

TAX INCENTIVE MANAGEMENT AND TRANSPARENCY BILL, 2016

ARRANGEMENT OF CLAUSES

Clauses:

1. Declaration of policy
2. Filing of tax Return and submission of Tax Incentives Report
3. Monitoring of Tax Incentives
4. Conduct of Cost-Benefit Analysis on Investment Incentives
5. Penalties for noncompliance with filing and Reportorial Requirement
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A BILL

FOR

AN ACT TO ENHANCE TRANSPARENCY IN THE MANAGEMENT AND ACCOUNTING OF TAX INCENTIVES BY RELEVANT AUTHORITIES SO AS TO CHECK CORRUPTION IN THE SYSTEM AND FOR RELATED MATTERS

Sponsored by Senator Aliyu Sabi Abdullahi

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1 1. The Federal Republic of Nigeria declared to promote fiscal Declaration of
2 accountability and transparency in the grant and management of tax policy.
3 incentives (import waivers, tax holidays, grants and concessions) by
4 developing means to promptly measure the government's fiscal exposure on
5 these grants and to enable the government to monitor, review and analyze
6 the economic impact thereof and thereby optimize the social benefit of such
7 incentives.
- 8 2.-(1) All registered business entities are required to file their tax Filing of tax return
9 returns and pay their tax liabilities, on or before the deadline as provided and submission
10 under the Federal Inland Revenue (Establishment) Act 2007, as amended of Tax incentive
11 and other legislations and issuance connected therewith. report
- 12 (2) For registered business entities availing of incentive
13 administered by the relevant authorities they shall file:
14 (a) a complete Annual Tax Incentives report of the income-based
15 tax incentives;
16 (b) value added tax and duty exemptions, deductions, credits; or
17 (c) exclusions from the tax base as provided in the relevant extant
18 rules and regulations and legislation concerned, within thirty days (30) days
19 from the statutory deadline for filing of tax returns and payment of taxes.
20 (3) The relevant authority shall within sixty (60) days from the end

1 of the statutory deadline for filing of the relevant tax returns submit to the
2 Federal Inland Revenue Service their respective annual tax incentives reports
3 based on the list of the registered business entities who have filed said tax
4 incentives report.

5 (4) The details of the tax incentives reports, as provided in the
6 preceding sub clause, shall be provided in Implementing Rules and
7 Regulations (IRR) of this Bill.

8 (5) The foregoing provisions shall be without prejudice to the right of
9 the FIRS and the Nigerian Customs Service (NCS) to conduct assessment
10 within the prescribed period provided as amended, and the Tariff and Customs
11 Code of as amended, respectively.

Monitoring of
Tax incentives

12 3.-(1) The Federal Inland Revenue Services and the Nigerian
13 Customs Service shall submit the record to the Federal Ministry of Finance,
14 notwithstanding any law to the contrary:

15 (a) the tax and duty incentives of registered business entities as
16 reflected in their filed tax returns and import entities; and

17 (b) actual tax and duty incentives as evaluated and determined by the
18 Federal Inland Revenue Service and the Nigeria Customs Service.

19 (2) The Federal Ministry of Finance shall maintain a single database
20 for monitoring and analysis of tax incentives granted.

21 (3) For purpose of monitoring and transparency, the Federal Ministry
22 of Finance shall submit to the Budget Office of the Federation (BOF) the
23 aggregate data on a sectorial and per industry basis of the;

24 (a) amount of tax incentives availed by registered business entities;

25 (b) estimate claims of tax incentives immediately preceding the
26 current Year; and

27 (c) programmed tax incentives for the current year;

28 (d) projected tax incentives for the following year.

29 Such information shall be given to the Oversight Committee created under
30 Clause 9 of this Bill.

1 (4) The said data shall be reflected in the annual Fiscal Strategy
2 Paper, which shall be known as the Tax Incentive Information section,
3 provided that the Tax Incentive Information shall be limited to aggregate
4 data related to incentives availed of by registered business entities based on
5 the submissions of the Federal Ministry of Finance and the concerned
6 Revenue Agency, categorized by sector, by Revenue Agency and type of
7 incentive.

8 (5) Nothing in this Bill shall be construed to diminish or limit, in
9 whatever manner, the amount of incentives that Revenue Agency may grant
10 pursuant to their charters and existing laws, or prevent, deter, or delay the
11 promotion and regulation of investments processing of applications for
12 registrations, and evaluation of entitlement of incentives by Revenue
13 Agencies.

14 4.-(1) The Nigerian Institute for Social and Economic Research
15 (NISER) is mandated to conduct cost-benefit analysis on the investment
16 incentives to determine the impact of tax incentives on the Nigerian
17 economy.

Conduct of Cost-
Benefit analysis
in investment
incentives

18 (2) For this purpose, all heads of the Revenue Agencies shall
19 submit to the Nigerian Institute for Social and Economic Research the
20 aggregate tax incentives, based on the submission of registered business
21 entities as provided in Clause 4 of the Bill, and aggregate incentives-related
22 data, both on a sectoral or per industry basis, which may include, but not
23 limited to:

- 24 (a) investment projects;
25 (b) investment cost; and
26 (c) actual employment and export earnings.

