

Value Added Tax in Nigeria: An Overview of Notable Reforms and Implications of the Finance Act, 2019 and 2020*

Abstract

The Value Added Tax (VAT) is one of the taxes levied in Nigeria. It is a type of indirect tax levied on goods and services for the value added at every stage of production and distribution. Although, divergent taxes are being levied in Nigeria, the Value Added Tax remains distinctive and has been a constant reoccurrence in judicial proceedings and political discourse. In actuality, majority of the populace do not comprehend the applicability, nature and legal framework hitherto guiding the administration, management and collection of the Value Added Tax in Nigeria. This paper therefore using doctrinal research methodology and adopting analytical approach gives an overview of the connotation, history and nature of the Value Added Tax and its applicability in Nigeria viz-a-viz some notable new provisions of the Finance Act 2019 and 2020. Also analyzed in this paper, is the legal and institutional framework guiding the administration, management and collection of the Value Added Tax in Nigeria. The recommendations in this article tilt towards the writer's opinion on the recent issues surrounding the correct tier of government statutorily empowered to administer and manage VAT in Nigeria.

Keywords: Value Added Tax, Tax, Finance Act 2020, Tax Administration

1. Introduction

The Value Added Tax, hereinafter referred to as VAT, is an indirect tax that is charged on taxable supplies of goods and services by a taxable person in the ordinary course of business¹. Value added Tax in Nigeria commenced in 1993 following the enactment of Decree No. 102 of 1993.² Prior to the adoption of VAT, there were some kinds of expenditure taxes like the general sale tax and excise duty payable on some goods etc. All of these were subsumed under the Value Added Tax vide the Value Added Tax Act Cap No. 102 of 1993 now Value Added Tax Act, Cap VI, Laws of the Federation of Nigeria, 2004.³ A further amendment was effected on 2th May, 2007 as VAT (Amendment) Act No. 12 of 2007.⁴

The current regulatory regime for Value Added Tax in Nigeria, in addition to the VAT Act 2004 (as amended), includes the Finance Act, 2019 and 2020; and the VAT Modification Order of 2020 ("MO 20"). The Minister of Finance, Budget and National Planning, on September 21, 2021, issued the VAT Modification Order of 2021 ("MO 21") which amends the list of goods and services exempted from VAT and eligible as zero-rated goods and services.

Value Added Tax is a consumption tax that has been embraced by many countries worldwide. Because it is consumption tax, it is relatively easy to administer and difficult to evade. It is tax imposed and charged on goods and services which are not expressly exempted from VAT under Nigeria Law. Except for the VAT- exempted or zero-rated goods and services, the current rate

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¹ GD Morris, S Mckay, A Oates, *Taxation in Finance Director's Handbook*, 5th Edition, <https://doi.org.10.1016/B978-0-7506-8701-0.00035-7> accessed 26th February, 2022.

² CS Ola, *Tax Planning and Auditing in Nigeria* (Ibadan: University Press Ltd, 1985) P. 583.

³ JAA Agbonika, *Problems of Personal Income Tax in Nigeria*, (Lagos: Ababa Press Ltd, 2012) P. 133.

⁴ LA Nwanyanwu, "Value Added Tax Administration in Nigeria: An Inquiry into Irrevocable Invoices" (2015) *Applied Economic and Finance Journal*, 43.

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of VAT charged in Nigeria is 7.5 percent of the value of the goods and services supplied or delivered (increased from 5% on 1st February 2020.⁵

2. Meaning and Nature of the Value Added Tax in Nigeria

As a matter of general knowledge, registration by ‘Vatable’ persons is the starting point of VAT administration. Every person or company carrying on business or trade and whose products or services are not exempted is expected to register with the Federal Inland Revenue Service (FIRS)⁶ (excluding small companies with less than 25 million naira turnover within a calendar year). These unexcused persons or companies must include VAT at the rate of 7.5% on invoices issued for the supply of taxable goods and services.⁷

