

Nigeria's Ministry of Finance issues VAT (Modification) Order, 2021

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Background

The Ministry of Finance has issued a Value Added Tax (Modification) Order, 2021 (the "Order" or "VMO 2021") with a commencement date of 30 July 2021. The Order revokes previous orders and modifies the list and definitions of exempt items under the First Schedule to the VAT Act. Refer to our Tax Alert on the previous order 2020 [here](#).

Highlights

We highlight the major changes below.

Exempt goods – These Include:

- Petroleum products - restricted to aviation turbine kerosene premium motor spirit, household kerosene, locally produced Liquefied Petroleum Gas (LPG), and crude petroleum oils.
- Renewable energy equipment.
- Raw materials for the production of baby diapers and sanitary towels.
- Locally produced animal feeds.
- Gas supplied by gas producing companies to electricity generating companies (GENCOs), electricity generated by GENCOs and supplied to National Grid or Nigeria Bulk Electricity Trading Company (NBET) and electricity transmitted by Transmission Company of Nigeria (TCN) to electricity distribution companies (DISCOs).
- Agricultural seeds and seedlings.
- All locally produced veterinary medicine .
- Military hardware, arms, ammunition and locally manufactured uniforms used by the armed forces, para-military and other security agencies of governments in Nigeria.

Exempt Services

Previously, services rendered by Community Banks, People's Bank and Mortgage Institutions were VAT exempt. The Order replaces "Community Banks" and "People's Bank" with "Unit Microfinance banks", defined as banks categorised by the Central Bank of Nigeria as Tier 1 or Tier 2 Unit Microfinance Banks.

Shared passenger road transport services available for public use are VAT exempt. However, the Order excludes "leased, hired or rented motor vehicles or transportation apparatus for business or private use, or a car or ride hailing".

The exemption on air tickets sold by commercial airlines registered in Nigeria now specifically excludes hired or rented aircrafts or private jets. Also, private jets and their spare parts are VATable.

Zero-rated items

'Non-oil exports' has been reclassified from the list of zero-rated items to exempt items.

Takeaway

While the effective date of the Order was stated as 30 July 2021, it was gazetted in September (and became publicly available in October). This will create transition issues which should be resolved in favour of taxpayers. Ideally, a period of not less than 90 days should have been allowed from the date of publication before commencement in line with the 2017 National Tax Policy.

The exclusion of hired vehicles and ride-hailing services seems to signal government's move towards rationalising tax incentives especially those not targeted at the most vulnerable population or sector.

By exempting only locally produced LPG from VAT, the Order now provides a legal basis for the imposition of VAT on imported LPG which has recently been the practice, resulting in rising prices of cooking gas. Hopefully this will encourage investment in the local production of LPG and potentially price moderation in the long run.

However, the deletion of natural gas from the list of exempt items seems to negate this policy objective, considering that Nigeria has one of the largest natural gas reserves in the world. While gas for electricity generation is expressly listed as exempt, gas used for fertilizers, private power generation, etc., will no longer enjoy VAT exemption. The removal of VAT exemption on natural gas may impact the growth of the sector and efforts geared towards reducing gas flaring.

The reclassification of non-oil exports from the list of zero-rated items to exempt items will make exports from Nigeria uncompetitive and compromise the country's ability to diversify its sources of foreign exchange receipt. Government should therefore revisit this to restore the zero-rated status while the FIRS should improve its tax refund process to address the challenges of administering zero-rated items in line with global best practices.

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