Excise Duties on Telecommunication Services – The Tax Administration Conundrum

Overview

In our newsletter for the month of February 2021, we have reviewed an amendment made to the Customs and Excise Tariff, Etc. (Consolidation) Act by the Finance Act 2020, in which telecommunication services provided in Nigeria may now be charged with duties of excise at a rate prescribed by the President through an Order.

This amendment is notable as it aims to categorize telecommunication services as goods liable to excise duty under the Customs and Excise Tariff, Etc. (Consolidation) Act.

Below, we have examined key administrative challenges that may arise in the course of the implementation of this enactment and have suggested a way forward for all stakeholders.

Introduction

It is arguably the case that due to the decline in oil price amidst the growing national budget deficit, the Government of Nigeria has increasingly focused on non-oil revenues.
It is in this revenue drive that the government expanded the scope of the goods liable to excise duty as provided in Section 21 of the Customs and Excise Tariff, Etc. (Consolidation) Act. (“CETA” or “the Act”) to include telecommunication (TelCo) services.

Specifically, Section 21 of CETA was amended to include “telecommunication services provided in Nigeria shall be charged with duties of excise at the rate specified under the duty column in the Schedule as the President may by order prescribe...”

This policy bewildered industry experts as many viewed this move as counterproductive given that TelCo services have become essential for the survival of many businesses, hence, should be made affordable to reduce the cost of doing business and promote economic growth.

Taking a step further, we have considered key questions that the inclusion of TelCo services as goods liable to excise duty has stirred.

**Matters Arising**

Some of these have been discussed below:

- **What Services Constitute TelCo Services?**

  Unfortunately, the CETA did not define what constitutes TelCo services for excise duty purposes. This may lead to multiple debate amongst industry operators as the TelCo space remains highly innovative and ubiquitous.

- **Which Regulatory Agency is to Enforce Compliance?**

  This question if left unanswered may pose a challenge as we foresee a debate playing out between the Federal Inland Revenue Service (FIRS) vs the Nigeria Custom Service (NCS) on excise duties collection. This is similar to what happened between the FIRS and Nigeria Postal Service (NIPOST) on which Agency is empowered to collect Stamp duties.

This is so as Paragraph 9 of the First Schedule to the **Federal Inland Service (Establishment) Act** states that the Service (FIRS) “shall have legislative powers to administer on any other laws for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the Nigeria Assembly from time to time...conferring any power, duty or obligation on the Service”.

Similarly, Section 4 of the **Customs and Excise Management Act, (CEMA)**, an Act that provides the legal basis for regulating the management and collection of duties of customs and excise duties, vest powers for collection of customs and excise duties with the Board (the Customs and Excise Board established by the NCS). It further empowers the Board, subject to the control of the Minister, to “collect the revenues of customs and excise and account for them in such manner as may be directed”.

Another provision to duly consider is Section 119 of the CEMA, which requires that “no person shall manufacture any goods... unless he holds an excise license for that purpose.”

**The Way Forward**

- We advise that the government continues to harmonize the regulations guiding the collection of taxes in Nigeria. This is to drive collaborative efforts among government agencies and not policy mismatch.

- Also, it is expected that the inclusion of telecommunication services as goods liable to excise duty would undoubtedly result in higher cost of doing business in Nigeria.

- Thus, companies are advised to adopt strategic tax planning options, that are within the ambit of the existing tax and regulatory laws. Ascension Consulting Services will be glad to be of service in this regard.
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