

REVIEW OF THE VAT MODIFICATION ORDER, 2024



INTRODUCTION

On 1 September 2024 the Honourable Minister of Finance and Coordinating Minister of the Economy (“Minister”) issued the Value Added Tax (Modification) Order, 2024 (“Order”) which was published in the official gazette on 3 September 2024. He relied on the powers conferred on him by s. 38 of the Value Added Tax Act (“VATA” or “Act”) to expand the list of the goods and services exempted from VAT. The modification made by the Order became effective on 1 September 2024, except the modification in respect of Automotive Gas Oil (“AGO”) which was deemed to have become effective as from 1 October 2023.

This retroactive exemption of VAT on AGO is to give force to the waiver of VAT on AGO for 6 months as granted by the federal government on 1 October 2023 during a meeting with the leadership of the labour unions and to further extend the waiver up to the date of the Order. There is however no provision in the Order on how refunds will be made in respect of any VAT suffered on supply of AGO during the period after the expiration of the initial waiver, i.e., April 2024 to the effective date of the Order, since the initial waiver was for 6 months.

Prior to the issuance of the Order, the Minister (referred to then as Minister of Finance, Budget and National Planning) had issued (a) the Value Added Tax (Modification) Order, 2021 (“2021 Order”) which modified the list of the goods and services exempted from VAT, and (b) a subsequent circular dated 7

December 2023, which was addressed to government agencies on “Fiscal Incentives for the Presidential Gas for Growth Initiative” (“Circular”). The Circular (i) provided for the reduction of import duty and VAT on the importation of specified renewable energy products/ equipment to zero percent (0%), and (ii) exempted importation of liquefied petroleum gas with specified harmonised system (“HS”) codes from import duty and VAT. Whilst the 2021 Order can be said to be validly issued in accordance with the enabling s. 38 of the VATA (which empowers the Minister to, by an order published in a gazette, (A) amend the VAT rate, and (B) amend, vary, or modify the list of exempted goods and services), the Circular can not be said to have been validly issued in accordance with s. 38 of the VATA (which appears to be the enabling provision) considering that the Circular issued by the Minister did not make any reference to any enabling provision and was not gazetted as required by s. 38 of the VATA. Based on the fact that the matters covered by the Circular are significantly the same matters now covered in the Order, it would appear that the Order was issued to settle the question of the validity of the Circular which was issued pursuant to the commitment to improve Nigeria’s investment climate and increase the utilisation and supply of gas in the domestic market.

The Order modified parts I and II of the first schedule of the Act (i.e., goods and services exempted from VAT) by including specified goods and services relating to

renewable energy, electric vehicles (“EVs”), and biogas/ biofuel in the list of exempted items. In our view, the exemptions are aimed at further consolidating the federal government’s policy to encourage investment in the renewable energy sector of the Nigerian economy, promote environmental

sustainability, and reduce the burden of tax on critical goods and services utilised in the Nigerian economy.

In this newsletter, we have reviewed the provisions of the Order and provided further guidance on the potential impact of the Order:

REVIEW OF THE KEY PROVISIONS OF THE ORDER

Amendment to the list of exempted goods

The Order amended the list of goods exempted from VAT to include the following goods:

- (a) equipment and infrastructure relating to the expansion of compressed natural gas (“CNG”) including conversion kits;
- (b) equipment and infrastructure relating to the expansion of liquefied petroleum gas (“LPG”) equipment including conversion kits;
- (c) domestic liquefied natural gas (“LNG”) processing facilities and equipment;
- (d) EVs;
- (e) parts, semi-knock-down units for the assembly of EVs; and
- (f) biogas and biofuel equipment and accessories for clean cooking and transportation.

In addition, the Order provides a new definition of “petroleum products” as “feed gas for all processed gas, aviation turbine kerosene, premium motor spirit, automotive gas oil, household kerosene, locally produced liquefied petroleum gas, compressed natural gas, imported liquefied petroleum gas, and crude petroleum oils” (underlining supplied). This extends the definition of “petroleum products” in the 2021 Order to cover the exemption of (i) feed gas for all processed gas (i.e., natural gas), (ii) automotive gas oil (i.e., diesel), (iii) compressed natural gas, and (iv) imported liquefied petroleum.

