



EXAMINING THE AMENDMENTS TO THE STAMP DUTIES ACT

The world is evolving, perhaps faster than we can imagine. Technology has placed human transaction on a fast pace and as such transactions are being carried out without parties involved meeting physically. Social interactive applications have become the new normal for business transactions as well as for the effective execution of contracts. In response to this evolution, our laws have evolved to include the admissibility of electronic evidence and more recently, taxation of digital service providers. Prior to now, the laws regulating stamping obligations in Nigeria applied to documents in prints. However, the Finance Act 2019 ("the Finance Act") in making sweeping changes to Nigeria's revenue laws, amended the Stamp Duties Act ("SDA") to include electronic documents. Further to this, the FIRS in exercising its powers to collect stamp duties, released an information circular on the amendments introduced by the Finance Act.

This article is focused on examining the FIRS information circular with a view to understanding the current realities of stamp obligations in Nigeria.

AMENDMENTS MADE BY THE FINANCE ACT, 2019

The Finance Act, redefines the following words in the SDA: "Stamp" "stamping" and "instruments". Uniformly speaking, the definitions given by the Finance Act on the above quoted words was simply to expand the borders of stamp obligations to recognize electronic documents and electronic means of stamping documents.

Further to the above, the word "receipt" was also amended to include any electronic inscription whereby money or any bill of exchange or promissory note is acknowledged or expressed to have been received or deposited or debt is acknowledged to be discharged or any such acknowledgment.

The Finance Act also provides that money received from one bank account to another whether through transfer or cash deposit of 10,000 Naira or above is to be subject to stamp duty at the rate of 50 Naira. Notably, this obligation does not apply where the transaction is made between two accounts of same ownership within the same bank. Relatedly, this is proper since there is no need to validate a transaction made by one to himself or herself within the same bank. It should be emphasized that where the banks involved are different, the stamp duty charge shall apply accordingly regardless of whether the bank accounts are owned by the same individual.

From the above, the trajectory of the amendments to the SDA is simply to admit electronic documents and electronic means of stamping. Be that as it may, the Finance Act failed to define what constitutes electronic documents.

HIGHLIGHTS OF THE FIRS INFORMATION CIRCULAR ON STAMP DUTIES

Laudably, the FIRS information circular has helped to provide a better understanding of the intendment of the Finance Act especially from the point of view of the revenue collector (FIRS). The information circular in detailing the current realities of stamp obligations, explains instruments and receipts liable to stamp duties, mode of denoting stamp duties, the application of stamping on electronic documents received in Nigeria, stamp duties on bank deposits or transfer, stamp duties on loan and credit facilities and contract notes, penalties attached to non-compliance etc.

The highlights of the information circular are discussed below;

INSTRUMENTS OR RECEIPTS LIABLE TO STAMP DUTIES

The circular lists this in the following categories;

- All written and printed dutiable instruments or receipts
- All electronic dutiable instruments or receipts. For example, emails, sms, electronic media content or any electronic documents any internet based messaging medium etc.
- All printed receipts. For example, POS receipts, ATM print outs, fiscalised device receipts, other written or print out acknowledgment of payment.
- All electronic generated receipts.

METHOD OF DENOTING STAMP DUTIES

- Employing die impressed on a document as adhesive stamp.
- Affixing adhesive stamp issued by the service on documents.
- Direct electronic printing or impression on document.
- Electronic tagging.
- Issuance of Stamp duties certificate.
- Any other form of acknowledgment of payment adopted by the FIRS.

APPLICATION OF STAMP DUTIES ON ELECTRONIC DOCUMENTS RECEIVED IN NIGERIA

This refers to electronic documents executed outside Nigeria but received in Nigeria. It becomes imperative given the provisions of Sections 7(3) (a), 23(3) and 47 of the SDA, which jointly capture the need to stamp documents executed outside Nigeria. The information circular defines what is deemed as “received in Nigeria” and further defines the timeline for which these documents ought to be stamped. The timelines are as follows;

- 10days in the case of Charter Parties;
- 30days in the case of instruments subject to ad valorem stamp duties;
- 21days in any other instance.

Pointedly, the FIRS information circular defines the context of what electronic documents received in Nigeria entails. It states that a document is deemed to have been received in Nigeria where;

- It is retrieved or accessed in or from Nigeria;
- It (or an electronic copy of it) is stored on a device (including a computer, magnetic storage, etc.) and brought into Nigeria; or
- It (or an electronic copy of it) is stored on a device or computer in Nigeria.

