

## THE LAST DAYS OF VAIDS: WHY TAXPAYERS SHOULD TAKE ADVANTAGE OF THE AMNESTY PROGRAMME

### BACKGROUND

Ordinarily, under the extant laws governing tax and taxation in Nigeria, tax evasion constitutes a crime punishable, upon conviction, by imprisonment of a term up to five (5) years while the taxpayer will, in addition, be required to pay the tax due along with the accrued interest (typically at 21%) and also subjected to the associated penalties (a fine of usually 10% of the assessed tax due and in some cases forfeiture of the related assets to Government). However, figures released by the Joint Tax Board (“JTB”) in May 2017 revealed that, the total number of taxpayers stands at 14 million out of an estimated 69.9 million economically active persons in Nigeria. This statistics has been advanced by many analysts as the reason behind the country's abysmally low tax-to-GDP ratio of 6%, which compares unfavorably with other countries of the world (i.e. Ghana, 15.9%; India, 16%; South Africa, 27%; and countries of the OECD with an average of 34%).

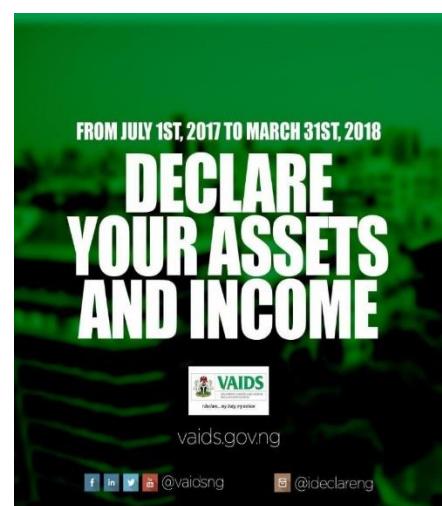
The Federal Government of Nigeria (“FGN”), in realisation of the facts that the country’s low tax revenues could be due in part to lack of awareness among the citizens of prompt and accurate tax payments as a civil obligation, aside the willful acts of tax evasion prevalent among some persons; decided to grant a period of Tax Amnesty to all taxpayers who are in default of their tax liabilities instead of outright prosecution for tax offences as stipulated in the relevant tax statutes. In furtherance of this resolve, the FGN, through the Vice President, Professor Yemi Osinbajo, SAN, in his capacity as Acting President of the FRN at the time signed, on June 29, 2017, the **Executive Order No. 004 of 2017 (“Executive Order”)**. The Executive Order provided the framework upon which the Ministry of Finance, JTB and the Federal Inland Revenue Service (“FIRS”) have jointly established the **Voluntary Assets and Income Declaration Scheme (“VAIDS”)**.

This article looks at the nitty-gritty of the VAIDS, which will be available for taxpayers for only a period of nine (9) months between July 1, 2017 and March 31, 2018 and presents reasons why taxpayers should take advantage of the tax amnesty offered by the VAIDS, before the limited period for regularisation lapses.

### OBJECTIVES OF VAIDS

The objectives sought to be achieved through the VAIDS include:

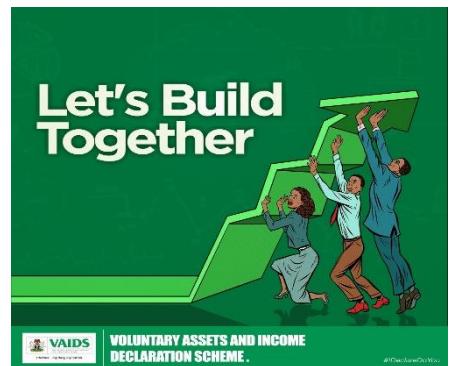
- Provision of a time-limited Tax Amnesty to taxpayers who are in default of their tax obligations to enable them regularise their tax positions without payment of statutorily prescribed penalties or fear of criminal prosecution for tax offences;
- Enhancement of the FGN’s projection for a higher tax-to-GDP ratio for the country;
- Attainment of better rates of tax awareness and compliance among Nigerian citizens and residents;



- Improvement on non-oil earnings for the FGN and internally generated revenue (“**IGR**”) for state governments; and
- Provision of a viable alternative to borrowing for the financing of infrastructure.

## TARGET AND SCOPE OF VAIDS

VAIDS is targeted at taxpayers:



- Who have not been fully declaring their taxable income/assets;
- Who have not been paying tax at all; and/or,
- Who have been under-paying or under-remitting applicable tax.

