

Approved for tabling



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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION (2019)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON

THE CONSIDERATION OF THE VALUE ADDED TAX

(AMENDMENT) REGULATIONS, 2019

(Legal Notice No. 86 of 2019)

NOVEMBER 2019



Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI.

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ABBREVIATIONS

KRA	Kenya Revenue Authority
LN	Legal Notice
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order
VAT	Value Added Tax

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning published in the Kenya *Gazette* the Value Added Tax (Amendment) Regulations, 2019 on 13th June, 2019 vide *Legal Notice No 86 of 2019*. The Regulations were received by the Clerk of the National Assembly on 21st June, 2019 and tabled before the House on 21st June, 2019.

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee invited the regulation making authority to a consultative meeting on 20th August, 2019 to consider the said statutory instrument, among others related to the FY 2019/2020 Budget.

Having scrutinized the **Value Added Tax (Amendment) Regulations, 2019**, against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Value Added Tax Act (*No 35 of 2013*) and the Statutory Instruments Act (*No 23 of 2013*), the Committee **approved it** for reasons advanced in this Report.

The Report is submitted to the House in accordance with section 67 of the Value Added Tax Act, 2013 which requires that the Regulations made under this section of the Act be presented to the National Assembly for approval before they take effect.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) and section 67 of the Value Added Tax Act, 2013, it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Value Added Tax (Amendment) Regulations, 2019**.

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises -

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative

Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Robert Mbui, MP
Kathiani Constituency,
Wiper Democratic Movement -Kenya

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency

Jubilee Party
Hon. Jennifer Shamalla, MP

Nominated

Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency

Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency

Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency

Jubilee Party

Hon. Sammy Seroney, MP

Nominated

Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP

Butere Constituency

Amani National Congress

Hon. Alfred W. Sambu, MP

Webuye East

Amani National Congress

Hon. Abdi Koropu Tepo, MP

Isiolo South Constituency

Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Anne Njeri Kigoro
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE VAT (AMENDMENT) REGULATIONS, 2019

2.1 Introduction

5. The **Value Added Tax (Amendment) Regulations, 2019** were made by the Cabinet Secretary Treasury pursuant to section 67 of the Value Added Tax Act, 2013.
6. The Regulations were published in the Kenya Gazette as *Legal Notice No 86* of 2019 on the 13th June, 2019, received by the Clerk of the National Assembly on the 21st of June, 2019 and tabled before the House on 21st June 2019.

2.2 Purpose of the Regulations

7. The Regulations seek to amend Regulation 8 (2) of VAT Regulations, 2017 which contains the formula which is used to calculate the Value Added Tax refund. The current formula has been found to **disadvantage exporters of taxable goods** since they are not able to fully recover their input VAT. The formula has the following contents:

$$R = \frac{Z}{T} X e$$

Where, R = amount to be refunded; Z = total value of zero-rated supplies; T = total value of taxable supplies and e = excess input for the month of supply.

The **revised formula** has the following contents:

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

Where, R = value of input tax relating to zero rated supply; Z = total value of zero-rated supplies; T = total value of taxable supplies and i = deductible input tax for the month of supply.

8. The **difference between the current and the revised formula** is that the current one calculates the amount allowed as refund of input value added tax whereas the revised one calculates the share of input value added tax to be allowed. **The implementation of the proposed revised formula will guarantee the exporters of VAT taxable goods full recovery of their share of input tax relating to zero-rated supplies.**
9. The proposed amendment therefore **addresses challenges** faced by suppliers of both zero-rated and general rated supplies in ensuring that they are able to recover the deductible input VAT related to zero rated supplies.
10. In addition, the amendment proposed in Regulation 13, Part (b) of the proviso clarifies what constitutes an exported service for VAT purposes regardless of who pays for them.

2.3 Summary of the Regulations

11. The Regulations propose to amend the Principal Regulations, i.e. **Value Added Tax Regulations, 2017 (Legal Notice No.54 of 2017)** by –

(i) by deleting paragraph (2) of Regulation 8 and substituting therefor the following new paragraph—

(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;

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

Where; R = value of input tax relating to zero rated supply; Z = total value of zero-rated supplies; T = total value of taxable supplies and i = deductible input tax for the month of supply.

(ii) amending paragraph (1) of Regulation 13 by—

(a) inserting the words "irrespective of where the payment is made from" at the end of paragraph (b); and

(b) deleting paragraph (b) of the proviso thereto.

2.4 Scrutiny of the Instrument

12. Pursuant to section 16 of the Act, the Committee held a meeting with the regulation making authority on 20th of August, 2019 in Mombasa where the authority made a presentation to the Committee on the proposed changes to the **Value Added Tax Regulations, 2017 (Legal Notice No.54 of 2017)**. Additionally, the Committee met on 26th September, 2019 to further deliberate on the Regulations.
13. The Committee considered the Regulations against the principal Regulations, i.e., the Value Added Tax Regulations, 2017 (Legal Notice No. 54 of 2017) and took into account submission by the private sector, particularly the KPMG Advisory Services Limited regarding implementation challenges of the principal Regulations.
14. The Committee held meetings with KPMG Advisory Services Limited, the Kenya Revenue Authority and the National Treasury in accordance with Section 16 of the Statutory Instruments Act, 2013. The Committee also received written submission from the Clerk of the National Assembly dated 4th April, 2019.

