



FEDERAL INLAND REVENUE SERVICE

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INFORMATION CIRCULAR

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Subject: CLARIFICATION ON THE IMPLEMENTATION OF THE VALUE ADDED TAX (VAT) PROVISIONS IN THE FINANCE ACT 2019

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners in line with the provisions of the Value Added Tax Act. This instant circular amends, updates or replaces contents of any circular, notice or other publication previously issued by the Service that is inconsistent with its contents to the extent of such inconsistency.

1.0 Introduction

The Finance Act 2019 ammended some provisions of the Value Added Tax Act Cap V1, LFN 2004 (as amended). This Information Circular is issued as guidance to all stakeholders for appropriate implementation of relevant provisions of the Act.

2.0 Section 2 - Definition of Goods & Services

Section 2 of the Value Added Tax Act, Cap V1, LFN 2004 (as amended) defines "goods and services" as follows:

"(2) For the purpose of this Act, goods and services shall be deemed to be supplied in Nigeria if -

(a) in respect of goods -

(i) the goods are physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in Nigeria, or installed in Nigeria, or

(ii) the beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right thereof is situated, registered or exercisable in Nigeria;"

This provision clarifies that VAT is chargeable on:

- a. goods which include property (tangible or intangible) such as articles of trade, rights in goods or property (e.g. rights in mineral resources, copyrights, trademarks), assets, motor vehicles, oil wells, rigs, aircrafts, ships, buildings, roads, jetties, or any other type of property.
- b. services, where:
 - i. the services are rendered in Nigeria by a person physically present in Nigeria at the time of providing the service, or
 - ii. the services are provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria.

This provision indicates that:

- Services performed in Nigeria to persons in Nigeria is liable to VAT irrespective of the residence status of the service provider.
- Services provided to persons while in Nigeria, regardless of the medium of delivery of the service, is liable to VAT in Nigeria.
- Services rendered remotely, online or by other virtual means to Nigerian residents or persons in Nigeria are liable to VAT in Nigeria.

NOTE

Services rendered to and consumed by a Nigerian resident while physically outside Nigeria, is not liable to VAT in Nigeria.

3.0 Section 4 - Rate of Tax

Section 4 of the VAT Act is amended by changing the VAT rate from 5% to 7.5%.

The new rate becomes effective from the 1st of February 2020. Consequently, all transactions carried out from the 1st of February shall reflect the new rate of 7.5%.

3.1 Transitional issues

The change in rate from 5% to 7.5%, takes effect from the 1st of February 2020.

Section 13A(2) of the Value Added Tax (VAT) Act, Cap V1, LFN 2004 (as amended) states that:

“A tax invoice shall be issued on supply whether or not payment is made at the time of supply”

For the purposes of VAT:

- i. A service is supplied when it is performed or an agreed milestone is reached.
- ii. Goods are supplied upon delivery or transfer of risk, whichever occurs first.

Provided that where it is not practicable to determine the time of supply as aforesaid, the Service may rely on the dates indicated on the relevant invoices, bills, debit notes, goods-received notes, waybills, journal entries, etc.

In view of the foregoing, the general public is invited to take note of the following transitional arrangements:

- i. The VAT rate for taxable supplies made prior to the 1st of February 2020, is 5%;
- ii. For a contract of taxable supplies signed prior to 1st of February 2020 and supplies or performance occurred on or after the 1st of February 2020, applicable VAT is 7.5%;
- iii. For continuing contracts for which supplies or performance is measured on the basis of milestone achieved, VAT rate for milestones achieved on or after the 1st of February 2020, is 7.5%; and
- iv. For all taxable supplies made from 1st of February 2020, VAT rate is 7.5%.

4.0. Section 8 of the VAT Act: Registration and Deregistration

- a. Section 8 of the VAT Act was amended to mandate all taxable persons to immediately register for the tax upon the commencement of business as defined in Section 46 of the VAT Act.
- b. The penalty for failure to register has been reviewed as follows:
 - i. First month of default, from ~~₦~~10,000 to ~~₦~~50,000
 - ii. Subsequent months in which failure continues from ~~₦~~5,000 to ~~₦~~25,000;

- c. A taxable person who permanently ceases to carry on trade or business in Nigeria shall notify the Service of such cessation within 90 days for the purposes of deregistration.
- d. Taxable supplies made after cessation shall be deemed to have been made on the day immediately preceding cessation.
- e. Penalties for failure to file returns will continue to apply where the taxpayer fail to notify the Service of cessation of business.

