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Value Added Tax Decree

SCHEDULES

Decree No. 102

[1st December 1993] Commencement.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:-

PART I - IMPOSITION, ETC. OF VALUE ADDED TAX

1. There is hereby imposed and charged a tax to be known as the Value Added Tax (in this Decree referred to as the "the tax") which shall be administered in accordance with the provisions of this Decree. Imposition, etc. of Value Added Tax.
2. The tax shall be charged and payable on the supply of all goods and services (in this Decree referred to as "taxable goods and services"), other than those goods and services listed in the Schedule to this Decree. Taxable goods and services. 1995
3. There shall be exempt from the tax the goods and services listed in the Schedule to this Decree. Goods and services exempt. 1995
4. The tax shall be computed at the rate of 5 per cent on the value of all taxable goods and services as determined under sections 5 and 6 of this Decree. Rate of tax
- 5.-(1) For the purpose of this Decree, the value of taxable goods and services shall be determined as follows, that is - Values of taxable goods and services.
- (a) if the supply is for a money consideration, its value shall be deemed to be an amount which with the addition of the tax chargeable is equal to the consideration;
- (b) if the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value.

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(2) Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it.

(3) For the purpose of this Decree, the open market value of supply of taxable goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (1)(b) of this section if the supply were for such consideration in money as could be payable by a person in a transaction at arm's length.

Value of imported goods

6. The value of imported taxable goods for the purposes of this Decree shall be the amount which is equal to the price of the goods so imported and shall include-

(a) all taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Decree;

(b) all costs by way of commission, parking, transport and insurance up to the port or place of importation.

PART II - ADMINISTRATION

Administration of the tax.

7.-(1) The tax shall be administered and managed by the Federal Board of Inland Revenue (in this Decree referred to as "the Board")

(2) 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 amounts so collected in accordance with the provisions of this Decree.

Registration 1995

8.-(1) A taxable person shall, within six months of the commencement of this Decree or within six months of the commencement of business, whichever is earlier, register with the Board for the purpose of the tax.

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(2) Without prejudice to the provisions of section 28 of this Decree, a taxable person who fails or refuses to register with the Board within the time specified in subsection (1) of this section shall be liable to pay as penalty an amount of -

(a) ₦10,000 for the first month in which the failure occurs; and

(b) ₦5,000 for each subsequent month in which the failure continues.

8A.(1) Every Government Ministry, statutory body, and other agency of Government shall register as agents of the Board for the purpose of collection of tax under this Decree.

Registration by Government Ministries, etc as agents of the Board 1995

(2) Every contractor transacting business with a Government Ministry, statutory body and other agency of the Federal, State or Local Government shall produce evidence of registration with the Board as a condition for obtaining a contract.

8B. (1) For the purpose of this Decree, a non-resident company that carries on business in Nigeria shall register for the tax with the Board, using the address of the person with whom it has a subsisting contract, as its address for the purposes of correspondence relating to the tax.

Registration by non-resident companies. 1995

(2) A non-resident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax in the currency of the transaction.

9. A person who is registered under section 8 of this Decree (in this Decree referred to as "a registered person") shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Decree.

Records and accounts.

PART III - RETURNS, REMITTANCES, RECOVERY AND REFUND OF TAX

Payment of tax by taxable person.

10.-(1) A taxable person shall pay to the supplier the tax on taxable goods and services purchased by or supplied to him.

(2) The tax paid by a taxable person under subsection (1) of this section shall be known as input tax.

Remission of tax collected by Government Ministries, etc. 1995

10A-(1) Every Ministry, statutory body or other agency of Government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest Local Value Added Tax Office.

(2) The remission shall be accompanied with a schedule showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and month of return.

Collection of tax by taxable person.

11.-(1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the rate specified in section 2 of this Decree.

(2) The tax collected by a taxable person under subsection (1) of this section shall be known as output tax.

Taxable person to render returns.

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

(2) A person who imports taxable goods into Nigeria shall render to the Board returns on all the taxable goods imported by him into Nigeria.

Remission of tax.

13.-(1) A taxable person shall, on rendering a return under subsection (1) of section 12 of this Decree-

(a) if the output tax exceeds the input tax, remit the excess to the Board; or

(b) if the input tax exceeds the output tax, 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, require.

