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### Value Added Tax in Kenya

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Dear Client,

This updated edition of our publication Value Added Tax in Kenya incorporates changes in legislation introduced by Finance Bill 2008 and other subsidiary legislation. It also includes references to changes in the practice of the Value Added Tax Department where they are significant. Some changes may arise when Finance Act 2008 is published.

These notes are designed to familiarise clients with Kenya Value Added Tax law. They constitute only a brief guide and are not a comprehensive summary of Kenya Value Added Tax Law and Practice. While all reasonable care has been taken in the preparation of this guide, Deloitte and its associates accept no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however caused, or sustained by any person that relies on it.

NAIROBI

12 June 2008

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## 1.0.0 The Kenya Value Added Tax Act

The Kenya Value Added Tax Act (Cap 476) was enacted in 1989, and its date of commencement was 1 January 1990. Value Added Tax replaced Sales Tax.

These notes incorporate the amendments to the Act enacted up to and including the provisions of the Finance Bill 2008. A complete and up to date VAT Act is available for sale at our offices.

## 2.0.0 Basis of Charge to Tax

- 2.0.1 Value added tax is charged on the supply of taxable goods or services made or provided in Kenya by a taxable person in the course of or in furtherance of any business carried on by that person and on the importation of goods and services into Kenya.

**S.5**

**S.6**

- 2.0.2 A taxable person is one who makes or intends to make taxable supplies while he is registered or required to be registered under the VAT Act.

**S.6 (3)**

- 2.0.3 The liability to VAT vests with the person making the taxable supply of goods or services. However, the liability to VAT in respect of imported taxable services vests with the recipient of the service.

**S.6 (4)**

**S.6 (6)**

- 2.0.4 In the case of imported services, where the supplier of the services is normally resident outside Kenya, the Commissioner may appoint a resident person to collect the tax payable on the service and remit it to the Department.

**S.6(7)**

- 2.0.5 VAT on the importation of goods into Kenya is payable at the point of customs entry by the importer.

**S.6 (5)**

- 2.0.6 The rates of tax applicable are specified in the First Schedule of the Act. Exempt goods and services are listed in the Second and Third Schedules respectively, while zero-rated goods are listed in Part B of the Fifth Schedule. Special goods, privileged persons and institutions which enjoy a zero-rate status are listed in the Eighth Schedule.

- 2.0.7 Any goods which are not exempt or zero rated are deemed to be taxable at the standard rate of 16%.

**S.6 (2)**

**First Schedule**  
**Second Schedule**  
**Third Schedule**  
**Fifth Schedule**  
**Eighth Schedule**

- 2.0.8 All services that are not listed in the Third Schedule or Fifth Schedule, are taxable at the standard rate of 16%.

**Third Schedule  
Fifth Schedule**

- 2.0.9 Services shall be deemed to have been supplied in Kenya where
- (i) the supplier has established his business or has a fixed physical establishment in Kenya; or
  - (ii) the services are physically performed in Kenya; or
  - (iii) if in connection with immovable property, the place where the property is situated is in Kenya; or
  - (iv) if the service is in connection with receiving a signal or a telephone, television, radio or other communication service, the person receiving the signal/service is in Kenya.

**VAT Regulations, Para. 20(1)**

- 2.0.10 Where transportation ends outside the country, the transport services shall be deemed to have been supplied outside Kenya.

**VAT Regulations, Para. 20(2)**

## 3.0.0 Registration and De-registration

### 3.1.0 Registration

- 3.1.1 Registration, de-registration and changes affecting registration are dealt with in the Sixth Schedule to the VAT Act.

**S. 27**

- 3.1.2 Compulsory registration applies to any person who in the course of his business has supplied taxable goods or taxable services or expects to supply taxable goods or taxable services, or both, the value of which is Ksh. 5,000,000 or more in a period of twelve months; or

**Para 1, Sixth Schedule**

- 3.1.3 Any person who meets the above conditions is a taxable person and should, within thirty days of becoming a taxable person, apply for registration.

**Para 1, Sixth Schedule**

- 3.1.4 Voluntary registration is permissible under the law but is granted at the discretion of the Commissioner.

**Para 3, Sixth Schedule**

- 3.1.5 The Act defines what manufacturer means but for purposes of the Sixth Schedule, it is deemed to include a related person where:

- taxable goods are manufactured in Kenya and in any three months, more than thirty per cent of the value of the goods are supplied by the manufacturer to the related person; or
- taxable goods are manufactured in Kenya and in any three months, more than thirty per cent of the value of the goods are supplied by the manufacturer to one or more persons who then supply them to the related person.

**Para 2, Sixth Schedule**

- 3.1.6 A person is deemed to be related to another person if:

- either person participates directly or indirectly in the management, control or capital of the business of the other; or
- a third person participates directly or indirectly, in the management, control or capital of the business of both; or
- an individual, who participates in the management, control, or capital of the business of one, is associated by marriage, consanguinity, or affinity to an individual who participates in the management, control, or capital of the business of the other.

**Para 2, Sixth Schedule**



- 3.1.7 Where a person is related to another and owns or controls more than one business entity, the value of taxable supplies for purposes of registration is the aggregate value of the taxable supplies of all the business entities.

**Para 2, Sixth Schedule**

- 3.1.8 Where a person qualifies for registration, a registration certificate shall be issued within ten working days after receipt by the Commissioner of the application.

**Para 5, Sixth Schedule**

- 3.1.9 Where an application for registration is made within 30 days of becoming a taxable person, the effective date for registration is deemed to be the 30th day from the date the person became a taxable person. However, the Commissioner has the discretion to vary the effective date, and in practice, the date of receipt of the certificate applies.

**Para 8 & 9, Sixth Schedule**

- 3.1.10 Every registered person is required to display the registration certificate in a clearly visible place in his business premises. Where a person has more than one place of business, certified copies (by the Commissioner) must be displayed in each of those places.

