

NO. 35 OF 2013

THE VALUE ADDED TAX ACT

SUBSIDIARY LEGISLATION

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THE VALUE ADDED TAX (TRIBUNAL) RULES, 1990

[Legal Notice 229 of 1990]

Revoked by Legal Notice 54 of 2017 on 7th April, 2017

THE VALUE ADDED TAX (DISTRRAINT) REGULATIONS, 1990

[Legal Notice 227 of 1990, Legal Notice 123 of 1996]

Revoked by Legal Notice 54 of 2017 on 7th April, 2017

THE VALUE ADDED TAX REGULATIONS, 1994

[Legal Notice 195 of 1994, Legal Notice 213 of 1995, Legal Notice 121 of 1996, Legal Notice 42 of 1997, Legal Notice 122 of 1997, Legal Notice 544 of 1997, Legal Notice 70 of 1998, Legal Notice 67 of 1999, Legal Notice 165 of 1999, Legal Notice 96 of 2001, Legal Notice 176 of 2001, Legal Notice 94 of 2002, Legal Notice 52 of 2004, Legal Notice 49 of 2005, Legal Notice 54 of 2006, Legal Notice 37 of 2007, Legal Notice 78 of 2008, Legal Notice 95 of 2009, Legal Notice 81 of 2010]

Revoked by Legal Notice 54 of 2017 on 7th April, 2017

THE VALUE ADDED TAX ORDER, 2002

[Legal Notice 95 of 2002, Legal Notice 68 of 2003]

Revoked by Legal Notice 54 of 2017 on 7th April, 2017

**THE VALUE ADDED TAX (REMISSION) (OFFICIAL
AID FUNDED PROJECTS) ORDER, 2003**

[Legal Notice 67 of 2003, Legal Notice 3 of 2004]

1. This Order may be cited as the Value Added Tax (Remission) (Official Aid Funded Projects) Order and shall come into operation on the 13th June, 2003.
2. The whole of the tax payable on taxable services, materials and equipment, including vehicles, which the Commissioner is satisfied are for use in the construction, equipping or execution of an aid funded project, to be, or in the process of being carried out pursuant to an agreement between the Government and a foreign government, or a foreign or international agency, institution, foundation or organization, supplying or making available aid funds, materials or equipment (in this Order referred to as "the aid agency") is remitted subject to the conditions set out in paragraph 3.
3. The conditions referred to in paragraph 2 are that—
 - (a) the agreement expressly provides for remission of tax on taxable services, materials and equipment, including vehicles;
 - (b) the agreement provides that—
 - (i) the materials and equipment, including vehicles, shall become the property of the Government, any public university, the Kenya Medical Research Institute, the Kenya Bureau of Standards or such other non-profit making organization in Kenya as the Cabinet Secretary may, by notice in the *Gazette*, specify for the purposes of this Order; or
 - (ii) the materials and equipment belong to, and whilst in Kenya, continue to belong to the aid agency; or
 - (iii) that both the conditions specified in this subparagraph apply;
 - (c) the implementing agency shall, at all reasonable times, make the records of the materials and equipment available to an authorized officer and shall give the officer every facility necessary to inspect and audit such records;
 - (d) within ninety days after the completion of the project, the aid agency shall provide the Commissioner—
 - (i) in the case of a situation referred to in subparagraph (b)(i), with a detailed list of items of equipment which have been used in the execution of the project and which, not forming part of the project itself, have become the property of the Government or other organization referred to in that subparagraph;
 - (ii) in the case of a situation referred to in subparagraph (b)(ii), with a detailed list of items of equipment which have been used in the execution of the project and which remain the property of the aid agency; and
 - (e) the Commissioner may, if he considers it necessary, inspect the project at any time during its execution.
4. The remission of tax under paragraph 2 shall not apply to—
 - (a) fuels and oils for use in vehicles and equipment for the projects:
Provided that the Cabinet Secretary may grant remission under this subparagraph after taking into consideration the terms and conditions of the funding agreement;
 - (b) all taxable services, except those specified in any remission Order published under section 23 of the Act.

[L.N. 3/2004, r. 2.]

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5. Notwithstanding the provisions of paragraph 2, tax shall become payable if goods which are the subject of this Order are used or disposed of in a manner inconsistent with the purpose for which the remission is granted.

6. Legal Notice No. 93 of 2002 (L.N. 93/2002) is revoked.

THE VALUE ADDED TAX (TAX WITHHOLDING) REGULATIONS, 2004

[Legal Notice 53 of 2004, Legal Notice 94 of 2009]

Revoked by Legal Notice 54 of 2017 on 7th April, 2017

**THE VALUE ADDED TAX (REMISSION)
(INVESTMENTS) REGULATIONS, 2004**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Application for remission
 3. Minister may require further information, inspection
 4. Only one application per investment
 5. Remission not for certain goods
 6. Condition relating to inspection, etc
 7. Further conditions to remission
 8. Revocation of remission
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**THE VALUE ADDED TAX (REMISSION)
(INVESTMENTS) REGULATIONS, 2004**

[Legal Notice 51 of 2004]

1. Citation

These Regulations may be cited as the Value Added Tax (Remission)(Investments) Regulations and shall come into operation on the 10th June, 2004.

2. Application for remission

(1) An application for remission of tax under section 23(3)(a) of the Act shall be made in writing to the Minister.

(2) The application referred to in paragraph (1) shall be submitted together with a detailed list of the goods in respect of which the application is made.

