

Tax Alert

July 2021

The Value Added Tax (Electronic Tax Invoices) Regulations, 2020

Introduction

The Cabinet Secretary for the National Treasury and Planning (CS) is conferred powers to draft the necessary legal guidelines for better implementation of the provisions of the VAT Act Pursuant to Section 67 of the Value Added Tax Act, 2013. By virtue of the above powers, the CS gazetted “The Value Added Tax (VAT) (Electronic Tax Invoice) Regulations, 2020” (the Regulations), through Legal Notice No. 189 dated 10 September 2020 and published on 25 September 2020.

The primary objective of the Regulations is to provide a framework for the use of electronic tax registers by persons registered under Section 34 of the VAT Act, 2013 (the Act). These regulations detail the use of a register, availability of a register, obligations of the user of a register, specifications of a register, transmission of invoice data and security, amongst others.

In addition, the Cabinet Secretary published “The Value Added Tax (Amendment) Regulations, 2020”, through Legal Notice No. 188 also dated 10 September 2020 and published 25 September 2020, by revoking Regulation 9 of the Value Added Tax Regulations, 2017 which provided the requirements of a valid tax invoice. The new requirements of a valid tax invoice are coincidentally set out under Regulation 9 of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020.

By way of background, prior to this, upon publication of the VAT Regulations in 2017, the Value Added Tax (Electronic Tax Registers) Regulations, 2004 were revoked hence brought about a debate about the legality or otherwise of use of electronic tax registers on the basis that the 2017 regulations had deleted the relevant provision. However, with the introduction of the new Electronic Tax Invoices Regulations, the doubt as to whether VAT registered taxpayers are obliged to issue electronic tax invoices has been eradicated.

The latest Regulations are largely similar to the previous Regulations: the main differentiators being a requirement for taxpayers to maintain a tax register that is able to transmit tax invoice data to the Kenya Revenue Authority (KRA) system.

Following the postponement of the effective operation of the regulations by twelve months from September 2020, the Kenya Revenue Authority (KRA), through a Public Notice dated 9 July 2021 notified the general public that the roll out of the Electronic Tax Invoice pursuant to the provisions of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 is expected to commence from 1 August 2021.

In this regards, all VAT registered taxpayers shall thereafter be 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 roll out.

We provide below our analysis of the key regulations contained in the VAT (Electronic Tax Invoice) Regulations, 2020:

Regulation	Provisions	Our Comments
Regulations 1, 2, 3 and 4	<p>Introduction, citation and interpretation.</p> <ul style="list-style-type: none"> “Register” means “an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations.” “user of a register” means a person registered under Section 34. 	
Regulation 5 - Application of the Regulations	These Regulations shall apply to a person registered under Section 34 of the Value Added Tax Act, 2013.	This regulation limits the applicability of the Electronic Tax Invoices Regulation to VAT registered persons.
Regulation 6 - Use of a register	<ol style="list-style-type: none"> A user of a register shall ensure that: <ol style="list-style-type: none"> each sale is recorded with the use of the register; an invoice is generated in respect of each sale; and each invoice generated in respect of each sale shall contain the information specified in Regulation 7. The user of the register shall: <ol style="list-style-type: none"> transmit or deliver the invoice generated with respect to a purchase to the purchaser; and transmit or deliver the invoice details to the Commissioner in accordance with Regulation 9 (a). A register shall be exclusively used by the registered user of that register. 	<p>The Regulation seeks to rejuvenate the prior requirements in relation to issuance of tax invoices save for the fact that the user is required to transmit the invoice details to KRA.</p> <p>In addition, we have noted that the Regulation incorrectly makes reference to ‘Regulation 7’ and ‘Regulation 9 (a)’ with respect to tax invoice requirements and transmission of invoice data respectively. However, the tax invoice requirements are detailed under ‘Regulation 9’ while guidance on transmission of invoice data is contained in ‘Regulation 11 (a)’.</p> <p>We hope that this shall be corrected/ clarified by the KRA as we move forward with implementation of the regulations.</p>
Regulation 7 - Availability of a register	<ol style="list-style-type: none"> The user of a register shall ensure continuity of operations of the register if there is an interruption of power supply. Where a user of a register cannot use the register for any reason, the user shall: <ol style="list-style-type: none"> notify the Commissioner in writing within twenty-four hours of the user’s inability to use the register; and record sales using any other means as may be specified by the Commissioner. Once the user of a register is able to use the register, the user shall enter into the register the sales recorded under the other means above. 	<p>A user will be responsible for the continuous operation of the register and shall make relevant arrangements when there is an interruption of power supply, which presumably may include maintenance of power supply back up.</p> <p>Additionally, we expect that KRA will provide guidance on the substitute means to be used by taxpayers to record sales in the event the register cannot be used for any reasons beyond the taxpayers control.</p>

