

ICPAK Tax Principles Workshop

22 February 2016



Building a better
working world

TOPIC: Value Added Tax

PRESENTER: John Gikima



Building a better
working world

Value Added Tax - Content

- ▶ Introduction
- ▶ General VAT provisions
- ▶ Summary of penalties and key obligations
- ▶ Trends in the rest of the world
- ▶ VAT planning ideas and key audit issues
- ▶ Current issues on VAT

Introduction

- ▶ VAT is a tax on consumption
- ▶ Registered persons acts as collection **agents**
- ▶ **Incidence** and **impact** of VAT is borne by the **final consumer** of goods and services
- ▶ Generally input tax qualifies for deduction against output tax
- ▶ Tax point is the main point of reference
- ▶ Special consideration required for business with mixed sales
- ▶ Transactions entered into prior to 02 September 2013 governed under repealed VAT Act

Output tax - Is VAT applicable?

- ▶ Sale of by-products and factory wastes
- ▶ Samples issued to customers
- ▶ Staff give away
- ▶ Operation of cafeteria
- ▶ Consultancy or advisory fee
- ▶ Management fee
- ▶ Rental income for owned or sub-leased property
- ▶ Short time parking charges
- ▶ Other miscellaneous incomes
- ▶ Imported taxable services

Deduction of Input Tax

- ▶ **Input tax** is tax paid on the supply to a registered person to be used by him for the purpose of his business
- ▶ Input tax is claimable by a registered person provided that:
 - The person is in possession of valid a tax invoice
 - The amount thereon has not been previously deducted
 - Not more than 6 months have lapsed after the input tax became due and payable
 - Tax is not restricted under **Section 17(4)**
 - Tax does not relate to exempt supplies either directly or on apportionment

Deduction of Input Tax

Restriction

– Sec 17(4)

- ▶ Except where the goods are purchased as stock in trade, deduction of input tax is restricted on the following:
 - Passenger cars and minibuses, as well as their spare parts
 - Entertainment, restaurant and accommodation services unless:
 - Provided in the ordinary course of business
 - Provided while recipient is away from home for purpose of business

Apportionment of Input Tax

- ▶ **Sec. 17(6)** of the VAT Act provides for apportionment of input VAT claimed where a registered person has both taxable and exempt supplies
 - Full deduction of input tax in relation to taxable supply
 - Full exclusion of input tax in relation to exempt supplies
 - Apportionment of shared input tax using the following ratio

$$\frac{\text{Value of taxable supplies}}{\text{Value of Total Supplies}} \times \text{Input tax} = \text{deductible VAT}$$

- ▶ No apportionment where exempt supplies are less than **10%** of the total supplies
- ▶ No input tax is deductible if exempt sales are more than **90%**

Tax Invoice

What is a tax invoice?

- ▶ A valid Tax Invoice should contain the following:
 - Supplier's name, address, PIN and VAT Reg No. (VAT Reg No. no longer required w.e.f 12 June 2009)
 - Generated through a tax register (ESD) or attached to an ETR generated receipt (w.e.f. 16 June 2006)
 - Serially numbered
 - Name and address of the supplier
 - Description, quantity and price of the supply
 - Total value of the supply, VAT rate used and the total amount of VAT charged

Payment of Tax

VAT Account (VAT 3)

- ▶ Summarizes input and output tax
- ▶ Declaration of sales for the business
- ▶ Determination of VAT liability/credit
- ▶ Reflects the company's VAT account with KRA
- ▶ Calls for full disclosure
- ▶ VAT is payable monthly by the 20th of the following month
- ▶ Interest at 2% pm, compounded, is due on any tax that remain unpaid

Imported Services – Sec 10

- ▶ **Imported services** – means supply of services that:
 - Is made by a person who is not a registered person
 - Supply would have been taxable
 - Non taxable person is not entitled to deduction of input tax
- ▶ Supply of imported services deemed as self supply
- ▶ VAT payable to the extent it relates to provision of exempt supplies
- ▶ VAT on imported **taxable** services is declared/paid online by generating PRN

VAT Refunds

Refunds

- ▶ Tax payers allowed to claim for VAT refund where it arises from:
 - Excess input tax arises from making zero-rated supplies;
 - Lodged within a period of 12 months
 - Tax is paid in error
 - VAT relating to bad debts
- ▶ Cumulative VAT credit should be reduced with claims lodged with KRA - **effective September 2011**

