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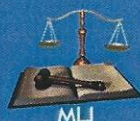


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Refund Procedure for Value Added Tax in Nigeria: An Appraisal

By

Hafsat Iyabo Sa'adu Ph.D*

Abstract

This paper appraises Refund Procedure for Value Added Tax under the Nigerian Law. A significant characteristic of the Value Added Tax Act Cap VI Laws of the Federation of Nigeria (LFN) as modified by the Finance Act, 2019 is the right of the VATable person to demand for a VAT refund where the input tax genuinely exceeds the output tax for a transaction period. Refund is also available for VAT paid on zero rated goods and services. Section 23 of the Federal Inland Revenue Service (Establishment) Act (FIRSEA) 2007, vests Federal Inland Revenue Services (FIRS) with the power to make tax refund as well as place guidelines and requirements for refund procedure including VAT refund from time to time. In addition, pursuant to section 61 of the FIRSEA, FIRS issued information circular to notify stakeholders with the policy on the refund procedure. An appraisal of section 23 of the FIRSEA and the Refund Circular raised questions as the taxpayers is deprived of use of his property as guaranteed by section 43 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended. The taxpayer is forced to wait till an undetermined future date for the refund or agree to the choice of setting off the refund due against future tax. This paper seeks to canvass for a specific legal framework for the tax system to recognize surplus payment as debt owed by the state.

Keywords: Refund Procedure, Value Added Tax, Nigeria, Appraisal

1. Introduction

Value Added Tax (VAT) is a general tax levied on all goods and services bought and sold for use or consumption in Nigeria. It is a

consumption tax imposed on all manufactured goods and other inputs imported into or produced in Nigeria.¹ In the case of *Lynson Chemicals Ltd v First Bank of Nigeria PLC and Anor*² the court held that taxable person for VAT purpose is a person who independently carries out economic activity as a producer, wholesale trader or supplier. The dragnet of VAT covers everybody because everybody is a consumer of either goods or services.

VAT refund means an excess that arises from the collection of VAT input. This excess is carried forward as a credit against future VAT payable.³ VAT refund is recoverable in the following ways, by credit method, direct cash or a combination of the two methods. In practice, application of credit method has been adopted by the Federal Inland Revenue Service (FIRS) in major cases. This is due to the difficulty posed by the cash refund.⁴

This work appraises what Refund Procedure for Value Added Tax (VAT) under the Nigerian law is all about. The work highlights the historical antecedents of Value Added Tax in Nigeria. It further analyzes Pay- Before-Argument-Rule and explains refund offences and penalties in Nigeria. The paper concluded that the law should provide for a definite time frame for the determination of the taxpayer's refund claim and recommendations are made that would improve the system of refund claim in Nigeria.

Historical Antecedents of Value Added Tax

Value Added Tax (VAT) is a tax levied on goods and services consumed. It is an indirect tax wherein the burden of the payment is borne by the final consumer of the goods and services.⁵ VAT was first introduced as consumption tax in 1919 in Germany, 1954 in France and 1973 in the United Kingdom. Its introduction was occasioned by the impacts of First and Second World War. In Nigeria, VAT replaced the existing sales tax which had been in

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¹ W K Adebiyi and S A Alabi, *Nigerian Taxation and Tax Management* (2nd Edn, Aseda Publishing Ibadan, 2007) 260.

² (1999) FHC/L/CS/687/97, Vol 4 All NTC at 197.

³ Kingley ThankGod Nweduoku, 'Value Added Tax: Comparative Analysis in Line with Finance (Miscellaneous Provision) Act 2019 and Contemporary Issues Arising' (2020) <<https://thenigerianlawyer.com/value-added-tax-comparative-analysis-...>> accessed 08 June 2020.

⁴ FIRSEA 2007 s 23 and FA 2019 s 39.