The submissions are as follows –

2.3.1 Submissions by KPMG Advisory Services Ltd.

15. The Committee held a meeting with the KPMG Advisory Services Limited on 12th March, 2019 led Mr. Peter C. Kinuthia, Tax Partner.
16. He informed the Committee that the regulation making authority did not undertake industry consultations /public participation in the development of the Regulations as required by the Constitution of Kenya and section 5 of the Statutory Instruments Act. He also alleged that the Regulations were not submitted to the House in accordance with section 11 (1) of the SI Act.
17. The Committee was also informed that the Company's clients continue to experience the following **challenges** in the implementation of the 2017 Regulations –
 - (i) Regulation 8 introduced a simplistic formula for restricting input VAT for exporters who have a small percentage of local sales creating a perpetual VAT payment which they cannot recover;
 - (ii) Regulation 13 (1) on export of service provided that a service provided in Kenya but paid for by a non-resident is deemed to be a local sale, effectively eliminating all exports of services; and
 - (iii) under Regulation 13(3), KRA obligates taxpayers to provide a certificate from a competent authority in the country where the goods were exported to, confirming that the goods were landed and requisite taxes paid.
18. On the **impact of implementation of the Regulations**, Mr. Kinuthia informed the Committee that –
 - (i) there was a huge backlog of VAT refunds and disputes as taxpayers were unable to meet the onerous KRA documentation;
 - (ii) the Regulations have diverse economic effect on export-related industries such as manufacturing and horticulture whose funds are tied up in VAT refunds;
 - (iii) the Regulations undermine Kenya's ambition to be a regional hub for multinational company's due to imposition of 16% VAT on export of services; and
 - (iv) KRA does not refund to registered partners as Regulation 8(2) on Refund stipulates.
19. The Company pleaded for the Committee's intervention on the matter since implementation of the 2017 Regulations poses a significant handicap to the growth of the manufacturing and agricultural sectors and also reverses gains Kenya has made in improving the ease of doing business in Kenya.

2.3.2 Submission by the Clerk of the National Assembly

20. The Clerk of the National Assembly in his written submission vide letter Ref. NA.2/4/2019(126) dated 4th April, 2019 submitted a brief detailing the process of consideration of the Value Added Tax Regulations, 2017.

21. He informed the Committee THAT –

- (i) the VAT Regulations were published on 30th March, 2017 and consequently transmitted to the Clerk of the National Assembly vide a letter copied to the Chairperson of the Committee on Delegated Legislation on 11th April, 2017, pursuant to section 11 (1) of the Statutory Instruments Act (No. 23 of 2013). The National Assembly was however not in session having gone on recess on 7th April, 2017 until 8th May, 2017 both days inclusive.
- (ii) in light of the foregoing, and the recess period, the Regulations were tabled before the House on 10th May, 2017 a date which is within the prescribed seven sitting days.
- (iii) the Regulations were then referred to the Committee on Delegated Legislation on the same day they were tabled, i.e. Wednesday, 10th May, 2017 for consideration pursuant to section 12 of the Statutory Instruments Act. The then Committee on Delegated Legislation did not submit a Report to Parliament within the timeline provided by section 15(2) of the SI Act.
- (iv) Section 15(2) of the Statutory Instruments Act provides that *“Where the Committee does not make the report referred to in subsection (1) within twenty-eight days after the date of referral of the statutory instrument to the Committee under section 12, or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met the relevant considerations referred to in section 13.”*
- (v) In view of the foregoing, it is considered that the Value Added Tax Regulations, 2017 came into force on 7th June, 2017, which was twenty-eight (28) days after 10th May, 2017 in accordance with the provisions of sections 11, 12 and 15 (2) of the Statutory Instruments Act (No. 23 of the 2013).

2.3.3 Submission by the Kenya Revenue Authority

22. The Committee held a meeting with representatives of the Kenya Revenue Authority on 26th March, 2019. The delegation was led by Mr. Mohamed Omar Muhamud, Commissioner for Strategy, Innovation & Risk, Kenya Revenue Authority (KRA).

23. Mr. Muhamud informed the Committee THAT –

- (i) the VAT Regulations, 2017 (Legal Notice No. 54 of 2017) were published on 30th March, 2017 in accordance with Section 67 of the Value Added Tax Act, 2013 which empowers the Cabinet Secretary, National Treasury to make Regulations. He further added that the main objective of the Regulations was to increase the GDP of the country in terms of manufacturing and improving the ease of doing business in the country for prospective investors.
- (ii) On public participation, the Commissioner informed the Committee that while delivering the Budget Statement for FY 2017/2018, the Cabinet Secretary at paragraph 157 stated that the Regulations had been subjected to stakeholder engagement as required by section 5 of SI Act. In addition, KRA continues to

- engage various stakeholders including the Kenya Association of Manufacturers (meeting held on 9th October, 2018), the Institute of Certified Public Accountants of Kenya and the Kenya Private Sector Alliance (meeting held on 11th December, 2018).
- (iii) Regarding compliance with section 11 of the Statutory Instruments Act, KRA presented to the Committee a letter dated 11th April, 2017 by the Cabinet Secretary forwarding various legislative proposals relating to FY 2017/2018 Budget Statement to the National Assembly for consideration.
 - (iv) In a letter to the Committee dated 8th April, 2019, the KRA submitted evidence of compliance with sections 5 and 11 of the Statutory Instruments Act, 2013 relating to tabling of the Regulations before the House.
 - (v) The evidence submitted¹ is as follows –
 - a) Copy of Votes and Proceedings of Wednesday, 10th May, 2019 indicating the laying of various Regulations relating to the National Budget 2017/2018. VAT Regulations, 2017 was listed as (g);
 - b) Calendar of the National Assembly as published vide Kenya Gazette Notice No. 786 dated 27th January, 2017;
 - c) The Hansard of Wednesday, 10th May, 2017 afternoon sitting indicating the laying of the Regulations before the House;
 - d) Letters from the National Assembly to the Principal Secretary, National Treasury, Ref. NA/CDL/2017/ (29) and Ref. NA/CDL/2017/ (29) dated 19th May, 2017 and 29th May, 2019, respectively, in reference to a meeting to consider the VAT Regulations, 2017.

