



FEDERAL INLAND REVENUE SERVICE

15, SOKODE CRESCENT, WUSE ZONE 5, P.M.B 33, GARKI, ABUJA, NIGERIA

INFORMATION CIRCULAR

NO:2021/08

PUBLICATION DATE: 3RD JUNE,2021

Subject: CLARIFICATION ON THE IMPLEMENTATION OF THE VALUE ADDED TAX (VAT) ACT

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners in line with the provisions of the Value Added Tax Act. The circular amends/replaces FIRS Information Circular 2020/02 of 29th April 2020.

1.0 Introduction

The Finance Act, 2020 further amended some provisions of the Value Added Tax Act, Cap. V1, LFN 2004 (as amended). This Information Circular is issued to provide guidance to all stakeholders for appropriate implementation of relevant provisions of the VAT Act.

2.0 Taxable Goods and Services

The provisions of Section 2 of the VAT Act (as amended) are explained as follows:

All goods and services supplied in Nigeria are liable to VAT in Nigeria except goods and services specifically listed in the First Schedule to the Act. To this end, all goods and services consumed or otherwise utilised in Nigeria are subject to VAT in Nigeria. This is in line with the "destination principle" of VAT.

3.0 Place of Supply

Goods are supplied in Nigeria if:

- i. the goods are physically present in Nigeria at the time of supply;
- ii. imported into Nigeria;
- iii. assembled in Nigeria;
- iv. installed in Nigeria;
- v. the beneficial owner of the rights in or over the goods is a taxable person in Nigeria; and
- vi. the goods or right is situated, registered or exercisable in Nigeria.

Service is supplied in Nigeria if:

- (i) the service is rendered to or consumed by a person in Nigeria, irrespective of whether the service is rendered within or outside Nigeria.
- (ii) the service relates to an immovable property in Nigeria, regardless of the location of the service provider.

Service, in this regard, includes but not limited to the services of agents relating to the management or marketing of immovable property, services of all forms of experts and professionals relating to immovable property including analysis of samples drawn from the immovable property, services of engineers, architects, valuers, researchers, testers, etc. relating to the immovable property.

Incorporeal is supplied in Nigeria, irrespective of where the payment for its exploitation is made, if:

- i. the exploitation of the right is made by a person in Nigeria whether or not the right is registered in Nigeria;
- ii. assigned to or acquired by a person in Nigeria; and
- iii. the incorporeal is connected with a tangible or immovable asset located in Nigeria.

NOTE:

- i* Services rendered to and consumed by a Nigerian resident while physically outside Nigeria, are not liable to VAT in Nigeria.
- ii* Services provided under a contract of employment are not liable to VAT.
- iii* Land and building, money, and securities are not liable to VAT.
- iv* Although the definition of goods and services (as contained in Section 46 of the VAT Act) exclude land and building, this does not in any way preclude the charge of VAT on the supply of chargeable goods and services relating to such land and building.

4.0 Time of Supply

Generally, the time of supply for VAT purposes is the earlier of when an invoice or receipt is issued, or payment of consideration is due, or received by the supplier in respect of that supply.

However, where invoices are not issued as in the case of connected persons, time of supplies is the earlier of any of the following periods and as may be applicable:

- a) The time of removal of the goods from the supplier's premises;
- b) The time when the goods or incorporeal are available for the use of the recipients; or

c) Upon rendering the service.

In cases where goods or services are supplied under a law or an agreement that provides for periodic payments, then the time of supply of each successive part of the supply shall be the earlier of:

- i. when payment for that part becomes due;
- ii. invoice relating to that part is issued; or
- iii. when payment for that part is received.

This treatment also applies in the case of instalment, progressive, or periodic payment of rent, or any construction, improvement, repair, assembly, manufacturing, and similar activities or works.

Where goods are supplied under an instalment credit agreement, the time of supply is the earlier of when the goods are delivered and when payment is received by the supplier.

5.0 Rate of Tax

Section 4 of the VAT Act is amended by changing the VAT rate from 5% to 7.5%.

VAT rate was changed to 7.5% with effect from the 1st of February, 2020. Consequently, all taxable supply of goods and services from the 1st of February, 2020 is chargeable at the new rate of 7.5%.

Transitional Issues

The change in rate from 5% to 7.5%, takes effect from the 1st of February 2020. Section 13A (2) of the Value Added Tax (VAT) Act, Cap V1, LFN 2004 (as amended) states that:

“A tax invoice shall be issued on supply whether or not payment is made at the time of supply” For the purposes of VAT:

- i. A service is supplied when it is performed, or an agreed milestone is reached.
- ii. Goods are supplied upon delivery or transfer of risk, whichever occurs first.

Provided that, where it is not practicable to determine the time of supply as aforesaid, the Service may rely on the dates indicated on the relevant invoices, bills, debit notes, goods-received notes, waybills, journal entries, etc.

