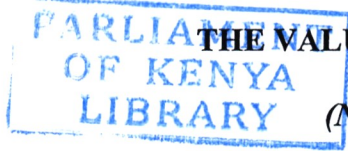


LEGAL NOTICE NO.....



THE VALUE ADDED TAX ACT

(No.35 of 2013)

IN EXERCISE of the powers conferred by section 67 of the Valued Added Tax Act, 2013, the Cabinet Secretary for the National Treasury makes the following Regulations—

THE VALUE ADDED TAX REGULATIONS, 2014

PART I—PRELIMINARY

Short title and commencement

1. (1) These Regulations may be cited as the Value Added Tax Regulations, 2014.

(2) Regulations 20 and 33 shall come into operation on the date that the Tax Procedures Act commences.

Interpretation

2. (1) In these Regulations –

“adjustment event” means—

- (a) an application of taxable supplies or taxable importations by a registered person for use outside the person’s business treated as a taxable supply under section 15 or regulation 12;
- (b) an event giving rise to a requirement that a registered person issues a credit or debit note under section 16;
- (c) an application of taxable supplies originally acquired to make exempt supplies by a registered person to the making of taxable



supplies to which section 18(1)(a) applies;

- (d) an event giving rise to the application of section 31(1) or (2); or
- (e) an application of taxable supplies or taxable importations by a registered person to an exempt use treated as a taxable supply under regulation 15;

“arm’s length transaction” means a transaction between persons dealing with each other at arm’s length;

“consideration”, in relation to a supply, has the meaning in section 13(3);

“member”, in relation to a registered group, includes the representative member of the group;

“personal identification number” or “PIN” means the personal identification number required under section 132 of the Income Tax Act;

“prepaid telecommunications card” means a card or similar item in whatever form it is issued, including electronically, that entitles the holder to receive supplies of telecommunications services up to its face value, and includes a pre-paid Subscriber Identity Module (“SIM”) card, a rechargeable card, an internet access card, or any other form of prepayment of telecommunications services;

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

“representative member”, in relation to a registered group, means the member of the group appointed, from time to time, as the representative member of the group;

“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 in accordance with section 5;

“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 includes any raw materials used in the production or manufacturing process.

Open market value

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

the time of supply.

(2) If the open market value of a supply cannot be determined under paragraph (1), the open market value is the consideration that is 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) If a provision of the Act or these Regulations requires the open market value to be determined at a particular time for particular goods or services held by a person, that value shall be worked out by reference to the open market value of a supply of those goods or services as determined, at that time, under these Regulations.

Related persons

4. (1) For the purposes of the Act and these Regulations and subject to paragraph (2), section 13(8) applies in determining whether persons are related or associates.

(2) In addition to the circumstances specified in section 13(8)(c), an individual and a relative of the individual are treated as related or associates.

(3) In this regulation—

(a) "relative", in relation to an individual, means—

(i) an ancestor, a descendant of any of the grandparents, or an adopted child, of the individual;

(ii) an ancestor, a descendant of any of the grandparents, or an adopted child of a spouse of the individual;

or

(iii) a spouse of the individual or of any person specified in paragraph (a) or (b); and

(b) “spouse”, in relation to an individual, means an individual who is legally married to the first-mentioned individual, and includes another individual who, although not legally married to the first-mentioned individual, lives with the individual on a genuine domestic basis in a relationship as a couple.

PART II—SUPPLIES

Mixed Supplies

5. (1) This regulation applies to identify a transaction that has two or more elements as a supply of goods or a supply of services.

(2) A supply of a particular kind that is ancillary or incidental to a supply of another kind (“the principal supply”) is treated as part of the principal supply.

(3) When the following conditions are satisfied—

- (a) there is a single supply (referred to as a “mixed supply”) of any of the following –
 - (i) two or more different types of goods;
 - (ii) two or more different types of services;
 - (iii) goods and services;
- (b) if the goods or services were supplied in separate supplies, different rules would have applied under the Act to those

separate supplies;

- (c) sub-regulation (2) does not apply to the mixed supply,

each item of goods or services provided in the mixed supply shall be treated as the subject of a separate supply occurring at the time of the mixed supply.

(4) The consideration for each separate supply under sub-regulation (3) is calculated according to the following formula –

$$A \times B/C$$

where –

- (a) A is the total consideration for the mixed supply;
- (b) B is the open market value of the separate supply at the time of the mixed supply; and
- (c) C is the sum of the open market values of each separate supply at the time of the mixed supply.

