A LEGAL APPRAISAL OF TAX INCENTIVES IN THE NIGERIAN AGRICULTURAL SECTOR*

Abstract
Agriculture is sine qua non for economic growth and development. Historically, agriculture was the mainstay of the Nigerian economy accounting for well over half of the country's Gross Domestic Product (GDP), and yielding the highest value in export earnings until the discovery of crude oil in 1956 which turned the nation to a near mono economy, relying heavily on the revenue from crude oil export. In order to stimulate and diversify the economy, some measures were employed by the Nigeria government including the introduction of tax incentives. Tax incentives, succinctly put, refers to the policies and measures initiated by government to encourage enterprises and individuals to spend or save money by reducing the sum total of tax payable to government. This paper critically evaluates the impacts of tax incentives on the Nigerian agricultural economy. The methodology adopted by the researcher is doctrinal, while data are obtained from both primary and secondary sources. Findings reveal that tax incentives, if properly channeled and made available to deserving enterprises and individuals, would ultimately enhance growth and economic development in Nigeria. The paper concludes with recommendations centred around sensitization of individuals and businesses on the availability of tax incentives, effective implementation, and balanced tax incentivization scheme.

Keywords: Agriculture, Tax, Incentives, Nigeria

1. Introduction

Agriculture which is the science and/or art of cultivating the ground including the harvesting of crop and the rearing and management of livestock, is the primary source of food for consumption by man and animals alike. It is the bedrock of economic growth and development. Agriculture contributes well over one quarter of the Gross Domestic Product (GDP) in most developing countries[1]. It is the only form of private practice in which a public officer in Nigeria is permitted to engage in[2]. An articulate agricultural revolution and increased value addition in the downstream agro-processing sub-sector, present a potential platform for effective wealth generation and sustainable poverty eradication[3]. Agriculture was the mainstay of Nigerian economy after independence, accounting for more than half of the country's Gross Domestic Product (GDP), and yielding the highest value in export earnings[4]. It contributed up to 60 to 70 percent of the nation's export in the early 1950s and 1960s as Nigeria was reported to be a net exporter of highly valued agricultural products such as rubber, groundnut, palm, cocoa, cotton etc[5]. In the 1960s, agricultural sector was the most important sector in Nigeria as a result of its contributions to domestic production, employment and foreign exchange earnings[6]. It remained a very important sector almost three decades after with the exception that it was no longer the principal foreign earner, a role now being played by the Nigerian oil sector. With the discovery of crude oil in large quantity, Nigeria soon abandoned agriculture and focused on the revenue accruing from oil. The sector became and remained stagnant during the oil boom period of the 1970s, and this development accounted largely for the declining share of its contributions. A trend in the share of agriculture in the Gross Domestic Product (GDP), shows a substantial variation and long-term decline from 60% in the 1960s through 48% in the 1970s and 22.2% in the 1980s[7].

In an effort to revive, revamp and restore the agricultural sector to its original position, various policies have been initiated and introduced by the Nigerian government. One of such policies is tax incentives. This paper seeks to appraise the various agricultural tax incentives under the Nigerian Law and their impacts on the Nigerian agricultural economy.

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[1]K Sertoglu, S Ugural, F V Bekun, 'The Contribution of Agricultural Sector on Economic Growth of Nigeria' (2017) Vol. 7 *International Journal of Economics and Financial Issues* P3.

[2] See paragraph 2 (b) of the Fifth Schedule of the 1999 constitution of the Federal Republic of Nigeria.

[3]O Edoumiekumo and N P Audu, 'The Impact of Agriculture and Agro-Based Industries on Economic Development in Nigeria: An Econometric Assessment'. (206) (7) (1) *Journal of Research in National Development* P. 232.

[4]A Dargumola et al, 'Agricultural Export Potential in Nigeria' (2007). <https:www.lsae.ox.uk/books/epopn/AgriculturalexportinNigeria.pdd> Accessed 5/3/2022.

[5]A Daramola et al, 'Agricultural Export Potentials in Nigeria (2007)<https:www.csae.ox.ac.uk/books/epopn/AgriculturalexportpotentialinNigeria.pdd> Accessed 5/2/2022.

[6]O E Raphael, 'Tax Incentives in the Agricultural Industry (Nasarawa State University, Keffi, April, 20150<https:www.academic.edu> Accessed 6/3/2002.

[7]National Bureau of Statistics, 'Agricultural Sector Statistics<www.nigerianstat.gov.ng/sectorstat/sectors/agriculture> Accessed 5/2/2022.

