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Administration of Stamp Duties in Nigeria

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Independent member
Morison Global

CONTENT

Introduction

Stamp duty is a tax charged on written and electronic instruments, otherwise referred to as documents. It was first introduced to Nigeria via Ordinance 41 of 1939, but currently codified as the Stamp Duties Act, Cap S8, LFN 2004 ("SDA" or "the Act"). Besides the Act as the main legislation, there are also subsidiary legislations to the Act – the Stamp Duties (Mortgage and Marketable Security Duties) Regulations of 1963 and the Stamp Duties (Approval for One Unit Die of One Million Naira) Notice of 2003.

"Effective from February 2020, electronic documents are now considered dutiable instruments."

> The Act has seen little to no amendment since its enactment in 1939, until the passing of the Finance Act 2019, through which the SDA was amended to include electronic instruments within the purview of stamp duties in Nigeria. Effective from February 2020, electronic documents are now considered dutiable instruments.

Prior to 2020, the only active areas of compliance with the Act were upon incorporation of companies and filing of notice of increase in share capital at the Corporate Affairs Commission (CAC). With the introduction of the Finance Act 2019 and the inauguration of the Inter-Ministerial Committee on the Audit and Recovery of Stamp Duties in 2020 by the President to recover unremitted stamp duties, more focus is now drawn to stamp duty by the government and taxpayers alike.

Stamping of dutiable instruments is imposed by the relevant provisions of the Act, and as such not a voluntary obligation of taxpayers. That is, even where there is no likelihood of a litigation, as erroneously believed in the past, the responsibility to pay stamp duty subsists and remains as such until discharged.

Methods of Charging & Denoting Stamp Duties

Stamp duty is charged either at an ad valorem rate or at a fixed amount. In Latin, ad valorem translates to "according to value" thus implying that ad valorem duties are charged at fixed percentages of the value of the consideration of the transaction to which the document relates. On the other hand, duties of fixed amounts do not vary regardless of the consideration. Examples of documents charged at ad valorem rates include mortgages, debentures, leases, etc. while instruments charged at fixed amounts include contracts, voting papers, receipts, etc.

Duty paid may be denoted by impressed stamps, adhesive stamps, electronic tagging, issuance of certificate acknowledging payment, or any other means of acknowledgement adopted by the Federal Inland Revenue Service (FIRS) or States' Internal Revenue Service.

ad valorem

...mortgages, debentures, leases,...

Fixed Amount

...contracts, voting papers, receipts...

Responsibility to Pay Stamp Duty

The SDA does not specify in most cases, which party to a transaction is responsible to pay the applicable duty on the documentation. However, Section 23 of the Act is clear on the persons responsible to pay penalty in the event of default as shown in the table:

Instruments	Persons Liable to Duty
Bond, Covenant or any other Instrument	Obligee (the person to whom an obligation is owed), covenantee or any person taking the security
Conveyance on Sale	Transferee
Transfers operating as voluntary dispositions *inter vivos*	Grantor or transferor
Lease	Leasee
Mortgage bond, debenture, covenant and warrant of attorney to confess and enter up judgment	Mortgagee, obligee, transferee, the assignee, disponee or person redeeming the security
Settlement	Settlor

It may be inferred from the table above that these parties expressly mentioned have the obligation to stamp as and when due, rather than only in the event of default.

In a few other instances, the Act specifies the parties responsible to pay stamp duties such as in the case of conveyance on sale where the purchaser is responsible, appraisement/valuation where the appraiser has the obligation to stamp, insurance policies where the insurer has the obligation to pay the duty, etc.

Timeline
for Paying Stamp Duty

The SDA provides for varying rules with respect to stamping different categories of instruments. Dutiable instruments which should be stamped by adhesive stamps are required to be stamped on or before the first execution. Unstamped or insufficiently stamped ad valorem documents are expected to be stamped within 30 days post-execution, while fixed rate documents are to be stamped within 40 days, after which penalty and interest will apply. Instruments executed outside Nigeria are generally expected to be stamped within 30 days of receipt in Nigeria.

