



“FIRS POWER OF SUBSTITUTION: Critical Review and Matters Arising”

**A PRESENTATION
AT THE 49TH ICAN ANNUAL ACCOUNTANTS CONFERENCE WORKSHOP
INTERNATIONAL CONFERENCE CENTRE
ABUJA**

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September 11, 2019

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BACKGROUND

- The Federal Inland Revenue Service (FIRS) is the Federal Agency responsible for the administration of various tax laws in Nigeria.
- It is saddled with the powers to assess, collect and account for revenues accruing to the Government of the Federation (three tiers).

BACKGROUND

AMNESTY PROGRAM

- As part of efforts by the Service to promote voluntary compliance and shield taxpayers from the burden of carrying forward tax liabilities arising from penalty and interest, the Service granted a waiver of penalty and interest for three **years (2013-2015)**.
- All defaulting taxpayers were considered, provided that such taxpayers came forward to declare their indebtedness, pay at least 25% of the outstanding amount and present a payment plan on the outstanding tax liability that was acceptable to the Service.
- This window was opened from **5th October to 24th November, 2016**. A total of 2,400 companies took advantage of the window, from which FIRS realized about **₦98.8 billion**.

BACKGROUND

VOLUNTARY ASSETS AND INCOME DECLARATION SCHEME (VAIDS)

- The scheme which commenced on **1st July, 2017** to be run for a period of nine months was formally launched on the **29th of June, 2017** by the then Acting President, H.E. Yemi Osinbajo.
- VAIDS was an initiative designed to encourage voluntary disclosure of previously undisclosed assets and income for the purpose of payment of all outstanding tax liabilities.
- It was implemented by the Federal Inland Revenue Service in collaboration with the 36 States and FCT Internal Revenue Service.
- It offered a grace period from **July 1, 2017 to March 31, 2018**, for defaulting taxpayers to voluntarily declare their true tax status and pay to government what they owe over an agreed period of time.

BACKGROUND

VOLUNTARY ASSETS AND INCOME DECLARATION SCHEME (VAIDS)

The scheme was expected to help expand Nigeria's tax base and improve the low level of tax compliance. So far **₦77 billion out of ₦ 92.7 billion** has been collected from this initiative for federal taxes.

ESTABLISHMENT OF FIRS AND ITS OBJECTIVES

- The FIRS is set up by an Act of the National Assembly, The Federal Inland Revenue Service (Establishment) Act (FIRSEA), Cap F36 LFN 2004.
- The Act grants FIRS the power to administer all the laws listed in the 1st schedule to the Act.

POWERS OF THE SERVICE

Section 8 FIRSEA

Further to the obligations of the taxpayers, the FIRS has also been empowered to address instances where taxpayers fails to comply.

- Section 8 (1)(a) of the FIRSEA empowers the Service to assess persons chargeable with tax under the extant tax laws and enforce payment of taxes as may be due to Government.
- Section 8 (1)(c) of the FIRSEA empowers the Service to collect, recover and pay to the designated account any tax under any provisions of this Act.
- Section 8 (1)(g) of the FIRSEA empowers the Service to adopt measures, to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;
- The operating words in this provision, is the “power to adopt measures to address tax fraud and evasion.”

POWER TO SUBSTITUTE

S. 31 of the FIRS Establishment Act (FIRSEA) provides for the Power of Substitution which is one of the enforcement powers of the Service. Section 49 of Companies and Income Tax Act (CITA) also provides similar powers to the Service.

S 31 (1-4) of FIRSEA provides:

“(1) The Service may by notice in writing appoint any person to be the agent of a taxable person if the circumstances provide in sub-section (2) of this section makes it expedient to do so.

(2) The agent appointed under sub-section (1) of this section may be required to pay any tax payable by the taxable person from any money which may be held by the agent of the taxable person.

(3) Where the agent referred to in subsection (2) of this section defaults, the tax shall be recoverable from him.

(4) For the purposes of this section, the Service may require any person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to, any person”.

S 49 (2) (a – d) of FIRSEA provides:

“(2) Where an Offence under this Act is committed by a body corporate or firm or other association of individuals.

(a) every director, manager, secretary or other similar officer of the body corporate;

(b) every partner or officer of the firm;

(c) every person concerned in the management of the affairs of the association; or

(d) every person who was purporting to act in any capacity, commits an offence and shall be liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offense, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance”.

AT WHAT POINT DO YOU SUBSTITUTE?

