Tax

Seminar
VAT Act 2013

Strictly Private and Confidential

September 2013

pwc

Agenda

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Agenda

Introduction

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Evolvement of Value Added Tax (VAT) in Kenya

Sales tax

- Focused on manufacturing and importation of goods only
- Tax collected at one stage only

VAT Act, 1990

Objective – expand the tax base and increase Government revenue but expectations not fully met

- Tax at every stage of the supply chain

Numerous amendments created complexities and uncertainties in the VAT Act

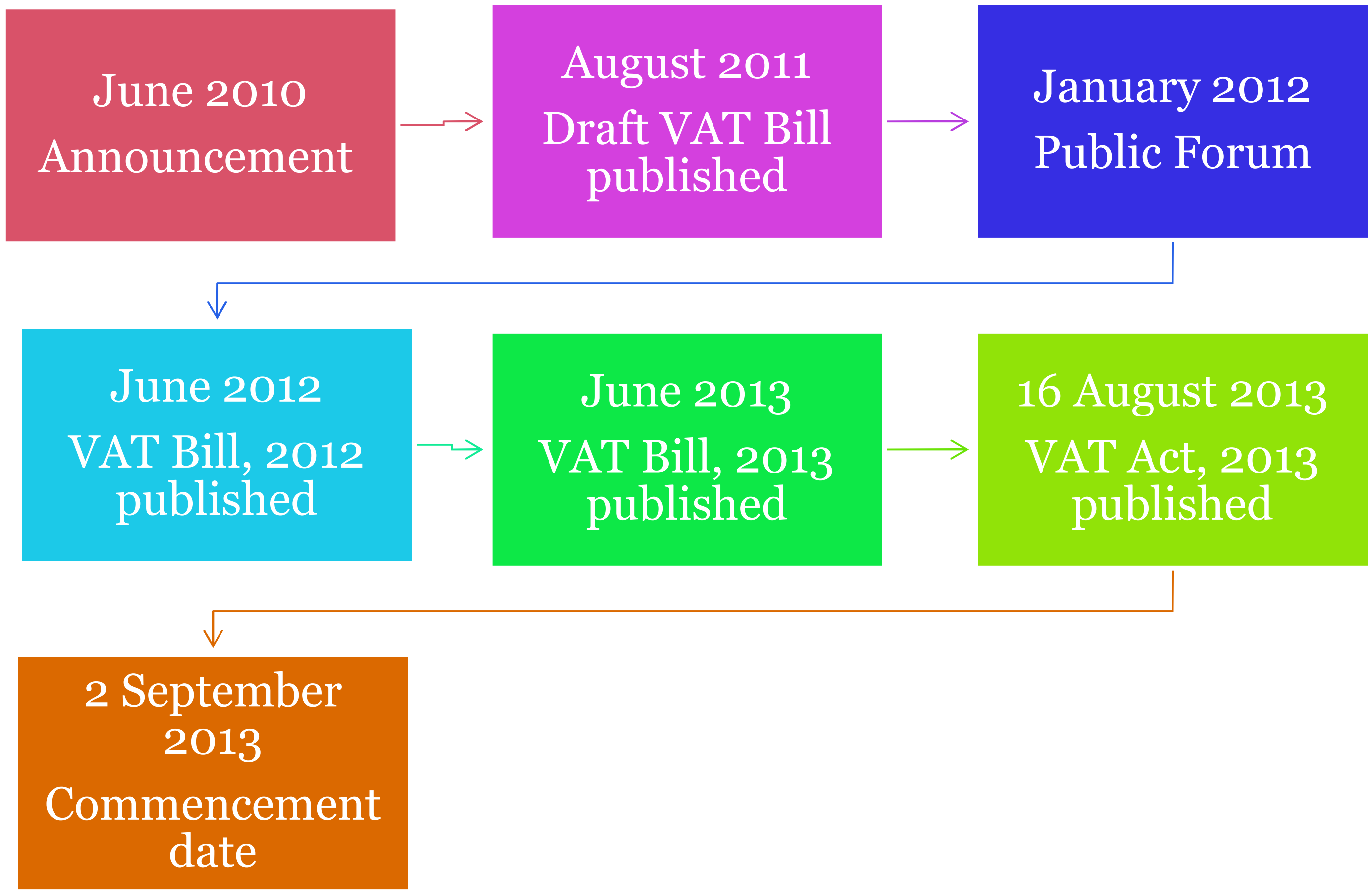
VAT Act, 2013

Objectives:

