

**DOMESTIC TAXES DEPARTMENT****GUIDELINES ON TAXATION OF NON-RESIDENTIAL BUILDINGS**

The Value Added Tax Act was amended through Finance Bill 2007 by deleting Paragraph 10(c) from the Third Schedule. Following the amendment renting, leasing, hiring or letting of non-residential buildings will become taxable with effect from 1<sup>st</sup> January, 2008.

The following Guidelines are issued in order to guide staff and taxpayers on the implementation of the change.

**1. REGISTRATION**

- (a) Any person who makes taxable supplies, or is expected to make taxable supplies, the value of which is Kshs.5million or more per annum is required to register. Where a person makes other taxable supplies, taxable rental income will be added to the other taxable supplies to determine the taxable turnover. A person who is already registered for VAT will not be required to register afresh for rental income but will charge tax on rental income even if rental income does not exceed Kshs 5m.
- (b) Determination of whether rental income is taxable or not will be based on the purposes to which that building or part of it is put. Where a building is used for both residential and non-residential purposes, tax will only be chargeable on rental of the portion that is used for non-residential purposes.
- (c) Registration will be based on the ownership of the building. Where a building is jointly owned by two or more persons, they will be treated as partners for purposes of registration. Also where a person owns more than one rental building, only one registration will be issued to cover all the buildings.
- (d) The effective date of Registration will be 1<sup>st</sup> January, 2008. Any qualifying person should apply for registration within 30 days of becoming registerable. To avoid last minute rush, it is advisable to apply earlier than 1<sup>st</sup> January, 2008 though the effective date of registration will remain 1<sup>st</sup> January, 2008.
- (e) After registration a person shall be required to display a certified copy of the VAT registration Certificate in each of the buildings from which he is earning taxable rent since such a building will constitute his business premises in accordance with paragraph 10(1) of the Sixth Schedule to the VAT Act.
- (f) Sale of nonresidential buildings is an exempt supply and such suppliers will not be required to be registered.

**2. INPUT TAX DEDUCTION**

- (a) A person registered for the supply of rental services shall be entitled to claim relief of tax incurred in the construction of such buildings or civil works, in accordance with section 12, but not on the purchase of the building as sale of buildings is still exempt.



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- (b) Where a registered person supplies both residential and non-residential in the same building, the registered person will be required to apportion the input tax on the basis of the use of the premises as provided under regulation 17 of the Value Added Tax Regulations.
- (c) Tenants who are registered for VAT will be entitled to deduct input tax charged on rent in their monthly return.
- (d) Where any person develops a non-residential building and uses it to supply rented income and then sells the same within 5 years, he will be required to refund the input tax claimed as provided under Section 11(1B).

### 3. CHARGE OF TAX ON RENTAL OF NON RESIDENTIAL BUILDINGS

- (a) Tax point for rental services will apply as per Section 13 of the Value Added Tax Act. Therefore, invoices issued or payments made before 1st January, 2008 will be taxable for the part of the supply made from 1st January, 2008 in accordance with section 56. Payments received in respect of rent for any period prior to 1st January, 2008 will be exempt from tax.
- (b) Statutory charges paid on behalf of tenants will be treated as reimbursements provided that the tenants pay the same amount without additional charges.
- (c) Refundable rent deposit will not be taxable. However, when such deposit is applied to meet rent charges tax must be accounted for.
- (d) Any premium charged in addition to rent, such as goodwill, development levy etc is taxable.
- (e) Service charge levied on top of rent will be treated as part of rent and shall be included in the taxable value.
- (f) Taxable persons who occupy their own buildings for the taxable business will be treated as making self-supplies within the business and will not be required to account for VAT for that space.
- (g) Where a person rents a building and he further sublets the whole or part of the same building for rent, he will be treated as a supplier of rental services and shall be liable to register for VAT if the income exceeds Kshs.5million per annum.
- (h) A non-residential property owner may apply to the Commissioner for the registration of an Estate Agent who should be responsible for the imposition and collection of the tax on his behalf.

### COMMISSIONER DOMESTIC TAXES