

Nigerian Oil and Gas Industry Local Content Development Act an Appraisal

Cali Ojimba and Chinedu Ifeinwa Lilian

Faculty of Law Chukwuemeka Odumegwu Ojukwu University Igbariam Campus Anambra State Nigeria

ABSTRACT

Distribution challenges in the petroleum industry in Nigeria have contributed to issues such as petroleum products theft. These challenges include inadequate infrastructure, pipeline vandalism, smuggling and illicit activities in the downstream sector. The theft and illegal diversion of petroleum products have had significant economic implications for the country. Theft and illegal activities in the petroleum sector have resulted in revenue losses for the Nigerian government, it is estimated that Nigeria has lost billions of dollars over the years due to these activities. The stole petroleum products are often sold on the black market or smuggled to neighboring countries, where they fetch higher prices. This not only leads to financial losses for the government but also undermines the effectiveness of the Petroleum Profit Tax Law and hampers the development of the country. Several factors contribute to the prevalence of petroleum products theft in Nigeria. Inadequate security measures along pipelines and storage facilities make them vulnerable to theft and sabotage. Criminal networks involved in illegal activities have exploited these vulnerabilities for their gains. Additionally, corruption and collusion among certain individuals within the industry have facilitated the illicit activities. More so, the Nigerian government has taken steps to address the issue. Security agencies have been deployed to protect pipelines, and efforts have been made to strengthen collaboration between security forces and oil companies. The government has also established specialized task forces and enacted laws to curb petroleum products theft and punish offenders. However, the problem remains persistent, and a comprehensive approach involving enhanced security, technological advancements, and increased transparency and accountability is necessary to effectively tackle the issue. In order to address this situation, this study seeks to s amine administrative challenges inhibiting the distribution of petroleum products under the Petroleum Profit Tax Laws of Nigeria.

Keywords: Nigerian Oil, Gas, Industry, Theft and illegal

INTRODUCTION

The main thrust of the NOGIC ACT is to increase the Nigerian content in the country's oil and "Nigerian content has been defined as:

The quantum of composite value added in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian Oil and Gas industry.

Most African countries, at post-independence, recognized the need for their indigenes to take ownership and control of their natural resources for exploitation and transformation into economic growth.¹ In order to achieve this goal various policies and laws have been pursued by the Governments.² Petroleum industry in Nigeria was not immune from these Government policies. Some laws enacted in Nigeria include the Petroleum (Drilling & Production) Regulations³, Industrial Training Fund,³ Petroleum Technology Development Fund⁴² and National Office of

¹ www.akindelano.com accessed on the 15th of December, 2010

² Ibid

³ Schedule 1 of the Petroleum Act, Cap P10, LFN, 2010 : Cap N123, LFN, 2010

Technology Acquisition Act.⁴ The Nigerian Petroleum industry was originally the exclusive domain of the International Oil Companies (IOCs) in areas ranging from exploration to production, refining and trading.

