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Morison KSi Africa Newsletter

Editorial

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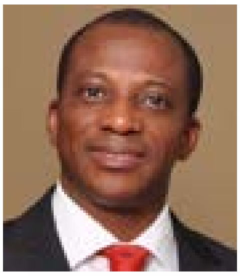

Morison KSi presence in Africa

The merger of Morison International and KS International has been well received in the market across the Africa continent. Morison KSi Africa is bigger.

The merger is good news for Africa, as it presents more opportunities to do business with the rest of the world and jointly unlock opportunities in the continent through referrals and collaborations. It also affords African firms the opportunity to provide world-class professional service to meet the cross-border accounting, auditing, tax and business consulting needs of their clients.

Despite slow economic growth in some parts, Africa remains an attractive destination for business and good value for return on investment. Business activities have increased since the merger in April 2016, and we have received numerous requests from interested firms across the continent wanting to join the association.

As a testimony to the growth of the association, the *International Accounting Bulletin* – a global magazine covering the professional services world – recently ranked Morison KSi in the top 10 in their survey of associations covering Morocco, Nigeria and South Africa. In Morocco, Morison KSi ranked seventh in terms of total revenue and staff. In Nigeria, Morison KSi ranked first in terms of total revenue and second in terms of staff. In South Africa, Morison KSi ranked first in terms of total revenue and staff.

We commend the leadership of both Morison International and KS International for the initiative to merge to metamorphose into one of the most progressive associations around the globe.

Without a doubt, Africa is ready to take advantage of the professionalism and the dynamism that Morison KSi offers.

Benjamin Martins

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Morison KSi

Financial Reporting Council Rule 4: A conflict with IFRS?

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The Financial Reporting Council of Nigeria (FRCN) is a federal government agency established by the Financial Reporting Council of Nigeria Act, No. 6, 2011 ('the Act'). It is a parastatal under the supervision of the Federal Ministry of Industry, Trade and Investment. The FRCN is responsible for, among other things, developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public entities in Nigeria, and related matters. It replaced the Nigerian Accounting Standard Board (NASB) following the adoption of the International Financial Reporting Standards (IFRS), and has since been regulating the practice of accounting in Nigeria. In carrying out its mandate to regulate accounting and financial reporting, the FRCN issues rules and guidelines from time to time, given its powers under Sections 30 and 53(2) of the Act.

The FRCN has issued nine rules so far, the most contentious of which is Rule 4 ('Transactions requiring registration from statutory bodies such as the National Office for Technology Acquisition and Promotion'). Rule 4 deals with the requirements that must be fulfilled before transactions governed by other statutory provisions can be recognised in the financial reporting process. Specifically, it states that:

> Transactions and/or events of a financial nature that require approval and/or registration or any act to be performed by a statutory body in Nigeria and/or where a statute clearly provides for a particular act to be performed and/or registration to be obtained; such transactions or events shall be regarded as having financial reporting implication only when such act is performed and/or such registration is obtained…

In simple language, this rule means that FRCN now requires that transactions or activities impacting the financial statements of companies will not be recognised in financial statements until any requirements for the certification or registration of such activities by any existing legislation have been met.

The specific transactions or activities that readily come to mind within Nigeria's current economic framework are:

- NOTAP (National Office for Technology Acquisition and Promotions) certification of technology-related contracts; and
- Federal Ministry of Industry Trade and Investment certification of qualifying capital expenditures – plant and machinery, motor vehicles, furniture, etc.

The rule goes to further require that 'the details of the required act and/or registration obtained from such statutory body shall be disclosed by way of note in the financial statements if the transaction is recognised as part of the financial reporting of the entity'. Therefore, details of the registration (such as registration certificate number, approved amount, approval basis, validity period and subject-matter) should be disclosed in the notes to the financial statements.

The rule also requires the disclosure of the financial implications of intercompany transfer and technical management agreements between the company and its significant local and overseas suppliers (if any).

NOTAP is the statutory body established to approve and monitor the implementation of technology transfer agreements to ensure that the transferred technology is adaptable to the local environment and reflects national interests, but mainly to guard against 'dumping' and capital flight. To guard against capital flight, no payment for technology-related contracts is allowed through the Nigerian financial system unless a NOTAP certificate is presented.

Similarly, the Industrial Inspectorate Act of 1970 requires companies to obtain certification for assets acquired for the purpose of carrying out their business. The certificates are expected to be issued by the Industrial Inspectorate Division (IID) of the Federal Ministry of Industry Trade and Investment. Currently, any acquisition in excess of NGN500,000 (US$1,634) must be certified. An extreme interpretation of FRC Rule 4 therefore indicates that this certificate must be produced before recognising the cost of property plant and equipment (PPE), acquired in any year, in the financial statements.

Rule 4 as a child of necessity

It is a generally held belief that FRC Rule 4 is a reaction by the FRCN to a boardroom dispute into which it was initially drawn by the minority shareholders of a major Nigerian bank in 2015. These shareholders had reported the bank to FRCN, alleging a deliberate erosion of their interest by the majority shareholder (a foreign entity) by the execution of a sale and lease-back contract for the provision of the bank's operating software. The bank's application for certification of the contract was declined by NOTAP, but the bank went ahead to make provision for the lease payments and recognise indebtedness to the foreign shareholder. The minority shareholders viewed this as a deliberate erosion of their share of the bank's earnings and, by extension, the market value of their shares.

"It is believed that the FRCN issued Rule 4 quickly to ensure that the outcome of the suits do not set a detrimental precedent for recognition of such transactions in future"

The FRCN reacted to this allegation through various actions, including the imposition of sanctions against the bank's statutory auditors and directors for signing the financial statements containing such provisions even after NOTAP had ruled the contract to be ineligible for payment. These sanctions were subsequently challenged at the Federal High Court, and a number of suits and counter-suits have since been instituted by the various parties. It is believed that the FRCN issued Rule 4 quickly to ensure that the outcome of the suits do not set a detrimental precedent for recognition of such transactions in future.

What does IFRS say?

The introduction of Rule 4 has generated considerable debate among audit practitioners and finance managers/CFOs in Nigeria's financial reporting circles. The debate has centred mainly on the issue of supremacy between the principles set out in the IFRS and the rules issued by the FRCN. Most commentators have opined that Rule 4 attempts to counter some clear principles of IFRS, whose standards Nigeria has fully adopted.

