

# Nigerian Government Issues Amendments to Order on Voluntary Offshore Assets Regularisation Scheme

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## Introduction

Nigeria's President has issued an executive order amending the Executive Order 008 of 2018 on the Voluntary Offshore Assets Regularisation Scheme (VOARS). The Amendment Order is officially known as **the Voluntary Offshore Assets Regularisation Scheme Amendments 2019** (the Amendment Order). See our alert on the original Order EO 008 [here](#).

The Amendment Order was issued on the basis that existing legislation require 'relevant persons' to disclose/declare their offshore assets, transactions, income and accounts in domestic and foreign financial institutions. 'Offshore assets' means liquid assets, bank balances and currencies of foreign countries held anywhere in the world, stocks and bonds held in portfolios, precious metals, insurance policies, shares in listed and unlisted companies, property assets and all forms of movable and immovable property whether held directly or indirectly through corporate entities, trust structures or foreign companies and intermediaries.

## Highlights of the Order

The Attorney General of the Federation is required to set up a VOARS office within the Nigerian Financial Intelligence Unit (NFIU). Relevant persons who are in default are given a period of 30 months, commencing from 8 October 2019 to declare offshore assets acquired during the 30-years period from 1987 to 2017.

Relevant persons who take advantage of the Scheme, would be able to regularise their offshore assets by voluntarily paying a 35% one off fine/levy on the disclosed offshore assets. The Order also allows persons to elect to access any of the offshore assets regularisation facilities in Liechtenstein, Nigeria, UAE, Switzerland, UK or elsewhere by paying a 2% facility access fee. The Order imposes a penalty (of 10% per annum on the value of the offshore assets, in addition to other penalties provided under the relevant laws) on any domestic or foreign bank, asset manager or intermediary that cooperates with defaulters to conceal offshore assets.

## Eligibility to Participate

'Relevant persons' covered by the order include physical, moral or legal persons or entities, or non-resident companies and intermediaries who have obligations to declare and regularise offshore assets and income to authorities in Nigeria.

The definition of 'relevant persons' is broad. It would include Public Officers and employees of Banks who have statutory obligations to disclose their assets under the Constitution or the Bank Employees, etc (Declaration of Assets) Act, and all other persons and entities falling into the category of the definition.

The Scheme is open to all relevant persons who hold offshore assets, whether they are being investigated or have been investigated and determined to be innocent.

Relevant persons who declare and comply with laid down procedures, after paying the 35% one-time fine/levy amongst others, would enjoy permanent waiver from criminal prosecution for offences related to the offshore assets, and from penalties and interests concerning such assets.

## Takeaway

The Amendment Order further improves the Executive Order 008 issued in 2018. It seeks to address issues of non-compliance with various disclosure requirements under existing laws and extends the scope of penalty to agents and intermediaries.

The Amendment Order may however face legal hurdles if it seeks to impose penalties for non-disclosure in circumstances where such penalties can only be imposed by a law enacted by the Legislature.

In any case, individuals and companies need to assess whether they are 'relevant persons' i.e. if they have an existing obligation to disclose their offshore assets or income to any authority in Nigeria. For example, as provided in the Money Laundering (Prohibition Amendment) Act 2012, financial institutions and designated non-financial institutions are required to disclose qualifying transactions (i.e. for individuals - a single transaction that exceeds ₦5Million or its equivalent, and for companies - ₦10Million or its equivalent).

Section 3 of the Foreign Exchange Monitoring and Miscellaneous Act provides that (unless required under any other enactment or law) a person is not obligated to disclose the source of any foreign currency to be sold in the Market. It further provides that the obligation to disclose foreign currency in excess of \$5,000 at the port of entry is for statistics only.

Persons operating in the Foreign Exchange Market may need to review relevant legislation to determine their obligations beyond specific exemptions as stated above.

Also, an obligation to disclose foreign income to tax authorities may also arise if such income is liable to tax in Nigeria (accrued, derived, received or brought into Nigeria). The tax laws also empowers the tax authorities to demand **any information** relating to a person who is liable to tax under the relevant enabling law (s. 103 PITA). Also, during litigation, the tax authority can file court processes (i.e. discoveries and interrogatories) mandating a taxpayer to make disclosures on oath.

The Order identifies that income arising as investment yield or gain on disposal may be taxable in Nigeria (under certain conditions) and rightfully classifies non-disclosure of taxable income as tax evasion. For a person or company that seeks to take advantage of the Order to regularise their tax position, in addition to payment of the 35% levy on the value of the asset, declarants are expected to subsequently comply with taxes on income earned on their regularized residual offshore assets to the relevant authority.

It is not clear if the subsequent tax compliance required relate to income earned post regularization or all income earned on the assets declared. Consequently the Order may not absolve a declarant from being assessed to tax by the relevant tax authorities for historic periods given that the Order does not consider the payment of the 35% levy on the value of the asset as a tax, nor does it specifically mention that it absolves a declarant from past tax obligations. The exposure is higher where the relevant person is taxable under PITA which is collected by the relevant State Tax Authority.

This Order complements the various schemes for cross border exchange of information. Taxpayers are therefore encouraged to proactively declare any previously undisclosed assets and regularize.

For a deeper discussion, please contact any member of our **Tax Dispute Resolution team** below or your usual contact within PwC Nigeria:

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