Essentially, some of the ways by which taxes are evaded and which the VAIDS is targeted at addressing include:

- Manipulation of accounting records, usually by keeping two or more sets of books;
- Willful non-declaration or underestimation of assets and income by high net-worth individuals especially in the informal sector;
- Use of complex structures in transactions to deliberately evade taxes;
- Non registration for Value-Added-Tax (“**VAT**”) or charging of VAT without remitting same to the FIRS;
- Non-payment of Capital Gains Tax (“**CGT**”) on asset disposals.



The types of taxes which VAIDS covers are:

- Companies Income Tax;
- Personal Income Tax;
- Petroleum Profits Tax;
- Capital Gains Tax;
- Stamp Duties;
- Tertiary Education Tax, and
- All taxes administered by the FIRS as well as those administered by all State Boards of Internal Revenue (“**SBIR**”).



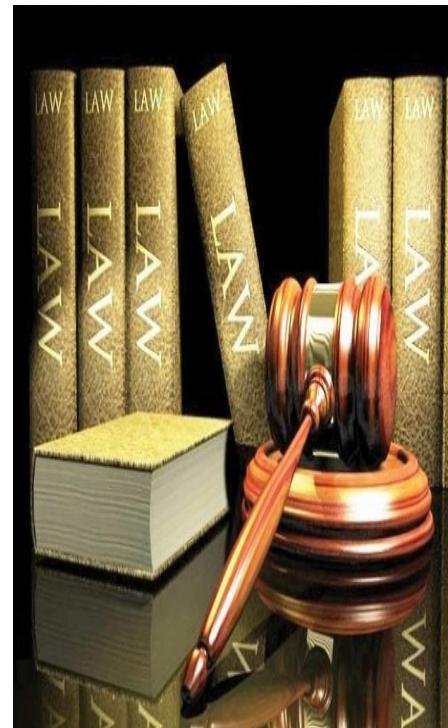
## LEGAL BASIS

Whilst VAIDS does not have force of law since it is unenforceable on taxpayers for the period for which it is to operate, its establishment and operation are nonetheless well rooted in law. Essentially, and as the name implies, it is only a persuasive scheme providing a time-limited opportunity (a period of 9 months between July 1, 2017 and March 31, 2018) for taxpayers who are in default of their tax obligations to voluntarily come forward and truthfully declare their assets and income, comply with the regulations and guidelines and pay all outstanding taxes, in consideration of certain promises by the FGN including:

- Waiver of interest and penalties for late payment;
- Immunity from prosecution for tax offences;
- Immunity from tax audit;
- Option of spreading payment of outstanding liabilities over a maximum period of three years as may be agreed with the relevant tax authority. Provided however that the remission or waiver granted under the Executive Order/VAIDS shall not prejudicially affect or invalidate any court order or judgment already obtained in respect of any default in payment of tax for which interest and/or penalty have already accrued; and
- A unique opportunity for tax payers who previously had held assets by nominees to have the assets transferred to their names without any penalty.

Looking at relevant tax laws, the Executive Order, the VAIDS and the tax amnesty granted thereunder derive legality and validity under the following statutory provisions:

- The President may remit wholly or in part any tax payable by any company if he is satisfied that it will be just and equitable to do so – Section 89, Companies Income Tax Act (“CITA”);
- The President may, by Order, exempt any company or class of company from all or any provisions of the CITA or from tax at all – Section 23(2), CITA;
- The FIRS Board has power to “remit the whole or any part ..” of the interest and penalty that may be due in respect of tax liability – Section 32(3), FIRS Act and Section 85(3), CITA;
- The FIRS may compound any offence by accepting a lesser sum – Section 48, FIRS Act;



- The FIRS Board may, with the approval of the Minister, make rules and regulations which “in his opinion is necessary or expedient for giving full effect to the provisions of the Act” – Section 61, FIRS Act;
- The tax authority, where a good cause is shown, may remit wholly or partly before or after judgement, penalties due under the Personal Income Tax (“PITA”) – Section 79, PITA;
- The Governor of a state on the recommendation of the Commissioner of Finance, on the advice of the tax authority, may remit wholly or in part any tax payable under the Act – Section 80, PITA;
- The Minister (of Finance) has power to make regulations generally on the recommendation of the JTB for giving full effect to the provisions of the Act – Section 106A (1), PITA (Amendment Act), 2011;
- The President, through the Minister for Finance, is empowered to give general directions to the FIRS for the carrying out of the latter’s duties under the FIRS Act – Sections 51 and 60 of the FIRS (Establishment) Act.

The VAIDS also derives legality from the Memorandum of Understanding signed between the Federal Government and the respective State Governments.



