TAX INCENTIVE PROVISIONS UNDER NIGERIAN LAWS: SUGGESTED REFORMS

Oyesola Olufemi Animashaun*

Abstract

Government creates tax incentives to encourage certain behaviours which are likely to impact positively on the economy. This includes creating competitive advantage for its products in the international market, stimulating further investments and subsidizing household expenses for low income families, among others. The paper examines the different Nigerian statutes granting tax incentives to the investors-taxpayers and looks at those prone to abuse, thereby incapable of fulfilling the objectives stated above. It also examines the overall desirability of tax incentives. The paper found that most of the provisions of tax incentive statutes are in need of review. The paper concludes that there is a need to expunge some of the tax incentive provisions from the tax statutes while others are amenable to review.

Keywords: Tax incentives; Taxpayers Reforms; Tax Behaviours; Abuse.

1. Introduction

Tax may be defined as a compulsory contribution to the support of government, levied on persons, property, income, commodities, and transactions, at a fixed rate, while penalty is attached for failure to pay.[1] The *raisons d'etre* for taxation are the need for governments to raise revenue, redistribute wealth and manage the economy and affecting behaviour.[2] Taxation is regarded as a tool to drive sustainable development and economic growth.[3] In the bid to improve the economy, attract foreign direct investment (FDI) and improve the lives of the citizen, the government of Nigeria through its laws introduced tax incentives. The provision of tax incentives is a global phenomenon, actually, it is not a new invention, it goes back to antiquity.[4] Tax incentives are of many variants- in form of reliefs, tax credits, tax holidays, allowances and drawbacks. The reasons for granting these incentives are myriad and it is usually to grant a certain group or category of taxpayers, tax incentives in order for the country to benefit

---

* PhD, BL, ACTI, Senior Lecturer, Department of Business and Private Law, Faculty of Law, Kwara State University, Malete, PMB 1530, Ilorin, Nigeria. E mail: anitrust2@gmail.com or oyesola. animashaun@ kwasu. edu.ng. Telephone No: +234 803 833 4466.

[1] DW William & Morse Davies, 'Principles of Tax Law' (7th ed. Sweet & Maxwell, London 2012); see also Oxford Advanced Learners Dictionary in S Wehmier (ed), (6th edition OUP, London 2001) 1227.

[2] Muhammed T Abdulrazaq , 'Revenue Law and Practice in Nigeria' (3rd ed. Malthouse Law Books, Lagos 2015) 1-2.

[3] Ibid.

[4] 1st Samuel 17:25 The Holy Bible KJV – 'so men of Israel said .... and gave his father's house exemption from taxes'

exponentially. Tax incentive, for instance, may be granted industrialists or investors, to site industries in remote areas in order to ensure even development in the country; or to boost export-oriented industries or to rescue low income households from starvation. The amount of lost revenue in this venture is vast when quantified as a percentage of the national Gross Domestic Product (GDP). Although, there is no statistics as to what the gains and losses occasioned by the tax incentive provisions are in Nigeria, but the statistics from other nations are staggering. In the US, for instance, the federal personal income tax code alone provides over $500 billion worth of incentives intended to encourage socially beneficial activities, such as charitable contributions, homeownership and education. This is an enormous investment, amounting to about 4 percent of the GDP.[5] These tax expenditures are consequential – especially in developing economies, it is estimated at 2, 2.5 and 5 percent of the GDP in Ghana, Kenya and Tanzania, and Brazil respectively.[6] The Nigerian state has serious revenue problem as the tax to GDP ratio is about 6 percent, which is very low even by the sub-Sahara African standard.[7] This parlous revenue condition is further complicated by the tax incentives under the Nigerian laws which yield little or no benefit.[8]

Tax related government programmes are funded in two ways, namely- the straightforward method of taxing, spending and tax expenditures. The latter includes tax credits, reliefs, exemptions, or rate reductions which give direct benefits to a subset of taxpayers—often as an incentive to take a particular action—encouraging companies to invest, develop infrastructure, or set up in disadvantaged regions or individuals to save for retirement.[9] Tax incentives are defined as any special tax provisions that are granted to qualified investment projects or firms that provide a favourable deviation from the general tax code, such as tax holidays, which are widely used in Africa and happen to be the most abused type of tax incentive in Nigeria in the form of pioneer status. The pioneer status is an incentive governed by the Industrial Development

---

[5] Lily L Batchelder, Fred T Goldberg, Jr., and Peter R Orszag 'Efficiency and Tax Incentives: The Case for Refundable Tax Credits' (2006) 59 *Stan. L. Rev.* 23

[6] Maya Forstater 'The Good, the Bad, and the Ugly: How Do Tax Incentives Impact Investment?' <https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment> accessed 28 August 2022.