5.0 Section 10 - Registration by Non-Residents

Section 10 of the VAT Act as amended provides that:

- a. a non-resident person who makes taxable supplies to a person in Nigeria or to a Nigerian resident, is required to register for the tax with the FIRS. The non-resident person is to use the address of the person to whom it is making the supply, as its Nigerian address, for the purposes of correspondence relating to the tax.
- b. The non-resident person shall include VAT on its invoice for the supply of goods or services made;
- c. the person who receives the supply in Nigeria is required to withhold and remit the VAT due on the invoice to the FIRS in the currency of transaction.

Note:

A non-resident company which have a fixed base (permanent establishment) in Nigeria is required to comply with registration, charging, filing, payment and other requirements as if it is a Nigerian company. As such, such company must register using the address of its place of business in Nigeria (fixed base), issue VAT invoice, file return, remit the tax, submit itself to tax examinations, etc. in accordance with the provisions of the VAT Act.

6.0 Section 14 - Self-Account Provision

Section 14(3) & (4) of the VAT Act introduced a Self-Account provision for all supplies for which VAT was not charged.

The Self-Account provision imposed a duty to withhold and remit VAT on a taxable person to whom a supply is made in Nigeria where:

- i. the supplier is a person exempt from charging VAT under the Act or otherwise failed to charge VAT;

- ii. the supplier is a foreign company without a fixed base (permanent establishment) in Nigeria, whether not VAT is included in the invoice;

The taxable person shall self-account and remit the tax due in the currency of transaction on or before the 21st day of the month immediately following the month of the transaction.

The taxable person, in accounting and remitting the VAT, shall provide a schedule of all taxable transaction for which it is self-accounting, in the form prescribed by the Service, indicating the tax identification numbers of the suppliers in the schedule.

NOTE:

1. Where a taxable person receives taxable supplies for which VAT was not charged from either a person below the threshold of ₦25m or any other other person, the taxable person receiving the supplies shall self-charge and account for the VAT due.
2. Return for VAT self-accounted or self-charged shall be separated made in the form prescribed by the Service.

7.0 Section 15 - Introduction of VAT Threshold

The amendment to Section 15 of the VAT Act created a threshold for taxable persons under the Act. By this provision, only taxable persons with taxable supplies of ₦25million and above are required to charge, collect, remit the tax and file monthly returns to the FIRS.

7.1 Determination of ₦25 million turnover threshold

- i. A taxable person who has made taxable supplies of ₦25 million prior to the introduction of the VAT threshold shall continue to charge, collect, remit the tax and file monthly returns even if it has not made ₦25million taxable supplies in the current year.
- ii. A taxable person who did not attain the ₦25 million taxable supplies before 1st of February 2020, shall immediately commence to charge, collect, remit the tax and file monthly returns upon attaining the threshold of ₦25million taxable supplies at any time within the year;
- iii. A taxable person may voluntarily register, charge, collect, remit the tax and file monthly returns to the FIRS at any time even without attaining the ₦25 million threshold. Such a person shall notify the FIRS prior to doing so and shall be subject to all the provisions of the VAT Act applicable to persons above the threshold.

- iv. A taxable person who has not attained the ₦25million threshold but expects to attain the threshold at a future date within the calendar year shall immediately commence to charge, collect, remit the tax and file monthly returns to the FIRS.
- v. A taxable person who makes taxable supplies amounting to ₦25million and above within a calendar year is required to file monthly VAT returns to the FIRS, even if part or the whole of such supplies are exempt under the VAT Act or not. (Please note the definition of taxable supplies).

NOTE:

1. A calendar year, for the purposes of this Circular, is a period of 12 months beginning on a day marking the start of that year.
2. A taxable person who attains the taxable supply threshold of ₦25million shall continue to collect VAT and file VAT returns on a monthly basis.
3. "Taxable supplies" is **"any transaction for the sale of goods or the performances of a service, for a consideration in money or money's worth"**. As such, the value of taxable supplies is the gross inflow of economic benefits (cash, revenues, receivables, other assets, etc) arising from economic activities, including sales of goods, supply of services, rents, royalties, fees, rights, etc. However, it shall not include a taxable supply of the capital asset, and the sale of the whole or part of the business.

7.2 Illustrations

Illustration 1

Mr ABC, a wholesale supplier of Consumer goods commenced business in January 2019; by the end of January, his taxable supplies amounted to ₦10 million. Furthermore, his taxable supplies increased to ₦18 million in February and ₦26 million in March 2019. When will Mr ABC be expected to register, collect tax and file monthly VAT returns?

