

## The Desirability of the Pioneer Status Incentives as a Driver of the Nigerian Economy

THEODORE BALA MAIYAKI  
University of Abuja, Nigeria

**Abstract.** The quest to improve the economy by any Nation is by no means a walk in the park. Nations, their leaders and leaders of their economic teams are faced with the uphill task of attracting investors and investments to boost the economy and consequently tap from the enormous multiplier effect is augurs, portends and promises. Faced with the dilemma of increasing revenue by way of meticulous taxation and the need to attract investments into the Country by assuaging and relieving the companies of their tax burden concerns, the Nigerian Government like some other economies has introduced tax waivers and holidays as investment incentives to this effect. The thrust of this paper examines one of such investment incentives – the pioneer status incentive for what it is, what it has been since its inception in 1970 and what it ought to be.

### 1. Introduction

Private sector participation is an integral part of every well-meaning and growth propelled economy; economic analysts have described it as that vehicle that drives any economy. This private sector participation has over time been hampered by variant factors ranging from economic and political instability, unfavorable economic policies and excessive taxation amongst other beleaguering factors.

The Government of the Nigeria having identified Foreign Direct Investment and Local Direct Investment as a panacea to economic development of Countries and having come to terms with the fact that there subsists increased competition among countries in attracting FDI

from Foreign Investors; has put in place certain schemes, machineries, regimes, waivers and exemptions to serve as policy based incentives to assuage intending investors from all “start-up challenges”, drawbacks and impediments that they are likely to face on the onset thereby encouraging investments from both local and foreign investors into the Country’s vast economic potential and consequently improving the economy, boosting production, opening the much needed recent and broader frontiers to the Nigerian economy in its wake.

Nigeria as an emerging economy with its sight set on being a global destination and hub for diverse economic activities and investments has taken the initiative to put in place several incentive instruments to attract, support and encourage further investment into the Nation’s economy. However very few of these incentives are properly and adequately implemented as intended, this is largely due to lack of policy clarity, and for want of a properly defined legal, administrative and institutional framework.

Faced with a thorny situation of unimplemented incentive policies in the past and the pressing need to attract investors into the Nation’s Economy, in 1970 the Nigerian Government introduced a Pioneer Status Incentive for deserving companies who have met it’s laid down criteria and yardstick as one of such policy based incentives and exemptions targeted at certain areas, products and services considered to be nascent, priority sectors, and growth-drivers of the economy that exude the potential of burgeoning in commercial scales in the

Nigerian economic sphere with the view of growing those areas, products and services beyond what was hitherto the status quo. The Pioneer Status Incentive was rolled out under an Act of the National Assembly to ensure it is armed with statutory backing and to ensure it is immune from arbitrariness and to obliterate any likelihood of abuse in the process of application, grant and extension of the Pioneer Status Incentive.

While the introduction of the Pioneer Status Incentive tax holiday regime was received with much optimism, 40 years down the line after its inception and introduction, questions today abound as to the efficacy of the scheme over the years and whether it has yielded the desired results and outcome for which it was initiated four decades ago, the desirability of its continuous existence and the propriety or otherwise of the modus operandi employed in the application for, grant of and extension of the scheme.

This paper takes an in depth view at what the pioneer status incentive is, the justification and desirability of the Pioneer Status Incentive scheme in its entirety. The paper will then do a critical appraisal of the institutional and legal framework for the application, grant and extension of the Pioneer Status Incentive scheme, appraise the scope and extent of application and coverage of Pioneer Status Incentive, scrutinize the Pioneer Status Incentive from inception till its suspension in 2015 with a view to uncovering incidences and instances of abuses and improprieties bedeviling the process of the application, grant and extension of the Pioneer Status Incentive scheme and finally proffer solutions to the issues raised and accordingly make recommendations towards achieving a better positioned, more transparent, more consistent and more effective pioneer status incentive scheme in Nigeria

## **2. Definition of Pioneer Status Incentive (PSI)**

The Industrial Development (Income Tax Relief) Act 1970 which is the Principal Legislation on Pioneer Status defines it as: *“industries, sectors, products or services not*

