



Stamp Duties – Issues for consideration

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Introduction

- The Finance Act of 2019 resolved the decades long dispute between regulatory agencies over the power to administer the Stamp Duties Act (SDA) by clearly **vesting upon the Federal Inland Revenue Service (FIRS) the exclusive power to impose charge and collect duties upon instruments** that have been executed by companies or between a company and an individual
- Stamp Duties are an instrument utilized by governments to raise much needed revenue. Stamp Duties were first enacted in Nigeria, pre-independence in 1939 and 1954, being now included in the compilation of the Laws of the Federation of Nigeria, 1990 and 2004.
- Originally intended to apply to physical documents and instruments, the Finance Act of 2019 now firmly codifies its extension to electronic transactions as well
- The SDA provides for two types of rates: fixed rate and ad-valorem rates.



Highlights of Recent Developments

- The FIRS recently introduced its circular 2020/05 on stamp duties to clarify the provisions of the SDA as amended by the Finance Act, 2019.
- The FIRS has inaugurated the Inter-Ministerial Committee on Audit and Recovery of Back Years Stamp Duties and launched its own adhesive stamp to be used on dutiable instruments going forward.
- With the inclusion of stakeholders such as CBN, NIBSS and various MDAs, the FIRS is poised to begin aggressive stamp duties audits, which is hinged on the budgeted revenue expectation of over ₦400 Billion from stamp duties in the federal government's 2020 budget and an annual projected stamp duties revenue of ₦1 trillion.
- The ongoing revenue drive by FIRS is expected to lead to significant unplanned tax exposure for banks and other players in the financial services industry. This brings to fore the need to adopt a proactive approach to managing stamp duty issues.

FIRS' Circular on Stamp Duties – electronic receipts and documents

Authority to collect Stamp duties



- Confirmation of FIRS as the competent authority to charge and collect stamp duties on transactions of companies
- Definition of the role of state tax authorities in stamp duties administration

Dutiable instruments



- Specification of dutiable instruments to include written/electronic documents, electronic receipts, SMS, etc.
- Stipulation of applicable stamp duty rate for contracts and other dutiable transactions of banks
- Expansion of method of denoting stamp duties to cover electronic tagging, impression, adhesive stamps etc.

Electronic Documents



- Clarity on the scope of electronic documents
- Emphasis on requirement for financial institutions to charge appropriate stamp duty on bank deposit and electronic transactions

Key Issues arising....

Practicality of imposing stamp duties on certain receipts such as SMS, ATM & POS receipts etc.

Adoption of rates not consistent with the provisions of the SDA e.g. lease agreement, general agreements etc.

FIRS has in recent times informed stakeholders of its intent to audit stamp duties on electronic transfers prior Finance Act, 2019. Who actually can audit this period – FIRS or CBN – and is there a legal basis?

FIRS' Circular on Stamp Duties – physical documents applicable to banks

| S/N | Instrument | Rate per FIRS/JTB | SDA Provision |
|----------|---|--|---|
| 1 | Guarantor's Form | <ul style="list-style-type: none"> • ₦500 flat rate | The SDA treats guarantee as either an agreement or a bond depending on the underlying facility and terms of the documents. The Act does not provide for guarantor's form. |
| 2 | Loan Agreement | <ul style="list-style-type: none"> • ₦1.25 for every ₦1,000 i.e. 0.125% ad valorem rate | The SDA provides for certain exemption which was not captured in the FIRS' circular. |
| 3 | Loan Agreement (Accompanying a Mortgage or Debenture) | <ul style="list-style-type: none"> • ₦500 flat rate | This is not separate from (2) above. |
| 4 | Mortgages | <ul style="list-style-type: none"> • ₦3.75 for every ₦1,000 i.e. 0.375% ad valorem rate | While this is correct for certain type of mortgages, the correct rate scale for mortgages is graduated from 0.075% to 0.375%. |
| 5 | Bonds (Mortgages) | <ul style="list-style-type: none"> • ₦3.75 for every ₦1,000 i.e. 0.375% ad valorem rate | Same as 4 above. |
| 6 | Tenancy or Lease | <ul style="list-style-type: none"> • Ad-valorem rate of 6% i.e. ₦6 for every ₦100 | The SDA has graduated the duty payable on leases/tenancy depending on the lease tenure. The rates range from 0.78% to 6%. |
| 7 | General agreement | <ul style="list-style-type: none"> • 1% of contract value | Rates vary depending on the nature of agreement. Could be as low as 15 Kobo. |

FIRS' Circular in many areas is inconsistent with the Stamp Duties Act. Therefore, taxpayers must carry out reviews and health checks, based on the provisions of the SDA, to determine their exposures and implement risk management strategies.

Summary of key Issues and Controversies on stamp Duties

1

Introduction of extraneous rates/instruments

- The FIRS released a list of dutiable instruments and applicable rates.
- This list leans heavily on the JTB Harmonization schedule
- The FIRS list is largely at variance with the SDA
- Also, some instruments like loans, mortgages, leases, general agreement are listed by FIRS at rates different from the SDA
- Certain instruments (like vending agreement not in the SDA are also listed as dutiable by FIRS

2

Audit of stamp duty collected on electronic transfer pre-Finance Act

- In 2016, the CBN mandated Banks to collect stamp duties on transfers from ₦1,000 on transfer/deposits to current account
- The CBN circular was successfully challenged in Court
- Some banks stopped collection from their customers until the Finance Act legitimized the collection
- Managing the audit of this collection amidst varying stance of industry players remains an issue

3

Demand of stamp duties by state tax authorities

- Several state tax authorities have also intensified their demand for stamp duties on electronic transfer and other dutiable instruments from Bank
- This contradicts the position of the SDA
- Managing the opposing legal views of state government on stamp duty matters is also a challenge

As an Industry, how do we want to resolve the above Issues?

What needs to be done – As National Association of Microfinance Banks

Advocacy drive at the FIRS, Ministry of Finance, CBN and Presidency to prevent retroactive application of stamp duties rates not provided in the SDA e.g. Stamp duties of 1% on all contracts

Collaboration of all banks to collectively resist State Government's demand for stamp duties on electronic transactions purportedly between individuals.

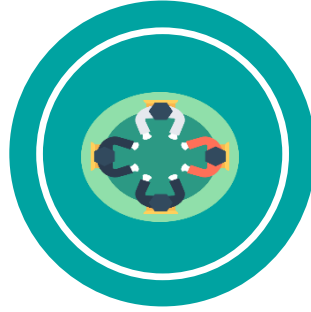
Readiness to challenge the State Governments in the court of law

Mount Advocacy or legal action to prevent stamp duties audit of electronic transfers prior to the Finance Act to protect vulnerable banks?

What needs to be done - By individual Banks



- **Review core banking application for proper deduction of stamp duties**



- **Proactively Conduct a stamp duty health check and diagnostic review on physical documents**



- **Prepare for Stamp Duties Audits by FIRS for 2015 – 2019 FYs**

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