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An Overview of the Tax Incentives Available to Operators in the Nigerian Mining Industry





Introduction

Nigeria has identified approximately forty-four different types of minerals in significant quantities across its thirty-six states. To fully utilize this mineral wealth, Nigeria, in collaboration with the World Bank through the Mineral Sector Support for Economic Diversification (MinDiver) Project, has intensified exploration efforts. This aims to gather data that can enhance the viability of the sector. According to the Nigerian Extractive Industry Transparency Initiative (NEITI) Solid Minerals Report of 2021, Nigeria earned NGN 814.59 billion from its solid mineral sector between 2007 and 2021. In 2021 alone, earnings reached NGN 193.59 billion, marking the highest revenue in fifteen years, with a notable 51.89% increase compared to 2020.

While this reflects improved production levels, fully harnessing Nigeria's solid mineral potential necessitates concerted efforts to promote ease of doing business in the mining sector, implement policy and infrastructural reforms, and attract foreign investments. This article examines the incentives provided by the Nigerian Minerals and Mining Act of 2007 and assesses their alignment with other tax laws.

Tax Incentives under the Minerals Act

The Minerals Act grants tax concessions to companies or enterprises engaged in mining operations in Nigeria. Some of those concessions include the following:

1. Accelerated Capital Allowances

Companies engaged in mining operations are entitled to capital allowance at 95% of qualifying capital expenditure incurred in relation to (a) certified exploration, development, and processing expenditure, including feasibility study and sample assaying costs; and (b) infrastructure costs.

This provision aligns with the the provisions of the Companies Income Tax Act, as amended ("CITA recognises mining expenditure as a qualifying expenditure for capital allowance. The Paragraph defines qualifying mining expenditure as capital expenditure incurred in connection with, or preparation for, the working of a mine, oil well, or other source of mineral deposits of a wasting nature. A company claiming this capital allowance must do so in the year the asset was first used.

2. Loss Relief

The Minerals Act allows mineral title holders to deduct incurred losses from assessable profits for up to four years. However, recent amendments to the Companies Income Tax Act by the Finance Act 2019 removed the four-year restriction. Although the Minerals Act is yet to be amended, the amendment of the CITA implies that losses incurred by mining companies can now be carried forward indefinitely until fully recovered. In the case of *Akintokun V LPDC* (2014) LPELR-22941(SC) and *INEC v. Omotosho & Ors* (2021) LPELR-56626(CA), the Court of Appeal held that where later legislation conflicts with earlier provisions, the later enactment implicitly amends the earlier to resolve inconsistencies. Since the CITA is the principal legislation that governs the taxation of companies, a company operating in the minerals sector can rely on the provisions of the CITA.

3. Tax Holiday

Companies with mineral titles are granted a three-year tax relief period, which commences on the date the company begins operations and may be extended, by application, for one further period of two years. To qualify for the three-year tax holiday period, mining companies must submit their applications through the Nigerian Investment Promotion Commission (“NIPC”), the agency responsible for coordinating and monitoring all investment promotion activities. For the tax relief period to be extended, the Minister for Solid Mineral Development must be satisfied with (a) the rate of expansion, standard of efficiency, and level of development of the company in mineral operations for which the mineral title was granted; (b) the implementation of any conditions upon which the lease was granted; and (d) the training and development of Nigerian personnel in the operation of the mineral. [UUBO1][LO2]

This incentive aligns with the provisions of the Industrial Development (Income Tax Relief) Act (“IDITRA”), which is the principal legislation that governs the grant of pioneer status. Mining and Quarrying is listed as a pioneer industry under the Approved List of Pioneer Industries and Products, 2017, made pursuant to the IDITRA.



4. Tax Deductions

Mining companies can deduct certain expenses related to mining operations, such as costs for environmental protection and pension contributions, from taxable profits.

The costs incurred for the establishment of a reserve for environmental protection, mine rehabilitation, reclamation, and mine closures are restricted to the actual amount incurred for the purpose of the reclamation.

5. Exemption from Customs Duty

Operators in the mining industry are exempted from customs and import duties on machinery and equipment imported specifically for mining operations. This incentive accords with the Customs, Excise Tariff, etc. (Consolidation) Act which places the import duty on equipment and machinery in the mineral mining sector at 0%.

6. Tax Exemption on Foreign Currency Remittances

The Minerals Act grants entities operating in the mining industry, a personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.

Conclusion:

The Nigerian government is contemplating reforms to encourage beneficiation activities within the mineral sector. Consequently, some of the outlined incentives may be subject to modification to promote investment in beneficiation projects.

This update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how this update could apply to you or your business or require litigation advice on any aspect of the Nigerian laws, please contact taxteam@uubo.org.