*being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or there are favorable prospects of further development in Nigeria of any industry and if it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria”*

The Nigerian Investment Promotion Commission which is the body in charge of the administering the Pioneer Status incentive by virtue of its being saddled with the responsibility of encouraging and promoting investment in the Nigerian economy and for matters thereto defines the Pioneer Status Incentive as: *“fiscal concessions designed by government and backed by law to encourage and promote certain targeted industries, activities, products and services identified by government as priority areas and growth drivers of the economy”*

According Ashabi Vincent, a Tax consultant and senior content partner with an online economic analyst called ‘Nairametrics’, Pioneer Status Incentive means ‘A Tax holiday given to companies for a period of time to encourage the growth and development of the Nigerian economy’.

Flowing from the foregoing definitions and to put it simply, the pioneer status incentive is a tax holiday given to companies for a period of time to encourage the growth and development of the Nigerian Economy in sectors considered as nascent or requiring incentivization. The effect of the following impetus is a tax waiver granted the beneficiary company for the payment of Company Income Tax covering the period of the said grant. It apposite to point out at this juncture that the said tax exemption excludes payment of other associate taxes like Value Added Tax, Withholding Tax, Pay As You Earn Tax, Education tax et al.

## **3. Why Pioneer Status Incentive is Granted?**

Other than the apparent reasons of boosting the economy by encouraging private sector participation by way of Local and Foreign Direct Investment, the Federal Government of

Nigeria's objectives and policy thrust for the grant of Pioneer Status incentive are as follows:

- To encourage the inflow of local and foreign direct investments (FDI) into the economy;
- To encourage the establishment and sustenance of investments that have favorable prospects for further development and diversification;
- To promote import-substitution industrialization by promoting local production, diversification and export of goods for the purpose of reducing capital flight;
- To encourage investment in growth sectors that are considered strategic and of high priority as well as those with high employment potentials;
- To assist new companies, survive the initial challenges associated with business start-up; sustain growth of their operations and to remain profitable against any unfavorable business climate;
- To rescue ailing industries from total collapse to prosperity;
- To encourage technology transfer and value addition in all productive activities.

#### **4. Benefits of Pioneer Status Incentive to the Economy**

Over the past 40 years of the existence of the Pioneer Status Incentive in Nigeria, the scheme has no doubt been beneficial to the Nigerian Economy and to the beneficiary companies; the following are some of the benefits of the grant of the incentive to the economy:

- It enhances survival and consolidation of business entities that would enable them contribute significantly to future revenue for Nigeria
- It is used as catalyst for the development of identified strategic and priority sectors of the economy and growth divers of the economy
- It increases the global competitiveness of Nigeria in the attraction and retention of local and foreign investments

- It helps in mitigating challenges associated with business start-ups and sustainability of businesses
- It encourages the development of new products/services, business expansions and diversifications;
- It supports investment negotiation and can be used as a bargaining chip to entice reluctant investors in investment location decisions in favor of Nigeria
- It sends the right signal to investors that government is interested and supportive of their businesses; and
- It provides critical inputs to the policy advocacy role of the commission and government.

#### **5. The requirements for the Grant of PSI**

The entire gamut of the application for Pioneer Status Incentive is governed by statutory and regulatory provisions. The requirements for the application for the PSI are as follows:

- A covering letter for the application addressed to the Executive Secretary
- A copy of NIPC registration certificate
- Completed NIPC application form for Pioneer Status
- A copy of the Company's CAC incorporation
- A copy of the Company's CO2 & CO7
- A copy of the company's Memorandum and Article of Association
- Tax clearance certificate
- Relevant regulatory licenses to operate in the sector or business activity where required
- A copy of the business plan of the proposed or actual project, which the pioneer status is being sought.
- Sector specific licenses/approvals by relevant regulatory bodies where applicable.

In addition to the aforementioned documents, applicants are required to make a non-refundable payment of N200,000.00 and the evidence of such payment is to be exhibited along with the application.