Framework and accrual basis of accounting

The Conceptual Framework for Financial Reporting ('the Framework') recognises elements of financial statements, such as expenses. Recognition is the process of incorporating in the balance sheet or income statement an item that meets the definition of an element and satisfies the recognition criteria in the Framework, which are:

- It is probable that any future economic benefit associated with the item will flow to or from the entity; and
- The item's cost or value can be measured with reliability.

Based on these general criteria, expenses are recognised when a decrease in future economic benefits related to a decrease in an asset or an increase of a liability has arisen that can be measured reliably. This means, in effect, that recognition of expenses occurs simultaneously with the recognition of an increase in liabilities or a decrease in assets (for example, in this case, the accrual for expenses based on technical agreements entered with vendors). Also, paragraph 27 of International Accounting Standards 1 (IAS 1), 'Presentation of financial statement', states that 'an entity shall prepare its financial statements, except cash flow information using the accrual basis of accounting'. When the accrual basis of accounting is used, an entity recognises items as assets, liabilities, equity, income, and expenses (the elements of financial statements) when they satisfy the definitions and recognition criteria for those elements in the Framework.

The question, then, is: Does the non-certification of a contract for the supply of technology by NOTAP vitiate the obligation/liability to pay the value set out in the contract? If the answer to this is 'No', then what is the implication for not recognising the cost and liabilities?

IAS 16: Property plants and equipment

Paragraph 7 of IAS 16 provides for recognition of property plants and equipment as provided by the Framework:

The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

(a) it is probable that future economic benefits associated with the item will flow to the entity; and

(b) the cost of the item can be measured reliably.

Unfortunately, the IID and NOTAP are no different from other government agencies whose activities are traditionally delayed and bogged down by unending bureaucracy and various inefficiencies. Because of this, most certificates or registrations take months and sometimes years to complete, by which time the financial statements are already issued.

Conclusion

While waiting for the outcome of the court judgements, businesses will continue to invest in qualifying capital expenditures and enter into agreements requiring NOTAP approval – which will mean flaunting the FRCN's Rule 4, either purposely or inadvertently. The FRCN needs to revisit its rules for possible amendments or outright repeal to align with the IFRS, which it has enforced entities in Nigeria to comply with. This will ensure conformity, and will be beneficial to all parties.

However, the FRCN Act, being an Act of Parliament, adopts the provisions of the IFRS and its application in Nigeria is a superior provision to the FRCN Rules. In the interpretation of laws and statutes, the FRCN Act therefore takes pre-eminence in any court of competent jurisdiction.

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Nigeria: the best-kept secret

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The African business environment provides a positive platform for, and influence on the development of, various sectors in different countries. In the context of increased economic viability, the present boom in Africa creates a new pattern of opportunities for investors to improve the business climate. Recent oil discoveries in different African countries and the array of investment opportunities makes Africa, especially Nigeria, an investor's secret.

The driving force for the African market is external demand, especially for oil and mineral resources; while the key to Africa's growth surge is its improved political and macroeconomic stability and microeconomic reforms.

It is projected that four groups of industry – consumer-facing, agriculture, resources, and infrastructure – together could generate as much as US$2.6 trillion in revenue annually by 2020, US$1 trillion more than today.

As growth opportunities continue to move away from the traditional markets, most multinationals have Africa in the sights of their expanding global footprint.

Early entry into African economies provides opportunities to create markets, establish brands, shape industry structures, influence consumer preferences, establish long-term relationships and create an enabling environment for the gainful employment of Africa's youth, who will drive economic growth and support measures to sustain it.

Nigeria has emerged as the number one frontier-market economy in Africa in terms of attracting attention from European and American multinationals – especially its association with the New Partnership for Africa's Development (NEPAD), which aims to attract foreign direct investment (FDI). The determinants of FDI in Nigeria include market size, infrastructure development and stable macroeconomic policy, which all contribute positively to economic growth.

The Nigerian perspective

With a foreign reserve of about US$50 billion, a strong banking sector, and its vast human and natural resources, Nigeria has become one of the world's most attractive investment destinations.

A burgeoning middle class has created exciting business opportunities in consumer markets like power, agriculture, education, health, financial services, energy and telecommunications. The Nigerian economy is undoubtedly a viable one that can be fully harnessed for greater socio-economic value.

As the largest economy in Africa with a GDP of over US$500 billion since re-basing, and ranking as the world's 26th largest economy, the country is clearly set for the world stage.

Doing business in Nigeria

The impact of regulatory agencies on business transactions in the Nigeria makes it imperative that its implementation cannot be ignored. Hence, the effect of business-friendly regulations in Nigeria is exemplified in the following ways:

- Simplified investments and/or business registrations that have created opportunities for foreign investment in Nigeria
- Increased trade openness
- Flexible labour market
- Strong entrepreneurship and economic performance
- Tax reliefs
- Effective commercial justice system.

Some of the prominent regulatory agencies and institutions that govern and/or regulate businesses in Nigeria include:

Corporate Affairs Commission (CAC) – Regulates and supervises the formation, incorporation, registration, management and winding up of companies under or pursuant to the enabling law.

Securities and Exchange Commission (SEC) – The apex regulatory organisation for the Nigerian capital market.

Nigerian Investments Promotion Commission (NIPC) – Encourages, promotes and coordinates investments in the Nigerian economy.

National Office for Technology Acquisition and Promotion (NOTAP) – Among other functions, encourages a more efficient process for the identification and selection of foreign technology.

Nigerian Stock Exchange (NSE) – Regulates the Nigerian stock market.

Central Bank of Nigeria (CBN) – Regulates banks and other financial institutions

Federal High Court – Has the jurisdiction, among others, for hearing matters arising under the Companies and Allied Matters Act.

Several incentives designed by the federal government to boost investment in Nigeria include:

Pioneer status – Excludes an investor from paying tax in the first 5 years of doing business in Nigeria.

Relief from Commonwealth income tax – Otherwise known as 'double taxation relief', this is granted to any taxpayer who operates in a country with whom Nigeria has a double taxation agreement. This relief is governed by the provisions of Section 33 of the Companies Income Tax Act, 2004.

