

**ECONOMIC DEVELOPMENT IN NIGERIA:
THE ROLE OF TAX INCENTIVES**

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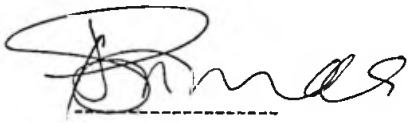
DECLARATION

I, KUZHE ASHEZI DORCAS (NSU/LLM/180/15/16), do hereby declare that apart from references made to other people's work which I have duly acknowledged; this Dissertation has neither in whole nor in part been presented for the award of Master of Laws in Nasarawa State University, Keffi or elsewhere.

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CERTIFICATION

This Dissertation was read and certified as meeting the requirements for the award of Master of Laws (LLM) of Nasarawa State University, Keffi.



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DEDICATION

To God Almighty who in his infinite mercy has made this work possible.

My husband, Mr Eleazar Sunday Madaki and my parents, Mr and Mrs Kuzhe D. Lasson for tirelessly standing by me, and most importantly for their love, care, encouragement and support.

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TABLE OF CONTENTS

Title Page-----	ii
Declaration-----	iii
Certification-----	iv
Dedication-----	v
Acknowledgement-----	vi
Table of Contents-----	vii-ix
Table of Cases-----	x
Table of Statutes-----	xi-xii
Abbreviations-----	xiii-xiv
Abstract-----	xv
CHAPTER ONE-----	1-13
INTRODUCTION	
1:1 Background to the Study-----	1-3
1:2 Statement of the Problem-----	4
1:3 Aims and Objectives of the Study-----	5
1:4 Scope and Limitation-----	5
1:5 Significance of the Study-----	5-6
1:6 Research Methodology-----	6
1:7 Literature Review-----	6-13

1:8 Synopses of the Chapters-----	13
CHAPTER TWO-----	14-31
CONCEPTUAL CLARIFICATION	
2:1 What is Taxation? -----	14-15
2:1:2 Definition of Tax Incentives-----	15-16
2:1:3 Definition of Economic Development-----	16-17
2:2 History of Tax in Nigeria-----	17-19
2:3 Purpose and Importance of Tax-----	20-21
2:4 Classification of Tax-----	21-22
2:5 Qualities of a Good Tax System-----	22-23
2:6 Statutory Bodies Charged with Tax Administration in Nigeria-----	23-31
CHAPTER THREE-----	32-43
LEGISLATIONS ON TAX INCENTIVES IN NIGERIA	
3:1 Nigeria Investment Promotion Commission Act-----	33-35
3:2 Custom and Excise Management Act-----	35-36
3:3 Industrial Development (Income Tax Relief) Act-----	36-38
3:4 National Office of Technological Acquisition Programme Act-----	38-39
3:5 Double Taxation Treaties/ Agreements-----	39-40
3:6 Petroleum Profit Tax Act-----	40-41
3:7 Foreign Exchange (Monitoring and Miscellaneous) Act-----	41-42
3:8 Immigration Act-----	42

3:9 Companies Income Tax Act-----	42-43
3:10 Personal Income Tax Act-----	43
CHAPTER FOUR-----	44-58
TAX INCENTIVES AND ECONOMIC DEVELOPMENT IN NIGERIA	
4:1 Tax Incentives in Nigeria-----	44-45
4:1:1 Incentives to the Oil and Gas Industry-----	45-47
4:1:2 Incentives to the Agricultural Sector-----	47-48
4:1:3 Incentives to Manufacturing Companies-----	49-50
4:1:4 Incentives for Hoteliers and Tourism Services-----	51
4:1:5 Incentives for Mining and Solid Minerals-----	51
4:1:6 Incentives for Companies Engaged in Export Trade-----	51-53
4:2 Efficiency of Tax Incentives-----	54-56
4:3 Demerits of Tax Incentives-----	56-58
CHAPTER FIVE-----	59-65
SUMMARY, OBSERVATIONS, RECOMMENDATIONS AND CONCLUSION	
5:1 Summary of Findings-----	59-60
5:2 Conclusion-----	60-62
5:3 Recommendations-----	62-64
5:4 Contribution to Knowledge-----	64
5:5 Suggested Area(s) for Further Studies-----	65
Bibliography	

TABLE OF CASES

CASE	PAGE
Shell v. Federal Board of Inland Revenue (FBIR) [2004] FWLR,Pt 859, 46.-----	14.

TABLE OF STATUTES

STATUTES	PAGE
Aid to Pioneer Industries Ordinance No.10, 1952-----	2
Company and Allied Matters Act, 1990.-----	36
Companies Income Tax Act, 1979.-----	24,26,27,42,45,48,49,50,51,52
Custom(Draw Back) Regulation (As Amended), 1958.-----	35
Custom and Excise Management Act, 1986.-----	6,35
Direct Taxation Ordinance No.4, 1940.-----	19
Double Taxation Treaties/ Agreements-----	6,35
Federal Inland Revenue Service (Establishment) Act, 2007.-----	26
Foreign Exchange (Monitoring and Miscellaneous) Act, 1995.-----	6,41
Immigration Act (As Amended), 2009.-----	6,42
Income Tax Ordinance No.3, 1940.-----	19
Income Tax Ordinance No.29, 1948-----	39
Income Tax Management Act, 1961.-----	19
Industrial Development Coordination Committee Decree No.36, 1988.-----	33
Industrial Development (Income Tax Relief) Ordinance No.8, 1958.-----	2,35

Industrial Development (Income Tax Relief) Act No.22, 1971.	6,36,37
Industrial Development (Income Tax Relief) Act, 1990.	50
Industrial Development (Income Tax Relief) Act, 2004.	37
Land Revenue Proclamation, 1904.	18
Native Revenue Ordinance, 1917.	18
Native Revenue (Amendment) Ordinance, 1927.	19
Nigerian Enterprise Promotion Decree, 1972.	33
Nigerian Investment Promotion Commission Act, 1995.	6,33
National Office for Technological Acquisition Programme Act, Cap 268, LFN, 2004.	6,38
Order in Council No.5, 1948.	39
Personal Income Tax (Amended) Act, 2011.	24,43
Personal Income Tax Decree, 1993.	28,29,30
Petroleum Profit Tax Act Cap P8, LFN, 2004.	6,40
Pioneer Industries Ordinance, 1952.	2
The Constitution of the Federal Republic of Nigeria, 1999 (As Amended).	32

ABBREVIATIONS

BC-----	Before Christ
BOT-----	Build Operate and Transfer
CEMA-----	Custom Excise Managment Act
CITA-----	Companies Income Tax Act
DTT/DTA-----	Double Taxation Treaties/ Double Taxation Agreements
EPZ-----	Export Processing Zone
FBIR-----	Federal Board of Inland Revenue
FDI-----	Foreign Direct Investment
FIRS-----	Federal Inland Revenue Service
FMITI-----	Federal Ministry of Industry, Trade and Investment
IDCC-----	Industrial Development Coordinating Committee
ITMA-----	Income Tax Management Act
JTB-----	Joint Tax Board
MOU-----	Memorandum of Understanding
NIPC-----	Nigeria Investment Promotion Commission
NNPC-----	Nigerian National Petroleum Corporation

NOTAP-----National Office of Technological Acquisition Programme

PAYE-----Pay-As-You-Earn

PITA-----Personal Income Tax Act

PPT-----Petroleum Profit Tax

PPTA-----Petroleum Profit Tax Act

PSC-----Petroleum Sharing Contract

R &D-----Research and Development

SBIR-----State Board of Internal Revenue

ABSTRACT

In trying to improve economic development which is a constant focus of the government, effort is always made to attract investors and this is often achieved by offering tax incentives to certain areas of the economy. Attracting these businesses, keeping them and getting them to expand often involves amongst other things providing tax incentives. It therefore means that these incentives are a key part of government's economic development strategy as they are used to achieve goals beyond economic growth or job creation such as spreading economic activity throughout the whole country and focusing on perceived high-value industries.

The objective of the study was to examine the various tax incentives available and how their existence have encouraged investments and whether or not it has led to economic development in Nigeria. The study relied on doctrinal method using secondary data. This entailed reliance on textbooks, journals, articles, internet materials and relevant tax legislation governing incentives.

It was discovered that various tax incentives are available ranging from tax holiday, capital allowance, investment allowance, interest free loan etc and these incentives are usually granted on a sector basis with focus on the agricultural sector, oil and gas, manufacturing, tourism etc. it was found that over time, these tax incentives have helped attract investments in these sectors even though the incentive alone is not a sufficient factor as other factors such as the market size, and generally the business environment influence investments. It was further discovered that there are those that are of the view that tax incentives are an inefficient allocation of resources on actions that would have been taken without the tax breaks, however, these incentives in the long run are usually necessary to attract businesses and the costs of the incentives are partially or wholly offset by the additional tax revenue derived from the increased economic activity. The implication of these findings necessitated these recommendations.

It was recommended that to better benefit from tax incentives, legislations granting the incentives should be drafted carefully so that they achieve policy objectives with minimum leakage of tax revenue and a proper periodic evaluation and assessment of the incentives be carried out to check for its effectiveness.

It was concluded that government should focus more on creating a better business environment which in itself attracts investments rather than focus solely on developing a variety of incentives.

CHAPTER ONE

INTRODUCTION

1:1 BACKGROUND TO THE STUDY

Economic development of any country depends largely on the deliberate efforts by the government of such a country to provide a stable and thriving environment for business. Economic development are efforts that seek to improve the economic well-being and quality of life for a community by creating and or retaining jobs and supporting or growing incomes and the tax base.¹ Nigerian economy has grossly underperformed relative to her enormous resource endowment. It has the 6th largest gas reserve and the 8th largest crude oil reserves in the world. It is endowed in commercial quantities with about thirty seven solid mineral types and has a population of over 170 million people². Yet economic performance has been weak and does not reflect these endowments.

In the light of this, Nigeria has used taxation to encourage savings, investment and redistribution of income by encouraging investors to invest in different areas of the economy so as to enhance its growth and development and through that, improve the standard of living of its citizens. Taxation is generally believed to play an important role in promoting and encouraging economic activities. It is one of the means through which the government generates revenue to finance its expenditure. It is in line with this, that priority has been given to certain sectors of the economy through tax incentives, reliefs and exemptions to stimulate the growth of the economy.

¹ Salmon Valley Business and Innovation Centre , *What is Economic Development?* (2011) ...
< www.svbic.com>node> accessed 26 November, 2016.

² Micheal Kelikume, ' Economic Development and Growth in Nigeria' *Daily Trust* (Nigeria, Dec 12 2015)
<Daily Trust>ng>Saturday-comments> accessed 16 January, 2017.

Taxation in itself does not give rise to economic development but the implementation of favourable tax policies. These policies are important to the growth and survival of any business in a competitive economy especially in developing countries.

The granting of tax incentives in Nigeria can be traced back to the early 1950s. The relief was first granted under the Pioneer Industries Ordinance of 1952³ this was during the last years of colonial rule in Nigeria (1952-1954), the colonial government adopted an industrial development policy which was continued by the incoming indigenous government. The government of the time recognized the importance of foreign investment in filling the domestic savings, foreign exchange and technology gaps between the level of industrialization in Nigeria and in the developed world. The view at that time was that a formidable array of economic-environment difficulties beyond those encountered by businessmen in advanced economies constituted a major reason for the paucity of profitable investment opportunities for Nigerian businessmen⁴ to even the odds, the Aid to Pioneer Industries Ordinance No. 10 of 1952 was enacted, permitting the establishment of certain industries characterized as “pioneer” industries and offering income tax relief and protection for investments. Subsequently, in 1957/1958, the first Industrial Development (Income Tax Relief) Ordinance No.8 of 1958 was enacted, repealing the Aid to Pioneer Industries Ordinance 1952. The Ordinance provided for the publication of a list of ‘pioneer’ industries which would be given a five-year tax-free holiday. The Ordinance also provided for the exemption of tax on dividends distributed to shareholders during the tax holiday

³ I A Ayau, *Nigeria Tax Law*, (Spectrum Law Publishing 1996) 305.