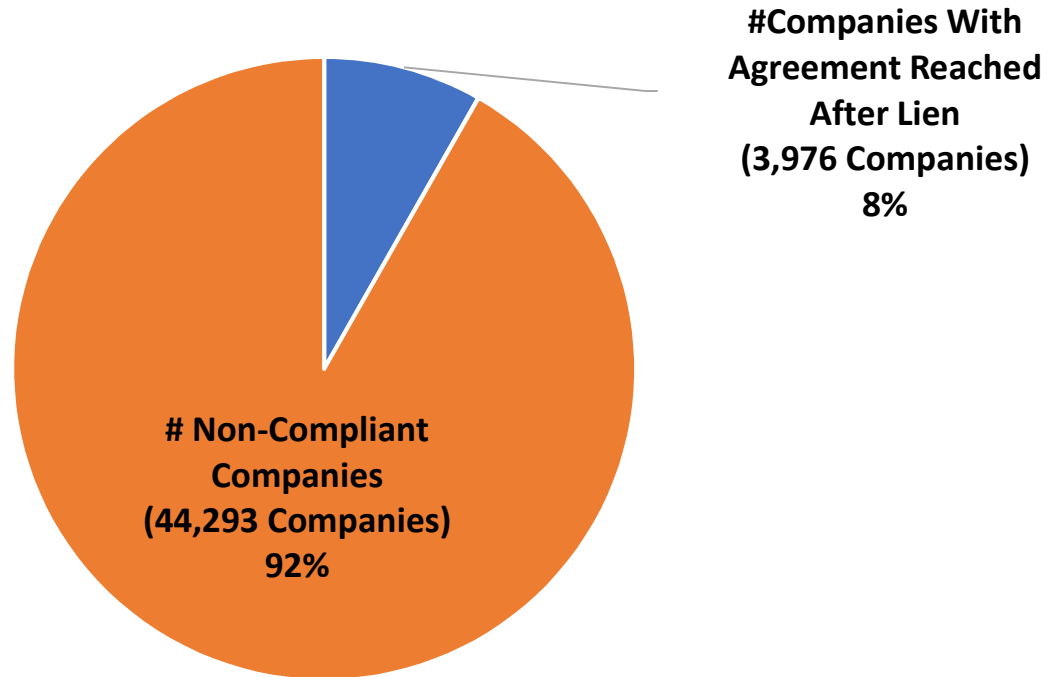
- The power of substitution can be invoked by virtue of S31 (2) of the FIRS Establishment Act (FIRSEA).
- The said power can be invoked when any tax has become payable. Tax is said to become payable when the liability has been established, the said taxpayer is in default of payment of taxes as when due and demand for the said liability has been made, and adequate opportunity to be heard has been afforded the taxpayer and the tax payer has refused to pay or has refused to object to the established tax liability .
- In such circumstance, the FIRS is at liberty to substitute by appointing an agent in place of the tax payer.

CAN THE FIRS SUBSTITUTE WITHOUT NOTICE TO THE TAXPAYER ?

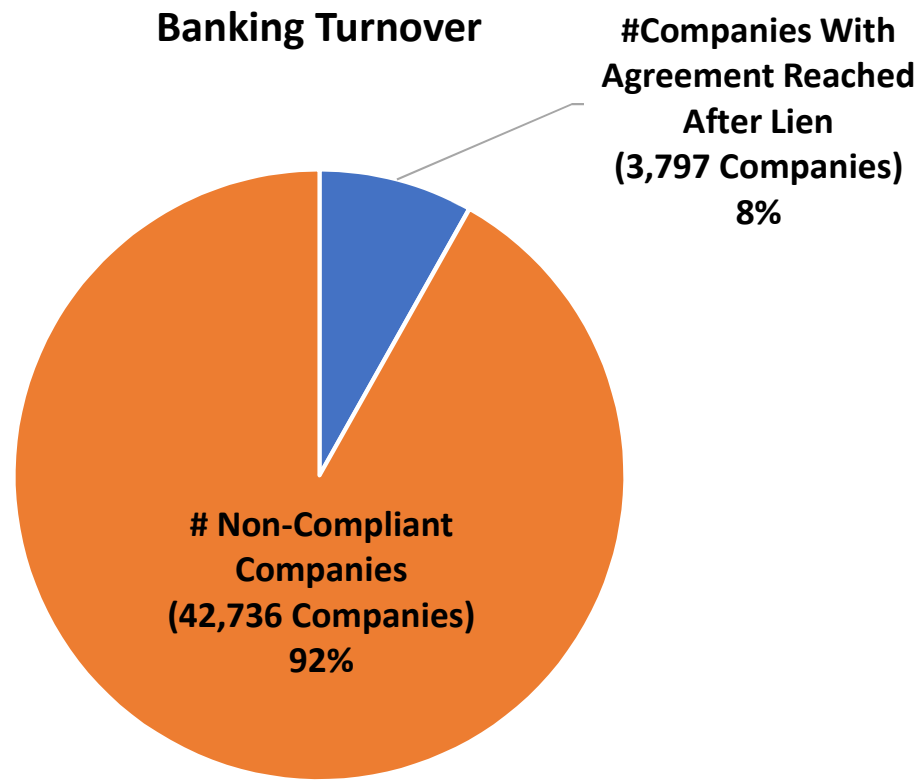
- By the combined reading of Section 8(1)(g), Section 31 of the FIRSEA and Section 55 Of CITA, the FIRS does not require additional notice to a taxpayer before exercising its power of substitution.
- This is because failure to file self-assessment under Section 55 Of CITA Or failure to deduct and remit under Section 40 of the FIRS Act, and other contraventions under the extant tax laws are classes of tax evasion which may trigger the exercise of the power of substitution.

