

# FIRS ISSUES INFORMATION CIRCULAR TO PROVIDE CLARIFICATION ON THE VALUE ADDED TAX PROVISIONS OF THE FINANCE ACT 2019



## Introduction

The Finance Act 2019 (the “Finance Act”) was passed into law on 13th January 2020 and came into effect on the same date. The Finance Act amended major tax laws including the Value Added Tax Act, 2004 (as amended) (the “VAT Act”) to enable the Federal Government of Nigeria (“FGN”) align its fiscal and monetary reform policies. Several new provisions included in the VAT Act however required clarification from the FGN.

To address the above, the Federal Inland Revenue Service (“FIRS”) recently issued an information circular No. 2020/02 titled “The Clarification on the Implementation of the Value Added Tax (VAT) Provisions in the Finance Act 2019” (the “Circular”). This was to provide guidance to all stakeholders on the appropriate implementation of some provisions of the VAT Act as amended by the Finance Act.

We had discussed the changes introduced to the Nigerian Value Added Tax (“VAT”) system by the Finance Act in our earlier update titled “The New Face of VAT in Nigeria: What Nigerian Businesses and Consumers Should Know at <https://www.uubo.org/media/1823/uubo-tax-update-the-new-face-of-vat-in-nigeria.pdf>. We have highlighted in this update some of the clarifications contained in the Circular.

## Definition of Goods and Services

The Finance Act provides that goods are deemed to be supplied in Nigeria, and therefore chargeable to VAT if such goods are (i) physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in Nigeria, or installed in Nigeria; or (ii) the beneficial owner of the rights in or over the goods is a taxable person and the goods or rights are situated, registered or exercisable in Nigeria.

To clarify this, the Circular states that VAT is chargeable on the supply of goods which include:

- (a) tangibles such as assets, motor vehicles, oil wells, rigs, aircraft, ships, buildings, roads, jetties or any other type of property; and
- (b) intangibles such as articles of trade, rights in goods or property (e.g. rights in mineral resources, copyrights, trademarks).

To provide clarity on services liable to VAT, the Circular provides that the supply of the following services is subject to VAT in Nigeria:

- (a) services performed in Nigeria to persons in Nigeria irrespective of the residence of the status of the service provider;
- (b) services provided to persons while in Nigeria, regardless of the medium of delivery of the

service; and

- (c) services rendered remotely, online or by other virtual means to Nigerian residents or persons in Nigeria.

Services rendered to and consumed by a Nigerian resident while the person is physically outside Nigeria will not be liable to VAT in Nigeria.

## Taxable supplies

The Finance Act defines taxable supplies as any transaction for the sale of goods or the performance of a service, for a consideration in money or money’s worth. The FIRS has stated in its Circular that the value of taxable supplies is the gross inflow of economic benefits (such as cash, revenues, receivables, other assets etc.) arising from economic activities including sale of goods, supply of services, rents, royalties, fees, rights, etc. This does not, however, include a taxable supply of capital asset and a sale of the whole or part of a business.

## Rate of Tax and Transitional issues

There was some debate on whether the increase in the rate of VAT from 5% to 7.5% would be effective from the commencement date of the Act. The Circular has now confirmed the Minister of Finance, Budget and National Planning’s earlier announcement that the effective date for the implementation of the new VAT rate of 7.5% was 1st February, 2020 (“Effective Date”). By this, all invoices issued for the ‘supply’ of VATable goods and services from that date must include the new VAT rate of 7.5%.

On when goods and services are supplied, the Circular provides that goods and services are supplied

- (i) where the service is performed or agreed milestone is reached; and
- (ii) when goods are delivered or risk is transferred (whichever occurs first). Where it is impracticable to determine the time of supply, the FIRS will rely on the invoices or related documents.

In relation to goods or services supplied before the Effective Date, the Circular states that the following transitional arrangements shall apply:

- (i) the VAT rate for taxable supplies made prior to the Effective Date is 5%;
- (ii) the VAT rate for taxable supplies made after the Effective Date is 7.5%;
- (iii) where a contract for taxable supplies was signed prior to the Effective Date but performed on or after that date, the applicable VAT rate is 7.5%; and
- (iv) in the case of continuing contracts where performance is measured by milestones, the VAT rate of 7.5% shall apply to invoices issued for milestones achieved after the Effective Date.

### Registration and Deregistration

The Finance Act requires taxable persons to immediately register for tax upon the commencement of business. Where a taxable person permanently ceases to trade or carry out business in Nigeria, such a person is required to notify the FIRS of this fact within 90 days of such cessation for deregistration purposes. The Circular provides that the penalties for failure to file VAT returns will apply where the FIRS is not duly notified of this fact. In addition, the Circular requires that taxable supplies made after cessation of business will be deemed to have been made on the day immediately preceding the date of cessation of business.

### Registration of Non-Residents

The VAT Act requires a non-resident person who makes taxable supplies to a person in Nigeria to register for tax with the FIRS using the address of the recipient of the supply and to include the applicable VAT. The recipient of the supply in Nigeria is required to withhold and remit the VAT to the FIRS in the currency of the transaction.