⁴ S Schatze, *Nigerian Capitalism*, (University of California Press 1977) 1-8.

period. The Ordinance was subsequently repealed by the Act, which was enacted in 1971 but with an effective date of April 1st, 1970⁵.

Tax incentives generally are intended to attract, retain or increase investment in particular sectors, to stimulate growth in specific areas and to assist companies or individuals carrying on identified activities in specific sectors⁶. Thus, the current policy of Nigerian Government is to ensure incentives are sector based and not granted arbitrarily. This, the Government achieves by regularly reviewing the incentives granted to confirm if they are serving the expected purpose, that is, the benefits of the incentive to the Nigerian economy should exceed the cost of taxes forgone amongst others.

Tax incentives are not always for direct investors. It relates to real investment in productive activities rather than investment in financial assets and often directed to foreign investors on the ground that there is insufficient domestic capital for the desired level of economic development and that international investment brings with it modern technology and management techniques⁷.

It should be noted that despite the incentives offered, it is not sufficient as a determining factor for investment. Other factors like the market size, competition, capital or profit repatriation and political climate will have to be taken into consideration. Thus, the greatest incentive for investors is a stable, efficient and well organized tax system.

⁵ Dipo Okuribido, *The Nigerian Pioneer Status Regime- Acomprehensive Review* <Academia.edu>The_Nigerian_Pioneer_...> accessed 5 January, 2017.

⁶ Ifueko Omoigui, *Tax Incentives for Foreign Investors Business Forum, Berne Switzerland, 20th, 21st November, 2009* <slideshare>mobile>farrahkhan>tax-i...> accessed 12 December, 2016.

⁷ Olabisi Jayeola, *Tax Incentives as a Catalyst for Economic Development in Nigeria...*<ResearchGates>publication>272541990...> accessed 14 January, 2017.

1:2 STATEMENT OF THE PROBLEM

In the quest to woo investors for economic development, Nigeria emphasises the need for the National Tax Policy to be responsive to both internal and external developments in the Nigeria economy.

Tax incentives have been criticized on the basis that the granting of incentive discriminates in favour of a particular sector and thus, other sectors are faced with the burden of heavier tax which is intended to make up for the tax fall arising from the grant of incentives to the favoured sector. There is also the issue of the tax system being made complicated as a result of the need to monitor beneficiaries of the incentives to avoid possible abuse and to evaluate the benefit the granting of the incentive have on the growth and development of the economy or if the tax forgone exceeds the benefits derived from granting the incentive.

Even with all the measures put in place in the wake of the criticism, Nigeria economy has not experienced any appreciable progress and is still regarded as a developing nation. Consequently, this research seeks to examine the role tax incentive plays in the economic development of Nigeria.

The following research questions were formulated:

- i. How effective is the framework of tax incentives in Nigeria?
- ii. To what extent have tax incentives led to economic development in Nigeria?
- iii. What are the criteria for qualifying for tax incentives?
- iv. What are the various tax incentives available to investors in Nigeria?
- v. What are the merits and demerits of tax incentives?

1:3 AIM AND OBJECTIVES OF THE STUDY

Tax incentive is a fiscal policy from the government as a means of motivating investment that can help develop the economy. The aim of the study is to examine the adequacy of the regime of tax incentives in Nigeria, while the objectives are to:

- a. Examine how the existence of tax incentives has encouraged investment
- b. To establish the relationship between tax incentives and economic development in Nigeria
- c. To examine the various tax incentives available in Nigeria and how it has led to economic development
- d. To identify problems or benefits of granting tax incentives in Nigeria and to make appropriate recommendations.

1:4 SCOPE AND LIMITATION

The importance of tax incentives in economic development in Nigeria as a developing country cannot be overemphasized. Thus, discussions in this area cannot be exhaustive. The researcher is however constrained by time and page specifications as this is an academic programme. Therefore, the geographical scope of the research is Nigeria. Another limitation is the financial constraints that would result from visiting many revenue agencies in Nigeria for materials.

This notwithstanding, attempt would be made to adequately discuss tax incentives, legislation supporting tax incentives and the role it plays in economic development in Nigeria.

1:5 SIGNIFICANCE OF THE STUDY

This research is of immense significance to investors and it also serves as a means of educating Nigerians and the world at large of incentives granted by the government in Nigeria. To the government, recommendations made can be used to provide better incentives in line with recent challenges.

Generally, when the recommendations made are implemented, it would create a more favourable economic environment and by extension, a better standard of living. Finally, this research can be used as a reference material for further studies in the area of tax incentives.

1:6 RESEARCH METHODOLOGY

The research is basically doctrinal in nature; it relies essentially on the various legislation supporting tax incentives in Nigeria which amongst others include; Nigeria Investment Promotion Act, Custom and Excise Management Act, Industrial Development (Income Tax Relief) Act, National Office of Technological Acquisition Programme Act, Petroleum Profit Tax Act, Immigration Act, Foreign Exchange (Monitoring and Miscellaneous) Act, Double Taxation Treaties etc.

It also contains opinion of various scholars as contained in textbooks, journals, articles and internet materials.

1:7 LITERATURE REVIEW

The main crux of this research is to examine the role tax incentives play in the economic development of Nigeria. There are quite a number of authors and tax practitioners who have

made plausible contributions in discussing tax incentives as a policy of the government which is aimed at promoting economic growth and development of the country.

Tennyson⁸ noted that tax incentives have reawakened investors and are extensively used and exploited by agribusinesses in Nigeria to save the agricultural sector from total collapse. He is of the opinion that incentives in Nigeria should be directed at small and growing agribusinesses because they are often short of funds due to their inability to borrow from capital markets. He went further to say that investment tax credits that provide upfront funding might be more effective rather than reduced tax rates or tax holidays which do not produce required results. His work is limited to the agricultural sector alone and does not include other sectors of the economy; however, his work will inform part of the researcher's chapter 4.

Olabisi⁹ is of the opinion that tax incentives would enhance economic growth and development in Nigeria if the incentives are well focused and extended to all deserving companies in the country. However, the writer did not go further to explain ways to make the incentives 'focused' and how to categorize companies deserving of the incentives. This research makes available a list of companies that fall under the category of companies qualified for incentives.

Margaret¹⁰ discusses generally how taxation relates to economic growth in Nigeria and does not specifically deal with tax incentives. However, the article discussed the origin of tax, objectives of tax and classification of tax which will inform the researcher's chapter two.

⁸ Tennyson Oghoghomeh, 'An Assessment of Agribusiness Tax Incentives in Nigeria' (2014) 2 (1) *International Journal of Business and Economic Development* <EBSCOHOST>connection>articles>asse...> accessed 20 December, 2016.

⁹ J Olabisi, 'Tax Incentive as a Catalyst for Economic Development in Nigeria' (2009) 7 (2) *Journal of Research in National Development* <ajol.info> accessed 20 October, 2016.

¹⁰ Margaret Okoli and Charles Odinakachi Njoku and Gift Nkiru Kaka, 'Taxation and Economic Growth in Nigeria: A Granger Causality Approach' (2014) 2 (3) *International Journal of Research in Management, Science and Technology* < www.ijrmst.org/margaret-nokoli > accessed 5 January, 2017.

Ayau¹¹ is one of the leading authors in the area of taxation in Nigeria. He has contributed extensively in the role of tax incentives in the encouragement of inflow of investment in Nigeria. He observed that the extension and proliferation of tax incentive measures in many countries is evidence of an increasing concern with the rate of economic growth and with restructuring the economy to stimulate particular classes of economic activity deemed desirable in the national interest.

He emphasized the need for tax exemptions or tax holiday as the basis for encouraging economic growth, accelerated depreciation allowances and its capacity to enhance the profitability and liquidity of companies and stimulation of investments by increasing the availability of financial resources. He went further to examine the significance of import duties to business growth and its negative consequences of making the government suffer undue revenue loss. He also looked at tax relief for pioneer industries as provided under the Industrial Development (Income Tax Relief) Act.

Zubairu¹² in his work gave a comprehensive definition of tax incentive. He defined it as those special exclusions, exemptions or deductions from income or tax liability offered to taxpayers by the government as an encouragement to engage in specified activities. He went further to mention some of the objectives of tax incentives which include attracting foreign investment into Nigeria, promoting exports, encouraging voluntary tax compliance amongst others. The different tax incentives offered by the government and the sectors in Nigeria were also discussed by the author, these discussions having been adequately dealt with will inform the researcher's chapter four.

¹¹ I A Ayau, *op.cit.*, 305-333.

¹² A D Zubairu, *Understanding Nigerian Taxation* (Husaab Global Concept Limited 2011) 430-435.

Easson¹³ view tax incentive either in statutory or effective terms. He noted that government persist in offering tax incentives because there is no much else that can be realistically done other than opting out of the competition. Financial incentives such as grants and soft loans are simply out of the question because the funds are not available. Other measures to improve the investment environment also cost money, for example, improving the physical infrastructure may take time. By contrast, tax holidays can be introduced at the stroke of the pen and at no apparent cost.

The author's line of argument is based on Direct Foreign Investment which is basically an investment in intangible assets against tangible which is in the production of goods and services. Although it might not cost the government to put in place policies and legislations that would attract investment, at the same time no investor would commit resources where there is political instability, insecurity and lack of market.

Seyi¹⁴ discusses the different types of taxes in Nigeria and briefly enumerates the incentives available under each type of tax. However, chapter one of his book discusses administration of taxes in Nigeria and further list the machinery currently in existence for the administration which include; the Joint Tax Board (JTB), The Federal Board of Inland Revenue (FBIR), The State Board of Internal Revenue (SBIR), Local Government Revenue Committee and the Joint State Revenue Committee. This aspect of his work will form part of the researcher's chapter two.

¹³A Easson, *Tax Incentives for Foreign Direct Investment* (Kluwer Law International 2004) 2-3.

¹⁴ S Ojo, *Fundamental Principles of Nigerian Taxation* (Sagibra Tax Publications 2003) 1-7.

Sunday's¹⁵ study revealed that many state government face pressure to sweeten investment tax incentive programme to compete with tax breaks elsewhere at the same time, intensify efforts to strengthen revenue source to finance essential public goods and services. The challenges are to understand the conditions and policy design features that determine whether tax incentives are likely to deliver substantial and sustainable net benefits.

The study reveals that tax rates have significant relationship with Foreign Direct Investment (FDI) and economic growth. It thus recommended the abolition of exonerations despite finding a determinant role of fiscal and financial incentive on the development and growth of private investment, particularly, in the export sector. It noted that Nigeria tax system is not simple and creates distortions. It concludes that there should be a comprehensive tax reform, including amending Nigeria's tax incentives since it will eliminate tax distortion, remove unnecessary administrative and compliance cost and improve government capacity to generate revenue.

The above findings and recommendations is based on the research carried on the impact of tax policy and incentive on FDI particularly in the Export Processing Zone (EPZ) and same cannot be said to be applicable in other sectors. There are businesses that operate outside the EPZ which may not have impact on the economy because of the distortionary nature of the tax system. However, the need for amendment to eliminate distortions in the tax system is supported since there are other factors like the host government encouragement to companies as against the tax rate, while others will prefer incentives related to depreciable assets because they utilize more fixed assets that serve the industries.

¹⁵ O Sunday, 'The Impact of Tax Policy and Incentive on Foreign Direct Investment and Economic Growth, Evident from Export Processing Zone in Nigeria' (2013) 2 (9) *European Journal of Commerce and Management Research*; 192.

Arogundade¹⁶ observed that tax policies in Nigeria take the form of reducing effective tax rate to target foreign investment, reducing risk attached to the investment and thereby increasing the rate of return to the investment. He observed further that the reality of modern business mechanism points to the fact that factors like insecurity, currency convertibility and political stability, market or source of supply are known to weigh higher on an investor's scale of preference than fiscal incentive. The author also considered various types of capital allowances and their economic significance, the limitation in terms of deductibility. Others include investment tax credit and treatment of losses that are set off against tax payable. The researcher finds the contribution of the author quite commendable and will rely on it in the course of this research.