(3) The application referred to in paragraph (1) shall include the following for the investment referred to in section 23(3)(a) of the Act—

- (a) the total value of the investment in Kenya shillings;
- (b) a full description of the investment including, where applicable, the physical location of the investment;
- (c) the personal identification number of the applicant;
- (d) a report of a feasibility study of the investment with sufficiently detailed pro forma cash flow statement including the itemization of the cash flows for—
 - (i) all traded or tradable goods to be produced, undertaken or purchased; and
 - (ii) any financial obligations or commitments.

3. Minister may require further information, inspection

The Minister may require the applicant to—

- (a) furnish such further information as the Minister may consider appropriate; and
- (b) allow and facilitate the inspection of the goods to which the application relates.

4. Only one application per investment

(1) Only one application shall be made with respect to an investment except as provided in paragraph (2).

(2) A second application in respect of the same investment may be made if the applicant demonstrates to the satisfaction of the Minister that the additional application relates to a separate phase of the investment or an expansion thereof.

5. Remission not for certain goods

Remission shall not be granted in respect of stocks in trade, consumables, office furniture, typewriters, copying equipment, stationery, kitchenware, crockery, linen, draperies, carpets (in single pieces), safes and refrigerators.

6. Condition relating to inspection, etc

It is a condition of a remission that the person to whom a remission has been granted shall—

- (a) allow and facilitate the inspection of the goods in respect of which the remission relates; and
- (b) avail to the Commissioner the records of such goods for purposes of inspection and audit.

[Subsidiary]

7. Further conditions to remission

The Minister may attach such further conditions to a remission as he considers necessary.

8. Revocation of remission

The Minister may revoke a remission if any condition set out in regulation 6 or attached under regulation 7 is breached.

**THE VALUE ADDED TAX (ELECTRONIC
TAX REGISTERS) REGULATIONS, 2004**

[Legal Notice 110 of 2004, Legal Notice 50 of 2005]

Revoked by Legal Notice 54 of 2017 on 7th April, 2017

THE VALUE ADDED TAX (REMISSION) ORDER

[Legal Notice 18 of 2007]

1. This Order may be cited as the Value Added Tax (Remission) Order.
2. The tax payable on the items listed in the Schedule hereto being imported for the Kwale Titanium Mining project by Tiomin Kenya Limited within the year 2007 be remitted wholly:

Provided that the tax remitted by this Order shall be payable by Tiomin Kenya Limited in the event that the Cabinet Secretary determines that Tiomin Kenya Limited is in breach of any of the terms of the Agreement in relation to a Special Mining Lease granted by the Government of Kenya to Tiomin Resources Inc. *et al* entered on 2nd February, 2005.

SCHEDULE

<i>Description</i>	<i>Qty</i>	<i>Unit</i>	<i>Ex-Works</i>
Air Receiver	2	ea	\$5,000
Anchor	6	ea	\$3,000
Attritioner	2	ea	\$193,966
Bag House	2	ea	\$570,288
Bank of Spirals	29	ea	\$687,020
Belt Conveyor	29	ea	\$1,561,528
Belt Feeder	2	ea	\$72,047
Belt Weightometer	4	ea	\$32,054
Bucket Elevator and Motor Assembly	20	ea	\$574,842
CD Tank	1	ea	\$3,060
Chain Host	7	ea	\$14,000
Clamshell Feeder	3	ea	\$15,000
Classifier	1	ea	\$36,998
Compressor	4	ea	\$86,520
Conveyor	5	ea	\$1,281,720
Cyclone	2	ea	\$7,612
Cyclone Cluster Assembly	31	ea	\$747,570
Dosing Pump	4	ea	\$14,802
Double-deck Wet Table	12	ea	\$315,640
Electric Hoist	4	ea	\$33,241

Value Added Tax

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Electric Motor	7	ea	\$70,000
Electrostatic Plate Separator	3	ea	\$81,400
Electrostatic Roll Machine	18	ea	\$1,68,843
Fan Assembly	1	ea	\$8,743
Filter	1	ea	\$6,762
Fire Extinguisher	181	ea	\$3,263
Fire Hydrant Assembly, incl. Hose Reel	8	ea	\$2,133
Fire Water Pump Assembly	3	ea	\$36,048
Fluid Bed Dryer Assembly	3	ea	\$2,015,507
Gland Seal	2	ea	\$4,165
Water Pump	3	ea	\$37,722
Inclined Plate Weighter/ Sampler	8	ea	\$690,272
Induction Magnet Separator	2	ea	\$650,534
Keisy Jig	10	ea	\$3,000
Kibble	1	ea	\$15,000
Launder	1	ea	\$43,186
Low Intensity Magnetic Separator (LIMS)	6	ea	\$11,500
Maintenance Trolleys	1	ea	\$205,740
Mixer	1	ea	\$70,000
Monitors	3	ea	\$217,249
Pontoon Pump	5	ea	\$21,420
Hopper			

Value Added Tax

			[Subsidiary]
Rare Earth Roll Separator	6	ea	\$356,088
Re-heater	1	ea	\$98,552
Rope	1200	meters	\$12,000
Safety Signs	200	ea	\$2,000
Sampler	21	ea	\$185,378
Screw Feeder	7	ea	\$121,801
Slurry Pump	75	ea	\$1,860,513
Sump Pump	26	ea	\$1,854,715
Thickener Assembly	1	ea	\$888,000
Vibrating Feeder	1	ea	\$17,632
Vibrating Screen	10	ea	\$476,456
Water Pump	9	ea	\$286,317
Water Pump Assembly	12	ea	\$120,000
incl. Motor			
Water Tank	3	ea	\$15,000
Water Tank and Pump Assembly	1	ea	\$12,000
Water Treatment Plant	1	ea	\$214,296
Weighbridge	1	ea	\$31,406
Wet High Intensity Magnetic Separators (WHIMS)	4	ea	\$1,290,275
Wet Table	1	ea	\$132,298
Winch	6	ea	\$12,000
Generator Sets	4	ea	\$6,331,000
Mechanical Engine	1	Lot	\$1,952,340
Auxillary Equipment			
Exhaust Heat	1	Lot	\$0