**Para 10(1), Sixth Schedule**

- 3.1.11 A group of companies that is owned or substantially controlled by another person may apply to be registered and treated as one person, subject to the discretion of the Commissioner.

**Para 13 & 14, Sixth Schedule**

- 3.1.12 The Commissioner may de-register a group of companies upon giving a notice of thirty days to each company in the group if he is satisfied the group registration has caused or is causing undue risk to revenue, or one of the companies ceases to make taxable supplies, or the person in whose name the group is registered ceases to have a substantial control of the group.

**Para 14, Sixth Schedule**

- 3.1.13 Upon de-registration, each group company will be registered separately and become individually responsible for the tax due and payable.

**Para 14, Sixth Schedule**

- 3.1.14 Upon registration, a person who has in stock goods on which tax has been paid, or has constructed a building or civil works or purchased assets within one year before registration, he may, within thirty days or such longer period as allowed by the commissioner, claim the input tax charged thereof. Such a person must have submitted the application for registration within the prescribed time limit.

**S. 12 (1) & (2)**

### **3.2.0 De-registration**

- 3.2.1 If the value of taxable turnover does not exceed five million shillings in any period of twelve months, a registered person may apply for de-registration and will be subject to turnover tax under the Income Tax Act, upon notifying the Commissioner.

**Para 16, Sixth Schedule**

- 3.2.2 A person applying for de-registration should notify the Commissioner of the value of his supplies in the relevant periods and the description and value of taxable materials and other goods in stock.

**Para 16, Sixth Schedule**

- 3.2.3 If the Commissioner is satisfied that the trader should be de-registered, he will do so from the date when that person pays the tax due in respect of goods and materials on which tax has not been paid or input tax has been claimed.

**Para 18, Sixth Schedule**

- 3.2.4 Where a person ceases to make taxable supplies, he must notify the Commissioner immediately, of the date of cessation and submit a return showing details of taxable assets, materials and other goods in stock and their value and pay any tax due on such assets and goods within thirty days from the date he ceased to make taxable supplies.

**Para 15, Sixth Schedule**

- 3.2.5 A registered person who disposes of a registered business as a going concern to another registered person may make the transfer without accounting for VAT. Both persons must provide the Commissioner with details of the transaction, arrangements made to pay any outstanding tax and the description, quantities and value of assets and stock of taxable goods on hand at the date of disposal. They should also provide details of the arrangements made for transferring the responsibility for keeping

the records and producing books of the business for the period before disposal. Where the Commissioner has any objection, he will notify the taxpayers within 14 days.

**Para 21, Sixth Schedule**

### **3.3.0 Changes Affecting Registration**

3.3.1 A registered person is required to notify details to the Commissioner within fourteen days of the following changes:

- change of address of the place of business; or
- additional premises are, or will be used for the purpose of the business; or
- premises used for the business cease to be so used; or
- business or trading name is changed; or
- an interest of more than thirty percent of the share capital of a limited company has been acquired by a person or group of persons; or
- the person authorised to sign returns is changed;
- the partners in a partnership are changed;
- a change occurs in the trade classification of the goods or services supplied.

**Para 19, Sixth Schedule**

## 4.0.0 Record Keeping

4.0.1 Paragraph 7 of the VAT Regulations and the Seventh Schedule to the Act prescribe the records to be kept, which include:

- copies of all invoices issued in serial number order;
- a VAT account showing totals of the output tax and input tax in each period and the tax payable or refundable;
- copies of all credit and debit notes issued, in chronological order;
- purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, credit and debit notes received, all to be filed chronologically;
- details of the amounts of tax charged on each supply made or received;
- totals of the output and the input tax in each period and a net of the tax payable or the excess input tax at the end of each period;
- details of goods manufactured and delivered from the factory;
- details of each supply of goods and services from the business premises;
- copies of stock records kept in a chronological order.

**Regulations, Para 7(1)**

4.0.2 All records must be kept in the Kiswahili or English language and for a period of five years from the date when the last entry was posted.

**Regulations, Para 7(6)**

4.0.3 The Commissioner is empowered to issue a notice requiring a taxable person to keep such records or take such action as the Commissioner may specify.

**Regulations, Para 7(3)**

4.0.4 The Commissioner is empowered to allow a taxpayer to file returns and receive other information electronically.

**S. 28A**

4.0.5 The Commissioner is empowered to require any person to use an electronic tax register for purposes of accessing information that may affect the tax liability of that person.

**Para 6(5), Seventh Schedule**

### 4.1.0 Tax Invoices

4.1.1 Every registered person who makes a taxable supply on credit must issue a tax invoice at the time of supply or within fourteen days of the completion of that supply. In the case of a cash sale, a tax invoice must be issued immediately upon payment for the supply. A simplified tax invoice may be issued in respect of cash sales from retail outlets.

**Para 1, Seventh Schedule**

- 4.1.2 No tax invoice should be issued on any supply which is not a taxable supply or if the supplier is not registered. If an invoice is issued in contravention of this requirement, the tax collected shall be payable to the Commissioner within seven days of the date of the invoice.

**Para 4(1) & (2), Seventh Schedule**

- 4.1.3 A tax invoice must be generated from a register or attached to a register receipt. The details required on a tax invoice are:
- the name, address, PIN, and VAT registration number of the supplier;
  - the serial number of the invoice;
  - the date of the invoice;
  - the date of supply, if different from the date of the invoice;
  - the name, address, PIN and VAT registration number of the person to whom the supply was made;
  - the taxable value of the supply, if different from the price charged;
  - the rate and amount of tax charged on each of the supply;
  - details of whether the supply is a cash or credit sale, and details of cash or other discount, if any;
  - the total value of the supply and the total amount of VAT charged;
  - a logo unique to his business;
  - the unique identification number of the electronic tax register, printer or special secure fiscal device for record signing.