[7] National Bureau of Statistics '2019 Poverty and Inequality in Nigeria: Executive Summary' (2020) <https://nigerianstat.gov.ng/elibrary?queries[search]=poverty> accessed 12 July 2022.

[8] Mustapha Ndajiwo 'Are Tax Incentives in Nigeria Attracting Investment or Giving Away Revenue' (2018) <https:/www.taxjustice.net/2018/08/14/are-tax-incentives-in-nigeria-attracting-investment-or-giving-away-revenue/> accessed 28 August 2022.

[9] Maya Forstater 'The Good, the Bad, and the Ugly: How Do Tax Incentives Impact Investment?' < https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment> accessed 28 August 2022.

(Income Tax Relief) Act,[10] and it allows certain businesses a tax holiday for three years, which is renewable for another two years.[11] The abuse of the pioneer status incentive is partly due to the discretionary powers of the Executive which enables it to grant pioneer status without the need for approval from the National Assembly. The Nigerian tax system permits registered businesses to change their name or business, or even leave the country, after the expiration of their pioneer status which creates more risk for abuse. This, among other things, raises questions about the effectiveness of these so-called tax incentives and the resultant opportunity cost.[12]

Tax incentives are generally considered to be the least important factors in making investment decisions in low-income countries, because the investments would have happened with or without them. Factors such as infrastructure, security and rule of law, to mention a few are ranked higher.[13] Other studies confirm that tax incentives have more negative than positive impact on sustainable development in developing countries.[14] Studies commissioned by the World Bank and other authors confirmed that tax incentives are more effective in countries with better infrastructure, reasonable transport costs, and a policy framework favouring investment.[15] This article confirmed that the recommendations from the revised National Tax Policy provide that the concession granted by the tax laws should be evaluated and reported annually. The revised National Tax Policy which states that:

> Any incentive to be granted should be broad, sector-based, tenured and transparent; implementation should be properly monitored, evaluated, periodically reported and kept under review; revenue forgone from tax incentives or

---

[10] Cap I7 LFN, 2004.

[11] Section 10 of the Industrial Development (Income Tax Relief) Act, Cap I7 LFN, 2004.

[12] Mustapha Ndajiwo 'Are tax incentives in Nigeria attracting investment or giving away revenue' <https:/www.taxjustice.net/2018/08/14/are-tax-incentives-in-nigeria-attracting-investment-or-giving-away-revenue/> accessed 28 August 2022.

[13] World Bank 'Options for Low Income Countries' Effective And Efficient use of Tax Incentives for Investment : A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank' http://documents.Worldbank.org/curated/en/794641468000901692/Options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment-a-report-to-the-G-20-development-working-group-by-the-IMF-OECD-UN-and-World-Bank accessed 20 August 2022.

[14] Saila Naomi Stausholm 'Rise of Ineffective Incentives: New Empirical Evidence on Tax Holidays in Developing Countries' Copenhagen Business School (2017) < https://osf.io/preprints/socarxiv/4sn3k/> accessed 28 August 2022.

[15] Hania Kronfol and Victor Steenbergen, 'Methodological Approaches and Policy Considerations' (World Bank 2020); Bellak, C., M. Leibrecht, and J. P. Damijan. 'Infrastructure Endowment and Corporate Income Taxes as Determinants of Foreign Direct Investment in Central and Eastern European Countries' (2009) 32(2) *World Economy* 267–90; Kinda, Tidiane 'The Quest for Non-Resource-Based FDI: Do Taxes Matter?' IMF Working Paper no. 14/15 (International Monetary Fund 2014).

concessions should be quantified against expected benefits and reported annually. Where the benefits cannot be quantified, qualitative factors must be considered; and tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition.[16]

There is no evidence that shows that significant efforts towards the above prescriptions of the National Tax Policy have been taken, notwithstanding that, Nigeria is a country where close to 40 percent of its population live below the poverty line and where, about 10.5 million children are out of school.[17] This information may be a conservative estimate due to the fact that Nigerians are further impoverished by the current government policies; displacements of the citizens by armed insurgency, ethnic militias and terrorists.

Perhaps another thing that complicates the issue of tax incentives in Nigeria is the fact that so many agencies are involved in its administration, which leads to the duplication of duties and lack of coordination that open up avenues for abuse. These bodies include the presidency, the Federal Executive Council, the Federal Inland Revenue Service, Nigerian Investment Promotion Commission, the Industrial Inspectorate Department, the Federal Ministry of Industry, Trade and Investment and the State Internal Revenue Services. Hence, even if the said incentives were confirmed to be beneficial, it remains unclear if the existing complicated framework will be efficient and effective in implementation of the provisions of the law. One other concern is that the government has also never disclosed the cost of the incentives it grants, which may be attributable to the complex nature of the tax incentives framework. One can deduce that the government's actions may not be ill-conceived; however, the same cannot be said about the quality of the decisions.

