

TRANSPORT, SHIPPING & CLEARING AND FORWARDING -UNIQUE TAX ISSUES

PRESENTATION

ICPAK-COAST BRANCH

TRANSPORT, SHIPPING & CLEARING AND FORWARDING

Scope of Presentation

- Introduction
- Demurrage payments-WHT and VAT treatment
- Shipping tax and the incentives for the sector
- Clearing and forwarding and other service payments-WHT and VAT
- Exports and transit goods and services-VAT treatment
- VAT regulation 8 and regulation 13

Introduction

- Taxation of shipping, transport and clearing and forwarding business is not significantly different from the taxation of other business units.
- The following have however presented some unique challenges to the sector in terms of compliance;
 - i) Demurage paymentes-WHT and VAT treatment
 - ii) Shipping tax and the incentives for the sector
 - iii) Clearing and forwarding and other service payments-WHT and VAT
 - iv) Exports and transit goods-VAT treatment
 - v) VAT regulation 8 and regulation 13-for discussion

Demurrage paymentes-WHT and VAT treatment

- The Income Tax Act does not specifically mention demurrage as taxable
- However consideration should be given to the substance and not the form or description of the item in the financial statements or business practice.
- The payments for demurrage are in respect of rent or premiums for use of property and should be subjected to income tax as provided for under the law.
- Regard should be made to section 3 which requires all income accrued or derived from Kenya to be chargeable to tax

Demurrage paymentes-WHT and VAT treatment

- Is demurrage a penalty or an addition charge for the continued use of property, and therefore a supply of a service for which VAT may be applicable?
- Is demurrage part of the freight cost and therefore part of the customs value to which VAT is already charged at the port of entry?
- In substance, demurrage is neither a penalty and neither does it form part of the CIF value. It is a supply of a service to which VAT is applicable according to the law.

Shipping tax and the incentives for the sector

- Taxation of non-resident ship owner is specified under section 9 of the Income Tax Act.
- Taxation of resident ship owners on income from shipping is not different from the charge on taxes from business from ordinary business.
- Resident persons enjoy investment deduction of upto 100%. Questions have arisen as to whether this incentive has been effective

Clearing and forwarding and other service payments- WHT and VAT

- Clearing and forwarding payments and supplies are chargeable to WHT and VAT unless the same is subject to specific exemption under the two Acts.
- Re-embursements are not taxable. However re-imbursements must be demonstrated by way of documentation

Exports and transit goods-VAT treatment

- Supply of services on transit goods are zero rated
- Services are exported out of Kenya in accordance with the provisions of the ACT and are zero rated
- Reference should be made to regulation 13 to provide further guidance on what constitutes an exported service.
- Reference should be made to regulation 8 in regard to VAT refunds where a supplier makes both services taxable at general rate and also zero rated

VAT regulation 8 and regulation 13-for discussion

THE END

THANK YOU