

Tax Alert

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

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Pursuant to Section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning (CS) has published “The Value Added Tax (Amendment) Regulations, 2020” through Legal Notice 188 of 2020 and “The Value Added Tax (Electronic Tax Invoices) Regulations, 2020” through Legal Notice 189 of 2020.

The Value Added Tax (Amendment) Regulations, 2020 have amended The Value Added Tax Regulations, 2017 by deleting Regulation 9 which detailed 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.

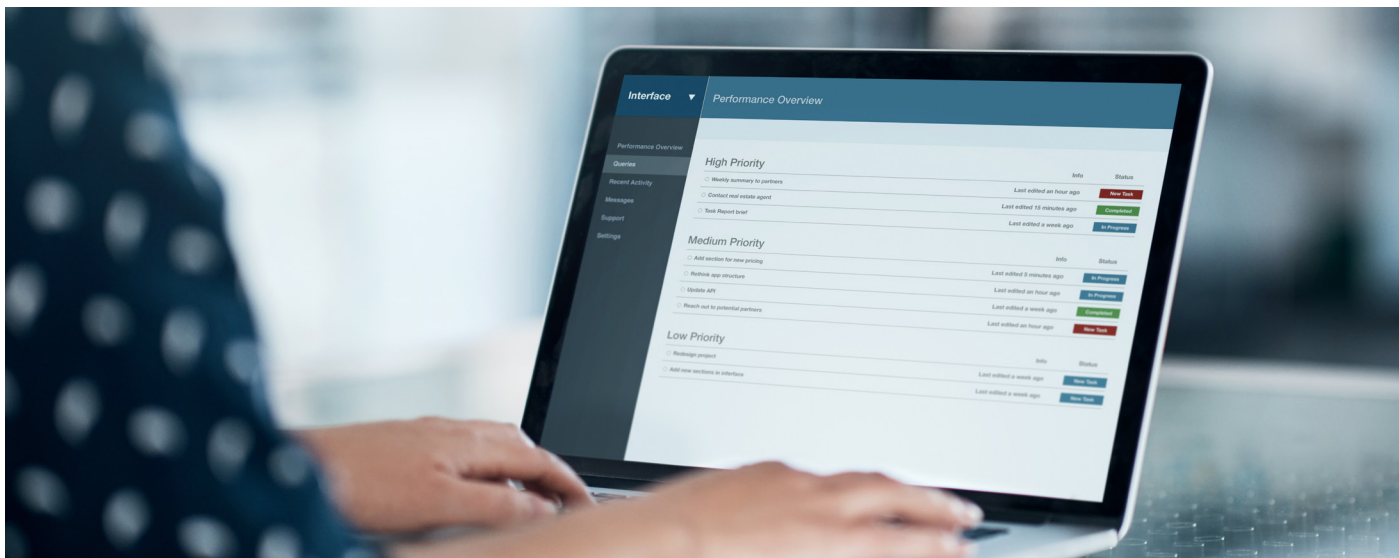
Upon publication of the VAT Regulations in 2017, the Value Added Tax (Electronic Tax Registers) Regulations, 2004 were revoked hence there has been an ongoing debate about the legality or otherwise of use of electronic tax registers. However, with the introduction of the new Electronic Tax Invoices Regulations, 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 predecessor Electronic Tax Registers 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.



