

# Indirect taxes - VAT

## Presentation by:

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Friday, 1<sup>st</sup> February 2018

# Outline



- Introduction
- General VAT provision
- Withholding VAT
- VAT Regulations 2017
- Finance Act 2018 Updates
- VAT planning and Current issues

# Introduction



- VAT is a tax on consumption
- **Incidence** and **impact** of VAT is borne by the **final consumer** of goods and services
- Transactions entered into prior to 2 September 2013 are governed under the repealed VAT Act
- Tax point is the main point of reference
- Generally input tax qualifies for deduction against output tax
- Special consideration required for business with mixed sales
- Exempt business are not required to register/account for VAT

# Determining VAT status



- First test – Is supply listed in First Schedule?
  - If Yes: No VAT chargeable
  - If No: proceed to second test
- Is the supply listed in part A of Second Schedule?
  - If Yes: zero rate
  - If No: proceed to next test
- Check whether customer is listed in Part B of the Second schedule
  - If Yes: zero rate, subject to conditions
  - If No: Charge VAT at standard rate

# VAT Status



- Toll manufacturing charges, sale of by-products and factory wastes
- Staff give a ways and free issues
- Operation of cafeteria
- Other miscellaneous incomes
- Rental income for owned or sub-leased property
- Self supply
- Sale of assets
- Reimbursements
- Disbursement

# Credit Notes



- Relates to any form of reduction of supply
- Should reference the invoice the supply relates to
- To be raised with 6 months from invoice date to enjoy VAT credit
- If done after 6 months – lose right of deduction of VAT
- Details to be captured, same as for an invoice.

# Deduction of Input Tax



- One is allowed to claim input tax, provide:
  - In possession of a tax invoice
  - Its claimed within a period of 6 months
  - Is business related
- Input tax on passenger cars and minibuses as well as spare parts and repairs is restricted
- Restaurant, entertainment and accommodation services –restricted, unless incurred when out for business

# Apportionment of Input tax



- Sec. 17(6) of the VAT Act provides for apportionment of input VAT incase of 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:

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

- No input tax is deductible where exempt supplies are more than 90% of the total supplies
- Full deduction of shared input tax where exempt sales is less than 10%



# Apportionment of Input Tax



Scenario 1								
Sales				Input Tax				
Sales	Amount	%	Total Input Tax	Attributable to taxable	Attributable to Mixed supplies	Attributable to exempt supplies	Deductible input tax for mixed	Total Deductible input tax
Taxable 16%	2,500,000	60%	2,700,000	1,800,000	200,000		120,000	1,920,000
Zero Rated	3,500,000					700,000		
Exempt	4,000,000	40%						
Total	10,000,000		2,700,000	1,800,000	200,000	700,000	120,000	1,920,000
Scenario 2								
Sales				Input Tax				
Sales	Amount	%	Total Input Tax	Attributable to	Attributable to Mixed supplies	Attributable to exempt	Deductible input tax	Total Deductible
Taxable 16%	5,000,000	95%	2,300,000	1,800,000	200,000		-	2,000,000
Zero Rated	4,500,000					300,000		
Exempt	500,000	5%						
Total	10,000,000		2,300,000	1,800,000	200,000	300,000	-	2,000,000
Scenario 3								
Sales				Input Tax				
Sales	Amount	%	Total Input Tax	Attributable to	Attributable to Mixed supplies	Attributable to exempt	Deductible input tax	Total Deductible
Taxable 16%	500,000	9%	2,100,000	600,000	400,000		-	600,000
Zero Rated	400,000					1,100,000		
Exempt	9,500,000	91%						
Total	10,400,000		2,100,000	600,000	400,000	1,100,000	-	600,000

# Use of ETR



- Do we still require ETR/ESD?
- No longer a requirement of a Tax Invoice
- ETR Regulations dropped
- Lawyers appeal dismissed
- Are your clients/customers willing to settle invoices without ETR/ESD

# Imported Services



- **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



- Withholding VAT system was reintroduced in 2014
- Appointed agents include government ministries, parastatals or any other person appointed by the Commissioner
- VAT withheld at 6% of taxable value of supply
- VAT to be deducted on taxable supplies irrespective of whether it was charged or not
- Due for payment by 20<sup>th</sup> of the following month
- How do you deal with payments to non VAT registered suppliers?
- There are provisions for VAT exemption for business that end up in permanent VAT credit as a result of Withholding VAT