⁵ W K Adebiyi and S A Alabi (n1).

operation under the federal government legislated Decree No. 7 of 1986 and was operated on the basis of residence.⁶

The sale tax was characterized by a lot of inadequacies, lapses and limited coverage. This led to an idea of introducing VAT in Nigeria following the Report of Study Group set up by the federal military government in 1991 to review the entire tax system.⁷ VAT was introduced through the Act (the Decree) No. 102 of 1993 which became effective from January, 1994. Since then, the Value Added Tax Decree has been amended more than half a dozen times including the VAT Act, 2004 and VAT (Amendment) Act, 2007.⁸ The Finance Act, 2019 which became effective on 1st February, 2020 was enacted to modify the VAT Act Cap VI Laws of the Federation of Nigeria (LFN) 2004.⁹

VAT is a tax on spending and it is borne by the final consumers of goods and services because it is included in the price paid. VAT could also be described as a consumption tax imposed on all manufactured goods and industrial raw materials and other inputs imported into or produced in Nigeria. The tax is collected only by FIRS¹⁰ at the rate of 5% until the change in rate from 5% to 7.5% by the Finance Act, 2019¹¹ of the value of the goods and services supplied. From inception to date, the tax has proven to be a strong source of revenue to the government.¹² All proceeds of VAT flow into the VAT pool account which are distributed monthly to the federal, states (including federal capital territory) and local

⁶E Anna, 'Taxation: Value Added Tax and Voluntary Compliance', *The Nation* (Lagos, August 10 2015) 34.

⁷W K Adebisi and S A Alabi (n1).

⁸Abiola. Sanni, 'Current Law and Practice of Value Added Tax in Nigeria' [2012], 5(2) *British Journal of Arts and Social Sciences*, 186 at 201 Cross Ref. Google Scholar; A A Talt, 'Value Added Tax International Practices and Problems', (International Monetary Fund, 1988) See also M T. Abdulrazaq, *Revenue Law and Practice in Nigeria* (3rd edn, Malthouse Press Limited, Lagos 2015) 307.

⁹FIRS Information Circular No. 2020/02 dated 29th April, 2020. The Information Circular was issued as guidance to all stakeholders for appropriate implementation of relevant provisions of the Finance Act, 2019.

¹⁰In line with the federal structure of the Nigerian State, tax administration in the country is multi-tiered. The FIRS is responsible for assessing, collecting and accounting for tax and other revenues accruing to the Federal Government. The State Boards of Internal Revenue and the Local Government Revenue Committees perform similar functions at the State and Local Government levels respectively. See I O Okauru, African Books Collective, 2012 Google Scholar.

¹¹The F A, 2019 amended some provisions of VATA VI, LFN 2004.

¹²Tunde Fowler, 'Tax Discourse: Synopsis of Value Added Tax Administration in Nigeria', *The Guardian* (Lagos, June 23 2016) 58.

governments in the proportion of 15%, 50% and 35% respectively¹³ (with consideration of derivation principle).

a) Registration by Taxable Persons

Section 8(9) of the Federal Inland Revenue Service (Establishment) Act, 2007, directs the service to issue a Taxpayer Identification Number (TIN) to every taxable person in Nigeria in collaboration with States Inland Revenue Service (SIRS) and the Local Governments Revenue Committees (LGRC). Section 8. (1) of the VAT Act Cap VI LFN, 2004 also requires taxpayers to register for VAT. In *Monamer Khod Enterprises Nigeria Ltd and Anor v FIRS and Ors*¹⁴ while dismissing the claims, the court held that the law makes it mandatory for manufacturers of goods to register for VAT.

However, when the TIN was generated, it suffices and covers all the types of tax as no other registration number for any type of tax will be required. The Finance Act, 2019 amended section 8 of the VAT Act, which mandate all taxable persons¹⁵ to register for the tax upon the commencement of business as defined in section 46 of the VAT Act. Since VAT is a tax payable on the value of goods and services rendered, a taxable person is obligated to upon supplying of taxable goods or services to his accredited agents and distributors collect the tax on those goods or services at the specified rate.¹⁶ The Vatable persons include but not limited to the following:¹⁷

- a) Limited liability company;
- b) Firm;
- c) Sole trader; and
- d) Resident and non-resident entities e.t.c.

The penalty for failure to register under the new amendment/review is as follows:

- i) First month of default from ₦10, 000 to ₦50, 000;
- ii) Subsequent months in which failure continues from ₦5, 000 to ₦25, 000;
- iii) A taxable person who permanently ceases to carry on trade or business in Nigeria shall notify the Service of such cessation within 90 days for the purposes of deregistration.

¹³ VATA 2004 s 40.

¹⁴ (2005) FHC/S/CS/1/2004, Vol II All NTC at 103.

¹⁵ A taxable person is a person/ individual liable to pay VAT to the supplier of goods and services rendered.

