Stamp Duties in Nigeria – a rude awakening!

In the last 5 years, stamp duty in Nigeria has gained prominence as a regular bank charge, with many bank customers protesting alleged "unnecessary/unauthorised deductions" by the banks. This push back can be attributed to the low level of awareness, among Nigerians regarding stamp duties.

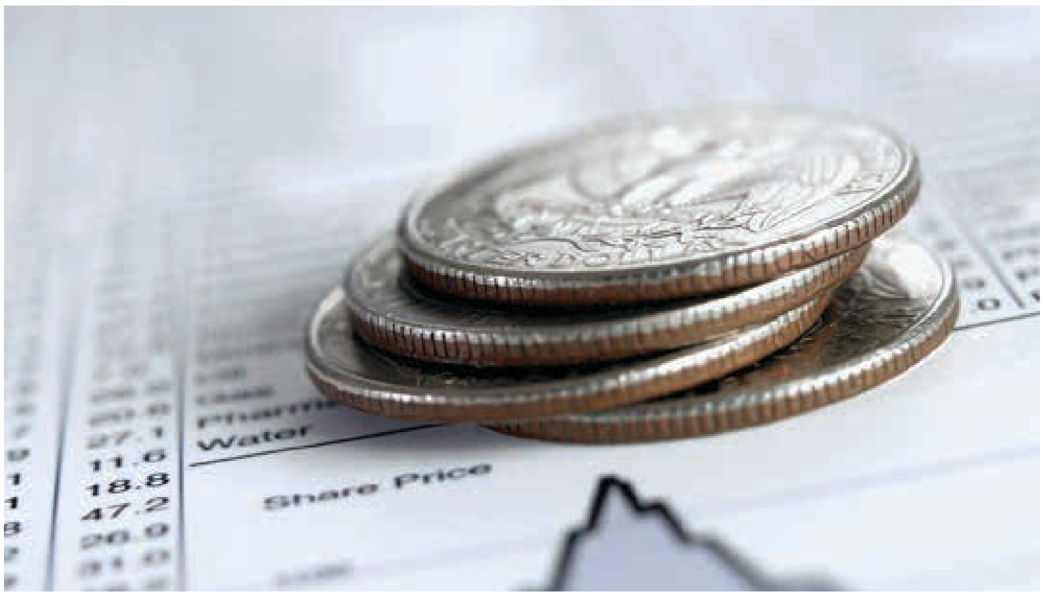
Stamp duty is a government (Federal or State) levy on written or electronic transaction documents, as prescribed by the Stamp Duties Act (SDA). It is charged at a flat rate or a percentage of the transaction/ instrument value (taking into cognisance the nature of the instrument).

Despite its huge potential, it remains an "untapped" revenue source, only wielded during incorporation of companies, dealings on the stock exchange, tendering evidence in court and perfection of title to property. The SDA was barely enforced under the misconception that stamp duty was only required for admissibility of instruments in court.

The new face of Stamp duty: The enormity of SDA's potential as a major revenue-generating tool became pronounced when the Nigerian Postal Service (NIPOST) sought to obtain stamp duties on receipts from banks, resulting in Central Bank of Nigeria's intervention. This culminated in various lawsuits[1] involving NIPOST, on the responsible agency to collect stamp duties, its applicability and relevant exemptions/limitations.

The Finance Act 2019 (FA 2019) amended SDA and clarified some of the issues examined in the lawsuits. It provides that "stamp" covered electronic transactions and imposed a flat N50 charge on receipts issued for "all" bank transfers above N10,000 except intra-bank transfers between the same beneficiary. It also authorised the Federal Inland Revenue Service (FIRS) to "**impose,** charge and collect" stamp duties on company/ individual transactions.

"Imposition" of stamp duties presupposes power to amend the SDA. This is clearly *ultra vires* FIRS as an executive agency



whose main function is tax administration. Amendment of the SDA is constitutionally within the powers of the National Assembly. Thus, any imposition by the FIRS is, to the extent of its inconsistency with the SDA, null and void.