**Regulations, Para 4(2)**

- 4.1.4 A simplified tax invoice requires the following details:
- the name, address, PIN and VAT registration number of the supplier;
  - the serial number of the invoice;
  - the date and time of issue of invoice;
  - the tax amount payable.
  - description of supply, quantity, unit price, tax rate, and value of recorded sale;
  - the total amount charged to the customer, inclusive of VAT;
  - the explicit statement that the price includes VAT.

**Regulations, Para 5(1)**

## **4.2.0 Credit Notes**

- 4.2.1 A credit note may be issued where goods are returned or for good and valid business reasons, a supplier decides to reduce the value of a supply after a tax invoice has been issued. The amount to be shown on the credit note is the amount of the reduction.

**Regulations, Para 6(1)**

- 4.2.2 A credit note must be issued within twelve months after the issue of the relevant tax invoice.

**Regulations, Para 6(1)**

- 4.2.3 A credit note must show the following details:

- the serial number;
- the name, address, VAT registration number and PIN of the person to whom it is issued;
- sufficient details to identify the tax invoice on which the supply was made and the tax that was originally charged.

**Regulations, Para 6(2)**

- 4.2.4 Where a credit note has been issued, the relevant adjustments are made in the month in which the credit note was issued.

**Regulations, Para 6(3)**

- 4.2.5 The recipient of a credit note shall reduce the input tax for the month in which the credit note is received.

**Regulations, Para 6(4)**

### **4.3.0 Debit Notes**

- 4.3.1 Where a tax invoice has been issued and subsequently, the supplier wishes to make a further charge in respect of that supply, he may either issue a debit note or a further tax invoice.

**Regulations, Para 6(5)**

- 4.3.2 A debit note is required to show all the details required of a tax invoice as listed in 4.1.3 above. In addition, it should show details of the tax invoice issued at the time of the original supply.

**Regulations, Para 6(5)**

- 4.3.3 The recipient of a debit note may claim credit for the further tax charged, if eligible, in the month in which the further charge was made, or in the next month.

**Regulations, Para 6(6)**

## 5.0.0 Output Tax

5.0.1 Output tax means tax that is due on taxable supplies.

**S. 10**

5.0.2 Value added tax is charged:

- on the supply of goods or services and on the importation of goods or services into Kenya; and
- the supply is a taxable supply; and
- the supply is made by a taxable person; and
- the supply is made or provided in Kenya; and
- the supply is made or provided in the course of the furtherance of a business carried on by the taxable person.

**S. 5**

**S. 6 (1)**

5.0.3 The expression "supply" includes:

- the sale, supply or delivery of taxable goods to another person;
- the sale or provision of taxable services to another person;
- the appropriation of taxable goods or services by a registered person for his own use outside the business;
- the making of a gift of any taxable goods or taxable services;
- the letting of taxable goods on hire, leasing or other transfers;
- the provision of taxable services by a contractor to himself in constructing a building and related civil engineering works for his own use, sale or renting to other persons;
- the appropriation of taxable goods by a registered person for use in the business where, if supplied by another person, the tax charged on the supply would have been excluded from the deduction of input tax;
- any other disposal of taxable goods or provision of taxable services.

**S. 2**

5.0.4 Where a person applies for de-registration, then upon de-registration, all the goods in stock and fixed assets for which he had claimed input tax will be deemed to have been supplied. Consequently, that person will be required to account for tax in respect of such goods before de-registration is effected.

**Para 18, Sixth Schedule**

5.0.5 Where a person ceases to make taxable supplies, the taxable assets, goods in stock and other materials shall be deemed to have been supplied and the tax due must be paid within thirty days of ceasing to make taxable supplies. Such person is required to notify the Commissioner about the cessation immediately.

**Para 15, Sixth Schedule**

- 5.0.6 Samples of taxable goods may not be liable to tax if they:
- are distributed free for the furtherance of business; and
  - have a value of less than two hundred shillings for each sample; and
  - are freely available; and
  - are distributed to at least thirty persons in any one calendar month.

**Regulations, Para 8**

### **5.1.0 Time of Supply**

- 5.1.1 Tax becomes due and payable at the time when:
- goods are supplied or services have been rendered; or
  - an invoice is issued in respect of the supply; or
  - payment is received for all or part of the supply; or
  - certificate is issued by an architect, surveyor or any person acting in a supervisory capacity in respect of the service, whichever time shall be the earliest.

**S. 13(1)**

- 5.1.2 The time of supply in respect of imported services is the earlier of:
- the time when the services are rendered; or
  - when payment for the service is made; or
  - when an invoice is received in respect of the service.

**S. 13(1A)**

- 5.1.3 For supplies made on a continuous basis or by metered supply, tax becomes chargeable at the time of each determination or meter reading.

**S. 13(2)**

- 5.1.4 The tax due is payable not later than the twentieth day of the following month, or the last working day where the twentieth day falls on a public holiday or a weekend.

**S. 13(3)**

- 5.1.5 The Commissioner has discretionary powers to require a taxable person to account for tax when collected from the customer, rather than as indicated above.

**S. 13(4)**



## 5.2.0 Value of supply

5.2.1 The charge for VAT is determined by the value attributable to the supply of goods or services.

5.2.2 The general rule for determining the value of a supply is as follows:

- Where a supplier and a buyer are independent of each other and dealing at arms length, the value for tax is the price for which the supply is provided.

**S.9(1)(a)**

- Where the supplier and the buyer are not independent of each other, the taxable value of the supply is the price at which the supply would have been provided in the ordinary course of business by a supplier who is independent of the buyer.

**S. 9(1)(b)**

- If in the above case the price cannot be determined, the Commissioner is empowered to fix the price at the open market selling price.

