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# A CRITICAL EVALUATION OF STAMP DUTY AS A CATALYST FOR ECONOMIC DEVELOPMENT IN NIGERIA: A PRAGMATIC APPROACH

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## ABSTRACT

The primary objective of this study is to examine the effective and efficient assessment and collection of stamp duty tax in Nigeria. Stamp duty tax is a tax imposed on both written and electronic instrument such as conveyance on sale, admission, bill of exchange, bill of lading, receipt, apprenticeship, charter party, hire purchase, contract note, promisory note, marketable securities etc. Recently, the Finance Act 2020 expanded the scope of stamp duty to include Electronic Money Transfer Levy (EMTL) for every bank deposit up to the tune of N10,000 and above for N50 charge (one off). The mode of assessment of stamp duty is either a fixed flat rate or alvalorem basis on the instrument. The relevant tax authority for the assessment and collection of stamp duty tax in Nigeria are the Federal Inland Revenue Service (FIRS) and State Internal Revenue Service (IRS). The inherent challenges of stamp duty are the acceptance of fake stamp duty instrument without verification and lack of awareness by taxpayers among others. The recommendation is continuous enlightenment of taxpayers on the existence and inport of stamp duty tax as well as the review and simplification of the stamp duty Act 2004 to reflect current economic realities.

**Keywords:** stamp, duty, bill of exchange, twenty naira, penalty, imposed, denote etc.

## 1.0 BACKGROUND TO THE STUDY

The concept of Stamp Duty was introduced in view of the critical infrastructural deficit in Nigeria. In view of the need to providing critical infrastructure to the citizenry, the imposition of stamp duty tax was advocated as early as 1939 by the colonial masters. Today, the quest to provide good road networks, quality medical care, pipe-borne water, electricity have heightened the craving for the collection of stamp duty in Nigeria.

Hence, the word “stamp duty” was derived from two words: ‘stamp’ and ‘duty’. Finance Act (2020) section (2) defined ‘stamp’ as “an impressed pattern or mark by means of an engraved or inked die or an electronic acknowledgement for denoting any fee”. On the other hand, duty refers to any fee chargeable under the stamp Duty Act. The word ‘die’ in this context refers to any tool, plate, type or implement of any description directed by the Minister of Finance or Commissioner of Finance to be used for expressing or denoting a duty.

PWC (2020) defined stamp duty as a tax on instrument (written or electronic document). It simply means that stamp duty is a tax imposed on both written and electronic document such as contracts, receipt, agreement, etc.

  

The Federal Inland Revenue Service in a press statement noted that stamp duty is a “tax payable in respect of dutiable instrument as contained in the Stamp Duties Act, 2004 Cap. S8 such as contracts, promisory notes, agreements, etc.

Thus, stamp duty is a tax imposed on both written or electronic instrument such as receipt, conveyance, appraisement, promisory notes, bill of exchange, admission, agreement, memorandum of understanding (MOD), hire purchase, bill of lading, charter party, electronic money transfer or bank deposit, etc. Section 89A of the Finance Act, 2020 as amended has expanded the scope of stamp duty to include Electronic Money Transfer Levy (EMTL) on all deposit and money transfer above N10,000.00. The said levy is N50 on every receipt or electronic transfer of the sum of N10,000 or above. This implies that all financial institutions or money deposit banks in Nigeria shall charge N50 one off on every N10,000 or more received or electronically transferred in each transaction.

The Minister of Finance on the approval of the National Assembly administers and remit the Electronic Money Transfer Levy (EMTL). The money deposit banks shall remit the stamp duty collected into FIRS stamp duty Account with the Central Bank of Nigeria. The account is the Federation Account which is distributed to the three tiers of government by the Federation Account and Allocation Committee.

However, the sharing formular is on the basis of derivation as follows: 15% to the Federal Government and the Federal Capital Territory (FCT) and 85% to State Government. The stamp Duty Act, Section 4(1) noted that only the Federal Inland Revenue Service (FIRS) shall collect such tax on instruments executed by corporate bodies and individuals or between persons and corporate bodies. The Federal Government is the only organ of government statutorily empowered to charge, collect, impose stamp on corporate entities or companies.

But instruments executed between individuals or group of persons is within the jurisdiction of state government and it is administered by the State Internal Revenue Service in agreement with the Federal Government.

The duty payable on instruments is either on advalorem or flat rate basis. The charges payable on document is either according to the value (advalorem) of the transaction or fixed flat rate as prescribed by the Stamp Duty Act.