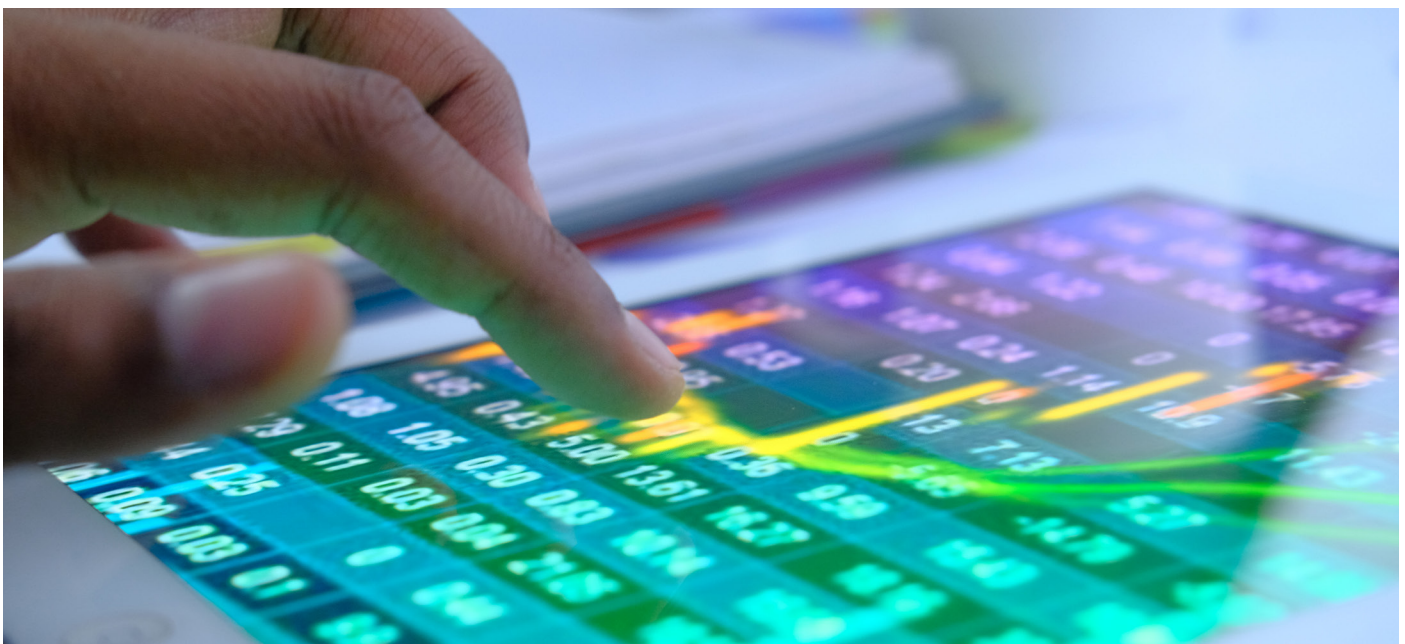
We provide below our analysis of the key Regulations contained in the VAT (Electronic Tax Invoice) Regulations, 2020:

Regulation	Provisions	Our Comments
Regulations 1, 2, 3 and 4.	Introduction, citation and interpretation.	
Regulation 5 – Application of the Regulations	These Regulations shall apply to a person registered under section 34 of the Act [Value Added Tax Act, 2013].	This Regulation specifies that the Electronic Tax Invoices Regulations shall only apply to VAT registered persons.



Regulation	Provisions	Our Comments
<p>Regulation 6 - Use of a register</p>	<ol style="list-style-type: none"> 1. A user of a register shall ensure that: <ol style="list-style-type: none"> a) <i>each sale is recorded with the use of the register;</i> b) <i>an invoice is generated in respect of each sale; and</i> c) <i>each invoice generated in respect of each sale shall contain the information specified in Regulation 7.</i> 2. The user of the register shall: <ol style="list-style-type: none"> a) <i>transmit or deliver the invoice generated with respect to a purchase to the purchaser; and</i> b) <i>transmit or deliver the invoice details to the Commissioner in accordance with regulation 9 (a).</i> 3. A register shall be exclusively used by the registered user of that register. 	<p>The Regulation aligns to the historical requirements in relation to issuance of tax invoices save for the fact that the issuer (user) is required to transmit the invoice details to the Commissioner for KRA.</p> <p>Additionally, 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>Regulation 7 – Availability of a register</p>	<ol style="list-style-type: none"> 1. The user of a register shall ensure continuity of operations of the register if there is an interruption of power supply. 2. Where a user of a register cannot use the register for any reason, the user shall: <ol style="list-style-type: none"> a) <i>notify the Commissioner in writing within twenty-four hours of the user's inability to use the register; and</i> b) <i>record sales using any other means as may be specified by the Commissioner.</i> 3. 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>To ensure continuity in case of power supply interruption, the taxpayer is required to maintain a power supply back up.</p> <p>It is expected that the Commissioner will specify the substitute means to be used by taxpayers to record sales where the register cannot be used for any reason.</p>
<p>Regulation 8 - Obligations of the user of a register</p>	<ol style="list-style-type: none"> 1. A user of a register shall: <ol style="list-style-type: none"> a) <i>ensure availability of the register at the point of sale;</i> b) <i>facilitate the inspection of the register by an authorized officer;</i> c) <i>ensure the register is regularly serviced to ensure the register's proper functioning at all times;</i> d) <i>keep and maintain a register ledger in which a record of the servicing of the register shall be entered and which shall contain:</i> <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) <i>comply with such other requirements as may be specified by the Commissioner.</i> 2. Where a user of a register intends to discontinue the use of a register due to closure of business, cessation to supply taxable 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 clarifies the obligations of the user of a register.</p> <p>In addition to the obligations specified by the regulations, the Commissioner has discretionary powers to prescribe additional requirements – such discretionary powers may be abused by imposition of onerous requirements.</p>

