

PROPOSING TAX AMNESTY AS A ROBUST FISCAL TOOL FOR VOLUNTARY TAX COMPLIANCE IN NIGERIA

By

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Abstract

The objective of tax amnesty is to pardon or rather, negotiate, as it were, the tax liabilities of individuals and corporate taxpayers in line with laid down statutes. It is also intended to regularize the tax affairs of persons and corporate organizations who have defaulted, as it were, in meeting up with their tax obligations, which is a civil responsibility. Despite finalizing the National Tax Policy, and also, amending the tax laws, and furthermore, strengthening of the Federal Inland Revenue Service for enhanced operational efficiency, no other real consideration has been given to measures or strategies that may encourage voluntary declaration and compliance, as an alternative means of growing the nation's taxbase. The study therefore examines the essence of tax amnesty in Nigeria through a comparative analogy with some selected climes, and finally recommends the adoption of tax amnesty as a new tax vision for Nigeria.

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1.0 Introduction

Since the attempt is made towards finalizing the National Tax policy¹, amending the tax laws² and strengthening of the Federal Inland Revenue Service (FIRS)³ for enhanced operational efficiency, no real consideration has been given to measures or strategies being evolved, as it is suggested now for the adoption of tax amnesty, which may encourage voluntary declaration and compliance as an alternative means of growing the nation's tax base.

Amnesty is legal forgiveness from certain infraction⁴. Tax amnesty therefore constitutes a form of waiver or reduction and (sometimes) removal of penalties in back taxes⁵ to encourage defaulting taxpayers to pay what they owe within a specific window.

An amnesty must necessarily have a legal or legislative backing⁶ for it to be effective and a deadline for compliance stipulated as part of the provisions. Usually, stiffer penalties are instituted for taxpayers who are still noncompliant even after the amnesty programme.

The objective of tax amnesty is therefore to pardon or negotiate the tax liabilities of individuals and corporate taxpayers in line

¹ This is a new policy adopted by the nation's leadership to enthrone and sustain proactive tax measures to engender vibrant fiscal goals.

² Amendment herein refers to the ongoing tax reform agenda in Nigeria.

³ The service was strengthened by the Federal Inland Service Establishment Act 2007 to make the nation's tax legislation responsive to current realities, expectations and demands.

⁴ Leigh, K., 'Fiscal Challenges of Shortfalls in Budgeted Revenue', *Business Day*, September 26th 2007, Pp. 53-55.

⁵ *Ibid.*

⁶ *ibid*

with laid down statutes. It is also intended to regularize the tax affairs of persons or corporate body who defaulted in meeting their tax obligations; improve the tax compliance culture and then widen the tax net.

In several countries world over, tax amnesty has been implemented successfully as a means of encouraging voluntary declaration and payment of accumulated tax liabilities.

Italy introduced a tax amnesty in 2001 that came to be known as Tax Shield and in 2009, the Italian tax amnesty yielded €80 billion. In 2004, the Belgian Parliament adopted a law allowing individuals subject to Belgian income tax to regularize the undeclared, or untaxed assets they held before June 1, 2003. In the same 2004, Germany granted a tax amnesty in connection with tax evasion⁷.

Portugal introduced tax amnesties separately in 2005 and 2010. In 2007, the Russian tax amnesty programme yielded \$130 million in the first six months. Australia launched tax amnesties in 2007 and 2009. In 2010, the Hellenic parliament ratified a legislation pushed through by the Greek government in an effort to raise revenue, granting tax amnesty to millions of Greek citizens who paid just 55 percent of the outstanding debts. South African, Spain and the United States respectively, adopted tax amnesty programme at one time or the other encouraging many citizens to voluntarily declare outstanding taxes and raising millions in money's worth. The closest and most recent was Ghana's 2012 tax amnesty programme⁸.

⁷ Chronology of International growth of tax amnesty (1999-2010) Available at http://en.wikipedia.org/wiki/chronology_of_international_growth_of_tax_amnesty. (accessed 02/10/2016).

⁸ Section 13-15 Income Tax Law Ghana 1963.

