

# Commentary on the VAT (Modification) Order, 2024

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The Value Added Tax (VAT) (Modification) Order, 2024 (“the Order”) was signed on 1 September 2024, by the Honorable Minister of Finance and Coordinating Minister of the Economy (the Minister), pursuant to Section 38 of the VAT Act, Cap. V1, Laws of the Federation of Nigeria, 2004 (as amended). The Order was subsequently published by the Federal Government of Nigeria (FGN) in its Official Gazette No. 149, Vol.111 of 3 September 2024.

The Order, which is effective from 1 September 2024, modifies Parts I and II of the First Schedule to the VAT Act and extends the list of exempted items under paragraph 2 of the Order. The Order also prescribes a commencement date of 1 October 2023, for the amended provisions relating to Automotive Gas Oil (AGO).

This publication summarizes the provisions of the Order and our commentary on its implications for businesses.

## 1 | Expansion of the List of VAT Exempt Goods and Services

The Order has expanded the list of VAT exempt goods to include items such as Equipment and Infrastructure related to the expansion of Compressed Natural Gas (CNG) and Liquefied Petroleum Gas (LPG), including conversion kits; Domestic Liquefied Natural Gas (LNG) Processing Facilities and Equipment, Electric Vehicles, Parts, semi-knock-down units for the assembly of Electric Vehicles and Biogas and Biofuel equipment and accessories for clean cooking and transportation. Furthermore, the Order extends the list of VAT exempt services to include CNG and LPG conversion and installation services, and Manufacturing, assemblage, and sale of electric vehicles.

## 2 | Modification of the definition of “Petroleum products”

The definition of “*Petroleum products*” has been expanded to mean “feed gas for all processed gas, aviation turbine kerosene, premium motor spirit, automotive gas oil (AGO), household kerosene, locally produced liquefied petroleum gas, compressed natural gas, imported liquefied petroleum gas, and crude petroleum oils”.

## Our Commentary

The Order has a commencement date of 1 September 2024, yet its provisions as they relate to the exemption of supply of AGO from VAT would be effective from the 1st day of October 2023. The question, therefore, is how the VAT that has been charged and remitted on the supply of AGO to individual and corporate consumers, between the commencement date and effective date of the Order, would be refunded to the consumers. Our expectation is that this conundrum would be addressed by the implementation guideline to be issued by the relevant agency. However, it is important that the proposed refund process be unambiguous and seamless, to deepen public trust. Based on the current process for refund, the Federal Inland Revenue Service (FIRS) will conduct a comprehensive audit before confirming the refund due on diesel. Often, such audit always results in additional taxes payable. The relevant question is why the FIRS can't first confirm the VAT refund due on the diesel, which is the subject of the refund, without tying it to the outcome of a comprehensive tax audit?

Given the above, the provisions of the National Tax Policy (NTP) and leading practices, Government should avoid retroactive application of tax laws as this causes unnecessary confusion and complexity. Most times, businesses do not get the benefit of the incentives that are meant to be conferred. We would suggest, as we have always argued in respect of negative changes in tax laws, that every proposed change in tax laws must have a transition period of 3-6 months as enunciated in the NTP to facilitate its seamless and effective implementation.

One of the key drivers of headline inflation in Nigeria today is energy cost. Hopefully, with the exemption of petroleum products, especially diesel, from VAT, it will help to reduce the cost of transportation, and ultimately the cost of food, which is the other major contributor to headline inflation. Currently, food inflation is 37.52%. However, the significance of the impact of the reduction will depend on the effective management of the exchange rate as crude oil and gas are priced in US dollars.

The expansion of the list of VAT exempt goods and services to include equipment and infrastructure for processed gas (i.e., CNG, LPG and LNG) is a testament to the FGN's commitment to the adoption of natural gas as an alternative source of fuel for the Nigerian populace and in furtherance of the Presidential Compressed Natural Gas Initiative; an initiative aimed at providing cheaper and cleaner fueling alternative for Nigerians.

