THE SENATE
FEDERAL REPUBLIC OF NIGERIA

LEAD DEBATE ON

PETROLEUM INDUSTRY FISCAL BILL 2017

SPONSOR
Senator Omotayo Donald Alasoadura
Ondo Central

CO-SPONSORS
All members of Senate Committees on Petroleum Resources (Upstream), Gas Resources and Downstream Petroleum Resources

OUTLINE FOR LEAD DEBATE

1.0. Introduction.

2.0. Background

3.0. Objectives of the Petroleum Industry Fiscal Bill.

4.0. Principles

5.0. Structure

6.0. Financial Implications

7.0. Conclusion.

1.0. Introduction

1.1. Mr. President, Distinguished Colleagues, It is my honour and privilege to lead the debate on the Petroleum Industry Fiscal Bill ("Bill"). The first reading of the Bill took place on the 27th day of April 2017.

Mr. President and Distinguished Colleagues, the Bill seeks to attract and sustainably encourage investments in the Petroleum Industry whilst increasing accruable revenues to the Government of Nigeria.

Mr. President and Distinguished Colleagues, permit me to briefly provide the background, objectives, principles and summary of the content of this Bill on the basis of which we seek your support for the *Second Reading* of this Bill.

2.0. Background

The petroleum sector is one of the major contributors to the Nigerian economy and commands continuous attention by the government and its people. The existing fiscal framework for petroleum in Nigeria is complex and many parts are in conflict with one another. Indeed so many amendments of the primary Act have been enacted into law and in some cases not readily available to investors and operators of the industry since these exist as separate regulations.

Thus, this Bill consists of the totality of the legal instruments which government applies to extract rent from companies operating in the upstream sector and for collecting revenues from companies operating in the downstream.

Mr. President, Distinguished Colleagues, the existing legislations underlying the Nigerian fiscal regime include the following:

(a) **Petroleum Profit Tax Act** (Cap. 354 of LFN 1990 as amended – (1958);
(b) **Petroleum Act** (Cap. 350 of LFN 1990 as amended – which came into force on 27 November 1969);
(c) **Deep Offshore and Inland Basin Production Sharing Contracts Act** (No. 9 of 1999 (as amended – (1993);
(d) The **first Memorandum of Understanding (MOU)** signed between Industry operators and Government – 1986;

(e) **Finance (Miscellaneous Taxation Provisions) Decrees** 1996 – 1999; and

(f) **Companies Income Tax Act** (Cap C21. Of LFN 2004) as amended 2007

These legislations which are mostly outdated and out of touch with current realities will be repealed by passage of this Bill. The imperative for the consideration of this bill is borne out of the challenges faced by the existing fiscal system including:

(1) Legislative uncertainties surrounding appropriate regime for operators in the industry, definition issues, application of correct pricing to products and revenue determination, cost recognition, capital allowances claims, filing of returns and payment of taxes;

(2) Lack of fiscal neutrality where, for example, a player with associated gas sets off gas costs against crude oil while another player claims gas cost under companies income tax regime or where different royalty rates are applied to different players with similar product base.

(3) Lack of clarity around gas revenues under Production Sharing Contracts leading to long term disputes with the Contractors;

(4) Elimination of dual tax rates and crude pricing for tax purposes;

(5) High petroleum profit tax rate (85%) with absence of incentives for cost reduction;

(6) Lack of enabling fiscal protection for domestic refining to align with the policy of maximizing value-add locally as well as protecting unintended sharp practices in a sector that is still evolving and traditionally known to have tight profit margins;

(7) Government participation without adequate operational costs control measures;

(8) Difficulties and Uncertainties of tax assessment and collection between the FIRS and NNPC;

(9) Difficulties in accessing cost data especially for the independent operators;

(10) Lack of cluster or integrated development planning and operating philosophies to minimize cost and maximize government take;

(11) Need for review of the Associated Gas Framework Agreement (AGFA) terms and assess its continuous relevance or suitability;

(12) Lack of flexibility in the existing legislation with respect to windfall tax when crude oil price increases and incentives when it decreases thus denying the government appropriate take during high prices and fair take during low oil prices to sustain investment; and

(13) Inability of the Government to fund its equity in the JV operations.

All these call for new directions motivated by new objectives, new principles, new framework and invariably new legislation that will address all these obvious gaps.

3.0. Objectives of the Petroleum Industry Fiscal Bill

Mr. President, Distinguished Colleagues, the primary purpose of the Petroleum Industry Fiscal Bill is to have fully developed fiscally sustainable, safe, secure, environmentally friendly, efficient and integrated petroleum operations for the socio-economic development of Nigeria.

The Bill will establish a fiscal framework that will guide the planning and development of petroleum resources in a rational and sustainable manner for the socioeconomic development of Nigeria.

The measurable objectives of this Bill shall include but not limited to:

(a) establish a progressive fiscal framework that encourages substantial and progressive investment in the petroleum industry balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria;

(b) institute a forward looking fiscal framework that is based on core principles of clarity, dynamism, neutrality, open access and fiscal rules of general applications;

(c) provide clear distinction between legislative aspects of the fiscal regime and negotiable aspects of contractual obligation.

4.0. Principles

Mr. President, Distinguished Colleagues, the design of fiscal regimes is a critical factor in shaping perceptions of petroleum industry competitiveness, especially in the era of high volatility in oil prices and the need to maximize both investors and government objectives. A poorly designed fiscal regime would lead to undermined production operations and/or consequent declines in production and revenue generation.

A summary of the key fiscal principles of a desirable fiscal regime is provided below:

1. **Neutrality** - Avoids investment and reward distortions. The fiscal regime should not alter the order in which projects are undertaken; nor should it change the speed of operations, decisions about reinvestment, etc. It should not be the sole reason why an investment is made; similarly it should not be the reason why an investment is not made.

