

## COMPARATIVE OVERVIEW OF TAX AMNESTY POLICY IMPLEMENTATION IN NIGERIA

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### Abstract

*Nigeria between 2016 and 2019 implemented several tax amnesty programmes successively. Tax amnesty is the release from the consequence of non-compliance with a tax obligation. The repetition of tax amnesty schemes within a short period indicates that there are lapses in tax administration in Nigeria. This paper examines the role of Tax amnesty in catalysing domestic resource mobilisation and voluntary compliance to tax obligations in Nigeria; drawing from the lessons presented by the experiences of Ghana, South Africa, Mauritius, Kenya, Ireland, Indonesia and the United Kingdom. The doctrinal research methodology is adopted in this research. The paper will contend that for a tax amnesty to succeed there is need for an effective tax administrative system that has the capacity to enforce tax laws and sanctions. It recommends that a sectorial tax amnesty is preferable for Nigeria.*

**Keywords:** Tax, Tax Amnesty, Tax Evasion, Tax Enforcement, Nigeria

### 1. Introduction

In recent times, there is an increasing manipulation of taxation as an economic management and resource mobilisation tool across the world. However; the impact differs from one continent to the other depending on the functionality of the tax system. Nigeria like many other countries in Africa is yet to have a functional tax system and the level of non-compliance in the payment of taxes is relatively high. According to the Federal Inland Revenue Service only about 14 million people out of the about 70 million economically active Nigerians pay taxes, of this number 96% of them have their taxes deducted at source under the 'Pay As You Earn' (PAYE) system, while only 4% comply under direct assessment, which means only about 20% of economically active Nigerians pay taxes.<sup>1</sup> The situation is not different with corporate taxes; available data suggest that tax evasion is equally prevalent at the corporate level as many companies falsify their book of accounts to show low revenues and high expenses to evade tax.<sup>2</sup> Hence, taxation is yet to have considerable impact on the Gross Domestic Product (GDP). This is evident from the fact that Nigeria has one of the lowest

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<sup>1</sup> Newman U Richards, 'Tax Amnesty in Nigeria: An Examination of the Voluntary Assets and Income Declaration Scheme (VAIDS)' (2017) 1(1) 1 *OAU Journal of Public Law* 324.

<sup>2</sup> Ibid.

tax to GDP ratio in Africa which is currently put at about 6%.<sup>3</sup> This is in sharp contrast to the state of affairs in Europe and some other countries where the tax to GDP ratio is considerably high. For instance, the tax to GDP ratio of the United Kingdom is 33.2%, Germany 37.6%, France 45.3%, Sweden 44.1%, while that of the United States is 26.0%, Canada 31.7%, and Korea 26.3%.<sup>4</sup> These statistics show that many developed economies rely heavily on tax revenue to fund their budget; the same cannot be said of Nigeria. Taxation for many years was not a major contributor to the revenue profile of Nigeria due to the over reliance on revenue from natural resource and the lack of tax culture. It is argued that the increasing cases of non-compliance are symptomatic of an ineffective tax administrative system and bad governance over the years. In other words, non-compliance is higher in economies where the tax authorities lack the capacity to effectively discharge the core mandate of tax administration, which is collection of taxes and enforcement of sanctions for non-compliance. Non-compliance to tax obligations is also more prevalent in economies that are characterised by bad leadership and mal-administration. This is so as often times the apathy to pay tax is a silent protest and a reflection of the lack of confidence in the government to meet the expectations of its citizens.

In recent times, there is a renewed commitment to expand the tax net, increase tax revenues and mobilise more funds to address the infrastructure deficit across Nigeria. The conventional approaches of enforcing tax compliance which involve investigation, tax audit, prosecution of tax defaulters to recover tax due, accrued penalties and interest has not been effectively deployed to compel voluntary compliance. This is compounded by the dawdling judicial system in Nigeria and corruption. Thus, the effective and viable short term alternative is the tax amnesty strategy which has the potentials to expand the tax net and increase the revenue base of any country within a short time. Achieving these objectives is dependent on a number of factors including the structure of the amnesty programme and the willingness to enforce sanctions on those who fail to participate. In many cases, the gains of an amnesty scheme, start manifesting at the end of the scheme and is dependent on the capacity of the tax authorities to effectively enforce tax laws without giving any indication of another amnesty within a short time. This paper examines the implementation of tax amnesty schemes in Nigeria, drawing from the lessons the experience of Ghana, South Africa, Mauritius, Kenya, Ireland, Indonesia and the United Kingdom present in the implementation of tax amnesty schemes.

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<sup>3</sup> OECD, 'Revenue Statistics in Africa 2017' <<http://www.oecd.org/tax/tax-policy/revenue-statistics-africa-2017-infographic.pdf>> accessed 6 September 2021.

<sup>4</sup> Ibid.

## 2. Conceptual Framework

An amnesty is ‘an act of erasing from legal memory some aspect of criminal conduct by an offender.’<sup>5</sup> It implies an absolution from a wrongful act or the consequence of a wrongful act. Tax amnesty on the other hand is the release from the consequence of non-compliance with tax obligation. A tax amnesty provides a time bound window of opportunity for tax payers to pay a defined amount in exchange for forgiveness.<sup>6</sup> It is ‘...a limited time opportunity for a specified group of tax payers to pay a defined amount, in exchange for forgiveness of a tax liability relating to a previous tax period or periods without fear of criminal prosecutions.’<sup>7</sup> Similarly, it has been defined as ‘a waiver or reduction and sometimes removal of penalties in back taxes to encourage defaulting taxpayers to pay what they owe within a specified window.’<sup>8</sup> It has also been described as ‘a time-bound opportunity for defaulters to pay a defined amount relating to a previously unpaid tax liability (which may include interest and penalties) without the fear of criminal prosecution.’<sup>9</sup> Most of these definitions emphasis the payment of an amount within a specified period in exchange for pardon from the consequences of previous tax default. In practice a tax amnesty scheme does not in all cases mandate the payment of any specified amount; in some cases it may be targeted at generating data on tax payers and there may be waiver of all principal taxes, penalties and interest due, to attract participants. Accordingly, tax amnesty is a scheme that allows tax defaulters to voluntarily declare their assets and income, negotiate their tax liabilities with the tax authorities within a specified time, on the expectation that the tax authorities will either waive or reduce outstanding tax liabilities, penalties, interest, or suspend the prosecution of tax defaulters, tax audit and investigation.<sup>10</sup> In other words, Tax amnesty is a strategic fiscal policy measure

<sup>5</sup> Jonathan Law and Elizabeth A Martin (eds) *Oxford Dictionary of Law* (7<sup>th</sup> edn Oxford: Oxford University Press, 2009), 32.

<sup>6</sup> Meyasi Dissanayake, Sachitha Madushani and Kithmini Weerakkody, ‘Tax Amnesties: The Case of Sticks and Carrots’, 1. KDU Library, E-repository <<http://ir.kdu.ac.lk/handle/345/1676>> accessed 20 February 2020.

<sup>7</sup> Olufemi Abifarin, SA Bello and Isah E Joseph, ‘Tax Amnesty in Some Commonwealth Countries and America: A Lesson for Nigeria’ in Josephine AA Agbonika, *Topical Issues on Nigerian Tax Laws and Related Areas*, (Ibadan: Ababa Press Ltd, 2015) 101.

