

# Clarifying Issues: What you need to know about recent developments on Stamp Duties!

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Since the inauguration of the Inter-Ministerial Committee for the Audit and Recovery of Back-Years Stamp Duties on 30 June 2020 ([link to previous alert](#)), there has been several public pronouncements by the Federal Inland Revenue Service (FIRS) on the administration of stamp duties ("SD") in Nigeria.

## Background

Stamp Duty is a tax chargeable either at fixed rates (flat amounts) or *ad valorem* (as a percentage of the value of a transaction), depending on the class of instrument as provided in the Stamp Duties Act (SDA). Such instruments include notarial acts, agreements, conveyance on sale of property, powers of attorney, contract notes, valuations, bank notes, promissory notes, mortgage notes, share certificates, debentures, share warrants, insurance policy, customs bills of lading, bills of sale and receipts.

One of the changes introduced by the Finance Act 2019 was the designation of the FIRS as the only competent authority to impose, charge and collect stamp duties in all cases except on instruments executed between individuals for which the competent authority is the relevant state tax authority.

The FIRS has subsequently issued various public notices on stamp duties administration. These public notices seek to:

- highlight the amendments to the SDA as provided by the Finance Act (FA) 2019;
- clarify the administration of SD in Nigeria and;
- guide taxpayers to avoid fraudulent activities aimed at evading stamp duties.

## Stamp Duties Rates

Before 2020, both the Joint Tax Board and the FIRS have published rates applicable to various instruments. In its recent public notices, the FIRS provided an updated list of

dutiable instruments and the duty payable on such instruments.

Instruments subject to ad valorem rates include contract notes at 0.08%; Deeds of assignment at 1.5%; Gifts (Land) at 1.5%; Insurance Policy at 0.075%; Tenancy or Lease agreement at 0.78% to 6%; Bonds (Mortgage) at 0.375%; Contract agreement at 1%, Loan Agreement at 0.125% etc.

The FIRS also lists instruments subject to fixed rate such as Appointment of trustee or an Attorney, Guarantors form (for loan application), Bank cheque at NGN1 flat rate; Bank deposits or transfers at a rate of NGN50; Certificate of occupancy, partnership at NGN1000, Joint Venture Agreements at a fixed rate of NGN 500; Power of Attorney (Revocable/not Land Related) at NGN500 etc.

In addition to the above charges, a fixed rate of NGN 50 is applicable on all receipts and for extra copies made of the instruments.

## Administration of Stamp Duties

Based on the amendment of Section 4(1) of the SDA by the Finance Act 2019, FIRS is designated as the competent authority to collect SD on behalf of the federal government. In this regard, the FIRS notice seeks to clarify that the newly unveiled FIRS Adhesive Stamp should be used for denoting duties requiring adhesive stamps. With respect to instruments executed between individuals, the competent authority is the relevant tax authority of the State.

## Burden of payment

The FIRS mentioned that the person obligated to stamp the document is the beneficiary of the contract. The Banks, MDAs, landlords and other executors of chargeable transactions are only collecting agents. In the case of rent and leases, the obligation is that of the tenant/lessee.

In many cases, the SDA is silent on the party responsible for stamping. In practice many people stamped documents only if and when they had to be presented in court.

However, in some cases, the SDA identifies the party that would be liable to the penalty if a document is not stamped (e.g. Section 23 of the SDA). In this regard, the party that would be penalized should ordinarily have the burden of compliance in the first place. In other cases, e.g. for loan capital, the SDA imposes procedural obligations on a party that also includes a process for stamping.

