) 460 7890

E: gelias@gelias.com

ABUJA OFFICE

2nd Floor, Abia House,
Plot 979, First Avenue,
Central Business District
F.C.T, Abuja.

T: +234 (1) 888 8881

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