CLIENT ALERT:

NOTICE OF TAX INCENTIVES ON DEEP OFFSHORE OIL AND GAS PRODUCTION, 2024

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INTRODUCTION

In February 2024, three presidential executive orders were issued aimed at establishing Nigeria as the premier destination for the oil and gas investments in Africa. These directives seek to eliminate investment barriers, leverage national resources, and drive economic diversification.

The Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order, 2024 (“**The Order”**)- introduces various tax incentives which includes tax credits for greenfield Non-Associated Gasdevelopment, midstream capital and gas utilization investment allowances, and incentives for deep water oil and gas projects.

Pursuant to Paragraph 10 of the Order and Section 2 of the ***Ministers’ Statutory Powers and Duties (Miscellaneous Provisions) Act***, the Minister of Finance and Coordinating Minister of the Economy, Federal Republic of Nigeria, issued the ***Notice of Tax Incentives on Deep Offshore Oil and Gas Production, 2024 (“the Notice”).***

Below are the key provisions of the Notice:

ELIGIBILITY FOR TAX CREDIT INCENTIVES

The incentives under the Notice apply to existing deep offshore leases with an approved Field Development Plan (FDP) where a Final Investment Decision (FID) is made between the effective date and January 1, 2029. The tax incentives take effect immediately from the date of the Order, allowing eligible developments to benefit once the guidelines are issued[1]. The effective date of the Order is the 28th of February, 2024.

If a lessee is unable to make the FID due to force majeure, an extension may be requested. Lessees must notify the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) within 30 days of making the FID to benefit from the incentives. These incentives will also apply to future leases awarded after the effective date, including those derived from both existing and future licenses.

[1] **Paragraph 11 ibid**

Notably, the tax credit incentives apply only to parties directly funding deep offshore developments under Production Sharing Contracts (PSCs) or Profit-Sharing Contracts [2].

CATEGORIES OF INCENTIVES:

1. **Deep Offshore Oil Development:**

For existing and future deep offshore leases:

i. US$3.00 per barrel or 20% of the fiscal oil price, whichever is lower, for fields with reserves up to 400 million barrels[3]
ii. US$4.50 per barrel or 20% of the fiscal oil price, whichever is lower, for fields with reserves exceeding 400 million barrels.[4]
iii. Additional US$1.00 per barrel for future leases awarded after the effective date.[5]

2. **Deep Offshore Non-Associated Gas Development:**

For non-associated gas developments or fields with both crude oil and non-associated gas:

i. US$1.00 per thousand standard cubic feet (mscf) or 30% of the fiscal gas price, whichever is lower, for fields with Hydrocarbon Liquids (HCL) content below 30 barrels per mmscf[6]

ii. US$0.50 per mscf or 30% of the fiscal gas price, whichever is lower, for fields with HCL content between 30 and 100 barrels per mmscf [7]

RESTRICTIONS AND LIMITATIONS

1. **Non-Combination of Incentives:** The production tax credit cannot be combined with production allowances provided in the Sixth Schedule to the PIA or incentives under AGFA[8]

2. **Unit Technical Cost Benchmark:** If the UTC of development exceeds US$20 per BOE (the 2024 benchmark), the tax credit is reduced by 10%[9].

3. **Price Floor:** Should crude oil prices fall below US$50 per barrel, the tax credit will be reduced by 50%[10]

CARRY FORWARD AND APPORTIONMENT OF TAX CREDITS

1. **Carry Forward of Surplus Credits**: Surplus production tax credits may be carried forward for up to three (3) years. After this period, any unutilized credits will expire[11].

2. **Apportionment of Credits:** Tax credits are apportioned based on each investor's capital contribution to the development, ensuring fair allocation[12].

CONCLUSION:

The *Notice* is a significant step by the Federal Government of Nigeria to attract and incentivize investment in the deep offshore oil and gas sector. By offering production tax credits for crude oil and non-associated gas developments, the notice aims to reduce operational costs, encourage new field development, and enhance Nigeria's competitiveness in the global energy market.

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[2] **Paragraph 5 of the Notice**
[3] **Paragraph 2(1)(a) Ibid**
[4] **Paragraph 2(1)(b) Ibid**
[5] **Paragraph 2(2)) ibid**
[6] **Paragraph 3(1)(a) ibid**
[7] **Paragraph 3(1)(b) ibid**
[8] **Paragraph 7 ibid**
[9] **Paragraph 6 ibid**
[10] **Paragraph 2(3) ibid**
[11] **Paragraph 8 ibid**
[12] **Paragraph 9 ibid**

However, the tax credit incentives come with important restrictions, including limitations on combining incentives and conditions tied to oil prices and development costs. Investors must carefully assess these provisions and comply with the eligibility requirements to fully benefit from the incentives. As the Federal Inland Revenue Service (FIRS) is required to issue implementation guidelines within 15 days of the notice to detail how the tax credit incentives will be applied[13], stakeholders should remain attentive to further regulatory clarifications. It is hoped that these efforts will stimulate growth in the oil and gas sector.

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[13] **Paragraph 10 ibid**