

# Guidelines on simplified VAT compliance regime for non-resident suppliers

**KPMG in Nigeria**  
**November 2021**

The Federal Inland Revenue Service (FIRS) has issued Information Circular No.: 2021/19 ("the Circular") on *Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers (NRSs)* of goods, services or intangibles to persons in Nigeria through electronic, digital or similar platforms.

The Circular was issued pursuant to the provisions of Section 10(5) of the VAT Act Cap.V1 LFN 2004 (as amended) and replaces other notices and publications issued by the FIRS in this regard. The Guidelines will take effect from **1 January 2022** with respect to supply of services and intangibles, and **1 January 2024** for goods.

We have provided below, a summary of the key highlights of the Circular:

## 1. Scope of the Guidelines

The Guidelines will apply to supplies of goods, services and intangibles made through digital means and other digital products by persons (i.e. natural persons, trusts, partnerships, corporations, companies and any other persons) not physically present, located or represented in Nigeria to businesses ("Business-to-Business" - B2B) or consumers ("Business-to-Consumers" - B2C) in Nigeria.

or more customers or participant groups (typically buyers and sellers), and is characterised by two key features, namely:

- (i) each group of participants ("side") are customers of the multi-sided platforms in some meaningful way, and
- (ii) the multi-sided platform enables a direct interaction between the sides."

## 2. Definition of important terms

### 2.1. Non-Resident Suppliers

The Circular defines NRSs as "suppliers located outside the territory of Nigeria, who supply taxable goods, services, digital products or intangibles to Nigerian customers through digital or electronic platforms or means or intermediaries where such intermediaries are not the actual owners or suppliers of the goods or services but facilitate the supply, issuance of invoices and payment."

The above definition is consistent with the provisions of the VAT Act (as amended) regarding digital services supplied to and/ or consumed in Nigeria.

### 2.2. Supply through electronic or digital means

This is defined as "supplies made using digital platforms, any software, electronic or digital interface that enables or facilitates the supply like websites, mobile applications, computer application, online marketplaces, online or digital portals, or like technology. The mechanism for the supply must be automated in nature or involve only minor human interference."

The Circular further defines digital platforms as "multi-sided platforms (electronic or digital) that enable, by electronic means, direct interactions between two

### 2.3. Taxable services

Services covered in the Circular include "any intangible or services delivered via electronic or digital means or similar networks, whose supply is essentially automated, involves minimal human intervention, and is impossible to ensure in the absence of information technology". The Circular also listed examples of the digital services covered under the Guidelines.

Further, it provides that internationally traded services or intangibles are deemed to be supplied in Nigeria where the services or intangibles are consumed or intended to be consumed in Nigeria, based on the "place of supply" provisions of the VAT Act. Consequently, services provided by internationally owned mobile applications, video streaming, ride-hailing, subscription, ticketing and online leasing or rental platforms, cloud-based services and services linked to immovable property in Nigeria are liable to Nigerian VAT.

Additionally, the Circular provides that digitally supplied services or intangibles are deemed consumed or utilised in Nigeria for VAT purposes, under the following instances:

- a) the recipient of the supply resides in Nigeria which is supported by a Nigerian billing, business, residential or postal address;

- b) it can be inferred from information provided to the supplier that the consumer's usual place of residence is Nigeria;
- c) the customer is a company incorporated under any law in Nigeria;
- d) the customer's URL, geo-location or IP address is in Nigeria;
- e) the services are physically performed in Nigeria;
- f) there are other evidences suggesting that the supply is consumed or utilised in Nigeria or that such supplies can only be utilised in Nigeria; or
- g) where a place of consumption cannot be established for the supplies using any of the above indices, the place of consumption is Nigeria if the payment for the supplies originates from a bank or any other financial institution licensed in Nigeria pursuant to Nigerian laws.

The criteria for using the information provided by consumers with respect to their usual place of residence as noted in condition "b" above presupposes the use of *"place of residence"* as the criteria for determining the applicability of Nigerian VAT on supplies made by NRSs. This condition is inconsistent with the extant provisions of Section 2 of the VAT Act which provides for a *"place of supply"* rule and amounts to an amendment of the law which is beyond the FIRS' jurisdiction. Specifically, Section 2(b) of the VAT Act requires that the *"service is provided to and consumed by a person in Nigeria"*, which emphasises the presence of the consumer in Nigeria rather than a place of residence in Nigeria, to deem the supply to have taken place in Nigeria. Therefore, where the consumer is not in Nigeria at the time of supply of the service, it is reasonable to conclude that VAT should not apply to the transaction. Hence, the FIRS may need to update the Guidelines to align it with the exact provision of the law.