## 2.0 STATEMENT OF THE PROBLEMS

The administration of stamp duty is fraught with many impediments notably:

1. Fictitious stamped documents are still being received for documentation without confirmation from the relevant tax authority.
2. Lack of awareness by taxpayers on instruments that are chargeable to stamp duty.
3. The sanction for the use of unstamped instrument is inconclusive and too meagre. There is no adequate sanction for the receipt of unstamped instrument.

## 3.0 OBJECTIVE OF THE STUDY

  

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Generally, the objective of the study is to X-ray an effective and efficient method of assessing and collecting stamp duty in Nigeria.

## 4.0 REVIEW OF RELATED LITERATURE

### 4.1 Evolution of Stamp Duty

Stamp Duty Act came into limelight as far back as 1st April 1939 as a product of the British Ordinance. Hitherto, the stamp Duty Act has undergone many legislative debates from 1941, 1942, 1946, 1950, Resolution and order of 1951, 1954, 1956, 1979 Constitution, the 1999 Constitution, 2004 Stamp Duty Act and the latest amendment in the Finance Act 2020, Section 89A. The different level of amendments over the years is aimed at promoting and enhancing the collection of stamp duties by the Federal Inland Revenue Service and State Board of Internal Revenue Service.

The amount chargeable as duty is on advalorem or flat rate basis as noted earlier. The determination of charges on the value of the transaction is calculated on the United States dollars if the instrument is executed in foreign currency from the date of the transactions. And if the instrument is a marketable security or stock, it is calculated on the average price of the stock.

The Federal Inland Revenue Service (FIRS) has prescribed the use of adhesive stamp for stamping duties and the postage stamp sold by NIPOST for stamping goods and documents. It is prohibitive to use adhesive stamp more than once (same). Any attempt to remove an adhesive stamp from an instrument or affix same on another instrument is an aberration and the said person shall be guilty of an offence and liable to a fine of One Hundred Naira and penalty on conviction as prescribed by the stamp Duty Act.

However, the adhesive stamp can be cancelled if an authorized person write his name or initial on the face or across the stamp and such stamp cannot be used for any other purpose. Note that instrument here refers to telegram or any other article used by NIPOST.

### 4.2 Appropriate Time for Stamping

It is being advocated that instrument executed in Nigeria should be stamped before first execution. It has a grace period of forty days if the instrument has been executed before stamping outside Nigeria, it could be stamped within 30 days from the day of first execution. This is also obtainable if the transaction is calculated on advalorem basis.

Similarly, unstamped and insufficiently stamped instrument can also be stamped within 40 days after first execution. Charter parties executed outside Nigeria and received in Nigeria can be stamped within 10 days after first execution. And charter party executed in Nigeria can be stamped with impressed stamped within 7 days after the first execution (PWC: 2020).

However, the onus lies on the beneficiaries of transactions to bear the brunt of stamp duty payment. Whether on the basis of the value of the transaction or fixed rate, the beneficiary of the contract or the customer receiving an electronic transfer to the tune of N10,000 or above bears the burden of payment. The companies, money deposit banks in the case of financial

  

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institutions, industries, departments and agencies (MDAs) and other executors are only agents of the relevant tax agency (either FIRS or SIRS).

Hence, the following are the approved rates and templates for the collection of stamp duties in Nigeria.

| **Name** | **Type** | **Rate** | **Extra Copy** |
|---|---|---|---|
| Appointment of Receiver | Flat rate | ₦500 | ₦50 |
| Appointment of Trustee or Attorney | Flat rate | ₦500 | ₦50 |
| Appraisement or Valuation of Property | Advalorem | 1.5% | ₦50 |
| Bank Cheque per leaflet ₦1.00 per leaflet | Flat rate | ₦1.00 | |
| Bank deposit/transfer | Flat rate | ₦50 | ₦100 |
| Bill of Sale | Advalorem | 1.5% | ₦50 |
| Bond (Mortgage) | Advalorem | ₦0.375% | ₦50 |
| Certificate of Occupancy: Partnership | Flat rate | ₦1000 | ₦50 |
| Vending agreement | Advalorem | 1.0% | ₦50 |
| Will | Flat rate | ₦500.00 | ₦50 |

**Source:** FIRS Press Release (2023)

### 4.3 Exemptions

Stamp Duty Tax is very broad in scope if properly harnessed with certain degree of exemptions. However, some of the stampable instruments contained in the Stamp Duty Act Cap. S8, 2004 include: receipts, admission, bill of exchange, provisory notes, admission, agreement, lease, insurance policy, conveyance, bond and debenture, mortgage, marketable securities, bill of sale, contract notes, bill of ladding, appraisement, instrument of apprenticeship, bank notes, settlements, notarial acts, warrant for goods, loan capital, stock certificate, share warrants, power of attorney, voting papers, charter-party, letter of credit license, protest of any bill, annuity, appointment of new trustee assignment, hire purchase, letters of allotment and other miscellaneous provision contained in the Stamp Duty Act.