APPLICATION OF STAMP DUTY ON BANK TRANSFER AND DEPOSIT

Pursuant to the Finance Act, a one-time stamp duty of 50 naira is levied on all transactions amounting to 10,000 Naira and above, carried out between banks, whether in form of deposit or bank transfer. The only exception to this charge is where the transaction is between two accounts of same ownership in the same bank. The obligation to remit this charge is levied on the bank through the automated stamp duty process.

TRANSACTIONS ATTRACTING STAMP DUTY

Following the introduction of the FIRS Adhesive Stamp duty by the Inter-Ministerial Committee on Audit and Recovery of Back years Stamp duties, the FIRS recently announced that stamp duty will now be paid on house rent and certificate of occupancy (C of O). This new provision is in line with the recent amendments to the new Stamp duty Act by the Finance Act.

Recall that the FIRS earlier issued a circular following its powers in Section 4(1) of the SDA to collect Stamp duties. By that circular the FIRS listed out transactions which attract Stamp duty. The following transactions were listed thus;

- Instruments with fixed stamp duty; Power of Attorney, Certificate of Occupancy, Proxy Form, Appointment of receiver, Memorandum of Understanding, Joint venture Agreements, Guarantors form, Ordinary Agreements and receipts.

- Instruments with Ad valorem duties; Deed of Assignments, Sales Agreements, Legal mortgages and debenture, Tenancy and Lease Agreements, Insurance Policies, Contract Agreements, Vending Agreements, Promissory notes and Charter Party.

COMMENTARIES

1. Firstly, the provisions of the Finance Act, make it clear that the burden of collecting and enforcing stamp duties lies solely on the FIRS unlike the previous position where stamps were issued by both the FIRS and the Nigerian Postal service. It is expected that this will resolve the controversy about which agency has the powers to collect Stamp Duties, especially as the Nigerian Postal Service has previously made public statements about collecting Stamp Duties. Companies should therefore remit stamp duties to the FIRS.
2. Secondly, the FIRS requires that stamp duties are paid through the automated stamp duties portal therefore transactions which require stamping are to be declared via the stamp duty portal. In conjunction with the admittance of electronic documents for stamping, transactions completed via social interactive apps such as WhatsApp or other e-platforms are to be reported by the parties for the purpose of stamping through any of the modes of denoting stamp duties. While this is a leap from the previous position, the issue of compliance and penalties then become controversial as the existing rates contained in the SDA are not more than N100 and are not commensurate to existing realities.
3. Significantly, the importance of stamps on executed documents are to ensure that they are registrable and may be tendered as evidence before any Court of law. This significance cannot be overemphasized. However, the reality remains that transactions executed via WhatsApp are often simple contracts, i.e. sale and purchase of items and payment for these items are often by way of bank transfer or deposit. In event of a dispute, the contract may be established in several other ways without necessarily stamping the WhatsApp acknowledgment of cash received or sent especially where such transactions are not dutiable.
4. Furthermore, the FIRS was not clear on whether the application of stamp duty on electronic documents applies only to transactions that are dutiable or on all electronic acknowledgment of money received or in promissory form. As such, clarifications need to be provided by the FIRS as to what qualifies as an electronic receipt in the hands of the members of the public.
5. In a similar vein, the question of how the FIRS intends to verify a document received in Nigeria is largely uncertain. A document executed outside Nigeria and received electronically in Nigeria is within the exclusive knowledge of parties to such

executed document and it is really a matter of self-compliance than it is a matter of enforcement for the FIRS.

6. On the issue of double taxation that may arise as a result of charging stamp duties on the Value added Tax element of a transaction and vice versa, it is expected that this should be addressed as the need for the Government to generate revenue should not result in unjustly burdening the taxpayers.

CONCLUSION

The recent amendment of the SDA by the Finance Act and subsequent clarifications by the FIRS in its circular has expanded the scope of stamp duty obligations on taxpayers. Admittedly, there may still be some grey areas especially with regard to the practicability of enforcing compliance but the effort of both the National Assembly and the FIRS is a step in the right direction.

It is expected that the FIRS will address issues such as the inability to make bulk remittance of stamp duties as the platform only allows for individual stamping of documents even though the FIRS in its circular encouraged the payment of stamp duties via the FIRS e-platform.

It is also expected that as the Finance Act only sought to expand the borders of stamp obligations to recognize electronic documents and electronic means of stamping documents without addressing the existing lacunas, proposed amendments to the Finance Act will address key issues in the SDA such as its scope and structure, including definition of terms, rates contained therein and the administration of the SDA.

Generally, the SDA, being an enactment made in 1939, based on the laws of the United Kingdom, is due for amendments that would ensure that it conforms with the present economic realities and global best practices.

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