Regulation	Provisions	Our Comments
Regulation 9 - Tax invoices, credit notes and debit notes.	<p>1. A tax invoice generated from a register shall contain:</p> <ol style="list-style-type: none"> <i>the PIN of the registered user of a register;</i> <i>the time and date of issuance;</i> <i>the serial number of the invoice;</i> <i>the buyer's PIN;</i> <i>the total gross amount;</i> <i>the total tax amount;</i> <i>the item code of supplies (for exempt, zero-rated and other rate supplies) as provided by the Commissioner in accordance with the Act;</i> <i>a brief description of goods and services;</i> <i>the quantity of supply;</i> <i>the unit of measure;</i> <i>the tax rate charged;</i> <i>the unique register identifier;</i> <i>the unique invoice identifier;</i> <i>a quick response (QR) code; and</i> <i>any other requirement as may be specified by the Commissioner.</i> <p>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>	<p>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> <p>In addition to the previous requirements, a tax invoice shall contain the item code of supplies and a quick response (QR) code among others.</p>
Regulation 10 - Specifications of a register	<p>A register shall:</p> <ol style="list-style-type: none"> be capable of interconnectivity with information technology networks; have sufficient storage to maintain records; display clear messages in the official languages; be secure and tamperproof; and be capable of: <ol style="list-style-type: none"> <i>integrating with the Authority's systems;</i> <i>transmitting or connecting to a device that will transmit the recorded data to the systems;</i> <i>allowing updates for any changes in the tax laws; and</i> <i>capturing the information required under these Regulations.</i> 	<p>The implementation/operationalization of the regulations is subject to further intervention by Commissioner. It is expected that the Commissioner will publish the list of approved suppliers of the registers.</p> <p>We further note that the regulations do not specify the system that the register is required to integrate with. It is our understanding that the register will integrate with the Tax Invoice Management System ("TIMS") – an invoicing 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"> 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; printing or providing stored data; storing data in an unintelligible manner to persons not authorised to access it; maintaining the integrity of the data; securing authentication for authorised users; capturing the log of all activities; and assigning a unique identifier to each invoice. 	<p>It is expected that the register is able to transmit the invoice data and the end of day summary.</p> <p>We believe that such registers will be internet enabled to allow transmission of data from the device to the KRA's system.</p>



Regulation	Provisions	Our Comments
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) <i>fails to comply with any of the provisions of these Regulations; or</i> b) <i>tampers, manipulates or interferes with the proper functioning of the register.</i> 2. A person convicted of an offence under these Regulations shall be liable to pay the penalty specified under section 63 of the Act. 	A person convicted of an offence under these Regulations shall be liable to a fine not exceeding one million shillings, provided for under Section 63 of the VAT Act, 2013.
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>Taxpayers are expected to comply with the new regulations within one year after the Regulations come into operation.</p> <p>We note that whilst the Regulations were gazetted on 9 October 2020, the Regulations are dated 10 September 2020 thus bringing controversy on the effective date of the Regulations.</p> <p>As per the provisions of Section 67 of the VAT Act, 2013, the CS is required to table the Regulations before the National Assembly for approval before they take effect. We note that the Regulations are yet to be tabled by the CS NT before the National Assembly, which suggests neither of the two dates referenced above qualifies as an effective date unless ratified by the National Assembly. We hope that CS NT will pronounce himself unequivocally on the effective date post the National Assembly approval to avoid the imminent confusion and potential retrospective application of the Regulations.</p>

Conclusion

The use of technology as a compliance enabler is a necessity and we embrace KRA's adoption of technology to enhance VAT compliance and curb tax evasion. However, questions about the KRA's ability to handle the volume of tax invoice data it will receive in terms of the Electronic Tax Invoice Regulations.

Perhaps comforting is the knowledge that the KRA is in the process of implementing a Tax Invoice Management System ("TIMS") – the capability and versatility of TIMS, will in our view, determine the success or otherwise of the Electronic Tax Invoice Regulations.

Lastly, the use of Electronic Tax Invoice registers to transmit data to revenue authorities has been adopted in several neighboring jurisdictions such as Tanzania and Rwanda over the last +/- 5 years. It is therefore our hope that

KRA has undertaken benchmarking studies on successes and challenges associated with 'real time' VAT reporting.

Kindly reach out to any of our experts listed herein or your usual PwC contact for further information on this tax alert.