Value Added Tax

[Subsidiary]

Recovery System			
MCD and Scada System	1	Lot	\$345,800
Mainboard MV/LV	1	ea	\$505,960
Distribution Board	1	ea	\$186,030
Transformer Feeders	4	ea	\$0
(inc. in ML/LV Board)			
Auxillary Transformer	1	ea	\$23,790
Control Voltage Supply (UPS System)	1	ea	\$34,970
Black Start Generator			
500kWe/400-230V Standard Set of	1	set	\$15,795
Spares for Engines			
Special Tools Set	1	set	\$30,875
for Normal Maintenance			
Set of HFO, LFO waste, LO and DO Tanks	1	lot	\$101,739
Fire-fighting System, Complete			
HFO Separator	1	ea	\$175,500
Fuel Oil Supply Unit	1	ea	\$215,254
Aux, Transformer	1	ea	\$94,510
		lot	\$53,950

Value Added Tax

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and Equipment to Intergrate 1000l Air Receiver	1	ea	\$9,620
Dissel- driven Aircompressor	1	ea	\$12,480
Telescoping Shiploaders	2	ea	\$1,103,993
Belt Conveyors complete	12	ea	\$1,995,712
Chain and Bucket Elevators	3	ea	\$498,928
Weight- belt feeders	4	ea	\$665,237
Electrical and Instrumentation	1	lot	\$15,713,624
Field Piping	1	lot	\$11,511,088
Linings	2000	m2	\$921,229
Mobile Equipment	1	lot	\$1,573,429
Platwork	570	t	\$6,222,547
Structural Steel	310	t	\$1,256,101
(Heavy) Structural Steel	2410	t	\$4,444,223
(Medium) Structural Steel	1	lot	\$3,662,458
(Light) Rebar	2300	t	\$3,438,500
Sand Drill with its components	1	ea	\$300,000

THE VALUE ADDED TAX (REMISSION) (LOW INCOME HOUSING PROJECTS) ORDER, 2008

[Legal Notice 115 of 2008, Legal Notice 43 of 2009]

1. This Order may be cited as the Value Added Tax (Remission) (Low Income Housing Projects) Order, 2008.

2. In this Order, unless the context otherwise requires—

"applicant" means a person making an application under paragraph 3 of this Order;

"low income earner" means a person whose monthly gross earning amounts to thirty five thousand shillings or less;

"low income house" means a house put up at a construction cost of not more than one million six hundred thousand shillings and of plinth area of not less than thirty square meters;

"low income housing project" means a project of not less than twenty housing units intended for low income earners;

"Minister" means the Minister for the time being responsible for Finance.

3. (1) An application for tax remission under section 23(3)(i) of the Act shall be made in writing to the Minister through the Minister for the time being responsible for Housing.

(2) An application under this paragraph shall—

- (a) be submitted together with the detailed certified list of goods and services to be rendered in respect of which the application is made;
- (b) include the following—
 - (i) the location of the project;
 - (ii) evidence of construction cost;
 - (iii) approved designs of the project;
 - (iv) the number of units to be constructed;
 - (v) the approval of the development by relevant authorities;
 - (vi) the Personal Identification Number (PIN) of the applicant; and
 - (vii) tax compliance certificate.

4. The Commissioner may require an applicant to—

- (a) furnish such further information as the Commissioner may consider necessary; and
- (b) allow and facilitate the inspection of the goods or services rendered to which the application relates by a person authorized by the Commissioner.

5. (1) Except as provided in sub-paragraph (2) below, only one application shall be made with respect to a given project.

(2) A second application in respect of the same project may be made if the applicant demonstrates that the additional application relates to a separate phase of the project or an expansion thereof.

6. A person granted tax remission under this Order shall—

- (a) construct low income houses;
- (b) allow and facilitate the Minister for the time being responsible for Housing or the Commissioner to inspect the projects, including the goods and services rendered;
- (c) avail the records of such goods and services rendered for purposes of inspection and audit to the Minister for the time being responsible for Housing or the Commissioner;
- (d) sell, rent or lease the houses to low income earners;

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- (e) sell the housing units at a price which is not more than thirty per cent of the construction cost;
- (f) ensure the rent charged for the houses constructed under the scheme reflect the reduced cost of construction as a result of tax remission.

7. Where the Commissioner and the Minister for the time being responsible for Housing is satisfied that an applicant granted tax remission under this Order has failed to comply with the provisions of paragraph 6 above, the Commissioner shall require the applicant to refund the tax remitted.

8. An applicant shall, if he sells, leases, rents or converts a house for uses other than as provided under paragraph 6(d), before the expiry of five years from the date the construction was completed, be required to refund the tax remitted or such portion thereof as the Minister may determine relating to the construction of the part so converted.