The period of registration of VAT which before now is six months from the commencement of the Act or business whichever is earlier has now by virtue of the Finance Act, is upon commencement of business⁸. The Finance Act 2020 has now clarified that a business shall be deemed to have commenced in Nigeria on the day that the entity carries out its first transaction.⁹In other words, value added tax shall be charged and payable on all supplies of goods and services in Nigeria other than those listed in the First Schedule to the Act.¹⁰

In addition, the Finance Act 2020 made elaborate amendment to charge of VAT on a non-resident person (NRP). A non-resident person that makes a taxable supply of goods and services to Nigeria shall register for tax with the FIRS and obtain Tax Identification Number (TIN)¹¹. Under S. 10(2) VAT Act 2004 (as amended), a non-resident person shall include the tax on its invoice for all taxable goods and services. In other words, there is an obligation on a non-resident company to include VAT on its invoices for the supply of taxable goods and/or services to a resident entity in Nigeria.

Again, the taxable person to whom the supply of taxable goods or services are made in Nigeria or such other person as may be appointed by the FIRS shall withhold and remit the tax to the service in the currency of the transaction.¹² The above-mentioned provision, therefore, mandates the Nigerian resident person on whom taxable goods or services are supplied in Nigeria to withhold and remit the tax payable to the Federal Inland Revenue Service in the currency of payment.¹³The effect of this is that Nigerian customers of non-resident companies that are supplied taxable goods and/or services in Nigeria are required to self-account for the applicable VAT even if the non-resident company does not include VAT on its invoice.¹⁴

⁵ Part VII, S.42 Finance Act, 2020 and S.4 VAT Act, Cap VI, Laws of the Federation of Nigeria, 2004 (as Amended), Although the Finance Act 2020 has a commencement date of 1st January, 2020, the Minister for Finance, Budget and National Planning announced 1st February, 2020 as the commencement date for the implementation of the VAT rate of 7.5%.

⁶S.8 and S.9 Value Added Tax Act, Cap VI, Laws of the Federation of Nigeria, 2004, S.40 Finance Act 2020.

⁷ibid.

⁸Part VII, S.46 Finance Act 2019, S. 46 VAT Act, ibid.

⁹ ibid.

¹⁰ Part VII, S.40 Finance Act 2019, and S. 2(1) VAT Act, ibid.

¹¹ Finance Act 2020, Part VII, S.43, VATA 2004, S.10 (1) ibid.

¹²Pt VII, S. 43 Finance Act 2020, S. 10(3) VATA 2004 ibid.

¹³ibid.

¹⁴U Udoma and B Osagie, Nigeria’s New VAT Regime, <<https://www.mondaq.com/Nigeria/sales-taxes-vat-gst/1023654/nigeria-new-vat-regime>> accessed 27th February, 2022.

Furthermore, notwithstanding the provisions of Section 10(1), which makes it mandatory for a non-resident person, that makes a taxable supply of goods or services to Nigeria, to register for tax with the FIRS and obtain Tax Identification Number (TIN), a non-resident person that makes a supply of taxable goods or services in Nigeria may appoint a representative, for the purpose of its tax obligations.¹⁵

However, the FIRS has elaborated that a non-resident company that has a fixed base, or a permanent establishment in Nigeria, should directly comply with the provisions of the Value Added Tax Act¹⁶This means, therefore, that such a company must register using the address of its place of business in Nigeria (fixed base or Permanent establishment)¹⁷No doubt, by the above provisions of the new Finance Act 2020, the issue of the application of VAT to services rendered by a non-resident company called “Non Resident Suppliers”¹⁸ to persons resident in Nigeria has been laid to rest.¹⁹ Previously, before the Finance Act 2020 was signed into law, the FIRS ascribed to the view that such services should be subject to VAT while the Taxpayers were of the opinion that such services by non-resident companies should not be charged to VAT²⁰. Being guided by the recent Finance Act 2020, all businesses and consumers are mandated and obliged to remit VAT on taxable goods or services supplied to them notwithstanding where the supplier of same is located, situated or resident.