**S. 9(1)(b)**

**Regulations, Para 16**

5.2.3 In determining the price of any goods for purposes of ascertaining the value for tax, the charges for the following items must be included:

- wrapper, package, box, bottle or other container in which the goods are contained; and
- any other goods contained in or attached to such wrapper, package, box, bottle or other container; and
- any liability the purchaser has to pay to the vendor by reason of the supply in addition to the selling price, including excise duty, if any, and any amount charged for advertising, financing, servicing, warranty, commission, transportation, etc.

**S. 9(2)**

5.2.4 Where taxable goods are sold in returnable containers and the containers were purchased or imported tax paid then no tax will be chargeable in respect of the containers.

**Regulations, Para 18 (a)**

- 5.2.5 Where tax has been charged in respect of returnable containers, which are then returned to the supplier, the supplier will be entitled to take credit for the tax in his next succeeding return.

**Regulations, Para 18 (b)**

- 5.2.6 For taxable goods imported into Kenya, the taxable value is the value for duty (whether duty is payable or not) plus the duty (whether or not a remission of the duty has been issued).

**S. 9(1)(c)**

- 5.2.7 The taxable value in respect of imported services is the price charged for the supply.

**S. 9(1)(d)**

- 5.2.8 A taxable person who is a retailer and mainly supplies taxable goods or services to unregistered persons is required to quote or label a price that is inclusive of VAT.

**Regulations, Para 19 (a)**

- 5.2.9 Where prices are quoted inclusive of VAT, the amount of tax is determined by applying to the price the tax fraction,  $t/(1+t)$ , where  $t$  is the rate of tax applicable.

**Regulations, Para 19 (b)**

- 5.2.10 The value of taxable services must include any incidental costs incurred by the supplier of the service in the course of making his supply, excluding any disbursements which the supplier has made to a third party as an agent of his client.

**S. 9(3)**

- 5.2.11 The taxable value of hotel accommodation and restaurant services shall exclude any Catering Levy and service charge made in lieu of tips or gratuities, provided:

- the proceeds of the service charge are distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employees; and
- the service charge does not exceed ten percent of the value of the service, excluding such service charge.

**S. 9(4)**

- 5.2.12 The taxable value of mobile cellular phone services shall be the value determined for excise duty under the Customs Act.

**S. 9(6A)**

- 5.2.13 Where goods are purchased under hire purchase terms in accordance with the provisions of the Hire Purchase Act, the consideration for the supply will represent the cash price and the additional interest or finance charge will be disregarded in determining the value of the goods.

**S. 9(8)**

- 5.2.14 Where interest is charged for late payment of the price of a taxable supply, it shall be disregarded in determining the value of goods.

**S. 9(9)**

- 5.2.15 There is no special provision in the Act for determining the value of second hand goods. Usually the general rule stated in 5.2.2 above will be applied where tax is chargeable.

### **5.3.0 Rates of Tax**

- 5.3.1 With effect from 16 June 2006, two rates are applicable: 0% and 16%.

- 5.3.2 All services, except those listed in the Third Schedule and Fifth Schedule, are taxable at 16%.

**Third Schedule**

- 5.3.3 Zero-rated goods are listed on Part B of the Fifth Schedule. Other zero-rated supplies are listed in Part A of the Fifth Schedule and the Eighth Schedule.

**Fifth Schedule  
Eighth Schedule**

- 5.3.4 Please refer to the appendix on page 37 for the steps to be followed in determining the tax status of a supply.

## 6.0.0 Input Tax

- 6.0.1 Input tax is defined as tax paid by a registered person on the purchase or importation of any goods or services to be used by him for the purposes of his business.

**S. 10**

### 6.1.0 Credit for Input Tax

- 6.1.1 At the end of each tax period, a registered person is required to submit a return in which he deducts the input tax and/or tax withheld by a tax withholding agent for the period from the output tax. Where output tax exceeds the input tax, the difference is paid to the Commissioner. Where the input tax exceeds the output tax, the difference is either deducted in the following tax period or claimed as a refund from the Commissioner. Refunds are granted only to taxpayers who make zero-rated supplies or who have had their output tax withheld.

**S. 11**

- 6.1.2 The tax that may qualify as input tax is governed by the nature of supplies made by a taxable person. Where all supplies of goods and services made by a taxable person are taxable, the whole of the tax suffered may be treated as input tax and offset against the output tax. However, where only a proportion of the supplies is taxable, the registered person can only deduct input tax attributable to the taxable supplies.

**S. 11(3)(a)**

- 6.1.3 The VAT Order, 2002 specifies items for which tax paid may not be deducted, except where such goods are stock in trade. The items covered in the Order include:

- fuels and oils to be used in vehicles, ships and other vessels;
- passenger vehicles and minibuses, except where such vehicles are to be used for leasing or hiring services or are specifically designed or modified for use in the supply of taxable goods or services;
- bodies, parts and services for the repair of passenger vehicles and minibuses except where they are used in the supply of repair and maintenance services or other taxable goods or services;
- the leasing or hiring of passenger vehicles and minibuses;
- furniture, fittings and ornaments, except where such items are permanently attached to buildings, or for use in hotels and restaurants (subject to the approval of the Commissioner);

- household or domestic electrical appliances other than those approved by the Commissioner for use in the manufacture of other taxable goods or supply of taxable services;
- entertainment services;
- restaurant services;
- accommodation services;
- taxable supplies for use in staff housing and similar establishments for the welfare of staff.

### **VAT (No. 1) Order 2002**

- 6.1.4 Where a registered person acquires any goods specified in 6.1.3 as stock in trade, he is allowed to presume that the price charged is inclusive of VAT. He may therefore deduct the attributable VAT in his monthly return.