- Simplification
- Broadening the Tax Base
- Best Practice

Step in the right direction, but needs fine-tuning

The journey


June 2010
Announcement
August 2011
Draft VAT Bill published
January 2012
Public Forum
June 2012
VAT Bill, 2012 published
June 2013
VAT Bill, 2013 published
16 August 2013
VAT Act, 2013 published
2 September 2013
Commencement date

Positive aspects

- Import/Export of services ;
- Simplified administrative procedures e.g. on transfer of a business as a going concern

Disappointments

- VAT status change on basic commodities

- Abolition of VAT remission

Broadening the tax base

- Expansion of scope of business
- Persons covered
- Change in status of taxable supplies – shift to from zero/exempt to standard

Business

Per the Repealed Act

Trade, commerce or manufacture or any concern in the nature of trade, commerce and manufacture;

VAT ACT,2013

a) Trade, commerce, manufacture, vocation or occupation;

b) Any activity carried on by ***a person*** continuously or regularly, whether or not for gain or profit and which involves, ***in part or in whole the supply of goods or services for consideration***; and

c) A supply of property by way of lease, licence, or similar arrangement.

Person …Now defined

An individual, company, partnership, association of persons, trust, estate, the government, a foreign government, or a political subdivision of the government or foreign government

Company…

Company means a company as defined in the Companies Act or a corporate body formed under any other written law ***including a foreign law***.

The implications re business and persons

- Any person who supplies taxable goods or services for consideration will be required to register for VAT (subject to threshold)

Changes in interpretation

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	Repealed VAT Act	VAT Act 2013
Goods	Taxable goods- Electricity and any other goods other than those specified in the 2^{nd} schedule	Goods - Tangible movable and immovable property and includes electrical or thermal energy, gas and water but does not include money.
Importation		Bringing or cause to be brought into Kenya from a foreign country or from an export processing zone.

	Repealed VAT Act	VAT Act 2013
Importer	A person who imports taxable goods	The person who owns the goods or any other person who is for the time being in possession of or beneficially interested in the goods at the time of importation.
Supply	• Supply or delivery of taxable goods to another person; • sale or provision of taxable services to another person; • making of a gift of any taxable goods or services ; or • any other disposal of taxable goods or provision of taxable services.	The definition categorises in to: • Supply of goods; • Supply of services ; and • Supply of imported services.

Rates of Tax

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Rates of tax

- Two rates for VAT:
  - 0% for zero rated supplies; and
  - 16% for any other supply.

- 12% rate scrapped therefore electrical energy and industrial oils now taxable at 16%.

Time and Place of supply

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Time of supply of local supplies and imported services

The earlier of the date:

- on which goods are delivered or services performed;
- a certificate is issued by an architect, surveyor, or consultant;
- on which the invoice is issued; or
- on which payment for is received, in whole or part.

Time of supply of imported goods

- Time of supply of imported goods shall be:
- Time of customs clearance for goods cleared for home use at the port of importation or at an inland station;
- At the time of final clearance from a warehouse for home use;
- At time of removal of goods from an export processing zone for home use; and
- At the time goods are brought into Kenya, in any other case.

Place of supply of local services and goods

Local Services

- A supply of services is made in Kenya if ***the place of business*** of the supplier from which the services are supplied is in Kenya.

Local Goods

Supply of goods occurs in Kenya if:

- they are delivered or made available in Kenya by the suppliers;
- their supply involves their installation or assembly at a place in Kenya; or
- goods are delivered outside Kenya and these were in Kenya when transportation commenced.