2. Conceptual Clarification

Tax

Tax is defined as a compulsory monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue[8]. The court in an Australian and *locus classicus* case of Matthews v Chicory Marketing Board[9], also defined tax as a compulsory exaction of money by a public authority for public purposes or the raising of money for the purpose of government by means of contributions from individual persons. The term 'tax', more so, refers to a compulsory levy imposed on a subject or upon his property by the government having authority over him[10].

Tax Incentives

Tax incentive refers to a government enticement, through a tax benefit, to engage in a particular activity[11]. The term, also, can be defined as a government measure that is intended to encourage individuals and businesses to spend money or to save money by reducing the amount of tax that they have to pay[12]. It refers to special arrangements in the tax laws aimed at attracting, retaining or increasing investments in a particular sector, stimulating growth in specific areas and assisting companies or individuals carrying on identified activities[13]. It is, moreso, a fiscal measure used to attract local or foreign investment capital to certain economic activities or particular area in a country[14]. The term "tax incentive" is generic in theory. In practice, it takes the form of tax exemptions, from payments, investment allowances, import tariffs etc.

Agriculture

Agriculture has been defined as all forms of activities connected with growing, harvesting and primary processing of all types of crops, with the breeding, raising and caring for animals, and with tending gardens and nurseries[15]. It is the art and science of cultivating the soil, growing crops and raising livestock.

3. Legal Framework for Tax Incentives in the Nigerian Agricultural Sector

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Nigerian constitution[16] is the fundamental and supreme law of the land. Its provisions are supreme and have a binding force on all authorities and persons throughout the Federal Republic of Nigeria[17]. If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall be void to the extent of its inconsistency[18]. The Constitution provides a framework for taxation. Under Part 1 of the Second Schedule to the Constitution, the National Assembly is empowered to legislate on such tax matter as customs and excise duties[19], stamp duties[20], and the taxation of incomes, profits and capital gains, except as otherwise prescribed by the constitution[21]. The Constitution, moreso, provides certain directive principles on the implementation of economic policies. Thus, section 16(2)(a) provides that "the State shall direct its policy towards ensuring the promotion of a planned and balanced economic development". It is submitted that this provision, though not justiceable, provides a framework for planned formulation and implementation of tax incentives as an economic development policy.

[8] B A Garner (ed), Black's Law Dictionary (10th edn, West Publishing Co. 2004) p. 1685.
[9] (1938) 60 C. L R 263 at 276.
[10]O Akanle, 'The Government, the Constitution and the Taxpayer in Tax Law and Tax Administration in Nigeria' (1991) Nigerian Institute of Advanced Legal Studies, p. 182.
[11] B A Garner (ed0, Black's Law Dictionary (10th edn, West Publishing Co. 2004) p. 1b 90.
[12] Collins Online Dictionary <https//www.collinsdictionary.com> Accessed 10/8/2021.
[13] O O Ifueko, Tax Incentives for Foreign Investors in Nigeria (Switzerland: The Nigerian Investors Business Forum, 2009) p. 2.
[14]B Bruce, 'Effectiveness and Economic Impact of Tax Incentives in the SADC Regions' (2004), submitted to the SEDC Tax Subcommittee, p. 109.
[15] International Labour Organization, Occupational Health Problems in Agriculture, 1963, p. 4.
[16] Constitution of the Federal Republic of Nigeria, 1999 (as amend).
[17] See section (1) of the Constitution.
[18] Ibid, Section 1(3)
[19] Item 16
[20] Item 58
[21] Item 59

Industrial Development (Income Tax Relief) Act[22]

The Industrial Development Income Tax Relief Act (IDITRA) was originally enacted as Industrial Development (Income Tax Relief) Decree No. 22 of 1971 and commenced on April 1st 1970[23]. Generally, a company in Nigeria is subject to tax on all its profit accruing in or derived from Nigeria at 30% rate. However, the Industrial Development Income Tax Relief Act established an income tax relief applicable to companies engaged in industries or products approved as pioneer industries or products. An industry is designed as a pioneer industry if the industry's business is currently not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or there are favourable prospects of further developments in Nigeria or it is expedient in the public interest to encourage the development or establishment of such industry in Nigeria[24]. In Nigeria, industries engaged in the cultivation and processing of food crops, vegetables and fruits, integrated diary production, cattle and livestock ranching, coasted fishing and shrimping, inland lake fishing and processing, have been designated as pioneer industries[25]. Such companies with pioneer status shall be granted income tax relief for a period of three years, which can be extended for a period of one year and thereafter another one year, or for one period of two years[26]. The IDITRA also established exemptions from paying tax on dividends during the pioneer period to the extent that they are paid out of income exempted from tax[27].

