

STAMP DUTIES IN NIGERIA: ANALYSIS OF THE AMENDING BILL IMPLEMENTATION & EFFECT ON STAKEHOLDERS

PAPER DELIVERED AT THE SEMINAR ON CURRENT ISSUES IN
NIGERIAN TAXATION: VAT ACT, STAMP DUTY, NEW-TIN AND PTF
@ CHIDA INTERNATIONAL HOTEL, Abuja Lagos

Abiola Sanni, Ph.D, FCTI, FC Arb

Professor of Commercial Law (Taxation) Lagos State Professor of Taxation & Fiscal Matters,
University of Lagos,

08033958020, 08024065832, asanni@abiolasanniandco.com, asanni@unilag.edu.ng

OVERVIEW

- **Introduction**
- **Highlight of Stamp Duties Act**
- **Highlight of Stamp Duties Amendment Bill**
- **Other Current Development**
- **Issues Arising**
- **Effect on Stakeholders**
- **Recommendations**

INTRODUCTION

SDA was enacted in 1939. The last amendment was in 1956.

JTB in the past had taken initiatives to review the rate from time to time which is not feasible under the 1999 Constitution.

Some of the provisions are archaic, the penalties out of sync with economic realities resulting in avoidable revenue leakages.

For instance there is no express legal framework for electronic stamp in this digital era.

There are current initiatives to amend SDA (in form of an Amending Bill and Presidential Regulation) resulting tension in inter-agency relationship.

INTRODUCTION (CONT'D)

As governments seek to expand the tax net a quick resolution of the inter-agency conflict on SD administration is desirable.

Commendation for CITN, the Organisers of the programme

HIGHLIGHTS OF SDA

Consists of 118 Sections divided into 3 parts and a Schedule.

PART I - imposition on instruments generally & collection

PART II – mode of denoting particular instruments

PART III - duty on capital of companies

Schedule – list of various over hundred instruments in alphabetical order and the applicable rate.

Definition of stamp

A stamp impressed by means of a die as an adhesive stamp for denoting any duty or fee - Section 2 SDA

An official mark or seal placed on a document especially to indicate that a required tax (such as duty or excise tax) has been paid. - The Black's Law Dictionary

On what are stamp duties paid on?

Stamp duty is paid and denoted on instruments/documents contained in the first schedule to the SDA. See section 3 of the SDA.

Eligibility for stamping

Eligibility is predicated upon instrument being “executed in Nigeria or relate to a matter or thing done or to be done in Nigeria wherever executed.”

Thus, eligibility cannot be determined simply on the basis of the nature of instrument. Whether it eligible or exempted under the Schedule or other provisions of SDA.

Exempt

Instruments not contained in Schedule 1 are not eligible. Some of the instruments have specific exemptions. For example, not all agreements are eligible. The following are exempted in the category of agreement:

- Agreement relating to a subject matter whose value is less than N10
- Hire of a labourer or mania servant
- Sale of goods

Types of Stamps

Section 5(1) SDA provides that “all duties shall be by impressed stamps except otherwise allowed by the provisions or regulation.” SDA expressly refers to at least 4 stamps viz:

- Postage stamp (s. 5(2) SDA).
- Impressed stamp (s. 5(4) SDA)
- Embossed stamp (s. 5(4) SDA)
- Adhesive stamp (s. 5(4) SDA)

Section 5(2) provides that “where duty may be denoted by adhesive stamps, postage stamps may, subject to the provisions of any Act or Regulation, be used for the purpose.

Administration

The Federal Government is the competent authority to collect SD on instruments executed between a company and an individual, group or body of individuals.

State Government is the competent authority to collect duties in respects of instruments executed between persons or individuals.

Rates

The transaction may attract *ad valorem* or flat rate

Ad valorem – instruments made for consideration in respect of something is usually ad valorem. For example, share capital of companies, contract, contract note, lease, deed etc

Flat rate – For example receipts. See s. 89 of the SDA.

Implications of non-compliance

The implications of non-compliance with the provisions of SDA include:

- Payment of 10% as penalty. S.23(1)
- The instrument will not be admissible in the Court of law
- The instrument/document cannot be presented in other registries for transactions.
- Reduction in the value of the instrument as security/collateral

Contract Notes on Sale of Stocks and Shares

Contract note is *ad valorem* and not a flat rate as the First Schedule to SDA provides:

CONTRACT NOTE for or relating to the sale or purchase of any stock or marketable security—

Where the value of the stock or marketable security is less than ₹10 : 03k

Where the value of the stock or marketable security is ₹10

and does not exceed ₹200 : 16k

exceeds ₹200, for every ₹200 or part thereof : 16k

50(4) SDA provides:

All stamp duties on a contract note may be denoted by an adhesive stamp which is to be cancelled by the person by whom the note is executed.

