



# Tax Amnesty: A Step on the Ladder Out of Recession?

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## Introduction

It is no longer news that the Nigeria economy is in recession: reflective of foreign exchange challenges, growing inflation and unemployment rates, amongst other indices. As the government comes under pressure to revitalize the economy, translating that to increased prosperity for citizens, obviously many options are on the table. A key plank is diversifying government's sources of revenue from oil, moreso as oil prices have plummeted and timing of upward trend is uncertain. Central to this, is increased tax revenue; whilst the default thinking is tightening the enforcement net, can a properly thought out Tax Amnesty Programme (TAP) also be deployed as a complement to other initiatives? This view is premised on the fact that TAP has proven to be a potent tool in some jurisdictions which at some time, faced similar economic situation as currently encountered in Nigeria.

TAP would operate as government's limited time offer to a specified group of taxpayers to pay defined amounts, in exchange for 'forgiveness' (including freedom from prosecution/ enforcement litigation) of their respective tax liability (inclusive of interest and penalties) relating to a previous tax period(s). The programme would provide a basis for optimal compliance for erstwhile tax defaulters (individuals and corporates), going forward. TAP is not aimed at encouraging tax infractions rather, the time

specific 'relaxation' will help to widen the tax net, raise revenue, facilitate capital repatriation and increases future tax compliance.

According to the National Bureau of Statistics (NBS), only 13% of Nigeria's labour force falls within the tax net. This validates Oseni Elemah (Chairman, Edo State IRS)'s assertion that over 80% of taxable Nigerians do not have a Tax Identification Number (TIN), and thereby evade tax. To change this sorry case, TAP should be sponsored and given both legislative and judicial blessings. However, a pertinent question arises: with the famed historic notoriety of public funds mismanagement, corrupt practices and failure to provide basic social amenities, will Nigerians embrace TAP?

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## Relevancy of Nigerian laws on TAP

Currently, no Nigerian law nor government programme specifically addresses or goes far enough regarding implementation framework for TAP. Existing tax and related legislations in Nigeria, such as the *Personal Income*

*Tax Act (PITA) Cap P8 LFN 2004, Companies Income Tax Act (CITA) Cap 21 LFN 2004, Federal Inland Revenue Service Establishment Act (FIRSEA)2007, and the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) only made reference to provisions in furtherance of tax compliance, but our tax to GDP levels remain abysmally low at 5%, compared to other countries like South Africa 27%, Kenya 17%, and China 35%. For instance, section 24(f) CFRN provides that “it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.” The reality however is that such provision is non-justiciable, courtesy of section 6(6)(c) CFRN. The Supreme Court in **A.G. Ondo v. A.G. Federation [2002] 9 NWLR (Pt 772), 222**, reiterated that courts cannot enforce any of the provisions of Chapter II of the CFRN until the National Assembly (NA) has enacted specific laws for their enforcement. This is therefore not an impediment to the Revenue, given the specific enforcement provisions in the tax laws.*

Resort can therefore be only made to Acts enacted by the NA, including provisions such as **section 54(3)PITA** (similar to **section 65(3) CITA**), which states that “where a taxable person has not delivered a return within the time allowed and the relevant tax authority is of opinion that tax is chargeable on that person, the relevant tax authority may, according to the **best of its judgement (BOJ)**, determine the amount of the assessable, total or chargeable income and make an assessment accordingly...” (emphasis mine). Also, **section 96 PITA** provides: “a person who unlawfully refuses to pay tax (inclusive of false statements and returns) is guilty of an offence and liable on conviction to a fine of N5000 or imprisonment for five years or both such fine and imprisonment.”

The above and similar provisions give the Revenue discretion, based on its BOJ, to assess a defaulting or non-compliant tax payer to tax. BOJ helps to save the Revenue's time, rather than waiting endlessly to determine defaulting tax payer's chargeable tax. However, *Belgore J. in Federal Board of Inland Revenue v. Omotosho*, held that “in making an

assessment to the best of judgement against a person who defaulted as regards supply of information, the tax authority must not act dishonestly or vindictively or capriciously [...] and must take into consideration local knowledge and repute in regard to the assessee's circumstances as well as the previous returns [by the defaulting tax payer]....” This BOJ powers can be expanded to introduce and administer formal TAP in Nigeria.

The FIRS, recently published an advertorial in **Business Day** (5th October 2016 pg.21) presumably pursuant to **section 32(3) FIRSEA** notifying the public of 45 days “special window” to waive penalty and interest on tax liabilities from 2013- 2015 commencing from 5<sup>th</sup> October 2016 till 24<sup>th</sup> November 2016. Although this is a step in the right direction, it may not yield the expected result if TAP and other mechanisms, which go further than the “special window” and are discussed in the latter part of this article, are not implemented to foster voluntary compliance.



