

Legal Alert March 2008 **VAT & Foreign Non Resident Companies In Nigeria**

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Legal News

The Stamp Duties rates in Nigeria have been reverted downwards to the rates prescribed in the Stamp Duties Act, Cap S8, Laws of the Federal Republic of Nigeria, 2004. This is in compliance with a ministerial directive that the rates should be reverted.

Legal Alert for March 2008 ? Value Added Tax & Foreign Non Resident Companies In Nigeria
What is VAT?

In brief, Value Added Tax (VAT) is a consumption tax levied at each stage of the consumption chain and borne by the final consumer of the product or service.

Each person in the consumption chain, known as the taxable person, is required to charge and collect VAT at a flat rate of 5% on all invoiced amounts, on all goods and services not exempted from paying VAT, under the Value Added Tax Act (as amended).

Where the VAT collected on behalf of the government (output VAT) in a particular month is more than the VAT paid to other persons (input VAT) in the same month, the difference is required to be remitted to the government, on a monthly basis, by the taxable person. Where the reverse is the case, the taxpayer is entitled to a refund of the excess VAT paid or more practically, to receive a tax credit of the excess VAT from the government.

All exports are zero rated for VAT, i.e. no VAT is payable on exports. Also, VAT is payable in the currency of the transaction under which goods or services are exchanged.

Registration For VAT ? Resident & Non Resident Persons

Every person, whether resident in Nigeria or non resident in Nigeria, who buys or sells goods and services in Nigeria that are not exempted from paying VAT under the VAT Act (as amended) is compulsorily required to register for VAT within six months of its commencement of business in Nigeria. Registration is with the Federal Board of Inland Revenue (FBIR).

Registration for VAT in Nigeria is relatively very easy with minimum registration requirements demanded.

VAT Registration of Foreign Non Resident Persons

The VAT Act (as amended) provides that a foreign non-resident person or company that carries on economic activity in Nigeria must register for VAT, using the address of the person with whom it has a subsisting economic activity for purposes of correspondence with FBIR and for compliance with the VAT Law.

The foreign non resident person or company is required upon registration for VAT to include in its invoice VAT at 5% with instructions to the receiver of the goods or services to remit the 5% VAT in the currency of the transaction to the Nigerian government on behalf of the foreign non resident person.

Penalties for Non VAT Registration

A taxable person, whether Nigerian or resident outside Nigeria, who fails or refuses to register for VAT administration within six months of engaging in any economic activity in the territory of Nigeria is liable to pay a penalty of N10,000 for the first month that the failure occurs and a further penalty of N5,000 for each subsequent month in which the failure continues.

In addition to the fines for non registration, Section 32 of the VAT Act (as amended) authorises the FBIR to seal up the premises from where the economic activity in question is being carried on within the territory of Nigeria.

Penalties For Non Remittance & Other VAT Offences

To ensure that all VAT collected are remitted to the government in a timely manner, the VAT Act (as amended) provides that where a taxpayer does not remit the VAT collected within time, he or she shall be liable to (a) the value of the VAT that ought to have been remitted in the first place (b) to a penalty sum equal to 5% per annum of such sum (c) plus a further interest at commercial rates on the VAT not remitted with 5% per annum interest charge.

Other offences under the VAT Act (as amended) include:

- ? Failure to issue a VAT invoice is an offence that on conviction attracts a fine of 50% the costs of the goods or services for which the invoice was not issued.
- ? Failure to collect VAT is an offence that attracts a penalty of 150% of the amount not collected in addition to a 5% interest charge above the Central Bank of Nigeria rediscount rate.
- ? Evasion or participation in the evasion of this tax attracts a fine of N30,000.00 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.
- ? Production of a false document or the making of a false statement to FBIR is an offence and the offender is liable on conviction to a fine twice the amount of the VAT that is under-declared.
- ? Failure to notify FBIR of a change of address within one month of such change attracts a penalty of N5,000.

Administration of VAT in Nigeria

VAT was introduced under the military unitary system of government. Whilst the 1999 Constitution has incorporated VAT as a subsisting Law in Nigeria, its implementation remains unitary in nature. 15% of the revenue accruing from VAT is retained by the Federal Government whilst the States and the Federal Capital Territory share 50% of VAT revenues and the balance 35% is distributed among all the local government areas in Nigeria.

Conclusion

VAT remains the easiest and cheapest form of tax to collect and administer in a country like Nigeria with a very high informal sector. This has led to many practitioners recommending that the rate of VAT charged in Nigeria should be increased while the rate of Personal Income Tax and Companies Income Tax charged should be reduced.

However, the equitable distribution of the proceeds of VAT remains questionable. Because of this, the Lagos State Government is currently challenging the constitutionality of the VAT Act (as amended) on the primary ground that sales tax or VAT is a residual matter in which only the States can legislate. It is expected that the popular case of Attorney General of Ogun State v. Aberuagba decided by the Nigerian Supreme Court in 1997 would be revisited in the determination of this matter at the Supreme Court of Nigeria.

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