## 6. Guidelines for the grant of PSI

Based on the need to create a system that is devoid of discretionary practices in line with the Commission's legal framework and policy objectives of the Government in fostering investment climate, the following are the principles and parameters that guide the implementation of the incentive:

- Employment generation
- Technology transfer
- Value addition
- Local content (raw material utilization)
- Corporate social responsibility
- Value of the investments
- Host community relationship management
- Compliance with labor laws
- Compliance with environmental laws
- Export potentials
- Value chain development (linkages with SMEs)
- Compliance with Cabotage and local Content Act Provisions
- Survival of Industries.

The commission has the statutory responsibility of interpreting administering the incentive to products/industries listed in the Pioneer Status Industries/Products Schedules of the enabling Act and in doing this, it shall be guided by the dynamics of the competition for FDI, the extant legal framework and Government policy thrust. Where there is no sufficient clarity in both the legal framework and the schedule of the pioneer activities, the commission shall be guided by the spirit and letter of the Industrial Development (Income Tax Relief) Act, the economics of the projects and cost benefit analysis.

## 7. The Legal Framework for the Grant of Pioneer Status Incentive in Nigeria

The application, grant, monitoring, extension and withdrawal of the pioneer status incentive are all provided for and governed by statutes to wit, Acts of the National Assembly and administrative regulations. These are analyzed below:

### 7.1 Industrial Development (Income Tax Relief) Act Cap 179, LFN 1990

The Industrial Development (Income Tax Relief) Act is the principal legislation on pioneer status incentives. This is the case because the statute was enacted chiefly to establish and provide statutory backing for the pioneer status regime. The relevance of this piece of legislation to the issuance of pioneer status incentives can neither be overemphasized nor overstated as it embodies the following:

- A definition of what the pioneer status entails;
- provides the mode of application for the pioneer status and fees payable;
- provides the terms of the pioneer certificate
- the grounds for the cancellation of the pioneer status incentive certificate
- defines the commencement date and termination date of the pioneer status;
- defines the tax relief period and the grounds for an extension of the grant for a further term and most importantly
- Declares what products, industries and services are pioneer products, pioneer industries and pioneer services.

A Safe to say that the Industrial Development (Income Tax Relief) Act is the principal legislation on the issue of pioneer status incentives application, grant, extension and cancellation of the regime.

### 7.2 Nigerian Investment Promotion Commission Act

The Nigerian Investment Promotion Commission Act establishes the Nigerian Investment Promotion Commission, an agency of the Federal Government saddled with the responsibility to encourage, promote and co-ordinate investment in the Nigerian economy, initiate and support measures which shall enhance the investment climate in Nigeria for both Nigerian and non-Nigerian investors, advise the Federal government on policy matters, including fiscal measures designed to promote the industrialization of Nigeria or the general development of the economy and

perform such other functions that are supplementary or incidental to the attainment of the objectives of the Act. The Commission is equally so empowered to do all such things as are expedient for the functions required of it under the Act.

### **7.3 Nigerian Investment Promotion Commission Pioneer Status Incentive Regulation, 2014**

This regulation was made by the Nigerian Investment Promotion Commission in pursuance of powers conferred on it by Section 30 of the Nigerian Investment Promotion Act Cap N177. In the main the regulation is to provide policy clarification, consistency and transparency in applying for Pioneer Status Incentive. The regulation was put in place to give administrative directive to the applicant companies and the officers of the commission. Even though it is a subsidiary legislation and an administrative regulation, its importance and role in this work cannot be waived aside.

### **7.4 Federal Inland Revenue Service (Establishment) Act, 2007**

The Federal Inland Revenue Service (Establishment) Act 2007 establishes the Federal Inland Revenue Service, an agency of government saddled with the responsibility of assessing, collecting and accounting for revenues accruable to the government of the federation and for related matters. Basically, the Federal Inland Revenue Service as created by this Act is the implementing agency of the PSI regime.

