



FG waives VAT and Customs Duties on gas and gas equipment

Background

In December 2023, the Ministry of Finance (MoF) released a Circular on fiscal incentives for the gas sector. This Circular is in line with the Presidential Gas for Growth Initiative which aims to improve the investment climate in Nigeria and to increase the utilisation and supply of gas in the domestic market. The Circular contains incentives and directives to the Nigerian Customs Service (NCS) and the Federal Inland Revenue Service (FIRS).

Circular Highlights

Eligible LPG and CNG equipment for import duty exemption

The Circular reiterates Section 5 of the Customs, Excise Tariff etc (Consolidation) Act (CETA) which exempts machinery, equipment or spare parts imported into Nigeria for the exploration, processing or power generation through the utilisation of Nigerian gas, from Customs Duties. Further to this, the Circular lists 41 equipment categories which qualify for this import duty waiver, including CNG and LPG conversion kits, cascades, dispensers; gas washing machines, gas leak detectors, regulators, storage tanks of all sizes, dedicated LPG vehicles and dedicated CNG vehicles.

Exemption from VAT

The Circular also directs the FIRS and the NCS to apply a zero percent VAT rate on the following items:

- Feed Gas for all processed gas
- Compressed Natural Gas (CNG)
- Imported Liquefied petroleum gas (LPG)
- LPG and CNG equipment components, conversion and installation services
- All equipment relating to the expansion of CNG, LPG and the Presidential CNG initiative, including conversion kits

Letter of Support

Applications for import and custom duty exemption for Compressed Natural Gas equipment are to be followed with a letter of support from the office of the Special Adviser to the President on Energy.

Withdrawal of pending assessments of Import duty

The Circular reiterates that the importation of propane, butanes and other LPG (not including natural gas, ethylene, propylene, butylene and butadiene) are exempted from import duty and VAT.

The Circular further directs the Nigeria Custom Service to withdraw all debit notes for VAT and import duty issued to petroleum marketers who have imported LPG utilising HS Codes 2711.12.00.00 (propane) and 2711.13.00.00 (butanes) from August 2019 till date.

Insights

What is new?

At first glance, the Circular seems like a reiteration of the existing provisions of the law on the exemption of gas equipment. However, some new exemptions were introduced such as the exemption of imported LPG from VAT, compared to the VAT Modification Order (VMO) 2021 which only exempted locally produced LPG.

Also, the circular exempts “feed gas for all processed gas”. This should mean that natural gas is now exempt from VAT. This is also a movement away from VMO 2021 which did not exempt natural gas from VAT, except for gas supplied to Gencos. In addition, the VAT exemption in the Circular is expected to apply to the supply of gas at different levels of the supply value chain, unlike VMO 2021 which limited the VAT exemption to gas supplied by gas producing companies to Electricity Generating Companies only.

There are some questions around the legal basis of the Circular, considering that it appears to have been issued based on Section 38 of the VAT Act, which empowers the Minister of Finance to vary the VAT rate and amend the list of VAT exempt items. However, this section mandates such changes to be done through an Order published in the gazette. The document issued by the MoF is not a Ministerial Order, but a circular issued to a number of government agencies. It has also not been published in the gazette.

In addition, there have been historical concerns around the legal basis of Orders and other similar pronouncements by the Executive which amend tax laws. In *Hotel Owners and Managers Association of Lagos (HOMAL) vs Attorney General of the Federation (AGF) & The Minister of Finance*, the Federal High Court ruled that the amendment of laws is the constitutional duty of the legislature and therefore the Minister can not issue pronouncements that effectively amend laws, but can only issue administrative guidelines.

In any event, there is unlikely to be any legal challenges to the Order and we expect that it would have practical effect because it grants incentives rather than impose new obligations.



Takeaway

The Circular is in line with the “Decade of Gas” policy launched by the previous administration, and the government’s overall focus on developing the gas sector. Taxpayers and the general public will be pleased with the Circular, and the changes are expected to lead to a reduction in the retail prices of cooking gas.

However, we hope that the legal basis of the incentives will be regularised, by publishing them in a gazetted order. The government may also consider amending Section 38 of the VAT Act to restrict the powers granted to the Minister, in a way that addresses the case law challenging the powers of the Minister to make changes to the law.

In the Circular, the NCS was directed to withdraw debit notes in respect of Customs Duties and VAT on imported LPG, issued from 26 August 2019 till date. Whilst this is a welcome development, the Circular does not clarify whether this directive also translates to a refund of duties paid by importers during the period, or the process for obtaining any such refunds. We expect that the government also subsequently issues clarity in this regard.



Contact details

Kenneth Erikume
Partner
kenneth.y.erikume@pwc.com

Emeka Chime
Associate Director
chukwuemeka.x.chime@pwc.com

Ayo Akinduyite
Associate Director
ayo.akinduyite@pwc.com

Patrick Nwakosi
Senior Associate
patrick.nwakosi@pwc.com