

THE FEDERAL MINISTRY OF FINANCE

THE NIGERIAN VOLUNTARY ASSET AND INCOME DECLARATION
SCHEME:

FREQUENTLY ASKED QUESTIONS ("FAQs") AND ANSWERS

FREQUENTLY ASKED QUESTIONS (“FAQs”) AND ANSWERS ON NIGERIAN VOLUNTARY ASSET AND INCOME DECLARATION SCHEME

1. What is the Voluntary Asset and Income Declaration Scheme?

The Nigerian Voluntary Asset and Income Declaration Scheme (VAIDS) is a time-limited opportunity for taxpayers to pay their outstanding Nigerian tax liabilities due. This enables taxpayers to regularize their tax affairs by honestly and fully declaring assets and income previously undisclosed to the tax authorities. This gives the opportunity to declare and pay outstanding liabilities with the assurance that they will not face criminal prosecution for tax offences or tax investigations. The participant may also benefit from forgiveness of overdue interest and penalties.

2. Why is the Federal Government offering this scheme?

Nigeria’s tax system is based on global best practice. It is a progressive system that ensures fairness. Those with the highest income levels should shoulder the greatest proportion of the tax burden. Whilst considerable progress has been made with taxing those in formal employment, self-employed persons, professionals and some companies are able to evade full tax payment due to the inability of the tax authorities to assess their true income and thereby tax them accurately. According to Federal Inland Revenue Service, [as at April 2017] the total number of taxpayers in Nigeria is just 12.6m despite the population of 180m, of which 40million are estimated to be economically active. Of these, 96% are those whose taxes are deducted at source under the PAYE scheme and just 4% comply with Direct Assessment.

Our tax system is structured such that majority of personal income tax is payable to State Governments where the individual is resident. However, many States lack the machinery to accurately track the true income of their residents especially on transactions that took place outside the State of residence of that taxpayer, or where funds are transferred abroad for offshore transactions. Additionally, many companies use complex tax schemes to evade taxpayment.

As a result, Nigeria’s tax to GDP ratio, at just 6%, is one of the lowest in the world (compared to India’s of 16%, Ghana’s of 15.9 %, and South Africa’s of 27%). Most developed nations have tax to GDP ratios of between 32% and 35%.

Nigeria’s low tax revenues are at variance with the lifestyles of a large number of its people and with the value of assets known to be owned by Nigerians residents around the world.

There is currently a global initiative to tackle the problem of illicit financial flows and tax evasion, which has contributed to the country’s underdevelopment. A report by former South African Premier, Thabo Mbeki found that the amount of illicit financial flows out of Africa exceeded the amount of development aid that Africa receives. Nigeria has the highest level of illicit financial flows in Africa.

As part of the global support to rebuild Nigeria under President Muhammadu Buhari, the Government has secured the co-operation of a number of nation states in its quest to repatriate funds due to it. Nigeria has also signed agreements with a number of nations, which provide Automatic Exchange of Information (AIE). Countries who are party to this agreement include Switzerland, Panama, the Bahamas and other tax havens. There is also an agreement to share bank information under Common Reporting Standard (CRS). Previously to obtain information from foreign governments, Nigeria would have been required to show cause. From 2018, this exchange of information will be automatic.

This information, together with local intelligence can be compared to tax payment records to identify underpayment of taxes and to support the criminal prosecution of tax evaders. In addition to the above, direct cContact has already been made with and co-operation assured from authorities in United States of America, Canada, United Arab Emirates, United Kingdom, and Switzerland among others. BVN, lifestyle, ownership of PJ, ownership register, companies house re NFIU

3. Why does government not simply prosecute tax evaders according to the law?

In the process of tracing stolen funds, it has become apparent that a significant number of Nigerians have assets, funds and lifestyles that are not consistent with their income as declared on their tax returns.

With the assistance of international asset tracing professionals, the Ministry of Finance has already identified that the number of potential tax defaulters is significant. We believe that many of these cases may be as a result of ignorance of the tax laws rather than an intent to defraud.

Even though ignorance of the law is not an excuse, Government has decided to take the pragmatic approach of offering an amnesty window to allow Nigerians, who may have evaded tax, whether ignorantly or deliberately, the opportunity to do their civic duty and pay the correct taxes whilst providing much needed revenue for Nigeria's infrastructure. A number of countries, including Indonesia, Italy and Argentina, who have seen their tax revenues illegally moved to other nations have undertaken similar programmes to fund their national development. This will reduce the amount that Government would have had to borrow for essential projects and will enable Nigeria to make a concerted effort to upgrade essential infrastructure and spur development.