In view of the foregoing, the general public is invited to take note of the following transitional arrangements:

- i. The VAT rate for taxable supplies made prior to the 1st of February 2020, is 5%;
- ii. For a contract of taxable supplies signed prior to 1st of February 2020 and supplies or performance occurred on or after the 1st of February 2020, applicable VAT is 7.5%;
- iii. For continuing contracts for which supplies or performance is measured on the basis of milestone achieved, VAT rate for milestones achieved on or after the 1st of February 2020, is 7.5%; and
- iv. For all taxable supplies made from 1st of February 2020, VAT rate is 7.5%.

6.0 Registration and Deregistration Requirements

6.1 Domestic Businesses and Companies with Fixed Base or Permanent Establishments

- a. Section 8 of the VAT Act was amended to mandate all taxable persons to immediately register for the tax upon the commencement of business as defined in Section 46 of the VAT Act.
- b. The penalty for failure to register is as follows:
 - i. First month of default is ~~₦~~50,000
 - ii. Subsequent months in which failure continues is ~~₦~~25,000;
- c. A taxable person who permanently ceases to carry on trade or business in Nigeria shall notify the Service within 90 days of cessation.
- d. Penalties for failure to file returns will continue to apply where the taxpayer fails to notify the Service of cessation of business.

6.2 Non-Resident Companies

Section 10 of the VAT Act provides that:

- a. a non-resident person who makes taxable supplies to a person in Nigeria, is required to register for the tax with the FIRS and obtain a Taxpayer Identification Number (TIN);
- b. the non-resident person shall include VAT on its invoice for the supply of goods or services made;
- c. a non-resident person may appoint a representative in Nigeria for the purpose of its tax obligations in Nigeria;

- d. where a person has been appointed by the Service, the agent shall withhold and remit the VAT due on the transaction.
- e. Where the non-resident did not collect the tax, the resident person to whom the supply was made is required to withhold and remit the VAT due to the Service in the currency of the transaction.

NOTE:

A non-resident company which has a fixed base or a permanent establishment in Nigeria is required to comply with the provisions of the VAT Act.

The Service will issue detailed Guidelines to provide clarifications on the operations of VAT as it relates to non-residents in line with the provisions of Section 10(5) of the VAT Act.

7.0 Collection and Remission of Tax

7.1 General Rule

In accordance with Section 4 of the VAT Act, every taxable person is to collect tax at the rate of 7.5% of the value of the goods and services supplied and the tax so collected is the output VAT. Monthly remission of the net VAT payable (which is the excess of the output VAT over the input VAT) is to be made in the currency of transaction on or before the 21st day of the preceding month of such transaction and returns must be rendered to the Service in the appropriate form as discussed in paragraph 9 below.

7.2 Withholding of VAT and Self-Account

Section 14(3) & (4) of the VAT Act introduced a Self-Account provision for all supplies for which VAT was not charged.

The Self-Account provision imposed a duty to withhold and remit VAT on a taxable person to whom a supply is made in Nigeria where:

- i. the supplier is a person exempt from charging VAT under the Act;
- ii. the supplier failed to charge VAT;
- iii. the supplier is a foreign company that makes taxable supply of goods or services without a fixed base or permanent establishment in Nigeria, whether or not VAT is included in the invoice.

The taxable person shall prepare a self-account and remit the tax due in the currency of the transaction on or before the 21st day of the month immediately following the month of the transaction.

The taxable person, in accounting and remitting the VAT, shall provide a schedule of all taxable transaction for which it is self-accounting, in the form prescribed by the Service, indicating the tax identification numbers of the suppliers in the schedule.

NOTE:

1. Where a taxable person receives taxable supplies for which VAT was not charged from either a person below the threshold of ₦25m or any other person, the taxable person receiving the supplies shall self-charge and account for the VAT due.
2. Return for VAT self-accounted or self-charged shall be separately made in the form prescribed by the Service.

8.0 Input Tax

According to Section 17 of the VAT Act, where a taxable person pays Input tax on goods purchased or imported for resale to customers; or where such goods are purchased for direct production of any new product on which tax is charged, such input tax shall be claimable against the Output tax on those goods.

However, all input VAT payable in respect of asset purchased for use by a taxable person should be added to the cost of the asset.

Similarly, all VAT payable in respect of services consumed by the taxable person should be regarded as part of normal operational expenses chargeable to Statement of Profit or Loss Account. Under no circumstance should input VAT on such items be claimed or deducted from output VAT collected.

The claim for input VAT must be made on the VAT returns form for each month and attribution must be appropriately made to ensure that only input VAT that have direct and immediate link to the goods supplied during the month are claimed.

NOTE:

Failure to make attribution constitutes an offense in line with Section 27 of the VAT Act.