Abdulrazaq¹⁷ dwelt on the allowance for investors who incur capital expenditure for the provision of infrastructure for the purpose of trade and business which is located at least 20km from facilities provided by government. He noted the incentives available to investors for utilization of associated and non associated gas especially in areas of separating crude oil and gas from the reservoir into usable product. Other areas include income from inconvertible currencies derived from tourist to be exempted from tax for five years for the purpose of expansion of new facilities for tourist development.

Umenweke¹⁸ noted that incentives are measures specifically designed either to increase rate of returns of a particular DFI undertaken to reduce or distribute its cost or risk. He observed that government policies towards tax incentive are generous in the area of Personal income tax and

¹⁶ J A Arogundade, *Nigerian Income Tax and its International Dimension* (Spectrum Books Limited 2005) 107.

¹⁷ M T Abdulrazaq, *Revenue Law and Practice in Nigeria* (Malthouse Press Limited 2010) 146-147.

¹⁸ M N Umenweke, *Tax and its Implication of Foreign Investment in Nigeria* (Nolix Educational Publication Limited 2008) 314.

Company income tax. He reported that 1997 federal government budget enunciated a policy of exemption from value added tax of certain categories of goods imported for use in the EPZ to encourage investment in the economy. He noted that EPZ in certain zones are specifically designed to encourage foreign investment in Nigeria and that is why enterprises operating in those zones are exempted from federal, state and local government tax, rate and levies.

The analysis of the author captured the very essence of tax incentives as far as investment in the EPZ are concerned but did not discuss the extent to which tax incentives have influenced the decision of investors in Nigeria.

Ochei¹⁹ noted that tax incentives are concessions granted to entrepreneurs and all concerned persons in order to encourage them to come forward and establish their industries in the country. He identified the various types of incentives. He further observed that tax incentives are designed with the intention of introducing novelties, break new grounds, create and sustain industries and to provide good distribution or spread of industries in the rural areas.

Notwithstanding the author's lack of clarity in defining the concept of incentives, his introduction has given an insight and will assist the researcher in dealing with certain issues in this work.

Kobel²⁰ viewed incentives as the totality of measures taken by the government to encourage, improve level of productivity, expand existing and investing in new businesses with a view to saving more and to encourage compliance with tax legislations. He focused on tax exemptions and personal benefits derived by employees such as medical or dental expenses, cost of passage

¹⁹ B B Ochai, *The Nigerian Tax Man's Book* (Pyramid Unit Publishers Educational Limited 2008) 20.

²⁰ M R Kobal, *Personal Income Tax in Nigeria* (Springfield Publisher Limited 2007) 369.

to or from Nigeria, compensation for loss of office or employment, rent allowance not exceeding certain limit etc.

The author's contribution is mainly in the area of personal benefit as contained in the personal income tax which is restricted to individuals. This research is mainly to ascertain the role of tax incentives in the development of Nigeria economy. Thus, the contribution of the author is hardly needed.

1:8 SYNOPSES OF THE CHAPTERS

This research is divided into five chapters. Chapter one dealt with the general introduction ranging from the aim and objectives of the study, methodology adopted, review of related literature etc.

Chapter two dealt with conceptual clarification, defining taxation, tax incentives and economic development. It further discussed the history of tax in Nigeria, importance of tax, classification of tax and qualities of a good tax system. It concludes by examining the various bodies charged with the responsibility for tax administration in Nigeria.

Chapter three focused on the legislations on tax incentives in Nigeria.

Chapter four x-rayed the importance of tax incentives, the various types of tax incentives and the demerits of tax incentives

Chapter five which is the conclusion summarised the research while stating observations and recommendations made.

CHAPTER TWO

CONCEPTUAL CLARIFICATION

2:1 WHAT IS TAXATION?

As there are many authors and scholars on taxation, so there are many definitions of tax. Thus, there is no universally acceptable definition.

However, for the purpose of this research, definitions proffered by the dictionary, case law, text writers and scholars etc would be examined.

Wikipedia²¹ defines tax as a financial charge or other levy imposed upon a taxpayer (an individual or legal entity) by a state or the functional equivalent of a state to fund various public expenditures.

Black's law dictionary²² defines tax as a charge by the government on the income of an individual, corporation or trust, as well as the value of an estate or gift.

The Supreme Court in *SHELL V. FEDERAL BOARD INLAND REVENUE (FBIR)*²³ in an attempt to define tax held that tax should be deemed as a debt due to the government.

Tax may be defined as a "pecuniary burden laid upon individuals or property to support government expenditure. A tax is not a voluntary payment or donation, but an enforced and

²¹ Tax-wikipedia <<https://en.m.wikipedia.org>> accessed 13 March, 2017.

²² H C Black, (6th Ed), (West Publishing Co. 1990).

²³ (2004) FWLR pt 859 at 46.

compulsory contribution, exacted pursuant to legislative authority and is any contribution imposed by government whether under the name of duty, custom excise, levy or other name²⁴.

Tax simply put, is a charge on income of individuals and corporate bodies by the government²⁵.

Arising from the various definitions examined above, tax can be defined as an obligatory levy, exacted by government on eligible persons, goods or activities for particular purposes which may be expressed or implied in the interest of the nation²⁶. The definitions have been able to consider other purposes for which taxes are exacted other than for supporting the government or raising revenue to meet its expenditure²⁷.

2:1:2 DEFINITION OF TAX INCENTIVES

Incentives simply mean anything that can motivate someone to do something. It is anything offered by a person or government to another in order to encourage him to do what he would not have done²⁸.

Tax incentives are those special exclusions, exemptions or deductions from income or tax liability offered to taxpayers by the government as an encouragement to engage in specified activities²⁹.

Tax incentives are deductions, exclusions or exemptions from tax liability offered as an enticement to engage in a specified activity for a certain period³⁰. It can also be seen as a

²⁴ National Tax Policy-Federal Inland Revenue Service < [www.firs.gov.ng/Tax Legislations](http://www.firs.gov.ng/Tax%20Legislations)>N...> accessed 20 March, 2017.

²⁵ A D Zubairu, op.cit., 1.

²⁶ J A A Agbonika, *Problems of Personal Income Tax in Nigeria* (Ababa Press Limited 2012) 17.

²⁷ Other purposes may include discouraging the activity taxed or bridging the chasm of social inequality etc.

²⁸ Asada, D and Alubo, A O. 'The Legal Regime of Tax Incentives in Nigeria: Appraisal for Management' (2000) 4 (4). *Journal of Public and Private Law (JPPL)* 99.

²⁹ A D Zubairu, op.cit., 429.

deliberate elimination or reduction in tax liability in order to encourage specified desirable economic activities such as savings, investment, export, certain sectoral activities etc³¹.

In developing countries, government sometimes reduce or eliminate corporate taxes for the purpose of attracting foreign direct investment or stimulating growth in selected industries. Example of tax incentives include; capital allowances, investment allowance, investment tax credit, loss relief, tax holiday, lower tax rate, tax free dividend, exemption from tax interest on certain loans etc³².

2.1.3 DEFINITION OF ECONOMIC DEVELOPMENT

One of the indices by which development and growth can be measured in any society is the amount of wealth which is created by economic activities undertaken in that society. Economic development entails harnessing all available resources towards creating wealth for the sustenance of its citizens. One of the veritable tools for national development and growth in most countries is taxation. Furthermore, one of the means of creation of the wealth for citizens is through meaningful employment so that citizens are able to earn income to cater for their needs and also to contribute taxes to the government as part of the contribution to national development³³.

Economic development is the process by which a nation improves the economic, political and social well being of its people³⁴. It is the development of economic wealth of countries for the well being of their citizens. Economic development can also be seen as efforts that seek to improve the economic well being and quality of life for a country by creating and or retaining

³⁰ Tax Incentives and Subsidies: Two Staples of Economic Development... <uca.edu>2016/08/19>tax-incent...> accessed 5 March, 2017.

³¹ J A A Agbonika, op.cit., 81; Nigerian Tax Reform (NTR) in 2003 and Beyond. 40.

³² A D Zubairu, op.cit. 429.

³³ Draft National Tax Policy, 2005. 25.

³⁴ Economic Development-Wikipedia <<https://en.in.wikipedia.org/wiki/Econ...>> accessed 23 March, 2017.

jobs and supporting or growing incomes and the tax base³⁵. It is the adoption of new technologies and general improvement in living standards.

Generally, economic development is usually the focus of federal, state and local governments to improve our standard of living through the creation of jobs, the support of innovation and new ideas, the creation of higher wealth and the creation of an overall better quality of life. Economic development is often defined by others based on what it is trying to accomplish. Many times these objectives include building or improving infrastructure such as roads, bridges etc, improving our education system through new schools, enhancing our public safety through fire and police service or incentivizing new businesses to open a location in a community³⁶.

2:2 HISTORY OF TAX IN NIGERIA

Taxation is as old as civilized or organized human society. It is the oldest and the most invaluable tool used by government in raising revenue to provide welfare services for its people. Its evolutionary existence can be traced back to several thousand years ago. In ancient Egypt, there are records that as far back as 3000 BC taxation existed. Some form of taxation was practiced as early as the days of the Roman Empire as documented in the New Testament of the Holy Bible in the Gospel of St Luke chapter 20 verse 25 when the issue of tax arose as to whether or not taxes should be paid to Caesar, Jesus answered, 'Give unto Caesar what is Caesar's and to God what is God's'³⁷.

In Nigeria, the earliest trace of any form of taxation was during the pre-colonial era where there existed diverse systems of direct taxation amongst some organized ethnic groups in the country

³⁵ What is Economic Development?|Salmon Valley Business...< www.svbic.com/node > accessed 23 March, 2017.

³⁶ What is Economic Development?-Definition & Examples- Video... <study.com/academy/lesson/what-is-...> accessed 24 March, 2017.

³⁷ J A A Agbonika, op.cit., 27.

especially in the north. The north had a form of organized central administration under the Emirs. The Muslim religion practiced predominantly in the north adhered to by the people approved of taxation. Taxes such as *zakat*- a tax levied on Muslims for charitable, religious and educational purposes. *kudin kasa*- an agricultural tax and *jangali*-a cattle tax levied on livestock were paid.

In the South-west, taxation took the form of tributes, levies and tariffs on movement of goods across a community's borders. The Obas were the custodians of such taxes which were not necessarily paid in money.

The Eastern part of the country had no developed traditional system of rulership, this set-up could not guarantee the payment of taxes as there was no recognized leader. However, there existed *Egbu Nkwu* which required palm tree owners to pay a fixed sum to the Village Head before palm oil is harvested, the reason was based on their belief that palm trees belong to the whole community³⁸.

With the coming of the British, they realized the necessity of taxation to finance their administration. They took advantage of the tax system existent in the north. They consolidated the multiplicity of taxes into a single uniform tax known as the Land Revenue Proclamation of 1904, it was expectedly successful thus, Northern Nigeria was the first to have a codified legislation on taxation in 1904 until the amalgamation of the other protectorates in 1914³⁹.

The Native Revenue Ordinance of 1917 was enacted after the amalgamation of 1914. It was made to cover the North and some parts of the South. In 1918, the Ordinance was made to extend to some areas in the West which had recognized chiefdoms.

³⁸ C S Ola, *Income Tax Law and Practice in Nigeria* (Dalag Prints & Pak Limited 1999) 19.

³⁹ J A A Agbonika, *op.cit.*, 34.

