

# Value Added Tax (VAT)



# Definition

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- VAT is a *general consumption* tax assessed on the value of goods and services
- It applies to **all** commercial activities involving production/distribution of goods/services
- It is ultimately borne by the *final consumer*
- It is charged as a % of price – 0% and 16%



# Five pillars of VAT

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A transaction is within the scope of Kenyan VAT where:

- It is a *supply* or *importation* of goods or services
  - Takes place in the Kenya.
  - Is a taxable supply.
  - Made by a taxable person
  - Is made in the course or furtherance of any business carried on by that person
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# Registration for VAT

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- Done through registration for PIN on  **iTax**  
Simple, Swift, Secure
- Registration is mandatory for any person who has supplied taxable goods or services or expects to supply taxable goods whose value is  $\geq$  **KShs 5,000,000** within *twelve months*
- Registration should be done within **30 days** from the date on which he becomes a taxable person
- Voluntary registration is allowed.

# De-registration for VAT

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- Taxpayer can de-register for VAT if:
    - ✓ Does not make taxable supplies in excess of KShs 5M within 12 months;
    - ✓ Does not expect to make taxable supplies for the next 12 months.
  - Taxpayer is required to continue filing returns until de-registration is approved
  - Failure to file the returns crystallizes penalties
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# Definition of Supply

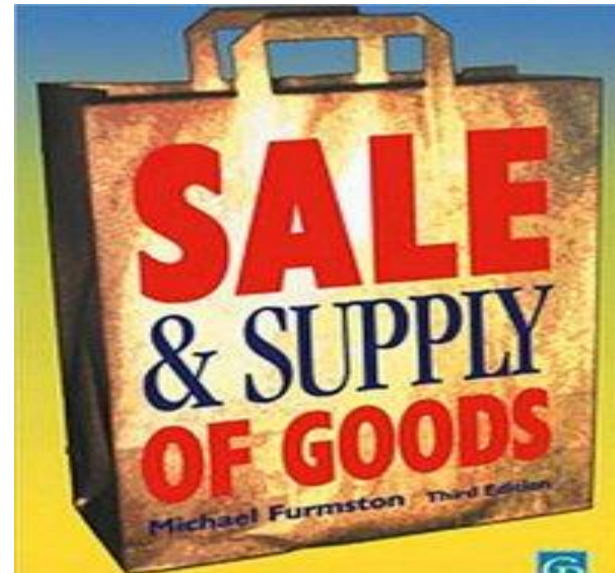
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**supply of goods** means –

- (a) a sale, exchange, or other transfer of the right to dispose of the goods as owner; or
- (b) the provision of electrical or thermal energy.



# Definition of Supply

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**supply of services** means anything done that is not a supply of goods or money, including –

- (a) the performance of services for another person;
  - (b) the grant, assignment, or surrender of any right;
  - (c) the making available of any facility or advantage; or
  - (d) the toleration of any situation or the refraining
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# Definition of Supply continued...

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**supply of imported services** means a supply of services that satisfies the following conditions –

1. The supply is made by a person who is not registered for VAT
  2. It is a taxable supply if it had been made in Kenya; and
  3. the registered person would not have been entitled to a credit for the full amount of input tax payable
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# Time of Supply

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The **time of supply** for purposes of VAT is *the earlier of:*

- Date of *supply* of goods/services
  - Date a *certificate is issued* by an architect, surveyor or consultant or in a supervisory capacity in respect of the service
  - Date an *invoice is issued*
  - Date *payment or part payment* is received in whole or part
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# VAT status of Supplies

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<b>Status</b>	<b>VAT rate</b>	<b>Examples</b>
<b>Exempt</b>	No VAT	<ul style="list-style-type: none"><li>- Suppliers cannot claim VAT</li><li>- Examples are:<ul style="list-style-type: none"><li>- Insurance services</li><li>- Financial services</li><li>- Unprocessed agricultural produce</li></ul></li></ul>
<b>Zero-rated</b>	0%	<ul style="list-style-type: none"><li>- Suppliers can claim input VAT</li><li>- Examples are:<ul style="list-style-type: none"><li>- Export of goods or taxable services</li></ul></li></ul>
<b>Standard rated</b>	16%	<ul style="list-style-type: none"><li>- Suppliers can claim input VAT</li><li>- Examples are:<ul style="list-style-type: none"><li>- Other taxable supplies</li></ul></li></ul>

# Taxable vs Exempt Supplies

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What is the difference between taxable and exempt supplies?

## Taxable supplies

- Standard rated supplies (16%) or zero-rated (0%)
- Supplier can claim input VAT incurred in making taxable supplies within 6 months

## Exempt supplies – Not taxable supplies

- Persons who deal exclusively in exempt supplies are not liable to register and cannot claim input tax on these supplies
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# Input VAT

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## Input VAT is:

- Tax paid by a registered person on the **purchase** of goods or services to be used for the purpose of his business
  - Tax paid by a registered person on the **importation** of goods or services to be used for the purpose of his business
  - Taxpayer can only *claim input VAT* if registered for VAT
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# Non-deductible Input Tax

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- Purchase, repair and maintenance of passenger cars and minibuses, including spare parts.