Even the downstream operations were initially controlled by expatriate companies. Intervention by the Federal government resulted in the nationalization of assets of the major oil players in 1991,⁵ the Federal Government sought to demystify the oil industry by awarding onshore and offshore oil blocks to Nigerian entrepreneurs through competitive bidding. Despite the seeming progress narrated above, the “Nigerianization” process in the lucrative process in the lucrative upstream has been comparatively negligible.⁶ The primary reason is the absence of legal or statutory frameworks for Nigeria to harvest the technological industrial and economic intangible capital assets being generated by oil and gas activities for diffusion into the local economy. The enactment of Nigerian Oil and Gas Industry Content Development Act ^{6<s} seeks to increase indigenous participation in the Oil and gas industry by prescribing minimum thresholds for the use of local services and materials and to promote transfer of technology and skill to Nigerian staff and labour in the industry. The Act⁷ is comprehensive in nature, running into 107 sections and applies to all operators, contractors and other entities involved in any project in the oil and gas industry. It takes precedence over all other existing enactments and laws in respect of all matters and operations industry pertaining to Nigerian content carried out in the oil and gas. A Nigeria Content Development and Monitoring Board (the Board) has been established and rested with the responsibility to implement the provisions of the Act, make procedural guidelines and monitor compliance by operators within the oil industry. The Act set out general obligations which are applicable either by reference to the operators and participants in the Oil and Gas Industry of activities taking place in the Oil and Gas industry. The overall local content policy objective and obligation imposed in respect of transactions within the oil and gas industry are set out in Section 3(1) of the Act⁸ which provides that Nigerian independent operators shall be given first consideration in the award of oil blocks, oil field licences, oil lifting licenses and all projects for which contract is to be awarded in the Nigerian oil and gas industry subject to the fulfillment of such conditions as may be specified by the Minister. Sub-section (2)⁷¹ of the same section state that there shall be exclusive consideration to Nigerian Indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work to bid on land and swamp operating areas of the Nigerian oil and gas industry for contracts and services contained in the schedule of this Act. Sub-section (3)⁵¹ is with regards to the compliance with the provisions of this Act and promotion of Nigerian content development shall be a major criterion for award of licenses, permits and any other interest in bidding for oil exploration, production, transportation and development or any other operations in Nigerian oil and gas industry. In furtherance of this objective, the Act⁹ gives prudential treatment to all Nigerian companies operating in the industry. As a basic principle, the Act requires that promotion of Nigerian content development shall be a major concern in all projects and operations in the oil industry. It then goes to say that Nigerian independent operators shall have first consideration in the award of oil blocks, lifting licenses etc and in all projects for which contracts are to be awarded. This principle applies to all sphere of the industry not only “contracting” but also employment of staff and labour, staff training and procurement of goods, materials and services etc. By Section 3 (2)¹⁰ exclusive consideration is given to Nigerian indigenous service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute such work on land and swamp. This section incorporates a significant pre-condition for getting the coveted exclusive preferential treatment. It stipulates “demonstrate capacity to perform as a key criterion for preferential award of jobs. Supporting provisions for the policy objectives of Section 3 and for Nigerian companies are contained primarily in Section 11,15 and Section 16. The main support granted in favour of Nigerian companies is contained in Sections 15 and 16 which deals with the bidding process.

Other benefits to be enjoyed by Nigerian companies under the Act are technology transfer as contained in Sections 44 and 45 of the Act. Section 44 stipulates that operators are required to have a program of to have a program of incentives to promote transfer of technology and Section 45 encourages the formation of joint ventures and other forms of alliances. Section 3(2) is developed further in Section 11 of the Act which sets out the minimum level of Nigerian Content required for various activities carried out in the Oil and gas industry. Section 11 of the Act states

⁴ Ibid

⁵ Schedule 1 of the Petroleum Act, Cap P10, LFN, 2010 : Cap N123, LFN, 2010

⁶ CAP N123, LFN, 2010

⁷ Ibid

⁸ CAP, N124, LFN, 2010

⁹ Nigeria Oil and Gas Local Content Development Act CAP N124, LFN, 2010

¹⁰ Ibid

that the "minimum Nigerian content in any project to be executed in the Nigerian Oil and Gas industry shall be consistent with the level set out in the Schedule to the Act" The promotion of Nigerian human material" as an aspect of Nigerian Content is dealt with in Section 28 to 35 of the Act The general clause in this regard is Section 28(1) of the Act which stipulates that Nigerians shall be given first consideration for employment and training in any project executed by any operator or project promoter". Based on the above foundation the Act requires that the Nigerian Content Plan submitted by operator or project promoter shall include and employment and training Plan which complies with Section 29 of the Act. Section 30 and 31 also make it an obligation on operators to provide training to Nigerians where Nigerians are not employed because lack of training and to provide a succession plan for a Nigerian to understudy to an expatriate for a maximum period of 4 years.