9.0 Tax Returns

The amendment to Section 15 of the VAT Act created a threshold for taxable persons under the Act. By this provision, only taxable persons with taxable

supplies of ~~₦~~25million or more are required to charge, collect, remit the tax and file monthly returns to the FIRS.

Monthly VAT returns are to be rendered in the appropriate form as listed below:

- i. **Form VAT 002:** for own business returns filing in line with Section 15(1).
- ii. **Form VAT 002A:** for rendering returns on VAT withheld and reverse charged VAT in accordance with Section 13.
- iii. **Form VAT 002B:** for rendering returns by self-account filers in line with section 14(3) and 14(4).
- iv. **Form VAT 002NRC:** this is for non-resident filers rendering returns in line with Section 10.

9.1 Determination of ~~₦~~25 Million Turnover Threshold

- i. A taxable person who has made taxable supplies of ~~₦~~25 million prior to the introduction of the VAT threshold shall continue to charge, collect, remit the tax and file monthly returns even if it has not made ~~₦~~25million taxable supplies in the current year.
- ii. A taxable person who did not attain the ~~₦~~25 million taxable supplies before 1st of February 2020 (being the date of commencement of the new VAT rate of 7.5%), shall immediately commence to charge, collect, remit the tax and file monthly returns upon attaining the threshold of ~~₦~~25million taxable supplies at any time within the year;
- iii. A taxable person may voluntarily register, charge, collect, remit the tax and file monthly returns to the FIRS at any time even without attaining the ~~₦~~25 million threshold. Such a person shall notify the FIRS prior to doing so and shall be subject to all the provisions of the VAT Act applicable to persons above the threshold.
- iv. A taxable person who has not attained the ~~₦~~25million threshold but expects to attain the threshold at a future date within the calendar year shall immediately commence to charge, collect, remit the tax and file monthly returns to the FIRS.
- v. A taxable person who makes taxable supplies amounting to ~~₦~~25million and above within a calendar year is required to file monthly VAT returns to the FIRS, even if part or the whole of such supplies are exempt from VAT. (Please note the definition of taxable supplies).

NOTE:

1. A calendar year, for the purposes of this Circular, is a period of 12 months beginning on a day marking the start of that year.
2. A taxable person who attains the taxable supply threshold of ₦25million shall continue to collect VAT and file VAT returns on a monthly basis.
3. "Taxable supplies" is **"any transaction for the sale of goods or the performances of a service, for a consideration in money or money's worth"**. As such, the value of taxable supplies is the gross inflow of economic benefits (cash, revenues, receivables, other assets, etc) arising from economic activities, including sales of goods, supply of services, rents, royalties, fees, rights, etc.

However, for the purpose of determining the turnover threshold, it shall not include a taxable supply of the capital asset(i.e. assets capitalized in the books of the taxable person) and the sale of the whole or part of the business.

8.2 Illustrations

Illustration 1

Mr ABC, a wholesale supplier of Consumer goods commenced business in January 2020; by the end of January, his taxable supplies amounted to ₦10 million. Furthermore, his taxable supplies increased to ₦18 million in February and ₦26 million in March 2020. When will Mr ABC be expected to register, collect tax and file monthly VAT returns?

Mr ABC should approach the FIRS immediately he attains the threshold of ₦25 million in March 2020, commence to charge, collect, remit the tax and file monthly returns to the FIRS by April 2020.

Illustration 2

XYZ Enterprises, a supplier of motor parts commenced business in January 2020 and by the end of January, he had made taxable supplies worth ₦12 million. Furthermore, in February 2020 he got an order to supply another customer spare parts worth ₦18 million. When will XYZ Enterprises be expected to collect tax and file monthly VAT returns?

XYZ Enterprises should approach the FIRS as soon as the contract was awarded. In this case, XYZ will surpass the taxable supply threshold of ₦25 million going forward. The enterprise should, therefore, issue tax invoice(s) on the contract sum of ₦18m, collect the VAT, remit and file returns beginning from the 21st of March 2020.

10.0 Tax Exempt Items

10.1 Business Sold or Transferred

VAT is exempt on any asset employed in trade or business sold or transferred, where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria.

The entities will qualify for this concession subject to the following conditions:

- i. The company must prove, to the satisfaction of the Service, that one company has control over the other or that the companies are controlled by same person or are members of a recognised group of companies;
- ii. The entities involved must have been related for not less than a consecutive period of 365 days before the reorganisation;

However, where assets transferred in the reorganisation are further disposed within 365 days after the reorganisation, the VAT exemption granted shall be withdrawn and the applicable VAT shall be recovered. As such, VAT that is chargeable upon the transfer shall be treated as due but unpaid from the date it ought to have been paid if there was no concession; and the penalty and interest shall be charged accordingly.

