

**TOPIC: Value Added Tax**

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- ▶ Introduction
- ▶ General VAT provision
- ▶ Provisions of the Tax Procedures Act 2015 in relation to VAT
- ▶ VAT Regulations as per 2017 Finance Bill
- ▶ Current issues on VAT
- ▶ VAT planning and key audit issues

# Introduction

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- ▶ VAT is a tax on consumption
- ▶ Registered persons act as **agents** in collecting VAT
- ▶ **Incidence** and **impact** of VAT is borne by the **final consumer** of goods and services
- ▶ Generally input tax qualifies for deduction against output tax
- ▶ Transactions entered into prior to 02 September 2013 governed under repealed VAT Act
- ▶ Tax point is the main point of reference
- ▶ Special consideration required for business with mixed sales
- ▶ Exempt business not required to register/account for VAT

# VAT Registration

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- ▶ Threshold for registration is **KShs. 5M** or more in 12 months (Sec 34 ) – taxable supplies
- ▶ Threshold to exclude
  - ▶ Capital asset
  - ▶ Sale of whole or part of a business
- ▶ Registration and other formalities being done on-line, including VAT Returns

# Charge of Tax

- ▶ Registered suppliers of taxable supplies required to charge VAT at the rates indicated below:

Status	VAT Rate	Example
Taxable	16%	Supplies not listed in the 1 <sup>st</sup> Schedule,
Zero-rated	0%	Supplies listed in the 2 <sup>nd</sup> Schedule of the VAT Act which include exports, sale of business etc.
Exempt	-	Listed in 1 <sup>st</sup> schedule to the VAT Act. Products such as petroleum products to be taxable after 3 years.

# Output tax - Is VAT applicable?

- ▶ Sale of by-products and wastes
- ▶ Samples issued to customers?
- ▶ Staff give a ways
- ▶ Operation of cafeteria
- ▶ Consultancy or advisory fee
- ▶ Management fee
- ▶ Other miscellaneous incomes
- ▶ Rental income for owned or sub-leased property
- ▶ Parking charges
- ▶ Imported taxable services

# Tax Point

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- ▶ VAT is due and payable as follows:
  - The date the goods are delivered or services performed;
  - The date a certificate is issued by an Architect, surveyor or any person acting as a consultant or in a supervisory capacity in respect of the supply
  - The date an invoice is issued in respect of the supply or
  - The date all or part payment is received for the supply
- ▶ VAT should be charged at the tax point

# VAT on Credits Notes

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- ▶ Does it qualify for deduction
- ▶ When should the credit note be issued
- ▶ How should VAT be treated if the credit note is issued after statutory time period
- ▶ What details should be captured on the credit note
- ▶ Is the treatment different for Debit Notes



# 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 documentations such as 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 upon apportionment with taxable supplies

## What is a tax invoice?

- ▶ A valid Tax Invoice should contain the following:
  - Supplier's & Customers name, address and PIN
  - 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
  - Details of discount allowed
  - Marked as 'Tax Invoice' – (wef – 03 April 2017)

# 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 the exempt supplies are less than **10%** of the total supplies
- ▶ All input tax is deductible if taxable sales are more than **90%**

# Apportionment of Input Tax Illustration

Scenario 1					
Sales			input tax		
Sales	Amount	%	Input tax attributable to		Deductible input tax
Taxable 16%	2,500,000	60%	Taxable supplies	800,000	800,000
Zero rated	3,500,000		Mixed supplies	1,000,000	600,000
Exempt	4,000,000	40%	Exempt supplies	200,000	-
<b>Total</b>	<b>10,000,000</b>	<b>100%</b>		<b>2,000,000</b>	<b>1,400,000</b>
Scenario 2					
Sales			input tax		
Sales	Amount	%	Input tax attributable to		Deductible input tax
Taxable 16%	5,000,000	91%	Taxable Supplies	800,000	800,000
Zero rated	4,100,000		Mixed supplies	1,000,000	1,000,000
Exempt	900,000	9%	Exempt supplies	200,000	-
<b>Total</b>	<b>10,000,000</b>	<b>100%</b>		<b>2,000,000</b>	<b>1,800,000</b>
Scenario 3					
Sales			input tax		
Sales	Amount	%	Input tax attributable to		Deductible input tax
Taxable 16%	1,000,000	10%	Taxable supplies	800,000	800,000
Zero rated	-		Mixed supplies	1,000,000	-
Exempt	9,000,000	90%	Exempt supplies	200,000	-
<b>Total</b>	<b>10,000,000</b>	<b>100%</b>		<b>2,000,000</b>	<b>800,000</b>

