



TAX LAW NEWSLETTER

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"Today's newsletter was written by my senior colleague Nkiru Okonkwo, G.O Sodipo and Co's Tax expert"- B.V Enwesi, LLB, BL, LLM (E-commerce Law)

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EDITOR'S NOTE

In this quarter's newsletter we are taking a quick look at two tax matters currently trending. The first is the recent tax amnesty carried out by the Lagos state government in Nigeria. The second is the NIPC pioneer tax incentive that seeks to positively impact all industries in Nigeria.

VAIDS, TAX AMNESTY IN NIGERIA

On 29th of June 2017 the Federal Government through the Vice President Mr. Yemi Osibajo SAN launched the Voluntary Asset and Income Declaration Scheme (VAIDS) by signing the Executive order 004 Of 2017. The Federal Ministry of Finance was charged with the task of setting up the SCHEME. The scheme commenced on the first day of July 2017 and will run until the 31st day of March, 2018, spanning a period of 9 months when the scheme will terminate.

During this 9-month period, eligible taxpayers (all kinds of taxes are eligible for this scheme) will be given an opportunity to

- a. regularize their tax status for all the relevant years.
- b. pay all outstanding taxes;
- c. prevent and stop tax evasion; and
- d. ensure full tax compliance

To be eligible to participate in the VAIDS process parties must comply with the following:

1. disclosures by the taxpayer should be voluntary;
2. the disclosure must be full, frank, complete and verifiable in all material respects;
3. disclosure must be made using the Voluntary Asset and Income Declaration Scheme forms or in any other form or manner as may be prescribed under the Scheme; and
4. the assessment of tax payable must be carried out by relevant tax

authority.

The benefits of VAIDS include the following:

Any taxpayer who truthfully and voluntarily declares his assets and income, complies with the regulations and guidelines and pays all outstanding taxes shall obtain the following benefits.

- a. immunity from prosecution for tax offences;
- b. immunity from tax audit;
- c. waiver of interest;
- d. waiver of penalties; and
- e. option of spreading payment of outstanding liabilities over a maximum period of three years as may be agreed with the relevant tax authority.

Provided however that the remission or waiver granted under these Regulations shall not prejudicially affect or invalidate any court order or judgment already obtained in respect of any default in payment of tax for which interest and/or penalty have already accrued.

The reliefs are applicable to the taxes due to Federal Inland Revenue Service and to the State Inland Revenue Service.

Failure of any defaulting taxpayer to truthfully and promptly take advantage of this Scheme shall at the expiration of the Scheme result in the following consequences:

- a. liability to pay in full, the principal sum due;
- b. liability to pay all interest and penalties arising therefrom;
- c. liability to be prosecuted in accordance with relevant extant laws for tax offences;
- d. withdrawal of any reliefs, which may have been granted to the participant;
- e. liability to undergo comprehensive tax audit; and
- f. any sum paid in relation to the Scheme may be counted as part payment of any further outstanding tax in respect of undisclosed information.

In the administration of the Scheme, all the information obtained in the course of the scheme shall be treated with the utmost confidentiality unless otherwise stated. And any tax official or person authorized who breaches this confidentiality is liable for prosecution under the Federal or State laws.

This scheme was created in order to allow the governments tackle tax evasion and the illicit flow of funds and in doing this has set up this scheme to allow citizens to the opportunity to come forward to contribute towards national development without fear of prosecution.

The government needs the money to help to tackle developmental issues,

increase the tax base and generate revenue by providing a means by which citizens are given a tax amnesty if they should comply voluntarily and honestly comply. In so doing data is compiled on records of taxpayers is readily available.

By the end of the scheme all the persons who do not take advantage of the scheme to regularize their tax liability will have to be assessed to tax without the advantages provided by the VAIDS scheme.

The improvement in technology at present will make it difficult for defaulters to get away from their tax liabilities as the Federal government and states are already exchanging information with regard to citizens e.g the Corporate Affairs Commission CAC., Securities and Exchange Commission SEC, Central Bank of Nigeria (CBN) Remita, NIMC, Land Registries, Nigeria Customs service, Government Payrolls, Banks (BVN) AGIES etc. are but a few agencies that are now collaborating to minimize evasion of tax.

The period for which the taxes are owed to the government is a period over the last 6 years between 2011----2016 but if the VAIDS declarations are not done properly by the tax payer the tax authority can go back further than the designated 6 years.

The declarations may be made online or on paper and later uploaded online and persons who are not ordinarily resident in Nigeria but are liable to tax here in Nigeria can have the opportunity to pay their tax liabilities under the VAIDS Scheme.

The Nigerian Investment Promotion Commission Pioneer Status Tax Incentive¹

The Nigerian Investment Promotion Commission Act Cap N 117 (Decree No 16 of 1995) Laws of the Federation 2004 created the (NIPC) Nigerian Investment Promotion Commission.

One of the aims of the Commission as stated in S. 4 NIPC Act Cap N117 LFN 2004 upon its creation, was to grant incentives to industries to enable and encourage, promote and co-ordinate investment in the Nigerian economy for both Nigerian and non-Nigerian investors. This the Commission does by granting pioneer status or tax holidays on income derived in Nigeria which otherwise would be subject to taxation. This concession is granted to selected industries and the list of eligible companies can be found in official gazette of 21st May 2015 in volume 102 which lists 44 pioneer industries

For a company that applies to benefit from this concession, if it is granted by the Commission stands to benefit from a 5 to 7 year tax holiday for investing in economically disadvantaged areas of Nigeria but this time has been reviewed downward by the Commission and it is now for 3 years which may be extended to 4 or 5 years.

