NIGERIAN TAX INCENTIVES LAWS AS VEHICLE OF INDUSTRIALISATION & GLOBAL TRADE

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ABSTRACT

This paper examines the legal aspect of various tax incentives available to local and foreign investors in Nigeria. It focuses on the export processing, Agriculture, oil and gas exploration companies and other enterprises undertaking pioneering activities towards Nigerian quest for total industrialization and integration into world economy. It would assess specifically; the developments in similar jurisdictions i.e. discuss the trends at the regional and global levels. It seeks to argue that generous tax incentives are the most successful method of inducing foreign investments judging from the rising profile of the expansion of investments in the gas, manufacturing, agricultural sectors, increase in world trade and payment of substantial part of all Nigerian outstanding foreign debts. It asserts that tax incentives alone without political or democratic stability/successful political transition, observance of rule of law, war against economic/financial crime stipulated by FATF to ensure fiscal probity, irreversible deregulation and trade liberalization cannot; achieve the desired result. It would further appraise and critically review the resultant impact of the legislations dealing with tax incentives in terms of legal, economic advantages and disadvantages in the Nigerians match towards complete industrialization. It shall conclude with criticisms and proposals for reform.

GENERAL INTRODUCTION

In the oil boom of 1970's Nigeria earned over 5 billion USA dollars annually. This discovery of oil fortune, resulted into the neglect or diversion of attention from other vital, enormous agro-allied resources sectors as the economy turned into mono-export product one entirely dependent on oil. Owing to the declining fortune attributable to oil glut, there is the need to diversify the economic base and encourage aggressive drive in the non-oil sectors particularly to encourage the Organized private sector to invest in the export processing, manufacture and gas utilisations. Heterogeneous products economy would encourage deviation from excessive reliance on oil, generate more revenue in terms of foreign exchange and create employment opportunities. In line with the urgent need to promote competition, trade liberalisation, technological development and create conductive environment to attract investors, encourage other sectors of the economy as alternative road to industrialisation prompted the Nigerian government to promulgate appropriate fiscal legislations which would provide tax incentives, rebates, subsidies, accelerate, induce, harness potentials in the industries. Export free Zones Acts† were passed designating various areas viz:- Calabar, Kano, Lagos, Maiduguri, Tamaro/Agbado, Ondo/Ogun and Port Harcourt as FREE TRADE ZONES/centres to facilitate private sector driven economy. Even in 2000-2006 budget the Federal Government restated and continued the implementation of the trade liberalization and incentive scheme to encourage competitive pricing.

† See Nigerian Export Free Zone Act 1992 & Nigerian Oil & Gas Exports Free Zone Act 1996. Both tax incentives statutes were amended in 1999 & 2003 to remove all trade barriers.
Industries were also urged to take advantages of the protocol on ECOWAS (Economic Community of West African States) which provided for the elimination of trade barriers including taxes and levies in respect of the movements of manufactured goods. We shall consider the meaning of tax incentives, the scope of the legislation and the extent of its availability to the pioneering industries whose economic activities fall within the ambit or relate reasonably incidental to the export processing, agricultural, oil and gas sectors of the economy.

TAXING POWERS OF GOVERNMENT

The government of Nigeria like most others in different parts of the world has plenary of powers to impose any form of tax legislation and at whatever rate it deems appropriate. Strictly, taxation is not subject to any constitutional restrictions.


4. S.4 Nigerian Constitution 1999 & item 58 Exclusive Legislative list empowers the National Assembly (Federal Parliament) to make tax laws, impose any form of tax for any purpose and at whatever rate. See also items 7 and 8 concurrent list on the collection of tax by states, Akanle O. (Prof.) Tax Law & Administration in Nigeria (1991) P.1 at 8 (Nigerian Institute of Advanced Legal Studies (NIALS).

5. In U.K the power to impose tax is the part of Sovereignty of Parliament - See Burtterworths Tax Guide P. 3. (Infra).


7. See S.91(3) British North America Act 1867 which Conferred Powers on the Dominion Parliament to make tax laws in relation to raising money by any mode or system of taxation. See also S.122 Canadian Constitution to the same effect. Each of the provinces of Canada has Power under S.92(2) Canadian Constitution to raise direct taxation within the Province in order to generate revenue for its purposes. Similarly, under 1963, Nigerian Constitution each state had sole jurisdiction to impose personal tax on individuals resident or deemed resident in its territory.

8. Under Article 2, SS.8(2) 10(2) USA Constitution; the Congress has power to levy and collect taxes, duties, imports and excises. Each state in USA could impose duties and excises on goods circulating inland -See Lane P.H. Australian Federal System with USA:- analogies p.570 (1972) (Law Books Co. Ltd).
limitation. Basically, a tax payer can only be taxed pursuant to clear legislative enactment when the wordings of the statues are very clear to that effect. In otherwords, there must be an express statutory authority before tax can be imposed. By definition, taxation is a pecuniary burden imposed on the properties, income, activities of individuals, companies etc in Order to generate revenue and channel same to support important government projects which are beneficial to the public.

TAX INCENTIVES

Strictly, it is a compulsory exaction of money or its equivalent by the public authority for the purposes of public utilities enforceable by law and it is not a payment for services rendered. The flip side to the resources allocation dimension of taxation policy is its role in promotion investment. One of the critical measures of ensuring a healthy economy is to create new assets - new wealth. An indirect assessment of this parameter is the level of investment and taxation often used as a driver for savings and investment. Taxation is a tool of securing competitive advantages to aid economic development in an increasingly interdependent world. No doubt, the tone of stock markets around the world changes with the movement in the fiscal policy; depending on the analysts readings of the strategic consequences of the movement in taxes.

9. Williams V. Lagos State Development Property Corporation (1978)3 SC at 17 - 19 where the Supreme Court of Nigeria held that tax law is statutory; it represents the policy powers of the State which must be exercised only upon the clear letters of statutory enactments. Consequently, the tax payer can only be taxed pursuant to legislative authority.

10. Attorney General V. Wiltshire United Daireies (1921) 37 TLR 884 Cheney V. Conn (1968) ALL ER 77 (1968) 44 Tc 217. See also Anderawos Timber Trading Co. Ltd V. FBIR (1966) LLR 195 to the effect that the aid of English Courts' decisions can be invoked in interpreting tax laws in Nigeria where the expressions or terms are similar to those used in the English statutes.


12. Matthews V. Chikory Marketing Board of Victoria (1938) 60 CLR 263 at 276 per Latham C.J. See also Indian Supreme Court case where this definition was adopted - commissioner Hindu Religious Endowment (Mandra) V. Sri Lakmutt (1954) SCR 1005 at 1040 per Mukherjea J.


12B. See note 12A (supra)
Wise government therefore worry about creating competitive advantages which is a consideration of the owners of capitals. In exercise of its unlimited powers of taxation, the legislature oftentimes deliberately varies its fiscal policy or entirely waives its right to the payment of taxes through statutory grants of **EXEMPTIONS** and **JUICY INCENTIVES** as an integral part of economic strategy. Tax incentives/exemption are not defined. They synonymous with inducements, freedom, privilege, release, abatements and licenses given to certain categories of tax payers not to pay tax at all or pay at reduced or minimal rates. It is a tax holiday, tax sparing device, a tax haven or immunity from the obligation to pay tax in whole or in part. Tax incentives are thresholds where no tax is paid and they are offered to influence investments through favouring certain industries or activities with avowed purpose of development of economy, create efficiency and faster rate of growth. Fiscal policies used to manage economy, to encourage entrepreneurs to create employment, boost the economy are tax incentives.

