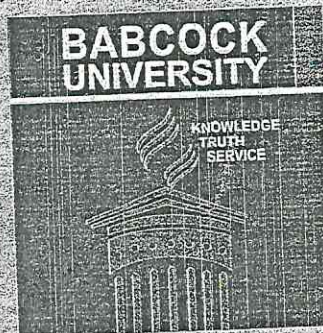




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VALUE ADDED TAX (VAT) ISSUES IN THE NIGERIAN BANKING BUSINESS: A DIAGNOSIS

by

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Abstract

Even though Value Added Tax is omnipresent in all goods and services provided to the consumer, however, in the banking sector, this is not absolute. There are some services that are not VATable and not all banking institutions are subject to VAT. This approbation and reprobation VAT characters in the banking business have added to the complexity of VAT treatment in the sector. This paper therefore discusses the contending issues and requirements in the VAT aspects of banking business in Nigeria. The paper also examines the Nigerian banking business vis-à-vis its chargeability to VAT. The essence of this effort is to show the extent to which the banking business is subject to VAT under the Nigerian Law.

1.0 Introduction

Value Added Tax (VAT) is one of the indirect taxes usually imposed by government on goods and services other than those goods and services listed in the First Schedule to VAT Act. In Nigeria, VAT is omnipresent in all goods and services provided to the consumer. VAT is a consumption tax that has been embraced by many countries worldwide and it is imposed sometimes when the government operates on a budget surplus or wants to increase its revenue in order to finance its budget deficit.¹

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1 Revindra, T. et al. 'The Effect of Value Added Taxes on the Indian Society' in *the Journal of Accounting and Taxation*, Vol. 3 (2) June, 2011, p.32. Available also at <<http://www.academicjournals.org/JAT>>accessed on 12th September, 2011.

VAT is a self-assessment tax that is paid when returns are being rendered.² The yield from VAT is a fairly accurate measurement of the growth of an economy since purchasing power (which determines yield) increases with economic growth³. VAT is a multi-stage tax which has its incidences on the final consumer. VAT is of particular importance to banks because of the effect which it may have on their overheads.

Similarly, bank is the major organisation saddled with the responsibility of managing the treasury of both individual as well as corporate organizations via acceptance of saving and disbursement of same when applied for⁴. In any economy, be it developed or developing, banks are at the fore front of business financing and treasury management, especially by ways of giving loan facilities and selling of hedging instruments for the bail out of any business in debt. Part of these and other services by the banking industry are chargeable to tax in form of Value Added Tax. Structured into six sections, the legal framework and reasons for the introduction of VAT is in section two while the paper discusses the VAT administration in Nigeria in the third section. The fourth section is on the legal issues and requirements in the VAT aspects of banking business in Nigeria. Tax offences and penalties are the major discussion in section five while section six concludes the study.

2.0: LEGAL FRAMEWORK, SCOPE AND REASONS FOR THE INTRODUCTION OF VAT IN NIGERIA

Historically, VAT was first introduced by French economist, Maurice Maure, who was the Joint Director of the French tax authority in 1954⁵. The idea of introducing VAT in Nigeria came from the Report of the Study Group which was set up by the Federal Government in 1991 to review the entire tax system. VAT was proposed and a committee was set up to carry out feasibility studies on its implementation.

In January 1993, the government agreed to introduce VAT by the middle of the year; however, the date of implementation was postponed to September 1, 1993, in order to give sufficient time to draw up the relevant legislation and carry out the proper groundwork.⁶

2.1 Legal Framework of VAT in Nigeria

The VAT Act is an Act to impose and charge VAT on certain goods and services and to provide for the administration of the tax and matters related thereto⁷. The Act was introduced via Decree No. 102 of 1993⁸ as a replacement of the former Sales Tax which has been in operation under the Federal Government Legislated Act No. 7 of 1986 and was operated on the basis of residence⁹. VAT framework is supplemented by primary and secondary legislations derived from a number of sources.¹⁰

2 Abdulrazaq, M.T. "VAT" in Abdulrazaq, M.T. (Ed.) *CITN Nigerian Tax Guide Statutes* (2nd Edition, Lexis Nexis, South Africa, 2009) p.35.