## 2.4. Exempt services

Based on the Circular, NRSs that provide the following services are exempt from compliance with the requirements stipulated therein:

- a) Professional and consultancy services that are not automated but are delivered via the internet (e.g., via email);
- b) Broadcasting services;
- c) Telecommunications services; and
- d) Services that are exempt from tax under the First Schedule to the Act.

## 3. Compliance requirements for NRSs

### 3.1. Qualification and Registration for VAT

The Circular requires an NRS who, within 12 consecutive months immediately before the commencement of the Guidelines or any 12 consecutive months thereafter, has made or expects to make a single or series of supplies to Nigeria which (in aggregate value) amounts to **US\$25,000** (or its equivalent in other currencies) to register for VAT with the FIRS and obtain a Tax Identification Number (TIN), in line with Section 10(1) of the VAT Act, provided the NRS meets any of the following conditions:

- a) the supplies are made, through digital means, to a person in Nigeria from a location outside Nigeria, or
- b) the supplies are delivered to, consumed, or otherwise utilised in Nigeria.

The registration will be made through a dedicated link (to be provided by the FIRS) on the FIRS' website. Further, NRSs who have already registered for VAT in Nigeria will be required to migrate to the Simplified Compliance Regime and re-submit their information using the dedicated link.

The FIRS clarified that VAT registration under the Guidelines does not constitute a taxable presence for NRSs for income tax purposes in Nigeria, provided that the NRSs do not have a taxable presence in Nigeria as defined in provisions of extant Income Tax Acts or Double Tax Treaties to which Nigeria is a party.

The registration threshold of US\$25,000 (~~₦10.3~~ million at the CBN's current rate of ~~₦410.79~~ - US\$1 at the time of publication) contradicts the ~~₦25~~ million threshold provided in the Act for VAT compliance by taxable persons. Therefore, the FIRS may need to revise and align the provisions of the Guidelines to ensure consistency with the Act.

### 3.2. Responsibilities of intermediaries and agents

The Circular requires an NRS to register for VAT in its own name, issue VAT invoices, collect and remit the VAT on eligible transactions, where taxable supplies are made directly from it to the customer without the use of intermediaries. However, where supplies are made through intermediaries, the intermediary will be deemed the Supplier for purpose of VAT. Consequently, the intermediary will have the primary responsibility for complying with the charging, collection, remittance, filing of VAT returns and relevant record keeping obligations under the VAT Act,





while the NRS will be exempt from further obligation under the Act. Therefore, the intermediary will be required to register for VAT using its own name, issue VAT invoices for the taxable supplies, and deduct and remit the VAT due to the FIRS.

Further, the Circular provides that a registered NRS is required to charge and collect VAT from parties that earn commission on sales of its services, whether such parties receive payment directly or indirectly from the customer.

### 3.3. Issuance of tax invoice

Affected NRSs are required to issue electronic tax invoices containing their names and TINs, description of the supply, date of the supply, value of the supply, and applicable VAT on the value of the supply.

Further, the Circular provides a transitory measure, whereby an NRS can apply to the FIRS for approval for a phased compliance with the requirements to issue a tax invoice, provided that the NRS shall, from the effective date of the Guidelines, file VAT returns and remit VAT collected on qualifying supplies to Nigeria.

### 3.4. Recovery of input VAT

An NRS is required to expense any input VAT incurred on services supplied to Nigeria. Therefore, an NRS may only claim input tax in the jurisdiction of origin of the supply where the domestic VAT rules of that jurisdiction provides for recovery of input VAT on exported goods and services.

### 3.5. Filing returns and payment of VAT

An NRS registered for VAT purposes is required to file monthly VAT returns, including a Nil return for months where no taxable supply is made to Nigeria. The VAT returns may be filed via the dedicated link to be provided by the FIRS on its portal or by forwarding the duly completed VAT form 002 to a designated FIRS email within the stipulated timeline. The Circular also provides the payment accounts and details for remittance of VAT collected on foreign currency transactions.

Further, an NRS may apply and obtain approval for extension of the due date of filing from FIRS. However, the extension shall not be more than one month and the application must be submitted prior to the due date stated in the Act for filing the relevant VAT returns.

Relatedly, the FIRS emphasised that it will take all necessary steps, including invoking the provisions of Mutual Administrative Assistance in tax collection instruments (where applicable), to enforce, collect and recover the VAT due from an NRS that fails to account for, or remit, the VAT due on qualifying transactions, or comply with the requirements of the Guidelines.

