

# Federal Government of Nigeria Issues New Executive Order on Voluntary Offshore Assets Regularization Scheme (VOARS)

## Introduction

The President of the Federal Republic of Nigeria on Monday 8<sup>th</sup> October 2018, signed an Executive Order 008, titled "Voluntary Offshore Assets Regularisation Scheme ("VOARS" or "Scheme").

According to the Order, the office of the Attorney General of the Federation and Minister of Justice has a mandate to set up a Scheme for all categories of taxpayers who have defaulted in the declaration of their offshore assets, payment of taxes due and collectible subject to the fulfilment of the terms and conditions stipulated by it. The Scheme aims to provide an opportunity for taxpayers to regularize their offshore assets, pay taxes or levies due, commit to avoid tax evasion and ensure full tax compliance going forward. The scheme commences from the date of the Order and shall be in operation for 12 months.

## Eligibility:

The VOARS is open to all persons, entities and their proxies who are holding offshore assets and are in default of their tax liabilities in any way whatsoever, including persons who may have obtained such assets from corrupt practices up to 30 years prior to the date of the Order.

The scheme however excludes any persons that are currently facing charges in Nigeria or any other country for corrupt practices, theft of public funds or obtaining offshore assets through corrupt practices.

## Benefits of the Scheme

According to the Order, taxpayers who truthfully and voluntarily declare their offshore assets and income and have paid the one-time levy of 35% on the total offshore assets or have paid all outstanding taxes after the completion of the requisite forensic audit are entitled to certain benefits

These benefits include: immunity from prosecution for tax offences and other offences related to the offshore assets; immunity from (further) tax audit; waiver of penalties and interests; receipt of an Offshore Assets Regularization Compliance Certificate; and the freedom to use or invest the regularized residual of the total offshore assets in any manner in Nigeria or overseas, and be subject only to subsequent annual tax payable on income earned on such assets.

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## Conditions for Successful Participation:

For a declaration under the VOARS to be valid, such declaration must have been made fully, voluntarily, completely and verifiably. The disclosure must be made via the Voluntary Offshore Assets Regularization Facility in Switzerland (VOARFS) established; or appointed qualified intermediary of the Federal Government of Nigeria for the scheme.

Other conditions include a commitment to pay a one-time 35% levy on the value of the assets and a 2% access fee payable to the VOARFS for using the facility and consent to be assessed to tax on the residue of the assets by the relevant tax authority in subsequent years.

## VAIDS versus VOARS

It will be recalled that the Federal Government through the Ministry of Finance had previously implemented the Voluntary Assets and Income Declaration Scheme (VAIDS) that ended in 30<sup>th</sup> June 2018. The objective of VAIDS was for non-compliant persons and companies to declare in full previously undisclosed income and assets (whether held locally or offshore), to enable the relevant tax authority issue assessment for unpaid taxes due on such asset and or income from 2011 to 2016, without the attendant penalties for default.

The VOARS appears to be like VAIDS in many respects, except for the following clear distinctions:

- i. While VAIDS involved total assets and incomes (local and offshore), VOARS applies only to offshore assets and income;
- ii. VAIDS assured participants of exclusion from prosecution against only tax offences, but VOARS appears to assure participants that they will be excluded from all criminal prosecution relating to the acquisition of the assets and their non-declaration prior;
- iii. VAIDS required taxes to be paid up to a maximum of six (6) years before the year of implementation, but VOARS requires disclosure and tax payment up to 30 years of assessment prior to the date of the Order.
- iv. Tax payable under VAIDS was based on the provisions of applicable tax laws only, but VOARS offers the option of a one-time levy of 35% of value of the offshore assets;
- v. VAIDS declarations were submitted to the relevant tax authority for appropriate tax assessment, but the VOARS has vested authority on the Swiss facility to receive declarations for an access fee of 2% of the value of the assets, exclusive of the 35% one-time levy. The declarant however has the option of being assessed to the actual tax due by the relevant tax authority in Nigeria;
- vi. VAIDS was implemented through the Federal Ministry of Finance and the various tax authorities in Nigeria, while VOARS is being implemented through the office of the Attorney General of the Federation and Minister of Justice, in conjunction with the Voluntary Offshore Asset Regularization Facility in Switzerland (VOARFS).

## Conclusion

The executive order on VOARS has been issued as part of government's efforts to improve voluntary tax compliance and promote transparency amongst the citizenry. The making of the order may also have been motivated by the compelling need for Nigeria to join the growing number of nations working against the illicit flow of funds out of their countries to offshore territories, while ensuring that at least part of what has already been lost is recovered. A number of countries have therefore implemented various variants of the voluntary declaration scheme. Countries such as South Africa, India, USA and Indonesia have all implemented schemes similar to the VOARS.

**Albert Folorunsho**  
afolorunsho@pedabo.com

**Killian Khanoba**  
[kkhanoba@pedabo.com](mailto:kkhanoba@pedabo.com)

**Fidelis Chukwu**  
[fchukwu@pedabo.com](mailto:fchukwu@pedabo.com)

**Olamide Obajimi**  
obajimi@pedabo.com

**Lagos Office:**  
67, Norman Williams Street  
South West, Ikoyi  
Lagos, Nigeria  
Tel: 01-2919041  
0808 820 8747  
[info@pedabo.com](mailto:info@pedabo.com)  
[www.pedabo.com](http://www.pedabo.com)

**Abuja Office:**  
4th Floor, Grand Square  
Mohammed Buhari Road  
Central Business District,  
Abuja  
Tel: 09-8707692

The above notwithstanding, the jury is still out on the sustainability of executive order legislations in Nigerian jurisprudence, especially when viewed against the penchant for succeeding governments to discard the policies of previous regimes.

The question therefore is: can future governments be forced to live up to the promises in the executive order, especially as it concerns the waiver of prosecution for criminal offences?

Nigeria still operates a federal tax system which vests the power to assess and collect income tax from persons resident in a State on the tax authority of that state, while only taxes from companies are collected by the federal government. We are aware of the efforts of the Federal Ministry of Finance during the implementation of VAIDS to get all the state governments to collaborate with the Federal Government on the scheme. We hope that VOARS will not be implemented any differently, as doing so may erode the confidence of would-be declarants in the scheme.

Meanwhile, though the executive order does not mention it, persons who already made full and truthful declaration of their offshore assets and income under the VAIDS need not repeat such declaration under the VOARS.

We expect that more light would be thrown on the modalities for implementing the VOARS which we believe will be made known soon by the Office of the Attorney General or other appropriate agency of the Federal Government of Nigeria.

**Please contact us for any further clarifications on this subject or other tax matters.**