3 Ibid.

4 Olokooba S.M. "A Diagnostic Appraisal of the Tax Aspects of the Treasury Management in the Nigerian Banking Sector", *Ahmadu Bello University Journal of Commercial Law*, Vol. 5 No. 1, 2010-2012, p.73

5 Revindra, *op. cit.* note 1 at p.33

6 Abdulrazaq, M.T. *An Overview of Nigeria's VAT Regime*, (The Bureau of National Affairs, Inc., 2011), p.8

7 See the commencement part to Value Added Tax Act, Cap. VI, Laws of the Federation of Nigeria, 2004.

8 Now Value Added Tax Act Cap. VI LFN, 2004.

9 Abdulrazaq *op. cit.*, note 2 at, p.35, see also Sunday O. et al. *Taxation Principles and Practice in Nigeria*, (Silicon Publishing Company, Ibadan, 2006), p.514.

10 Sunday, O. et al. *Taxation Principle and Practice in Nigeria*, (Silicon Publishing Company, Ibadan, 2006) p.517.

Many of the detailed provisions on VAT are set out in orders, rules and regulations made by statutory instruments.¹¹ The minister of finance is given wide powers to make orders, usually of a policy nature, and the Federal Inland Revenue Services are given similarly wide powers to make regulations, usually on matters of an administrative nature.¹² Accordingly,

The minister may by the order published in the Gazette:

- a) amend the rate of tax chargeable, and
- b) amend, vary or modify the list set out in the First Schedule to this act.¹³

2.2 Scope of VAT

In general, VAT applies to the supply of goods or services (together with anything which is treated as being a supply in the legislation); by a taxable person¹⁴ in the course or furtherance of any business carried on by him. It also applies to the importation of goods by any person and to the receipt of certain services from overseas by taxable persons in Nigeria.¹⁵ In other words, the scope of VAT in Nigeria covers the consumer goods, income as well as gross products.

The administration of this tax is by the FIRS, through the VAT Directorate which is located at the Head Office, Abuja (FCT) with a network of zonal offices throughout the federation¹⁶. The FIRS are to do such things, as it may deem necessary and expedient for the assessment and collection of tax and account for all amount so collected in accordance with the provision of the Act.¹⁷

In assessing VAT by the revenue, place of supply of goods is important. The reason being that, VAT only applies to supplies made in Nigeria, or where goods are being supplied and they are located in Nigeria at the time the supply is made, they are treated as supplied in Nigeria. If they are exported from Nigeria, they are still regarded as supplied in Nigeria but subject to satisfactory proof of export, the supply is zero rated. Where the goods are located outside Nigeria and do not enter the country, the supply of goods is outside the scope of VAT.

As regards services, these are generally treated as being made in the place where the supplier belongs, which is not necessarily the same place where the services are 'performed'. The concept of 'belongings' is peculiar to VAT legislation and the rules may be summarised as follows:

1. Where a person has one business establishment or other fixed establishment, he belongs in the country where that establishment is situated
2. Where a person has two or more establishments, he belongs in the country where the establishment most directly concerns with the supply is situated¹⁸

2.3 Reasons for VAT in Nigeria

The rationale behind replacing Sales Tax with VAT was based on a number of factors and considerations, notably:

- (i) The base of the Sales Tax in Nigeria, as operated under Act No. 7 of 1986, was narrow. It covered only nine categories of goods plus sales and services in registered hotels, motels and similar

¹¹ Abdulrazaq, *op. cit.* note 2 at p.36.

¹² Section 38 Value Added Tax Act, Cap. VI, LFN, 2004. See also *ibid.*

¹³ Section 38(a) & (b) of Value Added Tax Act, Cap. VI, LFN, 2004.

¹⁴ Banks and other Financial Institutions are taxable persons within the provision of the VAT Decree and all services rendered by them are taxable with the exception of services of Peoples banks, Community banks, and Mortgage Institutions which are exempted by the VAT Decree. See also, FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st December, 1995.

¹⁵ Abdulrazaq, *op. cit.*, note 2 at p.36.

¹⁶ Sunday, O. *et al. op. cit.* note 10 at p.517

¹⁷ See Section 7 Value Added Tax Act, Cap. VI, LFN, 2004.

