

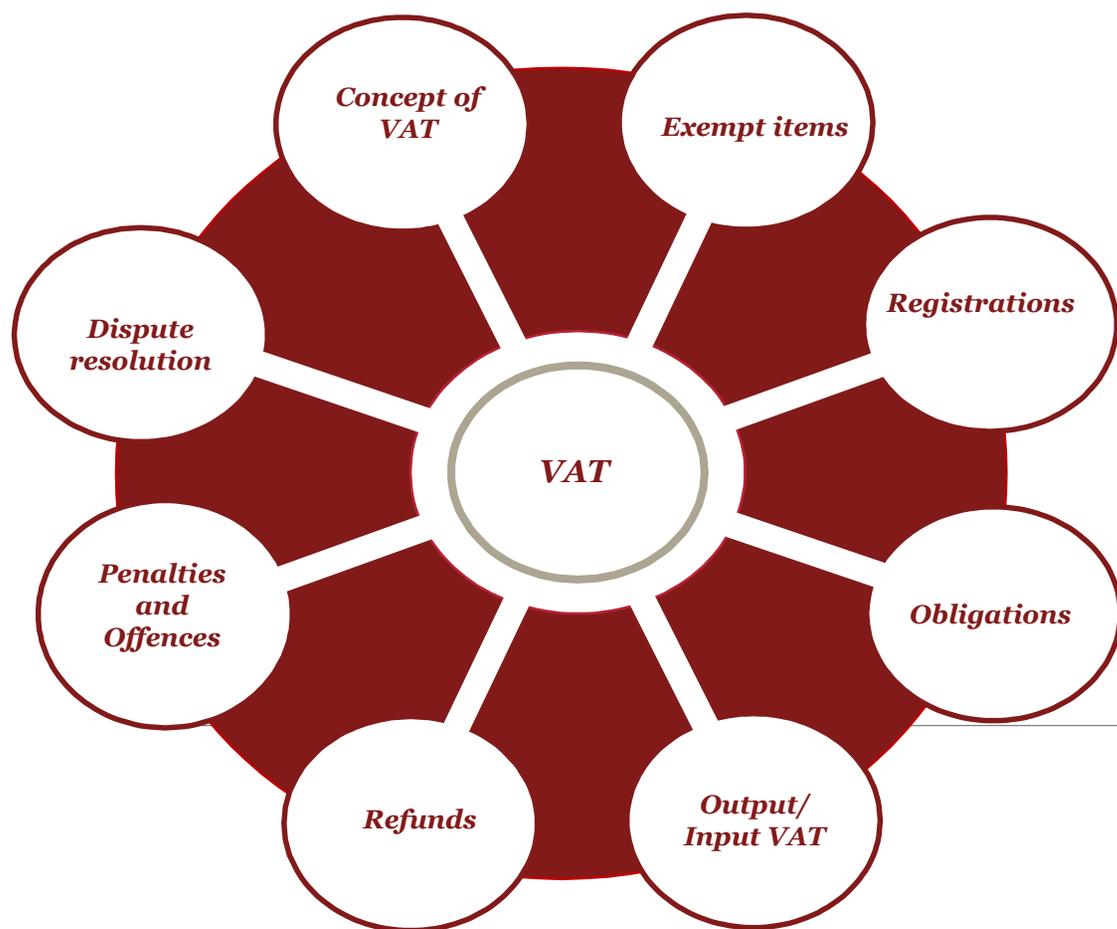
VAT On Bottled Water



*OECD Tax Crime Academy- Asia- Pacific
VAT-GST Fraud Investigations 2022*

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What we already Know...