Mr ABC should approach the FIRS immediately he attains the threshold of ₦25 million in March 2019, commence to charge, collect, remit the tax and file monthly returns to the FIRS by April 2019.

Illustration 2

XYZ Enterprises, a supplier of motor parts commenced business in January 2019 and by the end of January, he had made taxable supplies worth ₦12 million. Furthermore, in February 2019 he got an order to supply another customer spare parts worth ₦18 million. When will XYZ Enterprises be expected to collect tax and file monthly VAT returns?

XYZ Enterprises should approach the FIRS as soon as the contract was awarded. In this case, XYZ will surpass the taxable supply threshold of ₦25 million going forward. The enterprise should, therefore, issue tax invoice(s) on the contract sum of ₦18m, collect the VAT, remit and file returns beginning from the 21st of March 2019.

8.0 Section 45 - Business Sold or Transferred

VAT is exempt on any asset employed in trade or business sold or transferred, where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria.

The entities will qualify for this concession subject to the following conditions:

- i. The company must prove, to the satisfaction of the Service, that one company has control over the other or that the companies are controlled by some other person or are members of a recognised group of companies;
- ii. The entities involved must have been related for not less than a consecutive period of 365 days before the reorganisation;

However, where assets transferred in the reorganisation are further disposed within 365 days after the reorganisation, the VAT exemption granted shall be withdrawn and the applicable VAT shall be recovered. As such, VAT that is chargeable upon the transfer shall be treated as due but unpaid from the date it ought to have been paid if there was no concession; and the penalty and interest shall be charged accordingly.

9.0 Exported Service

"Exported service" is "a service rendered within or outside Nigeria by a person resident in Nigeria, to a non-resident outside Nigeria. Provided that a service supplied to the fixed base or permanent establishment of a non-resident person shall not qualify as exported services;

For a service to be treated as exported service under this provision:

- the service must be provided by a Nigerian resident to a non-resident;
- the non-resident person to whom the service is provided must be outside Nigeria when consuming the service.
- where the non-resident is in Nigeria or consumes the service in Nigeria, such service will be liable to VAT.

- where a non-resident contracts a third party to provide a service to its permanent establishment or fixed base (branch or any other physical presence) within Nigeria, such service will be liable to VAT accordingly.
- where a non-resident company provides a service through its fixed base in Nigeria, such will not be an exported service.
- where a non-resident company provides a service to a person in Nigeria, such service shall not be considered an exported service.
- a person is understood to have consumed a service, where the service is "provided to" such person who is the actual consumer of the service in Nigeria. Accordingly, where a service is provided to a consumer in Nigeria "for" or on behalf of a non-resident, such service will not qualify as an exported service.

10.0 Penalty Regime

The following are the new penalty provisions:

Section	Offence	Penalty	
		Initial (₦)	Subsequent (₦)
S.8-VATA	Failure to register	50,000.00	25,000.00
S.28-VATA	Failure to notify of change of address or permanent cessation of trade or business	50,000.00	25,000.00
S.35- VATA	Failure to submit returns	50,000.00	25,000.00
S.19 VATA	Failure to remit tax	Tax + 10% of tax + interest at CBN MRR	

Section 8, 28 & 35 of VATA imposes a penalty of ₦50,000 for the first month in which the failure occurs; and ₦25,000 for each subsequent month in which the failure continues.

10.1 Illustration

QED Ltd., a taxable person under the VAT Act approaches FIRS WUSE Tax Office in January 1, 2021, to file its annual returns for 2020 assessment year. In the course of reviewing its file, it was discovered that the company failed to submit VAT returns for all 2020 (Jan – Dec) transactions. The applicable penalties are determined as follows:

NOTE:

The first month for which it fails to submit returns attract N50,000; subsequent months attracts N25,000.

MONTH	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	CUMM. TOTAL
JAN	-												
FEB	50,000	-											50,000
MAR	25,000	50,000	-										125,000
APR	25,000	25,000	50,000	-									225,000
MAY	25,000	25,000	25,000	50,000	-								350,000
JUN	25,000	25,000	25,000	25,000	50,000	-							500,000
JUL	25,000	25,000	25,000	25,000	25,000	50,000	-						675,000
AUG	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-					875,000
SEP	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-				1,100,000
OCT	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-			1,350,000
NOV	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-		1,625,000
DEC	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-	1,925,000
TOTAL	300,000	275,000	250,000	225,000	200,000	175,000	150,000	125,000	100,000	75,000	50,000	-	1,925,000

The cumulative amount of penalty for failure to submit returns is **₦1,925,000** only.

11.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

12.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House, No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
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