(5) Despite this Regulation, the Commissioner may treat a mixed supply in any manner that the Commissioner considers reasonable provided the treatment is a true reflection of the value to the recipient of each item of goods and services provided in the mixed supply.

Exportation of
goods or services

6. (1) An exportation is 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 from a place of business in Kenya to a recipient outside Kenya for use, consumption, or enjoyment outside Kenya.

(3) A taxable supply shall be treated as an exportation if the person making the supply has the documents specified in regulation 31 evidencing the exportation.

Place of supply of telecommunications services

7. (1) This Regulation applies to a supply of telecommunications services where—

(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) A supply of telecommunications services to which this Regulation applies shall be treated as made in Kenya when the person who initiated the supply is in Kenya at the time of supply.

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

who appears first in the following paragraphs—

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

Place of supply of
professional
services

8. A supply of consulting, engineering, legal, architectural, accounting, data processing, or any other similar services shall be treated as taking place in Kenya if

- (a) the supply was made from a place of business outside Kenya;
- (b) the recipient of the supply is not a registered person; and
- (c) the services are supplied to a recipient in Kenya for use, consumption, or enjoyment in Kenya.

Supply of imported
services

9. (1) Where section 10(4) is applied—

- (a) the overseas person and the registered person shall be treated as related persons;
- (b) the overseas person is not a registered person; and
- (c) the internal provision of services from the overseas person to the registered person shall be treated as a supply of services made by the overseas person in the course or furtherance

of a business carried on outside Kenya.

(2) In this Regulation, “overseas person” means that person who, for the purposes of section 10(4), carries on that part of the business of a registered person that is carried on outside Kenya.

Taxable value of supply

10. (1) Unless the Act or these Regulations provide otherwise, the value of a supply for no consideration shall be zero.

(2) If 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 –

$$A - (A \times B)$$

where—

(a) A is the total amount charged for the supply; and

(b) B is the tax fraction.

Rights and options

11. If –

(a) the supply of a right or option was a taxable supply; and

(b) a subsequent supply is made on the exercise of the right or option,

the consideration for the subsequent supply shall be limited to the additional amount, if any, given for the subsequent supply or in connection with the exercise of the right or option.

Application of section 15 of the

12. (1) Section 15 shall apply also to the application of a taxable importation by a registered person

for use outside that person's business.

(2) Section 15 shall apply only if 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 that is applied by that person for use outside that person's business.

(3) Subject to paragraph (4), the taxable value of a taxable supply under section 15 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 lesser of—
 - (i) the consideration paid or payable on the acquisition of the goods or services; or
 - (ii) the open market value of the goods or services at the time specified in section 15(2).

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

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

if only part of the goods or services were applied to a use outside the person's business.

Vouchers

13. Subject to regulation 14—

(1) The issuing of a voucher shall not be a supply if the voucher –

- (a) entitles the holder of the voucher to receive a supply of goods or services up to a monetary amount on the redemption of the voucher; and
- (b) is issued for an amount in money.

(2) If the voucher is redeemed for a taxable supply made by a registered person, the amount referred to in paragraph (1)(b) shall be treated as comprising two components, that is—

- (a) an amount as the consideration or part of the consideration for the supply calculated as the amount referred to in paragraph (1)(b) reduced by the tax fraction of that amount; and
- (b) an amount as the tax or part of the tax payable in respect of the supply calculated as the tax fraction of the amount referred to in sub-regulation (1)(b).

(3) If—

- (a) a registered person issues a voucher for no charge;

- (b) the voucher entitles the holder to a discount on the consideration for the supply of goods or services by another person; and
- (c) the voucher is redeemed for a taxable supply,

the consideration for the supply includes the monetary value of the voucher reduced by an amount equal to the monetary value of the voucher multiplied by the tax fraction.

(4) A registered person shall be entitled to a deduction for an amount of input tax in respect of any amount paid to a supplier in respect of the redemption by the supplier of a voucher referred to in paragraph (3).

(5) The amount of the deduction referred to in paragraph (4) is the amount paid to the supplier multiplied by the tax fraction and the deduction is allowed in the tax period in which the amount is paid to the supplier.

(6) A supply of telecommunications services through the use of a prepaid telecommunications card acquired in Kenya that can be used either in or outside Kenya occurs at the time the phone calls are made with the card.