Personal Income Tax Act[28]

This Act regulates tax charged on the income of individuals, families, body of individuals and body of trustees. By section 19(1) of the Personal Income Tax Act, various categories of income as spelt out in the Third Schedule are exempted from tax. In relation to agricultural activities, interest on any loan granted by a bank to a person engaged in agricultural trade or business if the moratorium is not less than 18 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted is exempted[29]. More so, dividends paid to a person by a company incorporated in Nigeria shall be exempted from tax under Personal Income Tax provided that the equity participation of the person in the company paying the dividends is either wholly paid for in foreign currency or by assets brought into Nigeria between 1st January 1987 and 31st December, 1992; and that person to whom the dividends are paid own not less than 10% of the equity share capital of the company[30]. The dividend tax-free period shall commence from the year of assessment following the year in which the new capital is brought into Nigeria for the real purpose of the trade or business in Nigeria of the company paying the dividends and shall continue for five years if the company paying the dividends is engaged in agricultural production within Nigeria or processing of Nigeria agricultural products produced within Nigeria or production of petrochemicals or liquefied natural gas, and in any other case, the tax-free period shall be limited to three years[31].

Value Added Tax Act[32]

Value Added Tax Act is an Act that regulate taxes imposed on goods and services. The current regulatory regime for Value Added Tax (VAT) in Nigeria is made up of a number of laws and regulations including the Value Added Tax Act 1993 (as amended in 1996, 1999, and 2007); the Finance Act, 2019 and 2020; and the VAT Modification Order of 2020 and 2021. By virtue of section 2 of the VAT Act, all supply of goods and services into and within Nigeria are subject to tax. However, there are certain goods and services that are exempted from Value Added Tax as contained in the First Schedule to the VAT Act[33]. These include basic food items, fertilizer, locally produced agricultural and veterinary medicine, forming machinery and forming transportation equipment, tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes[34]. Also, following the issuance of the Value Added Tax Modification Order of 2021 (MO 21) by the Minister of Finance, Budget and National Planning, the list of goods and services exempted from VAT has been amended. Thus the MO 21 includes additional products and services to support the agricultural sector. These include locally produced animal feeds and agricultural seeds and seedlings.

[22] Industrial Development (Income Tax Relief) Act, Cap L17, Laws of the Federation of Nigeria, 2004.
[23] O K Obayemi, O O Adegbo & O Omene, 'The Role of Tax During Economic and Post Economic Recession: Challenges and Policy Options in JAM Agbonika and others (eds), *Topical Issues on Nigerian. Tow Laws and Related Areas* (Lokoja: College of Law Salem University 20180 p. 208.
[24] Section 1 of the Industrial Development Income Tax Relief Act.
[25] Industrial Development (List of Pioneer Industries) Notice, 1982.
[26] Section 10(2) (a) (b) of the Industrial Development Income Tax Relief Act, 1970.
[27] Ibid, Section 17 (3).
[28] Personal Income Tax Act, Cap P 8, Laws of the Federation of Nigeria, 2004 (as amended) 2011.
[29] Section 19(7) of the Personal Income Tax.
[30] Third Schedule of the Personal Income Tax Act, para 25 (1)(a).
[31] Third Schedule of the Personal Income Tax Act, para 25(2).
[32] Value Added Tax Act, VI, Laws of the Federation of Nigeria, 2004.
[33] Section 3 of Value Added Tax Act.
[34] See First Schedule to the Value Added Tax Act.

Companies Income Tax Act [35]

This Act governs the taxation of companies in Nigeria. By section 9 of the Act, tax for each year of assessment shall be payable at the rate specified upon the profits of any company accruing in, derived from, brought into, or received in Nigeria. However, certain forms of incentives exist for companies engaged in the agricultural sector under Companies Income Tax (CITA). Section 31(3) allows companies carrying on agricultural trade or business to carry forward their losses from year to year, indefinitely, until the loss has been completely set off against the company's subsequent assessable profits. Similarly, section 33(3)(a) exempts from payment of minimum tax companies carrying on agricultural trade or business. Companies engaged in wholly agricultural activities are entitled to unrestricted and full capital allowance[36]. Thus a company engaged in the fabrication of agricultural equipment, tools and spare parts in Nigeria can also benefit from incentives. More so, any interests payable on loans granted on any company engaged in agricultural trade or business is exempted from taxation provided the moratorium does not exceed 18 months[37]. This serves to incentivize commercial and microfinance banks to provide affordable financing solutions to agribusinesses.