<sup>8</sup> Deloitte ‘Amnesty for Tax Defaulters’ <<https://www2.deloitte.com/ng/en/pages/tax/articles/inside-tax-articles/amnesty-for-tax-defaulters.html>> accessed 6 September 2021.

<sup>9</sup> Folajimi Olamide Akinla, ‘VAIDS Imperatives and the Role of stake holders’ A paper presented at the Sensitisation Workshop on VAIDS organized by the Federal Ministry of Finance in Conjunction with Price Water Cooper House (PWC) (28 September 2017) 13.

<sup>10</sup> Richards (n1) 326.

to catalyse voluntary compliance in the payment of taxes within a specific time which in most cases will not be more than a year.<sup>11</sup>

Taxation is statutory thus; tax amnesty schemes must have some legislative support to guarantee its effectiveness. In practice, tax amnesty schemes are introduced either by specific laws, subsidiary legislations or executive policy instruments/orders. It is attractive because of its potentials to deliver short term and long term gains. Some of the benefits are; it could lead to a considerable increase in tax revenue and widen the tax net within a short time. In addition, it provides revenue authorities with important statistics and data on tax payers and increases the level of information and awareness on tax matters. Furthermore, it reduces the cost of enforcement of tax laws and invariably the cost of tax administration. This is because, while investigations, audit and prosecution of tax offenders could involve some huge cost, tax amnesty on the other hand replaces the possibility of prison sentences with financial concessions.<sup>12</sup> It is contended that fiscal compromise in the enforcement of tax laws will yield more economically viable outcomes than punitive sanctions. Arrangements like tax amnesty are therefore preferable because the main intent for tax sanctions is not to punish offenders but to induce compliance to tax laws. Tax amnesty could also trigger the repatriation of capital abroad without using any of the conventional tax enforcement mechanisms.<sup>13</sup>

Notwithstanding these advantages, there are concerns on the use of tax amnesty schemes. It has been argued that since it seeks to give reliefs or benefits to defaulters, it invariably rewards law breakers who have cheated the government considering that tax evasion is an offence and therefore it is unfair to compliant tax payers.<sup>14</sup> Furthermore, it has been contended that incentivising tax defaulters could discourage and lower the morale of law abiding tax payers which could in the long run reduce the level of tax compliance.<sup>15</sup> However, the Indonesian Constitutional Court which is the apex court in Indonesia rejected the contention that the Indonesian amnesty law was unfair and discriminated against obedient tax payers as it gives special privileges to tax evaders.<sup>16</sup> It is

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<sup>11</sup> Ibid.

<sup>12</sup> Haula Rosdiana and Titi M Putranti 'Tax Amnesty Policy Discourse in Perspective of Politic of Taxation' *Proceedings of the International Conference on Social and Political Issues 2016* [2018] *Knowledge and Social Transformation* 225.

<sup>13</sup> JAA Agbonika, 'Tax Amnesty for Delinquent Taxpayers: A Cliché in Nigeria' (2015) 3(3) *Global Journal of Politics and Law Research*, 105-120.

<sup>14</sup> See the objections to the Indonesian Tax Amnesty Scheme by several civil society organizations in Haula Rosdiana and TiTi M Putranti 'Tax Amnesty Policy Discourse in Perspective of Politic of Taxation' (n12), 257-260.

<sup>15</sup> Dissanayake and others (n 6) 3

<sup>16</sup> Grace D Amianti 'Court Verdict clears hurdles for Tax Amnesty Law' *The Jakarta Post*, (26 October, 2017) <<http://www.thejakartapost.com/news/2016/12/14/court-verdict-clears-hurdles-for-tax-amnesty-law.html>> accessed 1 August 2021.

contended that, the fact that a tax amnesty scheme is unfair to obedient tax payers cannot be wished away considering that it seeks to give incentives to tax defaulters without a concomitant direct or special benefit to obedient tax payers for being compliant. It is therefore, necessary for an amnesty scheme to have specific provisions like tax waivers or tax rebates to compliant tax payers to sustain and reinforce the positive attitude of compliant tax payers within the amnesty period.

In spite of these challenges, tax amnesty is a commendable strategic fiscal policy measure that could instigate tax defaulters to regularise their tax status within a short time. The objective of a tax amnesty programme includes reduction of administrative cost, increase of tax revenue, stimulation of voluntary compliance, development of a more comprehensive and accurate tax data base, acceleration of domestic liquidity and investment within a short time.<sup>17</sup> However, whether a tax amnesty scheme achieves its objectives or not depends on several intrinsic factors within a tax system. Studies show that oftentimes the critical objectives of a tax amnesty programme which are increase in tax revenue and stimulation of voluntary compliance within a short time are not achieved in many cases.<sup>18</sup> This is because a tax amnesty programme could produce contrary and unintended results due to a number of factors such as; an ineffective tax administrative system, lack of enforcement of sanctions after previous amnesty schemes, negative reactions of obedient tax payers and the complacency of the participants after the scheme.<sup>19</sup> In other instances, the need to increase tax revenue could be sacrificed on the altar of escalation of voluntary compliance and expansion of the tax net. This is because most tax amnesty schemes grants full or partial waivers for principal tax due, penalties and interest. Furthermore, an amnesty scheme rather than stimulating compliance could lead to reduced compliance over the years if not properly structured. For instance, if obedient tax payers perceived the scheme as unfair it will induce deliberately default in their tax obligations as they expect the enjoyment of some privileges in the guise of an amnesty for being delinquent instead of sanctions in future. Thus, in some places the level of compliance rather than increasing fell drastically after an amnesty programme.<sup>20</sup>

Notwithstanding the advantages of tax amnesty scheme, countries like Nigeria who have introduced tax amnesty programmes repeatedly<sup>21</sup> without

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<sup>17</sup> Ahad Munir 'Good Governance on Tax Amnesty' International Conference on Law, Governance and Globalisation' (2017) *131 Advances in Social Science, Education and Humanities Research* 29. See also, Muhammad Alishahdani Ibrahim and others, 'Tax Policy in Indonesian Energy Sectors: An Overview of Tax Amnesty Implementation' (2018) (8) 4 *International Journal of Energy Economics and Policy* 235.

<sup>18</sup> Ibid.

<sup>19</sup> Dissanayake and others (n 6) 5.

<sup>20</sup> Alishahdani and others (n 17) 235.

<sup>21</sup> Dissanayake and others (n 6) 2.

significant results should reconsider their strategy. It is contended that the frequent use of tax amnesty scheme may not be an effective fiscal policy and resource mobilisation plan and may invariably be a strong indicator that there is failure of tax administration in the tax system. This is more so as a key performance index for tax administration is the level of tax payers' compliance and revenue generated. It is further contended that the consistent introduction of tax amnesty schemes could discourage effective participation in subsequent schemes as tax defaulters may not be inclined to participate in anticipation of future amnesty scheme with higher incentives. Also, compliant tax payers may become complacent and deliberately default in expectation of an amnesty instead of sanctions. In the long run, rather than stimulating voluntary compliance and increasing tax revenue, it may end up increasing the number of tax defaulters. It is for these reasons that a tax amnesty scheme should not be introduced too often. Another reason a tax amnesty scheme may not meet its intended goals is, failure of tax administration to enforce sanctions for non-participation after the scheme which in most cases are prosecution of tax offenders to recover taxes, penalties and interest due or invocation of the provisions of the law on tax audit and investigation. This in itself exposes the incapacity of the tax administrators to enforce tax laws and further strengthens the non-compliance posture of tax defaulters.