### **Sec. 11B**

- 6.1.5 Where a taxable person makes both taxable and exempt supplies, then only part of the tax attributable to taxable supplies qualifies as input tax. Taxable supplies include zero-rated supplies. However, the Commissioner is empowered to determine that tax relating to both taxable and exempt supplies shall be deductible if the tax attributable to the exempt supplies does not exceed a specified proportion of the whole tax. The specified proportion is currently set at five per cent.

### **S. 11(3)**

### **Regulations Para 17**

- 6.1.6 Where VAT in respect of exempt supplies exceeds the above limit, then the registered person is required to apportion the VAT by securing a fair and reasonable attribution of tax to taxable supplies, upon receipt of the Commissioner's approval of the attribution method.

### **S.11(4)**

- 6.1.7 The following methods can be used to apportion tax without obtaining the approval of the Commissioner:
- $$\frac{\text{value of taxable supplies}}{\text{value of total supplies}} \times \text{Input tax} = \text{Deductible input tax}$$
  - deduction of input tax attributable to taxable goods purchased and sold in the same state and not deducting any input tax directly attributable to exempt supplies. The remainder of the input tax is apportioned using the above formula.

### **Regulations, Para.17**

- 6.1.8 All claims for input tax must be supported with a valid tax invoice. Input tax in respect of imported goods must be supported by an import entry together with a receipt for the payment of duty. For assets acquired under a hire purchase or lease financing agreement, the claim for VAT must be supported by a letter of undertaking from the financier that VAT will be accounted for in the event that the asset is repossessed and sold, or a clearance certificate indicating that the purchaser has met all conditions under the financing agreement. Withholding VAT shall not be deducted unless a registered person is in possession of a withholding tax certificate.

**S.11(1A)**

- 6.1.9 Where a registered person deducts input tax in respect of business premises used in making taxable supplies and subsequently he sells or disposes of the building or converts it for use in production of exempt supplies, he shall be required to refund such input tax during such sale, disposal or conversion.

**S.11(1B)**

- 6.1.10 No input tax or tax withheld is deductible after the expiry of twelve months from the date of supply as determined in 5.1.1 above, except in the case of a motor vehicle or other asset purchased under a hire-purchase finance arrangement. In this case, the twelve months period starts running from the date of receipt of the letter of undertaking or a clearance certificate issued by the financier.

**S. 11(1)**

## 7.0.0 Zero-rated Supplies, Exempt Supplies & Remission of Tax

7.0.1 Zero-rated supplies are supplies for which no tax is charged, but in all respects are treated as taxable supplies.

**S. 8(1)**

7.0.2 Notwithstanding the zero rate of tax, the value of zero-rated supplies is taken into the computation of the threshold turnover to determine whether the supplier is a taxable person who is required to be registered under the Sixth Schedule. (See 3.1.2 above).

7.0.3 A taxable person supplying only zero-rated goods or services is entitled to the repayment of input tax suffered.

7.0.4 Zero rating applies, *inter alia*, to the following:

- goods or taxable services that are exported;
- supplies to designated foreign aid funded capital investment projects;
- supplies to EPZ enterprises;
- shipstores supplied to sea and air carriers on international voyages and flights;
- services supplied by hotels to foreign travel and tourism promoters subject to specified conditions;
- the supply of tea for export to the tea auctions;
- the supply of coffee;
- supply of below two hundred kilowatt hours of electrical energy to domestic consumers;
- supply of taxable services in respect of goods in transit;
- supply of taxable airport services to transit aircraft;
- taxable supplies to cotton ginning factories;
- goods listed in Part B and C of the Fifth Schedule to the Act;
- supply of water drilling services;
- electricity imported into Kenya;
- goods imported or purchased by public bodies, privileged persons and institutions specified in Part A of the Eighth Schedule to the Act;
- special goods subject to zero rating as specified in Part B of the Eighth Schedule to the Act;
- persons with diplomatic privileges as provided in Part C of the Eighth Schedule to the Act;
- natural water by local authorities;
- transportation of unprocessed agricultural and agroforest produce;
- transportation of passengers by air carriers on international voyage or flight

**Fifth Schedule  
Eighth Schedule**

### **7.1.0 Exports and Supplies to EPZs**

7.1.1 A supply of goods or taxable services will be zero-rated if the Commissioner is satisfied that the person supplying the goods has exported those goods or taxable services.

7.1.2 The evidence required consists:

- a copy of the invoice showing the sale of goods or services to the purchaser;
- in the case of goods, copies of the bill of lading, road manifest or airway bill;
- the export entry duly certified by customs authorities at the port of export.

**Regulations, Para 10(1)**

7.1.3 In the case of goods, they must be marked with the inscription "FOR EXPORT ONLY"

**Regulations, Para 10(2A)**

### **7.2.0 Supplies to Exporters and Privileged Persons**

7.2.1 A supply of goods or services will also be zero-rated if supplied by a registered person to another registered person who manufactures goods in a customs bonded factory for export, or to any person specified in the Eighth Schedule of the Act. The supplier must keep the following as evidence of the supply:

- a copy of the invoice showing the supply of goods or services to the purchaser;
- proof of the payment made in respect of the supplies;
- a certificate signed by the purchaser that the goods have been received.

**Regulations, Para 10(2)**

7.2.2 In the case of goods supplied to exporters, they must be marked with the inscription "FOR EXPORT ONLY"

**Regulations, Para 10(2A)**

### **7.3.0 Remission of Tax in the Public Interest**

7.3.1 Generally, the power to remit tax is vested with the Minister for Finance who, through a notice in the Gazette, can remit tax if he is satisfied it is in the public interest to do so.

