



Seminar on Indirect taxes, Transfer Pricing and Emerging Issues – *Value Added Tax*

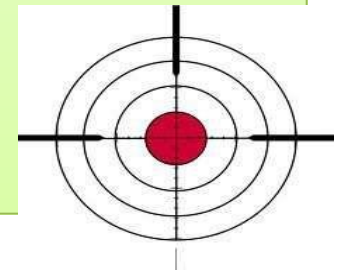
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CPA Starlings Muchiri
Mobile: 0722 33 27 29
Email: info@taxeac.com

Scope of presentation



- ❑ Intro to VAT principles;
- ❑ Compliance requirements;
- ❑ Emerging issues;



Five pillars of VAT...



A transaction is within the scope of Kenyan VAT where:

- ❑ It is a **supply** or **importation** of goods or services;
- ❑ Takes place **in 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.

Value Added Tax...



Section 34 of VAT Act - **A person** who in the **course of business** has made or expects to make **taxable supplies** valued at KShs 5 million or more in any 12 months period is required to register and account for VAT.

“Person” includes individuals, companies, associations, trusts, estates and governments.

“Business” includes activities carried on without a profit motive where the activities are regular or continuous and involve supply of goods or services for consideration.

“Taxable supplies” are supplies that are not exempt from VAT under the 1st schedule to the VAT Act.

Exempt supplies...



- ❑ Medical, vet, dental & nursing services + products;
- ❑ Agricultural services, animal husbandry,
horticultural services + Unprocessed agricultural
produce;
- ❑ Educational; Medical; Burial; Social welfare
services by Government;

Exempt supplies...



- ❑ Transportation of passengers (except international air transport or through hired means)
- ❑ Solar products
- ❑ Financial services, Insurance services
- ❑ Sale, lease of land and residential premises

Exempt supplies...



- ❑ Betting, gaming and lotteries services.
- ❑ Hiring, leasing and chartering of aircrafts
- ❑ Car park services by national and county governments
- ❑ Supply of airtime other than by a mobile service provider

Exempt supplies...



- ❑ Supplies for film industry
- ❑ Supplies to construct industrial and recreational parks more than 100 acres
- ❑ Supplies to SEZs

Zero-rated Supplies...



- ❑ Exportation of goods and taxable services;
- ❑ Services provided with respect to goods in transit
- ❑ Transfer of business as going concern;
- ❑ Ship stores, supplies and services;
- ❑ Supplies to EPZs;
- ❑ Privileged organizations



Zero-rated Supplies...



- ❑ Supply of coffee and tea for export to coffee or tea auction centers.
- ❑ International air transport of passengers;
- ❑ Supply of natural water by National, county governments or other approved person



Registration for VAT...



- ❑ If a person has supplied or expects to supply taxable goods whose value is **KShs 5,000,000** within **twelve months**;
- ❑ Register **within thirty days** from the date on which he becomes a taxable person;
- ❑ Registration is through registration for **PIN online**;

Charge to tax...



❑ Charge VAT on:

- A **taxable supply** made by a **registered person in Kenya**;
- The **importation** of taxable goods; and
- A supply of **imported taxable services** (Reverse Charge VAT).

When to charge VAT...



- ❑ The tax point is the **earlier** of:
 - Date **delivery** of goods or services **performed**;
 - Date of issue of **Certificate** by an architect, surveyor etc;
 - Date of issue of an **Invoice**;
 - Date **payment** for supply, whole or part.
- ❑ When coins, tokens etc taken out of vending machine;
- ❑ For periodic or continuous payments, earlier of when successive payment is **due** or **received**.

Deducting input VAT...



- ❑ Tax payer should have invoices, credit, debit notes & customs entries;
- ❑ Input VAT must be claimed within **6 months** from the period of supply/importation;
- ❑ Input tax incurred within **24 months prior to registration** claimed within **3 months of** registration/end of exemption;
- ❑ Input VAT is **restricted** if supplier is supplying both taxable and **exempt** supplies;
- ❑ *De minimis* rule – All input allowed if exempt is less than 10% and all input disallowed if exempt is more than 90%.

Deducting input VAT...