Apart from individuals and companies, charities and educational trusts could enjoy tax exemptions if the words of the statute are clear to this effect. Through the process of exemption partially or completely, the grantee/tax payer enjoys exclusion by law from the liability of assessment and payment of taxes. Tax exemption is usually granted as incentive to boost industrial activities. In substance, it is a device to woo, encourage or attract foreign investors, improve gross national income through foreign earnings, induce economic developments and influence favourable balance of payments with other countries.

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In Nigeria, it is not available to all categories of business concern but only to capital intensive pioneering companies and individuals engaged in the manufacturing of goods for exports/incidental commercial activities in the export processing zone, oil/gas export free zone etc. These tax exemptions and incentives are the government methods to indirectly subsidise, grant, dole, support etc the cost of the pioneering efforts in this area and minimise the risk involved in the high technology and capital intensive projects. Tax incentive is not peculiar to Nigeria alone. In Britain, to induce investment in industry, Enterprise Investment Scheme (EIS) was established in 1994 to replace a previous one known as Business Expansion Scheme (BES). Under EIS, those subscribing for shares in qualifying companies, essentially unquoted UK trading companies are entitled to tax reduction of 20 percent of the amount invested during the tax year provided the minimum £500 and maximum £100,000 are invested. Other qualification is that the investor must retain the shares for at least 5 years or the EIS tax relief is lost. As a further incentive, any capital gain arising from the eventual disposal of the shares is exempted from tax and at the same time loss arising from the disposal is eligible for relief. Similarly, as a way to encourage savings and investments in house ownership, banks and building societies in Britain since 1991, have been able to offer "tax exemption special savings account" (TESSA).

THE SCOPE OF TAX EXEMPTION LEGISLATIONS

It is necessary to examine the scope of the tax exemptions available to the pioneering industries whose economic activities fall within the ambit of the export processing, oil and gas sectors of the economy and how the various legislations affect these sectors for the process of industrialization and boasting world trade under separate headings.


19A. Ayua op. cit 307.


20A. See note 20 (supra).

TAX EXEMPTION FOR EXPORT PROCESSING ZONES

Manufacturing sector of the Nigerian economy has not fared well. In 1996, it accounted insignificantly for just 6.9 percent of the gross domestic product (GDP)\(^{21c}\) in the year where the economy as a whole barely showed any growth. The growth of 3.3 percent recorded was virtually offset by 2.8 percent rise in population in 1997. The economy is generally said to be growth when the manufacturing sector accounts for 20 percent of GDP. The developed economies show figures as high as 45 percent or more. In 1997, the manufacturing sector declined by 1.1 percent thus worsening or further shrinking the fortune of this sector. Since the manufacturing private sector is the engine of economic growth, the 2003-2006 Nigerian budget confirmed and restated the continuance of all the tax incentives policies of 1992 to 1998 in order to revitalise this ailing sector.

The Federal Government of Nigeria (FGN) in order to induce faster industrialization particularly the manufacturing sector, maximize employment opportunities, acquired vast acres of land and designated them as free trade zones\(^{22}\). There are presently two of them viz:- the Calabar FTZ located at Cross River State and Onne/Ikpokiri FTZ situated Port Harcourt Rivers State respectively. From 1999 to 2006, more Free Trade Zones have been created in Kano, Lagos, Jigawa, Tamaro/Agbado, Ondo-/Ogun etc parts of Nigeria. Apart from making land available to the industries, FTZ is a form of industrial estate which facilitates closeness of factories to the highways, good roads network, power supply, telecommunication, Security, nearness to financial institutions, 200 metres distance from the seaports etc Strictly, it is only the enterprises carrying on approved activities that are entitled to list of tax exemptions and other incentives within the FTZ complex.

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21A. See note 21 (supra), note that up to £9000 in total may be invested in TESSA. On maturity after 5 years, a second TESSA could be opened within 6 months of the maturity date of the original TESSA.

21B. See note 21A (supra).

21C. See note 12B (supra)

A body corporate having perpetual succession and common seal with the legal capacity to sue and be sued called **NIGERIAN EXPORT PROCESSING ZONE AUTHORITY (NEPZA OR NEPROZA)** is saddled with the responsibilities to manage, control, supervise, co-ordinate all the enterprises whose activities are approved and established in the zones including the power to acquire, hold or dispose movable and immovable properties in the course of the prosecution of its objects. The duty of **NEPROZA** extends to the construction and completion of perimeter fence and gates of the zones as a condition precedent to the commencement of business operations in the zone. Other functions of **NEPROZA** include the demarcation, designation, naming and specification of the limit of the zones as a condition precedent to the commencement of business operations in the zone and from time to time order; amend, vary or add to the limit of the zone or change its name. In course of the administration of the zones, **NEPROZA** could approve development plans, budget for the infrastructures, buildings, provisions and maintenance of the services and facilities. As part of its strategies, **NEPROZA**, has power to prescribe and approve all the business activities carried on within the zone.


26. S. 2 (2) (ii) NEPZA 1992. The Ghana Investment Centre Pursuant to the Act of 1994 has the duty to advice government on measures for the protection and promotion of industries, to monitor, co-ordinate all investment activities and perform other functions incidental to the attainment of the objectives of the Act. Ghana is also a member of the Multilateral Investment Guarantee Agency (MIGA) an organ of the world Bank which provides international insurance cover for investors in the developing countries.


However the day to day management all the Free Trade Zone is handled by a private company DMS International limited under contract with NEPROZA thereby facilitating private and public sector partnership, with the private sector in the saddle.

It is necessary at this point to categories the activities of the enterprise capable of operating within the export processing zone (EPZ) so as to be able to determine its entitlement or qualification for tax exemption package. Strictly, it is only the approved activities carried on by the business concern that would qualify it to claim tax reliefs and exemption from all the taxes, levies and rates imposed by the Federal, State and local Government Authorities in Nigeria. To be able to enjoy the tax concessions, any enterprise or business concern shall apply to NEPROZA in writing for permission to operate business enclosing documents and other required information in support. Subject to its discretion, NEPROZA may grant approval to the business concern to undertake the specified activity on terms and conditions it thinks fit.

This application procedure is identical to what obtains in Irish Shannon Free Zone. In respect of the latter, a formal application must be made to Shannon Development Agency (SDA) in order to qualify for the tax incentives. Once approved, it is further referred to the Minister of Enterprises and Employment for an operation license and furthermore to the Minister of finance for a tax certificate. While the requirements for the approval of the business activity in Nigeria is subject to the discretion of NEPROZA but the information and document required by the Irish SDA are more specific about the size, history, share holding details of the enterprise, technical proforma of the proposed business activity for which tax incentive certificate is sought, accommodation and facility available, management skill and staffing level requirement, finance/capital structure, profits projection/loss accounts/cash flow balance sheets, and an outline of the project’s contribution to the economy of the Shannon region.

