



TAX SEMINAR-NORTH RIFT BRANCH

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VAT Revisited

Agenda



- Introduction
- Updates on the VAT Act 2013 & Regulations
- VAT status of petroleum products
- Unmasking reverse VAT
- VAT compliance & planning

Relevant laws



VAT ACT 2013.

- Mechanics and principles of VAT
- VAT Regulations of 2017.

Tax Procedures Act, 2015

- Administrative procedures of other revenue acts and VAT

Other Related Acts

- EACCMA and Excise Act 2015.

International Principles

- OECD VAT/GST Guidelines

VAT Imposition



- First Introduced in Jan. 1990 , replacing sales tax due to the inherent shortcomings of the former.
- VAT Act 2013 came into operation from 2nd September 2013 (repealed Cap 476)
- Charged under Sec. 5 of the Act.
- VAT is levied on **consumption** of Goods & Services within Kenya.
- VAT is Charged by Registered Taxpayers Only.

What is Vatable



A supply (defined) will be subject to VAT if;

1. It's a supply or importation of goods and services,
2. Takes place in Kenya,
3. Is a taxable supply,
4. Made by a taxable person,
5. Is made in the course of or in furtherance of business carried on by that person.

Supply defined



supply of goods means –

- (a) a sale, exchange, or other transfer of the right to dispose of the goods as owner; or
- (b) the provision of electrical or thermal energy.

supply of services means anything done that is not a supply of goods or money, including –

- (a) the performance of services for another person;
- (b) the grant, assignment, or surrender of any right;
- (c) the making available of any facility or advantage; or
- (d) the toleration of any situation or the refraining

VAT Registration



If a person has supplied or expects to supply taxable goods whose value is Kshs. 5,000,000 and above within 12 months; one needs to register within 30 days from the date on which he becomes a taxable person.

Registration is done online.

Tax Point



Tax Point; This is the time at which one recognizes or charges VAT. It is the earlier of;

- a) Issuing of invoice
- b) Delivery or performance
- c) Receipt of part or full payment on account of the supply.

Times of supply.*Action 5*



1. Metered Supply- water, dispensers, electricity(tokens) etc
2. The sale of airtime (mpesa, scratch cards, tokens etc)
3. Developer of property for sale.
4. Online sales/business platforms
5. Shopping using points (supermarkets,hotels, airlines, bonga points etc)

Classification of Supplies



Supplies are classified into two major categories;

Taxable : Are of 2 rates; 0% or zero rated and Taxable at 16%.

Exempt. These supplies do not attract VAT.

Concern: Why do persons often declare only the taxable @ 16%, ignoring the other 2 (zero and exempt ? **What dangers do this present?**



Zero rated supplies- 2nd Schedule



- Exportation of goods and taxable services;
- Services provided with respect to goods in transit
- Transfer of a business as a going concern
- Ship stores, supplies to EPZs and SEZs,
- Privileged bodies
- Supply of water by national or county governments or other approved bodies,
- Maize flour, wheat flour etc.

Exempt Supplies- 1st Schedule



- Medical, Vet, dental and nursing services and some products,
- **Agricultural services, animal husbandry and horticultural services and unprocessed agricultural produce.**
- Educational, medical, burial and social welfare by government.
- Transportation of passengers except where the means is (hired, chartered and international air transport)
- Solar products, betting, gaming and lotteries, some financial and insurance services.
- Sale ,hire, transfer, lease of land and residential premises... This is under a big debate.

VAT Regulations, 2017



Gazetted on 30th March 2017, effective 3rd April 2017.

- Where no separation of an invoice is done for VAT, the grossing up method will apply to extract the VAT amount.
- A person can use either the supplies as others or they can be stock of inventory. This is after purchase or on importation. When one consumes these supplies, they are not taxable unless input tax was claimed. The values attached on taxation is the higher of acquisition cost or open market value on use outside the business and for trading stocks, acquisition cost or taxable value of importation.

VAT Regulations, 2017



1. Exports are defined as; For goods, they must be delivered outside Kenya according to EACCMA and for services, for consumption out of Kenya even if paid for by a person outside Kenya.
2. For supply to unregistered persons, The invoices should state prominently if the product is taxable or not and if the price is VAT inclusive.