(2) An importer of taxable goods shall, before clearing those goods, pay to the Board the tax due on those goods.

(3) The Nigerian Customs Service shall, before releasing taxable goods to its import demand the Value Added Tax Compliance Certificate issued by the Board on those goods.

14. Where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Board shall assess, to the best of its judgment, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.

Effect of failure to render returns.

15.-(1) If a taxable person does not remit the tax within the time specified in section 13 of this Decree, a sum equal to five per centum per annum (plus interest at the commercial rate) of the amount of tax remittable shall be added to the tax and the provisions of this Decree relating to collection and recovery of unremitted tax, penalty and interest shall apply.

Effect of non-remittance of tax.

(2) The Board should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days from the date of such notification, the Board may proceed to enforce payment as provided in section 16 of this Decree.

16. Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceeding in the Federal High Court.

Recovery of tax.

Value Added Tax Decree

PART IV - VALUE ADDED TAX TECHNICAL COMMITTEE

17. There is hereby established a committee to be known as the Value Added Tax Technical Committee (in this Decree referred to as "the Technical Committee") which shall comprise -

- (a) a chairman who shall be the Chairman of the Federal Board of Inland Revenue;
- (b) all Directors in the Federal Inland Revenue Services;
- (bb) the Legal Adviser to the Federal Inland Revenue Service.
- (c) a Director in the Nigerian Customs Service; and
- (d) three representatives of the State Governments who shall be members of the Joint Tax Board.

18. The functions of the Technical Committee shall be to -

- (a) consider all the tax matters that require professional and technical expertise and make recommendations to the Board;
- (b) advise the Board on the duties specified in section 7 of this Decree; and
- (c) attend to such other matters as the Board may, from time to time, refer to it.

19. Subject to such directions as the Board may, from time to time, give, the Technical Committee shall determine its quorum and otherwise regulate its own procedure.

20. The Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions.

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PART V - OFFENCES AND PENALTIES

21. A person who -

(a) produces, furnishes or sends for the purpose of this Decree or otherwise makes use for the purpose a document which is false in any material particular; or

(b) in furnishing an information to the Board, makes a statement which is false in any material particular, is guilty of an offence and liable on conviction to a fine of twice the amount under-declared.

22. A person who -

(a) participates in; or

(b) takes steps with a view to,

the evasion of the tax by him or any other person, is guilty of an offence and liable on conviction to a fine of ₦30,000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

23. A person, required to make an attribution, who -

(a) fails to do so; or

(b) having done so, fails to notify the Board, is liable to pay a penalty of ₦5,000.

24. A person who fails to notify the Board of any change of address within one month of such change, is liable to pay a penalty of ₦5,000.

25. A person who fails to issue tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50 per cent of the cost of the goods or services for which the invoice was not issued.

Furnishing of false document, etc.

Evasion of tax.

Failure to make attribution.

Failure to notify change of address.

Failure to issue tax invoice.

Value Added Tax Decree

26. A person who -

(a) resists, hinders or obstructs or attempts to resist or hinder an authorised officer acting under section 35 of this Decree; or

(b) fails to comply fully with any requirement made under section 35 of this Decree; or

(c) makes any statement in response to a requirement made under section 35 of this Decree which is false or incomplete; or

(d) procures or attempts to procure by any means any other person to act as aforesaid,

is guilty of an offence and liable on conviction to a fine of ₦10,000 or imprisonment for a term of 6 months or to both such fine and imprisonment.

27. A person who, other than -

(a) a person registered under this Decree; or

(b) a person authorised to do so under this Decree,

issues an invoice purporting same to be attributable to tax, is guilty of an offence and is liable on conviction to a fine of ₦10,000 or imprisonment for a term of 6 months.

28. A taxable person who fails to register under this Decree, is guilty of an offence and 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.

29. A taxable person who fails to keep proper records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of ₦2,000 for every month in which the failure continues.

Value Added Tax Decree

30. A taxable person, who fails to collect tax under this Decree, is liable to pay as penalty 150 per cent of the amount not collected, plus 5 per cent interest above the Central Bank of Nigeria rediscount rate.

31. A taxable person, who fails to submit returns to the Board, is liable to a fine of ₦5,000 for every month in which the failure continues.

