

## **DECONSTRUCTING THE VOLUNTARY ASSET AND INCOME DECLARATION SCHEME (VAIDS) OF THE FEDERAL GOVERNMENT**

### **Introduction**

A tax is an extortion,<sup>1</sup> albeit of a legitimate kind.<sup>2</sup> As is common with all extortions, the tax payers on whom lies the uneasy obligation to pay, employ various devices both within and outside the ambit of the law to rid themselves of such burdens. This invariably gives rise to tax avoidance/evasion depending on the methods of tax planning adopted and the provisions of the law.

In the same vein, tax payers have become more sophisticated in trying to avoid or rather, minimize their tax liabilities, with carefully laid out schemes that sometimes cut across State jurisdictions.<sup>3</sup> Equally, tax administrators have become shrewd and perhaps cynical by incorporating clumsy and cumbersome provisions in tax statutes in a bid to bring all taxable activities within the tax net as much as possible. Ultimately, the courts are left with the unenviable role of adjudicating disputes between tax payers and tax administrators regarding the former's potential tax liabilities.<sup>4</sup>

Notwithstanding this positional stand-off, most governments, realizing the revenue implications of this impasse, have been forced to explore other means of improving tax compliance by citizens. These measures typically include: sensitization of the public on the benefits of paying taxes, provision of tax incentives/waivers/amnesties, as well as focused negotiations with erring taxpayers on the amortization of their tax liabilities.

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<sup>1</sup> The legal dictionary.net defines extortion as "the act of obtaining something of value by using threats, force..."

<sup>2</sup> R.W. Mcgee posited that "The property tax relies on force or the threat of force for collection." See his article titled "the Ethical Case for Charging Fees for Education" Journal of accounting Ethics and Public Policy, vol. 2, No.1, p.235

<sup>3</sup> Transfer pricing for example

<sup>4</sup> This is because tax is entirely statutory. There is no common law/equity of Tax

## **The VAIDS Policy**

The then Acting President - Professor Yemi Osinbajo, on 29<sup>th</sup> June, 2017 signed an executive order<sup>5</sup> introducing the Voluntary Assets and Income Declaration Scheme (the “Scheme”) which was to take effect from 1<sup>st</sup> July, 2017.<sup>6</sup> The said executive order was made pursuant to the Constitution which provides that:

“It shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.”<sup>7</sup>

The object of the Scheme is essentially to encourage and provide an opportunity for eligible taxpayers to:

- a. regularize their tax status for all the relevant years;
- b. pay all outstanding taxes;
- c. prevent and stop tax evasion; and
- d. ensure full tax compliance<sup>8</sup>

The Scheme covers all federal taxes including those administered by State agencies such as the Personal Income Tax.<sup>9</sup> Also, the Scheme is mandated to provide a nine (9) month period commencing from 1<sup>st</sup> July, 2017 for defaulting tax payers to declare their assets and income from sources within and outside Nigeria relating to the preceding six (6) years of assessment.<sup>10</sup> The Executive Order also provides for certain requirements to be satisfied before the relevant tax payer can take benefit of the Scheme, such as the condition that the disclosures by the taxpayer should be voluntary, full, frank, complete and verifiable in all material respects.<sup>11</sup>

In return for compliance, certain benefits accrue to the tax payer under the Scheme, such as - immunity from prosecution for tax offences, immunity from tax audit, waiver of interest and penalties, option to spread payment of outstanding liabilities over a maximum period of three

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<sup>5</sup> Executive No. 004 of 2017

<sup>6</sup> Paragraph 13 of the Executive Order

<sup>7</sup> Section 24(f) of the 1999 constitution of the Federal Republic of Nigeria as amended

<sup>8</sup> Paragraph 3 of the Executive Order

<sup>9</sup> Paragraph 7 of the Executive Order

<sup>10</sup> Paragraph 2 of the Executive Order

<sup>11</sup> Paragraph 5 of the Executive Order

years as may be agreed with the relevant tax authority, among others.<sup>12</sup> However, non-compliance would attract the full sanctions and penalties as provided under the relevant tax statute.<sup>13</sup>

Lastly, the Executive Order not only provides for the confidentiality of all information supplied by the taxpayers under the Scheme, but also prescribes penalties for any tax official or persons duly authorized to receive information under the Scheme who breaches the confidentiality of information received or exchanged under the Scheme.<sup>14</sup>