2.3.4 Submissions by the National Treasury & Planning

- 24. The National Treasury and Planning, led by the Chief Administrative Secretary, Hon. Nelson Gaichuhie, appeared before the Committee on 8th and 20th August, 2019 to respond to the Committee's concerns regarding implementation of the VAT Regulations 2017 and the VAT (Amendment) Regulations, 2019.
- 25. The VAT (Amendment) Regulations, 2019 seeks to cure implementation challenges of the VAT Regulations, 2017 following consultations with taxpayers. The amendment seeks to adjust the VAT refund formula in order to ensure that taxpayers are able to fully recover the portion of input tax relating to zero-rated supplies.
- 26. The Committee was informed as follows –
 - (i) **Status of VAT refunds including information on the actual outstanding refunds, amount refunded and list of beneficiaries.**

¹ Annexure 5 – Submission by the National Treasury & Planning

Table 1: Refund Claim Trend Analysis for the Period 2016/2017, 2017/2018 and 2018/2019

Status	2016/2017 Amount (Kshs. B)	2017/2018 Amount (Kshs. B)	2018/2019 Amount (Kshs. B)
Claims Carried Forward	17.9	13.3	21.3
Lodged in the period	23.0	27.7	26.5
Total	40.9	41.0	47.8
Less disallowed/rejected amount	7.6	2.6	7.9
Less claims paid	20.0	16.4	13.6
Less claims processed awaiting payment	0.00	0.7	2.0
Outstanding claims not processed as at end of the period	13.3	21.3	24.3

Table 2: Breakdown of Outstanding VAT Refund Claims as at 30th June 2019

	Claim Category	Number of claims	Amount (Kshs. B)	Proportion on Amount (%)
1.	Claims under verification at Refunds Unit	2,339	11.8	49%
2.	Cases Pending export verification	235	2.3	10%
3.	Audit process	646	4	16%
4.	Cases Pending Debt reconciliation	2,199	3.5	14%
5.	Claims requiring additional documents from taxpayers	585	1.8	7%
6.	Cases Under TAT/ Court/ ADR/ Investigation, Policy Review	102	0.9	4%
	Total Refunds Stock	6,106	24.3	100%

(ii) Measures put in place to fast-track the processing

KRA informed the Committee that it has put in place the following measures to fast track claims processing –

- a) **Formation of a dedicated team** comprising of officers from the relevant divisions (Customs, Refunds, Debt, Audit, ICT & Finance) in March 2019 with the objective of fast-tracking of refunds claims. The team has made great strides in processing of the refunds leading to payment of Kshs.10.4B during the period March 2019 to June 2019.

- b) **Classification of the taxpayers:** KRA developed a framework to classify taxpayers as low or high risk. The claims from low risk taxpayers are to be paid within 30 days from the date of lodgement. In this category of taxpayers, the verification process is simplified and the taxpayers will be subjected to post audit on sample basis to ensure integrity of the framework.

High risk taxpayers require detailed verification before payments. This category of taxpayers includes first time claimants, taxpayers with non-compliance history, taxpayers under investigation, and taxpayers with known history of exports diversion among others. Claims from these taxpayers will take more than 30 days.

c) **Re-engineered Refund Processes**

KRA is reviewing and re-engineering some of the key refund processes to simplify and fast track claims processing. Some of these processes are **integration of iCMS with iTax for ease of automatic confirmation of exports and VAT on imported goods and implementation of Tax Invoice Information Management System (TIMS) to ensure the integrity of the invoices being used in the lodgement of the claims.**

The process of re-engineering a continuous.

- d) **Enhanced Staff Capacity:** The number of staff involved in refund processing has been increased by 15 additional officers to fast track claims processing.

- (iii) **Consultations with industry stakeholders** to resolve challenges facing implementation of the VAT Regulations, 2018.

KRA informed the Committee that it had several engagements with stakeholders on the challenges with implementation of VAT Regulations, 2017. Key among the engagements include meeting with the Institute of Certified Public Accountants of Kenya (ICPAK) on 13th July 2018, meeting with the Kenya Association of Manufacturers on 9th October 2018 and a Roundtable engagement with various representatives of the Private Sector under the umbrella of Kenya Private Sector Alliance.

One of the key concerns raised by the stakeholders in these engagements includes the challenges with the new VAT refunds formula. It is as a result of these engagements that the VAT (Amendment) Regulations, 2019 were developed.

3.0 COMMITTEE OBSERVATIONS

27. The Committee observed THAT –

- (i) the Regulations were submitted to the National Assembly **within the statutory timeline contemplated** under section 11(1) of the Statutory Instruments Act (*No 23 of 2013*); having been published on the 13th of June, 2019, received by the Clerk of National Assembly on the 21st of June, 2019 and tabled on the 21st of June, 2019;
- (ii) on **public participation**, the regulation making body submitted that it held several engagements with industry players to tackle challenges faced in implementing the

VAT Regulations, 2017, specifically the VAT refunds formula. These include meetings with Institute of Certified Public Accountants of Kenya (ICPAK) on 13th July, 2018; meeting with the Kenya Association of Manufacturers on 9th October, 2018 and the roundtable engagements with various representatives of the Private Sector of the Kenya Private Sector Alliance. The proposed amendments to the Regulations, therefore, is a result of these engagements.