The Circular requires that where a non-resident company has a fixed base/ permanent establishment in Nigeria, such company must comply with the registration, charging, filing, payment and other VAT obligations applicable to a Nigerian



company. What this means is that such a non-resident company must register with the FIRS using the address of its fixed base/permanent establishment in Nigeria and comply with the requirements in respect of VAT under the VAT Act.

### Business Sold or Transferred

The sale or transfer of any asset employed in trade or business, where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria, is exempt from VAT. The Circular states that the entities will qualify for this concession if

- (a) one company has control over the other or the companies are controlled by some other person or are members of a recognised group of companies; and
- (b) the entities involved must have been related for not less than a consecutive period of 365 days before the reorganisation.

Where the same assets are further disposed within 365 days after the reorganisation, the VAT exemption granted shall be withdrawn and the applicable VAT that is chargeable shall be treated as due but unpaid from the date it ought to have been paid if there was no concession. The VAT shall be recovered and the applicable penalty and interest shall be charged accordingly.

### Self-Accounting Provision

The Finance Act introduced the reverse-charge mechanism into the Nigerian VAT system. This mechanism requires a recipient of taxable goods or services in Nigeria to self-account for the tax and remit same (in the currency of the

transaction) to the FIRS within the prescribed period for remittance where:

- (a) the supplier is a person exempt from charging VAT under the VAT Act (such as a person that falls below the VAT threshold) or otherwise failed to charge VAT; or
- (b) the supplier is a foreign company without a fixed base or permanent establishment in Nigeria, whether or not VAT is included in the invoice.

The Circular provides that a taxable person shall make the VAT return for self-account in the form prescribed by the FIRS including a schedule of all taxable transactions and indicating the tax identification numbers of the suppliers. As at the date of this publication, the FIRS is yet to issue a prescribed form.

### VAT Threshold

The Finance Act provides that only taxable persons with taxable supplies of =N= 25 million or more ("VAT threshold") are required to charge, collect, remit VAT and file monthly returns to the FIRS.

In determining the VAT threshold, the Circular provides that the following rules will apply:

- (a) a taxable person who has made taxable supplies above =N= 25 million prior to the introduction of the VAT threshold shall continue to charge, collect, remit VAT and file monthly returns even if it has not met the VAT threshold in the current year;
- (b) a taxable person who as at the Effective Date did not meet the VAT threshold must immediately commence to





charge, collect, remit VAT and file monthly returns upon attaining the VAT threshold at any time within the year;

- c) a taxable person may voluntarily register, charge, collect, remit VAT and file monthly returns to the FIRS at any time even without attaining the VAT threshold. Such person must, however, notify the FIRS prior to doing so and will be subject to all the provisions of the VAT Act applicable to persons whose supplies are above the VAT threshold;
- d) a taxable person who has not attained the VAT threshold but expects to do so at a future date within the calendar year (i.e., 12 months) shall immediately commence to charge, collect, remit VAT and file monthly returns to the FIRS; and
- d) a taxable person who meets the VAT threshold within a calendar year is required to file monthly VAT returns to the FIRS, even if part or the whole of such supplies are exempt from VAT under the VAT Act.

Furthermore, the Circular requires that where, based on a supply agreement, it is clear that the taxable supplies are about to surpass the VAT threshold, the taxable person must issue tax invoices on the sum (being the sum that brings it over the threshold), collect the VAT, remit same and file returns from the 21st of the following month.

### Exported Services

Exported services are exempt from VAT under the VAT Act. The Finance Act defines exported service as a service rendered within or outside Nigeria by a person

resident in Nigeria, to a non-resident outside Nigeria, excluding services provided to a permanent establishment or a fixed base of a non-resident person in Nigeria.

To provide clarity on how the FIRS will apply the provision, the Circular states that the following services will not be treated as an exported service:

- a) where a non-resident recipient is in Nigeria or consumes the service in Nigeria;
- b) where a non-resident contracts a third party to provide a service to its permanent establishment or fixed base (branch or any other physical presence) within Nigeria;
- c) where a non-resident company provides a service through its fixed base in Nigeria; and
- d) where a non-resident company provides a service to a person in Nigeria.

Any of the above services will be liable to VAT in Nigeria. The Circular explains that a person is deemed to have consumed a service, where the service is “provided to” such person who is the actual consumer of the service in Nigeria. Consequently, where a service is provided to a consumer in Nigeria “for” or on behalf of a non-resident, such service will not qualify as an exported service and will be liable to VAT.

### Conclusion

The FIRS has provided these clarifications in order to resolve any ambiguities that may have arisen from the amendments to the VAT Act by the Finance Act. Taxpayers are advised to consult their tax advisers to ensure optimum tax compliance with the provisions of

the VAT Act in order to avoid penalties that may arise for non-compliance.

*This update is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how the Circular would apply to you or your business or require tax advice on any aspect of the Nigerian tax laws, please contact: [taxteam@uubo.org](mailto:taxteam@uubo.org).*



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