27 5.-(1) Any registered business entity which fails to comply with
28 filing and reportorial requirements with the appropriate Revenue Agencies
29 or which fails to show proof of filing of taxes of the Federal Inland Revenue
30 Service shall be imposed the following penalties:

Penalties for
non-compliance
with filing and
reportorial
requirement

1 (a) First (1st) violation: payment of a fine amounting to one hundred
2 thousand naira (N100,000);

3 (b) Second (2nd) violation: payment of a fine amounting to five
4 hundred thousand naira (N500,000); and

5 (c) Third (3rd) violation: cancellation of the registration of the
6 registered business entity.

7 Provided, that if the failure to show such proof is not due to the fault of the
8 registered business entity, the same shall not be a ground for the suspension of
9 the ITH or other income-based tax incentives available.

10 (2) Any government official or employee who fails without justifiable
11 reason to provide or furnish the required tax incentives report or other data or
12 information as required under this Bill shall be penalized, after due process, by
13 a fine equivalent to the official's or employee's basic salary for a period of one
14 (1) month to six (6) months suspension from government service for not more
15 than one (1) year, or both, in addition to any criminal and administrative
16 penalties imposable under existing laws.

Funding

17 6. Such amount necessary to carry out the implementation of this Bill
18 shall be sourced from the current existing funding of the various Revenue
19 Agencies involved in the implementation of the various provisions of this Bill.

Joint Oversight
Committee

20 7.-(1) A Joint Oversight Committee of the National Assembly, herein
21 referred to as the Oversight Committee, shall be constituted in accordance with
22 the provisions of this Bill.

23 (2) The Oversight Committee shall be composed of the respective
24 Chairperson of the Committee on Finance of the Senate and House of
25 Representatives and four (4) additional members from each chamber as
26 follows:

27 (a) Chairperson of the Senate and House Committee on Trade,
28 Industry and Investment; and

29 (b) Three other persons each selected by the President of the Senate
30 and the Speaker of the House of Representatives.

1 (3) The Oversight Committee shall monitor and ensure the proper
2 implementation of this Bill.

3 8. The Permanent Secretaries of the Federal Ministry of Finance Rules and
4 and the Federal Ministry of Trade and Investment in coordination with the Regulations
5 Nigerian* Institute for Social and Economic Research Director-General,
6 Representative of the Chartered Institute of Taxation of Nigeria, Chairman
7 of the Federal Inland Revenue Service and Controller General of Customs
8 and other heads of concerned Revenue Agencies Shall, within sixty (60)
9 days from the coming into effect of this Bill, promulgate rules and
10 regulations to faithfully implement the intent and provisions of this Act:
11 provided, that the failure of the above offices to promulgate the rules and
12 regulations shall not prevent the implementation of this Bill upon its coming
13 into effect.

14 9. If any provisions of this Bill is subsequently declared invalid or Validity
15 unconstitutional, other provisions thereof which are not affected thereby
16 shall remain in full force and effect

17 10. This Bill gives effect to any law that will facilitate the Effect
18 realization of the objectives of this Bill.

19 11. This Bill shall take effect fifteen (15) days after its complete Commencement
20 publication either in the Official Gazette or in at least one (1) newspaper of
21 general circulation.

22 12. In this Bill: Interpretation

23 "Relevant authorities" means government entities created by law, executive
24 order, degrees or other issuance, in charge of promoting investments,
25 administering tax and non-tax incentives, and/or overseeing the operations
26 of the different economic free zones and ports in accordance with their
27 respective enabling laws. These include:

28 (i) Federal Ministries (Finance, Agriculture and Rural
29 Development, Trade, Industry and Investment, Petroleum and Power (and
30 any other subsequent names);

- 1 (ii) Central Bank of Nigeria (CBN);
- 2 (iii) The Nigerian Customs Service (NCS);
- 3 (iv) Federal Inland Revenue Service;
- 4 (v) Nigerian Immigration Service (NIS);
- 5 (vi) Nigeria Investment Promotion Council (NIPC);
- 6 (vii) Nigerian Export Promotion Council (NEPC);
- 7 (viii) Nigeria Export Processing Zones Authority (NEPZA);
- 8 (ix) Others.

9 "Tax incentives" means fiscal incentives such as those which come in the form
10 of income tax holidays (ITH), exemptions, deductions, credits or exclusions
11 from the tax base, as provided by law, to registered business entities; it is also
12 defined as a generic term for all the measures adopted by the government to
13 deliberately manipulate the tax system to the advantage of a potential tax payer.

14 Tax incentive is a deliberate reduction in or total elimination of tax liability
15 granted by the government in order to encourage a particular economic unit
16 (e.g. corporate body) to act in some desirable ways. The desirable ways may be
17 to invest more, produce more, employ more, export more, sell more, consume
18 less, import less and pollute less;

19 "Registered business entity" include any individual partnership, corporation,
20 Nigerian branch of a foreign Corporation, or other entity incorporated and/or
21 organized and existing under Nigerian laws.

Citation

22 13. This Bill may be cited as Tax Incentive Management and
23 Transparency Bill, 2016.

EXPLANATORY MEMORANDUM

This Bill seeks to enhance transparency in the management and accounting of
tax incentives by relevant authorities so as to check corruption in the system.