

Kenya gazettes VAT regulations on electronic tax invoices

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Executive summary

Kenya's Cabinet Secretary for National Treasury and Planning 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, among others.

In addition, the Cabinet Secretary, through Legal Notice No. 188 also dated 10 September 2020 and published 25 September 2020 revoked Regulation 9 of the Value Added Tax Regulations, 2017 which provided the requirements of a tax invoice. Accordingly, the Regulations also replace the requirements of a tax invoice previously set forth in the repealed Regulation 9.

Detailed discussion

Requirement for use

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

A register means an electronic tax invoicing or receipting system that is maintained and used in accordance with the VAT (Electronic Tax Invoices) Regulations.

Use of a register

The user of a register is responsible to ensure that each sale is recorded in the register and the invoice generated is transmitted and delivered to the purchaser of each sale.

Each invoice shall contain the following information:

- a) PIN of the registered user of a register
- b) Time and date of tax invoice
- c) Serial number of the invoice
- d) Buyer's PIN
- e) Total gross amount
- f) Total tax amount
- g) Item code of supplies (for exempt, zero-rated and other rate supplies) as provided by the Commissioner in accordance with the Act
- h) Brief description of goods and services
- i) Quantity of supply
- j) Unit of measure
- k) Tax rate charged
- l) Unique register identifier
- m) Unique invoice identifier
- n) Quick response (QR) code
- o) Any other requirement as may be specified by the Commissioner

For a credit note and debit note, the documents need to have the PIN and invoice number related to the sale.

Availability of a register

A registered supplier is responsible to ensure that the register is in continuous operation and shall make relevant arrangements when there is an interruption of the power supply.

In the event that the register is not working, the registered person is required to notify the Commissioner in writing within 24 hours of the register's malfunction. Further, the subsequent sales will be recorded using any other means as prescribed by the Commissioner and rerecorded via the register once it is operational again.

Obligations of a user of a register

The user of a register must meet the following obligations:

- i) Ensure availability of the register at the point of sale
- ii) Facilitate the inspection of the register by an authorized officer
- iii) Ensure the register is regularly serviced to ensure it's always functioning
- iv) Keep and maintain a register ledger in which a record of the servicing of the register is to be entered and is to contain both:
 - a. The name and address of the person servicing the register
 - b. An entry for each time the register is serviced, describing the servicing and shall be signed by the person performing the service
- v) Comply with such other requirements as may be specified by the Commissioner

In the event a registered supplier intends to discontinue the use of a register due to a business closure, cessation to supply vat-able supplies or any other valid reason, the user must notify the Commissioner of the intended discontinuation within 30 days prior to the discontinuation.

Specifications of a register

A register shall have the following features:

- i) Interconnectivity with information technology networks
- ii) Sufficient storage to maintain records
- iii) Display clear messages in the official languages
- iv) Be secure and tamperproof
- v) Have the capability to:
 - a. Integrate with the Kenya Revenue Authority's (KRA) systems

- b. Transmit and connect to a device capable of transmitting the recorded data to the KRA's systems
- c. Allow updates for any changes in the tax laws
- d. Support capturing of information in the prescribed manner

Transmission of invoice data and security

A register shall be capable of:

- i) Transmitting tax invoice data to the KRA's system and an end of day summary as specified by the Commissioner
- ii) Print or provide stored data
- iii) Store data in an unintelligible manner to unauthorized persons
- iv) Maintain the integrity of the data
- v) Secure authentication for authorized users
- vi) Capture the log of all activities
- vii) Assign a unique identifier to each invoice

Penalties

A person commits an offense in the following instances:

- i) Non-compliance with the provisions of the Regulations
- ii) Tampering, manipulation or interference with the proper functioning of the register

Any person convicted of the offenses may be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or both.

Transitional provisions

Registered suppliers shall comply with these Regulations within a period of 12 months from the time the Regulations take effect.

Where a person is unable to comply within the stipulated timeframe, the person shall 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.

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