Upon expiration of the Voluntary Asset and Income Declaration programme, Government will commence criminal prosecution of those who have evaded taxes and yet failed to take advantage of the scheme.

4. Are Nigerians Liable to pay tax on overseas income and assets?

Nigerian tax law is clear that Nigerian tax residents are liable to pay tax on their global income earned anywhere in the world. Generally, Nigerian tax residents include

individuals that derive income from sources in Nigeria, employees that are in Nigerian employment or resident in Nigeria for at least 183 days within a twelve months period and corporate taxpayers where the relevant company is a Nigerian company (being incorporated or has a fixed base in Nigeria). Intending participants in the Scheme are advised to confirm the extent of their Nigerian tax liabilities with their professional advisers.

SPECIFICALLY, FOR INDIVIDUALS: Section 3 Personal Income Tax Act, Cap P8, Laws of Federation of Nigeria, 2004, as amended provides: Income chargeable 3(1) Subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including, without restricting the generality of the foregoing-(a) gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised; (b) any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to an employee (d) dividend, interest or discount; (e) any pension, charge or annuity; (f) any profit, gain or other payment not falling within paragraphs (a) to (e) inclusive of this subsection.

FOR COMPANIES: Section 13 (1) Companies Income Tax Act, Cap C21, Laws of Federation of Nigeria, 2004, as amended provides: The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria.

5. What about overseas assets on which no income is earned?

Some Nigerians own assets overseas, but do not earn any revenue on them, rather they are for personal and other uses. In such cases, they may not be exposed to tax in Nigeria, but if the original purchase of those assets was, in any way, financed from income earned by a Nigerian taxpayer, on which the correct amount of tax was not paid in Nigeria, then the unpaid tax liability may be tied to the overseas asset.

The information obtained on some citizens suggests clearly that the funds they used to purchase overseas assets far exceed the income declared in the tax returns in the year of purchase. Such Tax Returns may therefore be rendered false except the source of finance for the overseas assets can be verified, failing which a tax liability may exist.

6. What about assets that are owned in jurisdictions where there is no tax payable?

The use of tax avoidance or planning schemes by taxpayers to minimize their tax liabilities within the confines of the law, is legal but tax evasion schemes which contravene tax laws are not. If the ultimate beneficial owner of those assets had paid all taxes on the funds prior to their transfer to the tax shelter, then there will be no additional liability except any tax payable on further income earned on those funds. However if the correct amount of tax was not paid prior to transfer, then a liability

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exists and Government is entitled to trace its tax claim through to those assets and any income that arises from them.

7. What about assets within Nigeria?

The Scheme allows Nigerian residents the opportunity to declare all assets and income on which tax has not been paid. The Federal Government recognises that there has been a significant "shadow economy" that is largely unrecorded and untaxed. The scheme is therefore not restricted to overseas income and assets, but it also includes income derived from part-time businesses, vocations, professions and economic activities other than the main or principal sources of incomes accruing to taxpayers; annuities, yields, and other incidental incomes derived from investments including rental from residential and commercial properties, cash and non-cash investments and investments in other asset classes. The idea is that Nigerian tax residents can "come clean" about their true income and assets, and declare their tax liabilities by providing full, frank and verifiable disclosures. This scheme will allow them to undertake economic activities, invest in various asset classes and conduct their businesses without the fear of being unable to explain the source of their wealth, or demonstrate that they are in compliance with the tax obligations on their incomes and assets.

8. How long will the Voluntary Asset and Income Declaration last?

The Scheme is expected to last for 9 months only from 1st July, 2017 to 31st March, 2017. There will be no renewal or extension, once the scheme period has expired all remaining tax defaulters who have not taken advantage of it will face the full force of the law.

9. What are the benefits of participating in the scheme?

Under the various relevant laws, tax evasion is a crime, which is punishable upon conviction by imprisonment of up to 5 years, while the taxpayer is still liable to pay the tax due with interest and penalties. In most cases, a penalty of 10% of the tax due and interest at 21% per annum is added. In some cases the penalty is 100% of the tax due and the assets are liable to be forfeited.

