OVER 40 YEARS OF ACCOUNTING EXCELLENCE

Extension of Time to Comply with the Value Added Tax (Electronic Tax Invoice) Regulation 2021

Newsletter

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Introduction

Introduction

We are pleased to release the eighth edition of our tax newsletter. The main focus of this issue is Customs Duty. This issue also highlights the extension given to comply with the VAT (Electronic Tax Invoice) regulations; the automation of the Voluntary Tax Disclosure Program; and guidelines on reactivating cancelled VAT obligations. On the right column of the newsletter, you will find contact details for the senior members of our team who can help answer any questions you may have about the issues highlighted in this newsletter or any other matter.

We are interested in your feedback on the items covered and any topics you would like to see featured in upcoming issues of the newsletter.

Please provide any feedback at **tax@mbaya.co.ke**

In this issue

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Extension of Time to Comply with the Value Added Tax (Electronic Tax Invoice) Regulations, 2020

The Value Added Tax (Electronic Tax Invoice) Regulations, 2020 were gazetted on 25th September 2020 vide Legal Notice No. 189 of 2020. The regulations are aimed at facilitating administration of VAT through Electronic Tax Invoice Management.

The Kenya Revenue Authority (KRA) commenced the rollout of the Electronic Tax Invoice pursuant to the provisions of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 with effect from 1st August 2021.

All VAT registered taxpayers are therefore required to comply with the requirements of the regulations on implementation of the Electronic Tax Invoice within a period of twelve (12) months from the date of the rollout. This therefore implies that all VAT registered taxpayers should comply with the new regulations on or before 31st July 2022.

Where a VAT registered taxpayer is unable to comply within the timelines, they are supposed to apply to the Commissioner of Domestic Taxes for an extension of time to comply which shall not exceed six months as provided for in the regulations. The application for an extension shall be made at least thirty (30) days before the expiry of the twelve-month period specified.

Automation of the Voluntary Tax Disclosure Programme

The Finance Act, 2020 introduced a three-year Voluntary Tax Disclosure Programme (VTDP) effective 1st January 2021 to 31st December 2023.

VTDP is a programme where a person upon disclosing previously undisclosed tax liabilities to the Commissioner, is granted relief from penalties and interest on the taxes disclosed.

In the past few months VTDP application has been done manually. However, KRA has automated the VTDP in their portal hence the applications for grant of relief of penalties and interest under the VTDP can now be made online through the iTax portal.

Successful applicants will receive VTDP certificates via their registered email addresses.

Taxpayers with previously undisclosed taxes are encouraged to take advantage of the relief granted under the VTDP to avoid imposition of punitive penalties and interest.

Notice on Updating of Tenant Records for Nairobi City County Government Rental Market Stalls

The KRA was appointed by the Nairobi City County Government (NCCG) as the principal agent for overall revenue collection for all county revenue vide Gazette Notice No. 1967 dated 6th March 2020.

KRA in conjunction with the Nairobi City County Government and the Nairobi Metropolitan Services is undertaking an exercise of updating records of the tenants of all Nairobi City County rental market stalls for rent payment purposes. The exercise will commence on 7th July 2021.

Tenants of Nairobi City County rental stalls are advised to visit KRA Offices at Times Tower Ground Floor Banking Hall with the original and copies of following documents:

a. Tenant rental card
b. National identity card
c. KRA PIN
d. Payment receipts for the last 3 months
e. Any other document(s) proving tenancy

The above taxpayers are advised to adhere to avoid punitive enforcement measures.

Customs Duty

Customs duty is a tax imposed on goods brought into Kenya. It is paid at the port of entry on goods subject to taxation. Customs duties are assessed based on the Customs value of the item and in accordance with the rates provided by East African Community Customs Management Act EACCMA (2004), VAT Act (2013), Excise Act (2015) and any other levies imposed by Government legislation.

Customs Valuation is based on the price actually paid or payable for the imported goods. The passenger has a right to query the assessed Customs duties and the Customs Officer is under obligation to demonstrate the correctness.

Customs duties are paid at the appointed banks or through mobile banking platforms after the generation of an electronic payment slip. Banks are located within the terminals.

All goods, whether new or used, are subject to taxation. However, different passenger categories have different concessions and entitlements as shown below:

Passenger Categorization

Category A This category includes all passengers on the first arrival who are bona fide changing their residences to Kenya whether as missionaries, military personnel or Aid Agencies or to take up appointments in commerce or industry. It also includes diplomats, students, and other persons resident in Kenya but who have resided outside Kenya for a period long enough as prescribed to enable them to comply with the conditions prescribed in Parts A and B of the Fifth Schedule of EACCMA.

Entitlement:

a) Wearing apparel;
b) Personal and household effects of any kind which were in his personal or household use in his former place of residence;
c) One motor vehicle, which the passenger has personally owned and used outside a Partner State for at least twelve months (excluding the period of the voyage in the case of shipment).