Again, there is a period of timeline allocated for filing the returns or remitting VAT in Nigeria. VAT assessment complies with the self-assessment procedure (self-accounting) with respect to supplies of goods and services. The VAT Act specifically under S. 4 provides that a taxable person is required to self-collect and remit the VAT due in the currency of the transaction on or before the 21st day of the month immediately following the month of the transaction.²¹

In further clarification,²² the FIRS stated specifically as follows:

In accordance with Section 4 of the VAT Act, every taxable person is to collect tax at the rate of 7.5% of the value of the goods and services supplied and the tax so collected is the output VAT. Monthly remission of the VAT payable (which is the excess of the output VAT over the input VAT) is to be made in the currency of transaction on or before the 21st day of the preceding month of such transaction and returns must be rendered to the service in the appropriate form.

In other words, the Finance Act now imposes an obligation on a taxable person who has made taxable supplies or expects to make taxable supplies, that is, an aggregate of over N25,000,000.00 to file VAT returns to the FIRS on or before the 21st day of every month in which the threshold is achieved and on or before the same day in successive months thereafter.²³ What this means is that any taxpayer that meets the threshold for VAT filing has an obligation to file

¹⁵ VAT Act, S.10 (4). (n. 12).

¹⁶FIRS, Information Circular No 2021/08, Clarification on the Implementation of the Value Added Tax (VAT) Action, 3rd June, 2021.

¹⁷Banwo and Ighadalo, <<https://www.banwo-ighadalo.com/grey-matter/firs-clarifies-changes-introduced-to-nigerian-vat-regime-by-the-finance-act-2019>> accessed on 27th February 2022.

¹⁸ Guideline 26, FIRS Information Circular No.2021/19, Guidelines on Simplified Compliance Regime for Value Added Tax (VAT) for Non-Resident Suppliers, issued on 11th, October 2021, for the definition of Non-Resident Supplier.

¹⁹ This was an issue in the case of *Saipem Contracting (Nig) Ltd v FIRS & Ors* (2018) LPELR – 45118 (CA).

²⁰ *Vodacom Business Nig Ltd v FIRS* (2019) LPELR - 47865 (CA).

²¹S.36, 38 Finance Act 2019, S 10 (4), S.15 (1) VAT Act, *ibid*.

²²FIRS Information No. 2021/08, *ibid*.

²³U Udoma and B Osagie,(n.14)

VAT returns on or before the 21st day of the month in which it meets (or expects to meet) the threshold and subsequently file its VAT returns for every month thereafter.

The huge yield from VAT is a fairly accurate measurement of the growth of an economy and it undisputedly explains why it is usually controversial and litigious. In 2021, the Federal Government of Nigeria generated 2.07 trillion Naira from VAT alone.²⁴

3. Notable Classes of Transactions Taxable under VAT in Nigeria

Under the VAT Act 2004 (as amended), all goods and services (produced within or imported into the country) are taxable except those specifically exempted by the VAT Act.²⁵ All goods and services supplied in Nigeria are liable to VAT in Nigeria except goods and services specifically listed in the First Schedule to the Act. To this end all goods and services consumed or otherwise utilized in Nigeria are subject to VAT in Nigeria. This is in line with the “destination principle” of VAT.²⁶ The Finance Act further defines what constitutes goods and services for VAT purposes.

“Goods” for the purposes of the VAT Act, 2004 (amended) means all forms of tangible properties, moveable or immovable, but does not include land and buildings, money or securities.²⁷ This definition of “goods” implies that VAT is chargeable on the supply of all forms of tangible properties, moveable or immovable except the supply of land and building (commercial or private), money or securities, which are exempted from VAT²⁸

“Services” on the other hand, for the purposes of the VAT Act, means²⁹

- a. Anything other than goods, or services, provided under a contract of employment; and
- b. Includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security.