(7) In this regulation, "voucher" means a voucher, stamp, token, coupon, or similar article, including an article issued electronically, that can be redeemed by the holder only for supplies of goods or services, and includes a phone card but does not include a postage stamp.

Prepaid
telecommunications
cards

14. (1) This regulation shall apply to—

- (a) the supply of a prepaid telecommunications card by a telecommunications supplier, but not the supply of a prepaid telecommunications card by a telecommunications supplier to another telecommunications supplier; and
- (b) a supply of a prepaid telecommunications card by a telecommunications intermediary of a telecommunications supplier.

(2) Where a telecommunications supplier supplies a prepaid telecommunications card at a discount on the face value of the card to a telecommunications intermediary, the consideration for the supply shall be calculated without reduction for the discount.

(3) If a telecommunications intermediary buys and sells on a prepaid telecommunications card—

- (a) the sale of the card by the telecommunications intermediary shall not be treated as a supply for the purposes of the Act; and
- (b) the acquisition of the card shall not be treated as an acquisition for the purposes of the Act.

(4) For the avoidance of doubt, if a telecommunications supplier supplies a prepaid telecommunications card through a telecommunications intermediary, the consideration for the supply is calculated without taking into

account the commission paid to the intermediary.

(5) A supply of agency services by a telecommunications intermediary acting as agent, whether for a telecommunications supplier or another telecommunications intermediary, in relation to the distribution of a prepaid telecommunications card shall not be treated as a supply.

(6) For the purposes of this regulation, a “telecommunications intermediary” includes the agent or distributor of a telecommunications supplier for the supplier of prepaid telecommunications cards.

Application of goods
or services to exempt
use

15. (1) When—

- (a) a registered person has acquired goods or services in a taxable supply or taxable importation, wholly or partly, for the purposes of making taxable supplies;
- (b) the person has been allowed a deduction for the whole or part of the input tax paid or payable in respect of the acquisition of the goods or services; and
- (c) the person has applied the goods or services to an exempt use,

the application of the goods or services to an exempt use shall be treated as a taxable supply made by the registered person on the date the goods or services are first applied to exempt use.

(2) Subject to paragraph (3), the taxable value of a taxable supply referred to in paragraph (1) 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 class of goods, the lesser of—
 - (i) the consideration paid or payable on the acquisition of the goods or services; or
 - (ii) the open market value of the goods or services at the time specified in paragraph (1).

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

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

(4) In this regulation, “exempt use” means the use of goods or services to make an exempt supply.

PART III—IMPORTS

Taxable value of
imported goods

16. For the purposes of section 14(1)(c), when the imported goods are subject to excise duty, the reference to “duty of customs” includes the excise duty payable in respect of imported goods.

PART IV – INPUT TAX

Second-hand Goods

17. (1) This regulation shall apply if—
- (a) a supplier of second-hand goods has made a taxable supply of second-hand goods;
 - (b) a supplier of second-hand goods has purchased second-hand goods from a person who is not a registered person;
 - (c) a supply of second-hand goods to a supplier of second-hand goods is not an exempt supply or a zero-rated supply if the supplier of the goods to the supplier of the second-hand goods is also a registered person; and
 - (d) a supplier of second-hand goods has supplied the second-hand goods in substantially the same state as they were in when purchased by the supplier.

(2) When applying this regulation, supplier of the second-hand goods shall be allowed a deduction for an amount of input tax equal to the tax fraction of the consideration paid by the supplier for the second-hand goods.

(3) The deduction for input tax under paragraph (2) shall be allowed in the tax period in which the supplier of the second-hand goods makes a supply of the second-

hand goods.

(4) If a supplier of second-hand goods receives second-hand goods (referred to as “traded-in goods”) as part payment for a supply that the supplier makes to a person who is not registered, the open market value of the traded-in goods used to determine the consideration for the supply must be the same as the open market value used to determine the consideration paid by the second-hand goods supplier to purchase the traded-in goods.

(5) In this regulation—

- (a) “second-hand goods” means goods that have previously been used by a person who is not a registered person; and
- (b) “supplier of second-hand goods” means a registered person whose business principally involves the re-supply of second-hand goods in substantially the same state as they were in when purchased by the person.

