The Federal Inland Revenue Service (FIRS) has communicated its intention to modify the recently introduced value added tax (VAT) filing process, which took effect from 1 April 2023. In a recent meeting with tax practitioners and other stakeholders, FIRS noted that the revised VAT filing process will become applicable to VAT filings made on the Tax Pro-Max Portal (the Portal) from 1 June 2023.

Recall that FIRS had recently introduced a new VAT filing process, which amongst others, precluded a taxpayer from claiming input VAT that has been paid to a supplier but not remitted to FIRS. Also, recall that taxpayers objected to various aspects of the new VAT filing process on the basis that the process is not entirely consistent with the provisions of the extant VAT Act.

According to FIRS, the roll out of the modified VAT filing process is a response to the various issues raised by taxpayers around the new VAT filing process.

The following changes have been introduced:

1. **Customer’s tax identification number (TIN):**
   The customer’s TIN field in the sales schedule will no longer be a mandatory field when returns are being filed. The implication of this is that the sales schedules can now be uploaded without the customer’s TIN.

2. **Entry limit on sales schedule**
   It is recommended that voluminous transactions should be uploaded in bits of 300 to 500 entries. Though the Portal can accommodate more than 1,000 entries in one upload, the FIRS warned taxpayers about the risk of the upload becoming slow or the computer freezing up. Taxpayers are advised to take note of this while trying to upload multiple sales schedules.

3. **Input VAT claims on domestic purchases:**
   A taxpayer who wishes to claim input VAT on domestic purchases will be required to prepare and upload a "schedule of purchases" using the VAT invoices received from its suppliers. FIRS will grant the input VAT claims pending a verification of the details on the schedule of purchases. The purchases listed in the schedule must be limited to the qualifying items as in section 17 of the VAT Act.

4. **VAT withheld at source (WVAT)**
   A taxpayer who wishes to claim credits for VAT withheld at source is now required to populate and upload a "withheld VAT schedule" when filing its VAT returns. FIRS will grant the WVAT credits pending the verification of the details on the WVAT schedule.

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1. Taxpayers can insert ‘0’ in the field requiring a customer’s TIN.
2. The information to be contained in the schedule of purchases include the name, TIN and address of seller, description of purchases, invoice value and VAT paid.
3. Please see paragraph 6 below for details on the verification process.
4. By this section, the input VAT to be allowed as a deduction from output tax is limited to the tax on goods purchased or imported directly for resale and goods which form part of the stock in trade used for the direct production of any new product on which the output tax is charged.
5. The schedule shall include the name, address and TIN of the withholding person, description of goods or services, invoice amount and VAT.
6. Please see 6 below for details on the verification process.
5. **VAT on imports**

A taxpayer who wishes to claim input VAT on imports which has been paid to FIRS via the Nigerian Customs Service (NCS) is required to populate and upload a “purchase import schedule”\(^7\). Import VAT is claimable on the Portal through line 130 (‘Purchased Imports’). The entries must, however, be limited to the input VAT allowable under section 17 of the VAT Act. FIRS will grant the input VAT claims on imports pending verification\(^8\) of the details on the purchase import schedule.

FIRS has stated that it is in the process of implementing an online, real-time integration of the Portal and the NCS system in order to obtain import VAT data, which will be uploaded on the Portal for use in verifying the taxpayer's input VAT claims.

6. **The process of verification**

In the modified filing process, FIRS has chosen to adopt the procedure below in verifying input claims:

- **The Filing Month (FM)**
  A taxpayer is expected to file its VAT returns on or before the 21st day of every month\(^9\). For example, given the fact that the modified filing process takes effect from 1 June 2023, the FM for May 2023 transactions will be June 2023\(^10\).

- **Automatic Verification Period (AVP)**
  This is the period beginning from the day of filing (this may be on or before 21st day of every month) and ends on the last day of the month (this may be 28, 29, 30 or 31 depending on the month in question). For example, in the first FM (June 2023), this will fall between the date the VAT return is filed and 30 June\(^11\).

  During the AVP, the Portal will attempt to automatically match input VAT claimed by a taxpayer with the output VAT returned by the taxpayer's suppliers. Where the Portal successfully traces the input VAT claimed by the taxpayer to the corresponding output VAT returned by the taxpayer's suppliers, FIRS will match the payments and close the case. Also, input VAT claims on imports will be verified by the FIRS with the NCS, during the AVP.

  If a traced supplier is yet to remit the output VAT, the FIRS will:
  i. Require the supplier to immediately comply.
  ii. Raise the unremit amount as a liability on the supplier’s account on the Portal.
  iii. Raise interest and penalty against the supplier in line with the provisions of the VAT Act.
  iv. Trigger audit and enforcement in line with statutory timelines.

- **Manual Verification Month (MVM)**
  This is a one-month period beginning at the end of the AVP. That is, the month following the FM. For example, for the May 2023 VAT returns filed in June 2023, the MVM will fall between 1st and 31st July 2023\(^12\).

  Where the Portal is unable to automatically trace the input VAT, FIRS will disallow the input VAT claim and raise the amount as a liability for the taxpayer (i.e., the purchaser). The purchaser may escape this liability if it aids the FIRS in locating the supplier before the end of the MVM\(^13\).

  For input VAT claims on imports, please note that claims that remain unverified one month after the returns was filed will be: (a) reversed with penalty and interest, and (b) the taxpayer will face prosecution for false claims.

- **Close Out Month (COM)**
  This is a one-month period beginning at the end of the MVM. That is, the second month following the month of filing. For example, for May 2023 VAT returns filed in June 2023, the COM will fall between 1st to 31st August 2023\(^14\).

  The COM activities kick in where the supplier can still not be traced by the end of the MVM.

