FIRS PROVIDES CLARIFICATION ON THE ADMINISTRATION OF STAMP DUTIES

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Introduction


Set out below are the key highlights of the Press Release.

General Clarification

The Press Release provides that stamp duty is payable on dutiable instruments (physical and electronic) at the specific rates set out in the schedule to the SDA (the “Schedule”). The rate of stamp duty payable on a document could be either ad valorem (i.e. based on a percentage of the consideration payable under an instrument) or flat (i.e. a fixed sum irrespective of the consideration payable under an instrument).

The relevant authority to impose, charge and collect stamp duties on instruments executed between an individual and a company is the FIRS, by virtue of section 4(1) of the SDA. Where the instruments are executed between individuals, the relevant tax authority of a state is empowered to collect the stamp duties in respect of such instruments.

The Press Release contains a table which sets out the stamp duty rates for specific instruments (the “Table of Rates”). In the case of stamp duty imposed at ad valorem rates, the stamp duty is to be remitted to the stamp duties account of either the Federal or State Government. The Press Release does not, however, provide for how stamp duty imposed at a flat rate will be remitted. We are of the opinion that the same remittance process which applies to ad valorem rates will apply in this instance.
Discrepancies in the Press Release

The following are the discrepancies noted in the Table of Rates provided in the Press Release, vis-à-vis the Schedule:

✓ **Tenancy/Lease Agreements:** One of the major issues raised by the Press Release was the rate of stamp duty payable in respect of tenancy/lease agreements set out in the Table of Rates. The Table of Rates set out the applicable stamp duty on tenancy or lease agreements at an ad valorem rate of 6%. What the FIRS purported to do, via the Press Release, was to set the stamp duty on such agreements at a uniform rate of 6% irrespective of the term of the relevant agreement, which is contrary to the SDA. The Schedule imposes stamp duty at varying rates on lease agreements depending on the term of the lease as follows:

<table>
<thead>
<tr>
<th>Term</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7 years</td>
<td>0.78%</td>
</tr>
<tr>
<td>7-21 years</td>
<td>3%</td>
</tr>
<tr>
<td>Above 21 years</td>
<td>6%</td>
</tr>
</tbody>
</table>

Following public outcry and opinion surrounding the purported increase in the stamp duty rate payable on lease and tenancy agreements, the FIRS has clarified that stamp duty payable on a lease agreement is on a graduated scale, depending on the term of the lease agreement as set out in the Schedule.

✓ **Legal Mortgages:** The Table of Rates provides that the applicable stamp duty rate for legal mortgages is 0.375%. This is inconsistent with the rates prescribed in the Schedule, which provides different rates (depending on the nature of the legal mortgage) as follows - (i) 0.375% for legal mortgages being the only or principal or primary security for the payment or repayment of money; and (ii) 0.075% for legal mortgages being a collateral or auxiliary or additional or substituted security, or by way of further assurance where the principal or primary security is duly stamped.

✓ **Expansion of the scope of dutiable instruments:** The basis for the inclusion of certain items or instruments not contained in the Schedule is unclear. Such instruments include certificate of occupancy, vending agreements etc. The inclusion of items such as Notaries Act in the Table of Rates is confusing, as it is unclear whether the flat rate applicable here is in respect of instruments executed further to the Notaries Act. In addition, given that stamp duty is a documentary tax, it is also not clear why the Table of Rates contains a flat rate for Oath and other affiliate bodies relating to the Notaries Act.

1 https://thenationonlineng.net/tenants-to-pay-0-78-percent-stamp-duty-firs-clarifies/
Furthermore, the basis for the imposition of stamp duty on instruments relating to share increase (pre-incorporation), share reduction (pre-incorporation) and share transfer (pre-incorporation) is, in our opinion, unfounded. This is because share transfers, share reduction and share increase are acts that can only be carried out after a company has been incorporated at the Corporate Affairs Commission. In other words, these are acts that occur post-incorporation and not pre-incorporation.