Place of supply of services provided by a non - resident supplier if the recipient is not a registered person

These will be deemed to be made in Kenya if they are:

- ✓ Physically performed in Kenya;
- ✓ Directly related to immovable property in Kenya;
- ✓ Radio or broadcasting services received at an address in Kenya;
- ✓ Transfer or assignment of, or grant of a right to use, a copyright, trademark, patents etc; or
- ✓ **Electronic services** delivered to a person in Kenya at the time of supply.

The non-resident supplier is required to appoint a tax representative to meet his obligations

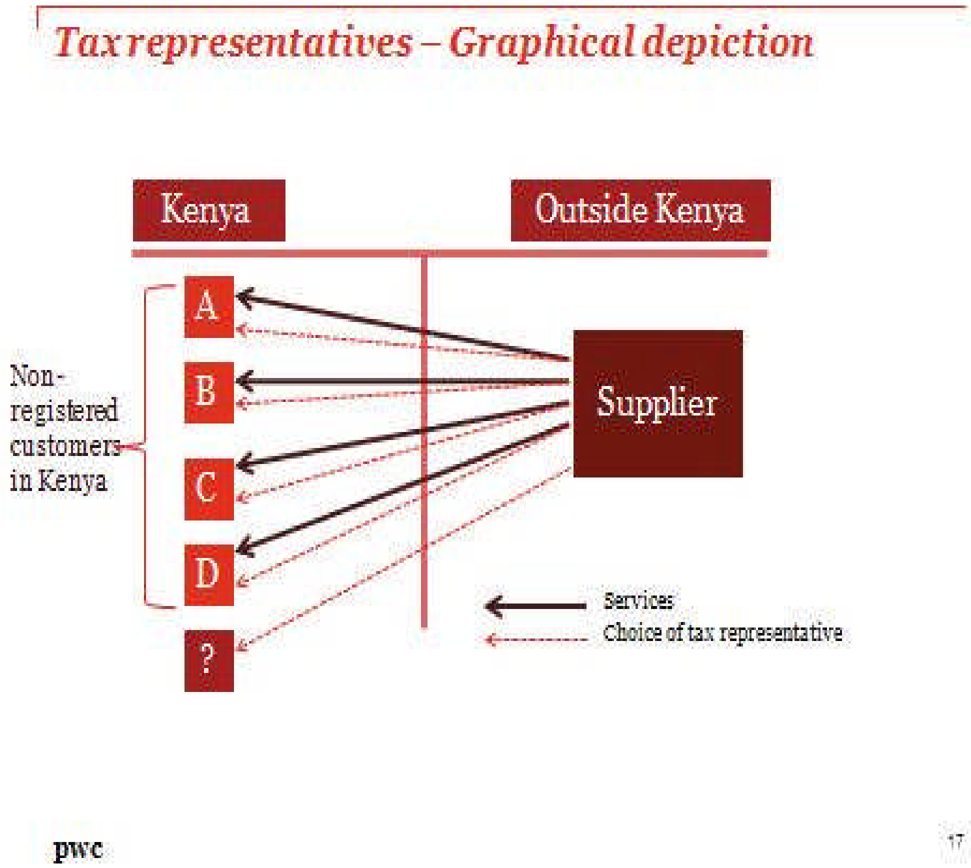
Tax Representatives

- Tax representatives:

  - to be registered in the name of non-resident person being represented.

  -will have the responsibility for doing all things required by the non-resident.

Commissioner may appoint upon failure of the non-resident to do so;



Imported services received by registered persons

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VAT on imported services received by registered persons

Accounting for VAT

This will be accounted for as follows:

