Key Contacts

Oyeyemi Oke
Partner
oyeyemi.oke@ao2law.com

Chukwuemeka Ozuzu
Senior Associate
chukwuemeka.ozuzu@ao2law.com

Oluwatoyosi Olumekun
Associate
toyosi.olumekun@ao2law.com

DEEMED APPROVAL OF ECONOMIC DEVELOPMENT TAX INCENTIVE – ANY RESCUE BY THE BUSINESS FACILITATION ACT?

INTRODUCTION

Nigeria has long used tax incentives to attract investment and stimulate economic growth. An example of this is the Pioneer Status Incentive ("**PSI**") administered by the Nigerian Investment Promotion Commission ("**NIPC**") under the Industrial Development (Income Tax Relief) Act (IDITRA).

The Nigeria Tax Act, 2025 ("**NTA**") replaces the PSI with the Economic Development Tax Incentive ("**EDTI**"). This briefing note analyses the EDTI framework viz-a-viz a gap in its framework surrounding the approval timelines of applications. It considers the effect of this gap and whether the Business Facilitation (Miscellaneous Provisions) Act, 2023 ("**BFA**") can bridge this gap through its deemed approval mechanism.

WHAT IS ECONOMIC DEVELOPMENT TAX INCENTIVE AND HOW DOES IT WORK?

One of the significant innovations introduced by the NTA is the EDTI with the aim of bolstering investment in key sectors and ultimately fostering industrial and economic development.

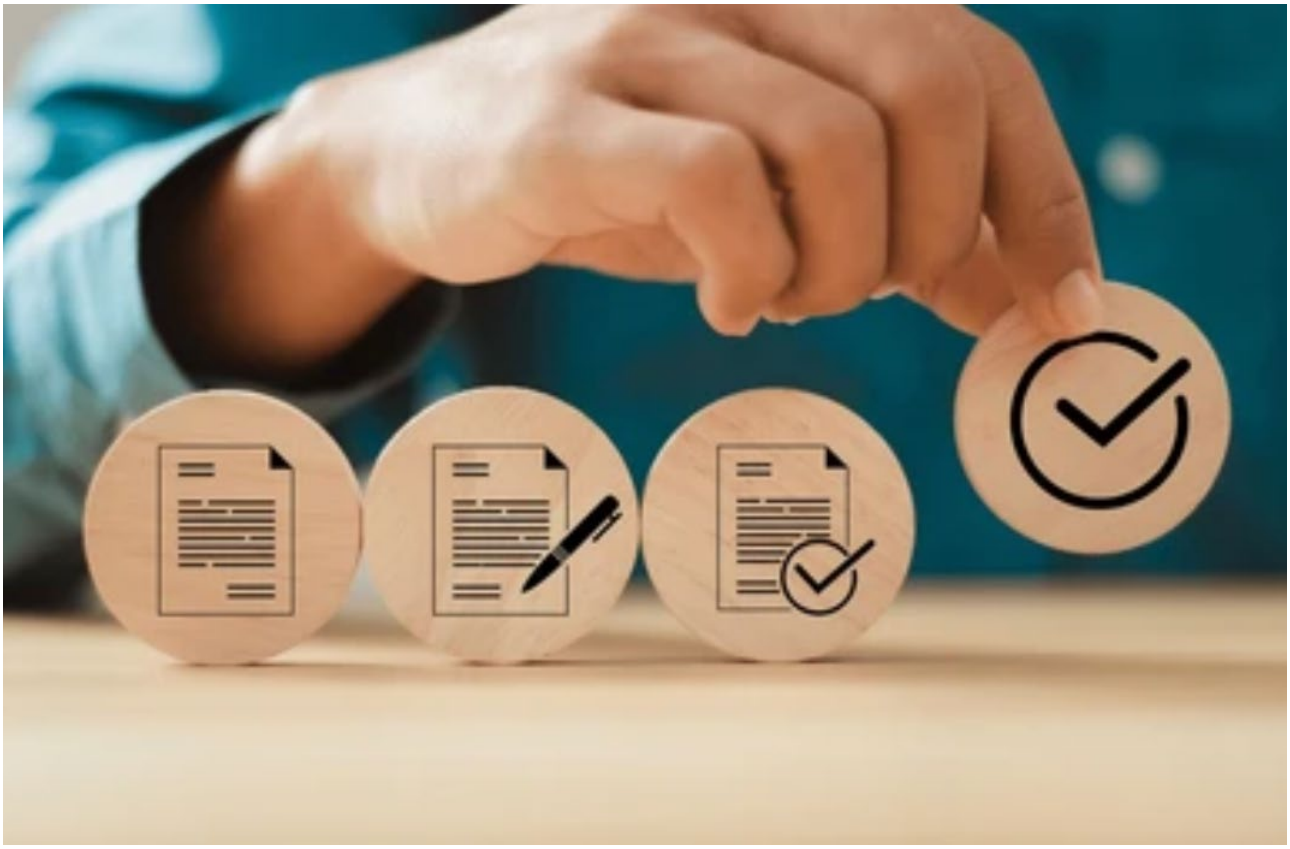
This new incentive operates by granting a ***tax credit, not a total tax holiday***, to qualifying companies that have met the Qualifying Capital Expenditure ("**QCE**") threshold in approved priority sectors or products. These priority sectors as contained in the tenth schedule of the NTA include manufacturing, transportation and energy among other sectors. The credits received are tied to the QCE and measured outcomes of the company. This credit can be used to offset the tax payable for any year of assessment during the priority period of a company subject to the minimum effective tax rate under Section 57 of the NTA.[1]

THE KEY FEATURES OF THE EDTI INCLUDE:

- The incentive applies only to companies incorporated in Nigeria, companies granted exemption from incorporation or promoters of companies yet to be incorporated.[2]

[1] Section 177(2) NTA 2025.
[2] Section 167(1) NTA 2025.