¹⁸ Christopher, F. and Miles, W. *Taxation and Banking*, (Sweet and Maxwell, London, 1990), p.246.

establishments. The narrow base of the tax negated the fundamental principle of consumption tax which, by nature, is expected to cut across all consumable goods and services. In contrast the VAT base is broader and includes most professional services and banking transactions, which are high profit-generating sectors.

(ii) Only locally-manufactured goods were targeted by the Sales Tax Act of 1986, although this was likely not the intention of the law. VAT is neutral in this regard. Under VAT, a considerable part of the tax to be realised is from imported goods. This means that under the VAT regime, locally manufactured goods are not placed at a disadvantage relative to imports.

(iii) Since VAT is based on the general consumption behaviour of the people, the expected high yield from it will boost the revenue of the state government with minimum resistance from taxpayers.¹⁹

3.0 ADMINISTRATION OF VAT IN NIGERIA

VAT is administered and managed by the Federal Board of Inland Revenue, otherwise, referred to in the Act as 'the Board'²⁰ and in carrying out their functions,

The board may do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amount so collected in accordance with the provision of the Act²¹.

In arriving at what constitutes VATable financial services, a distinction is made between activities that constitute a return on investment, and the consumption of services rendered by financial institutions²². Charges arising from the consumption of services rendered by banks and financial institutions ordinarily are subject to VAT. These include:

- commissions and fees charged on foreign exchanges or remittances;
- bank charges, commissions on turnover, ledger fees, and so on;
- arrangements and legal and other fees chargeable on leasing activities;
- fees charged for advisory services (for example, mergers and acquisitions, financial strategy counselling, and so on);
- fees chargeable on public/private issues;
- debt conversion fees;
- fees and commissions on asset trading;
- fees earned on fund management;
- fees and commissions earned on letters of credit/documentary collection to finance imports or exports;
- commissions on the sale of bank drafts and certified checks;
- fees chargeable on stockbroker and trustee services, and
- commissions paid by an insurer to brokers, reinsurers, underwriters, and other insurance agents.

The services of banks and other financial institutions that constitute a return on investment and therefore are not subject to VAT include:

- premiums on insurance policies;

¹⁹ Abdulrazaq, *op. cit.* Note 6 at 12. See also, Abdulrazaq, M.T. *Revenue Law and Practice in Nigeria*, (Malthouse Press Limited, Lagos, 2010), pp.267-268.

²⁰ Sec 7(1) Value Added Tax Act, Cap. VI, LFN, 2004.

²¹ Sec 7(2) Value Added Tax Act, Cap. VI, LFN, 2004.

²² Abdulrazaq, M.T. 'Consolidation Brings Tax Changes to Banking Industry' (Tax Notes International, December 19, 2005), p 2. See also, FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st December, 1995.

- interest on loans and advances, and overdraft facilities;
- interest on savings accounts;
- interest on bank deposits;
- dividends;
- interbank placements, and
- profits and gains on the disposal of government securities.²³

Accounting for VAT is on a self-assessment basis and as a check on this, the local VAT officer visits taxpayers on a regular basis to examine the records and check these against the returns. Taxpayers are required to retain their accounting records with supporting tax invoices²⁴.

While no specific requirements are laid down as to the form in which a taxpayer is expected to maintain his books and records, FIRS does expect to be able to follow through the entries in the taxpayer's account to satisfy themselves that VAT is being properly dealt with. In particular, it expects every taxpayer to maintain a VAT account which reflects the entries in his VAT returns and to be able to follow and audit trail from this to his accounting records.

The VAT account for each VAT accounting period has to reflect the true VAT liability for the period. Where errors come to light after the VAT return for a period has been furnished, the VAT account for the relevant accounting period has to be amended²⁵.

4.0 CONTENDING ISSUES AND REQUIREMENTS IN THE VAT ASPECTS OF BANKING BUSINESS IN NIGERIA

4.1 ISSUES

A feature of the growth in banking services over the last few years has been the increasing complexity of services being provided. Arranging for a loan may now, for example, involve one swap arrangement as a safeguard against interest charges and another to minimize the effect of the volatility of its foreign exchange rate. Quite apart from deciding whether such transactions are exempt or zero-rated, there are often problems in identifying the supply, consideration and the partial exemption implications. Thus it is necessary to be familiar with many aspects of VAT law if such transactions are to be given the correct VAT treatment²⁶.