By section 32 the expatriate workforce for an operator or project promoter is limited to a maximum of 5% of its management positions as may be approved by the Board. Further in this regard, Section 33 requires that all applications for expatriate quota must first be referred to the Board. The Act required in Section 34 that a "Labour Clause" be inserted in "projects or contracts" mandating the use of a minimum percentage of Nigerian workers as may be stipulated by the board. Finally, all operators and companies operating in the Nigeria oil and gas industry shall employ only Nigerians in their junior and intermediate cadre. With regards to legal and financial services Section 51 provides that all the operators and other investors in any operations, business or transaction in Nigeria oil and gas industry can only retain a Practitioner or a firm of Legal Practitioners located in Nigeria, whereas. Section 52 provides that all operators and investors in need of financial services can only retain the service of Nigerian financial institutions expect in situations to the satisfaction of the Board it is impracticable to do so. Section 53 on the other hand provides that all operators and investors engaged in Nigerian oil and gas industry must carry out all fabrications and welding activities in the country.

Companies Income Tax Act (CITA)

Companies operating in all other segments of the oil and gas sector are assessed to Companies Income Tax at 30% of taxable profit under CITA. Also, non-crude oil related income/profits earned by petroleum operations are liable to CIT, separately. In practice, nonresident companies are taxed on a deemed profit basis at an effective tax rate of 6% of total revenue (i.e. 30% of 20% deemed profit). The FIRS have indicated its intention to begin to assess them to tax on actual profits basis (based on audited accounts), like a typical Nigerian company.

Challenges of Petroleum Taxation

There are a number of issues militating against the effective administration of petroleum taxation in Nigeria. Highlighted below are some major challenges of petroleum taxation:

Quality of Tax Officials: Knowledge and skill gap is a major challenge in tax administration in Nigeria. The Nigeria's National Tax Policy Report indicates that a major factor limiting the development of tax administration in Nigeria is shortage of qualified personnel¹¹, Tax officials lack the requisite experience and knowledge of the laws required to appropriately and effectively assess taxpayers. The challenge of unqualified personnel has been attributed to poor funding of tax administrative agencies⁴³ which impedes the capacity of the agencies to attract the required qualified personnel. It is important that the operational needs of tax officials are well catered for. The provision of conducive work atmosphere, proper working tools, access to information and a research, competitive remuneration, and a working reward system will enhance dedication to duty on the part of tax official and this will impact positively on increased revenue generation.

Tax Evasion and Tax Avoidance: Tax evasion entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and it includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, or overstating deductions¹². While tax avoidance on the other hand, is the legal use of tax laws to reduce one's tax burden¹³. Tax evasion unlike tax avoidance is a crime. However, both of them have been viewed as forms of tax noncompliance, as they describe a range of activities that intend to subvert a state's tax system¹⁴. In Nigeria today, tax evasion is one of the major challenges plaguing the efficient and effective taxation of petroleum revenue. Unfortunately, tax can be evaded with little or no consequences at all in Nigeria as tax evaders are hardly prosecuted. Taxpayers (especially corporate taxpayers) would rather prefer to give bribes amounting to a substantial fraction of their tax liability to avoid discharging their applicable tax -liabilities. The petroleum sector in Nigeria has recorded large cases of tax evasion

¹¹ Ibid

¹² OMOROGBE Y. (2001) Oil and Gas law in Nigeria, Malthouse Publication, Lagos

¹³ OLISA M.M (2003) Nigerian Petroleum Law and Practice, Jonia Ventures Limited Lagos

¹⁴ ETIKERENTSE G. Petroleum Law in Nigeria, Lagos 2005

and avoidance perpetrated by operators, thereby causing the country to be robbed to the tune of billions of dollars yearly¹⁵. Foreign oil companies have been notorious for a high percentage of the tax evasion incidents in the petroleum industry despite their huge earnings from their commercial activities in Nigeria. Accordingly, the Federal Government seems to have put up a vibrant light against tax evasion by oil companies operating in Nigeria by sealing up and threatening to seal up oil Firms for tax evasion. Again, the Federal Government on Wednesday, 3 August 2016, approved a multinational competence authority agreement which will enable the government to have a better grip of its tax laws to prevent tax evasion and avoidance by companies operating in the country. The agreement would ensure that multinationals besides filing returns in Nigeria would also file returns on their activities in other countries where they run businesses, for accuracy of figures¹⁶. It is hereby submitted that the war against tax evasion by the Federal Government is laudable. However, steps should be taken to effectively prosecute defaulting oil companies and where convicted, they should be penalised accordingly, to serve as deterrent to other companies.