Annual
reconciliation of
deduction of input
tax

18. (1) If a registered person has made a calculation under section 17(7) for a tax period during a calendar year, the registered person shall, at the end of the year, make a calculation under section 17(7) based on the annual value of supplies for the year.

(2) A registered person shall make the calculation referred to in paragraph (2) by the end of the first tax period of the following calendar year.

(3) If the calendar year deduction of a registered person for a calendar year exceeds the return deduction of the person for the year, the excess is treated as input tax deducted by the person in the first tax period of the

following calendar year.

(4) If the return deduction of a registered person for a calendar year exceeds calendar year deduction of the person for the year, the excess is treated as output tax of the person in the first tax period of the following calendar year.

(5) In this regulation—

- (a) “calendar year deduction”, in relation to a calendar year, means the deduction of input tax for the calendar year calculated under paragraph (2) that would be allowed to a registered person for the year on the basis that section 17(7) applied by reference to the calendar year and not the tax period; and
- (b) “return deduction”, in relation to a calendar year, means the total deduction of input tax actually allowed to a registered person for the calendar year.

Deduction of input
tax on registration or
change in use

19. (1) A person is entitled to claim relief under section 18 for the tax paid on taxable supplies made to, and taxable importations made by, that person.

(2) A person is entitled to relief under section 18(1)(b) only for trading stock on hand at the date that the person becomes registered.

(3) A deduction is allowed under section 18(2) if—

- (a) the input tax to which the deduction relates is deductible under section 17;
- (b) the registered person has provided the Commissioner with satisfactory evidence of the following—
 - (i) that input tax was paid on

acquisition of the goods; and

- (ii) where section 18(1)(b) applies, of the quantities, descriptions, and values of the goods on hand at the time of registration.

(4) The maximum amount of the deduction allowed under section 18(2) to a registered person —

- (a) for goods that are trading stock, shall be the tax paid on acquisition or importation of the goods; or
- (b) for any other case, shall be the lesser of—
 - (i) the tax paid on the 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 the change in use.

(5) A person shall submit to the Commissioner a list of goods on hand at the date of registration in respect of which that person seeks relief under section 18(1)(b).

(6) The list referred to in paragraph (6) shall be—

- (a) in the approved form; and
- (b) submitted within three months of becoming registered.

(7) The Commissioner may require a person who has submitted a list under paragraph (6) to also produce

evidence of—

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

PART V – REFUND OF TAX

Refund of tax on
bad debts

20. (1) When the recipient of a taxable supply to which section 31(1) applies is a registered person at the time the supplier applies for a refund under section 31(1), the refund shall be allowed only if the supplier issues a credit note to the recipient of the supply specifying the amount of the unpaid tax computed in accordance with section 31(1).

(2) The recipient of a taxable supply who has been issued with a credit note under paragraph (1) shall reduce the amount of their the deductible input tax in the tax period in which the credit note is received by the amount of tax specified in the note, but only to the extent that the recipient claimed a deduction for the input tax payable in respect of the taxable supply.

(3) When section 31(2) 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 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.

(4) The recipient of a taxable supply issued with a debit note under paragraph (3) 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, but only to the extent that the recipient used the taxable supply to make taxable supplies.

PART VI – REGISTRATION

Application for
registration

21. (1) An application for registration under section 34(1)(a) shall be made as soon as the value of a person's taxable supplies exceeds the registration threshold during the relevant twelve-month period.

(2) For the purposes of section 34–

- (a) when determining whether a person exceeds the registration threshold, the Commissioner may consider the value of taxable supplies made by a related person; and
- (b) the reference to a taxable supply made by a person includes a supply of imported services made to the person determined on the assumption that the person is already a registered person.

(3) For the purposes of section 34(2), a “capital asset” is a tangible or intangible asset of a business having a useful life of longer than one year, but does not include trading stock.

(4) In this regulation, “registration threshold” means the amount specified in section 34(1).

Voluntary
registration

22. The Commissioner may register an applicant for registration under section 34(3) if the applicant intends to make taxable supplies and if the other conditions for registration in section 34(4)(b), (c), and (d) have been

satisfied.