A community reading of the following laws reveals a compendium put together for the guidance and implementation of the Pioneer Status Incentives with a view to propel the Nigerian economy and trigger the so much awaited industrial revolution in the country. A critical evaluation of the said legislations however reveals certain existential gaps that have inhibited the optimal realization of the dreams of the legislature and curtailed the expected outputs. Some of the potent gaps observed are as follows;

Section 10 of the IDA provides that grants of the PSI should be for a period of three (3) years extendable by two (3) Years to make of total of five years. Contrary to the above and in contradiction of the above provision of the IDA, which is the Principal Legislation, Section 22 of the NIPC Act provides for ‘negotiation’ of the same tax relief period. Relying on the latter, Government has given PSI to companies for period extending to between p7 and 10 years against the intents of Section 10 of the IDA.

It is also observed that Section 1 (4) (a) and (b) of the IDA provides for a qualifying threshold of N 50,000.00 Share Capital for indigenous companies and ₦150,000.00 Share Capital for non-indigenous Companies, in contradiction of this provision, the Pioneer Status Regulation 2014 provides for a qualifying threshold of 10,000,000.00 Share Capital for the PSI applicants generally.

Section 10 (1) of the IDA provides that the PSI should be granted to companies who are commencing business, also section 3(4) of the Pioneer Status Incentive Regulation 2014 provides that production should be commenced within one year of its grant. Contrary to the above provisions and in contravention of same, PSI has been and is being granted to companies already in existence and in business for a long period of time.

Section 10 (3) of the IDA provides for periodic impact assessment of companies and industries benefitting from the PSI, but the beneficiary companies have remained stagnant and unchanged.

This paper also found that some Companies were rejected for not being covered under the 71 products/industries list while some others carrying out businesses of the same nature and industry were granted.

The extant principal legislation is forty six years old, it is due for a review in order to meet current requirements and the realities of these times. Applications are not handled with transparency and there is a likelihood that grants are not done by the book. Applications for grants and extensions ought to but are not considered in

consonance with other stake holders i.e NOTAP, Manufacturers Association of Nigeria etc should be accommodated among the agencies to consider the desirability or otherwise of granting PSI to an applicant. This would engender compliance with the need to have the applying company meet with the contemporary dynamics of technology and skills transfer, the relevance and desirability of the said industry or product to the growth the Nigerian economy and more.

### **8. Institutional Framework for the Grant of Pioneer Status Incentives in Nigeria**

For a judicious administration of the Pioneer Status Incentive in Nigeria, several institutions play certain roles from the point of Company registration, application for the incentive, issuance of production day certificate, approval and grant of the pioneer status incentive and subsequent impact assessment.

In summary, the institutional framework of the Pioneer Status Incentive Regime involves an interplay of various governmental agencies, each playing its own distinct yet interdependent roles; the Federal Executive Council headed by the President, draws up a list of priority sectors, products, industries and services which it considers eligible for the incentive. The Corporate Affairs Commission sanctions the registration of the Companies which is the first entry point on the part of the intending applicant and without which a company will not even be qualified to apply.

The Nigerian Investment Promotion Commission receives applications, scrutinizes them and if found eligible, the Industrial Inspectorate Office issues certificate of production day to the applying company and then the NIPC grants the PSI to start running from the date specified on the production day certificate issued by the Industrial Inspectorate Office. The Federal Inland Revenue Service being the body saddled with the responsibility of tax assessment and collection; implements the tax waiver for the stipulated period of time for which the applicant company was granted the said incentive after which the Nigerian

Investment Promotion Commission will conduct impact assessment on the beneficiary company.

### **9. Desirability of the Pioneer Status Incentive Regime in Nigeria**

The desirability of the Pioneer Status Incentive Regime in Nigeria is one that has raised a lot of debate amongst policy makers, scholars and the spectrum of the wider society. Most of them arguing that the scheme does more evil than good to the Nigerian Economy and others positing that it has outlived its relevance and importance, taking cognizance of the huge sums of revenue that are lost to companies by way of tax holidays under the scheme. As at the 25<sup>th</sup> day of October 2014, the Nigerian Government had lost significant revenue to the tune of \$1,172,800,956.38 (One Billion, One Hundred and Seventy Two Million, Eight hundred thousand, nine hundred and fifty six dollars, thirty eight cents an equivalent of ₦233,800,000000.00 (Two Hundred and Thirty-Three Billion, Eight hundred million naira) only through the grant of tax holiday to 12 of the 22 Oil Companies alone.