1. *Fully taxable persons*

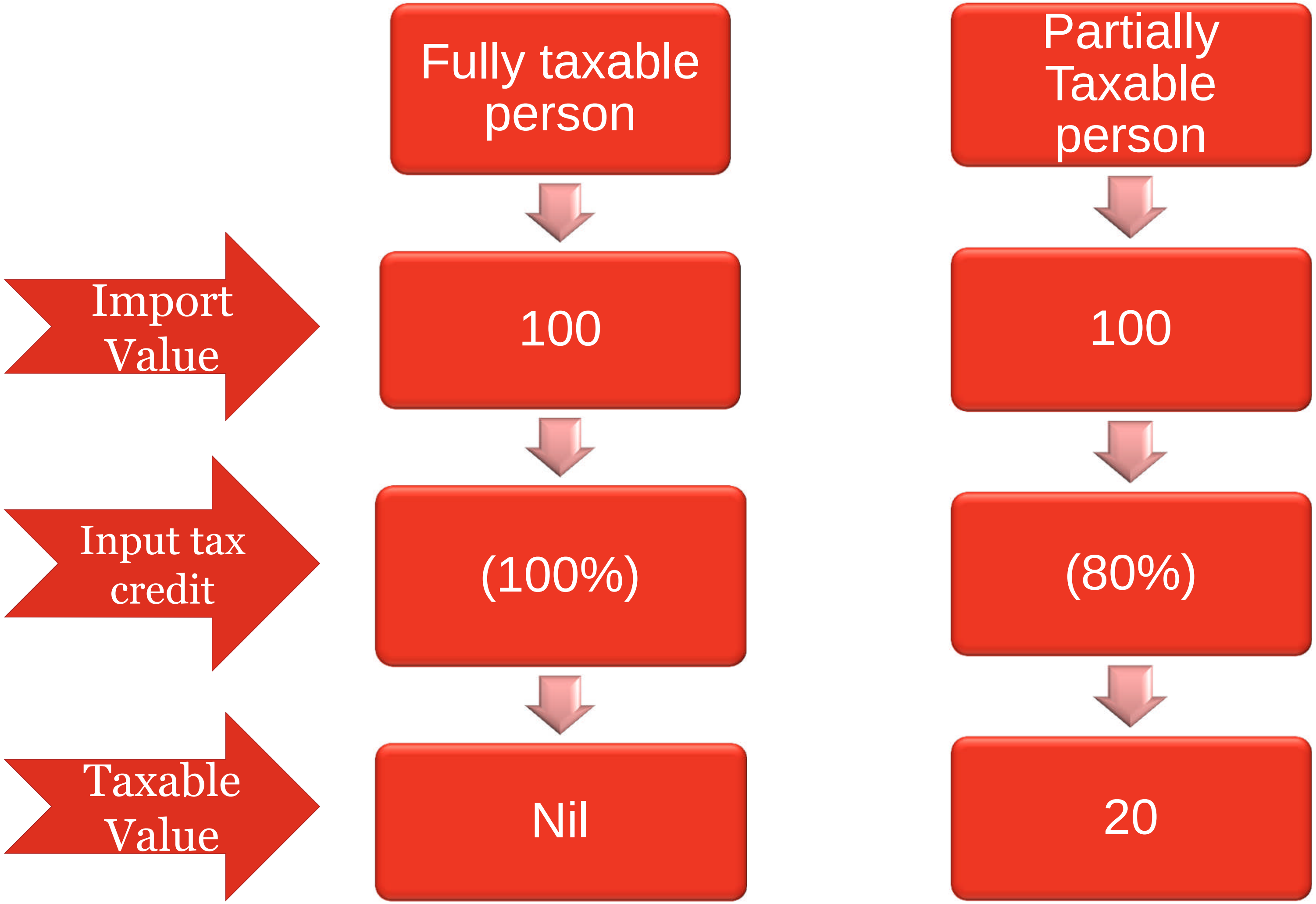
Will get credit for full input tax payable by having the taxable value of the imported services reduced to zero and will be accounted for as output in the VAT 3 return.

2. *Mixed supplies persons*

Registered persons will get credit for the part of input tax that relates to taxable supplies.

A registered person will be deemed to have made a taxable supply to himself.

Illustration



Taxable value

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Taxable Value of local supplies and imported services…

Repealed VAT Act

- The price for which the supply is provided
- In case of related parties, arm's length price

VAT Act 2013

- Consideration for the supply .
- In case of related parties, open market value.