**S. 23(1)**



7.3.2 Remission of tax applies to all taxable persons. The remission granted shall only apply in respect of:

- capital goods (excluding motor vehicles) imported or purchased for investment, subject to the Regulations;
- goods and taxable services imported or purchased by a company that has been granted an oil exploration or prospecting licence, subject to specified conditions;
- capital goods and equipment for use in a customs bonded factory for export only;
- official aid funded projects;
- goods for use by the Kenya Armed Forces;
- shipstores for the national carrier;
- goods, including motor vehicles imported or purchased by any company granted geothermal resource licence;
- goods imported under bond for manufacture of exports, indirect exports, goods free of import duty, and goods for use in official aid funded projects;
- goods and services for use in the construction or expansion of private universities, excluding student hostels and staff housing, subject to the Minister of Finance approval;
- goods and services for the construction of more than 20 housing units for low income earners, subject to the regulations.

**S. 23(3)**

#### **7.4.0 Remission of Tax in Respect of Exports of Taxable Goods and Services**

7.4.1 A tax remission certificate is issued on Form VAT 4B. The application for a remission certificate must include:

- a bond security on Form VAT 4B1 executed and guaranteed by a bank, insurance company or financial institution licensed to operate in Kenya;
- an irrevocable letter of credit and other evidence to show that the account of the exporter has been credited with payment in foreign currency for the exported goods;
- a proforma invoice from the registered manufacturer or dealer.

**Regulations, Para 10(4)**

7.4.2 A VAT remission certificate remains valid for ninety days from the date of issue.

**Regulations, Para 10(5)**

- 7.4.3 Where the remission is granted in respect of an export, the exporter shall then re-submit to the Commissioner within ninety days from the date of issue, the duplicate copy of the remission certificate together with documentary evidence of exportation of the goods.

**Regulations, Para 10(6)**

- 7.4.4 A bond security executed for purposes of obtaining a remission certificate shall be cancelled if the exporter satisfies the Commissioner that:
- the goods have been duly exported;
  - he has received the appropriate payment in foreign currency or in an approved manner.

**Regulations, Para 10(7)**

**7.5.0 Exempt Supplies**

- 7.5.1 Exempt supplies means supplies of goods and services specified in the Second and Third Schedules respectively, which are not subject to tax.

**S. 2**

- 7.5.2 The VAT regime only applies to a person who makes taxable supplies. A person who makes exempt supplies will not be regarded as making a taxable supply. The consequences are:
- the value of exempt supplies will be disregarded in the calculation of the threshold turnover required for registration. (3.1.2 above);
  - a supplier of exempt goods or services cannot obtain registration for VAT;
  - tax suffered by the person cannot be claimed as input tax. An exempt supplier must absorb any VAT suffered when making charges to his own customers.
- 7.5.3 It is important to distinguish between zero-rated and exempt supplies. The supply of goods that are zero-rated is within the VAT regime but exempt supplies are not.

## 8.0.0 Collection, Recovery and Refund of Tax

### 8.1.0 The VAT Return

- 8.1.1 Every registered person is required to submit a monthly VAT return to the Commissioner giving the following details:
- show separately for each rate of tax, the total value of supplies, the rate of tax and the amount of tax payable for the supplies made during the month;
  - show separately for each rate of tax, the total value of supplies, the rate of tax and the amount of tax paid in respect of which input tax is claimed;
  - where necessary, to state the fact that no supplies were made or received during that tax period.

#### **Para 7, Seventh Schedule**

- 8.1.2 The VAT return is completed for every month on Form VAT 3 and is accompanied by a VAT 3A, showing input tax claimed and VAT 3B, showing zero-rated supplies. The return must be submitted to the Commissioner by the 20th day of the following month. Where the 20th day falls on a weekend or public holiday, the return shall be submitted on the last working day prior to the weekend or public holiday.

#### **Para 7, Seventh Schedule Regulations, Para 9(1) S. 13(3)**

- 8.1.3 All tax payments are to be made by banker's cheque, or bank guaranteed cheques or cash. Where payment is by cheque the payment shall be made payable to the Commissioner of Value Added Tax, crossed and endorsed with the words "account payee only." Payment, together with the return, should be made at the Central Bank or to designated banks in areas not served by the Central Bank.

#### **Regulations, Para 9**

### 8.2.0 Recovery of Tax

- 8.2.1 The Commissioner is given wide-ranging powers under the Act to collect tax that is due and payable.
- 8.2.2 The Commissioner may appoint any person who purchases taxable goods or services, a tax withholding agent. Such an agent is required to withhold the VAT applicable on such taxable supplies received and remit it directly to the Commissioner, whether VAT had been charged or not. The Commissioner is, however, empowered to either revoke the appointment at anytime or to

exempt some taxable supplies from withholding VAT, upon application by a supplier of taxable goods or services. However, no tax shall be withheld from suppliers subject to turnover tax under the Income Tax Act upon presentation of a valid turnover tax registration certificate.

**S. 19 A**

- 8.2.3 The Commissioner may collect tax by distress, rather than sue for the recovery of unpaid tax. To do so, the Commissioner is empowered to order and empower an authorised officer to exercise distress upon the goods and chattels of the person from whom tax is recoverable. For the purpose of executing the distress, he may require a police officer to be present. All the costs incurred in levying the distress will be borne by the taxpayer.

**S. 18**

- 8.2.4 A distress levied shall be kept for ten days during which the taxpayer can pay the tax and distress costs to recover the goods and chattels distrained upon or else they shall be sold by public auction. The proceeds from the auction shall first be applied towards the costs of levying the distress, keeping and selling the distrained goods and finally, towards tax. Any amounts remaining shall be paid to the distrainee.

**S. 18(3)&(4)**

- 8.2.5 The Commissioner may recover tax due and payable from a person who owes money to the taxpayer. Accordingly, the Commissioner may, by notice in writing, require any person:
- from whom any money is due or accruing or may become due to a taxable person; or
  - who holds or may subsequently hold money on account of the taxable person; or
  - who holds or may hold money on account of some other person for payment to the taxable person; or
  - any person having authority from some other person to pay money to the taxable person;

To pay to the Commissioner that money or so much thereof as may be sufficient to pay the tax so due and payable.