33. SS.8, 18 (1) (A) NEPZA 1992.
34. S.9(2) NEPZA 1992. Compare Certificate of status of investment which specifies conditions to be satisfied for eligibility of the proposed foreign investment; such application is made to the Minister of Trade & Industry Controlling NIC Pursuant to SS.5(1) (2) (3), 6(1) (2) Foreign Investment Act 1990 (Namibia).
36. E & Y international Service Operations (supra) p.7
37. See note 36 (supra).
38. ibid. See also S.7 Shannon Free Zone Act 1959 (Ireland) Repealed by 21 & 25 Industrial Development Act 1986 (Ireland).
The basic criterion the would be satisfied before a business concern is granted operation licence and tax immunity certificate is that its activity must be export processing oriented. Its operation must fall squarely within the ambit of the definition of the term "approved activity". The tax immunities and incentives are primarily geared towards export oriented activities which include manufacturing of goods for export, warehousing, freight forwarding, custom clearance, handling or duty free goods though the process of transshipment, sorting, marketing, packaging etc, banking, stock exchange, insurance, reinsurance, other financial services, import of goods for special services, exhibitions, publicity, international arbitration services, activities relation to integrated zones and others deemed appropriate by NEPROZA. The Irish SDA activities are more elaborate but not exhaustive; though there are very few restrictions on the type of activities that can locate there. The overriding substantive requirement is that the proposed business activity must contribute to the use and development of the Shannon airport through new jobs creation and generation of the traffic movement of the passengers, Cargo freight. The job generation capacity of the approved enterprise is judged in terms of its ability to create more or less 15 jobs over 3years period and at least 90 percent of the total income should be derived from the export activity. From the comparisons of the two systems, it would appear that the approved activities must be export generating. Therefore, if the activities are not geared towards export of goods and services enumerated above in the sense that they are not oriented towards foreign exchange earnings i.e. of being exported or performed in foreign land, they would not qualify for tax exemption.

39. S.28 NEPZA 1992. Compare the qualifying Project or activities i.e. export Oriented ones under Irish Shannon Free Zone and industrial investment Schemes in UK unquoted qualifying trade companies & House ownership inducement savings Schemes. See notes 20 & 21.

40. 3rd Schedule NEPZA 1992. Compare Ghana Investment Promotion Centre Act 1994 (GIPCA), the Centre an equivalent of NEPROZA, with the object of facilitating economic recovery and promoting investment; can award automatic investment incentives and benefits without prior approval. Such incentives include import duty exemption administered by the Customs, Excise, preventive service and tax incentives administered by the Federal Revenue service.


42. S.4 Shannon Free Zone Act 1959 (Ireland).

43. Logical deduction from notes 38 to 42. See also Guobadia D.A. (Prof.) Issues Facilitating Foreign Investment For National Development (1998) Vol.2 (No.4) MPJFIL P. 38 at 51.
In Ghana the tax incentives range form tax holidays from the beginning of operations by the enterprise in the designated business viz: agriculture, agro-industry which enjoy 5 to 10 years, Rural banking 10 years and real estate business income-5 years tax holidays respectively 43A.

What constitute taxes, levies and rates are not stated in the Act. It would appear to include all revenue impositions of FGN in form of companies income tax (CIT) withholding tax (WT), petroleum profits Tax (PPT), value Added tax (VAT), capital gain tax (CGT), education tax (ET), stamp duties (SD). The levies include impositions by all or any of the government of the 36 states of Nigeria in form of roads, business premises registration, developments funds contributions, streets naming registrations, fees for procurement of certificate of titles for the statutory right of occupancy for urban lands and market stalls. The rates encompass impositions by the local Government Authorities for shops, kiosks, on and off liquor licence, slaughter slab, fees for the procurement of certificates of title for the customary right of Occupancy for rural land, motor parks, wheelbarrow/cart fees, radio/television licences, wrong parking charges, public conveniences, sewages/refuse disposal and sign boards/advertisement fees.

All the enterprises operating within the EPZ whose business undertakings fall within the ambit of the definition of approved activity are conferred with statutory tax immunity. Apart from total exemption, there are other tax incentives available to the export processing business.

43A. See Notes 43 (above) and 58 (below).
44. See notes 43 (above) and 58 (below).
45. For Companies resident at Federal capital Territory (FCT) Abuja, State Capitals, Urban cities and non-resident individuals.
46. See note 27 (supra). For discussions on the exemption of educational expenses in the computation of tax liability for capital gains made in the disposition of capital assets - See Shodipo V. FBIR (1992) 1 NTC 273 (Nigerian Tax Cases).
47. See notes 26 - 28 (supra).
These include import duty free in respect of any capital goods, consumers' goods, raw materials, components or articles imported into the zone intended for the use of the approved activity notably construction, alteration, machineries reconstruction, extension or repairs of premises in the zone or the equipment thereat\textsuperscript{50}. The duty free articles include building materials, tools, plants, fertilizer, machinery, pipes, pumps, conveyor belts, appliances necessary for the construction, alteration, repairs of the premises, capital and consumers' goods, raw materials used for the construction in the zone\textsuperscript{51}. The other types of equipments in this category are those used in the offices, ancillary facilities necessary for proper administration, health, safety, hygienic, welfare of the employees and others which \textbf{NEPROZA} may specify\textsuperscript{52}. All the enterprises with approved business activity are entitled to repatriate its foreign capital investment\textsuperscript{53}. Others include rent free land during the construction stage\textsuperscript{55} and the export processing company who incurred expenditure in its qualifying building, plan, equipment in an approved activity in the zone shall be allowed 100 percent capital allowance in any year of assessment\textsuperscript{56}. The option or choice of this particular relief disentitles the same company recipient from claiming investment allowance\textsuperscript{57} simultaneously. There is an additional incentive. Up to 100 percent foreign ownership of business in the zone is allowable\textsuperscript{58}.

\textsuperscript{50} SS. 12 (1), 18(1) (d) NEPZA 1992.

\textsuperscript{51} See 4th Schedule NEPZA 1992. The lists are not exhaustive - See note 52 (infra).

\textsuperscript{52} S.12 (2) (3) NEPZA 1992.

\textsuperscript{53} S.18 (l) (b) NEPZA 1992.

\textsuperscript{54} s.18 (i) (C) NEPZA 1992.

\textsuperscript{55} S.18(1) (f) NEPZA 1992. Under the Irish Shannon Free Zone, the Shannon Development Agency could give rent subsidy, grants etc as allowable expenditures - See Ernest & Young op.cit p.4.

\textsuperscript{56} S.12 Finance (Miscellaneous Taxation Provision) Act No.31 (1996) amending S.28 (c) (i) Company income Tax Act Cap. 60 LFN 1990.

\textsuperscript{57} S.12 Finance (MTP) Decree (Supra) substituting a new S.28 (c) (ii) CiTA (supra).

\textsuperscript{58} S.18(i) (h) NEPZA 1992 further Consolidating the scrapping and repeal of the Enterprises Promotion Act 1973. See also Nigerian Investment Promotion Act 1995 also designed to create Conducive investment climate for foreign investors.
Furthermore, the same tax immunity would entitle the export processing enterprise operating within the demarcated zone to claim exemption from taxation liability computed in the foreign currency in which the transaction was carried on or affected\(^{59}\) if petroleum products or mining activities are involved. Similarly, profits made from goods exported from Nigeria are exempt from tax provided the proceeds are repatriated and reinvested in Nigerian and used exclusively for the purchase of raw materials, plants, equipments and spare parts\(^{60}\). The same treatment applies to profits of a company whose supplies are exclusively used as inputs to the manufacturing of products for exports; such profits are exempted from tax provided the exporter shall furnish the certificate of purchase to the seller of the supplies\(^{61}\).

