

# FIRS issues information circular on the implementation of VAT changes in the Finance Act

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## Background

The Finance Act (FA) 2019 introduced significant amendments to the Value Added Tax Act (VATA). The FIRS circular seeks to provide guidance on how the FIRS intends to implement the VAT amendments.

In this publication, we examine some of the matters clarified in the FIRS circular, including:

1. Definition of goods and services;
2. Transition to the new VAT rate;
3. VAT registration and deregistration;
4. Self accounting for VAT;
5. Registration by non-residents;
6. Introduction of VAT threshold;
7. Business reorganisation;
8. Exported service;
9. Penalty regime; and
10. Status of the information circular.

## Definition of supply of goods and services

The circular reiterates that apart from tangibles, VAT now applies on the supply of intangible goods in Nigeria, and provides examples such as the supply of rights in mineral resources, copyrights and trademarks.

In line with the FA, 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.

For services, VAT will apply if the service is performed to persons in Nigeria irrespective of the location of the provider or medium of delivery.

## PwC Comments

Based on the FA, the transfer of interest in land is specifically excluded from the definition of a taxable good for VAT purposes.

However, it is not clear if this exemption covers items attached to land.

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.

As intangibles are now considered “goods” under the FA, it is possible in principle to claim input VAT where the other conditions for input VAT claim are met.

## Transition to new VAT Rate of 7.5%

The VAT rate has been increased from 5% to 7.5%. The FIRS Circular states the effective date as 1 Feb 2020.

In terms of which rate to use and the cut-off date, the FIRS mentions that:

- a service is supplied when it is performed or an agreed milestone is reached
- goods are supplied upon delivery or transfer of risk, whichever occurs first.

Based on the above, any taxable supply made from 1 Feb 2020 would be subject to VAT at 7.5%. Where it is not practicable to determine the time of supply, FIRS may rely on the date contained in invoices, bills, debit notes, good received notes, journal entries or waybills as the date of supply.

## PwC Comments

The FIRS interpretation is in line with Section 13A of the VAT Act on tax invoices which specifies that a tax invoice should be issued on supply. This technically means that an invoice can be issued at any time where the supply occurs. For services, this may be at the start, when the service is being provided or at the end. The ‘time of supply’ is also a legal requirement of tax invoices, and this may not necessarily be the same as the invoice date.

It is expected that the FIRS will implement this provision in a manner to prevent taxpayers from exploiting any timing difference between the time of supply and the date an invoice is issued.

## Registration and de-registration of taxable persons

The amended VATA requires businesses to register for VAT upon commencement. Also, when ceasing a trade, the tax law mandates businesses to notify the FIRS within 90 days of cessation. In addition, the circular states that supplies made post-cessation will be considered as supplied immediately before ceasing.

The penalties for failure to register for VAT have been increased, and new penalties have been introduced for failure to notify FIRS of cessation.

## PwC Comments

The FA exempts organisations with less than N25m turnover in a calendar year from VAT registration. The circular however requires that such entities continue to charge VAT and file returns if they attained N25m prior to the amendment. The circular also provides for voluntary registration. These may pose a legal challenge without specific amendments to the enabling law.

## Registration by non-residents

The circular highlights that a Non-Resident Company (NRC) that “makes taxable supplies” to a Nigerian resident should:

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

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.

## PwC Comments

The VATA requires an NRC that “carries on business” in Nigeria to register for VAT. In our view, “carrying on business” requires some level of presence in Nigeria. Requesting 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.

## Self-Accounting for VAT

The circular clarifies that a taxable person should self-charge and remit VAT on transactions with:

- a supplier who is exempt from charging VAT because of the N25m threshold;
- a taxable person that fails to charge VAT; and
- an NRC without a presence in Nigeria.

A taxable person that self-charges VAT should remit the VAT using VAT Form 006 and maintain a schedule of such transactions.

### PwC comments

Currently, many companies use the regular VAT Form 002 for all VAT returns. Using a separate VAT Form for self-charging of VAT will increase the compliance burden on taxpayers. FIRS should consider a consolidation of all VAT returns into a single form which may also be automated for online filing.

## Introduction of VAT Threshold

The FA exempts companies that make taxable supplies of less than N25m from charging, collecting, remitting and filing monthly VAT return to the FIRS. Such businesses are also exempt from penalties for non-registration.

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

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

“**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.

## Business Reorganisations

The FA 2019 introduced a VAT exemption on transfer of assets in a business reorganisation between related parties, subject to the following conditions:

- a) The companies must justify to the FIRS that they have been related parties for at least one year before the transaction;
- a) 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 penalties and interest will be charged from the transaction date.

### PwC Comments

The reorganisation concessionary relief available to groups now clearly covers VAT and Capital Gains Tax (CGT) in addition to Companies Income Tax (CIT).

One of the anti-abuse conditions is that the transferred assets should not be disposed of at least a year after the transaction. However, it is not clear if this refers to all the assets, or whether the concession will be withdrawn if one or some of the assets are disposed off. The condition also refers to a sale of assets, which means it would not be adversely affected by a sale of shares of the acquiring company within the 365 days.