In Nigeria, most of the usual services supplied by bank operating in Nigeria to person who belong in Nigeria are exempt for VAT purposes. This means that no VAT need be charged on the supply of services but the bank will be restricted in its ability to recover its input tax. Schedule 2 part II listed those financial 'services' which are exempt for VAT purposes and these include, service rendered by:

1. People's Banks,
2. Community Banks; and
3. Mortgage Institutions

However, certain supplies made by banks are normally standard-rated for VAT purposes, and these are;

1. debt collection, credit control and sales ledger accounting services,
2. equipment leasing,
3. executor and trustee services and the administration of estates,

²³ As listed in FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st December, 1995.

²⁴ See section 13(1)&(2) VAT Act, Cap. VI, LFN, 2004.

²⁵ Christopher, F. and Miles, *op.cit*, note 18, at p.252.

²⁶ *Ibid.* p.248.

4. investment and financial advice,
5. nominee service,
6. paying agents' services,
7. portfolio management,
8. registrar services,
9. safe custody services, and
10. service company's activities.

4.1.1 Issue of Vatable Goods and Services

Since banking business is categorized as a form of service, its administration and control is not beyond Value Added Tax. This is so because, the tax is charged and payable on the supply of all goods and services other than those goods and services listed in the 1st Schedule of Value Added Tax Act, 2004.²⁷ According to the Act,²⁸ VAT...shall be charged and payable on the supply of all goods and services (in this Act referred to as 'taxable goods and services'....)

Invariably therefore, VAT could be said to be a derivative tax on goods and services which accrue in or limited categories²⁹ brought into the country. Taxable goods and services are goods and services not listed in the First Schedule of the VATA. Any good and services in the First Schedule of the VATA are all exempted from VAT. The exempted ones, according to the Act,³⁰ are:

1. all medical and pharmaceutical products,
 2. basic food items,
 3. books and educational materials,
 4. baby products,
 5. fertilizer, locally-produced agricultural and veterinary medicine, farming machinery and farming transportation on equipment,
 6. all exports,
 7. plant and machinery imported for use in export processing zone,
 8. plant, machinery and equipment purchased for utilization in the down-stream petroleum operations, and
 9. tractors, ploughs and agricultural equipment purchased for agricultural purposes.
- b. *Services Exempt include:*
1. medical services,
 2. services rendered by Community Banks, People's Banks and Mortgage institutions
 3. plays and performances conducted by educational institutions apart of learning, and
 4. all exported services.

4.1.2 Issue of Rate of VAT in the Banking Industry

Save the rate of those goods and services exempted, the VAT is charged and payable on the supply of all goods and services referred to as 'taxable goods and services' and it is computed at the rate of 5%³¹. The 2007 reform increased the VAT rate from 5 per cent to 10 per cent; however, this was eventually rescinded to 5 per cent by Presidential Directive following various protests from Nigerians.

²⁷ See section 46 Value Added Tax Act, Cap. VI, LFN, 2004.

²⁸ Section 2 Value Added Tax Act, Cap. VI, LFN, 2004.

²⁹ For example plant and machinery imported for use in export processing zone

³⁰ In the First Schedule of VATA 2004. See also, the FIRS Information Circular No 9401 of 1st March, 1994

³¹ See Section 2 and 4 of Value Added Tax Act, Cap. VI, LFN, 2004, but the determination of rate is with caveat, and the caveat is that the 5% calculation is 'as determined under Section 5 & 6 of Value Added Tax Act, Cap.

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The mode of calculating VAT is conducted through a system called credit system. The mode of doing this is that, all VAT on inputs will be deducted from VAT outputs; the remainder is the net VAT payable to the Board.

4.1.3 Issue of Method of Calculating VAT

a. *The Subtraction Method*

Under this method, the taxable purchase (cost) is subtracted from the taxable sales to arrive at the value added. We then multiply the value added by the tax rate to arrive at the tax liability. The subtraction method is simply known as the Japanese method.³²

b. *The Addition Method*

With this method, the firm calculates the value added by adding all the payments for untaxed inputs. The result is then multiplied by the VAT rate to get the VAT payable.³³

Furthermore, to sustain and maintain their existence, banks charge commissions, fees and/or bank charges for services rendered to the customers. VAT calculations are expected to be based only on the debt charges made for services rendered. It should, however, be noted that the focus of VAT is on the charges levied on customers for the consumption of services rendered by banks³⁴ and not otherwise.