#### **REASONS TAXPAYERS SHOULD PARTICIPATE IN VAIDS WHILE IT LASTS**

- The VAIDS offers a once-in-a-lifetime opportunity for tax offenders to regularise their positions without facing the stipulated legal consequences of their actions;
- Every person (individual or corporate) who participates in the VAIDS between July 1, 2017 and December 31, 2017 will be relieved from the payment of both interests and penalties on the tax evaded in addition to receiving amnesty from prosecution for any tax offences committed;

- Every person (individual or corporate) who participates in the VAIDS between January 1, 2018 and March 31, 2018 will be shielded from prosecution for any tax offences committed;
- Every participant in the VAIDS will have opportunity of self-assessing the taxes they are to pay or employ the services of accredited professionals of their choice to do the assessment and will be free from tax audit;
- Taxpayers who have been holding assets by nominees will have the opportunity of transferring such assets into their own names without any penalty. In other words, declaration will allow assets to be legally and formally held by their true owners;
- Those who fail to take advantage of the scheme and are later found to have under declared their income or assets will be treated as willful tax evaders and will therefore face the full force of the law;
- Those who fail to take advantage of the scheme and are later found to have under declared their income or assets will in addition to payment of accrued interest and/or forfeiture of assets, be exposed to public ridicule through the FGN's "Name and Shame" programme to follow.

## THE TAXMAN KNOWS YOU



The screenshot shows the OECD homepage with a navigation bar including 'OECD Home', 'About', 'Countries', 'Topics', and 'Français'. A search bar is also present. The main content area features a news article titled 'Nigeria signs both the Multilateral BEPS Convention and the CRS Multilateral Competent Authority Agreement to tackle international tax avoidance and evasion'. The article includes a photo of two men shaking hands at the OECD headquarters in Paris. The text describes the signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI) and the CRS Multilateral Competent Authority Agreement (the CRS MCAA). It notes that Nigeria became the 71st jurisdiction to sign the MLI and the 94th jurisdiction to join the CRS MCAA.

Information available from the Ministry of Finance indicates that the FGN may have obtained important data of all economically active Nigerian citizens and residents, as well as Nigerians in the Diaspora. The FGN has signed a retainer with one of the world's leading asset tracing and recovery firms, to track the true assets of those who have not participated and would not participate in the VAIDS but are believed to have underpaid their taxes. Similarly, Nigeria has become a signatory to the Treaty on **Automatic Exchange of Information** ("AEI") (an initiative of The Global Forum on Transparency and Exchange of Information for Tax Purposes), which has currently been signed by over 95 countries, for the global exchange of information on illicit financial flows and tax evasion.

Also for over a year, the Ministry of Finance has reportedly been involved in Data Mining by collating and synchronizing data and information of all citizens (home and abroad) and residents liable to pay taxes, through the integration of the data bases of strategic Ministries, Agencies and Departments of government ("MDAs") as well as various regulatory bodies. The Data Mining project has also reportedly benefited from the integration of transactions' data in the records of the Nigerian Financial Intelligence Unit (NFIU); States' Land Registries; Corporate Affairs Commission (CAC); FIRS;

Securities and Exchange Commission (SEC) & Nigerian Stock Exchange (NSE); Central Bank of Nigeria (CBN)'s Treasury Bills and Bank Verification Number (BVN) Policy; Nigerian Inter-Bank Settlement System Limited (NIBSS); REMITA payment platform; Nigerian Identity Management Commission (through the Federal Road Service Corps & the Independent National Electoral Commission); Nigeria Customs Service; Dealership; Nigerian Civil Aviation Authority (NCAA); Crow (Asset Tracking); Banks; Nigerian National Petroleum Corporation & Department of Petroleum Resources (DPR); and the Panama Papers etc.

## **CONCLUSION**

Overall, we note that the objectives of VAIDS are laudable at this time of the country's journey to attaining a diversified economy that is less dependent on oil revenues. We equally observe that the scheme is one of the tools employed by the FGN to implement the (new) 2017 National Tax Policy, which essentially envisions a higher tax-to-GDP ratio for Nigeria and better degrees of tax awareness and compliance among Nigerians. It is our candid opinion that taxpayers (particularly those who have defaulted in one way or the other on their tax obligations) have a lot to gain by participating in the VAIDS and those who are yet to take advantage of the tax amnesty should endeavor to do so within the limited period before the scheme expires in March 2018.

***The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo***

**DISCLAIMER:** This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm. Specialist legal advice should be sought about the readers' specific circumstances when they arise.

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