THE VALUE ADDED TAX REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Interpretation
 3. Open market value
 4. Place of supply of telecommunications services
 5. Taxable value of supply
 6. Taxable importation by a registered person for use outside the person's business
 7. Deduction of input tax on registration or change in use
 8. Refund
 9. *[Deleted by Legal Notice 188 of 2020, r. 2]*
 10. Tax invoice for supplies of imported services
 11. Credit notes
 12. Debit notes
 13. Exportation of goods or services
 14. Documents relating to supply to an Export Processing Zone business or Special Economic Zone
 15. Tax-inclusive pricing of taxable supplies to unregistered persons
 16. Manner of submitting documents
 17. Application of increased or reduced tax rate to successive suppliers
 18. Revocation
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THE VALUE ADDED TAX REGULATIONS

[Legal Notice 54 of 2017, Legal Notice 86 of 2019, Legal Notice 188 of 2020]

1. Citation

These Regulations may be cited as the Value Added Tax Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Value Added Tax Act (Cap. 476);

"arm's length transaction" means a transaction between persons dealing with each other at arm's length;

"member", in relation to a registered group, includes the member of the group appointed, from time to time, as the representative member of the group;

"recipient", in relation to a supply, means the person to whom the supply is made;

"supplier", in relation to a supply, means the person making the supply;

"tax fraction", in relation to a supply, means the fraction computed in accordance with the following formula—

$$t/(1+t)$$

where t is the rate of tax applicable to the supply as determined under section 5 of the Act;

"telecommunications services" means the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by wire, radio, optical, or other electromagnetic systems, and includes—

- (a) the related transfer or assignment of the right to use capacity for such transmission, emission, or reception; or
 - (b) the provision of access to global or local information networks,
- but does not include the supply of the underlying writing, images, sounds, or information;

"telecommunications supplier" means a person who supplies telecommunications services; and

"trading stock" includes anything produced, manufactured, purchased, or otherwise acquired for sale or exchange, and any raw materials used in the production or manufacturing process.

3. Open market value

(1) The open market value of a supply shall be the consideration that the supply would reasonably be expected to fetch in an arm's length transaction made at the time of supply.

(2) Where the open market value of a supply cannot be determined in accordance with paragraph (1), the open market value shall be an objective approximation of the consideration the supply would fetch in an arm's length transaction made at the time of supply as determined by the Commissioner based on generally accepted principles of valuation.

(3) Where there is need to determine the open market value for particular goods or services held by a person, at a particular time, the value shall be determined in accordance with paragraph (2), or be the value of similar goods or services, at that time.

4. Place of supply of telecommunications services

(1) A supply of telecommunications services shall be treated as made in Kenya when the person who initiated the supply is in Kenya at the time of supply where—

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- (a) the supply is made from a place of business outside Kenya;
- (b) the supply is not initiated by—
 - (i) a telecommunications supplier; or
 - (ii) a person who is global roaming while temporarily in Kenya; and
- (c) the recipient of the supply is not a registered person.

(2) The person who initiates a supply of telecommunications services shall be the person

- (a) who controls the commencement of the supply;
- (b) who pays for the supply;
- (c) who contracts for the supply; or
- (d) to whom the invoice for the supply is sent.

5. Taxable value of supply

Unless the Act otherwise provides, where a registered person makes a taxable supply without a separate amount being identified as tax, the taxable value of the supply shall be computed in accordance with the following formula—

$$B = A / (1 + t)$$

Where —

A is the total amount charged for the supply inclusive of VAT;

B is the taxable value; and

t tax rate.

6. Taxable importation by a registered person for use outside the person's business

(1) An application of taxable supplies by a registered person for use outside his business shall not be treated as a taxable supply made by the person unless the registered person has been allowed a deduction for input tax in respect of the taxable supply made to, or taxable importation made by the person for use outside the person's business.

(2) The taxable value of a taxable supply by a person for use outside his business shall be—

- (a) for goods that are trading stock acquired in a taxable supply, the consideration paid or payable in respect of the acquisition of the trading stock;
- (b) for goods that are trading stock acquired in a taxable importation, the taxable value of the importation; or
- (c) for any other case, the higher of—
 - (i) the consideration paid or payable on acquisition of the goods or services; or
 - (ii) the open market value of the goods or services on the date the supply is first used outside the business.

(3) The taxable value determined under paragraph (2) shall be reduced by—

- (a) if part of the input tax paid by the registered person on acquisition was allowed as a deduction, an amount reflecting the extent to which no deduction was allowed; or
- (b) if part of the goods or services were applied to a use outside the person's business, an amount reflecting the extent to which the goods or services were not so applied.

7. Deduction of input tax on registration or change in use

(1) A person shall be entitled to a deduction of input tax incurred for trading stock on hand at the date that the person becomes registered.

(2) A deduction of Input Tax shall not be allowed unless —

- (a) the input tax to which the deduction relates is deductible under section 17 of the Act;
- (b) the registered person has provided the Commissioner with satisfactory evidence—
 - (i) that input tax was paid on acquisition of the goods;
 - (ii) of the quantities, descriptions, and values of the goods on hand at the time of registration.

(3) A person shall when applying for the authorisation of deduction, submit to the Commissioner a list of goods on hand at the date of registration in respect of which the person seeks relief within three months of becoming registered in the approved form.

(4) The Commissioner may require a person who has submitted a list under paragraph (3) to produce further evidence of—

- (a) the quantities, descriptions, or values of goods on hand at the time of registration; or
- (b) the use or intended disposal of the goods after the date of registration.

(5) The Commissioner shall not allow an appropriate deduction—

- (a) for goods that are trading stock, the tax paid on acquisition or importation of the goods; or
- (b) for any other case, the lesser of—
 - (i) the tax paid on acquisition or importation of the goods or services; or
 - (ii) the tax fraction of the open market value of the goods or services at the time of change in use.

