



Nigeria's Executive Order on Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Analysis and implications

In the quest to improve the infrastructural needs of Nigeria and maximise resources, the President of Nigeria approved the Executive Order 007 (the Order) on Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme (the Scheme).

The Scheme is a public-private partnership, which enables private companies fund the construction and refurbishment of eligible roads in Nigeria. In return, participants in the Scheme are entitled to recover the project funds by way of tax credits, claimable against Companies Income Tax (CIT) payable.

The Scheme will be implemented and administered by a special management committee (the Committee), consisting of representatives from relevant Ministries and agencies, including Federal Inland Revenue Service (FIRS) and chaired by the Minister of Finance.

Highlights

The highlights of the Scheme are set out below:

a) Commencement and duration

Although the commencement date of the Scheme is not specifically stated in the Order, the date the Order was signed

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by the President (25 January 2019) can be assumed as commencement date of the Scheme pending possible indication of a commencement date when the Order is gazetted. The Scheme will be in force for a period of 10 years from the date of commencement of the Order.

b) Eligibility

The Scheme is open to Nigerian companies (other than corporation sole), institutional investors and a pool of companies operating through a special purpose vehicle set up as an infrastructure fund. Eligible road refers to any road approved by the President as eligible for the Scheme on the recommendation of the Minister of Finance and as duly notified to participants and published pursuant to the Order.

c) Confirmation of eligibility

In order to participate in the Scheme, interested companies are required to provide the following documents to the Committee:

- A written expression of interest in the construction or refurbishment of an identified road project, duly signed by a principal officer of the company;
- Valid and current corporate tax clearance certificate;
- Project cost and timeline bids which will include design and specification for identified road project(s).

Upon verification of an interested company's eligibility to participate in the Scheme, the Committee may make a

recommendation to the President, through the Minister of Finance. Such recommendations are based on the Committee's determination that a proposed road project is economically viable, cost-efficient and can be completed within 1 to 4 years.

d) Details of the Road Infrastructure Tax Credit (RITC)

- **The certificate:** The primary benefit of this Scheme to participants is the ability to recover the project cost as tax credit against CIT payable. This credit is represented by the RITC. RITC covers:
 - Project cost (any expenditure wholly, reasonably, exclusively and necessarily incurred by a participant for the construction or refurbishment of an eligible road as quoted by the participant in its project cost bid and as certified by the Committee); and
 - A single uplift (similar to interest), which is equivalent to the prevailing monetary policy rate (MPR) of the Central Bank of Nigeria (CBN), plus 2% of the project cost. The uplift (income) would not constitute taxable income in the hands of a participant.
- **Implementation:** FIRS, through the Committee, will issue the RITC to a participant or its representative, based on the proportion of work done,

upon presentation of the following documents:

- a. An authorisation to participate in the Scheme issued by the Committee;
 - b. Approval of the project cost and completion timeline bid by the Committee;
 - c. Contract award letter; and
 - d. Certification of work done issued by the Committee.
- **Utilisation:** The amount of tax credit to be utilised in any year of assessment is limited to 50% of the CIT payable in that year, except where the project was carried out in an economically disadvantaged area, as defined in the Order. However, participants have an opportunity to carry forward unutilised RITC to subsequent years, until fully utilised.
 - **Negotiability of tax credit:** Participants are able to trade and dispose all or part of the RITC to a willing buyer on a relevant Securities Exchange or through some other approved transaction. This is however, subject to the approval of the Committee. In addition, transfer of tax credit between related parties must be carried out at arm's length, and gains/losses arising from such disposal shall be subject to tax as prescribed by the applicable tax legislation.
 - **Recognition as an asset:** The RITC may, where applicable, be recognised as an asset in the financial statements of a participant, in line with International Financial Reporting Standards.

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- **Limitation:** It should be noted that a participant who is entitled to tax credit on an eligible road will not be entitled to claim any other tax credit, capital allowance, relief or incentive on the project cost incurred in respect of that eligible road under any law in force in Nigeria, in addition to the RITC.

General comments and conclusion

The Scheme is a laudable initiative by the Federal Government of Nigeria (FGN), as it is capable of encouraging investment in capital projects, which would lead to infrastructural development across the country.

In essence, FGN intends to spend tax revenue in advance, (as the Scheme represents an alternative source of funding to FGN's road infrastructure development initiative which reduces pressure on its budget) while providing timely and efficient delivery of road projects.