While opponents of the scheme hold that the scheme be set aside to enable the Nigerian Economy benefit from the massive revenue loss that would have accrued to it by way of taxation. This is against the backdrop of continuing dwindling revenue occasioned by the drastic fall in oil prices in the last few years. The proponents of the PSI regime however maintain that the scheme benefits the Nigerian Economy in many ways such as employment generation, contribution to the Gross Domestic Product (GDP) of the Country, Technology and Skills Transfer, payment of other taxes such as; Value Added Tax (VAT), Education Tax, Withholding Tax (WHT) and National Information Technology Development Agency (NITDA) Levy.

These concerns and the scrutiny that the PSI has been subjected to necessitated the Nigerian Investment Promotion Commission (NIPC) to quantify, analyze and calculate the value of benefits that have accrued to the Nigerian

Economy as a result of the grant of Pioneer Status Incentive.

**9.1 Value of Investment**

A Cost Benefit Analysis conducted by the NIPC for the period covering 2011 to 2015 on the following parameters:

On the value of investment brought into the Country, the records and statistics gathered by the NIPC on their Cost Benefit Analysis for the period covering 2011 to 2015 indicates that the level of investment is put at ₦2, 660,53Billion (Two Trillion, six hundred and sixty billion, five hundred and thirty million naira) only and equivalent of \$13,57Billion (thirteen Billion, Five Hundred and seventy Million Dollars) only at the rate of ₦196 to \$1. These investments cover 195 projects that were beneficiaries of the Pioneer Status Incentive with breakdown as follows:

- Level of Investment by year;
- Capital Imported though FDI by way of cash or equipment;
- Employment Generation (direct and indirect)
- Import Substitution Industries and Technology Transfer;
- Corporate Social Responsibility Projects; and
- Local Content (sourcing of production and operational inputs

YEAR	NUMBER OF PROJECTS	VALUE OF INVESTMENT ₦
2011	51	438.0 Billion
2012	29	126.63 Billion
2013	51	732.04 Billion
2014	46	1.098 Billion
2015	18	265.86 Billion
<b>Total</b>	<b>195</b>	<b>2,660.53 Billion</b>

**9.2 Capital Importation (FDI)**

On the issue of Capital Importation by way of Foreign Direct Investment, the period under assessment shows that the sum of \$4.93 Billion was imported into Nigeria in the following ways:

YEAR	NUMBER OF PROJECTS	CAPITAL IMPORTED \$
2011	51	357.81 million
2012	29	184.22 million
2013	51	2,365.80 million
2014	46	1,372 million
2015	18	657.75 million
<b>Total</b>	<b>195</b>	<b>4,937.62 million</b>

**9.3 Employment Generation**

On Employment Generation, in the period covering 2011 to 2015, direct employment is put at 153,297 from the 195 companies granted Pioneer Status, while indirect employment is put at 3,867,672 the breakdown is as follows:

YEAR	NUMBER OF PROJECTS	EMPLOYMENT GENERATION	
		Direct	Indirect
2011	51	29,499	983,596
2012	29	23,262	709,491
2013	51	39,289	1,001,869
2014	46	45,472	932,176
2015	18	15,825	240,540
<b>Total</b>	<b>195</b>	<b>153,297</b>	<b>3,867,672</b>

**9.4 Import Substitution and Transfer of Technology**

During the period under review, statistics from the NIPC Cost Benefit Analysis shows that import substitution developed with particular reference to the Car Manufacturing, Beverage Can Manufacturing, Cement production, fruit juice production, Rice Milling, Iron and Steel, Fibre Boards, Metering equipment, food and fruit concentrates, processed vegetable oil, amongst others thereby leading to massive transfer of technology which have consequently boosted local production in these areas.

