NIGERIA GOVERNORS' FORUM

HelpDesk

Achieving Effective TAX Administration

Resource Guide For States' Boards Of Internal Revenue

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PRELUDE

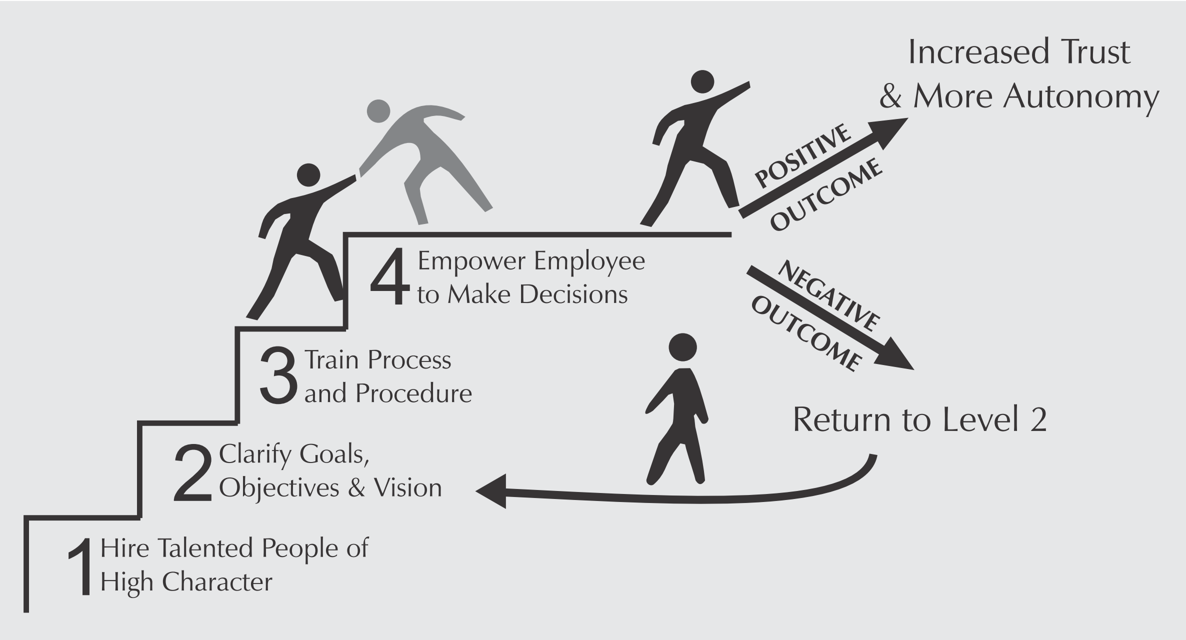
The HelpDesk is a technical support programme instituted by the Nigeria Governors' Forum (NGF) to support States in improving their development performance, by providing demand-based advice, knowledge resources and technical support in the areas of Public Financial Management (PFM) and Domestic Financing (Internally Generated Revenue).

This publication is a compendium of resources designed to guide SBIRs through key reforms aimed at strengthening tax administration across States in Nigeria. The compendium is based on diagnostic study and research findings gathered by the NGF HelpDesk during its interactions with States' Boards of Internal Revenue (SBIRs).

SECTION ONE

PREPARING FOR AUTONOMY

Why and when is autonomy right?



Introduction

In Nigeria, States are mandated by Section 87 of the Personal Income Tax Act (PITA) to establish a State revenue board to administer the taxes and levies of the State. Tax administration comprises all the activities and processes taken by a tax authority to implement the tax policies and tax law of a government. For tax administrators to effectively carry out their mandates, they execute two major functions namely core and support functions.

Core Functions

The core functions of modern tax administration include:

- Taxpayer registration
- Taxpayer awareness
- Tax processing (tax declaration filings and tax payments)
- Taxpayer audits and fraud investigation
- Taxpayer objections and appeals (administrative appeals)
- Debt recovery

Support Functions

Support functions for effective tax administration include:

- Deployment of Information technology
- Legal services
- Human resources – personnel management, training and development functions
- Budget planning and resource management (physical space, facilities, and other property management)
- Procurement
- Strategic and operations planning
- Internal audits and Integrity investigations

Both core and support functions should be strategically distributed across departments, ensuring they compliment each other to maintain efficiency and effectiveness. All departments/units and their individual functions and roles should be guided by a clear organisational structure indicating reporting lines and process flows for decision making. More importantly, these departments/units need to be driven by the right leadership and management to ensure optimum output and effectiveness[1]. Instituting the right leadership, granting greater autonomy, adequate funding and adoption of innovative technology ensures effectiveness in the dispensation of their mandate[2]. This is evident from a study[3] of 18 countries[4], which revealed that granting revenue authorities even semi-autonomy, self-financing and instituting a strong board likewise *sui generis* personnel system would yield increased revenues and improved service delivery.

Autonomy can mean many things, including independence or even self-government, but in the context of public sector administration it refers to the degree to which a government department or agency is able to operate independently from government control, in terms of legal form, status, funding, budget, human resource and administrative practices[5]. In Nigeria, this ranges from full to partial autonomy.

Contrary to misrepresentations of the term "autonomy", a State Board of Internal Revenue (SBIR) remains accountable to the State government. It only becomes independent of external influence[6] and impediments, especially in its routine operation. With full autonomy, the SBIR would possess adequate legal status, staffing rights, institutional capacity and financial independence to carry out its mandate effectively. While a number of SBIRs possess legal backing for a percentage of collection to accrue to them as funding, operationalizing this provision has been met with a range of challenges:

- Insufficient funds to pay for all SBIR activities from personnel to infrastructure needs in the early years where collections are still very low
- Divergence in the interpretation of the percentage in absolute terms

To address some of the plethora of issues hindering full autonomy, this guide seeks to provide a checklist of actions and pointers for SBIRs to effectively transit to full autonomy.

Checklist for Autonomy

- Attain the political support of the Governor
- Ensure that there is a legal framework in place
- Systematic and strategic transition to self-funding (from subsidies to self-funding using cost of collection). Once a maximum cost of collection is set by law, SBIRs should be free to budget accordingly subject to appropriation rules for MDAs.
- Constitute a project management/change management team/committee to coordinate and support the transition process.
- Develop an organisational structure that will support the range of duties of an autonomous agency and the peculiarities of the State.
- Ensure the vision, mission and strategic plan of the SBIR are aligned and fit for purpose to support the tax authority.
- Ensure adequate staffing and routine training to improve staff capacity to deliver on mandate

Key Stakeholders: The key stakeholders on

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1 S87, 88, 89 Personal Income Tax Act CAP P8 LFN 2004 (as amended 2011)

2 Adom, A (2000): "Resource Mobilization for Economic Development: The Role of Tax Administration", Ad Hoc Expert Group Meeting on Strategies for Improving Resource Mobilization in Developing Countries and Countries with Economies in Transition Montreal, 2 - 6 October, Organized by the United Nations in cooperation with Association de Planification Fiscale et Financière (APFF)

3 Taliercio, Robert, Designing Performance: The Semi-Autonomous Revenue Authority Model in Africa and Latin America (October 2004). World Bank Policy Research Working Paper No. 3423. Available at SSRN: https://ssrn.com/abstract=625301

4 Malaysia, New Zealand, Singapore, Ghana, Kenya, Malawi, Rwanda, South Africa, Tanzania, Uganda, Zambia, Bolivia, Ecuador, Guatemala, Guyana, Mexico, Peru and Venezuela

5 Revenue Administration: Autonomy in Tax Administration and the Revenue Authority Model, IMF Technical Note, 2010 https://www.imf.org/external/pubs/ft/tnm/2010/tnm1012.pdf

6 Taxation has been an area characterized by high level of political regulation. Politicians allegedly intervene in SBIRs to grant favors such as tax exemptions to supporters or to harass political opponents through audits.

Figure 1: Inter-relationship for Autonomy

> ***"Always remember that there are numerous stakeholders and interlocking activities that must proceed in parallel.***
>
> ***The success of the SBIR is measured by the uninterrupted flow of revenue to Government and the support of taxpayers"***
>
> **— NGF, HelpDesk**

the Government side are the Governors, Commissioners of Finance, the State House of Assembly, Heads of Service and other MDAs (especially revenue generating MDAs). These stakeholders need to be sensitised, with potential misunderstandings and conflicts addressed. Other key stakeholders are the taxpayers and citizens, whom must be educated on tax administration, with particular emphasis on their rights and responsibilities as taxpayers.

Laws and Regulations: There are a number of laws that address the structure, roles and responsibilities of tax administration in Nigeria. These include sections 87 -93 of the Personal Income Tax Act (PITA) 2004 (as Amended 2011), National Tax Policy (2017), State laws and the FIRS Establishment Act 2007. While many States have passed their individual tax administration laws[7], most require updates for potential autonomy. This includes ensuring that the SBIR is the sole collector of revenues in the State while instituting transparency and professionalism through out the service and ensuring sufficient funding.

