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MAX BAUCUS

From good to better Value Added Tax



Preamble

This edition of our publication Value Added Tax in East Africa incorporates changes in legislation introduced by Finance Bill 2011, the Budget speeches 2011 and other subsidiary legislation. It also includes references to changes in the practice of the Country Revenue Authorities where they are significant. Some changes may arise when Finance Act 2011 is published.

These notes are designed to familiarise clients with Kenya, Tanzania and Uganda Value Added Tax law. They constitute only a brief guide and are not a comprehensive summary of Value Added Tax Law and Practice. While all reasonable care has been taken in the preparation of this guide, Deloitte and its associates accept no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however caused, or sustained by any person that relies on it.

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Kenya

1 The Kenya Value Added Tax Act

The Kenya Value Added Tax Act (Cap 476) was enacted in 1989, and its date of commencement was 1 January 1990. Value Added Tax replaced Sales Tax.

2 Basis of charge to tax

2.1	Value added tax is charged on the supply of taxable goods or services made or provided in Kenya by a taxable person in the course of or in furtherance of any business carried on by that person and on the importation of goods and services into Kenya.	Section 5 Section 6
2.2	A taxable person is one who makes or intends to make taxable supplies while he is registered or required to be registered under the VAT Act.	Section 6(3)
2.3	The liability to VAT vests with the person making the taxable supply of goods or services. However, the liability to VAT in respect of imported taxable services vests with the recipient of the service.	Section 6(4) Section 6(6)
2.4	In the case of imported services, where the supplier of the services is normally resident outside Kenya, the Commissioner may appoint a resident person to collect the tax payable on the service and remit it to the Department.	Section 6(7)
2.5	VAT on the importation of goods into Kenya is payable at the point of customs entry by the importer.	Section 6(5)
2.6	The rates of tax applicable are specified in Part I and II of the First Schedule of the Act. Exempt goods and services are listed in the Second and Third Schedules respectively, while zero-rated goods are listed in Part B of the Fifth Schedule. Special goods, privileged persons and institutions which enjoy a zero-rate status are listed in the Eighth Schedule.	
2.7	Any goods which are not exempt or zero rated are deemed to be taxable at the standard rate of 16% or the lower rate of 12%.	Section 6(2) First Schedule Second Schedule Third Schedule Fifth Schedule Eighth Schedule
2.8	All services that are not listed in the Third Schedule or Fifth Schedule, are taxable at the standard rate of 16%.	Third Schedule Fifth Schedule
2.9	Services shall deemed to have been supplied in Kenya where: (i) The supplier has established his business or has a fixed physical establishment in Kenya and the services are physically used or consumed in Kenya regardless of the payer's location; or (ii) In connection with immovable property, the place where the property is situated is in Kenya; or (iii) The service is in connection with receiving a signal or a telephone, television, radio or other communication service, the person receiving the signal/service is in Kenya.	VAT Regulations, Paragraph 20(1)
2.10	Where transportation ends outside the country, the transport services shall be deemed to have been supplied outside Kenya.	VAT Regulations, Paragraph 20(2)

3 Registration and de-registration

3.1 Registration

<p>3.1.1 Registration, de-registration and changes affecting registration are dealt with in the Sixth Schedule to the VAT Act.</p>	<p>Section 27</p>
<p>3.1.2 Compulsory registration applies to any person who in the course of his business has supplied taxable goods or taxable services or expects to supply taxable goods or taxable services, or both, the value of which is KShs 5,000,000 or more in a period of twelve months.</p>	<p>Paragraph 1, Sixth Schedule</p>
<p>3.1.3 Any person who meets the above conditions is a taxable person and should, within thirty days of becoming a taxable person, apply for registration.</p>	<p>Paragraph 1, Sixth Schedule</p>
<p>3.1.4 Voluntary registration is permissible under the law but is granted at the discretion of the Commissioner.</p>	<p>Paragraph 3, Sixth Schedule</p>
<p>3.1.5 The Act defines what manufacturer means but for purposes of the Sixth Schedule, it is deemed to include a related person where:</p> <ul style="list-style-type: none"> • Taxable goods are manufactured in Kenya and in any three months, more than thirty percent of the value of the goods are supplied by the manufacturer to the related person; or • Taxable goods are manufactured in Kenya and in any three months, more than thirty percent of the value of the goods are supplied by the manufacturer to one or more persons who then supply them to the related person. 	<p>Paragraph 2, Sixth Schedule</p>
<p>3.1.6 A person is deemed to be related to another person if:</p> <ul style="list-style-type: none"> • Either person participates directly or indirectly in the management, control or capital of the business of the other; or • A third person participates directly or indirectly, in the management, control or capital of the business of both; or • An individual, who participates in the management, control, or capital of the business of one, is associated by marriage, consanguinity, or affinity to an individual who participates in the management, control, or capital of the business of the other. 	<p>Paragraph 2, Sixth Schedule</p>
<p>3.1.7 Where a person is related to another and owns or controls more than one business entity, the value of taxable supplies for purposes of registration is the aggregate value of the taxable supplies of all the business entities.</p>	<p>Paragraph 2, Sixth Schedule</p>
<p>3.1.8 Where a person qualifies for registration, a registration certificate shall be issued within ten working days after receipt by the Commissioner of the application.</p>	<p>Paragraph 5, Sixth Schedule</p>
<p>3.1.9 Where an application for registration is made within 30 days of becoming a taxable person, the effective date for registration is deemed to be the 30th day from the date the person became a taxable person. However, the Commissioner has the discretion to vary the effective date.</p>	<p>Paragraph 8 & 9, Sixth Schedule</p>
<p>3.1.10 Every registered person is required to display the registration certificate in a clearly visible place in his business premises. Where a person has more than one place of business, certified copies (by the Commissioner) must be displayed in each of those places.</p>	<p>Paragraph 10(1), Sixth Schedule</p>
<p>3.1.11 A group of companies that is owned or substantially controlled by another person may apply to be registered and treated as one person, subject to the discretion of the Commissioner.</p>	<p>Paragraph 13 & 14, Sixth Schedule</p>
<p>3.1.12 The Commissioner may de-register a group of companies upon giving a notice of thirty days to each company in the group if he is satisfied the group registration has caused or is causing undue risk to revenue, or one of the companies ceases to make taxable supplies, or the person in whose name the group is registered ceases to have a substantial control of the group.</p>	<p>Paragraph 14, Sixth Schedule</p>

3.1.13 Upon de-registration, each group company will be registered separately and become individually responsible for the tax due and payable. **Paragraph 14, Sixth Schedule**

3.1.14 Upon registration, a person who has in stock goods on which tax has been paid, or has constructed a building or civil works or purchased assets within twenty four months before registration, he may, within three months or such longer period as allowed by the Commissioner, claim the input tax charged thereof. Such a person must have submitted the application for registration. **Section 12(1)&(2)**

3.2 De-registration

3.2.1 If the value of taxable turnover does not exceed five million shillings in any period of twelve months, a registered person may apply for de-registration and will be subject to turnover tax under the Income Tax Act, upon notifying the Commissioner. **Paragraph 16, Sixth Schedule**

3.2.2 A person applying for de-registration should notify the Commissioner of the value of his supplies in the relevant periods and the description and value of taxable materials and other goods in stock. **Paragraph 16, Sixth Schedule**

3.2.3 If the Commissioner is satisfied that the trader should be de-registered, he will do so from the date when that person pays the tax due in respect of goods and materials on which tax has not been paid or input tax has been claimed. **Paragraph 18, Sixth Schedule**

3.2.4 Where a person ceases to make taxable supplies, he must notify the Commissioner immediately, of the date of cessation and submit a return showing details of taxable assets, materials and other goods in stock and their value and pay any tax due on such assets and goods within thirty days from the date he ceased to make taxable supplies. **Paragraph 15, Sixth Schedule**

3.2.5 A registered person who disposes of a registered business as a going concern to another registered person may make the transfer without accounting for VAT. Both persons must provide the Commissioner with details of the transaction, arrangements made to pay any outstanding tax and the description, quantities and value of assets and stock of taxable goods on hand at the date of disposal. They should also provide details of the arrangements made for transferring the responsibility for keeping the records and producing books of the business for the period before disposal. Where the Commissioner has any objection, he will notify the taxpayers within 14 days. **Paragraph 21, Sixth Schedule**

3.3 Changes affecting registration

3.3.1 A registered person is required to notify details to the Commissioner within fourteen days of the following changes:

- Change of address of the place of business; or
- Additional premises are, or will be used for the purpose of the business; or
- Premises used for the business cease to be so used; or
- Business or trading name is changed; or
- An interest of more than thirty percent of the share capital of a limited company has been acquired by a person or group of persons; or
- The person authorised to sign returns is changed; or
- The partners in a partnership are changed; or
- A change occurs in the trade classification of the goods or services supplied.