As stated earlier, the Eastern part of the country had no centralized leadership, thus, with the introduction of taxation through the Native Revenue (Amendment) Ordinance of 1927, it was fiercely resisted which eventually led to riots and protest with the common being the Aba Women's Riot of 1929 which resulted in loss of lives and properties. However, despite the resistance and its consequence, taxation was eventually introduced in the entire geographical space called Nigeria with the unification of the various Tax Ordinances under two major tax legislations known as; The Income Tax Ordinance No.3 of 1940 which applied to expatriates and Nigerians in Lagos and The Direct Taxation Ordinance No.4 of 1940 which applied to all Nigerians except those in Lagos⁴⁰.

In 1954, Nigeria became a federation and the question of distributing taxing power between the center and the federating regions came up. A committee was set up known as the Raisman Commission which came up with certain recommendations. The recommendations gained constitutional recognition in 1960 and gave birth to the enactment of the Income Tax Management Act (ITMA) in 1961. With the discovery of oil in commercial quantity in the 1950s, the Petroleum Profit Tax (PPT) was introduced which charged companies involved in upstream activities that is oil producing companies⁴¹.

The post-colonial leadership in Nigeria continued with taxation as a source of state revenue and expanded its base. Today, taxation has grown from personal taxation to cover a variety of taxes like Company Income Tax, Petroleum Profit Tax, Capital Gains Tax, Value Added Tax etc and a whole lot of levies and duties.

⁴⁰ Ibid., 36.

⁴¹ Ibid., 39.

2:3 PURPOSE AND IMPORTANCE OF TAX

Generally, taxation is seen primarily as a means of generating revenue for the sole purpose of running of government activities. However, taxation transcends this as it plays an important role in any government's policy.

The principal object of taxation is to raise sufficient money for government in order to enable it meet its economic and social responsibilities to the citizenry such as education, health, defense, administration cost etc. other purposes of taxation include⁴²:

- a. To discourage the consumption of dangerous/ harmful products
- b. To control the importation and production of certain goods and services thereby preventing dumping. this is achieved by increasing tax payable on such goods and services.
- c. Distribution of income or wealth through the imposition of proportionate tax on the income of taxpayers. This is done by imposing heavy taxes on the income of wealthy persons while low tax rate is imposed on the poor.
- d. To protect companies at infant stages by reducing their tariffs which will invariably reduce the cost of production relative to imported products that are substitutes.
- e. Taxation can be used to ensure price stability as a short run objective. Taxes are regarded as an effective means of controlling inflation by raising the rate of direct taxes, private spending can be controlled, naturally, the pressure on the commodity market is then reduced.
- f. Taxation can be used to service national debt and to provide retirement benefits

⁴² A D Zubairu, op.cit., 1-2.

- g. It can be used to provide subsidies in favour of preferred sectors of the economy, for example, agricultural sector.

2:4 CLASSIFICATION OF TAX

Tax can be classified or categorized based on the burden of tax payment (incidence theory) and based on income theory.

Taxation based on income theory is in accordance with the percentage or amount of income of the tax payer. Under this theory, taxes are classified into:

- a. PROPORTIONAL TAX SYSTEM: it is a system where the same tax rate is levied on every tax payer irrespective of the amount or size of income. Example is the Education Tax which is at 2% of assessable profit of companies⁴³.
- b. PROGRESSIVE TAX SYSTEM: a tax is said to be progressive when the rate of taxation increases as income increases that is, persons with high income pay higher taxes. This tax system is considered more appropriate in terms of income redistribution since the higher the income, the higher the tax rate. Example is the Pay-As-You-Earn (PAYE) system⁴⁴.
- c. REGRESSIVE TAX SYSTEM: under this system, the rate of tax decreases with increase in come. With this tax system, the burden falls heavily on persons with low income than those with high income. It is not suitable for developing economies as it cannot generate the required revenue⁴⁵.

Under the classification of tax based on burden of tax payment (incidence theory), taxes are classified into:

⁴³Ibid., 2

⁴⁴Ibid.

⁴⁵J A A Agbonika, op.cit., 23.

- i. DIRECT TAXES: these are imposed directly on the income of individuals and companies. The burden is born by the tax payer and cannot be shifted to another person. The persons paying are conscience of its existence, assessment and payment. Example is Personal Income Tax, Company Income Tax, Petroleum Profit Tax, Capital Gains Tax etc⁴⁶.
- ii. INDIRECT TAXES: these are taxes on goods and services. They are sometimes referred to as expenditure taxes. The burden of an indirect tax can be shifted wholly or partly from the tax payer (manufacturer, seller) to another person (consumer) depending on the elasticity point facing the item. Persons liable sometimes pay without their actual knowledge of its imposition and collection. Examples are Excise Duties, Value Added Tax, Import Duties, Export Duties etc⁴⁷.

2:5 QUALITIES OF A GOOD TAX SYSTEM

The cannons of taxation as propounded by Adam Smith in his book, '*Wealth of Nations*' have been used today as the criteria for judging a good tax system the world over⁴⁸. These are:

1. EQUITY: a good tax system should be equitable in the distribution of tax burden. To ensure this, a tax payer's ability to pay is to be borne in mind by the authorities. Progressive tax system posses this quality.
2. NEUTRALITY/ IMPARTIALITY: this advocates that a tax system should not discriminate between tax payers under similar circumstances. It requires that all persons should similarly be placed under the same conditions to pay the same tax.

⁴⁶ A D Zubairu, op.cit., 2.

⁴⁷ Ibid.

⁴⁸ J A A Agbonika, op.cit., 19.

3. CERTAINTY: this stipulates that the time, mode and amount to be paid should be clear to the tax payer. The procedure for computation should be stated.
4. ADMINISTRATIVE EFFICIENCY: trained personnel must administer the tax system efficiently. The administrative cost should not exceed the revenue realized from the tax.

Other characteristics/ qualities of a good tax system include⁴⁹;

- a. Convenience: this is in respect of timing and mode of payment. It should be convenient to the tax payer.
- b. Simplicity: a good tax system should be coherent, simple and straight forward. It should not be complicated or ambiguous.
- c. Flexibility: it should be responsive to changing realities especially in a Federal and democratic country where there are always changes in government. It should be adjustable to allow for scrapping of obsolete tax system and replacing same.

2:6 STATUTORY BODIES CHARGED WITH TAX ADMINISTRATION IN NIGERIA

Statutory bodies are those bodies charged with the responsibility of implementing policies, rules and regulations of the government. Tax administration is all about the machinery put in place to determine, monitor and enforce the collection of taxes by the government of a country⁵⁰.

The administration of tax in Nigeria is spread through the three tiers of Government depending on the type of tax. Broadly, there are three categories of tax authorities namely; Federal Inland

⁴⁹ A D Zubairu, op.cit., 3.

⁵⁰ Nigerian Tax System and Administration-liste.org< www.iiste.org/EJBM>article>viewfile> accessed 20 April, 2017.

Revenue Service, State Internal Revenue Service and The Local Government Revenue Committee⁵¹.

Section 100 of Companies Income Tax Act gives tax authority to mean bodies like the Federal Board of Inland Revenue, State Board of Internal Revenue and Local Government Revenue Committee. Others are Joint Tax Board and the State Joint Revenue Committee.

1. **JOINT TAX BOARD (JTB)**⁵²: is the apex unifying body for all tax authorities in Nigeria. It is established by section 85 of Personal Income Tax (Amended) Act 2011.

Composition

- i. The chairman of the Federal Inland Revenue Service who serves as the chairman of the Board.
- ii. A representative from each state of the federation experienced in tax matters nominated by the Commissioner of Finance
- iii. A secretary to the Board experienced in tax matters appointed by the Federal Civil Service Commissioner
- iv. The legal adviser of the Federal Inland Revenue Service Board to serve as the legal adviser of the Board.

⁵¹ An Overview of the Nigerian Tax System: Implications for Foreign Investors- CITN <www.citn.org>tax_content> accessed 25 March, 2017.

⁵² A D Zubairu, op.cit., 10.

Functions

- a. Resolving any disputes in determination of residence between tax payers and tax authority.
- b. Processing for approval, decisions on provident fund schemes which are to be recognized as tax allowance for deductions
- c. Impose its decisions on matters of procedure and interpretation of the Decree on any state for the purpose of conforming to agreed procedure or interpretation
- d. To promote uniformity both in the application of tax laws and in the incidence of tax on individuals throughout Nigeria
- e. To advise the Federal Government in respect of double taxation arrangements, rates of capital allowances and other tax matters including proposed amendments to the Decree.
- f. To exercise powers and perform duties conferred on it by any enactment of the Federal Government imposing tax on the income and profit of companies or which may be agreed by the Minister or to be exercised by it under the enactment in place of the Federal Inland Revenue Service Board.
- g. Harmonize tax administration in Nigeria
- h. To exercise the powers or duties conferred by the Decree or any other powers or duties arising under the Decree which may be agreed by the government to be exercised by the Board.

2. **FEDERAL INLAND REVENUE SERVICE (FIRS)**⁵³: Federal Inland Revenue Service is the federal tax authority first created under the Companies Income Tax Act (CITA) 1979⁵⁴ and now under the FIRS (Establishment) Act, 2007. The Board responsible for its management is Federal Inland Revenue Service Board.

Composition

- i. The Executive Chairman experienced in taxation to be appointed by the President subject to confirmation by the Senate
- ii. Six members from the six geo-political zones with relevant qualifications and expertise to be appointed by the President
- iii. A representative of the Attorney General of the Federation
- iv. The governor of the Central Bank of Nigeria or his representative
- v. A representative of the Minister of Finance not below the rank of a Director
- vi. The chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative
- vii. The Group Managing Director of the Nigerian National Petroleum Corporation or his representative not below the rank of a Group Executive Director of the Corporation or its equivalent
- viii. The Comptroller-General of the Nigerian Customs Service or his representative not below the rank of Deputy Comptroller-General
- ix. The Registrar-General Corporate Affairs Commission or his representative not below the rank of a Director

⁵³Ibid., 7.

⁵⁴ Section 1 (1).

- x. The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director

Functions

- a. Provide the general guidelines relating to the functions of the Service
- b. Manage and superintend the policies of the Service on matters relating to the administration of the revenue, assessment, collection and accounting system under the Act or any enactment
- c. Review and approve the strategic plans of the service
- d. Employ and determine the terms and conditions of service including disciplinary measures
- e. Stipulate remuneration, allowances, benefits and pension of staff and employees.

3. TECHNICAL COMMITTEE OF THE FEDERAL INLAND REVENUE SERVICE

BOARD⁵⁵: created by the Companies Income Tax Act, 1979 as amended.

Composition

- i. Executive Chairman
- ii. Directors and Heads of Department of the Service
- iii. Legal adviser of the Service
- iv. The secretary of the Board

⁵⁵ S Ojo, op.cit., 4.

Functions

- a. Consider tax matters requiring professional and technical expertise and make recommendations to the Board
 - b. To advise the Board on its powers and duties
 - c. To carry out any other duty assigned to it by the Board.
4. **THE STATE INTERNAL REVENUE SERVICE BOARD**⁵⁶: established by the Personal Income Tax Decree 1993⁵⁷ as the state tax authority. The operational arm of the Board is the State Internal Revenue Service.

Composition

- i. The Executive head of internal revenue service as the Chairman experienced in tax matters and appointed by the state governor from within the Service
- ii. Three persons nominated by the Commissioner of Finance
- iii. All the Directors and Head of the State Internal Revenue Service
- iv. A Director from the state Ministry of Finance
- v. Legal adviser to the Board
- vi. Secretary to the Board an ex-officio member appointed by the Board

Functions

- a. Ensuring the effectiveness and optimum collection of all taxes and penalties under the relevant laws

⁵⁶ C S Ola, Tax Law in Nigeria (Heinemann Educational Books PLC 1999) 356.

⁵⁷ Section 85 (A).

- b. Doing all things that may be deemed necessary for the assessment and collection of the tax and shall account for all amounts collected in a manner prescribed by the Commissioner
- c. Making recommendation where appropriate to the Joint Tax Board on tax policies, tax reforms, tax legislation, tax treaties and exemption from time to time
- d. Controlling the management of the Service on matters of policy subject to the provisions of the law setting up the Service
- e. Appointing, promoting, transferring and imposing discipline on employees of the state service.