The tax amnesty programme is usually applied to certain categories of potential taxpayers, namely;

- Those who had previously registered with the tax authority but had ceased to pay taxes.
- Those in business for years without due tax registration for tax, hence no tax payment.
- Those already paying taxes but are inconsistent with remittances or owing huge amounts in arrears.
- Those with huge undisclosed income due to potential tax liabilities on those incomes (i.e those confusing tax evasion as tax avoidance)⁹.

Several taxpayers in these categories are conscious of the fact that they need to come clean and comply with the provisions of the tax laws. However, the potential cash flow implications on their business income serve as major deterrent to them. A tax forgiveness programme may serve as the lever they require to propel them to doing the right things without necessarily suffering huge penalties.

So far, Nigeria has successfully brought the three phased conversion to International Financial Reporting Standards (IFRS) to its final stages GDP has been rebased and the Central Bank of Nigeria (CBN) has implemented several monetary reforms¹⁰. All these signify steps by Nigeria to conform to global best financial practices originating or trending from developed economies.

⁹ Ambuka Grace, "Capturing Categories and Benefits of Tax Amnesty as A tax Initiative", Sun Newspaper, January 20th, 2015, Centre – Spread.

¹⁰ Nigeria Imperatives of Repositioning Economy. Available at <http://allafrica.com/stories/201008030960.html> (accessed 26/11/2015).

Voluntary tax compliance is therefore a culture that needs to be encouraged and cultivated in line with current trends in other developed countries. The soon-to-be launched Tax platform¹¹ is also an indication that voluntary tax compliance by all income earners would need to be encouraged to guarantee its effectiveness. Although a tax amnesty programme has never been formally or rigorously implemented in Nigeria, proposals for its usage as a more effective tax revenue generation tool can be validated by results achieved in other countries where it had been implemented.

If Nigeria had adopted the approach of enforcement all these years and yet has experienced moderate compliance by taxpayers and huge leakages in form of undisclosed income and unpaid taxes, then it is time to tweak approach and monitor the resultant effect. Amnesty in other countries has been reported to curb evasion, thereby increasing tax revenues at very low administrative cost. It has also helped to boost trust in the tax paying public and the drive for voluntary tax compliance. The paper now examines the benefits of tax amnesty to Nigeria.

2.0 Envisaged Benefits From Tax Amnesty.

The development of any given nation's tax law often depends on the operation of some inter-woven factors¹², ranging from economic, political and social. The economic factors can be viewed in terms of the stage of the country's development in the light of some fiscal progression.

¹¹ This is another aggressive tax initiative as it were, about to be launched to stimulate the nation's fiscal policy in that respect.

¹² Op. cit. Nigeria: Imperatives of Repositioning Economy.

A country such as Nigeria in its early stages of economic development suffers severe limitations on the scope of taxation and the types of tax instruments which can be used. Thus low levels of income imply a narrowness of the national tax base. So much for the stage of economic development as a constraint on tax law development is also a close interaction between changes in political setting¹³ and social philosophy. In sum, the study is therefore of the firm view that these factors weighted together, appear to provide the necessary pedestals upon which an assessment of the development of a nation's tax legislation could be based on.

Nigerian citizens of various and diverse strata, often avoid tax in various ways and this reduces government revenue for government every year. Thus, this is a major problem because, in every country, it is necessary to have an effective taxation system in order to raise adequate revenue to enable government carry out development projects.

Thus, taxation is an important government policy and therefore, adequate fiscal measures, as the study is presently advocating the incorporation of tax amnesty in our tax statutes, should be put in place to erase tax avoidance and tax evasion.

The present study avers, and in strong terms too, that proposed tax amnesty shall not only boost the growth and development of the nation's economy, but shall in addition, offer a number of otherwise liable taxpayers a unique opportunity to start afresh in fulfilling their tax obligations¹⁴.

¹³ Ibid.

¹⁴ The assertion is heaped on the fact that the much sought after tax amnesty has the potency to regularize the tax affairs of otherwise liable taxpayers, this very factor usually improves generally the tax compliance culture of otherwise recalcitrant taxpayers, and thus, widens the tax bracket or net.