Paragraph 19, Sixth Schedule

4 Record keeping, invoices, credit and debit notes

4.1 Record keeping

<p>4.1.1 Paragraph 7 of the VAT Regulations and the Seventh Schedule to the Act prescribe the records to be kept, which include:</p> <ul style="list-style-type: none"> • Copies of all invoices issued in serial number order; • A VAT account showing totals of the output tax and input tax in each period and the tax payable or refundable; • Copies of all credit and debit notes issued, in chronological order; • Purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, credit and debit notes received, all to be filed chronologically; • Details of the amounts of tax charged on each supply made or received; • totals of the output and the input tax in each period and a net of the tax payable or the excess input tax at the end of each period; • Details of goods manufactured and delivered from the factory; • Details of each supply of goods and services from the business premises; and • Copies of stock records kept in a chronological order. 	<p>Regulations, Paragraph 7(1)</p>
<p>4.1.2 All records must be kept in the Kiswahili or English language and for a period of five years from the date when the last entry was posted.</p>	<p>Regulations, Paragraph 7(6)</p>
<p>4.1.3 The Commissioner is empowered to issue a notice requiring a taxable person to keep such records or take such action as the Commissioner may specify.</p>	<p>Regulations, Paragraph 7(3)</p>
<p>4.1.4 The Commissioner is empowered to allow a taxpayer to file returns and receive information electronically.</p>	<p>Section 28A</p>
<p>4.1.5 The Commissioner is empowered to require any person to use an electronic tax register for purposes of accessing information that may affect the tax liability of that person.</p>	<p>Paragraph 6(5), Seventh Schedule</p>
<p>4.1.6 An auditor certifying a refund claim is required to furnish the Commissioner, not later than the 20th of the next month, with a return of all claims filed by him in the last tax period.</p>	<p>Regulations, Paragraph 13A</p>

4.2 Tax invoices

<p>4.2.1 Every registered person who makes a taxable supply on credit must issue a tax invoice at the time of making payments to the supplier. In the case of a cash sale, a tax invoice must be issued immediately upon payment for the supply. A simplified tax invoice may be issued in respect of cash sales from retail outlets.</p>	<p>Paragraph 1, Seventh Schedule</p>
<p>4.2.2 No tax invoice should be issued on any supply which is not a taxable supply or if the supplier is not registered. If an invoice is issued in contravention of this requirement, the tax collected shall be payable to the Commissioner within seven days of the date of the invoice.</p>	<p>Paragraph 4(1)&(2), Seventh Schedule</p>

4.2.3	<p>A tax invoice must be generated from a register or attached to a register receipt. The details required on a tax invoice are:</p> <ul style="list-style-type: none"> • The name, address and PIN of the supplier; • The serial number of the invoice; • The date of the invoice; • The date of supply, if different from the date of the invoice; • The name, address and PIN of the person to whom the supply was made; • The description, quantity and price of the goods or services being supplied; • The taxable value of the supply, if different from the price charged; • The rate and amount of tax charged on each supply; • Details of whether the supply is a cash or credit sale, and details of cash or other discount, if any; • The total value of the supply and the total amount of VAT charged; • A logo unique to his business; and • The unique identification number of the electronic tax register, printer or special secure fiscal device for record signing. 	Regulations, Paragraph 4(2)
4.2.4	<p>A simplified tax invoice requires the following details:</p> <ul style="list-style-type: none"> • The name, address and PIN number of the supplier; • The serial number of the invoice; • The date and time of issue of invoice; • The tax amount payable. • Description of supply, quantity, unit price, tax rate, and value of recorded sale; • The total amount charged to the customer, inclusive of VAT; and • The explicit statement that the price includes VAT. 	Regulations, Paragraph 5(1)
4.3 Credit notes		
4.3.1	<p>A credit note may be issued where goods are returned or for good and valid business reasons, a supplier decides to reduce the value of a supply after a tax invoice has been issued. The amount to be shown on the credit note is the amount of the reduction.</p>	Regulations, Paragraph 6(1)
4.3.2	<p>A credit note must be issued within twelve months after the issue of the relevant tax invoice.</p>	Regulations, Paragraph 6(1)
4.3.3	<p>A credit note must show the following details:</p> <ul style="list-style-type: none"> • The serial number; • The name, address and PIN of the person to whom it is issued; and • Sufficient details to identify the tax invoice on which the supply was made and the tax that was originally charged. 	Regulations, Paragraph 6(2)
4.3.4	<p>Where a credit note has been issued, the relevant adjustments are made in the month in which the credit note was issued.</p>	Regulations, Paragraph 6(3)
4.3.5	<p>The recipient of a credit note shall reduce the input tax for the month in which the credit note is received.</p>	Regulations, Paragraph 6(4)

4.4 Debit notes

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| <p>4.4.1 Where a tax invoice has been issued and subsequently, the supplier wishes to make a further charge in respect of that supply, he may either issue a debit note or a further tax invoice.</p> | <p>Regulations,
Paragraph 6(5)</p> |
| <p>4.4.2 A debit note is required to show all the details required of a tax invoice as listed in 4.2.3 above. In addition, it should show details of the tax invoice issued at the time of the original supply.</p> | <p>Regulations,
Paragraph 6(5)</p> |
| <p>4.4.3 The recipient of a debit note may claim credit for the further tax charged, if eligible, in the month in which the further charge was made, or in the next month.</p> | <p>Regulations,
Paragraph 6(6)</p> |

5 Output tax

5.1 General

<p>5.1.1 Output tax is tax that is due on taxable supplies.</p>	<p>Section 10</p>
<p>5.1.2 Value added tax is charged where:</p> <ul style="list-style-type: none"> • The supply of goods or services and on the importation of goods or services into Kenya; • The supply is a taxable supply; • The supply is made by a taxable person; • The supply is made or provided in Kenya; and • The supply is made or provided in the course of the furtherance of a business carried on by the taxable person. 	<p>Section 5 Section 6(1)</p>
<p>5.1.3 The expression “supply” includes:</p> <ul style="list-style-type: none"> • The sale, supply or delivery of taxable goods to another person; • The sale or provision of taxable services to another person; • The appropriation of taxable goods or services by a registered person for his own use outside the business; • The making of a gift of any taxable goods or taxable services; • The letting of taxable goods on hire, leasing or other transfers; • The provision of taxable services by a contractor to himself in constructing a building and related civil engineering works for his own use, sale or renting to other persons; • The appropriation of taxable goods by a registered person for use in the business where, if supplied by another person, the tax charged on the supply would have been excluded from the deduction of input tax; and • Any other disposal of taxable goods or provision of taxable services. 	<p>Section 2</p>
<p>5.1.4 Where a person applies for de-registration, then upon de-registration, all the goods in stock and fixed assets for which he had claimed input tax will be deemed to have been supplied. Consequently, that person will be required to account for tax in respect of such goods before de-registration is effected.</p>	<p>Paragraph 18, Sixth Schedule</p>
<p>5.1.5 Where a person ceases to make taxable supplies, the taxable assets, goods in stock and other materials shall be deemed to have been supplied and the tax due must be paid within thirty days of ceasing to make taxable supplies. Such person is required to notify the Commissioner about the cessation immediately</p>	<p>Paragraph 15, Sixth Schedule</p>
<p>5.1.6 Samples of taxable goods may not be liable to tax if they:</p> <ul style="list-style-type: none"> • Are distributed free for the furtherance of business; • Have a value of less than two hundred shillings for each sample; • Are freely available; and • Are distributed to at least thirty persons in any one calendar month. 	<p>Regulations, Paragraph 8</p>

5.2 Time of supply

<p>5.2.1 Tax becomes due and payable at the time when:</p> <ul style="list-style-type: none"> • goods are supplied or services have been rendered; or • an invoice is issued in respect of the supply; or • payment is received for all or part of the supply; or • certificate is issued by an architect, surveyor or any person acting in a supervisory capacity in respect of the service, whichever time shall be the earliest. 	<p>Section 13(1)</p>
<p>5.2.2 The time of supply in respect of imported services is the earlier of:</p> <ul style="list-style-type: none"> • The time when the services are rendered; or • When payment for the service is made; or • When an invoice is received in respect of the service. 	<p>Section 13(1)(a)</p>
<p>5.2.3 For supplies made on a continuous basis or by metered supply, tax becomes chargeable at the time of each determination or meter reading.</p>	<p>Section 13(2)</p>
<p>5.2.4 The tax due is payable not later than the twentieth day of the following month, or the last working day where the twentieth day falls on a public holiday or a weekend.</p>	<p>Section 13(3)</p>
<p>5.2.5 The Commissioner has discretionary powers to require a taxable person to account for tax when collected from the customer, rather than as indicated above.</p>	<p>Section 13(4)</p>

5.3 Value of supply

<p>5.3.1 The charge for VAT is determined by the value attributable to the supply of goods or services.</p>	
<p>5.3.2 The general rule for determining the value of a supply is as follows:</p> <ul style="list-style-type: none"> • Where a supplier and a buyer are independent of each other and dealing at arm's length, the value for tax is the price for which the supply is provided; • Where the supplier and the buyer are not independent of each other, the taxable value of the supply is the price at which the supply would have been provided in the ordinary course of business by a supplier who is independent of the buyer; and • If in the above case the price cannot be determined, the Commissioner is empowered to fix the price at the open market selling price. 	<p>Section 9(1)(a)</p> <p>Section 9(1)(b)</p> <p>Section 9(1)(b) Regulations, Paragraph 16</p>
<p>5.3.3 In determining the price of goods for purposes of ascertaining the value for tax, the charges for the following items must be included:</p> <ul style="list-style-type: none"> • Wrapper, package, box, bottle or other container in which the goods are contained; • Any other goods contained in or attached to such wrapper, package, box, bottle or other container; and • Any liability the purchaser has to pay to the vendor by reason of the supply in addition to the selling price, including excise duty, if any, and any amount charged for advertising, financing, servicing, warranty, commission, transportation, etc. 	<p>Section 9(2)</p>

5.3.4	Where taxable goods are sold in returnable containers and the containers were purchased or imported tax paid then no tax will be chargeable in respect of the containers.	Regulations, Paragraph 18(a)
5.3.5	Where tax has been charged in respect of returnable containers, which are then returned to the supplier, the supplier will be entitled to take credit for the tax in his next succeeding return.	Regulations, Paragraph 18(b)
5.3.6	For taxable goods imported into Kenya, the taxable value is the value for duty (whether duty is payable or not) plus the duty actually paid.	Section 9(1)(c)
5.3.7	The taxable value in respect of imported services is the price charged for the supply.	Section 9(1)(d)
5.3.8	A taxable person who is a retailer and mainly supplies taxable goods or services to unregistered persons is required to quote or label a price that is inclusive of VAT.	Regulations, Paragraph 19(a)
5.3.9	Where prices are quoted inclusive of VAT, the amount of tax is determined by applying to the price the tax fraction, $t/(1+t)$, where t is the rate of tax applicable.	Regulations, Paragraph 19(b)
5.3.10	The value of taxable services must include any incidental costs incurred by the supplier of the service in the course of making his supply, excluding any disbursements which the supplier has made to a third party as an agent of his client.	Section 9(3)
5.3.11	The taxable value of hotel accommodation and restaurant services shall exclude any Catering Levy and service charge made in lieu of tips or gratuities, provided: <ul style="list-style-type: none"> • The proceeds of the service charge are distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employees; and • The service charge does not exceed ten percent of the value of the service, excluding such service charge. 	Section 9(4)
5.3.12	The taxable value of mobile cellular phone services shall be the value determined for excise duty under the Customs Act.	Section 9(6A)
5.3.13	Where goods are purchased under hire purchase terms in accordance with the provisions of the Hire Purchase Act, the consideration for the supply will represent the cash price and the additional interest or finance charge will be disregarded in determining the value of the goods.	Section 9(8)
5.3.14	Where interest is charged for late payment of the price of a taxable supply, it shall be disregarded in determining the value of goods.	Section 9(9)
5.3.15	There is no special provision in the Act for determining the value of second hand goods. Usually the general rule stated in 5.3.2 above will be applied where tax is chargeable.	

