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Client Alert

Overview of the Implementation Guidelines Issued by the Minister of Finance in Respect of the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc) Order 2024

Introduction

On February 28, 2024, President Bola Ahmed Tinubu issued the Oil and Gas Companies (Tax Incentives, Exemption, Remission. Etc.) Order 2024[1] (the "**Order**") which granted specific tax incentives is aimed at unlocking investment in the Nigerian oil and gas industry. The Order was issued pursuant to the President's powers under the Companies Income Tax Act to exempt the profits of any company from tax or to remit the taxes of any company[2]. The Order granted the following tax incentives – (i) tax credits and allowances for non-associated gas ("**NAG**") greenfield developments in onshore and shallow water locations, where the hydrocarbon liquid ("**HCL**") content falls between 0-100 barrels per million standard cubic feet of gas; (ii) capital and gas utilization investment allowance on qualifying expenditure incurred on plant and equipment by companies in the midstream oil and gas sector in respect of new and ongoing gas utilization project. (Our review of the Order can be found **here**).

Pursuant to the powers granted under the Order[3], the Minister of Finance, (the "**MoF**"), in collaboration with the Federal Inland Revenue Service (the "**FIRS**") and the Nigerian Upstream Petroleum Regulatory Commission (the "**NUPRC**"), issued the Implementation Guidelines for the Oil and Gas Companies (Tax Incentives, Exemption, Remission, Etc) Order 2024 (the "**Implementation Guidelines**") on April 23, 2024.

Application

The Implementation Guidelines apply to (i) companies with licenses or leases producing NAG from greenfield onshore and shallow water locations and (ii) midstream gas companies undertaking gas utilization projects. The Implementation Guidelines is split into the following three sub guidelines:

[1]https://www.nuprc.gov.ng/wp-content/uploads/2024/03/Oil-and-Gas-Companies-Tax-Incentives-Exemption-Order-2024-publication.pdf
[2] Section 23(2) and Section 89 of the Companies Income Tax Act.
[3] Paragraph 12 of the Order.

a. The Federal Inland Revenue Service Guideline on the applicability of Tax Credits and Allowances for Non-Associated Gas Greenfield Development;
b. The Federal Inland Revenue Service Guideline on the applicability of the Midstream Capital and Gas Utilization Allowance; and
c. The Nigerian Upstream Petroleum Regulatory Commission Guideline on Hydrocarbon Liquid Content in a Non-Associated Gas Field.

A. Guideline on the Applicability of Tax Credits and Allowances for Non-Associated Gas Greenfield Development (the "GTC Guideline")

The GTC Guideline provides for the application and implementation of the gas tax credit granted in respect of NAG greenfield development in onshore and shallow water locations.

Eligibility

To be eligible for the GTC, a company must have a valid license or lease and must have achieved first gas production on or before 1 January 2029[4]. Where a company achieves first gas production after 1 January 2029, it will be entitled to a Gas Tax Allowance (GTA) rather than a GTC.

Computation of GTC and GTA Rates

The GTC is determined as follows:

i. where the HCL content per MMSCF[5] is between 0 – 30 barrels, the GTC rate is the lower of US$1 per thousand SCF and 30% of the Fiscal Gas Price.
ii. where the HCL content per MMSCF is between 30 – 100 barrels, the GTC rate is the lower of US$0.5 per thousand SCF and 30% of Fiscal Gas Price.
iii. Where the HCL content per MMSCF is above 100 barrels, the company is to revert to existing legislation governing the oil and gas sector.

The GTA is also determined as follows:

i. Where the HCL content per MMSCF is between 0 – 100 barrels, GTA rate is the lower of US$0.5 per thousand SCF and 30% of Fiscal Gas Price.
ii. Where the HCL content per MMSCF is above 100 barrels, the company is to revert to existing legislation such as the PPTA and PIA.

Carryover of GTC Surplus

Where the GTC granted to an eligible company exceeds the amount of the Companies Income Tax due from that company in an accounting period (Gas Tax Credit Surplus), the surplus can be carried forward for a maximum period of three (3) accounting years, after which any unutilised surplus will lapse[6].