8. Refund

(1) A registered person who makes taxable supplies at both the general rate and zero rate, shall only be entitled to a refund arising from making zero rated supplies.

(2) In determining the amount due as a refund to a registered person who makes taxable supplies at both the general rate and zero rate, the Commissioner shall use the following formula—

$$R = \frac{Z \times i}{T}$$

Where—

R, is the value of input tax relating to zero rated supplies,

Z, is the total value of the zero-rated supplies,

T, is the total value of the taxable supplies; and

i, is the deductible input tax for the month of supply.

(3) A refund payable under section 30 or 31 of the Act shall be applied in accordance with section 47(4) of the Tax Procedures Act (Cap. 469B).

(4) When the recipient of a taxable supply to which section 31(1) of the Act applies is a registered person that is still in existence at the time the supplier applies for a refund under section 31(1), the refund shall be allowed unless the supplier had issued a credit note to the recipient of the supply specifying the amount of the unpaid tax claimed computed in accordance with section 31(1).

(5) The recipient of a taxable supply issued with a credit note under paragraph (4) shall reduce the amount of their deductible input tax in the tax period in which the credit note was received by the amount of tax specified in the note.

(6) When section 31(3) applies and the recipient of the taxable supply is a registered person who has previously been issued with a credit note in relation to the supply, the

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registered person refunding the tax to the Commissioner shall issue the recipient of the taxable supply with a debit note specifying the amount of tax refunded to the Commissioner.

(7) The recipient of a taxable supply issued with a debit note under paragraph (6) shall be allowed to reduce the amount of their deductible input tax in the tax period in which the debit note is received by the amount of tax specified in the note.

[L.N. 86/2019, r. 2.]

9.

[Deleted by Legal Notice 188 of 2020, r. 2]

10. Tax invoice for supplies of imported services

A registered person liable for tax under section 5(1)(c) and (6) of the Act and who is entitled to a credit for part of the amount of input tax payable shall, in respect of a supply of imported services, prepare a tax invoice in respect of the supply containing—

- (a) the name, address, and PIN of the recipient;
- (b) the name and address of the supplier;
- (c) the individualised serial number of the tax invoice and the date on which the tax invoice is prepared;
- (d) a description of the services supplied and the date of the supply;
- (e) the extent to which the supply has been applied other than to make taxable supplies;
- (f) the consideration for the supply and the amount of tax charged.

11. Credit notes

(1) A registered person for good and valid business reasons, decides to reduce the value of a supply after the issue of a tax invoice after goods are returned to the registered person shall issue a credit note to a person after the registered person has refunded the excess tax to the recipient of the supply, whether in cash or as a credit against any amount owing to the supplier by the recipient.

(2) A credit note shall contain—

- (a) the words "CREDIT NOTE" in a prominent place;
- (b) the name, address, and PIN of the supplier;
- (c) the name, address, and PIN of the recipient;
- (d) the individualised serial number of the credit note and the date on which the credit note is issued;
- (e) a brief description of the circumstances giving rise to the issuing of the credit note, including the invoice details to which the credit note relates;
- (f) the consideration shown on the tax invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of tax that relates to the difference.

12. Debit notes

(1) A registered person who issues a debit note in respect of further charge made in respect of a supply, or any transaction associated with that supply shall include the amount of tax specified in the debit note as output tax of the person in the tax period in which the debit note is issued.

(2) A debit note issued under paragraph (1) shall contain—

- (a) the words "DEBIT NOTE" in a prominent place;
- (b) the name, address, and PIN of the supplier;
- (c) the name, address, and PIN of the recipient;
- (d) the individualised serial number of the debit note and the date on which the debit note is issued;

- (e) a brief description of the circumstances giving rise to the issuing of the debit note, including the invoice details to which the debit note relates;
- (f) the consideration shown on the tax invoice for the supply, the correct amount of the consideration, the difference between those two amounts, and the amount of tax that relates to the difference.

13. Exportation of goods or services

(1) An exportation shall be a taxable supply—

- (a) in the case of goods, when the taxable supply involves the goods being entered for export under the East African Community Customs Management Act and delivered to a recipient outside Kenya at an address outside Kenya; or
- (b) in the case of services, when the taxable supply involves the services being provided to a recipient outside Kenya for use, consumption, or enjoyment outside Kenya irrespective of where the payment is made from:

Provided that the exportation of services shall not include—

- (a) taxable services consumed on exportation of goods unless the services are in relation to transportation of goods which terminates outside Kenya;
- (b) *deleted by L.N. 86/2019, r. 3(b).*

(2) The documentation relating to a supply required as the proof of an exportation of goods or services shall be—

- (a) a copy of the invoice showing the recipient of the supply to be a person outside Kenya;
- (b) proof of payment for the supply;
- (c) for goods, a copy of—
 - (i) the bill of lading, road manifest, or airway bill, as the case may be;
 - (ii) the export or transfer entry certified by a proper officer of Customs at the port of exit;
 - (iii) for excisable goods, the documents shall be in accordance with the provisions of the Excise Duty Act (Cap. 472).
- (d) for services, such other documents as the Commissioner may require as proof that the services had been used or consumed outside Kenya.

(3) Where the Commissioner has reasonable grounds to believe that goods treated by a registered person as exported may not have been exported —

- (a) the Commissioner may, by notice in writing, require the registered person to produce, within the time specified in the notice, a certificate signed and stamped by a competent authority outside Kenya stating that the goods were duly landed and entered for home consumption at a place outside Kenya;
- (b) the supply shall not be treated as an exportation until the certificate referred to in paragraph (a) has been provided to, and accepted by, the Commissioner.

