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2018 No. 8

Presidential Executive Order No. 008 of 2018

PRESIDENTIAL EXECUTIVE ORDER NO. 008 OF 2018

ON THE VOLUNTARY OFFSHORE ASSETS REGULARIZATION SCHEME
“VOARS”

[8th Day of October, 2018] Commence-
ment.

WHEREAS, the Constitution imposes a duty on every citizen to declare his/her income and assets fully and honestly to appropriate and lawful agencies and pay taxes promptly ;

WHEREAS every taxable person is under obligation to voluntarily declare his/her income and assets from all sources including outside Nigeria, file annual tax returns and pay the tax due to the tax authority ;

AWARE that it is desirable to inculcate in all Nigerian citizens the ethics of responsibility to the nation, accountability, and honesty ;

AWARE that there are significant offshore assets of Nigeria origin that have not been declared to the relevant authorities, and that are also not tax compliant ;

AWARE that the Government(s) owe citizens the duty of ensuring security, welfare and development ; and

CONSEQUENT upon the determination to provide an opportunity for taxpayers who are in default under all relevant Statutes to voluntarily declare their offshore assets and income and pay taxes due on them and in return obtain some benefits.

NOW THEREFORE, PURSUANT TO THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AS THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA, I HEREBY ORDER AS FOLLOWS :

1. The Office of Attorney-General of the Federation and Minister of Justice shall set up a Voluntary Offshore Assets Regularization Scheme in Switzerland (hereinafter referred to as “the Scheme”) for all categories of taxpayers who have defaulted in declaration of their offshore assets, payment of taxes due and collectible subject to the fulfillment of the terms and conditions as may be stipulated in this Order and other subsequent complementary regulations.

2. The Scheme shall provide a twelve (12) month period commencing from 8th day of October, 2018 for taxpayers who are in default to declare their offshore assets and income from sources outside Nigeria relating to the preceding thirty (30) years of assessment.

3. The Scheme shall encourage and provide an opportunity for eligible taxpayers to :

(a) regularize their offshore assets held anywhere in the world ; voluntarily elect to regularize their tax status for all the relevant years by paying to FGN a one-time levy of 35% of their offshore assets in lieu of all outstanding taxes, penalties and interest ;

(b) voluntarily elect to access the facility in Switzerland by paying the 2% facility access fees and submitting to compliance procedures required by Swiss authorities in order to obtain an Eligibility certificate to declare offshore assets through the Scheme ;

(c) establish a Swiss nexus for their offshore assets held anywhere else in the world or its management in Switzerland or through its financial system and institutions in order to use the Scheme ;

(d) avoid and stop tax evasion ; and

(e) ensure full tax compliance on their residual offshore assets after accessing the Scheme by paying taxes to FGN on income earned thereon.

ELIGIBILITY TO PARTICIPATE

4. The Scheme is open to and targeted to all persons, entities and their intermediaries who are holding offshore assets and are in default of their tax liabilities in any way whatsoever, including those who :

(a) are not already under investigation by law enforcement agencies in Nigeria or any other country and have not been charged with any crimes including theft of public funds or obtaining offshore assets through corrupt practices ;

(b) own offshore assets but are yet to declare them with the relevant authorities; such offshore assets by definition include liquid assets (bank balances), stocks and bonds held in portfolios, insurance policies, shares in listed or unlisted offshore companies, property assets and all manners of assets held directly or indirectly through corporate entities, trust structures and non-Nigerian resident companies and intermediaries ;

(c) earn income on offshore assets but are yet to declare such income to relevant tax authorities ;

(d) are registered taxpayers who have additional disclosures to make or need to amend prior disclosures ; and/or are registered but have not been filing returns ;

(e) have not been fully declaring their taxable income and offshore assets ;

(f) have been underpaying or under remitting ;

(g) are under a process of tax audit or investigation with the relevant Tax Authority and/or engaged in a tax dispute with the relevant Tax Authority but are prepared to settle the tax dispute out of court ;

(h) have applied for and received FGN Special Clearance to access the Scheme ; and

(i) have been determined to be innocent after investigations or legal proceedings.