[4] the date certified by the NUPRC as the first gas production date.
[5] "MMSCF" Million Standard Cubic Feet.
[6] Paragraph 6.0 of the GTC Guideline.

Filing of separate tax computation

The GTC Guideline clarifies that companies eligible for the GTC are not entitled to claim the Associated Gas Framework Agreement ("**AGFA**") incentive for the same greenfield NAG project.[7] Eligible companies are required to file separate tax computations for the greenfield NAG project.

Restrictions

The GTC can only be claimed by a company that achieved first gas production on or before 1 January 2029 and for a maximum period of 10 years, provided that the HCL content does not exceed 100 barrels per MMSCF. The GTA also can only be claimed by a company that achieved first commercial gas production after 1 January 2029, provided that the HCL content does not exceed 100 barrels per MMSCF.

Transition from GTC to GTA

Companies granted GTC in greenfield development may be eligible for GTA after the expiration of the maximum period of 10 years.

B. Guideline on the Applicability of the Midstream Capital and Gas Utilization Investment Allowance (the "GUIA Guidelines")

The GUIA Guidelines were issued by the FIRS on 19 April 2024 to provide guidance on the implementation of the Gas Utilization Investment Allowance (GUIA). The GUIA is granted on qualifying capital expenditure incurred on plant and equipment by midstream gas companies in respect of new[8] and ongoing[9] projects.

Eligibility

To be eligible for the GUIA, a company must possess the relevant licenses issued by the Nigeria Midstream and Downstream Petroleum Regulatory Authority ("NMDPRA") and have incurred qualifying capital expenditure on plant and equipment in one or more of the following midstream gas operations[10] ;

i. Transportation of natural gas to gas conditioning and processing plants
ii. Transportation of natural gas from gas conditioning and processing plants to gas-based industries, and other end-use customers, specifically not exceeding exit points connecting gas distribution pipelines and networks
iii. Gas processing and conditioning plants;
iv. Gas bulk storage infrastructure deliberately installed not for sale but holding stock of plants condensates, liquified petroleum gas (LPG) or liquified natural gas (LNG).

[7] See paragraph 9.0 of the GTC Guidelines. The incentives provided under the AGFA have been codified into sections 11 and 12 of the PPTA.
[8] New project means project that was initiated and executed after the commencement date of the Executive Order 40.
[9] Ongoing projects means project currently under construction or in progress, prior to the commencement date of the Executive Order
[10] Midstream Gas Operations means activities downstream of the measurement points of petroleum mining leases, whether or not related to the petroleum mining lease, with respect to the construction and operation of natural gas transport or transmission pipelines, including the related compressor stations construction and operations of facilities to compress, transport and deliver compressed natural gas (CNG); construction and operations of gas, processing facilities and central processing facilities, producing ethane, propane, butane and natural gas liquids and marketable natural gas, construction and operation of underground or above ground facilities for the storage of natural gas, ethane extraction plants, construction and operation of gas to liquids (GTL) plants, petrochemical, construction and operation of LNG plants, and related LNG terminals as well as storage and transport of LNG, acquisition, operation or chartering of LNG tankers for coastal and marine transportation, purchase and sale, trading, bartering, aggregating and marketing of natural gas transported by pipelines, compressed natural gas, LNG, methane, ethane. propane, butane, natural gas liquids and liquids from GTL plants with respect to wholesale customers and gas distributors and related administration and overhead.

GUIA Rate

The GUIA is granted at a rate of 25% of the actual expenditure incurred on the qualifying plant and equipment.

Qualifying Expenditure/ Qualifying Plant and Equipment

The qualifying plant and equipment are the tangible assets and any other component that make up a plant or equipment that is used for gas processing and transportation in midstream gas operations provided that the useful life of the asset is beyond a period of one year.