10.2 Other Exempt Items

At the moment, there are eleven categories of goods and seven categories of services that are exempt from VAT in Nigeria. The list of exempted goods and services contained in the First Schedule are as follows:

(a) Goods Exempted

- i. Medical and pharmaceutical products;
- ii. Basic food items;
- iii. Books and educational materials;
- iv. Baby products;
- v. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment;
- vi. Oil exports;
- vii. Plant, machinery and goods imported for use in the export processing zone or free trade zone;
- viii. Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations;
- ix. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes;
- x. Locally manufactured sanitary towels, pads or tampons;

- xi. Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts.

(b) Services Exempted

- i. Medical Services;
- ii. Services rendered by microfinance banks, people's banks and mortgage Institutions;
- iii. Plays and performances conducted by educational institutions as part of learning;
- iv. All exported services;
- v. Tuition relating to nursery, primary, secondary and tertiary education;
- vi. Airline transportation tickets issued and sold by commercial airlines registered in Nigeria;
- vii. Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.

NOTE:

- i* The commission earned by airline booking agents represents fee for service performed by the agent and thus chargeable to VAT.
- ii* In line with Section 38 of VAT Act, the Honourable Minister of Finance may from time to time issue VAT Modification Order to amend, vary or modify the list of exempt items in the First schedule of the VAT.

11.0 Sundry Issues

11.1 Definitions

"Goods"

Section 46 of the Act defines "goods", as all forms of tangible properties, movable or immovable, but does not include, land and building, money or security. The definition of "goods" above implies that VAT is **chargeable** on the supply of all forms of tangible properties, movable or immovable, except the supply of land and building (commercial or private), money or securities, which are **exempted** from VAT.

NOTE:

The exemption on the supply of land and building covers only supplies that involves both land and building and does not include services incidental to the supply of the land and buildings. As such, survey, valuation, agency and other services incidental to sales and lease are chargeable to VAT.

"Services".

Section 46 of the VAT Act defines "services" as:

- a. Anything, other than goods, or services provided under a contract of employment; and
- b. Includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, monies or securities.

The above implies that VAT is chargeable on the supply of any other thing that is not covered under the definition of goods. This definition covers the performance of any form of service for money or money's worth, lease, rental or use of any form of intangible assets or products or intellectual property rights, etc.

The only exemptions provided by this definition are:

- i. service under a contract of employment,
- ii. interest in land and building in the form of rent or lease (commercial or private).

NOTE:

- the use of land and building for any form of hospitality service or business, including but not limited to monies paid for supply of hotel accommodation space or short stay (sublets) are liable to VAT.
- all fees/commission (including survey, agency, valuation, legal and other related fees/commission) incidental to supply and processing of interest in land and building are chargeable to VAT.

11.2 Penalty Regime

The following are the new penalty provisions:

Section	Offence	Penalty	
		Initial (₦)	Subsequent (₦)
S.8-VATA	Failure to register	50,000.00	25,000.00
S.28-VATA	Failure to notify of change of address or permanent cessation of trade or business	50,000.00	25,000.00
S.35- VATA	Failure to submit returns	50,000.00	25,000.00
S.19 VATA	Failure to remit tax	Tax + 10% of tax + interest at CBN MRR	

Sections 8, 28 & 35 of VATA impose a penalty of ~~₦~~50,000 for the first month in which the failure occurs and ~~₦~~25,000 for each subsequent month in which the failure continues.

Illustration 3

QED Ltd., a taxable person under the VAT Act approaches FIRS WUSE Tax Office in January 1, 2021, to file its annual returns for 2020 assessment year. In the course of reviewing its file, it was discovered that the company failed to submit VAT returns for all 2020 (Jan – Dec) transactions. The applicable penalties are determined as follows:

NOTE:

The first month for which it fails to submit returns attract ~~N~~50,000; subsequent months attracts ~~N~~25,000.

MONTH	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	CUMM. TOTAL
JAN	-												
FEB	50,000	-											50,000
MAR	25,000	50,000	-										125,000
APR	25,000	25,000	50,000	-									225,000
MAY	25,000	25,000	25,000	50,000	-								350,000
JUN	25,000	25,000	25,000	25,000	50,000	-							500,000
JUL	25,000	25,000	25,000	25,000	25,000	50,000	-						675,000
AUG	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-					875,000
SEP	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-				1,100,000
OCT	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-			1,350,000
NOV	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-		1,625,000
DEC	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-	1,925,000
TOTAL	300,000	275,000	250,000	225,000	200,000	175,000	150,000	125,000	100,000	75,000	50,000	-	1,925,000

The cumulative amount of penalty for failure to submit returns is ~~N~~1,925,000 only.

12.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

13.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House,
15, Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department,
Federal Inland Revenue Service,
Revenue House Annex 4,
12, Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Email: tpld@firs.gov.ng