Customs, Excise Tariff, etc (Consolidation) Act[38]

This Act provides for the imposition of *ad valorem* customs and excise duties payable on goods imported and manufactured in Nigeria based on a harmonized system of customs tariff. Section 4 of the Act, provides for partial exemption of fish from import duty. Also, goods specified in the Second Schedule of the Act imported into Nigeria shall, subject to such conditions as are set out therein, be exempted from the duties set out in the Custom Duty Rate Column of the First Schedule of the Act[39].

Finance Act[40]

The finance Act, in its explanatory memorandum, amends the Capital Gains Tax Act[41], Companies Income Tax Act[42], Personal Income Tax Act[43],and other laws[44]. The amendments done by the Finance Act provides for reduced tax burdens for companies in the agricultural sector. It shows that the sector has been a major area of focus by the Nigerian government. Thus section 11(2) of the Companies Income Tax Act[45] was amended by replacing "agricultural trade or business" with "primary agricultural production" which narrows the application of the tax exemption on bank loan interests for loans granted to "primary agricultural production". The Finance Act amendment of the Companies Income Tax Act also restructured the exception of interest on loan for companies engaged in primary agricultural production. The minimum moratorium period of 18 months was reduced to 12 months. This further demonstrated the government's commitment in the improvement of the sector. In the Finance Act, another amendment was also done to section 1 of the Industrial Development (Income Tax Relief) Act where small or medium size companies engaged in the primary agricultural production was included in the list of pioneer industries. Hence, eligible businesses would be rightly given a tax-free period for up to six years subject to the approval of the Nigeria Investment Promotion Commission. More so, the exemption of hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes from Value Added Tax, is another important and notable amendment of the Finance Act.

4. Tax Incentives in the Nigerian Agricultural Sector

In Nigeria, the agricultural sector of the economy enjoys Pioneer Status. In addition to this Pioneer Status that the sector enjoys, there are attendant tax exemptions to all companies operating in the agricultural sector of the economy. Below are the incentives available in the agricultural sector of the economy in Nigeria[46].

A. All agricultural and agro-industrial machines and equipment enjoy zero percentage (0%) duty.
B. Companies in the agro-allied business do not have their capital allowance restricted. It is granted in full i.e. 100%.
C. Agribusiness is tax-free. The payments of minimum tax by companies that make small or no profits at all do not apply to agro-allied business.

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[35] Companies Income Tax Act, Cap (21, Laws of the Federation of Nigeria, 2004 (as amended) 2007.
[36] Second Schedule of Companies Income Tax Act 1993, para 24(7).
[37] Section 11(2) of the Companies Income Tax Act.
[38] Customs, Excise Tariff, etc (Consolidation) Act, 1995.
[39] Section 8 of the Customs, Excise Tariff, etc (Consolidation) Act, 1995.
[40] Finance Act, 2020.
[41] Capital Gains Tax Act, Cap CI, Laws of the Federation of Nigeria, 2004.
[42] Companies Income Tax Act, Cap (21, Laws of the Federation of Nigeria, 2004 (as amended). 2007
[43] Personal Income Tax Act, Cap P 8, Laws of the Federation of Nigeria 2004 (as amended) 2011.
[44] See the Finance Act 2020.
[45] Companies Income Tax Act, Cap (21, Laws of the Federation of Nigeria, 2004 (as amended) 2007.
[46]http:www.indusren.com/incentives-and-guarantees/agribusiness/tt:text=Agriculture%20sector%2oin%20Nigeria%20enjoys%20Pioneer%20status%20with,machines%20and%20equipment%20zero%20percent%20%280%25%20%20duty. Accessed 4/5/2022.

D. Agro-allied plant and equipment enjoy enhanced capital allowance of up to 50%.
E. Processing of agricultural produce is a pioneer industry; consequently, there is 100% tax-free period for 5 years or projects into processing of agricultural produce.
F. Tax relief for Research & Development: Agro-allied industries that attained minimum levels of local materials sourcing and utilization enjoy tax credit.
G. Up to 75% guarantee for all loans granted by commercial banks for agricultural production and processing under the Agricultural Credit Guarantee Scheme Fund (ACGSF) administered by the Central Bank of Nigeria (CBN).
H. Interest Drawback Program Fund.
I. 60% repayment of interest paid by those who borrow from bank under the Agricultural Credit Guarantee Scheme (ACGS), for the purpose of cassava production and processing provided such borrowers repay their loans on schedule.
J. Expatriate quota and resident permits in respect of expatriate personnel engaged by agro-allied companies.
K. Corporate tax incentives relate of 12% shall be enjoyed by Bakers on attainment of 40% cassava blend within a period of 18 months.
L. Personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.
M. The Nigerian Investment Promotion Commission Act allows 100% ownership of companies by foreigners, while the Foreign Exchange Miscellaneous Act, guarantees 100% Repatriation of Capital, Profit, Dividends through authorized means.

