

What you need to know about UK's Unexplained Wealth Order



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On 27 April 2017, the UK Parliament passed the Criminal Finance Act 2017 (Act) into law amending the Proceeds of Crime Act 2002. The Act, amongst other things, introduces the Unexplained Wealth Order (UWO) effective from 31 January 2018.

What is the UWO about?

The UWO is an Order granted by a UK High Court judge upon an application by a UK enforcement agency requiring a person (respondent) to explain the nature of its interest in property (real estate and other assets), how it obtained the property, details of any trust or settlement where the property is so held and any other information as required by the court.

Objective

The UWO seeks to address illicit financial flows, corruption and money laundering in the UK. It gives law enforcement agencies new capabilities and powers to recover the proceeds of crime.

Scope

A UWO can be issued against a Politically Exposed Person (PEP) – an individual entrusted with public functions by an international organisation or a State other than the UK or European Economic Area (EEA). The UWO also applies to a PEP's family members, close associates or connected persons.

A UWO would be issued where a court has reasonable cause to believe that a respondent:

- has an interest in property the value of which exceeds GBP50,000 (circa N25 million); and
- its known sources of income are insufficient to enable the respondent acquire the property; or
- there are reasonable grounds to believe that the respondent or a persons connected to them have been involved in a serious crime in or outside the UK.

It would not matter if the property was jointly held. Also where a PEP holds different properties, the total value of all the properties is taken into account.

How is the UWO obtained?

An enforcement agency must, by an application (with or without notice), satisfy the court that the conditions set out above have been met.

The court may also grant an interim freezing order where it is convinced that there is a risk against recovery of such property. Upon granting the UWO, a respondent is given a number of days to provide a statement explaining, amongst other things how it acquired the property. Failure to do so within the required time creates a presumption that the property can be recovered in subsequent

proceedings for that purpose. False or reckless misstatements amount to a crime punishable by custodial sentence of 2 years and 12 months respectively with or without fines.

Where the statement is found to be satisfactory, the respondent may be entitled to compensation where an interim freezing order was wrongly granted.

International cooperation

Both a receiver and enforcement authority may seek foreign assistance, through the Secretary of State who then requests for assistance from a foreign jurisdiction especially where there is risk of recovery of the property in a foreign jurisdiction.

Takeaway

The UK UWO is an example of the global efforts aimed at curbing financial crimes and increasing transparency. With the introduction of the UK's Ultimate Beneficial Ownership register in June 2016 and other automatic exchange of information platforms, Nigeria can now obtain information on target taxpayers.

In due course, the UWOs will provide further insights on focus areas for the Nigerian authorities especially where such assets or acquisition proceeds are identified as not having been previously taxed.

The Voluntary Assets and Income Declaration Scheme (VAIDS) offers an opportunity for taxpayers to regularise their tax affairs on or before 31 March 2018. It may no longer be enough to merely declare but there is now a need to justify sources of funds.

As the response time for UWOs could be limited, individuals need to evaluate their readiness for any enquiry that may arise in future.