[L.N. 86 of 2019, r. 3.]

14. Documents relating to supply to an Export Processing Zone business or Special Economic Zone

The documents relating to a supply required as proof of a supply of goods or services to an Export Processing Zone business or Special Economic Zone shall be—

- (a) a copy of the recipient's export processing zone licence; or Special Economic Zone licence;
- (b) a certificate signed by the recipient of the supply stating that the goods have been received and are for use in the approved operations of an export processing zone enterprise; and
- (c) for goods, the export entry duly certified by the proper officer of customs.

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15. Tax-inclusive pricing of taxable supplies to unregistered persons

(1) A registered person who is a retailer or who otherwise primarily makes taxable supplies to persons who are not registered shall—

- (a) state prominently on its invoices that taxable supplies are made inclusive of tax; and
- (b) disclose prominently on its invoice that the supply is a taxable or exempt supply and, if a taxable supply, the rate of tax charged.

(2) In determining the tax payable in respect of a taxable supply for which the price is quoted as inclusive of tax the following formula shall apply—

$$tx[A/((1+t))]$$

where—

A is the total amount charged for the supply inclusive of VAT; and

t is the tax rate.

(3) A registered person who fails to comply with paragraph (1) commits an offence.

16. Manner of submitting documents

A return, application, notice, or other document to be lodged or submitted under the Act shall be lodged or submitted in accordance with the Tax Procedures Act (Cap. 469B).

17. Application of increased or reduced tax rate to successive suppliers

(1) Where a supply of goods or services is treated as a successive supply under section 12(3) of the Act for a period beginning and ending before the date on which a change in the rate of tax levied becomes effective in respect of the supply, or the date on which tax is imposed or withdrawn in respect of the supply, and the supply is treated under section 12 as having been made on or after that date, the—

- (a) in the case of a change in the rate of tax on the change date, the rate of tax applicable to the supply shall be the rate applicable immediately before the change date;
- (b) in the case of the imposition of tax on the change date, the supply shall be treated as not being subject to tax; or
- (c) in the case of withdrawal of the tax on the change date, the supply shall be treated as being subject to tax as if the tax had not been withdrawn.

(2) When a supply of goods or services is treated as a successive supply under section 12(3) of the Act during a period beginning before and ending on or after the date on which a change in the rate of tax levied becomes effective in respect of the supply, or the date on which tax is imposed or withdrawn in respect of the supply, and the supply is treated under section 12 as having been made on or after the change date, the consideration for the supply shall, on the basis of a fair and reasonable apportionment, be treated as consisting of a part relating to the supply of the goods or services before the change date and a part relating to the supply of goods or services on or after the change date and—

- (a) in the case of a change in the rate of tax on the change date, the tax payable in respect of the first part is determined at the rate applicable before the change date and the tax payable in respect of the second part is determined at the rate applicable on the change date;
- (b) in the case of the imposition of tax on the change date, the first part is not subject to tax; and
- (c) in the case of the withdrawal of the tax, the first part is subject to tax as if the tax had not been withdrawn.

18. Revocation

Subject to section 68 of the Act, the following are revoked:

- (a) The Value Added Tax Regulations, 1994 (L.N. 195/1994);

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- (b) The Value Added Tax (Appeals) Rules, 1990 (L.N. 229/1990);
- (c) The Value Added Tax (Distrain) Regulations, 1990 (L.N. 227/1990);
- (d) The Value Added Tax Order, 2002 (L.N. 95/2002);
- (e) The Value Added Tax (Tax Withholding) Regulations, 2004 (L.N. 53/2004);
- (f) The Value Added Tax (Electronic Tax Registers) Regulations, 2004 (L.N. 110/2004).

(2) The Value Added Tax (Remission) (Official Aid Funded Projects) Order, 2003 (L.N. 67/2003) shall continue to apply until another Regulation relating to official aid funded project is put in place.

(3) The Value Added Tax (Remission) (Low Income Housing Projects), Order 2008 (L.N. 115/2008) shall continue to apply to a remission granted before the commencement date while the remission remains in force.

**THE VALUE ADDED TAX (DIGITAL
MARKETPLACE SUPPLY) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Interpretation
 3. Scope of taxable supply through a digital marketplace
 4. Application of tax
 5. Registration
 6. Appointment of tax representatives
 7. Simplified tax registration framework
 8. Place of supply
 9. Time of supply
 10. Exemption from issuing an electronic tax invoice
 11. Claim for input tax
 12. Accounting for and payment of tax
 13. Amendment of returns
 14. Penalties
 15. Transitional provisions
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THE VALUE ADDED TAX (DIGITAL MARKETPLACE SUPPLY) REGULATIONS

[Legal Notice 190 of 2020, Legal Notice 68 of 2022]

1. Citation

These Regulations may be cited as the Value Added Tax (Digital Marketplace Supply) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"business-to-business transaction" *deleted by LN 68 of 2022, r. 2;*

"business-to-consumer transaction" *deleted by LN 68 of 2022, r. 2;*

"digital marketplace supply" means the supply of a service made on a digital marketplace;

"digital marketplace" has the meaning assigned to it in section 5(9);

"export country" means any country other than Kenya and includes any place which is not situated in Kenya;

"intermediary" means any person who facilitates the supply of services through the digital marketplace and is responsible for issuing invoices or collecting payments for the supply;

"Personal Identification Number" or "PIN" has the meaning assigned to it in section 2 of the Tax Procedures Act (Cap. 469B);

"recipient", in relation to any supply of services, means the person to whom the supply is made;

"tax" has the meaning assigned to it under section 2(1); and

"tax period" means a calendar month.