# VAT Refund



- Tax payers allowed to claim for refund of VAT in regard to:
  - Making zero-rated supplies;
  - Tax paid in error, or
  - 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

# Changes under Finance Act 2018 - Taxable



- Supply of petroleum products classified as taxable supplies at the rate of 8%.
- Taxable value of cellular services to include excise duty
- Credit or debit note shall be in a prescribed form
- Extension of time to submit a return – Application should be 15 days to the due date
- Commissioner's response to the applicant - 5 days to due date

# Changes under Finance Act 2018 - Exemption



Item	Previous status legislation	Finance Act
Garment and leather footwear manufactured in EPZ	Exempt	Taxable
Medicaments containing alkaloids	Zero rated	Taxable
Medicaments containing ephedrine, pseudoephedrine and norephedrine	Taxable	Zero rated
Wheat, barley and meslin seeds	Taxable	Exempt
Unprepared Cereal straws & husks	Taxable	Exempt
Lucerne (alfalfa) meal and pellets	Taxable	Exempt
Beet-pulp, bagasse & other waste of sugar manufacture	Taxable	Exempt
Beverage to Kenya Defence Forces canteen	Taxable	Exempt
Postal services(rental of post boxes or mailbags and postage stamps)	Taxable	Exempt
Medicaments containing ephedrine	Taxable	Exempt

# Changes under Finance Act 2018 - Exemptions



- Specialized equipment used for development and generation of solar and wind energy
- Plant and machinery of chapter 84 and 85 **used for the manufacture of goods**
- Parts imported or purchased locally for the assembly of computers
- Exemption widened to include equipment for construction of grain storage
- Goods or services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the government Postal services
- Asset transfers related to REIT and asset backed securities



# VAT Regulations - 2017



## Some issues on VAT Regulations 2017

- Tax invoice to have the words “TAX INVOICE” at a prominent place
- Requirement of a Tax invoice does not include ETR/ESD
- 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 Refund restricted to proportion of zero rated supplies
- Taxable supply made without charging VAT to be treated as VAT inclusive

# Tax Planning Ideas



- 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

# Current Issues



Some of the current issues on VAT include:

- Introduction of VAT Auto Assessment (VAA)
- Introduction of VAT on petroleum products previously on transition period
- Massive recruitment of Withholding VAT Agents
- Aggressive audits by KRA

# Interactive Session



# Excise Duty Presentation by:

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# Excise Duty - Overview



Is it a sin tax as termed before?

- It is a tax on the importation or local manufacture of specified products and supply of excisable services

Is it necessary for the government to impose Excise Duty?

- Increase Revenue
- “Sin Tax” - To compensate the Government for Health and environmental conservation costs or control consumption

# Excise Duty

## Imposition of Excise Duty



Excise duty shall be charged on:

- Excisable goods manufactured in Kenya by a licensed manufacturer
- Excisable services supplied in Kenya by a licensed person
- Imported excisable goods into Kenya

Excise duty is payable by

- The licensed manufacturer
- Licensed person making the supply, or
- The importer of excisable goods.

# Excise Duty

## Excise Valuation-Goods



### 1. Imported goods

The value of imported goods for purposes of levying excise duty (using advalorem rates) shall be the sum of;

- Customs value + import duty

### 2. Locally manufactured goods

The value of locally manufactured goods is the ex factory price



# Excise Duty

## Excise Valuation-Services



The excisable value of excisable services shall be:

- the fee, commission or charge payable for the service (in an arm's length transaction), or
- In any other case, the open market value of the services

The excisable value for excisable services shall not include VAT

- The excisable value for other fees charged by financial institutions shall not include interest, return on loan or an insurance premium, premium based or related commissions

# Excise Duty Licensee Obligations



## 1. Registration/ Licensing

- Certificate of Registration – For service providers or
- Licence – For goods' manufacturers