In respect of specific instruments, the SDA specifies the time for stamping, such as:

01 Appraisements are to be stamped within 14 days of making out the report.

02 Charter parties executed outside Nigeria are to be stamped within 10 days of receiving same in Nigeria

03 Charter parties executed in Nigeria may be stamped within 7 days of first execution upon paying the duty and penalty of 45 kobo, or within 1 month of first execution upon paying the duty and penalty of NGN20

04 Bill of lading is not to be stamped after its execution, etc

Responsible Tax Authority

Stamp duty is listed under the Concurrent Legislative List contained in the 1999 Constitution of the Federal Republic of Nigeria (as amended). The implication of this is that the adjudication on stamp duty is recognised as the responsibility of both the Federal & State Governments.

FIRS is the responsible agency to charge and collect stamp duties on behalf of the Federal Government while States' Internal Revenue Services (SIRS) are responsible for charging and collection on behalf of State Governments. FIRS is responsible to collect duties where a corporate entity is a party to the transaction to which the dutiable instrument relates, while SIRS are to collect duties on instruments relating to transactions executed between individuals/unincorporated bodies.

Power of Recovery

Section 111 of the SDA gives the Attorney-General of the Federation or the Attorney_General of a State the authority to summarily recover all unpaid duties and penalties due to the Government. All proceedings for such recovery may be commenced at any time within 5 years in which the duty became due or penalty incurred. This means that the statute of limitation for collecting stamp duty is 5 years.

Note that by virtue of Section 116 of the Act, only the National Assembly and States' Houses of Assembly may increase, diminish or otherwise vary the rates as prescribed in the Schedule. Thus, no amendment of the rates by way of information circular or notice will suffice save for the proper legislative process prescribed by law. That is, all recoveries and audits in respect of stamp duty must be in line with the rates and amounts prescribed in the Act.

Some Principles of Charging Duties

As an anti-avoidance provision, Section 8 of SDA provides that where one instrument is used to express several distinct matters, each dutiable transaction is then to be charged separately as though they were contained in several documents. This principle is seen to be applied in S.49(3) of the Act in respect of where one contract note advises the sale of one or more description of stock.

Where more than one instrument is executed for the settlement of the same property, only one of the instruments is to be charged with an ad valorem duty. The law allows the parties to the transaction to determine which of the several instruments is to be deemed the principal instrument.

In the case of a conveyance on sale, the law provides for the following:

1. where the consideration is payable periodically for a definite period not exceeding 20 years, the applicable duty is to be paid at once on the total sum payable

2. where consideration is payable periodically for a period exceeding 20 years or an indefinite period not terminable with life, the duty to be paid is that which is computed on the total consideration payable during the first 20 years after the date of the instrument

3. where consideration is payable during a period terminable with life, the duty is to be on amounts payable during the first 12 years after the date of the instrument

Penalty for Non-compliance

The Act provides for penalties for non-compliance across some of the instruments varying from 20 kobo to NGN100. However, Section 23 of the Act provides for a generic principle for imposing penalty and interest. Where the unremitted duty is NGN20 or less, a penalty of NGN20 is payable in respect of such unstamped or insufficiently stamped instrument.

However, where the unpaid duty exceeds NGN20, the NGN20 penalty applies as well as interest at 10% per annum from the day of first execution. When the interest is computed annually and the amount of interest equals the unpaid duty, no further interest is to be charged.

This contradicts the provisions of Section 40 of the FIRS Establishment Act (FIRSEA) which prescribes a 10% penalty and interest at the prevailing rate where a taxpayer fails to pay tax at the appropriate time. Meanwhile, Section 68 of the FIRSEA provides that its provisions supersede provisions of relevant tax laws, including the SDA and any inconsistencies with the FIRSEA are rendered null and void. This implies that the penalty regime under FIRSEA may be implanted by the tax authority.

In addition to monetary penalties, unstamped or insufficiently stamped documents are generally inadmissible as evidence in any civil proceedings in a court of competent jurisdiction in Nigeria, until same have been duly stamped.

"...unstamped or insufficiently stamped documents are generally inadmissible as evidence in any civil proceedings..."

Chargeable Instruments, Variants, Exemptions and Rates

The Schedule to the SDA provides for an exhaustive list of dutiable instruments and the corresponding rates. Also included in the Schedule are a list of generally exempted instruments and exempted variants of chargeable instruments. The following are some of the generally exempted instruments:

1. documents relating to transfer of shares and stocks
2. instruments for transfer of interest in vessels or ships
3. instruments on which the duty would be payable by the government
4. bond given by public officer for the execution of his duties
5. documents relating to securities lending transactions carried out under regulations issued by the Securities Exchange Commission etc.