This anomaly plays out in the FIRS' stance as documented in its 20 July 2020, public notice (Notice), to enlighten the public about SDA and its proposed enforcement framework. The Notice has some potential dispute triggers as examined below:

1. **Instrument categorisation and rates:** FIRS made general statements on the rate applicable to some instruments which appear contrary to the SDA. This would suggest an attempt to change the provisions of the SDA, which the FIRS is not empowered to do. Instances include:

   a) **Loan Agreement:** FIRS seeks to impose a stamp duty of 0.125% on all unsecured loan agreements. This is a major overreach as section 102 of SDA does not apply to unsecured loan agreements.

   Section 102(1) mandates companies or body of persons seeking to "issue" loan capital to, "deliver to the Corporate Affairs Commission a statement of the amount proposed to be secured by the issue". Section 102(2) imposes stamp duties on the "statement".

   It is instructive to note that the word "issue", as contained in section 102, is a term of art, which connotes offer to sell/sale and used when an entity seeks to raise capital (debt or equity) through securities e.g. shares, loan notes or debentures. Therefore, where an entity does not seek to offer/sell securities there is no "issue" or attendant "statement" and section 102 is inapplicable.

   The definition of "loan capital", is not the dutiable instrument – a statement supporting the "issue" of loan capital is the dutiable instrument for section 102 purposes. Thus, FIRS' sweeping categorisation of the loan agreement as a "statement to issue loan capital" is misleading.

   A borrower does not "issue" a loan agreement – this is executed by the parties. Unsecured loan agreements fall under no other described category, thus, chargeable at a nominal rate.

   b) **1% on Contract Agreement:** The basis of this charge is unclear as most of the dutiable instruments are "contracts" or "agreements" further described/categorised by the SDA – there is no "Contract Agreement" category.

   c) **Mortgages:** SDA distinguishes between legal mortgages (power of sale), charged at 0.375% and equitable mortgages (mere deposit of title document), charged at 0.15%. The Notice specifies a blanket 0.375% on mortgages contrary to SDA provisions.

   d) **Tenancy:** FIRS imposed a blanket 6% on tenancy agreement contrary to SDA. But it has since corrected its position

2. **Collection tussle with States and other agencies:** FIRS created its adhesive stamp to obviate reliance on a postage stamp. However, the Notice may not end the controversy (as NIPOST continues pursuing its lawsuits at the Supreme Court). Rather, a Regulation, pursuant to sections 5(2) and 115, SDA would provide the legal basis for FIRS' position.

   Additionally, FIRS mandates banks to remit deductions on receipts to FIRS. This position has good merit because banks issue receipts pursuant to banker (company)/ customer relationship rather than any underlying transaction between individuals. However, a State, which thinks stamp duties on receipts for transfers between individuals should accrue to it may raise issues with banks.

   This puts banks in a vulnerable situation because of demands by two government institutions on the same transaction. While States have arguable moral grounds to share the funds, they should urge stakeholders to develop/ implement a proper legal framework for this purpose.

3. **Appointment of collection agents:** Nomination of Landlords and other collection agents should be made pursuant to a gazetted regulation in line with the provision of section 107 of SDA, and/ or sections 25(2) and 61 of the FIRS Establishment Act which requires regulation for this purpose, – a Public Notice is ineffective.

   Nonetheless, FIRS' appointment is inapplicable to tenancy arrangements involving only individuals.

   Overall, the Notice is a rude awakening that stamp duty is here to stay, but this "octogenarian" legislation needs an overhaul to ensure it speaks to reality, raises reasonable revenue for the government and does not hinder efforts at making Nigeria a preferred investment destination or erode all the mileage gained by the ease of doing business initiatives. Furthermore, taxpayers should strive to maintain compliance and seek assistance to ascertain relevant exemptions/ limitations. In the same vein, authorities should be mindful of their limits and not overstretch their powers.

[1] e.g. Standard Chartered Bank v Kasmal International Services Limited & 22 Ors (CA/L/437A/2014)

Article written by

Asiata Atinuke Agboluaje
Senior Manager
Tax & Legal
E: aagboluaje@deloitte.com.ng