The Finance Act further provides that “goods” shall be deemed to be supplied in Nigeria³⁰, for VAT purposes, if:

- i. The goods are physically present in Nigeria at the time of supply, imported into Nigeria, assembled in Nigeria or installed in Nigeria, or
- ii. The beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria.

On the other hand, “services” are deemed to be supplied in Nigeria³¹ for VAT purposes, if:

- i. The service is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service.
- ii. The service is provided to and consumed by a person in Nigeria, regardless of whether the service is rendered within or outside Nigeria or whether or not the legal or

²⁴ Victor Ejechi, 'FIRS: We Generated N6.4trn Revenue in 2021' *The Cable*, <<https://www.thecable.ng/firs-generates-n6-4trn-revenue-in-2021/amp>> accessed 15 February, 2022.

²⁵ VAT Act (amended), S.2, *ibid*.

²⁶ Guideline 2, 0 FIRS Information No. 2021/08 *ibid*.

²⁷ VAT ACT (amended), S.46, *ibid*.

²⁸ Guideline 11.1, FIRS Information Circular No. 2021/18, *ibid*.

²⁹ VAT Act (amended), S, 46 *ibid*; S.44 Finance Act. 2020, S.44.

³⁰ VAT Act (amended) S.2 (3) (a) (i) (ii) *ibid*.

³¹ *ibid*, S.2 (3) (b) (i) (ii) (iii).

- contractual obligation to render such service rests on person within or outside Nigeria,
or
- iii. The service is connected with existing immovable property (including the services of agents, experts, engineers, architects, valuers, etc.) where the property is located in Nigeria.

Furthermore, with respect to an “incorporeal”³² a taxable supply shall be deemed to take place if:

- i. The exploitation of the right is made by a person in Nigeria,
- ii. The rights is registered in Nigeria, assigned to or acquired by, a person in Nigeria, regardless of whether the payment for its exploitation is made within or outside Nigeria,
or
- iii. The incorporeal is connected with a tangible or immovable asset located) in Nigeria.

A particular word “Taxable supplies” runs through what is deemed susceptible to VAT. This has been defined as any transaction for sale of goods or the performance of a service, for a consideration in money or money’s worth³³

From the foregoing on services chargeable under VAT, it can be concluded that VAT is chargeable on services which are carried out in Nigeria by a person bodily present in Nigeria at the point of accomplishing the service.³⁴ Again, VAT is chargeable on services rendered to a person bodily present in Nigeria notwithstanding whether or not the services are done within or outside Nigeria.³⁵ VAT is also chargeable on services rendered in Nigeria to persons physically present in Nigeria, notwithstanding the residence status of who rendered the service.³⁶It is also chargeable on services relating to immovable properties in Nigeria, notwithstanding the location of the provider of the service.

“Service”, in this regard includes but not limited to the services of agents relating to the management or marketing of immovable property, services of all forms of experts and professionals relating to the immovable property including analysis of samples drawn from the immovable property, services of engineers, architects, valuers, researchers, testers, etc. relating to the immovable property.³⁷ It is the writer’s view that legal services rendered by lawyers also comes squarely under this head.³⁸

4. Goods and Services exempted from VAT in Nigeria

The Act³⁹ provides detailed outright exemption of VAT on some goods and services in Nigeria. This means that there is no obligation of VAT and no attempt at charging VAT *ab initio*. Exempted goods and services attract neither input nor output VAT⁴⁰. Therefore, the deduction

³²S.2 (c) (i) (ii) (iii) VAT Act (Amended).

³³ VAT Act, S.46.

³⁴VAT Act *ibid*, S. 2(3) (i).

³⁵ VAT Act *ibid*, S.2 (3) (i).

³⁶VAT Act *ibid*, S.2 (3) (ii).

³⁷Guideline 3.0, FIRS, Information Circular No 2021/08 *ibid*.