A brief review of some of the pioneer sectors shows robust developments. Some of such sectors are, Rice Cultivation, Processing and Milling, Cement, Iron and Steel, Telecommunications, Noodles and Pasta production, fruit juice production, shopping malls and recreational facilities, ports development and sugar production and Marginal Oil Field Production for indigenous companies. In the aspect of Rice Production and Milling

Currently, Nigeria is producing an average of 1.1million metric tonnes of rice per annum. Nigeria’s four biggest Rice Processing and Milling companies including Pardee Foods, Mikap Nigeria Limited, Golden Penny Rice, Popular Farms and Mills Ltd, Ashi Foods Limited, Olam Limited, Stallion Group Industries Limited and Ebony Agro Farms limited that are beneficiaries of the Pioneer Status were as at 2016 contributing 472,064 metric tonnes per annum to Nigeria’s production output. The direct employment from these companies granted Pioneer Status in Rice

Processing and Milling stands at 5,771 people and the value of investments by these pioneer companies is put at ₦7.31 Billion, while the FDI generated by way of Capital Importation is put at \$31.51million.

Another sector of the Nigerian economy that has blossomed as a result of the Pioneer Status Incentive granted to it is Cement Production. Nigeria is currently a net exporter of cement having met and exceeded the National output demand. Messrs Dangote Industries Limited, BUA Cement Limited, Lafarge Cement Industries Limited, UNICEM, Ashaka Cement and Cement Company of Northern Nigeria add 58.5million metric tonnes per annum. They are all beneficiaries of the Pioneer Status Incentive. Dangote Industries Limited alone invested a total of ₦150.0 billion or \$765.31 million on its Obajana factory alone as at 2015, ₦43.0 billion on the Benue Cement Company is acquired in 1998 and its investment as at the time of NIPC’s assessment is put at ₦241.0 billion or \$1.22billion)

Vehicle Manufacturing is another industry that has benefit significantly from the PSI. Finding by the NIPC while conducting the Cost Benefits Analysis, shows that five of the bigger companies granted PSI have made investments totaling ₦11.43 billion Naira (Eleven billion, four hundred and thirty million), with value FDI put at \$58.24 million, direct employment created as a result of these investments recorded as 1,675 and a total production capacity put at 125,675 units of various types of vehicles per annum. These statistics are tabulated below as follows:

NAME OF COMPANY	SIZE OF INVESTMENT ₦	CAPITAL IMPORTATION (FDI) \$	EMPLOYMENT GENERATION	CAPACITY UTILIZATION
Peugeot Automobile Nig Ltd	3.79 billion	19.32 million	950	70,000 units of Vehicles per annum
Innoson Vehicle Manufacturing Co. Ltd	3.53 billion	17.92 million	400	10,000 units of vehicles per annum
Zahav Automobile Nigeria Ltd.	3.20 billion	16.33 million	120	20,000 Units of vehicles per annum
Stallion NMN Ltd	0.60billion	3.06 million	119	15,675 units of vehicles per annum
Hyundai Motors Limited	0.32 billion	1.61 million	86	10,000 units of vehicles per annum
Total	11.43 billion	58.24 million	1675	125,675 Units of vehicles per annum

These three industries amongst a dozen others have shown to a significant extent how the PSI has benefitted the Nigeria economy and why it's continuous existence is desirable.

#### **10. Incidence of Abuses in the Application for, Grant of and Extension of the Pioneer Status Incentive in Nigeria**

Recently, the Nigerian House of Representatives observed the myriad of abuses smearing the regime of Pioneer Status Incentive, the level of high handedness and arbitrariness that characterized the consideration of applications and subsequent grants or refusals, the failure of government agencies to adequately scrutinize the pioneer companies by way of regular impact assessment amongst other anomalies. In response to these concerns, the House of Representatives inaugurated an Ad-Hoc committee on the Abuse of Pioneer Status Incentives with the mandate of investigating all applications received and granted by the Nigerian Investment Promotion Commission, all Certificates granted to the beneficiary companies and their level of compliance with the terms of the grant between 1999 to 2015 when the pioneer status regime was suspended.

