

Federal Government of Nigeria launches tax amnesty

Newsletter

KPMG in Nigeria

Overview of the Executive Order

The Acting President of the Federal Republic of Nigeria, Prof. Yemi Osinbajo, on 29 June 2017 signed Executive Order No. 004 ("Order") authorizing the Federal Ministry of Finance to set up a Voluntary Assets and Income Declaration Scheme ("VAIDS" or "the Scheme") for all categories of taxpayers in default of taxes. Registered taxpayers eligible to participate in the Scheme include those:

- (a) with additional disclosures or liabilities;
- (b) currently undergoing a tax audit or investigation by any relevant tax authority (RTA); and
- (c) engaged in pending tax disputes who prefer to resolve such disputes through out-of-court settlement.

The Scheme provides a 9-month window commencing 1 July 2017, during which affected taxpayers can declare their assets and income from all sources within and outside Nigeria for the preceding 6 years (i.e. 2011 – 2016 years of assessment (YOA)), regularize their tax status and ensure full compliance.

To participate, a taxpayer must make full and frank disclosures verifiable in all material respects using the VAIDS declaration forms or any other form prescribed, after which an assessment of the tax payable would be carried out by the RTA. In exchange, the taxpayer shall benefit from certain incentives, which include immunity from prosecution for tax

Outstanding tax liabilities can be spread over a maximum period of three years

offences, immunity from tax audit, and waiver of penalties and interest charges. These are in addition to the option of spreading the payment of outstanding liabilities over a maximum period of three years subject to any agreement reached with the RTA.

Any eligible taxpayer who fails to take advantage of the opportunity provided by the Scheme, shall upon its expiration, be liable to pay in full, the principal tax liability due, penalty and interest thereon. The taxpayer may also be subject of a comprehensive tax audit exercise and prosecution.

The RTAs under the Scheme include the Federal Inland Revenue Service (FIRS) and all State Boards of Internal Revenue (SBIRs).

Comments

1. The Federal Government of Nigeria (FGN) has indicated that it expects to generate revenues of about US\$1 billion from the Scheme. This is coming on the back of a similar tax amnesty program initiated by the FIRS in October 2016 which raised about US\$89million. Though the FIRS scheme was not as extensive as VAIDS, it is debatable that the expected revenue target from the Scheme is achievable given current economic realities.



A taxpayer must make full and frank disclosures verifiable in all material respects using the VAIDS declaration forms or any other form prescribed, after which an assessment of the tax payable would be carried out by the RTA

2. There are also concerns as to whether the FGN can initiate a scheme which grants beneficiaries tax exemptions and immunity that will be respected by SBIRs. This is by reason of the division of constitutional powers between the Federal Government and the States. In our opinion, as the Scheme was approved by the National Executive Council (NEC), which comprises State Governors, before the enabling Order was issued, the Scheme should provide effective amnesty for its beneficiaries. Nevertheless, we expect that the respective States will issue complementary Executive Orders for implementing the Scheme in their jurisdictions.
3. VAIDS potentially alters the legal framework for submission of tax returns in Nigeria while it lasts. Currently, under Companies Income Tax Act and Personal Income Tax Act, taxpayers are required to undertake a self-assessment and remit the tax due. The Scheme appears to return the country to the previous framework requiring the tax authority to issue a direct assessment after a declaration of income is received. This will likely result in significant administrative challenges during implementation of the Scheme, besides the risk of overwhelming the tax authority if the Scheme receives popular adoption.
4. There is also the additional issue of the competent tax authority to issue assessments under the Scheme on individuals, whether this should be the FIRS or the SBIRs.
5. It is not clear that taxpayers will be able to challenge assessments issued under the Scheme or any discretion exercised by the tax authority on receipt of a taxpayer's declaration. What will be the process for settling such disputes, and will initiating that process invalidate the ability of the taxpayer to benefit from VAIDS relief?
6. There is also the issue of how documents submitted by taxpayers would be verified. According to the information provided on the Scheme's website, the RTA will review the information supplied. If they are not satisfied with its completeness, they may ask for additional information and documents which must be provided within the duration of the Scheme. Therefore, would a VAIDS declaration trigger audit by the tax authority? If so, would such audit follow current audit protocols of the tax authority? If this process is not properly managed, VAIDS is likely to be viewed as analogous to the existing tax audit protocols that are seen to be aggressive, and thereby discourage participation therein.
7. It also appears that the current disclosure forms available on www.vaids.gov.ng are focused on income taxes, even though the Scheme covers all taxes. The forms may, therefore, need to be modified as appropriate.

It is not clear how taxpayers will be able to challenge assessments issued or any discretion exercised by the tax authority under the Scheme

Conclusion

Notwithstanding the issues noted above, the Scheme appears to be a very good opportunity for eligible taxpayers to regularize their tax compliance status, particularly those with ongoing protracted tax audit issues. We commend the Federal Government and the NEC for instituting this wide ranging Scheme to widen the tax net and improve the country's tax to GDP ratio.

We encourage all eligible taxpayers to participate in the Scheme and engage the services of professional tax advisers to guide them through the process in view of the potential challenges highlighted above.

For further enquiries, please contact:

Wole Obayomi
 NG-FMTAXEnquiries@ng.kpmg.com

www.kpmg.com/ng

kpmg.com/socialmedia