2. Meaning of Tax Incentive

Tax incentives are generally classified into two categories: cost-based tax incentives such as tax credits and accelerated depreciation allowances and profit-based tax incentives such as tax

[16] Federal Ministry of Finance 'National Tax Policy' (2017) https://www.nipc.gov.ng/product/national-tax-policy/ accessed 28 July 2022; Mustapha Ndajiwo 'Are Tax Incentives in Nigeria Attracting Investment or Giving Away Revenue?' </https://www.taxjustice.net/2018/08/14/are-tax-incentives-in-nigeria-attracting-investment-or-giving-away-revenue/> accessed 20 August 2022.

[17] Frank Aragbonfoh Abumere 'Taxation in the COVID-19 Pandemic: to Pay or Not to Pay' *Philosophia* <https://doi.org /10.1007/s1 1406-021-00354-2> accessed 20 August 2022; NBS '2019 Poverty and Inequality in Nigeria: Executive Summary' <https://nigerianstat.gov.ng/elibrary?queries[search]= poverty> accessed 12 August 2022.

holidays or reduced tax rates.[18] These incentives can be temporary or permanent and/or partial or full-exemption.[19] Tax incentives are defined as a measurable economic advantage made available to specific industries or sectors by the government to behave in a particular way, such as, to increase production, invest in an economically disadvantaged area or boost exportation.[20] It is also defined as an offer given to qualified taxpayers to pay less tax for engaging in acts or activities which the government is trying to promote or encourage.[21] Tax incentives have also been defined as reductions in the effective tax burden on favoured activities with the intention that the loss in tax revenue, due to the tax foregone, be compensated by an increase in national revenue from the broadened economic base.[22] In addition, the rationale for granting tax incentives include- development of the domestic market, balanced regional development, reduction in unemployment, better utilization of existing capital, diversification of output and improvement of balance of payment.[23] The question to ask at this juncture is to what extent have the tax incentives granted by the Nigerian statutes benefit the economy along the criteria cited above?

3. Tax Incentive Provisions in Nigerian Statutes

In order to stimulate employment and encourage investment in certain sectors of the economy the government using the Taxing Acts grants investing public and foreigner concerns certain reliefs and exemptions.[24] Some of the taxpayers plan their activities around this, thus pay little or no tax at all. The Companies avails themselves of the following provisions of the Companies

[18] Mustapha Ndajiwo (n 12).
[19] Ibid.
[20] OA Somorin 'Teju Tax Reference Book' (Malthouse Press 2012) 898; Ifueko O Okauru 'Tax Incentives for Foreign Investors in Nigeria' <https://www.slideshare.net/farrahkhan/tax-incentivesinnigeria-firs/> accessed 20 August 2022.
[21] Financial Times 'Lexicon' <http://lexicon.ft.com/Term?term=tax-incentive/> accessed 20 August 2022.
[22] DC John, 'An Examination of the Statutory Provisions on Tax Incentives in Nigeria' in Oyesola Animashaun et al (eds), *Changing Perspectives in the Law and Practice of Taxation in Nigeria: Essays in Honour of Profesor MT Abdulrazaq* (Hybrid & KWASU 2017) 402; IA Ayua, 'Tax Incentives and Private Investment in Nigeria: Nigerian Commercial Laws, Problems and Perspectives' (1993) (2) *Nigerian Commercial and Business Law Journal* 85; see also GO Oyedokun, WA Babalola and M Awosika 'Imperative of Tax Incentives in Nigeria' in MA Mainama et al. (eds) *Tax Management and Compliance in Nigeria* (OGE Business School 2020) 307-342; SC Rapu, HT Sanni, DB Akpan, AA Ikenna-Ononugbo, DJ Yilkudi, *et al*, 'Fiscal Incentives In Nigeria: Lessons of Experience' Central Bank of Nigeria Occasional Paper No. 47 (1993) <https://www.cbn.gov.ng/out/2015/rsd/ ocp_47_fiscal%20 incentives %20in%20nigeria_lessons%20of%20experience.pdf> accessed 21 August 2022.
[23] Oyedokun *et al* ibid 315;
[24] Tax exemption is not a new invention in 1st Samuel 17:25 The Holy Bible KJV, tax exemption was granted by the King to any valiant warrior capable of fighting Goliath.

