LAWS OF KENYA

The Value Added Tax Act

No. 35 of 2013

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| Revised Edition 2017 |
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*Note* – *This edition contains amendments to the Act made in 2017 including amendments by Finance Act, 2017.*

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In some cases, changes have been made to the Act to correct, clerical, grammatical or typographical errors that appear in the text of the official versions. For all purposes of interpreting and applying the law, users should consult the official version of the laws – The Value Added Tax Act – which is printed and published by the Government Printer.

This Act does not constitute professional tax advice and specific advice on the practice and application of any section should be sought.

| **No.35** *Value Added Tax* [Rev. 2017] | | | | |
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| **No. 35 of 2013**  **THE VALUE ADDED TAX ACT**  **ARRANGEMENT OF SECTIONS** | | | | |
| **PART I – PRELIMINARY** | | | | |
| *Section* | | | | |
|  |  | | | |
| 1 – | Short title and commencement. | | | |
| 2 – | Interpretation. | | | |
|  | | | | |
| **PART II– ADMINISTRATION** | | | | |
|  |  | | | |
| 3 – | Functions and powers of the Commissioner and other officers. *(Deleted by No.* 29 *of* 2015.) | | | |
|  |  | | | |
| **PART III– CHARGE TO TAX** | | | | |
|  |  | | | |
|  | **Division 1 – Conversion of private limited company** | | | |
|  |  | | | |
| 4 – | Charge to tax. | | | |
| 5 – | Cabinet Secretary may amend the rate of tax.. | | | |
|  |  | | | |
|  | **Division 2 – Conversion of public entities** | | | |
|  |  | | | |
| 6 – | Zero rating. | | | |
|  |  | | | |
| **PART IV– PLACE AND TIME OF SUPPLY** | | | | |
|  |  | | | |
| 7 – | Place of supply of services. | | | |
|  | | | | |
|  | | | | |
|  | | | | |
| **SCHEDULES** | | | | |
|  | |  |  | |
|  | | FIRST SCHEDULE – | Exempt supplies | |
|  | |  |  |  |
|  | |  | Part I – | Goods |
|  | |  | Part II – | Services |
|  | |  |  |  |
|  | | SECOND SCHEDULE – | Zero rating | |
|  | |  |  | |
|  | |  | Part A – | Zero rated supplies |
|  | |  | Part B – | Zero rated supplies to public bodies, privileged persons and institutions |
|  | |  |  | |
|  | | **SUBSIDIARY LEGISLATION** | | |
|  | |  |  | |
|  | | **The Value Added Tax Regulations, 2017 [under sec 67]** | | |
|  | |  |  | |
|  | |  |  | |
|  | |  | **PUBLIC RULINGS** [under sec 53] | |
|  | | 2013 – | Clarification on Value Added Tax Act, 2013 | |
|  | | 2014 – | Public Notice No. 3002/53/001 – Treatment of taxable supplies, locally purchased by companies granted geothermal, oil or mining licences | |