5.4 Rates of tax

5.4.1	With effect from 30 October 2008, three rates are applicable: 0%, 12% and 16%.	
5.4.2	All services, except those listed in the Third Schedule and Fifth Schedule, are taxable at 16%.	Third Schedule
5.4.3	Zero-rated goods are listed on Part B and C of the Fifth Schedule. Other zero-rated supplies are listed in Part A of the Fifth Schedule and the Eighth Schedule.	Fifth Schedule Eighth Schedule
5.4.4	Please refer to the appendix on page 20 for the steps to be followed in determining the tax status of a supply.	

6 Input tax

6.1 General

- 6.1.1** Input tax is defined as tax paid by a registered person on the purchase or importation of goods or services to be used by him for the purposes of his business.

Section 10

6.2 Credit for Input tax

- 6.2.1** At the end of each tax period, a registered person is required to submit a return in which he deducts the input tax and/or tax withheld by a withholding tax agent for the period from the output tax. Where output tax exceeds the input tax, the difference is paid to the Commissioner. Where the input tax exceeds the output tax, the difference is either deducted in the following tax period or claimed as a refund from the Commissioner. Refunds are granted only to taxpayers who make zero-rated supplies or who have had their output tax withheld.

Section 11

- 6.2.2** The tax that may qualify as input tax is governed by the nature of supplies made by a taxable person. Where all supplies of goods and services made by a taxable person are taxable, the whole of the tax suffered may be treated as input tax and offset against the output tax. However, where only a proportion of the supplies is taxable, the registered person can only deduct input tax attributable to the taxable supplies.

Section 11(3)(a)

- 6.2.3** The VAT Order, 2002 specifies items for which tax paid may not be deducted, except where such goods are stock in trade. The items covered in the Order include:

- Fuels and oils to be used in vehicles, ships and other vessels;
- Passenger vehicles and minibuses, except where such vehicles are to be used for leasing or hiring services or are specifically designed or modified for use in the supply of taxable goods or services;
- Bodies, parts and services for the repair of passenger vehicles and minibuses except where they are used in the supply of repair and maintenance services or other taxable goods or services;
- The leasing or hiring of passenger vehicles and minibuses;
- Furniture, fittings and ornaments, except where such items are permanently attached to buildings, or for use in hotels and restaurants (subject to the approval of the Commissioner);
- Household or domestic electrical appliances other than those approved by the Commissioner for use in the manufacture of other taxable goods or supply of taxable services;
- Entertainment services;
- Restaurant services;
- Accommodation services; and
- Taxable supplies for use in staff housing and similar establishments for the welfare of staff.

VAT (No. 1)
Order 2002

- 6.2.4** Where a registered person acquires any goods specified in 6.2.3 as stock in trade, he is allowed to presume that the price charged is inclusive of VAT. He may therefore deduct the attributable VAT in his monthly return.

Section 11B

- 6.2.5** Where a taxable person makes both taxable and exempt supplies, then only part of the tax attributable to taxable supplies qualifies as input tax. Taxable supplies include zero-rated supplies. However, the Commissioner is empowered to determine that tax relating to both taxable and exempt supplies shall be deductible if the tax attributable to the exempt supplies does not exceed a specified proportion of the whole tax. The specified proportion is currently set at five per cent.

Section 11(3)
Regulations
Paragraph 17

6.2.6	Where VAT in respect of exempt supplies exceeds the above limit, then the registered person is required to apportion the VAT by securing a fair and reasonable attribution of tax to taxable supplies, upon receipt of the Commissioner's approval of the attribution method.	Section 11(4)
6.2.7	<p>The following methods can be used to apportion tax without obtaining the approval of the Commissioner:</p> <ul style="list-style-type: none"> • Value of taxable supplies x Input tax = Deductible input tax value of total supplies • Deduction of input tax attributable to taxable goods purchased and sold in the same state and not deducting any input tax directly attributable to exempt supplies. The remainder of the input tax is apportioned using the above formula. 	Regulations, Paragraph 17
6.2.8	All claims for input tax must be supported with a valid tax invoice. Input tax in respect of imported goods must be supported by an import entry together with a receipt for the payment of duty. For assets acquired under a hire purchase or lease financing agreement, the claim for VAT must be supported by a letter of undertaking from the financier that VAT will be accounted for in the event that the asset is repossessed and sold, or a clearance certificate indicating that the purchaser has met all conditions under the financing agreement. Withholding VAT shall not be deducted unless a registered person is in possession of a withholding tax certificate.	Section 11(1A)
6.2.9	Where a registered person deducts input tax in respect of business premises used in making taxable supplies and subsequently he sells or disposes of the building or converts it for use in production of exempt supplies before the expiry of five years from the date of construction, he shall be required to refund such input tax during such sale, disposal or conversion within thirty days.	Section 11(1B)
6.2.10	No input tax or tax withheld is deductible after the expiry of twelve months from the date of supply as determined in 5.2.1 above, except in the case of a motor vehicle or other asset purchased under a hire-purchase finance arrangement. In this case, the twelve month period starts running from the date of receipt of the letter of undertaking or a clearance certificate issued by the financier.	Section 11(1)

7 Zero-rated supplies, exempt supplies and remission of tax

7.1 Zero-rated supplies

- 7.1.1** Zero-rated supplies are supplies on which no tax is charged, but in all respects are treated as taxable supplies. They are specified in the Fifth and Eighth Schedules.
- 7.1.2** Notwithstanding the zero rate of tax, the value of zero-rated supplies is taken into the computation of the threshold turnover to determine whether the supplier is a taxable person who is required to be registered under the Sixth Schedule. (See 3.1.2 above).
- 7.1.3** A taxable person supplying only zero-rated goods or services is entitled to the repayment of input tax suffered.

Section 8

7.2 Exports and supplies to EPZs

- 7.2.1** A supply of goods or taxable services will be zero-rated if the Commissioner is satisfied that the person supplying the goods has exported those goods or taxable services.
- 7.2.2** The evidence required consists:
- A copy of the invoice showing the sale of goods or services to the purchaser;
 - In the case of goods, copies of the bill of lading, road manifest or airway bill; and
 - The export entry duly certified by customs authorities at the port of export.
- 7.2.3** In the case of goods, they must be marked with the inscription "FOR EXPORT ONLY"

Regulations,
Paragraph 10(1)Regulations,
Paragraph 10(2A)

7.3 Supplies to exporters and privileged persons

- 7.3.1** A supply of goods or services will also be zero-rated if supplied by a registered person to another registered person who manufactures goods in a customs bonded factory for export, or to any person specified in the Eighth Schedule of the Act. The supplier must keep the following as evidence of the supply:
- A copy of the invoice showing the supply of goods or services to the purchaser;
 - Proof of the payment made in respect of the supplies;
 - A certificate signed by the purchaser that the goods have been received; and
 - A copy of the Gazette Notice containing the name of the exporter.
- 7.3.2** In the case of goods supplied to exporters, they must be marked with the inscription "FOR EXPORT ONLY"

Regulations,
Paragraph 10(2)Regulations,
Paragraph 10(2A)

7.4 Remission of tax in the public interest

<p>7.4.1 Generally, the power to remit tax is vested with the Minister for Finance who, through a notice in the Gazette, can remit tax if he is satisfied it is in the public interest to do so.</p>	<p>Section 23(1)</p>
<p>7.4.2 Remission of tax applies to all taxable persons. The remission granted shall only apply in respect of:</p> <ul style="list-style-type: none"> • Capital goods (excluding motor vehicles) imported or purchased for investment, subject to the Regulations; • Taxable goods for emergency relief purposes subject to specified conditions; • Goods and taxable services imported or purchased by a company that has been granted an oil exploration or prospecting licence, subject to specified conditions; • Capital goods and equipment for use in a customs bonded factory for export only; • Official aid funded projects; • Goods for use by the Kenya Armed Forces; • Shipstores for the national carrier; • Goods, including motor vehicles imported or purchased by any company granted geothermal resource licence; • Goods imported under bond for manufacture of exports, indirect exports, goods free of import duty, and goods for use in official aid funded projects; • Goods and services for use in the construction or expansion of private universities, excluding student hostels and staff housing, subject to the Minister of Finance approval; and • Goods and services for the construction of more than 20 housing units for low income earners, subject to the regulations. 	<p>Section 23(3)</p>

7.5 Remission of tax in respect of exports of taxable goods and services

<p>7.5.1 A tax remission certificate is issued on Form VAT 4B. The application for a remission certificate must include:</p> <ul style="list-style-type: none"> • A bond security on Form VAT 4B1 executed and guaranteed by a bank, insurance company or financial institution licensed to operate in Kenya; • An irrevocable letter of credit and other evidence to show that the account of the exporter has been credited with payment in foreign currency for the exported goods; and • A proforma invoice from the registered manufacturer or dealer. 	<p>Regulations, Paragraph 10(4)</p>
<p>7.5.2 A VAT remission certificate remains valid for ninety days from the date of issue.</p>	<p>Regulations, Paragraph 10(5)</p>
<p>7.5.3 Where the remission is granted in respect of an export, the exporter shall then re-submit to the Commissioner within ninety days from the date of issue, the duplicate copy of the remission certificate together with documentary evidence of exportation of the goods.</p>	<p>Regulations, Paragraph 10(6)</p>
<p>7.5.4 A bond security executed for purposes of obtaining a remission certificate shall be cancelled if the exporter satisfies the Commissioner that:</p> <ul style="list-style-type: none"> • The goods have been duly exported; and • He has received the appropriate payment in foreign currency or in an approved manner. 	<p>Regulations, Paragraph 10(7)</p>

7.6 Exempt supplies

Section 2

- 7.6.1** Exempt supplies means supplies of goods and services specified in the Second and Third Schedules respectively, which are not subject to tax.
- 7.6.2** The VAT regime only applies to a person who makes taxable supplies. A person who makes exempt supplies will not be regarded as making a taxable supply. The consequences are:
- The value of exempt supplies will be disregarded in the calculation of the threshold turnover required for registration (3.1.2 above);
 - A supplier of exempt goods or services cannot obtain registration for VAT; and
 - Tax suffered by the person cannot be claimed as input tax. An exempt supplier must absorb any VAT suffered when making charges to his own customers.
- 7.6.3** It is important to distinguish between zero-rated and exempt supplies. The supply of goods that are zero-rated is within the VAT regime but exempt supplies are not.