PART VII – GROUP COMPANIES

Registration of a
group of companies
as a single
registered person

23. (1) Two or more companies may be registered as a group of companies under the Act if—

- (a) each company is incorporated under the Companies Act;
- (b) each company is—
 - (i) a registered person;
 - (ii) if it is not a registered person, it may be registered under section 34(1); or
 - (iii) if it is not a registered person, it is a company that the Commissioner may register under section 34(4) if an application for registration had been made by that company under section 34(3);
- (c) each company is part of the same wholly owned group;
- (d) each company is not part of another group of companies registered as a group of companies under these Regulations;
- (e) each company agrees in writing to be part of the group of companies; and
- (f) the companies agree, in writing, that one member of the group, being a resident company, shall be the representative member of the group.

(2) Two companies are part of the same wholly owned group of companies if—

- (a) one company beneficially owns, directly or indirectly, all the issued shares in the other company; or
- (b) another company beneficially owns, directly or indirectly, all the issued shares in both companies.

(3) The representative member of a group of companies may apply to the Commissioner, in the approved form, for registration of the group as a single registered person (referred to as a “registered group”).

(4) When an application has been made under paragraph (3), the Commissioner shall register the group of companies as a registered group when—

- (a) all members of the group specified in the application satisfy the conditions in paragraph (2);
- (b) having regard to the members of the group, there is no undue risk to the revenue in registering the group of companies as a registered group.

(5) The Commissioner shall issue the tax registration certificate of a registered group to the representative member of the group.

(6) Section 35 shall apply to a registered group if—

- (a) the tax registration certificate of the registered group is displayed in a conspicuous place at the principal place of business of the representative

member of the group;

- (b) a copy of the certificate is displayed in a conspicuous place at every other place of business of the members of the group (including the representative member); and
- (c) the representative member shall notify the Commissioner, in writing, of any change in the name (including business name), address, place of business, or nature of the business of any member of the group (including the representative member) within twenty-one days of the change.

(7) The Commissioner shall cancel the registration of a company if it becomes a member of a registered group.

(8) Section 36(9) and (10) shall not apply to a company that has its registration cancelled under paragraph (7).

(9) In this regulation, “resident company” means a company within the meaning of “resident” found in section 2(b) of the Income Tax Act.

VAT treatment of a
registered group

24. (1) Regarding the treatment of a registered group for the purposes of the Act—

- (a) a supply by a member of the group to another member of the group shall be disregarded;
- (b) a supply made by a member of the group to a person who is not a member of the group shall be treated as having been

made by the representative member;

- (c) a supply made by a person who is not a member of the group to a member of the group shall be treated as having being made to the representative member;
- (d) the representative member shall be entitled to deduct input tax on a taxable supply to, or taxable importation by, a member of the group to the extent that the member acquired the supply or importation to make taxable supplies; and
- (e) section 17(2) shall apply where a deduction for input tax is allowed in the first tax period in which the representative member or any other member of the group holds the relevant documentation referred to in section 17(3).

(2) If an adjustment event happens in relation to a member of a registered group (including an adjustment event that relates to a supply or importation made by or to the member before becoming a member of the registered group), the Act shall apply as if the adjustment event happened in relation to the representative member.

(3) Despite paragraphs (1) and (2), a tax invoice, credit note or debit note that a registered group is required to issue shall be issued in the name of the registered group by the member who made the taxable supply to which the tax invoice credit note or debit note relates.

(4) The representative member of a registered group

shall—

- (a) submit the return for the group for each tax period in accordance with section 44;
- (b) pay the tax payable for the group for each tax period in accordance with section 19; and
- (c) pay the tax payable on a taxable importation by a member of the registered group.

(5) A registered group and each member of a registered group is liable for—

- (a) the tax payable by the representative member under paragraph (4)(b); and
- (b) the tax payable by on a taxable import by a member of the registered group.

Changes to a
registered group

25. (1) A representative member of a registered group may apply to the Commissioner, in the approved form, to admit a company as a member of the group.

(2) The Commissioner shall, by notice in writing to the representative member, grant an application under paragraph (1) if—

- (a) the company satisfies the conditions prescribed in regulation 24(2) for joining a or being a part of a registered group;
- (b) the company has agreed in writing to be a member of the registered group;

- (c) at the time of joining the group—
 - (i) the company has no outstanding liability for VAT; and
 - (ii) the company has no excess input tax deduction carried forward; and
- (d) there is no undue risk to the revenue in granting the application.

(3) A company shall be admitted as a member of a registered group from the date specified by the Commissioner in the notice of approval under paragraph (2), being a date that is the start of a tax period.

(4) Paragraphs (7) and (8) of regulation 24 shall apply to a company that becomes a member of a registered group.

