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# NIGERIA'S PRESIDENTIAL ORDER ON GAS INCENTIVES: AN ATTEMPT TO TEND TO THE GOLDEN GOOSE?

## Introduction:

On 28th February 2024, the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu issued an Executive Order and Presidential Directives relating to the Oil and Gas Industry. The Executive Orders include: (i) the Oil & Gas Companies (Tax Incentives, Exemption, Remission, ETC) Order 2024; (ii) Presidential Directives on Local Content Compliance Requirement 2024; and (iii) the Presidential Directive on Reduction of Petroleum Sector Contracting Cost and Timelines, 2024.

This briefing note focuses on the Oil & Gas Companies (Tax Incentives, Exemption, Remission, ETC) Order and its potential impact on the Nigerian Gas sector.

## Impact of the Tax Incentives Order on the Gas Sector:

The Oil & Gas Companies (Tax Incentives, Exemption, Remission, ETC) Order 2024 is aimed at encouraging Non-Associated Gas (NAG) greenfield projects for onshore and shallow waters.

Potential impact of the Executive Order are as follows:

1. ***Gas Projects with first gas production date on or before 1 January 2029 to enjoy Gas Tax Credits:*** The applicable gas tax credit for this category of projects shall be the lower of US$1.00 per thousand cubic feet or 30% of the fiscal gas price. This credit shall apply where the Hydrocarbon Liquid Content of gas produced does not exceed 30 barrels per million Standard Cubic Feet (SCF). In the event the gas produced contains Hydrocarbon Liquid Content of more than 30 barrels per million SCF but less than 100 barrels per million SCF, the applicable Gas Tax Credit shall be US$0.5 per thousand SCF or 30% of the fiscal gas price.

2. ***Gas Projects with first gas production date after 1 January 2029 to enjoy Gas Tax Allowance:*** Greenfield Non-Associated Gas projects with first commercial gas production after 1st January 2029 shall be eligible for gas tax allowance at a rate of the lower of US$0.50 per thousand SCF or 30% of the fiscal gas price provided that the Hydrocarbon Liquid Content does not exceed 100 barrels per million SCF.

3. ***Will NAG projects with greater than 100 barrels per million SCF be entitled to incentives under the Executive Order?*** The Executive Order appears to exclude NAG projects which have production greater than 100 barrels per million SCF from enjoying the incentive under the Executive Order.

4. ***Gas Tax Credit v. Gas Tax Allowance: Any difference?*** The Executive Order differentiates between Gas Tax Credit and Gas Tax Allowance with respect to: (i) the period of time within which the Gas Tax Credit is to be enjoyed and (ii) the quantum of Gas Tax Credit as compared with Gas Tax Allowance. With respect to the period of time within which Gas Tax Credit is to be enjoyed, the Executive Order states that Gas Tax Credit for NAG projects shall apply for a maximum period of 10 years after which the Gas Tax Credit shall mutate into Gas Tax Allowance. Please note that the Gas Tax Credit is not expected to exceed the company's income tax payable by a company and shall not be combined with the Associated Gas Framework Agreement (AGFA) incentives for the same greenfield NAG project.

   Unclaimed Gas Tax Credit surplus in any year shall be carried forward to the subsequent year, provided that tax credit surplus shall only be carried forward for a maximum period of three years.

   Historically, from the Deep Offshore and Inland Basin Production Sharing Contract Act, there had been arguments as to whether tax credits are a better fiscal incentive when compared to tax allowances. It has been argued that tax credits have been applied as dollar-for-dollar credits against tax liabilities (a "below the line item" when computing petroleum profit taxes) while tax allowances have been used as a relief before arriving at the tax liability of a company (an "above the line item" in the determination of petroleum profit tax). The provision of the Executive Order appears to support the position that tax credits are better incentives as opposed to tax allowances.