Contract Notes on Sale of Stocks and Shares

S.89(2) – Every receipts acknowledging any money amounting to N4 and upward.

Payment could be could be for good or services or discharge of a debt. It is immaterial whether the document is signed or not or bear the name of any person.

Obligation imposed on the person “by whom the receipt is given” (the person issuing the receipt) to ensure that an adhesive stamp is affixed and which is to be cancelled “by the person by whom the receipt is given.

Sec 92 expressly prescribes penalty of N20 for failure to duly stamp a receipt, refusal to give a receipt duly stamped; issuance of a receipt less than N4 for an amount amounting to N4 and upward splitting/division of receipts with intent to evade payment.

SDA AMENDING BILL

A private member Bill comprising of 9 paragraphs on:

Expanding the definition of “stamp” to mean a postage adhesive or printed or impressed or engraved or electronic (image, pattern, code or reference) on any written, printed or electronically generated on receipt

Definition of “Proceeds” and “Stamping Protocol” to mean revenue generated from the sale of adhesive postage stamp or electronically generated stamps or POS machine generated stamp or income from the operations or business activities of NIPOST

Stamping Protocol means the entire process of implementing and enforcing denotation of documents, instruments, forms, deeds, agreement, and relevant written documents with an adhesive or postage stamp or electronic or internet generated stamps as well as the act of cancelling out such stamps by signing across.

SDA AMENDING BILL (CONTD)

Section 5 makes it mandatory for postage stamps to be used where the duty is to be denoted by affixing adhesive stamp under the Act.

Expanding the definition of receipts to include, any written, printed or electronic note or memorandum, transaction or notification for any amount of money from N3000 above

Extend the definition of “document” to include any written, printed or electronic note, memorandum or piece of matter which provides information or evidence or representation of thought or drafts or agreement that serves as an official record between two parties.

Extend the definition of “instrument” to include any written, printed or electronic matter formally attributed to its author, which formally expresses a legally enforceable act, process, contract or obligation or right, and such is evidenced with value or can be traded for an amount of N3000 and above.

SDA AMENDING BILL (CONTD)

Seeks to make denotation upon receipt, document or instrument to be made with physical or electronic postage stamp which is to be cancelled by the person issuing or giving the receipt. It also imposes a fine of N100,000 for failure to effect such cancellation.

Seeks to make denotation upon receipts, document or instrument to be done with a postage stamp which is in the same currency of the value of the receipt, document or instrument.

Provides that all postage stamps including adhesive stamps and electronic stamps or any stamp that can be used for postal purpose shall be within the meaning of the Nigerian Postal Service Act and shall include all postage stamps approved by NIPOST.

Stipulating a penalty of N1000 postage stamp, for stamping a receipt, document or instrument which is not stamped within 28 days after it was given.

SDA AMENDING BILL (CONTD)

A penalty of N5000 postage stamp, for stamping a receipt, document or instrument which is stamped 28 days but within 56 days after it was given. It also provides that a document not stamped within this period shall not be stamped in any circumstance.

Section 91(2) stipulates that a fine of N100,000 be paid before an unstamped receipt, document or instrument can be admitted in evidence while being unstamped in a court or Arbitration proceedings,

A person who has paid the N100,000 penalty to recover the same from any person whose duty it was under the law to have stamped the relevant receipt, document or instrument.

The President has refused assent to the SD Bill

OTHER CURRENT DEVELOPMENTS

Issues Arising

CBN Circular dated 15th January 2016 ref no CBN/GEN/DBM/02/006 ON COLLECTION AND REMITTANCE OF STATUTORY CHARGES ON RECEIPTS TO NIPOST

Judicial decisions

Judicial Decisions declaring NIPOST power to collect stamp duties as illegal, null and void

Standard Chartered Bank Nig. Ltd. v. Kasmal International Services Limited & 22 Ors

Shoprite v. Citibank & CBN

OTHER CURRENT DEVELOPMENTS

FIRS Opposition

JTB Opposition

Dilemma on remittance of stamp duties on Contract notes by CSCS & ASHON

Draft Presidential Regulations – leveraging section 115 to provide for electronic stamping of N50 only

Conclusion

SD is a broad-based tax whose utility is being hampered by narrow administration.

The Presidency/ National Assembly/Ministry of Finance should make Stamp Duties Reform a priority.

Meanwhile, there is need for sustained meaningful consultation among stakeholders to resolve their differences and ensure that appropriate legal framework is provided for electronic stamping.

NIPOST should clearly understand and accept that its power to collect stamp duties pursuant to SDA is limited to **section 50(4)** in respect of Contract Note and **section 89(2)** in respect of receipt AND NO MORE.

THANK YOU