³⁸ *AL-Maseer Law Firm v FIRS* (2019) LPELR – 48628 (CA).

³⁹Parts I and II of the First Schedule, VAT Act *ibid*, Order 3 Value Added Tax (Modification) Order, 2021.

⁴⁰Administration of Value Added Tax in Nigeria: Goods and services exempt-<<https://www.proshareng.com/news/taxes%&%20Tarriffs/Administration-of-value-added-tax-in-Nigeria-Goods-And-services-exempt/58518> > accessed February, 2022.

of the former from the latter and remittance of the difference to FIRS does not arise.⁴¹ There are some categories of goods and services that are exempted from VAT in Nigeria. The list of exempted goods and services as contained in the Part I and Part II of the First Schedule of the Act⁴² are as follows:

- i. Medical and pharmaceutical products;
- ii. Basic food items;
- iii. Books and educational materials.
- iv. Baby products
- v. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment,
- vi. Oil exports
- vii. Plants, machinery and goods imported for use in the export processing zone or free trade zone
- viii. Plant machinery and equipment purchased for utilization of gas in downstream petroleum operations.
- ix. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.
- x. Locally manufactured sanitary towels, pads or tampons
- xi. Commercial aircrafts, commercial aircraft engines, commercial aircraft spare parts.

b) Services Exempted are as follows;

- i. Medical services
- ii. Services rendered by unit micro-Finance banks and mortgage institutions
- iii. Plays and performances conducted by educational institutions as part of learning
- iv. All exported services
- v. Tuition relating to nursery, primary, secondary and tertiary education
- vi. Airline transportation tickets issued and sold by commercial airlines registered in Nigeria
- vii. Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes

It is noteworthy that item 11, in the Part I to the Schedule on goods exempted, and items 6 and 7 in the Part II on services exempted, were all recently added to the goods and services exempted from VAT by virtue of the recent Finance Act 2020⁴³

The Federal Government of Nigeria, however, has published the Value Added Tax (Modification) Order, 2021 in its Official Gazette No. 167, Vol. 108 of 21 September 2021, which has a commencement date of 30 July 2021 and was issued by the Honourable Minister of Finance, Budget and National Planning, Mrs. Zainab S. Ahmed, pursuant to her powers under Section 38 of the Value Added Tax (VAT) Act, Cap. VI, Laws of the Federation of Nigeria, 2004 (as amended).

The 2021 Order, which replaces the erstwhile VAT (Modification) Order 2020, modifies the First Schedule to the VAT Act by expanding the list of exempt goods and services and updating

⁴¹ *ibid.*

⁴² VAT Act (amended) *ibid.*; Value Added Tax (Modification) Order, 2020.

⁴³ Finance Act 2020, S.45, *ibid.*

the definition of some terms to ensure consistency with the amendments introduced to the VAT Act by the Finance Act, 2020.⁴⁴

Highlights of the 2021 Order Include:

1. Expansion of goods exempt in Part I of the First Schedule to include the following:
 - Petroleum products
 - Renewable energy equipment
 - Raw materials for the production of baby diapers and sanitary towels
 - Raw materials for the production of pharmaceutical products
 - Locally produced animal feeds
 - Military hardware, arms, ammunitions and locally manufactured uniforms used by the Armed forces, Para-military and other security agencies of governments in Nigeria
 - Gas supplied by gas producing companies to Electricity Generating Companies (GENCOs), Electricity generated by GENCOs and supplied to National Grid or Nigeria Bulk Electricity Trading Company (NBET) and Electricity transmitted by Transmission Company of Nigeria (TCN) to Electricity Distribution Companies (DISCOs); and
 - Agricultural seeds and seedlings.
2. Part II of the First Schedule is modified by
 - a. replacing the existing paragraph 2 with a new paragraph 2 as follows-
“Services rendered by Unit Micro –Finance Bank and Mortgage Institutions” and
Expansion of services exempt under Part 11 of the First Schedule to include "shared passenger road-transport service”