Taxable value of imported goods

Repealed VAT Act

- Value+ amount of customs duty

VAT Act 2013

- Value+ customs duty+ cost of insurance and freight+ cost of ***services*** treated as part of imported goods e.g. royalty

Services mean that which is ancillary or incidental to the importation of goods.

Export of services

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Export of services

Repealed Act

"Service exported out of Kenya" means a service for use or consumption outside Kenya whether the service is performed in Kenya or outside Kenya, or both.

Regulation 20 provides that services shall be deemed to have been supplied in Kenya:

- Where the supplier has a fixed physical establishment/business in Kenya and the services are physically used or consumed in Kenya;

Export of services

VAT Act 2013

Section 8(1) provides that a supply of services is made in Kenya if the place of business of the supplier from which the services are supplied is in Kenya.

The definition of *'service exported out of Kenya'* means a service provided for use or consumption outside Kenya.

Implication

The VAT Act 2013 has provided for clarity in respect of 'consumption' of an export of service based on the ***destination principle***.

Deduction of input tax

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Deduction of input tax

Repealed VAT Act

- S. 10 defines *"input tax"* and *"output tax"*.
- S. 11 sets out the documentation required to support input tax deduction.

VAT Act 2013

- The definition of *input tax* and *output tax* have rightly been moved to the interpretation section of the Act (S. 2).
- Clearly sets out the documentation required to support input tax deduction. This includes an **original** tax invoice. However, it also allows suppliers to issue a clearly marked copy to a person who has lost the original.

Blocked Items

Items	Restricted under repealed Act	Restricted under VAT Act 2013
Passenger cars and minibuses, bodies, parts, oils and services for their repair;	√	√
Furniture, fittings and ornaments of decorative items;	√	
Household or domestic electrical appliances; and	√	
Entertainment, Restaurant and Accommodation services.	√	√restricted if not for business

Partial exemption

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Deductibility of Input tax for persons who are partially exempt – under the repealed Act

- Method 1
  - $\frac{\text{Taxable supplies}}{\text{Total supplies}} \times \text{Total Input VAT} = \text{Deductible Input Tax}$
- Method 2
  - Deduct all input tax directly attributable to taxable supplies;
  - No deduction for input tax attributable to exempt supplies;
  - Remainder of taxable supplies use method 1 above;

Where input tax attributable to **exempt supplies** is **less than 5%** of total input tax, **all** input tax can be deducted.

Deductibility of Input tax for persons who partly make taxable supplies and partly for another use under the VAT Act 2013

- Input tax relating to taxable supplies is **deductible** in full.
- Input tax relating to other use is **not deductible.**
- Input tax relating to making of partly taxable supplies and partly other uses is:
  - deductible in full, if **taxable supplies** are more than 90% of the total supplies
  - not deductible, if **taxable supplies** are less than 10% of the total supplies

...Deductibility of input tax on composite transactions

Taxable Supplies %	Other Supplies %	Input VAT claimable
100	0	Claim fully
>90	<10	Claim fully
11-89	11-89	Apportion
<10	>90	None

- The amount of input tax to be deducted is determined by the formula below:

$$\frac{\text{Value of all taxable supplies}}{\text{Value of Total supplies made}} \times \text{Input tax}$$

Revised time limits

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Revised time limits for issuance of Credit Notes and deduction of Input Tax

Repealed Act	VAT Act 2013
Time limit for issuance of ***credit notes*** is 12 months after the issue of the relevant tax invoice.	Time limit for issuance of ***credit notes*** is reduced to 6 months.
Deduction of input tax allowed up to 12 months after which that input tax became due and payable.	***Deduction of input*** tax allowed within 6 months after the end of the tax period in which the supply or importation occurred.

Refund of tax

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Refund of tax

Repealed VAT Act

- Refund of VAT where input tax exceeds output tax as a result of making zero-rated supplies.
- Application of Refund claims must be lodged within 12 months of the date the tax became payable.

