



Minister of Finance releases Value Added Tax Modification Order 2024

Introduction

The Honourable Minister of Finance, Budget, and National Planning, Adebayo Olawale Edun (hereinafter “the Minister”) has released the VAT Modification Order 2024 (No. 149) (hereinafter “VATMO 2024” or “the Order”). The Order was published in the Federal Government of Nigeria (FGN) Official Gazette on 3 September 2024 and has a commencement date of 1 September 2024.

VATMO 2024 was issued pursuant to the powers of the Minister in section 38(b) of the Value Added Tax Act (VATA) to amend, vary, or modify the list set out in the First Schedule to the VATA. VATMO 2024 is aimed at catalysing investment in midstream gas infrastructure and providing enabling investment to support energy transition by granting value added tax (VAT) exemptions on Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and others.

We have provided below, highlights of VATMO 2024 and our commentary on this latest amendment to the VAT legislation.



Highlights

1. Commencement date

The commencement date is 1 September 2024 for all items contained in the Order. However, provisions of the Order relating to Automotive Gas Oil (AGO) commence on 1 October 2023.

It would be recalled that VAT was applied to AGO up until September 2023 when the FGN announced a temporary removal of VAT on AGO for six months. The six month application period for this announcement expired in March 2024 and had not been renewed.

The retrospective application date provided for in VATMO 2024 has been done to avoid confusion and prevent tax disputes, as the September 2023 amendment to the VAT exemption list was apparently not validly made.

2. Additions to VAT exempt list

(a) Goods

The list of goods exempt in Part I of the First Schedule to the VATA has been expanded by the addition of six (6) new items as follows:

- (i) Equipment and infrastructure related to the expansion of Compressed Natural Gas (CNG) including conversion kits.
- (ii) Equipment and infrastructure related to the expansion of Liquefied Petroleum Gas (LPG) equipment including conversion kits.
- (iii) Domestic Liquefied Natural Gas (LNG) processing facilities and equipment.
- (iv) Electric vehicles.
- (v) Parts, semi-knock-down units for the assembly of electric vehicles.
- (vi) Biogas and biofuel equipment and accessories for clean cooking and transportation.

(b) Services

The list of services exempt in Part II of the First Schedule to the VATA has been expanded to include three (3) new items below:

- (i) Compressed Natural Gas (CNG) conversion and installation services.
- (ii) Liquefied Petroleum Gas (LPG) conversion and installation services.
- (iii) Manufacturing, assemblage, and sale of electric vehicles.

The goal to reduce Nigeria's dependence on fossil fuels and the focus on clean and renewable energy are amongst reasons behind the additions to Parts I and II of the First Schedule to the VATA. These additions also serve to validate the current administration's commitment to facilitating the energy transition process.

3. Detailed list of VAT exempt items

Like the 2021 VAT Modification Order, VATMO 2024 also provides a detailed list of the new items that have been added to the exempt list. This detailed list uses the Harmonized Commodity Description and Naming System (HS) to provide clarity on items that are covered on the new VAT exempt list. The updated list is reproduced as **Annexure 1** to this alert for ease of reference.

We have reproduced the list as it appears in the VATMO 2024 without any adjustments. However, we have noted that the commodity description on the VATMO 2024 list differs slightly from what is contained on the Nigerian Customs Service Tariff Schedule.

4. Substitutions

VATMO 2024 replaces the definition of "petroleum products" with a new definition as follows:

"feed gas for all processed gas, aviation turbine kerosene, premium motor spirit, automotive gas oil, household kerosene, locally produced liquefied petroleum gas, and crude petroleum oils".

Specifically, the definition extends the list of petroleum products by including feed gas for all processed gas and AGO. This implies that other petroleum products not mentioned in the definition will not be exempt from VAT.

Commentary

VATMO 2024 stands out because it does not take away from, discredit, replace, or invalidate the provisions of the previous VAT Modification Order (i.e., VATMO 2021). The implication of this is that, going forward, both VATMOs are to be read together as one when reference is being made to the list of items exempt from VAT or to definitions of items in the VATA.

Furthermore, VATMO 2024's addition to the meaning of petroleum products is such that it now covers a wider range of items than it used to. That is, the VATMO 2021 definition of petroleum products did not include feed gas for all processed gas and AGO. This has now been included.

As indicated in the highlights, the uncertainty surrounding the application of VAT on the supply of AGO has been addressed by VATMO 2024. Whilst this is a good development, it raises two questions:

- What happens to businesses who paid VAT on AGO whilst there was no legal basis for the VAT exemption?
- Can an order, as is the case with VATMO 2024, have retrospective application?



Conclusion

The release of VATMO 2024 is a positive development as the changes indicate that the current administration is committed to developing alternative sources of clean and renewable energy. By introducing VATMO 2024, the government aims to lower the production costs for manufacturers and distributors, ultimately making the relevant energy sources covered by VATMO 2024 more affordable for end users.

Taxpayers should always refer to the newly added list of items exempted in the VATMO 2024, and the comprehensive list of items exempted in the VATMO 2021 when considering VAT-exempt items. We anticipate that the Minister will regularly review the exempt list and make any necessary amendments to avoid confusion, adapt to economic conditions, and prevent tax disputes.

If you require further clarification or seek to understand how this would impact your business, please reach out to ngtaxpartners@deloitte.com.



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