The President's tax exemption powers can also be wielded to implement TAP. **Section 23 (2) CITA** states that “the President may exempt by order-(a) any company or class of companies from all or any of the tax provisions of this Act; or (b) from tax all or any profits if any company or class of companies from any source, on any ground which appears to it[sic] sufficient.” The President can also propose (with the NA's approval) to alter tax rates for capital allowances such as mining, infrastructure, agriculture, research and development expenditures pursuant to **section 100 CITA**.

If these provisions are introduced into PITA with the TAP in view, it will help to widen the tax net because a larger percentage of tax defaulters are in the informal sector, and mostly subject to PITA. In principle, TAP is a “strategic” departure from the general tax regime, like tax incentives, such as pioneer status whereby “pioneer enterprises” enjoy up to 5 year tax holiday, pursuant to **Industrial Development (Income Tax Relief) Act Cap 17 LFN 2004**, the tax holiday granted to NLNG pursuant to the **Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act, Cap. N87 LFN 2004**, gas

utilisation incentives under the CITA and PPTA, the tax free regime for free trade zones, etc. To achieve this, the PITA and CITA should be amended integrating the TAP, with specific provisions stating reasonable (fixed) tax waiver for delinquent taxpayers who voluntarily comply with the TAP provisions, depending on each taxpayers' situation. It may also be worthwhile to consider whether the TAP should be limited to small and medium enterprises (SMEs).

The FIRS would have to do the background work in preparing a business case (supported by research data) for any recommendation that the President should exercise his **section 23 CITA** powers in furtherance of TAP. In a sense, TAP is similar to late President Yar'Adua's amnesty programme for the Niger Delta militants in 2009, whereby the militants surrendered their arms and renounced militancy in return for pardon and rehabilitation assistance. Implementing TAP would encourage tax defaulters to comply and lessen the Revenue's enforcement burden - as enforcement would only be required against defaulting tax payers who fails to take advantage of TAP.

#### TAP: A Peep at Other Jurisdictions

Many countries that implemented TAP recorded positive outcomes. For instance, the Irish government introduced comprehensive tax policy in the January 1988 budget and gave ten months' ultimatum for delinquent taxpayers to pay overdue taxes without incurring any interest, penalty charges or facing prosecution. They also increased the numbers of “tax sheriffs” to enforce the tax collection; names of tax defaulters were published in the newspapers; after expiration of the ten month period, the government introduced a new tax system that precluded those who failed to take advantage of the amnesty from accessing their bank accounts and assets. Also, the government increased the interest and penalty payments for tax defaulters and widened Revenue Commissioners' powers. Per the official data, the TAP raised equivalent of US\$750m, far exceeding government's projected collections of US\$50m, and helped to reduce Irish Treasury borrowing requirement to approximately 3.4% of GDP in 1988 compared to 10% in 1987.

Similarly, in the USA, Pennsylvania's **Tax Amnesty Act 48** program of 9 October, 2009 generated US\$254.6 million within 56 days from 59,400 taxpayers. The result surpassed the government's US\$190 million goal set for the program. The **Pennsylvanian Act 48** provided that every

TAP participant was to receive: 50% interest abatement; limited look back whereby, ‘unknown’ taxpayers were only to file tax returns for the last 5 years; and a 5% non-participation penalty added for unpaid delinquent taxes, interest and penalty. Furthermore, TAP beneficiaries were prohibited from future participation and anyone that has benefited from the TAP must remain up-to-date with his/her taxes for 2 years, otherwise, the Revenue will revoke the TAP benefits.

A more current example is Indonesia, which launched its 9 month TAP in July 2016. Expected to run till 31 March 2017, the programme has so far recorded huge success. As at 30 September 2016, the government had collected about US\$ \$6.5 billion (IDR 84.6 trillion) roughly 51% of its target IDR 165 trillion. Also, 8,500 new taxpayers have been added to the database of Indonesia's Tax Office. Apparently the Indonesian government learnt from its past failures - especially its 1964 and 1886 TAPs – premised on lack of trust in the government. To avoid this, President Joko Widodo appointed a highly respected technocrat as Finance Minister. Also, the government introduced a flexible TAP administrative procedure whereby at each quarter of the TAP, the tax tariffs increases, incentivizing early, rather than late, compliance.

