

Value Added Tax (General) Regulations, 2015

August 2015

In brief

Following the entry into force on 1 July 2015 of the VAT Act 2014 ("The Act"), the Value Added Tax (General) Regulations 2015 ("the Regulations") have recently become publicly available. Our earlier newsletter covered an overview of the Act, and a subsequent Tax Alert issued immediately following the receipt of the Regulations highlighted the 31 July 2015 deadline for notification of input tax credits brought forward at 1 July 2015. This newsletter now gives more detail on the Regulations.

The Regulations include provisions dealing with the following: forms and procedure for various matters including adjustment notes; capital goods deferral; VAT returns; VAT refund claims; and VAT registration. As regards registration, the Regulations confirm an increase in the registration threshold to annual turnover of TZS 100 million. The Regulations also cover the following: input tax on passenger vehicles; VAT representatives of non-residents; adjustment events including bad debts; insurance; finance leases; and transitional arrangements. Some initial concerns with regard to the Regulations are highlighted in the Commentary at the end of this newsletter.

Registration

Registration – general

New registration threshold – Confirmed as turnover of TZS 100m pa. Turnover includes supplies of imported services (however, refer to our VAT Act 2014 newsletter in relation to de minimis rules in respect of imported services).

New registration form – form ITX245.02.E as prescribed in the Schedule to the Regulations.

Cancellation of registration – A registered person must apply for cancellation of registration in the case of (a) permanently cessation to make taxable supplies, or (b) failure to maintain the registration threshold.

Registration – intending trader

Requirements include :

- Provision of letter of commitment to comply with conditions specified in s 29(3) of the Act.
- Provision of evidence to TRA that the applicant will make taxable supplies exceeding the VAT registration threshold within twelve months from the date of commencement of producing taxable supplies.

Registration – non residents

Where a non-resident is required to appoint a VAT representative, such a representative must have:

- A Taxpayer Identification Number ("TIN") and a good tax compliance history;
- A statement of declaration of the representative's capacity to deal with the VAT affairs of the non-resident;
- A fixed, well known and accessible place of business.

A VAT representative can only assume responsibilities following formal notification in writing of the appointment to the Commissioner General.

A non-resident and his VAT representative are jointly and severally liable for any VAT liabilities of the non-resident.

Imports

Payment and collection

Payment and collection of VAT on imports is to be in the manner prescribed under the East African Customs Management Act.

Deferral – capital goods

Application for deferment to be made using form ITX247.02.E as prescribed in the Schedule to the Regulations, and shall incorporate a declaration that the goods are for use in the applicant's business.

Application restricted to items with an individual VAT value of TZS 20 million or more.

The deferred VAT must be accounted for as output tax and input tax in the same VAT return of the tax period in which the capital goods were imported.

Deferment period is 10 years during which (i) the Tanzania Revenue Authority ("TRA") have the right to inspect the relevant capital goods, and (ii) the taxpayer must keep all relevant records in respect of the capital goods. Once this 10 year deferment period has elapsed, no VAT becomes payable.

Input Tax

Passenger vehicles

Input tax can be claimed where incurred on a passenger vehicle with a passenger seating capacity of more than sixteen persons.

Partial exemption – services imported by financial service providers

For financial service providers the value of supplies of imported services is excluded from the apportionment calculation.

Returns, Payments and Refunds

Returns

VAT return form – a new VAT return (form ITX240.02.B as prescribed in the Schedule), which must also be accompanied by a declaration of details form (form ITX241.02.B as prescribed in the Schedule).

Amendment of VAT return – In order to file an amended VAT return, application must be made to the Commissioner General stating the reason for the amendment, and upon approval by the Commissioner General an amendment can be made to correct the relevant error or omission. This procedure is not required in respect of minor errors (errors for VAT amounts not exceeding TZS 1 million) where the only requirement is to notify the Commissioner General of the correction made.

Refunds - General

A refund claim must be accompanied by the following:

- The new refund form (form ITX260.02.E as prescribed in the Schedule);
- A certificate of genuineness (as prescribed in the Schedule) issued by an auditor registered with the National Board of Accountants and Auditors and registered as a tax consultant with the Tanzania Revenue Authority;
- A computation of the refund amount;
- A checklist (as specified in form ITX261.02.E as prescribed in the Schedule);
- Such other information as the Commissioner General may require.

Refunds – Diplomats etc

Separate forms are prescribed for refunds to diplomats and international bodies, and these must be accompanied by supporting tax invoices.

Adjustment events

Adjustment notes

An adjustment note must:

- Be by way of the prescribed form (form ITX264.02.E)
- Contain the following information: (i) a sequential identifying number (ii) the tax invoice issued in respect of which the adjustment is being made, (iii) a description of the goods or services, and (iv) the amount being adjusted and the reason for the adjustment.