Those taking advantage of the Scheme by declaring honestly and fully will be free from prosecution and will qualify for forgiveness of penalties and interest. Under the Automatic Exchange of Information and with the tax investigation capabilities in the Assets Tracing Team, from 2018, Nigeria will have the information required to successfully pursue tax evaders. This could lead to a full criminal investigation, criminal prosecution and even potential forfeiture of the assets as possible proceeds of crime. By participating in the Scheme, taxpayers can avoid this risk.

Another benefit of participating in the Scheme, is that taxpayers will be free to transfer assets that they had previously held in nominee and other names into their own name. It should be remembered that many Nigerians have lost assets in the course of trying

to conceal them from the authorities. Such losses typically occur in the event of death or an urgent need to liquidate assets when required documentation and proof of ownership cannot be provided. The global focus on illicit financial flows is such that global regulations will only become tighter with time, thus this opportunity to regularize ownership of assets should be seized. Declaration allows assets to be legally and formally held by the true owner.

10. What types of Taxes will be covered?

The Scheme will cover all Federal and State taxes such as Companies Income Tax, Personal Income Tax, Petroleum Profits Tax, Capital Gains Tax, Stamp Duties, Tertiary Education Tax, Information Technology Tax, Tenement Rates, and other Property Taxes.

11. Which period of default will be covered by the scheme?

The scheme will cover all back taxes for the last 6 years in line with the statutory periods of limitation under the relevant tax statutes.

12. Who is entitled to participate in the scheme?

The Voluntary Asset and Income Declaration Scheme is open to all persons who are in default on their tax liabilities in any way whatsoever. The programme is specifically targeted at taxpayers who:

- i. Have not been fully declaring their taxable income/assets;
- ii. Have not been paying the tax due at all;
- iii. Have been underpaying or under remitting;
- iv. Are under a process of tax audits or investigations with the Relevant Tax Authority;
- v. Are engaged in tax disputes with the Relevant Tax Authority but are prepared to settle the tax dispute out of court;
- vi. Are new taxpayers who are yet to register with the tax authorities; and
- vii. Are existing registered taxpayers who have new disclosures to make.

It does not matter whether the relevant tax default arose from undeclared assets within or outside the country. If tax should have been paid, the Voluntary Asset and Income Declaration Scheme is providing a once in a lifetime opportunity to declare the tax outstanding and resolve it definitively.

13. How will the Scheme affect the waiver of interest and penalty introduced by the FIRS?

The grace period recently allowed by FIRS for waiver of interest and penalties pursuant to the recent tax amnesty have lapsed. The Voluntary Asset and Income Declaration Scheme is more comprehensive in terms of taxes and timeframe. It covers personal taxes as well as company taxes. The commitments made by the FIRS during the programme will be respected save for discovery of new facts, non-disclosure and partial disclosure.

14. What conditions must be fulfilled for participating taxpayers to be entitled to immunity from prosecution and forgiveness of Interest and penalties?

A taxpayer will be required to fill and file the DECLARATION form, calculate and pay the tax due. A key condition of the scheme is that a full and honest declaration must be made. The Relevant Tax Authorities are empowered by specific provisions of the relevant tax laws (such as Section 47 of the Personal Income Tax Act; Section 60 of the Companies Income Tax Act; etc.) to require participating taxpayers to produce any books, documents, accounts, returns and other records, which the Relevant Tax Authority may deem necessary.

Specifically, in order for an application pursuant to the Scheme to be valid, the following requirements must be met:

- i. The disclosures by the taxpayer should be voluntary, and not prompted by the Relevant Tax Authority;
- ii. The disclosure must be full, frank, complete and verifiable in all material respects;
- iii. The disclosure must not result in a refund being due from the Relevant Tax Authority; and
- iv. The application must be made in the form and manner prescribed.

15. How do I pay the tax due under the scheme?

All taxes paid under the scheme are to be collected by the Relevant Tax Authorities including the FIRS and SIRS, depending on the type of tax in issue. Payments should be made to the Relevant Tax Authority quoting your full name and TIN as a reference. The bank will issue a receipt for the payment.

16. Will I have to pay all the established liabilities at once?

The Federal Government appreciates that many defaulters have assets but may not have cash. Therefore taxpayers will be allowed to enter into arrangements for payments by monthly installments, any tax liability due under the scheme. Taxpayers can be granted up to 3 years to pay their liability but will pay interest on the outstanding balance.

