UDO UDOMA & BELO-OSAGIE

Client Update

The Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024

On March 6, 2024, President Bola Ahmed Tinubu signed the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order 2024 (referred to as the "Order"). The objective of this order is to specify incentives applicable to Non-Associated Gas (NAG) and to promote investments in NAGs Greenfield development.

Tax Incentives for the Gas Sector Before the Order

Before the Order, the Petroleum Industry Act (PIA), the Companies Income Tax Act (CITA), and the Petroleum Profits Tax Act (PPTA) already provided incentives for companies operating within Nigeria's oil and gas sector. Particularly, the PPTA offered incentives for the utilization of associated and non-associated gas.

The PIA confirmed that the incentives provided under Section 39 of the CITA applied to all companies engaged in downstream gas operations and large-scale gas utilization industries. These included a tax holiday period of three years, an investment allowance of 35% as an alternative to the initial tax-free period, tax-free dividends during the tax-free period for businesses investing in foreign currency or imported plant and machinery, and an annual allowance of 90% with 10% retention for investment in plant and machinery, among others.

Under the PPTA, investments required for separating crude oil and gas from the reservoir into usable products were considered part of oil field development. Additionally, capital investment in equipment to deliver non-associated gas in usable form was treated for tax purposes as part of the capital investment for oil development. The PPTA also specified that investments in gas-to-liquid facilities would be treated as chargeable capital allowance and recovered against crude oil income. Gas transferred from natural gas liquid facilities to gas-to-liquid facilities incurred 0% tax and 0% royalty.

Highlights of Additional Incentives Introduced by the Order

1. Tax Credit for Non-Associated Gas (NAG) Greenfield Development

This incentive applies to NAG greenfield developments in onshore and shallow water locations with first gas production on or before January 1, 2029. It includes a gas tax credit (GTC) at the rate of US$1.00 per thousand cubic feet or 30% of the fiscal gas price (whichever is lower) if Hydrocarbon Liquids (HCL) content does not exceed 30 barrels per million standard cubic feet (SCF). If HCL exceeds 30 barrels per million SCF but does not exceed 100 barrels per million SCF, a GTC at the rate of US$0.50 per thousand cubic feet or 30% of the fiscal gas price is applicable.

For other greenfield NAG projects with first commercial production after January 1, 2029, a gas tax allowance is provided at a rate of US$0.50 per thousand SCF or 30% of the fiscal gas price (whichever is lower), provided that HCL content does not exceed 100 barrels per million SCF. The Order stipulates that HCL content in a NAG field will be determined in guidelines issued by the Nigerian Upstream Petroleum Regulatory Commission.

The GTC for NAG operations applies for a maximum of 10 years, after which it becomes a gas tax allowance (GTA) claimable at the outlined rates. Restrictions on GTC include limits not exceeding a company's income tax payable for the year and not combining with Associated Gas Framework Agreement (AFGA) incentives for the same greenfield NAG project. Any surplus GTC can be carried forward for a maximum of three years.

2. Gas Utilization Investment Allowance in the Midstream Oil and Gas Industry

Under the Order, gas companies receive a gas utilization investment allowance on qualifying expenditures on plant and equipment incurred for new and ongoing projects in the midstream oil and gas industry. Only 25% of actual expenditure on purchased plant and equipment is allowable for calculating the gas utilization investment allowance. This allowance is deducted from the assessable profits of the company from the year of equipment purchase. It does not affect the residue of qualifying expenditure on the equipment. This allowance is granted after the tax-free period as per the Companies Income Tax Act and does not apply to subsequent purchasers of equipment.

Implementation of the gas utilization investment allowance starts on March 15, 2024.

3. Incentives for Deepwater Oil and Gas Projects

The Order supports government goals to attract investments for deepwater oil and gas projects, aiming for a competitive internal rate of return (IRR). The Minister of Finance has been tasked with introducing appropriate fiscal incentives to help the government achieve its goals. Until then, the Ministry of Petroleum is directed to work with NNPC Limited to implement commercial enablers for new brownfield investments in deep waters.

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