5) Administration, Management and Collection of VAT in Nigeria

The VAT Act 2004 (as amended) vests the FIRS with the power to administer and manage the collection of VAT from taxable persons in Nigeria.⁴⁵ This issue of which appropriate arm of government is reposed with the power to impose and collect VAT in Nigeria is still a matter of controversy and *subjudice*. In the recent landmark case of *A.G. Rivers State v. FIRS & AG Federation*,⁴⁶ the Federal High Court provided a literal interpretation of the Constitution of the Federal Republic of Nigeria 1999 (as amended)⁴⁷ holding that the National Assembly is only empowered to enact laws in relation to stamp duties, taxation of income/profit and capital gains. The court held that pursuant to the Constitution, the federal Government or any of its agencies, lack the powers to impose and collect VAT, or any other tax not specifically provided for in the Constitution.⁴⁸

The FIRS has however filed an appeal against the Federal High Court judgment at the Court of Appeal which led to the order of the Court of Appeal for parties in the case to maintain status quo. Lagos State which was not part of the case from the Federal High Court has also been joined in the appeal having applied to be joined as a necessary party. Meanwhile, The Rivers State government has asked the Supreme Court to set aside the order of the court of Appeal

⁴⁴KPMG Tax Alert Issue No. 10.5 October 2021, Federal Government Issues VAT Modification Order 2021, <<https://assets.kpmg/content/dam/kpmg/us/pdf/2021/10/tnf-nigeria-oct19-2021.pdf> > accessed 27th February, 2022.

⁴⁵ VAT Act, S.7(1) *ibid*.

⁴⁶Suit No. FHC/PH/149/2020 (unreported), See also, *Ukala v. FIRS* (2021)56 TLRN 1.

⁴⁷Henceforth called “The Constitution”.

⁴⁸Alex-Adedipe, F. Akinyanmi, Nigeria’s Value Added Tax (VAT) Regime; Regulatory update<<https://www.mondag.com/nigeria/sales-taxes-vat/gst/110590/nigeria395-value-added-tax-vat-regime-regulatory-update> accessed on 28th February, 2022.

which directed the state to maintain status quo. We however await the outcome of the case at the Court of Appeal.

No doubt, the power to make laws for the imposition of tax is vested by virtue of S.4 (2) of the Constitution. S.4 (2) provides thus:

The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the exclusive legislative list set out in Part 1 of the Second Schedule to this constitution.

Although, there are multifarious taxes in Nigeria, only four of them are specifically mentioned by name in the exclusive list. Could there be a reason for that? The items under the exclusive legislative list expressly relating to taxation are item 16 relating to customs and excise duties, items 25 relating to export duties. In addition, item 58 of the exclusive legislative list vests the Federal Government with the powers of taxation on stamp duties and item 59 also vests the Federal Government with powers on taxation of incomes, profits and capital gains.⁴⁹The power over the exclusive legislative list by the Federal government is however to be exercised to the exclusion of the Houses of Assembly of the States.⁵⁰In addition to power to legislative on matters in the exclusive legislative list to the exclusion of the State House of Assembly, the National Assembly also exercise power to legislative on any matter in the concurrent legislative list set out in the first column of Part II of the Second Schedule to the Constitution.⁵¹

In the case of the taxing powers of the State Government, it could impliedly be derived from the general provision conferring legislative powers on states which provide under S.4 (7) of the Constitution as follows:

The House of Assembly of a State shall have powers to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:

- a) Any matter not included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.
- b) Any matter included in the concurrent legislative list set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
- c) Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.⁵²

From the above mentioned provisions of the Constitution, items, 16, 25, 58 and 59 on the Exclusive Legislative list of the Constitution, which are the items exclusively designated to the Federal Government by the Constitution to make laws relating to taxation, did not mention the Value Added Tax (VAT) while expressly naming Import duties, stamp duties, taxes of incomes, profits and capital gains.

