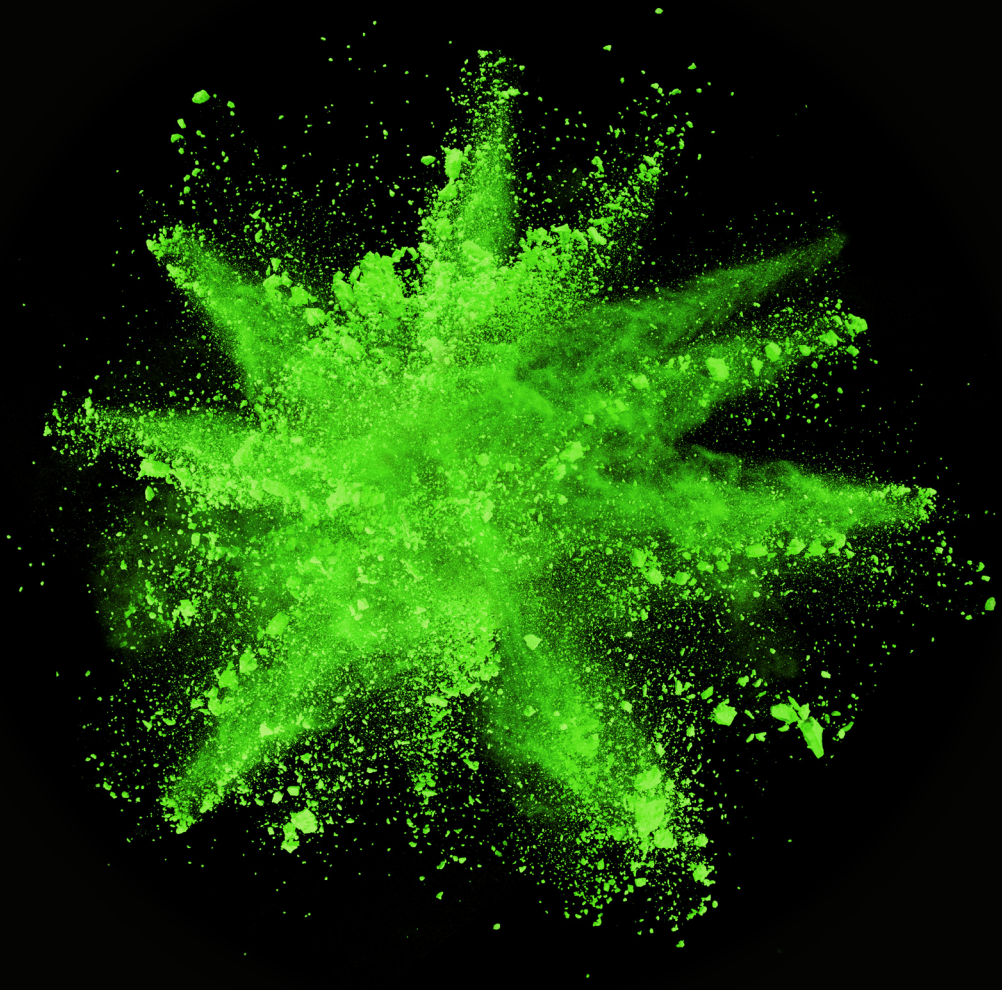


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## Minister of Finance releases Value Added Tax Modification Order 2021

October 2021



The Honourable Minister of Finance, Budget and National Planning (“the Minister”), Zainab Shamsuna Ahmed, has issued the Value Added Tax (VAT) Modification Order 2021 (“the 2021 Order”) which took effect from 30 July 2021. The Minister issued the 2021 Order pursuant to Section 38(b) of the VAT Act (“VATA”), which empowers the Minister to amend, vary or modify the list set out in the First Schedule to VATA i.e. the schedule listing the goods and services designated as VAT exempt and zero-rated.

It appears the First Schedule of VATA was modified to further align with Nigeria’s economic objectives, and also regularize previous pronouncements by the Federal Government that were not properly coded in VATA. The 2021 Order was also used to define some terms in the First Schedule to VATA. Whilst these definitions would arguably not form part of VATA, since VATA does not give the Minister powers to interpret terms used in the legislation, the definitions may be an indication of the Minister’s position with respect to the scope of VAT exemptions.