Chargeable instruments are charged in line with the prescriptions in the SDA, and this report would consider only some of these instruments including their exempted variants and applicable rates.

Loan Capital

The Act defines 'loan capital' as any debenture stock or funded debt or any capital raised by any corporation, company or body of persons in Nigeria, which is borrowed or has the character of borrowed money. Overdraft obtained at the bank is exempt from stamp duty as well as loans with a tenure of 12 months or less. Loan capital is charged at 0.125% on the loan amount obtained by the company, payable by the borrower.

In the case of financial institutions, funds obtained for the purpose of on-lending to others, such as players of a particular sector, are not considered loan capital of the financial institutions but that of the final recipient of such funds.

Marketable Securities

Marketable securities refer to financial instruments that are capable of being sold in a stock market. The Act defines marketable securities to include those issued by or on behalf of a Nigerian company and those issued in Nigeria but on behalf of a foreign company or government. The SDA also categorizes this into securities transferable by delivery and those not transferable by delivery.

This instrument is charged to duty as per the table below:

Instrument	Variations	Applicable Rates	Base
Marketable Security	Not transferable by delivery	0.375%	Total amount secured
	Transferable by delivery (exceeding 3 years payment period)	2.25%	
	Transferable by delivery where the amount secured is to be paid off within a maximum period of 1 year	0.25%	
	Transferable by delivery where the amount secured is to be paid off within a period exceeding 1 year but not more than 3 years	0.5%	
	Transferable by delivery – given in substitution for a duly stamped similar security	0.225%	
	Sale of marketable security	1.5%	Consideration for sale
	Mortgage of marketable security (by deed)	0.375%	Amount secured

Mortgages, Debentures, Covenants, Bonds

A mortgage is a security created over the debtor's property in exchange of which the creditor advances money to the debtor, provided that the property is returned to the debtor once the debt is settled, otherwise the title is transferred to the creditor. Mortgage may be legal or equitable. Section 80 of SDA provides for charging of both legal and equitable mortgages to stamp duty to be paid by the mortgagee, and the table below shows the treatment of mortgages, debentures, covenants & bonds as security for repayment of money:

Instrument	Variations	Applicable Rates	Base
Mortgages, Bonds, Covenants, and Debentures	Legal mortgage – Where it is the only/principal security for the payment or repayment of money	0.375%	Total amount secured
	Legal mortgage – Where it is an additional or substituted security, where the main security is stamped.	0.075%	
	Equitable mortgage	0.15%	
	Equitable mortgage (where the mortgagee has the power of sale or power to receive rents/profits from the mortgaged property)	0.375%	
	Transfer of Mortgage, bonds, covenants & debentures	0.075%	Amount transferred (exclusive of interest not due)
	Sale of marketable security	1.5%	Consideration for sale

Leases

Stamp duty is chargeable on lease of real property at rates dependent on the lease term. Lease of other assets such as plants and machinery are chargeable as ordinary agreements. The lessee is responsible to pay the duty on leases per the table below:

Instrument	Variations	Applicable Rates	Base
Leases	Where it is for a definite term of less than 1 year	NGN0.39	Nil. Fixed sum
	Between 1 – 7 years	0.78%	Total Rent Amount
	Between 8 – 21 years	3%	Total Rent Amount
	Over 21 years & indefinite term	6%	Total Rent Amount

Bills of Exchange

These include any document, except a bank note, entitling a person to payment. Examples include cheques, promissory notes, letters of credit, etc. The Act classifies bills of exchange into two: bills payable on demand and any other kind. A bill is considered to be payable on demand where it can be paid immediately upon presentation, sighting, or demand or within a maximum of 3 days, while any other bill not falling within this category is deemed to be of any other kind.

For bills payable on presentation or within 3 days, the drawer (issuer) of the bill is responsible to pay applicable duty at 0.02k, but may be charged by the drawee. For any other kind of bill, the duty payable is 0.1% of the amount for which the bill is drawn.

Appraisement/Valuation

The Act defines 'loan capital' as any debenture stock or funded debt or any capital raised by any corporation, company or body of persons in Nigeria, which is borrowed or has the character of borrowed money. Overdraft obtained at the bank is exempt from stamp duty as well as loans with a tenure of 12 months or less. Loan capital is charged at 0.125% on the loan amount obtained by the company, payable by the borrower.