The FGN has declared 2020 – 2030 as the decade of gas, and as such, concerted efforts have been made to incentivize and stimulate the domestic production and utilization of natural gas for economic growth.

In addition, the FGN has consistently affirmed that the abundant gas resources in the country would be harnessed and monetized to ameliorate the impact of the removal of fuel subsidy on the citizenry. Thus, this development further strengthens the FGN's stance on incentivizing domestic gas production and utilization.

The Order has an effective date of 1 September 2024, whereas the Minister had earlier issued a Circular dated 7 December 2023 on Fiscal Incentives for the Presidential Gas for Growth Initiatives. Part 3 of the Circular directed the FIRS and the Nigeria Customs Service (NCS) to apply zero percent (0%) VAT rate on supply of feed gas for all processed gas, CNG, imported LPG, CNG and LPG equipment components, conversion, installation services and conversion kits. As at the time of the issuance of the Circular, its (the Circular) legality was a topic of discourse amongst stakeholders, especially since Section 38 of the VAT Act specifically requires the Minister to amend, modify or vary the list set out in the First Schedule to the VAT Act by an Order published in the Gazette.

Thus, two questions arise in this regard: what is the extent of reliance that the public can place on Circulars issued by the Minister without the relevant force of law and what should taxpayers do with those circulars/Regulations? Whilst the Circular was not initially supported by a gazette as required by the law, it is crucial that such Circulars contain a caveat to the effect that the provisions will only be applicable 3-6 months after the relevant gazette has been issued. This will help to address any potential misapplication of the provisions of the circulars. Recently, there was a similar issue with respect to Withholding Tax Regulations 2024 where some taxpayers had started applying the provisions to avoid any potential penalty/interest that may arise on the retroactive application of the Regulations but only for the Gazette to show a commencement date of 1 January 2025. This confusion could have been avoided.

One major area that requires clarity is the VAT status of domestic sale of crude oil. In the 2024 VAT Modification Order, "*Crude Petroleum Oils*" has been retained in the definition of "*petroleum products*". In the 2021 VAT Order, the specified Customs External Tariff (CET) Code for this item is 2709, which refers to 'petroleum oils and oils obtained from bituminous minerals, crude' and listed under petroleum products. There are other CET codes that relate to petroleum oils and the source of those petroleum oils. The question, therefore, is whether 'crude' as listed under 2709 refers to crude oil or oils obtained from crude. It is important that clarity be provided in this regard to avoid unnecessary dispute, uncertainty, and controversy, especially now that Nigeria will be witnessing increasing sale of domestic crude. One of the cardinal principles of tax is that tax codes must be simple and devoid of ambiguity as much as possible.

The phrase 'feed gas for all processed gas' included in the definition of petroleum products has been generating some arguments among taxpayers. While everyone agrees that feed gas would qualify for the exemption, the disagreement centres on the definition of feed gas. In our opinion, feed gas represents the source material for all the gas that is processed and transformed into different products. It should, therefore, be seen as the input for all gas processing activities such as liquefaction, pressurization, compression, dehydration, separation, treatment, and acid gas removal. It is important to note that gas is sold from the exit of a flow station and would have gone through some form of processing. Therefore, it cannot be the intention of the law that the exemption would only apply to gas that has not gone through any processing activity.

Rather, it should apply to gas that is used as raw material for various processing operations that result in fuels, chemicals, and other petroleum products. It is, therefore, important that the Regulations be amended to make it clearer and eliminate unnecessary dispute.

Lastly, we noted that imported LPG, which was hitherto subjected to VAT, has now been included as a VAT exempt item in a bid to encourage local production. This development will ensure adequate supply of LPG to meet local demand, and invariably lead to a drop in the cost of cooking gas in the country. Whilst this development may be laudable in the short term, it is pertinent that domestic production be encouraged to reduce future reliance on importation and ultimately address the further foreign exchange pressure.



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