It is contended that tax amnesties alone cannot increase tax compliance; it is a regularisation device that lacks the capacity to address the core challenges of a tax system. The introduction of a tax amnesty scheme repeatedly suggests that the tax system is confronted with the challenge of low compliance and ineffective tax administration; since tax amnesty schemes are introduced most times where there is a high prevalence of tax default in the tax system. Therefore, for a tax amnesty programme to succeed, it should be preceded with necessary reforms to address the challenges in the tax system that are inhibiting effective tax administration and discouraging compliance. The success of a tax amnesty programme is largely dependent on the presence of an effective tax administrative system with the capacity to enforce compliance to tax laws. This must be complemented with good governance by political leaders which are necessary to develop and sustain tax payers' confidence in the tax system. An effective tax administrative system must demonstrate the capacity to enforce tax laws and impose appropriate sanctions on tax defaulters. Tax defaulters will be more inclined to regularise their tax status when it is clear, the tax authorities can compel their compliance through the various enforcement mechanisms at their disposal. This makes it imperative for tax authorities at the end of an amnesty programme to immediately proceed with investigation, audit and prosecution of tax defaulters who refuse to participate in the scheme. This is more so as the waivers given as incentives in an amnesty programme must be followed with vigorous enforcement of tax laws after the amnesty programme.<sup>22</sup>

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<sup>22</sup> Ibid.

If this is not done, the amnesty may fail to increase the number of voluntary compliance as the pardoned tax payers may go back to their old ways and may be joined by some compliant tax payers since they may never be punished for breaking the law. In the next part of this paper, Nigeria's experiment with tax amnesty will be considered.

### 3. Tax amnesty in Nigeria

Nigeria has found tax amnesty schemes an attractive fiscal policy strategy and thus between 2016 and 2019 it has introduced 3 tax amnesty schemes. Extant Nigerian tax laws clearly anticipate the implementation of tax amnesty schemes which could be by remission of taxes, remission of penalties and interest and/or compounding of tax offences. For instance, the President, based on sections 89 and 23(2) of the Companies Income Tax Act<sup>23</sup> (CITA), has powers to remit or exempt wholly or in part any tax payable by a company on any ground that appears sufficient to him as just and equitable. In the same vein, the Governor of a State on the recommendation of the Commissioner of Finance and the relevant tax authority can remit wholly or in part, personal income tax, if he is satisfied that it is just and equitable to do so.<sup>24</sup> Furthermore, tax authorities<sup>25</sup> have powers to remit either wholly or in part penalties and interest on unpaid taxes,<sup>26</sup> and to compound tax offences by accepting sums not more than the maximum fine prescribed for the offence.<sup>27</sup>

The first attempt to introduce tax amnesty in Nigeria was by public notice issued by the Federal Inland Revenue Service (FIRS) in October 2016, which gave 45 days windows for tax defaulters to pay outstanding tax liabilities for the years 2013-2015.<sup>28</sup> Under this scheme, defaulting tax payers are to declare their tax indebtedness, accompanied with evidence of part payment of not less than 25% or full payment of undisputed tax liabilities and a schedule of a payment plan for the balance acceptable to the FIRS within the 45 days window, while

<sup>23</sup> (As Amended) 2011, Cap C21, Laws of the Federation of Nigeria, (LFN) 2004.

<sup>24</sup> See section 80 Personal Income Tax Act (as amended) 2011, (PITA) Cap P8, LFN, 2004. Note that in Nigeria personal (individual) income tax is administered by states except for the Federal Capital Territory.

<sup>25</sup> The Federal Inland Revenue Service.

<sup>26</sup> See section 85 (3) CITA; section 79 PITA; section 32 (3) Federal Inland Revenue Service (Establishment) Act, 2007. (FIRS(E) Act).

<sup>27</sup> Section 48 (1) FIRS(E) Act.

<sup>28</sup> See Taiwo Oyedele, 'FIRS Declares Tax Amnesty' (*PWC Nigeria*, 5 October 2016), <[http://pwc-nigeria.typepad.com/tax\\_matters\\_nigeria/2016/10/firs-declares-tax-amnesty-.html](http://pwc-nigeria.typepad.com/tax_matters_nigeria/2016/10/firs-declares-tax-amnesty-.html)> accessed 18 July

2021; Umar Yusuf Usman, 'Acting President Launches Voids' *Gauge April-June 2017*, A quarterly publication of the Federal Inland Revenue Service 12.

the FIRS will waive penalties and interest for all participants.<sup>29</sup> The waivers covered all federal taxes including personal income tax collectable by the FIRS, interest and penalties for late registration, late filing of returns and late payment.

The scheme was extended for six months and it provided an opportunity for corporate organisations in default of payment of taxes to regularise their tax status within the stipulated time.<sup>30</sup> The scheme generated about 27 billion Naira in deposit and about 2700 companies participated.<sup>31</sup>

### **3.1 Voluntary Assets and Income Declaration Scheme (VAIDS)**

Shortly after the end of the first tax amnesty programme, VAIDS was introduced on the 29 June 2017 by a Presidential executive order.<sup>32</sup> The scheme provided a 12 months' opportunity for tax defaulters to declare their income and assets from sources within and outside Nigeria relating to the preceding six years of assessment and pay their outstanding tax obligation within the specified period.<sup>33</sup> The scheme afforded all tax defaulters (corporate and individuals) including those who earn income and own assets but are yet to register with the relevant tax authorities, or have not been filing returns an opportunity to voluntarily regularise their tax status.<sup>34</sup>

Under the scheme tax payers who make full and complete declarations and are willing to pay all outstanding taxes are immune from prosecution, tax audits and they are also entitled to waiver of interest and penalty.<sup>35</sup> The consequence of not participating in the scheme includes: liability to pay in full the principal sum due, penalties and interest and tax defaulters could face prosecution for tax evasion and comprehensive audits.<sup>36</sup> Although, the objective of the VAIDS scheme was to mobilise over 1 billion dollars (over 360 billion Naira) in tax revenue, increase the tax to GDP ratio to 20% by 2020

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<sup>29</sup>Deloitte, 'Clarifications of FIRS Waiver of Penalty and Interest' (*Deloitte Tax Alert*) <<https://www2.deloitte.com/ng/en/pages/tax/articles/clarification-of-FIRS-waiver-of-penalty-and-interest.html>> accessed 18 July 2021.

<sup>30</sup> PWC, 'Nigeria: Federal Inland Revenue Service Declares Tax Amnesty' (*PWC Global Mobility Service*, 21 (October 2016) <<https://www.pwc.com/gx/en/services/people-organisation/global-employee-mobility/global-mobility-insights/nigeria--federal-inland-revenue-service-declares-tax-amnesty.html>> accessed 7 August 2021..

<sup>31</sup> Akinla (n 9) 15.

<sup>32</sup> Executive Order No 004, 2017 <<http://pwc-nigeria.typepad.com/files/voids-executive-order.pdf>> accessed 18 July 2021.