  In this case, all unverified claims on the Portal will be closed out by the FIRS as follows:
  i. Traced suppliers: FIRS will raise liability against the suppliers and receive payment from them. Where they refuse to make payment within the specified timeline, FIRS will commence enforcement actions against them
  ii. Untraced suppliers: FIRS will raise liability against the purchaser and receive payment from them. FIRS may also commence prosecution for false input VAT claims.

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\(^{a}\) The schedule shall include name and address of exporter, description of purchases, bill of lading, invoice value and VAT paid based on Customs declaration.

\(^{b}\) Please see 6 below for details on the verification process.

\(^{c}\) This is the statutory deadline for filing VAT returns.

\(^{d}\) Please note that this will continue to apply to subsequent filings.

\(^{e}\) Please note that this will continue to apply to subsequent filings.

\(^{f}\) Please note that this will continue to apply to subsequent filings.

\(^{g}\) In essence, during the MVM, both the purchaser and the FIRS concurrently work towards verifying the supplier.

\(^{h}\) Please note that this will be the same for subsequent months.
Our analysis

The modified filing process though commendable, still poses the following concerns/questions:

Ease of doing business/administrative concerns/questions

- It appears that taxpayers with significant input VAT and WVAT portfolio would need to have teams dedicated to continually assist the FIRS with supplier verification. Whether these teams are internally or externally maintained, this would lead to additional costs to the taxpayers.

- There is an additional administrative burden on purchasers to verify their suppliers before purchasing goods from them. Hence, proper know your customer (KYC) procedures should be carefully implemented and regularly revisited to revalidate suppliers.

- The recommended 300 to 500 entries limit of the Portal is a cause for concern and will create an administrative burden on taxpayers to populate and upload multiple schedules. Hence, we expect that the FIRS will expand the capacity of the Portal to allow for the seamless upload of large transaction schedules.

- Further, there was no mention of the number of transactions that can be contained in the import, WVAT and purchase schedules. If, like in the sale schedule, there is a limit to the number of transactions that the Portal can optimally handle per upload, then taxpayers with large transaction volumes will be saddled with the administrative issue of populating and uploading multiple schedules.

- The immediate implementation of the modified filing process does not allow for robust testing of the newly introduced features, and is likely to result in filing errors, delays and possibly default as taxpayers may not be familiar with the new process.

Legal issues/questions

- The requirement for a purchaser to repay the input VAT granted if the supplier cannot be traced raises a potential case of double taxation as the purchaser will be paying VAT on a single purchase both to the FIRS and supplier. This is especially so because the purchaser was right in law to pay the input VAT to the supplier at the first instance.

- There is the question as to what will happen if a former untraced supplier is finally located after the 2-month period. Recall that, at this time, the purchaser would have been subjected to double taxation and undergone prosecution for false claims.

- The VAT Act does not provide for the prosecution for false claims for the inability to locate or verify a supplier. This is especially important in a case where the details provided are genuine, but the supplier cannot be located for any reason whatsoever. It then raises the question as to whether a claim which qualifies as such under section 17 of the VAT Act should really be classified as false because a supplier could not be located or verified?
Recommendations

Taxpayers

Reevaluate suppliers:
Taxpayers may need to reevaluate their list of suppliers to ensure that they are immediately verifiable to ensure that they recover input VAT.

Reevaluate service level agreements:
Taxpayers may need to reevaluate their service level agreements (SLAs) with suppliers and customers to ensure that the SLAs contain clear guidance on the VAT obligations/requirements of parties.

Reconcile input VAT:
Taxpayers would need to reconcile existing input VAT claims to ensure that they are reflected on the Portal.

Integrate ERP systems:
To avoid the administrative burden of populating and uploading multiple sales, import, WVAT and domestic purchase schedules on the Portal, taxpayers (particularly taxpayers with large transaction volumes) may decide (having considered the issues around data protection) that it is more beneficial to integrate their ERP systems with FIRS’ VAT automation sentinel.

FIRS

FIRS’s speedy response to taxpayers’ complaints is commendable. We believe that it is important for FIRS to allow some time for the adoption of the revised filing process before a complete change is executed. The experience of taxpayers during the April round of VAT filings (for March 2023 transactions), where some taxpayers were forced to make additional VAT payments, clearly demonstrates the importance of testing a new system before making a complete changeover.

In our opinion, there ought to be a test period within which taxpayers will not be penalized. Also, the FIRS may consider a phased migration of taxpayers to the modified system and align the modified filing process with the extant VAT legislation to avoid legal tussles with taxpayers.

The limitation of the period for the verification of input VAT claims goes against the grain of the VAT Act which does not make provision for a specific time frame.

FIRS’ restriction of claimable input VAT of taxpayers to only VAT that has been verified does not align with the provisions of section 16 of the VAT Act. It is our view that the VAT Act allows taxpayers to claim qualifying input VAT ‘paid’ to suppliers, regardless of whether the suppliers are verifiable or not. This creates some contention as to the legality of the revised input VAT arrangement as it appears that the burden for verifying suppliers still rests on the taxpayers.

Under this revised filing system, there needs to be a process for purchasers with untraced suppliers to appeal the request for the payment of double VAT especially when their KYC reveals that the supplier has a TIN issued by the FIRS.
Conclusion

Taxpayers are advised to familiarize themselves with the modified filing process and ensure that their tax teams are positioned to ensure continued compliance with their VAT obligations. Additionally, it is instructive to note that the modified filing process provides FIRS with more data for better intelligence gathering. Therefore, taxpayers will need to be more deliberate about their tax compliance position.

While FIRS’ continued efforts to automate VAT compliance and achieve better collection efficiency is commendable, it must be noted that the increased compliance burden placed on taxpayers remains an area of concern and needs to be addressed. As such, FIRS should be looking to lower the pressure on businesses.
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