8 Collection, recovery and refund of tax

8.1 The VAT return

- 8.1.1** Every registered person is required to submit a monthly VAT return to the Commissioner giving the following details:
- Show separately for each rate of tax, the total value of supplies, the rate of tax and the amount of tax payable for the supplies made during the month;
 - Show separately for each rate of tax, the total value of taxable supplies, the rate of tax and the amount of tax paid in respect of which input tax is claimed; and
 - Where necessary, to state the fact that no supplies were made or received during that tax period.
- 8.1.2** The VAT return is completed for every month on Form VAT 3 and is accompanied by a VAT 3A, showing input tax claimed and VAT 3B, showing zero-rated supplies. The return must be submitted to the Commissioner by the 20th day of the following month. Where the 20th day falls on a weekend or public holiday, the return shall be submitted on the last working day prior to the weekend or public holiday.
- 8.1.3** All tax payments are to be made by banker's cheque, or bank guaranteed cheques or cash or the RTGS System. Where payment is by cheque the payment shall be made payable to the Commissioner of Value Added Tax, crossed and endorsed with the words "account payee only." Payment, together with the return, should be made at the Central Bank or to designated banks in areas not served by the Central Bank.

Paragraph 7,
Seventh Schedule

Paragraph 7,
Seventh Schedule
Regulations,
Paragraph 9(1)
Section 13(3)

Regulations,
Paragraph 9

8.2 Recovery of tax

- 8.2.1** The Commissioner is given wide-ranging powers under the Act to collect tax that is due and payable.
- 8.2.2** The Commissioner may appoint any person who purchases taxable goods or services, a tax withholding agent. Such an agent is required to withhold the VAT applicable on such taxable supplies received and remit it directly to the Commissioner, whether VAT had been charged or not. The withholding VAT agent is required to furnish the supplier with the withholding VAT certificate at the time of making payment for the supplies. The Commissioner is, however, empowered to either revoke the appointment at anytime or to exempt some taxable supplies from withholding VAT, upon application by a supplier of taxable goods or services. However, no tax shall be withheld from suppliers subject to turnover tax under the Income Tax Act upon presentation of a valid turnover tax registration certificate.
- The Ministry of Roads will however only withhold 50% of the total tax payable on their supplies.
- 8.2.3** The Commissioner may collect tax by distress, rather than sue for the recovery of unpaid tax. To do so, the Commissioner is empowered to order and empower an authorised officer to exercise distress upon the goods and chattels of the person from whom tax is recoverable. For the purpose of executing the distress, he may require a police officer to be present. All the costs incurred in levying the distress will be borne by the taxpayer.
- 8.2.4** A distress levied shall be kept for ten days during which the taxpayer can pay the tax and distress costs to recover the goods and chattels distrained upon or else they shall be sold by public auction. The proceeds from the auction shall first be applied towards the costs of levying the distress, keeping and selling the distrained goods and finally, towards tax. Any amounts remaining shall be paid to the distrainee.

Section 19A

Section 18

Section 18(3)&(4)

8.2.5	<p>The Commissioner may recover tax due and payable from a person who owes money to the taxpayer. Accordingly, the Commissioner may, by notice in writing, require any person:</p> <ul style="list-style-type: none"> • From whom any money is due or accruing or may become due to a taxable person; or • Who holds or may subsequently hold money on account of the taxable person; or • Who holds or may hold money on account of some other person for payment to the taxable person; or • Any person having authority from some other person to pay money to the taxable person. <p>To pay to the Commissioner that money or so much thereof as may be sufficient to pay the tax so due and payable.</p> <p>Where such a person required by the Commissioner to pay any tax on behalf of a tax payer is unable to do so, he should inform the Commissioner within seven working days of the inability.</p>	Section 19(1)
8.2.6	<p>Where the Commissioner has reasonable belief that:</p> <ul style="list-style-type: none"> • Taxable supplies were made and no tax was charged; or • Tax was charged but not remitted to the Authority; and • There is likelihood of the person to frustrate collection of the tax, the Commissioner may apply to the High Court to obtain an order prohibiting transfer, withdrawal or disposal of the funds. Within 30 days of the order, or any extension given by the Court upon application by the Commissioner, the Commissioner is required to issue an assessment, which shall automatically remove the order. Any person whose funds are the subject of this order can apply to the High Court for its discharge or variation within 15 days of being served the order. Any person who, in enforcing the order, suffers any loss howsoever caused shall be indemnified. 	Section 19B
8.2.7	<p>Where a person who is the owner of land or buildings situated in Kenya fails to pay tax due and payable, the Commissioner may notify that person of his intention to apply to the Registrar of Lands to have the land and buildings to be the subject of security for the tax. If, after thirty days of issuing the notice, the taxpayer fails to pay the tax due, the Commissioner may, by notice in writing, direct the Registrar of Lands that the land and buildings be the subject of security for the tax. Such a notice will be registered as if it were an instrument of mortgage.</p>	Section 20(1)
8.2.8	<p>Where the person in 8.2.7 above fails to make payment for the tax on the due date, the Commissioner may, having taken all reasonable steps to notify the owner of the intended sale and after 21 days of placing a notice in the Gazette, sell the land and buildings to recover the tax, and the purchaser shall acquire title to the land. The proceeds from the sale shall be applied firstly in settling the unpaid tax and any costs incurred on selling the property. Any balance shall be paid to the owner of the property.</p>	Section 20(2)
8.2.9	<p>In order to secure payments by any person of any tax, the Commissioner may require the person concerned to furnish security in such manner and in such amount as may be prescribed. Generally, the security shall be in such sum not exceeding the total tax payable. Where the security is not in cash or equivalent securities, it shall take the form of a bond in such form and given by such sureties as the Commissioner may approve.</p>	Section 29 Regulations, Paragraph 14
8.2.10	<p>The Commissioner may recover any tax due and payable as a civil debt due to the government. Where the amount of tax does not exceed one hundred thousand shillings, the debt shall be recovered summarily.</p>	Section 22
8.2.11	<p>Where interest is charged on unpaid tax, the interest chargeable shall not exceed 100% of the tax due.</p>	Section 15(2)
8.2.12	<p>The Commissioner has power to grant remission for interest due up to a maximum amount of KShs 1,500,000. Where it exceeds this amount, remission will be given subject to the Minister's written approval.</p>	Section 15(3)
8.2.13	<p>Where an application is made for remission, the Commissioner will suspend charging of interest where taxpayer has paid the principal tax, pending hearing of the application.</p>	Section 15(4)