¹<http://www.nipc.gov.ng>

The NIPC did in 2014 review the regulations of the Commission and made some changes notably the conditions for application for pioneer status which include the introduction of a service charge, the submission of financial statement of applicant companies. In addition the Minister of Commerce and Industry announced on August 7, 2017 its expanded list of industries that may be eligible for the pioneer status. This the Commission did by increasing the number industries eligible for Pioneer status by 27 industries and these now include the motion picture industry, video and television programme production, distribution, exhibition and photography; music production, publishing and distribution among others.

It is worthy of note that those who are already participants in the industry which form part of the NIPC expanded list can not benefit there from.

The pioneer status incentives according to MrsSadiku (The Executive Secretary, Nigeria Investment Promotion Council, NIPC) is for new entrants and not for those already in business for more than a year. The government is trying to encourage new entrants into the industry to invest and in order to benefit from the tax holiday on offer, companies which are already in existence may benefit only if they become involved in the businesses listed in the expanded list of 27 industries which are now part of the pioneer industries list. Please see PREMIUM TIMES AUGUST 9, 2017EXCLUSIVE: Nigerian govt clarifies 27 businesses to enjoy tax break under pioneer status by BASSEY UDO.

S.1 the Copyright Act, Cap C28 LFN 2004. section 1, sets out works which are eligible for copyright they include literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts and if juxtaposed with the expanded list of 27 Pioneer industries i.e e-commerce services; software development and publishing; motion picture, video and television programme production, distribution, exhibition and photography; music production, publishing and distribution.

S. 1 (3) of the same Copyright Act says “ an artistic work shall not be eligible for copyright if at the time the work is made it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.”

Some works as at the time of their creation were never intended for mass production but due to popularity or demand were multiplied by industrial purposes and as such may retain copyright protection and also have benefit of the pioneer status under the NIPC Act.

Some aspects seem to be left out areas of creative arts like books, theatre productions and drawings in the case of fashion industry do not seem to be covered under the expanded list of 27 Pioneer industries.

S. 51 of the Copyright Act being the interpretation section defines artistic works and the various meanings which may be ascribed to them in relation to copyright, it defines artistic works to include paintings, drawings, etchings,

lithographs, wood cuts , engravings and prints.

Also included in the definition are maps, plans, and diagrams. Works of sculpture. Photographs not comprised in a cinematograph film, works of architecture in the form of building models and works of artistic craftsmanship and also pectoral woven tissue and articles of applied handicrafts and industrial Art.

We can now say that some artistic works which are protected by copyright may not be able to benefit from the revised pioneer status list as it seem that the artistic works which fall in line with the pioneer status list are works which are capable of being mass produced unlike works of sculpture, paintings, wood cuts to name a few, but things like photographs/ photography, motion pictures, cinematography works all of which are protected under the copyright Act may benefit under the revised pioneer status list as investors in the said industry may be able to grow their business for industrial application or be able to mass produce such works on a large scale.

Some works protected by copyright like paintings, drawings, engravings may not benefit under the expanded pioneer list as some of these works tend to lose their artistic value if they are mass produced.

Most works of the kind listed in this paragraph tend to have their value for their uniqueness or rarity, unless pictures of the said artworks are being mass produced upon their creation.

Another area of concern is related to people who are already in the creative industry who cannot benefit from the additional expansion of the pioneer list because they are already participants for a year or more, this may encourage some people to register new companies dedicated to movie production or music in order to benefit from the tax holiday offered by the NIPC.

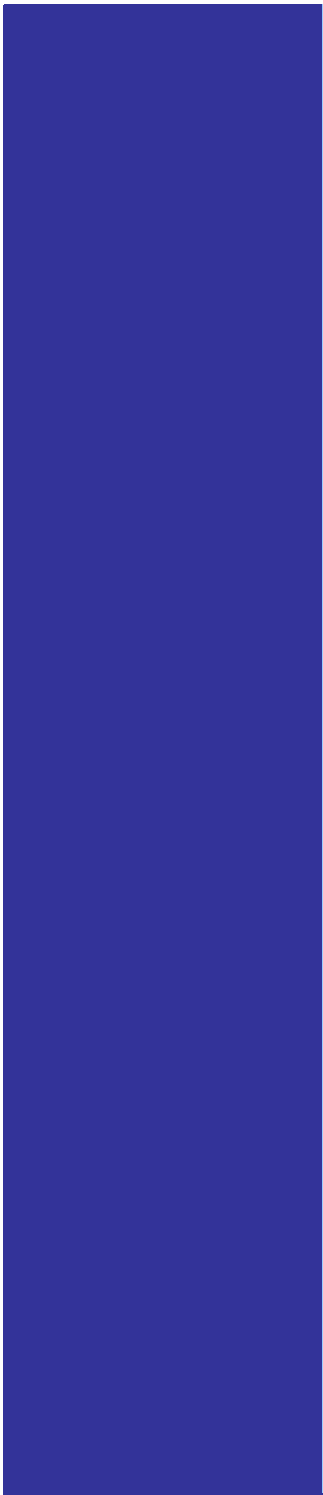
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