VAT Act 2013

- Refund of VAT where input tax exceeds output tax as a result of making zero-rated supplies.
- No time limits within which the refund would be paid

VAT Remission

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VAT Remission

- VAT Remission is abolished!
- Remission already granted under the repealed Act shall continue to remain in force for a period of 5 years.
- Companies likely to be affected:
  - who purchase equipment not under chapter 84 and 85;
  - are in the hotel construction business; and
  - in the oil exploration business
  - who applied for TREO

Registration and Deregistration

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Registration and Deregistration

Repealed VAT Act		VAT Act 2013	
Sixth Schedule Paragraph 1	Registration required for persons making taxable supplies over KShs. 5 million or more in a period of 12 months	34 (1) & (2)	Threshold maintained. However, in determining the threshold it excludes • the sale of capital assets and • sale of a person's enterprise or • cessation of business permanently.
Sixth Schedule Paragraph 5, 6, 7 , 8 & 9	Effective registration date	34 (5), (7) & (8)	Simplification on registration dates i.e as specified in the person's registration certificate.
Sixth Schedule Paragraph 13 & 14	Group registration	34 (9)	The Cabinet Secretary may in regulation, provide for registration of a group of companies

Registration and Deregistration

Section 13 – Registration and Deregistration

Repealed VAT Act		VAT Act 2013	
Sixth Schedule Paragraph 19	• Threshold KES 5m • Notification of change of business details within 14 days	35 (2)	• Threshold KES 5m (A taxable supply of a capital asset and a taxable supply made solely as a consequence of the person selling the whole or part of the persons business , ***will be excluded*** • Period for notification for change of business details extended to 21 days .
Sixth Schedule Paragraph 10 (2), 11, 12	Different penalties for varying offences	37	Default penalty not exceeding KES 200,000 applicable for all offences

Application of Information Technology

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Information technology to be used for the following:

- Application for registration;
- Return/statement required by the Act;
- Any payment or repayment;
- Any notice/document required to be issued by the Commissioner; and
- Any other thing required to be done under the Act.

Application of Information Technology

iTax

Powers given to the Commissioner to establish and operate:

- a procedure for electronic filing of tax returns or other documents by registered persons;
- electronic service of notices and other documents; and
- provide written conditions for electronic returns and notices.

Objections

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Objections

Section 15 – Objections

Repealed VAT Act

- No time limit within which the Commissioner was to respond to the objections of assessments submitted by tax payers.

VAT Act 2013

The Commissioner to:

- respond within 30 days after he has received the notice of objection.
- to send out a notice within 15 days setting out an amendment or confirming the assessment.
- Where the Commissioner fails to communicate within 60 days, he shall be deemed to have agreed to amend the assessment in accordance with the objection.

Appeals

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Appeals

- VAT appeals provisions excluded from the VAT Act 2013 in light of the Tax Appeals Tribunal Bill 2013.
- However, transitional clauses provide for subsidiary legislation to remain in force until new subsidiary legislation is enacted.

Implications

- Any notifications to appeal to the Tribunal can still be effected.

Tax avoidance schemes

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Tax avoidance schemes

Repealed Act

Non-existent in the repealed Act.

VAT Act 2013

- A *scheme* is entered into when a person obtains a *tax benefit*.
- Where a scheme is entered into, the Commissioner shall make an adjustment and issue an assessment of any tax liability.

Enforcement

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Enforcement

- Commissioner may require the production of records and information in respect of tax liability in order to ascertain the correctness of the tax declared by the tax payer.
- Audit to be concluded within 6 months, however, KRA can request for extension in writing.
- Where audit is not concluded within 6 months, a registered person can be issued with an interim certificate indicating the progress of the audit.

Public/private rulings

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Public ruling

Repealed VAT Act

KRA would issue non-binding

- Information Letters;
- Public notices; and
- Technical circulars.

VAT Act 2013

The Commissioner is required to make public notices to appear in at least 2 daily newspapers specifying;

- Subject matter;
- ID number of subject matter; and
- Effective date of ruling.

Withdrawal of public notice to be published in newspapers.

Private ruling

Repealed VAT Act

Specific rulings were issued to the tax payer in respect of a technical issue.

VAT Act 2013

Commissioner to issue private ruling upon application of the registered person.