Human Resource Issues: Negotiation with the Head of Service for staffing issues (both existing and future) needs to be worked out along with any SBIR specific pay, incentives, job descriptions, key performance indicators, conduct, discipline, pension, terms and conditions of service etc. This requires careful handling, costing and planning.

Finance Issues: This usually requires input from the Ministry of Finance, to avoid conflict, even where the Governor has given an approval in principle; clarifying who pays for – staff remuneration, Infrastructure, ICT and ensuring sufficiency of the percentage cost of collection.

[7] Loosely based on the FIRS (Establishment) Act 2007 with variations

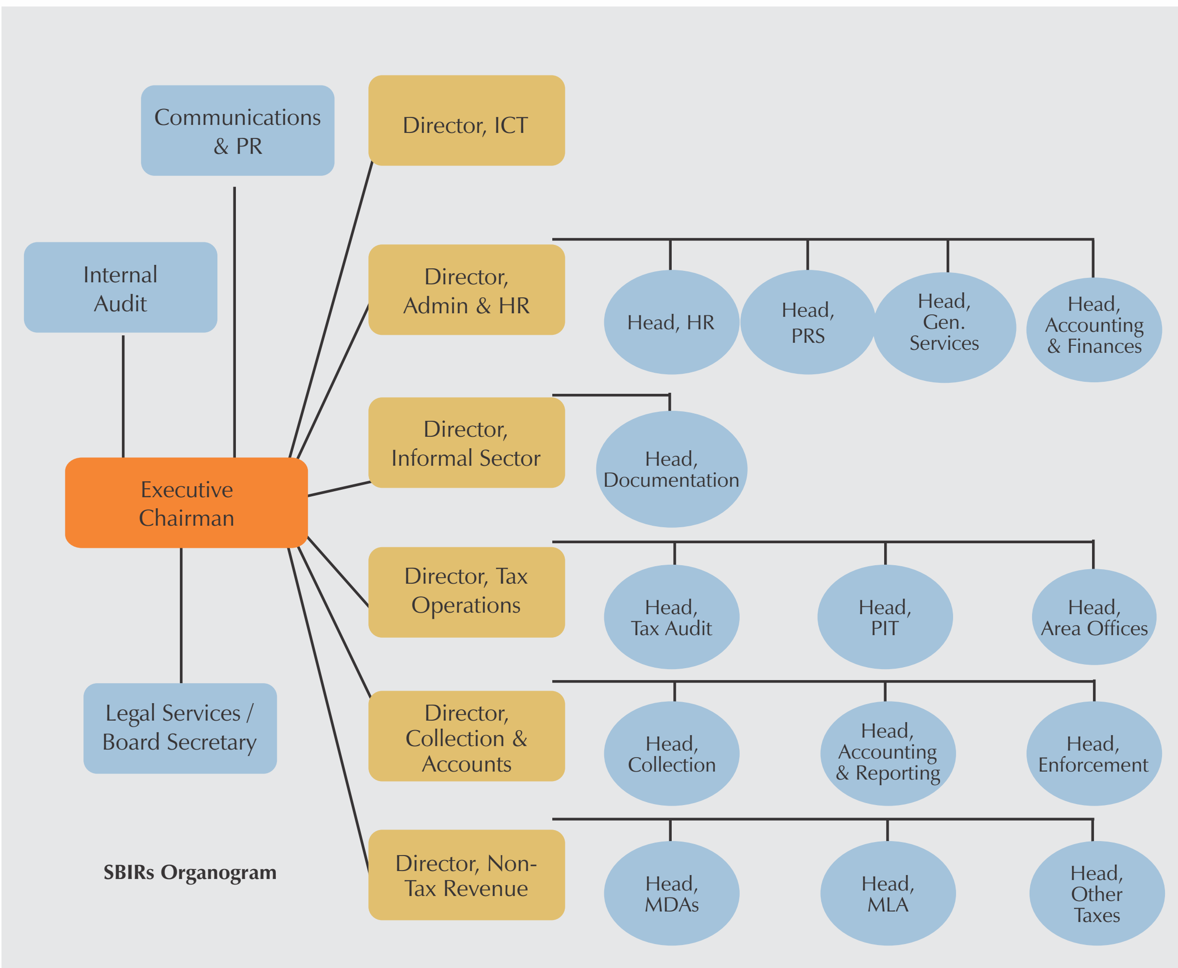
Organizational Structure and Top Management: The constitution, qualification, function and role of board members and senior management need to be clearly defined[8]. In addition, the SBIRs need to consider whether their existing vision and mission is still fit for purpose in autonomy. The standard ratio for staffing should be 2:1 for core/support staff ratio.

Similarly, there is the need for SBIRs to establish process flows, decision and reporting lines to ensure operational efficiency within the service. For cases of semi-autonomy where the SBIR is still funded through the Ministry of Finance, reporting lines could be extended to the Commissioner of Finance.

A default organogram is provided in figure 2 below, to guide SBIRs seeking full autonomy. However, this is just a guide and should be restructured where necessary to fit the individual peculiarities of States.

Procurement Administration: In an autonomous (or even semi-autonomous) SBIR the procurement processes and interaction with State due diligence rules need to be considered and agreed.

Figure 2: Default Organogram for SBIRs



[8] The constitution, qualification, function and role of board members and senior management need to be clearly defined.

SECTION TWO

MANAGING HIGH NET WORTH INDIVIDUALS

A guided approach

Introduction

A major challenge that continues to dampen returns on tax efforts is the lack of engagement of High Net Worth Individuals (HNWIs)[9].

The Organisation for Economic, Co-operation and Development (OECD) suggests that those with the greatest wealth pay the least tax across many countries. This may not be the case, but….

" …does demonstrate the enhanced scrutiny which the public expects for the high net worth individual segment…[A tax authority] must therefore demonstrate that its tax system is fair and that it is (sic) compliance strategy equally applies to the high net worth individual segment"

Several countries in the world including the United Kingdom and Uganda[10] have recognised taxing HNWIs as a high yielding tax segment of the economy. According to an HMRC report in 2016, the UK had in its database over 6500 HWNIs (1 out of every 5000 taxpayers) with wealth of more than GBP 10 million. Statistics from the report indicate that HNWIs paid over GBP 4.3 billion in income taxes, national insurance contribution and capital gains tax in the 2014/2015 fiscal year.

For many SBIRs, HNWIs are those who pay up to NGN 100, 000 or more because only a few

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[9] HMRC's approach to collecting tax from high net worth individuals: Report by the Comptroller and Auditor General, National Audit Office, HC 790 SESSION 2016-17 1 November 2016

[10] Kangave, J.; Nakoto, S.; Waiswa, R.; Zzimbe, P.L. Boosting Revenue Collection through Taxing High Net Worth Individuals: The Case of Uganda. ICTD working paper 45. The International Centre for Tax and Development at the Institute of Development Studies, Brighton, UK (2016) ISBN 978-1-78118-285-7

[11] http://www.pwc.com/ng/en/assets/pdf/voluntary-assets-income-declaration-scheme.pdf

of their residents pay up to a million. A recent review by FIRS[11] shows that only 214 persons pay up to NGN 20 million in tax in the country with most of these individuals resident in Lagos State. For a country of over 180 million people[12] and many unreported millionaires likewise billionaires, it is evident that there is a poor engagement strategy for this population group.

It has become imperative, especially in light of the recent economic down turn, that SBIRs are better equipped to manage their wealthy taxpayers (HNWIs) to cushion revenue drop beyond oil and low-income earners. A preliminary profiling of occupations and professionals who might fall under the category of HNWIs include large-scale grain and agricultural produce aggregators, direct labour contractors, self-employed individuals, cottage industries, legal practitioners (Senior Advocates of Nigeria), senior medical consultants and accountants who anecdotally earn on average NGN 50 million annual income on which income tax should be NGN 10 million. Also included are directors who extract funds from their companies improperly[13].

Engagement of HNWIs requires high-level political support. The 2017 amnesty programme, Voluntary Assets and Income Declaration Scheme (VAIDS), commissioned by both the federal and State governments is a step in the right direction and has shown the readiness of the government to exploit persuasion rather than force in encouraging compliance amongst HNWIs (see guide for administering VAIDS in section 3). An incidental but welcome benefit of taxing HNWIs, is that overall taxpayer compliance is driven up as taxpayers realise that both rich and poor alike pay tax.

Key Issues and Considerations for Setting up an HNWI Unit

Staffing and Organizational Setup within the BIRS: A HNWI unit must be staffed with highly qualified and trained staff, adequately incentivised to ensure that they are not easily compromised. The unit should ideally consist of a tax trained head (with inspector training[14] parts 1 and 2) with good administrative skills, supported by 2 tax-trained staffs (with inspector training part 1) and a fully qualified accountant (who may also be one of the above).