In the same way, export processing enterprise could deduct 100 percent of the basic salaries of its employees\(^{62}\) as allowable expenditure and if it embark on **research and development** activities for commercialisation, it could deduct further 20 percent **investment credit tax**\(^{63}\). As part of the package of tax immunities and incentives designed to encourage companies engaged in approved manufacturing in the export processing zone, reconstruction and investment allowances are deductible in respect of plants and equipments\(^{64}\). Presently, profit or gain of 100 percent export oriented undertaking within the zone is exempted from tax within the first three years\(^{65}\) subject to the following qualification. Firstly, the undertaking was not formed by splitting or breaking up or reconstruction of a business already in existence\(^{66}\).

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60. S.14 Finance (MTP) Act No. 32 (1996) adding a new S.19 (i) (q) to CITA Cap.60 (supra).

61. S.14 Finance (MTP) Act No. 32 (1996) adding a new S. 19 (i) (r) to CITA Cap. 60 (supra).


64. S.28 CITA as amended by Act No.3 (1993). Under Irish Shannon Free Zone, 100 percent accelerated tax depreciation is available for plant and equipment including those leased Overseas - See Ernest & Young International Services & Operation pp. 3 - 4.


66. See note 65 (supra) adding S.28 C (3) (ii) CITA (supra).
Secondly, the tax immunity seeking manufacturer must be able to produce article and export at least 75 percent of its turnover in the relevant year. Thirdly, the undertaking was not formed by transfer of machinery or plants previously used for any purpose to the new undertaking or where such second hand or used ones are transferred; they do not exceed 25 percent of the total value of the plant/machinery. Fourthly, the undertaking must repatriate 75 percent of the export earnings to Nigeria and place it in the domiciliary account in a registered and licensed bank in Nigeria. These are welcome statutory safeguards and to forestall possible abuse by Nigerians and foreign investors in the zone. If these four criteria are rigidly enforced, only genuine investors would be qualified to operate in the zone and at the end of the tax holiday of three years, only the tax written down value of the assets shall be carried forward.

Apart from the above, Hotel and Tourism also qualify under FTZ as "approved other business activities" deemed appropriate in the in not exhaustive but subject to extension, addition and alteration by NEPROZA. The hotel/tourist enterprise generating its service for export to earn foreign exchange is entitled to partial tax exemption or concession of 25 percent of its income in convertible currencies provided such income is put into a reserved fund to be utilised within 5 years for the purpose of tourism development. Similarity, investment tax credit of 25 percent in value is available to company within the zone for its qualifying capital expenditure, if it engages in the fabrication of spare parts, tools equipments for local consumption and export as partial tax incentive. Companies who purchase locally manufactured plant, machinery, equipment for use in their business have allowable 15 percent investment tax credit on such fixed asset bought for use.

67. See note 65 (supra) adding S.28C (3) (iii) CITA (supra).
68. See note 65 (supra) adding S.28C (3) (iv) CITN (supra).
69. See note 65 (supra) adding S.28C (3) (v) CITA (supra).
73. S.22 Finance (MPT) Act No.32 (1996) introducing a new S.28 (F) (i) CITA (supra).
74. See note 73 (supra) introducing a new S.28 (F) (ii) CITA (supra).
Apart from the reduction of the rate of tax from N0.50 to N0.35 there are other tax reliefs available. The company who incur expenditure for the replacement of obsolete plant, machinery-new for old, repairs, refurbishment or renovations is entitled to 15 percent investment tax credit, whereas in the case of outright purchase of new assets for the entire replacement, the company would enjoy once-and-for all 95 percent capital allowancethe first year with 5 percent book value retention until the final disposition of the particular asset(s). There is a ceiling place on this relief. The aggregate allowances granted in respect of these assets shall not exceed 95 percent of their total costs. In comparison the Ghana Investment Promotion Centre Act 1994 also made provision for capital allowances for accelerated depreciation for all sectors except banking, finance, commerce, insurance, mining and petroleum. Those sectors that enjoy the accelerated depreciation allowances do not get the benefit of annual allowances.

**TAX EXEMPTION FOR OIL & GAS EXPORT FREE ZONE**

Nigeria is abundantly endowed with Natural gas. There are reliable statistical data that despite the enormous wealth of oil resources, Nigeria is richer in gas energy i.e. gas production ratio is 125 years compared to 30 years for that of crude oil; about the top 10th largest producer in the world market-the 9th after the defunct Soviet Union, Iran, Qatar, U.A.E, Saudi Arabia, USA, Algeria and Iraq. Nigeria is the second African largest producer after Algeria. She has estimated over 30 trillion cubic feet (tcf) (4.4 trillion cubic meters) (tcf) gas reserve unutilised. Unlike Nigeria, Algeria developed its gas resources which enhanced her Gross Domestic products (GDP). Gas is the by-product of oil exploration.

77. S.25 Finance (MTP) Act No.32 (1996) adding entirely new S.6 (3) and 2nd schedule to CITA (supra).
78A. See note 2 (supra) and statistics of Nigerian National Petroleum Corporation (NNPC).
Nigeria produces over 1000 standard cubic feet (SCF) of gas with every barrel of crude oil produced in the country. With the production of 2.2 millions barrels per day (bpd), an estimated 2.2 billions (SCF) of associated gas resources are produced daily and out of these, 75 percent are flared and wasted. No doubt, proper tapping of the gas resource could enhance Nigerian economic fortune by generating huge revenue. Access to Nigerian gas would also improve the economy of West African sub-region i.e. Ghana, Togo, Benin etc., because it would cure epileptic power generation thereby minimise problems of electricity supply. Since 1958 when oil was produced in commercial quantities, gas flaring has been one of the ugly features of petroleum production as the flames occasion environmental hazards and colossal waste of resources. To eradicate flaring necessitates channeling the gas to commercial and industrial utility as the gas has to be gathered, processed, compressed and piped in a consumable form. Colossal estimated cost of the conversion to consumable use is put between 600 million to 1 billion USA dollars. Nigerian government cannot undertake this huge investment alone without the involvement and co-operation of private sector including international community. In order to give Nigeria a pride of place in gas utilisation in the development plan, favourable tax statute which would create enabling environment for business to flourish is desirable. Apart from deregulation, tax incentive legislations were promulgated to induce investors aid or directly finance the economic exploitation of natural resources of gas, notably oil & gas export free zone decree. This piece of legislation is the same in framework, substance and effect with NEPZA discussed above. The oil and gas industries operating in the free trade zone (FTZ) are subject to the same rules like the EPZ. Onne/Ikpokiri area of Port Harcourt Rivers State has been designated as FTZ and the approved activity operating within the zone are managed, controlled and co-ordinated by a body corporate known as OIL & GAS EXPORT FREE ZONE AUTHORITY hereinafter called 'OGEFREZA.

79. Energy Watch Business world (Note 2 Supra) quoting extracts from paper presented by a Briton Mr. Michael Weston Managing Director of Shell Nigeria Gas Limited in an Energy Seminar held at Lagos Nigeria. See also Associated Gas Re-Injection Act 1979 now Cap.26 LFN 1990 as amended in 1985-1987 where the penalty was imposed for gas flaring as follows:- ₦0.02 (1985) ₦0.50 (1992)₦ 10.00 (1987-1988) per MSCF of gas flared.