(5) The representative member of a registered group shall apply to the Commissioner, in the approved form, for the removal of a company from the group when—

- (a) the company ceases to satisfy the conditions in regulation 24(2); or
- (e) the company has agreed in writing to be removed as a member of the group.

(6) An application under paragraph (5) shall be made within seven days of the company ceasing to satisfy the conditions in regulation 24(2) or agreeing in writing to be removed from the group

(7) The Commissioner shall grant an application under paragraph (5) if satisfied that the company has ceased to satisfy the conditions in regulation 24(2) or

agreed in writing to be removed from the group.

(8) The Commissioner shall by notice in writing to the representative member of a registered group, remove a company from a registered group if the Commissioner is satisfied that the company has ceased to satisfy the conditions in regulation 24(2).

(9) A company shall be removed from a registered group under paragraphs (7) or (8) from the end of the tax period in which the company ceased to satisfy the conditions in Regulation 24(2) or agreed in writing to be removed from the group, as the case may be.

(10) If, after a company is removed from a registered group, an adjustment event happens in relation to a taxable supply or taxable importation made to or by the company while a member of the group, the company shall account for any VAT payable, or claim a deduction for input tax, in relation to that adjustment event.

(11) The members of a registered group may apply to the Commissioner, in the approved form, for another member of the group to be the representative member of the group.

(12) The Commissioner shall, by notice in writing, grant an application under paragraph (11) if—

- (a) Regulation 24(2)(f) applies in relation to the member of the group nominated as the new representative member; and
- (b) there is no undue risk to the revenue in granting the application.

(13) When the Commissioner grants an application under paragraph (12)—

- (a) the former representative member shall cease to be the representative member and the new representative member shall become the representative member from the date specified in the notice of approval under paragraph (12), being a date that is the start of a tax period;
- (b) the new representative member shall be liable for any unpaid tax liability in relation to the registered group by the former representative member on the date specified in the notice of approval under paragraph (12); and
- (c) the new representative member may deduct any input tax credit carried forward of the former representative member on the date referred to in paragraph (a) specified in the notice of approval under paragraph (12).

(14) A representative member who fails to make an application as required under paragraphs (5) and (6) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Cancellation of the registration of a registered group

26. (1) The Commissioner may, by notice in writing to the representative member of a registered group, cancel the registration of the group when –

- (a) the representative member of the group applies, in writing to the Commissioner in the approved form, for the cancellation of the registration of the registered group;
- (b) a member of the group goes into liquidation or a receiver is appointed for the winding

up of that member; or

- (c) the Commissioner is satisfied that the registration of the group has caused or is causing undue risk to the revenue.

(2) Section 36(6), (7), (8), (9), and (10) of the Act shall apply to the representative member of a registered group if a registered group's registration is cancelled in accordance with paragraph (1).

(3) When the Commissioner cancels the registration of a registered group, each member of the group shall be immediately registered.

PART VIII—VAT DOCUMENTATION

Tax invoice

27. (1) Subject to paragraph (2), a tax invoice must contain the following details—

- (a) the words "TAX INVOICE" printed prominently on the face of the invoice;
- (b) the name, address and PIN of the supplier;
- (c) the name, address and PIN of the recipient;
- (d) the serial number of the tax invoice;
- (e) the date on which the tax invoice is issued and the date on which the supply was made;
- (f) the description of the goods supplied, including quantity or volume, or services provided;
- (g) the details of any discount allowed at the time of supply;

- (h) the consideration for the supply; and
- (i) the amount of tax charged.

(2) A registered person may provide a cash register receipt as a simplified tax invoice for cash sales made from retail premises containing the following details—

- (a) the name, address and PIN of the supplier;
- (b) the serial number of the receipt;
- (c) the date and time of issue of the receipt;
- (d) a brief description of the goods supplied, including quantity or volume;
- (e) the tax payable; and
- (f) the total amount payable for the supply including the tax payable.

Tax invoice for
supplies of imported
services

28. (1) A registered person liable for tax under section 5(1)(c) and (6) in respect of a supply of imported services shall, at the time of the supply, prepare a tax invoice in respect of the supply.