The power conferred on the Minister to amend, vary or modify VATA has been exercised at various times in the past and more recently in 2020, with the issuance of VAT Modification Order 2020 (“the 2020 Order”). With the release of the 2021 Order, it appears that amendments, variations or modifications to the First Schedule would become more frequent. It would be recalled that Finance Act 2019 (“FA19”) and Finance Act 2020 (“FA20”) also amended the First Schedule.

In this newsletter, we provide a detailed evaluation of the key changes, modifications and clarifications contained in the 2021 Order, as well as new issues that may have been triggered by the 2021 Order.

# Amendments to the First Schedule

## a. Substitutions

The 2021 Order modifies Part I of the First Schedule by replacing the previous paragraph 3 i.e. “books and educational materials” and previous paragraph 5 i.e. “fertilizers, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment”, with a new paragraph 3 i.e. “educational books and materials” and new paragraph 5 i.e. “fertilizers and locally produced agricultural chemicals, and locally produced veterinary medicine”. Also, the 2021 Order modifies paragraph 2 of Part II, by replacing “Services rendered by microfinance banks, people’s banks and mortgage institutions” with “Services rendered by Unit Micro-Finance Banks and Mortgage Institutions”.

These modifications were made to limit the scope of VAT exemption for financial services and clarify any ambiguities in the interpretation of the First Schedule. For instance, removing “farming machinery and farming transportation equipment” ensures that exemptions provided to agricultural equipment is based on paragraph 9 of Part I i.e. “tractors, ploughs and agricultural equipment and implements purchased for

## b. Deletions

The 2021 Order deleted “non-oil exports” from the list of zero-rated goods in Part III of the First Schedule. Whilst this move may be intended to clarify a seeming ambiguity in the interpretation of “All exports” listed in Part I and “All exported services” in Part II, it has effectively removed the ability of non-oil exporters – especially manufacturers – to recover input VAT incurred on goods that form the stock-in-trade used for the direct production of the exported goods. This may act as a disincentive for manufacturing businesses seeking to go into export trade.

## c. The detailed list of Exempt Items

Similar to the 2020 Order, the 2021 Order also provides a detailed list of exempt items. We have attached this modified list as Annexure 1.

## d. Additions

### 1 Goods

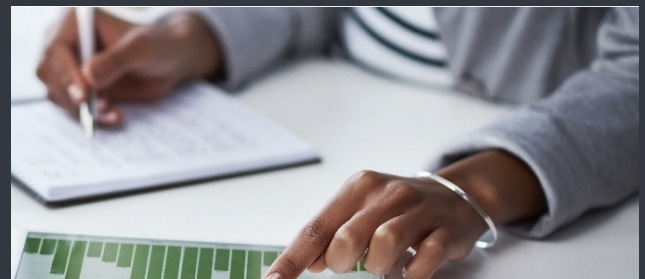
The 2021 Order has included the following seven (7) items to the exempt list:

- i* Petroleum products
- ii* Renewable energy equipment
- iii* Raw materials used to produce baby diapers and sanitary towels
- iv* Raw materials used to produce pharmaceutical products
- v* Locally produced animal feeds
- vi* Military hardware, arms, ammunition, and locally manufactured uniforms used by the armed forces, para-military and other security agencies of governments in Nigeria
- vi* Gas supplied by gas producing companies to Electricity Generating Companies (GENCOs); Electricity generated by GENCOs and supplied to the National Grid or Nigeria Bulk Electricity Trading Company, and Electricity transmitted by Transmission Company of Nigeria to Electricity Distribution Companies.
- vii* Agricultural seeds and seedlings"

The new additions reinforce Nigeria’s commitment to not only reduce energy costs but also ensure the production of clean energy. Further, there is an immediate need to lower the cost of therapeutics in the current health climate, and ensure essential products remain affordable. It is also important to note the distinct addition of locally produced animal feeds to the exempt list. It would be recalled that the 2020 Order only defined “produced animal feeds” without providing clarification about its VAT exemption status. The 2021 Order has now regularized the VAT exemption status of animal feeds.

