

Nigeria's Voluntary Assets and Income Declaration Scheme and Responsible Tax Practice¹



Wole Obayomi

Head of Tax, Regulatory & People Services, KPMG in Nigeria

Nigeria launched the Voluntary Assets and Income Declaration Scheme (VAIDS) effective 1 July 2017 by Executive Order No. 4 of 29 June 2017 to give defaulting tax payers the opportunity to make up their outstanding tax obligations from 2011 to 2016 in return for waiver of penalty and interest and criminal prosecution. This article is a follow up to my earlier article on Bridging the Expectation Gap in Nigeria's Voluntary Assets and Income Declaration Scheme (available at <https://responsibletax.kpmg.com/page/bridging-the-expectation-gap-in-nigeria-s-voluntary-assets-and-income-declaration-scheme>), and is aimed to prove the point that compliance with the Scheme should be everyone's business.

The Global Principles for a Responsible Tax Practice developed by KPMG (available at <https://responsibletax.kpmg.com/home> and used herein with permission) set out our vision on how tax advisors are able to contribute to a responsible approach to tax for the common good. However, such an approach is equally applicable to all stakeholders, including the government, policy makers, tax administrators, taxpayers, civil society, the media and the public at large.

The responsibility imposed by Responsible Tax Practice on stakeholders includes the following:

- a. design and formulation of appropriate tax policies by the government to drive tax reform in accordance with its fiscal agenda and income redistribution objectives.
- b. enactment of appropriate tax laws by the legislature from time to time to ensure efficient tax

administration

- c. tax administration in accordance with tax laws and policies of the government
- d. avoidance of aggressive tax planning by tax practitioners in the provision of tax advice to their clients, which must be in accordance with the letter or spirit of the law, as the case may be, depending on whether the provision of the law is clear or ambiguous
- e. responsible tax planning within the law and payment of appropriate tax by tax payers as prescribed in the tax laws.

The Fiscal Responsibility Act, 2007 is aimed at making the government fiscally responsible through the transparency of its processes and accountability to its citizenry on public revenue and expenditure management. In this regard, implicit in tax payers' discharge of their civic obligation as responsible citizens is the social contract binding the government as a responsible institution to provide social and economic infrastructure required for their well-being.

While the launching of VAIDS is an opportunity for tax payers in Nigeria to fulfill their past tax obligations, the government must also seize the opportunity to recommit itself to the social contract with its citizens so as to inspire their confidence and motivate voluntary tax compliance from now on. Unless VAIDS is implemented to advance the mutual interest of both parties, it will not yield the intended result of promoting tax compliance culture and increasing the current tax to GDP ratio from 6%.

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VAIDS as Everyone's Business

The success of VAIDS in making delinquent tax payers fulfill their past tax obligations, and the embracement of a regime of voluntary tax compliance post-VAIDS should be the responsibility of all the stakeholders in our fiscal system. In other words, tax compliance should not just be about a tax payer fulfilling his own tax obligations alone, but also about ensuring tax compliance by everyone over whom he has authority and influence.

Attempt has been made below to break down the compliance universe to identify the players without whose collaboration VAIDS is unlikely to achieve the success that is hoped for.

1. Employers:

It is expected that responsible employers will deduct pay-as-you-earn (PAYE) tax from their employees' income and remit it to the tax authority in the State where the employees are resident. While they may not be aware of their employees' unearned income and cannot be held accountable for the tax due on this, they have a moral obligation to create awareness about VAIDS among their employees and advise them to comply accordingly. Employers should be interested in compliance by their employees to avoid the association risk that they could suffer in the event that their employees are named as tax dodgers.

2. Employees

Employees are duty bound to disclose their unearned income from investments, such as rental income, for tax purposes. This obligation is easily overlooked, but the time has come for them to know that tax compliance is more than just about PAYE tax deduction, and that income from all sources received both within and outside Nigeria must be reported for tax purposes.

3. Entrepreneurs and Professionals

Entrepreneurs in business and professionals in practice owe personal income tax on the earned income from their business and practice in addition to unearned income from their investments. In a situation where these individuals have not clearly separated their personal financial affairs from their business, the outgoings from their business accounts to pay for their personal expenses should be taken as their minimum income for tax purposes.

4. Political Office Holders, Civil Servants and Public Servants.

To the extent that this category of tax payers have the status of employees, the same rule applicable to employees equally apply to them, and they must account for tax on their unearned incomes in addition to their PAYE tax obligations.

5. Lawyers, Accountants and Tax Advisers

Beyond complying with VAIDS in their personal affairs as professionals, they have advisory role to play in educating their clients on the compliance requirements imposed by VAIDS and the consequences of non-compliance.

6. Investment Houses

This category includes private equity funds, venture capital funds, asset managers, wealth managers and trustees to name a few. This is one sector where reputation management is important as the operators could suffer from association risks where their executives, investors and clients alike are found wanting in tax compliance.

