

AJUMOGOBI & OKEKE

VOLUNTARY ASSETS AND INCOME
DECLARATION SCHEME (VAIDS)*



INTRODUCTION

The Voluntary Asset and Income Declaration Scheme (“VAIDS” or “the Scheme”) was recently signed into force via an Executive Order No 004 of 2017 by the then Acting President, Professor Yemi Osinbajo (SAN).¹ The purpose of the Scheme is to authorize both the federal and state government to allow defaulting taxpayers to voluntarily declare their assets and income, pay due taxes and obtain some benefits in return, i.e., regularizing their tax positions with regards to the preceding past 6 years without suffering penalties, interests and/or prosecution. In clear terms, the Acting President had stated that the Scheme was specially targeted at taxpayers, who had neither declared their taxable incomes and assets nor correctly declared same, those who do not pay tax at all, and also those who had been underpaying or under remitting taxes. Responsible citizens have an opportunity and a nine-month period of grace to redress their weighty offence of failure to pay tax, a failure to fulfill their legal and moral obligation to government and to society. Tax defaulters have been given nine months (from 1st July to 31st March 2018) within which they can settle their tax liabilities without having to pay interest and penalties, or face prosecution.

THE AIMS AND OBJECTIVES OF THE SCHEME

By virtue of this Scheme also, if taxpayers give full and honest declaration, they will receive immunity from prosecution, forgiveness from penalty and interest that is due on unpaid taxes.

It is stated that taxpayers will also get the full assurance that all information provided will remain confidential. In addition to this, participants in the Scheme will not be selected for tax audit for the period. Those who fail to take advantage of the nine months grace period would face criminal investigation and if found guilty, may face up to five years jail term.

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¹. On June 20th, 2017. However, the Scheme which applies to taxes from the preceding six (6) years is to be in operation for nine (9) months commencing on 1st July, 2017 until March 31st, 2018.

In summary, the Voluntary Asset and Income Declaration Scheme is a Scheme which encourages the voluntary disclosure of previously undisclosed asset and income for the purpose of payment of all outstanding tax liabilities. The Scheme offers a limited waiver for declaration within the specified period of time, and it has the following aims:

- *The main aim of the Scheme is to encourage tax compliance from individuals and companies thus increasing the tax revenue. The Scheme also encourages compulsory disclosure of undisclosed assets and income for the payment of outstanding tax liabilities especially for the High-Net worth Individuals (HNI's). These individuals get a chance to voluntarily redeem their past tax obligations and prosecution provided they act within the time frame given.*
- *It also aims at discouraging tax evasion and the use of tax havens.*
- *It also aims at increasing tax to Gross Domestic Product (GDP) of the country from 6% to 15% by 2020 and very soon, the Senate would pass whatever legislation needed to improve tax compliance in Nigeria; and*
- It also aims to broaden the Federal and state tax bracket as investigation shows that only 214 individuals nationwide pay ₦20 Million (Twenty Million Naira) or more on tax annually.

THE LEGAL BASIS FOR THE SCHEME

From the above, the Scheme was introduced by an Executive Order rather than by an Act of the Federal Parliament, thereby making the legality of such Executive Orders an issue to be considered. An Executive Order is usually intended to direct or instruct the actions of executive agencies or government officials or to set policies for the Executive branch to follow. Executive Orders have the full force of law, based on the authority derived from statute or the Constitution itself. The ability to make such orders is also based on express or implied Acts of Parliament that delegates to the President some degree of discretionary

powers – delegated legislation. In essence, the Executive Order is not a deviation from law. Rather, it is an extension of the existing law or the Constitution, giving biting teeth to both. It is for quick decision and action. The Executive Order recognises that it is not enough to make laws and put them to sleep. Rather, it ensures that no law goes to bed without accomplishing the purpose for which it was enacted.