80. See notes 78A to 79. All fiscal incentives for Gas utilisation were restated in the budgets of 1996-1999.


82. SS.1 (i), 5 OGEFZA (1996).

83. S.1 (2) OGEFZA (1996).

OGEFREZA has all the powers, duties, functions, procedures and responsibilities of NEPROZA. The only exception is that its duties are very much specialized only in relation to approved oil and Gas enterprises operating within the FTZ.

Strictly, only an approved enterprise operating within the EFZ are entitled to exemption from all Federal, States and local government taxes, levies and rates. To qualify for this exemption, the enterprise must apply in writing for permission to operate or undertake the approved business activity and enclose documents and information in support as may be required by OGEFREZA who may grant the licence subject to such terms and condition as it thinks fit. The applicant enterprise may be an individual or business concern and the grant of the licence shall constitute registration within the EFZ. Anybody corporate licensed to operate in EFZ and undertaking an approved business activity shall notify OGEFREZA of any purchase, assignment or transfer of its shares except where its shares are quoted and freely transferable on international stock exchange market. Apart from total tax exemption, there are other tax incentives available. Capital and consumers' goods, raw materials, components or articles used for the construction, alteration, reconstruction, extension and repairs of the premises or intended to be used for the purpose of and in connection with an approved activity shall be imported into the EFZ free of custom duties. The import duty free goods include equipments in offices and other facilities necessary for the proper administration, health safety, hygiene, perimeter fence, gate and welfare of the employees.

85. See the discussions in notes 23 to 35 (supra) and repetition here is both unnecessary and superfluous.


87. SS.8, 18(I) (A) OGEFZA (1996).


89. SS.9 (2), 10, OGEFZA (1996).

90. S.10 (1) (2) OGEFZA (1996).

91. S.10 (3) OGEFZA (1996).

92. SS. 12 91), 18(1) (d) OGEFZA (1996).

93. S.12 (2) OGEFZA (1996)
Furthermore, the approved enterprise operating in EFZ shall be entitled to receive payment for goods and services in foreign currency and persons who supplies goods and services to an approved enterprise within EFZ shall be paid in foreign currency. Other incentives include repatriation of foreign capital investment in the EFZ at any time with capital appreciation of the investment, remittance of profits and dividends earned by the foreign investors; and an up to 100 percent foreign ownership of businesses are allowed including rent free land at the construction stage. It is noteworthy to observe that the business concern can claim exemption from tax and the incentives stated above only when the operation in the zone have commenced. Strictly, the operations within the EFZ shall commence on the date when the construction of the perimeter fence, gate and demarcation of the zone have been completed and OGEFREZA has assumed duties.

Another form of reassurance to foreign investor is the promulgation of NIGERIAN NATURAL GAS (FISCAL) INCENTIVES, GUARANTEES & ASSURANCE Act 1995. Under this Act the NLNG Limited is effectively insulated from the prevailing legal and policy investment climate and from the control by the various bodies, conflicting rules, bureaucratic delays as to the status of the company or applicable rules. Pioneer status is conferred on NLNG in accordance with the law and consequently, it is entitled to 3 to 5 years tax exemption for long term foreign loan and a further tax relief for the first 10 years of the commencement of business of export of natural gas.

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96. S.18 (i) (b) OGEFZA (1996).
97. S.18 (i) (c) OGEFZA (1996).
98. S.18 (i) (g) OGEFZA (1996).
100. S.18 (4) OGEFZA (1996).
103. 1 Industrial Development (Income Tax) Act 1971 now Cap. 179 LFN 1990 (IDITA)
104. S.2 IDITA 1990.
After the expiration of the tax holiday stated above, NLNG would be subject to low basic rate of tax 30 percent under CITA and not the higher rate of tax of 85 percent under 104A PPTA. Consequently, it is further entitled to deductible tax allowance on interests on loan 105 and it enjoys total exemption from NATIONAL SHIPPING LINE POLICY ACT 1997 and therefore all customs' duties, levies, charges and imports laws of similar nature are not binding on NLNG. Exemption from tax embraces the extension of immunity from liability to pay tax in the currency in which the transaction was affected or currency in which the computation giving rise to the assessment was made 106. Similarly, expenditures incurred by Oil & Gas Industries "OGI" in the EFZ (EPZ) in its qualifying building and plant equipment in the approved business activity are entitled to be granted 100 percent capital allowance in any year of assessment 108. Any company who is granted this tax relief shall not be entitled to claim an investment allowance 109. -i.e. capital allowance (CA) - minus investment 110 allowance (IA). The other deductible allowance while computing the adjusted profit of "OGI" in any accounting period from its petroleum operations shall include all outgoings and expenses wholly, exclusively and necessarily incurred within or outside Nigeria. For the purpose of oil and gas activities, allowable expenses also include rents payments incurred in respect of building occupied under an oil prospecting licence or an oil mining lease for disturbances of surface rights etc in the computation of its profits.

104A. Shell B.P Petroleum Development Co. Ltd V. FBIR (1976)1 FNLR 197


106. S.41 Finance (MTP) Act no. 30 (1996)


110. see NOTE 109 (SUPRA).


Similarly, all royalties paid or incurred in respect of the sales and delivery of natural gas to NNPC or royalties paid for crude oil or casing of head petroleum spirit won in Nigeria are equally deductible in the computation of profits. All other expenditures or tangible costs directly incurred in connection with the drilling, appraisal of the development wells, all sums, liability to Federal, States and local government Authorities by way of duty, customs excise duties, stamp duties, tax, rates, fees or other like charges are all allowable expenditures. Assets used first for petroleum activity entitles the "OGI" to claim petroleum investment allowance computed according to ordinary principles of commercial accounting in accordance with the rate set out in table1, second schedule.

Strictly, 95 percent expenditures are allowable. Act No.32 of 1996 as amended in 1999 introduced another form of concession, relief or tax holiday for solid minerals mining companies. Any company going into the business of mining of solid minerals are exempted from tax for the first 3 years of operation. Such new company is also entitled to initial capital allowance at the rate of 95 percent.

There is anxiety of prevention of waste of natural gas. There are two types viz.: Association gas (AG) non-Associated (NAG). The first category AG are the ones that come out and are flared during crude oil production, posing environmental hazards. The second group (NAG) are the types which occur on its own and form underground reservoir. There is the challenge of harnessing the potential wealth and energy fortune that could rehabilitate our ailing and epileptic electricity supply. No doubt gas is cheaper than other unreliable petrol fuel sources.

113. See the expansion of S.10 PPTA (supra) introduced by S.19 (b) Finance (MTP) Act No. 31 (1996).
115. S.19 (d) Finance (MTP) Act No. 32 91996).
118. Table 1, Finance (MTP) Act No. 31 (1996).
119. Certainly not an existing oil exploration Companies. See CIT V. NIPC LTD (supra).
120. S.20 Finance (MTP) Act No.32 91996) as amended in 1999.
They could be bottled cheaply and affordable even for cooking purposes, the compressed ones could be used for vehicles transportation as a reprieve for the perennial fuel scarcity. Finally piped gas for industries is very dependable. To stimulation the exploitation of this veritable source of clean energy, facilitate industrial expansion, Act No.18 1998 was further passed. This piece of legislation introduced more tax incentives to facilitate greater utilization of Associated and Non-Associated gas. Strictly, companies engaged in investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of crude oil development. Capital investment allowance on the facilities, equipment used to deliver associated gas in a usable form at utilization or designated custody or transfer point are deductible. This means 100 percent capital allowance minus investment allowance.

