

# Stamp duties on bank deposits and transfers

## Are there unresolved issues?

The Stamp Duties Act, Chapter S8, Laws of the Federation of Nigeria (LFN) 2004 (SDA) provides the legal basis for the imposition and collection of stamp duties in Nigeria. Stamp duties are chargeable on all instruments relating to matters executed between a company and individual, group or body of individuals and those executed between persons or individuals. The instruments upon which stamp duties are chargeable include bond, bill of exchange, promissory note, covenant, conveyance on sale, lease, mortgage, etc. The duty rates vary depending on the types of instruments or nature of transactions and these may be flat charge or ad valorem charge (i.e. percentage of the value of the transaction).

The Federal Government is the only competent authority empowered to impose, charge and collect duties on eligible instruments if such instruments relate to matters executed between a company and an individual, group or body of individuals. State Governments are however permitted to collect duties in respect of eligible instruments executed between persons or individuals.

In a bid to increase enforcement of the provisions of the SDA, especially with respect to transactions consummated in the informal sector, the Federal Government, through the Central Bank of Nigeria (CBN), issued a circular on 15 January 2016 mandating all Deposit Money Banks (DMBs) and other financial institutions to enforce collection of ₦50 stamp duty on eligible transactions.

CBN issued this circular in the wake of Federal High Court (FHC)'s decision in *Kasmal International Services Limited v. CBN* (Suit No: FHC/L/CS/1710/2013). The court held that CBN was duty bound to ensure that all financial institutions, under its regulation, deduct stamp duty of ₦50 on all receipts given by any person in acknowledgement of goods purchased or services rendered (including electronic transfers or teller deposits) of monies from ₦1,000 and above.

The circular specifically listed, as eligible transactions, all receipts issued by banks and other financial institutions for services rendered in respect of electronic transfer and teller deposits from ₦1,000 and above for stamp duties purposes. This general rule is subject to some exceptions – such as receipts for transfer to self, transfers from savings accounts and receipts in respect of salaries and wages, further to a statement issued by CBN on 21 January 2016.

Most banks immediately commenced implementation of CBN's directive by charging their customers a ₦50 stamp duty for each eligible transaction consummated through their accounts. CBN further mandated banks to periodically account for the stamp duties collected and subsequently debited same to the banks' accounts with the CBN. This practice has continued since the issuance of the circular till date; albeit, it has been saddled with controversies due to challenges from some stakeholders.

In April 2016, in a case between Standard Chartered Bank Nigeria Limited and Kasmal International Services Ltd & Ors (Suit No: CA/L/437A/2014) on the powers of the Nigeria Postal Services (NIPOST) to collect stamp duties on receipts issued for payments above ₦1,000, the Court of Appeal (CoA) ruled, for academic purposes, that receipts given by banks for money received by them on behalf of their customers are exempt from stamp duties. The court supported its position by citing the provision of the Schedule to the SDA which exempts from stamp duties, "receipts given for money deposited in any bank or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for or for money withdrawn from a savings bank account".

Further, on 13 March 2017, in the case of *Retail Supermarkets Nigeria Limited (AKA Shoprite) v. Citibank Nigeria Limited & CBN* (Suit No: FHC/L/CS/126/2016), the FHC ruled that the CBN circular is inconsistent with

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the provisions of the SDA and as such is null and void. The judgment of the FHC aligned with the decision of CoA in the aforementioned case between Standard Chartered Bank Nigeria Limited and Kasmal International Services Limited & Ors (Suit No: CA/L/437A/2014).

The major decision in the last two mentioned cases is that receipts given for money deposited in any bank are exempt from stamp duties. Also, banks and other financial institutions do not have any obligation to charge, collect and remit stamp duty on receipts given for deposits or transfers as there is no provision or amendment in the SDA conferring such powers upon them.

### Conclusion

It is worth noting that the decision of CoA could still be challenged. However, until a higher court overrules the decision or the SDA is amended, banks are not under obligation to charge stamp duties on receipts given for monies received on behalf of their customers and remit same to CBN or the tax authorities.

Despite the established judicial precedents with respect to the legality of CBN's directive to banks to act as collection agents for stamp duties purposes, some banks are yet to stop implementing the provisions of the CBN circular. This is in view of the significant influence

CBN has on banks and the reluctance of CBN to withdraw its circular. The dilemma of banks has been heightened by recent attempts by Lagos State Government to enforce banks to collect stamp duties on receipts made by banks for transfers and deposits between individuals within the territory of Lagos State. It is however doubtful that Lagos State Government has been successful in making banks to comply with this directive in view of the challenge around its constitutionality.

If the practice of deducting stamp duties from customers' bank accounts is not suspended, it is expected that other stakeholders would challenge the banks on a case by case basis. Thus, the impending legal suits that would emanate as a result are likely to disrupt the activities of banks and result to additional legal costs.

Recently, a Bill was introduced to amend certain provisions of the existing SDA. One of the proposed changes is the expansion of scope of the SDA to cover receipts for bank deposits and transfers. The Bill is currently going through legislative process and until it is passed, stamp duties should not apply to receipts for bank deposits and transfers. The CBN should therefore consider the plight of banks by withdrawing its circular to enable the banks suspend the practice of collecting stamp duties on receipts for deposits and transfers by customers.

### References:

1. Tax Newsletter: No more ₦50 stamp duty on bank deposits - Federal High Court (2017), Deloitte Nigeria
2. Circular on collection and remittance of statutory charges on receipts to Nigeria Postal Service under the Stamp Duties Act (2016), Central Bank of Nigeria

<sup>1</sup> SDA defined receipts to include any note, memorandum, or writing whereby any money amounting to ₦4 and above, or any bill of exchange or promissory note for the money amounting to ₦4 and above, is acknowledged or expressed to have been received or deposited or paid

<sup>2</sup> Draft of a proposed statute (Act of National Assembly) which must be approved by both houses of the legislature and signed by the President to become a law

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