Regulation	Provisions	Our Comments
Regulation 8 - Obligations of the user of a register	<ol style="list-style-type: none"> 1. A user of a register shall: <ol style="list-style-type: none"> a) ensure availability of the register at the point of sale; b) facilitate the inspection of the register by an authorized officer; 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: <ol style="list-style-type: none"> 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 closure of business, cessation to supply vatable supplies or any other reason, the 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 the above provision, the Commissioner may, by notice in writing and within thirty days, retire the register. 	<p>This regulation puts more emphasis on the taxpayers responsibility as to proper maintenance of the register.</p> <p>We note that the regulations confer the Commissioner discretionary powers to prescribe additional requirements.</p>
Regulation 9 - Tax invoices, notes and debit credit notes.	<ol style="list-style-type: none"> 1. A tax invoice generated from a register shall contain: <ol style="list-style-type: none"> 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. 	<p>In comparison to the previous regulations, the current regulations have additional requirements including, amongst others, the purchasers PIN, description of supply and the requirement to include a QR code.</p> <p>It is important to note that the regulation has done away with the previous, mandatory requirement to include the words "TAX INVOICE" in a prominent place on the face of the invoice.</p>

Regulation	Provisions	Our Comments
Regulation 10 - Specifications of a register	<p>A register shall:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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. 	<p>It is our understanding that this regulation is aimed at supplementing the Tax register through integration with the Tax Invoice Management System (TIMS) - a taxpayer/KRA invoicing integration system that the KRA is currently implementing.</p>
Regulation 11 - Transmission of invoice data and security	<p>A register shall be capable of:</p> <ol style="list-style-type: none"> 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 authorized to access it; d) maintaining the integrity of the data; e) securing authentication for authorized users; f) capturing the log of all activities; and g) assigning a unique identifier to each invoice. 	<p>It is expected that the register shall be capable of transmitting tax invoice data to the KRA system and provide a summary of the data at the of the day in a manner specified by the Commissioner.</p> <p>We hope that on implementation of the regulations KRA will have real time information and assist in the resolving the current VAT inconsistencies that KRA chases taxpayers for.</p>
Regulation 12 – Offence	<ol style="list-style-type: none"> 1. A person commits an offence if that person: <ol style="list-style-type: none"> 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. 	<p>In order to deter non-compliance, the Regulations impose a fine not exceeding one million shillings, as provided under Section 63 of the VAT Act, 2013.</p>
Regulation 13 - Transitional Provisions	<p>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:</p> <p>Provided that:</p> <ol style="list-style-type: none"> 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. 	<p>As noted in the public notice of 9 July 2021. The expected roll out date is expected to be 1 August 2021 and as such tax payers are expected to have fully complied by 31 August 2022.</p> <p>In addition, where a person is unable to comply within the stipulated timeframe i.e. 31 August 2022, the person can apply to the Commissioner for an extension of time which shall not exceed six months. The application must be made at least 30 days prior to the expiration of the grace period stipulated, that is on or before 1 July 2022,</p>

Conclusion

We welcome KRA's initiative in the use of technology as a tax compliance enabler which will facilitate curtailment of tax evasion. As we approach the roll out date, taxpayers should be on the lookout on further guidance from KRA on a below implementation issues that are still unclear including logistics around ensuring that a PIN number is available for each customer.

- We expect that, KRA will publish a list of authorized vendors of registers to facilitate smooth implementation of the regulations.
- Alternatively, tax payers can reach out to their usual approved electronic tax register vendors to find out whether KRA has provided guidance on the new registers compliant with the regulations
- We note the applicability of the regulations is limited to VAT registered persons, as such we expect to get clarification on the applicability of the regulations to businesses such as supermarkets which may not be able to get individual customers PINs.
- Once the features of the registers are finalised in conformity with the regulations, we wait to see how the QR code will be generated and the information it will contain.

We urge all registered persons to take necessary steps to seek further guidance on how the new regulations will impact their businesses. For additional information with respect to this Alert, please get in touch with us to find out how we can walk with you in the journey towards compliance with the new regulations.

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