In the alternative, rents, royalties, expenditures connected with the separation of the gas from crude oil, its bottling and delivery to designated utilisation points are also deductible expenses incurred in the gas production, separation, marketing and distribution.

**AGRICULTURAL SECTOR EXPORT PROCESSING.**

Part of the taxation policy of the promulgation of Free Trade Zone (Export processing Zone Act) is to stimulate transformation of peasant agriculture into a mechanized commercial one. **WHITE FARMERS DISPLACED BY ZIMBABWE** Land Acquisition Act were invited and resettled in Kwara, Nasarawa & Kaduna States of Nigeria.

122. Over 13 Companies situate at Trans Amadi Industrial Layout turbine located at the Bayelsa State of Nigeria supplies electricity to Yenagoa State Capital and 82 Communities. Even the big city like Tokyo in Japan derive a third of its electricity supply from gas - See Energy watch note 2 (supra).


124. See notes 108 to 123 (supra).

125. See note 123 (supra) introducing a new S.10A (i) (b) PPTA (supra).

126. See note 125 (supra).

127. See notes 198 to 123 (supra) and William V. RTB (1992)1 NTC. 97.

128. S.4 (b) Finance (MTP) Act No.19 (1998) Where gas utilisation is defined as marketing, distribution of natural gas for commercial purposes including Power plant, liquified natural gas, fertilizer plant, gas to liquid plant, gas transmission and distribution pipelines.

128A. See notes 123 and 125 (supra).

The whole farmers now in their 4th generations whose farming expertise of many years commercial farming were granted 99 years Right of Occupancy pursuant to SS1. 34 and 36 Land Use Act 1978 since all the land ownership in Nigeria are vested in the state Governor. They have been given land, loan, and Nigerian citizenship in addition to tax holiday of over 10 years. Pursuant to SS. 1, 5, 6, 21, 22, 2, 26, 34 & 36 of Land Use Act, the maximum interest anybody can possess over land is scaled down to 99 years Right of occupancy subject to renewals on expiration. The commercial Farmers Union signed collaborative agreements on agriculture with Kwara & Nasarawa States Governors in July 2004. The farmers were given loans by the Federal and States Government and in addition FGN assisted them to source and secure additional credit facilities from financial institutions to enable then utilize the phases of 1st-1000, 2nd-4000 3rd- 7,000 and 4th- 700,000 hectares of land granted to them. The progress recorded within 2 years has been fantastic with the results that more of the Zimbabwean farmers now have Nigeria as their permanent home 129A. Owing to the tax incentives outlined above, over $12bn cassava flour market has been created with exports to China. Bread produced in Nigerian for export now have 10 percent content of High Quality Cassava flour (HQCF) with 90 percent wheat flour leading to $20bn saved for expenditure on importation of wheat, additional 1.20 million tons of fresh Cassava created annually to mop up the glut spurring more production; over 10,000 jobs created and private sector leadership ensured through the establishment of modern cassava flour processing factory (MCFPF) ensuring sustainable food, industrial use and export129B global trade. Livestock feeds recorded profitability of N748.42 million owing to this boost in agriculture attributable to tax incentives statutes 129C.

**APPRAISAL OF THE TAX EXEMPTIONS & INCENTIVES**

The main objective of the grant of the various tax exemptions, reductions and incentives stated above is to stimulate and encourage foreign investments in Nigerian developing economy. It is a common sight in oil drilling locations to observe large quantities of enormous natural gas flaring and wasting away daily. The gas if separated form crude oil and utilized, bottled or channeled into industrial use, could generate sustainable income.


129B. Success Digest publication (2005) March P. 4-25.

If the large depository of natural resources are to be adequately explored, exploited, managed or utilised, they would boast the economy. No doubt, gas exploration for local consumption, industrial use for manufacture and export; require huge capital outlay\textsuperscript{130} and intensive, complex, technical skills which are difficult to obtain locally. Therefore, the multinationals and foreign investors have been inducing by attractive, guarantee\textsuperscript{131}, enhanced tax incentives and exemptions. Tax incentives are strategic and most successful method of inducing foreign and local investors, judging from Nigerian rising profile in industrialization and increase in global trade. This is because in the third quarter of 2006, Nigerian economic growth hits 7.5 percent with the performance of non-oil sector recording 12.8 percent, the foreign exchange inflow=$16.6bn and $5.19bn out flow. Federal Government of Nigeria (FGN) nets $4.8bn from exports. Investment in gas, stood at $99.8bn while earning of $3.6bn from liquefied Gas was reinvested for further growth to capture significant export global market particularly in Equatorial Guinea and Trans Sahara. Owing to the effectiveness of tax incentives Nigeria recorded balance of payment surplus N34bn in the third quarter of 2006 and N398.0bn in 2005. With this boost in global trade facilitated by tax incentive climate Nigerian was able to pay off substantial part of its foreign debt of $12.4bn to parish club with $18.bn written of \textsuperscript{131A}. Other advantages include provision of employment opportunities \textsuperscript{132} for teeming population in Nigeria and facilitate the gradual transfer of technology \textsuperscript{133}. By virtue of this multiplier’s effect, the use of local raw material to fabricate things here boost the economy and export of the products. There is also the further advantage of the prevention of capital flight. Higher productivity and investment risks, obstacles etc are reduced to the barest minimum\textsuperscript{134} as capital costs can be recovered quickly and used for foreign exchange earning to develop local infrastructures\textsuperscript{135}.


\textsuperscript{131} Omorogbe; Yinka (Mrs) - Investment guarantees & Incentives in Nigeria Natural Gas Industry (1998) Vo;1,2 (No.4) MPJFIL P.142.


\textsuperscript{133} Fagbemi, O.A - Taxation & Acquisition of Technology p.278 (Akande Ed.).

\textsuperscript{134} Fajojutimi, A.o. - Foreign investment & Nigerian Taxation p.356 (Akande Ed.).

There are also disadvantages. Firstly, is the problem of erosion of sovereignty by powerful investors countries interfering in the domestic affairs of the host donee country unnecessarily 136. Economic might, might stifle political might. The most glaring demerit is the disproportionate benefits that could accrue to the donor foreign countries in terms of greater profits137. Consequently the host countries are sapped, drained, exploited, impoverished and starved of its valuable revenue138. It may further lead to inefficient and ineffective stimulus139 to tax evasion and complication in business tax legislation. There is the possible danger that these foreign companies may liquidate on the expiration of the period of tax incentives139A and transfer the share to a new company or embark on projects with short gestation, reinvesting the surplus in the hosts country thereby defeating the aims of these Acts. Inspite of the controversies140 over shortcomings141, the tax incentives are still beneficial. It is a good balance between countries like ours which can boast of enormous natural resources and others like Japan, Hong Kong etc who do not have land, forests, minerals but are endowed with human resources. The facilities of tax incentives therefore make the things in the world to go round. Countries with materials and human resources can interact, work together and achieve mutuality of balanced economy in a world where interdependence is indispensable.


