KPMG

Tax Alert

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FIRS issues guidelines on the applicability of VAT on financial services

The Federal Inland Revenue Service (FIRS) recently issued Information Circular No.: 2021/04 ("the Circular") to provide clarification on what will constitute a supply of taxable services by financial institutions (FIs), in line with the provisions of the VAT Act, Cap. V1, LFN, 2004 (VATA).

We have provided below, a summary of the key aspects of the Circular:

1. Definitions of FIs

The Circular defines FIs as "*any bank, individual, body, association or group of persons, whether corporate or unincorporated, licensed under Banks and Other Financial Institutions Act (BOFIA) and any other related Act which carries on the business of a discount house, finance company, money brokerage and those whose principal objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases, order financing, export finance, project consultancy, financial consultancy, pension fund management and such other business as the Central Bank of Nigeria, Nigeria Deposit Insurance Corporation, Pension Commission and other regulatory body may, from time to time, designate*".

Further, the Circular defines the various types of FIs including banks, insurance companies, pension fund administrators, discount houses, and brokerage firms.

2. VATable services and non-VATable incomes

The Circular provides that only the income of FIs arising from charges, such as commissions and fees, for services provided to customers will be liable to VAT. Therefore, incomes from activities that constitute return on investments or consideration for risks are exempt from VAT. The exempt incomes of FIs include dividends, gains on disposal of securities, interest on loans, advances, savings accounts, bank deposits, interbank placements, and premium on insurance policies.

Consequently, FIs are required to charge VAT on their non-exempt services and remit the tax to the FIRS, in line with the relevant provisions of the VATA.

3. Registration and rendition of returns

The Circular provides that all FIs, except those exempted under the First Schedule to the VATA, are obligated to register with the FIRS, obtain tax identification numbers for VAT purposes, and file their monthly VAT returns as prescribed in the relevant provisions of the VATA.

4. Treatment of input VAT

The Circular provides that the claim of input VAT by FIs shall be in accordance with the provisions of Section 17 of the VATA. Specifically, Section 17 of the VATA provides that, *"allowable input VAT shall be limited to VAT on goods purchased or imported directly for resale, and goods which form stock-in-trade used for the direct production of any new product on which output tax is charged."*

Therefore, input VAT on fixed assets are to be capitalised with the cost of the assets, while input VAT on overheads, general administrative expenses and services are to be expensed in the statement of profit or loss account.

5. Obligation to account for VAT

Based on the provisions of the VATA, the obligation to charge and remit the VAT on services falls on the person providing the service. However, the Circular clarifies that this obligation may be transferred to the FIs in the following instances:

i) where they act as intermediaries between the service providers and the customers, as an agent or broker, the FIs are required to charge and remit the VAT on the services;

ii) where the agent or broker cannot charge VAT due to being either an individual (including staff of the FIs) or a person below the VAT threshold;

iii) where the agent or broker fails to charge VAT;

iv) where the broker or agent fails to charge and collect VAT or charges and collects the VAT but fails to remit the tax, the penalties for non-compliance prescribed in the relevant tax laws shall apply to the FI.

Comments

We commend the FIRS for providing a detailed clarification on the administration of VAT on services provided by FIs. However, the imposition of penalties on FIs where their broker or agent fails to charge and collect VAT or charges and collects the VAT but fails to remit the tax is inconsistent with the provisions of VATA. Specifically, VATA requires the service provider to charge and account for VAT on supply of taxable services, except in instances where the service provider operates in the oil and gas industry, is a government ministry, department or agency, or a non-resident person. It is, therefore, expected that the FIRS will be guided accordingly in its implementation of the guidelines to avoid the imposition of tax obligation on the FIs where none exists in the tax law.

Please click **here** to read the FIRS' Circular

For further enquiries, please contact:

Wole Obayomi
ng-fmtaxenquiries@ng.kpmg.com

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