

THE FIRS HAS PROVIDED CLARIFICATIONS ON THE STAMPING OF ELECTRONIC DOCUMENTS AND RELATED MATTERS

Introduction

The Federal Inland Revenue Service (“FIRS”) recently published a circular titled “Clarification on the Provisions of the Stamp Duties Act” (the “Circular”) to provide implementation guidance and clarify the effect of recent amendments to the Stamp Duties Act 2004 (as amended) (“SDA”) by the Finance Act 2019 (the “Finance Act”). The Finance Act amended section 2 of the SDA to expand the scope of dutiable instruments to include electronic documents, and provide for electronic stamping and denoting of stamp on documents. We have set out below the highlights of the Circular.

Documents liable to stamp duties

The FIRS has now expanded the scope of the documents liable to stamp duty. The Circular provides that the categories of instruments and receipts liable to stamp duty include

- a) written or printed dutiable instruments or receipts, all electronic dutiable instruments or receipts (such as electronic media content, electronic documents or files, e-mails, short message service, instant messages, any internet-based messaging service, website or cloud-based platform etc.),
- b) all printed receipts (including POS receipts, fiscalised device receipts, Automated Teller Machine print-outs and other forms of written or printed acknowledgment), and
- c) all electronically generated receipts and any form of electronic acknowledgment of money for dutiable transactions. Transaction documents accepted or executed on a website or cloud-based platform (particularly by Fintech companies) will now trigger stamp duty.

Methods of stamping an instrument

The Circular provides that stamp duty may be denoted by electronic tagging, direct electronic printing or impression on the instrument, issuance of a stamp duty certificate, employing a die impressed on an instrument as an adhesive stamp, affixing printed FIRS adhesive stamps on instruments or any other form of acknowledgement of payment for stamp duty adopted by the FIRS.



For instance, a person who has completed a dutiable transaction could use the FIRS e-stamp duty platform to pay the applicable duty or report to the relevant Stamp Duties Commissioner. This will lead to assessment and payment of appropriate stamp duty and a consequential issuance of a stamp duty certificate or an acknowledgement. Such certificate or acknowledgement will suffice as evidence that stamp duty has been paid and that the electronic receipt has been stamped appropriately.

Documents executed outside Nigeria

In relation to documents, receipts or instruments executed outside Nigeria but received in Nigeria, the Circular clarifies that such documents are liable to payment of stamp duty and must be presented for stamping within the time provided in the SDA. In ascertaining when an electronic document is received in Nigeria, the Circular provides that an electronic document, receipt or instrument executed outside Nigeria is received in Nigeria if:

- a) it is retrieved or accessed in or from Nigeria;
- b) it (or an electronic copy of it) is stored on a device (including a computer, magnetic storage, etc.) and brought into Nigeria; or
- c) it (or an electronic copy of it) is stored on a device or computer in Nigeria. The FIRS has clarified that the download of a copy of the electronic records in Nigeria, or accessing an electronic record from Nigeria will be construed as receiving such documents in Nigeria.

The effect of the above is that the practice of executing documents and keeping them offshore (such as in lending transactions) while electronic versions are sent to counterparties in Nigeria will no longer be feasible. The receipt of electronic



copies of such documents in Nigeria will now trigger the obligation to stamp such documents.

Banking transactions liable to stamp duties

All banks and other financial institutions are required to charge appropriate stamp duties on qualifying transactions and remit same to the FIRS. The Circular also provides clarity on transactions that are liable to stamp duty charges by banks and other financial institutions. NGN50 stamp duty shall be charged on inter-bank and intra-bank deposits and transfers of NGN10,000 and above among customers. This charge will however, not apply to deposits or transfers between accounts maintained by the same person in the same bank. Furthermore, all banks are to pay stamp duty on particular dutiable transactions, including bonds (mortgage), loan agreements and other dutiable transactions.

The Circular lists certain eligible transactions that are liable to stamp duty and the applicable rate of duty. These transactions include guarantor's form, loan agreement, legal mortgage, bonds, tenancy or lease, bank cheque per leaflet and other dutiable transactions listed on the stamp duty portal and now also covers the concept of upstamping and the applicable rate.

Stamping of contract notes

With respect to the payment of stamp duty on contract notes, the Circular reiterates that any person carrying out any sale or purchase of stock or marketable security should make and execute a contract note which should state the amount of stamp duties in the charge for brokerage or agency. Any broker or agent that fails to charge the appropriate stamp duty may not be entitled to claim any charge for brokerage, commission or agency.

Stamping of contracts generally

The Circular states that corporate entities, ministries, departments and agencies have an obligation to charge and remit stamp duty on all contracts issued to third party vendors at the rate of 1% of the contract value excluding Value Added Tax. This imposes a 1% flat duty on the sum

specified under such contracts without reference to the rates prescribed in the SDA.

Compliance Procedure

The Circular directs that all payments for stamp duty should be made using the FIRS' automated stamp duty collection portal - www.stampduty.gov.ng and provides that failure to comply with the provisions of the SDA may result in prosecution for offences, payment of penalties or other judicial or quasi-judicial proceedings and enforcement actions against the defaulting party.

It is unclear how the FIRS intends to implement and monitor compliance with the Circular, given that it has expanded the scope of dutiable instrument to include e-mails, short message service, instant messages, any internet-based messaging service, website or cloud-based platform, POS receipts etc. We are not of the view that the FIRS' intention is to impose stamp duty on these various means of communication unless such communication creates a commercial transaction which is liable to stamp duty. Further clarification on the intended scope, which should conform with best practices, is still required from the FIRS.

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 these measures could apply to you or your business or require tax advice on any aspect of the Nigerian tax laws, please contact taxteam@uubo.org



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