Also the unit should work closely with the legal department of the service to ensure all cases are error free and fit for trial. Over the years, non-compliant HNWIs exploit obvious technical errors of facts, procedures or interpretation of extant statutes to get courts to grant injunctions or complete cessation of future processes. A common objection filed by HNWIs is to dispute their residence for tax purposes presented by the SBIR. For clarity, tax residence is different from State of origin. Section 10 PITA[15] provides clear guidance in assigning the State of residence for tax purposes.

The unit should also be provided with a researcher or research team depending on the size of the HNWI population in the State. Such person(s) may be staff members of the Planning, Research and Statistics (PRS) department of the SBIR. The person(s) will be responsible for conducting profile reviews of prospective HNWIs; including establishing their State of residence to prevent the existence/case of 'nowhere'[16] taxpayers.

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[12] 2006 Census by the National Population Commission (NPOC)

[13] Excluding dividends, salaries or repayment of loans

[14] JTB and FIRS Inspector of Taxes Training

[15] Personal Income Tax Act CAP. P8 L.F.N 2004 (Amended 2011) – S10 (1) (a) (ii) and the First Schedule to the ACT.

[16] Nowhere taxpayers are taxable persons who claim to be resident in multiple locations and in the process pay tax in no location.

Confidentiality: HNWIs usually require special and sensitive handling such as the maintenance of confidentiality when documenting their personal information and assessing their tax exposure, especially of those who may be politically exposed persons[17]. Breaching taxpayer confidentiality is covered in general by law and by various tax Acts. Sanctions for breaking taxpayer confidentiality include fines and possibly criminal prosecutions, which could lead to dismissal or even a jail term[18].

Complexity of Financial Affairs: The need for skilled and technically trained staff is underscored by the fact that their financial affairs are usual more complex, with income streams subject to different tax rules or regimes. Some of these revenue streams include the following:

- Remuneration (PAYE)
- Income from self-employment (in the case of trader, professional or other service) (PIT)
- Sale of properties/assets (CGT)[19]
- Company income (PAYE/PIT)
- Dividends (WHT)[20]
- Income from banks and similar investments (WHT).

Specific Tools and Skills Required for Banding HNWI Cases: Pertinent skill sets required for effective management of HNWIs include customer handling (akin to high value personal bankers for rich clients), investigative skills (income reconstruction[21] and best of judgement assessment skills), understanding of relevant tax laws and case laws to anticipate and counter allegations of improper interpretations of the law and legal precedence.

Minimum ICT Requirements: Ideally, HNWIs should be part of any existing Integrated Tax Administration System (ITAS), however, this is not the case as many SBIRs still employ simple database management software such as Microsoft access and excel. Database management systems allow the service to easily stratify eligible HNWIs by actual or estimated taxable income, tax return status and payment status. Other relevant information include correspondences with taxpayers, including letters written, telephone calls and face-to-face meetings and dates of all activities and persons who carried out the action. It is also important that such data is segregated from the rest of the SBIR to ensure confidentiality of HNWI data and the ability to trace and take action against contraventions of the confidentiality rules.

Engagement Strategy: Process and Approach: As a special group of taxpayers, a clear engagement strategy is required. The HNWI unit will need to ensure that their taxpayer engagement levels are high. In some jurisdictions, such as the UK, a wealthy external stakeholder forum was set up following the launch of the High Net Worth Unit. The unit dealt with the personal tax affairs of the UK's wealthy individuals. In managing consultations and engagements with HNWIs the forum had a cross section of internal thematic experts and policy owners along with external members comprised of representatives from professional bodies, HNWIs, subject specialists and policy owners who provide advocacy on dynamic subject matters and themes relating to HNWI management.

Processes for managing HNWIs: This guide provides an outline process for SBIRs on managing HNWIs below. Each SBIR is encouraged to domesticate according to its existing peculiarities to ensure effectiveness in deployment.

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17 A Politically Exposed Person (PEP) is someone who holds or has held a senior position in any state, national body or international body including government, civil service, judiciary, armed forces or public organization such as the UN or World Bank or is a family member of a known close associate of a PEP.

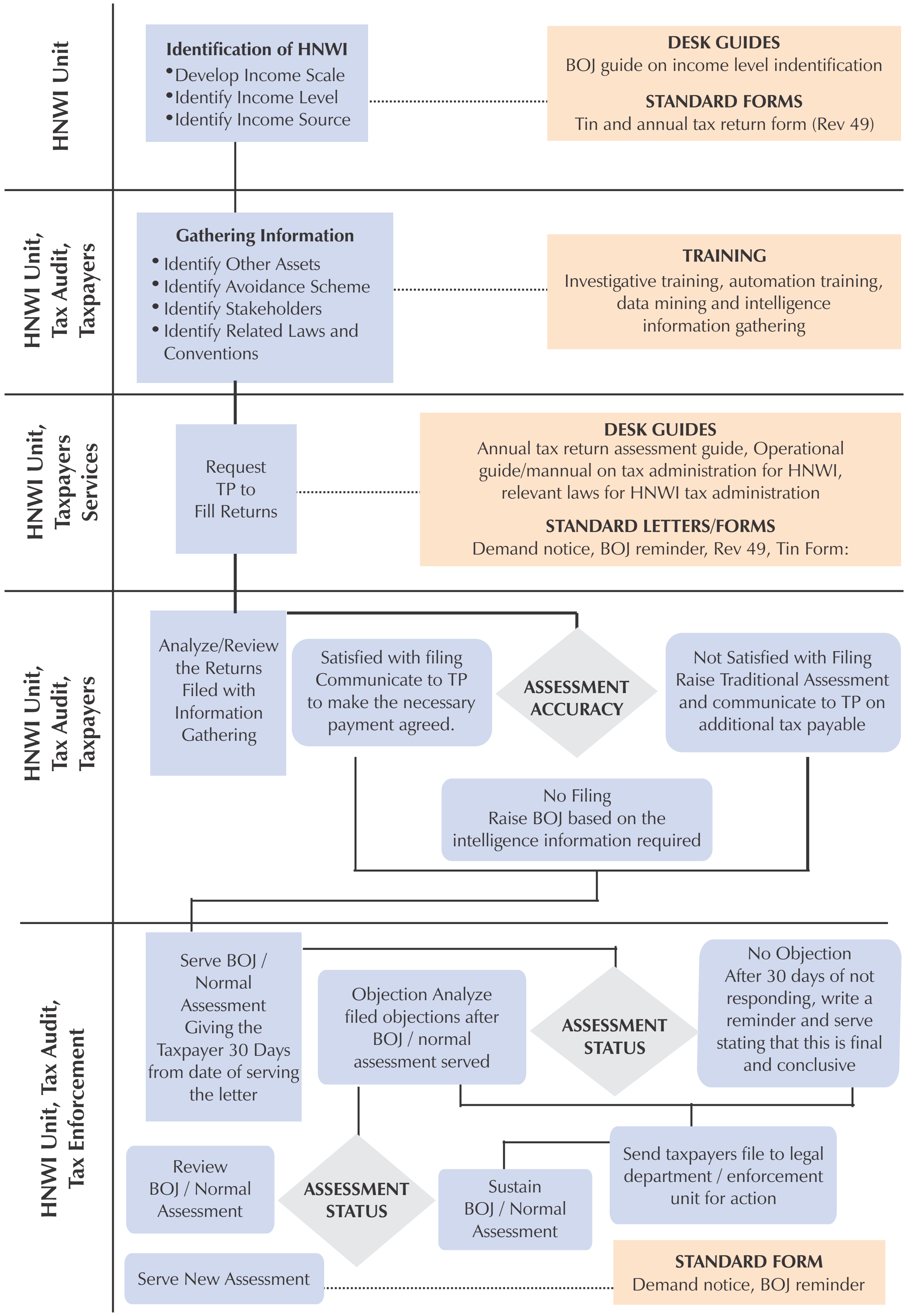
18 PITA: S 48; FIRS (Establishment) Act 2007 S 50.

19 CGT: Capital Gains Tax

20 WHT: With-holding Tax

21 Income reconstruction tools including capital statements, missing records, lifestyle questionnaires, means statements and clear understanding of risk: identification, categorisation, prevention and management. WHT from banks can also give an indication of interest received and capital sum invested in the bank.

Process Map for HNWI Tax Administration



SECTION THREE

VOLUNTARY ASSET AND INCOME DECLARATION SCHEME (VAIDS)

An opportunity for States' Boards of Internal Revenue

VAIDS

VOLUNTARY ASSETS AND INCOME DECLARATION SCHEME

Introduction

VAIDS is a nine months amnesty scheme (July 1st 2017 to 31st March 2018) launched by the Federal government and supported by the 36 State governments. The scheme is aimed at encouraging voluntary compliance by taxpayers and defaulters.