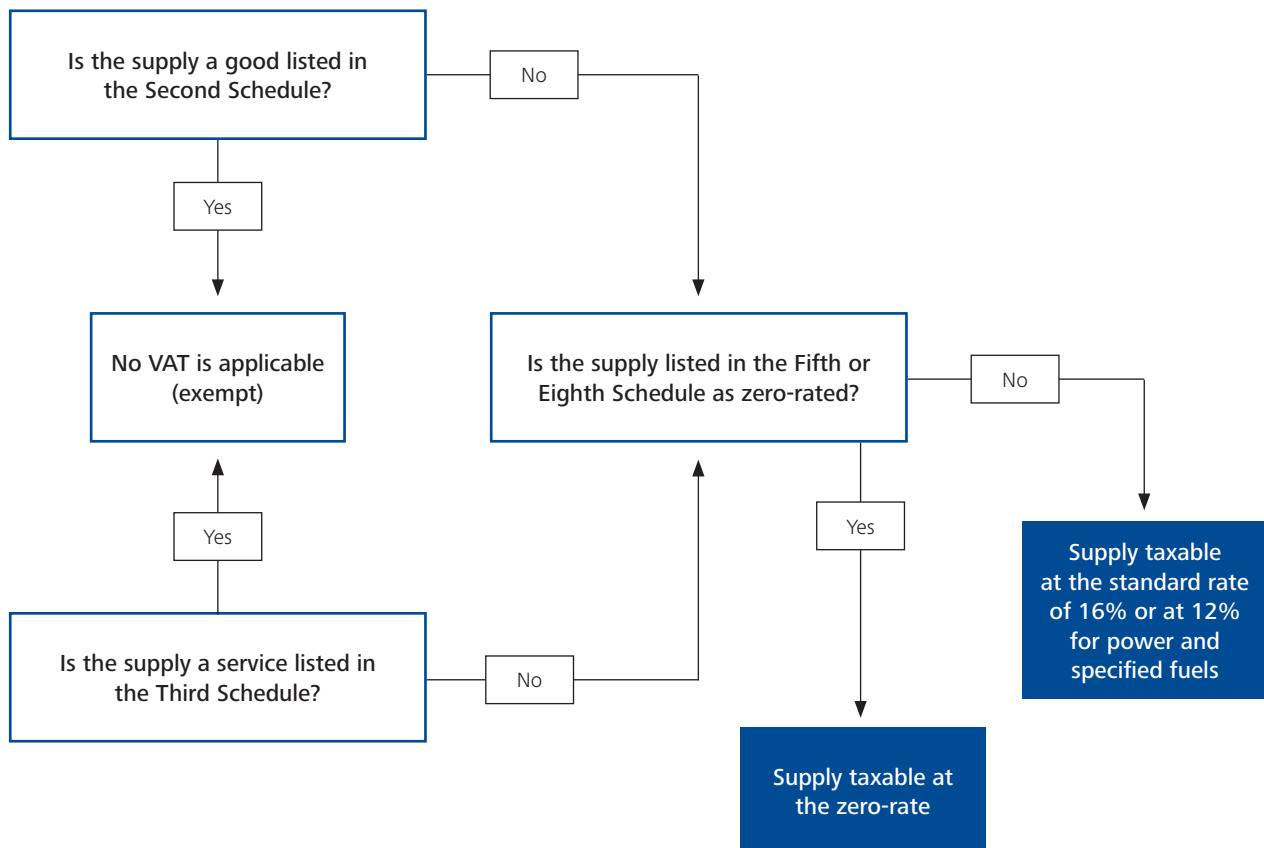
<p>8.2.14 Where remission is not granted or is granted for only part of the interest, the balance of interest shall be due and payable within 90 days of determination of the application.</p>	<p>Section 15(5)</p>
<p>8.2.15 If interest payable after determination of the remission application is not paid after the specified period, a surcharge at rate of 2% per month or part thereof shall be due and payable.</p>	<p>Section 15(6)</p>
<p>8.3 Refund of tax</p>	
<p>8.3.1 The Commissioner will refund tax in the following circumstances:</p> <ul style="list-style-type: none"> • Where the amount of input tax exceeds the amount of output tax as a result of either the trader making zero-rated supplies; or • Where VAT charged has been withheld by the buyer of the taxable supplies; or • Where taxable goods have been manufactured in or imported into Kenya and tax has been paid in respect of those goods and, before being used, those goods are subsequently exported under customs control; • Where tax has been paid in error; or • Where in the opinion of the Minister it is in the public interest to do so. 	<p>Section 11(2) Section 24</p>
<p>8.3.2 Where a person has supplied goods or services and has accounted for or paid tax on that supply, but has not received any payment from the buyer, he may apply for a refund or remission of the tax on the following conditions:</p> <ul style="list-style-type: none"> • A period of three years has elapsed from the date of supply; or • The buyer has become legally insolvent. 	<p>Section 24A</p>
<p>8.3.3 An application for refund of tax in respect of bad debts must be made within five years from the date of supply and be accompanied by the following:</p> <ul style="list-style-type: none"> • A document issued by the person with whom he proves the insolvency of the debtor, specifying the total amount proved; • A copy of the tax invoice in respect of each supply upon which the claim is based; • Evidence that every effort has been made to recover the amount owed; and • A declaration that the seller and the buyer are independent of each other. <p>No refund will be payable if the applicant is not up-to-date in submitting all VAT returns.</p>	<p>Regulations, Paragraph 11</p>
<p>8.3.4 A non-registered person who has imported or purchased goods from a registered person and then exports the goods by way of business, may claim a refund of the tax paid by submitting Form VAT 4, attaching:</p> <ul style="list-style-type: none"> • A copy of the invoice showing the sale of the goods; • An export entry certified by the proper officer of customs at the port of export; • A copy of the tax invoice issued by the registered person, or a copy of the customs entry as evidence of the value of the goods and the tax suffered; and • A certificate signed by the purchaser that the goods have been received. 	<p>Regulations, Paragraph 10</p>
<p>8.3.5 Where tax has been erroneously refunded or remitted or a rebate of tax has been allowed in error, the person to whom the refund, remission or rebate has been made or allowed in error shall, on demand by the Commissioner, pay the amount erroneously refunded, remitted or in respect of which rebate has been allowed in error.</p>	<p>Section 25(1)</p>
<p>8.3.6 All applications for refund of tax of KShs 1,000,000 or more must be supported by a certificate issued by an independent auditor.</p>	<p>Regulations, Paragraph 13A</p>
<p>8.3.7 Where a registered person makes exempt supplies which subsequently become taxable, he may within 3 months, claim the input VAT on the supplies purchased 24 months before the supplies became taxable.</p>	<p>Section 12(1)(a)</p>

9 Offences and penalties

OFFENCE	PENALTY	REFERENCE
Late payment of tax	Additional tax at 2% per month compounded	Section 15 (1) & (2)
Failure to comply with the Commissioner's notice to pay money owed to a taxable person from whom tax is due, or furnish a return showing monies held or due to a person from whom tax is due	Fine not exceeding Ksh 15,000 and/or up to six months imprisonment and liability to pay the amount discharged	Section 19(6)
Failure to produce books, records or provide information as required by an authorised officer	Fine not exceeding Ksh 15,000 and/or up to six months imprisonment	Section 30(2)
Failure to produce books, records, statements or other documents or to attend summons or to answer questions put by the VAT Tribunal	Fine not exceeding Ksh 15,000 and/or up to six months imprisonment	Section 35
Making false statements, producing false documents, providing false information, involvement in fraudulent evasion of tax, a non-registered person who holds himself out as a registered person	Fine up to Ksh 400,000 or double the tax evaded, whichever is the greater and/or up to three years imprisonment. In addition, any taxable goods connected with the commission of the offence may be forfeited.	Section 40
Failure to display registration certificate in a visible place in the business premises	Default penalty of up to Ksh 20,000 and a fine of up to Ksh 200,000 and/or imprisonment for up to two years	Sixth Schedule Paragraph 10 (2)
Late submission of application for registration	Penalty of Ksh 20,000	Sixth Schedule Paragraph 11
Failure to apply for registration	Penalty of Ksh 100,000	Sixth Schedule Paragraph 12
Failure to issue a tax invoice as required	Penalty of between Ksh 10,000 and Ksh 200,000. Any goods connected with the offence are liable to forfeiture	Seventh Schedule Paragraph 5
Failure to keep proper books or records	Penalty of between Ksh 10,000 and Ksh 200,000	Seventh Schedule Paragraph 6
Failure to submit a return	Penalty of Ksh 10,000 or 5% of tax due	Seventh Schedule Paragraph 9
Failure to comply with Electronic Tax Register regulations requirements	Penalty of Kshs. 500,000	Legal Notice No. 110 of 2004 Paragraph 9
General penalty for offences under the Act for which no specific penalty is prescribed	A maximum fine of Ksh 500,000 and/or up to three years imprisonment	Section 43

- 9.1.1** Where an employee or agent commits an offence, the employer shall also be guilty of the offence unless he proves his innocence. S. 41(1)
- 9.1.2** Where a company commits an offence, every director and officer of the company concerned with the management of the company shall also be guilty of the offence unless he proves his innocence. S. 41(2)
- 9.1.3** The Commissioner is empowered, subject to specified conditions, to compound offences under the Act. The order issued by the Commissioner in such a case can be enforced as if it were a decree or order of the High Court. The taxpayer whose offences have been compounded is not liable to prosecution except with the express consent of the Attorney General. S. 55

Appendix: Determining Tax Status



Tanzania

1 The Tanzania Value Added Tax Act

The Value Added Tax Act, Chapter 148, was enacted and assented to by His Excellency, The President of The United Republic of Tanzania on 21 October 1997. The Act came into operation on the 1 July 1998 in Mainland Tanzania. Value Added Tax replaced Sales Tax.

These notes incorporate the amendments made to the Finance Act 2010 and include the proposed changes contained in the Budget speech 2011.

Almost everyone in business needs to know about VAT. It will affect the amount you pay for your supplies and the amount you charge for your sales. The notes provide a brief guide and are not a comprehensive summary of Tanzania Value Added Tax Law and practice.

2 Basis of charge to tax

2.1	Value Added Tax is charged on the supply of goods and services in Mainland Tanzania and on the importation of goods and services from any place outside Mainland Tanzania made on and after the first day of July 1998. Hence, VAT is charged on any supply of goods and services in Mainland Tanzania where it is a taxable supply made by a taxable person in the course of or in furtherance of any business carried on by him.	Section 3 Section 4
2.2	A taxable person is one who makes or intends to make taxable supplies while he is registered or required to be registered under the VAT Act, 1997.	Section 2 Section 4
2.3	The VAT on a taxable supply of goods or services shall be payable by a taxable person at the end of a prescribed accounting period or at any time which the Commissioner for VAT may prescribe. The VAT on the importation of taxable goods or services from any place outside Mainland Tanzania shall be charged and payable in accordance with the VAT Act and the procedures applicable under the Customs Laws for imported goods shall apply in respect of VAT imports.	Section 4
2.4	VAT is charged at the rate of 18% of the taxable value. However, the Minister responsible for Finance may vary the VAT rate from time to time under the procedures contained in the Provisional Collection of Taxes and Duties Act, 1963.	
	The supply of goods or services listed in the First Schedule is zero-rated. Zero-rating a supply means that no VAT shall be charged on the supply but in all other aspects, it is treated as a taxable supply.	
	Exempt supplies are listed in the Second Schedule of the Act. Output VAT is not chargeable on an exempt supply. Accordingly deduction or credit of input tax is not allowable on purchases made in respect of exempt supplies.	Section 8 Section 9 Section 10 Section 11 First Schedule Second Schedule Third Schedule
	The persons and organisations listed in the Third Schedule to the Act are entitled to relief from VAT within the prescribed limits and subject to the procedures which may be determined by the Minister for Finance. The Minister may by order through publication in the Government Gazette, amend, vary, add to or replace the third schedule.	

3 Registration and de-registration

3.1 Registration

3.1.1 The Commissioner for VAT shall maintain a register in which he shall record such particulars of the taxable persons and their businesses.

An application for registration shall be made in the form prescribed in the VAT regulation vide Government Notice No. 176, published on 17 April 1998. The application shall be lodged in any manner with the Commissioner for VAT within thirty days of the taxable person becoming liable to make the application.

**Section 19
Regulations**

3.1.2 Any person shall make an application for registration for the purposes of the Act to the Commissioner where the taxable turnover of such person exceeds or is likely to exceed forty million shillings.