## 2. Display of the Licence in a conspicuous place

## 3. Notify the Commissioner in case of any material changes in the business

## 4. File the excise duty return by the 20<sup>TH</sup> of the following month

# Excise Duty

## Noteworthy items Adjustment for inflation



Description of Excisable items excluding petroleum products	Old Rate of Excise Duty(KShs)	New Rate of Excise Duty(KShs)
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Kshs 10 per litre	Kshs 10.50 per litre
Bottled or similarly packaged waters and other non-alcoholic beverages not including fruit or vegetable juice.	Kshs 5 per litre	Kshs 5.20 Per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	Kshs 100 per litre	Kshs105.20 Per litre
Powdered beer	Kshs 100 per kg	Kshs 105.20 per Kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Kshs 150 per litre	Kshs 157.80 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Kshs 200 per litre	Kshs 210.40 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Kshs 10,000 per kg	Kshs 10,520 per Kg
Electronic cigarettes	Kshs 3,000 per unit	Kshs 3,156.00per unit
Cartridge for use in electronic cigarettes	Kshs 2,000 per unit	Kshs 2,104.00 per unit
Cigarette with filters (Hinge lid and soft cap)	Kshs 2,500 per mille	Kshs 2,630.00 Per mille
Cigarettes without filters (plain cigarettes)	Kshs 1,800 per mille	Kshs 1,893.00 Per mille
Other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences	Kshs 7,000 per kg	Kshs 7,364.00 Per Kg
Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	Kshs 10,000 per unit	Kshs 10,520 per unit

# Excise Duty

## Noteworthy items



### Exempt Excisable goods

- Stores– for use by ship and aircraft on international voyage
- Excisable supplies to specified privileged persons/ organizations
- One motor vehicle for use by persons with disability (limit 4 yrs.)
- Excisable goods imported by person changing residence or a returning resident subject to limitations
- Excisable for direct and exclusive use in Official Aid- Funded Project, Goods purchased locally or imported by Kenya red cross or St. John Ambulance for official use in the provision of relief services in Kenya.
- Excisable goods imported or purchased locally for direct use in the manufacture of sanitary towels
- All goods for the official use by the KDF and the NPS
- Drinks supplied to DEFCO

# Excise Duty

## Noteworthy items



### Excise Stamps

- Excisable goods (except motor vehicles) manufactured or imported shall be affixed with an excise stamp
- An application for the excise stamps shall be submitted to the Commissioner at least 60 days before manufacture and importation of the excisable goods.
- Excise stamps shall be affixed at the production facility immediately after packaging and for the imported goods within 5 days of the clearance for home use.
- The Commissioner may allow affixing of excise stamps at the production facility of the exporting country.

# Excise Duty

## Noteworthy items



### **Goods Exempt from Excise Stamps**

- Excisable goods manufactured for export, KDF, National Police Service or delivered to a duty free shops
- Excisable goods imported into Kenya as samples which shall have been exempted from import duty
- Excisable goods imported or purchased from a duty free shop by privileged persons/ institutions as listed in the 2nd schedule of Excise Duty Act,2015. e.g diplomatic and consular missions
- Different categories of Excisable goods have different excise stamps which are priced differently.

# Excise Duty Easing the Burden



## Refunds

- Excise duty refunds may arise where;
- The goods have been damaged or stolen during transportation to Kenya
- Goods have been damaged or destroyed while subject to excise control
- Goods have been returned to the seller
- The excise duty has been paid in respect of spirits that have subsequently been used by a licensed manufacturer to manufacture unexcisable goods.
- The imported goods on which excise duty has been paid on, have subsequently been exported. (Duty Draw back --sec 138 of EACCMA)

# Excise Duty Easing the Burden



## Excise Duty Remission

- The Cabinet Secretary may on application by a manufacturer, grant remission of excise duty at 80 per centum with respect to beer made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya subject to some conditions.

## Relief for Raw materials

- Where excise duty has been paid on imported or manufactured goods, and which have been used as raw materials to manufacture other excisable goods, the excise duty is offset against the excise duty payable on the finished goods



# Excise Duty Easing the Burden



## Planning Opportunities

- Speedy collection of debts in view of the tax point
- Utilisation of Refund, remission and exemption provisions
- Claim of Excise duty paid on excisable goods- raw materials
- Timely application of advance ruling on unclear Excise Duty treatment
- Compliance to minimize possible penalties by KRA
- Lobbying for favourable rates or exemption

# Excise Duty 2018 Developments



## **Finance Act, 2018**

- Verification of exports and goods consumed by exempt persons
- Annual inflation adjustment
- Commissioner's absolute power to suspend licences & possess manufacturing plant
- Increased duty rates on illuminating kerosene, motor vehicles & excisable services
- Expansion of First & second schedule
- Stricter penalties

Thank you