5. ***Can Gas Tax Allowance be carried forward?*** The provision of paragraph 2 of the Executive Order is silent as it appears to specifically be stated that Gas Tax Credit surplus

in a year can be carried forward without specific mention of Gas Tax Allowance. This grey area may need further clarification from the Executive arm of the Nigerian government. In our view, *what is good for the goose should be good for the gander!*

6. ***<u>A new category of incentive called "Gas Utilization Investment Allowance" for new and ongoing projects</u>:*** Gas Utilization Investment Allowance shall be granted as an allowable deduction from assessable profits of a company from the year of purchase of the relevant plant and equipment. With respect to ongoing projects, it is our expectation that the Gas Utilization Investment Allowance will be applicable immediately as from the 2024 Year of Assessment (i.e. 2023 Financial Year). The rate for the Gas Utilization Investment Allowance shall be 25% of the actual expenditure incurred and just like any other investment allowance, it shall not be considered in ascertaining the tax written down value of the qualifying expenditure incurred on such plant and equipment.

   Please note that the Gas Utilization Investment Allowance shall be utilized upon the expiration of the tax-free period granted under Section 39(1) of the Companies Income Tax Act.

   Where an equipment that has enjoyed Gas Utilization Investment Allowance is sold and or transferred to a new owner, the new owner cannot claim Gas Utilization Investment Allowance on the same equipment.

7. ***Possible "Claw Back" of Gas Utilization Investment Allowance***: Gas Utilization Investment Allowance may be clawed back under the following scenarios:
    a. *Where within a period of five years from the date of the equipment purchase there is a sale or transfer of the plant and equipment to a person who does not intend to utilize the equipment for gas or related purposes.*
    b. *Where within a period of five years from the date of the equipment purchase, the company utilizes the equipment for other purposes other than for the purpose of gas utilization.*
    c. *Where within a period of five years from the date of the equipment purchase, it was discovered that the expenditure was incurred on the basis of an artificial or fictitious transaction.*

8. ***Any respite for Deep Water Production Sharing Contract (PSC) Holders?*** Not in the immediate! The Executive Order states that the Minister shall introduce fiscal incentives to ensure investments for deep water oil and gas projects achieve a competitive Internal Rate of Returns (IRR). The import of this, is that the Deep-Water PSC holders still need to tarry a bit till the Minister introduces the relevant fiscal incentives. It is our view that this gives the relevant stakeholders ample time to lobby the government with respect to incentives that can be granted by the government in order to ensure gas projects are competitive thereby giving the desired IRR.

## Critical Success Factors:

We have identified some critical issues that need to be considered to ensure success of the Executive Order:

1. ***Consistency of Government Policy***: In addition to the Executive Order being regarded as mere policy directives, it is our suggestion that the Executive Order be codified into relevant laws to reduce the risk of a potential policy upturn. We believe a codification of the Executive Order will provide further comfort for investors.

2. ***Perennial security issues for onshore and shallow waters as a deal breaker***: While the Executive Order has the potential of unlocking the much-needed investments in Non-Associated Gas, it is necessary that the security issues with respect to operations in onshore and shallow waters be addressed to ensure that investments are guaranteed in addition to safety of lives and properties. While it can be argued that there is little risk with respect to the possibility of commodity theft when comparing gas to oil due to the explosive nature of gas, security of operations should also be guaranteed. In the event the security issues are not frontally addressed, the much-needed investments may not be unlocked.

3. ***Financing for onshore and shallow water operators***: Considering the divestments of International Oil Companies over the last 15 years of onshore and shallow water assets, a significant portion of the onshore and shallow water assets in Nigeria are owned by indigenous companies who may have limited financial capacity with respect to developing Non-Associated Gas projects. That said, the Nigerian market has seen audacious gas projects undertaken by indigenous companies with local and international financing support.

## Conclusion

In our view, we believe that the additional incentives for non-associated gas projects and midstream gas utilization projects will engender investment in gas projects and the potential impact remains to be seen; perhaps, with stock taking in 2029 to determine how this policy has fared in tending to Gas as the Golden Goose. Also, the "commercial enablers" as provided under the Executive Order need to be immediately developed by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated for brownfield and greenfield investments in deep water projects to be attractive.

While the Executive Order is laudable, it is necessary that some of the Critical Success Factors mentioned above are considered by both government and operators to ensure maximal utilization of the incentives.