Bad debts

The Regulations introduced additional requirements for a supplier to make a “decreasing adjustment” in respect of a bad debt, in particular:

- The supplier must have undertaken action for recovery of the debt or have handed the bad debt to an attorney or debt collector for recovery;
- Such action for recovery has proved futile; and
- All the necessary entries have been made in the books of account, including write off of the debt.

Transitional arrangements

Notification of brought forward input tax credits

A deadline of one month from commencement of the Act – namely, a deadline of 31 July 2015 - is given for any taxpayer with a brought forward input tax credit to file a notification of such credit to the Commissioner General using the prescribed form (form ITX266.02.E).

VAT relief applications – Extractive, EPZ / SEZ

Any application for relief from VAT on the basis of extractive sector agreements entered into before July 2015 must be made by way of the relevant prescribed form (form ITX263.02.E)

Sale of Economic Activity as Going Concern

Conditions

Requirements for a sale of an economic activity to be treated as a sale of a going concern include:

- Capability of being operated separately;
- Turnover of that part of the economic activity being sold to be not less than the VAT registration threshold;
- Purchaser must be able to conduct the relevant activity without being required to make further acquisitions in order to make the acquired economic activity operational.

Registration of purchaser

The purchaser must be registered no later than the date of concluding the sale (as defined).

Financial Services

Insurance

The Act provides for VAT to apply to insurance (other than health and life). In this regard, the Regulations provide that an insurer must account for VAT on the net premium amount received by him in relation to a contract of insurance. For this purpose, “net premium received” means the total premium received in a given tax period less payments made for settlement of any claim arising from a contract of insurance and amounts of premium paid for that period to another insurer for the purpose of reinsurance.

An increasing adjustment must be made in respect of any subsequent recovery of a claim (for example, in the case of fraud).

The Regulations state that “*exports of insurance premium arising from reinsurance shall be zero rated*”. It is understood that the objective of this wording is to zero-rate any premium charged locally to the extent that the risk covered by such premium is reinsured overseas.

A supply of “salvage” (being damaged property an insurer takes over to reduce its loss after paying a claim) is subject to VAT.

An insured person who is a taxable person:

- Is required to account for output tax on receipt of an insurance settlement payment, but
- Is not eligible to claim an input tax credit in relation to VAT incurred on insurance premium.

An insurer who makes payment to an insured person in respect of a claim under a contract of insurance:

- Is eligible for an input tax credit for the claim, irrespective of whether or not the claim is payable to a taxable person
- Not eligible to claim an input tax credit on costs of sales, administration and management relating to a supply made under a contract of insurance.

Finance leases

“Finance lease” definition –

The Regulations define the term “finance lease”. The definition is the same as set out in Section 32(7) Income Tax Act 2004.

The regulations state that any interest payable on a finance lease is exempt from VAT.

Commentary

A number of concerns arise in relation to these regulations including:

- The objective of regulations is to provide guidance in relation to administrative matters to give better effect to the law (as clearly articulated in section 94 of the Act: *“for any matter necessary or convenient in order to carry out or give effect to the provisions of this Act”*). However, whilst the Regulations do give guidance on a number of administrative matters, there are also areas where they are wider than this including cases of direct contradiction with the Act.
- Contradictions between the regulations and the Act include the following examples: (i) the regulations on bad debts effectively make meaningless the automatic adjustments contemplated in the Act; (ii) the Act states

that taxpayers registered under the predecessor legislation had an option to de-register, whereas the regulations make this mandatory; (iii) the “sale of economic activity as a going concern” provisions in the Act, and in particular the definition of “economic activity”, contemplated the application of these rules even in cases where taxable turnover was not yet being generated – by contrast the regulations include a condition that the turnover of the part of economic activity being sold must not be less than the VAT registration threshold.

- The short deadline (31 July 2015) for notification of brought forward input tax credits (bearing in mind that the Regulations only became available at the end of July);
- A conflict between the regulations dealing with amendment of VAT returns, and the Tax Administration Act 2014 provisions on amendment of tax returns.
- The denial of an input tax credit for insurance costs of businesses is inconsistent with normal VAT principles. Other concerns in relation to insurance include uncertainty on the definition of net premium,

restriction of input tax claims on insurers’ sale and administration costs, and treatment of commission paid to brokers. There is also uncertainty in relation to invoicing obligations (including EFD) between insurers and brokers.

- Non-resident suppliers with an obligation to appoint a domestic VAT representative may find it a challenge to identify such representatives given the joint and several liabilities attached to taking on such a role.
- Whilst an increase in the VAT registration threshold to TZS 100m is a step in the right direction, it still represents turnover of the equivalent of approximately only US\$ 4,000 per month. We believe that a much higher threshold would be beneficial from a revenue collection perspective (as well as reducing administrative costs for both TRA and smaller taxpayers).
- An overriding concern with the Regulations is the absence of proper public consultation in advance of their publication in final form.

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Let's talk

For a deeper discussion and detailed advice on how the new VAT Act 2014 might affect your business, please contact:

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