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## CLARIFICATION ON THE MODIFICATION INTRODUCED TO THE STAMP DUTIES ACT BY THE NIGERIAN FINANCE ACT 2019

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### INTRODUCTION

Subject to the amendments by the Finance Act 2019 (“**Finance Act**”) to several provisions of the Stamp Duties Act (**SDA**) Chapter S8 LFN 2004 (as amended), the Federal Inland Revenue Service (“**FIRS**”) issued a circular entitled “*Clarification on the Provisions of the Stamp Duties Act*” dated 29 April 2020 (“**Circular**”) in order to provide implementation guidance for clarity and ease of compliance to taxpayers.

### EXISTING STAMP DUTIES ACT PROVISIONS

Section 22 (4) SDA provides that:

*“Except as aforesaid and subject to the provisions of section 90 (3) of this Act, an instrument executed in Nigeria, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.”*

What this means is that instruments executed in Nigeria (or relating to anything to be done in Nigeria) are required to be stamped in order for the same to be admissible as evidence in court or in civil proceedings.

Furthermore, with respect to instruments chargeable with ad valorem stamp duties or any instrument executed outside Nigeria, the SDA<sup>1</sup> provides that stamping of these instruments should be done within



<sup>1</sup> Section 23(3)(a) and (4) of the SDA

thirty (30) days from the date they were first executed or after they have been received in Nigeria (if executed outside Nigeria). The SDA was however silent on the meaning of ‘*after they have been received in Nigeria*’ as it relates to instruments liable to be stamped which were executed abroad.

## AMENDMENTS TO THE SDA BY THE FINANCE ACT

### DEFINITIONS AND ELECTRONIC DOCUMENTS

The Finance Act amended certain provisions of the SDA. These amendments include introducing the concept of “electronic stamping”, “electronic denoting” and “electronic receipt” of documents. The Finance Act also defines the following terms:

“stamp” means “*an impressed pattern or mark by means of an engraved or inked block die as an adhesive stamp or an electronic stamp or an electronic acknowledgment for denoting any duty or fee.*”

“stamped” means “*with reference to instruments and material, applies to instruments and material impressed with stamps by means of an engraved or inked block die, adhesive stamp affixed thereto as well as to instruments and material digitally tagged with electronic stamp or notional stamp on an electronic receipt.*”

Section 2 SDA was amended to expand the scope of instruments liable to stamp duties to mean “every written document and electronic documents”.



However even though the Finance Act introduced the concept of electronic documents and electronic stamping, it did not provide for definitions in that regard, neither did it provide the mechanics for stamping electronically. The Finance Act also did not clarify when electronic documents would be deemed to have been received in Nigeria for stamping purposes. The Circular in expanding on the instruments liable to stamp duties further provides that instruments and receipts liable to stamp duties include the following:

- (i) All written or printed dutiable instruments or receipts;
- (ii) All electronic dutiable instruments or receipts (i.e. in the form of electronic media content, electronic documents or files, e-mails, short message service (sms), instant messages (IM), any internet-based messaging service, website or cloud-based platform, etc);

- (iii) All printed receipts (including POS receipts, fiscalised device receipts, Automated Teller Machine (ATM) printouts and other forms of written or printed acknowledgment); and
- (iv) All electronically generated receipts and any form of electronic acknowledgement of money for dutiable transactions.

What this means is that “electronic documents” are now liable to stamp duties and stamp duties are required to be paid within 30 (thirty) to 40 (forty) days after they have been executed or if executed outside Nigeria, within 30 (thirty) days after they have been received in Nigeria.

The Circular through illustrations clarified what electronic dutiable instruments and electronically generated receipts mean in respect to paragraphs (ii) and (iv) above.

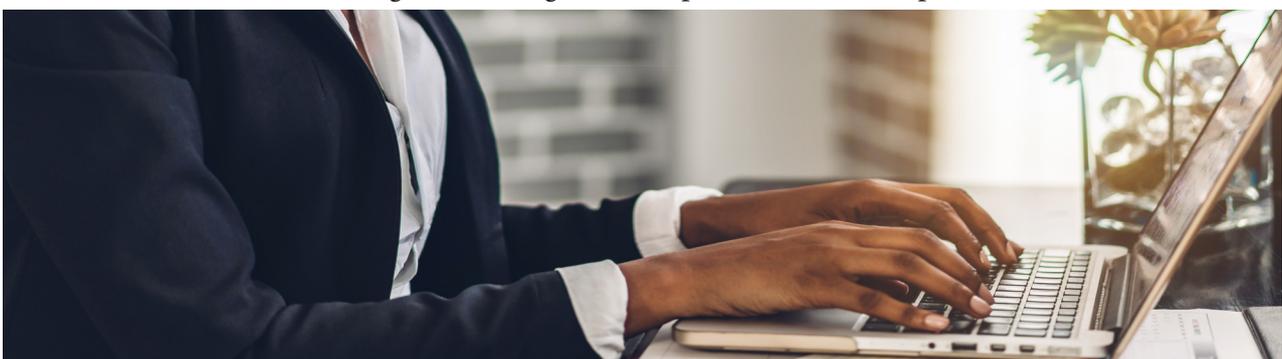
With respect to paragraph (ii), the Circular illustrates that: (a) an informal lease agreement whose terms and conditions are expressed via email correspondence; and (b) a lease agreement drafted and executed online with no physical document to evidence it, are both electronic dutiable instruments. Based on this illustration, it would mean that any other chargeable instruments such as contract agreements, loan agreements, all assets debentures, etc. that are executed online or whose terms and conditions are expressed in an email, would constitute electronic dutiable instruments.

With respect to item (iv), the Circular illustrates that a WhatsApp message acknowledging receipt of money constitutes a receipt for which stamp duty is payable. Details of the underlying transaction for which the receipt was issued are required to be disclosed to the FIRS for assessment and payment of appropriate stamp duties.