The VAIDS process insures the taxpayer against back duty investigations[22], penalties and interest, provided full disclosure is made and all outstanding sums are paid within the schemes' period. Where the tax bill is huge, it may be paid in instalments over a three-year period.

Acting President Yemi Osinbajo signing the executive order on Voluntary Assets and Income Declaration Scheme (VAIDS) at the State House Conference Centre, Abuja on Thursday, June 29, 2017-Source: Pulse.ng

However, payments past the closing date of the scheme will attract interest excluding penalties.

Administering VAIDs at the State Level

Taxes Covered: The scheme covers all Federal and State taxes including Corporation Income Tax (CIT), Personal Income Tax (PIT), Petroleum Profits Tax (PPT), Capital Gains Tax (CGT), Value Added Tax (VAT), Stamp Duty (SD), Tertiary Education Tax and National Information Technology Development Agency (NITDA) levy. Pertinent to States are taxes accruing from PIT (both Direct Assessment and PAYE), CGT, and SD of their resident taxpayers.

Legality and Administration: The Scheme is authorised by an executive order issued by the President.[23] To ensure this cascades down to the State level, a MoU was signed between the Federal and State governments. To bolster the success of the scheme, the federal government is also leveraging on its partnerships to access cross-country data and track tax evaders and defaulters.

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22 Facilitated by FIRS, SBIRS and the Asset Tracking Team (ATT) of Ministry of Finance

23 Executive Orders are backed by section 5 of the Nigerian Constitution of 1999. EO can be issued by the President or Governor and a can be issued: To cover Operational Management of the Executive Branch; for Operational Management of the Federal (or state MDAs); for statutory or constitutional responsibilities. The President may decide to exempt companies for the CIT (CITA 823 {2}): While the President or Governor may at his discretion mitigate any fine or penalty, debt arising or compound any proceedings for recovery thereof and may also after judgment, further mitigate or entirely remit any such fine, penalty or debt. (S…) S79; S80; S97; S106A PITA 2004 (as Amended 2011)

The federal government will put all funds recovered from the programme in a designated VAIDS-SBIRs account for monitoring, reconciliation and tracking. To compliment this, States' BIR can undertake the following activities: -

- Issue PIT assessment and collect payments
- Institute a VAIDS desk and assign a trained officer (s)
- Train and use community tax liaison officers[24] to execute sensitization drives including "Tax Thursdays"- a day designated by the government to carry out tax enlightenment programmes.

VAIDs provides an opportunity States should actively and strategically exploit to persuade its HNWIs to come on board and regularise their tax affairs. For many, the exemption from penalties and assurance of confidentiality is a great incentive to be tax compliant.

Establishment of VAIDS Offices:

The following are expected of a VAIDS office/unit at the State level:

1. Staffed with experienced and trained tax officers, supported by community tax liaison officers
2. Maintain records of declarations and tax remittance by declarants
3. Establish VAIDS liaison desks at strategic/designated locations
4. Maintain confidentiality of declarations by taxpayers
5. Collaborate with the SBIR in the State to ascertain disclosure status

Scope for SBIRs: Below is the scope of persons and assets/income covered by VAIDs under the jurisdiction of the SBIRs to implement.

Who?	What?
1. Listed and multinational companies	1. Honorarium and speaking fees to retires and active individuals
2. Sole proprietorship	2. Income accruing to States from betting and winnings
3. Portfolio companies with no physical office	3. Gains accruing from assets of inherited estate/deceased persons other than capital transfer tax/inheritance tax
4. Small, micro and medium size companies	4. Income from taxable sources
5. Professionals e.g. artistes, spokesmen, bloggers, sportswomen, professors and teachers on Secondment etc.	
6. Public companies	
7. Individuals in paid employment	
8. Partners in a partnership business	
9. Owners of enterprises, traders, contractors	
10. Professionals such as lawyers, accountants, engineers, doctors, surveyors, valuers, consultants, investment advisers, analysts, etc.	
11. Clergymen with identifiable income other than gifts	
12. Persons dealing in land/properties as speculators or developers, including property holding companies	
13. Property owners with rental or sales income	
14. Settlors, trustees and beneficiaries of living trusts	
15. New taxpayers who are yet to register with the tax authorities	

[24] The federal government will be funding and training the community tax liaison officers

SECTION FOUR

TAX ADMINISTRATION FOR THE INFORMAL SECTOR

Why, how and what works

Introduction

The informal sector generally comprises of the economic activities or interactions of individuals, enterprises or other unincorporated entities or organizations, as opposed to the formal sector which represents the economic interactions of organized individual or corporate entities.

Informal sector businesses are characterized by poor reporting standards and the absence of conventional accounting procedures.

Statistics indicate that the sector contributed 57% to a total of 2.48 million jobs created between July 2012 and June 2014. The sector accounts for about 80% of all non-agricultural employment and 60% of urban jobs created, earning it the description of being mammoth, heterogeneous and the backbone of the formal sector. Informal sector players include street traders, subsistence farmers, small-scale manufacturers and service providers such as freelance photographers and hairdressers, private taxi drivers, carpenters, etc. Despite their huge population and spread, their contribution to national revenue in the form of tax is minimal.

Nigeria tax law and policy following amendments now recognises this group of potential taxpayers, prescribing the adoption of presumptive tax.

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[25] SMEDAN and National Bureau of Statistics collaborative survey: Selected findings (2013), and Philips Consulting – Informal economy survey report Nov, 2014 http://www.phillipsconsulting.net/files/informal-economy-survey-report-nov-2014.pdf

Administering Tax on the Informal Sector

Legality: The presumptive tax regime as prescribed by the Personal Income Tax Act (PITA) allows for taxation[26] of individuals whose income by all possible or practical accounting techniques cannot be ascertained. This is codified in section 36(6) Personal Income Tax Act (PITA) (as amended 2011). The regulatory frameworks under PITA and the Nigeria Tax Policy (NTP) 2017 provide for the domestication of a presumptive tax policy at the State level. In some States including Kano and Kaduna State, a State law specifically allowing for the exercise of a presumptive tax regime has been passed[27].

Administration and Domestication: Although the Joint Tax Board (JTB) has proposed rates for the purpose of presumptive tax, it is advised that States domesticate the policy taking into cognisance their individual peculiarities in terms of viability. The UK's Department For International Development Growth and Empowerment in States (DFID-GEMS) 3 programme had provided support to four States- Cross River, Kano, Kwara and Kaduna State- in the implementation of the presumptive tax regime. Based on experiences gathered, a simplified guide[28] was developed by the programme indicating the procedures followed by these States including MoUs, letters and fee schedules for micro, small and medium enterprises for other States to learn from and replicate processes accordingly. First, a technical working headed by the SBIR must be instituted. The committee will be responsible for producing the applicable tax rates in collaboration with relevant stakeholders (consisting of public and private sector actors). This exercise should be based on an enumeration/mapping exercise. Other activities germane to the successful implementation of the regime include reaching agreements with key stakeholders including the local government, trade unions and market associations. Trade groups are particularly important to sensitize their members to voluntarily comply with their tax obligations as specified in the tax schedule.

Chairman of Kano State BIR, Mr. Sani Abdulqadir Dambo during a PPD workshop with BMOs and trade association on presumptive tax

Also tax for service[29] programmes have shown to be strong complementary strategies for maintaining compliance in the informal sector. The strategy provides incentives to market users, traders and motor parks operators/users to pay State and local government taxes, levies and charges legally payable by them. A certain percentage, typically between 20% and 30%, of such payments is dedicated to be spent on infrastructural improvements in the markets/motor park and business areas of those who pay.

After agreements have been signed and sensitization initiated, the SBIR will begin strategic enumeration of prospective taxpayers using mobile TIN kits where available. However, States with no mobile TIN kits may begin by exploiting innovative strategies such

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[26] Using indirect methods such as income reconstruction or by applying baseline taxation across the entire tax base

[27] Kaduna State tax (codification and consolidation) law 2016 and Kano State revenue administration law (Amendment) 2017

[28] The Implementation Guide in the GEMS 3 Toolbox: http://www.jtb.gov.ng/gems3-tax-toolkit

[29] The concept "tax for service" relates to the collection of taxes with provision of service to the taxpayers. State where this has been employed (E.g. Kwara and Kano State) has shown increase in voluntary compliance by taxpayers. This is often guided by an MoU (Tax for Service Agreement) between the public sector (State/LGA) and the private sector (representatives of the market traders/motor park owners).

A public toilet built under the initiative of tax for service in Ago market Ilorin West LGA in Kwara State.

