

Pioneer Status Incentive Regulations 2014

In brief

The Nigerian Investment Promotion Commission (NIPC) recently released pioneer status incentive regulations. The Regulations have an effective date of 30 January 2014.

The Pioneer Status Incentive Regulations provides additional conditions to those contained in the Industrial Development (Income Tax Relief) Act for processing an application for Pioneer Status Incentive. It provides an update on the list of requirements to be provided by applicants in addition to the application forms. More prominent in the Regulations, is a service charge of 2% based on estimated tax savings to be paid to the NIPC. The Regulations do not address the controversial issue of pioneer status incentive to companies other than those subject to tax under the Companies Income Tax Act.

In detail

Introduction and effective date

The NIPC has issued a new Regulation setting out the objective and scope, as well as processes/procedures guiding the application and issuance of the pioneer status incentive. The regulations were issued by the Chairman Governing Council of the NIPC, in exercise of the powers conferred on the Commission by Section 30 of the NIPC Act.

The regulations have a commencement date of 30 January 2014 and apply to every company seeking pioneer status incentive effective from that day.

Key provisions of the Regulations and their implications are set out below:

Application for a Pioneer Status Incentive

The Regulations provide that an applicant for a Pioneer Status Incentive must:

- be a body corporate, registered in Nigeria; and
- have incurred capital expenditure of not less than ₦10 million.

A filled application form i.e. NIPC Form 2 (which formerly cost ₦40,000, but now obtainable for free) is to be submitted along with a list of requirements to the NIPC. The list of requirements basically remains the same, with the exception of the following:

- the relevant regulatory license to operate in the sector or business activity where applicable; and
- a copy of the NIPC registration certificate.

The non-refundable processing fee has also noticeably increased from ₦100,000 to ₦200,000.

Introduction of Service Charge

The Regulations introduce a service charge to be paid by every company applying for the pioneer incentive. The service charge is to be determined by the NIPC at 2% of a company's estimated tax savings, derived from the five-year financial projections. Where a company records losses in its projections, the service charge will be calculated on the higher of the following:

- 0.5% of its net assets; or
- 0.25% of its turnover

A notification letter accompanied by an invoice will be issued by the NIPC within two days of the determination of the service charge to the company. Upon presentation of evidence of payment of the invoice amount, an approval letter is issued to the applicant company. This approval letter must be presented to the Industrial Inspectorate Department (IID) of the Federal Ministry of Industry, Trade and Investment to enable processing of the company's Production Day Certificate. The Production Day Certificate issued by the IID in addition to the approval letter, are to be presented to the NIPC before a Pioneer Status Certificate is issued.

This minimum levy regardless of profitability means that pioneer incentive may well result in additional cost overall putting the affected companies in a worse situation than without the incentive. It remains to be seen whether the FIRS will consider the service charge as a levy to be added back to pioneer profit/loss or as a tax to be ignored in the calculation of pioneer profit.

Other Provisions

The Regulations additionally provides for:

- A periodic impact assessment to be carried out by the NIPC, for the purpose of evaluating the utilisation of the savings obtained from the Pioneer Status Incentive.
- Extenuating circumstances (including but not limited to host community hostility, natural disasters, strikes, and insurgency) where the pioneer incentive may be suspended and the procedures to be followed to achieve this.
- Circumstances in which the pioneer status certificate may be revoked.

The takeaway

The inclusion of the service charge in the Regulations is a new development and results in additional costs for obtaining a pioneer certificate, although it was already being applied in practice on the more recent pioneer status applications before the introduction of the Regulations. The Regulations do not specifically address what will be included in the NIPC's computation of tax savings. Clearly, companies' income tax savings will be included but it is not clear whether the NIPC's computations will include Tertiary Education Tax (TET) and Withholding Tax on dividends to be distributed from profits earned during the pioneer period.

There is no clarity on how the five-year financial projections would be determined. However, the Regulations seem to leave this to the discretion of applicants. The law also does not mention that any adjustments will be made to the service charge if the actual results deviate materially from the projections. Therefore, it is expected that companies will be very conservative with their profit estimates and try to balance that with their justification for the pioneer incentive.

The Regulation does not address the legality of the grant of pioneer status to companies engaged in petroleum operations under the Petroleum Profits Tax Act i.e. exploration and production (E&P) companies. Pioneer Status Incentive is granted under the Industrial Development (Income Tax) Relief Act ("IDITRA") which grants tax holidays to companies by exempting their profits from taxation under the Principal Act being the Companies Income Tax Act. As a result, E&P companies who have been granted a pioneer certificate or seeking to apply for a pioneer certificate must continue to assess the risk of applying the incentive to their upstream operations. However, we expect that the NIPC will continue to process pioneer certificates for E&P companies given that oil and gas exploration and production is in the list of pioneer industries.

Let's talk

For a deeper discussion, please contact your PwC team:

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