POWER TO SUBSTITUTE: FIRS COMPLIANCE STRATEGIES

FIRS has taken bold steps aimed at cushioning the effect of sustained revenue challenges, broadening our tax base and increasing our tax collection. Through the Substitution exercises, FIRS increased tax revenue collection through *Special Tax Audit*, *VAIDs*, *Special Investigation* and the *Banking Turnover Initiatives*. So far, **3,976** out of **44,293** non-compliant companies have paid about **97.7billion**.



BANKING TURNOVER SUBSTITUTION EXERCISE

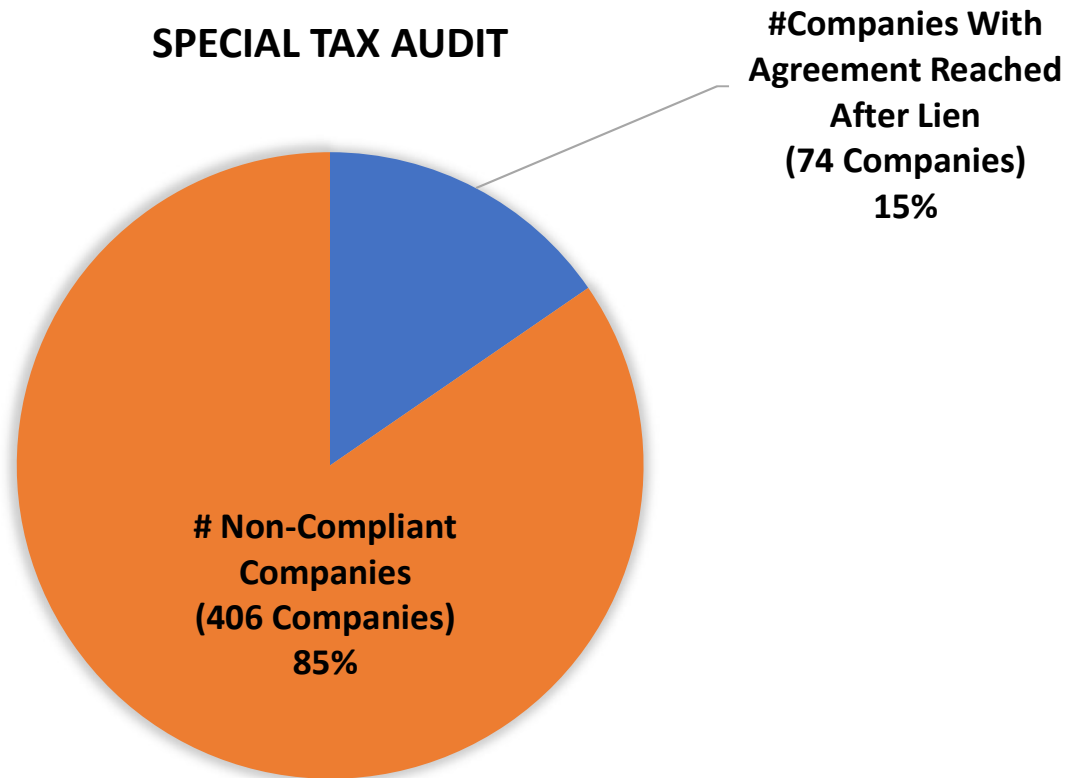


- 3,797 out of 42,736 companies have paid **88.59 Billion Naira**

BANKING TURNOVER EXERCISE

	100M-999M	1BN AND ABOVE
NON-COMPLIANT TAXPAYERS WITH LIENED ACCOUNTS	34,843 (Out of 45,283)	2980
NO OF COMPANIES WITH AGREEMENT REACHED	3203	594
AMOUNT PAID	N 47,465,084,646.32	41,127,620,568.84