Figure 3: Benefits of Tax for Service

Obligations for States/LGAs to collect legally authorised harmonised rates and levies	Improved relationship between taxpayers and revenue officers	Community based projects are agreed by traders and government	Improved voluntary tax compliance	Better shopping experience	Improved facilities (e.g. borehole)

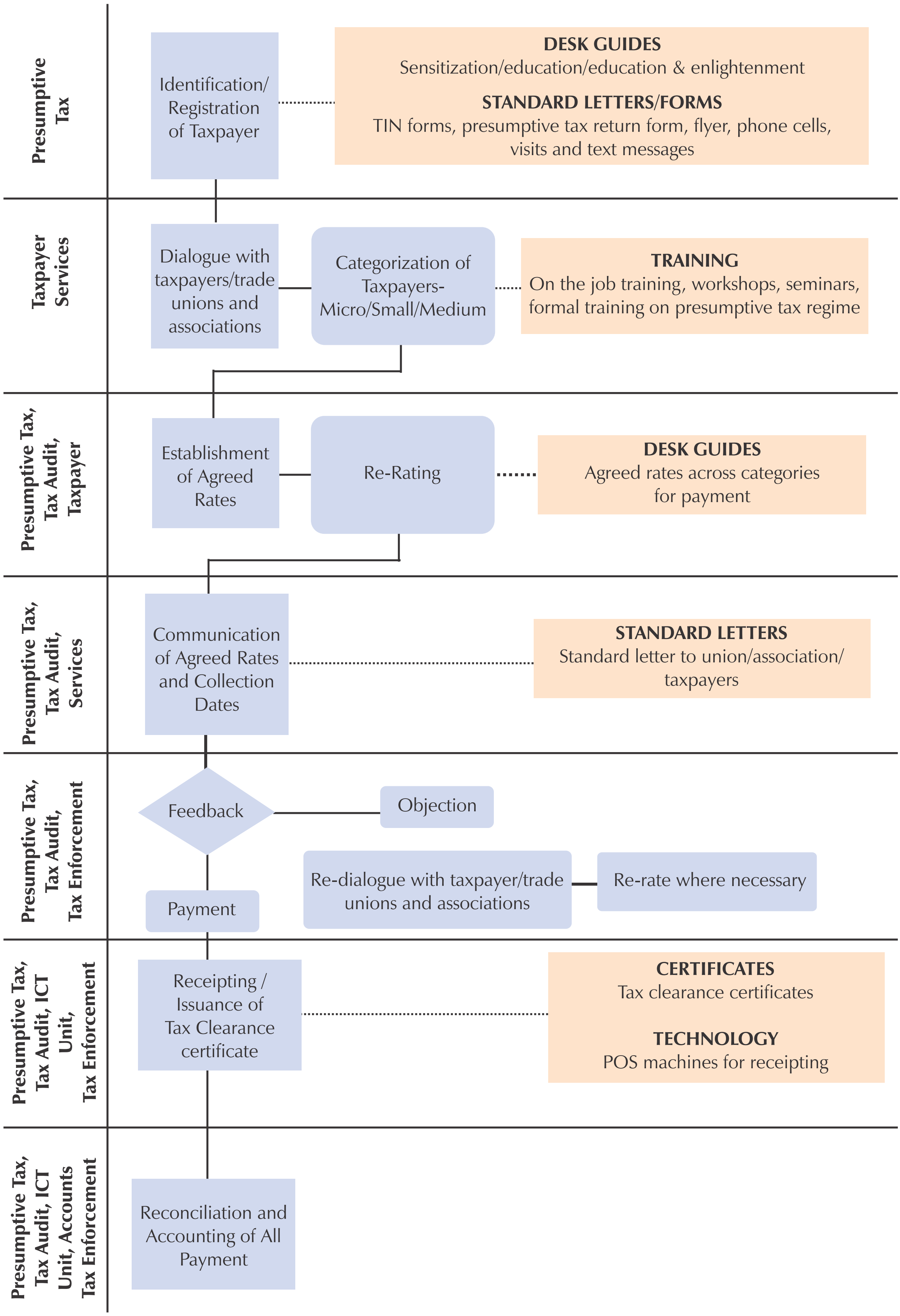
as obtaining phone numbers and BVNs (where possible) on a pre-set form to allow the SBIR triangulate the data for future recall and use. Segmentation could be done along sectorial and SME dimensions to allow for easy categorization and assignment of applicable tax rates.

Capacity building training workshop for BIR staff on the implementation of presumptive tax in Cross River State

Lastly, the officers assigned to engaging with the informal sector must be periodically trained in areas such as customer relationship management, assessment protocols, negotiations and most importantly, the legality of the tax.

To further assist State officials with an understanding of the assessment protocols for presumptive tax, a process map has been provided below.

Process Map for Presumptive Tax Administration



SECTION FIVE

BEST OF JUDGMENT AND RECONSTITUTION FOR TAXABLE INCOME

Methods and approaches

Introduction

Although taxpayers are allowed by law to self-assess[30] and return their taxable income and compute their tax bills, this rarely happens. Hence, tax authorities have to estimate their assessable income and serve defaulters with a notice for payment[31]. This estimation exercise is referred to as a Best of Judgement Assessment (BoJA).

As expected, SBIRs are faced with lots of objections[32] by taxpayers, as BoJAs served are often unrealistic due to poor estimation and wrong assumptions amongst other reasons.

Approaches to making Realistic Best of Judgement Assessments

In the absence of a return, or where a return is being disputed and the records are incomplete or the tax authority is not getting the co-operation of the taxpayer, there are a number of approaches to estimating undeclared profits

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[30] Tax Administration (Self-Assessment) Regulations 2011, Federal Republic of Nigeria official gazette No. 117 vol. 98 Lagos, 19th December 2011.

[31] PITA S 54 (2)(b),(3)

[32] PITA S 58 (1)

and raising BoJAs that leave the taxpayer with a higher probability to accept and pay.

Where unrealistic BOJAs are served and taxpayers disapprove, the law permits the tribunals and appeal bodies to rule objectively on findings of fact. This can effectively derail the collection process for a considerable length of time and take up valuable resources.

Strategic methods for computing a BoJA include the use of:

- Business economics exercises
- Capital statements
- Incomplete records reconstruction
- Means tests

Business Economics Exercise: This involves a basic study of the nature of the taxpayer's business and preferably the use of a business sector database to estimate the income/ profit figures. This can be done in one of two ways:

1. Break down the business into its component sources of income (making assumptions where needed) and estimate the assessable income
2. Use an average income estimated for the business from records of similar businesses that have either made returns or been audited[33].

Tax cases have shown that in the absence of records, a business economics approach to reconstructing income is acceptable[34].

A similar approach replicates the 'presumptive tax approach'. In such a case, the SBIR will have a list of businesses that have accepted a certain level of tax demand and this can be averaged out for the sector. Consequently, all similar-sized businesses in the sector are then taxed at the same rate.

Example: A hotel business where the State has institute an entertainment tax of 3%.

Find the number of rooms, price of rooms, make assumptions based on local knowledge of its location, popularity and any activity that may affect customers and turnover.

Suppose for this example: The hotel has 20 rooms. (15 rooms @ NGN10, 000 per night and 5 rooms @ NGN 15, 000 per night) and it is always busy and during peak times of holidays, full to capacity.

Assuming an average occupancy rate of 70% over the 300 days[35] in a year should provide an estimate base for assessment.

11 x NGN 10, 000 = NGN 110, 000/night
3 x NGN 15, 000 = NGN 75, 000/night
Total= NGN 185, 000/night

So for 300 nights that is NGN 185, 000 x 300 = NGN 55, 500, 000/per annum@ 3% = NGN 1, 665, 000 in entertainment tax

Assuming guests eat 2 meals per day @ 1000/meal = 2meals x 14 guests x 300nights x NGN 1000 = NGN8, 400, 000

Tax at 3% x NGN 8, 400, 000 = NGN 252, 000 in consumption tax

You could assume a similar figure for drinks so a further NGN 252, 000 tax on drinks.

Since taxes are on gross income and do not require expense accounting, a tax officer can safely issue a demand notice for at least NGN 2, 169, 000. But it is unlikely you will have identified all the potential income so it is safe to revise upwards and round off at NGN 2, 500, 000 for the first BOJA.

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[33] Gemini Bus Co Ltd. vs. Commissioners of Income Tax, Colombo 1952 AC 571 -Base profits on average ratio of profits to expenses on oil and gas by 7 other companies anonymous.

[34] Coy vs. Kime 59 TC 447 - Where records not accurate, an estimate can be used especially when based on facts from different sources. Britain v Gibb 59 TC 374 - Estimate of income – hourly rate x likely number of hours worked

[35] Adoption 300 days as against 365 days to allow for maintenance claims which might require closing the hotel for a short time. The tax authority must also be proactive, capturing possible scenarios that might occur in its assumption to increase the accuracy of its assessment/estimation.