2. **Capture of rents** – this principle satisfies the neutrality criterion, enables the government to share in the upside of projects, and supports the government's role as owner of the natural resources.

3. **Stability and timing of revenue** – this principle provides for a stable revenue stream to government. Governments favour stable and early revenue. However, the counterpoint to this goal is a transfer of risk to the investor and delayed payback. This objective should be less of a concern when there are multiple fields at different stages of development.

4. **Progressivity and adaptability** – Ensures progressivity. A progressive regime yields a rising government take as the project's profitability increases. A system that responds flexibly to changes in prices and costs

might be perceived as more stable, lowering the investor's perceived risk of regime stability and avoiding the rent-seeking behavior associated with discretionary changes. It also ensures a low tax burden on marginal projects, thereby improving their economic viability.

5. **Administrative simplicity and enforceability** – this principle emphasizes and supports ease of administration. To the maximum extent possible, given other objectives, the regime should be transparent and simple to administer. It should also be designed to avoid leakages through abusive transfer pricing and other tax avoidance practices.

6. **International competitiveness** – this principle emphasizes and supports competitiveness. Adjusting for investor's perceptions of country risk, the regime should be competitive relative to those of other countries in order to attract investment.

7. **In-country value-add** – this principle provides enabling fiscal protection for domestic refining to align with the policy of maximizing value-add locally as well as protecting unintended sharp practices in a sector that is still evolving and traditionally known to have tight profit margins.

5.0. Structure

(a) Structure of the Bill

Mr. President, Distinguished Colleagues, this Bill is divided into 8 parts and a schedule.

Part 1 deals with the objectives of the Bill, while Part 2 provides for the administration of the Bill, adjustment factors and special products. It also contains provisions for frontier acreages and ultra-deep water.

Part 3 stipulates a new requirement for all petroleum companies to pay company income tax under the Companies Income Tax Act.

Part 4 and Part 5 provide for rents, royalties and Tax.

Part 6 provides for the various payments and allocation system to regulate the Production Sharing Contracts and other contracts.

Parts 7 and 8 respectively contain the Miscellaneous Provisions and the Repeals, Transitional and Savings Provisions.

(b) Highlights of Provisions of the Bill

Mr. President, Distinguished Colleagues, the following are the key highlights of this Bill:-

1. The Bill makes provisions for the fiscal terms and instruments (rents, royalties, tax and incentives) for the entire petroleum industry value chain – including upstream, midstream and downstream operations.

2. The Bill seeks to provide general terms for exploration and producing companies that may wish to venture into the frontier and the ultra-deep acreages.

3. The Bill offers new rates for rents for land covered by petroleum exploration licences, petroleum prospecting licences and petroleum mining leases.

4. The Bill stipulates comprehensive and progressive natural gas fiscal terms and instruments for the development of the abundant natural gas resources in Nigeria.

5. The Bill also designs a progressive fiscal system for upstream, midstream and downstream oil and gas operations.

6. The Bill reinforces fiscal neutrality; provides clear definitions of upstream oil and upstream gas operations, distinct from mid-stream oil and mid-stream gas operations and likewise for downstream oil and downstream gas operations.

7. The Bill provides for improvement in the system of tax administration in the petroleum industry by inclusively repealing and re-enacting the Petroleum Profit Tax Act to help the *Federal Inland Revenue Service* to properly and effectively administer the tax system for the industry.

8. The Bill seeks to remove the distortions in Associated Gas Framework Agreement (AGFA) from the effective cross subsidy of oil to the gas sector;

9. The Bill provides for improvement in the system of tax administration in the petroleum industry and provides tools to help Federal Inland Revenue Service to properly and effectively administer the tax instruments for the industry. Further, the Bill also provides tools for Nigeria Petroleum Regulatory commission to properly effectively, efficiently, and equitably administer the rent and royalty schemes prescribe in the Bill.

6.0. Financial Implications

FINANCIAL IMPLICATIONS:
In Pursuance of Senate Standing Order 2016 (As Amended)

1. **Statutory Requirement for Financial Implications**
   Senate Standing Order 2015 (As Amended), Order 77 paragraph (3) provides that *"a compendium of the background information and financial implications shall accompany every bill"*. In pursuance of this requirement, the financial implications of the *Petroleum Industry Fiscal Bill 2017* are stated hereunder as follows:

2. **Financial Implications of the Industry Fiscal Bill 2017**
   Petroleum Industry Fiscal Bill 2017 seeks, inter alia, to provide a fiscal framework for the petroleum industry. The Bill does not propose to set up any new institution. Therefore, no funds are needed to be appropriated by the National Assembly for funding under the *Petroleum Industry Fiscal Bill 2017.*

7.0. Conclusion

In conclusion Mr. President and Distinguished Colleagues, this Bill proposes a slim, focused, yet robust fiscal framework for the Nigeria Petroleum Industry. Principles of neutrality, progressivity, flexibility, simplicity, and adaptability have been adopted to capture economic rents equitably, ethically, effectively and efficiently to enhance investment performance and government revenue. In particular, key lapses associated with prior fiscal frameworks have been remedied.

Mr. President and Distinguished Colleagues, I believe that the objectives and provisions of this Bill are very laudable and would transform the Nigerian oil and gas industry and attract substantial investment to the industry at this critical time that such investments are required to stimulate growth in the industry with its concomitant effect on other sectors of the Nigerian economy. I therefore urge you all to support the 2nd reading of this Bill and its committal to the Committees for detailed legislative consideration.

Thank you.

Senator Omotayo Donald Alasoadura
Ondo Central Senatorial District