The statistics shows that an avalanche of Applications were received and processed during this time and of the applications received, 439 were granted the pioneer status incentive.

The Industrial Inspectorate Department's role as it relates to the grant of PSI is limited to pre-grant of the incentive, this is to the extent that they stipulate the date of commencement of the PSI and what product or service the beneficiary company was given PSI for. However, it has been observed that some companies' production days predates their dates of incorporation at the Corporate Affairs Commission. This anomaly is seen not only an abuse of the process of grant of the PSI but also an illegality as it contravenes the provisions of sections 6 and 25 of the Industrial Development (Income Tax Relief) Act.

Section 10 (1) and (2) of the Industrial Development (Income Tax Relief) Act which is

the principal legislation on Pioneer Status provides as follows:

- The tax relief period of a pioneer company shall commence on the date of the production day of the company, subject to sections 3(6) and of 7(2) of this Act, the tax relief period shall continue for three years
- The tax relief period of the pioneer company may at end of the three years be extended by the President
- For a period of one year and thereafter for another period of one year commencing from the end of the first period of extension; or For one period of two years

It has been observed that more than a hundred companies were found to have been granted five years PSI is clear and obvious contravention of the express provisions of the Principal legislation. Further to the above, companies were found to have been granted extensions as a matter of normalcy, whereas the provisions of Section 10 (3) expressly stated as follows:

- The President shall not extend the tax relief period of a pioneer company in exercise of the power conferred under subsection (2) of this Section unless the President satisfied as to
- The rate of expansion, standard of efficiency and level of development of the company;
- The implementation of any scheme-
- For the utilization of local raw materials in the processes of the company; and
- For the training and development of Nigerian personnel in the relevant industry;
- The relative importance of the industry in the economy of the Country;
- The need for the extension, having regard to the location of the industry; and
- Such other relevant matters as may be required.

Empirical evidence also shows that all the companies that enjoyed the grant of the PSI conducted no impact assessment on their

companies throughout the period of tax holiday and neither was any conducted at the point of their application for extension. This clearly is in contravention of the express provision of the provisions of Section 10(3) of the Industrial Development (Income Tax Relief) Act. The failure of the NIPC to carry out such impact assessment on the companies is in also seen to be in contravention of Section 11 of the Nigerian Investment Promotion Commission Pioneer Status Incentive Regulation 2014 that provides as follows:

- The commission shall carry out periodic impact assessment and evaluate the utilization of the savings accruing from the incentive to
- Measure the effectiveness of the incentives; and
- Ensure that the savings accruing from the incentives are utilized for the intended purpose.

Without an impact assessment duly conducted, it is impossible to ascertain that companies have met the requirements in subsection (3) of Section 10 of the Principal Legislation.

Furthermore, Section 3(4) of the NIPC Pioneer Status Regulation provides that application for the incentive must be submitted within one year of the commencement of commercial production. In contravention of this provision, companies that have long commenced production for as long as 20 years appear to have been beneficiaries of the Pioneer Status Incentive.

The list of products and industries eligible for the grant of the PSI are provided for in the Industrial Development (List of Pioneer Industries) Notice, however, it has been shown that companies whose activities and products do not fall within the eligible list of products and industries may have been granted the PSI, in clear contravention of the list. It is also observed that concurrent multiple PSIs were granted to Companies for the same sector, industry and product. This is clearly in contravention of the provisions of section of the IDA

While it is apposite and desirable that NIPC provided regulations to give guidelines for the application, processing of application, grant and revocation of the PSI regime which it administers, regulations are meant to fill up administrative and legal gaps in the procedures and can never alter, amend, override or rank above an Act of the National Assembly. The NIPC regulation on PSI is at cross-purposes with the Principal Legislation – the IDA and the NIPC neglected the content and intent of the IDA and relied chiefly in the provisions of the Regulation, thereby abusing the PSI regime by changing the procedure and requirement for application, and deciding to give extended PSI tax holidays for periods that extend up to ten years in some cases.