Relief in respect of interest on any foreign loan – Where any foreign loan of an amount not less than N150,000 is granted by a foreign company to any person carrying on trade or business in Nigeria and is repayable within a period of not less than 10 years, the interest derived by the foreign company from the loan shall be exempted from tax, but where the loan is repayable within a period of not less than 5 years, the interest accruing on the loan will be charged half the rate of tax due.

Export Development Fund (EDF) – The EDF is a special fund set up by the Nigerian government to provide financial assistance to private sector exporting companies to cover part of their initial expenses in respect of export promotion activities, participation in training courses, symposia, seminars and workshops on all aspects of export promotion.

Duty drawback/suspension scheme – Under this scheme, exporters/producers can import raw materials and intermediate products for use in the manufacture of export products free of import duty and other indirect taxes and charges. The exporter can also claim a refund of duties already paid on imported inputs and apply for exemption from, or suspension of, import duty prior to actual importation.

Currency retention scheme – Allows the investor to open and maintain a foreign currency domiciliary account into which export proceeds can be paid and retained. Funds in the account can be sold in the interbank foreign exchange market (IFEM).

So why invest in Nigeria?

Abundant human and material resources: Nigeria has enormous resources (including mineral, agricultural and human), most of which are yet to be fully exploited. In terms of agriculture, Nigeria has a vast expanse of arable land that is increasingly recognised as a viable investment opportunity waiting to be explored.

Large market: The Nigerian market potential stretches into the growing West African sub-region.

Political stability: Nigeria offers a stable political environment, as evidenced by its steady government since the peacefully concluded national elections in 2015.

Free market economy: The government has created a favourable climate for business and industrial ventures by streamlining administrative and bureaucratic procedures and implementing policies and programmes that guarantee a free market economy.

Robust private sector: The country has a dynamic private sector, which has assured greater opportunities under the new economic environment. Some areas of the private sector where investors can make a niche include the power, agricultural, educational, health, energy and e-commerce sectors.

Free flow of investment: Exchange control regulations have been liberalised to ensure free flow of international finance.

Innovative and entrepreneurial population: Nigeria is a viable economy with a huge potential market that has continued to experience GDP growth averaging 6–7% per annum through the global recession.

Nigeria remains a **high-return business environment**, and one that stands poised to experience economic and social transformation.

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Cyber-security alert! Ransomware cyber-attack – what you need to know

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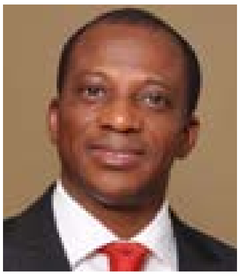

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Ransomware attack has spread to 150 countries

Since its discovery on 12 May 2017, the WannaCry ransomware attack has continued to spread, impacting over 10,000 organisations and 200,000 individuals in over 150 countries, according to European authorities. However, while measures have been taken to slow the spread of the malware, new variations have begun to surface. There could be further ransomware cases this week after the global cyber-attack. In light of these attacks, what is ransomware and how can organisations and individuals protect themselves from such attacks?

What is ransomware?

Ransomware is a malicious program that locks a computer's files until a ransom is paid. The WannaCry virus takes control of users' files and demands a US$300 (£230) payment to restore access. It exploits security flaws in Microsoft computers, and once it infects a computer, it encrypts the files and spreads to other computers. Victims receive a demand for a payment of US$300 in Bitcoin in order to regain access.

How can organisations and individuals protect themselves from such attacks?

Ransomware exploits security weaknesses in computers. For organisations to protect themselves from such attacks, they should ensure that their antivirus and patch management processes are effective. Antivirus software can detect and block viruses before they infect computers, and patches are security updates that fix weaknesses that can be exploited by viruses. Organisations should consider the following counter measures:

Ensure that the latest security updates and patches are applied on all computers and systems in their network. Updating software should be done regularly, not only when there is a threat. In a blog post, Microsoft stressed the importance of doing this: 'As cybercriminals become more sophisticated, there is simply no way for customers to protect themselves against threats unless they update their systems'.

- Ensure that antivirus and anti-spyware software is installed on all servers and workstations.
- Ensure that the antivirus and anti-spyware software have up-to-date definitions (ideally, have a central antivirus server that downloads the definitions regularly and deploys them across the network to all computers).
- Ensure that the e-mail gateway is configured to scan for malware, spam and spyware on all incoming and outgoing e-mails.
- Ensure that the e-mail gateway is configured to block all suspicious attachments, such as executable files.
- Block accessing of malicious websites and downloading of suspicious files.
- Ensure that computers are configured to auto-scan for malware and spyware when external or portable media (e.g. memory sticks, hard drives) are connected.
- Conduct periodic security aware training to educate employees against opening suspicious attachments or accessing malicious websites.
- Implement disaster recovery and backup policies and

procedures to ensure effective restoration of critical data in cases of attacks, thus minimising impact on business operations.

- Back up critical data and keep it offline and separate from the network, in case ransomware spreads.
- Conduct periodic vulnerability and virus scans to detect security weaknesses and infected machines.

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Mauritius: Partnering with Africa

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History

The central focus of business for the *Compagnie des Indes* (French East India Company), the island of Mauritius has been important for commerce since the early seventeenth century. Over the years, Mauritius has diversified from monoculture (sugar cane) to textile manufacturing, hospitality (tourism), financial services and a knowledge-based economy.

Strategically located in the Indian Ocean, Mauritius is ideally situated as a gateway to Africa.

Framework

Mauritius is an African country and maintains close links with the African continent. Global business and investment can be carried out in Africa through Mauritius. The Mauritius International Financial Centre offers many advantages to global investors – such as low tax, double taxation agreements (DTAs) and investment promotion and protection agreements (IPPAs).

Of the 43 DTAs with Mauritius, seven await ratification, five await signature and 18 are being negotiated (see Table). Moreover, Mauritius has 19 IPPAs with various countries across Africa.

Table. Tax treaties with Mauritius.