The instalment plan - the Federal Government of Nigeria Tax Notes Programme requires an initial payment of 30% of the liability followed by two payments of 35%. FGN Tax Notes Programme is being administered through approved SEC registered Asset Managers and Stock-brokers. It entails entering into a legally binding agreement to pay the balance via payment into the FGN Tax Notes Programme. Payment will be due annually on the 31st of March. Interest on the outstanding balance is payable at the rate of 20% plus an administrative fee of 1% of the tax liability.

Furthermore, where taxpayers default in paying their tax liabilities in agreement with this Scheme, such defaulting taxpayers shall pay pursuant to Section 32 of the FIRS Establishment Act as follows:

A. A sum equal to 10% of the amount of tax payable shall be added to the accrued tax

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liabilities as [Penalty]; and

B. For Naira tax liabilities, the tax due shall carry interest at the prevailing Central Bank of Nigeria Monetary Policy Rate ('MPR') plus a spread of [10%], from the date when the tax becomes payable until it is paid; or

C. For foreign currency tax liabilities, the tax due shall carry interest at the higher of the Central Bank of Nigeria Monetary Policy Rate ('MPR') plus a spread of [10%], and the prevailing London Inter Bank Offered Rate ('LIBOR') plus a spread of [5%], calculated from the date when the tax becomes payable until it is paid;

Upon payment in full, a Certificate of Compliance will be issued by the FIRS specifying the period for which full compliance is being certified. This can be presented as evidence of participation in the scheme and formally shields the holder from future tax investigation for the qualifying period.

17. What if I do not know how much tax I am owing?

Once you register for the Voluntary Asset and Income Declaration scheme by filing the Declaration form, agents of the Relevant Tax Authority can help you to calculate your tax liability. We will also be providing extensive training to legal advisers, tax accountants and other professionals to ensure that taxpayers fully understand their obligations under Nigeria's tax laws.

18. What about persons who were ignorant of the law and had no idea that tax should have been paid?

Ignorance of the law is not a defence to a tax liability. The tax liability remains until it is settled.

19. Will the tax authority review the information filed?

Yes. The tax authority will review the information supplied by the taxpayer. If they are not satisfied with its completeness, they may ask for additional information. Indeed, The Relevant Tax Authorities are empowered by specific provisions of the relevant tax laws (such as Section 47 of the Personal Income Tax Act; Section 60 of the Companies Income Tax Act; etc.) to require participating taxpayers to produce any books, documents, accounts, returns and other records, which the Relevant Tax Authority may deem necessary. The Relevant Tax Authorities already have considerable information on a number of tax resident persons, provided by partner nations.

Within the scheme period, an applicant can file an amended declaration if further tax liabilities are identified. However, all information must be received by the Relevant Tax Authorities within the 9 months' period.

20. What about taxes I have already paid?

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All taxes already paid will be taken into account into determining the final tax position of a taxpayer.

21. Can I declare anonymously?

No! Declaration cannot be made anonymously. For any taxpayer to get clearance, the person must have declared correctly and made payment in his/her own name or that of his/her company as the case may be. Tax declarations are however treated as confidential by the tax authorities. However, intending participants in the Scheme are encouraged to use the [Tax Calculator] on the VAIDS / FIRS website to assess their indicative tax liabilities and the reduced penalties and interest due pursuant to the Scheme. Furthermore, taxpayers may, through their advisers, clarify the potential tax treatment or liabilities arising from their state of affairs, on an Anonymous / No-Name basis. However, any ruling issued by the Relevant Tax Authority would be non-binding on that Relevant Tax Authority until the name and character of the taxpayer is made known, and all relevant facts are frankly, fully and verifiably disclosed to the Relevant Tax Authority.

22. How can I be sure that information that I provide will not be used against me?

The confidentiality of the information provided under the scheme is assured. The DECLARATION FORM will expressly stipulate that whatever information received by the tax authority, from or in relation with the taxpayers, will be kept in strict confidence and will not be disclosed to third parties other than in compliance with extant provisions of relevant laws.

23. What happens if my declaration under this scheme is inaccurate?

Inaccurate and incomplete declarations would be rejected while the Relevant Tax Authority will provide guidance on how to make full and accurate information.

24. Are corporate taxpayers the only participants in the scheme? Can companies make declarations or is it just individuals?

The Scheme covers all taxable persons and entities including individuals, family, communities, trust, executors, registered companies, statutory companies. It is not limited to corporate taxpayers.