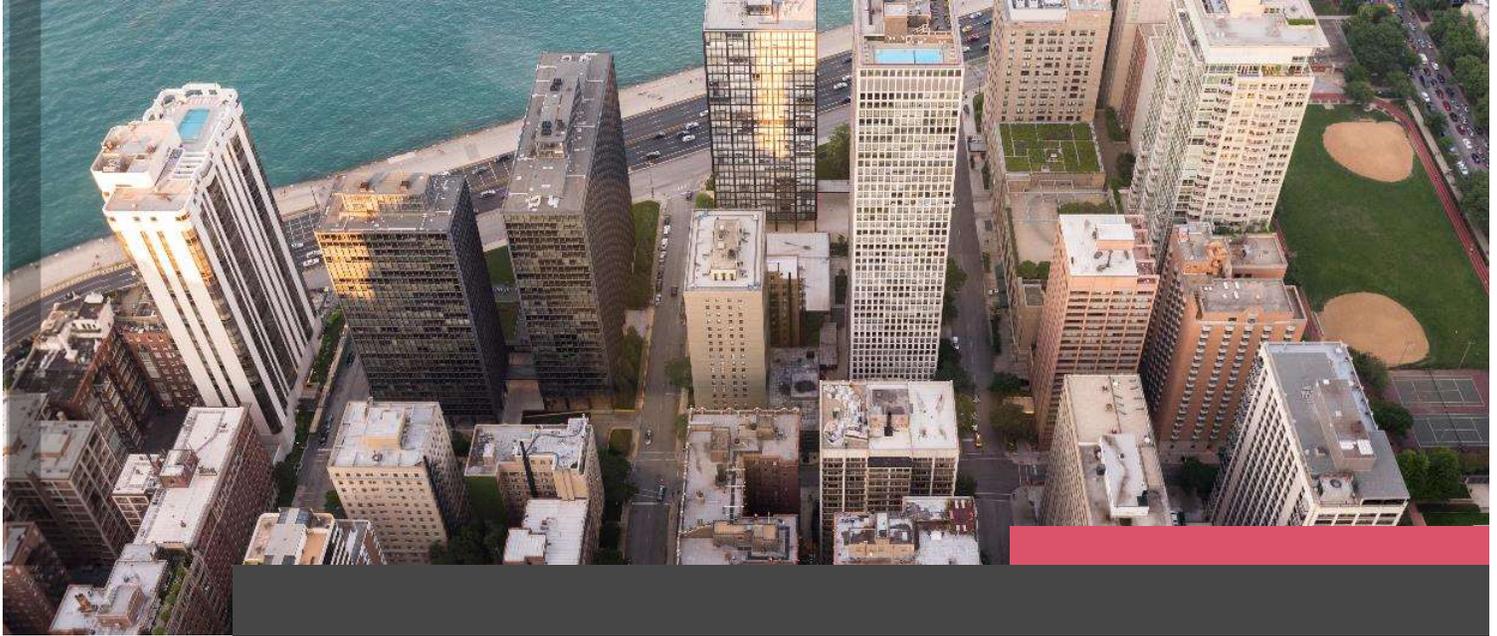
## Compliance process for SD

Stamp duties collected should be remitted to the Stamp Duties Account of either the Federal or State Government. The SDA, as amended by the FA 2019, now covers 'electronic instruments' as liable to stamp duties.

Stamp duties are required to be paid within 30 to 40 days after they have been executed or within 30 days after they have been received in Nigeria (if executed outside Nigeria). The SDA does not define the meaning of 'electronic documents' or 'received in'. This may pose some issues for the FIRS as taxpayers may challenge the FIRS' description of the above terms in its circular. It will be useful to amend the SDA to define the term 'electronic documents' or 'received in Nigeria', provide the necessary legal backing and simplify compliance process.

The FIRS in its information circular also suggests that SD can be remitted through the "FIRS Stamp Duty Partner Support Portal" for all dutiable instruments executed by Corporate bodies including banks, MDAs etc.

Another FIRS' public notice seeks to inform taxpayers to stamp all dutiable documents at the relevant SD office for authentication of such documents. Failure to do so will be considered as non-payment of the duty on such instruments.



While the circular encourages the payment of stamp duties via the FIRS' e-platform, there have been issues such as the platform not facilitating bulk remittance of SD, as the platform only allows individual stamping of documents. The FIRS also suggests that taxpayers can seek further confirmation, in writing, from the relevant tax authority where the documents were deemed stamped to confirm the authenticity of the stamps.

Punitive measures will be imposed on any persons involved in fraudulent activities with regards to the execution of the SD including imprisonment under section 480(1)(b) and Section 467 of the Criminal Code Act. Failure to deduct or remit the SD to the relevant SD Account attracts prosecution for offences under the SDA, payment of penalties, and inability to admit chargeable but unstamped documents in evidence in civil proceedings.

### Conclusions

The current economic challenges have widened the budget deficit of governments at all levels as both revenue from oil and taxes have dwindled. Ironically, it is also the time when government needs to spend more to provide palliatives, tax concessions and support to vulnerable persons and businesses. Given the unusual situation, government needs to be deliberate in implementing tax measures and fiscal policies. The overall objective should be to generate revenue in a manner that does not hamper economic recovery. On the other hand, taxpayers need to pay attention to their tax affairs to ensure compliance at the least possible costs while managing their tax risks for long-term sustainability.

Also, the tax authorities should do more to create awareness, educate the general public and simplify the compliance process. Ultimately, the SDA should be repealed and re-enacted to address existing ambiguities and limit the tax to a few, broad based transactions.

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