- (iii) The Regulations **do not require a Regulatory Impact Statement** within the meaning of sections 6, 7 and 8 of the Act since they are intended to address challenges faced by suppliers at both zero-rated and general-rated supplies in ensuring they are able to recover the deductible input VAT related to zero-rated supplies.

4.0 COMMITTEE RECOMMENDATION

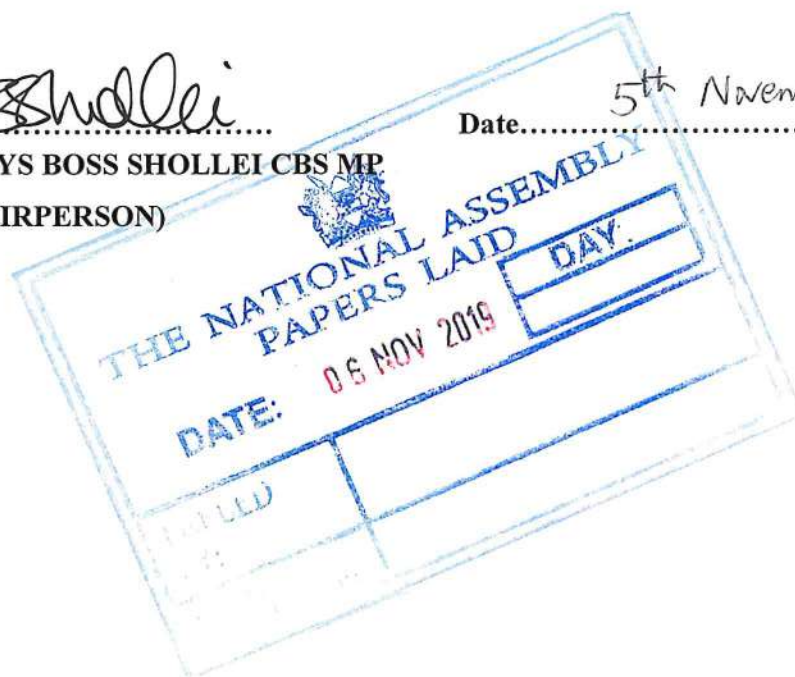
28. Having examined the Value Added Tax (Amendment) Regulations, 2019, against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*) Laws of Kenya, the Value Added Tax Act (*No 35 of 2013*) and the Statutory Instruments Act (*No 23 of 2013*), the Committee **recommends that the House approves the said statutory instrument in accordance with section 67 of the Value Added Tax Act (*No 35 of 2013*).**

Signed.....

HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date.....

5th November 2019



ANNEXURES

- 1. Adoption List**
- 2. Legal Notice 86 of 2019 and the Explanatory Memorandum**
- 3. Committee Minutes**
- 4. Submissions by the National Treasury & National Planning**

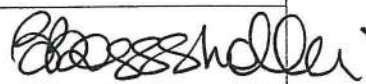


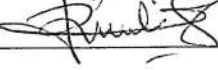
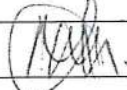
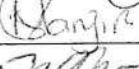
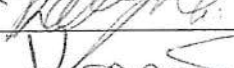
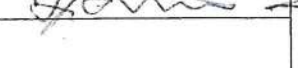

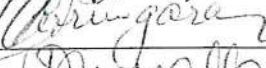
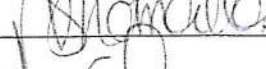


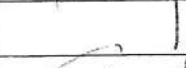


COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Report on the Consideration of the Value Added Tax (Amendment) Regulations, 2019

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 02 November, 2019

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss-Shollei CBS MP (Chairperson)	
2.	Hon. Fatuma Ali Gedi, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Muriuki Njagagua, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Timothy Wanyonyi, MP	
10.	Hon. William Kamoti Mwamkale, MP	
11.	Hon. Patrick Kariuki Mariru, MP	
12.	Hon. Ronald Kiprotich Tonui, MP	
13.	Hon. William Kassait Kamket, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. George Gitonga Murugara, MP	
16.	Hon. Jennifer Shamalla, MP	
17.	Hon. Muturi Kigano, MP	
18.	Hon. (Dr.) Wilberforce Oundo, MP	
19.	Hon. Sammy Seroney, MP	
20.	Hon. Tindi Mwale, MP	
21.	Hon. Gideon Mulyungi, MP	
22.	Hon. Abdi Tepo, MP	
23.	Hon. Alfred Sambu, MP	

**MINUTES OF THE 38TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 20TH AUGUST, 2018, AT 9.00 A.M. IN BAOBAB
CONFERENCE ROOM AT SERENA BEACH RESORT, MOMBASA**

PRESENT

1. The Hon. George Murugara, MP - (Chairing)
2. The Hon. Robert Mbui, MP
3. The Hon. Patrick Mariru, MP
4. The Hon. Ronald Tonui, MP
5. The Hon. Martha Wangari, MP
6. The Hon. Daniel Maanzo, MP
7. The Hon. Kamoti Mwamkale, MP
8. The Hon. (Dr.) Wilberforce Oundo, MP
9. The Hon. Munene Wambugu, MP
10. The Hon. Muturi Kigano, MP
11. The Hon. Jennifer Shamalla, MP
12. The Hon. Gideon Mulyungi, MP
13. The Hon. Kamket Kassait, MP
14. The Hon. Tindi Mwale, MP