❑ Blocked input VAT-

- Acquisition, repair and maintenance of **Passenger cars and minibuses** unless where they are stock in trade;
- **Entertainment, restaurant and accommodation services, unless**
 - Services are provided in normal course of business carried on by the person;
 - Services are provided away from home for purposes of business of the recipient or his employer .

Collection and enforcement



- ❑ Collection and enforcement mechanisms now under Tax Procedures Act and VAT Act;
- ❑ Not later 20th of the next month;
- ❑ Maintain ETR and other records for 5 years;
- ❑ Interest for unpaid tax is 1% per month;
- ❑ Withholding VAT on supplies to Govt bodies and agencies (excluding official aid funded projects) is at 6%

VAT Refunds ...



- ❑ Erroneous payment of tax – claim for refund **within 12 months** from the date tax became payable;
- ❑ Bad debts
 - Where VAT is not collected from debtor after **3 yrs**;
 - If company becomes legally insolvent;
 - Claim must be made **within 5 yrs** after date of **supply**.
- ❑ Input VAT exceeds the output VAT from making zero-rated supplies;

Emerging issues ...



IDEAL VAT SYSTEM

- ❑ Simple
- ❑ Single Rate
- ❑ Broad base
- ❑ Few exemptions - exemptions break
- ❑ Factors to success-
 - Campaign for acceptance 2 years in New Zealand
 - Costs of administration – in New Zealand 1 out of 45 tax officers handles VAT
 - Social security and tax – other ways to mitigate for regressive nature of tax ie Income Tax and benefits system

Emerging issues ...



❑ Exemption

- Distortion in the VAT system
- Lobbying by exempt bodies leads to rolling back of exemptions to other suppliers
- **Restrict to hard to tax eg financial services; Donor funded; distributional eg agricultural and health and education**

Emerging issues ...



- ❑ The **invoice system** has won the day?
 - Invoice system and the Statement system are commonly used
 - Invoice system used in EU and most other jurisdictions
 - Outputs and inputs supported by tax invoices. VAT accounted for monthly-Quarterly;
 - **Statement system** – Nets off sales and purchases over a period of time, 1 year in Japan;
 - Challenges of the statement system unavailability of money to pay and high penalties;

Emerging issues ...



- ❑ VAT on **Capital goods**
 - VAT is a consumption tax not a production tax;
 - Immediate credit for capital goods or exemption to avoid accumulation of VAT;
 - Still an issue for certain classes of equipment and commercial buildings

Emerging issues ...



- ❑ Threshold debate should it be low or high?
 - Cost of administration of a large number of taxpayers by Revenue Authority
 - Ghana and Malta systems didn't work at first because of too low thresholds
 - **Studies to establish the right threshold for registration**

Emerging issues ...



- ❑ Refunds and credits
 - Causes – Incapacity for audit; budget pressures; frauds
 - Zero-rate supplies to exporters – France, Ireland
 - Cross-checking outputs and inputs by all registered suppliers
- ❑ Gold Card Scheme???

Emerging issues ...



- ❑ Regional integration/ single market
 - Single VAT regimes with registration requirements
 - Duplicity of rules and threshold requirements
 - Carousel frauds

Emerging issues ...



- ❑ Administration of VAT whether by customs or domestic taxes
 - Kenya moving towards splitting Customs and Domestic taxes;
 - Customs and DTD Semi-autonomous agencies;
 - VAT involves the movement of goods which is controlled by customs;
 - There is a need for integration. UK has adopted integration for between Domestic taxes and Customs for VAT

Emerging issues ...



- ❑ Electronic commerce
 - Movement of services and intangibles across borders
 - Challenge of monitoring movement of services and intangibles

Emerging issues ...



- ❑ Lessons from European Union
 - VAT system highly developed and ideally the principles are harmonized;
 - Complexity of admin and rates eg “Chocolate tea cake” dispute, what is main supply and what is ancillary supply
 - Duplicity of forms and procedures
 - Disputes resolution
- ❑ **Mirrlees Review** – “Dimension of Tax Design” 2010 and “Tax by Design” 2011 advocated for single tax and rate broad base tax