32. -(1) An officer of the Board or any other person, who aids or abets the commission of any of the offences under this Decree, is guilty of an offence and is liable on conviction to a fine of ₦50,000 or to imprisonment for a term of 5 years.

(2) Where a person's conduct during any specified period has involved the commission or omission by him of any one or more of the foregoing offences under this Decree, then whether or not the particulars of the offences are known, he shall, by virtue of this section, be guilty of an offence and liable to pay a fine of ₦10,000 or if greater, four times the amount of any tax that was, or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

33. Where an offence under this Decree is committed by a body corporate or firm or other association of individuals -

(a) every director, manager, secretary or other similar officer of the body corporate; or

(b) every partner or officer of the firm; or

(c) every person concerned in the management of the affairs of the association; or

(d) every person who was purporting to act in any capacity as aforesaid, is severally guilty of that offence and liable to be proceeded

Failure to collect tax

Failure to submit returns.

Aiding and abetting commission of offence, etc.

Offence by body corporate, etc.

Issuing of tax invoice by an unauthorised person.

Issuing of tax invoice by an unauthorised person.

Failure to register. 1995

Failure to keep proper records and accounts.

Value Added Tax Decree

against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

PART VI - MISCELLANEOUS

Powers of Secretary to vary Schedule.

34. The Secretary may by order published in the Gazette -

(a) amend the rate of tax chargeable; and

(b) amend, vary or modify the lists set out in Schedules 1, 2 and 3 to this Decree.

Power of inspection.

35.-(1) An authorised officer may at any time enter without warrant any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether this Decree is being complied with (whether on the part of the occupier of the premises or any other person) and on entry he may carry out such inspections and make such requirements as may be specified by the Board.

(2) Where an authorised officer enters any premises in exercise of the power conferred on him by subsection (1) of this section, he may take with him such persons as he considers necessary for carrying out his functions under this Decree.

Distribution of revenue.

36. Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this Decree shall be distributed as follows, that is -

(a) 40 per cent to the Federal Government

(b) 35 per cent to the State Governments and the Federal Capital Territory, Abuja; and

(c) 25 per cent to the Local Governments.

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37.-(1) The Board may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed shall be the agent of the manufacturer or importer for the purposes of this Decree.

Appointment of agent for manufacturer or importer.

(2) An agent may be required to pay any tax which is or may become payable by the manufacturer or importer from any money which may be held by him for, or due by or to become due by him to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him.

(3) For the purpose of this section, the Board may require a person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to a manufacturer or an importer.

38. Anything required to be done by the Board under this Decree may be signified under the hand of the Chairman or any other senior officer assigned to do so by him.

Significant

39. The Board may, from time to time, specify the forms, statements and notices to be used under this Decree.

Forms.

40. The Board may, with the approval of the Secretary, make regulations for giving effect to the provisions of this Decree.

Regulations.

41. Subject to section 6 of the Interpretation Act, the Sales Tax Decree 1986 is hereby repealed.

Repeal of 1986 No. 4. Cap. 192 LFN.

42. In this Decree, unless the context otherwise requires -

Interpretation.

"agency of Government" includes a Ministry department, statutory body, public authority and an institution of the Federal, State and Local Government.

"authorised officer" means an officer who has been authorised by the Board to perform any function under or in pursuance of this Decree;

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"Board" means the Federal Board of Inland Revenue;

"building" means any house, including any garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building, and similarly roofed structure affording protection and shelter, radio and television masts, transmission line, tower, vehicle and other similar structure but excludes mobile homes, caravans and trailers;

"business" includes any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture;

"Chairman" means the Chairman of the Federal Board of Inland Revenue;

1990 No. 1. "company" means a company as defined under the Companies and Allied Matters Decree 1990 and a corporate body that may be formed under any other written law and includes any association, whether incorporated in or outside Nigeria;

"entertainment" includes any exhibition and performance in which admission of persons is subject to payment by such persons but does not include the following, that is -

(a) play on stage and performance which are carried out by educational institutions, approved by the Secretary for the time being responsible for education as part of learning;

(b) sport, game or other cultural performance conducted under the superintendence of the Ministry charged with the responsibility for culture and social welfare;

(c) entertainment of a charitable, educational, medical, scientific or cultural nature as may be approved in writing by the Board prior to the date of the entertainment for the benefit of the public; and