VAT Penalties & Offences

Penalty type	Penalty
Late filing of return (VAT 3)	KShs.10,000 or 5% of tax due whichever is higher
Late payment of VAT	Interest at 2% per month compounded
Failure to comply with ETR regulation	KShs.500,000 or 3 years imprisonment or both,
General penalty	KShs.500,000 or 3 years imprisonment or both

VAT Penalties & Offences

Offence type	Penalty
False statement;	Fine of up to Kshs 400,000/=, or double the tax evaded, whichever is higher, or imprisonment for a period not exceeding three (3) years,
Failure to comply with Commissioner agency notice	Fine of up to Kshs 15,000/=or to imprisonment for a term not exceeding six months or to both, and liable to pay to the Commissioner the amount of any liability so discharged
Failure to display the certificate of registration	Fine not exceeding Kshs 200,000/= or imprisonment for a term not exceeding two years or to both
Registration after the time limit	Default penalty of twenty thousand shillings

VAT Penalties & Offences

Offence type	Penalty
Forced registration and Deregistration	Default penalty of Kshs 100,000/=
Improper use of a Tax register	Fine not exceeding Kshs 500,000/= or to imprisonment for a term not exceeding three years or to both
Unauthorized access to or improper use of tax computerized system	Imprisonment for a term not exceeding two years, or to a fine not exceeding Kshs 400,000/=; In the case of a body corporate a fine not exceeding Kshs 1M
Interference with tax computerized system	Imprisonment for a term not exceeding three years, or to a fine not exceeding 800,000/=

VAT Penalties & Offences

Offence type	Penalty
Failure to produce books, records, information, etc	Fine not exceeding Kshs 15,000/= or to imprisonment for a term not exceeding six months or both
Unauthorised disclosure of information	Fine not exceeding Kshs 20,000/= or to imprisonment for a term not exceeding twelve months or to both
Disobedience of summons to give evidence, etc	Fine not exceeding Kshs 15,000/= or to imprisonment for a term not exceeding two years, or to both

Value Added Tax

Tax obligations for VAT registered persons

- ▶ Charging VAT on taxable supplies and issuing **ETR compliant invoices**
- ▶ Paying taxes when **output tax is in excess of input tax**
- ▶ Filing of monthly VAT 3 return and paying taxes by the due date - **20th** of the following month
- ▶ Declaration of VAT in relation to exempt supplies upon importation of taxable services
- ▶ Accounting for Reverse Charge VAT, where applicable

Key VAT Audit Issues

- ▶ Issues often noted in audits
 - Utilization of VAT Credit for VAT claims lodged/paid by KRA
 - Lack of proper documentation in support of export
 - Failure to account for VAT on **miscellaneous income**
 - Failure to issue ETR/ESD compliant invoice
 - Non declaration/payment of VAT on taxable **imported services**
 - Erroneous claim of restricted/**non-deductible input tax**
 - Failure to **complete VAT returns** correctly
 - Lack of valid **tax invoice(s)**
 - **Incomplete** details or **misleading** description in the input tax schedules (VAT 3A)
 - Failure to display VAT Registration Certificate

Finance Act Amendments

- ▶ Commissioner empowered to appoint any person as a Withholding VAT Agent. Base of withholding VAT changed to taxable amount
- ▶ Zero rating of vehicle bought by returning resident in replacement of a left hand drive vehicle
- ▶ Zero rating of taxable supplies in respect of goods in transit
- ▶ Zero rating of duty free purchases
- ▶ Zero rating of inputs/raw materials for pharmaceutical manufacturers
- ▶ Zero rating of medicaments
- ▶ Exemption of VAT on parts for assembly of primary school laptop tablets
- ▶ Exemption of sewerage services

Planning Ideas

- ▶ **Speedy collection of debts** since the tax point is not based on cash received
- ▶ Claim for **relief of VAT on Bad debts**
- ▶ Input tax planning
- ▶ Use of available duty incentives
- ▶ **Use of Technology** – Data analytics tool
- ▶ Operating Model Effectiveness

Questions



THE END!