**Section 19
Regulations**

3.1.3 Where the Commissioner is satisfied there is good reason to do so, on grounds of national economic interest for the protection of the revenue, he may register any person, whether or not an application to be registered has been made, regardless of the taxable turnover of the person.

Section 19

3.1.4 A Certificate of Registration shall be issued by the Commissioner for VAT. The VAT Registration Certificate has the following particulars:

- The name of the taxable person;
- The taxable person's principal place of business;
- The date on which the registration takes effect;
- The Taxpayer Identification Number (TIN); and
- The VAT Registration Number (VRN).

A taxable person shall indicate his Taxpayer Identification Number (TIN), and his VAT Registration Number (VRN) in any return, notice of appeal or other document used for the purpose of the VAT Act.

A taxable person shall display his certificate of registration in a conspicuous position at his principal place of business. The Commissioner shall provide on request sufficient copies of the certificate of registration, clearly marked "copy" for a copy to be displayed at all premises which are part of the business for which the taxable person is registered.

Section 20

3.1.5 The Registration of taxable persons carrying on a business through several divisions or branches may, if the body corporate so requests and the Commissioner deems fit, be in the names of those divisions or branches.

Section 22

3.2 De-registration

The Commissioner may de-register any person who is no longer required to be registered on condition, among others, that all VAT due and payable is immediately paid. Furthermore, VAT on closing stock-in-trade must be paid. Where a person ceases to be taxable, any goods, then part of the assets of a business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. If, however, the VAT on the deemed supply does not exceed five thousand shillings, then VAT will not be payable. Another situation under which VAT is not payable on cessation of business is when the business is transferred as a going concern to another taxable person.

3.2.1 A registered person is required to notify the Commissioner in writing within thirty days of the changes in his business activities. Changes or occurrences are any of the following events:

- (a) Cessation of making taxable supplies;
- (b) The taxable turnover falls below the turnover prescribed under 3.1.2 above;
- (c) A change in ownership of the business including change in the constitution of, or the terms governing the business;
- (d) A change in the name or trading name of business or in the name or address of the owner or any of the owners of the business;
- (e) A change of the business address;
- (f) A change of or addition to business premises; or
- (g) Any other major change in the nature, control or conduct of the business.

**Section 23
Regulations**

4 Record keeping

4.1 General

4.1.1 A taxable person shall record each supply made and account for tax on it at the time of supply. Records relating to the business must be kept and retained for five years or a longer period which the Commissioner may require in writing. However, a taxable person who fails to keep any records required by or under the VAT Act, or who fails to retain them for the time so required, commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 24
Section 25

4.1.2 Every taxable person shall keep the following records of the business activities:

- (a) A VAT account, recording for each prescribed accounting period total VAT on outputs and inputs together with the net difference to be paid to or reclaimed from the Commissioner;
- (b) A record of each supply made related to the appropriate tax invoice or any other invoice;
- (c) A record of the value of each supply made excluding VAT, together with the VAT charged on each supply;
- (d) A record of each supply received related to the appropriate tax invoice, any other invoice or important documents;
- (e) A record of the value of each supply received excluding VAT and the VAT charged;
- (f) A record of the total VAT recorded in (c) and (e) above, for each prescribed accounting period;
- (g) A record of each payment made or received showing the date, amount and the person making or receiving the payment; and
- (h) A record of all goods appropriated or taken into personal use or into the use of others, the date of appropriation or taking into use, the description of the goods, the value of goods excluding VAT and the VAT calculated on the goods.

For each prescribed accounting period the totals of VAT in items (c), (e) and (h) above, shall be transferred to the VAT account kept in accordance with item (a) above.

Regulations
Section 25

4.2 Tax Returns

4.2.1 Every taxable person shall, in respect of each prescribed accounting period, lodge with the Commissioner, a tax return, in a form approved by the Commissioner containing any information which the form requires in relation to the supply by and to him of goods or services, the importation of goods, tax deductions or credits and any other matter concerning his business.

The prescribed accounting for a taxable person is the calendar month containing the effective date of registration and each calendar month after that, unless the Commissioner, by notice in writing, determines another prescribed accounting period for the taxable person.

The return shall be lodged by the last working day of the month after the end of the prescribed accounting period to which it relates, or within such other time as the Commissioner may in a particular case determine by notice in writing.

Section 26

4.2.2 A taxable person who fails to submit a return or to pay tax within the time allowed under the VAT Act, shall pay a penalty of fifty thousand shillings or one per centum of the value of the tax involved in respect of the prescribed accounting period covered by the return, whichever is the greater and a further penalty of one hundred thousand shillings or two per centum of the tax shown as payable in respect of the prescribed accounting period covered by the return, whichever is the greater, shall be payable for each month or part month thereafter.

The penalty for late submission of the VAT returns is payable immediately on receipt of a notice in writing issued by the Commissioner. The penalty is in addition to the interest charged for late payment of VAT.

Section 27

4.3 Tax Invoice

- 4.3.1** The VAT Act requires that a tax invoice be issued for goods or services supplied to another taxable person and a receipt or similar document is supplied to a non-registered person. A taxable person who fails to issue a tax invoice commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding twelve months, or to both.
- 4.3.2** A registered taxable person shall issue a tax invoice in respect of any taxable supply at the time of supply or not later than fourteen days after the time of supply:
- (a) To a customer who is a taxable person in respect of any taxable supply of goods or services to that customer; or
 - (b) Upon request by a customer who is not a taxable person.
- 4.3.3** A tax invoice for the supply of goods or services shall prominently bear the words "Tax Invoice" on its face and it shall include the following particulars:
- (a) The taxable person's name, address, TIN and VAT registration number;
 - (b) The date of supply;
 - (c) The number of the invoice taken from a consecutive series;
 - (d) The customer's name, address, TIN and his VAT registration number;
 - (e) A description sufficient to identify the goods or services supplied which includes the quantity of goods or the extent of services supplied, tax exclusive price for each description of goods or services supplied, rate of tax; and
 - (f) The rate of any discount.
- Furthermore, a tax invoice shall indicate: (i) the total charge exclusive of tax; (ii) the total tax charged; and (iii) the total charge inclusive of tax.
- 4.3.4** A registered taxable person who has issued a tax invoice in respect of a taxable supply shall issue a credit note if any of the following events occurs:
- (a) The supply is cancelled;
 - (b) The goods are returned to the registered taxable person; or
 - (c) The value of the supply is reduced.
- The credit note shall contain the following:
- (a) The particulars prescribed for tax invoices;
 - (b) The amount of credit; and
 - (c) A statement of the reason for credit.

Section 29

Regulations

Regulations

Regulations

5 Output tax

5.1 General

5.1.1 Output tax means tax that is due on taxable supplies.

5.1.2 VAT as stated in paragraph 2.1 above, is charged where:

- There is a supply of goods or services in Mainland Tanzania or an importation of goods or services into Tanzania;
- The supply is a taxable supply;
- The supply is made by a taxable person; and
- The supply is made or provided in the course of or in furtherance of any business carried on by him.

Section 4

5.1.3 "Taxable Supplies" means any supply of goods or services made by a taxable person in the course of or in furtherance of his business after the introduction of the VAT and taxable supplies includes the following:

- (a) The leasing or letting of goods on hire;
- (b) The appropriation of goods for personal use or consumption by the taxable person or by any other person;
- (c) Barter trade and exchange of goods;
- (d) The supply of any form of power, heat or ventilation;
- (e) Where a person produces goods by processing or treating the goods of another person the supply shall be regarded as supply of goods; and
- (f) Anything which is not a supply of goods but it done for a consideration, including the granting, assignment or surrender of all or profit of any right is a supply of services.

Section 5(6)(b)

5.1.4 Where goods are neither supplied by a person to another person nor incorporated in other goods produced in the course of the business of the first person, but are used by that person for the purpose of furtherance of his business, the goods are regarded for the purposes of the VAT Act, as being supplied to him for the purpose of the business.

Section 5(6)(a)

5.1.5 Where a person in the course of his business does anything for the purpose of furtherance of his business which is not a supply of services but, if done for a consideration, would be a supply of services. The goods or services are regarded for the purposes of this Act as being both supplied to him for the purpose of the business and supplied by him in the course of that business.

Section 5(b)

5.2 Time of supply

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| <p>5.2.1 Tax becomes due and payable at the earliest of the following events:</p> <ul style="list-style-type: none"> (a) Goods are removed from the premises owned or controlled by the supplier to the person to whom they are supplied; (b) A tax invoice is issued in respect of the supply; (c) Payment is received for all or part of the supply; or (d) Service is rendered or performed. | Section 6 |
| <p>5.2.2 Tax is also due and payable on part supply on which a tax invoice or part payment has been received.</p> | Section 6(2) |
| <p>5.2.3 Where supplies are measured by meter, the time of supply shall be the date of the first meter reading following the introduction of VAT and subsequently at the time of each meter reading, except to the extent that a tax invoice is issued or payment is made in respect of the supply.</p> | Section 6(3) |
| <p>5.2.4 VAT on imported goods shall be charged and payable at the time customs duties taxes and levies are payable in accordance with the Customs Laws, unless prescribed otherwise in the regulations made by the Minister.</p> | Section 6(4) |

5.3 Place of Supply

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| <p>5.3.1</p> <ul style="list-style-type: none"> (a) Goods shall be regarded as supplied in Mainland Tanzania if their supply does not involve their removal from or to Mainland Tanzania; (b) Goods shall be regarded as supplied in Mainland Tanzania if their supply involves their installation or assembly at a place in Mainland Tanzania to which they are removed; and (c) Goods shall be regarded as supplied outside Mainland Tanzania if their supply involves their installation or assembly at a place outside Mainland Tanzania to which they are removed. | Section 7(2) |
| <p>5.3.2 Where goods, in the course of their removal from a place in Mainland Tanzania to another place in Mainland Tanzania, leave and re-enter Mainland Tanzania, the removal shall not be regarded as a removal from Mainland Tanzania.</p> | Section 7(3) |
| <p>5.3.3 Services shall be regarded as supplied in Mainland Tanzania if the supplier of the services:</p> <ul style="list-style-type: none"> (a) Has a place of business in Mainland Tanzania and no place of business elsewhere; (b) Has no place of business in Mainland Tanzania or elsewhere but his usual place of residence is in Mainland Tanzania; or (c) Has places of business in Mainland Tanzania and elsewhere but the place of business most concerned with the supply of the services is the place of business in Mainland Tanzania. | Section 7(4) |
| <p>5.3.4 The Minister may, by order published in the Gazette and after consultation with the Authority, in relation to goods and services generally or in specific goods or services, vary the rules for determining where a supply of such goods and services is made.</p> | Section 7(5) |

