

# Federal Government issues Official Gazette on VAT (Modification Order), 2020

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**KPMG Nigeria**



The Federal Government of Nigeria has published the Value Added Tax (Modification Order), 2020 ("the Order") in its Official Gazette No. 18, Vol.107 of 4 February 2020. The Order commenced on 3 February 2020 and was signed by the Honourable Minister of Finance, Budget and National Planning (HMOf), Mrs. Zainab Shamsuna Ahmed, pursuant to her powers under Section 38 of the Value Added Tax (VAT) Act, Cap. V1, Laws of the Federation of Nigeria, 2004 (as amended).

The Order modifies the First Schedule to the VAT Act by defining and expanding the list of goods and services exempted from VAT and providing clarity on the interpretation of the VAT Act as amended by Finance Act, 2019.

Highlights of the Order include:

1. Adoption of "basic food items" as described in the Finance Act, 2019 but excluding such items sold at restaurants, hotels, eateries, lounges and other similar premises. The Order further provides that basic food items sold by contractors, caterers and other similar vendors will not qualify for the exemption.

2. Definition of the following terms with examples:

- Baby products
- Downstream gas utilisation
- Educational books
- Educational materials
- Equipment
- Farming machinery and implements and farming transportation equipment
- Fertilizers
- Locally produced agricultural and veterinary medicines

- Locally produced animal feeds
- Machinery
- Medical equipment
- Medical products
- Pharmaceutical products
- Plant
- Purchase
- Medical services
- Shared passenger road-transport service
- Lease and rental of residential building

3. Extended list of items exempted from VAT with their Common External Tariff (CET) Codes. The Order provides the CET Codes for the following items:

- Medical and pharmaceutical products
- Basic food items
- Books and educational materials
- Baby products
- Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum sector
- Petroleum products (incorporating provisions of the Value Added Tax Act (Schedule Modification) Order, 2018 signed by the HMOf to exempt petroleum products like automotive gas oil, aviation turbine kerosene, household kerosene, liquefied petroleum gas and premium motor spirit from VAT
- Fertilizer, locally produced agricultural and veterinary medicine and farming machinery
- Essential raw materials for the production of pharmaceutical products
- Renewable energy equipment
- Raw materials for the production of baby diapers and sanitary towels

## Comments

We commend the HMOf for issuing the Order to provide clarity on the application of the First Schedule to the VAT Act which, expectedly, should assist taxpayers to improve their understanding of the VAT Act and enable the tax authority to correctly apply its provisions. It is, therefore, hoped that the Order will help to reduce the incidence of tax disputes arising from ambiguous provisions of the law.

Notably, the Order adopted the description of "basic food items" as contained in the amendments to the VAT Act by the Finance Act, 2019. However, it is not clear why the Order excludes basic food items sold at restaurants, hotels, eateries, lounges and other similar premises from VAT. We humbly posit that the characterization of a basic food item should not change by reference to the place of sale or the status of the seller. Therefore, it should make no difference for VAT purposes whether a bottled water was purchased from a supermarket or from a restaurant, hotel, lounge or an eatery especially as equity is one of the cannons of taxation. Consequently, imposing VAT on items purchased at the listed places without an enabling provision to that effect in the Finance Act, 2019 should be revisited.

Further, the Order exempts "*lease and rental of residential accommodation by persons other than corporate entities*" from VAT thereby making VAT applicable to lease/rental of a

residential apartment if the property is rented by a corporate entity. As a corporate entity can only procure such premises for use by its personnel, there should be no distinction between lease and rental of residential accommodation by individuals and corporate entities. The VAT Act also needs to be more explicit if it is also intended to subject commercial leases to VAT as "land," which is VAT exempt, is broadly interpreted to include any property attached to the land.

Also, we note the expansion of the list of exempt petroleum products and the inclusion of earlier exempted products, such as automotive gas oil, aviation turbine kerosene, household kerosene, *locally produced* liquefied petroleum gas and premium motor spirit, contained in the Value Added Tax Act (Schedule Modification) Order, 2018. Consumers who might have been incurring VAT on these items after 2018 should take note of the exemption which is intended to make the products more affordable for household consumption.

In addition, it is hoped that the inclusion of CET Codes in the Order for VAT-exempt items would provide clarity to importers, Nigeria Customs Service and port authorities on the appropriate VAT treatment of the affected items and expedite their clearance at the ports of entry.

Please click [here](#) to download a copy of the Order.

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