Thus, the exemptions include: instrument for the sale of a ship, agreement made by the Nigerian Railway Corporation; certain documents relating to lease in respect of penal rent; unstamped bill of exchange used to prove the adequacy of another duty stamped that is destroyed, instrument of apprenticeship involving government significant interest, indemnity bond issued by Nigerian Railway Corporation (NRC); all instrument in which the duty is payable by Government MDAs.

### 4.4 Penalties for Non-Compliance

There are sanctions or penalty for not stamping a dutiable instrument or improper stamping. The stamp Duty Act Cap. S8 Section 12 prescribed instrument to be stamped before first

  

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execution or forty days after the first execution upon the payment of the duty. The SDA prescribed the use of impressed stamp for any insufficiently or unstamped instrument within the period of forty days after the first execution or be reduced by Court of Competent Jurisdiction. And failure to comply with the above provision shall attract a fine of Twenty Naira (N20) Section 23(1). And if the unpaid duty is more than Twenty Naira, it shall attract an interest of 10 percent per annum. Also, unstamped or insufficiently stamped instrument is not admissible in evidence in the court of law.

Similarly, Section 13(1a) frowns at the mutilation of used adhesive stamp for another purpose other than the original intendment. The STA noted that any person who removes a stamp from an instrument for the purpose of resale or affixing it on another instrument shall be guilty of an offence if held liable on conviction to a fine at One Hundred Naira and other fine in line with the STA.

In the same vein, section 20 prohibits the administration of the same instrument by two commissioners of stamp duty as to the actual amount or duty chargeable on a particular instrument. An instrument that has been adjudicated upon by a commissioner relating to the duty chargeable shall not be submitted to another commissioner for the determination of the duty chargeable, otherwise, he shall be liable on conviction to a fine of Twenty Naira.

Section 25 of the STA noted that any person whose office is saddled with the responsibility of enrolling, registering, entering in a book or recording of an instrument that is dutiable shall comply with the provisions of the SDA by properly stamping all the chargeable instrument otherwise, it shall attract a fine of Twenty Naira on conviction for non-compliance.

Also Section 42(1) of the STA prohibits the presentation of unstamped bills and notes. It attracts a fine of Two Hundred Naira if found liable and convicted. This relates to all bills or notes issued, negotiated, transferred or endorsed or presented for payment that is not duly stamped.

It is in keeping with section 32(1) of the SDA for every appraisement or valuation to be stamped within 14 days of such valuation or appraisement or risk a fine of One Hundred on conviction. And the recipient of such unstamped instrument shall be liable to a fine of Forty Naira on conviction.

## 5.0 REGULATION RELATING TO SPECIFIC TRANSACTION

### 5.1 Agreement

The stamp Duty Act prescribed the use of adhesive stamp on agreement. The duty payable on agreement is Ten Kobo.

### 5.2 Conveyance on Sale

The Act Section 52, defines conveyance on sale as any person or on whose behalf the ownership of an estate in property has been vested on or transferred to the purchaser by the order of a court. The instrument of conveyance on sale is chargeable to stamp duty on advalorem basis. The instrument that confers the interest or right to the purchaser is known as conveyance or assignment.

### 5.3 Conveyance in Settlement of Debt

Section 55 of the SDA stated that where an estate or property is transferred to a person in consideration of debt either in part of whole, it shall be chargeable to stamp duty on advalorem basis. Any land or property used in settlement of debt has to be duly stamped.

### 5.4 Conveyance Relating To Periodical Payment

This is a conveyance relating to the payment of money in instalment for the settlement of debt. If the money is payable within a definite period of twenty years, the stamp duty payable shall be on advalorem basis on the total amount. Nonetheless, if the periodical payment is for an indefinite period or more than twenty years and not terminable by life, the duty chargeable shall be on advalorem basis within twenty years from the date of first execution.

### 5.5 Admission

Any officer responsible for registering, enrolling or entering into a book or making memorandum of admission on instrument is required by the SDA to denote the duty on such instrument. The duty payable on instrument of admission should be made available to the person admitted. The failure to deliver a duly stamp instrument to the person admitted within one month after admission shall be liable on conviction to a fine of Twenty Naira.

### 5.6 Appraisement

An appraisement is carried out by an appraiser. The appraiser is the person who appraises or values a property, estate or goods for the purpose of a fee or compensation Section 31 and 32 of the SDA noted that after an appraisement, the value of the merchandise or estate shall be disclosed and duly stamped within fourteen days or risk a fine of One Hundred Naira on conviction. The person who receives such instrument of appraisement must check or ascertain whether it has been properly stamped or liable to a fine of Forty Naira on conviction.