<sup>33</sup> Ibid, paras 2 and 3. It was initially nine months but was extended for three months. See 'President Buhari Extends VAIDS Deadline to June 30' <<https://voids.gov.ng>> accessed 12 September 2021.

<sup>34</sup> Paras 4 and 5.

<sup>35</sup> Paras 3 and 6.

<sup>36</sup> Para 8.

and attract about 4 million new taxpayers to the tax net;<sup>37</sup> at the end of the exercise, only about 10 Million Dollars was realised,<sup>38</sup> and it had no significant impact on the tax to GDP ratio in Nigeria. The objectives of VAIDS are laudable but unfortunately, the outcome of the exercise appears too distant from the intended objectives.<sup>39</sup>

### **3.2 Voluntary offshore Assets Regularization Scheme in Switzerland**

The most recent attempt at tax amnesty policy implementation in Nigeria is the Voluntary Offshore Assets Regularization Scheme (VOARS). VOARS was introduced few months after the end of VAIDS via an executive order issued by the president on 8 October 2018 which authorised the Attorney General of the Federation and Minister of Justice to set up a Voluntary Offshore Assets Regularization Scheme in Switzerland (VOARS).<sup>40</sup> The scheme provides a 12 months window (8 October 2018 – 7 October 2019) for affected tax payers who are in default to declare their offshore assets and income from sources outside Nigeria relating to the preceding 30 years (1978-2018)<sup>41</sup> through the Voluntary Offshore Assets Regularisation Facility set up by the Nigerian Government in Switzerland (VOAFS).<sup>42</sup> The scheme applies to all entities and their intermediaries who have undeclared offshore assets<sup>43</sup> and/or earn incomes on offshore assets but are yet to declare such incomes or are in default or have registered but have not been filing returns or have been under declaring their income and assets but need to make additional disclosures or have been under paying or under remitting taxes due.<sup>44</sup> To participate in the scheme, the tax payer pays a one-time levy of 35% of their offshore assets to the Federal Government of Nigeria in lieu of all outstanding taxes, penalties and interest,<sup>45</sup> establish a Swiss nexus for their offshore assets held anywhere in the world,<sup>46</sup> voluntarily elect to access the facility in Switzerland by paying a 2% facility

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<sup>37</sup> Ifeanyi Onuba, 'FG Targets Four Million New Tax Payers through VAIDS' Punch, accessed on 14 July 2021 <<https://punchng.com>> accessed 4 September, 2018.

<sup>38</sup> Ndubuisi Francis, 'Proceeds from VAIDS Hit N30 Billion' *Thisday Live* <<https://www.thisdaylive.com>> accessed 14 July 2021.

<sup>39</sup> Richards (n 1) 338.

<sup>40</sup> Presidential Executive Order No 008 of 2018, Federal Republic of Nigeria Official Gazette, Lagos, 8 October, 2018, para 1. The choice of locating the facility in Switzerland may have been informed by the fact that Nigeria has in the past traced a lot of looted funds to Switzerland and it is generally believed that there are a lot of funds hidden in Switzerland by some Nigerians.

<sup>41</sup> Ibid, para 2.

<sup>42</sup> Para 5(c).

<sup>43</sup> The assets include liquid assets, stocks and bonds held in portfolio, insurance policies, property assets.

<sup>44</sup> See para 4.

<sup>45</sup> Para 3(a) and 5(e).

<sup>46</sup> Para 3(c).

access fees<sup>47</sup> and consent that assessment of future taxes will be carried out by the relevant tax authority on income earned on residual offshore assets.<sup>48</sup> In return, the declarant is entitled to a permanent waiver from prosecution, tax audit, penalties and interest in relation to the offshore assets and he is free to invest the regularised assets in Nigeria.<sup>49</sup> Failure to participate in the scheme will expose the tax payer to investigation, prosecution and liability to pay in full, principal tax due including interest and penalty.<sup>50</sup>

It appears that the conceptualization of VOARS did not consider the provisions of extant tax laws, particularly the Personal Income Tax Act, Company income Tax Act and Double Taxation Agreements. Although, it provided that the executive order shall be subject to extant tax laws,<sup>51</sup> it was initiated on the assumption that once you are a Nigerian or a Nigerian Company, your offshore assets is automatically taxable in Nigeria. The assets and income of a Nigerian resident outside Nigeria is generally not subject to tax in Nigeria except it is brought into or received in Nigeria.<sup>52</sup> Similarly, the income of a Nigerian Company earned outside Nigeria must have been brought into or received in Nigeria for it to be taxable<sup>53</sup> and this is subject to double taxation agreements which could allow the income earned abroad to be taxed only in the source country. Thus, they are not automatically subject to the scheme as they can choose to retain such funds and income abroad. Similarly, dividend, interest, rent or royalty, derived by companies outside Nigeria are exempted from tax if such incomes are repatriated back to Nigeria through an approved official channels.<sup>54</sup> It has therefore been argued that the only foreign incomes subject to tax in Nigeria are the non-exempt incomes and those incomes brought into Nigeria through unauthorised channels thus, it is far reaching for VOARS to create tax obligations where there is none.<sup>55</sup> Considering the preceding, it is argued that the assets and income that can be captured under the scheme are those subject to tax in Nigeria since the executive order is subject to the provisions of extant tax laws. Furthermore, there are concerns on the basis of imposing the 35% asset levy and the 2% facility levy as it is above the threshold for personal income tax which is maximally 19%<sup>56</sup> and

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<sup>47</sup> Para 3(b).

<sup>48</sup> Para 5(f).

<sup>49</sup> Para 6.

<sup>50</sup> Para 8.

<sup>51</sup> Para 12.

<sup>52</sup> PITA, s 13.

<sup>53</sup> CITA s 9(1) and 23(1) j.

<sup>54</sup> Ibid s 23(1)k.

<sup>55</sup> See Wole Obayomi, 'KPMG Executive Order 008 on VOARS' <<https://home.kpmg/ng/en/home/insights/2018/10/Executive-Order-008-on-Voluntary-Offshore-Assets-Regularization-Scheme.html>> accessed 14 July 2021

<sup>56</sup> See the 6<sup>th</sup> schedule to PITA.

companies' income tax which is 30%.<sup>57</sup> Also, the 30 years duration for the scheme appears unrealistic and is inconsistent with the limitation period of six years for tax obligations under most Nigerian tax laws.<sup>58</sup> For these reasons it is doubtful if the VOARS scheme would achieve any significant impact in increasing compliance and generating more tax revenue as expected. In fact, there is hardly any information on whether it has had any participant and it is opined that the scheme is an example of how not to run a tax amnesty scheme. It may have been introduced as part of mechanisms to repatriate funds allegedly looted over the years by corrupt public officials. However, for the Scheme to achieve its intended objectives it must be restructured to elicit the participation of its intended participants.