However, Executive Orders may be challenged for the following reasons amongst others:

1. Like both legislative statutes and subsidiary ordinances by government agencies, Executive Orders are subject to judicial review. They can be challenged in whole or in part and they can be quashed if they lack support by statute or the Constitution.² The extant VAIDS Executive Order being a federal subsidiary ordinance appears to be a good candidate for judicial review as it appears to change tax status of the citizens.
2. The Executive Order is to be read in conjunction with all extant tax laws, regulations and guidelines, and since it seems to grant tax concessions that may not be expressly supported by extant tax laws and regulations, it may not be upheld by Nigerian Courts.³ In particular, Section 68 of the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRS Act) provides that the FIRS Act is superior to all other tax laws—particularly the ones administered by the FIRS as well as the Personal Income Tax, and so, even if the Executive Order were a tax law, it would still be subject to the provisions of the FIRS Act.⁴
3. The VAIDS Executive Order cannot override Federal Tax statutes if in conflict with them, and this is because in a long line of tax and revenue cases, Nigerian courts have always held that administrative circulars and opinions cannot override validly enacted legislation. For instance, in **Global International Drilling vs FIRS**,⁵ the court held that

². Josef Omorotionmwan, “Government in action: The Executive Orders,” *Vanguard Newspaper* (Lagos, Nigeria, June 1, 2017). Available at: <https://www.vanguardngr.com/2017/06/government-action-executive-orders/>. Last accessed on October 9th, 2017. (Omorotionmwan).

³. Andersen Tax (Nigeria), “Andersen Tax’s Alternative Views on the Voluntary Assets and Income Declaration Scheme.”

⁴. *Ibid.*

⁵. (2013) 12 TLRN 1,

on the status of the FIRS Information Circular, such are merely explanatory notes, which cannot by any stretch of statutory interpretation override or supersede the clear and unambiguous meaning of any statutory provision. Therefore, administrative circulars and opinions cannot be clothed with any legal authority giving it statutory flavour. This rule has also been upheld in other revenue law cases such as **Offshore International vs FBIR**,⁶ and **Saipem Contractors vs FIRS**.⁷ In **Saipem**, in particular, Justice Saidu had held thus:

“Notwithstanding whatever representation [that] the 1st Defendant [FIRS] might have made to the Plaintiffs [Saipem] as to their tax regime or status, it is the law that guide payment of tax that [must] prevail...Therefore; it is not the issue of resiling of earlier statement that is important now. What is important are the various provisions of law guiding payment of tax in this country. I hereby hold that nothing stopped the [FIRS] from resiling their earlier statement to the Plaintiffs, where such statement does not conform with the law. Issue of payment of Tax is completely that of law.”⁸

The **Saipem** Court’s view is in line with the earlier decision in **Global International Drilling vs FIRS**, where the court also held that the FIRS is not bound by its own opinions and circulars, since FIRS has freedom to change its policy: “.....The respondent [FIRS] must have the freedom to interpret the revenue laws and give general practice guidance to taxpayers when the tax policy and enactment suggests.”⁹To reiterate, on the status of the FIRS’ Information Circular, the court in **Global International Drilling vs FIRS** (2013) 12 TLRN 1 also held that such is merely an explanatory note, which “cannot by any stretch of statutory interpretation override or supersede the clear and unambiguous meaning of any statutory

⁶. (2011) 4 TLRN 59, at 78-82.

⁷. (2014) 15 TLRN 76, at 97-98.

⁸. *Ibid.*

⁹. *Ibid.* at 98.

provision. Therefore, it cannot be clothed with any legal authority giving it statutory flavour.”

CONCLUSION

The persisting global economic downturn now poses several challenges for the Sub-Saharan African region in particular, and coupled with plunging oil and commodity prices, Sub-Saharan economies have been forced to re-assess their investment and business regulatory policies in general, in order to generate more revenue from hitherto neglected or omitted sources. In addition, in light of dwindling revenues from global crude oil sales, the Nigerian federal government is facing some of the largest budget deficits in its history, and Nigerian finance experts and tax stakeholders have opined that the projected budget deficits are unsustainable and that the federal government needs to close the budget gap through reduced spending and/or increased revenue. One way the Nigerian government could increase tax revenue is through tightening up the tax avoidance routes by which income and gains that ought, ordinarily to be subject to tax, escape being taxed due to porous leakages in the Nigerian administrative policies and enforcement of its tax laws. Typical examples would include gains and income accruable under Personal Income Tax, Companies Income Tax, Petroleum Profits Tax, and Capital Gains Tax statutes which are the principal direct tax statutes in Nigeria.

Finally, it is our view that while the efforts of the government to widen the tax net and also curb tax evasion through the VAID Scheme is very salutary, such bold tax instruments should be well grounded in law via proper amendments of federal tax statutes in order to be enforceable.

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