Transitional clauses

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Transitional clauses

- The clauses under the repealed Act shall still remain in force for purposes of:
  - the assessment and collection of any tax or recovery of penalty;
  - subsidiary legislation consistent with the VAT Act 2013;
  - remission already granted for the next five years;
  - tax due to be paid or refunded, but was not so paid or refunded; it shall be paid or refunded as though it were a sum due under the current regime.

Implications on Consumer, Industry and Product Sector (CIPS) and Services Sector

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Manufacturing

- All plant, machinery, electrical and mechanical appliances under chapters 84 and 85 of the East African Community Common External Tariff (CET) including generators, refrigerators, computer hardware, processors and monitors, *most of which were zero rated have become exempt.*
- Registered persons who sell the above as stock in trade may ***de-register*** from VAT as their supplies shall now be exempt.
- Cost of such appliances might be more expensive to buy as the manufacturer could pass the VAT burden to the consumer.

VAT Remissions

Products more expensive?

Hospitality

- Tour operation and travel agency services including travel, hotel, holiday and other supplies made to travellers *which was exempt in the repealed VAT Act now taxable at 16%.*
- Services provided by hotel establishments to foreign travel and tourism promoters undertaking a tour in the promotion of tourism in Kenya *which was zero rated, now taxable at 16%.*
- Transportation of tourists by any means of conveyance *which was exempt now taxable at 16%*
- Zero rating of materials and equipment on construction/refurbishment of hotels *abolished*

What does this mean?

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What this means

- No Remission
- Impact on Partial Exemption
- Importation of services
- VAT status change
- No TREO

Change of VAT status

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Reduction in zero rated and exempt supplies…

The Act has significantly reduced the number of exempt and zero rated supplies. All other supplies are now taxable at the standard rate of 16% except items listed in the First and Second Schedule.

VAT Status Changes

Repealed VAT Act \ VAT 2013 Act	16%	Exempt	0%
16%	**No change in status**	**NONE**	**NONE**
Exempt	**X**	**No change in status**	**NONE**
0%	**X**	**X**	**No change in status**

Some examples of services moving from Exempt to 16%

- Credit rating bureau services
- Management of a unit trust or collective investment scheme
- Sale of commercial building
- Services rendered by trade, professional and labour associations
- Postal services
- Tour operations and travel agency services
- Landing and parking services provided for aircrafts

Some examples of goods moving from Exempt to 16%

- Flour (rice, rye, groats and meal of wheat/maize, potatoes, dried leguminous vegetables)
- Cut flowers and flower buds
- Rocket launchers/Artillery/military weapons

Some examples of services moving from Zero rated to 16%

- Electricity supply of electrical energy to domestic households below 200 KW
- Transport services for unprocessed agricultural/ agro forest produce
- construction services in relation to grain silos

Some examples of goods moving from Zero rated to 16%

- Goods used by the President
- Goods for the official use of the Armed Forces
- Residues and waste from the food industries; prepared animal
- Milk
- Newspapers and books
- Solar equipment and accessories
- Agricultural tractors

Some examples of goods moving from Zero rated to Exempt

- Milk specially prepared for infants
- Ordinary, gluten and unleavened bread.
- Wheat Flour
- Maize flour
- Cereal (except wheat, rye and barley seeds)
- Organic chemicals
- Pharmaceutical products
- Fertilizer
- Sanitary towels (pads) and tampons.

LPG now VAT able… Other petroleum products in transition

Zero rated goods now exempt in transition to 16%	Transitioning from exempt to 16%
Kerosene type jet fuel	Petroleum oils and oils obtained from bituminous minerals, crude.
Illuminating kerosene	Motor spirit (gasoline) regular
Purchase of Jet fuel and aviation spirit by jet owners	Motor spirit (gasoline), premium
	Aviation spirit
	Spirit type jet fuel
	Special boiling point spirit and white spirit
	Other light oils and preparations
	Other medium petroleum oils and preparations

Chapter 84, 85 – Interpretation

What is Plant and machinery

An example:

Are phones and computer software taxable @ 16% or still exempt as phones are under chapter 85

Questions & answers

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