

Legal Alert **Tax Benefits Pioneer Status**

In this Issue:

1. Legal Alert for November, 2009 ? Tax Benefits of Pioneer Status in Nigeria
2. Subscribe & Unsubscribe to Legal Alerts.
3. Disclaimer Notice.

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TAX BENEFITS OF PIONEER STATUS APPROVAL IN NIGERIA

The number of Nigerian companies applying for and obtaining pioneer status approval has dwindled considerably in the last decade with the attendant decrease in the benefits inherent in the possession of a pioneer's status certificate.

This is despite the subsisting applicable legislation in the Nigerian Statute book, namely the Industrial Development Income Tax Relief Act ("the industrial Development Act").

The Industrial Development Act provides that where the Nigerian government is of the opinion that any sector or industry in her economy is not being undertaken on a scale suitable to the economic advancement of Nigeria, or that it is in the public interest to encourage the further development or establishment or advancement of trade in such a sector or industry, the President of Nigeria is authorised to publish in a Gazette, a list of such industry or industries to whom pioneer status Certificate may be issued upon their successful application.

Any industry that is not listed in the schedule of industries, to which pioneer status could be granted, is at liberty to apply for the inclusion of such an industry in the pioneer status list. The Nigerian government is also at liberty to, from time to time, amend its list of pioneer industries, enterprises and products.

APPLICATION FOR PIONEER STATUS

To qualify to apply for pioneer status, a joint venture company or a foreign wholly-owned company must show that it will incur capital expenditure in excess of N5,000,000 (Five Million Naira). In addition, an application for pioneer status must be submitted within one year of the applicant company commencing commercial production otherwise the application will time-barred.

Every application for pioneer status must be addressed to the Federal Minister for Industries stating the ground or grounds on which the applicant relies for making the application for the issuance of a pioneer certificate to such an Applicant company. The application should indicate:

- (a) Whether the Applicant Company is an indigenously controlled or foreign controlled company?
- (b) Particulars of the assets on which qualifying capital expenditure will be incurred by the

company, including their source and estimated costs.

(c) The probable date of commencement of the production by the company.

(d) The location of the assets in respect of which qualifying expenditure will be incurred by the applicant company.

(e) The product and any by-product proposed to be or that is being produced by the company.

(f) Provide particulars of the loan and share capital, or the proposed loan and share capital of the applicant company or the proposed applicant company.

(g) Provide the names, addresses and nationalities of each Director, and the number of shares held by each such Director in the applicant company.

(h) Give the name(s), addresses and nationalities of each promoter in the case of a company that is yet to be incorporated.

A pioneer certificate could be amended by including an additional product or products. The particulars of all pioneer Certificates must be published in the Federal Government Gazette.

INCOME TAX RELIEF FOR PIONEER COMPANIES

The tax relief period for all pioneer companies is three years commencing on the first production day of the company. The tax relief period may be extended subject to some conditions, for a further period of two years or one extra year after which a further extra one year may be allowed. However, a company which acquires or proposes to acquire the assets of a company that has pioneer status or has been taken over or is been taken over by such other company remains only entitled to continue to enjoy a pioneer approval that must not exceed five years cumulatively from the date of its original grant or the date of the first production under the original grant.

A Pioneer Company is not allowed, for tax relief purposes, during the period of the tenure of its grant, to engage in other form of enterprise different from those for which pioneer approval has been granted. Where however a pioneer company engages in such other trade or business, the profit accruing to it from such other trade or business shall be liable to Nigerian Income tax statutes and regulations.

Subject to the above condition, all the profits of a pioneer company from an approved pioneer enterprise or product are not subject to the payment of Income tax on their assessable or total profits.

Also, the Dividend Income of a pioneer company is exempted from tax in the hands of the shareholders of such a company provided such dividends are paid from an account of the company approved by the Federal Board of Internal Revenue (FBIR). FBIR is also authorised to retract these benefits within a period of six years should the pioneer certificate of the pioneer company be cancelled or such other contrary directive is issued by the Nigerian government for

good reason.

FALSE INFORMATION

Any applicant who makes or presents a false declaration or statement, or who produces a false invoice or undertaking is guilty of an offence and is liable on conviction to a fine not exceeding N1,000 or to a term of imprisonment of five years or to both the fine and the term of imprisonment. Where the offence is committed by a body corporate, every director, manager, secretary or other principal officer of the company, if found severally guilty with the body corporate, will also be liable in the same manner as if he or she had committed the offence in his or her individual capacity.

CONCLUSION

In the last decade, pioneer certificates have been issued to industries in the manufacturing, solid minerals, telecommunications, food production, processing and agriculture, scientific instruments, construction services, gas and industrial power, utility services, real estate development, tourism, information and communication technology, and other related pioneer sectors of the Nigerian economy. More recently however, there appears to be a paucity of fresh applications or consciousness of the business benefits and effectiveness of pioneer approvals in Nigeria. Multiple taxation and infrastructural challenges continue to overwhelm existing and new businesses. Investment promotion agencies of government with independent chambers of commerce and other business stakeholders should enlighten their members through institutionalised pressure groups to bring certainty to establishing enduring businesses in Nigeria while taking advantage of the existing statutes like the one on pioneer companies and the tax relief that they enjoy.

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