Other matters

Validity and Enforceability

By virtue of section 116 of the SDA, the power to increase, diminish or repeal the duty chargeable on instruments is vested solely in the National Assembly or the House of Assembly of a State, as the case may be. Any rate that is inconsistent with the rates prescribed in the SDA may therefore give rise to issues as to validity and enforceability. Consequently, in the event of any inconsistency between the provisions of the SDA and a circular/press release published by the FIRS, the former will prevail.

Electronic Money Transfers

With the recent amendment to the SDA by the Finance Act, customers of money deposit banks (“MDBs”) are required to pay a one-off stamp duty charge of NGN50 for electronic money transfers above NGN10,000. The Press Release provides that MDBs are required to deduct the relevant stamp duty and remit same to the FIRS Stamp Duties Account with the Central Bank of Nigeria.

Party Responsible for Stamp Duty Payment

The Press Release provides that the party responsible for paying stamp duty is the beneficiary of the contract, e.g. tenants, contractors or bank customers. Furthermore, it is the responsibility of the banks, landlords, companies, executors etc. to ensure that the stamp duties are paid and remitted as and when due. For example, in relation to a lease agreement, the stamp duty will be paid by the lessee, on the total amount of the rent payable – this is also provided in Section 23(3)(c) of the SDA. We should mention, however, that it is not in all cases that the beneficiary of the contract will be responsible for the stamp duty payment. For instance, in respect of conveyances or transfers operating as voluntary dispositions inter vivos, the SDA provides that it is the grantor or transferor that is responsible for the payment of stamp duty.
Agents of Collection
MDBs, landlords and other executors of chargeable transactions are identified as agents of collection to ensure that the stamp duty due on each transaction is remitted to the Federal or State Government Stamp Duties Account. The basis for appointing MDBs, landlords etc. as collection agents is, however, not provided in either the FIRS (Establishment) Act 2007 or the SDA. Consequently, there is no legal basis for which MDBs, landlords etc. are to act as agents of collection for the FIRS. The FIRS cannot therefore compel such persons to act in such capacity.

Use of postage stamps versus FIRS adhesive stamps
The Press Release also clarified the issue regarding the use of postage stamps issued by the Nigerian Postal Service (“NIPOST”) as a substitute for the FIRS adhesive stamp. The FIRS stated that the postage stamp administered by the NIPOST is for the delivery of goods and instruments and does not denote stamp duty. The NIPOST postage stamp, therefore, cannot be used as a substitute for the FIRS adhesive stamp.

According to the Press Release, the FIRS adhesive stamp, at the fixed rate of NGN50, is applicable to all receipts. This is however contrary to the provisions of the Schedule which exempts certain receipts from stamp duty.

Penalty and Interest
According to the Press Release, failure to deduct or remit stamp duty into the Federal or State Government Stamp Duties Account attracts penalty and interest as stipulated in the SDA. The SDA does not however contain any penalty and/or interest for failure to deduct and/or remit stamp duty; rather, the SDA in Section 23 (3) (b) provides for penalty in respect of failure to pay stamp duty on an instrument. There is, therefore, no basis in the SDA on which the FIRS can impose penalty and/or interest on MDBs, for instance, for failure to deduct and remit the applicable stamp duty to the relevant account.

Conclusion
The FIRS needs to take steps to reconcile the discrepancies between the Press Release and the provisions of the SDA in order to avoid potential conflicts. Furthermore, the powers of the FIRS to impose, charge and collect stamp duty should not be misconstrued to mean the power to alter the stamp duty rates in the SDA, as this is the exclusive power of the legislature. Taxpayers should ensure strict compliance with the provisions of the SDA in order to avoid incurring penalty 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 this update could apply to you or your business, or require tax advice on any aspect of the Nigerian tax laws, please contact taxteam@uubo.org.