# Collection 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 20<sup>th</sup> of the following month
- ▶ Simple interest at 1% pm or part thereof is due on any tax that remain unpaid

## Imported Services – Sec 10

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- ▶ **Imported services** – means a supply of services that:
  - Is made by a person who is not a registered person
  - Supply would have been taxable
  - 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

# Withholding VAT

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- ▶ Appointed agents were required to withhold VAT chargeable on the supply irrespective of whether VAT was charged or not
- ▶ System reintroduced in 2014
- ▶ Appointed agents include government ministries and parastatals or any other person appointed by Commissioner
- ▶ Only 6% of the VAT charged/chargeable is deducted and remitted to KRA – (*due date is after 14 days*)



# VAT Refunds

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## Refunds

- ▶ Tax payers allowed to claim for refund of input tax where the excess arises from:
  - Making zero-rated supplies; or
  - VAT is refundable on tax paid in error
  - VAT relating to bad debts

*(Withholding VAT not refundable) – Act provides for exemption*
  
- ▶ Cumulative VAT credit should be reduced with claims lodged with KRA - **effective September 2011**

## 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 - **20<sup>th</sup>** of the following month
- ▶ Declaration of VAT in relation to exempt supplies upon importation of taxable services
- ▶ Accounting for Reverse Charge VAT, where applicable

# Tax Procedures Act 2015 – VAT effective 9 Jan 2016

TPA Key VAT provisions	Comments
Penalty for late submission of returns	5% of tax not paid or KES 20,000
Interest for late payment	1% simple interest
Tax Shortfall	20% of the shortfall
Withholding VAT	Any person can be appointed
Advance rulings	The Commissioner should Respond within 45 days.
Record Keeping	Tax invoices shall be in KES



# Finance Bill 2017



Item	Proposed change	Current status	Effective date
Additional/ expanded definitions	To include definitions of Islamic finance management, Islamic finance return and Sukuk under Section 2;  To expand the definition of interest to include Islamic finance return.	Not included in the current definitions under Section 2	3rd April 2017
List of exempt items expanded	<ul style="list-style-type: none"> <li>➤ <b>Equipment &amp; apparatus</b> for the direct and exclusive use in specialized hospitals <b>with a minimum bed capacity of 50</b>;</li> <li>➤ The supply of Liquefied Petroleum Gas;</li> <li>➤ Taxable goods for use in the manufacture of liquid petroleum gas cylinders by licensed manufacturers upon recommendation by the Cabinet Secretary responsible for Energy and petroleum;</li> <li>➤ Goods falling under tariff number 4907.00.90, which include revenue stamps;</li> <li>➤ Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;</li> <li>➤ Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture</li> </ul>	<p>New addition to the schedule</p> <p>Zero-rated</p> <p>Taxable</p> <p>Taxable</p> <p>Taxable</p> <p>Taxable</p>	3rd April 2017

# Finance Bill 2017



Item	Proposed change	Current status	Effective date
List of exempt items expanded	<ul style="list-style-type: none"> <li>➤ Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, subject to the following conditions;                             <ul style="list-style-type: none"> <li>❖ the vehicle is registered and operated by a company licenced under the Tourism Vehicle Regime,</li> <li>❖ the vehicle is used exclusively for the transportation of tourists,</li> <li>❖ the vehicle has provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings, and</li> <li>❖ any other condition the Commissioner may impose.</li> </ul> </li> </ul> <p><b>Note:</b> Tax on these vehicles shall become payable upon change of use or disposal of the vehicle for other use;</p>	Taxable	3rd April 2017
	<ul style="list-style-type: none"> <li>➤ Asset transfers and other transactions related to the transfer of assets into Real Estates Investment Trusts and Asset Backed Securities;</li> </ul>	Taxable	
	<ul style="list-style-type: none"> <li>➤ Financial services set out in Part II (1) of the First Schedule that are structured in conformity with Islamic finance.</li> </ul>	Not recognised	

# Finance Bill 2017



Item	Proposed change	Current status	Effective date
List of zero-rated supplies expanded	<ul style="list-style-type: none"> <li>➤ The supply of maize (corn) flour and ordinary bread;</li> <li>➤ Taxable goods supplied to marine fisheries and fish processors upon recommendation by relevant state Department;</li> </ul>	<p>Exempt</p> <p>Taxable</p>	3rd April 2017
Clarification on zero-rated medicaments	<ul style="list-style-type: none"> <li>➤ Part C of the Second Schedule to the VAT Act, 2013 has been amended by deleting tariff number 3303.10.00 and 3003.90.00 and substituting with the following Tariff No. Description: <ul style="list-style-type: none"> <li>➤ 3003.10.00 - Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycins or their derivatives.</li> <li>➤ 3003.90.00 - Other.</li> </ul> </li> </ul>	Zero-rated (the codes didn't have definitions)	3rd April 2017

