MAZARS' INSIGHT

Finance Act 2020; The Shift from Stamp Duties Levy to Electronic Money Transfer Levy

Over the years, the dwindling oil revenue has forced the Nigerian Government to become more interested in generating revenue from the non-oil sector of the economy. One of the non-oil sector revenues being explored is tax revenue which includes the Stamp Duties Levy.

The Black's Law Dictionary defines stamp duties as tax raised by requiring stamps sold by the government to be affixed to designated documents, thus forming part of the perpetual revenue. Stamp duty is essentially a duty chargeable on both physical and electronic instruments. Stamp duty is also an evidence or acknowledgement of payment of the appropriate fee which could take the form of an engraved ink, blocked die, an electronic stamp or an electronic acknowledgement for denoting any duty or fee. Stamp duty is either charged ad valorem (where duty payable is a percentage of the consideration of an instrument) or a fixed sum regardless of the consideration of the instrument.

The Stamp Duties Act 2004 (SDA) provided for the levying of stamp duties on certain transactions specified in the Act. The instruments required by law to be stamped are physical documents such as lease contract notes, statutory declaration, bill of exchange, all forms of agreements, etc. However, due to the advancement in information technology, the implementation and enforcement of the SDA encountered some difficulties as it did not reflect the current economic realities. This, among other reasons, brought about the amendment of the SDA in the Finance Act 2019 and 2020.

We have highlighted in this article some of the key changes in the SDA and the shift from collection of stamp duties on electronic bank transfers to the adoption of Electronic Money Transfer Levy.

Expansion of the Scope of Stamp Duties Levy

The introduction of the Finance Act 2019 serves as an amendment to several provisions of existing tax and fiscal legislation including the SDA. Under the Finance Act 2019, the scope of receipts and instruments that must be stamped was expanded to include the following;

- all written or printed dutiable instruments or receipts;
- 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.);
- all printed receipts (including POS receipts, physicalized device receipts, Automated Teller Machine (ATM) print-outs, and other forms of written or printed acknowledgment);
- and lastly, all electronically generated receipts and any form of electronic acknowledgment of money for dutiable transactions

On the 29th of April 2020, the Federal Inland Revenue Service (FIRS) published a circular titled "Clarification on the Provisions of the Stamp Duties Act" (the "Circular") to provide implementation guidance as well as clarify the effect of recent amendments to the Stamp Duties Act 2004 (as amended) by the Finance Act 2019 (the "Finance Act"). The renewed focus on stamp duties is therefore predicated on the expected increase in stamp duties collection, especially, given the expansion of the scope of dutiable instruments to include electronic documents via the introduction of the Finance Act, 2019. The FIRS reported that the expansion of the scope of stamp duties to include electronic instruments has led to a record increase of 1000 percent in the revenue generated within the first five months of 2020.

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The Shift to Electronic Money Transfer Levy

Following the expansion of the scope of stamp duties levy to cover electronic transactions, section 48 of the Finance Act 2020 introduced a new section 89A in the SDA to provide for the administration and collection of the Electronic Money Transfer Levy (EMT Levy). Consequently, stamp duties previously charged on electronic bank transfer transactions would no longer apply. The EMT Levy is a singular and one-off charge of N50 on electronic receipt or transfer of money deposited in any deposit money bank or financial institution on any type of account on sums of N10,000 or more. The revenue derived from the EMT Levy is to be shared based on derivation and distributed at 15% to the Federal Government (FG) & Federal Capital Territory (FCT) on the one hand, and then 85% to the state governments.

It is important to note that the introduction of the EMT Levy has resolved the controversies on the relevant government agency empowered to administer and collect the stamp duties levy applicable on transfers between individuals and has also provided a basis for sharing the collection amongst the FG, FCT and the various state governments.

Various State Internal Revenue Service were previously in contention with the FIRS over the powers to administer and collect the stamp duties levy applicable on electronic bank transfers between individuals.

This newly introduced platform would make it seamless for the tax authority to collect the taxes due on digital business transactions. One of the challenges that may be faced using this platform is the potential weaknesses that may be exploited by hackers who may want to gain access into the system. This can cause a great loss to the taxpayers and may further taxpayers' trust in the tax authority.

Conclusion

The SDA (as amended by the Finance Act) clearly expands the scope of stamp duties in Nigeria to include electronic transactions. While we await further developments regarding stamp duties administration in Nigeria, it is important for corporate and individual taxpayers who may be engaged in transactions covered by the SDA to review their transactions and business arrangements. This is to ensure they are in compliance with the obligations under the law, given the renewed focus by the tax authority predicated on the amendment introduced by the Finance Act.

Since the SDA remains a binding law, taxpayers are advised to consult their tax advisors on how to ensure compliance and the necessary steps for seeking redress in circumstances where they feel incorrectly assessed.

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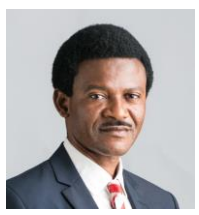

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