



CBN Stamp Duty Charges on Deposits – Can Something be Built on Nothing?

Thought Leadership | By Ayooluwatunwase Fadeyi

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INTRODUCTION

On 15th January 2016, the Central Bank of Nigeria (CBN) issued a circular, “Collection and Remittance of Statutory Charges on Receipts to Nigeria Postal Service under the Stamp Duties Act” (the Circular) to all Deposit Money Banks (DMBs) and other Financial Institutions (FIs) in Nigeria. This initiative was part of the Federal Government (FG)'s efforts to boost revenue collection in the non-oil sector following the oil price nosedive and reduction in related oil sector receipts.

All DMBs and FIs were instructed to charge Fifty Naira (N50) as stamp duty (SD) on all receipts issued in acknowledgment of services rendered in respect of electronic transfer and teller deposits from N1,000 in accordance with the provisions of the *Stamp Duties Act, Cap S8, LFN 2004 (SDA)* and the *Federal Government Financial Regulations 2009 (FGFR)*. This rate, payable by the receiving accounts, exempts self-to-self deposits/transfers, whether inter or intra bank; and also any form of withdrawal/transfers from savings accounts.

The Circular, however drew the ire of many Nigerians; there were ensuing arguments – will SD be charged on every N1000 per deposits above N1000 or a flat rate of N50 on deposits above N1000? Will savings accounts also be charged (alongside current accounts)? Reservations boiled over and various DMBs and FIs have since challenged the validity of the Circular in Court.

On 21 January, 2016 the CBN clarified that the eligible transactions to be charged pursuant to the Circular include all receipts given by a DMB or FI in acknowledgment of services rendered in respect of teller deposits and electronic transfers for the value of N1,000 and above. However, this clarification did little to help the situation.

Rationale for the CBN Stamp Duty Charges (SDC)

The Circular stated (in paragraph 1) that: “...It is in recognition of this fact that banks and other financial institutions are enjoined to support Government's revenue generation drive through compliance with the provisions of the *Stamp Duties Act, LFN, 2004* as reinforced by the court judgment in *Suit No FHC/L/CS/1710/2013*.”

It can be deduced therefore that the bases for the SD deduction policy by CBN are: the *Stamp Duty Act (SDA)*, *FGFR* and the trial court's decision in *Kasmal International Services Ltd (KIS Ltd) v. CBN*.¹ This writer will attempt to critically analyse the bedrock of the Circular.

1. SDA: A valid cover for the CBN SDC?

SDs are taxes payable to FG or State Governments (SGs) on documents or instruments such as receipts, document of transfer, bills of exchange, bill of sale, agreement or contract, promissory notes, and agreements. The SDA governs and regulates SDs in Nigeria.

No doubt, **section 89(1) SDA** defines receipt to “include note, memorandum, or writing whereby any money amounting to N4.00 (four naira) or upwards, or any bill of exchange or promissory note for money amounting to N4.00 or upwards, is acknowledged or expressed to have been received or deposited or paid, whereby, it is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.”

However, **section 3 SDA** expressly provided that SDs to be collected pursuant to the Act shall be subject to the exemptions contained therein. The SDA Schedule prescribes that “RECEIPT given for or upon the payment of money amounting to N4.00 or upwards ... shall be subject to 2 kobo SD. However, it goes on to include under “Exemptions”: “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.”

Relying on the above provisions, the Court of Appeal (CA, Lagos Division) in **Standard Chartered Bank Nigeria Ltd (SCBNL) v. KIS Ltd & 22 Ors**,² overruled the Federal High Court (FHC) in **KIS Ltd v. 22 DMBs**,³ by holding that charging SDs on deposit or electronic transactions is improper. The CA also held that the SDA as amended did not impose an obligation on NIPOST (Nigerian Postal Service), DMBs nor any FI to deduct N50 for every N1,000 and above, deposited or paid via electronic transfers, as SD tax.

¹Suit No: FHC/L/CS/1710/2013.

²(2016) 27 TLRN 1.

³Suit No: FHC/L/CS/1462/2013.

The CA further held that the provisions of the Circular being inconsistent with the SDA Schedule is therefore invalid, null and void. CBN and its agents, servants, privies, assigns, or any person claiming through or deriving authority from them were restrained from implementing provisions of the Circular. Furthermore, NIPOST and CBN lacked the power to arbitrarily increase the amount of SD to N50 under the guise that 2 kobo stamps are no longer in circulation, without first securing an amendment of the SDA through the National Assembly.