Income Tax Act (CITA). Also, persons incorporate companies, transferring assets to the incorporated entity solely in order to avoid tax:

(a) Section 23 of CITA exempts from tax the dividends, income, interest and profits of certain companies, especially those in respect of export-oriented business, manufacturing, charitable and other such business.[25]

b) Under section 23(2) of CITA the President may exempt by order:

a) any company or class of companies from all or any of the provisions of the Act; or

b) from all tax or any profit of any company or class of companies from any source, on any ground which appears to it sufficient the provisions of the Act.[26]

This power seems too enormous for the Nigerian President in my view and it is recommended for amendment in such a way as to include probably the advice of the National Economic Council or the Council of State, due to the dismal performance of the past office holders.

---

[25] Section 23 of CITA exempts from tax the dividends, income, interest and profits of the following companies:
(i) Profits of any Nigerian company in respect of goods exported from Nigeria;
(ii) Profits of a company whose supplies are exclusively inputs to the manufacturing of products for export;
(iii) Dividends received from investments in wholly export oriented businesses;
(iv) Dividends received from small companies in the manufacturing sector, in the first 5years of their operations;
(iv) Dividends received from small companies in the manufacturing sector, in the first 5years of their operations;
(v) The interest on deposit accounts of a foreign non-resident company provided the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1st January 1990 through Government approved Channels.
(vi) Dividends, interest, rent or royalty derived by a company from a country outside Nigeria and brought into Nigeria through government approved channels.
(vii) Any profits of a company other than a Nigerian company which, but for this paragraph, would be charged to tax by reason solely of their being brought into or received in Nigeria;
(viii) The profits of any company being a statutory or registered friendly society in so far as such profits are not derived from a trade or business carried on by such society,
(ix) The profits of any company being a co-operative society registered under any enactment or law relating to cooperative societies not being profits from any trade or business carried on by that company other than cooperative activities solely carried out with its members or from any share owned or other interest possessed by that company in any trade or business in Nigeria carried on by some other persons or authority;
(x) The profits on any company formed for the purpose of promoting sporting activities where the profits are wholly expendable for such purpose, subject to such conditions as the board may prescribe.
(xi) The profits of any company being a trade union registered under any Trade Union Act in so far as such profits are derived from trade or business carried on by such trade union;
(xii) The profit of any company being a body corporate established by or under any Local Government Law or Edict in force in any State of Nigeria;
(xiii) The profits of any body, corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria for the purchase and sale (whether for the purpose of export or otherwise) of that commodity.
(xiv) The profits of any company or any corporation established by the law of the State for the purpose of fostering the economic development of the state, not being profits derived from any trade or business carried on by that corporation or from any share or interest possessed by that corporation in trade or business in Nigeria carried on by some other person or authority.

[26] see also section 23(3)

(c) Section 11 (1) of CITA exempts from tax, interest derived by a foreign company on loan to a Nigerian company on or after 1st April, 1998 for the repayment period, grace period and tax exemption rates as stated in the third schedule. Hence a foreign investor under this section can avoid tax by investing in a Nigerian company by way of loan rather than equity in order to gain the advantage of deductibility of the interest from taxable income thus lowering the tax payable by the company.

(d) Section 11(2) of CITA also exempts from tax, interest on any loan granted by a bank on or after 1st January, 1997 to companies that engage in agricultural trade or business or the fabrication of any local plant and machinery or provides working capital to a cottage industry established by the company.

(e) Section 11 (5) exempts from tax as prescribed in the Third Schedule interest payable on any loan granted by a bank on or after 1st April, 1980 for the purpose of manufacturing goods for export, subject to presentation of certificate issued by Nigerian Export Promotion Council stating that the level of export specified has been achieved by the company.

(f) Under section 26 of CITA, expenses for research and development are treated as capital, hence deductible for tax purposes. This thesis opined that this allowance is difficult to monitor hence it should be abrogated. However, the allowance under section 21A (1) which provides that any donation to a university, tertiary or research institute is tax exempt suffices as that is easily monitored.

(g) Section 34 (1) & (2) - Rural Investment Allowance: a company that incurs capital expenditure on provision of facilities such as electricity, water or tarred road for the purpose of a trade or business, which is located at least 20 kilometres away from such facilities provided by Government shall be allowed as addition to initial allowance under Second Schedule to the Act, the allowance referred to as Rural Investment Allowance is allowed at the rate (percent) specified below:

No facilities at all 100%, No electricity 50%, No water 30% and No tarred road 15%.[27] I advocate the provision of necessary infrastructure or the creation of industrial estates to aid town planning exercise and the disposal of industrial wastes rather than this allowance.

[27] This has been adjusted by deleting 5 percent hitherto allowed on the telephone, probably due to the advent of mobile telephony.