### 3.6. Record keeping

All NRSs making taxable supplies to Nigeria are required to keep reliable and verifiable records detailing the type of supply, date of the supply, VAT payable and any such information relevant to ascertain

that the tax for each supply was duly charged and accounted for.

The Circular provides that any information required by the FIRS, which is available to the NRS but not included in the VAT returns by default, should be submitted to the FIRS within 3 months of request. NRSs must, therefore, notify the FIRS where requested documents cannot be provided by the NRS due to legal or other domestic requirement of its country of residence.

### 3.7. Deregistration

An NRS that fails to meet the registration requirement in 3.1 above for three (3) consecutive years may communicate to the FIRS its intention to be deregistered from the regime. Following the notification, the FIRS will verify the NRS' non-qualification status and deregister such NRS from the regime. However, a deregistered NRS that subsequently meets the qualification criteria must apply to the FIRS to re-register for VAT in Nigeria.

## 4. Appointment of NRS as agents of VAT collection on cross-border supply of goods and services

Section (10)(3) of VAT Act, as amended by Finance Act, 2020, provides that, for supplies made by a NRS, *"the taxable person to whom the supply of taxable goods or services are made in Nigeria or such other person as may be appointed by the Service shall withhold and remit the tax to the Service in the currency of the transaction"*

Based on the Circular, the FIRS notes that the *"NRS shall have a prior obligation to collect VAT"* on cross-border supply of goods and services. However, where the NRS fails to collect VAT, the Nigerian customer shall withhold or self-account for the tax in line with sections 10(3) and 14(4) of the Act. Therefore, an NRS will be deemed to have failed to collect VAT on taxable supplies where it does not include the transaction in its return, or from the facts of the transaction, it can be demonstrated that the NRS has not charged or collected VAT on the transaction. Consequently, the Circular notes that the FIRS is empowered to do all such things as may be necessary for it to enforce the tax laws and collect the amount due.

The designation of NRSs as agents for VAT collection for B2B transactions further to Section 10(3) of the VAT Act places additional compliance burden on NRSs from which Section 14(3) (as amended by Finance Act, 2019) has absolved them by transferring the responsibility for VAT collection and remittance to *"the person to whom the goods or services are supplied in Nigeria."* Indeed, Section 14(4) obligates the Nigerian recipient of such taxable supply to self-account for the VAT where VAT is not included by the NRS in its invoice. This is consistent with the intent of the destination principle introduced by Section 2 of the VAT Act by Finance Act, 2019 to ensure VAT is charged and or collected on taxable goods and services consumed or used in Nigeria without necessarily saddling the NRSs with the related compliance burden. The FIRS may, therefore, wish to revisit the provisions of the Guidelines to align them with the extant provisions of the law.



## 5.NRSs powers to appoint a representative

Section 10(4) of the VAT Act empowers an NRS to appoint a representative for the purpose of its tax obligation in Nigeria. Consequently, the Circular provides that the NRS may utilise the services of a representative or a third-party service provider to act on its behalf in carrying out certain procedures or auxiliary functions, such as submitting returns. However, the appointment of a representative does not preclude the NRS from its obligation to ensure due diligence and compliance with the provisions of the VAT Act and FIRS Guidelines, given that any action taken by such third-party service provider is deemed to be taken by the NRS itself.

Therefore, a representative that acts on behalf of an NRS shall not (in relation to the transactions of the NRS) register for tax in its own name, but in the name of its principal, i.e., the NRS. Further, all correspondence with the FIRS on behalf of the principal shall indicate the name and TIN of the NRS. Finally, the NRS is required to inform the FIRS immediately upon termination of the appointment of a representative.

## Comments

We commend the FIRS for providing detailed clarifications on the administrative and compliance obligations of NRSs in respect of supplies made to Nigeria, in line with the provisions of Section 10(5) of the VAT Act. The clarifications provided in the Circular are especially relevant to ensure proper administration of the provisions of Finance Act, 2020 on the taxation of digital services in Nigeria. However, it is important that the provisions of the Guidelines align with the provisions of the extant tax laws to avoid unnecessary disputes with taxpayers and ensure its effectiveness.

Based on the foregoing, it is hoped that the FIRS will revisit the relevant provisions of the Guidelines to ensure their consistency with the VAT Act as noted in this publication.

Please click [here](#) to read the FIRS' Circular

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