5.4 Taxable Value

<p>5.4.1 The charge for VAT is determined by the value attributable to the supply of goods or services and the general rule for determining the value of a supply is as follows:</p> <ul style="list-style-type: none"> (a) Where a supply is for a monetary consideration the amount of the consideration excluding the VAT; (b) Where the supply is not for a monetary consideration, or is only partly for such a consideration, the open market value excluding the VAT; or (c) Where the supply is not the only matter to which a consideration in monetary terms relates, the supply shall be deemed to be for such part of the consideration as is properly attributed to it. 	Section 13(1)
<p>5.4.2 Open Market</p> <p>The term 'open market' referred to in 5.4.1 (b) above, means the value that such goods or services would fetch in the ordinary course of business between the supplier and recipient dealing at arms-length or any other person concerned in the transaction completely independent of each other. The open market transaction will have the following assumptions:</p> <ul style="list-style-type: none"> (a) That the supply shall be treated as having been delivered to the recipient at the supplier's place of business; (b) That the recipient will bear freight, insurance and other costs, charges and expenses incidental to the supply and the delivery of the goods to him; (c) That the supplier will bear any duty or tax chargeable in Mainland Tanzania other than the tax payable under the VAT Act; and (d) That the value covers the right to use the patent, design or trademark in respect of the supply. 	Section 13(2)
<p>5.4.3 Independent Supplier and Recipient</p> <p>A supply in the open market between a supplier and a recipient independent of each other pre-supposes the following:</p> <ul style="list-style-type: none"> (a) That the value is the sole consideration, (b) That the value is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the supplier or any person associated in any business with him and the recipient, or any person associated in any business with him (other than the relationship created by the transaction of the supply in question); and (c) That no part of the proceeds of any subsequent re-supply, use or disposal of the goods will accrue, either directly or indirectly, to the supplier or any person associated in any business with him. <p>The taxable value for prepaid airtime mobile phone voucher shall be the face value of the voucher plus any premium paid.</p>	<p>Section 13(3)</p> <p>Section 13(4)</p>
<p>5.4.4 Persons Deemed Associated in Business</p> <p>Two persons shall be deemed to be associated in business with one another if directly or indirectly, either of them has any interest in any business or property of the other, or both have a common interest in any business or property or some other third person has an interest in any business or property of both of them.</p>	Section 13(5)
<p>5.4.5 Commissioner to determine the taxable supply</p> <p>Where in the opinion of the Commissioner, by reason of any fraudulent act or omission of any importer, supplier or a recipient the taxable value of any supply is not the same as the taxable value of a similar supply, the Commissioner may, if he considers it reasonable to do so, assess the taxable value of the supply in accordance with such principles or appoint an independent professional valuer to carry out such assessment as he may consider reasonable.</p>	Section 13(5)
<p>5.4.6 Taxable Value of imported goods or services</p> <p>The taxable value of imported goods shall be the "value" declared and determined in accordance with the provisions of Customs Laws, taking into account the import duty, the excise duty and any other tax or levy payable on the goods excluding VAT.</p>	Section 14

6 Input tax

6.1 General

6.1.1 Input Tax is the amount of any tax which is payable in respect of the supply of goods or services supplied to a taxable person and the amount of any tax paid by a taxable person on the importation of goods and services, during a prescribed accounting period.

Section 16(1)

6.2 Credit for Input tax

At the end of each tax period, a registered person is required to submit a return in which he deducts the input tax for the period from the output tax. Where the output tax exceeds the input tax the difference is paid to the Commissioner for VAT. Where the input tax exceeds the output tax the difference is either deducted from the taxable person's tax liability or otherwise credited to him in respect of that prescribed accounting period or a later prescribed accounting period.

Section 16(1)

6.2.1 Input tax shall not be deducted, credited or claimed unless the taxable person, at the time of lodging the return in which the deduction or credit is claimed, is in possession of a tax invoice or other evidence satisfactory to the Commissioner, relating to the goods or services in respect of which the tax is claimed or, in the case of imported goods such documentary evidence of the payment of tax as the Commissioner may prescribe; and a person claiming input tax in contravention of this law shall, unless he satisfies the court to the contrary, be deemed to have taken steps for the fraudulent recovery of tax.

Section 16(4)

6.2.2 Where a taxable person in Mainland Tanzania pays tax to a taxable person in Tanzania Zanzibar in respect of any taxable supply pursuant to the law for the time being in force in Tanzania Zanzibar and then imports the taxable supply into Mainland Tanzania, the tax paid by him in Tanzania Zanzibar in respect of those supplies shall be credited as input tax.

Section 16(2)

6.2.3 Subject to the limitations prescribed under the Act and regulations, the input tax that may be deducted by, or credited to, a taxable person shall be:

- (a) The whole of that tax, if all the supplies effected by him in the course of his business are taxable; or
- (b) Any proportion of that tax as, in accordance with regulations made by the Minister is attributable to taxable supplies; where some but not all of the supplies effected by him in the course of his business are taxable.

Section 16(3)

6.2.4 Input tax may not be deducted or credited after a period of one year from the date of the relevant tax invoice.

Section 16(5)

6.2.5 Tax paid prior to registration

Where a person not registered for the purposes of VAT, imports any goods or services, and that person becomes subsequently registered, he may claim input tax credit or deduction in respect of those goods or services.

The claim of input tax credit or deduction can only be done on the following conditions:

- (a) The goods were in the ownership and possession of that person on the date of registration and such goods were received not more than six months prior to the registration; or
- (b) The services were received not more than six months prior to registration.

Regulations

6.2.6 Tax paid after cancellation of registration

Where services are supplied to a person who was previously registered under the Act, and those supplies are made for purposes directly connected with the reason his registration was cancelled, that person may claim repayment of the input tax in respect of those services if the services were received within six months of the cancellation of the registration. The claimant shall retain and produce all records, invoices, accounts and any other information prescribed in the Act.

Regulations

6.2.7 Claim of input tax paid in Zanzibar

Any claim of input tax by a taxable person in Mainland Tanzania for supplies purchased from a taxable person in Tanzania Zanzibar shall in addition to the tax invoice issued by the supplier be supported by a transfer form duly completed by the claimant and authenticated by the Zanzibar Treasury that the goods have actually been exported to Mainland Tanzania.

Regulations

6.2.8 The amount of input tax to be claimed as a deduction or credit in the prescribed accounting period where the supplies effected by a registered person comprise both taxable and exempt supplies, is arrived as follows:

$$\text{Deductible Input Tax} = \frac{\text{Value of Taxable Supplies}}{\text{Value of Total Supplies}} \times \text{Total Input Tax}$$

Regulations

6.2.9 The second method of claiming deduction or credit in a situation where a taxable person deals in both exempt and taxable supplies is to determine the amount of tax attributable to taxable supplies:

Step 1: Divide input tax for the prescribed accounting period into categories, namely:

- (a) Category "A" - Input tax that is directly attributable to taxable supplies;
- (b) Category "B" - Input tax that is directly attributable to exempt supplies; and
- (c) Category "C" - Input tax incurred for the purposes of the business but is not directly attributable either to taxable or exempt supplies.

Step 2: Calculate the proportion of taxable sales to total sales.

$$\text{Thus: } \frac{\text{Taxable sales}}{\text{Total sales}}$$

Step 3: Multiply the amount obtained in Step 2 by the amount obtained in Category "C" in Step 1.

$$\text{Thus: } \frac{\text{Taxable sales}}{\text{Total sales}} \times C$$

The amount which may be claimed as deduction or credit for the prescribed accounting period is the amount obtained in Step 3 together with the amount of input tax in Category 'A' in Step 1.

$$\text{Thus: Deductions or Credit} = A + \frac{\text{Taxable sales}}{\text{Total sales}} \times C$$

6.3 Input tax on motor cars

Any input tax charged on the supply to, or importation by, a taxable person of a motor car shall be excluded from any claim, deduction or credit made under the Act.

6.3.1 However, input tax is allowed on the following vehicles:

- (i) A vehicle capable of accommodating only one person;
- (ii) A vehicle constructed or adapted for carrying twelve or more persons;
- (iii) A vehicle of not less than three tons unladen weight; or
- (iv) A vehicle constructed for a special purpose other than the carriage of persons and having no accommodation for carrying persons other than such as is incidental to that purposes.

6.3.2 Furthermore, input tax is allowed on the following:

- (i) Supply of a motor car by way of letting or hire; and
- (ii) Importation or supply of motor car for the purposes of resale by a motor dealer

For avoidance of doubts, where a motor car is resold otherwise than at a profit, such resale shall not constitute a supply of goods for the purposes of the Act.

Regulations

6.4 Input tax on business entertainment

6.4.1 Any tax incurred by a taxable person on the following business entertainment shall be excluded from any claim, deduction or credit made under the Act:

- (a) The provision to a customer or prospective customer, of any form of food, beverages, tobacco, accommodation, amusement, recreation, transportation or hospitality; and
- (b) The provision to an employee, of any form of alcoholic beverage, tobacco, amusement, recreation or hospitality.

6.4.2 However, input tax is allowed on the following business entertainment:

- (a) Entertainment in relation to the ordinary course of business which continuously or regularly supplies entertainment for a consideration; or
- (b) Entertainment in relation to the provision to an employee of food, non alcoholic beverage, accommodation or transportation for use wholly and exclusively for the purposes of the employer's business.