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| **No. 35 of 2013** | | | | | |  |
| **THE VALUE ADDED TAX ACT** | | | | | |  |
|  |  | |  | | |  |
|  |  | | *Assent: 14th  August, 2013* | | |  |
|  |  | |  | | |  |
|  |  | | *Commencement: 1st September 2013* | | |  |
|  |  | |  | | |  |
| L.N. 193/2013,  7 of 2014,  16 of 2014,  14 of 2015,  No. 29 of 2015,  24 of 2016,  38 of 2016,  **11 of 2017.** | **An Act of Parliament to review and update the law relating** | | | | |  |
| **to value added tax; to provide for the imposition of value added tax on supplies made in, or imported into Kenya, and for connected purposes** | | | | |  |
|  |  | | |  |  |
|  | **ENACTED** by the Parliament of Kenya, as follows— | | | |  |
|  |  |  | | |  |  |
|  |  | **PART I—PRELIMINARY** | | | |  |
|  |  |  | | | |  |
| Short title and commencement. | **1.** | This Act may be cited as the Value Added Tax Act, 2013 and | | | |  |
| shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint which date shall not be later than one month from the date of publication of this Act in the Gazette. | | | | |  |
|  |  |  | |  | |  |
| Interpretation.  14 of 2015, s. 2,  38 of 2016, s. 26. | **2.** | (1) In this Act, unless the context otherwise requires— | | | |  |
|  |  | |  | |  |
|  | “aircraft” includes every description of conveyance for the | | | |  |
|  | transport by air of human beings or goods; | | | | |  |
|  |  |  | |  | |  |
|  |  | “assessment” means – | | | |  |
|  |  |  | | | |  |
|  |  | 1. a self-assessment return submitted under section 45; | | | |  |
|  |  |  | | | |  |
|  |  | 1. an assessment made by the Commissioner under section 45; or | | | |  |
|  |  |  | |  | |  |
|  |  | 1. an amended assessment under section 46; | | | |  |
|  |  |  | |  | |  |
|  |  | “Authority” means the Kenya Revenue Authority | | | |  |
| Cap. 469. | established by the Kenya Revenue Authority Act; | | | | |  |
|  |  |  | |  | |  |
|  |  | “authorised officer”, in relation to any provision of this Act, | | | |  |
|  | means any officer appointed under section 3 who has been authorised by the Commissioner to perform any functions under or in respect of that provision; | | | | |  |
|  |  |  | |  | |  |
|  |  | “business” means- | | | |  |
|  |  |  | |  | |  |
|  |  | 1. trade, commerce or manufacture, profession, vocation or occupation; | | | |  |
|  |  |  | |  | |  |
|  |  | 1. any other activity in the nature of trade, commerce or manufacture, profession, vocation or occupation; | | | |  |
|  |  |  | |  | |  |
|  |  | 1. any activity carried on by a person continuously or regularly, whether or not for gain or profit and which involves, in part or in whole, the supply of goods or services for consideration; or | | | |  |
|  |  |  | |  | |  |
|  |  | 1. a supply of property by way of lease, licence, or similar arrangement, | | | |  |
|  |  |  | |  | |  |
|  | but does not include – | | | | |  |
|  |  |  | |  | |  |
|  |  |  | | 1. employment; | |  |
|  |  |  | |  | |  |
|  |  |  | | 1. a hobby or leisure activity of an individual; or | |  |
|  |  |  | |  | |  |
|  |  |  | | 1. an activity of a person, other than an individual, that if carried on by an individual would come within sub­paragraph (ii); | |  |
|  |  |  | |  | |  |
| Cap. 469. |  | “Commissioner” means the Commissioner-General appointed | | | |  |
| under the Kenya Revenue Authority Act, or, with respect to powers or functions that have been delegated under that Act to another Commissioner, that other Commissioner; | | | | |  |
|  |  |  | |  | |  |
| Cap. 486. |  | “company” means a company as defined in the Companies Act | | | |  |
| or a corporate body formed under any other written law, including a foreign law, and includes any association, whether incorporated or not, formed outside Kenya which the Cabinet Secretary may, by order, declare to be a company for the purposes of this Act; | | | | |  |
|  |  |  | |  | |  |
|  |  | “duty of customs” means import duty, excise duty, export | | | |  |
|  | duty, countervailing duty, levy, cess, tax or surtax charged under any law for the time being in force relating to customs or excise; | | | | |  |
|  |  |  | |  | |  |
|  |  | “duty-free shop” means a bonded warehouse licensed by the | | | |  |
|  | Commissioner of Customs for the deposit of dutiable goods on which duty has not been paid and which have been entered for sale to passengers departing to places outside Kenya; | | | | |  |
|  |  |  | |  | |  |
| Cap. 517. |  | “export processing zone” means an export processing zone | | | |  |
|  | designated under the Export Processing Zones Act; | | | | |  |
|  |  |  | |  | |  |
|  |  | “goods” means tangible movable and immovable property and | | | |  |
|  | includes electrical or thermal energy, gas and water, but does not include money; | | | | |  |
|  |  |  | |  | |  |
|  |  | “hotel” includes premises commonly referred to as “service | | | |  |
|  | flats”, “service apartments”, “beach cottages”, “holiday cottages”, “game lodges”, “safari camps”, “bandas” or holiday villas” and other premises or establishments used for similar purposes, but does not include— | | | | |  |
|  |  |  | | | |  |
|  |  | 1. premises on which the only supply is under a lease or licence of not less than one month, unless the agreement relating thereto provides that by prior arrangement the occupier may, without penalty, terminate the lease or licence on less than one month’s notice; or | | | |  |
|  |  |  | | | |  |
