



VAT Alert

Notification Requirement for VAT Registered Intending Traders

October 2024

Taxpayers registered as intending traders who have not fulfilled the third condition risk being deregistered and losing the benefits of being VAT registered which allows them to claim input tax

In Brief

The Finance Act, 2024 (FA 2024) introduced a requirement for persons who are registered for Value Added Tax (VAT) as intending traders to notify the Commissioner General of Tanzania Revenue Authority (TRA) if they fail to meet the required conditions, which includes starting to make taxable supplies on or before the date stated in the registration application.

This notification should be made within 90 days after the end of the stated period providing reasons for the failure to comply with the conditions. Failure to comply with this notification requirement will result in an automatic deemed deregistration.

Background

The Value Added Tax Act, 2014 (VAT Act, 2014) provides for mandatory registration



(e.g. upon meeting the registration threshold of annual taxable turnover of TZS 200 million (approx. USD 73K)) and voluntary registration as an intending trader (which tends to be used in a situation in which a considerable set-up time is required before making taxable supplies in order to claim input tax incurred on imports or purchase of goods and services during the pre-production period in order to reduce the project costs. This is common for capital intensive projects like mining, oil and gas, manufacturing or real estate.

A person registering as intending traders is required to meet the following conditions:

- Provide sufficient evidence to the Commissioner of his intention to commence an economic activity, including contracts, tenders, building plans, business plans, bank financing;
- The person makes or will make supplies that are subject to VAT (at a rate of 18% or 0%); and
- Specify the period within which the intended economic activity will commence production of taxable supplies.

The VAT Act, 2014 has been amended by the FA 2024 to require a person who is registered as an intending trader and who has failed to start generating taxable supplies by the stated date, to notify the Commissioner and provide reasons for the failure to start generating taxable supplies. Non-compliance with this requirement will result in an automatic deemed VAT deregistration.

Potential impact on Taxpayers

Taxpayers registered as intending traders

Following this change, taxpayers registered as intending traders who have not fulfilled the third condition risk being deregistered and losing the benefits of being VAT registered which allows them to claim input tax.

Intending traders must review their VAT registration applications to ensure compliance with prescribed conditions and the notification requirement. Where the stated date to begin taxable supplies generation ended before the change of the law i.e. before 1 July 2024, the prudent approach would be to notify the Commissioner by 30 September 2024 or any other earlier date immediately after becoming aware of this requirement.

The notification should include reasons for the delay and, where applicable, indicate the revised expected timeframe to complete set-up and development activities before production starts.

Although the law is silent on whether the Commissioner may extend the period for an intending trader to start making taxable supplies, it is

expected that this extension will be granted where there are reasonable grounds but it is subject to the Commissioner's discretion.

Unfortunately, this change was not mentioned in the Budget speech nor in the Finance Bill, leaving the rationale behind it unclear with no visibility of the expected actions of the Commissioner following the notification.

Taxpayers considering to be registered as intending traders

Businesses that plan to register as intending traders need to carefully estimate the time required to begin production of taxable supplies which may also require pre engagement with the TRA to ensure that the status is granted as the TRA has historically been wary of long time frames (i.e. over 12 months). The engagement may help the TRA to make an informed decision and approve a reasonable time frame when registering intending traders for VAT.

Related challenges for intending traders

Intending traders are allowed to claim input tax in their returns and carry forward VAT credit balance in accordance with normal rules and make an application for a cash

refund if the company has been in a refundable position for six consecutive periods/months.

In practice, obtaining VAT refund for businesses during the set up phase has recently proven to be a challenge. In many instances, the Revenue Authority has rejected the VAT refund applications by businesses which are yet to start generating taxable supplies.

We understand that the Revenue Authority is of the view that no VAT refund should be paid unless a business has generated taxable supplies in the respective periods. This will mean that intending traders will have to carry forward their VAT credit balances until when they begin to make taxable supplies .

This position is contrary to the intended relief available to VAT registered businesses and the whole purpose of allowing businesses in the start up phase to register as intending traders.

Difficulty in recovering input tax for businesses making zero rated supplies

Specifically for businesses that are expected to make zero rated supplies, carrying forward VAT credit in their returns may not be practical due to the time limit to lodge VAT refund applications.

The law requires a person to lodge an application within three years after the end of the period/month to which the credit relates. After this period, a person is only left with an option to utilise the credit against output VAT.

Businesses in certain industries like mining expect to only make zero rated supplies (exports). As a result, there will not be any output VAT in the future to offset the VAT credit balance accumulated in the returns.

Effectively, the input credit will be lost hence defeating the purpose for registering as an intending trader. This challenge can be addressed by allowing refund applications and paying refunds within the timelines stipulated in the law.



Practices in other jurisdictions

In countries like Zambia, claiming of input tax credit is well legislated¹, offering clear guidance and hence making the business environment more predictable and conducive for planning purposes resulting in reduced frustration for taxpayers/investors. Their legislation allows claiming input tax for different industries within specified periods.

For instance, it allows input tax claims within four years from the date of registration as an intending trader for electricity generation, farming and tourism, ten years for mining, petroleum or gas exploration and two years for any other trading activities.

Tanzania could benefit from adopting similar practices used in such neighbouring countries to enhance the investment environment and hence economic growth.

VAT cost is not borne by businesses but rather passed on to the final consumer.

It is our hope that this change will not result in any actions which are contrary to VAT principles, albeit the recent rejections of VAT refunds (decisions which we hope to see reversed in the near future). As such, we do not expect that intending traders will be forced to bear the VAT burden.

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Commentary

While the notification requirement is clear, several questions remain unanswered, including the rationale behind this change and its implications to intending traders following the notification. In our view, VAT registration for intending traders is meant to provide relief by allowing input tax claims, the carry forward of VAT credits and VAT refunds.

This aligns with the VAT principles and best practice, ensuring that input

How We Can Help

Our Indirect Tax and Legal Business Solutions teams are happy to assist taxpayers following the recent notification requirement for intending traders, including but not limited to:

- Assistance with VAT registration as intending traders;
- Assistance with the introduced notification requirement; and
- Assistance with VAT refunds and the related dispute resolution.

¹<https://www.zambialaws.com/Zambia2010Pdfsi/SI-2010-88.pdf>

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