Category B Bona fide tourists and visitors to Kenya for periods not exceeding three months. This category includes not only tourists but temporary business and other visitors.

Kenya Government has directed that every reasonable facility is to be given to such passengers in the interests of the tourist industry.

Entitlement:

a) Non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;
b) Consumable provisions and non-alcoholic beverages in such quantities and of such kinds as are inconsistent with his visit;
c) That the goods are imported by a returning resident being an employee of an international organization the headquarters of which are in a Partner State and who has been recalled for consultations at the organization's headquarters.

Category C All returning Kenyan residents and passengers not included in Categories A and B above.

Entitlement:

a) Wearing apparel;
b) Personal and household effects which have been in his personal use or household use;
c) Subject to the above entitlements, duty shall not be levied on the following goods imported by, and in the possession of a passenger;
d) Spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
e) perfume and toilet water not exceeding in all one-half litre, of which not more than a quarter may be perfume;
f) Cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grams in weight;
g) The import duty-free allowance shall be granted only to passengers who have attained the age of (18) eighteen years.

Guidelines To Taxpayers on Re-Activation of Deregistered/Cancelled VAT Obligations

KRA deregistered/cancelled the VAT obligations of taxpayers who were perennial non-filers and nil-filers with effect from 10th June 2021.

The cancellation was done pursuant to the Public Notice of 5th May 2021 on "Deregistration/Cancellation of Tax Obligations" and in accordance with Section 36(5) of the VAT Act, 2013 and Section 10(5) of the Tax Procedures Act, 2015.

KRA subsequently issued the following guidelines as a broad basis to taxpayers who would wish to have their VAT obligations re-activated:

I. The taxpayer shall apply for re-activation to the Commissioner through their respective Tax Service Office while clearly stating the grounds/reasons for reactivation of their VAT obligation, which may include, among others, that the taxpayer:
   i. Requires a VAT obligation to conduct their business and remain competitive in the market;
   ii. Would like to take advantage of the Voluntary Tax Disclosure Programme.
   iii. Is a supplier whose purchasers/customers wish to claim input taxes related to certain transactions but have been inconvenienced by the de-activation of the supplier's VAT obligation.

II. The taxpayer shall provide the date they started trading and charging VAT and will be required to provide any documentation or information requested for by the Tax Service Office in accordance with the provisions of the law, for purposes of ascertaining their tax liability.

III. Perennial nil-filers seeking re-activation must satisfactorily demonstrate to the Commissioner their need for the VAT obligation since they have been filing nil VAT returns.

IV. Once re-activated, the taxpayer shall be required to file all the missing VAT returns to date or amend previously filed nil returns to capture their correct tax position. The taxpayer will also be required to make payments for the outstanding VAT liability or enter into a payment plan with the respective Tax Service Office.

V. Upon re-activation of the affected taxpayer/supplier's VAT obligation and compliance with the aforementioned conditions, the respective purchasers/customers of the said supplier will then be able to claim their input tax in accordance with the provisions of the VAT Act, 2013.

VI. To avoid future deregistration/cancellation or other punitive enforcement measures as provided for in the tax statutes, the taxpayer shall be required to:
   i. Ensure all future returns are filed and payments made on time;
   ii. Keep proper tax records; and
   iii. Comply with all their tax obligations under other revenue laws.

Fringe Benefit Tax, Deemed Interest Rate and Low Interest Benefit

Fringe Benefit Tax

For the purposes of Section 12B of the Income Tax Act, the Market Interest Rate is 7%. This rate shall be applicable for the three months of July, August, and September 2021.

Deemed Interest Rate

For purposes of section 16(5), the prescribed rate of interest is 7%. This is applicable for the months of July, August, and September 2021.

Low Interest Benefit

For purposes of section 5(2A), the prescribed rate of interest is 7%. This is applicable for the months of July, August, September, October, November, and December 2021.

Withholding tax at a rate of 15% on the deemed interest shall be deducted and paid to the Commissioner by the 20th day of the month following the month of computation.

Tax Due Dates

Withholding Tax | 20th Day of the following month

Pay as You Earn | 9th Day of the following month

VAT | 20th Day of the following month

Balance of Tax on Self-Assessment | 4th Month after year end

Monthly Rental Income | 20th Day of the following month

Instalment Tax

1st Instalment |20th day of the 4th month after year end

2nd Instalment | 20th day of the 6th month after year end

3rd Instalment | 20th day of the 9th month after year end

4th Instalment | 20th day of the 12th month after year end

Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.

Disclosure of Company Beneficial Ownership

Earliest date to be entered in the register of BOs | 21st day of February 2020

Deadline date for disclosure of company beneficial ownership | 31st day of July 2021

Digital Service Tax (DST)

20th day of the following month

Minimum Tax

Applicable where minimum tax is higher than instalment tax payable

1st Instalment |20th day of the 4th month after year end

2nd Instalment | 20th day of the 6th month after year end

3rd Instalment | 20th day of the 9th month after year end

4th Instalment | 20th day of the 12th month after year end