This would not be unreasonable and would be difficult to challenge except the taxpayer gives full co-operation. Even if the taxpayer objects and it goes to a tribunal, the onus will be in the taxpayer to show this is unreasonable.

Unfortunately, revenues are lost daily due to the lack of standardised techniques for BoJA served by many SBIRs.

Remember this is excluding tax due on income tax assessable (if non-corporate) and WHT or PAYE due on staff wages.

Capital Statements: Capital statements[36] are used where there is no clear and easy way to make a business economics exercise. It is used in cases where one can see or access evidence of assets owned by a taxpayer without a clear idea of how much money they make or the income source.

assess evidence of taxpayer's income used to back these, since; such loans must be serviced by an income.

So, for example, where a taxpayer has been identified to own a large estate (built over two years), which has not been rented out, a tax authority could employ a capital statement approach to estimate the income per year over. From the assessment above, a tax authority could serve this identified taxpayer a BoJA of NGN 200 million assessable income per annum or tax of NGN 36 million per annum before expenses as a starting point.

Where such a taxpayer is not cooperative and intends to claim expenses, it will only reveal an opportunity to get further information. Also if this is a property developer that claims the assessed income is capital and subject to capital gains tax, the tax authority should

	Estimated value	2014	2015	2016
Estate buildings Nil	–	–	–	–
Estate Buildings 20 units	NGN 10m/unit	NGN 200m		
Estate building 40 units	NGN 10m/unit		NGN 400m	NGN 400m
Increase in assets		NGN 200m	NGN 200m	NGN 0m
Take increase in assets as income spent so annual assessable income		NGN 200m	NGN 200m	
BOJA Income*18% marginal tax rate		NGN 36m	NGN 36m	Nil but look for other assets or rental streams

The idea is to link traceable assets to a combination of loans and income. However, one must exercise caution in using this approach to avoid displacement of facts by claims that loans, inheritances or gifts were used to finance traced assets. Although, where loans are genuinely used, one should be able to compare the activities with the 'Badges of Trade[37]

Incomplete Records Reconstruction: In some cases, the tax authority may have some expenditure and income information, which are incomplete for accurate assessment. In this

[36] Johnson vs Scott 52 TC 383 – Approved the use of Capital statements – but while using inferences, they should be fair.

[37] FIRS information circular published: August, 2010; What constitutes 'Trade' for tax purposes: Guidelines for the general public: www.firs.gov.ng/Resource-Centre/Pages/Tax-Circulars.aspx

circumstance, a combination of business economics approach and capital statements should be explored to estimate the missing figures on which to base you're the BoJA.

Assuming, expenses over NGN 3 million (wages and cost of materials) is traced to a trader who has no comprehensive record of his income available asides from the declaration of buying materials at NGN 100, 000 a load and reselling same load at NGN 150, 000. Receipts available indicate the trader had bought materials worth NGN 3 million in three months. Hence, the trader must have sold these materials for NGN 4.5 million, even though, sales recorded were staggered across the year.

Based on this, the tax authority can estimate that the trader spends at least NGN 3 million a quarter and NGN 12 million a year on purchases, accruing to him an annual income of NGN 18 million. Hence, the trader's gross profit will be NGN 6 million. A similar analysis for his wages and rent expenses at NGN 1.2 million per annum will leave the tax authority with a gross assessable income of NGN18 million less materials NGN 12 million and other expenses NGN 1.2 million.

This gives a net assessable profit of NGN 4.8 million and a tax of NGN86, 400 (assuming a marginal rate of 18%). So the BoJA could safely be put at NGN 5 million the first time, with less probability of objection by the taxpayer

Means Tests: These are more complicated but can be developed based on an analysis of the taxpayers lifestyle, known assets and expenses such as number of motor vehicles, houses, donations in public and so on.
A typical case could be:

Taxpayer X is a single male in his mid-20s who is a self-employed designer that is popular and always seen in high profile events where his clothes are worn. He is a sole trader who returns his income to the SBIR to get a tax clearance certificate. On examination, his net profits after expenses are around the NGN 250, 000 mark. This gives Mr X about NGN 20, 000 worth of available income per month based on his return. However, he owns a Porsche, lives in a part of town where the rent is NGN 1.5 million for a flat and the newspapers suggest he owns more than one basic flat. These expenses should raise a red flag for tax investigators as his lifestyle and income declaration for not tally.

If he refuses to cooperate when asked to supply more information, the tax authority could reasonably build a means profile (that is how much he needs to live the lifestyle its aware of) for a BoJA. Such a BoJA would ensure that Mr X comes in to discuss his tax affairs more comprehensively. In most cases, the taxpayer may object, so the assessment must be largely factual to ensure the taxpayer complies and pays.

Using Government-held Data for the Preparation of BoJAs

States possess a lot of information on taxable transactions, which can be used to estimate the turnover and tax bills of businesses and individuals.

Data in this category include WHT deductions and WHT notes[38], stamp duty fees and certificate of occupancy fees among others; which give an indication of assets for capital statement reconstitutions. These sources of data are based on facts but are often overlooked by tax authorities during investigation and audit.

Hence, the need for a strong Planning, Research and Statistics (PRS) department within SBIRs to collate data across MDAs and share with the assessing units of the SBIRs. Data output from the PRS department will also be valuable for the HNWI unit. An example could be a contractor who has a WHT payment of NGN 10 million, which will suggest a turnover between NGN 100 million and NGN 200 million (depending on the rate applied 5% or 10%). A comparison of this data with the turnover figure in their accounts will show how much they have hidden and justify a significant BoJA and subsequent tax bill, even after allowing for expenses.

[38] Often head for the office of the Accountant General who makes the contract payments and the WHT deduction.

SECTION SIX

GUIDE TO TAXING SOLID MINERALS

Relevance to States

Introduction

Given the recent diversification drive by States, many have sought to exploit revenue gains from taxing exploration and trade of their solid mineral deposits.

From an IGR perspective, across many countries, corporate income tax is less than half (48%) of all the taxes and contributions that mining companies bear[39]. In addition to corporate income tax, mining companies pay other taxes such as:

- People taxes (taxes on employment, PAYE and PIT of sub-contractors and suppliers)
- Taxes or levies borne on purchases or supplies such as quarry taxes, haulage taxes, consumption taxes (where applicable)
- Property taxes on factories, land and related items and related property charges and fees including certificate of occupancy fees amongst others.

Administrative Framework

Legality: The Nigerian Minerals and Mining Act 2007 was passed into law on March 16, 2007 to repeal and address the shortcomings of the Minerals and Mining Act, No. 34 of 1999 for the purposes of regulating the exploration and exploitation of solid materials in Nigeria[40].

The Nigerian Minerals and Mining Act (NMMA) 2007 vests the control, regulation and ownership of all mineral resources, in all States,

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[39] GTotal Tax Contribution, PWC, PricewaterhouseCoopers LLP Global study for the mining sector https://www.pwc.com/gx/en/energy-utilities-mining/pdf/total-tax-contribution-mining-sector.pdf

[40] Nigeria: An Overview Of The Nigerian Minerals And Mining Act 2007, Adeoye Adefulu Odujinrin & Adefulu http://www.mondaq.com/Nigeria/x/95916/Mining/An+Overview+Of+The+Nigerian+Minerals+And+Mining+Act+2007

to the federal government and prohibits unauthorized exploration or exploitation of minerals. The Act empowers the Ministry of Mines and Steel Development to establish a Mining cadastral office to issue mining titles/licenses.

While royalty payments and corporation income tax are only paid to the federal government, States receive payment for other fees including road maintenance, ecological impact, quarry and mining levies as well as registration fees. Local governments also collect haulage fees on transportation of sand, limestone, granite and chippings exploited from their area. Hence, it is, therefore, important that State governments periodically review and harmonize applicable rates[41] at both local and State levels including personal income tax of workers (PAYE). This is critical to ensure that the mining firms are clear about what is being charged and by whom, so they remain viable and the State remains attractive to investors. The SBIR also needs to accommodate in mind the federal government's incentives in the mining sector such as the applications of tax holidays for up to three years, to be clear about which taxes and levies are exempted and those that are not.

State Specific Laws about Mining and Quarries: The 2015 regulation amending the Schedule of the Taxes and Levies (Approved List for Collection) Act 2004 permits States to tax and levy fees for 'mining, milling and quarry activities[42]. Most States have however, not updated their tax laws to domesticate applicable extensions and develop the associated processes and procedures on such charges.

In recent times some States have integrated the provisions of this Act. For instance, in Kano State, the 'Kano State Revenue Administration (Amendment) 2016 Law mandates the SBIR to collect applicable taxes and levies for mining activities after payment of royalties (to the FGN) including quarry fees of all materials

along with quarry registration/permit fees and sand dredging charges. The law also introduced road congestion charges for tippers, trucks and trailers.

