

**THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA
(CITN)
SEMINAR ON STAMP DUTIES**

**THEME: STAMP DUTIES ACT 2018
SUB THEME: - STAMP DUTY ADMINISTRATION IN NIGERIA
PRESENTER: - MR. AUDU O. JOHNSON, ACTI
DATE: WEDNESDAY JULY 22, 2020
VENUE: WEBINAR (ZOOM)
TIME: 12.35PM – 1.35PM**

STAMP DUTIES ADMINISTRATION IN NIGERIA

Introduction

What is stamp duty?

- Stamp duty is simply a tax on commercial and legal documents which record and give effect to certain transactions.
- Instruments not properly stamped are not admissible in evidence in a court of law and Penalties are charged for late stamping according to the provisions of the Stamp Duties Act, CAP S8, LFN 2004 and the Federal Inland Revenue Service Establishment Act 2007 (FIRSEA). These are the principal Acts for the administration of Stamp Duties in Nigeria.
- Section 23 of the Act which provides that all instruments chargeable with stamp duty may be stamped within 40 days from the first execution thereof upon payment of the duty or unpaid duty except otherwise provided in any other law.

Introduction

- Failure to stamp the instrument within the prescribed period attracts a penalty in addition to the unpaid duty and where the unpaid duty exceeds twenty naira, an interest at the rate of ten percent shall be added to the unpaid duty and the penalty.
- However, such instrument is admissible in criminal proceedings, notwithstanding that is not duly stamped. It may also be tendered to prove a fraud and act of bankruptcy.
- In the same vein a receipt that is not duty stamped may be admitted in any legal proceedings or before any arbitrator or referee if the court, referee or the arbitrator is satisfied that the failure to stamp the receipt is due to the ignorance or illiteracy of the person tendering the receipt. (S.91 (3)).

DEFINITION OF COMMONLY USED TERMS

- i. **'Stamp'** is defined to include a stamp impressed by means of a die as an adhesive stamp for denoting any duty or fee.
- ii. **'Duty'** has been defined as any stamp duty for the time being chargeable under the Act or under any other law and also includes any fee chargeable hereunder.
- iii. **'Instrument'** is defined to include every written document.
- iv. **'Execution'** is defined as when a written document under seal is signed by both parties whose duty it is to do so, has been concluded in accordance with the provision of the law.
- v. **'Denoting'** this term is used when the dies are impressed, fixed or adhesive on any document to indicate any duty paid.
- vi. **'Embossment'** is the stamping of any document known as instrument by the use of a die and stamping machine.

DEFINITION OF COMMONLY USED TERMS

- vi. **‘Die’** includes any plate, tool or implement whatever used under the direction of Minister of Finance, or his counterpart in the state as the case may be, for expressing or denoting any duty or rate of duty.
- vii. **‘Adjudication’**:- The power of the Commissioner to adjudicate is premised on S. 16 of the Act which provides that the Commissioner may on the request of any person, express an opinion with reference to the amount of duty payable on any executed instrument.

LEGAL FRAMEWORK OF STAMP DUTIES

- The Stamp Duties Act CAP S8 Laws of the Federation, 2004 has its root in English Law as imposed in the country during the colonial era. The law was first promulgated in 1939 and was variously amended in 1942, 1946, 1950, 1953, 1954, 1955 1956, 1990, 2004 and most recently the amendments of some of its sections in the Finance Act 2019.
- Stamp duties come under the exclusive legislative list in the constitution which implies that only the Federal Government is competent to legislate on the subject matter .This makes it solely the duty of Federal Inland Revenue Service being the only competent authority to collect and account for such taxes on their behalf.

JURISDICTION OF STAMP DUTIES

- The law has made a distinction between the duties chargeable by the Federal Government and those chargeable by State Governments.
- The Federal Government is the only competent authority to impose charge or collect duties upon instruments relating to matters between a company and an individual, group of individuals.
- State Governments charge or collect duties in respect of instruments executed between persons or individuals.
- However, the rate of duties chargeable by the states has to be agreed with the Federal Government (S.4)

COMMISSIONER OF STAMP DUTIES AND FUNCTIONS

- Stamp duty is managed by the Commissioner for stamp duties who are appointed by the relevant Civil Service Commission of the Federation or of a State as provided in Section 6 of the Act.
- In appointing the Commissioner, the law empowers the president or the Governor as the case may be to limit the powers of such Commissioner to adjudication only.
- The Commissioner of stamp duty is the administrative head of the stamp duty; he is also responsible for assessing instruments and imposing penalties where necessary.
- The Commissioner is also responsible for stamping and embossing the instrument with appropriate stamp and keeps custody of the stamping instruments such as die and adhesive stamps