5. TECHNICAL COMMITTEE STATE INTERNAL REVENUE SERVICE BOARD⁵⁸: also established by the Personal Income Tax Decree 1993.

Composition

- i. Chairman of the State Board of Internal Revenue who serves as the chairman of the Committee
- ii. All Directors of the State Internal Revenue Service
- iii. Legal adviser to the State Board
- iv. Secretary to the Technical Committee

Functions

- a. Advise the State Board on matters that require professional and technical expertise
- b. Carry out any other duty assigned to it by the State Board.

⁵⁸ A D Zubairu, op.cit., 10.

6. **LOCAL GOVERNMENT REVENUE COMMITTEE⁵⁹**: is the Local government tax authority established by the provision of section 85 (E) of Personal Income Tax Decree 1993. It is empowered to collect taxes at the local government level.

Composition

- i. Chairman who is the Supervisor of Finance
- ii. Three local government counselors
- iii. Two persons to be nominated by the Chairman of the local government experienced in revenue matters.

Functions

- a. Responsible for the assessment and allocation of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner prescribed by the Chairman of the local government
- b. It shall be autonomous of the local government treasury and be responsible for the day to day administration of the department which form its operational arm
- c. Advise the local government on tax related matters.

7. **STATE JOINT REVENUE COMMITTEE⁶⁰**: established for each state of the Federation.

Composition

- i. Chairman of the State Internal Revenue Service as the Chairman
- ii. Chairman of the Local Government Revenue Committees

⁵⁹ Ibid., 12-13.

⁶⁰ Ibid., 12.

- iii. A representative of the Bureau on Local Government Affairs not below the rank of a Director
- iv. A representative of the Revenue Mobilization Allocation and Fiscal Commission as an observer
- v. Legal adviser of the State Internal Revenue Service
- vi. Secretary of the Committee who shall be a staff of the State Internal Revenue Service.

Functions

- a. Implementing decisions of the Joint Tax Board
- b. Advise the Joint Tax Board and the State and Local Government on revenue matters
- c. Harmonize tax administration in the state
- d. Enlighten members of the public generally on state and local government revenue matters
- e. Carry out such other functions as may be assigned to it by the Joint Tax Board.

CHAPTER THREE

LEGISLATION ON TAX INCENTIVES IN NIGERIA

With a view to attracting and maintaining foreign investment into key sectors of the Nigerian economy, government over the years have come up with tax legislation providing fiscal tax incentives in different sectors of the economy. The main thrust is to diversify the economy from its over reliance on crude oil to other viable sectors.

The 1999 Constitution which is the principal legislation in Nigeria has provided for the protection of foreign investment in chapters two and four. Chapter two deals with economic objectives on the Nigerian state while chapter four deals with the fundamental rights. Section 16 goes further to provide for the national control of the economy so as to secure maximum welfare, freedom and happiness of the citizens whether individuals or corporations on the basis of social justice or equality of state. The Constitution thus, whether directly or indirectly has given a level of assurance of security of foreign investment in Nigeria. Therefore, an investor will feel more secured in the knowledge that his investment will receive such favourable treatment that will go a long way in recovering the anticipated returns.

Apart from the Constitution, other legislation have been enacted and the nature of the benefits offered to foreign investment which has made Nigeria an attractive and secured field for foreign investment and even encouraging indigenous participation in other sectors of the economy⁶¹.

⁶¹ | A Anyau, op.cit., 317.

3:1 NIGERIA INVESTMENT PROMOTION COMMISSION (NIPC) ACT

The recent drop in global crude oil price and the persistent efforts of the government to diversify her economy and move away from over reliance on the oil and gas industry have made Nigeria a fertile ground for investments. With a huge population, large land mass and encouraging government policies, the Nigerian market is indeed an untapped gold mine⁶². It is for this purpose that the government enacted the NIPC Act which created the NIPC to advise the government on policy matters designed to promote the industrialization of Nigeria; enhance the investment climate in Nigeria for investors; identify specific projects and invite interested investors for participation in those projects.

The NIPC Act No.16 of 1995 which is the primary legislation governing investments in Nigeria with other supporting laws and policies jointly ensures a sustainable conducive business environment, enhanced periodic reform of the economy by the government. The Act repealed series of laws that imposed strict control on foreign investment especially the Industrial Development Coordination Committee Decree No. 36 of 1988 and the Nigerian Enterprise Promotion Decree of 1972⁶³.

The NIPC Act establishes the legal foundation for a very liberal and open investment framework. It is a cross-sectoral legislation that aims to encourage inflow of foreign investments in all sectors of the economy. It allows foreigners to invest and participate in the operation of any Nigerian enterprise without restriction. It allows 100% foreign ownership of firms except in the oil and gas sector where investment stays limited to joint ventures or production-sharing

⁶² Foreign Investments and the Role of Nigerian Investment Promotion...< www.mondaq.com >Nigeria>Foreign+1...> accessed 20 April, 2017.

⁶³ Nigeria Investment Promotion Commission-INVESTMENT INCENTIVES < www.nipc.gov.ng/invest-in-nigeria/in... > accessed 20 February, 2017.

agreements. It further allows repatriation of profits/dividends to home country in any convertible currency.

The Act is regarded as an investment protection legislation which provides important guarantees that investors consider as a prerequisite condition before taking the decision to invest. It protects against unlawful expropriation and gives a guarantee of free transfer of funds. In the event of a dispute between a foreign investor and the government, the Act in Article 26 opens access to international arbitration forums. It grants judicial determination of the amount of compensation to which the investor is entitled in accordance with international standards. It sets out the basic principles of non-discriminatory access to both foreign and domestic investors, although it does not explicitly embody the principle of National Treatment.

The Act has made provision for some fiscal incentives offered to investors which include⁶⁴;

- a. Pioneer status (tax holiday) incentive which is administered by NIPC in collaboration with the Industrial Inspectorate Department of the Federal Ministry of Industry, Trade and Investment (FMITI) and the FIRS.
- b. Very low VAT regime of 5%
- c. Investment in infrastructure which is 20% of cost per annum for five years
- d. Research and development which entails the use of local inputs is 140%
- e. Minimum local raw materials utilization is 20% for five years
- f. Attractive Capital Allowance for specified activities

Other effort being made is the attempt of the removal to constraint around access to land through greater synergy between the NIPC and the state governments to remove corruption, reduce land

⁶⁴ Nigeria Investment Promotion Commission-INVESTMENT INCENTIVES < www.nipc.gov.ng/invest-in-nigeria>in...> accessed 20 February, 2017.

and property fees and procedures. Also a strong national code of corporate governance has been developed by Financial Reporting Council of Nigeria.

3:2 CUSTOM AND EXCISE MANAGEMENT ACT (CEMA)

Usually, the size of the market of the host state has been a major consideration for the flow of foreign investment into the state. A foreign investor will feel more secured when he knows that the host market is large, lucrative and free from undue government interventions. The Act was enacted to govern imports and to accord some market protection and competition to local industrialists who at the same time were basically foreign investors who had established local industries in Nigeria. Under the Act, importers do not need to be registered and import procedures are the same for both foreign and domestic importers⁶⁵.

The Act empowered the Federal government to impose special duties on any goods which are being dumped in Nigeria or subsidized by any government or authority outside Nigeria, if the government is satisfied that such goods would threaten or cause material injury to a potential or established industry in Nigeria and that the imposition of the special duty will not conflict with the obligation under the international relevant trade.

The Custom (Draw Back) Regulation 1958 (as amended) enables importers to claim payment of import duties if goods are exported and in the same state as that in which they were imported and if the materials are imported for use in the manufacture of goods and then exported.

Thus, from the above, foreign investors are assured of substantial revenue from their investment in Nigeria.

⁶⁵ WTO Documents Online < <https://docsonline.wto.orgExportFile> > accessed 23 March, 2017.

3:3 INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT

Pioneer status is granted to qualifying companies and or products and services resulting in 3-5 years tax holidays. Qualifying industries include; mining manufacture of cement glass and glasswear, lime from limestone, ceramic product, rubber, leather, textile and other areas of industry that are of economic benefit to the country. It is granted to companies where the government is satisfied that; an industry is not being carried on in Nigeria on a scale suitable to the requirement of Nigeria or at all; there is no favourable prospects for further development in Nigeria; it is expedient in the public interest to encourage the development or establishment of an industry in Nigeria⁶⁶.

Tax exemption is granted for a three year period in the first instance and a maximum of five years in total, tax free dividends during pioneer period and carry forward of losses made and capital allowances (on assets) incurred during the pioneer period⁶⁷.

Under the pre-independence legislation⁶⁸ of this Act, a company registered under law⁶⁹ and qualified to be classified as pioneer industry is granted some substantial tax relief. The pioneer status is granted to any industry not been carried on a scale commensurate with the company's economic requirements and it is expedient in the interest of the public to encourage the development or establishment of the industry in Nigeria⁷⁰.

⁶⁶ An Appraisal of Tax Incentives in Nigeria|Chikezie Ajagu-Academia.edu <www.academia.edu an_appraisal_of_ta...> accessed 29 March, 2017.

⁶⁷ An Overview of the Nigerian Tax System: Implications for Foreign Investors- CITN < www.citn.org/tax_content> accessed 1 April, 2017.

⁶⁸ Industrial Development (Income Relief) Act 1958.

⁶⁹ Section 21 and 22 of the Company and Allied Matters Act, 1990.

⁷⁰ Section 3 Company and Allied Matters Act, 1990.

Apart from the statutory requirements, there are other administrative requirements such as the geographical location of the company, its financial status, scale of operations as well as management and labour force with reference to Nigeria participation in positions held by the expatriate in the country.

The major incentive provided by the Act is the tax holiday for a maximum period of five years from the time the company commenced business. The tax holiday also extended to the shareholders of the pioneer industry. Thus, profits earned by way of dividends during this tax holiday are also exempted. Similarly, interests on the loan made by non-Nigerian companies and individuals not resident in Nigeria though pioneer industries are exempted from tax. There are further reliefs in form of accelerated depreciation of capital assets thereby allowing such companies to amortize their capital assets within a very short time. Other forms of incentives also provided through the erection of tariff wall, to protect local industries against competition from foreign made finished products.

The 1958 Act was reviewed in 1971 by Industrial Development (Income Tax Relief) Act No. 22 of 1971 now Industrial Development (Income Tax Relief) Act 2004. Unlike the 1958 Act, the 1971 Act provided for straight five years holiday for any pioneer industry engaged in the manufacturing of pioneer products.

In addition to the above, the period of tax holiday is also extended to seven years in the case of pioneer industries located in the economically disadvantaged areas. The Income Tax Relief has been described as one of the greatest attractions Nigeria has for business men particularly the foreign investors.

3:4 NATIONAL OFFICE OF TECHNOLOGY ACQUISITION PROGRAMME (NOTAP) ACT

This legislation⁷¹ is the organic law which provides a framework in the transfer of any aspect of technology involving trademark and patents into the country⁷². The purpose of the office is to encourage and facilitate the identification, selection and acquisition of foreign technology. The office protects the economy by assisting entrepreneurs in their negotiation with foreign partners to ensure they obtain the best contractual terms from any technology agreement they enter into to eliminate any restricted clause from the agreement which tends to jeopardize the effective transfer of technology⁷³. It is also to ensure that appropriate technology adaptable to the needs of the society is transferred.

NOTAP is saddled with the responsibility of achieving the goals of Nigeria technology policy. Accordingly, it is to provide more efficient process for the registration of all contracts having effect from the commencement of the enactment and monitoring on a continuous basis the execution of all contracts registered in line with the Act⁷⁴. NOTAP functions as regulatory, promotional and developmental agency in technology issues. It is to create awareness in the concept Build Operate and Transfer (BOT) Scheme, and undertake techno-economic survey on industrial profile and organize seminars and workshops on various issues relating to technology acquisition and negotiation for public and private sectors⁷⁵.