In force	Awaiting ratification	Awaiting signature	Being negotiated
Australia (partial)	Gabon	Cape Verde	Algeria
Barbados	Ghana	Côte d'Ivoire	Burkina Faso
Belgium	Jersey	Gibraltar	Canada
Botswana	Kenya	Malawi	Czech Republic
China	Morocco	The Gambia	Greece
Congo	Nigeria		Hong Kong
Croatia	Russia		Lesotho (New)
Cyprus			Mali
Egypt			Montenegro
France			North Sudan
Germany			Portugal
Guernsey			Republic of Iran
India			Saudi Arabia
Italy			Spain
Kuwait			Saint Kitts and Nevis
Lesotho			Tanzania
Luxembourg			Vietnam
Madagascar			Yemen
Malaysia			
Malta			
Monaco			
Mozambique			
Namibia			
Nepal			
Oman			
Pakistan			
People's Republic of Bangladesh			
Rwanda			
Senegal			
Seychelles			
Singapore			
South Africa			
Sri Lanka			
State of Qatar			
Swaziland			
Sweden			
Thailand			
Tunisia			
Uganda			
United Arab Emirates			
United Kingdom			
Zambia			
Zimbabwe			

Source: Mauritius Revenue Authority (http://www.mra.mu/).

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"Africa, with its 54 countries, offers a land of opportunity. The continent is rich in resources and has young workforce"

This wide network of tax treaties makes Mauritius an ideal platform for routing investments in a tax-efficient way, such as via a global business company with a Category 1 licence qualifying it as tax resident in Mauritius.

In October 2012, the Africa Centre of Excellence (ACE) was launched to reinforce the government's 'Africa Strategy', which aims to facilitate regional integration, encourage investment and increase business opportunities. In December 2014, a 'This is Africa' summit was organised in association with the Mauritian Board of Investment (BOI) to explore strategic partnerships for business growth across the continent. In September 2016, the BOI in collaboration with the World Association of Investment Promotion Agencies (WAIPA) held an interactive 'Africa Partnership' conference aimed at 'creating shared value through sustainable investment', featuring eminent speakers and opinion leaders, which was attended by 24 investment promotion agencies from across Africa.

As part of the African Union (AU), Mauritius is actively involved in Africa along with:

- The Indian Ocean Rim Association (IORA) – comprising 21 member states and seven dialogue partners, with an ever-growing momentum for mutual benefit.
- An expanded free trade zone consisting of the Common Market for Eastern and Southern Africa (COMESA) with 20 member states, the East African Community (EAC; six members[1]) and the South African Development Community (SADC; 15 members).[2]
- The New Partnership for Africa's Development (NEPAD) is an economic development programme of the AU. One of its primary objectives is to integrate Africa into the world economy.

Africa, with its 54 countries, offers a land of opportunity. The continent is rich in resources and has young workforce. As each country has a different culture, with its own way of doing things, it is important to perform a proper due diligence to identify and determine the uniqueness of the different jurisdictions. Mauritius is keen to support investors and businesses in their search for such opportunities.

Opportunities

The Mauritius International Financial Centre has been the leading investor in India for many years. Now, the challenge is to attract investment to the African continent.

Mauritius being the gateway, ACE has been given the mandate to guide companies in their ventures into Africa. ACE brings business intelligence, partners, networking and repository as well as real-time business insights on the latest African developments.

Hence, the partnership between Mauritius and Africa can only be a win-win situation for the progress of the African countries. We strongly believe that Mauritius can assist the African continent to enhance its future.

1. Republics of Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda. EAC's headquarters are located in Arusha, Tanzania.
2. Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

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Malta: A bridge between Europe and Africa

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Why do you think Malta acts as a bridge between Europe and Africa?

Geographically located in the centre of the Mediterranean Sea, Malta has a long history of trading with all the surrounding countries. It also has a European lifestyle, albeit influenced by countries coming from both continents. The Maltese language is Semitic, with a mixture of words originating from Italian and English. The Semitic language probably derived from the Phoenicians, who originated from a coastal area presently part of Lebanon and surrounding countries. English is also considered an official business language, making Malta an ideal international hub.

The Maltese have immigrated in the past to various Mediterranean countries – including Italy and France in Europe, and Tunisia and Egypt in Africa. Maltese communities still exist in these countries. All the great maritime powers who dominated the Mediterranean area had a base in Malta, starting from the Carthaginians and finishing with the British Empire.

Such great diversity has shaped the Maltese nation with a vibrant culture and strong business acumen to trade with all neighbouring countries and to strive for excellent diplomatic and business relationships with all nations harbouring the Mediterranean Sea. We now must give greater importance to, and start doing business with, other countries in Africa.

What is the level of commercial activity between Malta and African states?

Malta has always acted as a bridge between Europe and North Africa. Due to its large and efficient maritime facilities, Malta has always done a lot of commerce with countries in North Africa; especially Libya, Tunisia and Egypt. New markets are now being developed with Algeria and Morocco.

Unfortunately, there are few commercial ties with other African countries. Nonetheless, the present government is trying to diversify Malta's exports by actively encouraging material interest in the African continent.

Has your firm ever provided services for companies operating in Africa?

Our firm has provided numerous services to local and foreign companies that either wanted to use Malta as a base to operate in Libya or made investments in North African companies. Unfortunately, the civil war in Libya affected Malta negatively. Nonetheless, we have both local and international clients who have invested in Egypt, Tunisia, Morocco and Algeria. We assist them in various ways including international taxation, project appraisal and legal matters.

We are also in the process of assisting for the first time a Congo-based gold production company to export to Italy.

How can African countries use Malta for their own benefit?

Malta is a very small country. It offers an efficient Freeport, an English-speaking and bilingual population, excellent telecommunications, a large pool of professionals, a sound banking system and a great climate. It is also a full member of the European Union (EU) and part of the Eurozone.

Malta is an ideal place for logistics purposes. African companies may use Malta as a base to export their

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products into the EU. Malta offers a lot of fiscal incentives, one of which is the lowest corporate effective tax in Europe at 5%.

I foresee that in the health, tourism and education sectors a lot may be done with African states. Medical care in Malta operates under very strict high standards. With more private hospitals being built over the next 5 years, African states may use Malta to train medical students or send patients for medical attention. In education, Malta has a university and colleges that can offer great opportunities for students wanting to pursue their studies in Malta.

