

## **Legal Alert – July 2016 – Tax Deductibles – Certificate of Acceptance of Capital Expenditure**

### **Introduction**

The Companies Income Tax Act recognises that companies will incur expenses/expenditure from which they will earn an income, and the income after expenses will attract taxable profits.

As capital expenditure impacts on a company's income and the final corporation tax paid, close attention is paid to all verifiable capital expenditure, as it is known that a prudent capital expenditure increases a company's production capacity and its long-term profitability; in contrast to fictitious or non-related expenditure to a company's bottom line or net earnings.

With the recession in the economy, and the natural inclination to increase the taxes collected, the requirement for a Certificate of Acceptance of Capital Expenditure or Assets, issued by the Director of the Industrial Inspectorate Division, which Division is in the Federal Ministry of Industries, Trade and Investments, has being resurrected.

### **Notice of Capital Expenditure**

It is the primary function of the Industrial Inspectorate Division ("IID") in the Federal Ministry of Industries, Trade and Investments to inspect, investigate, verify and certify any capital expenditure incurred on any capital asset or undertaking that is in excess of ₦500,000 (Five Hundred Thousand Naira) in value. Capital Assets and undertakings contemplated under this regime include land, buildings, industrial plants, equipment or machines and other similar capital assets.

The Industrial Inspectorate Act requires that before or after any capital expenditure that is in excess of ₦500,000 is incurred by any company, whether or not desirous of claiming an Investment or Capital Allowance, as a tax deductible expense from the tax authorities, against such a capital expenditure, Notice of the nature of the capital expenditure must be served on the IID Director, who is required to investigate, inspect, verify and certify such a capital expenditure.

### **IID Certificate of Acceptance**

The IID Director shall on his or her satisfactory investigation, inspection and verification of the true value of such a capital expenditure, issue the IID Certificate of Acceptance of such a capital expenditure.

No Capital or Investment Allowance can be claimed on a capital expenditure, as a tax deductible expense, where no IID Certificate of Acceptance is furnished to the Tax Authority. Thus, any Certificate of Acceptance of a capital expenditure issued by the IID Director or arising from a final Arbitrator's Decision or Award on an IID application shall be accepted by the Tax Authority, which is the Federal Inland Revenue Service ("FIRS"), and any other department of any tier of Government.

In addition to the none admittance of a capital expenditure to any tax relief or allowance, the failure by a company and its key management team to apply for a IID Certificate of Acceptance of a Capital Expenditure without a reasonable explanation is an offence which on conviction attracts a fine. More importantly, no Capital or Investment Allowance will be allowed by the Tax Authority as a business deductible expense where no IID Certificate of Allowance is tendered.

### **IID Arbitration**

Where a company disputes the IID valuation of its capital expenditure or asset, such a company has the right to serve a Notice of Objection to such a valuation for it to be re-assessed by an Independent Sole Arbitrator agreed to by the IID Director and the challenging company. The nominated Sole Arbitrator must however be approved by the Minister for the Federal Ministry of Industries, Trade and Investments.

The Investment Valuation Decision by the Sole Arbitrator shall be final and binding on the parties to the Arbitration.

### **Conclusion**

The revival of this regulatory Certificate of Acceptance of Capital Expenditure, at a time when the economy is in recession, will only further increase the number of permits, licenses and certifications, with their adverse impact on the escalating costs of doing business.

The certification timeline, which is a bureaucratic exercise and the acquisition of the asset timeline, may not align thereby delaying the acquisition of the asset or the forfeiture of the tax relief due to the delayed issuance of the IID Certificate of Acceptance. Where the Certificate of Acceptance is later issued, claiming the tax allowance or deduction or relief from such a capital expenditure, from the Tax Authority, can be another herculean exercise.

Multiple Licenses and Certifications have continued to impede legitimate businesses. The reduction and or harmonisation of these

certifications and permits, including the IID Certificate of Acceptance, will likely encourage more investments in the country.

Requiring the Federal Minister for the Federal Ministry of Industries, Trade and Investments to approve a jointly nominated Sole Arbitrator could be prejudicial to the Arbitration exercise as the Federal Ministry of Industries, Trade and Investments, on behalf of the tax collecting government authority, is an interested party to any challenged valuation and the outcome of the Arbitrator's decision.

Until the applicable legislation is amended, early planning for any capital expenditure, and its notification to the IID is highly recommended.

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