(h) Section 35– Manufacturing Activities in Export Processing Zone (EPZ): Where a company has incurred expenditure in its qualified building and plant equipment in an approved manufacturing activity in an Export Processing Zone that company shall be granted 100% capital allowance in any year of assessment. Under subsection (3) profit or gain of a 100% export-oriented undertaking established within and outside an EPZ shall be exempted from tax for the first 3 consecutive years subject to certain conditions.[28] The major concern is the ability of the appropriate authorities to establish the veracity of this assertion due to the porosity of the borders and the possibility of carrying goods across the borders and re-importing into Nigeria.

(i) Section 36- Mining of Solid Minerals: A new company going into the mining of solid minerals shall be exempted from tax for the next 3 years of its operation.

(j) Section 37 – Convertible Currencies from Tourists by Hotels: 25% of incomes in convertible currencies derived from tourists by a hotel shall be exempted from tax provided that such income is put in a reserved fund to be utilized within 5 years for the building expansion of new hotels, conference centres and new facilities for the purpose of tourism development. I opined that this is distortionary and should be expunged from the statute because, firstly, the framework for tourism is yet to be laid by the governments. Secondly, a cursory look at such shows that most of the facilities are underutilized as Nigerian investors prefer building hotels, resorts and petrol stations.

(k) Section 39– Incentives to Gas Industry: companies engaged in gas utilization (downstream operations) are granted an initial tax-free period of 3 years which is renewable for an additional period of 2 years. Such companies are granted accelerated capital allowances after the tax-free period.[29] In addition, such gas companies will also enjoy tax free dividend during the tax-free period where the investment for the business was in foreign currency or introduction of imported plant and machinery during the period was not less than 30% of the equity share capital of the company.

---

[28] provided that
(i) the undertaking is 100% export oriented;
(ii) the undertaking is not formed by splitting or breaking up or reconstructing a business already in existence.
(iii) The undertaking repatriates at least 75% of the export earnings to Nigeria and place it in a domiciliary account in any registered and licensed bank in Nigeria, etc.

[29] The applicable rate is an annual allowance of 90% with 10% retention, for investment in plant and machinery; and an additional investment allowance of 15% which shall not reduce the value of the asset.

(l) Tax Relief for Pioneer Companies - The Industrial Development (Income Tax Relief) Act (IDITRA)[30] provides tax relief to pioneer companies. The pioneer status is granted companies operating in certain sectors of the economy which in the opinion of the Federal Government is a pioneer industry; the period may be for three or more years.[31] Profits and certain dividends are exempted from income tax.[32] The inclusion of certain industries such as real estate development, hotel and resort facilities leaves much to be desired. Similarly, section 23 of Finance Act 2020 amends section 1 of the IDITRA by granting tax holiday of an initial period of four years, and an additional period of two years to Small and Medium sized companies engaged in primary agricultural production. The extension is subject to satisfactory performance. Eligible companies are required to apply to the President through the Minister for Trade, Industry & Investment.

The Nigerian Liquefied Natural Gas (NLNG) (Fiscal Incentives, Guarantees and Assurances) Act[33] in addition to the incentives enjoyed under the IDITRA provides incentive to the Liquefied Natural Gas Company to enjoy pioneer status under the Export (Incentives and Miscellaneous Taxation Provisions) Act.[34] The Nigerian Liquefied Natural Gas (NLNG) (Fiscal Incentives, Guarantees and Assurances) Act[35] made a schedule of guarantees and assurances in connection with rights of the NLNG Company and its shareholders. The Act declares the business of the company and the company as pioneer products and a pioneer industry respectively. Section 2 provides a 10-year tax relief period and section 3 provides that the company shall be subject to the Companies Income Tax Act and not the Petroleum Profit Tax Act (PPTA). Interest on loans is to be fully deductible for tax purposes and the provisions of the Nigerian Shipping Policy Act 1987 are declared inapplicable to the company and its contractor, subcontractors, customers and any shipping concern involved with the company's trade in LNG. The company is totally exempted from all custom duties, levies, charges and imposts of a similar nature etc.

m) Section 55 of the PPTA protects the profit of upstream oil companies that has been taxed under the PPTA against subsequent taxation. It provides that 'no tax shall be charged under the provisions of the Personal Income Tax Act in respect of any income or dividends paid out of any profits which are taken into account under the provisions of this Act, in calculation of the amount

[30] Cap I 17 LFN 2004
[31] Section 10 of the Industrial Development (Income Tax Relief) Act
[32] Ibid; Section 16 and 17.
[33] Cap. N 87 LFN 2004.
[34] Cap. E 10 LFN 2004
[35] Cap. N 87 LFN 2004.

of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Act'.

