

Nigeria's Ministry of Finance has issued a new VAT Modification Order

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Background

Further to the Finance Act (FA), 2019 which amended a number of provisions in the Value Added Tax (VAT) Act, the Federal Ministry of Finance has issued a Value Added Tax (Modification) Order, 2020 (the "Order") with a commencement date of 3 February 2020.

The Order clarifies and expands the list of exempt items as contained in the First Schedule of the VAT Act.

Highlights

The Order outlines the items that are VAT exempt including basic food items, baby products etc.

Basic Food items are defined as agro and aqua based staple food including:

- a) honey (raw or semi-processed),
- b) bread, cereal (raw or semi processed),
- c) cooking oil, culinary herbs (if raw and unprocessed),
- d) fish (other than ornamental),
- e) flour and starch (refined or unrefined),
- f) fruits (including dried),
- g) milk (including powdered),
- h) nuts and pulses (including roasted, fried, boiled, salted),
- i) roots (also in the form of flakes),
- k) salt (excluding industrial),
- l) vegetables (dried or ground), and
- m) water (excluding sparkling or flavoured)

The Order however states that food items sold in restaurants, hotels, eateries, lounges, and other similar premises; or by contractors, caterers and other similar vendors, are NOT VAT exempt.

Baby Products – refers to products made for the use of babies from birth to 3 years, and include baby activity and entertainment products, safety accessories, cribs, feeding and grooming items, clothing, raw materials for production of diapers, and so on.

Downstream Gas Utilisation – Plant, machinery and equipment purchased for the utilisation of gas in downstream petroleum operations are VAT exempt. The Order essentially borrows the definition of "Downstream Gas Utilisation" from the Companies Income Tax Act, and defines it as "the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines".

Education books and materials – The Order expands the VAT exemption to cover electronic books. It also clarifies that the exemption relates to music materials, maps and charts, and materials used in vocational and religious education, among others.

Medical products and services: The Order exempts healthcare related equipment, services and medicine for both humans and animals. However, cosmetology and fitness devices, spa, gymnasium and similar services are not VAT exempt.

Transportation - Shared passenger road transport services available for public use are VAT exempt.

Residential rent – The Order specifies that the rental of residential accommodation by persons other than corporate entities, is VAT exempt.

Petroleum products – The Schedule to the Order exempts petroleum products from VAT, including aviation and motor spirit, kerosene, natural gas, other liquefied petroleum gases and gaseous hydrocarbons.

Renewable energy - Wind and solar-powered generators and other equipment are VAT exempt.

Takeaway

The Order clarifies and defines the key exempt items. It also brings the VAT Act closer to global best practice by

providing a detailed list of exempt items, together with their Common External Tariff (CET) codes.

The FIRS has also issued Information Circulars on VAT changes introduced by the FA, including exempt items. However, there are a few unintended ambiguities introduced by the Order and the FIRS Circular. For example, the circular states that residential rent is VAT exempt while the Order only exempts rent by individuals.

Given that the Order is silent regarding some exemptions introduced by the FA such as tuition, locally manufactured sanitary towels, land, money, securities, and contract of employment; it implies that such exemptions will remain as specifically provided for in the FA until otherwise specifically withdrawn or modified.

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

Taiwo Oyedele
taiwo.oyedele@pwc.com
+234 1 271 1700 Ext 50002

Emeka Chime
chukwuemeka.x.chime@pwc.com
+2341 2711700 Ext 54045

Dozie Adibe
dozie.adibe@pwc.com
+234 1 272 1700 Ext 54060

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