Furthermore, the repeated use of tax amnesty schemes in Nigeria since 2016 is worrisome and the idea of having an amnesty scheme like VOARS which is to cover a 30 years period appears to be unprecedented considering the lessons presented by the experiences of some countries who had implemented such schemes in the past. The introduction of tax amnesty schemes successively in the last few years without properly evaluating the gains and losses of previous amnesty schemes suggest that policy makers in Nigeria may be working on the assumption that tax amnesty schemes are the panacea to the multiplicity of challenges inherent in the Nigerian Tax System such as poor tax administrative system, lack of capacity to enforce tax laws and sanctions on tax defaulters, lack of voluntary compliance and low tax revenue profile. To continue on this premise and assumption will be counterproductive as tax amnesty schemes are not designed to deliver such objectives. At best tax amnesty schemes are short term measures to provide an avenue for tax defaulters to regularise their tax status which could expand the tax net and may lead to increase in tax revenue in the short run. However, the long term gains of an amnesty programme are dependent on the effectiveness of tax administration system. This is more so as if the tax administrators are inefficient in discharging their responsibilities, participants of the scheme may likely not pay taxes in future. Furthermore, future amnesty schemes may fail as the usual threat of sanctions for non-participation in most amnesty schemes will not compel future participation if there is no record of the enforcement of sanctions against those that refuse to participate under previous amnesty Schemes. This itself reinforces non-compliance as the tax defaulter knows that either the tax authority lacks the capacity to locate them and enforce sanctions on them or it lacks the will to effectively discharge its responsibilities. Before Nigeria introduces further tax amnesty schemes, it is imperative to evaluate the lessons the experiences of other countries present, especially from countries that have effectively deployed tax amnesty schemes as a fiscal policy strategy. In the next part of this paper,

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<sup>57</sup> See CITA s 40.

<sup>58</sup> See Section 332 of the Companies and Allied Matters Act (CAMA), Cap C13 LFN 2004.

tax amnesty in some countries will be discussed and thereafter the lessons they present to Nigeria will be evaluated.

#### **4. Tax amnesty in other countries**

Nigeria is not the only country that has adopted tax amnesty as a tool to stimulate voluntary compliance in the payment of taxes. Several countries in Africa, Europe, Asia and other parts of the world had at various times experimented with the idea of tax amnesty with varying results. A brief discussion of tax amnesty in some of these countries is necessary at this point.

##### **4.1 Kenya**

Kenya successfully implemented a unique Tax Amnesty programme targeted at encouraging the repatriation of foreign earned income and assets. Pursuant to the Kenya Finance Act, 2016, the Government announced a tax amnesty for repatriation of assets and income owned by Kenyans' residents abroad.<sup>59</sup> The procedure for application for the amnesty is under the provisions of section 37B of the Tax Procedure Act, 2015. The scheme grants tax amnesty on income earned by Kenyan residents abroad that are subject to tax in Kenya, if they were earned on or before December 2016. The Tax Procedure Act, 2015 was amended in April 2017 to restrict the amnesty to only tax payers who completely disclose their foreign income and assets and transferred the funds to Kenyan not later than 30 June 2018. However, where tax payers declare such income but are unable to transfer the funds immediately, they have a 5 years window to transfer such funds but they will be liable to a 10% penalty.<sup>60</sup> To benefit from the amnesty scheme, the income earned abroad must be repatriated to Kenya.

The Kenya Tax Amnesty scheme was targeted at Kenyans who owned foreign assets or have earned foreign income taxable in Kenya. Its major objective was to stimulate the repatriation of funds to Kenya. To achieve this, tax payers who disclosed and repatriate their funds are entitled to 100% waiver of the principal tax due, penalties and interest. Also, the Tax Procedure Act prohibits the Kenyan Revenue Authority from asking any question relating to the source of income and with a promise that any information provided will be held in confidence and will not be shared with any other Government agency or

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<sup>59</sup> TaxKenya, 'Kenyan Tax Amnesty in Respect of Foreign Assets and Income' (2016) <<https://www.taxkenya.com/kenya-tax-amnesty-in-respect-of-foreign-assets-and-income/>> accessed 12 September 2021.

<sup>60</sup> 'Tax Amnesty on Foreign Earned Income' <[www.ikm.co.ke](http://www.ikm.co.ke)> accessed 5 September 2018; KPMG, 'Kenya: Voluntary Disclosure by Taxpayers' <<https://home.kpmg.com>> accessed 12 September 2021.

anti-graft agencies.<sup>61</sup> The scheme was relatively successful as about \$8.3billion was repatriated back to Kenya between 2016 and 2019.<sup>62</sup>

#### **4.2 South Africa**

South Africa has also experimented with Tax Amnesty Schemes. The South Africa Tax Administration Act, 2011, provided for the South Africa Permanent Voluntary Disclosure Programme with effect from 1 October 2012. This scheme encourages voluntary declaration of assets on a continuous basis. In 2016 a Special Voluntary Disclosure Programme (SVDP) was introduced to run from 1 October 2016 to 31 August 2017. The scheme provided a window for individuals and companies who in the past did not disclose tax on offshore assets and income, to voluntarily disclose this information and pay tax due, to avoid the imposition of administrative penalties.<sup>63</sup> South Africa has a higher tax payment compliance rate than Nigeria, this is clear from its tax to GDP ratio which is 28.4%.<sup>64</sup> Its tax amnesty schemes seems to be more targeted at encouraging voluntary compliance and creating a window for delinquent tax payers to regularise their status rather than increasing tax revenue within a short time.

#### **4.3 Ghana**

The Ghana Tax Amnesty Act, 2017 (Act 955) was enacted to provide a limited time opportunity for tax payers who have defaulted in any of the following ways: failure to register with the Ghana Revenue Authority, failure to file tax returns as and when due, non-payment of taxes as and when due and making false disclosure to discharge their tax obligations voluntarily in exchange for waiver of interest and penalties and relief from prosecution.<sup>65</sup> The tax amnesty scheme was aimed at facilitating the regularisation of the tax affairs of tax defaulters, updating the Ghana Revenue Authority data base, improving the tax compliance culture and to expand the tax net.<sup>66</sup> The tax amnesty scheme which ended on 30 September 2018,<sup>67</sup> provided an opportunity for all registered tax payers who have not submitted all returns or amended returns containing a full disclosure of all previously undisclosed liabilities up to 2017 to pay up all assessed and outstanding taxes and in turn, the revenue authority will waive all

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<sup>61</sup> Ibid.

<sup>62</sup> See 'Kenyan Tax Man Caught Sleeping on the Job as \$8.03 Billion of Repatriated Money Disappears Without a Trace' <<https://www.pulselive.co.ke/bi/finance>> accessed 15 June 2021.

<sup>63</sup> 'Voluntary Disclosure Programme (VDP)' (South Africa Revenue Service (SARS)) <<http://www.sars.gov.za/Legal/VDP/Pages/default.aspx>> accessed 15 June 2021.

<sup>64</sup> OECD, 'Revenue Statistics in Africa 2019-South Africa' <[www.oecd.org](http://www.oecd.org)> accessed on 16 June 2021.

<sup>65</sup> S 1 Guidelines on the Tax Amnesty 2017 (Act 955) <[www.gra.gov.gh](http://www.gra.gov.gh)> accessed 15 October 2021.

<sup>66</sup> Ibid s 2.

<sup>67</sup> Ibid, s 3.

penalties and interest for failure to file tax returns and pay tax as and when due.<sup>68</sup> Also, an unregistered person who is liable to pay tax in 2014, 2015 and 2016, who registers on or before 30 September, 2018 and submit all outstanding tax returns with full disclosure of all previously undisclosed incomes shall have their taxes, penalties and interest waived by the tax authority.<sup>69</sup> This is a radical and progressive provision which is in line with the objectives of the Ghana Tax amnesty programmes, to improve tax compliance culture.

