

THOUGHTS ON EXECUTIVE ORDERS



EXECUTIVE ORDER AS IT RELATES TO FOREIGN ENGINEERS

In a bid to promote Nigerian content in the planning and execution of public Nigeria projects, the President of the Federal Republic of Nigeria, Mr. Muhammadu Buhari in February 2018 issued an Executive Order No. 05 (EO5).

The EO5 mandates all public procuring entities¹ to give preference to Nigerian companies and firms in the award of contracts that encompasses science, technology and engineering. Such contract awards are to be in accordance with the provisions of the Public Procurement Act.

The National Office for Technology Acquisition and Promotion (NOTAP) is empowered by the EO5 to develop, maintain and regularly update a database of Nigerians with expertise in science, engineering, technology and other fields of expertise to ensure the EO5 objective is attained. With respect to taxes, the Federal Inland Revenue Service (FIRS) and the Federal Ministry of Finance are to grant tax incentives to existing machine tools companies, indigenous artisans, Small and Medium Enterprises (SMEs) and foreign firms that utilize local raw materials in their operations, subject to same having been authenticated by the Raw Materials Research and Development Council.

The EO5 further mandates the Federal Ministry of Interior (FMI) to ensure that expatriate quota granted to companies are granted in line with the provisions of the Immigration Act and other relevant immigration laws. Thus, foreign firms bidding for or executing public contracts that encompass science, technology or engineering components will only be granted expatriate quotas for foreign workers in the

¹ EO5 does not define Procuring entity. However, the Public Procurement Act 2007 defines Procuring entity as any public body engaged in procurement and includes a Ministry, Extra-Ministerial office, government agency, parastatal and corporation.

event that competent Nigerian nationals are unavailable or their expertise cannot be ascertained. The grant of such quota positions are contingent on a training plan for such number of Nigerians as may be required for the execution of the contract or project. The FMI is required to create a special immigration classification to encourage foreign expatriates especially from African Countries, with skills that are not readily available in Nigeria to reside and work in Nigeria.

The implementation of the EO5 has commenced by the various Ministries, Departments and Agencies of government and this is evident as the FMI now restricts the issuance of visas to foreign expatriates that are seeking engineering roles in the country.

EXECUTIVE ORDER ON PAYMENT OF TAX ON OFFSHORE ASSETS

The President recently issued Executive Order No. 8 (EO8) titled Voluntary Offshore Assets Regularization Scheme (the “scheme”). With EO8, Nigerian taxpayers are mandated to declare and pay tax on their offshore assets.

The scheme provides that any taxpayer who honestly and voluntarily complies with the conditions of the scheme, will be allowed to pay a one-time levy of 35% on reducing total offshore assets, or pays all outstanding taxes, penalties and interest, will be granted immunity from prosecution for tax offences and offences related to offshore assets among others. However, failure of any defaulting taxpayer to take advantage of the scheme will result in investigation and prosecution at the expiration of the scheme. Offshore asset owners have been given a 12-month grace period within which they are to declare and pay tax on their offshore assets. The scheme extends to all persons, entities, and their intermediaries holding offshore assets.

Conclusion

The Federal High Court of Nigeria has validated the powers of the President to issue executive orders provided that such orders are not in breach of the principle of separation of powers.