(d) entertainment organised by a non-profit making, charitable,

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educational, medical, scientific or cultural society registered under the law where the entertainment is in furtherance of the objectives of the society as may be approved in writing by the Board prior to the date of the entertainment;

"import" means bringing in or carrying to be brought in goods and services from another country or from an export processing zone;

"importer" means any person who imports taxable goods;

"input tax" has the meaning assigned to it in section 10 of this Decree;

"invoice" means any document issued as an evidence of demand for payment;

"manufacturer" means any person who engages in the manufacture of goods and includes a person who has manufactured for him or on his behalf by others, goods made to his specification or design;

"manufacturing" means the process by which a commodity is finally produced, including assembling, packing, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting and joining or any other similar activity;

"motel" means premises on which accommodation, flats service, apartments, beach cottages, holiday cottages, game lodges are provided but excludes the following, that is -

(a) premises run by a charitable or religious organisation registered under the relevant law for charitable or religious purposes;

(b) premises operated by a medical institution approved by the Secretary for the time being responsible for health for the use of the staff of that institution;

(c) premises whose supply is under a lease or licence of not less than one month, unless by prior arrangement, the occupier may without penalty, terminate that lease or license on less than one month's notice;

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"output tax" has the meaning assigned to it in section 11 of this Decree;

"owner" means in respect of any goods, aircraft, vessel, vehicle, plant or any other goods, a person, other than an officer acting officially, who holds out himself to be the owner, manufacturer, agent or the person in possession of or beneficially interested in, or having control of or power of disposition over the goods, aircraft, vehicle, plant or other goods;

"registered person" means any person registered under section 8 of the Decree;

"restaurant" means any establishment carrying out the business of restaurant services, and includes cafeterias, fast-food outlets, snacks bars, food stalls at exhibitions or sports arena and similar establishments but excludes -

(a) an establishment operated for a charitable or religious purposes;

(b) an establishment run by an educational or training institution approved by the Secretary for the use of the staff and students of those institutions; and

(c) an establishment run by a medical institution approved by the Secretary for the time-being responsible for the health for the use of the staff and students of the institution;

"restaurant service" means the supply of foods or beverages prepared for immediate consumption, whether or not such consumption is on the premises of the restaurant and including outside catering;

"Secretary" means Secretary or Minister responsible for matters relating to finance;

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"supplies" means any transaction, whether it is the sale of goods or the performances of a service for a consideration, that is, for money or money's worth,

"supply of goods" means any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in particular includes the sale and delivery of taxable goods or services used outside the business, the letting out of taxable goods on hire or leasing, and any disposal of taxable goods;

"supply of services" means any service provided for a consideration;

"tax" means the Value Added Tax imposed and charged under section 1 of this Decree;

"taxable goods and services" means the goods and services not listed in the Schedule to this Decree;

"tax period" means one calendar month commencing from the beginning of the month to the end of that month;

"taxable person" means a person who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of goods, supplier of services (including mining and other related activities) or a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business and includes a person and an agency of Government acting in that capacity.

"transaction at arms's length" means a transaction on normal open market commercial terms;

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"vehicle" includes for the purpose of this Decree every description of conveyance for the transportation by land of human beings or goods;

"vessel" means a mode or transportation or conveyance by water of human beings or goods;

"wholesaler" means a person who obtains his stock predominantly from the manufactures and sells in bulk to the retailers.

43. This Decree may be cited as the Value Added Tax Decree 1993 and shall come into force on 1st December 1993.

SCHEDULE

Section 3

GOODS AND SERVICES EXEMPT

Part I - Goods Exempt

B

- | | <i>Rate %</i> |
|--|---------------|
| 1. All medical and pharmaceutical products. | |
| 2. Basic food items. | |
| 3. Books and educational materials. | |
| 4. Newspapers and magazines. | |
| 5. Baby products. | |
| 6. Commercial vehicles and commercial vehicle spare parts. | |
| 7. Fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment. | |
| 8. All exports | |

Value Added Tax Decree

Part II - Services Exempt

1. Medical services.
2. Services rendered by Community Banks, People's Bank and Mortgage Institutions.
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.

MADE at Abuja this 24th day of August 1993

GENERAL I. B. BABANGIDA,
President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria.

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport)

The Decree imposes and charges Value Added Tax on certain goods and services, including all goods manufactured and assembled in Nigeria.