



# FIRS issues simplified VAT regime for non-resident suppliers

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## Background

The 2020 Finance Act introduced some amendments to the Value Added Tax (VAT) Act. In line with the new requirements, non-residents that make taxable supplies of goods and services to Nigerian customers are now required to register for VAT, include VAT on their invoices and file returns.

This amendment created Nigerian VAT obligations for all non-residents, as long as they have a Nigerian customer, even if they do not have any fixed connection with Nigeria. In response to these challenges, the FIRS has issued a circular to simplify the VAT regime for Non Resident Suppliers (NRSs) in order to ease the adoption of the new VAT requirements for non-residents. The circular would be effective from January 2022 for the supply of services and intangibles by NRSs to Nigerian customers, and from January 2024 for the supply of goods. This Tax Alert highlights the key matters in the circular.

## Highlights

### Appointment of Non-residents as VAT collectors

NRSs are now required to collect and remit VAT on all supplies that are made or facilitated electronically or digitally to Nigerian customers.

Owners of intermediary platforms are required to fulfil VAT registration, invoicing and filing requirements in respect of sales completed through their platforms, as if they were the actual suppliers. Such platform owners are also required to maintain relevant records of transactions with Nigerian customers completed through their platforms.

The FIRS recognises that some intermediaries may not receive payments from customers and will be compensated by way of commissions from the principals. For such intermediaries, the FIRS requires the VAT to be collected along with the commission received. This suggests unless the ultimate supplies account for the VAT, the platform providers may still be responsible to do so even where they did not receive payments from the customers. The circular also exempts the underlying supplier from any further VAT obligations where the platform provider has registered for tax and accounted for the VAT on the supply.

Where the NRS is unable to collect the tax, the Nigerian customers are still required to withhold or self-account for the VAT.

### New mode of registration

The circular references a dedicated link to be subsequently provided, which non-residents are expected to use for tax registration. NRSs that have already registered for tax in Nigeria are also required to migrate to the simplified compliance regime using this link.

### Introduction of a new VAT threshold

The circular introduces a new VAT threshold of \$25,000 (or its equivalent in other currencies) for NRSs. NRSs are only required to register if they expect to make total annual supplies of at least \$25,000.

### Basis for deregistration

Based on the circular, NRSs that have not met the \$25,000 VAT threshold for 3 consecutive years can write to the FIRS to be deregistered from the regime, and can reactivate their registration if they meet the threshold subsequently.

### Excluded services

The FIRS states that the guidelines cover services delivered via electronic or digital means. It excludes professional and consultancy services that are not automated (but may be delivered via email), broadcasting services, telecommunication services and services exempt from tax based on the first schedule of the VAT Act.

### Rules for determining the place of consumption

Based on the circular, digital services would be considered to be consumed or utilised in Nigeria if the recipient resides in Nigeria, is a company incorporated in Nigeria, or if the customer's IP address is in Nigeria. The FIRS would also consider any other evidence suggesting that the supply was consumed or utilised in Nigeria. If for any reason, the residence of the customer cannot be determined, the FIRS would also consider whether payments for the supplies originate from a bank licensed or incorporated in Nigeria.

### VAT return and payment Process

The VAT return for NRSs would include a report showing the name of each customer from whom the tax was collected. Also, the VAT payable by the non-resident can be converted to either USD, EUR or GBP only.

### Use of third party service providers

NRSs can appoint a representative to act on its behalf in carrying out certain administrative responsibilities. However, the NRS would still be required to register for VAT in its own name and would have ultimate responsibility for its obligations under the Act.



## Takeaway

- The appointment of NRSs as VAT collectors is technically not currently supported by the VAT Act, as Nigerian customers are required to self-charge or deduct VAT at source and remit to the FIRS. The FIRS has however relied on Section 10(3) of the VAT Act, where the FIRS may appoint a person to “withhold and remit” VAT. The reliance on this provision by the FIRS can be challenged on the basis that the NRS are not being asked to withhold VAT by the FIRS under these guidelines but are being asked to collect VAT from their customers.
- However, since non-business customers are not able to self-account for VAT, the FIRS’ approach may be practical, otherwise VAT would be lost on B2C transactions. Most digital NRSs prefer to collect and account for VAT on all supplies to Nigerian customers, rather than configuring their systems to deal separately with business and non-business customers. Irrespective of the practical acceptance, the laws should be amended in order to give legal backing to the Circular.
- The VAT registration threshold for NRSs included in the circular (\$25,000 ), is lower than the N25million threshold stated in the VAT Act. This translates to an uneven tax landscape, compared to local businesses and contradicts the law.
- The new mode of registration may create an additional administrative requirement for NRSs that have already registered. We suggest that the FIRS seeks a more efficient approach to migrating already registered taxpayers to the new regime.
- The conclusion that a service is consumed in Nigeria if its payment is originated from a Nigerian bank is not supported by the law because non-residents (including Nigerians in diaspora) can make payments for services entirely enjoyed outside Nigeria using their Nigerian banking details.
- Currently, the FIRS is unable to immediately issue tax receipts in respect of foreign currency payments. It is important that the FIRS improves the process for foreign payment receipts so that the non-residents are able to obtain evidence of their VAT payments.
- While, these guidelines may provide some clarity to non-residents with regards the new VAT rules, it is important that these guidelines are aligned with the provisions of the law. The 2021 Finance Act may be a good opportunity to provide legal backing to some of the matters in the guidelines.

**For a deeper discussion, please contact any member of our Tax team below:**

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