### **Matters Arising**

The window period of nine (9) months within which erring tax payers are to take advantage of the Scheme lapsed on 31<sup>st</sup> March, 2018 without prejudice to any further extension by the government. However, upon a dispassionate evaluation of the impact of the Scheme, there appears to be shortfalls in the attainment of its targeted goals and revenue expectations. For example, a total revenue of \$1billion which is the equivalent of N305 Billion was projected to be recovered under the Scheme, but what has actually been recovered is N20 billion.<sup>15</sup> This leaves much to be desired. Thus, this writer had to probe further with a view to uncovering the underlying reasons behind the apparent abysmal performance of the Scheme, and found as follows:

### ***Inadequate Sensitization of the Public***

There is a lack of awareness of tax laws by the generality of the public. Only a few citizens are aware of their tax obligations and only a smaller fraction of this minority is aware of the Scheme. More so, there is the prevalent misconception that the Scheme is targeted exclusively at high net worth individuals and businesses. Hence, it is outrightly incredible to learn that the Federal Executive Council approved a whopping sum of N1.5 billion for media advertisements for the

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<sup>12</sup> Paragraph 6 of the Executive Order

<sup>13</sup> Paragraph 8 of the Executive Order

<sup>14</sup> Articles 9 & 10 of the Executive Order

<sup>15</sup> This disclosure was made by the FIRS Chairman – Mr. Babatunde Fowler in an interview dated 19<sup>th</sup> March, 2018 and titled “How VAIDS will boost tax revenue, development” available at [www.m.guardian.ng/interview/](http://www.m.guardian.ng/interview/) accessed on 24/3/2018

Scheme.<sup>16</sup> While it is conceded that there was some level of publicity at the time the scheme was launched, the publicity wasn't sustained and thinned out after a few weeks.

### ***Poor Enforcement of Tax Laws***

The Scheme can only be successfully implemented by government from a position of strength and not that of perceived helplessness. It is of no use having laws that are not enforced, not least against tax offenders. For the Scheme to achieve its anticipated outcomes, the government must be seen as prepared to invoke the tax laws to sanction those who attempt to evade the system. While the Federal Inland Revenue Service ("FIRS") and the Lagos State Internal Revenue Service ("LSIRS") have consistently applied civil measures to enforce tax payment, criminal prosecution is rare and perhaps non-existent.<sup>17</sup>

### ***Pervasiveness of Corruption/Poor Governance***

There is a direct correlation between governance and tax compliance. For countries with highly transparent and accountable governments, the tax compliance rate is usually high.<sup>18</sup> However, for countries with endemic corruption especially in the public sector, the tax compliance rate is generally low.<sup>19</sup> The latter condition can partly be explained by the fact that the citizenry don't feel the obligation to pay tax when they have not seen or felt the positive impact of government in their lives. Also, the news media is inundated with stories of scandals by public office holders who use public funds to finance their ostentatious lifestyles. These stories act as a disincentive to

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<sup>16</sup> See comments of Minister of Finance, Kemi Adeosun, briefing State House Correspondents after the FEC Meeting held on 29<sup>th</sup> November, 2017 available at [www.m.guardian.ng/new/fec/](http://www.m.guardian.ng/new/fec/) accessed on 24/03/2018

<sup>17</sup> See article titled "Bridging the expectation gap in Nigeria's voluntary assets and income declaration scheme" available at [www.responsibletax.kpmg.com](http://www.responsibletax.kpmg.com) accessed on 24/03/2018

<sup>18</sup> For example, the tax compliance rates of countries like the United Kingdom, the United States of America, France, Germany and other saner climes are high

<sup>19</sup> An example being Nigeria and some other African Countries like Angola, Chad etc

taxpayers who consider paying tax as “emptying their stream into government’s ocean of corruption”.<sup>20</sup>

### ***Inadequate Records/Databases***

The record keeping culture in Nigeria is poor to say the least. I am not aware of any records manual nor records retention and disposition schedule; personnel handling the records are not trained in records management, inadequate facilities for the preservation, storage, and retrieval of records, no filing manual, inadequate computers to manage the volume of records generated and the attitude of administrators towards records and records management constitute the problems of many public institutions in Nigeria. In addition, financial institutions such as banks which are required to intimate the tax agencies of transactions within a defined time threshold fail or are late to do so. Similarly, there is a lack of information sharing between various government agencies giving rise to a disharmonized state of affairs where useful information on taxpayers and taxable activities are disparately lodged in various servers and databases. This has seriously undermined tax administration and enforcement in the country.