SPECIAL TAX AUDIT SUBSTITUTION EXERCISE

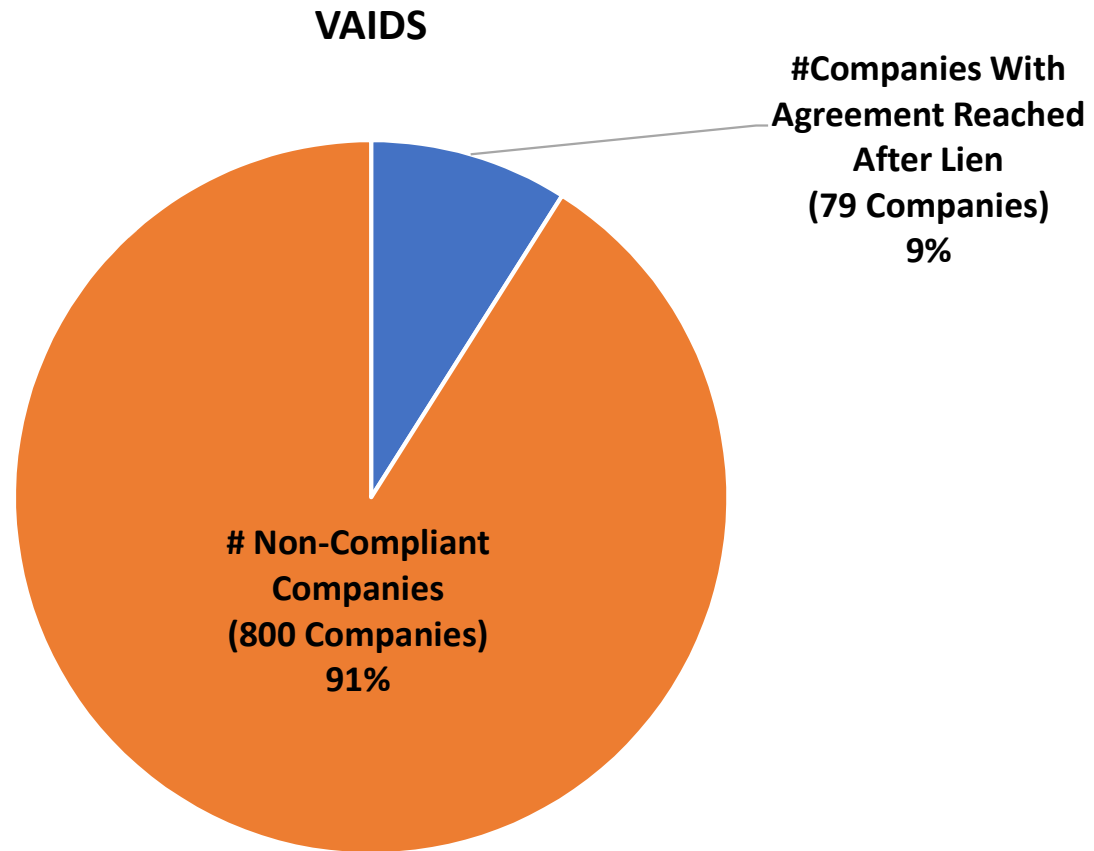


- 74 out of 406 companies have paid **4 Billion Naira**

SPECIAL TAX AUDIT SUBSTITUTION EXERCISE

SPECIAL TAX AUDIT SUBSTITUTION EXERCISE	
#NON-COMPLIANT TAXPAYERS WITH LIENED ACCOUNTS	406
NO OF COMPANIES WITH AGREEMENT REACHED	74
AMOUNT PAID	N 4,002,480,700.37