ABSENT WITH APOLOGY

1. The Hon. Gladys Boss Shollei CBS MP - Chairperson
2. The Hon. Fatuma Gedi, MP - Vice Chairperson
3. The Hon. Alice Wahome, MP
4. The Hon. Muriuki Njagagua, MP
5. The Hon. Waihenya Ndirangu, MP
6. The Hon. Timothy Wanyonyi, MP
7. The Hon. Sammy Seroney, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Jimale Mohamed - Second Clerk Assistant
3. Mr. Dima Dima - Principal Legal Counsel
4. Ms. Brigitta K. Mati - Legal Counsel I
5. Mr. Nimrod Ochieng - Audio Technician
6. Ms. Mary Otieno - Office Superintendent
7. Mr. Brian Wechabe - Legal Intern

The National Treasury and Planning

- | | |
|---------------------------|--|
| 1. Hon. Nelson Gaichuhie | - Chief Administrative Secretary |
| 2. Mr. Wanyambura Mwambia | - Senior Deputy Director, Macro Fiscal Affairs |
| 3. Mr. Joseph Ngugi | - Deputy Director, Macro Fiscal Affairs |
| 4. Mr. Eric Korir | - Director of Public Procurement |
| 5. Mr. Caleb O Ogot | - Senior Deputy Director, Supply Chain Ma services |
| 6. Mr. Henock Kirungu | - Board Secretary, PPARB |
| 7. Mr. Elijah Nyamamba | - Assistant Director, Supply Chain Management S |
| 8. Mr. Victor O Marege | - Principal Supply Chain Officer |
| 9. Mr. Samuel G. Kinyua | - Economist, National Treasury |

Kenya Revenue Authority

- | | |
|---------------------|--|
| 1. Mr. Maurice Oray | - Deputy Commissioner |
| 2. Caxton M. Ngeyo | - Deputy Commissioner |
| 3. Mr. Victor Mino | - Ag. Chief Manger |
| 4. Ms. Hannah Gakuo | - Assistant Manager, Marketing & Communication |
| 5. Ms. Sharon Kirai | - Supervisor, Marketing & Communication |

Retirement Benefits Authority

- | | |
|----------------------|--------------------------------------|
| 1. Mr. Shem Ouma | - Chief Manager, Research & Strategy |
| 2. Mr. Lazarus Keizi | - Manager, Retirement & Scheme |

Capital Markets Authroity

- | | |
|----------------------------|---|
| 1. Mr. Nyale Yanga | - Ag. Manager, Corporate Affairs |
| 2. Ms. Josephine Kangong'a | - Assistant Manager, Regulatory Framework |

MIN.NO. /NA/CDL/2019/202

PRAYER AND RELIMINARIES

The session resumed with at 9.20 a.m. chaired by Hon. Kamoti Mwamkale, MP. He then invited the National Treasury to proceed with the presentations on the remaining Legal Notices.

MIN.NO. /NA/CDL/2019/203

CONSIDERATION OF THE TAX PROCEEDURES (UNASSEMBLED MOTOR VEHICLES AND TRAILERS) REGULATIONS, 2019 - LEGAL NOTICE 84 OF 2019

The Regulations provides a new legal framework for importation of knocked-down kits for assembling of motor vehicles and trailers under the new tax legislation. The three levels of the knocked down kits are as follows:

- (a) Level 1 is assembly of motor vehicles using Semi Knocked Down (SKD) kits with low level of value addition;
- (b) Level 2 is assembly of motor vehicles using SKD kits with more value addition than level 1;

- (c) Level 3 is assembly of motor vehicles using Completely Knocked Down (CKD) kits and also using some locally manufactured parts.

The Regulations are expected to streamline the motor vehicle assembly industry by providing a legal framework for importation of knocked down kits by authorised importers and assemblers to support the development of the automotive sector. The Regulations also provide a framework where different levels of assembling of motor vehicle can be identified to facilitate provision of different tax incentives. The tax incentives once agreed upon between the stakeholders will be provided under the respective tax laws.

The Regulations were developed as a result of the need to update the Customs and Excise (Unassembled Motor Vehicles) Regulations, 1993 and the Customs and Excise (Restricted Imports) (Commercial Trailers) Order, 2002 with a view to issue them under the current laws while taking into account the current developments in the assembly of motor vehicle and trailers. The review was agreed upon during a meeting with the automotive stakeholders held in Mombasa in January, 2019.

The previous legal framework for importation of knocked down kits was restrictive and it was not providing different levels of breakdown of knocked down kits which are necessary for the growth of the sector.

The Regulations borrowed heavily from the draft Regulations that were discussed by stakeholders at the EAC level which is yet to be concluded. Stakeholders from Kenya and others EAC Partner States were involved in the discussion of the EAC draft Regulations on Motor Vehicle Assembly. Stakeholders locally welcomed the new regulations.

The Regulations will be implemented by the Kenya Revenue Authority and will be reviewed from time to time on need basis to assess the effectiveness.

Plenary Discussions

1. Members sought to establish whether the Kenya Association of Manufacturers' concerns and comments were incorporated in the final draft of the Regulations. It was clarified that stakeholder consultations were undertaken widely and comments of the stakeholders including the Kenya Association of Manufacturers were incorporated.
2. Under Reg. 4(4), Members observed that the Cabinet Secretary has power to decline or approve an application for approval of importation yet the Regulations do not provide for definition of 'unassembled motor vehicles or trailers'.
3. It was explained that the McPherson suspension is the most widely used suspension in modern assembly of motor vehicles.
4. Members observed that the Regulations have preceded the Automotive Policy, which the Committee was informed is on hold.