137. Okele, J.B - Promoting Agriculture & Industrial Developments through tax Incentives (paper presented of at seminar of Chartered Institute of Taxation of Nigeria (CITN) (1995)8 June Vicotria Island Lagos.  See also Yelpaala, K. - Efficacy of Tax Incentives within the framework of the Neoclassical Theory of Foreign Direct Investment: A legislative Policy Analysis (1984)19 Texas International Law Journal P.365 where the learned author flawed the basis of tax incentive and argued that the perceived advantage as fragile because of the tendency of multinationals profits maximisation policy.


139. See notes 136 & 137 (supra).

139A. Ayua, I.A. op. cit P.307 and notes 136 (above).


Presently, the system of tax incentives to induce external investors to boast the economy of the host country is achieving tremendous success in South Korea, Egypt and Taiwan\textsuperscript{141A}. Taiwan presently has four Export processing Free Zones\textsuperscript{142}, and they yield $90 billion USA dollars annually relying on economic statistics\textsuperscript{142A}. Taiwan is a very small country without too much resources. Through the EPZ, foreign investors come to produce and export. Both the donors and host countries are better off economically in this form of world trade relationship.

**CRITICISMS & PROPOSALS FOR REFORM**

On the general assessment, the tax legislations examined above offer too generous, extra-ordinarily benevolent exemptions and incentives. There is need to balance excessive generosity with the prospect of industrial development. There is the possibility of abuse by foreign and local "business sharks" unless the enormous powers conferred on the NEPROZA and OGREFREZ are carefully monitored. We advocate that these two powerful organs should be turned into two separate limited liability companies whereby the government and individuals could own shares to avoid the cankerworm of bureaucracy and inefficiency associated with public corporation in Nigeria. There is strong indication that these two Acts were promulgated without the usual inter-ministerial consultations whereby the various Committees or National Executive Council could have been given the opportunity to debate on them to facilitate streamlined applications. Imputes on pertinent issues centered on the effects of the zones on the tax laws and collections from the inter-ministerial Committees could have led to the improved workability of these Acts. There is also the problem of inelegant drafting. The provisions of NEPZA and OGEFZA are so identical in the framework, substance and effect without due regards, understanding and appreciation of the environmental factors in terms of divergence in the zones (Calabar, Onne/Ikpokiri etc) and the fact that the two Acts deal separately with issues of manufacturing for export promotion on one hand and the Oil/Gas utilisation/export on the other hand.

\textsuperscript{141A} See Foreign Capital Inducement Act (South Korea), Egyptian Investment Law 43, Philippines Omnibus Investment Code.

\textsuperscript{142} See - our hope in EPZ (1995) 30 October Newswatch pp.29 to 32.

\textsuperscript{142A} See notes 141A & 142 (supra).

\textsuperscript{142B} See Hiller & Kanffman - Tax Incentives. For Industry in less Developed Countries (1963) Harvard Law School pp. 160 & 221 where it was alleged that popular experiences in Philippines show tax incentives were obtained by many unqualified companies through bribery thereby sabotaging the economic policies.
The manners of the implementation of the Acts inspite of their lofty aims appear shady and may eventually lead to their unworkability. Under S.2 (2) OIL & GAS EXPORT FREE ZONE ACT 1996, OGEFREZA has the function to approve enterprises intending to operate in the zone. Since the approved enterprises which are exempted from tax are those established within the zone and to be approved by OGEFREZA i.e. those established for the sole and exclusive purpose of operation within the zone, the legal effect is that the existing enterprises that have been operating in the customs zone of EFZ are not qualified to do so and therefore not entitled to tax exemption and incentives. Presently, OGEFREZA has been established in the zone and its governing board constituted as required by the law. Investigation carried out by the author revealed that a firm DMG International Limited that won a contract from a government ministry to manage the zone on behalf of the agency for 5 years. The management of free three zone on contract by the private firm enhance efficiency and constitute an innovation and cure to the red-tapism and bureaucracy associated with government Agencies. This is a major shift to private sector participation or private sector lead economic partnership.

It is worthy to observe that 13 and 9 years respectively after the creation of EPZ and EFZ, there are demarcation, fencing, construction of perimeter and gates as required by the Act pursuant of S.18(4). Arguably companies operating outside the free trade zone are not entitled to tax immunities; in which case their incomes would be the subject of taxation. It is arguable that these companies operating unlawfully within the vicinity to the zone cannot escape from liability to taxation until their activities classified by DMS International limited agents of NEPROZA and OGEFREZA. Consequently they can only claim the tax exemptions and incentives if their activities are within the protected zone. This is the legal position because in the case of SHELL PETROLEUM DEVELOPMENT CO.LTD V. FEDERAL BOARD OF INLAND REVENUE143 the supreme court of Nigeria held that the words wholly and exclusively144 mean solely145 or entirely or inevitably. Furthermore, the activities of companies poaching business in breach of statutory provisions cannot satisfy the "test of operation within the exclusive zones " to be able to enjoy the tax immunities.


144. See also Grout, V. - wholly, Exclusively Duality For Tax purposes (1989/90) BTR 49 at 96 - 111 (UK Butterworth Tax Guide by Tiley, John.

Strictly, exclusively refers to the motive or the object accompanying it; it is one of facts and purpose\textsuperscript{146}. Duality of purpose, part-business, part-personal\textsuperscript{147} benefit element derived\textsuperscript{148}, are disqualified. It is submitted that activities of these companies which are not motivated or carried out in compliance with the economic blue print stipulated by the Acts are barred from claiming the tax incentives on the principle of duality and remoteness\textsuperscript{149} adopted by both Nigerian and English courts.

It is further submitted that since these companies were neither approved nor were their activities sanctioned by the OGEFREZA, within the zones demarcated as mandatorily required, they should deemed not to be operating within the zones and therefore not entitled to tax exemptions/incentives. Their activities can be classified as poaching are dual in nature; partly personal or partly perhaps boosting the exports activities and they must be made to pay the appropriate tax, levies and rates prescribed in the tax laws. The attitude of the court is to interpret tax laws strictly\textsuperscript{150} in order to give effect to the wordings of the statute. In \textbf{JOHNSON V. JEWIT}\textsuperscript{151}, it was held that sham transaction will be disregarded and the court would not give effect to transactions which are not bonafide or which are used as a cloak to hide the real transactions. There is therefore the need to keep these poaching companies under surveillance, their books of account examined and the appropriate income, capital gains, corporation, petroleum profits, value added etc taxes assessed and paid to the relevant authorities. Any operation within the vicinity of the zone which is at variance with the Act is illegal and should be discountenanced as they are not entitled to any tax incentive. There is the need to subject the powers of NEPROZA and OGEFREZA to some statutory controls. In both \textbf{Ghana and Malaysia}, appropriate statutory provisions permit purposeful government interventions in the activities of \textbf{MIDA (Malaysia) and GIPC (Ghana)} respectively. The government of these two countries on the basic of public interest can determine the direction where foreign investment should be channeled.

\textsuperscript{146} Tiley, John - Butterworth UK Tax Guide (1982/83) op.cit. 216.


\textsuperscript{148} Griffiths V. Mockler (1953)35 TC 135 at 137.

\textsuperscript{149} Dollar V. Lyon (1981) STC 333

\textsuperscript{150} Johnson V. Jewit (1961) 40 TC 231, Aboud V. Regional Tax Board (1992)1 NTC 124.