[LN 68 of 2022, r. 2.]

3. Scope of taxable supply through a digital marketplace

Taxable supplies made through a digital marketplace include—

- (a) downloadable digital content including downloadable mobile applications, e-books and films;
- (b) subscription-based media including news, magazines and journals;
- (c) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (d) software programmes including software, drivers, website filters and firewalls;
- (e) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;
- (f) music, and games;
- (g) search engine and automated helpdesk services including customisable search engine services;
- (h) tickets for live events, theatres or restaurants;
- (i) distance teaching through pre-recorded media or e-learning including online courses and training but excluding education services exempted under the First Schedule to the Act;
- (j) digital content for listening, viewing or playing on any audio, visual or digital media;

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- (k) services that links the supplier to the recipient including transport hailing services or platforms;
- (l) electronic services under section 8(3); and
- (m) any other service provided through a digital marketplace that is not exempt under the Act.

[LN 68 of 2022, r. 4.]

4. Application of tax

(1) Tax shall apply to taxable supplies specified under regulation 3 when supplied in Kenya.

(2) *Deleted by LN 68 of 2022, r. 3.*

(3) *Deleted by LN 68 of 2022, r. 3.*

(4) Where the supplier from an export country is notified as provided under paragraph (3), the supplier shall not be required to charge the tax on the supply to the business entity.

(5) *Deleted by LN 68 of 2022, r. 3.*

[LN 68 of 2022, r. 3.]

5. Registration

(1) A person supplying the taxable services specified in regulation 3 shall register for tax in Kenya if—

- (a) the supplies are made by a person from an export country to a recipient in Kenya in a business-to-consumer transaction; and
- (b) the person is conducting business in Kenya in accordance with section 8 (2) and any of the following circumstances apply—
 - (i) the recipient of the supply is in Kenya;
 - (ii) the payment for the services is made to the supplier in the export country from a bank registered under the Banking Act; or
 - (iii) the payment for the services that is made to the supplier in the export country is authorised in Kenya.

(2) A person from an export country who makes a business-to-consumer supply of services to a recipient who is in Kenya shall register for tax through a simplified tax registration framework in accordance with regulation 7.

(3) A person registered under paragraph (2) shall declare and pay tax on the supplies made on the digital marketplace at the rate specified in section 5 (2)(b).

6. Appointment of tax representatives

Despite regulation 5(2), a person from an export country making a business-to-consumer supply to a recipient in Kenya who elects not to register in accordance with regulation 7 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act (Cap. 469B)

7. Simplified tax registration framework

(1) A supplier from an export country who makes supplies on a digital marketplace shall register under the simplified tax registration framework specified under this regulation.

(2) An application for registration under the simplified tax registration framework shall be done through an online registration form prescribed by the Commissioner.

(3) The information required for registration under paragraph (2) shall include—

- (a) the name of the business including the business's trading name;
- (b) the name of the contact person responsible for tax matters;
- (c) the postal address or registered address of the business and its contact person;

- (d) the telephone number of the contact person;
- (e) the email address of the contact person;
- (f) the websites or uniform resource locators (URLs) of the supplier through which business is conducted;
- (g) the national tax identification number issued to the supplier in the supplier's jurisdiction;
- (h) the certificate of incorporation or registration issued to the business in the country where the business is incorporated; and
- (i) any other information that the Commissioner may require.

(4) An applicant under paragraph (2) may be required to submit to the Commissioner additional documents that may be necessary to substantiate the information provided in the application.

(5) Upon registration under this regulation, the Commissioner shall issue the applicant with a PIN for the purpose of filing returns and the payment of tax.

(6) A person registered under this regulation who ceases to make taxable supplies on a digital marketplace shall apply to the Commissioner for deregistration in accordance with section 36.

8. Place of supply

(1) A supply on a digital marketplace shall be deemed to have been made in Kenya where the recipient of the supply is in Kenya.

(2) In determining whether the recipient of a supply is in Kenya, the Commissioner shall consider—

- (a) whether the payment proxy including credit card or debit card information and bank account details of the recipient of the digital supplies is in Kenya; or
- (b) whether the residence proxy including the billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient is in Kenya.

9. Time of supply

The time of supply on a digital marketplace shall be the earlier of—

- (a) the date on which the payment for the supply is received in whole or in part; or
- (b) the date on which the invoice or receipt for the supply is issued.

10. Exemption from issuing an electronic tax invoice

A business-to-consumer supplier on a digital marketplace from an export country who is registered under these Regulations shall not be required to issue an electronic tax invoice:

Provided that the supplier shall issue an invoice or receipt showing the value of the supply and the tax deducted thereon.

11. Claim for input tax

A deduction of input tax by a supplier shall not be allowed for business-to-consumer transactions for a supply on a digital marketplace.

12. Accounting for and payment of tax

(1) The tax for a supply made on a digital marketplace from an export country to a recipient in Kenya in a business-to-consumer transaction shall be paid by the supplier or the tax representative of the supplier.

(2) A registered person shall submit a return in the prescribed form and remit the tax due in each tax period to the Commissioner on or before the twentieth day of the month following the end of the tax period.

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(3) Where an intermediary makes a supply on a digital marketplace on behalf of another person, the intermediary shall be required to charge and account for the tax on the supply whether such other person is registered for tax or not.

13. Amendment of returns

(1) Any amendments to a return submitted in accordance with these Regulations shall be made in accordance with section 31 of the Tax Procedures Act (Cap. 469B).