[41] Some of which include ecological fees, mining and quarry registration fees, haulage fees, Signage fees etc.

[42] Schedule to the Taxes and Levies (Approved last for collection) Act (Amendment) Order 2015

SECTION SEVEN

PROCESS MAPPING FOR TAX ADMINISTRATION

Ensuring consistency in tax administration

Introduction

Process mapping is a framework used to create visual representations of work processes. It shows the relationship between the steps and inputs to service delivery. This process of mapping is concerned with what the Service does, why it does what it does, what the standard for success is, who is responsible and when and where different steps will be initiated.

A common challenge for many SBIR is the absence of strategic planning, especially in tax administration, tax enforcement and tax audit functions. While senior level management may have a clear understanding of the vision and plan of the organization, many of the junior and middle level staff are not fully guided, hence, allowing room for inconsistencies and inefficiency. These include inconsistencies in BoJA served, as well as registration and processing protocols. Also senior level management are overburdened with low level administrative functions. To effectively address these problems, senior managers must articulate required steps, processes, responsibilities, decision chart, reference documents and standards for each tax work stream.

Why Develop Process Maps?

It is important that an SBIR establish process maps for its activities and work streams. This will help:

- Ensure all staff see the processes the same way.
- Decrease errors of procedure.
- Build understanding across cross-functional areas.
- Ensure staffs have a clear understanding of the "current state" of the organization

- Facilitate development of metrics.
- Decreases waste by identifying gaps and excesses easily.

Principles of Process Mapping

To properly transform an SBIR into a sustainable one, the tax authority must understand how to map processes. The following principles should be present in every mapping project:

- Define the scope of the project, with boundaries, start, and end points
- Look at the big picture - the intent of the process
- Define each step clearly
- Get feedback from everyone in your organization who is involved in the process.
- Strive to be complete in your accuracy, especially with the map of the “as-is” process
- Strive to keep the sub-processes simple
- Test the process with accepted metrics

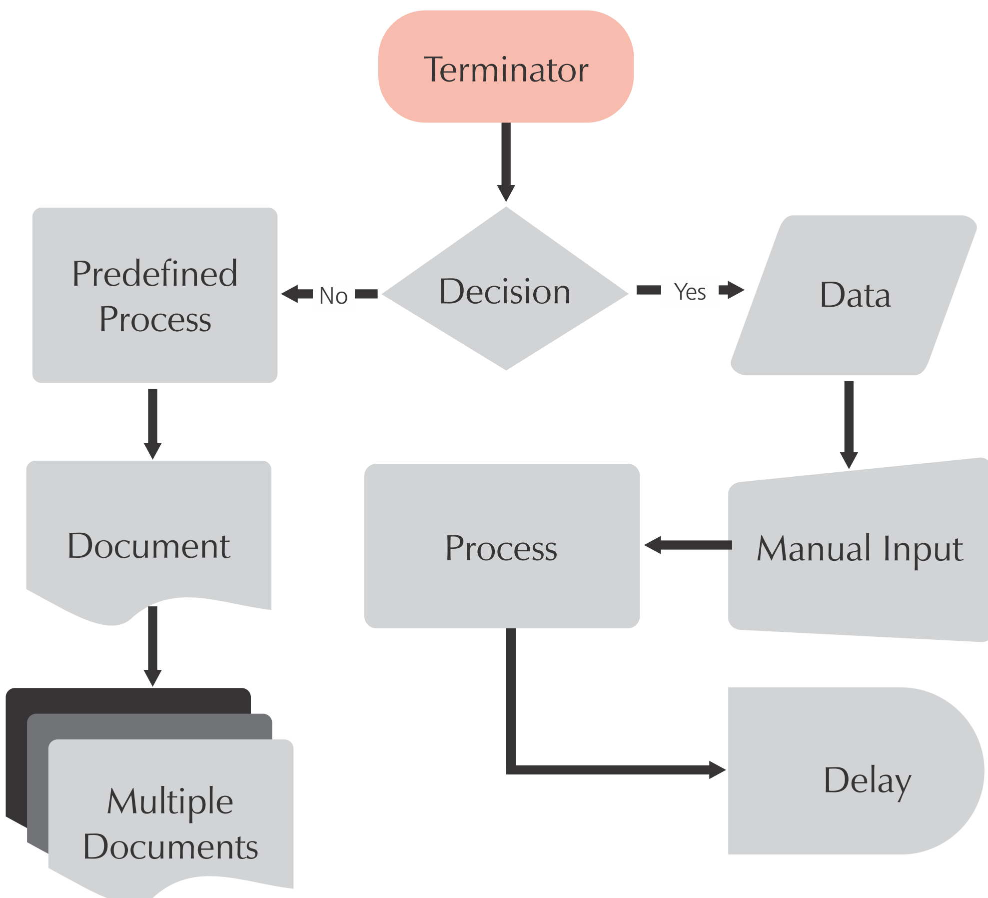
Metrics should measure the time, rates/costs, equipment, and any added value

- Work backward output to input
- Create ownership with single points of contact where feasible
- Redesign processes to be taxpayer-centric
- Use technology to enable your processes

The following are the key highlights of any process map:

- Responsibilities
- Objectives
- Activities
- Inputs
- Outputs
- Customers
- Risks and controls
- Key performance indicators

Figure 4: Applicable Signs and Symbols



ACCESSING SUPPORT FROM THE NGF HELPDESK

Step 1

Visit the HelpDesk portal via the www.nggovernorsforum.org/helpdesk url

Step 2

Complete the Request for Support/Request for Further Support Form
(Attach a cover letter signed by a high-level State official)
and submit online

Step 3

HelpDesk reviews State's request and recommends policy tool/guide where available or designates a technical expert to provide direct assistance to the State

Step 4

In the case of direct assistance, a diagnostic study visit to the State is initiated

Step 5

Technical support/training is provided to the State based on findings from the diagnostic study visit

Step 6

An evaluation exercise is carried out to track the impact of the support

APPENDIX 1:

ORGANIZATIONAL AND MANAGEMENT CHECKLIST FOR SBIRS

Strategy Formulation, Planning, Budgeting, Resource Allocation

- ❐ Develop organizational strategy
- ❐ Preparation of a corporate plan and an annual strategic plan
- ❐ Setting of annual performance targets for the service, its departments, units and staff
- ❐ Budget formulation
- ❐ Allocation of non-financial resources to different organizational units and tasks

Policy Formulation

- ❐ Participation in formulation of tax policy
- ❐ Harmonization of taxes collectible by State and local governments
- ❐ Development of management and technical policies to give effect to the BIR's strategy
- ❐ Review and modification of policies in the light of changes in tax laws, taxpayer behaviour, operational priorities, field experience etc.
- ❐ Enunciation and dissemination of policies

Monitoring and Evaluation

- ❐ Establishment of reporting rules
- ❐ Collection and analysis of performance data
- ❐ Supervision of field offices to assess quality of outputs and service delivery
- ❐ Evaluation of performance against targets
- ❐ Remedial actions to remove bottlenecks, solve problems and address performance deficiencies
- ❐ Utilization of results of monitoring and evaluation into planning and policy formulation
- ❐ Establishment of a complaints process/unit

Coordination

- ❐ Coordination within organizational units
- ❐ Coordination across organizational units
- ❐ Coordination with other agencies and stakeholders
- ❐ Internal communication channels

Financial management

- ❐ Budget Execution
- ❐ Procurement of goods and services
- ❐ Accounting
- ❐ Financial reporting

Personnel management

- Human resource planning;
- Development of rules for personnel management
- Development of career paths;
- Recruitment of skilled professionals, promotion, transfers, retirement, discipline and dismissal of staff
- Matching of individual skills, experience and capability with job requirements and workload
- Development of performance incentives
- Definition of performance targets and performance evaluation at the individual level
- Development of a competitive remuneration and benefits system.
- Administration of staff benefits
- Staff welfare
- Staff training:
  - Management training
  - Technical training in tax administration
  - Training in information systems

Asset management

- Acquisition of assets: buildings, goods and services
- Prevention of misuse of official property for personal use

Internal control

- Design, implementation and review of institutional checks and balances
- Internal audit

Anti-corruption

- Implementation of code of ethics to define standards of expected behaviour
- Development and implementation of disciplinary rules
- Vigilance:
  - Monitoring employee conduct;
  - Monitoring and analysing declarations of assets and income by staff
  - Investigating allegations of misconduct and corruption
- Carrying out of disciplinary proceedings to punish corrupt officials
- Cooperation with external anti-corruption agencies in investigation of corruption in the SBIR
- Providing training in ethics to staff

External relations

- Effective interaction with relevant environmental actors to promote SBIR objectives; meet external challenges and exploit emerging opportunities:
  - Institution of a Joint Revenue Committee to ensure effective collaboration with MDAs
  - Ministry of Finance: tax policy, tax laws, administrative budget and reporting on operations
  - Legislature and the Ministry of Justice: tax laws and regulations