¹⁶ See VATA, s 11.

¹⁷ Kingsley ThankGod Nwudukwu (n 3).

- iv) Taxable supplies made after cessation shall be deemed to have been made on the day immediately preceding cessation; and
- v) Penalties for failure to file returns will continue to apply where the taxpayer fails to notify the service of cessation of business.

However, VAT is chargeable but not in all items, this is so in order to avoid the danger of unfair practice. The Act enumerated different categories of exempted and zero-rated items which include all goods and services produced, imported or exported to a Nigerian consumer.¹⁸

b) VAT Returns

All registered VATable entities have to make regular VAT returns and either pay to, or receive from the FIRS, the difference between the Input Tax and the Output Tax. This means that every registered business organization is obliged to maintain records and accounts of all VATable transactions.¹⁹ Such records of supply made and received include tax invoices, cash books, sales and purchase day books, ledger accounts particularly VAT accounts etc. It is important to state that to claim credit for input tax; a registered person must produce a tax invoice which contains the following:²⁰

- i) taxpayer's name, address and VAT registration number and TIN number;
- ii) customer's name and address;
- iii) nature and date of supply (description of goods or services supplied);
- iv) gross amount of transactions;
- v) rate of any cash discount offered;
- vi) rate of VAT; and
- vii) total VAT payable.

A tax invoice shall be issued on supply, whether or not payment is made at the time of supply. VAT is invoice –based. That is, the computation and payment of VAT is not done on cash receipt but rather on the total invoices raised with other cash receipts. If any

¹⁸ Ibid. Further to the FA 2019 which amended a number of provisions in the VAT Act, the Federal Ministry of Finance issued a VAT (Modification) Order, 2020 (the "Order") with a commencement date of 3 February 2020. The order clarifies and expands the list of exempt items contained in the First Schedule of the VAT Act.

¹⁹ VAT (Amendment) Act, 2007 s 15.

²⁰ Ibid s 11(a).

portion of the invoices is not received ultimately, adjustments are done for bad debts.²¹

Nigeria operates a VAT exclusive system. This system requires that the VAT element of transaction is openly stated on the face of the invoice. The tax authority frowns at anything to the contrary notwithstanding that VAT is being paid.²²

c) Remittance of VAT

VAT rendition and payment is monthly and this has to be done not later than the 21st day of the month following in which the transaction occurred. In any month there is no transaction, the law requires that a nil return is rendered.²³

All VATable persons are to remit to their respective local VAT office, the net VAT payable (Excess of Output Tax over Input Tax) on a prescribed form 002 at the time of filing their VAT returns. Monthly remittances are to be made through the FIRS designated Banks to the local VAT offices, which will thereafter issue receipts on confirmation of such payments.²⁴ The Court of Appeal held in the case of *FIRS v Integrated Data Services Ltd.*²⁵ that the combined effect of the various provisions of Value Added Tax Act was to the effect that VAT returns and the monetary remittances are to be done contemporaneously. Therefore, failure to file returns also involved failure to remit taxes and thus contrary to the provisions of the VAT Act 2004.

However, with effect from May 25, 2007, all VAT able persons and other tax collecting agents were enjoined to pay remittances direct into designated FIRS Accounts.²⁶ All current and existing Bank Account holders should have a unique TIN provided by the FIRS.²⁷

3. Refund Procedure for Value Added Tax (VAT) in Nigeria

A tax refund or rebate is a refund on taxes when the tax liability is less than the taxes paid.²⁸ It is the right of the VAT able person to

²¹ Tunde Fowler (n 12) 58.

²² Ibid.

²³ Ibid.

²⁴ E Anna (n 6) 34.

²⁵ (2009) CA/B/150/2002, Vol 6 All NTC at 481.

²⁶ Tunde Fowler (n 12) 58.

²⁷ Kabir Marsh, 'Taxation: Value Added Tax Administration in Nigeria' *The Nation* (Lagos, September 8 2014) <thenationonline.net/vat-administration-2/> accessed 30 May 2019.