n) Under the Capital Gains Tax Act,[36] gains to religious, charitable or public educational institution, any statutory or registered cooperative society or trade union are tax exempt provided it is not derived from disposal of an asset acquired in connection with any trade or business and the gain is applied purely for the purpose of the institution or society.[37] A lot of individuals hide under this cover to avoid tax, as the flamboyant lifestyle of some religious leaders have been attracting critical comments recently. There have been calls for the removal of this exemption.[38] This article opined that there are certain criteria to be put in place before religious or statutory bodies could attain tax exempt status. The first is that it must be properly registered under the state and federal laws, including the Corporate Affairs Commission. The second issue is that there should be a body charged with regulating these bodies, to which it files its returns. Section 23 (1) (c) was amended by deleting educational institutions from the income tax exemption list. This section has been amended by the Finance Act, 2021, thus, the profits of companies engaged in educational activities of a public character will no longer enjoy any tax exemption and will be liable to companies income tax at 20 or 30 percent (depending on their turnover).

o) There are also allowances provided under section 3 of the Deep-Offshore and Inland Basin Production Sharing Contracts (PSC) Act 1999.[39] The tax applicable under the PSCs shall be determined in accordance with Petroleum Profit Tax Act provided that the tax applicable shall be 50% flat rate of the chargeable profits for the duration of the PSC. Tax reliefs are also created through Memorandum of Understanding (MoU). These MoUs are usually legal deeds between the Government and Multinationals. Examples are the Joint Venture Agreement or Production Sharing Contracts (PSC) which is a common feature in the oil and gas industry. These MoUs

[36] 1967, Cap C1 LFN 2004

[37] See sections 26, 28, 32, 33 and 34.

[38] The Punch 'Religious leaders' flamboyant lifestyle encouraging money rituals – Ex-LASU VC, Fagbohun' <https://punchng.com/religious-leaders-flamboyant-lifestyle-encouraging-money-rituals-ex-lasu-vc-fagbohun/> accessed 20 August 2022; Adetutu Adebimpe Adenugba, and Samuel Ayodeji Omolawal 'Religious Values and Corruption in Nigeria- A Dislocated Relationship' (2014) 4(3) *Journal of Educational and Social Research,* 522-528.

[39] Cap. D 3 LFN 2004

generally guarantee incentives that leads to less tax than the companies would have been normally liable to.[40]

p) Section 18(1) of Nigerian Export Processing Zones Authority Act[41] gave an array of tax incentives to approved enterprises within the zones that made them to pay very low or no tax compared with their counterpart located elsewhere in the country. Likewise, section 8 of Oil and Gas Export Free Zone Act[42] provides that approved enterprises operating within the free zone shall be exempted from all federal, state and local government taxes, levies and rates. This thesis opines that the blanket immunity from taxes and rate is not sustainable and should be abrogated. It rather advocates for a tax holiday of a limited period of not more than 10 years.

4. Personal Reliefs and Allowances under Personal Income Tax Act

The old section 33 of the Personal Income Tax Act (PITA) grants certain reliefs such as personal relief,[43] children education allowance,[44] alimony allowance deduction accruable to an individual whose marriage was dissolved by a court of competent jurisdiction,[45] dependent relative allowance[46] and disabled personal allowance.[47] This section 33 was amended by the Personal Income Tax (Amendment) Act (2011) which provides for a consolidated sum instead of the hitherto position. The section provides that:

> there shall be allowed a consolidation relief allowance of N200, 000.00 subject to a minimum of 1 percent of gross income whichever is higher plus 20 percent of the gross income and the balance shall be taxable in accordance with the income table in the Sixth Schedule to this Act.

Certain incomes are exempted from tax by virtue of section 19 and allowable deductions are enumerated under section 20 of the Personal Income Tax Act.[48] The amendment stated above is salutary in that it was meant to block fraudulent claims by individuals like unmarried men claiming that they were in order to claim deduction on their tax liability.

---

[40] Teju Tax Reference Book (supra) 1315; Nlerum F.E, Reflection on the Attitude of the Courts to Tax Incentive Mechanism in Nigeria *NIALS Journal of Business Law* <www.nials-nigeria.org/journals/Dr Francisca%20 E.%20 Nlerumbus.pdf> accessed 30 March 2022.
[41] Decree No 63 of 1992 now Cap N107 LFN 2004.
[42] Decree No 8 of 1996 now Cap O5 LFN 2004.
[43] Section 33(1) PITA.
[44] Section 33(3)(b) PITA.
[45] Section 33 (3)(a) PITA.
[46] Section 33(3)(c) (i) &(ii) PITA.
[47] Section 33(3)(e) PITA.
[48] PITA of 2004 as amended in 2011and by Finance Act 2021.