Reg. Continued



- One will only be eligible for a refund of tax on account of zero rate goods. Where one does mixed supplies, the refund amount will be apportioned appropriately.
- Provides for what is to be contained in tax invoice and a simplified tax invoice provided electronically. Key details include; Name and pin of supplier and recipient, addresses of the two, invoice numbers, dates, serial numbers, description of supplies etc.
- The regulations highlight the details to be contained in a debit/credit note. Key is description of circumstances leading to the credit/debit note and the corrected invoice and tax relating to the differences.

Petroleum products and VAT



- VAT on these products became effective on all petroleum products on 1st September 2018, at a rate of 16% of transaction value including on the sale of existing petroleum stocks then.
- The charge had been deferred for three (3) years up to September 2016, with a further two (2) year extension being granted under Finance Act, 2016.
- Parties involved in the petroleum supply chain activities are required to take note of the new requirements:
 - Oil Importers
 - Depot Operators
 - Distributors/Oil Marketers
 - Retailers including Service Stations

Petroleum products Contd'



- Petroleum oils;
- Motor spirit – regular and premium;
- Aviation spirit and spirit type jet fuel;
- Special boiling point spirit and white spirit;
- Light spirits and preparations;
- Partly refined crude;
- Kerosene – jet fuel and illuminating kerosene;
- Medium petroleum oils and preparations;
- Gas oil – automotive, light, amber – for high speed engines; and
- All natural gas in a gaseous state.

Issues on Petroleum products and VAT



- The supply of LPG remained zero rated and as such unaffected by the lapse of the exemption.
- VAA and issuance of ETR to retailers.
- Withholding tax at 6%(former) vs the VAT rate at 8% has caused massive credits.
- The computation of Vatable value excludes excise duty, fees and other statutory charges after taking account of the mark-up.
- Taxes and levies on petroleum products include; Excise Duty, Road Maintenance Levy, Petroleum Development Levy, Petroleum Regulatory Levy, Railway Development Levy, Merchant Shipping Levy, Import Declaration Fee. Kerosene attracts all these plus an Anti-adulteration levy.

Reverse VAT



- ✓ Reverse charge VAT is Value Added Tax on imported services

Its Accounted as follows:

- ✓ Fully taxable persons : Full credit of input tax payable and therefore no need to account for it.
- ✓ Mixed supplies persons :Registered persons will get credit for part of input tax that relates to taxable supplies and pay the portion that is non-claimable.
- ✓ Tax exempt persons : Account for and pay reverse charge VAT.

VAT Compliance planning



Collection and enforcement are under the TPA Act, 2015.

- Payment and filing of returns is not later than 20th of the next month. All this is done on **itax** platform.
- One is required to maintain ETR and other records for 5 years
- Interest on unpaid amount is 1% per month with a penalty of 5% per month.

Proper Compliance



This will involve a mix of the following;

1. Proper classification of supplies.
2. Proper declaration of sales and income
3. Proper declaration of input tax which relates to business and is not prohibited.
4. Proper rates of tax applied, 16%, 8%, 0%.
5. Correct arithmetical confirmations
6. Timely returns
7. Pay the correct amount.
8. Claim refund for correct VAT due.
9. A taxpayer may apply for a private ruling to the Commissioner on specific transactions and their tax implications.
10. A taxpayer can amend a VAT return dating back 5 years upon application to the Commissioner .

End month procedures



If possible, have a checklist of to-do-list before filing a VAT return.

The checklist can have items such as;

- Has the law changed on classification of both output and input items?
- Does my banking reconcile to sales/income
- Do I have proper invoices for all input and output items
- Do the trial balances/final accounts or sales ledger reconcile to VAT supplies declared... annual comparison would be paramount.
- How authentic are my input invoices- reputation of the supplier is key and if possible, confirm if they too have declared the sales.
- Are my input tax claims within the 6 months window?
- Are any sales/purchases from related parties at arm's length?
- Are the invoices serialized?
- Are withholding tax certificates obtained for such supplies? Have we claimed them?
- Are correct rates applied?

End month procedures



- Can I file shortly before due date due to clogging of the itax system?
- Is the e-slip generated?
- Are there staff dedicated and responsible for each aspect of the return or the whole return?
- Are there imported services?
- Are there bad debts? Do they merit claim under the VAT Act?
- Is there a refund claim? Is it within the stipulated time?
- Are refund applications properly supported?
- Has the paid amount match the e-slip and the return figures?