Where such a person required by the Commissioner to pay any tax on behalf of a tax payer is unable to do so, he should inform the Commissioner within seven working days of the inability.

**S. 19(1)**

- 8.2.6 Where the Commissioner has reasonable belief that
- taxable supplies were made and no tax was charged; or
  - tax was charged but not remitted to the Authority; and
  - there is likelihood of the person to frustrate collection of the tax,
- the Commissioner may apply to the High Court to obtain an order prohibiting transfer, withdrawal or disposal of the funds. Within 30 days of the order, or any extension given by the Court upon application by the Commissioner, the Commissioner is required to issue an assessment, which shall automatically remove the order.

Any person whose funds are the subject of this order can apply to the High Court for its discharge or variation within 15 days of being served the order. Any person who, in enforcing the order, suffers any loss howsoever caused shall be indemnified.

#### **S. 19B**

- 8.2.7 Where a person who is the owner of land or buildings situated in Kenya fails to pay tax due and payable, the Commissioner may notify that person of his intention to apply to the Registrar of Lands to have the land and buildings to be the subject of security for the tax. If, after thirty days of issuing the notice, the taxpayer fails to pay the tax due, the Commissioner may, by notice in writing, direct the Registrar of Lands that the land and buildings be the subject of security for the tax. Such a notice will be registered as if it were an instrument of mortgage.

#### **S. 20A**

- 8.2.8 Where the person in 8.2.7 above fails to make payment for the tax on the due date, the Commissioner may, having taken all reasonable steps to notify the owner of the intended sale and after 21 days of placing a notice in the Gazette, sell the land and buildings to recover the tax, and the purchaser shall acquire title to the land. The proceeds from the sale shall be applied firstly in settling the unpaid tax and any costs incurred on selling the property. Any balance shall be paid to the owner of the property.

- 8.2.9 In order to secure payments by any person of any tax, the Commissioner may require the person concerned to furnish security in such manner and in such amount as may be prescribed. Generally, the security shall be in such sum not exceeding the total tax payable. Where the security is not in cash or equivalent securities, it shall take the form of a bond in such form and given by such sureties as the Commissioner may approve.

#### **S. 29**

#### **Regulations, Para 14**

- 8.2.10 The Commissioner may recover any tax due and payable as a civil debt due to the government. Where the amount of tax does not exceed one hundred thousand shillings, the debt shall be recovered summarily.

**S. 22**

- 8.2.11 Where interest is charged on unpaid tax, the interest chargeable shall not exceed 100% of the tax due.

**S. 15(2)**

- 8.2.12 The Commissioner has power to grant remission for interest due up to a maximum amount of Kshs.1,500,000. Where it exceeds this amount, remission will be given subject to the Minister's written approval.

**S. 15(3)**

- 8.2.13 Where an application is made for remission, the Commissioner will suspend charging of interest where taxpayer has paid the principal tax, pending hearing of the application.

**S. 15(4)**

- 8.2.14 Where remission is not granted or is granted for only part of the interest, the balance of interest shall be due and payable within 90 days of determination of the application.

**S. 15(5)**

- 8.2.15 If interest payable after determination of the remission application is not paid after the specified period, a surcharge at rate of 2% per month or part thereof shall be due and payable.

**S. 15(6)**

### **8.3.0 Refund of Tax**

- 8.3.1 The Commissioner will refund tax in the following circumstances:
- where the amount of input tax exceeds the amount of output tax as a result of either the trader making zero-rated supplies or having incurred physical capital investment the input tax of which exceed KShs.1,000,000; or

- where VAT charged has been withheld by the buyer of the taxable supplies; or
- where taxable goods have been manufactured in or imported into Kenya and tax has been paid in respect of those goods and, before being used, those goods are subsequently exported under customs control; or
- where tax has been paid in error.

**S. 11(2)****S. 24**

8.3.2 Where a person has supplied goods or services and has accounted for or paid tax on that supply, but has not received any payment from the buyer, he may apply for a refund or remission of the tax on the following conditions:

- a period of three years has elapsed from the date of supply; or
- the buyer has become legally insolvent.

**S. 24A**

8.3.3 An application for refund of tax in respect of bad debts must be made within five years from the date of supply and be accompanied by the following:

- a document issued by the person with whom he proves the insolvency of the debtor, specifying the total amount proved;
- a copy of the tax invoice in respect of each supply upon which the claim is based;
- evidence that every effort has been made to recover the amount owed;
- a declaration that the seller and the buyer are independent of each other.

No refund will be payable if the applicant is not up-to-date in submitting all VAT returns.

**Regulations, Para 11**

8.3.4 A non-registered person who has imported or purchased goods from a registered person and then exports the goods by way of business, he may claim a refund of the tax paid by submitting Form VAT 4, attaching:

- a copy of the invoice showing the sale of the goods;
- an export entry certified by the proper officer of customs at the port of export;
- a copy of the tax invoice issued by the registered person, or a copy of the customs entry as evidence of the value of the goods and the tax suffered;
- evidence that foreign exchange has been credited to his account with a commercial bank in Kenya.

**Regulations, Para 10**

- 8.3.5 Where tax has been erroneously refunded or remitted or a rebate of tax has been allowed in error, the person to whom the refund, remission or rebate has been made or allowed in error shall, on demand by the Commissioner, pay the amount erroneously refunded, remitted or in respect of which rebate has been allowed in error.

**S.25(1)**

- 8.3.6 All applications for refund of tax of Kshs. 1,000,000 or more must be supported by a certificate issued by an independent auditor.