In the case of financial institutions, funds obtained for the purpose of on-lending to others, such as players of a particular sector, are not considered loan capital of the financial institutions but that of the final recipient of such funds.

Conveyance on Sale

This typically refers to transfer of title in real property. Stamp duty on this instrument is charged at 1.5% on the consideration of the transaction, payable by the purchaser.

Note that the following documents are not to be charged under Section 58 of SDA (contracts to be chargeable as conveyances on sale):

- real properties locally situated out of Nigeria (exempt)
- goods, wares, or merchandise (exempt)
- stock or marketable securities (chargeable under Sections 76-79)
- interest in vessel or ship (exempt)

Transfers between related entities (with at least 90% ownership in each other or through a common owner) are exempt from duty provided that the duty on the original purchase was paid by the then purchaser who is now transferring to a related entity.

Agreements/Contracts

The Schedule to the Act divides 'Agreement' into 4 categories:

- Agreement accompanied with a deposit, that is, mortgage;
- Agreement for a lease or letting of land, that is, leases;
- Agreement for sale of property, that is, conveyance on sale; and
- Agreement being evidence of a contract or obligation between parties

Ordinary contracts as in the fourth category are subject to stamp duty at NGN0.15k and NGN3 if executed as a simple agreement or as a deed. It is important to note that the Act exempts contracts for sale of goods, wares and merchandise from stamp duty. However, hire purchase agreements are to be stamped at the applicable rates depending on whether they are under hand only as ordinary agreements or under seal as deeds.

Insurance Policies

These refer to contracts between an insurance company and a person referred to as the insured. Stamp duty is chargeable on all policies of insurance as per the table below:

Instrument	Variations	Applicable Rates	Base
Insurance Policies	Life insurance	0.075%	Capital sum assured
	Marine insurance	NGN0.05k	Nil. Fixed sum
	Policy against accident (for money to be paid upon the death of a person from accident, or compensation from personal injury)	NGN0.09k	
	Policy for money to be paid during the sickness or incapacity of a person	NGN0.09k	
	Policy against loss or damage of any property	NGN0.09k	
	Other types of policies	0.075%	Capital sum assured

Instruments made in anticipation of the issue of a formal policy as well as policies in respect of personal or household effects made or executed out of Nigeria are exempted from stamp duty.

Contract Notes

The Act defines a contract note in Section 49 as a note sent by a broker to his principal advising the principal in respect of sale or purchase of stock or marketable securities. This does not include a note sent by a broker to his principal where the principal is himself acting as a broker/agent for a principal.

Contract notes are dutiable at 0.08% and to be accounted for by the broker. Where an option is given under any contract to purchase/sell any securities at a future time and at a certain price, the contract is to be charged at 0.04%, for every such option.