5. Impact of Tax Incentives in the Nigerian Agricultural Sector

The impact of tax incentives in the Nigerian agricultural sector is positive and favourable.

Investment: The major impact of tax incentives in the Nigerian Agricultural sector is investment. Tax incentives in the Agricultural sector in Nigeria has attracted many investments and reinvestments in various segments of the agricultural sector which include crop production, food processing and preservation, livestock and fisheries production, agricultural inputs supplies and machinery as well as water resources development, commodity trading and transportation etc. Tax incentives in the sector have attracted recent and proposed investments (including domestic and foreign investments) such as $5 Billion worth of investments in fertilizer manufacturing, $70 million in mechanized rice farm, $1 million for large scale rice production, establishment of $6 million plant to process oranges into concentrates[47] and so much more.

Increased Employment: Tax incentives in the agricultural sector have resulted in increased employment of many hitherto unemployed Nigerians. Many Nigerians now work in the agricultural sector as incentives in this area of the economy attracted investors who in turn create job opportunities.

Increased Agricultural Productivity: The use of bank loans by local farmers who are unable to access funds to expand their production has led to an increased agricultural productivity. President Muhammadu Buhari recently unveiled a massive pyramid of rice harvested by the farmers who accessed pay back bank loans they borrowed to expand their production[48]. Tax incentives in the Agricultural sector in Nigeria have led to increase in Agricultural productivity in the country and have also promoted food self-sufficiency. For example, food production index was 101.9 in 2018 from 25.2 index in 1969 representing in average annual growth rate of 3.07%[49].

6. Challenges Affecting Tax Incentives in the Nigeria Agricultural Sector

Lack of information: Most establishments especially the small scale and large agro-allied industries have limited access to information thereby missing out in respect of available tax incentives that would aid them in investing and reinvesting of their profits in their businesses.

Illiterary: Most farmers especially those in the rural areas are not educated enough to know about the provisions of the law on availability of incentives and even how to approach the banks to access loans for their agro-businesses.

Abuse by Investors: Some investors always abuse to tax incentives. The abuse may occur where existing firms re-register and restructure into new entities to qualify for incentives. It may occur also where an investor overvalue

[47] http://www.indusren.com/incentives-and-guarantees/agribusiness. Accessed 4/5/2022
[48] *Vanguard Newspaper* 18th January, 2022.
[49] Knoema, 'Food Production Index' <https://knoema.com/atlas/nigeria/food-production-index>. Accessed 5/5/2022.

or undervalue relevant assets in order to take advantage of tax incentives. This type of abuse usually arises in relation to incentives based on qualifying capital expenditure.

Poor Implementation Drive: Another challenge facing tax incentives in the Nigerian agricultural sector is low implementation drive by the regulatory bodies. There is hardly any articulated executive plan for monitoring and assessment of tax incentives in Nigeria, including process evaluation.

Corruption: The problem of systematic corruption is also another challenge to tax incentive in the Nigeria agricultural sector. Cases abound where tax incentives especially pioneer, status tax incentive are granted in favour of some rich and selected people without due process.

7. Conclusion and Recommendations

This study has made an attempt to discuss and present a robust evaluation of the various tax incentives available to the Agricultural sector of the economy in Nigerian and the various legal frameworks providing for them. The impact of tax incentives in the Nigeria Agricultural sector was also highlighted in the study. There is no gain saying that the agricultural sector is one of the largest sector of the economy, and it is a strong link for bridging national and global gap in food security. From the research, it is observed that though there are various tax incentives available under the Nigerian law for the Agricultural sector, several agro-allied businesses are not only unaware of those tax incentives but also lack the requisite knowledge on how to access them. The following are recommended: There should be an outreach to the local farmers all over the country about the provision of tax incentives and policies put in place by the government. Where this is done, the farmers would be able to exploit the available tax incentives as well as the policies granted. They should be also educated of the availability of financial tax incentives in the agricultural sector and how to access than through the variations financial institutions. There should be policies put in place for the adequate education and training of farmers. Government should ensure that its policies on tax incentives are properly and effectively implemented. Government should also ensure that there is balanced tax incentivization in the Agricultural sector in Nigeria.