

Tax Alert

Government listens to compliant tax payers and scraps withholding VAT

In a bid to harmonise the administration procedures in the various tax laws, the Tax Procedure Act (TPA) was enacted with effect from 19 January 2016.

In principle, the TPA has sought to consolidate provisions relating to the tax administration that were previously contained in the various tax legislations into one Act of law.

It also appears that the Government has also taken the enactment of the TPA as an opportunity to ease the compliance burden for tax payers.

For instance, the provisions governing the appointment of withholding Value Added Tax (WH VAT) agents and the administration of WH VAT were among the provisions deleted from the VAT Act, 2013.

We believe the abolishment of WH VAT has been done in response to the challenges faced by tax payers in relation to compliance with the system, which include:

- The systems' disregard of transaction volumes;
- Tax payers not being entitled to tax refunds arising from withheld VAT;
- The cost of modifying Enterprise Resource Planning (ERP) systems; and
- The lack of distinction between compliant and non-compliant tax payers.

As a reminder, we have discussed these challenges in a bit more detail in an annexure to this alert.

What does the change mean?

It is our view that the WH VAT provisions in the VAT legislation are no longer applicable. Accordingly with effect from 19 January 2016:

- Taxpayers that had been appointed as WH VAT agents are not obliged to withhold and remit any VAT amounts to the KRA; and
- The KRA does not have the power to appoint any taxpayers as a WH VAT agent.

Let's talk

Should you require any clarification or guidance, please do not hesitate to contact:



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The Evolution and challenges of WH VAT

Finance Act, 2014 reintroduced withholding Value Added Tax (WH VAT) with effect from 19 September 2014. Prior to this reintroduction, WH VAT had been abolished by Value Added Tax Act (VAT Act), 2013 with effect from 2 September 2013.

In terms of the reintroduced WH VAT system, the appointed WH VAT agents were required to withhold and remit directly to the Kenya Revenue Authority (KRA) six percent (6%) out of the 16% VAT amount levied on supplies acquired.

Additionally, it is also noteworthy that prior to the abolishment of WH VAT by the VAT Act, 2013, the system was restricted to Government Ministries, Department and Agencies. However, the Finance Act, 2015 expanded the scope of WH VAT to include any other non-governmental ministries/agencies appointed by the Commissioner for domestic taxes.

Accordingly, the KRA has appointed various tax payers as WH VAT agents and also issued guidelines on the obligations of WH VAT agents. Based on these appointments and guidelines the KRA has continued to administer the WH VAT system despite a myriad of challenges faced by the agents and their suppliers with regards to compliance with their WH VAT obligations.

WH VAT system challenges

Disregard of transactions volumes

The majority of the appointed WH VAT agents deal with numerous transactions and as such make payments in respect to a multitude of invoices over any given period.

The WH VAT system does not provide for a value threshold in relation to the withholding, this has meant that tax payers are required to withhold VAT on all their VATable transactions regardless of the value of the transactions.

This has proved to be administratively cumbersome and costly for WH VAT agents and their suppliers engaged in high volumes of transactions.

Tax payers are not entitled to tax refunds arising from WH VAT

Unlike the repealed VAT Act, Cap 476 that expressly provided for refund of tax credits arising from WH VAT, the VAT Act, 2013 only provides for VAT refunds arising from the making of zero rated supplies, bad debts and tax paid in error.

This has created an unfavourable cash flow position for suppliers whose WH VAT credits exceed output VAT as their VAT credits are not available for refund.

Need for WH VAT agents' ERP systems modification

A significant number of the appointed tax payers who are mainly drawn from the KRA large and medium tax payer offices operate already established Enterprise Resource Planning (ERP) system to account for VAT.

Upon the appointment as WH VAT agents, the affected taxpayers are obliged to incur unplanned expenses to modify their ERPs to facilitate compliance with the additional compliance burden imposed on them by the KRA.

The burden is further aggravated by the fact that the affected tax payers are obliged to comply with the WH VAT obligation with immediate effect upon appointment; disregarding the time and monetary costs required to modify their ERP systems.

Lack of distinction between the compliant and non-compliant tax payers

The intention of the WH VAT system was not only to improve the Governments' cash flow through upfront payment of tax but to ensure that the suppliers are compliant with their VAT obligations.

However, the law did not provide for distinction or exemption of the compliant tax payers from the purview of WH VAT thereby imposing an additional compliance burden on already compliant tax payers.