- Judiciary: expeditious and impartial disposal of tax cases, training of judges in tax matters, if needed
- Tax Appeal Tribunal: representation of the SBIR before the courts in tax cases
- Civil Service Commission (where applicable)
- Nigerian Police Force: protection of staff during field operations
- Other government agencies: information relevant to taxation
- Immigration, border posts, free trade zones, and warehouses: customs operations
- Banks: tax collections
- Tax lawyers and accountants, chambers of commerce, professional associations etc.: enlisting support to improve voluntary compliance
- Media: communications with the public regarding tax law changes, advantages of tax compliance and consequences for non-compliance
- Foreign countries/multinationals: double taxation relief treaties and agreements on cooperation in investigation of tax and customs fraud

Color Codes:

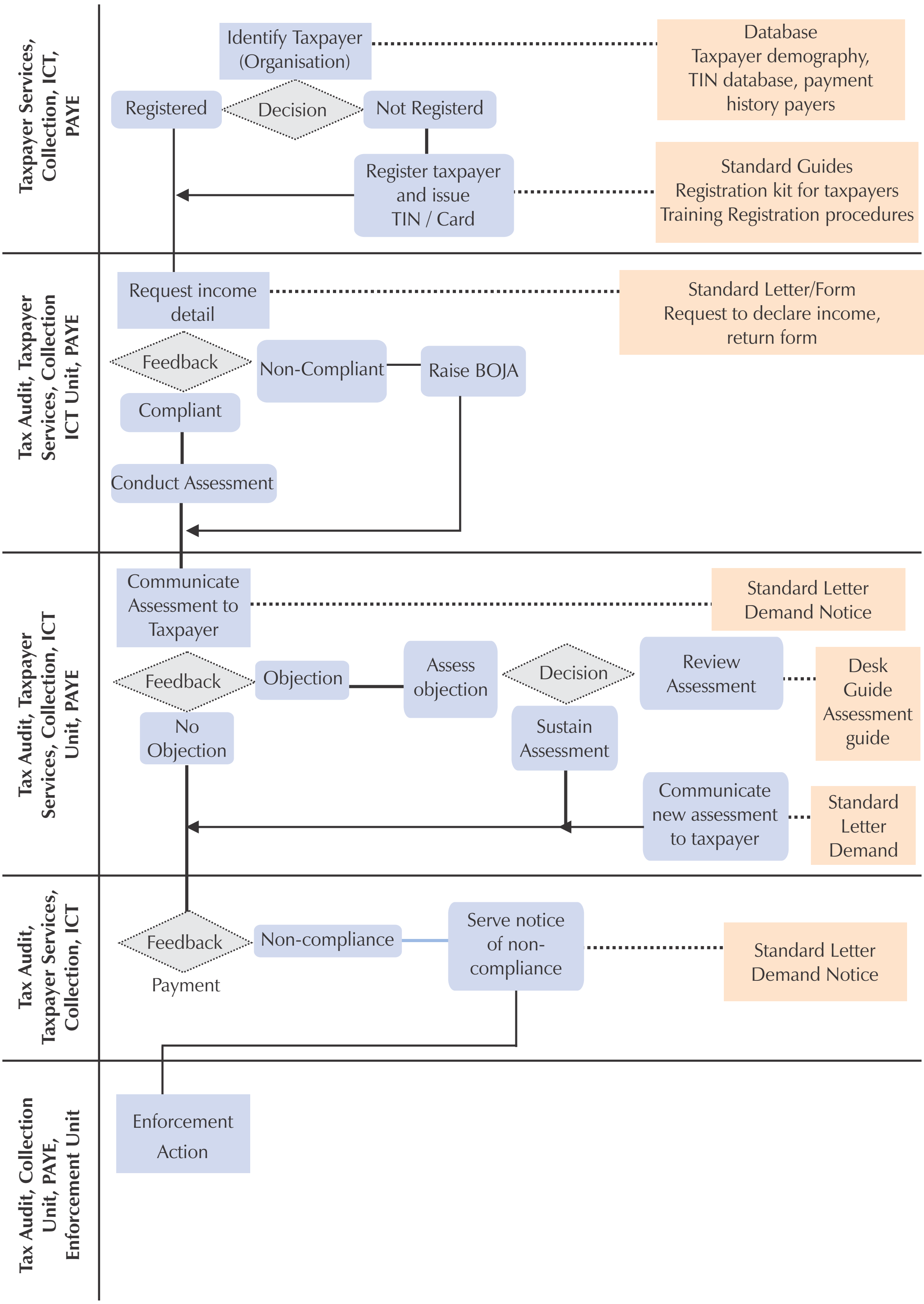
Can be enforced by SBIR management with relative ease

Can be enforced by SBIR management in conjunction with other MDAs/Organisations.

Requires Full Autonomy or may require legislative changes.

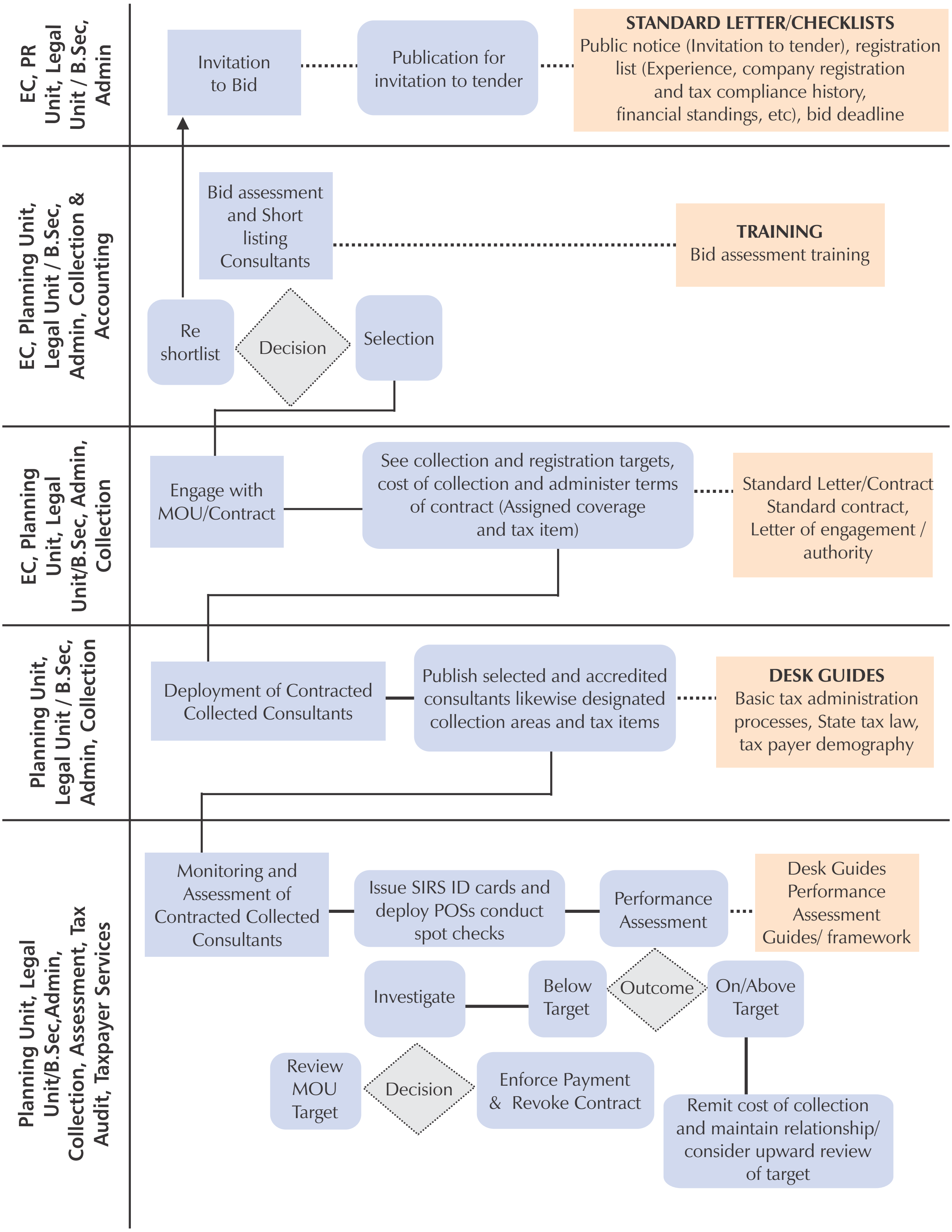
APPENDIX 2:

PROCESS MAP FOR PAYE TAX ADMINISTRATION



APPENDIX 3:

PROCESS MAP FOR MANAGING CONTRACTED OUT COLLECTIONS



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