Amendment to the list of exempted services

The Order also amended the list of exempted services to include the following services relating to renewable energy:

- (a) CNG conversion and installation services;
- (b) LPG conversion and installation services; and
- (c) manufacturing, assembling and sale of EVs.

Specific reference to EVs suggests that the federal government has slightly shifted its focus from the development of the entire automobile industry to specifically incentivising the manufacturing, assembling and sale of EVs.

Detailed list of the additions made by the Order to exempted goods and services

The schedule to the Order provides the specific details and the HS code of the items exempted by the Order. Reference to the relevant HS code in each case is commendable as it makes for certainty in the law and should exclude the opportunity for the exercise of discretion by the relevant government agencies, particularly the Nigeria Customs Service (“NCS”), in the implementation of tax incentives/waivers. With the specification of the applicable HS codes, importers and their legal and tax advisers can determine with certainty the goods to which the incentives apply.



The Order has further expanded the coverage of the exempted goods and services beyond the extension granted by the 2021 Order. Though the 2021 Order granted exemptions that applied, amongst others, to items such as petroleum products, renewable energy equipment, and gas supplied by gas producing companies to electricity generation companies (“Gencos”), the Order has extended the fiscal incentive by (a) capturing additional equipment and infrastructure in the renewable energy sector as against the limitation to mainly wind-powered generator, solar-powered generator and other photosensitive semiconductor devices as contained in the schedule to the 2021 Order, (b) extending the definition of petroleum products to cover items like natural gas as

against the limitation to only gas supplied to Gencos, (c) capturing conversion and installation services in respect of the relevant renewable energy products, and (d) including manufacturing, assembling and sale of EVs. This expansion will complement existing incentives granted to companies in the renewable energy sector (such as pioneer status incentive and import duty waiver) and reduce the amount of capital expenditure required to establish and operate renewable energy business in Nigeria with the potential to attract investments to the sector.

Further, items on which VAT was chargeable at 0% in the Circular have been included in the list of items exempted from VAT, thereby changing the impact of

the VAT regime on the items. For instance, any company that incurs input VAT on input utilised in the production of feed gas can no longer enjoy the benefit of being zero-rated by claiming such input VAT (as either a deduction from its output VAT (if any) or by seeking a refund in respect of the input VAT). This is because the item has now been exempted from VAT as against the zero-rated status it enjoyed in the Circular. The exemption status, which does not allow the claim of input VAT, will therefore increase the cost of production since input VAT will be added as part of the cost of the input utilised to produce the feed gas. In this instance, the Order has extinguished the more beneficial incentive regime introduced by the Circular.

CONCLUSION

The Order is a right step in aligning Nigeria's fiscal strategy with its broader goals of economic diversification, environmental sustainability, and technological innovation, and removing any barrier in the implementation of government policy. By introducing VAT exemption for activities in critical sectors for sustainable development such as renewable energy, EVs, biogas systems, and local manufacturing, the government intends to reduce the cost of doing business in these industries with a view to fostering sustainable economic growth.

The incentives granted by the Order should also play a significant role in reducing Nigeria's reliance on utilisation of fossil fuels, i.e., diesel and petrol as energy sources, and promote the utilisation of alternative cleaner and renewable energy sources. The removal of VAT on biogas and biofuel equipment will further stimulate the adoption of renewable energy in cases in which biogas may provide a viable alternative to traditional fuels. This is expected to reduce the environmental impact of energy consumption while creating jobs in the renewable energy sector.

With regard to EVs, the promotion of the manufacture of EVs should have the twofold effect of reducing the demand for and use of traditional gasoline and diesel as well as reducing pollution resulting from combustion automotive engines. It is also expected that there would be a reduction in the cost of transportation resulting from utilisation of cheaper and cleaner fuel sources. However, this assumes that the price of EVs will enable many Nigerians to switch from the traditional combustion engine automobiles to EVs. Government may therefore monitor the impact of the incentives on the automotive industry in Nigeria to determine if an approach that strikes a balance between incentivising the manufacture of combustion engine vehicles, particularly CNG -powered vehicles, whilst also accelerating the transition to EVs may not work best for Nigeria given the present high cost of EVs.

Although the primary focus of the Order is to promote growth in the renewable energy and automotive sectors, the impact of these incentives created in the Order should have positive impact in the wider economy.

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