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Tax Alert – FIRS circular on the implementation of VAT changes in the Finance Act, 2020

Background

The Finance Act (FA) 2020 introduced certain amendments to the Value Added Tax Act (VATA). The Federal Inland Revenue Service (FIRS) recently issued an information circular dated 3 June 2021, to provide guidance on the implementation of Finance Act amendments to the VATA. The circular replaces the earlier FIRS circular issued on 29 April 2020.

This new circular retains most of the points in the earlier circular (see PwC's Tax Alert on the previous circular [here](#)). We examine some of the tax law changes and other issues clarified in the recent FIRS circular below:

Highlights

Taxable goods and services/place of supply rules

The circular reiterates the VATA provisions on the conditions to be met for goods, services or incorporeals to be considered as supplied in Nigeria.

Essentially, goods and services received, consumed or utilised in Nigeria are supplied in Nigeria and are therefore subject to VAT in Nigeria, irrespective of the location of the supplier. A good is also supplied in Nigeria if the beneficial owner of the rights in or over the goods is a taxable person in Nigeria; and the goods or right is situated, registered or exercisable in Nigeria.

Also, services relating to an immovable property in Nigeria will be considered as supplied in Nigeria. This includes services of agents relating to the management or marketing of the property, and services of engineers, architects, valuers, and other professionals, also relating to the property.

The circular further clarifies that the following are exempt from VAT:

- Services rendered to and consumed by a person resident in Nigeria while physically outside Nigeria;
- Services provided under a contract of employment;
- Land and building, money and securities. However, VAT applies on other taxable goods and services relating to such land and building.

Time of supply

The time of supply of goods and services for VAT purposes is generally the earlier of when an invoice is issued by the supplier, or when consideration is due, or paid. For supplies where invoices are not issued, such as transactions between related parties, the time of supply is the earlier of:

- The time of removal of the goods and services from the supplier's premises;
- The time when the goods or incorporeal are available for use by the recipient;
- Upon rendering of a service.

For supplies made under a law or agreement which provides for periodic or instalment payments, including payments for rent, construction, manufacturing and similar activities, the time of supply is the earlier of when an invoice relating to the relevant portion is issued by the supplier, or when consideration is due, or paid, in respect of such portion.

For goods supplied under an instalment credit agreement, the time of supply is the earlier of when the goods are delivered; or payment is received.

Rate of tax and transitional issues

The effective date of the change in VAT rate to 7.5%, is 1 February 2020. Taxable supplies of goods and services which occur after this date will be subject to VAT at 7.5%, irrespective of whether the contract for such supply was executed prior to the date.

The FIRS will rely on the "time of supply" rules earlier stated, and where it is not practicable to determine this, the FIRS may rely on the dates indicated on the relevant invoices, bills, debit notes, goods-received notes, waybills, journal entries, and so on.

Compliance by Non-Residents

A non-resident person who makes taxable supplies to Nigeria, is required to register for the tax with the FIRS and obtain a Taxpayers Identification Number (TIN). The non-resident should include VAT on their invoices, and may appoint a representative in Nigeria for the purpose of complying with VAT requirements in Nigeria.

The resident person to whom the supply is made, is required to withhold and remit the VAT due to the Service in the currency of the transaction. Also, a person appointed by the FIRS will withhold and remit applicable VAT.

However, the FIRS states that a non-resident company that has a fixed base or a permanent establishment in Nigeria, should directly comply with the provisions of the VAT Act (conceivably referring to registering for and charging VAT). However, the FIRS is expected to issue detailed guidelines relating to VAT compliance requirements for non-residents.

Collection, self-charging or deduction, and remittance of tax

The circular highlights that a taxable person is required to collect and remit VAT at 7.5% on the value of taxable goods and services supplied. Monthly remission of the net VAT payable (i.e excess of output VAT over input VAT) should be made in the currency of transaction on or before the 21st day of the month following the month of the transaction, and returns are to be submitted using the appropriate forms.

The circular also states that a taxable person to whom supplies are made in Nigeria, is required to withhold and remit VAT on such supplies where:

- The supplier is a person exempt from charging VAT under the Act;
- The supplier failed to charge VAT;
- The supplier is a foreign company that makes taxable supply of goods or services without a fixed base or permanent establishment in Nigeria, whether or not VAT is included in the invoice.