7. Other Capital Market Operators

In addition to ensuring that they themselves are in good standing, stockbrokers, securities dealers, financial and investment advisers will be doing their

clients some good by advising them to comply with VAIDS in order to enjoy the benefits of waiver of interest and penalties, and avoid the consequences of non-compliance after 31 March 2018.

8. All Corporate Tax Payers

All companies should conduct a tax health check on their tax affairs between 2011 and 2016 in respect of which they are yet to be audited and cleared by tax authorities, or in respect of which tax audits are in progress, and pay any resulting additional tax liabilities to enjoy the benefits of tax amnesty under VAIDS.

9. Banks and other Financial Institutions (BOFIs)

In addition to their responsibility as corporate tax payers, all licensed BOFIs should use their various channels of communications to reach out to their customers to review their affairs and take advantage of VAIDS, if they have any disclosure to make.

10. Public Companies and Their Boards

In managing their reputation and public perception, public companies and their Boards should be interested in the compliance profile of their significant shareholders and directors. If responsible public companies would not appoint persons who fail integrity due diligence to their Boards, it follows that they would not retain such persons based on publicly available negative information after their appointment. Directors and other management staff of public interest entities are, therefore, well advised to review their affairs and be compliant with VAIDS as necessary.

11. Regulators

All the regulators should be concerned about the tax compliance status of the licensed operators in their respective sectors. While production of tax clearance certificates (TCCs) as a condition for doing business with the government is an age-old requirement, sometimes the TCCs are not worth the paper on which they are written since they are not certificates of final discharge from all tax obligations. The real question that regulators should be asking at this time is whether their licensees have taken advantage of VAIDS to regularize their tax affairs, if they have been in default. The Securities and Exchange Commission (SEC) has taken the lead in this regard by issuing a Circular (available at <http://sec.gov.ng/circular-to-all-capital-market-operators-and-public-limited-companies-to-comply-with-executive-order-no-004-of-2017-on-vaids/>) requiring all affected capital market operators (CMOs) and public limited companies (PLCs) to take advantage of the nine (9) month grace period to rectify their tax status in compliance with the Executive Order. It further states "that commencing from 31st March 2018, all CMOs and PLCs shall be required to show evidence of compliance with VAIDS or a clean tax status as part

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of their mandatory submissions to the Commission. Failure to comply with this Circular shall result in appropriate sanctions in accordance with the law."

This is a commendable initiative and other regulators should follow suit as they have a role to play in contributing to acceleration of government's non-oil revenue generation.

12. Faith-Based Organizations and Clergy

It has long been settled by the courts in Nigeria (ref, Revd Shodipo & 2 others vs FBIR (1974) reported in 2010 3 TLRN 61) that the tax exemption granted to religious organizations by Section 23(c) of the Companies Income Tax Act 2004 (as amended) is limited to incomes from their religious pursuits, and that they would be liable to income tax on their profits from commercial ventures. However, the question is how many faith-based organizations are really fully compliant and are duly accounting for rental income on their reception halls, event centres, guest houses, book publishing, etc.?

Apart from using their influence to make their members pay their income tax, the clerics should also "give unto Caesar what is Caesar's", as Jesus Christ commanded, and live by that example.

Implications of Non-Compliance

The Executive Order lists the consequences of non-compliance as follows:

- (i) liability to pay in full, the principal sum due;
- (ii) liability to pay all interest and penalties arising therefrom;
- (iii) liability to be prosecuted in accordance with relevant extant laws for tax offences;
- (iv) withdrawal of any reliefs, which may have been granted to the participant;
- (v) liability to undergo comprehensive tax audit; and
- (vi) any sum paid in relation to the Scheme may be counted as part payment of any further outstanding tax in respect of undisclosed information.

In terms of prosecution of tax defaulters, there are doubts about the readiness of the courts and political will by the government to do so. In a normal context, the

government only needs to make a few scapegoats through high profile prosecutions that would send the right signals and compel the average tax payers to fall in line and be compliant.

The Minister of Finance in apparent acknowledgment of the incapacity of the justice administration system has talked about government's plan to "name and shame" tax defaulters after 31 March 2018. As brand damage can be costly, it behoves all tax payers who have a reputation to protect to take advantage of VAIDS to avoid any reputational risks that may arise in the post-VAIDS era.

Conclusion

Whether the government prosecutes, or merely names and shames unrepentant tax dodgers after 31 March 2018, Responsible Tax Practice requires tax payers to comply with their civic obligations to the government, which must in turn perform its part of the social contract. The tax yield from VAIDS and its aftermath will determine whether we have reached a turning point on tax compliance in Nigeria, or whether it will be business as usual. However, if corruption continues unabated, and the government has little or nothing to show for the taxes paid by its citizens, both the government and its VAIDS will lose their credibility, as nothing would have changed. And this will be bad for both of them. It is hoped that the government will take the hint, as tax payers and other stakeholders do their part to make VAIDS successful.



For further enquiries, please contact:

Wole Obayomi

ng-fmtaxenquiries@ng.kpmg.com

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