#### 4.4 Mauritius

Mauritius has at various times introduced various amnesty schemes, the most recent of which is a tax amnesty for small and medium scale enterprises (SMEs). The scheme which was extended to 31 January 2020 by the Mauritian Finance Act 2019 provides a window for SME's to voluntarily disclose their incomes for 2017-2018 and in exchange all penalties and interest will be waived.<sup>70</sup> Furthermore, Mauritius implemented various tax amnesty schemes in 2012 as part of its tax reform programmes. For instance, it introduced the Tax Arrears Settlement Scheme (TASS) which provided an opportunity for individuals and companies to settle their outstanding principal tax liability and upon compliance all penalties and interest will be waived.<sup>71</sup> Similar waivers were also granted to persons who voluntarily disclose, undeclared or under declared income or VAT before 31 March 2012 under the Voluntary Disclosure of Income/Under Declared VAT Arrangement scheme which is complementary to the Voluntary Registration Incentive Scheme.<sup>72</sup> Also, the Expeditious Dispute Resolution of Tax Scheme, allowed tax payers who were unable to apply for a review of assessments issued prior to 1 January 2011, due to their inability to make compulsory down payment of 30% of the total assessment and non-production of full records or inability to apply to the tax authorities for a review of such assessment.<sup>73</sup>

#### 4.5 Ireland

Ireland is one of the countries in Europe that has effectively implemented tax amnesty schemes as a fiscal policy measure to boost her revenue over the years. It is reported that between 1988 and 2001, the Irish tax amnesty schemes

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<sup>68</sup> Ibid s 5(a).

<sup>69</sup> Ibid s 5(b).

<sup>70</sup> Mauritius Tax Agency extends deadline on Tax Amnesty program for SMEs under the 2019 Finance Act' <<https://news.bloombergtax.com/dailytaxreport>> accessed on 15 June 2021.

<sup>71</sup> Mauritius Revenue Authority, *E-News Letter* (February 2012) <<http://www.mra.mu/index.php/component/content/article/310-february-2012>> accessed 15 June 2021.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

generated over 1 billion pounds.<sup>74</sup> The 1988 Irish tax amnesty scheme; was introduced at a time when the country was facing financial difficulties as a short term measure to catalyse increase in tax revenue. The scheme, provided tax defaulters opportunity to pay outstanding taxes and the penalties and interest will be waived. At the end of the scheme over 500million pounds was realized from this first amnesty scheme.<sup>75</sup> Also, in 1993, Ireland introduced an amnesty scheme which was the fifth in six years that raked in over 260 million pounds. The scheme provided a waiver of interest or penalty and 85% of tax due to all tax payers who disclosed previously undisclosed income and paid 15% of the total tax due.<sup>76</sup> Under this scheme, it is a criminal offence to under disclose or to refuse to participate in the amnesty scheme.<sup>77</sup> Furthermore, Ireland introduced other amnesty schemes after the 1993 amnesty scheme, the most recent being the Voluntary Offshore Income Declaration scheme announced on budget day 2016 and ran till 1 May 2017.<sup>78</sup> The scheme presented an opportunity for tax payers with offshore assets and businesses with revenue subject to Irish tax to voluntarily declare such assets and regularise their tax status and enjoy reduced penalties.<sup>79</sup> Failure to participate in the scheme exposes the target tax payers to higher penalties, investigations and prosecution.<sup>80</sup>

#### 4.6 United Kingdom (UK)

In March 2013 the United Kingdom announced an amnesty for tax payers; which ended in 30 September 2016.<sup>81</sup> The scheme gave opportunity to taxpayers to make a disclosure of any unpaid tax to Her Majesty's Revenue and Customs (HMRC). The amnesty covered all UK taxes between 6 April and 31 December 2013. The scheme encouraged tax defaulters to voluntarily disclose their tax liabilities and in exchange enjoy the following benefits: limitation of tax liabilities to 6 April 1999 instead of the statutory 20 years, remission of penalties and interest, immunity from forensic review and prosecution by the tax authority, provided they make full and complete disclosure. Also, the plumber tax safe plan was introduced on 31 May 2011. The plan which was

<sup>74</sup> Irish Times '£1bn Collected in Amnesties over 13 Years', <<https://www.irishtimes.com>> accessed 15 June 2021.

<sup>75</sup>Ibid.

<sup>76</sup>Ibid.

<sup>77</sup>Ibid.

<sup>78</sup> Moran McNamara 'Undeclared Offshore Income "Tax Amnesty" Deadline 1 May 2017' (9 January 2017) <<http://moranmcnamara.ie/tax-offences/undeclared-offshore-income-tax-amnesty-deadline-1-may-2017/>> accessed on 15 June 2021.

<sup>79</sup>Helen Burggraf 'Irish Tax Amnesty Yields just €205,000', *International Investment* (17 March 2017) <[www.internationalinvestment.net/products/irish-tax-amnesty-yields-just-e205000-times/](http://www.internationalinvestment.net/products/irish-tax-amnesty-yields-just-e205000-times/)> accessed 18 August 2021.

<sup>80</sup> McNamara (n 78).

<sup>81</sup> Bob Jackson and TuiIti 'UK Amnesty for UK Tax Payers' *Ogier* (19 December 2013) <<https://www.lexology.com/library/detail.aspx?g=b77f469c-dab3-4f34-8602-1ddb73a0183a>> accessed on 18 July 2021.

targeted at plumbers, gas fitters, heating engineers and people involved in similar trades allowed its intended participants to disclose undeclared income in return for reduced penalty.<sup>82</sup> The plumber safe plan is similar tax amnesty scheme earlier introduced by HMRC for those in the medical profession in 2011.<sup>83</sup>

#### 4.7 Italy

In December 2014 the Italian Voluntary Disclosure Law was passed by the parliament. The law provided a window for Italian residents to disclose undisclosed assets held abroad and pay taxes due and in turn they will enjoy reduced penalties and protection from prosecution.<sup>84</sup> The scheme recorded some significant impact as about 130,000 residents participated and over 60 billion Euros in previously undeclared offshore funds were declared.<sup>85</sup> On 1 January 2017 the Italian Government re-introduced and extended the amnesty scheme to cover both offshore assets and domestic assets.<sup>86</sup> Also, in 2018, a new amnesty scheme targeted at providing opportunity for tax payers to reconcile their tax status with the revenue authority was introduced by Law Decree No. 119. The scheme tag 'Tax Peace' automatically waived all tax debts below 1, 000 Euros incurred between 2000 and 2010.<sup>87</sup>

#### 4.8 Indonesia

Indonesia has effectively deployed tax amnesty schemes as a fiscal policy strategy over the years. In 2016 a tax amnesty scheme which covered the period 18 July 2016 to 31 March 2017 was introduced. The special scheme waives the taxpayer's principal tax debt, penalties and criminal liabilities, on the redemptive payment of between 2% to 10% depending on when the tax declarations are made.<sup>88</sup> It is believed to be one of the most successful tax

<sup>82</sup> HMRC Opens Further Tax Amnesty <<http://www.mazars.co.uk/Home/News/Latest-news/Tax-News/HMRC-opens-further-tax-amnesty>> accessed on 18 July 2021.