Section 5 of the Act requires that every business agreement, contract or investment that is entered into by any individual or individuals in Nigeria which in itself involves the transfer of

⁷¹ Cap 268, LFN, 2004.

⁷² The Transformation of Nigeria: Essays in Honour of Toyin Falola < <https://books.google.com/books> > accessed 21 March, 2017.

⁷³ Protection of Intellectual and Industrial Property < www.nigeriahc.org.uk/doc > accessed 20 March, 2017.

⁷⁴ Section 4.

⁷⁵ NOTAP ACT|Nigerian Law Intellectual Property Watch < <https://nlipw.comnational-office-for-te...> > accessed 20 March, 2017.

technological skills to Nigerian business partner or group shall register with NOTAP within sixty days from the date of the execution or conclusion of such business or investment agreement.

However, the non provision of legal sanctions in the case of violation of the provision of the Act brings the issue of its desirability to question. This is because without the sanction, the legislation will remain ineffective in achieving the desired objectives.

3:5 DOUBLE TAXATION TREATIES/ AGREEMENTS (DTAs/ DTTs)

Double Taxation Agreements in Nigeria can be traced back to 1948 when the United Kingdom signed a colonial tax treaty with Nigeria by the Order in Council No.5 1948 under the Income Tax Ordinance No. 29 of 1948. Since then, Nigeria has entered into several agreements with many countries and has such agreements with currently thirteen countries⁷⁶ with a view to avoid double taxation with respect to taxes on income and capital gains⁷⁷. However, for these treaties to have the force of law, ratification by the Nigerian government is required and subsequent enactment into law by the National Assembly⁷⁸. All countries are inclined to co-operate in the elimination of double taxation because of their consequence on trade, commerce and movement of persons. As a result of inflow and operation of foreign investment in Nigeria, investor's profit is duly protected from the scourge of double taxation.

Under Double Taxation Agreement, there are usually a number of articles dealing with specific items. Most of these agreements, the first article define those taxes in respect of which relief is granted. There are other articles dealing with the definition of such terms. A Double Taxation

⁷⁶ UK , Netherland, Canada, Belgium , China, France, Pakistan, Romania, South Africa, Philippines, Mauritius, Italy, South Korea.

⁷⁷ Improved Double Tax Arrangements in Nigeria: Any Reason for Delay... <<https://www2.deloitte.com/tax/articles>> accessed 3 April, 2017.

⁷⁸ Nigeria Moves to Ratify New Double Tax Treaties with Spain, South Korea and... <pwc-nigeria.typepad.com/2016/12/nig...> accessed 3 April, 2017.

Agreement calls for a wide range of policy decisions. The move is usually initiated through the Ministry of External Affairs with input from the Ministry of Finance in consultation with Federal Board Inland Revenue Service and other agencies whose interest is likely to be affected. The process is concluded with final approval by the Federal Executive Council.

3:6 PETROLEUM PROFIT TAX ACT

Companies involved in prospecting for or extracting and transporting petroleum are taxable under Petroleum Profit Tax Act⁷⁹. These companies are not taxed under Companies Income Tax Act because of their peculiar and complicated nature⁸⁰.

Petroleum Profit Tax Act is the principal legislation and together with other laws, regulates the activities of the industry. It provides the legal frame work for the computation of the petroleum profit tax.

In order to maximize revenue from foreign petroleum prospectors subject to tax relief and having regards to the huge investment in oil prospecting without any certainty as to when some returns on the investment will flow in, the federal government adopted a mixed attitude towards tax of the foreign investment in the petroleum sector. Nigeria under the PPTA has rolled out incentives ranging from the tax rate of 30%, capital allowance of 20% in the first four years, 19% in the fifth year and the remaining 1% in the book. It also grants investment tax credit at the rate of 5%⁸¹.

⁷⁹ Cap P8, LFN, 2004.

⁸⁰ I A Ayau, *op.cit.*, 192.

⁸¹ Petroleum Profits Tax Act (PPTA)- Federal Inland Revenue Service <www.firs.gov.ng>Tax Legislations>PP...> accessed 23 April, 2017.

Irrespective of all the incentives available to investors, the government has to make certain assurances that will sustain the continuance of such investments especially as it affects the expected profit which is a major drive for such huge investment.

3:7 FOREIGN EXCHANGE (MONITORING AND MISCELLANUOUS) ACT

The Act was promulgated with a view to having an autonomous foreign exchange market which provides guidelines in the dealing of the foreign exchange market. In achieving the promotion and protection of foreign exchange as well as local investments in the Nigerian economy, the law authorizes the operation of a foreign currency domiciliary account which authorizes or allow any person whether in Nigeria or abroad, whether resident in Nigeria or not, whether a Nigerian citizen or not, to trade, deal in and invest in securities traded in Nigeria⁸².

The legislation also allows a foreign investor to invest freely in Nigeria and dividends under such investment can as well be freely repatriated to the foreign country. Similarly, foreign loans can be serviced and remitted to the foreign banks as well as when the total proceeds after the taxes have been deducted in the case of any final sale or liquidation of such companies.

All the above can be done without reference to the Ministry of Finance or with the consent of the Minister as was the case in the former legislation.

3:8 IMMIGRATION ACT

Globalization has led to doing businesses across the globe with Multinational Corporations establishing subsidiaries in many other countries. It therefore, becomes imperative that foreigners involved in carrying out business of such companies in Nigeria must observe the

⁸² Akoh, I.I. 'Legal Frame work and Requirement of Foreign Investment in Nigeria Capital Markets' in A A Jimoh, *Modern Practice Journal of Investment Law* (Law and Economic Development Publishers 1999) 291.

immigration laws. Under the Act⁸³, such foreigners must obtain business permit in order to carry on any form of business. These permits are categorized into three;

- i. Residence permit which gives the foreigner the right to reside in the country where his nature of his involvement in business is such that he must reside in Nigeria to do such business.
- ii. Business permit which allows the foreigner to carry out business that is permissible in Nigeria.
- iii. Expatriate quota is a requirement of the law that the number of foreigners to be employed by such business or partnership must receive the permission in writing of the Minister of Internal Affairs.

3:9 COMPANIES INCOME TAX ACT (CITA)

The Act has been amended in order to encourage potential and existing investors and entrepreneurs. The current rate in all sectors, except for petroleum is 30%. Dividends interest, rent or royalty earned by companies outside Nigeria and brought in through specified channels are exempt from tax. Interest earned by a foreign company on its bank deposits in Nigeria are exempt from tax⁸⁴.

Nigerian companies with a minimum of 25% foreign equity and within their first four years of operation are exempt from payment of minimum tax. The government of Nigeria signed into law an Order for the part exemption of profits of companies from tax. The Order is to last for five assessment years from the effective date and is aimed at stimulating employment of fresh

⁸³ Section 55.

⁸⁴ An Overview of the Nigerian Tax System: Implications for Foreign Investors- CITN < www.citn.org>tax_content> accessed 1 March, 2017.

graduates as well as to encourage the channeling of private sector investment in critical public infrastructure⁸⁵.

3:10 PERSONAL INCOME TAX ACT (PITA)

Under this Act, Non-Nigerian employees of foreign companies in Nigeria may be exempt from tax in Nigeria where they spend a cumulative period of less than 183 days in Nigeria during a 12 months period and their income is subject to tax in their home country⁸⁶. The Minister of Finance also has wide powers to grant exemptions to any person based on a treaty entered into with Nigeria.

⁸⁵ The Order was signed by the President in April, 2012.

⁸⁶ See generally 3rd and 5th Schedule of the Act.

CHAPTER FOUR

TAX INCENTIVES AND ECONOMIC DEVELOPMENT IN NIGERIA

4:1 TAX INCENTIVES IN NIGERIA

Governments often use their tax system to partner with the private sector on economic development initiatives. In particular, tax incentives are a key part of many governments' economic development strategies. They are used to achieve goals beyond economic growth or job creation, such as spreading economic activities throughout the country and focusing on perceived high-value industries. Tax incentives are a way of competition with other countries for business investments that promise jobs and increased economic activities⁸⁷.

The Nigerian Government in its effort has put in place a number of investment incentives for the stimulation of the private sector for investment from within and outside the country. While some of these incentives cover all sectors, others are limited to some specific sectors⁸⁸. These incentives can yield various benefits to the economy.

To receive tax incentives, businesses must meet certain requirements/ qualifications set out by the government. These requirements vary depending on the tax incentive, but common ones include; belonging to certain industries, investing so much in a particular project, creating a particular number of jobs or reaching a minimum payroll threshold etc. The qualifications often

⁸⁷ Tax Incentives for Economic Development/Urban Institute< www.urban.org/research/publication> accessed 23 March, 2017.

⁸⁸ Nigeria Investment Promotion Commission-INVESTMENT INCENTIVES <www.nipco.gov.ng/invest-in-nigeria>in...> accessed 25 March, 2017.

depend on the tax incentives' purpose, which might be creating new jobs, spurring private investment or increasing research and development⁸⁹.

Tax incentives may be granted on industry basis or on tax type and may include; exemption from payment of taxes, reduction in rate of tax to be paid or grant of allowances and deductions from profits subject to tax etc which may take the form of tax holidays⁹⁰, investment tax credit⁹¹, investment allowance⁹², accelerated depreciation ⁹³etc. Some of the industries granted tax incentives include;

4.1.1 INCENTIVES TO THE OIL AND GAS INDUSTRY

At the gas production level, the applicable tax rate is the same as company income tax rate which is 30%. Capital allowance of 20% per annum in the first four years, 19% in the fifth year and the remaining 1% in the books⁹⁴.

The numerous incentives granted to this industry are listed in section 10 to 12 Petroleum Profit Tax Act and section 39 Companies Income Tax Act which provides for the following deductions;

⁸⁹ Tax Incentives and Subsidies: Two Staples of Economic Development...<uca.edu>acre>2016/08/19>tax-incent...> accessed 28 March, 2017.

⁹⁰ Tax holiday is a temporary exemption of a new firm or investment from certain specified taxes. For example, corporate income tax. Sometimes administrative requirements are also waived, for example, the need to file tax returns.

⁹¹ Investment tax credits are a deduction from a certain fraction of an investment from the tax liability. It includes the possibility that lost may be carried forward.

⁹² Investments allowance are deductions of a certain fraction of an investment from taxable profits (in addition to depreciation).

⁹³ Accelerated depreciation is a depreciation at a faster schedule than available for the rest of the economy. It can be implemented as a higher first year depreciation allowance or increased depreciation rates. Tax payment in nominal terms are unaffected, but their net present value is reduced and the liquidity of firms is improved.

⁹⁴ Investment Incentives for Investing in Nigeria Oil and Gas Sector:: Nigeria...<www.nigeriapalleria.comNigeria>Oil...> accessed 3 April, 2017.

- a. Investment required to separate crude oil and gas from the reservoir into unusable products shall be considered as part of the oil field development.
- b. Capital investment on facilities and equipment to deliver associated gas in unusable form at utilization or designated custody transfer points, shall be treated as part of capital for all development
- c. Capital allowances, operating expenses and basis of tax assessments shall be subject to the provisions of the PPTA and the Memorandum of Understanding (MOU)

In addition to the above, incentives available in the gas industry include⁹⁵;

- d. A crude oil producing company which executed a Petroleum Sharing Contract (PSC) with Nigerian National Petroleum Corporation (NNPC) in 1993 shall throughout the duration of the PSC be entitled to claim an investment tax credit as an offset against tax in accordance with the provision of the PSC (Act No. 18 of 1998)
- e. All incentives granted in respect of investments in associated gas shall be applicable to investment in non-associated gas
- f. All capital investments relating to gas-to-liquids facilities shall be at a zero percent tax and zero percent royalty. Other incentives include;
 - i. Higher investment tax credit for offshore production in deeper waters
 - ii. Lower rates of royalties and crude oil offshore at greater water depth
 - iii. Use of production sharing contracts because of problems in meeting joint venture cash calls.