Malta's intriguing history makes it a fascinating place to visit. In this respect, great opportunities may also arise in one of Malta's fastest-growing and most important industry; tourism.

How can Malta assist African countries?

Politically, Malta plays a very important role in the EU to highlight the various pleas of African countries. It is a country that is well trusted on both continents and has always strived for peace.

Malta has a very well-organised tourism industry that African states would do well to emulate. Today, two million tourists visit Malta each year – is equal to four times the population.

Malta's high-tech manufacturing sector could benefit African states through joint ventures between Maltese and African enterprises. Relevant EU funds may be available to help finance such projects.

In education, Malta offers African students a wide range of options including a renowned medical school and special institutes for vocational training or diplomas.

Malta also offers various residence schemes to African individuals, including visa and citizenship schemes that allow free Schengen travel and permanent EU residence, subject to the conditions laid out in the relevant scheme.

What current developments are happening in Malta that may increase trade and commerce with African countries?

Current government policy is to further diversify the economy and assist Maltese firms to export more goods and services to a large amount of companies in various jurisdictions. In the coming years, Africa will surely become more dynamic and important economically. Therefore, the Maltese government is now formulating a strategy to meet this market exigency.

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VAT on non-executive directors' fees: South African perspective

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Introductory background

For a number of years, it has been unclear whether or not PAYE should be deducted from non-executive directors' fees that they earn from sitting on company's board meetings and their respective subcommittees. The general 'safe route' taken by most entities that were paying these non-executive directors' fees was to withhold 25%, which was the rate that is applied to temporary employees.[1]

In the 2016 Budget Speech delivered by the Minister of Finance, he announced that this uncertainty about the taxation of non-executive directors will be investigated and clarified.

On 10 February 2017, the South African Revenue Service (SARS) issued Binding General Ruling (BGR) 40, directing that director's fees received by a non-executive director for services rendered to a company are not remuneration as defined in the Income Tax Act, and are not subject to the deduction of employees' tax.

From a cashflow point of view, this was a ruling worth celebrating by non-executive directors. However, the ruling stated that it should be read in conjunction with BGR (Value Added Tax) 40, which deals with the VAT consequences of amounts earned by non-executive directors.

The VAT ruling

The essence of the ruling relating to non-deductibility of PAYE from fees paid to non-executive directors is that since they are not considered to be employees of the entities where they serve as board members, their services to these boards constitute the carrying-on of an enterprise as defined in the Value Added Tax Act.[2]

Section 7(1) of the VAT Act provides that:

Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the Value Added Tax –

On the supply by any vendor of goods or services supplied by him on or after the commencement date in the course of furtherance of any enterprise carried on by him.

Section 23 of the VAT Act which deals with the registration of persons making taxable supplies in the course of enterprise provides, inter alia, that

Every person who on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered.

At the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R1 million. Voluntary registration for VAT would also be permitted where the non-executive director's supplies would exceed R50,000 over the same period.

On 10 February 2017, the SARS issued a BGR directing that non-executive directors should register and account for VAT on their respective directors' fees. This registration is mandatory if the director earns, or expects to earn, at least R1 million in a period of 12 months.

As intimated by the Minister of Finance in the 2016 budget speech, the SARS argued that they opted for a ruling rather than new legislation, as it has always been the intention of the legislature to subject non-executive directors' fees to VAT. The purpose of the ruling was just to clarify the prevailing confusion.

While it is conceded that there is nothing in the VAT legislation giving the impression that services rendered by non-executive directors were intended to be excluded by the Act, it is submitted that the confusion was exacerbated by over-zealous SARS inspectors and auditors who took the view that PAYE should be withheld from non-executive directors' fees. This gave the impression that non-executive directors were regarded as some kind of employee – with the logical consequence that they should not be expected to register and levy VAT on their directors' fees, as the definition of 'enterprise' in the VAT Act excludes the rendering of services by an employee to his/her employer in the course of their employment.

Against this background of confusion, what was clear in terms of levying VAT was that in circumstances where the non-executive director was in the employ of another company and the board fees were accruing or payable to that company, that company would issue a VAT invoice to the company where the non-executive director serves as a board member.

The definitive clarification by the BGR that directors' fees received by non-executive directors are not subject to the deduction of PAYE does not give rise to loss of revenue to the fiscus, as it is just the timing issue giving rise to deferral of income tax payment as the non-executives would have to account for the tax when they submit their income tax return at the end of fiscal year. In fact, in instances where some entities were convinced that there was no need to withhold PAYE on non-executive directors, the directors concerned opted for 'voluntary' withholding of PAYE to avoid any shortfall when they ultimately submit their income tax returns.

There is no doubting the benefit to be derived by the fiscus from the implementation of the levying of VAT on non-executive directors' fees with effect from 1 June 2017 – especially considering the rising number of non-executive directors who are finding a niche career serving on company boards. The fees are often lucrative, particularly when these non-executive directors are also members of various subcommittees. Depending on their skills, some are also engaged in specialist assignments entitling them to earn extra fees over and above their normal board fees.

This levying of VAT on non-executive directors' fees came at an opportune time, when many South African tax commentators and economists felt that increasing the VAT rate by just 1% to 15% could alleviate the current fiscal deficit.

Potential challenges

The endeavours of the SARS could be frustrated by challenges around the administration of the VAT system in South Africa. In the past, serious frustrations have emanated from the registration process up to the filing of the VAT returns, as it was burdensome especially to small and medium enterprises (SMEs).

During the process of engagement of non-executive directors, it is unlikely that the levying of VAT was anticipated. If the initial agreed fee is not grossed up by the VAT fraction, non-executive directors will end up earning less than initially agreed, especially considering that they might not have input VAT expenses to set off against the output VAT they have charged.

Section 64 of the VAT Act, which deems prices to include VAT, provides that

any price charged by any vendor in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in terms of Section 7(1)(a) in respect of such supply, whether or not the vendor has included tax in such price.

If the engaging companies are prepared to alleviate the loss in the hands of non-executive directors by grossing up or increasing the fee, this might not be immediate, as shareholder approval must first be obtained.

Based on administrative challenges experienced by SMEs, it would have been useful for SARS to consider levying VAT by way of withholding tax to alleviate the administrative burden on individual non-executive directors, especially considering that the chances of them claiming input credit are very slim. Alternatively, for those who can claim it, the system could enable them to do so by way of reconciliation at the end of each fiscal year, just like the submission of income tax returns.