25. What about assets held in nominee names, either legally (under trusts - where a legal owner holds property on behalf of beneficial owners - or other such legal arrangements) or economically (that is, when the legal owner is actually holding the asset on an undisclosed basis for another person)? Can they now be formally declared? Am I free to transfer them after the declaration?

All assets owned, whether held directly or indirectly should be formally declared. Legal owners of property are entitled to declare the fact that they hold such assets on behalf of beneficial owners under trusts or other arrangements. However, the Scheme also applies to persons holding properties for undisclosed persons, who are the true owners of the assets, but such a relationship has not been disclosed or legally documented for various reasons. The Scheme also allows such undisclosed ownership of assets and incomes to be disclosed. The programme will also entail the creation or rectification of proper records so that future dealings with such assets will be properly recorded. The owner of assets held in nominee's names can then freely transfer them based on the extant law.

26. What will my obligations be going forward as a result of my declaration?

The declaration made under the Scheme is limited to the 9 months' period of the scheme in terms of discounted rates. Once the Voluntary Asset and Income Declaration period is over, the applicable rates under the relevant tax laws become applicable. The taxpayers will be expected to remain fully compliant with tax laws following the Scheme failing which they could forfeit the tax forgiveness and be liable to pay past liability in full.

27. What happens if I have no TIN and have never paid tax?

Registration for a Tax Identification Number would be the first step for persons who have never paid tax. Your application for a TIN will be fast tracked.

28. Will the Relevant Tax Authorities (that is the FIRS and SIRS) invite people to participate?

The idea of the scheme is that it is a voluntary programme, the decision to participate should therefore be left to the taxpayers. The FIRS and other Relevant Tax Authorities shall give effective publicity to the program and encourage as many people as possible to take advantage of it. Intending participants in the Scheme are advised to confirm the extent of their Nigerian tax liabilities with their professional advisers. However, taxpayers should be aware that the Relevant Tax Authorities have comprehensive databases on corporate, individual and other taxpayers, which are being augmented by information derived from other Federal, State and Local Governments sources; third party information sources such as returns from banks and other financial institutions; State and Federal databases of real estate property records, registers of private jets, yachts and other luxury / status assets; as well as publicly available information sources such as the 'Panama Papers' and Wiki-Leaks. These sources are to be significantly enhanced once the Automatic Exchange of Information Protocols comes into force in 2018.

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29. Must I be resident in Nigeria to participate? What if I spend time overseas?

The Programme is open to all those who were liable to tax in Nigeria. It covers Nigerian residents who had taxable undeclared income outside Nigeria and non-residents who earned undeclared income derived from or accruing within Nigeria. Those who are resident outside Nigeria are encouraged to make online declaration or to appoint a local agent to make necessary declaration on their behalf.

30. What happens to those who do not participate?

Those who fail to take advantage of the scheme and are later found to have under declared their taxes or assets will be treated as willful tax evaders and will therefore face the full force of the law and will not be shielded by anonymity.

Specifically we have engaged on retainer-ship, one of the world's leading asset tracing and recovery firms who will track the true assets of those who have not participated but are believed to have underpaid their taxes.

This will be supported by criminal prosecution, recovery of taxes due with full penalties and interest. In addition we plan a "Name and Shame" programme that will see the identities of tax evaders published.

Furthermore, the Relevant Tax Authorities are in the process of profiling certain categories of non-compliant taxpayers for ongoing audits and investigations, in line with the tax compliance reforms. As such, taxpayers are encouraged to make the most of the time-limited opportunities available under the Scheme to declare their incomes and assets, and pay outstanding tax liabilities to avoid the adverse consequences inherent in the tax enforcement processes to be implemented by the Relevant Tax Authorities at the end of the Scheme.

31. Where can one get information about the Voluntary Asset and Income Declaration Scheme?

Further information can be obtained from the information unit of the Federal Inland Revenue Service (FIRS), various State Internal Revenue Services and the dedicated website of the Scheme.

32. Who will oversee the implementation of the Scheme?

The Ministry of Finance in conjunction with the Relevant Tax Authorities (that is the FIRS, or SIRS, depending on the type of the tax in issue), will oversee the implementation of the Scheme.

33. What are the funds to be used for?

Taxes are the legitimate revenue of the Federal and State Governments for the provision of services to the people. Nigeria has urgent needs for infrastructure investment and has a deficit estimated at [US \$25 Billion per annum]. This

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Administration is committed to the judicious use of all funds recovered for the development of the nation.