For downstream gas operations, the following incentives are available⁹⁶;

⁹⁵ J A A Agbonika, op.cit., 110.

- a. Tax holiday for initial period of four years renewable for two years
- b. Accelerated capital allowance of 90% in the first year with 10% retention for investment in plant and machinery.
- c. Gas transferable from upstream to downstream is at zero percent PPT and zero percent royalty
- d. Investment allowance of 15% which shall not reduce the value of the asset
- e. Interest payable on any loans obtained with the prior approval of the Minister of Finance for a gas project shall be tax deductible, the tax free period shall start on the day the company commences production as certified by the Ministry of Petroleum Resources.
- f. Dividends distribution during tax holiday is tax free provided the investment for the business was in foreign currency or the introduction of imported plant and machinery during the period was not less than 30% of the equity-share capital of the company.

4:1:2 INCENTIVES TO THE AGRICULTURAL SECTOR

The incentives include; non-restriction on capital allowance, non-payment of minimum tax, enhanced capital allowance, lower rate of tax, investment allowance, interest-free loans etc. the following tax incentives apply to the agricultural sector⁹⁷:

- i. Non-restriction of capital allowance; companies in agro-allied business do not have their capital allowance restricted to 66%. It is granted in full that is 100%
- ii. Non-payment of minimum tax; the payment of minimum tax by companies that make small or no profits at all do not apply to agro-allied business

⁹⁶ Ibid., 111.

⁹⁷ Ibid., 111-112.

- iii. Enhanced Capital Allowance; agro-allied plant and equipment enjoy enhanced capital allowance at up to 50%
- iv. Lower Rate of Tax; a statutory rate of 20% of taxable profit is payable as tax for the first five years of commencement of business by small companies in agricultural production
- v. Investment Allowance; section 28 of CITA makes available to a company an investment allowance of 10% for qualifying expenditure incurred on plant and equipment for agricultural production other than in marketing and processing. This allowance is in addition to the initial and annual allowance allowable on the assets.
- vi. Interest-free Loan; interest-free loan is available for any loan granted by a bank for agricultural trade or business.
- vii. No Facility at all, 100%; where rural investment allowance is claimed, investment allowance cannot be claimed on the same assets and the claim can only be made in the year the capital expenditure is incurred since it cannot be carried forward tax.
- viii. Prior to 2007 only companies carrying on agricultural trade or business could carry forward losses for more than four years
- ix. Some agro-allied companies are granted pioneer status so that they are exempted from payment of income tax for three to five years and dividends paid from the exempted profits are not subject to tax.

4:1:3 INCENTIVES TO MANUFACTURING COMPANIES

Manufacturing companies enjoy almost all incentives approved for companies. Section 23 (2) Companies Income Tax Act provides that the President is empowered to exempt all or any profit of companies from taxes. By this power, past and present presidents of Nigeria have granted additional tax reliefs and incentives other than those in the tax laws.

The incentives that exist include; pioneer status, investment allowance, rural investment allowance, investment tax relief, interest on loans, incentives on manufacturing of spare parts, tools and equipment etc

- i. Rural Investment Allowance; CITA⁹⁸ provides that it is granted to companies established at least 20 km away from government facilities in rural areas lacking infrastructural facilities such as electricity, tarred road, telephone services or water, If they provide such services for the purpose of their trade. It can be claimed in addition to the initial allowance on such capital expenditure as follows;
 - a. No facilities at all, 100%
 - b. No electricity at all, 50%
 - c. No tarred road at all, 15%
 - d. No water, 30%
 - e. No telephone, 5% of capital expenditure on asset in use
- ii. Locally made Spare Parts; for a company engaged wholly in the fabrication of spare part tools and equipment for local consumption and export; are to be given 25% investment tax credit on their qualifying capital expenditure⁹⁹. Any taxpayer who

⁹⁸ Section 34 (1).

⁹⁹ Section 38 Companies Income Tax Act.

purchases locally manufactured plant, machinery and equipment is also entitled to 15% investment tax credit on such fixed asset bought for use

- iii. Pioneer companies; Tax holiday subject to a maximum of five years is granted to companies regarded as having pioneer status. A pioneer company is a company that is engaged in manufacturing, processing, mining, servicing and agricultural industries whose products have been declared pioneer products on satisfying certain conditions as determined by Industrial Development Coordinating Committee (IDCC) of the government under the Industrial Development (Income Tax Relief) Act 1990. The pioneer tax holiday is for an initial period of three years subject to further extension of two years or five years (ones and for all without further extension).
- iv. Capital allowance; this is an amount allowed by the government in respect of companies before arriving at taxable profit¹⁰⁰. These could comprise of initial allowance, annual allowance or investment allowance at the rate of 10% on plant and equipment.
- v. Interest on loans; provides for the removal of taxes on interest on loan granted by banks for manufacturing for exports. Section 9 (9) of Companies Income Tax Act provides that, 'a company is deemed to be engaged in manufacturing for export if the Nigeria Export Council certifies that not less than one half of its manufactured goods disposed of in its year of account is sold outside Nigeria and is not re-imported into Nigeria.

¹⁰⁰ Sections 40 (1) (2) (3) & 44 Petroleum Profit Tax Act.

4:1:4 INCENTIVES FOR HOTELIERS AND TOURISM SERVICES

Under the Companies Income Tax Act¹⁰¹, 25% of income in convertible currencies derived from tourism are tax- exempt provided the income is put in a reserved fund to be utilized within five years for the building expansion of new hotels, conference centers and new facilities for tourism development.

4:1:5 INCENTIVES FOR MINING OF SOLID MINERALS

A new company engaged in the mining of solid minerals is exempted from tax for the first three years of its operation under the Companies Income Tax Act. Under the Industrial Development (Income Tax Relief) Act, the tax holiday granted to a mining company can be extended by two years¹⁰².

A company engaged in mining of solid minerals and earns an annual turnover of less than one million naira is assessable to income tax at the rate of 20% instead of 30% for the first five years of assessment. Initial allowance of 95% is granted on qualifying mining expenditure while 5% is retained in the books until disposal.

4:1:6 INCENTIVES FOR COMPANIES ENGAGED IN EXPORT TRADE

The Companies Income Tax Act¹⁰³ provides for the establishment of geographical enclaves within Nigeria in which normal customs regimes do not apply. The objective is to attract foreign investments and stimulate industrial production for export. For a company to qualify as an export company, it has to provide certificate issued by the Nigerian Export Promotion Council stating

¹⁰¹ Section 37.

¹⁰² A D Zubairu, *op.cit.*, 433.

¹⁰³ Section 35.

that the level of export specified has been achieved by the company and this normally means the company is manufacturing and exporting not less than one half of its manufactured goods¹⁰⁴.

Interest on loan granted by a bank on or after 1st April 1980 for the purpose of manufacturing goods for export is exempted from tax as prescribed in the Third Schedule to CITA. 100% capital allowance is granted to a company in any year of assessment on qualifying expenditure on building, plant and equipment in an approved manufacturing activity in an Export Processing Zone. All exports are exempted from Value Added Tax and dividends received from investment in wholly export oriented businesses are exempted from tax¹⁰⁵.

A company which is engaged in wholly export trade and earns an annual turnover of less than one million naira is assessable to income tax at the rate of 20% instead of 30% for the first five years of assessment. The profits of any Nigerian company in respect of goods exported from Nigeria are exempted from tax provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plants, equipment and spare parts. The profits of a company whose supplies are exclusively inputs to the manufacturing of products for export are exempted from tax provided that the exporter gives a certificate of purchase of the inputs of the exportable goods to the seller of the supplies¹⁰⁶.

A company will thus enjoy duty-free export production and where it has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an Export Processing Zone, it shall be granted 100% in the first four years, 19% in the fifth year and the remaining 1% is retained in the books. Investment tax credit is at the rate of 5% while royalty is

¹⁰⁴ J A A Agbonika, *op.cit.*, 109.

¹⁰⁵ A D Zubairu, *op.cit.*, 431.

¹⁰⁶ *Ibid.*, 431-432.

at the rate of 7%, for onshore and 5% for offshore. At the transmission and distribution level, the company enjoys in addition to the above, a tax holiday as under pioneer status.

The profit of an undertaking which is export oriented established within and outside Export Free Zone shall be exempted from tax for the first three consecutive years of assessment provided that;

- a. The undertaking is 100% export-oriented
- b. The undertaking is not formed by splitting or breaking up or reconstructing an existing business
- c. The company must manufacture, produce and export articles during the relevant year and the export proceeds form 75% of its turnover.
- d. The undertaking is not formed by transfer of machinery or plant previously used for any purpose to any undertaking beyond 25% of the total value of such machinery of the undertaking
- e. The company must also repatriate at least 75% of its export earnings in Nigeria and place it in a domiciliary account in any approved licensed bank in Nigeria¹⁰⁷.

¹⁰⁷ Ibid., 432.

4:2 EFFICIENCY OF TAX INCENTIVES

To judge the efficiency of tax incentives, a look at the fundamentals of taxation is needed. Why tax in the first place? The ultimate purpose of taxation is to raise revenue to fund government functions and to enhance social welfare it thus, remains the key source of revenue for most governments¹⁰⁸.

Providing tax incentives therefore to selected economic activities is regarded as a necessity as International tax competition is an important force behind the provision of such incentives and the need to encourage foreign investment. Many developing countries use tax incentives to reduce the tax burden for foreign investors¹⁰⁹.

Tax incentives are 'preferential' tax treatments that deviate from the general tax structure and are provided only to a selected group of taxpayers. When a generous tax provision, ranging from a lower tax rate to a higher tax allowance is generally made available to all taxpayers regardless of their business or investment, it is not regarded as a tax incentive but an integral part of a general tax structure. Thus, tax incentives are not granted arbitrarily but to selected preferred sectors of the economy.

Tax incentives are generally intended to spur economic growth and development that would not have otherwise occurred. More specifically, they are designed to encourage investments in

¹⁰⁸ The Framework for Assessing Tax Incentives: A Cost...-the United Nations< www.un.org/fd/uploads/2015/04> accessed 28 March, 2017.

¹⁰⁹ The Effectiveness of Tax Incentives in Attracting Investment: Evidence from... < <https://www.cairn.info/revue-reflets-et-...> > accessed 29 March, 2017.

certain preferred sectors of the economy¹¹⁰. Thus, the importance of tax incentives in the development of the economy in any developing country cannot be over emphasized.

Generally, tax incentives are chosen by government because they are much easier to provide than to correct deficiencies in for example, infrastructure or skilled labour, they do not require an actual expenditure of funds or cash subsidies to investors and they are politically easier to provide than funds¹¹¹.

Countries often employ tax incentives to channel investment for development in a particular area. This may include support to rural development, building industrial centres away from major cities and reducing environmental hazards. Nigeria gives allowances ranging from 100% to 5% to companies that establish operations in rural areas where there are no facilities like electricity, tarred roads, telephone and water¹¹².

Tax incentives serve as a means of encouraging repatriation of foreign earnings to Nigeria. It also encourages voluntary tax compliance.

It can be used to enhance performance in certain sectors of the economy, this is evident in the telecommunications sector with MTN being granted pioneer status, it helped to enhance performance in the sector. This has also been applied to other sectors¹¹³.

Tax incentives help in the transfer of technology and upgrading of the skills of the workforce. The investor may train workers or import managerial skills where the benefit to the society outweighs the benefit to the investor. Employee receiving such training may then leave the

¹¹⁰ J A A Agbonika, op.cit., 105.

¹¹¹ Tax Incentives for Investment- A Global Perspective- OECD.org< www.oecd.org/mena/competitiveness> accessed 28 April, 2017.

¹¹² An Appraisal of Tax Incentives in Nigeria| Chikezie Ajagu-Academia.edu<www.academia.edu an_appraisal_of_ta... > accessed 3 April, 2017.