- The company must incur QCE on priority sectors or products listed in the tenth schedule to the NTA.[3]
- The incentive period begins on the production day and typically lasts 5 years.[4]
- The EDTI is extendable for an additional period of five years and no more if reinvestment conditions are met.[5]
- The benefit takes the form of a credit against company income tax, not a complete exemption.
- The unutilized tax credits may be carried forward for a period not exceeding 5 assessment years.[6]



ANY APPROVAL TIMELINES UNDER THE NTA 2025?

While Section 170(5) of the NTA provides that the NIPC shall within thirty (30) days of the President's approval, issue the EDTI and communicate same to the applicant, the NTA is notably silent on the timeframe within which the NIPC must process and recommend to the Minister of Industry, Trade, and Investment (the "**Minister**") (for approval or otherwise,) an application for the EDTI[7]. Additionally, while Section 168 (6) of the NTA empowers the Minister (following the NIPC's recommendation), to recommend to the President for approval, an application for EDTI, the NTA

[3] Section167(2) NTA.
[4] Section 178 NTA.
[5] Section 171(3) NTA.
[6] Section 177(3) NTA.
[7] See S. 168(5) of the NTA.

is silent on the timeframe for such recommendation. Although it is clear from the NTA that the grant of an Economic Development Incentive Certificate ("EDIC") to a company whose application has been approved by the President is not discretionary but must be granted as a matter of course[8], what is unclear is the timeline within which the application for EDTI must progress from the NIPC to the Minister and ultimately, to the President. This omission creates an administrative vacuum - one that can potentially stall investments and undermine the incentive's very purpose of promoting economic development.

IS THERE ANY DEEMED APPROVAL PROVISION IN THE NTA?

The NTA itself does not contain any provision for "deemed approval" or automatic grant of incentive status upon the lapse of time. Consequently, it could be presumed that if the application for an EDTI is not granted within a reasonable time, the applicant remains in regulatory limbo and is unable to rely on a statutory presumption of approval. This lacuna invites the question: can the BFA, which seeks to improve ease of doing business in Nigeria, be invoked to fill the gap and possibly rescue applicants from bureaucratic bottlenecks?

THE BUSINESS FACILITATION ACT TO THE RESCUE?

The BFA was enacted as part of the Nigerian government's efforts to ensure ease of doing business in Nigeria under the Presidential Enabling Business Environment Council (PEBEC). The BFA in Section 3 thereof, creates a transparency requirement as it directs Ministries, Departments and Agencies ("MDAs") of the Federal Government which provide products and services to publish a complete list of requirements to obtain the products and services, and this list shall include timelines required for the processing of applications for the products and services of the respective MDAs[9]. Similarly, Section 6(1)(c) of the BFA requires that an MDA shall have a Service Level Agreement (SLA) which shall provide for the timelines for processing applications.

Furthermore, Section 4(1) BFA mandates that:

> *"Where the relevant Ministry, Department or Agency fails to communicate approval or rejection of an application within the time stipulated in the published list, all applications for products and services not concluded within the stipulated timeline shall be deemed approved and granted."*[10]

This is a statutory articulation of the "deemed approval" principle, aimed at discouraging unnecessary bureaucratic delays and ensuring regulatory inaction does not frustrate legitimate business interests and economic development. This means, once an MDA publishes a timeline for processing an application, failure to act within that period results in automatic approval by operation of law. In theory, if the NIPC publishes a timeline for processing EDTI applications and fails to act within that time, Section 4(1) could apply to deem the application approved.

[8] See Sections 169(1) and 170(5) of the NTA.
[9] Section 3 BFA.
[10] Section 4(1) BFA.

APPLICATION OF THE DEEMED APPROVAL PRINCIPLE UNDER THE BFA TO THE EDTI UNDER THE NTA

The key issue is whether Section 4(1) of the BFA can apply to the EDTI application process, thereby filling the void left by the NTA. Given that the effective date of the NTA is 1 January 2026, there is presently no published list or processing timeline by the NIPC with respect to the EDTI. It is hoped that with effect from the effective date of the NTA, the NIPC will publish the list of processing timelines (including the processing timeline for the EDTI) as mandated by the BFA. Following the publication of the timelines, a failure to act within that timeline could validly attract the deemed approval consequence contemplated under Section 4(1) of the BFA.

CONCLUSION

EDTI framework under the NTA is designed to be a robust, modernized and pragmatic incentive system. It, however, requires the co-operation of all critical stakeholders for its objectives to come to fruition.

Following the coming into effect of the NTA, it may be useful for the NIPC to take steps to immediately issue the approval timelines as contemplated under the BFA. Doing so will not only activate the deemed approval safeguard but also promote transparency, reduce delays, and enhance investor confidence in Nigeria's tax incentive regime.

Please do not treat the foregoing as legal advice as it only represents the public commentary views of the authors. All enquiries on this should please be directed at the authors.