Just as the provision of loans and advances does not constitute a VATable service, so also the resultant interest chargeable on loans and overdrafts are not. However, the documentation and perfection of loan/overdraft agreements, which are part of ancillary services rendered by the bank therefore fees charged in this connection would attract VAT.³⁵

In the banking business, if a service constitutes a return on investment and not a consumable service, such are not VATable. In other words, services like interest on loans/advances and overdraft facilities, interest on savings accounts, interest on bank deposits; dividends; inter-bank placement are not VATable.

On the other hand, commissions/fees charged on forex trading or remittance; bank charges, commissions on turnover, ledger fees, etc., arrangements, legal and other fees chargeable on lease activities; fees charged for advisory services e.g., mergers and acquisition, financial strategy counseling, etc., are VATable.

Other bank service subject to VAT are, fees chargeable on public/private issues, debt conversion fees, fees/commissions on asset trading, fees earned on fund management, fees and commissions earned on letters of credit documentary collection to finance import/export, commissions on sale of bank drafts/certified cheques; fees chargeable on stock-broker and trustees' services, commission paid to brokers, re-insurers, underwriters and other insurance agents by an insurer.³⁶

4.1.4 Issue of Refund of the Excess VAT

Ordinarily, where VAT input³⁷ exceeds VAT output³⁸, the taxpayer may get refund of the excess tax from FIRS but on production of such documents required by the FIRS from time to time. However,

VI, LFN, 2004'. Section 5 is on the value of taxable goods and services while Section 6 is on value of imported goods.

32 Sunday O. *et al.* *op.cit.* note 10 at p: 519

33 *Ibid*

34 FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st, December, 1995.

35 *Ibid.*

36 Abdulrazaq, *op.cit.* note 2 at p.74.

37 VAT input is the VAT paid on VATable goods and services purchased. Input tax allowable according to the 1998 Amendment to the Decree) is only allowed if it is tax on goods purchased or imported directly for resale

with regards to bank and financial institutions, that may not apply. The simple reason is that only manufacturing establishments according to FIRS interpretation are qualified for setting off input VAT against output VAT. This is because they are the ones that add value to products or materials purchased to improve or transform that particular product into finished or semi-finished goods on which output VAT is chargeable³⁹.

It is a common knowledge that the banks and financial institutions render services only, they do not produce goods and could not be regarded as final consumers. Therefore, in this connection, all input VAT payable in respect of assets purchased for use in the banks and other financial institutions should be added to cost of the assets on which capital allowances may be claimed.

Similarly, all VAT payable in respect of service consumed by the bank should be regarded as part of normal operational expenses chargeable to profit loss account. Under no circumstance should input tax on such items be claimed or deducted from output tax collected. It will therefore appear that banks and other financial institutions cannot claim or deduct any input tax collected. The entire amount collected on behalf of the FIRS shall be promptly remitted in whole as prescribed by the law.

Any institution offsetting Input Tax against Output tax where it is not expected to do so, would be regarded as unduly withholding on VAT proceeds that ought to have been remitted to the FIRS and the appropriate penalties shall be imposed. Where banks are in doubt, the best option is to seek clarification from FIRS⁴⁰.

4.2 MATTERS OF COMPLIANCE AND REQUIREMENTS

4.2.1 Remittance

In the Nigerian financial institutions (save People's Bank, Community Bank and Mortgage bank) all services rendered to the customers are VATable. Therefore, it is required of them to account for the VAT collected by them to the local VAT offices nearest to their operational offices. In this regard, banks are taxable persons and for that, it

...shall render to the Board, on or before 30th day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the board may, from time to time, determine.⁴¹

4.2.2 Records to be kept By Banks for VAT Purposes

Since tax invoices are not always issued to bank customers, in order to keep VAT record in banks, debit notes are alternatively used. Not only that, in order to enhance disclosure, remittance and easy

and goods which form the stock-in-trade used for the direct production any new product in which the output tax is charged. It is important to note however that any input tax on overhead, that is services and general administration of business which ordinarily can be expended through the income statement and on capital item and asset shall not qualify as input tax as stated in section 17(2)(b) Value Added Tax Act, Cap. VI, LFN, 2004.