<sup>83</sup> Ibid.

<sup>84</sup> EY, 'Italian Parliament Passes New Voluntary Disclosure Law of Undisclosed Assets held Abroad by Italian Residents' *Global Tax Alert* (12 December 2014) <[http://www.ey.com/Publication/vwLUAssets/Italian\\_Parliament\\_passes\\_new\\_voluntary\\_disclosure\\_law\\_of\\_undisclosed\\_assets\\_held\\_abroad\\_by\\_Italian\\_residents.pdf](http://www.ey.com/Publication/vwLUAssets/Italian_Parliament_passes_new_voluntary_disclosure_law_of_undisclosed_assets_held_abroad_by_Italian_residents.pdf)> . accessed 18 July 2021.

<sup>85</sup> Step 'Italy Reopens Tax Amnesty for Domestic as well as Offshore Assets' (9 January 2017) <<http://www.step.org/news/italy-reopens-tax-amnesty-domestic-well-offshore-assets>> accessed 21 August 2021.

<sup>86</sup> Ibid.

<sup>87</sup> B McKenzie, 'Italy-Launch of Tax Amnesty Program – Preliminary Outline' <<https://www.bakermckenzie.com/en/insight/publications/2018>> accessed 27 September 2021.

<sup>88</sup> Gary Robinson, '347,000 Sign up and Declared via Indonesia Tax Amnesty' *International Investment* (7 Oct 2016),

amnesty schemes with over 745,000 participants and attracted more than 330 billion US dollars in tax revenue; which is beyond the expectation of the government.<sup>89</sup>

#### 4.9 India

India has implemented several tax amnesty schemes after the Voluntary Disclosure Scheme 1951.<sup>90</sup> In 2016, the Indian government introduced the Income Disclosure Scheme which provided an opportunity for tax defaulters to disclose undisclosed income or income, or asset and clear up their past tax transgressions by paying redemptive charge of 45% (including surcharge and penalty) of the undisclosed income between 1 June 2016 and 30 September 2016 (4 months).<sup>91</sup> The scheme which covers all undisclosed assets in India provides immunity for participants from investigation, penalties and prosecution for tax evasion.<sup>92</sup> Also, on 29 November 2016, the Income Tax Act was amended to allow depositors of unaccounted funds to pay 50% tax, in return they will be immune from prosecution for violation of tax laws. The scheme which is code named '*Pradhan Mantri Garib Kalyan Yojana*' (PMGKY), was the third voluntary disclosure scheme launched between 2014 and 2016.<sup>93</sup>

#### 5. Lessons for Nigeria

Tax amnesty has been effectively utilised as a tax evasion mitigation mechanism in several countries across the world; Nigeria can draw some lessons presented from the experience of some of these countries in the implementation of tax amnesty programmes. Indonesia and Ireland appears to have deployed arguably the most effective tax amnesty schemes. Their experiences suggest a tax amnesty schemes may need to waive all or a substantial part of principal tax liability for it to motivate participation. For

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<<http://www.internationalinvestment.net/products/tax/347000-sign-us263bn-declared-via-indonesia-tax-amnesty/>> accessed 27 Sept 2021.

<sup>89</sup> Gayatri Suroyo and Hidayat Setiaji, 'Indonesia Tax Amnesty Nets 330 Billion' (*Reuters*, 20 March 2017) <<https://www.reuters.com/article/us-indonesia-economy-tax/indonesia-tax-amnesty-nets-330-billion-now-for-reform-idUSKBN16S0AS>> accessed 13 August 2018; M Djafar Saidi, 'Tax Amnesty as Policy in the Field of Taxation' *Journal of Law, Policy and Globalisation* <<http://www.iiste.org/Journals/index.php/JLPG/article/view/38033>> accessed 27 Sept 2021.

<sup>90</sup> SS Khan 'Tax Amnesties in India' *Tax India International* (12 March 2012) <<https://taxindiainternational.com/columnDesc.php?qwer43fcxzt=NzU>> accessed 27 Sept 2021.

<sup>91</sup> 'Tax Amnesty Scheme in India' <<https://www.bdo.co.uk/getmedia/ca80b259-dba1-4bda-b73a-2304ffc788b9/Tax-Amnesty-in-India2016.%20pdf.aspx>> accessed 27 Sept 2021.

<sup>92</sup> Ibid.

<sup>93</sup> 'India Launches Another Tax Amnesty Scheme' <<https://www.eiu.com>> accessed 27 Sept 2021.

instance, the Indonesian tax amnesty scheme introduced in 2016 eliminated the taxpayer's principal tax debt, penalties and criminal liabilities, if the taxpayer's makes a redemption payment of between 2% to 10% depending on when the tax declarations are made.<sup>94</sup> This is technically a remission of about 90% of the total tax liability of delinquent tax payers. Similarly, the 1993 Irish amnesty scheme allowed tax defaulters to pay just 15% of the total tax while accrued interest and penalty for previously undisclosed income are waived.<sup>95</sup> Nigeria generally has a very high incidence of tax evasion which is largely due to the inability of the tax authorities to generate reliable data on prospective tax payers and their income. Hence, the experience of Indonesia and Ireland suggest that Nigeria needs a tax amnesty scheme that places emphasis on bringing more people to the tax net, data generation and formulating policies that makes it easy for tax authorities to access financial details of individuals and companies. Thus the tax amnesty scheme should focus more on long term revenue generation objectives rather than short term goals.

Another important lesson for Nigeria is from the structure of the UKs plumber tax safe plan and the Mauritius Voluntary Registration Incentive Scheme. Their experience suggest that, rather than have a general amnesty programme like VAIDS, it is better to have segmented or sectorial amnesty programme targeted at different categories of tax defaulters. Nigeria must consider a sectorial approach to the implementation of tax amnesty schemes in future. A sectorial tax amnesty strategy helps to address the peculiar needs and challenges of a particular sector and it is likely to succeed because the incentives for the amnesty will be targeted at the specific interest of the sector. For instance, the Mauritius scheme was well thought out and adopted a holistic approach to reform its tax system by introducing several schemes about the same time to address different categories of tax defaulters. This is complemented by the recent introduction of a special tax amnesty scheme for SMEs.<sup>96</sup> This approach treats each case based on their peculiar facts and circumstances and has the potentials to stimulate more participants based on group dynamism. Another significant difference between the Nigerian tax amnesty schemes and the Mauritius experience is that while Nigeria placed more emphasis on corporate taxes, the Mauritius Scheme had a broader approach to cover different types of taxes and different circumstances of tax default including a special arrangement for VAT defaulters.

The Mauritius experience presents a good precedent for Nigeria, because the various Nigerian amnesty schemes did not make provision to address the challenges of taxing the informal sector; it focused more on taxing large companies. It is difficult to enforce tax compliance in the informal sector

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<sup>94</sup> Gary Robinson (n 88).

<sup>95</sup> Irish Times (n 74).