Conclusion

Other than potential administrative frustrations, we believe that collecting VAT on non-executive directors' fees will go a long way in assisting the fiscus to close the fiscal deficit gap. This is certainly in line with the suggestions of various commentators and economists who were advising the Minister of Finance to consider raising the rate of VAT in the 2017/18 budget speech. However, the actual challenges of implementation will only become apparent after the effective date of 1 June 2017, as experienced by Belgium and Luxembourg.

Notes

1. The 'Guide for Employers in respect of Employees Tax' (2018 Tax Year) para. 14.4, to be read together with para. 1 and 9(1) of the Fourth Schedule to the Income Tax Act No. 58 of 1962, provides for the meaning of 'Standard Employment' as follows:
   Any employment where an employee (including a scholar or student), is required to render services to a single employer for a period of at least 22 hours in every full week provided that:
   - Periods of temporary absence of an employer is due to leave or exceptional circumstances; or
   - Temporary reduction in working hours is due to a reduction in the demand of the company's product where the employer imposes a temporary working week of less than 22 hours.

   The guide further provides that where an employee can neither be classified nor deemed to fall under standard employment that employee will be classified under 'non-standard' employment. The tax rate to be used for non-standard employment employees is 25%.
2. Value Added Tax Act No. 89 of 1999.

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Africa: How to attract the Middle Eastern wave of investors

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(ISFIN is a worldwide platform for professional firms specialising in Islamic Finance)

Historically, Africa first captured the attention of European investors who benefited from their post-colonial relationships with the continent. Then came Asian investors, led by the Chinese and their interest in natural resources. Now, the Middle Eastern investment community has begun to take notice of Africa – especially the countries of the Gulf Cooperation Council (GCC).

Here, we examine why this interest in Africa has grown so quickly, and how we can become involved in the process.

Beyond secure investments in Europe and Africa

An economic alliance of six Middle Eastern countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates [UAE]), the GCC enjoys huge liquidity but is also subject to severe instability. The recent diplomatic ballet between some of its members, who have excluded Qatar from political and economic relationships with their market, is evidence of the turmoil among some of the wealthiest countries in the world.

The regional political context – including the presence of Daesh in the north, a war with Yemen in the south, and the rise of the Iranian regional power – impacts the investment community.

Traditionally, GCC investors have looked at relocating their assets into jurisdictions offering more political stability and legal security. This is why Europe and Northern America have been their preferred choice.

However, while these Western markets offer relative security for their investments, they do not provide high yields.

Africa: The discovered gem

As the GCC increases its trade and foreign direct investment (FDI) with Africa, several African multinationals have set up their headquarters in Dubai.

In parallel, between 2005 and 2014, Gulf firms injected at least US$9.3 billion FDI into sub-Saharan Africa, with a further $2.7 billion in the first half of 2015 alone. Nigeria, South Africa, Kenya and Uganda are the markets that attracted the largest number of Gulf investors. However, the same period saw almost tenfold investment from Gulf countries into North Africa, demonstrating closer links between the Arab regions.

East Africa first

For obvious geographical reasons, East Africa has been the 'most appealing region' for non-commodity investment from the Gulf. Of particular interest are Ethiopia's manufacturing industry, Kenya's and Mozambique's retail and tourism, Uganda's education sector, and the banking sectors of Sudan and South Africa.

West Africa and Maghreb

West Africa is not an immediate option because of the distance and language barrier (it is a predominantly French-speaking region). The Maghreb, however, is attracting a high level of interest because of cultural similarities with Arab countries and the diversity of the economy.

Appetite from Gulf banks

With the conventional banking sector being less developed and competitive than other regions in the world, there is potential for relatively high profit margins for Gulf banks, especially within trade and infrastructure project financing.

Both the Qatar National Bank (QNB; the GCC's largest bank) and the National Bank of Abu Dhabi are focusing on expanding to Africa, while others – such as the Union National Bank and the Abu Dhabi Islamic Bank – are currently only active in North Africa. QNB has acquired banks in Egypt, Libya and Tunisia, and set up branches in Mauritania, Sudan and South Sudan, as well as acquiring a 23% stake in Ecobank (a pan-African banking conglomerate, with banking operations in 36 African countries).

Islamic finance and investments

Some Islamic finance and investments coming from Muslim-based countries is known as sharia-compliant finance, because it is governed by the ethical rules of the Muslim faith. Not all investments emanating from the Muslim world must be sharia-compliant, as some investors from the Middle East or Asia use conventional law for their investments abroad. This is a crucial distinction. However, Islamic finance may be the Gulf's most prominent involvement in Africa.

Africa constitutes the world's largest untapped growth market for high-liquidity markets from the Middle East, the Gulf and Asia. Among these, 'Islamic' business, which includes Islamic finance (banking, insurance, bonds and capital markets) and halal (sharia-compliant goods and services), is growing.

By increasing awareness among policy and decision makers about sharia-compliant instruments, Islamic finance could act as the catalyst in mobilising funding into Africa, resulting in further economic growth and sustainable development.

In Africa's context, the use of Islamic finance could help the continent pay for multibillion dollars' worth of infrastructure projects a year and help fund countries' fiscal deficits. African nations are also looking to diversify their funding sources and gain access to a pool of wealthy investors from the Middle East and other regions where investors generally only invest in sharia-compliant products.

Sharia-compliant retail products, microfinance and funding of small and medium-sized enterprises (SMEs) – those are multiple offers that meet the existing African demand.

Private equity for Africa

To balance part of their low-yield investments in Europe and America, a growing number of Gulf investors and businesses, which are often family-owned, are looking at African markets. Many Gulf companies are also making direct investments into private African companies.

Another option for Gulf firms is to target companies already backed by private equity firms, with a number of these players approaching the end of their fund lives and looking for exits. Co-investment with private equity firms is also an attractive option for Gulf companies that have limited experience in Africa, but want to develop exposure alongside a more experienced player.