## Exported Service

The FA 2019 amended the definition of “**exported services**” in the VATA to mean: “**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**”

The FIRS circular highlights that for a service to qualify as an exported service:

- it must be provided by a Nigerian resident to a non-resident; and
- the non-resident person must be outside of Nigeria when consuming the service.

The Circular also clarifies that the following do not qualify as exported services:

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

### PwC Comments

The FIRS has provided clarity on how it intends to interpret the application of VAT in relation to cross-border transactions. Taxpayers can therefore assess their transactions for any risk against the FIRS interpretation. Some examples of potential areas for review include marketing, support and advertising services, warranty services, representative offices, assessment of PE status of non-resident customers, etc.

## Penalty Regime

The FA 2019 amended the VATA to increase the penalty for failure to comply with VAT obligations. The circular summarises the penalties as follows:

- Failure to register for VAT, to notify the FIRS of change of address or permanent cessation of business or to submit VAT returns: N50,000 for the first month, and N25,000 for each subsequent month of failure;
- Failure to remit VAT attracts penalty at 10% of the VAT payable plus interest at the prevailing CBN minimum rediscount rate (MRR).

### PwC Comments

We note the significant increase in the penalty regime as introduced in the FA. This is expected to serve as a deterrent against non compliance.

## Status of the FIRS Circular

The Circular supersedes other publications previously issued by the FIRS on VAT to the extent of any inconsistency and may be withdrawn, amended or replaced at any time.

### PwC Comments

It is important for taxpayers to keep abreast of changes to the tax laws and FIRS' position as contained in the relevant Information Circulars to minimise the risk of inadvertent non compliance.

For a deeper discussion, please contact any member of our Tax team below or your usual contact within PwC Nigeria:

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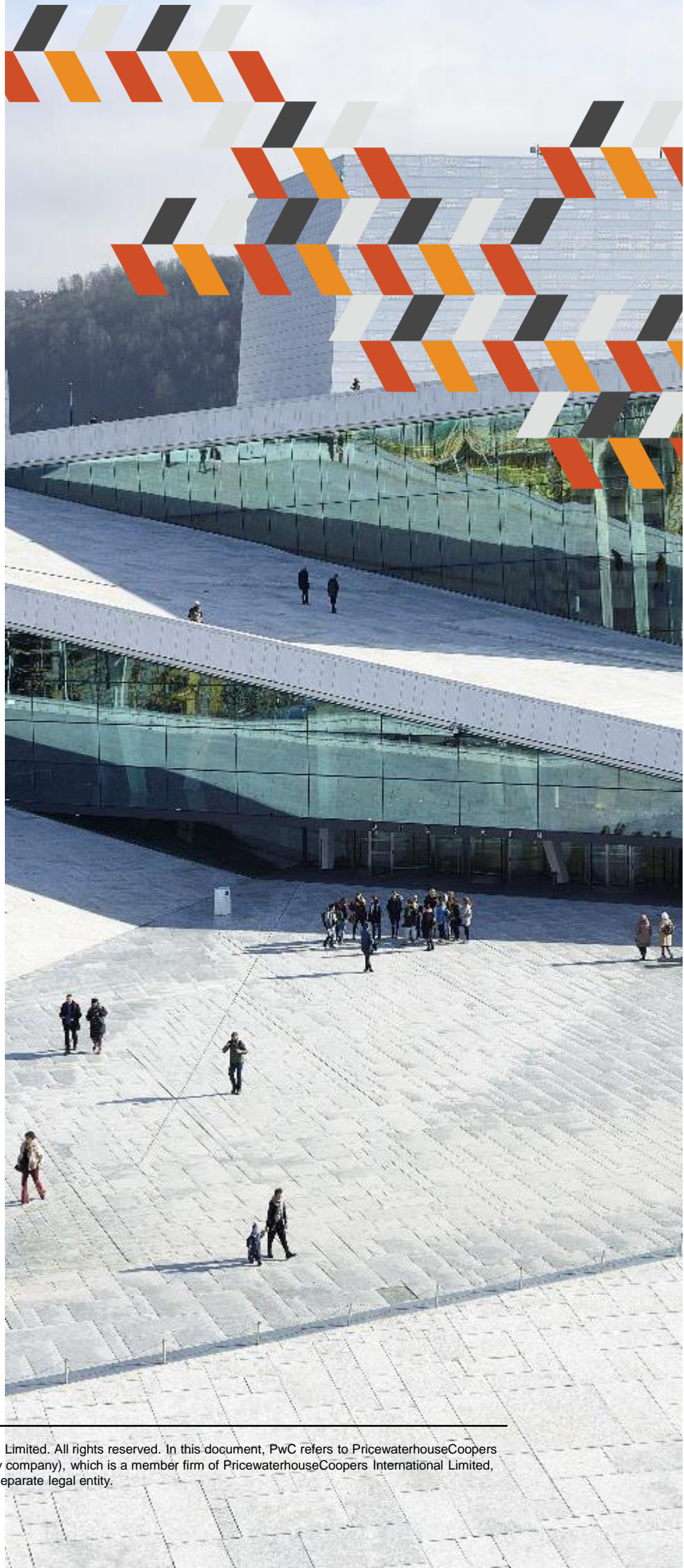
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