**Regulations, Para 13A**



## 9.0.0 Offences and Penalties

OFFENCE	PENALTY	REFERENCE
Late payment of tax	Interest at 2% per month compounded	Section 15 (1) & (2)
Failure to comply with the Commissioner's notice to pay money owed to a taxable person from whom tax is due, or furnish a return showing monies held or due to a person from whom tax is due	Fine not exceeding Ksh 15,000 and/or up to six months imprisonment and liability to pay the amount discharged	Section 19(6)
Failure to produce books, records or provide information as required by an authorised officer	Fine not exceeding Ksh 15,000 and/or up to six months imprisonment	Section 30(2)
Failure to produce books, records, statements or other documents or to attend summons or to answer questions put by the VAT Tribunal	Fine not exceeding Ksh 15,000 and/or up to two years imprisonment	Section 35
Making false statements, producing false documents, providing false information, involvement in fraudulent evasion of tax, a non-registered person who holds himself out as a registered person	Fine up to Ksh 400,000 or double the tax evaded, whichever is the greater. In addition, any taxable goods connected with the commission of the offence may be forfeited.	Section 40
Failure to display registration certificate in a visible place in the business premises	Default penalty of up to Ksh 20,000 and a fine of up to Ksh 200,000 and/or imprisonment for up to two years	Sixth Schedule Paragraph 10 (2)
Late submission of application for registration	Penalty of Ksh 20,000	Sixth Schedule Paragraph 11
Failure to apply for registration	Penalty of Ksh 100,000	Sixth Schedule Paragraph 12
Failure to issue a tax invoice as required	Penalty of between Ksh 10,000 and Ksh 200,000. Any goods connected with the offence are liable to forfeiture	Seventh Schedule Paragraph 5
Failure to keep proper books or records	Penalty of between Ksh 10,000 and Ksh 200,000	Seventh Schedule Paragraph 6
Failure to submit a return	Penalty of Ksh 10,000 or 5% of the tax due, whichever is the higher	Seventh Schedule Paragraph 9
General penalty for offences under the Act for which no specific penalty is prescribed	A maximum fine of Ksh 200,000 and/or up to three years imprisonment	Section 43
Failure to withhold VAT, remit withheld VAT, or submit withholding VAT return	Penalty of Kshs. 10,000 or 10% of tax due, whichever is higher	Seventh Schedule Paragraph 10
Withholding VAT without being appointed as a withholding VAT agent	Penalty of Kshs. 10,000 or 10% of tax due, whichever is higher	Seventh Schedule Paragraph 10
Making a fraudulent claim for VAT refund	Penalty of double the amount claimed or to imprisonment for a period not exceeding three years or both	Section 40

- 9.1.0 Where an employee or agent commits an offence, the employer shall also be guilty of the offence unless he proves his innocence.

**S. 40(1)**

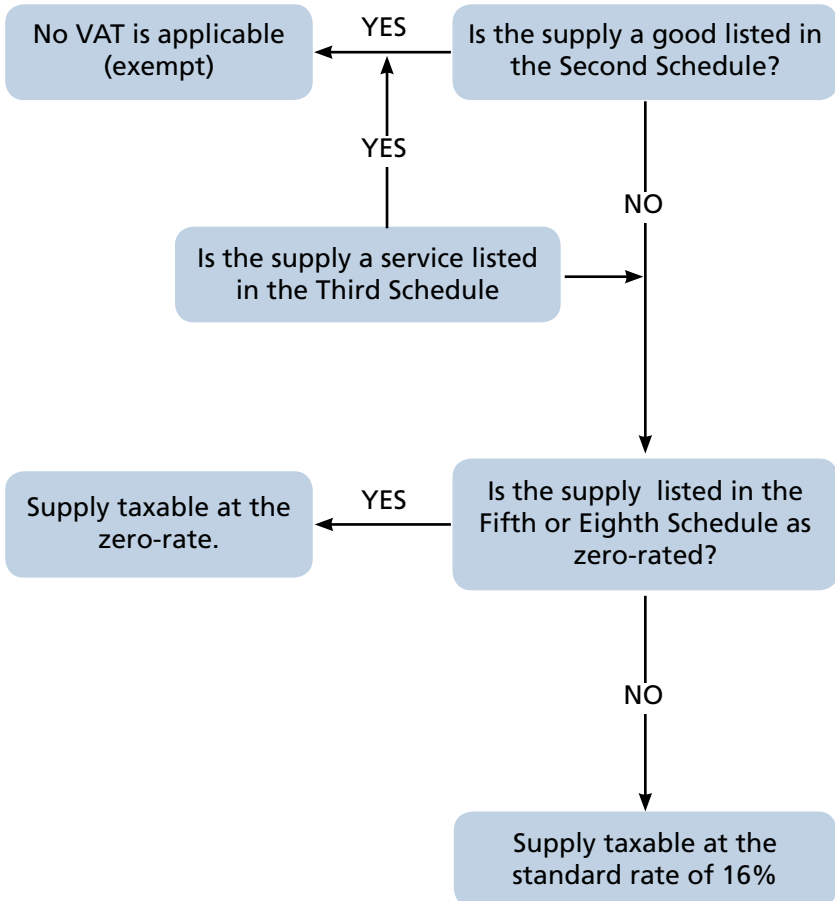
- 9.1.1 Where a company commits an offence, every director, general manager, secretary and officer of the company concerned with the management of the company shall also be guilty of the offence unless he proves his innocence.

**S. 40(2)**

- 9.1.2 The Commissioner is empowered, subject to specified conditions, to compound offences under the Act. The order issued by the Commissioner in such a case can be enforced as if it were a decree or order of the High Court. The taxpayer whose offences have been compounded is not liable to prosecution except with the express consent of the Attorney General.

**S. 55**

## Appendix: Determining Tax Status



This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a full page of blank handwriting practice paper. It features approximately 20 evenly spaced, horizontal blue lines across the entire page, providing a guide for letter height and placement. The background is a solid off-white color. There are no margins, text, or other markings present.

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