

## Nigeria signs Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme

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### Executive summary

Nigeria's President Muhammadu Buhari signed, on 25 January 2019, the Executive Order No. 007 on Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme (the Scheme). The Scheme is for a period of 10 years from its commencement date (remains to be clarified).

The Scheme is a public-private partnership (PPP) intervention that enables the Nigerian Government to leverage private sector capital and efficiency for the construction, repair, and maintenance of critical road infrastructure in key economic areas in Nigeria.

It is open to any Nigerian company (other than sole corporations), acting on its own or in collaboration with other Nigerian companies, and institutional investors (hereafter referred to as "Participants") wishing to construct or repair any road identified and designated by the Government as an "eligible road"<sup>1</sup> under the Scheme.

Participants will be entitled to utilize the total cost (Project Cost), incurred in the construction or refurbishment of an eligible road as a tax credit against their future Companies Income Tax (CIT) liability, until full cost recovery is achieved.

As a further incentive, Participants will be granted a single non-taxable uplift. The Uplift will be a percentage of the Project Cost, and the percentage to be applied is Monetary Policy Rate plus 2% on Project Cost. The uplift will be included in the total tax credit available to each participant.

## Detailed discussion

This Alert summarizes the highlights of the Executive Order.

### Commencement date

The Executive Order, signed on 25 January 2019, did not specifically state the commencement date of the Scheme. It is expected that the commencement date of the Scheme will be clear once the Executive Order is gazetted.

### Duration of the Scheme

The Scheme will be in force for a period of 10 years from the date of commencement.

### Objective of the Scheme

The Scheme will:

- a. Enable the Government to leverage private sector funding for the construction or repair of eligible road infrastructure projects in Nigeria.
- b. Increase the focus on the development of eligible road infrastructure projects in a manner that will generate value for money through the PPP intervention.
- c. Guarantee Participants timely and full recovery of funds provided for the construction or repair of eligible road infrastructure projects in the manner prescribed in the Executive Order.

### Administration of the Scheme

The Scheme and its activities will be executed by the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee (the Committee). The Committee comprises of top cadre personnel of various government ministries and parastatals such as the Federal Inland Revenue Service, Ministry of Power, Works and Housing, Ministry of Finance, Ministry of Industry, Trade and Investment, Ministry of Justice, Nigerian Investment Promotion Commission, Securities and Exchange Commission, Infrastructure Concession Regulatory Commission, National Bureau of Statistics, Nigeria Sovereign Investment Authority and the Bureau of Public Procurement.

### Eligibility to participate

The Scheme is open to Nigerian companies (other than sole corporations), institutional investors such as Pension Fund Administrators, Collective Investment Schemes, Insurance

Companies, Investment Banks, and a pool of companies operating through a special purpose vehicle set up as an infrastructure fund.

### Requirements to benefit

A Private Company must satisfy the following requirements for it to be able to benefit from the Scheme. It must:

- a. Register and ensure that its certification by the Committee as a Participant or representative of Participant of the scheme is confirmed.
- b. Be designated as a Beneficiary<sup>2</sup> under the Scheme.
- c. Provide evidence of certification of the Project Cost by the Committee.
- d. Provide evidence that the project is economically viable, cost-efficient and can be completed in a timely manner (within 12 to 48 months).

### Definition of Road Infrastructure Tax Credit (RITC)

The Scheme entitles Participants to utilize the Project Cost incurred in the construction or repair of eligible roads as a credit against CIT payable. In doing so, Participants are afforded a single uplift equivalent to the prevailing Central Bank of Nigeria Monetary Policy Rate (MPR) plus 2% of the Project Cost. And where such uplift is granted, it shall not constitute taxable income in the hands of the Participant.

Participants can decide to utilize this RITC from the relevant fiscal year in which the project is incurred until it is fully utilized. However, the amount of RITC that may be utilized in any year of assessment shall be limited to 50% of the company's income tax payable by the Participant for that year of assessment. Where there is any unutilized tax credit, it shall be available to be carried forward by the Participant to subsequent tax years.

However, as with similar schemes in the past, where a Participant enjoys the benefits of the RITC, it shall not be entitled to claim any other tax credit, capital allowance, relief or incentive on the Project Cost incurred in respect of that eligible road under any law in force in Nigeria.

### Scheme's grant of the RITC

- ▶ The Federal Inland Revenue Service, through the Committee, will issue the RITC to a participant or its representative, based on the proportion of work done, upon presentation of the following documents:

- An authorization to participate in the Scheme issued by the Committee
- Approval of the Project Cost and completion timeline bid by the Committee
- Contract award letter
- Certification of work done issued by the Committee
- ▶ Tax credits will be issued to Participants annually based on construction milestones achieved and will become immediately available for use.
- ▶ The Scheme allows the holders of the RITC certificate to trade it as a financial instrument on a relevant securities exchange and have same registered accordingly. Consequently, Participants are at liberty to undertake disposal of the whole or part of their certificate to willing buyers on a relevant securities exchange in the same manner as they would in the instance of shares, bonds and other securities. However, such trade must be brought to the attention of the Committee, which will then have to de-register the Participant and register the new Participant or in this case, the new beneficiary.
- ▶ Furthermore, the Executive Order provides that the tax credit may qualify as an asset in a Participant's or Beneficiary's financial records and will have to comply with International Financial Reporting Standards.

## Implications

The introduction of the Scheme is an innovative plan aimed at sourcing funds to support the Government's road infrastructure development initiative. However, it is anticipated that the implementation of this Scheme may present challenges, which, unless addressed, could limit the benefits Participants may receive from the Scheme.

Some of the challenges identified include gaps in the Executive Order which might limit the successful execution of the Scheme. The following queries summarize some of such identified gaps:

- a. What happens to unutilized RITC after the ten-year duration of the Scheme?
- b. What is the impact of the Scheme on roads managed by state and local governments?
- c. Are there potential restrictions on claimable tax credits?
- d. What are the strategies developed to mitigate bureaucracy and potential administrative bottlenecks?
- e. Would the transfer of unutilized RITC as employed in the Scheme be extended to other tax assets such as unutilized withholding tax credits, unrelieved tax losses, or unutilized capital allowances?

The Committee and other stakeholders may need to, through recommendations and proposed amendments to the President, secure clarity around some of the questions posed above.

Nonetheless, the Scheme presents an opportunity for companies, especially manufacturing companies, to channel funds towards the construction and/or repair of eligible roads, including feeder roads and highways, which are most critical to the movement of inventory and products, shortening supply lead times, optimizing the manufacturing supply chain and ultimately enjoying the tax incentive for the cost incurred as specified under the Scheme.

Also of importance is the need for companies with large balance sheets, to avail this opportunity in order to enjoy the various incentives and the reliefs the Scheme provides.

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## Endnotes

1. Eligible road refers to any road approved by the President as eligible for the Scheme on the recommendation of the Minister of Finance and as duly notified to participants and published pursuant to the Executive Order.
2. Beneficiary means a company appointed by a Participant to utilize the whole or part of the RITC initially issued to a Participant in the Scheme or any other person that has acquired the rights to utilize the RITC initially issued to a Participant in the Scheme.

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