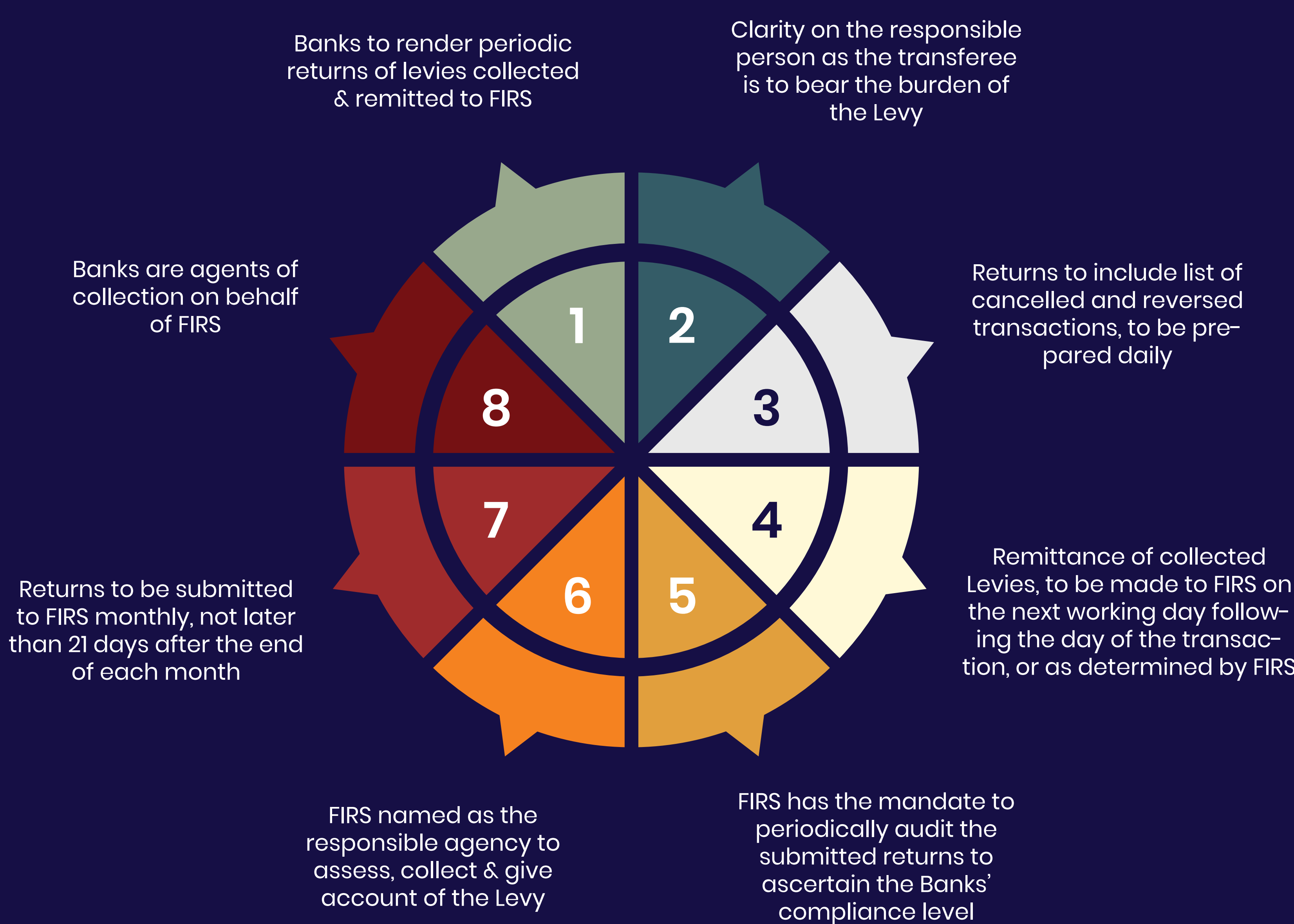
Share Capital

The Act requires that a company with a share capital being incorporated at CAC, pays duty on its share capital. Similarly, any increase on the share capital of the company is to be charged with stamp duty. In practice, companies are mandated to pay the applicable duty at 0.75% before incorporation and increase in share capital processes are considered complete.

Electronic Money Transfer (EMT) Levy

This was introduced via the new Section 89A of the SDA by the Finance Act 2020. The EMT Levy (previously referred to as stamp duty) is a one-off NGN50 charge of all electronic deposits and transfers of NGN10,000 and above. Further to the powers conferred on the Minister to further provide guidance on the imposition, assessment and collection of the Levy, the EMT Levy Regulations was released, effective from June 2022.

Highlights of the Regulations, which aim to provide a regulatory framework for the administration of EMT Levy, include the following:



Conclusion

Stamp duty as a type of tax was previously overlooked with little to no attention paid to it by tax authorities and taxpayers alike. This is, however, no longer the case as the Act is now under the radar of all stakeholders and the drive for compliance is at its highest. In order to generate the expected revenue from stamp duty, the Government needs to quickly do an overhaul of the SDA which is overdue for an amendment considering the archaic and redundant provisions.

Finally, it is important that taxpayers seek professional advice in respect of their transactions to ensure compliance with the provisions of the Act.

Albert Folorunsho
Managing Consultant

Fidelis Chukwu
Partner

Oluwasanmi Ogunsanwo
Manager

Pedabo
▪ Tax ▪ Audit ▪ Advisory

Lagos Office:
67, Norman Williams Street
South West, Ikoyi
Lagos, Nigeria
Tel: 01-2919041; 0808 820 8747
info@pedabo.com
www.pedabo.com

Abuja Office:
4th Floor, Grand Square
Mohammed Buhari Road
Central Business District,
Abuja
Tel: 09-8707692

For enquiries:
technical@pedabo.com