2. FGFR: A valid basis for the SDC?

The FGFR provides the regulatory framework for FG's finance and accounting procedures. Regulation 620 FGFR states that receipts given on payment vouchers are liable to SD in accordance with the SDA. Since SDA exempts receipts given for money deposited in banks from being liable to SD charges, the provisions of FGFR cannot validly contradict those of SDA.

Pursuant to the FGFR, the following are liable to N50 Sds:

- (i) "Receipts given for payment for or goods supplied or services rendered (except if the amount is N1,000 or over, a N50 stamp is required in respect of each signature acknowledging an amount);
- (ii) Refunds of amount deposited in the Treasury, unless the receipts of such payments are exempted if the amount is N1000 or over, a N50 SD is required in respect of each signature acknowledging an amount;
- (iii) Fees drawn by normal salaries, e.g. Language Examiners (exempted where the arrangement voucher makes such action possible, amount payable to the same person may be bracketed together and be receipted by one signature);
- (iv) Gratuities for passing Language Examinations; and
- (v) Composite vouchers for payment of several separate amounts."

Upon close examination of the FGFR, it is apparent that the FGFR does not provide any support for the Circular.

3. KIS Ltd v. CBN (Suit No: FHC/L/CS/1710/2013) & Other Cases: Judicial Validation of the CBN SDC?

In 2013, KIS Ltd sued the CBN; judgment was delivered on 17 April, 2014 in Plaintiff's favour to the effect that N50 SD was payable on every deposit or fund transfer of N1,000 and above; and that CBN, DMBs and FIs were obliged to implement the deduction. Similar decision was also reached on 17 February, 2014 in **KIS Ltd v. 22 Deposit Money Banks** (*supra*), were KIS Ltd's prayers to the Court for a declaration that by a combined reading of the SDA, NIPOST Act, FGFR and its agency agreement with NIPOST, DMBs are obligated by law to remit N50 SD to NIPOST and an order compelling DMBs to remit same.

However, Standard Chartered Bank Nigeria Ltd (SCBNL) in **SCBNL v. KIS Ltd & 22 Ors** (*supra*), appealed against **KIS Ltd v. 22 Deposit Money Banks** (*supra*). The CA upheld SCBNL's appeal, setting aside the FHC decision in favour of KIS Ltd.

In another case, **Retail Supermarkets Nigeria Limited v. Citibank & CBN**,⁴ the plaintiff challenged the collection of N50 surcharge for every transaction involving N1,000 and above. In arriving at its decision on 13 March, 2017, the FHC relied on CA's decision in **SCBNL v. KIS Ltd & 22 Ors**, consistent with the settled principle of *stare decisis* that lower courts are bound by superior courts' decisions. The FHC granted a perpetual injunction restraining Citibank directly or indirectly from taking any step to implement or further implementing the Circular in relation to the Plaintiff's bank account.

Despite these decisions, deduction of N50 SD on every bank transaction above N1,000 has continued this could be due to the CBN not issuing a directive instructing DMBs and FIs to stop the SD deductions forthwith, as DMBs and FIs will always obey CBN directives to avoid being sanctioned. Some of these cases are on appeal and until a final determination by the Supreme Court the situation may not be considered as finally resolved. The CBN has probably obtained orders staying execution of the judgments, otherwise its non-compliance would be

tantamount to contempt.⁵ In the absence of any appeal or stay of execution, the DMBs and FIs' continuous charging of SD is illegal.

Recently, the Lagos State Government (LASG) sued the FG⁶ claiming its share of SD charged on bank transaction between persons and individuals from 15 January 2016 (when CBN issued the Circular) till date. The LASG action was hinged on **section 163(b), 1999 Constitution** provision that: "where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State." However, it is arguable whether the LASG suit has locus when the National Assembly has not made any prescription regarding the proportion of the proceeds which Lagos State is entitled to.

Section 4(2) SDA also provides that "the State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government." This implies that assuming the instant SD charges are valid and devoid of controversies, SGs (including LASG) will be entitled to SD on deposit or electronic transactions between individuals in their respective territories. The CA having ruled that SD charged by the FG is null and void, is it not surprising that LASG wants a share of the "unlawfully" generated revenue? Of course, the CA decision may also be overturned on appeal hence the LASG action may still have some prospect, and therefore, not to be lightly written off.