²⁸ C. Becker, Africa Tax in Brief, *Mondag Business Briefing* (Lagos, 29 August 2017 Google Scholar. See also L. Pacioli, How to Process Tax Refund from the FIRS Nigeria, <<http://www.wipps.com.ng/tax/how to...>> accessed 30 December, 2019.

demand for a VAT refund where the input tax²⁹ genuinely exceeds the output tax³⁰ for a transaction period. VATable persons by their roles are agents of the FIRS in the administration of VAT and the FIRS is obliged to make timely refund to them in the course of their agency roles.³¹

In Nigeria, despite the guarantee of a tax refund by section 23 of the FIRSEA, 2007 and section 16 (1) of the VAT Act, from available evidence, the FIRS do not always comply with these provisions as it always fails to refund excess tax whether in the form of VAT or arising from other tax payment.³² One overwhelming impact of non-remittance of excess tax is the reduction in the cash flow of the company or individual businesses. This attitude is a deliberate violation of taxpayers' right and a huge infringement on the legal and constitutional rights of taxpayers in Nigeria.³³

Section 23 of the FIRSEA provides that:

1. There shall be refunded to taxpayers' after proper auditing by the Service, such overpayment of tax as is due;
2. The Service shall decide on who is eligible for the refund mentioned in subsection (1) of this section subject to such rules and conditions as may be approved by the Board;
3. Any tax refund shall be made within 90 days of this decision of the Service made pursuant to subsection (2) of this section, with the option of setting off;
4. For the purpose of tax refund, the Accountant –General of the Federation shall open a dedicated account funded from the

²⁹ Input tax referred to the tax paid by taxable person to the supplier on taxable goods and services purchased by or supply to him as contained under subsection (1) of section (2) of Value Added Tax (Amendment) Act 2007.

³⁰ Output tax referred to the tax collected by a taxable person 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 Value Added Tax (Amendment) Act 2007.

³¹ Micheal Olulenu, 'Taxation: Refund Procedure for Value Added Tax (VAT)', *The Nation* (Lagos, August 31 2015) 29. See also Para 3.0 of the FIRS Guidelines on Tax Refund (approved by the Technical Committee of the Board of FIRS in its meeting No.14A on Monday 22 August 2011.

³² Nigeria (a) 50: Top 50 Tax Issues: October 2010 <http://www.pwc.com/en_ng/ng/pdf/Nigeria_top_50_taxissues> accessed 16 March 2020.

³³ Saka Mohammed Olokooba and others 'Taxpayer's Right to Refund under the Nigerian Law: A Right in Fact or Privilege in Camouflage' in Josephine Aladi Anchor Agbonika and others (eds). *Tropical Issues on Nigerian Tax Laws and Related Areas*. (Vol. 2, Ababa Press Ltd; Ibadan, 2018), 18.

- Federation Account as may be approved by the National Assembly;
5. The Service shall administer the dedicated account as created by virtue of section 23(4); and
 6. For the purpose of the dedicated account, the Service shall prepare an annual budget for tax refund to be refunded from the Federation Account as may be approved by the National Assembly.

Despite the existence of these lofty provisions of section 23 of the FIRSEA, the FIRS are not always favourably disposed towards putting same into operation. Presently in Nigeria, the FIRS does not have an effective system for tax refund and hundreds of companies, businesses and individuals have billions of Naira lying with it in credit.³⁴ Section 23 of the FIRSEA gives an option to affected companies, businesses and individuals to institute legal action against the FIRS compelling it to set up the mechanism for tax refund.³⁵ In addition, the provisions of section 23 and 61 of the FIRSEA which empower FIRS with the authority to make rules and regulations that in its opinions are necessary or expedient for giving full effect to the provisions of the FIRSEA and for the due administration of its provisions, the FIRS guidelines on Tax Refund (Refund Circular) was issued to educate stakeholders on the technique of the refund process. A review of section 23 of the FIRSEA and the Refund Circular³⁶ give rise to issues which would have negative impact on the right of taxpayers. The first is the interval between the applications for the actual refund of the overpaid tax, while the second relates to a situation where the refund arises from maladministration attributable to FIRS or its agents.³⁷

The situation is not improved by the FIRSEA as it does not specify a time frame within which the determination of the taxpayer's claim is to be completed. As a matter of fact, section 23 (3) of FIRSEA and paragraph 6 of the Refund Circular emphasized that the refund shall be made within ninety days of the determination of a refund claim by FIRS in favour of the taxpayer. Both are also silent with regard to the fate of the taxpayer in a situation of maladministration. The situation is more

³⁴ Ibid.