Again, a perusal of the concurrent legislative List⁵³ which the federal and state can legislate upon reveals that VAT was also not mentioned. In the case of the state, it can be observed that the state governments have full powers to enact laws on any field that is not on the exclusive

⁴⁹ Part 1, Second Schedule, 1999 Constitution of the Federal Republic of Nigeria.

⁵⁰ 1999 Constitution *ibid*, S.4 (3).

⁵¹ *ibid*, S. 4 (7).

⁵² *ibid*, S.4 (3).

⁵³Part 11, First Column, Second Schedule, *ibid*.

list⁵⁴. Their power in respect of those on the concurrent legislative list is however subject to the doctrines of “inconsistency” and “covering the field”.⁵⁵

In other words, in respect of matters in the concurrent legislative list, the inconsistency rule stated in Section 4(5) of the Constitution which is to the effect that “any law made by the state House of Assembly which is in conflict with the law made by the National House of Assembly shall to the extent of the inconsistency is void” applies.⁵⁶ Flowing from the above, one can fathom that while the taxing powers of the Federal government is specifically enumerated in the constitution, those of the State are left open-ended.

It is therefore, the writer’s view that the federal government lacks the Constitutional taxing powers to administer VAT. The writer agrees with the views of the recent Federal High Court case of *AG Rivers State v. FIRS*⁵⁷ that statutes should be given their ordinary and literal meaning, where they are clear and unambiguous.⁵⁸ Also, it is the rule of interpretation that when something is specifically mentioned in a statute, the intendment is that it excludes whatever is not mentioned.⁵⁹

As already stated above, item 58 and 59 of the Second Schedule of the Constitution expressly designated the Federal government to legislate only on stamp duties, taxes on income, profits and capital gains. Reading into these provision extraneous clauses does not give the correct intendment of the Constitution. We however await the judgment of the Court of Appeal on this landmark judgment of the Federal High Court.

5. Conclusion and Recommendations

Value Added Tax is a fundamental and substantial key element of the Nigerian tax system. It is also a major source of revenue in Nigeria. However, VAT is one of the most contentious topics in the Nigerian tax system primarily because of the huge revenue it generates. The proper designation of which tier of government is constitutionally mandated to collect VAT will aid in the reduction of multiplicity of taxes whereby tax administration is harmonized which in turn reduces tax evasion and avoidance. While the judgment of the Appeal Court is being awaited on the landmark case on Appeal by the FIRS in the case of *AG Rivers State v FIRS & Anor*, the researcher, recommends that the National Assemble should in its continuing constitutional amendment exercise amend the Constitution to designate clearly which arm of government should administer and collect each class of tax. In the case of VAT, to include same specifically in the Exclusive Legislative List for it to be lawful and constitutional for the Federal Government through its agency, the FIRS, to administer, manage and collect same.

It is noteworthy that the only statutory mode of altering the provisions of the Constitution is as provided in S.9 (2) of the Constitution⁶⁰ which requires that a proposal supported by votes of not less than two-thirds majority of all the members in each of the National Assembly and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

⁵⁴ *ibid*, S. 4 (7).

⁵⁵ S.4 (7) (b), S.4 (5) *ibid*; *AG Abia State v AG Federation* (2002) 6 NWLR (Pt 763) 264 @ 435.

⁵⁶ *ibid*, *AG Lagos State v Eko Hotels Ltd & Anor* (2017) LPELR – 43713 (SC).

⁵⁷ *ibid*.

⁵⁸ *Russel v Scott* (1984) A.C 422 Per Lord Simonds; *FBIR v Integrated Data Services Ltd* (2009) LPELR –8191 (CA).

⁵⁹ *P & C.H.S.C Ltd & Ors v MIGFO Nig Ltd & Anor* (2012) SCM 205.

⁶⁰ 1999 Constitution, *ibid*.