Corruption: Corruption is a menace which has eaten deep into the fabrics of modern societies. It is not only peculiar to the administration of petroleum taxation neither is it synonymous with Nigeria alone. However, it appears that the Nigerian petroleum sector is an attractive sector for corruption to take place as there abound numerous opportunities and incentives to engage in illicit activity in the sector. Moreover, the lack of transparency and accountability in Nigeria's petroleum industry has created a high vulnerability for corrupt practices⁷⁹. Some factors that encourage corruption in tax administration include: the complexity of tax laws, the high discretionary powers of tax officials, and the low rate of punishment for defaulters in this area. In relation to tax administration, corruption can be identified in three major forms, namely:

1. Tax evasion committed by taxpayers;
2. Corruption on the part of tax officers and other tax professionals
3. Corruption and embezzlement of public funds by politicians.

The effect of corruption on tax administration in the Nigerian petroleum sector is widespread. It affects the revenue of the country, as large amounts of the nation's taxable revenues are unaccounted for. Corruption also results in the reduction of voluntary compliance with tax laws and regulations by making evasion a more attractive alternative to taxpayers who would prefer to bribe tax officials to diminish their tax obligations. If an honest taxpayer sees that paying taxes would only further lead to inequities by transferring tax dues to a corrupt and inefficient tax administration, he would rather seek to either evade taxes or bribe an official to pay less, instead of paying huge sums as tax only to enrich individual pockets. The lack of transparency and accountability in the petroleum sector has been attributed to the overlapping role performed by the federal government in the petroleum industry wherein the federal government negotiates and performs commercial activities in the petroleum industry as a commercial entity through the NNPC⁵⁰ and also regulates and play a supervisory role through the Department of Petroleum Resources¹⁷.

Multiplicity of Tax: Multiple taxation refers to situations where the same income is subjected to more than one tax treatment. According to the National Tax Policy Document, multiple taxation occurs where the tax, fee or rate is levied on the same person in respect of the same liability by more than one State or Local Government Council¹⁸. Since Nigeria operates a federal system of government, it may be impossible to completely avoid multiplicity of tax. This is because the different tiers of governments (federal, state and local governments) would most likely want to charge certain taxes and charges as may be applicable. Multiplicity of taxes affects the administration of petroleum taxation in the following ways: Firstly, it infringes on the cardinal taxation principle of certainty which proposes that a taxpayer should know in advance how much he is obligated to pay as tax. Secondly, when taxes are imposed arbitrarily and administered without recourse to due process, it can be regarded as a form of noncompliance to tax laws on the part of tax authorities and this can serve as a disincentive for compliance with the provisions of the tax laws by taxpayers. Thirdly, a multiple tax system is usually complex and where a tax system is unnecessarily complex, the cost of administration on the part of the government and the cost of compliance for the taxpayers increases. Fourthly, multiple taxation may discourage both indigenous and foreign investment in the petroleum sector and as such, the nation loses out on income which would have accrued to it by way of taxation.

Inefficient and Problematic Provisions of Tax Legislation: It is difficult to isolate a piece of legislation from its

¹⁵ Petroleum Profit Tax Act, CAP P13, LFN, 2010

¹⁶ Petroleum Law in Nigeria, Lagos 2005

¹⁷ ETIKERENTSE G. Petroleum Law in Nigeria, Lagos 2005

¹⁸ Petroleum Law in Nigeria, Lagos 2005

implementation and administration. Tax legislation basically provides the foundation upon which tax administration can be implemented. They stipulate what taxes are to be administered, how they are to be collected, the powers of the tax authority to administer or collect them and the various mechanisms for the resolution of tax disputes arising from its administration. To ensure successful and effective tax administration, tax legislation must be sound, robust and practical in application. Some provisions of tax laws are not explicit and are somewhat controversial, thus requiring constant resort to the tax tribunals and law courts for its interpretation. It has been opined that some provisions of tax laws are unnecessarily verbose and complicated.¹⁹