³⁵ See Personnel Income Tax Act s 73 & 74 for penalty for failure to deduct tax.

³⁶ FIRS Information Circular No 9501 Value Added Tax (VAT) Refund Procedure of September 19 1994, Para 6, <<http://www.firs.gov>> accessed 18 March 2020.

³⁷ Ibid.

complicated by the fact that the legal framework of the entire Nigerian tax system does not recognize excess payment by taxpayers as debt owed by the state like it does tax due from taxpayers.³⁸

The proposition that a tax due is a debt owed to the state which FIRS on behalf of the Federal Government is legally empowered to recover³⁹ can be premised on two provisions of the FIRSEA: Section 32 and 34(1). Section 34(1) provides that:

Without prejudice to any other provisions of this Act or any other law listed in the First Schedule to this Act, any amount due by way of tax shall constitute a debt due to the Service and may be recovered by civil action brought by the Service.

And where any tax is not paid within the period prescribed by law, FIRS is empowered by section 32 to:

1. Add a sum equal to 10% of the tax payable; and
2. Impose interest at the Central Bank of Nigeria (CBN) minimum rediscount rate (MRR) for Naira remittances or in the case of foreign currency remittance, impose interest at a rate determined to be the greater of the CBN MRR and the London Interbank Offered Rates (LIBOR).⁴⁰

On the foregoing, the objective of this is the determination of the constitutionality of the administration of the refund process and the pay-before-argument-rule.

4. Pay-Before-Argument –Rule

The Tax Appeal Tribunal (TAT) in Nigeria was established pursuant to section 59 of the FIRSEA to settle disputes arising from the administration of FIRSEA and the other law listed in the First Schedule of the former. In the course of hearing, a panel of the TAT⁴¹ can adjourn to a subsequent day, according to paragraph 15(7) of the Fifth Schedule of the FIRSEA, if:

³⁸ Ibid.

³⁹ The responsibility to collect the tax is vested on FIRS by FIRSEA s 2.

⁴⁰ It should be noted that with the regard to enforcement, the provisions of the FIRSEA supersedes the provision of the primary legislation. This is because by virtue of section 68 of the FIRSEA, the FIRSEA could be considered the 'superior' legislation in the Federal stratum of the Nigerian tax system as it provides that all laws in its First Schedule are subject to the FIRSEA. See also *Oando Supply and Trading Ltd v. FIRS* (2011) 4 TLRN 113 where the above provision was affirmed.

⁴¹ The panels of the TAT were constituted pursuant to the Tax Appeal Tribunal (Establishment) Order 2009 which amongst other things specifies the number of zones, their respective jurisdictions etc. See also Hafsat Iyabo Sa'adu, 'An

At the hearing of any appeal if the representative of the Service proves to the satisfaction of the Tribunal hearing the appeal in the first instance that:

- a) The appellant has for the year of assessment concerned, failed to prepare and deliver to the Service returns required to be furnished under the relevant provisions of the tax laws mentioned in paragraph 11;
- b) The appeal is frivolous or vexatious or is an abuse of the appeal process; or
- c) It is expedient to require the appellant to pay an amount as security for prosecuting the appeal, the Tribunal may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the Service, before the day of the adjourned hearing, an amount on account of the tax charged by the assessment under appeal, equal to the tax charged upon the appellant for the preceding year of assessment or one half of the tax charged by the assessment under appeal, whichever is the lesser plus a sum equal to ten percent of the said deposit, and if the appellant fails to comply with the order, the assessment against which he has appealed shall be confirmed and the appellant shall have no further right of appeal with respect to that assessment.

Premised on a-b above, it is beyond assumption that the deposit in compliance with a pay-before-argument- rule entails the payment of money in the same manner as an assessed tax into FIRS account. In practice, at the close of the matter, the deposit is deemed a prepayment or part payment of the tax assessed if the tribunal decision is in favour of FIRS.⁴²

It is imperative at this juncture to query the nature of the deposit when the taxpayer's appeal succeeds and the consequence of it being in the custody of FIRS during the appeal. Against the backdrop of section 43 of the Constitution of the Federal Republic

Overview of Tax Appeal Tribunal in Nigeria,' *Lasu Law Journal* (2010) (Vol.VII, No. 1) Published by Faculty of Law, Lagos State University, 108 - 111.

