

# FIRS information circular on amendments to VAT Act in the Finance Act 2019

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Federal Inland Revenue Service (FIRS) has issued an information circular to clarify the amendments to Value Added Tax Act 2004 in the Finance Act 2019. The circular covers nine (9) sections.

## Revised definition of goods and services

Value Added Tax (VAT) is payable on services, tangible and intangible goods. When a person in Nigeria receives a service within or outside Nigeria, the service is liable to VAT. Irrespective of the residency status of the service provider, services delivered remotely or online to a person in Nigeria are liable to VAT. An exception is a service rendered to and consumed by a Nigerian resident outside Nigeria.

## Higher rate of tax @ 7.5%

A supplier will issue a tax invoice for cash and credit sales. Taxable persons must use the new rate of 7.5% (Old: 5%) for liable transactions. For a seamless transition, FIRS suggests a rate of 7.5% on tasks completed on or after 1 February 2020 for supplies measured in stages. The same rule applies to a contract of taxable supplies entered before 1 February 2020 and delivered on or after 1 February 2020.

## Registration and deregistration

All taxable persons must register for VAT upon the commencement of business. A taxable person who permanently ceases business in Nigeria shall deregister with FIRS within 90 days of cessation. For instance, XYZ Nigeria Limited stopped operations on 30 April 2020. XYZ Limited must notify FIRS on or before 29 July 2020.

Furthermore, FIRS will treat taxable supplies after a business stops as a transaction for the preceding day of cessation. In the case of XYZ Limited, transactions on 7 May 2020 will have a value date of 29 April 2020.

## Registration by non-residents

A non-resident person (NRP) will register for VAT using the address of the Nigerian customer. The NRP will also include VAT on its invoice. However, the customer in Nigeria will withhold and remit the VAT payable in the currency of the transaction. The customer acts as a collection agent of FIRS. NRPs without a permanent establishment (PE) in Nigeria, therefore, have limited VAT obligations. In contrast, NRPs with a fixed base in Nigeria must comply with the full VAT obligations like a Nigerian company. For instance, filing, payment, proper tax records, and deregistration.

## Self-account provision

Section 14(3) and (4) of the VAT Act contains a new self-account provision for all supplies that are not subject to VAT. A taxable person who receives goods or services in Nigeria will withhold and remit tax in the prescribed format where the supplier is exempt from (or fails to charge) VAT. The tax form for self-accounting differs from the regular VAT 002 return. Examples of persons exempt are businesses with annual turnover below ₦25 million as well as NRPs without a PE in Nigeria.

But is the self-account provision for transactions with small companies a benefit or an extra cost of doing business in Nigeria? Let's examine how this provision may affect small businesses.

### Case Study of Solo Enterprises:

Solo Enterprises has an annual turnover of ₦15 million. The business buys raw materials for ₦800,000 and sells the final products for ₦1,000,000.

Before the Finance Act - December 2019:

Paid input VAT of ₦40,000 (5% \* 800k) resulting in a total cost of ₦840,000. Charged output VAT of ₦50,000 (5% \* 1 million). Amount paid = ₦10,000 (50k - 40k).

After the Finance Act - March 2020:

Input VAT was ₦60,000 (7.5% \* 800k) resulting in a total cost of ₦860,000. Solo Enterprises did not charge output VAT. Where the customer is a large company, the buyer will account for and remit VAT of ₦75,000 (7.5% \* 1 million). The customer will also pay a fee of ₦1 million to Solo Enterprises.

Remarks:

Even though the cost of sales for the company rose by 2.5%, the business may not recover the input VAT of ₦60,000 from output VAT (₦75,000). The self-account provision transfers the filing obligation of a small company to medium and large companies. It creates extra costs for both parties in the transaction. To ease the tax burden, Solo Enterprises may voluntarily charge, collect, remit, and file monthly returns.

The self-account provision will also raise the cost of compliance for taxpayers when the supply is between two small businesses.

### **New VAT threshold of ₦25 million**

Only persons with an annual taxable supply of ₦25 million and above can charge, collect, remit VAT, and file returns. A person with taxable supplies of ₦25 million before 1 February 2020 will comply with the full VAT requirements even if the chargeable transaction is less than the threshold this year.

A person who can meet the threshold in 12 months or has taxable transactions of ₦25 million and above is not exempt even if the supplies are exempt in full or part.

### **Business sold or transferred**

Any asset employed in trade or business sold or transferred to a Nigerian company is exempt from VAT. Subject to the following conditions:

- the company must prove the control relationship of the businesses, and
- the entities must have a business relationship for a minimum successive period of 365 days before the reorganization.

otherwise, FIRS will withdraw the waiver and recover the unpaid sum.

### **Comprehensive scope of exported service**

Exported service is a service rendered within or outside Nigeria by a person resident in Nigeria to a non-resident outside Nigeria. The NRP must be outside Nigeria when consuming the service. Where

- the non-resident company delivers a service directly to a person or through its fixed base in Nigeria or
- a resident in Nigeria renders service to the fixed base of the NRP in Nigeria,

then these transactions will be liable to VAT. The amended VAT Act has expanded the scope and clarified the definition of exported services.

### **Stricter penalties**

- Failure to register, submit returns, inform FIRS of change of address or permanent cessation of trade: Penalty of ₦50,000 for the first month of default and ₦25,000 per subsequent month of default.
- Failure to remit tax: Unpaid sum plus a penalty of 10% and interest at minimum rediscount rate (CBN).

### **Revision of the Circular**

FIRS may withdraw or replace or amend the Circular.