38 VAT output is a VAT charged on VATable goods and services sold. It is important to note that if the input tax exceeds the output tax, the tax payer will be entitled to a refund of the excess tax from the Board on production of such documents as the Board may from time to time required, as outline in section 16(b) Value Added Tax Act, Cap. VI, LFN, 2004.

39 FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st December, 1995. See also, Ibid. 75.

40 See, FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st December, 1995.

41 Section 15 Value Added Tax Act, Cap. VI, LFN, 2004.

verification by VAT inspectors, the VAT charges have to be reflected in the customers' statements of accounts.

Furthermore, wherever the officers of FIRS visited a bank on inspection, a comprehensive trial balance which will show the total charges and chargeable VAT thereof and how much so far remitted must be disclosed. Furthermore, the bank draft issued to cover the whole amount standing to the credit of FIRS VAT account must also be submitted.

Further still, in order to enhance disclosure and easy verification by VAT inspectors, banks and other financial institutions are required to adopt the following simple methods of recording their transactions for VAT purposes:

- i. When any service is identified as VATable, an invoice or debit note is to be raised accordingly. This invoice will state the service to the bank in total, then 5% VAT. Calculated on such total cost to arrive at what is payable by the customer.
- ii. The bank is expected to debit the account of the customer accordingly with the cost as above plus 5% VAT charged.
- iii. Credit the income account of the bank or institution with the income element of the charge excluding the VAT.
- iv. Credit the FIRS VAT Account in the particular bank or institution with the 5% VAT deducted from (ii) to arrive at (iii) 28⁴².

Apart from the above, however, banks acting as investment advisers are excluded from the requirement and may claim professional privilege to avoid the production of documents.⁴³

4.2.3 Bank Branch Offices in Connection With VAT

All the branches of bank, including their head offices, are expected to register separately with the FIRS offices nearest to them. They are also expected to render their monthly returns promptly and accurately as required by law⁴⁴. Where, however, due to internal procedural limitations, a branch is unable to issue Bank Draft for VAT collected and due to FIRS, the Head Office should not allow such internal arrangements to delay payments due to FIRS in order to avoid penalties⁴⁵. Therefore, in order to guard against this, it is expected that arrangements would be put in place to pay on behalf of the branch where necessary whatever is due by them to FIRS⁴⁶.

5.0 VAT OFFENCES AND PENALTIES

Quite number of VAT offences and penalties were outlined in the part V of the Act.⁴⁷ Though not all offences and/or penalties apply to the banking sector, the underlisted aptly applies. They are:

42 Ibid, 75, see also FIRS Information Circular No 9503 on VAT operation in Banks and other Financial Institutions, of 1st December, 1995.

43 Abdulrazaq, *op. cit.* above, note 22 at p.2.

44 See section 15 Value Added Tax Act, Cap. VI, LFN, 2004 for rendering of returns and section 35 Value Added Tax Act, Cap. VI, LFN, 2004 on the offences/punishment for failure to submit returns. Not only that, each of these branches is required to register separately with the integrated Tax Office nearest to it. This is done by the completion of VAT form 001.

45 The penalties as stated in section 35 Value Added Tax Act, Cap. VI, LFN, 2004, is N5, 000 for every month in which the failure continues.

46 On the other hand, if its branch office that registered, after filling VAT form 001, a taxpayer Identification Number is assigned, and returns to the FIRS must carry registration number of the branch making a return. From thereon, VAT returns are to be made regularly to the Integrated Tax Office within 21 days after the month of transaction.