⁴² Ifeanyichukwu Azuka Anyie, 'Recognition of the Rights of Taxpayers in Nigeria and its Implications' in Josephine Aladi Anchor Agbonika and others (eds), *Tropical Issues on Nigerian Tax Laws and Related Areas* at (Ababa Press Ltd., Ibadan 2015), 111.

of Nigeria 1999 as amended and the consequence of a valid objection to an assessment,⁴³ where the appeal is resolved in favour of the appellant, the period during which the deposit is in the coffers of FIRS could amount to a period of expropriation or compulsory acquisition of the appellant's - taxpayer-property. This is because, during the appeal the taxpayer's liability – and the tax due to the state – has not been determined. In the circumstances the deposit is still the property of the appellant (in the form of money) to which FIRS has no legal right to but has however successfully deprived the taxpayer of the enjoyment and use of his (money) property.⁴⁴ In these circumstances, notwithstanding the fact that the gamut of Nigerian tax law does not provide for compensation of taxpayers in situations of delay of refund, the delay makes section 44(1) (a) of the CFRN 1999 as amended applicable. Therefore, the taxpayer is entitled to compensation in the form of interest.

Section 43 of the CFRN 1999 as amended provides for the right to acquire and own property but this section cannot be interpreted without taking into consideration section 44 which provides (in part) that:

1. No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily... except in a manner... prescribed by law that, among other things;
 - a) requires the prompt payment of compensation thereof....
2. Nothing in subsection (1) of this section shall be construed as affecting any general law;
 - a) for the imposition or enforcement of any tax, rate or duty...

Compensation for delay in the refund process is a genuine means of protecting taxpayers' right to property. It is also not an absurdity especially in situations of maladministration. This is

⁴³ A valid objection to an assessment must be in writing sign by the taxpayer and filed within 30 days of the service of the assessment notice at the relevant tax office. It must contain the following information: (1) The name and address of the applicant (i.e. the taxpayer); (2) The notice of assessment number, the date of assessment and service on taxpayer; (3) The amount and year to which the assessment relates; and (4) The precise ground(s) on which the assessment is being challenged. And once the objection is accepted as valid, the assessment in question is put in abeyance or stood over until the final determination of the appeal. See paragraph 6, FIRS Guidelines on Dispute Resolution 2010.

⁴⁴ See *Phoenix Motors v. NPFMB* (2012) 7 TLRN where it was held that salary or wage is the property of the earner.

because with compensation, taxpayers are provided with reward for any loss to which they were exposed as a result of the delay in refund and the withholding of their funds.

This approach has been adopted in various jurisdictions. In the United States of America (USA), a taxpayer is entitled to compensation by way of interest where the refund is made after forty-five days.⁴⁵ In the United Kingdom, the taxpayer is entitled to interest on the refund, where the repayment is made after 31 January following the end of the tax year in which the repayment leading to the refund was made.⁴⁶ Australian taxpayers are also entitled to compensation where there is delay in determining objections or referring disputes to court or where they receive and act on misleading information given by officers of the Australian Tax Office (ATO).⁴⁷ In South Africa, subject to section 187-189 of the Tax Administration Act (TAA) 28 of 2011, if a refund due to a taxpayer from the South African Revenue Service (SARS) is not fully paid by the effective date, interest accrues on the outstanding refund.⁴⁸

5. How to Apply for VAT Refund

Section 13(1) of the VAT Act, 2004 provides that a taxable person shall, on rendering a return under subsection (1) of this section:

- 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.

However, in order for a VATable person to demand for a VAT refund where the input tax genuinely exceeds the output tax for a transactional period, he must follow certain procedure laid down by the FIRS that is, the VATable person must apply by filling the

⁴⁵ See 26 US Internal Revenue Code s 6611(e) (1). See also US International Revenue Manual Para 20.2.4.1 <http://www.irs.gov/irm/part20/irm_20_002_004.html> accessed 18 March 2020.

⁴⁶ Citizens Advice Bureau Tax Refunds http://www.adviceguide.org.uk/england/tax_3/tax_tax_refunds_claiming_back_overpaid_tax_refunds.htm accessed 18 March 2020.

⁴⁷ J Bevacqua, Australian Taxpayer Rights to Compensation of Wrongs of the Commissioner of Tax- A Call for Legislative Clarification *eJournal of Tax Research* {2012} (Vol. 10, No. 2).