REQUIREMENTS FOR VALID DECLARATION

5. In order for an offshore assets disclosure pursuant to the Scheme to be valid, the following requirements must be met :

(a) the disclosure by the taxpayer should be made voluntarily ;

(b) the disclosure must be full, honest, complete and verifiable in all material respects ;

(c) the disclosure must be made through the Voluntary Offshore Assets Regularization Facility in Switzerland (VOARFS), the qualified intermediary of FGN rendering sovereign advisory services for this purpose ;

(d) the disclosure must be made in accordance with compliance procedures required by Swiss authorities through the processes established by the Voluntary Offshore Assets Regularization Facility in Switzerland (VOARFS) or in any other form or manner as may be prescribed by Regulations governing the Scheme ; and

(e) consent that a one-time levy of 35% of offshore assets will be paid to FGN in the manner prescribed by regulations governing the Scheme ; and

(f) consent that the assessments of future taxes payable will be carried out by the relevant Tax Authority on income earned on residual offshore assets.

RELIEFS/BENEFITS

6. Any taxpayer who truthfully and voluntarily declares his/her offshore assets and income, complies with the regulations and guidelines governing the Scheme, pays to FGN a one-time levy of 35% on the total offshore assets and consents to tax compliance on the residual offshore assets shall obtain the following benefits :

(a) permanent waiver of criminal prosecution for tax offences and offences related to the offshore assets, penalties and interests concerning such declared offshore assets ;

(b) immunity from tax audit of the declared and regularized offshore assets ;

(c) waiver of interest and penalties on the declared and regularized offshore assets ;

(d) receive from FGN an Offshore Assets Regularization Compliance Certificate on the declared and regularized offshore assets ; and

(e) be free to use or invest their duly regularized residual offshore assets in any manner in Nigeria or overseas, and be subject only to annual tax to FGN on the income earned on such residual offshore assets,

Provided however that the above mentioned reliefs are obtained only if the remission or waiver granted under the Regulations governing the Scheme 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.

7. The benefits referred to in paragraph six (6) above are granted to any taxpayer in full compliance with the following conditions :

(a) the taxpayer accesses and provides full co-operation to the voluntary offshore assets disclosure facility in Switzerland ;

(b) the taxpayer pays the prescribed 35% levy to FGN in accordance with procedures governing the Scheme ; and

(c) the taxpayer consents to tax compliance on the residual offshore assets and full co-operation with relevant Tax Authority in Nigeria concerning future taxes on income earned on such residual offshore assets ;

CONSEQUENCES OF FAILURE TO COMPLY

8. 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) investigation, charges and enforcement procedures concerning offshore assets held anywhere in the world pursuant to information now readily available through automatic exchange of information between Nigeria and foreign countries ;

(b) loss of right to plea bargain ;

(c) liability to pay in full, the principal sum due ;

(d) liability to pay 100% of all interest and penalties arising therefrom ;

(e) liability to be prosecuted in accordance with relevant existent laws for tax offences ;

(f) withdrawal of any reliefs, which may have been granted to the participant ;

(g) liability to undergo comprehensive tax audit ; and

(h) any sum paid in relation to the Scheme may be counted as part payment of any further outstanding tax in respect of undisclosed information.

CONFIDENTIALITY OF INFORMATION

9. All information provided by the taxpayer under the Scheme shall be treated with utmost confidentiality in accordance with the provisions of the relevant laws save where it is stated otherwise.

10. Any Nigerian official or persons duly authorized to receive information under the Scheme who breaches the confidentiality of information received or exchanged under the Scheme in breach of relevant laws shall be liable to prosecution.

GENERAL

11. This Executive Order is valid only for the period in which the Scheme shall subsist, and relates to only persons who have voluntarily declared their offshore assets and income for the purpose of regularizing their offshore assets and ascertaining their outstanding tax liability.

Any rights and status properly acquired by any participating taxpayer pursuant to the Scheme shall vest to the benefit of the taxpayer to the extent provided for by law.

12. This Executive Order shall be read in conjunction with all extant Tax Laws, Regulations and Guidelines as well as those that may be issued pursuant to the Scheme.

13. This Executive Order shall take effect from the 8th day of October, 2018.

DATED this 8th day of October, 2018.

MUHAMMADU BUHARI
President of the Federal Republic of Nigeria