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The Road Infrastructure Tax Credit Scheme: The Journey So Far.

INTRODUCTION

Road infrastructure is a vital component of transportation infrastructure particularly in Nigeria where there is little diversification or availability of other means of transportation infrastructure. Nigeria has an estimated road network of 195,000km, out of which 32,000km are federal roads, while 31,000km are state roads[1], with a huge amount of goods and people movement within the country on these roads[2]. According to the Federal Emergency Roads Maintenance Agency (FERMA), the FGN will spend a minimum of 400 billion Naira annually to maintain the federal roads[3]. The Nigerian Road network is plagued with issues such as poor maintenance, road congestion and overpopulation, predominance of low volume roads due to sparsity of government funds.

Due to the highly capital-intensive nature of road infrastructure development, amongst other factors, and to ameliorate the road infrastructure deficit, the President of Federal Republic of Nigeria in January 2019 issued a Presidential Executive Order 007 (the "**Executive Order**") titled "the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme ("**RITC**"), which established a scheme to encourage public private partnership by utilizing private sector funding in the construction, refurbishment and maintenance of roads.

With low sensitization and awareness of the RITC and four years after the introduction of the RITC, the World Bank has reported that it will take Nigeria 300 years to close the infrastructure gap[4]. This staggering figure calls for deep concern and it remains to be seen whether the RITC will aid in the timely achievement of a world class road network system.

What is the Scheme?

The Executive Order established the Road Infrastructure Development and Infrastructure Tax Credit Scheme (the "**Scheme**"). The Scheme grants RITC to eligible participants or beneficiaries (the "**Participants**") involved in the construction or refurbishment of "Eligible Roads"[5]. The RITC entitles the Participants to (i) utilize the Project Cost as a tax credit against the Companies Income Tax (CIT) ordinarily payable by such Participant, and (ii) a single uplift equivalent to the Central Bank of Nigeria Monetary Policy Rate (MPR) plus two (2) percent of the Project Cost[6]. Currently, the Central Bank of Nigeria MPR is 18% thus, the uplift will allow a participant to claim an additional total tax credit of 20% to be utilized against the CIT[7].

Under the Scheme, each participant will be issued a Road Infrastructure Tax Credit Certificate (the "**Certificate**") by the Federal Inland Revenue Service ("**FIRS**") upon the approval of the Committee established pursuant to the Executive Order. Whilst the Scheme allows the FGN to leverage on private sector funding for construction and refurbishment of Eligible Roads in an efficient and effective manner, the Scheme also ensures that private sector participants are guaranteed timely and full recovery of funds utilized in the construction and refurbishment of Eligible Roads. It is pertinent to note that the Scheme has a tenure of 10 years which is set to expire in January 2029 and there is no provision for extension of the Scheme upon its expiry.

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[1] ICRC, '135,000km Road Network in Nigeria Un-tarred' https://www.icrc.gov.ng/135000km-road-network-nigeria-un-tarred-icrc/ accessed on May 9, 2023.

[2] KPA, 'Infrastructure in Nigeria and how it affects your Business' <https://kpakpakpa.com/infrastructure-in-nigeria-and-how-it-affects-your-business/> accessed on March 8, 2023.

[3] Bassey, 'All Federal roads require 400bn yearly maintenance' < https://www.vanguardngr.com/2021/11/all- federal-roads-require-400billion-naira-yearly-for-maintenance/ > accessed March 7, 2023.

[4] Hernandez, M and others, "Nigeria Public Finance Review: Fiscal Adjustment for Better and Sustainable Results" (Open Knowledge Repository June 2022) https://openknowledge.worldbank.org/handle/10986/38355 ; accessed April 25, 2023

[5] Eligible Road means any road approved by the President as Eligible for the Scheme on the recommendation of the Minister of Finance and as duly notified to Participants and published pursuant to the Order.

[6] Project Cost means any expenditure wholly, reasonably, exclusively and necessarily incurred by a participant for the construction or refurbishment of an Eligible Road as quoted by the participant in its Project Cost bid and as certified by the Committee.

[7] Road Infrastructure Development and Refurbishment Investment Tax Credit Order, (2019) Vol.99/No.15, Paragraph 2 (2)(3).

The Road Infrastructure Tax Credit Certificate

As mentioned, a Certificate will be issued to a Participant which will show the Project Cost. Interestingly, the Scheme provided that the Certificate is to be a transferable and tradable instrument on Relevant Securities Exchange[8]. A participant may register the whole or part of the Certificate on the Relevant Securities Exchange. Any Participant wishing to trade the Certificate shall obtain the approval of the Committee and designate the registration status of the Certificate in a register maintained by the Committee as "Tradable on Relevant Securities Exchange[9]. Despite the above, Participants are yet to take advantage of this on the Relevant Securities Exchange.

Criteria for Participation under the Scheme

To be eligible under the Scheme, an applicant must be both an Eligible Participant and propose to develop an Eligible Road project.

A. Eligible Participants in the Scheme[10]

To qualify as an "Eligible Participant" under the Scheme, such entity must fall under one of the categories of companies or entities listed below:

i. any company or corporation (other than a corporation sole), established by or under the Companies and Allied Matters Act or any law in force in Nigeria duly designated as a Sponsor of an Eligible Road pursuant to the Executive Order;

ii. any company or corporation (other than a corporation sole) established under the Companies and Allied Matters Act or any law in force in Nigeria, and certified by the Committee to be eligible to participate in the Scheme; or

iii. a pool of companies operating through a special purpose vehicle registered with and designated by the Securities and Exchange Commission (the "**SEC**") as an Infrastructure Fund set up solely for the purpose of managing the amounts received by the pool of companies for the construction or refurbishment of an Eligible Road in the Scheme and represented by a Fund Manager duly registered with SEC and certified by the Committee to be eligible to participate in the Scheme; or

iv. Institutional Investors such as Pension Fund Administrators, Collective Investment Schemes, Insurance Companies, Investment Banks.

