

FIRS circular on the implementation of the amendment made to Value Added Tax provisions in the Finance Act 2019

The Finance Act 2019 (the Act) provided various amendment to the Value Added Tax (VAT) Act. The FIRS information circular is issued for the information and guidance of the public, taxpayers, and tax practitioners in line with the provisions of the Value Added Tax Act.

This publication seeks to give more insights as well as offer explanations and interpretations on some of the matters clarified in the FIRS circular.

1. Definition of Goods & Services

The Finance Act provides that VAT now applies on both tangibles and intangibles goods such as copyrights, trademarks, right in mineral resources, assets, jetties, etc. Goods are considered to be supplied in Nigeria if they are physically present, assembled or imported for use in Nigeria. Also, if the beneficial owner of the rights in the goods is a taxable person in Nigeria and the rights are situated, registered or exercisable in Nigeria.

Also, VAT is chargeable on services that are either rendered in Nigeria by a person physically present in Nigeria at the time of providing the service, or provided to a person in Nigeria, regardless of whether the services are rendered within or outside Nigeria. However, Services rendered to and consumed by a Nigerian resident while physically outside Nigeria, is not liable to VAT in Nigeria.

2. Rate of Tax

The circular reiterates that the VAT rate has changed from 5% to 7.5% with effect from the 1st of February 2020. Thus, all transactions carried out from the 1st of February shall reflect the new rate.

The FIRS states that the cut-off dates should be determined as follows:

- 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.

Furthermore, where it is not practicable to determine the time of supply, the FIRS may rely on the dates indicated on the relevant invoices, bills, debit notes, goods-received notes, waybills, journal entries as the date of supply.

Where a contract of taxable supplies is 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% while 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%.

3. Registration and Deregistration

All taxable persons are required to immediately register for the tax upon the commencement of business. However, where a taxable person permanently ceases to carry on trade or business in Nigeria, such person shall notify the FIRS of such cessation within 90 days for the purposes of deregistration.

The penalty for failure to register has been amended as follow:

- i. First month of default, is now N50,000
- ii. Subsequent months in which failure continues is now N25,000

Where a taxpayer fails to notify the FIRS of cessation of business, penalties for failure to file returns will continue to apply. Also, taxable supplies made after cessation shall be deemed to have been made on the day immediately preceding cessation.

4. Registration by Non-Residents

The circular explains that a Non-Resident Company (NRC) that “makes taxable supplies” to a company resident in Nigeria should:

- i. register for the tax with the FIRS using the address of the person to whom it is making a supply; and
- ii. include VAT on its invoice.

However, NRCs that have a fixed base in Nigeria should register using the address of the fixed base and comply with charging, filing, payment and other requirements as if it were a Nigerian company.

5. Self-Account Provision

The FIRS clarify that the self-account provision imposes 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 or otherwise failed to charge VAT;
- ii. the supplier is a foreign company without a fixed base (permanent establishment) in Nigeria, whether not VAT is included in the invoice.

The taxable person, when 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 FIRS, indicating the tax identification numbers of the suppliers in the schedule.

6. Introduction of VAT threshold

The Finance Act introduced a threshold for taxable person to charge, collect, remit the tax, and file monthly returns to the FIRS. Taxable persons with taxable supplies of less than N25million are exempted while taxable persons with taxable supplies of N25million and above are not.

Taxable supplies for determining the N25m threshold is defined to include all supplies for a consideration irrespective of whether they are VAT exempt. However, this excludes the taxable supply of the capital assets and sale of the whole or part of the business.

A taxable person may determine if the threshold has been met as follows:

- i. A business that made taxable supplies of N25m or above prior to 1 February 2020 should continue to account for VAT, even if taxable supplies in the current year are below N25m;
- ii. A business that made taxable supplies less than N25m prior to 1 February 2020, but makes or expects to attain the threshold in the current year should account for VAT in the month it meets or expects to meet the threshold; and

- iii. A business may volunteer to account for VAT (subject to notifying the FIRS), even though it does not meet the VAT threshold.

7. Business Sold or Transferred

The Finance Act exempted VAT on any asset employed in trade or business sold or transferred, to a related party for the purposes of better organization of that trade or business based on the following criteria:

- i. The company must prove, to the satisfaction of the FIRS, that one company has control over the other or that the companies are controlled by some other person or are members of a recognized group of companies.

- ii. The entities involved must have been related for not less than a consecutive period of 365 days before the reorganization. The transferred assets should not be disposed of at least a year after the transaction. Where the assets are sold within this period, any concessions granted will be withdrawn by the FIRS, 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 from the transaction date.

8. Exported Service

The FIRS circular highlighted the criteria for a service to be categorized as exported service as follows:

- the service must be provided by a Nigerian resident to a non-resident.
- the non-resident person to whom the service is provided must be outside Nigeria when consuming the service.

The Finance Act defines exported service as a service rendered within or outside Nigeria by a person resident in Nigeria, to a non-resident outside Nigeria, provided that a service supplied to the fixed base or permanent establishment of a non-resident person shall not qualify as exported services.

Furthermore, the FIRS Circular also clarifies that the following do not qualify as exported services:

- i. Where a non-resident person is in Nigeria or consumes the service while in Nigeria;
- ii. Where a non-resident provides a service through its fixed base in Nigeria;
- iii. Where a Nigerian resident provides service to the fixed base of a non-resident in Nigeria; and
- iv. Where a service is provided to a consumer who is in Nigeria, on behalf of a non-resident person.

9. Penalty Regime

The Finance Act implemented new penalty for different default categories.

- Failure to register: Initial month is N50,000 while each subsequent month of failure is N25,000
- Failure notify of change of address or permanent cessation of trade or business: Initial month is N50,000 while each subsequent month of failure is N25,000
- Failure to submit returns: Initial month is N50,000 while each subsequent month of failure is N25,000.
- Failure to remit tax: 10% of the VAT payable plus interest at the prevailing CBN minimum rediscount rate

WYZE takeaway

The FIRS provided a note that services rendered to and consumed by a Nigerian person while outside Nigeria would not be liable to VAT. This clarifies the ambiguity as transactions like foreign hotel bills and training where the recipients were physically abroad should not be taxable services in Nigeria. Furthermore, the circular clarifies that an invoice can be issued at any time where the supply occurs.

NRCs that make any taxable supply to Nigeria to register for VAT is impracticable and can be an unnecessary administrative and compliance burden for the FIRS and the affected NRCs. It is important for taxpayers to be fully aware of changes to the tax laws and FIRS' position as contained in the relevant Information Circulars to minimize the risk of inadvertent non-compliance.

Contact us:

Femi Wright

+234 908 0000 358

fwright@wyzeassociates.com

Wale Ogunsola

+234 908 0000 358

wogunsola@wyzeassociates.com

Kehinde Adeyemi

+234 908 0000 358

kadeyemi@wyzeassociates.com

Gbenga Akinsulere

+234 908 0000 358

gakinsulere@wyzeassociates.com