47 Value Added Tax Act 2004

- i. Failure to register (bank branches) within (6) months of the bank existence⁴⁸ or opening of a branch with a VAT local areas.⁴⁹
- ii. Failure to charge and submit VAT returns promptly.⁵⁰
- iii. Failure to keep proper records and accounts.⁵¹
- iv. Failure to (in case of bank debit-notice) reflecting issue tax invoice the amount of VAT collected.⁵²
- v. Furnishing of incorrect or false documents.⁵³

5.1 Self Assessment and Appeal Process

For an efficient VAT compliance and administration in Nigeria, the Federal Inland Revenue Service (Establishment) Act⁵⁴ in sections 3-11 laid down the procedures for Self-Assessment, Forms and Mode of filling of Returns.⁵⁵ The Act further allow any taxable person who, being a person aggrieved by an assessment or demand notice made upon him to appeal against the -assessment to the Tax Appeal Tribunal.⁵⁶

6.0 CONCLUSION

Having examined different issues, compliance and requirements in the VAT aspects of banking business in Nigeria, it is clear that not all banking services are subject to VAT. While services like the documentation and perfection of loans and over draft agreement are VATable, provision and granting of loans and advances with the resultant interest chargeable on them are not. Similarly, while

48 See section 8(1) Value Added Tax Act, Cap. VI, LFN, 2004, and the punishment is N10,000 for the first month in which the failure occurs; and N5,000 for each subsequent month in which the failure continues

49 By the combined effect of sec 8(1) Value Added Tax Act, Cap. VI, LFN, 2004, and section 32 Value Added Tax Act, Cap. VI, LFN, 2004 is guilty of an offence & liable on conviction to a fine of #5,000, and if after one month the person is not registered, the premises where the business is carried on shall be liable to be sealed up.

50 By the provision of Sec 35 Value Added Tax Act, Cap. VI, LFN, 2004 is liable to a fine of #5,000 for every month in which the failure continues.

51 By the provision of Sec 33 Value Added Tax Act, Cap. VI, LFN, 2004 is liable to pay a penalty of #2,000 for every month in which the failure continues.

52 By the provision of Sec 29 Value Added Tax Act, Cap VI, LFN, 2004 is liable on conviction to a fine of 50% of the cost of the goods or services for which the invoice was not issued.

53 Section 25 Value Added Tax Act, Cap. VI, LFN, 2004 is liable on conviction to a fine of twice the amount under-declare.

54 No. 13, 2007

55 In section 3(1) of the Act, the Self Assessment Regime requires the concurrent self-filling of returns and payment of tax due on or before the due date. In section 3(2), a taxpayer is required to compute his tax liabilities, pay the tax due and file the relevant returns with evidence of payment of the tax on or before the due date. In section 3(3), it is required of the tax authority to accept all tax returns and submitted and carry out necessary checks to ensure that all required information have been appropriately entered into the tax return forms. On the forms for filling of tax returns, section 4(a) & (b) is explicit. The section provides that, for the filling of tax returns in the case of Companies and VAT, the tax return forms shall be as may be prescribed by the Board of Federal Inland Revenue Service. Furthermore, the mode of filling returns is either in person or the engagement of the services of accredited agent who must be fully certify by either the Association of National Accountants of Nigeria, or the Chartered Institute of Taxation of Nigeria; or the Institute of Chartered Accountants of Nigeria. This is in addition to the fact that the gent must be tax compliance; and that the staff or employees of tax authorities are prohibited from acting or being engaged as agent of taxpayer. Where an agent has been engaged by a taxpayer for the purpose of filling a tax return, the taxpayer must sign personally if the return is under the Personal Income Tax Act and by a Director or company secretary if return is under Companies Income Tax Act.

56 See section 59(1) & (2) of the Federal Inland Revenue Service (Establishment), Act, No. 13, 2007.

all commercial banks are subject to VAT, the Community Bank, People's Bank and Mortgage Banks services are VAT-free.

On the issue of set-off, unlike the manufacturing establishment that has the power to set off excess VAT collected, banks and other financial institutions cannot return, set off/or refund any excess VAT collected.

Finally, the Nigerian VAT Act did not take it lightly with the issue collection and delay in remittance of VAT in the hands of financial institutions. This and other acts constitute tax offences that attract severe punishment as far as VAT issue is concerned in the banking industries. Therefore, even where internal procedural limitations may hinder the prompt remittance of VAT to the FIRS by banks with several branches, the head office of such banks should arrange for the payment on behalf of the branch(s) and reclaim later from the branch offices in order not to infringe on VAT offences which may lead to penalties and sanctions.