Financing African's infrastructure

Africa is in need of improved infrastructures – in particular electricity, water, roads and information communications technology (ICT). The African governments can use Islamic finance as a means to fund government spending plans. An excellent way to do so is through issuing a sovereign *sukuk* (a bond offering that complies with Islamic law), a choice that has already been made by several African countries (Côte d'Ivoire, Senegal, South Africa, Sudan and Togo); Egypt, Kenya, Niger, Nigeria, Tunisia and Uganda are following in their steps. Both corporate and public actors can benefit from this economic model to boost the economic and social development of the country.

Indeed, on the one hand, investing in tangible infrastructure and development projects and assets complies fully with the Islamic ethos; on the other hand, there is plenty of liquidity in the GCC region, which is looking for viable investments. Africa offers investors a broad range of choices, as the continent is tremendously diversified.

Moreover, the Islamic Development Bank (IDB) supports many infrastructure development projects in Africa as well as private sector expansion, in part by providing sharia-compliant funds and technical support through its private arm, the Islamic Corporation for the Development of the Private Sector (ICD). The IDB Islamic financing facility has been utilised by many African nations, including Burkina Faso, Côte d'Ivoire, Egypt, Gambia, Morocco, Mozambique, Niger, Senegal, Tunisia and Uganda.

The primary motivation for African countries to issue *sukuks* is to access the financing available from the Gulf's Islamic banks. These banks are also active in commercial deals, such as Ibdar Bank of Bahrain's sharia-compliant purchase and lease-backs of planes for Ethiopian Airlines and RwandAir.

With about 30% of the sub-Saharan African population being Muslim, there is a growing demand for retail Islamic banking. This is why Gulf banks are establishing branches or purchasing banks in Africa. As more countries roll out legislation to support Islamic banking, there will be further opportunities for entrants.

Real estate boom

Large African metropolitan areas continue to draw new inhabitants, including a growing African middle class eager to live in new housing schemes.

Several REITs (real estate investment trusts) based in the Gulf are now systematically looking at including African operations and investments – not only in private real estate, but also in the commercial segment.

Before 2014 there were roughly a dozen shopping centres north of South Africa that were larger than 20,000 m². Their combined retail area was smaller than Dubai Mall, the largest shopping mall in the UAE. However, between 2014 and 2015, another dozen opened, with similar growth expected in 2016–17.

Gulf-based companies have unique expertise and experience in developing such malls. They also have the financial power to cater for demand from a growing African middle class.

Travel and tourism

Both business and leisure travel is increasing as connectivity improves, with room for further growth.

The countries with the most developed tourism are Ghana, Kenya, Mauritius, Seychelles, South Africa and Tanzania, while the sector is emerging in others such as the Gambia, Morocco, Mozambique and Rwanda.

Gulf airlines are particularly active on the continent, and have also been directly involved with African carriers. Gulf hotel brands are also showing some activity on the continent.

East African countries are also attracting hospitality groups, with two of the Gulf's largest hotel chains making plans to enter the region.

Logistics prospects

Poor infrastructure has made transport and distribution in Africa a major challenge. However, some Gulf-based logistics companies are expanding their operations on the continent. For example, the UAE's shipping company, DP World, is now systematically challenging the French Bolloré Group to manage ports – a contest that they have already won in Algeria, Egypt, Mozambique and Senegal; while Kuwait's Agility is active in 11 African countries with plans to develop five warehouse distribution parks on the continent.

Diasporas

Unlike some of their counterparts in Europe and America, Muslim communities in Africa are usually wealthy and economically active. Indian, Pakistani and Lebanese families in Africa are usually Muslim and can mediate culturally sensitive business dialogue for Middle Eastern investors.

How to do business with the Middle East

Trusted advisors have a specific role to play in the Gulf–Africa connection. Unlike brokers, professionals such as accountants, auditors and lawyers offer a guarantee of security as they have professional indemnity insurance, are listed at a Bar or a Chamber, respect ethical rules and have an established professional profile. Security is paramount for these investors, who should be offered special care in such matters – such as a sound client engagement contract, ethical guarantees, extra-territorial legal dealings, arbitration opportunities and introductions to local co-investors.

Professionals also offer a wider range of competence than real estate brokers, with their more nuanced understanding of aspects such as labour law, pre-litigation and tax issues. Tax is often key in designing a viable yield for these investors, who may refrain from investing in Africa if the return on investments does not sufficiently compensate for anxieties about security.

Understanding the basics of Islamic finance and the cultural sensitivities of doing business with Muslim investors requires considerable experience. Being able to provide a specialist, a supplier or a partner able to help establish good relations and demonstrate credibility in meeting each party's needs and expectations is an invaluable asset.

Smart professionals will pay close attention to this new wave of investments coming from the Muslim world, as Europe and Asia are presently focused on their own issues. Although Gulf investors are just starting to include Africa in their radar, this is becoming more common. Accountants and auditors who can develop the skills and experience to work with these markets will have a unique advantage over the competition, who are still focused on more traditional investment and trade routes.

About the author

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Our on-the-ground presence, with offices in multiple African countries, demonstrates the strategic importance of Africa to global business. We continue to extend our reach through strategic alliances to cover the entire continent.

Our global presence enables us to manage transactions across the developing axes of growth between Africa, Gulf countries, Asia, Europe and Latin America. Africa's trade volumes with these and other emerging partners have doubled in value over the last decade, and inbound investment from transnational corporations continues to rise.

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Introduction of the Voluntary Asset and Income Declaration Scheme (VAIDS) in Nigeria

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Nigeria has finally joined the league of countries such as South Africa, India, Indonesia, Argentina and Turkey with the introduction of the Voluntary Asset and Income Declaration Scheme (VAIDS). VAIDS has been successfully used in these countries to encourage voluntary declaration of income and assets by previously recalcitrant taxpayers, with a bid to widen the countries' tax base, improve tax compliance, curb illicit cashflows out of the countries to tax havens and accelerate growth in internally generated revenue.

The decision to introduce the scheme in Nigeria was driven by the general view that Nigeria has not maximised its potential for generating tax revenue, as indicated by its low tax – GDP rate of 6%, compared with about 18% among its peers in Africa and other emerging markets. It is expected that residents and citizens will take advantage of the scheme to regularise their income and tax positions with the tax authorities ahead of the forthcoming tax information exchange programme among cooperating countries, which will help expose assets of high net-worth Nigerians and multinational companies hidden in foreign jurisdictions.