(2) Where an amendment under paragraph (1) results in the overpayment of tax, the amount overpaid shall be retained as a credit in favour of the person who overpaid and offset against the tax payable in the subsequent tax period.

14. Penalties

A person who fails to comply with the provisions of these Regulations shall be liable to the penalties prescribed under the Act or the Tax Procedures Act (Cap. 469B).

15. Transitional provisions

A supplier on a digital marketplace from an export country who is required to register under these Regulations shall apply to the Commissioner for registration within six months from the date of publication of these Regulations.

THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Interpretation
 3. Application
 4. Use of a register
 5. Availability of a register
 6. Obligations of the user of a register
 7. Tax invoices, credit notes and debit notes
 8. Specifications of a register
 9. Transmission of invoice data and security
 10. Offence
 11. Transitional provisions
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THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) REGULATIONS

[Legal Notice 189 of 2020]

1. Citation

These Regulations may be cited as the Value Added Tax (Electronic Tax Invoices) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"authorised officer" means an officer appointed under section 3 of the Tax Procedures Act (Cap. 469B);

"Personal Identification Number" or "PIN" has the meaning assigned to it under section 2 of the Tax Procedures Act (Cap. 469B);

"register" means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and

"user of a register" means a person registered under section 34.

3. Application

These Regulations shall apply to a person registered under section 34 of the Act.

4. Use of a register

(1) A user of a register shall use the register in accordance with these Regulations and ensure that—

- (a) each sale is recorded with the use of the register;
- (b) an invoice is generated in respect of each sale;
- (c) each invoice generated in respect of each sale shall contain the information specified in regulation 7.

(2) The user of the register shall —

- (a) transmit or deliver the invoice generated with respect to a purchase to the purchaser; and
- (b) transmit or deliver the invoice details to the Commissioner in accordance with regulation 9(a).

(3) A register shall be exclusively used by the registered user of that register.

5. Availability of a register

(1) The user of a register shall ensure continuity of operations of the register if there is an interruption of power supply.

(2) Where a user of a register cannot use the register for any reason, the user shall—

- (a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the register; and
- (b) record sales using any other means as may be specified by the Commissioner.

(3) Once the user of a register is able to use the register, the user shall enter into the register the sales recorded under paragraph (2)(b).

6. Obligations of the user of a register

(1) A user of a register shall—

- (a) ensure availability of the register at the point of sale;
- (b) facilitate the inspection of the register by an authorised officer;

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- (c) ensure the register is regularly serviced to ensure the register's proper functioning at all times;
- (d) keep and maintain a register ledger in which a record of the servicing of the register shall be entered and which shall contain—
 - (i) the name and address of the person servicing the register; and
 - (ii) an entry for each time the register is serviced, describing the servicing and shall be signed by the person performing the service; and
- (e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a register intends to discontinue the use of a register due to—

- (a) closure of business;
- (b) cessation to supply vatiable supplies; or
- (c) any other reason,

that user shall notify the Commissioner, in writing, of the intended discontinuation within thirty days prior to the discontinuation.

(3) Where a notification has been made under paragraph (2), the Commissioner may, by notice in writing and within thirty days, retire the register.

7. Tax invoices, credit notes and debit notes

(1) A tax invoice generated from a register shall contain —

- (a) the PIN of the registered user of a register;
- (b) the time and date of issuance;
- (c) the serial number of the invoice;
- (d) the buyer's PIN;
- (e) the total gross amount;
- (f) the total tax amount;
- (g) the item code of supplies (for exempt, zero-rated and other rate supplies) as provided by the Commissioner in accordance with the Act;
- (h) a brief description of goods and services;
- (i) the quantity of supply;
- (j) the unit of measure;
- (k) the tax rate charged;
- (l) the unique register identifier;
- (m) the unique invoice identifier;
- (n) a quick response (QR) code; and
- (o) any other requirement as may be specified by the Commissioner.

(2) Where a user of a register issues a credit note or debit note, the credit note or debit note shall indicate the PIN and invoice number to which the supply relates.

8. Specifications of a register

A register shall—

- (a) be capable of interconnectivity with information technology networks;
- (b) have sufficient storage to maintain records;
- (c) display clear messages in the official languages;
- (d) be secure and tamperproof; and
- (e) be capable of—
 - (i) integrating with the Authority's systems;

- (ii) transmitting or connecting to a device that will transmit the recorded data to the systems;
- (iii) allowing updates for any changes in the tax laws; and
- (iv) capturing the information required under these Regulations.

9. Transmission of invoice data and security

A register shall be capable of—

- (a) transmitting to the Authority's system the tax invoice data and the end of day summary of the respective day's data in the manner specified by the Commissioner;
- (b) printing or providing stored data;
- (c) storing data in an unintelligible manner to persons not authorised to access it;
- (d) maintaining the integrity of the data;
- (e) securing authentication for authorised users;
- (f) capturing the log of all activities; and
- (g) assigning a unique identifier to each invoice.

10. Offence

(1) A person commits an offence if that person—

- (a) fails to comply with any of the provisions of these Regulations; or
- (b) tampers, manipulates or interferes with the proper functioning of the register.

(2) A person convicted of an offence under these Regulations shall be liable to pay the penalty specified under section 63 of the Act.

11. Transitional provisions

A person who is registered under section 34 of the Act shall comply with these Regulations within a period of twelve months from the coming into operation of these Regulations:

Provided that—

- (a) where the person is unable to comply with these Regulations within the period specified under this regulation, that person shall apply to the Commissioner for the extension of time which shall not exceed six months; and
 - (b) the application under paragraph (a) shall be made at least thirty days before the expiry of the period specified.
-