¹¹³ Ibid.

project and work elsewhere in the country thereby putting into use the skills acquired. Certain types of incentives are designed specifically for this purpose. For example, the incentive introduced towards research and development (R&D) activities. It provides that where an individual invests in the equity of a research and development company, he is entitled to an allowance which shall be lower of the actual value invested, or 25% of the total income¹¹⁴.

Tax incentives help offset other disadvantages that investors may face such as lack of infrastructure, complicated and obsolete laws, bureaucratic complexities and weak administration in the tax area¹¹⁵.

Tax incentives encourage businesses to make financial contribution to activities which the government considers socially desirable but which may not directly contribute to their profits. For example, donations to educational institutions, research institutes, government hospitals, relief funds, societies for the physically challenged people etc¹¹⁶.

4:3 DEMERITS OF TAX INCENTIVES

Tax incentive regimes are subject to abuse by some taxpayers. For example, a company which is not subject to tax in respect of a particular product or activity may engage in additional non-qualifying activities. The company may not disclose to the tax authority the profits earned from these non-qualifying activities which should ordinarily be subject to tax¹¹⁷.

Investors may sometimes benefit from some incentives that they should not enjoy. There are some conditions that must be fulfilled by investors in order to enjoy certain tax incentives, where

¹¹⁴ The Role of Tax Incentives in smes' Capital and Research...-ICAEW.COM<<https://www.icaew.com/files/products>> accessed 1 April, 2017.

¹¹⁵ Income Tax Incentives for Investment-IMF <<https://www.imf.org/ft/tlaw/eng>> accessed 2 April, 2017.

¹¹⁶ A D Zubairu, op.cit., 429.

¹¹⁷ Ibid., 435.

government officials have powers to use their discretion to determine which investor or project should benefit from the incentive, there could be room for corruption. Some investors who fail to meet the necessary requirements for the incentives may take advantage of this menace to qualify for the incentive.

Tax incentive may result in too much investment in certain areas because of the tax benefits thereby leading to neglect of other sectors of the economy which are not offered generous tax incentives¹¹⁸.

Since the issue of abuse because of tax incentive schemes cannot be ruled out, government is forced to incur additional costs for enforcement and compliance to monitor the scheme. For example, where the government wants to ensure that only investors who meet up with the requirements of the conditions for benefiting from the incentive are given, the government would have to monitor and ensure that the incentives are withdrawn or cancelled as soon as the investors no longer meet the requirements¹¹⁹.

Most tax incentives result in the investors paying less tax or no tax at all. This is a loss of revenue to the government. For example, the tax revenue foregone by the government as a result of granting pioneer status to some telecommunication companies at the inception of GSM in Nigeria¹²⁰.

Tax incentives granted by the Nigerian government to foreign investors are offset or reduced by taxes imposed by the investor's country of residence. If for example, the income derived from Nigeria by a foreign investor is exempted from income tax in Nigeria, but subject to tax in the

¹¹⁸ Ibid., 435.

¹¹⁹ Tax Incentives- World Bank <siteresources.worldbank.org/Resources> accessed 5 April, 2017.

¹²⁰ The Disadvantages of Tax Cuts| Sapling.com <<https://www.sapling.com/disadvantages...>> accessed 5 April, 2017.

investor's country of residence, it means that the investor has not really benefited from the tax incentive¹²¹.

Many tax incentives especially tax holidays are restricted to new investors. Such a restriction may be counterproductive and ineffective as an existing investor that plans to expand its activities will simply incorporate a subsidiary to carry on the activity and the subsidiary will qualify for a new tax holiday or an investor may sell his business towards the end of the tax holiday to a new investor who then claims a new tax holiday. Sometimes, the new investor is related to the seller though the relationship is usually concealed¹²².

Tax incentives violate the equity principle which is one of the canons of taxation by treating taxpayers not by their ability to pay but by their economic significance as judged by the policy makers. Therefore, it naturally induces excessive tax planning and even open the door for tax evasion¹²³.

¹²¹ A D Zubairu, op.cit., 436.

¹²² Advantages and Disadvantages of Tax Incentives for Direct Investment Free..

<www.studymode.com/subjects/advant...> accessed 20 April, 2017.

¹²³ The Frame work for Assessing Tax Incentives: A Cost...-the United Nations< www.un.org/ffd/uploads/2015/04> accessed 28 April, 2017.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5:1 SUMMARY OF FINDINGS

From the researcher's findings; it is observed that tax incentives alone do not increase economic development. Though tax incentives may encourage investments in a country, they do not on their own lead to economic development; many other factors play a role. Therefore, it is necessary for the government to rationalize these incentives to ensure that the country is not loosing while at the same time not reaping any benefits for resources given up.

Having examined tax incentives and the role it plays in economic development in Nigeria, it is discovered that tax incentives lead to reduction in government revenue but the reduction is often compensated with economic development brought about by successful investments both foreign and local.

There are divergent views by scholars as to whether tax incentives really influence the decision of an investor or not. Some are of the opinion that it plays a minor role, others believe it has a positive impact when coupled with political stability which at the end leads to economic growth and development. However it is viewed, the role tax incentives play cannot be over looked as it is designed to meet up with specific needs in the economy.

It has been noted also that most of the incentives give more preference to foreign investors than local investors even though the reason for this preference is not farfetched being that some of the sectors require huge capital and technical know-how to be established, for example,

under the oil and gas industry, it therefore follows that foreign investors can afford that huge capital as well as the technical expertise for exploration of petroleum.

The study has also shown that tax incentives cannot operate efficiently alone without being complemented by other measures put in place by the government. Also, the present system of tax incentive management in Nigeria is not well coordinated. There is the need for reforms so that the scheme can be well managed and the goals for its establishment achieved.

5:2 CONCLUSION

Over the past, most governments have been actively promoting their countries as investment locations to attract scarce private capital and associated technology and managerial skills in order to help achieve their development goals. Measures have also been put in place by these governments to facilitate the entry of investment. For example, liberalizing the laws and regulations for the admission and establishment of foreign investment projects, providing guarantees for repatriation of investment and profits and establishing mechanisms for the settlement of investment disputes. Tax incentives also form part of these promotional efforts¹²⁴.

Most countries irrespective of their stage of development employ a wide variety of incentives to realize their investment objectives. Developed countries more frequently employ financial incentives such as grants, subsidized loans or loan guarantees. It is generally recognized that financial incentives are a direct drain on the government's budget as such, they are not generally

¹²⁴ Tax Incentives and Foreign Direct Investment-Unctad <unctad.org/Docs/iteipcmisc3_en> accessed 30 April, 2017.

offered by developing countries. Instead, developing countries such as Nigeria tend to use fiscal incentives that do not require upfront use of government funds¹²⁵.

Tax incentive can yield various benefits to the economy. It is a veritable tool for attracting new or additional investments to certain sectors, enterprises, areas, projects etc. These investments may generate substantial spillover effects for example, creating employment opportunities, increasing the spending power of the country's residents, increasing demand for new goods and services, development of the communities in which the investments are made, growth of other firms etc. increased investment may also generate more tax revenue to the government through increased tax revenues received from employees, suppliers and consumers and in the long run from taxes paid by the investors after the expiration of the tax incentives.

With global competition, some forms of incentives are necessary in order to match those offered by competing host countries in attracting investment. It is thus established that tax incentives have positive impact on investment decisions coupled with other factors already discussed.

Certain important steps however, that need to be taken during incentive policies include, designing the incentives, granting the incentives and implementation and follow up of compliance by investors that have benefitted from the incentives.

Foreign investors are partners with the Nigerian government and people to develop the economy. This relationship should however be reciprocal and not exploitative. Nigerian government guarantees security of investments hence investors should discharge their obligations (tax, corporate social responsibility etc) as expected.

¹²⁵ Tax Incentives and Foreign Direct Investment-Unctad <unctad.org/Docs/iteipcmisc3_en> accessed 30 April, 2017.

The efficiency or inefficiency of tax incentives are solely based on how they are designed and what kind of governance mechanisms are established to support their implementation. Sustained tax reforms highlight commitment of government to develop systems for the benefit of all, including foreign investors.

The greatest incentive for investors is a stable, efficient, effective and well organized tax system and the formula for sustaining investment is foreign investors coupled with tax incentives plus increased economic activities which will amount to guaranteed returns for investors and the overall development of the Nigerian economy¹²⁶.

Above all, instead of focusing on developing a variety of tax incentives, the government should focus more on creating a better business environment which in itself will attract and retain investments.

5:3 RECOMMENDATIONS

Before the introduction of any tax incentive, government should assess in advance incentives that would boost investment, when it is introduced, expiry periods should be included to provide the opportunity to assess whether the availability of the incentive should be extended or not.

Making available tax incentive schemes alone is not sufficient as observed. Other factors considered by investors should be taken into consideration such as political stability and security, good governance, infrastructural development and facilities, transparency, market size, certainty in the application of tax laws and in tax administration etc need to be put in place to better attract and retain investment in Nigeria. As also observed one of the challenges of the scheme is

¹²⁶ Tax Incentives-in-Nigeria-FIRS-Slideshare < <https://www.slide share.net>farrahkhan>> accessed 30 April, 2017.

the issue of poor administration and monitoring. Importance should be given to man power training by the relevant tax authorities to enhance revenue collection and monitoring.

There is the need to take a cursory look at the various incentives offered in the various sectors and an evaluation be made on a periodic basis using a cost-benefit test to check the effectiveness and progress made so far as it relates to economic development, this can be done when the specific goals of a given incentive is made explicit at the outset.

Companies benefiting from these incentives should be better monitored as the government losses a lot of revenue in order to attract investment. These companies should be monitored to make sure that they do not find ways of defrauding or playing smart on the government.

All tax incentives should be automatic upon meeting certain requirements and conditions rather than discretionary as in some cases to avoid the issue of corrupt practices.

Where the issue of tax evasion is prevalent, it would not be advisable to introduce a tax incentive; rather other measures should be put in place to deal with the evasion.

Legal instruments granting tax incentives should be drafted carefully so that they achieve policy objectives with a minimum leakage of tax revenue. They should be expressed as precisely as possible so as to avoid the need for frequent corrections or changes as this may be perceived that the tax system is complex and difficult to comply with as stability and predictability of the tax system are major factors influencing long term investment.

The administration of tax incentives are usually carried out by different government agencies. Such diversity of agencies dealing with incentives tends to increase the inconvenience of doing business. Generally, investors prefer to deal with one government agency.

The more transparent the incentive system, the easier it is to administer and for investors to understand.

5:4 CONTRIBUTION TO KNOWLEDGE

The essence of any research is the ability to contribute to knowledge. This research has revealed that tax incentives can have both positive and negative effects on the economy depending on how well they are organized and the governance mechanism that is put in place to evaluate and assess its effectiveness. It also went further to reveal that tax incentives coupled with political stability and other factors stimulate investment and eventually lead to economic development. Some of the disadvantages of tax incentives were also identified. Tax incentives were also seen to be existent irrespective of some of the disadvantages identified because government most times find it much easier to provide as it does not require an actual expenditure of funds or cash to investors which is seen as a direct drain on government budget. The specific contributions are:

1. The study has shown the need for careful and proper drafting of tax incentive legislation to reflect Nigeria's fiscal policy objectives in order to eliminate possible revenue leakages in the tax system.
2. The study has also brought out clearly the need for collaboration and synergy amongst relevant government agencies in the administration of tax incentives to ensure certainty and convenience in tax administration.
3. The study has further revealed the need for transparency in tax incentive administration in order to enthrone a culture of trust, dependability and reliability.

5:5 SUGGESTED AREA(S) FOR FURTHER STUDIES

The tax incentives offered should be closely examined, evaluated and weighed to see if the initial desired goals are being met. Further research would be recommended in the area of the tax incentives offered to manufacturing companies especially with regards to small and medium scale manufacturing companies as they create employment, innovation, and help uplift the people's standard of living especially in this period of recession and mass unemployment for graduates.

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