



“You better watch out for the taxman is about” - Tax exemption & immunity for expatriates in Nigeria”

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Amongst other executive orders issued by the Acting President of Nigeria Professor Yemi Osinbajo is executive order No. 004 (“Order”) which introduces of the Voluntary Assets and Income Declaration Scheme (“VAIDS”) to all registered tax payers that may be in default of their tax returns.

The scheme provides for a 9 month window commencing July 2017 within which affected tax payers can declare their assets and income from all sources within and outside Nigeria for the preceding 6years of assessment and is applicable to the following categories of tax payers:

- a. Tax payers currently undergoing a tax audit or investigation by any relevant tax authority including State Boards of Internal Revenue (SBIR) & Federal Inland Revenue Service FIRS;
- b. Tax payers engaged in tax disputes and who prefer to settle such disputes out of Court; and
- c. Tax payers with additional exposure and or liabilities.

To take advantage of the scheme, a tax payer utilizing the VAIDS declaration form, is to provide full and frank verifiable disclosures upon which an assessment is to be made by the requisite tax authorities in exchange for immunity from Prosecution for tax offences; tax audit and waiver of penalties and or interest charges on any assessment arising from such disclosure.

At the expiration of the scheme, any tax payer found wanting will be liable to pay in full, the principal tax liability due, together with penalty and interest charged thereon.

The following are likely issues that may arise in implementing this scheme.

- (1) The scheme appears to be a departure from the existing legal framework for tax returns currently operational in Nigeria. Presently, the Companies Income Tax Act (CITA) and Personal Income Tax Act (PITA) mandates tax payers to self-assess and remit the due tax due to the relevant tax authorities.

- (2) With the scheme, the tax authorities upon the disclosure are to issue a direct assessment. Given the discretion granted to the tax authorities in issuing an assessment as proposed under the scheme, it is not clear from the order whether any assessment by the tax authorities can be challenged and in such event, what the dispute resolution process would be employed in settling such challenges.
- (3) A constitutional issue also arises given the powers of Federal Government and State Government to collect taxes as enshrined in the Constitution. The former with respect to Companies Income Tax whilst the latter, Personal Income Tax. The Executive Order was issued by the Federal Government with most states not having issued complimentary orders thereby obfuscating the applicability of the scheme to tax payers beholden to SBIRS.

In conclusion, it should be noted that the above scheme is applicable to resident and non-resident individuals and therefore would be applicable to resident and non resident expatriates. In the case of the latter, only on their Nigerian sourced income.