VAIDS SUBSTITUTION EXERCISE

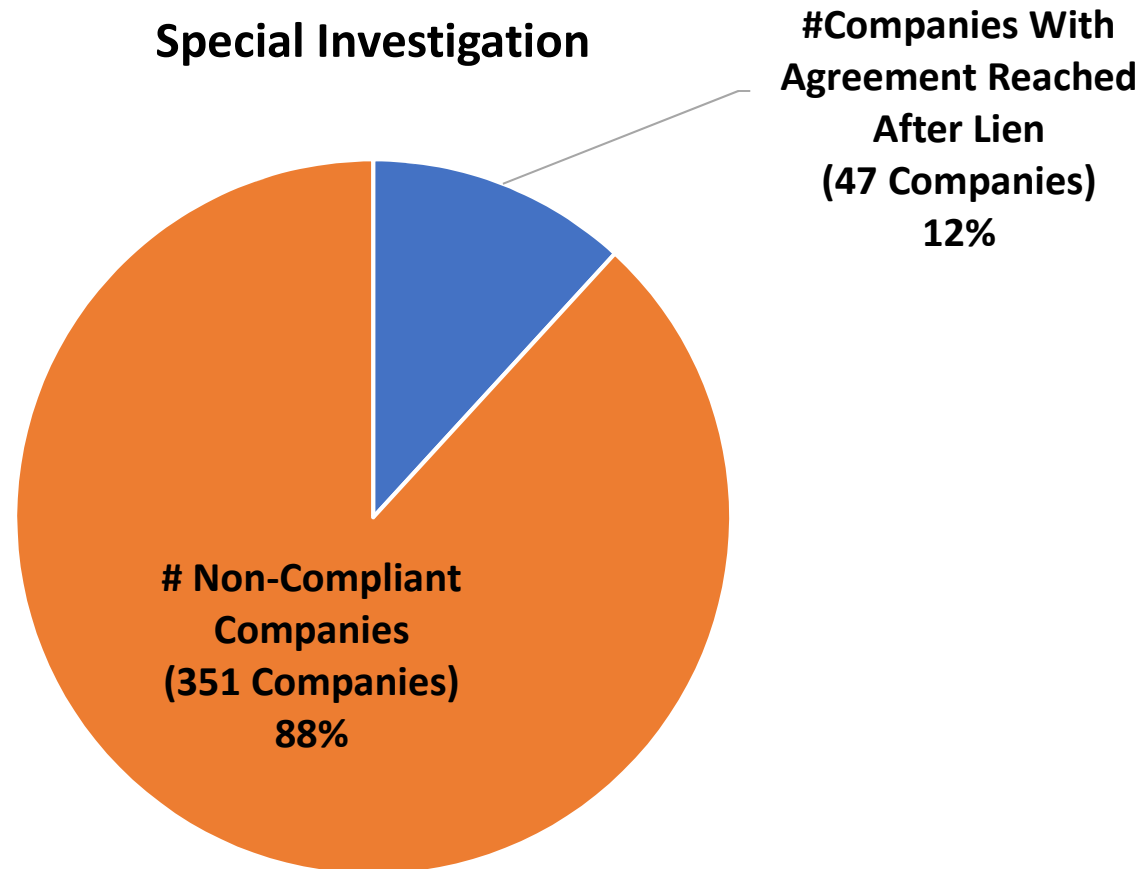


- 79 out of 800 companies have paid **3.84 Billion Naira**

VAIDS SUBSTITUTION EXERCISE

VAIDS SUBSTITUTION EXERCISE	
#NON-COMPLIANT TAXPAYERS WITH LIENED ACCOUNTS	800
NO OF COMPANIES WITH AGREEMENT REACHED	79
AMOUNT PAID	N 3,849,776.050.87

SPECIAL INVESTIGATION SUBSTITUTION EXERCISE



- 47 out of 351 companies have paid **2.06 Billion Naira**

SPECIAL INVESTIGATION SUBSTITUTION EXERCISE

SPECIAL INVESTIGATION SUBSTITUTION EXERCISE	
#NON-COMPLIANT TAXPAYERS WITH LIENED ACCOUNTS	351
NO OF COMPANIES WITH AGREEMENT REACHED	47
AMOUNT PAID	N 2,069,534,903.73

WAY FORWARD

- As at today there are a total of **23,141** tax defaulters who are yet to come forward to clear their outstanding liabilities of about **₦254 billion**.
- FIRS in collaboration with the banks have started engaging in compliance measures with regards to the tax defaulters and their accounts. Failure to carry this out this directive will result in the banks being sanctioned according to Section 31 subsection 1-3 & 32 respectively of FIRSEA 2007.
- Failure to comply is seen as an act of economic crime to the Nation and FIRS will be left with no option than to enforce its rights and apply appropriate sanctions starting with;
 - Delisting of the Bank(s) from FIRS collections.
 - Applying the provisions of the Act relating to the collection and recovery of the outstanding tax by debiting from the bank's account the sum of **₦254 billion**.
 - Deduction of an additional sum equal to 10 per cent of the amount of the tax payable (FIRS ACT Section 32).

CONCLUSION

- The FIRS has consistently implemented a robust engagement with the taxpayers in the discharge of its statutory functions.
- The power of substitution becomes expedient where taxpayers have become recalcitrant in fulfilling their obligations under the law.
- Finally, it has become clear that for government to meet with its responsibilities, everyone of us must take tax payment as a serious business of national importance and there is need for a conscious effort towards voluntary compliance which is the hallmark of an effective tax system.

Thank You