While the introduction of the Scheme is a welcome development, there are a couple of issues to be addressed, some of which are highlighted below:

Use of unutilised RITC at expiration of the Scheme

As earlier stated, the Scheme would be in force for a period of ten years from the commencement date. The Scheme also allows participants to carry forward unutilised tax credits to subsequent tax years until fully utilised. However, there appears to be no clarity on what will happen to unutilised

RITC after the ten-year duration of the Scheme. It is expected that the Committee or FGN will provide clarification on this in the near future, as the Scheme is being implemented.

Impact on roads managed by state and local governments

Being a Federal Government initiative, the Scheme appears to focus on roads managed by the FGN without a mention of roads owned by state and local governments. FGN and the Committee may consider extending the Scheme to cover roads owned by State and Local Governments as well, to encourage/facilitate the development of such roads. This would be enhanced by collaboration between FGN, State and Local governments and to ensure the buy-in of state and local governments in determining what roads are eligible for the Scheme. A workable set-off could be agreed upon by the different tiers of government.

Possible restriction of tax credit claimable

The Order specifies that the Committee has discretion over costs that would be allowable as project costs. Particularly, any additional cost in excess of the initial project cost which is incurred in the construction or refurbishment of an eligible road, would be subjected to further scrutiny by the Committee, before such additional costs are included as part of the recoverable project costs. By extension, the Committee has the power to determine how much a participant can claim as tax credit, as against actual amount incurred. There is therefore a

risk that participants may be granted RITC with a value which is lower than the actual project cost incurred. Furthermore, the approval of additional project cost is hinged on approval by "the relevant regulatory authority". However, there is no clarity on the authority.

In addition, the Order specifically mentions that where construction cost exceeds ₦10 billion, admissible professional fees in this regard would be restricted to 1.25% of the project cost.

This restriction appears to be in conflict with the definition of "Project Cost" in the Order, which allows any expenditure wholly, reasonably, exclusively and necessarily incurred by a participant for the construction or refurbishment of an eligible road. Restriction of RITC available to participants could significantly discourage participation in the Scheme and could create distrust between taxpayers and the government.

"The incentives offered by the Scheme appear limited, and the procedures involved in obtaining the RITC may discourage participation"

Mitigation against abandonment of projects

While the Order affords participants the opportunity to construct/refurbish eligible roads, there may be a risk of

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possible abandonment, as projects may not be completed within the 4-year period prescribed by the Order. This may be obtainable where a participant has already obtained RITC based on a stage of completion of a project and has no CIT payable in the immediate future. In order to mitigate against this risk, FGN could transfer the right to such abandoned projects to another willing participant. In addition, the defaulting participant may be forced to relinquish its RITC. Alternatively, participants may be made to provide performance guarantees to FGN, to ensure that projects are completed as and when due.

Bureaucracy and seeming administrative bottlenecks

According to the Order, the RITC will be issued by FIRS subject to the Committee's approval.

Since the Committee is made up of representatives from several government agencies, including FIRS, the process of issuing and utilising the RITC would be faster/facilitated where participants are able to obtain a

single document conveying approval and grant of tax credit at once. This would also be in line with the government's efforts towards improving the ease of doing business in Nigeria.

Further, given that certification of work done is critical to the issuance of RITC, the process should be transparent and not discourage eligible participants from embracing the Scheme.

Extension to other tax assets

The opportunity given to participants to trade/transfer unutilised RITC is an encouraging and laudable development. FGN may also consider extending this tradability/transferability to other tax assets such as unutilised withholding tax credits, unrelieved tax losses, unutilised capital allowances, etc. This would afford taxpayers the opportunity to optimise their taxes and to effectively manage cash flows.

The incentives offered by the Scheme appear limited, and the procedures involved in obtaining the RITC may discourage participation. For instance, the uplift of MPR plus 2% is about the same as the annual interest rate on investment in government securities.

In order to encourage widespread participation, FGN may consider increasing the rate of the uplift, to a rate significantly higher than the average interest rate on risk-free government securities.

The above notwithstanding, we encourage corporate organisations to review their business operations and consider participating in the Scheme, in order to take advantage of the potential benefits.

Please click [here](#) to access the Executive Order. If you require further clarification please reach out to NGTaxPartners@DELOITTE.com.

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