5. Members were also assured that franchise for local assembly of parts will meet international standards.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/204 CONSIDERATION OF THE VALUE ADDED TAX REGULATIONS, 2017 & VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2019 - LEGAL NOTICE NO. 86 OF 2019

The VAT (Amendment) Regulations, 2019 seek to amend Regulation 8 of the VAT Regulations 2017 by adjusting VAT refund formula in order to ensure that taxpayers are able to fully recover the portion of input tax relating to zero-rated supplies.

Following the meeting held on 8th August, 2019 in Parliament Buildings, the National Treasury submitted the following information –

- 1) **Status of VAT refunds including information on the actual outstanding refunds, amount refunded and list of beneficiaries.**

Table 1: Refund Claim Trend Analysis for the Period 2016/2017, 2017/2018 and 2018/2019

Status	2016/2017 Amount (Kshs. B)	2017/2018 Amount (Kshs. B)	2018/2019 Amount (Kshs. B)
Claims Carried Forward	17.9	13.3	21.3
Lodged in the period	23.0	27.7	26.5
Total	40.9	41.0	47.8
Less disallowed/rejected amount	7.6	2.6	7.9
Less claims paid	20.0	16.4	13.6
Less claims processed awaiting payment	0.00	0.7	2.0
Outstanding claims not processed as at end of the period	13.3	21.3	24.3

Table 2: Breakdown of Outstanding VAT Refund Claims as at 30th June 2019

	Claim Category	Number of claims	Amount (Ksh. B)	Proportion on Amount (%)
1.	Claims under verification at Refunds Unit	2,339	11.8	49%
2.	Cases Pending export verification	235	2.3	10%
3.	Audit process	646	4	16%

	Claim Category	Number of claims	Amount (Ksh. B)	Proportion on Amount (%)
4.	Cases Pending Debt reconciliation	2,199	3.5	14%
5.	Claims requiring additional documents from taxpayers	585	1.8	7%
6.	Cases Under TAT/ Court/ ADR/ Investigation, Policy Review	102	0.9	4%
	Total Refunds Stock	6,106	24.3	100%

2) Measures put in place to fast-track the processing

KRA informed the Committee that it has put in place the following measures to fast track claims processing –

(i) Formation of a dedicated team

KRA formed a dedicated team comprising of officers from the relevant divisions (Customs, Refunds, Debt, Audit, ICT & Finance) in March 2019 with the objective of fast-tracking of refunds claims. The team has made great strides in processing of the refunds leading to payment of Kshs.10.4B during the period March 2019 to June 2019.

(ii) Classification of the taxpayers

KRA has developed a framework to classify taxpayers as low or high risk. The claims from low risk taxpayers are to be paid within 30 days from the date of lodgement. In this category of taxpayers, the verification process is simplified and the taxpayers will be subjected to post audit on sample basis to ensure integrity of the framework.

High risk taxpayers require detailed verification before payments. This category of taxpayers include first time claimants, taxpayers with non-compliance history, taxpayers under investigation, and taxpayers with known history of exports diversion among others. Claims from these taxpayers will take more than 30 days.

(iii) Re-engineered Refund Processes

KRA is reviewing and re-engineering some of the key refund processes to simplify and fast track claims processing. Some of these processes are:

- (i) integration of iCMS with iTax for ease of automatic confirmation of exports and VAT on imported goods.
- (ii) implementation of Tax Invoice Information Management System (TIMS) to ensure the integrity of the invoices being used in the lodgement of the claims.

The process of re-engineering a continuous.

(iv) Enhanced Staff Capacity

The number of staff involved in refund processing has been increased by 15 additional officers to fast track claims processing.

3) Consultations with industry stakeholders to resolve challenges facing implementation of the VAT Regulations, 2018

KRA informed the Committee that it had several engagements with stakeholders on the challenges with implementation of VAT Regulations, 2017. Key among the engagements include meeting with the Institute of Certified Public Accountants of Kenya (ICPAK) on 13th July 2018, meeting with the Kenya Association of Manufacturers on 9th October 2018 and a Roundtable engagement with various representatives of the Private Sector under the umbrella of Kenya Private Sector Alliance.

One of the key concerns raised by the stakeholders in these engagements includes the challenges with the new VAT refunds formula. It is as a result of these engagements that the VAT (Amendment) Regulations, 2019 were developed.

On the VAT Regulations, 2019, the Authority explained to the Members how it was arrived at and its expected impact on refund of VAT claims.

Way Forward

The Committee deferred decision making on the Regulations.

MIN.NO. /NA/CDL/2019/205 ADJOURNMENT

The meeting was adjourned at 12.30 p.m. to be reconvened the same day.

Signed: 

Date: 17 September 2019

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**

**MINUTES OF THE 35TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON THURSDAY, 8TH AUGUST, 2019 AT 11.30 A.M. IN THE
COMMITTEE ROOM NO. 12, MAIN PARLIAMENT BUILDINGS**

PRESENT

1. The Hon. Gladys Boss Shollei CBS MP - Chairperson
2. The Hon. Martha Wangari, MP
3. The Hon. Waihenya Ndirangu, MP
4. The Hon. Alice Wahome, MP
5. The Hon. Patrick Mariru, MP
6. The Hon. Kamoti Mwamkale, MP
7. The Hon. Timothy Wanyonyi, MP
8. The Hon. Muriuki Njagagua, MP
9. The Hon. Daniel Maanzo, MP
10. The Hon. Gideon Mulyungi, MP
11. The Hon. (Dr.) Wilberforce Oundo, MP
12. The Hon. Jennifer Shamalla, MP
13. The Hon. George Murugara, MP
14. The Hon. Munene Wambugu, MP
15. The Hon. Kassait Kamket, MP
16. The Hon. Sammy Seroney, MP

