

Proposed Changes to the Stamp Duties Act under the Stamp Duties Amendment Bill 2017

Introduction

A Stamp Duties Amendment Bill (“the Bill”) has been introduced to the House of Representatives. The Bill seeks to expand the scope of the extant Stamp Duties Act CAP. S8 L.F.N. 2004 (“SDA”) by making receipts issued in respect of deposits made into a bank liable to the imposition of stamp duties. It also seeks to increase the respective fines that will be meted out to persons that contravene provisions of the SDA.

It will be recalled that on 15 January 2016, the Central Bank of Nigeria (CBN) relied upon the decision of the Federal High Court in *Standard Chartered Bank Nigeria Limited v. Kasmal International Services Limited and 22 Ors* and proceeded to issue a circular titled ‘Collection and Remittance of Statutory Charges on receipts of Nigeria Postal Service under the Stamp Duties Act’. The said circular directed all deposit money banks and financial institutions to charge a duty of ₦50 (Fifty Naira) for services rendered in respect of electronic transfers and teller deposits from ₦1,000 (one thousand Naira) and above on behalf of the Nigeria Postal Service.

However, in April 2016, the Court of Appeal overturned the decision of the Federal High Court in the above case. It held that electronic funds transfer and teller deposits were not instruments within the contemplation of the provisions of the SDA and that the Nigeria Postal Service does not have the power to impose and collect stamp duty on such transactions. Consequently, the decision of the Court of Appeal rendered CBN’s circular nugatory.

It was following the above decision of the Court of Appeal that the Bill was introduced in the House of Representatives. The significant changes in the Bill are highlighted below:

<i>Definition of Stamp</i>	The Bill expands the definition of “stamp” to include electronically generated stamps or stamps embossed through a point of sale (POS) machine or an adhesive postage stamp with face value or specified value.
<i>Adhesive Stamps</i>	The Bill provides that all agreements must be denoted by adhesive postage stamps issued by the Nigerian Postal Service (“NIPOST”). The

Bill defines adhesive stamps to mean postage stamps as well as electronically generated or online stamps. It also provides that all electronic instruments and transactions are to be denoted by adhesive postage stamps or ink electronically generated through the internet.

Increase in threshold for receipts The current threshold for receipts chargeable with stamp duty under the SDA is ₦4 (four Naira) and above. The Bill seeks to increase this threshold to ₦1,000 (one thousand Naira) and above. The duty is to be denoted on such receipts by adhesive stamps.

Stamp Duty on Bank Deposits The Bill seeks to include receipts issued in respect of deposits made into a bank as instruments for which stamp duty can be imposed. This will render the decision of the Court of Appeal in *Standard Chartered Bank Nigeria Limited v. Kasmal International Services Limited* redundant.

Issues Arising

It appears that the Bill intends to establish a legal basis for the government to impose stamp duties on bank receipts as was previously ordered by the CBN circular of January 15, 2016.

The position of the law is that a tax can only be imposed on a subject where there is a clear intention of an Act of Parliament to impose such tax on the subject. Accordingly, the rate of tax to be charged on a particular subject can only be deduced from the act of parliament imposing the tax.

Section 3 of the SDA currently provides that the duties to be charged on the specified instruments shall be duties specified in the Schedule to the SDA. In the Schedule, the duty to be paid on receipts is 2 kobo for every receipt given upon the payment of money amounting to ₦4 or upwards.

While the Bill has proposed an upward revision of the threshold for receipts chargeable with stamp duty to the sum of ₦1000 and above, there is no corresponding proposal for a review of the rates to be paid on such receipts. It can, therefore, be argued that if the Bill as currently drafted, is passed into law, the amount that will be payable as stamp duty on chargeable receipts will remain 2kobo and not the ₦50 ordered to be charged by the Central Bank

Considering this apparent loophole, it is likely that any future directive given to banks to charge ₦50 as stamp duty on each deposit above ₦1,000 will again be challenged on the grounds that the applicable rate under the amended SDA is 2 kobo for every receipt issued for the sum of ₦1,000 and upwards.

However, it should be noted that the law will not have a retroactive effect and would only take effect from the date the law is passed. Thus, bank receipts which were hitherto not chargeable with stamp duty will only become chargeable with stamp duty once the Bill has been passed into law.

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