<sup>96</sup> Mauritius Tax Agency extends deadline on Tax Amnesty program for SMEs under the 2019 Finance Act (n 70)

because they are largely unorganised and there are little or no data about their existence, operations and financial records. Nigeria has a large informal sector, and this has had a debilitating effect in the implementation of fiscal policies. Going forward, in implementing special amnesty scheme for the informal sector in Nigeria, some forms of carrot and stick approach must be adopted to catalyse and incentivise the informal sector to register for tax purposes by paying a token registration fee. For instance, all residents could be invited to register for tax purposes and upon registration all outstanding taxes, penalties and interest will be waived and this will be evidenced by issuing all participants a tax clearance certificate. This approach was adopted by Ghana's in taxing the informal sector; as its amnesty programme allowed persons who were previously not registered for tax purposes and are liable to pay taxes to register and submit all outstanding tax returns with full disclosure of all previously undisclosed incomes and in return they shall have their taxes, penalties and interest waived by the tax authority.<sup>97</sup> One advantage of this approach is that, it stimulates several tax defaulters especially those who have never paid taxes to come and register. This will improve the tax culture and help to develop credible data base on tax payers and in the long run lead to consistent increase in tax revenue. This is more so as amnesty schemes that emphasises data generation above revenue generation will in the long run lead to increase in tax revenue and a more effective tax system. It is opined that amnesty programmes should not always be targeted at short term revenue generation; sometimes it is more effective when it deemphasizes short term revenue generation and focuses more on bringing more people into the tax net, which in the long run will yield higher revenue.

Furthermore, Nigeria in a bid to join the global trend of stimulating the repatriation of incomes and assets abroad introduced VOARS which provides for the voluntary declaration of hidden assets and income by people who have assets and incomes abroad. However, it appears that VOARS was not properly structured to deliver its objectives. It is a known fact that many Nigerians prefer to keep their incomes and assets abroad. A number of factors may have informed this posture and they include fluctuation of the naira which has led to devaluation of the Naira over the years, inconsistency of government policies, insecurity, among others. It is also believed that most of the looted funds are stashed in bank accounts abroad and this belief is fortified by the several repatriations from different countries of funds allegedly looted by the Late Nigerian Military, Head of State. General Sani Abacha.<sup>98</sup>

In the quest to implement a successful voluntary disclosure scheme, the experience of Kenya is commendable as it presents useful lessons for Nigeria on how to stimulate the repatriation of funds abroad. The Kenya model unlike

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<sup>97</sup> Guidelines on the Tax Amnesty 2017 (Act 955) (n 65), s 5(b).

<sup>98</sup> The Guardian Nigeria, 'US to monitor usage of returned Abacha loots Nigeria', <<https://m.guardian.ng>> accessed 20 February 2020.

Nigerians VOARS emphasised voluntary disclosure and repatriation of income back to Kenya above the short term tax revenue enhancement goals. Accordingly, all those who voluntarily and fully declared and repatriated the funds were entitled to 100% waiver of the principal tax due, penalties and interest.<sup>99</sup> Nigeria should adopt this approach as it will encourage people with hidden assets and funds abroad to repatriate those funds back to Nigeria without fear of being harassed or losing a large chunk of their funds to tax. In the long run the Government will benefit from the multiplier effect of the repatriated funds on the economy. This is more so as the repatriated funds will be invested in Nigeria, catalyse economic growth, create more jobs and guarantee more consistent future taxes.

## **6. Conclusion**

Tax Amnesty schemes have relatively been successful in some parts of Europe, Asia and even Africa; but for Nigeria the reverse is the case. Apart from the first amnesty scheme introduced in Nigeria in 2016 which was partially successful, other amnesty schemes such as VAIDS and VOARS failed to achieve the intended objectives. VAIDS provided for waiver of penalties and interest and VOARS a 35% redemptive payment for disclosure of foreign income and assets; however, it appears these incentives were inadequate to catalyse repatriation of foreign assets. In contrast, the Kenya foreign assets and income disclosure and repatriation programme was not targeted at raising tax revenue for government in the short term, rather it was targeted at getting those funds repatriated back to Kenya because of the positive effect it will have on the economy. Thus, complete waiver from taxes, penalties and interest due was granted to those who repatriated their funds back to Kenya.

The successive introduction of tax amnesty schemes in Nigeria between 2016 and 2019 suggest policy makers may have been swayed by the partial success of the 2016 amnesty programme. This is evident from the fact that at the end of the first amnesty programme in 2017, VAIDS was immediately introduced to run from 2017-2018 and at the end of it; even with noticeable signs that the scheme technically failed, VOARS was introduced. Nigeria policy makers appears to be oblivious of the fact that repeated amnesty schemes introduced almost consecutively suggest there is poor tax administration and that several economic and political factors are not in place.

Tax Amnesty has not been able to achieve its objectives in Nigeria for a number of reasons. Firstly, it is always targeted at short term increase in tax revenue without considering the factors that are militating against the voluntary compliance in the payment of taxes in Nigeria. Secondly, Nigeria is a cash economy and has a relatively poor data management strategy. The implication of this is that, it is difficult to access data or records of tax payers, their assets and income. These in many cases frustrate the effort of tax authorities to enforce

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<sup>99</sup> 'Tax Amnesty on Foreign Earned Income' (n60).

compliance. Thirdly, after an amnesty scheme, there must be structures to enforce tax laws. This is because, future amnesty schemes may fail if non-participants in previous amnesty schemes were not sanctioned as prescribed by the scheme. Also, failure to enforce sanctions on defaulters who failed to participate encourages participants to go back to their old ways and discourages future participation. Therefore, before further amnesties are introduced, there is need to demonstrate a will to enforce tax laws. Furthermore, before Nigeria introduces another tax amnesty scheme, it is important to evaluate the factors that may have influenced the success of amnesty schemes in some of the countries discussed above. The success in the implementation of tax amnesty programme in parts of Europe like Ireland, UK, Italy and are largely due to the existence of an effective tax administration structure before the introduction of the amnesty programme. This is evident from the fact that there have been efforts by the tax authorities to ensure tax compliance over the years and the tax authorities have demonstrated the capacity to enforce sanctions for non-compliance and they had on several occasions successfully prosecuted tax evaders.<sup>100</sup> This is in addition to the fact that there is an automated financial and economic system that makes it easy for tax authorities to track and monitor tax compliance.

Nigeria needs to do a lot of background check for it to run a successful amnesty system. First, tax authorities must demonstrate the capacity to enforce compliance and prosecute tax defaulters. Also, there is need to reform the financial system. In this direction, there is an urgent need to reduce cash liquidity in circulation and enforce a cashless policy where all major transaction can only be done through e-payment systems. In a similar vein, there is need to encourage voluntary self-assessment and payment of taxes using the carrot and stick approach. The carrot it is suggested could be a 2% waiver for all those who voluntarily declare their income and pay their taxes as and when due, while the stick is to enforce sanctions inclusive of penalties, interest and prosecution of tax defaulters. This should be complemented with a comprehensive tax reform programme. After putting these structures in place a sectorial tax amnesty strategy could be adopted to target different sectors of the economy and to pursue specific objectives. However, it should not be declared with the sole intention of increasing tax revenue but to expand the tax net by providing an opportunity for people to regularise their tax status within a short time. In this direction, a more radical amnesty scheme with very attractive benefits like complete waiver or partial waiver of principal taxes due in addition to 100% waiver of interest and penalties and immunity from prosecution, investigation and audit is recommended.

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<sup>100</sup> See Lexis Nexis 'Tax Evasion Offences – Overview' <<https://www.lexisnexis.com>> accessed 16 June 2021.