ABSENT WITH APOLOGY

1. The Hon. Fatuma Gedi, MP - Vice Chairperson
2. The Hon. Robert Mbui, MP
3. The Hon. Ronald Tonui, MP
4. The Hon. Muturi Kigano, MP

ABSENT

1. The Hon. Alfred Sambu, MP
2. The Hon. Abdi Koropu Tepo, MP
3. The Hon. Tindi Mwale, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------|---|-------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Second Clerk Assistant |
| 3. Mr. Dima Dima | - | Principal Legal Counsel |
| 4. Ms. Winnie Kiziah | - | Media Relations Officer |
| 5. Mr. Charles Ayari | - | Audio Technician |
| 6. Ms. Mary Otieno | - | Office Superintendent |
| 7. Mr. Brian Wechabe | - | Legal Intern |

The National Treasury and Planning

- | | | |
|---------------------------|---|--|
| 1. Hon. Nelson Gaichuhie | - | Chief Administrative Secretary |
| 2. Mr. Wanyambura Mwambia | - | Senior Deputy Director, Macro Fiscal Affairs |
| 3. Mr. Joseph Ngugi | - | Deputy Director, Macro Fiscal Affairs |

Kenya Revenue Authority

- | | | |
|------------------------|---|--|
| 1. Mr. Maurice Oray | - | Deputy Commissioner |
| 2. Ms. Beatrice Mundia | - | Chief Manger, Stakeholder Consultations |
| 3. Ms. Hannah Gakuo | - | Assistant Manager, Marketing & Communication |
| 4. Ms. Sharon Kirai | - | Supervisor, Marketing & Communication |

MIN.NO. /NA/CDL/2019/182 PRAYER AND RELIMINARIES

The meeting commenced at 11.45 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/183 ADOPTION OF THE AGENDA

The agenda was unanimously adopted as presented.

MIN.NO. /NA/CDL/2019/184 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 34th sitting held on the morning of 6th August, 2019 were confirmed as a true record of the proceedings having proposed by Hon. Munene Wambugu, MP and seconded by Hon. Jennifer Shamalla, MP.

MIN.NO. /NA/CDL/2019/185 MATTERS ARISING

Under MIN.NO. /NA/CDL/2019/178,

On the matter of the retreat, the Committee resolved to reschedule the retreat owing to the unavailability of the preferred hotel in Eldoret town. It was therefore resolved that the activity be undertaken in Mombasa from 18th to 22nd August, 2019.

MIN.NO. /NA/CDL/2019/186 MEETING WITH THE NATIONAL TREASURY AND KENYA REVENUE AUTHORITY TO CONSIDER VALUE ADDED TAX REGULATIONS, 2017

The Committee Chairperson welcomed the team from the National Treasury & Planning and the Kenya Revenue Authority led by the Chief Administrative Secretary, Hon. Nelson Gaichuhie to the meeting. Introductions were thereafter conducted.

The Chairperson reminded the CAS about the meeting with the Kenya Revenue Authority held on 26th March 2019 and that with KPMG on 12th March, 2019 on the same matter. As a follow up meeting, the Committee sought to find out the following –

1. Progress made in constituting a committee to validate outstanding VAT refunds as contained in the Budget Statement for FY 2019/2020;
2. Consultations with industry stakeholders to resolve challenges facing implementation of the VAT Regulations, 2017 including VAT refunds backlog and the onerous KRA documentation;
3. Status of payment of VAT refunds including information on the actual outstanding refunds, amount refunded and list of beneficiaries;
4. Proof of gazettment of VAT Regulations, 2017.

The Chairperson also pointed out that the VAT Regulations, 2017 are punitive to taxpayers instead of being facilitative for the benefit of all parties.

Response by Chief Administrative Secretary

The CAS informed the Committee THAT –

- 1) Refund claims is a continuous process where industry players are paid their dues once the necessary documents are verified;
- 2) Kshs.1 billion is allocated monthly for VAT refunds;
- 3) Formation of taskforce/committee to verify and process the refunds is at an advanced stage; and
- 4) Consultations with industry stakeholders on VAT matters are ongoing. In response to some of the complaints by industry players, the National Treasury, through VAT (Amendment) Regulations, 2019 proposed adjustment of the VAT refund formula in order to ensure that taxpayers are able to fully recover the portion of input tax relating to zero-rated supplies.

Way Forward

The response on how much VAT has been refunded was not satisfactory to the Committee and the Chairperson directed that the following information be availed to the Committee within 7 days.

- (i) Progress made in constituting a Committee to validate outstanding VAT refunds as contained in the Budget Statement for FY 2019/2020;
- (ii) Status of payment of VAT refunds including information on the actual outstanding refunds, amount refunded and list of beneficiaries; and
- (iii) Consultations with industry stakeholders to resolve challenges facing implementation of the VAT Regulations, 2017.

MIN.NO. /NA/CDL/2019/187 ANY OTHER BUSINESS

On housekeeping matters, it was resolved that Committee deliberations should be guided by the Statutory Instruments Act, 2013 and Standing Order 210 to avoid delving into policy matters which are the subject of Departmental Committees.

MIN.NO. /NA/CDL/2019/188 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.45 p.m. and next meeting will be called on notice.

Signed:



Date:

17 September 2019

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**

LN 115/2008

(3) 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.

Made on the 30th March, 2017.

HENRY ROTICH,

Cabinet Secretary for the National Treasury.