The Federal Inland Revenue Service is the chief tax body of the country and the implementing agency for all matters relating to taxation and to tax exemptions thereto. While the grant and extension of the PSI has little or nothing to do with the FIRS because their role comes to fore after the grant of the PSI, and at the point of implementation, their abuse of the Incentive comes by way of an oversight and inaction, as observations have revealed that while it is common knowledge that the PSI applies only to Company Income Tax – to the exclusion of Withholding Tax, Education Tax, Personal Income Tax and Value Added Tax, the Service had not been sanctioning the collection and ensuring the remittance of the other taxes leading to the loss of considerable sums of revenue to the Federal Government.

Ignorance of the law they say, is no excuse, it has been observed that the beneficiary companies have potentially either deliberately or inadvertently contravened the laws relating to PSI in the following ways;

Applying for the tax holidays for a duration beyond that which the Act provides for;  
Some companies refuse, fail or neglect to pay the 2% service charge required of them to pay as provided for in Section 5 of the NIPC Pioneer Status Incentive Regulation;

Some companies applied for and were granted two concurrent tax holidays, that is to say before

the expiration of the previously granted term, some companies were granted PSI for another term of 3 years

The companies are only exempted from Company Income Tax, they are expected and ought to discharge all their other tax obligations. The investigation reveals that majority of the beneficiary companies defaulted in the Value added Tax (VAT) and Withholding Tax (WHT)

## 11. Conclusion

The mechanism of promoting indigenous and direct foreign investment in Nigeria through the vehicle of a Pioneer Status Incentive has been phenomenal. This is because it is common in many countries around the world to grant this form of tax waiver to companies willing to revolutionize the economy. It is noteworthy that indeed there are different forms of tax waivers that could be obtained by different companies in different countries. Nigeria embraced the PSI as a way of its economic impasse and as a fast track option to attract industries into its economy. The net effect of this noble objective has been the undesirable and unfortunate manipulation of the system by most of the key players to the injurious detriment of the country. Companies have been found to have connived with officials to circumvent the extant provisions of the PSI thereby robbing the nation not only of the expected industrial trigger, but of course of the net revenue that would have accrued to the country from the companies had the PSI regime not been in place. Just like most things in the nation, self over rides community.

Along with the urgent need to review the principal and supplementary legislations, to bring it in tune with contemporary realities and international best practice, there is also the desire for the government to improve capacity and reinforce the institution responsible for the regulation and implementation of the PSI. The said reinforcement requires the legislative instrument to ride on the back of the rule of law by establishing stringent punitive measure to serve a deterrence and retributive measure against those that decimate our drive towards economic self-sustenance particularly in the face of the clear and present danger of the

diminishing supremacy of oil and gas as a sustainable and dependable source revenue. It is to tax we must turn.

## References

- Cap 179 Laws of the Federation of Nigeria 1990 Section 1 (a) and (b) Industrial Development (Income Tax Relief) Act
- Long Title of the Nigerian Investment Promotion Commission Act Cap N117
- Position Paper on Pioneer Status (Tax Holiday) Incentive Regime, submitted to the Ad-Hoc Committee on the Abuse of Pioneer Status by Companies, Tuesday 18<sup>th</sup> October, 2016.
- NIPC Template for processing of Pioneer Status Incentive, submitted to the House of Representative Ad-Hoc Committee of Pioneer Status Abuses.
- S.3(3)(i) Nigeria Investment Promotion Commission Act, 1995 Pioneer Status Incentives Regulation 2014.
- Cap N117 LFN 2004
- Annex G (Executive summary of the Inter-Agency Meeting to assess the implementation of the report of the review committee on the grant of pioneer status to upstream oil companies and the administration of pioneer status in Nigeria)
- Annex C (Cost Benefit Analysis of Pioneer Status to the Nigerian Economy)
- Annexure (List of Companies granted PSI approval January-December 2010)