According to the Organisation for Economic Co-operation and Development's (OECD) Update on Voluntary Disclosure Programmes:

Voluntary disclosure programmes complement the rapid improvement in exchange of information and the ability of governments to detect offshore evasion. They are an integral part of a broader compliance strategy – and need to be considered as part of a variety of compliance actions that tax administrations and governments take to encourage all taxpayers to meet their obligations.

Although the Federal Executive Council (the highest ruling body) has approved its kick-off in principle, no details are yet available regarding VAIDS' modus operandi. Nonetheless, the Federal Government of Nigeria projects to generate about US$1 billion from the implementation of the scheme, which is expected to commence in May and run for up to 9 months. The government has also approved that tax liabilities assessed under the scheme are to be paid in multiple instalments over a 3-year period.

Brief history and basic operations of VAIDS

The OECD first published the guidance on voluntary disclosure programmes in 2010, a few months after G20 leaders called upon countries to implement the standard on exchange of information on request among countries. Considerable progress in the global fight against offshore evasion has been made by several countries over the years. More than 47 countries have since implemented the VAIDS, which led to the OECD updating its guidance on implementation.

Generally, voluntary disclosure programmes are opportunities presented by tax administrations to allow previously recalcitrant taxpayers to correct their tax affairs under certain terms. When implemented properly, voluntary disclosure programmes will benefit everyone involved – including taxpayers making the disclosure, and tax authorities.

As indicated earlier, VAIDS could be a general scheme enshrined in the law that provides a window for all individuals and entities to regularise their positions with the tax authorities within a given time (usually a few months), as stated in the respective laws. In some

> *"VAIDS usually contain some incentives to encourage recalcitrant taxpayers to voluntarily declare their income and assets. Such incentives could range from a simple waiver of penalties to amnesty/ immunity from criminal prosecution"*

jurisdictions, however, VAIDS has been introduced to specifically encourage the repatriation of assets previously held in foreign low tax jurisdictions back home to boost a country's economy. Some countries have also introduced VAIDS to encourage voluntary regularisation of errors in previous tax returns, where such errors have not been detected by the tax authorities or are yet to become the subject of a tax audit or investigation. VAIDS geared towards repatriation of foreign-held assets and correction of errors in previous tax returns are usually enacted as ongoing laws, while schemes that are geared to encourage voluntary disclosures are usually for a short and definite period.

VAIDS usually do not extend to the declaration of illegally acquired assets or incomes, where such acquisitions are ordinarily liable to criminal prosecution. Special provisions relating to the voluntary disclosure income – such as money under investigation, or a taxpayer under litigation for income tax fraud or alleged 'black' or 'corrupt money' – are usually exempted from such a declaration and given special treatment, depending on the provisions of the country.

VAIDS usually contain some incentives to encourage recalcitrant taxpayers to voluntarily declare their income and assets. Such incentives could range from a simple waiver of penalties (which could have been charged for default and late payment of tax due) to amnesty/immunity from criminal prosecution.

Several countries have embraced this scheme to help regularise variances between income and assets disclosed by taxpayers and the actual income and assets owned by them. These countries include Australia, Germany, India, Indonesia, South Africa and Turkey, among others.

Implications for Nigeria

As already mentioned, the Nigerian government is yet to roll out the coverage, procedures and guidelines for the execution of the VAIDS project, calling into question the likely success of the scheme, which is planned to commence in May 2017. One major challenge expected to be met by the scheme is the ability of the tax authorities to coordinate its implementation, given the fact that Nigeria operates a federation comprising 36 independent states and the federal government, with all the states maintaining a separate internal revenue agencies. Each state revenue agency is constitutionally empowered to collect income taxes from persons that are resident in their territories, while the federal government has responsibility to assess and collect tax from companies as well as people resident in the Federal Capital Territory.

Secondly, current estimates indicate that 50% of the expected funds to be generated from the scheme, which is mostly targeted at individuals, will belong to the states, which are the ultimate collectors of personal income tax. Interestingly, this will be a novel example of apparent cooperation between the federal and state governments in terms of revenue generation, which is interesting and if successful will be a sign of future potential.

A great number of high net-worth individuals have hitherto adopted offshore entities for holding and managing their assets over the years as a way to avoid tax payment. Many of these entities are registered in countries that are not likely to sign on to the OECD's automatic exchange of information policy and have no double tax avoidance treaties with Nigeria, so the impact of VAIDS may be minimal in this regard.

In recent years, the informal economy in Nigeria has been greatly reduced by the many reforms that have taken place in the banking sector, making it possible to track most financial transactions. In view of this, it is feared that many individuals may not bother to sign up to VAIDS – especially persons whose income and assets may have been acquired via questionable sources, unless immunity from prosecution is also extended to them.

Nigeria's inadequate manpower should also be taken into account: qualified and experienced resources available are currently under 7,000, which is the total staff capacity of the Federal Inland Revenue Service. This is a far cry from the South African Revenue Service's 15,000 employees.

However, there is no doubt that, if properly implemented, this scheme will help expand the tax base and bring a lot of high net-worth individuals and companies, who have hitherto escaped notice, into the tax net. The after-benefits of the scheme therefore naturally outweigh the immediate known challenges, as once signed into the scheme, a previously non-compliant taxpayer becomes known to the system and is subsequently encouraged to file annual tax returns as expected.

Conclusion

The successful introduction and practice of VAIDS in Nigeria, while primarily meeting its set objective of increased revenue for the states and country, will also provide immediate employment opportunities for willing individuals and professionals. As the scheme is likely to generate a flurry of activity in the economy, it will boost demand for the services of accounting and tax practitioners in Nigeria.

It is likely that we will see high net-worth individuals and companies requiring professionals to ab initio determine the likely costs and benefits of participating or not participating in VAIDS by compiling and bringing their books up to date, carrying out a pre-review and testing the tax computations of their disclosures. Professional advisers will also be required in advance to prepare for the potential contest of any excessive tax assessments issues that may arise as a result of voluntary disclosures.

It is worth noting, however, that until the full modalities and procedures for operating the scheme are released by the government, recalcitrant taxpayers may well continue to play the waiting game with the tax authorities.

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