- Entertainment, restaurant and accommodation services **unless** the services are provided in the ordinary course of business.



# Output VAT

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- Tax that is due on the supply of standard rated supplies
- Output tax is accounted for using a *proper tax invoice*
  - ✓ Supplier name, address, PIN
  - ✓ Date of supply and of invoice
  - ✓ ETR/ESD number
  - ✓ Serial number
  - ✓ Name and address of recipient of supply
  - ✓ Description of goods/services
  - ✓ Taxable value of goods/services
  - ✓ VAT rate and amount of tax
  - ✓ Total value of supply and amount charged



# Refund of Tax

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- A claim for refund of tax paid in error should be lodged within **12 months** from the date the tax became due and payable
- An application for refund of tax on bad debts should be made within **3 to 5 years** from the date of supply
- Tax refunded in error should be refunded to the Commissioner within **30 days** of service of demand. 2% interest for non compliance.



# Credit Notes

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- The validity period of credit notes is 6 months.
- ✓ The provision is critical to outstanding amounts and therefore taxpayers must ensure that they offset any credit notes within 6 months or they lose out.





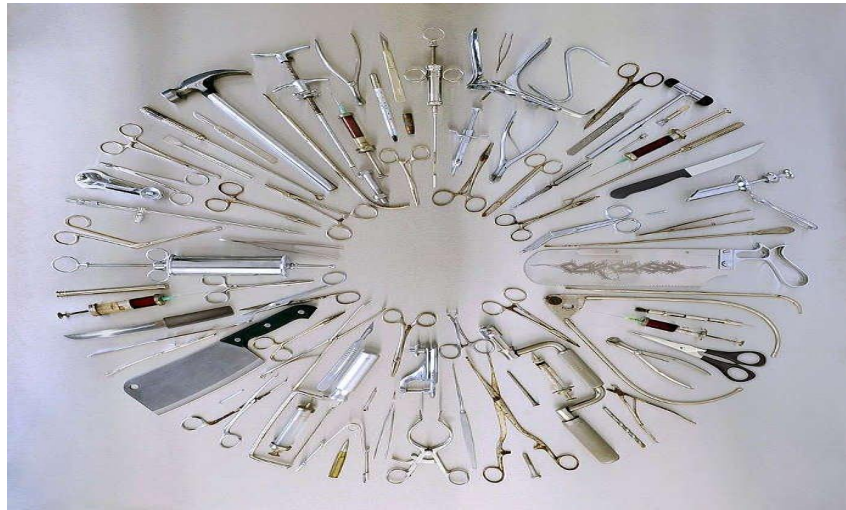
# Remissions

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## Are remissions still granted?

- Only remissions awarded prior to the commencement of the VAT Act, 2013 shall remain in force for a period of 5 years from the date of commencement of VAT Act 2013.



# Electronic Tax Register/Electronic Signature Device

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- All persons supplying taxable goods or taxable services or both are required to acquire ETR/ESD machines.
- Input VAT can only be claimed on invoices with ETRs/ESDs.



# Reverse charge VAT

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**Reverse charge VAT is Value Added Tax on imported services**

## Accounted as follows:

### Fully taxable persons

- full credit of input tax payable and accounted as output in VAT3 return.

### Mixed supplies persons

- Registered persons will get credit for part of input tax that relates to taxable supplies

### Tax exempt persons

- Account for and pay reverse charge VAT.
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## 1. Withholding VAT

- It is the declaration of VAT by an appointed withholding VAT Agent
- Only applicable to taxable goods and services.
- No VAT is withheld on exempt goods and services and Zero rated supplies.
- Not applicable for official aid-funded projects.

## 2. The supply of taxable services in respect of goods in transit is now **EXEMPT**.

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# VAT Accounting & Record keeping

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- Maintain a VAT control account
  - Compare Sales per VAT returns with corresponding months' management accounts
  - Compare Sales per audited financial statements to Sales per the VAT returns for the financial period
  - Tax payer should maintain the records for a period of five years
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# VAT law complexities

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- **Private rulings** - a taxpayer may apply for a private ruling to the Commissioner on specific transactions and their tax implications.
  - The VAT law grants the Commissioner powers to **seize any documents** during investigation.
  - A taxpayer can **amend a VAT return** dating back 5 years upon application to the Commissioner .
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# VAT law complexities

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- **VAT Refund period**- Should taxpayers lodge VAT refund claims within 6 months or 12 months?



- Companies making mixed supplies will have to account for reverse charge VAT based on the proportion of their exempt supplies to the total supplies since they cannot claim a full deduction of input tax.

# Offences

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Offence	Penalty/Interest
Late Payment of VAT	2% interest on amount payable compounded monthly
Fraudulent refund claims	2 times the amount of the fraudulent claim
Late filling of returns	KShs 10,000 or 5% of tax due
Registration offences	KShs 200,000 or imprisonment not exceeding 2 years or both



# Caveat

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**Q&A**

You have

**Questions**

We have

**Answers**