FORMS OF STAMP DUTIES

- a. **Fixed Duties:** These are duties that do not vary with the amount of consideration, this means that the value is not always taken into consideration while assessing. Example of instruments assessed with fixed duties include:- Payment receipt, Cheque leafs, Admission as solicitor or notary public, Guarantor forms, Proxy forms
- b. **Ad-valorem Duties:** These are duties that vary with the amount of consideration in accordance with the scale provided in the relevant schedule fixed by Government. Example of instruments with ad-valorem duty assessment include:- Tenancy/Lease Agreement, Policy of life insurance, Deed of Assignment, Bill of sale, Vending agreement, Increase in Shares of Companies
- c. **Exempted Instruments:** The list of exempted instruments include the following: Admission as military advocate, Affidavit or declaration made for the purpose of being filed in any court in Nigeria or before any judge or officer of such court, Agreement or memorandum for the hire of any laborer, all instruments on which the duty would be payable by Government, all documents relating to the transfer of stock and shares

CHARGEABLE INSTRUMENTS AND RATES

A. Flat /Fixed Rate Instruments

S/N	INSTRUMENT	CHARGES (Stamp Duties Act 2004 Rate)	EXTRA COPY
1	Guarantor's forms, Scholarship Bond, Sealed Agreement, Partnership Agreement, Guarantee of Bank Facilities, Trust Deeds, Admission Form in French, Articles of Clerkship, Trustee, Fidelity Bond, Sealed Declaration, Protest on Bill of Exchange, Maturity Claim, Forms for Insurance Company, Memorandum of Report, Deed of Appointment, Ordinary Receipts, Protest of Will, Dividend Warrants, Proxy Cards	N500 for original copy	N50 per counterpart
2	Ordinary or Open Agreement underhand articles	N500 for original copy	N50 per counterpart
3	Appointment of Trustee or of Attorney	N500 for original copy	N50 per counterpart
4	Affidavit-Affirmation, Statutory Declaration, Agreement (Memo of Handwritten) Ordinary	N500 for original copy	N50 per counterpart
5	Oath and other affiliate bodies relating to above	N500 for original copy	N50 per counterpart
6	Certificate of Occupancy, Partnership	N500 for original copy	N50 per counterpart
7	Will	N500 for original copy	N50 per counterpart
8	Notaries Act	N500 for original copy	N50 per counterpart
9	Bank Cheque per leaflet	N500 for original copy	N50 per counterpart
10	Letter or Power of Attorney (Revocable/Not Land Related)	N500 for original copy	N50 per counterpart
11	Memorandum, Articles of Association I. Pre Incorporation II. Post Incorporation	N500 for original copy	N500 per extra copy

B. Advalorem Charges

B	ADVALOREM CHARGES	Stamp Duties Act 2004 Rate	%	EXTRA COPY/COUNTERPART	REMARK STD ACT, S8, LFN 2004
1	Insurance Policy/Policies	N1.50k on every N2000	0.075%	N50 per counterpart	S8 - 50
2	Share Capital and Share Capital Increase (TCC Required)	N1.50k on every N200	0.75%	N/A	S8 – 45
3	Mortgage or Insurance and or Debentures In-denture and their up stampings equitable Mortgage (e.g Deposit)	Debenture 75k on every N200; L Mortgage 75k on every N200	Debenture: 0.375% L. Mortgage: 0.375%	N50 per counterpart	S8 – 49
4	Bill of Sale	75k on every N50	1.5%	N50 per counterpart	S8 - 43 & 45
5	Assignment from Bank (Amount written on top corner) Discharge (from Insurance Company) Indemnity or lease of Mortgage	75k on every N50 on Transfer 75k on every N200 on mortgage	1.5% 0.375%	N50 per counterpart	S8 - 42 & 49
6	Discharge or release	15k on every N200	0.075%	N50 per counterpart	S8 – 50
7	Loan Capital/Agreement	25k on every N200	0.125%	N50 per counterpart	S8-34
8	Surrender, Bills of Exchange	5k on every N50	0.1%	N50 per counterpart	S8 - 42
9	Promissory notes of ordinary documents	5k on every N50	0.1%	N50 per counterpart	S8 - 51 & 42
10	Lease agreement on plant and machinery	39k on every N50	0.78%	N50 per counterpart	S8 – 47
11	Goodwill Debenture, Settlements	75k on every N200	0.375%	N50 per counterpart	S8- 52
12	Contract Agreement	N2.00 on every N200	1%	N50 per counterpart	S8-58
13	Deeds of Assignment, Confirmation	75k on every N50	1.5%	N50 per counterpart	S8 – 46