4. Stamp Duties

Stamp duties must be paid on all agreements, deeds of Conveyance and other similar transactions to either the State Board of Internal Revenue (SBIR) or by the Federal Board of Inland Revenue (FBIR) for transaction by individuals or corporation respectively. The SBIR charges 3 percent while FBIR levies 1 percent of the value of the transaction as stamp duty. Taxpayers incorporate or use an existing company to execute transactions to avoid higher tax.

5. Value Added Tax (VAT)

Tax payment may be avoided by dealing on VAT exempt goods and services. These include:
All medical and pharmaceutical products, basic food items,[49] books and educational materials, baby products, locally produced fertilizer, agricultural and veterinary medicine, farming machinery, farming transportation equipment and all exports. Others are plant and machinery imported for use in the Export Processing Zone or for the utilization of gas in down-stream petroleum operations; proceeds from the disposal of Short-Term State, Local Government, Corporate and Federal Government of Nigeria's Securities and Bonds. Some services are also VAT exempt. VAT is not payable whenever any of these services is consumed- medical services, services rendered by community banks, peoples bank and mortgage institutions, plays and performances conducted by educational institutions as part of learning and all exported services.
Similarly, certain non-oil exports are VAT exempt. These include goods and services purchased by diplomats, goods purchased for humanitarian donor funded projects undertaken by non-government organizations (NGOs), religious and social clubs that are recognized by law whose activity is not for profit, charitable and in the public interest. Other exemptions are the additional exemptions granted by the Minister of Finance through Fiscal Policy Measures in line with section 38 (b) of the VAT Act which states that 'the Minister may by order published in the Gazette, amend, vary or modify the list set out in the First Schedule to this Act.

6. Challenges Associated with Tax Incentives

Zolt posited that tax incentives especially those targeting FDI inflows are bad in theory and practice, because it causes distortions in the investment choices and are "ineffective, inefficient

[49] *Warm Spring Water Nigeria Limited, Ashmina Limited, Seven-Up Bottling Company Plc, Voltic Nigeria Limited, & ors. v. Federal Inland Revenue Service* (Federal High Court, Lagos Judicial Division Suit No: FHC/L/CS/157/ 2015/ Judgment given: 11 May 2015). In this case, the trial Judge ruled that water (whether in bottle or packaging material) is a basic food item and therefore exempt from VAT.

and prone to abuse and corruption".[50] Similarly, Van Kommer (2018) in Sebele-Mpofu enumerated the possible risks associated with tax incentive initiatives, which include under and/or incorrect declaration of incomes, a drastic increase in the number of operators in the sector awarding incentives, manipulation of the life span of investments in order to access incentives; transferring incomes to other businesses (through manipulative transfer pricing strategies and the general misuse of tax incentives.[51] Daude *et al.* and Munongo *et al.* argued that incentives have invisible costs, thus, increasing social burdens including disproportionate distribution of resources, loss of revenue, increased tax compliance burdens, complex tax systems and an increase in corrupt behaviour.[52] Although tax incentives might lead to an increase in FDI and improved welfare of designated communities, it may have harmful effects such as tax competition, loss of comparative advantages, lack of transparency and pervasive corruption. [53] Similarly, Easson and Zolt and others posited that tax incentives are besotted by the following challenges.[54] The first is double dipping, because certain tax incentives, such as tax holidays, are restricted to new investors, therefore, an old investor desirous of enjoying the benefits of the incentive will simply incorporate a new company or a subsidiary in order to qualify for the new tax holiday. The second challenge is transfer pricing, a phenomenon that could occur in international or local transactions between related enterprises. Thus, an investor with two or multiple corporations/operations may manipulate the account books in such a way that a large part of the profits will be shifted to a particular operation in order to enjoy the tax advantage offered by the tax incentive.[55] Third, investment incentives such as exemption from customs duty

---

[50] EM Zolt, 'Tax Incentives and Tax Base Protection Issues' Papers on Selected Topics in Protecting the Tax Base of Developing Countries' Draft Paper 3 (2014) 3.

[51] Favourate Y Sebele-Mpofu, Delight Gomerab and Bonface Sibanda,'Tax Incentives: A Panacea or Problem to Enhancing Economic Growth in Developing Countries' (2022) 8(2) *Journal of Accounting, Finance and Auditing Studies* 90-123

[52] S Munongo, OA Akanbi and Z Robinson, Do Tax Incentives Matter for Investment? A Literature Review (2017) (13) *Business and Economic Horizons* 152-168; C Daude, H Gutiérrez and Á Melguizo, 'The Political Economy of Tax Incentives for Investment in the Dominican Republic: "Doctoring the ball" *OECD Development Centre Working Paper No. 322* (OECD 2014) .

[53] Ibid.

