



Jackson, Etti & Edu

**FEDERAL GOVERNMENT OF NIGERIA DEBUTS THE ROAD
INFRASTRUCTURE DEVELOPMENT AND REFURBISHMENT
INVESTMENT TAX CREDIT SCHEME**

www.jacksonettiandedu.com



Introduction

Nigeria currently faces a critical infrastructure deficit projected at \$3 trillion in the next 26 years.¹ With an average annual budget of *circa* \$29 billion in the last 10 years, of which figure only about 30% was allocated to capital expenditure, the Nigerian Government may not be able to singularly plug the infrastructure deficit in decades.

The Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme (the Scheme) is an innovative introduction of the Federal Government of Nigeria, promulgated by the President in the exercise of his powers under Section 23 (2) of the Companies Income Tax Act. The Scheme has been introduced to incentivise private sector participation in the provision and maintenance of key Road Transportation Infrastructure across the country.

Summary of the Scheme

The Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Order, 2019 (**the Order**) is an instrument for intervention in the road transportation sector of Nigeria. The Scheme establishes a framework for public private partnership, between the Federal Government of Nigeria and the private Sector, wherein the Federal Government of Nigeria may leverage on private sector funding for the construction or refurbishment of Eligible Road transportation infrastructure in Nigeria, and in exchange grant timely and full recovery of funds expended on the eligible road project (**the Project Cost**) through Tax Credit applicable to the Company Income Tax payable by the participant. The Scheme is for a term of ten years from the date of commencement of the Order.

Responsible Body

In order to ensure the operationalization of the Scheme, the Order establishes the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee (**the Committee**) and saddles it with the responsibility of implementing and administering the Scheme. The Committee whose membership is drawn from several government ministries and departments is chaired by the Minister of Finance while the Minister responsible for Works serves as Deputy Chairman.

Eligible Roads

An eligible Road under the Scheme is one that has been approved by the President on the recommendation of the Minister of Finance. Upon approval, such roads will be published in the official Gazette.

¹ According to the data made available by the Senior Director, AfDB Nigeria, at the Africa Investment Forum (AIF) Road show in Abuja 2018.



Eligibility for Participation

The following are eligible to participate in the Scheme:

- a. A company or corporation (other than a single man company) established by or under the Companies and Allied Matters Act or any Law in force in Nigeria;
- b. A pool of companies operating through a special purpose vehicle registered with the Securities and Exchange Commission as an Infrastructure Fund set up solely for the purpose of investing in the construction or refurbishment of any Eligible Road; or
- c. A Collective Investment Scheme duly registered under any relevant Law in force in Nigeria.

What do the Participants stand to gain?

A Participant in the Scheme shall be entitled to Tax Credits to the tune of the amount it incurred in the execution of the approved project. In addition, the Participant shall also be entitled to an uplift (not constituting taxable income) at the prevailing Central Bank of Nigeria Monetary Policy Rate plus two (2) per cent, of the Project Cost. Both are jointly referred to as "**Road Infrastructure Tax Credit**".

Application of the Road Infrastructure Tax Credit

At the end of each relevant year, the Ministry responsible for works shall evaluate the level of work carried out on an approved eligible road infrastructure development project and based upon its evaluation issue a Certificate of Work Done reflecting the degree of completion of the approved project. The Road Infrastructure Tax Credit to be granted to a participant in each year of assessment shall be equivalent to the cost of work done and certified in that year of assessment, plus the single uplift, which shall also be calculated based on the cost of the work done and certified in that same year.

Upon the issuance of the Certificate of Work Done, the Federal Inland Revenue Service (**FIRS**) shall, through the Committee, deliver to the Participant, a Road Infrastructure Tax Credit Certificate (**RITCC**), evidencing the Road Infrastructure Tax Credit granted to the Participant in that year of assessment. Where the approved project was executed by a pool of companies, the FIRS shall issue separate RITCCs to each company in the pool in proportion to their contribution, on the advice of the Fund Manager or representative.

A holder or beneficiary of a RITCC may utilise the Road Infrastructure Tax Credit against the Companies Income Tax payable in and from the relevant fiscal year in which the Project Cost was expended, and in subsequent years until the tax credit is fully utilised. The amount of Road Infrastructure Tax Credit that may be utilised in any year of assessment shall be capped at fifty (50) per cent of the Companies Income Tax payable by the Participant or Beneficiary (as described below) for that year of assessment. However, where the Road Infrastructure Tax Credit is granted with respect to a project approved in an Economically Disadvantage



Area, the Participant shall be entitled to apply the Road Infrastructure Tax Credit to its full Company Income Tax payable in any year of assessment, without the cap. Participants or Beneficiaries must include the applicable tax credit in its tax returns for a year of assessment before it can apply same to its Company's Income Tax for that year.

The Road Infrastructure Tax Credit as a transferable and tradable Asset

The Order provides that the Road Infrastructure Tax Credit can be transferred in part or as a whole by a Participant to a new beneficiary (**Beneficiary**) upon notification of transfer to the Committee. The Committee is mandated upon notification to effect the transfer in the Records and immediately issue a new RITCC to the Beneficiary of the transfer. A Participant may also with the approval of the Committee, register the RITCC as a tradable security on the relevant Securities Exchange.

The profits made from a transfer or trade of a Road Infrastructure Tax Credit shall form part of the taxable income of the disposing Participant/Beneficiary.

Key Observation

We have observed the absence of a comprehensive dispute resolution mechanisms for the Scheme. The nature of the Scheme is one in which disputes on issues such as; valuation of project costs, adjudged tax payable, policy conflicts may often arise. To this end, a proper and quick internal dispute settlement mechanism should be put in place for settlement of disputes before resort to the Court or Arbitration Panels.

Conclusion

We commend the Federal Government of Nigeria for this timely initiative. However, we advise that a responsive process should be put in place to ensure a seamless relationship between the Presidency, the Committee, the Ministry of Finance, the Ministry responsible for works and the FIRS to avoid the Scheme being belaboured with unnecessary bureaucratic bottlenecks and administrative difficulties.

Eligible Corporates are encouraged to participate in the Scheme, while retaining the services of professional advisers/lawyers.

Contributors

Etido David
Taiwo Adeshina
Folasade Olusanya

Key Contacts



Folasade Olusanya
Partner & Head of Practice
Corporate Commercial

e: folasadeolusanya@jacksonettiandedu.com



Taiwo Adeshina
Partner
Corporate Commercial

e: taiwoadeshina@jacksonettiandedu.com

Jackson, Etti & Edu is a full-service law firm with a sector focus, rendering legal services to Nigerian, Pan-African and International clients in diverse jurisdictions. We have earned a reputation for delivering commercial advice across all the key sectors: energy & natural resources, fast moving consumer goods (FMCGs), financial services, health & pharmaceuticals, real estate & infrastructure, and technology, media & entertainment.

Further information about the firm is available at www.jacksonettiandedu.com. This is a publication of Jackson, Etti & Edu and is for general information only. It should not be construed as legal advice under any circumstances.

For further information, please contact us at finserv@jacksonettiandedu.com



RCO Court 3-5, Sinari Daranijo Street,
Victoria Island, Lagos, Nigeria.

t: +234 (1) 4626841/3, +234 (1) 2806989
e: jacksonettiedu@jacksonettiandedu.com

f: +234 (1) 2716889
www.jacksonettiandedu.com