### ***Poor Human Capacity Development of Tax Administrators***

The remuneration/conditions of service of tax officials employed in public institutions saddled with revenue collection<sup>21</sup> is relatively poor when compared with what obtains in the private sector. Consequently, competent and qualified professionals prefer to pitch their tent with the private sector leading to the staffing of low grade professionals with little or no tax training in tax administration agencies. This inevitably leads to inefficiency in revenue administration in the country.<sup>22</sup> Additionally, there is the absence of continuous training and retraining of tax officials to keep them apprised of current developments in the tax industry. This is particularly instructive considering the fact that tax has transcended local borders and there are now international treaties regulating the sector.<sup>23</sup>

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<sup>20</sup> See article by Jide Ojo titled “Solutions to Nigerians’ Poor Tax Compliance” available at [www.opinionnigeria.com/](http://www.opinionnigeria.com/) accessed on 25/3/2017

<sup>21</sup> I.e the FIRS and other state internal revenue agencies like LIRS

<sup>22</sup> See A. Ipaye’s Book titled “Nigeria Tax Law & Administration – A Critical Review” published in London by Asco Prime Publishers, 2014, at p. 94

<sup>23</sup> An example is the Organisation for Economic Cooperation and Development (OECD) Treaty

## **Conclusion**

At 6%, Nigeria has one of the world's lowest tax revenues to GDP ratios. This can be compared with countries like France with 45%, Belgium with 44.2%, Finland with 44.1%, Norway with 38%, Germany with 37.6%,<sup>24</sup> South-Africa with 27%, and Mozambique with 26%. Closer to home, Ghana has a Tax to GDP ratio of 16%.<sup>25</sup> Also, as revealed at a Chartered Institute of Taxation forum,<sup>26</sup> 80% of taxable adults in the Nigeria never pay tax. On the corporate front, 75% of companies are not registered with the FIRS for the mandatory Companies Income Tax and 65% of those registered are not up to date with tax filings.<sup>27</sup> In the same vein, it has been revealed that only 214 individuals remit personal income taxes of N20 million or above annually.<sup>28</sup> These statistics are alarming and indeed worrisome and may have informed the introduction of the Scheme. However, failure to address the underlying causes of low tax compliance may have rendered the Scheme ineffective.<sup>29</sup> This is because the Scheme should not be viewed as a first line of action in tackling low tax compliance but rather as a complement to other measures employed to deal directly with the menace.

Hence, the following recommendations are proposed as measures to tackle low tax compliance:

First, there should be massive and continuous sensitization campaigns directed at the respective categories of tax payers, educating them on the extant tax laws and their tax obligations under the said laws.

Secondly, there should be a renewed drive in enforcing the provisions of the tax laws. The unjustifiable reluctance of tax administrators in applying the criminal provisions of the law on erring taxpayers should be discarded.

Thirdly, corruption by public office holders should be decisively dealt with. Also, there should be a prudent spending of tax revenues on infrastructural projects, and tax payers should be

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<sup>24</sup> See Revenue Statistics 2017 by the OECD. The OECD average is 34.3%; available at [www.oecd.org/tax/tax-policy](http://www.oecd.org/tax/tax-policy)

<sup>25</sup> See article by Tobi Awodipe titled "Nigeria's tax: GDP ratio remains one of the poorest in Africa" available at [www.m.guardian.ng/business-services/](http://www.m.guardian.ng/business-services/)

<sup>26</sup> Held in the year 2015

<sup>27</sup> See the Punch Newspaper editorial of December 7, 2015

<sup>28</sup> See comments attributed to the then Acting President – Prof Yemi Osibajo at the launch of VAIDS available at [www.m.guardian.ng/news/osinbajo-signs-executive-order-to-enforce-tax-collection/](http://www.m.guardian.ng/news/osinbajo-signs-executive-order-to-enforce-tax-collection/)

<sup>29</sup> This is akin to taking a pain killer to mask the pain rather than treating the cause of the pain

provided with information on how their taxes are expended in a bid to enhance accountability and encourage compliance.

Fourthly, there should be an improved system of co-operation and data sharing amongst the various agencies of government. If possible, a centralized database where all records previously held by the various record collecting agencies are domiciled could be established.

Lastly, attention should be paid to the welfare and conditions of service of tax administrators. An upward review of the emoluments of such officials to make same attractive and competitive is also not out of place. There should also be continuous training and re-training programmes for tax administrators to make them better informed of global tax trends/practices.

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