



FIRS issues Public Notice on VAT (Modification Order) 2020 - Items not exempted from VAT

The Federal Inland Revenue Service (FIRS) on Wednesday, 24 June 2020 issued a Public Notice to clarify enquiries received from taxpayers on the tax exempt status of some items included in Paragraph 2 of the recently published Value Added Tax (Modification Order), 2020 ("the Order"). The Order was signed by the Honourable Minister of Finance, Budget and National Planning (HMoF), Mrs. Zainab Shamsuna Ahmed, pursuant to her powers under Section 38 of the Value Added Tax Act (VAT), Cap. V1, Laws of the Federation of Nigeria, 2004 (as amended).

The FIRS asserts in the Public Notice that the:

- (a) main objective of the Order was to clarify the definition of the items exempted in the First Schedule to the VAT Act through extension of the list.
- (b) inclusion of the Common External Tariff codes of the exempt items in Paragraph 2 of the Order was to guide importers, Nigerian Customs Service and other relevant stakeholders on items that would not be subject to VAT at the ports.
- (c) following items (hereafter referred to as "alleged non-exempt items"), though included in Paragraph 2 of the Order, remain liable to VAT at 7.5% until they are exempted by an appropriate statutory instrument:
 - natural gas;
 - essential raw materials for production of pharmaceutical products;
 - renewable energy equipment; and
 - raw materials for production of baby diapers and sanitary towels.

Comments

The issuance of the Order and the amendment of the First Schedule to the VAT Act are within the statutory powers of the HMoF under the VAT Act. Therefore, the provisions of the Order are binding on all stakeholders in the tax system, including the FIRS.

The issuance of the Public Notice by the FIRS, which contradicts the express provisions of the Order, raises the question whether a Public Notice issued by the FIRS can override a subsidiary legislation promulgated by the HMoF pursuant to her power under VAT Act to amend, vary or modify the list set out in the First Schedule of the Act.

It is pertinent to refer to the judgement of the Federal High Court (FHC) in the case of Warm Spring & Ors. vs FIRS (FHC/L/CS/157/2015), where the court upheld that "...neither the FIRS nor its Chairman is legally empowered to make an order to either amend, vary or modify the list of VAT exempt items...". Thus, where the FIRS is of the view that the alleged non-exempt items were erroneously included in Paragraph 2 of the Order, the error cannot be validly corrected through a public notice. A public notice is an administrative document and cannot override the Order duly issued by the HMoF and published in the Official Gazette of the Federal Government. Hence, the Order would remain effective until further action by the HMoF to ensure certainty in the tax system

Please click [here](#) to download a copy of the FIRS Public Notice and [here](#) to read our Newsletter on the Order.

For further enquiries, please contact:

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