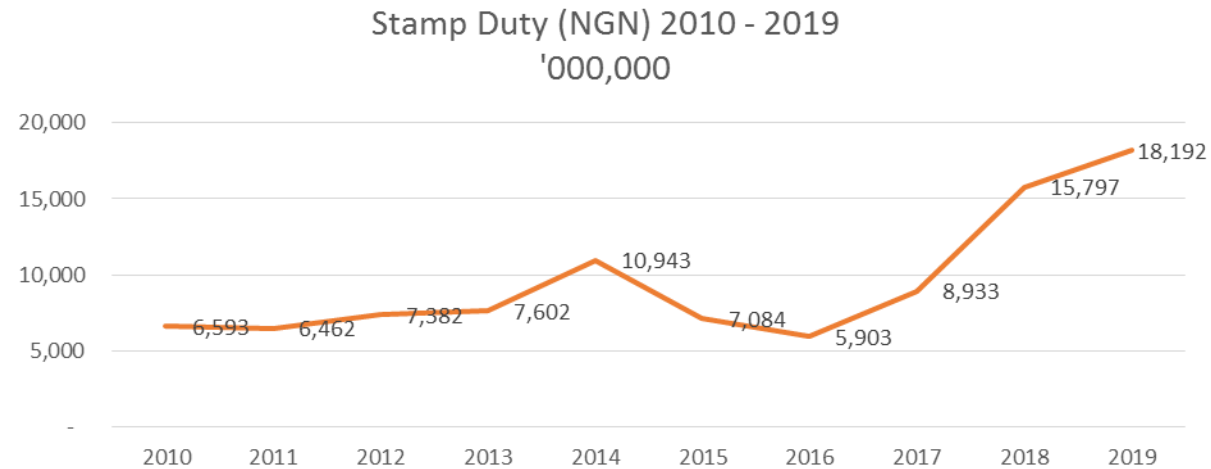
B. Advalorem Charges

14	Deed of Gifts (Land, Property, Etc)	75k on every N50	1.5%	N50 per counterpart	S8 - 63
15	Deeds on Conveyance or transfer on sale of property	75k on every N50	1.5%	N50 per counterpart	S8 - 46
16	Lease agreement or rent agreement i. 1-7 years ii. 7-21 years iii. 21 years to 99 years	1-7 years 39k on every N50 7-21 years N1.50 on every N50 21 years above N6 on every N100	1-7yrs: 0.78% 7-21yrs: 3% Above 21yrs: 6%	N50 per counterpart	S8 - 47
17	Marketable securities transferable by delivery	45k on every N20	2.25%	N50 per counterpart	S8 - 49
18	Promissory Notes/I.O.U	5k on every N50	0.1%	N50 per counterpart	S8 - 51 & 42
19	Contract notes	16k on every N200	0.08%	N50 per counterpart	S8 - 45
20	Settlement of any instrument	75k on every N200	0.375%	N50 per counterpart	S8 - 52
21	Appraisal or Valuation of Property	N3.00 on every N200	1.5%	N50 per counterpart	S8 - 41
22	Bonds (See Mortgage)	75k on every N200	0.375%	N50 per counterpart	S8 - 44
23	Power of Attorney (Irrevocable/Land Related)	75k on every N50	1.5%	N50 per counterpart	S8 - 46

C. Non-Chargeable Instruments

C	NON-CHARGEABLE INSTRUMENTS				
1	Transfer of shares (Government or Legislative Stock)	Free	N/A	N/A	General Exemptions
2	Shipping Agreement	Free	N/A	N/A	General Exemptions
3	Documents from Ministries and Parastatals (letter from Legal Adviser of the Ministry of Parastatals required)	Free	N/A	N/A	General Exemptions

FIRS STAMP DUTIES COLLECTION TREND



Source: FIRS Webportal: Collection so far in Jan. 2020 – June 2020: **N67bn** (**Source:** FIRS Collection Dashboard)

- **Note:** The sharp increase noticed in 2020 collection so far is as a result of remittance of over N20bn by Money Deposit Banks (MDBs) and N39bn by the Central Bank of Nigeria (CBN) unremitted backlog/deductions

Finance Act 2019 and Current Development

The Finance Act 2019 (Sections 52-56) which was passed into law December 2019 and took effect in February 2020 have amended the following sections of the Stamp Duties Act, CAP S8, LFN 2004.