### 2 Services

The 2021 Order has included shared passenger road-transport service to the exempt list. It could be argued that this is not an entirely new addition as there was a previous attempt to include “shared passenger road-transport” among the list of services exempt from VAT. The 2020 Order defined the term but did not confirm its VAT exemption status.



# Key clarifications

## a. Goods



### Utilisation of gas in down-stream petroleum operations

The 2020 Order did not define this term. Rather, it defined “downstream gas utilisation”. It will be recalled that VATA provides VAT exemption for “plant, machinery and equipment purchased for utilization of gas in down-stream petroleum operations”. Hence, the 2021 Order has provided the required clarity by defining the term “Utilisation of gas in downstream petroleum operations” albeit retaining the same interpretation provided to “downstream gas utilization” in the 2020 Order.



### Educational books and materials

The 2021 Order modified the name of this item to emphasize that not all books are considered as VAT exempt. Prior to this modification, the former term “books and educational materials” allowed for the exemption of all kinds of books whether educational or otherwise. While the definition of educational books and educational materials did not change, this rearrangement of the words used in paragraph 3 of Part I of the First Schedule will place it beyond doubt that only books used for educational purposes are intended to enjoy the VAT exemption.



### Equipment

The definition of “Equipment”, in the 2021 Order, “refers to tools, which may be devices, machines or specialized industrial vehicles that assist a person in achieving an action beyond the normal capabilities of a human”. Recall that the 2020 Order defines “Equipment” as “tools, which may be devices, machines or vehicles that assist a person in achieving an action beyond the normal capabilities of a human including tangible property, other than land and building, which facilitates business operations”.

First, the 2021 Order has limited the scope of vehicles that will be exempted to only specialized industrial vehicles. Whilst this means that not all vehicles will qualify for the exemption, the 2021 Order did not clarify the meaning of “Specialized Vehicles”. Secondly, the definition provided by the 2020 Order attempted to limit the scope of exempt “Equipment” by excluding land and building. This proviso has now been removed by the 2021 Order.



### Fertilizers

The definition of fertilizers was modified by restricting the definition of fertilizers to those used solely for agricultural purposes. This amendment helps clarify the scope of fertilizers that would enjoy VAT exemption.



### Petroleum products

The 2021 Order defines petroleum products to mean “aviation turbine kerosene, premium motor spirit, house hold kerosene and locally produced liquefied petroleum gas and crude petroleum oils”. The definition is restrictive and suggests that other petroleum products not listed in the definition will not be considered as exempt from VAT. Specifically, “Natural gas” and “Other Liquefied petroleum gases and other gaseous hydrocarbons” have been removed from the extended list of items exempted from VAT”.



### Commercial aircraft, commercial aircraft engines, commercial aircraft spare parts

The 2021 Order has defined this term, which was introduced by FA20, to mean “(a) in the case of a commercial aircraft, an aircraft used in shared air transportation in Nigeria, excluding private aircrafts; and (b) in the case of commercial engines and commercial aircraft spare parts, engines and spare parts for use on commercial aircrafts”.

## b. Services



### **Shared passenger road-transport service**

The 2021 Order has included shared passenger road-transport service to the exempt list. It could be argued that this is not an entirely new addition as there was a previous attempt to include “shared passenger road-transport” among the list of services exempt from VAT. The 2020 Order defined the term but did not confirm its VAT exemption status.



### **Unit Micro-Finance bank**

In paragraph 2 of Part II of the First Schedule to the VAT Act, the phrase “services rendered by microfinance banks, people’s banks and mortgage institutions” was replaced with the phrase “services rendered by Unit Micro-Finance banks and mortgage institutions”. To clarify this amendment, the 2021 Order states that the new paragraph refers to a Micro-Finance Bank categorized by the Central Bank of Nigeria as a Tier 1 or Tier 2 Unit Micro-Finance Bank. Consequently, going forward not all Micro-Finance Banks will qualify to enjoy VAT exemption on the services provided to customers.

# Conclusion

The release of the 2021 Order is a welcome development, as taxpayers will now have more clarity and can plan their tax affairs accordingly. Taxpayers should take note that the list in the Appendix to the 2021 Order differs from the previous list, hence, this new list should always be consulted by the taxpayers. We expect that the Minister would continually review the exempt list and amend where necessary to clear confusions, adapt to economic exigencies and/or close any window for mischief or tax dispute.



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