(2) A tax invoice for a supply imported services shall contain the following details

- (a) the name, address, and PIN of the recipient;
- (b) the name and address of the supplier;
- (c) the serial number of the tax invoice and the date on which the tax invoice is prepared;
- (d) a description of the services supplied;
- (e) the date of the supply;

- (f) the extent to which the supply has been applied other than to make taxable supplies; and
- (g) the consideration for the supply including the amount of tax payable.

Debit and credit
notes

29. (1) A registered person shall issue a credit note under section 16(1) to a person who is not registered only if 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) For the avoidance of doubt, a registered person who issues a debit note under section 16(4) 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.

(3) A credit note shall contain the following details—

- (a) the words “CREDIT NOTE” printed prominently on the face of the credit note;
- (b) the name, address and PIN of the supplier;
- (c) the name, address and PIN of the recipient;
- (d) the serial number of the credit note;
- (e) the date on which the credit note is issued;
- (f) 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; and
- (g) the consideration specified on the tax

invoice for the supply, the correct amount of the consideration, the difference between the amount specified in the tax invoice and the correct amount, and the amount of tax that is related to the difference.

(4) A debit note must contain the following particulars—

- (a) the words “DEBIT NOTE” printed prominently on the face of the debit note;
- (b) the name, address and PIN of the supplier;
- (c) the name, address and PIN of the recipient;
- (d) the serial number of the debit note;
- (e) (e) the date on which the debit note is issued;
- (f) 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;
- (g) the consideration specified on the tax invoice for the supply, the correct amount of the consideration, the difference between amount specified in the tax invoice and the correct amount, and the amount of tax that relates to the difference.

Documentation
relating to exports

30. (1) A supply of goods or services shall be treated as an export of goods or services for the purposes of section 7 and paragraph 1 of Part A of the Second Schedule only if the registered person making the supply has the following documentation relating to the supply—

- (a) a copy of the invoice showing the recipient of the supply to be a person outside Kenya;
- (b) for goods, a copy of the following—
 - (i) the bill of lading, road manifest or airway bill relating to the goods;
 - (ii) the export or transfer entry certified by an authorised person at the port of exit;
 - (iii) if the goods are goods for which excise is payable and if the goods have been examined, packed in a sealable vehicle or container with a tamper-proof seal or affixed with an electronic cargo tracking system seal, the export or transfer document stamped by an authorised person at the point of exit and the number of the seal endorsed on the export or transfer document;
- (c) for services, such documents as the Commissioner may require demonstrating that the services have been used or consumed outside Kenya.

(2) A supply of goods or services shall be treated as a supply of goods or services to an export processing zone business as specified in the Export Processing Zones Act which is eligible for duty and tax free importation for the purposes of section 7 and paragraph 2 of Part A of the Second Schedule only if the registered person making the supply has the following documentation relating to the supply—

- (a) a copy of the recipient's export processing 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 an authorised person.

(3) If 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; and
- (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

Cap. 517

Tax-inclusive
pricing of taxable
supplies to
unregistered
persons

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

- (a) state the price of the supply as inclusive of tax;
- (b) display a sign in a prominent location on

the person's business premises or disclose prominently on its invoices that taxable supplies are made inclusive of tax; and

- (c) disclose prominently on its invoice for a supply that the supply is a taxable or exempt supply and, if it is a taxable supply, the rate of tax charged.

(2) Regulation 10(3) shall apply in determining the tax payable in respect of a taxable supply for which the price is quoted as inclusive of tax.

(3) A registered person who fails to comply with sub-regulation (21) commits an offence and shall be liable to a fine not exceeding two hundred thousand shillings.

PART IX—VAT PROCEDURE

Assessment of
recipient of a supply

32. (1) If, because of misrepresentation or fraud by the recipient of a supply a registered person, , a person has incorrectly treated the supply as—

- (a) an exempt supply; or
- (b) a zero-rated supply;

the Commissioner may assess the recipient of the supply for payment of the tax due in respect of the supply and any penalty imposed under the Act or any other tax law as a result of the incorrect treatment of the supply.

(2) Where the Commissioner assesses the recipient of a supply for the payment of a tax due in respect of the supply contemplated in paragraph (1), the Commissioner shall notify that recipient in writing and

the notice shall specify—

- (a) the reason for the assessment;
- (b) the amount of tax and penalty assessed;
- (c) any late payment interest payable in respect of the assessed tax;
- (d) the date on which the tax, penalty and late payment interest are due, which must be at least thirty days after the date on which the notice is served; and
- (e) the time, place and manner of objecting to the assessment.