VAT Investigation matter

- VAT Act 1993 LFN("the Act") is the governing legislation for the administration of VAT
- VAT imposed on taxable value of goods and services except those specifically exempt
- VAT is administered and managed by the Federal Board of Inland Revenue(FIRS)
- the FIRS may do such things as it may deem necessary and expedient for the assessment and collection of the tax in accordance with the provisions of the act

Background

- ❑ Oil plunge in 2014-2016 and fall in oil revenues
- ❑ Government forced to look inward to diversify economy
- ❑ Avenues to raise revenue explored including taxation
- ❑ Tax authorities given ridiculous revenue targets
- ❑ Exempt items are listed in Part 1 of the first schedule of the Act to include basic food items
- ❑ The tax laws does not define basic food item
- ❑ Tax authorities issued a VAT Exemption Circular No 2007/02 to give clarification: *“...for the purpose of VAT, basic food items to include food or cash crops which must be raw or in semi- finished stage and agro-based and water (other than packaged water e.g. bottled water) is exempt.”*

Background

- ❑ Companies in the business of sale of Bottled water were issued VAT assessments notices and their TCCs withheld
- ❑ Particularly, a client was given an Investigations outcome letter and assessed N933m(\$3million)VAT liability on sale of bottled water
- ❑ An objection notice was filed by the client and the tax authorities responded with a notice of refusal to amend
- ❑ VAT matter went to the Tribunal and then to the Federal High Court for ruling

Issue

- ❑ Whether water constitutes a luxury item that is VATable or basic food item and therefore exempt in line with the provisions of the tax laws
- ❑ Whether the tax authorities held powers to amend, vary or modify the laws with its information circular and assess corporates to tax
- ❑ Whether judicial precedents per incuriam is relevant and applicable to decision of the Courts
- ❑ Estoppel and taxpayers' arguments for Judicial review

Investigation Techniques

- ❑ Client debrief –VAT investigations outcome notice
- ❑ Review facts and define issues
- ❑ Search for Authority: Direct and Indirect Sources
- ❑ Interpret and evaluate Authority
- ❑ document findings, deliberate with Client and team

Direct Sources:

- Legislation
- Judicial precedents-Monamer Khor v. FIRS

Indirect Sources

- Literal rule v. Golden rule
- Judicial approaches(Literal v purposive)
- Regulatory and health standards (NAFDAC)
- Other bottlers' position

Outcome

Issue

Description

Water

- Water constitutes basic food item as defined by Oxford, dictionary, regulatory bodies
- It therefore satisfies exempt provisions in the tax laws
- The law does not specify if food items need to be processed, bottled or packaged
- Regardless of their form, if it qualifies as basic food item it is exempt

Court Ruling: *“To begin to find out in what form an exempt item is , is to rewrite the law”*

Statutory Powers

- Tax authorities may do such things deemed expedient to the assessment and collection of VAT including issuing explanatory notes and information circulars
- Powers to amend, modify or vary the tax laws lies with the Minister- s.38(b)of the Act
- With approval of the Minister, tax authorities can make regulations to give effect to the provisions of the Act

The Circular relied upon by the tax authorities in assessing VAT is therefore void as the authorities have no powers to modify what constitute basic food item nor have approvals been sought or given to give effect that water which has been processed, purified or bottled is a VATable item

Judicial Precedents

- To the extent that the law is ambiguous or open to more than one interpretation, case laws can be relied upon. The ruling in Monamer Khod v. FIRS held in favour of FIRS

The case law addressed whether packaged water was a manufactured good and therefore taxable and is per incuriam to the fact whether water is a basic item in accordance with the first schedule of the Act.

Estoppel

- That some bottling companies had gone ahead to pay the VAT liabilities should not be an estoppel that prevents the application for a judicial review and ruling on the application of VAT on exempt items

Connecting the Dots...

- ❑ Compliance plays a direct correlation to tax crimes; ensuring compliance requires tax laws that are certain and free of ambiguity or multiple interpretation
- ❑ Tackling tax crimes require tax authorities have an effective Strategy document in place however, any form of strategy (compliance, risk, operations, etc) must be done based on legal system, legislative environment and policy
- ❑ Investigative powers exercised should be accompanied by oversight, professionalism and safeguards such that persons are protected from potential abuse of investigative powers

*When I talk to Managers, I get the feeling that they are important...
When I talk to Leaders, I get the feeling that I am important.*

Let's be leaders in our various vocations!

Thank you...