### 5.7 Apprenticeship

Section 33 of the SDA noted that any fee paid for the acquisition or learning of trade, skill, profession shall be considered as instrument of apprenticeship and it is chargeable and shall be duly stamped.

### 5.8 Bill of Exchange

Section 36 of the SDA defined Bill of Exchange to include draft order, cheque and letter of credit and any document or writing except bank note entitling or purporting to entitle any person whether named, therein or not to payment by any other person to draw upon any other person for any sum of money on demand. It represents an order for the payment of money or promisory note for certain specific date in the future on demand. Such instrument of promisory note or bill of exchange on delivery must be duly stamped and chargeable to stamp duty.

  

### 5.9 Hire Purchase

Section 30 of the SDA defines hire purchase as the purchase of goods or supply of goods for a periodic settlement or consideration in instalment for a certain period. The purchaser or the person whom the goods is supply well becomes the owner on the payment. The act noted that such instrument under a seal is chargeable to stamp duty.

### 5.10 Promissory Note

This is a written instrument (excluding bank note) with a promise to pay certain sum of money from a fund at a predetermined date on a condition or the occurrence of an event or otherwise Section 37 of the SDA noted that such instrument has to be duly stamped.

### 5.11 Bill of Sale

This is a legal instrument relating to the value of personal property sold by a vendor to a vendee or buyer. The document contains the value of the property, location and any other settlement received in respect of the item. Such legal document received by the buyer must be duly stamped in keeping with section 45 of the SDA.

### 5.12 Loan Capital

Section 102 of the SDA defines loan capital as a debenture stock, bond or long term debt excluding bank overdraft raised by a company, corporation, or body of persons. The body corporate or company intending to raise a loan, company must inform the Corporate Affairs Commission of such intention containing the amount proposed to be raised. Such statement contains the value of the loan capital and charged on advalorem basis of N200.

### 5.13 Contract Notes

Section 49 of the SDA defines contract note as a document or note sent by an agent or broker to a principal advising him on the sale or purchase of stock or marketable securities. And such note must be duly stamped with adhesive stamp. If the description relates to more than one stock or marketable securities, the more the notes to be issued.

### 5.14 Receipt

Section 89 defines ‘receipt’ as a note or memorandum issued for the acknowledgement of money received or deposited for the discharge of a transaction that is up to the time of four naira or upward. It is any promisory note or bill of exchange received or issued or any money received or paid for the discharge of a transaction that is up to four naira or above is dutiable and should be duly stamped.

### 5.15 Marketable Securities

Section 76 of the SDA defines marketable security as those shares or stock transferable or not that is traded in the Nigeria’s stock exchange by group of persons, companies or foreign government, it also includes foreign security. The instrument of stock sold or purchased are chargeable to stamp duly.

  

Other chargeable instruments in the Stamp Duty Act include: charter party, bill of lading, letter of attorney or voting papers, insurance policies, notarial acts, lease, mortgage etc. All the aforementioned instruments are chargeable to stamp duty.

## 6.0 RECOMMENDATION

However, the stamp duty tax has undergone several amendment and debate, it is still fraught with many hiccups. It is on this note that the following recommendations have been adduced.

1. It is imperative for increased awareness on the collection of the stamp duty tax.
2. The Act should be reviewed and simplified in relation to the rates and fines payable in keeping with economic reality. The fine is relatively too low.
3. It requires effective synergy and collaboration between the Federal Inland Service and State Internal Revenue Service in the assessment and collection of stamp duty.
4. The commissioners and their agents require more power and access to visit and inspect the rolls, register and books of account of companies, schools, and corporate bodies on compliance with the statutes.
5. The FIRS and internal revenue service should organize periodic visited inspection in the relevant corporate bodies with dutiable instruments.

## 7.0 CONCLUSION

The Stamp Duty Act Cap S8 was aimed at increasing the spate of development in all tiers of government in Nigeria but the collection of Stamp Duty Tax has not gained expected momentum. The assessment and collection of stamp duty tax in Nigeria is still at the lowest ebb. Besides, the remittance of the Electronic Money Transfer Levy (EMTL) as enunciated by the Finance Act 2020 is a good omen in the administration of stamp duty tax in Nigeria. The stamp Duty Act has a provision for appeal were necessary if a taxpayer is wrongly charged. However, the relevant tax authority has to work in synergy to foster the efficient collection and remittance of stamp duty into the designated Stamp Duty Account with the Central Bank of Nigeria.

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