In determining the qualifying expenditure on plant and equipment for GUIA purpose, the time the expenditure was incurred or when the asset was purchased, as opposed to when payment for the asset was made, is relevant. Therefore, all qualifying capital expenditure incurred on plant and expenditure on a gas utilization project prior to the effective date[11] of the GUIA incentive will not qualify for the allowance even where payment was made for the asset after the GUIA Guideline was introduced.

Conditions for GUIA

To qualify for the GUIA, the cost of the qualifying plant and equipment must have been incurred by the company from the commencement of the Order[12]. The company must also show proof of ownership and the evidence of the direct use of the plant and equipment for gas processing and transportation in midstream gas operations.

Restriction

Companies currently enjoying the tax-free period under Section 39(1)(a) of the CITA can only take advantage of the GUIA after the expiration of their tax-free period. Further, companies which have enjoyed the GUIA will not be entitled to any investment allowance under Section 39 of the CITA.

Submission of Information to FIRS

Upon filing of relevant tax returns, eligible companies claiming GUIA are required to submit certified copies of relevant information and documents submitted to NMDPRA on all new and ongoing projects.

Exemptions

The GUIA will not apply where (i) a company sells or transfers the plants and equipment to another company that is not engaged in the same or related business within five (5) years of incurring the expenditure, or (ii) where within the same period, the qualifying plant and equipment is appropriated for purposes other than gas utilization, (iii) where the cost incurred on the plant and equipment is not a bonafide business transaction i.e. is artificial or fictitious and (iv) where the company is an end – product user of gas as feedstock, energy source and related purpose.

[11] 28 February 2024
[12] 28 February 2024

In essence, a company eligible for GUIA is only entitled to GUIA where within five years of incurring a qualifying expenditure, it does not sell the relevant asset to a company engaged in non-gas utilization activities or use the relevant asset for non-gas utilization activities.

Accordingly, the GUIA Guideline requires a company that has transferred an asset for which GUIA has been claimed to disclose to the FIRS details of any sale or dealings with the qualifying asset within three (3) months of the transaction.

Non-interference with Capital allowance

The GUIA Guideline affirms that the grant of the GUIA will not affect the claim of capital allowance or reduce the value of an asset on which capital allowance is claimable by a benefitting company.

C. Nigeria Upstream Petroleum Regulatory Commission Guidelines on Hydrocarbon Liquid Content in a Nag Field.

Following the issuance of the Order, the NUPRC issued the "Guidelines for Determining and Measuring Hydrocarbon Liquids Content in Non-Associated Gas (NAG) Fields" (the "**Measurement Guidelines**"). The Measurement Guidelines provide for the accurate determination of HCL content from an NAG field and reservoir and applies to all greenfield licensees and lessees producing natural gas.

The Measurement Guidelines stipulate that the measurement of all Natural Gas Liquids shall be by dynamic method of measurement except where static method of measurement is approved by the NUPRC.[13]

Sunset Provision

By paragraph 5.0 of the Implementation Guidelines, the Order shall cease to apply once the fiscal incentives granted under it are introduced through a formal legislation.

Similarly, the Gas Tax Credit granted by the Order ceases to apply where first gas production is not achieved by 1st January 2029 (Sunset Date). Where however, a company's inability to achieve first gas production by 1st January 2029 is occasioned by the occurrence of a force majeure event[14] the operator may be entitled to an extension of the Sunset Date by the NUPRC.

[13] Paragraph 4.1 of the Measurement Guidelines
[14] Force Majeure Event is as defined under the Implementation Guidelines

D. Conclusion

The Implementation Guidelines, which harmonizes the subsidiary guidelines issued by both the FIRS and the NUPRC, provides the much-needed clarity on the implementation of the Order.

The Order offers significant tax relief for companies involved in NAG exploration and development, particularly in greenfield onshore and shallow water locations. The accompanying Implementation Guidelines has now clarified how to claim these benefits. Both the Order and the Implementation Guidelines will mark a significant step forward for companies operating in Nigeria's oil and gas industry. Companies must carefully navigate the eligibility criteria and adhere to the reporting and measurement requirements to maximize the benefits.