Ubi Jus, Ibi Remedium?

One major point of call regarding the CBN SD policy should be how account holders who have been wrongly or illegally charged can get refunds, knowing fully well that the proceeds have been remitted to CBN (and has not been disbursed by the CBN). On 13 April 2017, the House of Representatives (Nigeria's lower legislative chamber) mandated its Committee on Telecommunications to liaise with NIPOST to ascertain the total amount collected so far as

⁴ Suit No: FHC/L/CS/126/2016.

⁵ See for example, *Louis B. Ezekiel Hart v. Chief George I. Ezekiel Hart* [1990] NWLR (Pt.126), 276. In January 2017, the Nigeria Employers Consultative Association (NECA) advocated that the CBN stop deducting N50 stamp duty, in compliance with the CA decision.

⁶ Suit No: SC245/2017.

SD charges and its whereabouts. The House observed that since the introduction of the SD charges, NIPOST had not disseminated any information on the total amount so far collected.

The House also noted that NIPOST is responsible for collection of the SD charges and the amount collected should be paid into the Consolidated Revenue Fund (CRF) of the Federation.⁷ It is noteworthy that the functions and powers of NIPOST as contained in **sections 4 and 5 NIPOST Act** respectively does not include collection of SDs. Whereas the Court also held in **NBC v. NIPOST & Bethda International Merchant Nig. Ltd**⁸ that NIPOST is not authorised by either the NIPOST Act or SDA to enforce the collection of SDs. The Court held further that NIPOST's engagement of agents to enforce SDA's provisions, by way of enforced sale of postage stamps, is beyond its statutory powers.

Conclusion

The FG, in its laudable bid to increase its revenue base must be conscious of the truism that, anything placed on nothing will definitely fall. Whilst increased (optimal) tax revenues from the non-oil sector is a veritable tool, there must be legislative vehicles coupled with implementation plan envisioned (amongst others), by the National Tax Policy (NTP) to achieve this feat. It is therefore imperative that the FG should approach this strategic task by implementing the NTP through amending the SDA and other tax legislation in line with current Nigerian economic realities.

The FG can also increase its revenue by taxing the informal sector, being more accountable and transparent in judicious use of tax revenue, which will in turn enhance voluntary taxpayer compliance and increased public revenue. Consequently, the recent tax amnesty captioned *VAIDS (Voluntary Asset and Income Declaration Scheme)* is a step in the right direction. It is also noteworthy that a proposed legislation, the Stamp Duties Act (Amendment) Bill, 2017 is presently before

the National Assembly. Amongst others, it seeks to expand the SDA's scope to include electronic, internet and Point of Sale (POS) transactions as well as bring much needed clarity to the SDA.

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As at date of this article, no individual (i.e. natural person) has instituted an action against CBN or any DMBs on the SD issue. Could it be that aggrieved individuals are unaware of their rights, or they rather than incur costs on duplicative litigation prefer to await the outcome of the appeals involving corporate entities? This is moreso that they would also be entitled to benefit from such decisions if the Supreme Court were to uphold the order for SD refunds to (all) bank customers. Compliance with such will have costs and logistics implications. Maybe it could then be argued that CBN's Circular was ultimately reminiscent of "*Much Ado About Nothing*."

⁷ Note that the Circular instructed that SD collected by DMBs and FIs be transferred monthly to CBN's NIPOST Stamp Duty Collection Account and not to the CRF. Per section 80, 1999 Constitution, all revenues received or raised by the Federation unless specifically designated to be paid into any other public fund of the Federation shall be paid into the CRF. CRF withdrawals are made only to meet expenditure charged upon the Fund by the Constitution, or where the money has been authorized by an Appropriation Act, Supplementary Appropriation Act or an Act passed pursuant to section 199 Constitution, or unless authorised by an Act of the National Assembly. See also: *A.G. Ogun State & Ors v. A.G. Federation* (2003) FWLR (Pt. 143) 206).

⁸ Suit No. FHC/ABJ/CS/869/2015 (*coram Kolawole, J* (judgement delivered on 13 April, 2017).

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