B. Eligible Road

A Participant cannot be eligible for tax credit under the Scheme for any road. A road to which the Scheme will apply to must be an Eligible Road as designated by the President on the recommendation of the Minister of Finance. The list of the Eligible Roads may be updated as approved from time to time and such updates shall be published in the Official Gazettes of the Federal Republic of Nigeria[11].

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[8] Relevant Securities Exchange means: FMDQ Over-the Counter ("**OTC**") Securities Exchange or any other relevant Securities Exchange duly authorised and regulated by the Securities and Exchange Commission.

[9] Supra note 7, paragraph 4 (4), (7) and (9).

[10] Ibid, paragraph 5.

[11] Ibid.

Limitations of the RITC

Participants in the Scheme are allowed to utilize their RITC against CIT payable by the participants until the Project Cost is fully recovered. However, the amount of RITC to be utilized in any given year of assessment is limited to 50% of the CIT payable by the Participants (the "**RITC Limit**"). The RITC limit does not apply to projects carried out in Economically Disadvantaged Areas[12]. Any RITC that remains unutilized within a particular year of assessment is allowed to be carried forward to subsequent tax years until it has been fully utilized by the Participant[13]. Notably, where a Participant is claiming tax credit under the Scheme, such Participant is consequently prohibited from claiming any other tax credit, capital allowance, relief or incentive on the Project Cost incurred in respect of the Eligible Road under any law in force in Nigeria[14].

The Journey So far

The Federal Executive Council (the "**FEC**") has, in line with the Executive Order granted approval to a handful of companies to construct and refurbish some roads across the country. In the recent times, some of the known projects under the Scheme are (i) Nigerian National Petroleum Company Limited (the "**NNPC**") for the **(a)** Dualization of Ilorin-Jebba-Mokwa/ Bokani Junction Road Section 1: Ilorin-Jebba, Kwara State C/NO. 6468. 110.8km; and (**b**) Rehabilitation and expansion of Lagos-Badagry Expressway (Agbara Junction-Nigeria/Benin border) in Lagos State. 62km.[15] Early this year, FEC also approved phase two of the Scheme for NNPC in respect of some roads within the Country.[16] Under the Scheme, the Dangote Group has substantially completed the Reconstruction of 34km Apapa-Oworonshoki-Ojota Expressway and the 43km Obanjana-Kabba Road. Similarly, Nigeria LNG Limited is on track to complete the 38km Bodo-Bonny Road and Bridges Projects by the end of 2023.

Other companies like, BUA, Access Bank, GZI Industries and others have participated in the Scheme by investing circa N97.4b and have successfully completed the rehabilitation and reconstruction of 33 key road networks across the country in four (4) years[17]. Given the number of roads that have been successfully completed across the country under the Scheme so far, the Scheme can be said to be a success, although there is need to create more awareness among relevant stakeholders for a more robust participation in the Scheme. To date, there has been no (known) Certificate listed on the Nigerian Exchange.

Memorandum of Understanding

The Scheme provides a memorandum of understanding ("**MOU**") with summary of indicative head terms to be incorporated into the Eligible Road Project Contract Document[18]. One of such key terms is the provision on governing law and jurisdiction, stating that the Eligible Road Projects Contracts and other relevant Documents shall be governed and construed in accordance with the Nigerian Law; and

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[12]Economically Disadvantaged Areas means any area of location in any geopolitical zone or state designated as Economically Disadvantaged by the President on the advice of the Minister of Finance taking into consideration (i) the average income level of the inhabitants, (ii) availability of infrastructure, (iii)the volume and nature of economic activity being undertaken in such areas and (iv) any other factors as may be considered. See Executive Order, Paragraph 4 (2) and 5.

[13] Ibid paragraph 4 (3).

[14] Ibid paragraph 4 (15)

[15] Full List, 'FEC approves NNPC's request to fix 21 federal roads at N621bn' < https://www.thecable.ng/full-list-fec-approves-nnpcs-request-to-fix-21-federal-roads-at-n621bn > accessed March 12, 2023.

[16] Fashola, 'FG begins phase II of NNPC road infrastructure tax credit scheme' < https://www.vanguardngr.com/2023/01/fg-begins-phase-ii-of-nnpc-road-infrastructure-tax-credit-scheme/amp/> accessed March 12, 2023.

[17] Damilola, 'Dangote, others invest N97.4bn in four years' < https://punchng.com/road-dangote-others-invest-n97-4bn-in-four-years/?amp > accessed March 12, 2023.

[18] Executive Order, 2nd Schedule.

the Nigerian Courts and Nigerian arbitration panels shall have jurisdiction to decide disputes arising from projects carried out under the Scheme.[19]

While the key terms as stipulated in the MOU may not be a deterrent to the private sector participants, they are also noteworthy as oftentimes private sector participants prefer to choose their own forum for dispute resolution.

Conclusion and Recommendation

One of the main challenges of the Scheme is the uncertainty around to unutilized RITC upon expiration of the Tenure of the Scheme. While the Scheme has a 10-year tenure (out of which four years have elapsed), the Executive Order does not provide a validity period for unutilized RITC upon expiry of the Scheme. Are the Participants expected to forego the RITC upon the expiry of the Tenure? Further, there is a huge need create more awareness among stakeholders to understand the advantages of the Scheme and leverage on them while also enabling the Scheme to effectively achieve its objective of bridging road infrastructural gaps.

[19] Ibid.

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