- i. **Section 52 of the Finance Act** amended Section 2 of the Stamp Duties Act by substituting for the definition of the words, “stamp”, “stamped” and “instrument” to include electronic documents and legitimize electronic stamping
- ii. **Section 53 of the Finance Act** amended Section 4 of the Stamp Duties Act as follows:
 - (a) in subsection (1), by substituting for the words, “the Federal Government”, in line 1, the words, “Federal Inland Revenue Service”; and
 - (b) in subsection (2), by substituting for the words, “the State Government”, in line 1, the words, “the relevant tax authority in a State”.
- iii. **Section 54 of the Finance Act** substitute for Section 89 of the Stamp Duties Act by imposing a “duty upon receipt” and electronic receipt or electronic transfer for money deposited in any bank or with any banker, on any type of account, to be accounted for and expressed to be received of the person to whom the same is to be accounted for of amounts from N10,000.00 upwards shall attract a singular and one-off duty of the sum of N50.00:
 - Provided that money paid into one’s own account or transferred electronically between accounts of the same owner by the owner within the same bank shall not be chargeable to duty
- iv. **Section 55 of the Finance Act** deleted **Section 90 of the Stamp Duties Act Certain form of receipts not dutiable)**

Finance Act 2019 and Current Development

- v. **Section 56 of the Finance Act** amended the schedule to the Stamp Duties Act:
- (a) inserting under the category of exempt receipts, a new item “receipts given by any person in a Regulated Securities Lending Transaction carried out under regulation issued by the Securities and Exchange Commission”; and
 - b) inserting under the category of general exemption from stamp duty new item (14), (15), (16)-
 - “ (14) Shares, stocks or securities transferred by a lender or its approved agent or a borrower in furtherance of a Regulated Securities Lending Transaction.
 - “ (15) Shares, stocks or securities returned to a lender or its approved agent in pursuance to a Regulated Securities Lending Transaction.
 - “(16) All documents relating to a regulated securities lending transactions carried out under regulations issued by the Securities and Exchange Commission”

The Implications of the Amendments

1. **E-STAMPING: Section 52 of the Finance Act** has successfully provided the much needed legal backing and legitimacy for the practice of electronic stamping done by FIRS via the portal www.stampduty.gov.ng
2. **FIRS/NIPOST CONTENTION: Section 53 of the Finance Act** has brought the lingering FIRS/NIPOST jurisdictional contention to rest by recognizing the FIRS as the only competent Federal Government Agency to impose, charge and collect Stamp duties upon instruments specified in the Schedule to this Act if such instrument relates to matters executed between a company and an individual, group or body of individuals.
3. It is important to understand that postage stamp as administered by NIPOST is for the purpose of delivery of items and documents. It does not denote duty and, therefore not a substitute for FIRS adhesive stamp.
4. **STAMP DUTIES ON ELECTRONIC TRANSACTIONS:** Section 52 of the Finance Act has also redefined chargeable “Instruments” to include electronic documents, thus legitimizing the imposing of Stamp Duty on electronic transactions.

The Implications of the Amendments

4. **IMPOSITION OF N50.00 STAMP DUTY ON ELECTRONIC TRANSFERS FROM N10,000.00 upwards: Section 54 of the Finance Act** has legitimized and legalized the hitherto controversial N50 stamp duty charged by Money Deposit Banks (MDBs) on behalf of the Federal Government. This development has led to the remittance of backlog Stamp Duties by MDBs (N20bn) and CBN (N39bn) totaling about N60bn and is the premise upon which the **“Inauguration of the Inter-Ministerial Committee on Audit & recovery of Back Years Stamp Duties and The Launch of Federal Service Adhesive Stamp”** is predicated.
 - In view of the foregoing, The Executive Chairman of the Federal Inland Revenue Service, Mr. Mohammed M. Nami, has projected to collect over N500billion as Stamp Duties collection in the current year.

CHALLENGES OF STAMP DUTIES ADMINISTRATION IN NIGERIA

- The major challenge of the Stamp Duties Act is the stale and obsolete law guiding it. The Stamp Duties Act was first promulgated in 1939, although, the Stamp Duties Act, CAP S8, LFN 2004 underwent several amendments but the context and content was never changed.
- The Stamp Duties Act and the rates therein is outdated and does not reflect current economic realities. A typical case scenario can be seen in the Offences and Penalties which are usually less than Hundred Naira (N100.00).
- The Stamp Duties Act has technically made the administration and enforcement of Stamp Duties optional and it lacks provisions that have made it compulsory, hence, duty payers are at liberty of compliance, as the only deterrent is the applicable penalty which is also not in tune with economic realities.
- Lastly, there is high level unawareness of the tax. A lot of policy makers, tax administrators, practitioners, scholars and the general tax paying public seems to know little or nothing about stamp duties and this has grossly impeded its effective administration and development in Nigeria

WAY FORWARD

- ❖ A total and complete overhaul of the stamp Duties Act, Cap S8, LFN 2004 is urgently and extremely necessary. It is unfortunately one of the oldest precolonial laws in Nigeria which had made its administration very difficult regardless of its huge potential.
- ❖ Also, a massive public enlightening campaign is necessary to educate the general public on Stamp Duties and its significance.

THANK YOU

Reference

- i. The Stamp Duties Act, CAP S8, LFN 2004
- ii. The Finance Act 2019
- iii. Various FIRS Publications