[54] A Easson and E Zolt, 'Tax Incentives' (World Bank Institute 2002) 12; M Cotrut, K Munyandi, W Choi, VA Ferreira and J Rienstra, 'Tax Incentives in the BEPS Era' (2018 IBFD, Washington DC); S Munongo, 'The Effectiveness of Tax Incentives in Attracting Foreign Direct Investment: The Case of the Southern African Development Community (University of South Africa 2015); R Chikova 'Should Zimbabweans Worry About Tax Exemptions?' African Forum and Network on Debt and Development (2021) <https://extraproperty.com accessed 21 August 2022; Oyedokun (2020) *et al.*

[55] Olena Sokolovska and Dmytro Sokolovskyi, 'Tax Incentive Regimes: Models and Research Methods' *Munich Personal RePEc Archive Paper* No. 52415; Oyedokun (2020) *et al.*

on imported equipment may be abused. An unscrupulous investor may import more equipment than he needs and sell the unneeded equipment in the domestic market with a high margin.[56] Fourth, over-valuation is an existent problem in any tax system however, tax incentives exacerbate the problem.[57] For instance, where a tax holiday is conditional upon a certain minimum amount being invested, the value of assets contributed to the new firm can be manipulated to achieve the target figure. Fifth, there are asset stripping and "fly-by-night" operations.[58] Many operators may use the opportunity offered by tax incentives to make a quick, tax-free profit and then disappear to begin operations in another jurisdiction that offers similar tax privileges. This problem most often arises especially with tax holidays and in export processing zones. Similarly, sometimes a foreign or local investor acquires the control of an existing local enterprise as a part of the privatization process, at a very low price. Instead of contributing new capital to modernize the enterprise, the investor strips it of its useful assets and simply disappears. Lastly, as part of privatization process some local investors purchase some national assets at takeaway price but failed to invest the required fund in the corporation but relied on the general public to finance the corporation operation because it was designed by the law to be a monopoly.[59] The acquisition of the former National Electric Power Authority (NEPA) assets by the so called investors who sold the assets to themselves when they were in charge of the privatization project is an example. The fraudulent activities of the operators and the 'buyers' of the privatized NEPA project made Ahmed Lawan, the Nigerian Senate President to declare that the privatization of the power sector in Nigeria is a 'complete fraud'.[60]

7. Recommendations

There is a need to critically examine and assess the performance of the different tax incentives over the years and select the effective tools of tax incentives, which correspond to the prioritized goals of the state and the prevailing conditions inherent in the economic system. Second, the

---

[56] Ibid.
[57] Ibid.
[58] Ibid; UA Rumina, AS Balandina and KA Bannova 'Evaluating the Effectiveness of Tax Incentives in order to create a Modern Tax Mechanism Innovation Development (2015) *Procedia - Social and Behavioral Sciences* 156 – 160.
[59] See Shamsuddeen Usman, 'Monitoring and Regulatory Aspects of Privatization in Nigeria' in VV Ramanadham (ed), *Privatization and After: Monitoring and Regulation* (Taylor & Francis 2002) 92-106; Adekola Abdulazeez Alao and Raheem T Kazeem 'Privatization of Public Enterprises in Nigeria: Challenges and Prospects' 5(1) 2016 *Entrepreneurial Journal of Management Sciences* 1-20.
[60] Henry Umoru, 'Power Sector Privatization a Total Fraud – Lawan' *The Punch* (Lagos, 9 December 2019) < https: // www.vanguardngr.com/2019/12/power-sector-privatization-a-total-fraud-lawan/> accessed 5 October 2022.

multiple regulatory and supervisory authorities responsible for the enforcement and implementation of the tax incentive programmes should be streamlined in order to curb inter-agency rivalry and allow for proper coordination. Third, tax incentives must be geared towards the incorporation of local content and the training of Nigerian citizens. Lastly, tax legislation should be drafted in a simple language capable of comprehension by an average person with a good secondary education. Further, the tax administration procedures should also be simplified.

8. Conclusion

In conclusion, some authors such as John and Ayua posited that certain aspects of tax incentives are salutary, for instance, that the pioneer industries contributed to Nigerian industrial development.[61] While one could not dismiss tax incentives as a useless device, this author posits that tax incentives should be fewer, properly scrutinized, be granted under very serious criteria and aligned with the national plan. Similarly, there should be proper monitoring and appropriate calibration of the effects of the tax incentives. Moreover, the policy makers must not be oblivious of the need to provide a stable and secured business environment. Irrespective of the quantum of the tax incentive, the security of lives and properties is sine qua non in the consideration of any investment decision. It is paramount therefore for the Nigerian governments to curb social anomalies and the activities of social misfits such as ethnic militia, bandits, terrorists and the insecurity arising thereof.

[61] John (n 22) 407.