The paper now turns over to examine the operations and benefits derivable from tax amnesty as it is obtainable in some other climes.

3.0 Impact of Tax Amnesty In other Climes

(i) Canada and Development In Tax Amnesty

An invocation of the provision of the Canadian law¹⁵ clearly affirm the fact that the country has a copious legislation on tax amnesty. The law states¹⁶ that an evader must be satisfied that he will receive confidential treatment and that his disclosures will not make him a “marked” man for future harassment.

The law is also of the view that a “reformed”¹⁷ evader should be dealt with in subsequent years in the same way as other tax payers and should only be subjected to further examination if evidence subsequently comes to light indicating that his confession was incomplete.

(ii) What is India’s Status on Tax Amnesty?

The Indian Budget 1965¹⁸ introduced a scheme, commencing March 1965, whereby an amnesty was granted in India in respect of “unaccounted” wealth or income provided 60 percent was handed over to the Reserve Bank by May 31, 1965. For speedy action, there was a 3 percent ‘discount’, that is, those setting before March 31’ 1965, had only to pay 57 percent¹⁹.

¹⁵ Section 131 Income Tax Act Canada 1952.

¹⁶ Supra. Section 131 Income Tax Act.

¹⁷ Supra. Section 131 Income Tax Act.

¹⁸ Chapter 22 India income Tax Act 1961

¹⁹ Supra.

The Indian authorities had thoroughly prepared ground for the amnesty by several months of intense anti-evasion activities²⁰, including raids and searches of business and private premises, and seizures of “hoards” of cash and valuables pending investigations.

It was also announced that this programme was to be intensified. In addition, the Minister of Home Affairs had been conducting a campaign against corruption²¹. Six months was allowed for paying the tax and the amount collected was impressive, especially when it is remembered that such revenue was collected with a minimum of technical labour by the administration. In addition to this, provision is made for settlement in case of serious disputations of tax assessment.

Above is reinforced by the fact that several judicial authorities²² have pronounced in that direction. Again, as it is obtainable in some jurisdictions²³ that seem to share this legal principle on the subject matter, their rule of law also pervades in estate matters. No wonder it was held in *Re Bhah Rangahar*²⁴ that the deceased tax liability still persists, implying that the deceased's tax liability shall be recovered from the estate.

²⁰ A.I.R 1965 Ray 204, 107.

²¹ A.I.R. 1970 All 620; 625 (F.B).

²² Allah Gledhill (1964). *The Republic of India* (2nd ed); *Thomas Dana v State* 9, Punjab, A.I.R. 1995 S.C. 375 *Halkori Rom v King Superior* 91. T.R. 1959 S.C. 209.

²³ This Jurisdictions include UK, USA and India as currently under comparison.

²⁴ A.I.R. 1996 S.C. 701.

(iii) Tax Amnesty In Ghana

Ghanaian tax legislation have some provisions for offering tax evaders an opportunity to come forward and liquidate all their tax indebtedness. This has been made feasible by the passage of the relevant bill into law by the nation's legislature²⁵.

The nation's leadership is of the view that the amnesty shall facilitate the growth of the country's economy, and thus improve upon the national fiscal policy by widening the country's tax net²⁶ as the policy would offer a number of otherwise liable taxpayers an opportunity to start afresh in fulfilling their tax obligations.

Conclusion

It becomes very apt to ask now – where lies the essence in the present call for the incorporation of tax amnesty as a fiscal policy in the nation's tax statutes? The study strenuously examined the envisaged benefits derivable therefrom, and has gone further to look out of the box, by poaching on, as it were, the operations cum benefits of the policy in other climes.

The study concludes therefore, that, if the present proposal for adoption of the policy is approved and thus implemented, the envisaged tax policy, particularly now that we have seen the benefits, shall not only grow and develop the nation's economic base, but in addition, has got the inherent capacity to lay ambush against the recurring vices associated with tax avoidance and evasion, with a view to stemming the tide.

²⁵ This has been made possible by the passage of Internal Revenue (Tax Amnesty) Bill into law on the 29th of October 2012.

²⁶ <http://news.ghana.economy.acura/africa/6116314> stem (accessed 03/07/2014).