# VAT Regulations 2017



- ▶ The following regulations have been raised by the 2017 Finance Bill
  - Deduction of input tax relating to **trading stock at hand on registration** to be made to KRA within 3 months after registration
  - Tax invoice to have the words “**TAX INVOICE**” at a prominent place
  - An **Electronically generated fiscal receipt** can be issued as a simplified tax invoice for cash sales made from retail premises
  - Tax inclusive pricing of taxable supplies to unregistered persons – the retailer to state in the invoice that the taxable supply is **inclusive of Tax**.

# VAT Regulations – Cont'd

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- VAT Refund restricted to proportion of zero rated supplies
- Importers of taxable services to prepare a Self Supply Tax Invoice
- Taxable supply made without charging VAT to be treated as VAT inclusive

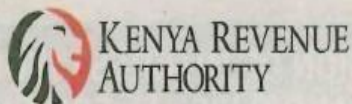


# Key VAT Audit Issues



- ▶ 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**
  - 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
  - Mismatch of suppliers/customers invoices on **tax**

# Current VAT filing issues - iTax



## Public Notice to all VAT Registered Taxpayers.

**Dear Taxpayer, Kenya Revenue Authority takes this opportunity to thank you for filing your monthly VAT returns through the iTax system.**

KRA however wishes to kindly remind ALL VAT registered taxpayers of the following:

1. A proper tax invoice must be issued for all the sales and purchases made
2. All sellers are required to declare the PINs of the VAT registered taxpayers they have traded with in the month.
3. All purchasers must provide their PINs to their sellers and advise them to declare the same in their VAT returns, especially if they wish to declare the same as input tax.

VAT registered traders are thus cautioned that:

### **For the Sellers:**

1. Failure to declare the PINs of those you have traded with will lead to a compliance check to verify the input tax claimed by respective purchasers. Sellers are therefore cautioned to declare PINs in their provided sections i.e. General rated, Zero rated and Exempt sales. They should therefore desist from lumping their sales in the section provided for **"Sales to customers not registered for VAT"**.

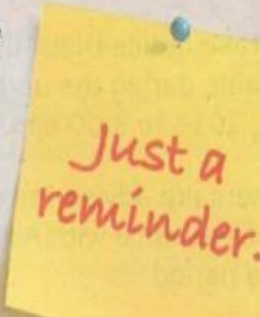
### **For the Purchaser:**

2. Failure by the purchaser to provide their correct PIN details to the seller may lead to a compliance check to verify the validity of the purchase. The input tax may therefore be disallowed.

It is therefore critical to have trader details captured as required in the online VAT returns to avoid any inconveniences in future. Please note that this is NOT a new requirement, but a kind reminder on proper filing of VAT returns and takes effect IMMEDIATELY.

In order to assist our taxpayers, KRA continues to train and sensitize taxpayers in ALL Regions. We have also set up iTax Support centers countrywide and devolved our services to ALL Huduma centers.

For more details please visit our website: [www.kra.go.ke](http://www.kra.go.ke)



Just a reminder.



## Filing of VAT Returns and Invalid Tax Invoices

Kenya Revenue Authority wishes to bring to the attention of the Public about the provisions of the Vat Act with regards to the claim of input tax and the use of valid tax invoices.

It has come to the attention of the Domestic Taxes Department that there are Taxpayers who are filing and claiming inputs using invalid tax invoices. KRA has therefore validated all invoices credited in the Vat returns of Taxpayers from July 2016 to date.

**All invalid invoices not recognized by the iTax system will automatically be disallowed.**

In view of this, KRA wishes to advise all taxpayers to amend their returns accordingly in order to avoid Penalties under the Tax Procedures Act, arising from erroneous declarations. System generated assessments are to be issued on such cases based on information and data obtained from itax system.

A list of all affected Taxpayers and their PINs have been posted on our KRA website. Please confirm if your PIN is amongst those with issues and seek for appropriate assistance from any KRA office nearest to you.

# VAT Planning Opportunities

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- ▶ **Speedy collection of debts** since the tax point is not based on cash received
- ▶ Claim for **relief of VAT on Bad debts**
- ▶ Acceleration of input tax
- ▶ **Deferral** of input tax
- ▶ **Compliance** to minimize possible penalties by KRA

# Questions



*THE END!*