South Africa (SA) introduced multiple TAPs from 1995 to 2016, under various legislation. The first two TAPs were introduced under **Tax Amnesty Act 1995**. Subsequent TAPs were pursuant to the **Final Relief on Tax, Interest, Penalties and Additional Tax Act 1996**, and the **Exchange Control Amnesty and Amendment of Taxation Laws Act 2003**. In 2006, the Small Business Tax Amnesty was introduced to benefit small businesses; Voluntary Disclosure Programme followed in 2010 and the most recent being the Special Voluntary Disclosure Programme 2016 (SVDP).

The SVDP offers non-compliant taxpayers an amnesty on offshore assets and income, commencing from October 1, 2016 till March 31, 2017. The SDVP relief mitigates penal exposure to exchange control contraventions and administrative penalties. However, this ongoing SVDP may not generate additional revenue like the earlier ones because tax defaulters evade tax while anticipating additional future amnesties. This multiplicity of tax amnesties is a bane to TAP success in SA because tax defaulters believe that if future TAPs will occur, it may not be “efficient” to take advantage of the current TAP. Italy which had done 27 TAPs in 20 years is an example in this regard.



### Executing a Fit for Purpose Nigerian TAP

One risk is that due to citizen's historic lack of trust in the government, many Nigerians may not respond positively to TAP. The current government's goodwill especially the personal integrity of President Buhari can be a good leverage to ensure TAP's success. Furthermore, the Federal and State Governments (FG) should work harder to earn citizens' trust in judiciously applying tax payers' money to providing facilities and services that will positively impact their quality of life. President Barack Obama once said *"if the people cannot trust their government to do the job for which it exists - to protect them and to provide their common welfare- all else is lost."*

The FG can optimally publicize TAP through deft use of social, print, and electronic media emphasizing its benefits and penalties for defaulters. There could be monthly or quarterly progress reports by the FIRS updates, coupled with naming and shaming especially for big time defaulters at the end of the TAP. The TAP can be effected in a similar manner to which the CBN and the FG implemented the Bank Verification Number (BVN) and the National Identity Card (NIC) projects: giving deadlines, proper sensitization and penalties like inability to operate the accounts, and requiring evidence of compliance before making bank transactions.

Revisions to the National Tax Policy (NTP) should also cover TAP. Whether or not to establish a TAP specific court or tribunal for expeditious treatment of issues arising from TAP implementation may be subjected to a merit review. It may be better to allow the extant tax dispute resolution infrastructure deal with them, as extra agencies and institutions is a bane of our public sector. Moreso, it is envisaged that participation in TAP should not lead to disputes, as it entails accepting an 'offer'. The TAP may entail massive recruitments to enhance the capacity of the Revenue to deal with expected large turnout of previously shadowy taxpayers.

The FG could give each taxpayer an "Automated Tax-Teller Machine Card" (TCard) that will serve payment and compliance verification purposes. Such TCard should be configured in a way that it can be used on ATMs and POS machines. Indeed the tax details of citizens can be on the NIC or other efficient solution such as integrating NIC with tax card, drivers' license, health care, security etc. India in

May 2007 launched its multi-purpose NIC and Philippines' Unified Multi-purpose ID (UMID), was introduced in 2010 to perform similar functions. Nigeria's NIC can, like the UMID, also be utilised for transactions with all government agencies. Introducing tax codes (like bank codes) - accessible through the taxpayers' TIN on their cellphones for easy payment and enquiry, ensures multiple tax compliance and payment options.

### Conclusion

If a Nigerian TAP is considered and implemented, the benefits are numerous: potential increase in tax revenues through expansion of reduction of multiple taxation or risk of future increase in tax rates (to be otherwise borne by the few compliant tax payers, pre TAP), because of the broadened tax base.

However, as part of TAP initiative, government must ensure public awareness, make efforts to improve tax evaluation, monitoring and enforcement systems, and act transparently to earn and retain public trust, etc. This is necessary because not all TAPs are success stories. Colorado's 2011 TAP generated US\$2.34 million against its US\$12.6 million goal. TAPs had also failed in countries like Argentina (1982), France (1982 and 1986), and Belgium (2003) primarily due to lack of trust in the government resulting in non-repatriation of undeclared offshore assets at various tax havens.

Properly utilized tax income from TAP, could boost Nigeria's economic recovery and development through spending on infrastructure, reduce the necessity/quantum of public borrowing (from foreign and local lenders) and help to shore up our foreign reserves. The informal sector could also benefit by becoming better run businesses as a result of their participation in TAP. There could be increased government capacity to provide/facilitate provision of capital to the MSMEs sector, and which in turn would help to reduce unemployment, amongst other benefits. But perhaps the most important benefit is the prospect of achieving long term behavioural change/commitment by Nigerians to pay tax without having any future recourse to TAP again.

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