

FIRS Finance Act Circular Amendments to the Stamp Duties Act

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Background

The Finance Act (FA) 2019 introduced some amendments to the Stamp Duties Act (SDA). The Federal Inland Revenue Service (FIRS) has issued an Information Circular in this regard.

We highlight and analyse the key matters below:

Highlights

- The Circular reproduces some of the amendments to the SDA, such as the inclusion of electronic documents as instruments liable to stamp duties, electronic stamping and denoting of documents, and updates to the definition of certain terms.
- In the circular, the FIRS clarifies that stamp duties apply on written, printed or electronic dutiable documents and receipts, and provides examples such as e-mails, short message service (sms), instant messages (IM), documents on website or cloud-based platforms, POS receipts, and Automated Teller Machine (ATM) print-outs.
- The Circular highlights that instruments can be “stamped” by:
 - Employing a die impressed on an instrument as an adhesive stamp;
 - Affixing printed adhesive stamps issued by the FIRS;
 - Direct electronic printing or impression on the instrument;
 - Electronic tagging;

- Issuance of stamp duties certificate, or
- Any other form of acknowledgement of payment for stamp duties adopted by the FIRS

- The FIRS states that instruments executed outside Nigeria but received in Nigeria are to be stamped within the period allowed in the SDA. For electronic documents, ‘received in Nigeria’ includes where the document is accessed in or from Nigeria, stored in a device outside Nigeria which is brought into Nigeria, or stored on a device in Nigeria.
- In line with the amended SDA, a N50 stamp duty is payable on any bank deposit or transfer of N10,000 or more, except deposits or transfers between accounts maintained by the same person in the same bank.
- Stamp duties on eligible transactions involving companies, or between companies and individuals, should be paid to the FIRS. On the other hand, duties on transactions between individuals should be payable to the relevant State Internal Revenue Service at rates to be agreed with the Federal Government.
- The Circular prescribes the use of the FIRS’ e-portal for the payment of stamp duties. The FIRS has also developed an Application Programming Interface (API) for corporate bodies and persons upon request,

presumably for automated deduction and remittance of stamp duties.

Takeaway

The indication of FIRS as the agency to collect stamp duties clarifies the ambiguity regarding the appropriate authority.

However, there are some matters in the circular and the SDA that need to be addressed. For example, the circular prescribes some stamp duty rates which are not supported by the SDA, such as tenancy or lease agreements stated as liable to 6% stamp duties whereas the SDA actually provides for 0.78% to 6% depending on lease tenure, with 6% applicable on lease terms that exceed 21 years or are indefinite.

A major issue with the SDA in its current form is the practicability of enforcing compliance. For example, in the Circular, the FIRS expects an individual who makes cash payment and receives an electronic acknowledgement to self-declare the payment on the FIRS’ e-platform and pay the necessary stamp duties. Payment acknowledgments by SMS or WhatsApp also fall into this category. The Circular also mentions Automated Teller Machine (ATM) printouts as examples of receipts subject to stamp duties.

The circular states that where an individual views an electronic document stored outside Nigeria on a device in Nigeria, the document

is “received” in Nigeria and is liable to stamp duties. The practical application of this is doubtful and even where the FIRS attempts to enforce this, taxpayers may challenge the FIRS’ definition of the term, as the Act itself does not provide a definition.

It will be useful to amend the SDA to define the term ‘received in Nigeria’ in a practical manner to give it necessary legal backing and simplify compliance.

While the Circular encourages the payment of stamp duties via the FIRS’ e-platform, there have been complaints that the platform does not facilitate bulk remittance of stamp duties, as the platform only allows individual stamping of documents. The FIRS should address this.

In general, the SDA (enacted in 1939) needs to be repealed and re-enacted to be in tune with modern day business and economic realities.

For a deeper discussion, please contact any member of our Tax team below or your usual contact within PwC Nigeria:

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