(3) Despite the provisions of paragraph (1) the Commissioner may recover the whole or part of the tax due in respect of the supply, together with any late payment interest and penalty payable, from the registered person who made the supply and—

- (a) any amount recovered from the recipient of the supply is credited against the liability of the supplier in respect of the supply; and
- (b) any amount recovered from the supplier is credited against the liability of the recipient of the supply,

but the Commissioner cannot recover more than the total amount of tax, late payment interest, and penalty payable in respect of the supply.

(4) A supplier who pays tax, late payment interest, or penalty referred to in paragraph (2) may recover the amount from the recipient of the supply.

(5) Nothing in the Act or any other tax law shall limit the power of the Commissioner to amend an assessment, including a self-assessment, of the registered person making the supply to give effect to paragraph (3).

Prescribed form

33. A return, application, certificate, or other document shall be in the prescribed form.

Tax representative

Cap. 470

34. (1) For the purposes of section 9, “non-resident person” means a person who is not a resident for the purposes of the Income Tax Act and includes—

- (a) a partnership or trust formed or settled outside Kenya;
- (b) a foreign government or political subdivision of a foreign government; and
- (c) an international organisation.

(2) In this Regulation, “international organisation” means an organisation the members of which are sovereign powers or the governments of sovereign powers.

Tax exemption card

35. (1) For the purpose of facilitating the zero-rating of supplies or imports under paragraphs 2(3), 2(4), 2(5), 4, 5 and 8 of Part B of the Second Schedule, the Commissioner may issue a person entitled to zero-rating treatment with a tax exemption card in the approved form and subject to such conditions as the Commissioner may specify.

(2) The Commissioner shall immediately cancel a tax exemption card issued to a person if the person to whom it has been issued—

- (a) uses the card in circumstances other than those provided for in Part B of the Third

Schedule or contrary to the conditions specified by the Commissioner; or

- (b) allows an unauthorised person to use the card.

(3) The Commissioner may treat a card issued by the Cabinet Secretary responsible for matters relating to foreign affairs to a person entitled to privileges or immunities in Kenya as a tax exemption card for the purposes of this Regulation:

Provided that the card shall specify the holder's immunity from taxation in Kenya.

PART X – MISCELLANEOUS PROVISIONS

Application of increased or reduced tax rate to successive supplies

36. (1) When a supply of goods or services is treated as a successive supply under section 12(3) for a period beginning and ending before the date (referred to as the “change 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, then—

- (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) during a period beginning before and ending on or after the date (referred to as the “change 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 a part (referred to as the “first part”) relating to the supply of the goods or services before the change date and a part (referred to as the “second 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; or
- (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.

Currency translation

37. (1) An amount taken into account under the Act or these Regulations shall be expressed in Kenya shillings.

(2) If any amount is expressed or paid in a currency other than Kenya shillings—

- (a) in the case of an import of goods, the amount is converted into Kenya shillings at the exchange rate applicable under the East African Community Customs Management Act, 2005, for the purposes of computing the customs duty payable on the import; or
- (b) in any other case, the amount is converted into Kenya shillings at the Central Bank of Kenya mean exchange rate applying between the foreign currency and Kenya shillings on the date the amount is taken into account for the purposes of this Act.

No. 1 of 2005

Revocation of
Regulations, Rules
and Orders

38. Subject to section 68 of the Act—

(1) The Value Added Tax Regulations, 1994 shall be revoked with effect from the commencement date of these Regulations;

(2) The Value Added Tax (Appeals) Rules, 1990, shall be revoked with effect from the commencement of the Tax Appeals Tribunal Act, 2014;

(3) The subsidiary legislation referred to in sub-regulation Value Added Tax (Distraint) Regulations, 1990, and Value Added Tax (Electronic Tax Registers) Regulations, 2004, shall be revoked with effect from the commencement date of the Tax Procedures Act;

(4) Subject to paragraph (6), the subsidiary legislation referred to in sub-regulation Value Added Tax Order, 2002, the Value Added Tax (Remission) (Official Aid Funded Projects) Order, 2003, Value Added Tax (Tax Withholding) Regulations, 2004, and the Value

Added Tax (Remission) (Low Income Housing Projects), Order 2008, shall be revoked with effect from the commencement date of the Act; and

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

12th June

Made on, 2014


HENRY ROTICH,
Cabinet Secretary for the National Treasury