<http://www.asb.unsw.edu.au/research/publications/ejournal_of_tax_research/documents/papers_v10nz-Bevacqua.pdf> accessed 18 March, 2020.

⁴⁸ See further of the VAT Act 89 of 1991 s 45 (1).

VAT return form 002, duly completed and submitted to the relevant tax office and the form must clearly and correctly indicate that it is excess of input tax over output tax to warrant any refund.⁴⁹

VAT refund can be claimed in any of the following ways:⁵⁰

- i) by credit method; or
- ii) by direct cash refund method; or
- iii) by both methods in (i) & (ii) above.

These will be discussed one after the other.

i) Credit Method

This is carried out with the use of VAT form 002, which contains the calculation of total output tax and input tax and deduction thereof. Where output tax equals input tax, no tax is payable or refundable and where output tax exceeds input tax, the tax difference is remittable to government. Where the output tax is less than the input tax, the excess of input tax must be refunded. Here, the taxable person may decide to set off the balance resulting in his favour against the output in subsequent month by making the outstanding input tax in the previous month as the first charge in the current month output tax. This is a popular VAT refund approach in many VAT system and jurisdictions and should be encouraged by the FIRS since it saves time and needless paper work.⁵¹

ii) Direct Cash Method

It is reasonable to expect that output tax will always exceed input tax. However, there are some companies whose input tax are perpetually in excess of output tax, such a company cannot reasonably be persuaded to engage in future set off by means of credit because the need for refund is recurring and could be so for an unlimited period. It is for this category of companies that regular cash refund may be necessary.⁵²

However, it is only registered Vatable person that can make refund claim. Normally, all relevant documents for VAT transaction will be verified before a refund can be made. The Service shall decide on who is eligible for refund subject to its refund rules and conditions. The refund shall be made within 90

⁴⁹ FIRS Information Circular NO. 9501 (n 36).

⁵⁰ Ibid.

⁵¹ Micheal Olulenu (n 31) 29.

⁵² FIRS Information Circular NO. 9501 (n 36).

days of the decision of the Service on the eligibility for the refund.⁵³

6. Refund Offences

The Nigerian law prescribes stiff penalties for offences that may be committed in the course of requesting for VAT refund. These include among others:⁵⁴

- i) where a person uses false documents to make refund claim; such a person shall be guilty of an offence and liable on conviction to a fine of twice the amount under declared;
- ii) where a person issue false tax invoice, with the intention to procure unmerited refund, such a person shall be guilty of an offence and is liable on conviction to a fine of ₦10,000 or imprisonment for a term of 6 months; and
- iii) where a person resists VAT Auditor from verification exercise or supplying false or misleading information, such a person shall be guilty of an offence and liable on conviction to a fine of ₦10,000 or imprisonment for a term of 6 months or both such fine and imprisonment.

7. Conclusion and Recommendations

In conclusion, it should be noted that the Nigerian taxpayers are entitled to refund of the excess tax paid to the government within a reasonable period of time. The taxpayers should not be forced to wait till an indeterminable future date for the refund and should not be made to accept the option of setting off the refund due against future tax which negates the provisions of Section 43 of the CFRN 1999 as amended. The issue of option should be at the discretion of taxpayers be it a company, business or an individual. In view of the above, it is recommended that:

- i) A legal framework should be put in place for the tax system to recognize excess payment as debt owed by the state.
- ii) The law should specifically provide for refund from over payment as soon as it is discovered by the Service or due to complaint by the taxpayer. The stipulation for 90 days is too long and unclear in view of the option to set off the refund against future tax by the taxpayer.
- iii) Where tax repayment or refund is made after certain period of discovery of excess tax, the taxpayers should

⁵³ Ibid. See further the Finance Act, 2019 s 39.

⁵⁴ VAT (Amendment) Act 2007 s 21-26.

be entitled to interest counting from the day it is discovered or when complaint is lodged.

- iv) There should be adequate enforcement of section 23 of the FIRSEA which gives an option to affected companies and businesses to institute legal action against the FIRS compelling it to set up the necessary account into which monies shall be paid for settling such refund.⁵⁵

⁵⁵ S M Olokooba and others 'X-Raying the Legal and Administrative Consequences in Divulging Confidential Information in Taxation' *Novena University Law Journal* (vol 2, The Faculty of Law, Novena University, Delta State 2017 31-40).