Tax returns

The circular outlines the various forms in which monthly VAT returns are to be submitted, including:

- **Form VAT 002:** For (regular) filing of output VAT less input VAT returns by a Nigerian company
- **Form VAT 002A:** For filing returns for VAT withheld and self-charged by businesses in the oil and gas sector, and government agencies and parastatals.
- **Form VAT 002B:** For filing VAT self-charged or deducted-at-source on payments to non-residents or other businesses who do not include VAT on their invoices
- **Form VAT 002NRC:** For non-resident businesses which the FIRS intends to direct to collect and remit VAT

Determination of turnover threshold for charging and collecting VAT

The circular largely reiterates the points highlighted in the previous circular. However, the FIRS now clarifies that supplies of capital items and the sale of the whole or part of a business, are excluded in determining whether a taxable person has met the N25m turnover threshold to be eligible to charge VAT.

Tax exempt goods and services

The FIRS circular reproduces the list of tax exempt goods and services in the VAT Act, including the recent items which were included by the FA 2020. These include:

- Locally manufactured sanitary towels, pads or tampons
- Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts
- Airline transportation tickets issued and sold by commercial airlines registered in Nigeria;
- Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.

However, the FIRS highlights that commissions earned by airline booking agents are liable to VAT.

Definition of goods and services for VAT purposes

As amended by the FA 2020, the FIRS circular clarifies that "goods" subject to VAT include: all forms of tangible properties, movable or immovable, except the supply of land and building (commercial or private), money or securities.

Also, "services" subject to VAT relate to: anything, other than goods, or services provided under a contract of employment; and any intangible or incorporeal (product, asset, or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money, or security.

The FIRS clarifies that interest in land and building in the form of rent or lease (commercial or private), is exempt from VAT. However, the circular reiterates that the land and building exemption does not include:

- Services incidental to the supply, such as surveys, valuation, agency services and so on
- the use of land and building for any form of hospitality service or business including hotel accommodation services or short stay (sublets)
- Other fees / commissions incidental to the supply of interest in land and building.

Comments and takeaway

Compliance by non-residents

In line with the FA 2020, non-resident persons that make taxable supplies (of goods and services) to Nigeria are now required to register for VAT in Nigeria and include Nigerian VAT on their invoices to Nigerian customers. This provision introduces material administrative burden on many non resident suppliers that should not necessarily be brought into the tax net.

It would have been preferable if the circular clarified how this requirement impacts foreign suppliers of goods imported into Nigeria. Here, VAT is assessed by the Nigeria Customs Service at the ports and paid by the Nigerian customers. Therefore, registration and other compliance requirements by the foreign suppliers should not be relevant or practicable.

Also, non-residents that make taxable supplies to Nigeria may now appoint local representatives in Nigeria for the purpose of complying with their tax obligations. The FIRS is still expected to issue guidance with respect to the nature and scope of the responsibilities of these representatives.

Classification of items and VAT exemption

The FA 2020 clearly excludes the supply of interest in land and building from the definition of goods and services, hence eliminating the ambiguity around the applicability of VAT on land and buildings. The FIRS has also clarified that the lease of land and building will also be considered VAT exempt, irrespective of whether this is for commercial or private purposes. However, the FIRS indicated that VAT will apply on the use of land and buildings for services such as hotels and short stay services. This provides some much needed clarity, considering that the VATA did not define "interest in land and building" for VAT purposes. However, the FIRS did not address the application of VAT on activities such as the provision of serviced accommodation, which is similar to hotel services but can also be on a long-term basis.

Also, intangible assets are now considered "services" under the FA 2020. This eliminates the possibility of input VAT claim on supply of intangibles, as the VATA restricts the claim of input VAT to VAT incurred on "goods", among other conditions.

VAT Modification Orders

The VATA empowers the Minister of Finance to amend, vary or modify the list of exempt items in the Act, and this is typically done by issuing a VAT Modification Order. These powers were also reiterated by the FIRS in the circular.

However, the FIRS had previously taken a different stance on this, in its previous publications. An example is a previous FIRS Notice stating that VAT should remain applicable on Natural Gas and renewable energy equipment, even though these items were included as exempt by the Minister of Finance in the VAT Modification Order 2020. It would have been preferable if the circular had provided more clarity in this regard.

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