A perfect example is Section 11 of the PPTA which always causes oil companies and the FIRS to be at loggerheads over the correct interpretation of the provision that deductible expenditure must, have been wholly, exclusively and necessarily incurred in petroleum operations. See the cases of *Shell Petroleum v. Federal Board of Inland Revenue*²⁰ and *Gulf Oil Company (Nigeria) Limited v. Federal Board of Inland Revenue*²¹. The decisions of the Courts in the foregoing cases seem to have given a robust meaning to the provisions of Section 10, thereby extending the range of deductible expenses, under the PPTA. However, it is submitted that the use of explicit terms in tax legislation should be encouraged as it will minimize recurring contentious debates on the provisions of tax laws. This is because contentions in tax legislation render their administration cumbersome and expensive to both the government and the taxpayers. It also delays the inflow of government revenue from taxation and may create room for tax evasion. Furthermore, the issue of redundant or inadequate provisions in petroleum taxation laws poses a huge challenge in the administration of petroleum taxation. One major area affected by such inadequate provision is the area of penalties for tax defaulters. For example, the penalties (especially in the area of fines), prescribed for different categories of offences under Part X of the Petroleum Profit Tax Act are so inadequate in current times and situations. They are paltry and not weighty enough to deter and discourage noncompliance.²²

Tax Evasion and Avoidance: Tax evasion and avoidance by petroleum companies pose a significant challenge to petroleum taxation in Nigeria. Companies may engage in aggressive tax planning strategies, transfer pricing manipulations, or underreporting of profits to minimize their tax liabilities. These practices can result in significant revenue losses for the government.

Transfer Pricing and Thin Capitalization: Transfer pricing issues arise when related entities within a multinational company engage in transactions at non-arm's length prices, thereby shifting profits to lower-tax jurisdictions. Additionally, thin capitalization refers to the excessive use of debt financing to reduce taxable profits. These practices make it challenging for tax authorities to ensure appropriate taxation of petroleum companies.

Complex Regulatory Environment: The petroleum sector in Nigeria is governed by a multitude of regulations, including tax laws, production-sharing contracts, and other fiscal terms. The complexity of these regulations can make it challenging for taxpayers and tax authorities to interpret and implement tax provisions consistently. This can lead to uncertainties and disputes regarding the application and compliance with tax regulations.

Tax Incentives and Fiscal Regime Stability: Tax incentives, such as tax holidays and pioneer status, are introduced to attract investments, encourage exploration and production, and promote the growth of the petroleum sector. However, the administration and monitoring of these incentives can be complex and prone to potential abuse. The eligibility criteria, compliance requirements, and monitoring mechanisms must be carefully designed and effectively enforced to ensure that the intended benefits are achieved without undue revenue leakages.

Informal Sector and Illegal Activities: Nigeria also faces challenges in addressing the informal sector and illegal activities, such as oil theft and smuggling. These activities result in significant revenue losses and undermine the effectiveness of tax collection efforts.

Volatility of Oil Prices: Nigeria's economy heavily relies on oil revenues, making it susceptible to the volatility of global oil prices. Fluctuations in oil prices can impact the profitability of petroleum companies and, in turn, affect tax revenues.

¹⁹ Petroleum Law in Nigeria, Lagos 2005

²⁰ Ibid

²¹ Ibid

²² Ibid

	CITE AS: Cali Ojimba and Chinedu Ifeinwa Lilian (2025). Nigerian Oil and Gas Industry Local Content Development Act an Appraisal. NEWPORT INTERNATIONAL JOURNAL OF LAW, COMMUNICATION AND LANGUAGES. 5(1): 10-15. https://doi.org/10.59298/NIJLCL/2025/5.1.101500	
--	--	--