The Circular further provides for the modes of denoting stamp duties. The Circular clarifies that stamp duties may be denoted by:

- (i) Employing a die impressed on an instrument as an adhesive stamp;
- (ii) Affixing printed adhesive stamps (issued by the Service) on instruments;
- (iii) Direct electronic printing or impression on the instrument;
- (iv) Electronic tagging;
- (v) Issuance of stamp duties certificate; or
- (vi) Any other form of acknowledgement of payment for stamp duties adopted by the FIRS.

In this regard, taxpayers can log into the portal on the stamp duties website to pay stamp duties and receive an electronic acknowledgment stating that stamp duties have been paid.



## **ELECTRONIC DOCUMENTS RECEIVED IN NIGERIA**

For electronic documents received in Nigeria, according to sections 7(3)(a), 23(3) and 47 SDA, documents, receipts or instruments executed outside Nigeria but received in Nigeria must be presented for stamping within:

- (a) 10 days in the case of Charter Parties;
- (b) 30 days in the case of instruments subject of ad valorem stamp duties; or
- (c) 21 days in any other instance.

On the other hand, the Circular provides that an electronic document, receipt or instrument executed outside Nigeria is received in Nigeria if 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. According to the illustrations provided in the Circular, it was clarified that where electronic records of a transaction carried out outside Nigeria and stored on a server outside Nigeria, are downloaded in Nigeria, the electronic instrument is said to have been received in Nigeria and will be liable to stamp duties accordingly.

## **AUTHORITY TO COLLECT STAMP DUTIES**

Additionally, the Circular further emphasized the position of section 4 SDA which provides that the FIRS is the competent authority to charge and collect duties upon instruments relating to transactions or matters executed between corporate bodies or between a corporate body and an individual, group or body of individuals. The Circular also provides that the relevant state tax authority shall collect duties in respect of instruments executed between individuals at such rate to be imposed or charged in agreement with the Federal Government. This provision is aimed at providing clarifications to enable taxpayers to be informed of the appropriate tax office to remit taxes.



## **STAMP DUTIES ON BANK DEPOSITS OR TRANSFERS**

The Finance Act further provides for stamp duties on bank deposits or transfers in the sum of N10,000 (Ten Thousand Naira) and above. To this end, banks and other financial institutions (commercial banks, investment banks, micro-finance banks, insurance companies, stockbrokers, finance companies, savings and loans, etc.) are required to charge appropriate stamp duties on qualifying transactions and all stamp duties so charged are required to be remitted to the FIRS. . In the same vein, section 89 of the SDA mandates banks and other financial institutions to charge the sum of N50 (Fifty Naira) stamp duties on

intra-bank and inter-bank deposits and transfers from N10,000 (Ten Thousand Naira) and above except where the deposit or transfer occurs between two accounts maintained by the same person in the same bank. The stamp duties so charged is to be remitted to the FIRS using the automated stamp duty process.<sup>4</sup>

### STAMP DUTIES ON CONTRACTS AND CONTRACT NOTES

The Circular further emphasizes section 50 SDA, which mandates any person who carries out any sale or purchase of any stock or marketable security to make and execute a contract note which must provide for the amount of stamp duties in the charge for brokerage or agency. It also provided that where a broker, agent or other persons fails to charge the appropriate stamp duties, such a person shall be prevented from having any legal claim to any charge for brokerage, commission or agency.

Furthermore, the Circular provides that corporate entities, including Ministries, Department and Agencies (MDAs), are required to charge and remit stamp duties on all contracts issued to third party vendors to the Service. The rate to be charged on such contract is 1% of the contract value excluding Value Added Tax. Finally, the Circular provides that a failure to comply with the SDA may result prosecution for offences, payment of penalties of various degrees; inability to use the relevant instrument as evidence in court or other judicial or quasi-judicial proceedings; or any enforcement actions, etc.



### COMMENTARY

From the above, it would seem that an electronic record of any transaction subject to stamp duties will be deemed to be an electronic document upon which stamp duties will be assessed and paid. Electronic documents could be agreements concluded through email and other online applications such as WhatsApp, as well as contracts executed through electronic signatures. With regards to electronic documents executed abroad, and which would be deemed to have been received into Nigeria because they have been downloaded and viewed in Nigeria, it is unclear how the FIRS intends to verify when an electronic document is received into Nigeria for the purpose of assessment and enforcement of payment of stamp duties. From a practical perspective, it is unclear how the stamp duties arm of the FIRS intends to ascertain when an electronic document is received into Nigeria for the purpose of triggering and enforcing the payment of stamp duties in this regard.

<sup>4</sup> Paragraph 12.0 of the Circular

It is important to also note that outside the Circular, the FIRS has further clarified that stamp duty has become payable on rent or lease agreement with the rate of stamp duty varying from less than 1% to 6 per cent depending on the duration of the contract as follows: for a period below 7 years at a rate of 0.78%, 7 to 21 years at a rate of 3%; and 21 years and above at the rate of 6%. The FIRS further directed landlords and property agents to charge stamp duty on all tenancy and lease agreements with tenants and property buyers and to remit same.

In further clarifying the new directive, the FIRS has also mentioned that stamp duty on rent or lease only applies to new agreements and not to renewals. Thus, if a new agreement is prepared at renewal of the lease, that document is required to be stamped and applicable stamp duties paid, just like initial agreement. If, however, the renewal terms are already in the initial agreement, such that no new document is prepared, but just payment of the rent for renewal, then no stamping is required in this regard.

In spite of the above, we believe that the clarifications provided by the Circular will enable taxpayers to be more informed and be guided in remitting the relevant taxes to the appropriate authorities.

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