LEGAL NOTICE NO. 86

THE VALUE ADDED TAX

(No. 35 of 2013)

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

THE VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2019

1. These Regulations may be cited as the Value Added Tax (Amendment) Regulations, 2019. Citation.

2. Regulation 8 of the Value Added Tax Regulations, 2017, hereinafter referred to as the “principal Regulations”, is amended by deleting paragraph (2) and substituting therefor the following new paragraph— L.N. No. 54 of 2017.

(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—

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

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. Regulation 13 of the principal Regulations is amended in paragraph (1) by—

(a) inserting the words “irrespective of where the payment is made from” at the end of paragraph (b); and

(b) deleting paragraph (b) of the proviso thereto.

Dated the 13th June, 2019.

HENRY ROTICH,
Cabinet Secretary for the National Treasury and Planning.



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

EXPLANATORY MEMORANDUM

LEGAL NOTICE NO. 86 OF 2019

VALUE ADDED TAX (AMENDMENT) REGULATIONS, 2019

Name of Statutory Instrument:	Value Added Tax (Amendment) Regulations, 2019
Name of Parent Act:	Value Added Tax Act, No. 35 of 2013
Enacted Pursuant to:	Section 67 of Value Added Tax Act, No. 35 of 2013
Name of the Ministry:	The National Treasury and Planning
Gazetted on:	17 th June, 2019

PART II

Value Added Tax (VAT) Regulations, 2017 in Regulation 8 introduced a formula to determine the amount due as a refund to a registered person who makes taxable supplies at both the general rate and zero rate. The formula has adversely affected businesses that produce both zero-rated supplies and general rated goods as they are not able to recover all the input VAT relating to zero rated supplies.

The proposed amendment addresses this challenge that is faced by suppliers of both zero-rated supplies and general rated supplies in ensuring that they are able to recover the deductible input VAT related to zero rated supplies.

In addition, amendment has been proposed in Regulation 13, Part (b) of the proviso to clarify what constitutes an exported service for VAT purposes regardless of who pays for them.

Public Participation

There has been several calls and meetings between the Kenya Association of Manufacturers (KAM) and other stakeholders to review the VAT refund formula due to the inadequacy of the formula to provide the required inputs VAT relating to zero rated suppliers for the suppliers of both zero rated and general rated supplies. The amended has been driven by suppliers through meetings, budget proposals and submissions to KRA and The National Treasury.



Monitoring and review

The KRA will monitor the efficiency of the VAT refund formula in terms of addressing the concern raised by stakeholders and the review may be done as need arises depending on the feedback from stakeholders and also considering the policy objectives of the formula.

Contact

The Principal Secretary, National Treasury

LEGAL NOTICE No. 54

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

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

THE VALUE ADDED TAX REGULATIONS, 2017

PART I—PRELIMINARY

	Citation.	Interpretation.
1. These Regulations may be cited as the Value Added Tax Regulations, 2017.		
2. In these Regulations, unless the context otherwise requires—		
“Act” means the Value Added Tax Act, 2013;		
“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. (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.

Open market value.

(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. (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—

Place of supply of telecommunications services.

- (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. (1) 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

Taxable value of supply.

6. (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.

Taxable importation by a registered 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. (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.

Deduction of input tax on registration or change in use.

(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.

Refunds.

8. (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.

Refund.

(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—

$$R = Z/T \times e$$

Where—

R is the amount to be refunded

Z is total value of the zero rated supplies

T is the total value of the taxable supplies

e is excess input tax for the month of the 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, 2015. No. 28 of 2015.

(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 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.

9. (1) A registered person who makes a taxable supply shall, at the time of supply, furnish the purchaser with a tax invoice containing— Tax invoice

- (a) the words "TAX INVOICE" in a prominent place;
- (b) the name, address, and PIN of the supplier;
- (c) the name, address, and PIN, if any, of the recipient;
- (d) the individualised 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, if different from the date of issue of the tax invoice,;
- (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; and
- (h) the consideration for the supply and the amount of tax charged.

(2) Notwithstanding paragraph (1), a registered person may provide an electronically generated fiscal receipt as a simplified tax invoice for cash sales made from retail premises containing—

- (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 inclusive of tax.

10. (1) 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—

Tax invoice for supplies of imported services.

- (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. (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.

Credit notes.

(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. (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.

Debit notes.

(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. (1) An exportation shall be a taxable supply—

Exportation of goods or services.

- (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.

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) taxable services provided in Kenya but paid for by a person who is not a resident in Kenya.

(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, 2015;
- (c) for services, such other documents as the Commissioner may require as proof that the services had been used or consumed outside Kenya.

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(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.

14. (1) 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.

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

15. (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.

Tax-inclusive pricing of taxable supplies to unregistered persons.

(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—

$$t \times [A / ((1+t))]]$$

where—

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

t tax rate

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

16. 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, 2015.

Manner of submitting documents.
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17. (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, then—

Application of increased or reduced tax rate to successive supplies.

- (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. Subject to section 68 of the Act, the following are revoked.

Revocation.

- (a) The Value Added Tax Regulations, 1994; LN 195/1994
- (b) The Value Added Tax (Appeals) Rules, 1990; LN 229/1990
- (c) The Value Added Tax (Distraint) Regulations, 1990; LN 227/1990
- (d) The Value Added Tax Order, 2002; LN 95/2002
- (e) The Value Added Tax (Tax Withholding) Regulations, 2004; LN 53/2004
- (f) The Value Added Tax (Electronic Tax Registers) Regulations, 2004. LN 110/2004

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

LN 67/2003