\textsuperscript{151} (Supra).
CONCLUSION

It is necessary to conclude the discussion by emphasizing on political stability and discipline among the politician and Nigerian populace. No matter how attractive the tax reliefs may be, it would not produce the desired high investment results in a volatile political climate. Emphasis should be on civil rule rather than military dictatorship. It is recommended that any political party who suffered electoral defeat should quit governance honourably and give way to the opposition. It is widely believed in all quarters that had the National Party of Nigeria (NPN) relinquished Power in 1983 when it suffered electoral defeat or had it avoided the indignity of electoral fraud of rigging themselves back to power, the economic abyss Nigeria suffered between 1988-1999 would have been avoided. Clinging to power to the detriment of the people at all costs result to political and economic instability. Nigerian politicians should concede defeat whenever it is imperative to do so in order to create conducive political climate favourable for internal and foreign investments151A. A British businessman once observed152 that there are competing choice in the investments all over the world and that poor infrastructures and political uncertainties are inhibiting factors. Sustenance of democracy, transparency, accountability and current fight against money laundering and other Economic/financial crime hold key to Nigerian total industrialization as prescribed by Financial Action Task Force (FATF) Global anti-money laundering body based in Germany. Nigeria was eventually delisted from the list of Non Co-operating Countries & Territories (NCCT) since the promulgation of Anti-money Laundering Act 1995, Advance Fee Fraud Act 1995, Economic & Financial Crime Commission Act 2001 etc ensured financial transparency. There are massive investments especially in the area of manufacturing as confidence is renewed to rebuild the trade relationship152A. Between 2004-2006 over 10, 000 jobs have been created as Nigerian company operating within the free trade zone exported over 60 metric tons of cassava chips worth US$ 5 billions to Republic of China 152B.

151A. See Robert Pritchard - The Transformation in Foreign Investment law:- More than a pendulum Swing (1997)7 ICCLR 233 at 234 to the effect that the foreign investors are far more concerned with risk of adverse legal change over the longer term than the prospect of short term tax incentives. See further Victor Odozie - An overview of Foreign investment in Nigeria 160 - 1995 Central Bank of Nigeria Research Department paper No. 11.


152A. Nigeria is a very strategic market in the business world. Dwindling investments from Britain are due to unfavourable political and environmental climate - These were the words of Miss Rosy Wilkie Head of Entrepreneurs group of London Chamber of Commerce & Industry at a meeting held in Lagos - See the caption British Investors warn against derailing transition (1999)11 March pp. 1 & 4 Guardian Newspaper.

Shell also invested over US$ 4.5 billion in the processing, shipping and upstream gas within the zone. Owing to the tax incentives Nigeria allowed to the free trade zone, Nigeria exceeded its national macro-economics targets. In 2004, growth exceeded 5 percent target by half percent (5.5) and external reserve rose to US$ 18.4 billion in January 2005. In 2002 there was increase from US$ 4.9 billion to US$ 10.6 billion. In 2003 Agriculture output rose to 6.1 percent compared with 4.0 in 2002.

Even though wooing foreign investors appears to be a common strategy of many developing third world countries, the issue of excessive tax generosity require legislative reform. There is no place in the world even though we are trying to induce investments where such blanket, extra-Ordinarily benevolent tax exemptions are given, We should borrow a leaf from the SHANNON FREE ZONE OF IRELAND where instead of total tax exemption, a partial one of 10 percent corporation tax incentive was guaranteed till the year 2005 and for manufacturing the 10 percent rate applies till the year 2010, though subject to extension if the Irish government thinks fit. Though Irish tax incentives last for 6 to 10 years, the British ones are of 5 years duration i.e., EIS and TESSA respectively, that of Nigerian is of unlimited fiscal immunity and ad-infintum. The tax incentives in Ghana last between 5 to 10 years depending on the type of business viz:- agriculture, agro-industry, rural banking, real estates etc. The author advocates that our own FTZ must be tailored to have limitation like Irish, Ghana or India and UK fiscal incentive systems. Instead of total exemption, reduced or low rates should be adopted as protective measure. This should be in line with Industrial (income Tax Relief) Act 1971 whereby public companies which engage in pioneering industrial activities are exempted from tax for 3 to 5 years. Australia-Malaysia, Japan-Malaysia, Denmark-Singapore Tax sparing treaties last for 3-5 years duration. The reform should be tailored in conformity with this 1971 Act which allows a pioneer certificate to be issued on application entitling it to a tax holiday of 3 to 5 years duration depending on the capital invested. To have limitation like Irish, Ghana or India and UK fiscal incentive systems. Instead of total exemption, reduced or low rates should be adopted as protective measure.

153 See notes 41 & 42 (supra).
154A. See Ghana Investment Promotion Centre Act 1994. See notes 24, 26 & 40 (supra).
This should be in line with Industrial (income Tax Relief) Act 1971\textsuperscript{155} whereby public companies which engage in pioneering industrial activities are exempted from tax for 3 to 5 years. The reform should be tailored in conformity with this Act which allows a pioneer certificate to be issued on application entitling it to a tax holiday of 3 to 5 years duration\textsuperscript{156} depending on the capital invested\textsuperscript{156A}. The major snag is the Nigeria has no pre-determined list of pioneer industries like Mexico, Puerto Rico etc\textsuperscript{157}. Unlike the EPZ and EFZ in Nigeria, tax exemption in Mexico is not granted to every company on arbitrary basis\textsuperscript{158} but it depends on factors like the quantity and quality of labour to be used, grade of technical efficiency, the degree of the use of equipment and machinery produced in the country, the volume of raw materials, finished goods and value of investment\textsuperscript{159}. India grants investment allowance of 25 to 35 percent as tax incentive depending on the factors like location of industry, types of industry etc. it is only South Korea, Singapore and Malaysia that grant 100 percent depreciation allowance in the first year of use as against initial allowance of 20 percent, as tax incentive.

The Acts could be amended by rationalizing the excessive tax incentives and not blanket tax exemptions. In view of the above, inspite of the fact that the designation of FTZ are commendable and necessary to attract foreign exchange and investment, we advocate the activities and implementation must be according to the relevant law to forestall abuse.

\textsuperscript{155} Now cap. 179 LFN 1990. This Act replaced Pioneer Industries Ordinance 1948 and Industrial Development (Import Duties Relief) Act 1958 respectively. Compare SS.9 and 19 CITA 1990 where several tax exemptions granted including interests on long term foreign loans and agricultural loans are allowable as expenditures.

\textsuperscript{156} Fadojutimi - Foreign investment & Nigerian Taxation op.cit pp.362 - 364.

\textsuperscript{156A} The Industrial Development (Income Tax Relief) Act Cap. 179 LFN 1990 set the conditions under which an industry will be granted pioneer status entitling it to tax relief for 3 years initially subject to renewal for either one year or one period of 2 years. The extension of the period of relief will only be granted where the appropriate authority is satisfied that the rate of expansion, standard of efficiency and level of development of the company, implementation of any scheme for utilisation of local raw materials in the processes of the company, training & development of the personnel in the industry, location in an economically disadvantaged part of the country. It is submitted the extension of tax incentives under NEPZD and OGEFZD should be tailored in these directions.

\textsuperscript{157} See notes 156 (supra).

\textsuperscript{158} Hiller V. Kanffman -Tax incentives in less Developed Countries (1963) Harvard Law School p.16.

\textsuperscript{159} See note 158 (supra).