|  |  | 1. premises operated by an educational or training institution approved by the Cabinet Secretary for the time being responsible for education for the use of the staff and students of that institution; or | | | |  |
|  |  |  | | | |  |
|  |  | 1. premises operated by a medical institution approved by the Cabinet Secretary for the time being responsible for health, for the use of the staff and students of that institution; | | | |  |
|  |  |  | | | |  |
|  |  |  | |  | |  |
|  | **PART II—ADMINISTRATION** | | | | |  |
|  |  |  | |  | |  |
| Functions and powers of the Commissioner and other officers.  No. 29 of 2015. | **3.** | (*Deleted by No.* 29 *of* 2015, Sch.)(*Tax Procedures Act)* | | | |  |
|  |  |  | |  | |  |
|  | **PART III—CHARGE TO TAX** | | | | |  |
|  |  |  | |  | |  |
|  | **Division 1 – Conversion of private limited company** | | | | |  |
|  |  |  | |  | |  |
| Charge to tax. | **4.** | (1) A tax, to be known as value added tax, shall be charged in | | | |  |
| accordance with the provisions of this Act on – | | | | |
|  |  |  | |  | |  |
|  |  | 1. a taxable supply made by a registered person in Kenya; | | | |  |
|  |  |  | |  | |  |
|  |  | 1. the importation of taxable goods; and | | | |  |
|  |  |  | |  | |  |
|  |  | 1. a supply of imported taxable services. | | | |  |
|  |  |  | |  | |  |
|  |  | (2) The rate of tax shall be – | | | |  |
|  |  |  | |  | |  |
|  |  | 1. in the case of a zero-rated supply, zero percent; or | | | |  |
|  |  |  | |  | |  |
|  |  | 1. in any other case, sixteen percent of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services. | | | |  |
|  |  |  | |  | |  |
|  |  | (3) Tax on a taxable supply shall be a liability of the registered | | | |  |
|  | person making the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply. | | | | |  |
|  |  |  | |  | |  |
|  |  | (4) The amount of tax payable on a taxable supply, if any, shall | | | |  |
|  | be recoverable by the registered person from the receiver of the supply, in addition to the consideration. | | | | |  |
|  |  |  | |  | |  |
|  |  | (5) Tax on the importation of taxable goods shall be charged as | | | |  |
|  | if it were duty of customs and shall become due and payable by the importer at the time of importation. | | | | |  |
|  |  |  | |  | |  |
| Cabinet Secretary may amend the rate of tax. | **5.** | (1) The Cabinet Secretary may, by order published in the | | | |  |
| Gazette, amend the rate of tax by increasing or decreasing any of the rates of tax by an amount not exceeding twenty-five percent of the rate specified in section 5(2)(b). | | | | |
|  |  |  | |  | |  |
|  |  | (2) Every order made under subsection (1) shall be laid before | | | |  |
|  | the National Assembly without unreasonable delay, and shall cease to have effect if a resolution of the National Assembly disapproving the order is passed within twenty days of the day on which the National Assembly next sits after the order is laid, but without prejudice to anything previously done thereunder. | | | | |  |
|  |  |  | |  | |  |
|  | **Division 2 – Conversion of public entities** | | | | |  |
|  |  |  | |  | |  |
| Zero rating. | **6.** | (1) Where a registered person supplies goods or services and | | | |  |
|  | the supply is zero rated, no tax shall be charged on the supply, but it shall, in all other respects, be treated as a taxable supply. | | | | |
|  |  |  | |  | |  |
|  |  | (2) A supply or importation of goods or services shall be zero- | | | |  |
|  | rated under this section if the goods or services are of the description for the time being specified in the Second Schedule. | | | | |  |
|  |  |  | |  | |  |
|  | **PART IV—PLACE AND TIME OF SUPPLY** | | | | |  |
|  |  |  | |  | |  |
| Place of supply of services. | **7.** | (1) A supply of services is made in Kenya if the place of | | | |  |
| business of the supplier from which the services are supplied is in Kenya. | | | | |
|  |  |  | |  | |  |
|  |  | (2) If the place of business of the supplier is not in Kenya, the | | | |  |
|  | supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person and - | | | | |  |
|  |  |  | |  | |  |
|  |  | 1. the services are physically performed in Kenya by a person who is in Kenya at the time of supply; | | | |  |
|  |  |  | |  | |  |
|  |  | 1. the services are directly related to immovable property in Kenya; | | | |  |
|  |  |  | |  | |  |
|  |  | 1. the services are radio or television broadcasting services received at an address in Kenya; | | | |  |
|  |  |  | |  | |  |
|  |  | (4) A registered person shall not deduct input tax under this | | | |  |
|  | Act if the tax relates to the acquisition of - | | | | |  |
|  |  |  | |  | |  |
|  |  | 1. full deduction of all the input tax attributable to taxable supplies; | | | |  |
|  |  |  | |  | |  |
|  |  | 1. no deduction of any input tax which is directly attributable to other use; and | | | |  |
|  |  |  | |  | |  |
|  |  | 1. deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula: | | | |  |
|  |  |  | | **A x B** | |  |
|  |  |  | | **C,** | |  |
|  |  | where - | | | |  |
|  |  |  | |  | |  |
|  |  | **A** | | is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use; | |  |
|  |  |  | |  | |  |
|  |  | **B** | | is the value of all taxable supplies made by the registered person during the period; and | |  |
|  |  |  | |  | |  |
|  |  | **C** | | is the value of all supplies made by the registered person during the period in Kenya. | |  |
|  |  |  | |  | |  |