Regulations

7 Zero-rated, exempt supplies and special reliefs

7.1 Zero-rated

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| <p>7.1.1 Zero-rated supplies are supplies for which tax is charged at zero percent but in all respects they are treated as taxable supplies.</p> | <p>Section 9(2)</p> |
| <p>7.1.2 Notwithstanding the NIL rate of tax, the value of zero-rated supplies is taken into the computation of the threshold turnover to determine whether the supplier is a taxable person who is required to be registered under the Act.</p> | |
| <p>7.1.3 A taxable person supplying only zero-rated goods or services is entitled to repayment of input tax suffered.</p> | |

7.2 Exempt Supplies

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| <p>7.2.1 A supply of goods or services is an exempt supply if it is of a description specified in the Second Schedule of the Act. VAT is not chargeable on an exempt supply, and deduction or credit of input tax is not allowable on purchases made in respect of the exempt supply.</p> | <p>Section 10</p> |
| <p>7.2.2 The implication of exempt supplies is that the VAT regime does not apply to persons who supply exempt supplies. A supplier of exempt goods or services cannot obtain registration for VAT and the value of exempt supplies will be disregarded in the calculation of the threshold turnover required for registration. Consequently, a supplier of exempt supplies absorbs any VAT suffered (input VAT) and he cannot pass it over (charge VAT) to his own customers.</p> | |

7.3 Special relief

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| <p>7.3.1 The supply of goods is a special relief supply if it is of a description specified in the 3rd Schedule of the VAT Act and if it is supplied to persons and organisations listed in the 3rd Schedule.</p> <p>Special relief supplies qualify as taxable supplies but do not attract VAT.</p> <p>A taxable person supplying (only) special relief goods or services is entitled to repayment of input tax suffered. In this respect, the VAT treatment of special relief supplies is similar to zero-rated supplies.</p> | <p>Section 11(1)</p> |
| <p>7.3.2 The relief granted ceases to have effect and the VAT becomes due and payable as if the relief had not been granted if the goods are transferred, sold or otherwise disposed of to another person who is not entitled to enjoy the special relief privileges.</p> | <p>Section 11(2)</p> |

8 Collection, recovery and enforcement of tax

8.1 Collection of Tax

Tax is collected through the monthly submission of returns which are lodged along with cheques. As described in paragraph 4.2.1 above, the return is lodged with the Commissioner on or before the last working day of the month following the end of the prescribed accounting period to which it relates.

Section 26

8.2 Recovery of tax

8.2.1 Recovery of tax by suit

Any tax or interest or penalty payable under the Act may be recovered as a civil debt in the court of a Resident Magistrate at the instance of the Commissioner-General.

Section 31

8.2.2 Recovery of tax by attachment of debts

Where any tax or interest due from a taxable person remains unpaid, the Commissioner may, by notice in writing, require any other person to pay that money in settlement of the debt. The third party must be a person:

- (a) From whom any money is due, or is accruing or may become due, to the taxable person; or
- (b) Who holds or may subsequently hold, money on account of some person for or on account of, or for payment to, the taxable person; or
- (c) Having authority from any person to pay money to the taxable person.

Upon service of the notice, the money necessary to discharge the tax and interest becomes a debt due to the Tanzania Revenue Authority and shall be recovered at the suit of the Commissioner-General in any Court of a Resident Magistrate.

A person on whom a notice under this provision has been served and who fails to comply with the notice commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings or ten percent of the amount demanded by the notice, whichever is the greater.

Section 32

8.2.3 Requirement to make early payment

The Commissioner may, by notice in writing, require a taxable person to pay any tax and interest before the due date if he has reason to believe that the tax or interest may not be paid within the time allowed by reason of any loss, transfer or disposition of the taxable person's assets. When the Commissioner evokes this provision, the time allowed by, or under the Act for payment of tax and interest will be deemed to have expired.

Section 33

8.2.4 Recovery of debts by distress

The Commissioner may through an authorized officer levy a warrant of distress upon the goods and chattels of a taxable person to recover tax and interest that has become recoverable after any of the following events:

- (a) After an appeal and any tax or interest due from a taxable person remains unpaid; or
- (b) A taxable person fails to appeal to Appeals Tribunal within ten days after the Commissioner notifies him of the tax or interest due from him; or
- (c) A taxable person refuses without any cause to pay the tax assessed by the Commissioner.

Section 34(1)

The officer executing the warrant may, with the assistance of a police officer or any other assistants who he may consider necessary, at any time between sunrise and sunset, break open any premises of the taxable person.

Section 34(2)

The goods and chattels on which distress has been levied under the Act, shall be kept for ten days either at the premises at which distress was levied or at any other place as the officer executing the warrant may consider appropriate, at the cost of the taxable person.

Section 34(3)

If the taxable person does not pay the amount due under the Act, together with the costs within the period of ten days mentioned above, the goods and chattels shall be sold by public auction.

Section 34(4)

The proceeds of sale shall be applied toward payment of those costs and any further costs of or incidental to the sale and the surplus, if any, shall be applied towards payment of the amount due and the balance, if any, shall be paid to the taxable person after deduction of any further tax or interest by then due from him.

Section 34(5)

A taxable person on whose goods and chattels, distress has been levied or is to be levied, or any other person who fraudulently removes and takes away any such goods and chattels to prevent the Commissioner from recovering them or completing the distress so levied, or assists in the same, commits an offence and upon conviction is liable to a fine not exceeding two hundred thousand shillings or three times the value of the goods taken away, whichever is the greater or imprisonment for a term not less than three months but not exceeding twelve months; or to both the fine and imprisonment.

Section 34(6)

8.2 Enforcement of tax

8.3.1 When the Commissioner believes there is a risk to the revenue he may, as a condition of allowing or repaying input tax, require a taxable person to produce any documents relating to the input tax that were supplied to the taxable person; or to give security or further security of such amount and kind which the Commissioner may determine before allowing any deduction or repayment of the input tax.

Section 35(1)

8.3.2 Where submission of the documents for verification or furnishing of a security or further security is required, the Commissioner-General shall remit the amount within thirty days from the date when the documents were submitted or a security or further security was furnished.

Section 35(2)

8.3.3 Where an authorised officer has reason to believe that it is necessary to do so for the protection of the revenue, he may take, from goods in the possession of any person who supplies goods or services such samples as may be reasonably necessary to determine how the goods or the materials from which they are made ought to be or have been dealt with for taxation purposes.

Section 36(1)

No sample shall be taken under the Act, without the issue by an authorised officer of a receipt to the person from whom it was taken. And every sample shall be disposed of and accounted for in the manner which the Commissioner may direct.

Section 36(2)

Where a sample taken under the Act is not returned, within a reasonable time and in the same condition as when sampled, to the person from whom it was taken, the Commissioner shall refund to him by way of compensation a sum equal to the cost of the sample to him or any larger sum which the Commissioner may determine.

Section 36(3)

8.3.4 Furnishing of Information and production of documents

The Commissioner may require every person who is concerned in the supply or importation of goods and services, to furnish any information or produce any documents to the Commissioner for examination.

Section 37(1)

The documents relating to the supply of goods or services or to the importation of goods shall be taken to include any Profit and Loss Account, and Balance Sheet or any book of account and any correspondence or other writing relating to the business.

Section 37(3)

Where any information or document is electronically stored, the authorised officer shall be empowered:

- (a) To view the information or document and to copy or take extracts from it by electronic means; or
- (b) To require that it be reproduced in hard copy or copied on to computer diskette or reduce to some other portable form suitable for removal and capable of reproducing the information or document for viewing.

Section 37(7)

8.3.5 Access to official information

A public officer may be required by the Commissioner:

- (a) To permit an authorised officer to examine all registers, books, accounts, documents, or records in the possession or control of public officer and to take any notes and extracts which may be considered necessary by the Commissioner; and
- (b) To supply any information to the authorised officer.

Section 38

8.3.6 Power to enter, inspect, etc.

An authorised officer may, at any reasonable time, enter any premises which he has reason to believe are used for or in connection with the carrying on of a business, including any premises used only for the storage of goods or documents, and shall have full and free access in it to open any packaging, take stock of any goods and do all such things as are reasonably necessary for the performance of his duties.

Section 39(1)

An authorised officer may seal off, lock up or in any other physical manner prevent access to any premises for the purpose of the exercise of any power under the Act or for the safeguarding of evidence from being tampered with.

Section 39(4)

9 Refund of tax

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| <p>9.1 The Commissioner-General shall refund tax to the taxable person where in respect of a particular prescribed accounting period, a taxable person's allowable credits exceed the tax on supplies he has made for the period, provided that any repayment claim lodged covering the period beyond three years from the date of its lodgement shall not be remitted. The refund of tax shall be made within thirty days after the earliest of the following events:</p> <p>(a) The due date for lodging of the return for the last prescribed accounting period in the half year; or</p> <p>(b) Receipt of the last outstanding tax return due for any prescribed accounting period falling within that half year.</p> | <p>Section 17(2)</p> |
| <p>9.2 A taxable person may apply to the Commissioner for refunds to be made on a monthly basis where a taxable person submits returns for prescribed accounting periods which regularly results in excess credits. The term "regularly results in excess credit" means that over six month period the total input tax credit for the prescribed accounting periods exceeds the total tax charged and paid on supplies.</p> | <p>Section 17(3)
Section 17(8)</p> |
| <p>9.3 Refund of tax shall be made within thirty days where the Commissioner-General has approved the refund of tax on a monthly basis after the later of the following events:</p> <p>(a) The due date for lodging the return for the prescribed accounting period, or</p> <p>(b) The date of receipt of the return.</p> | <p>Section 17(4)</p> |
| <p>9.4 Before making repayment under the Act the Commissioner-General shall reduce the amount of repayment by any sum owing to the Authority by the taxable person and the Commissioner-General shall inform the taxable person in writing accordingly.</p> | <p>Section 17(6)</p> |
| <p>9.5 No refund in respect of any claim shall be approved unless it is supported by a Certificate of Genuineness issued by an auditor who has been registered by the National Board of Auditors and Accountants and who is also a tax consultant registered with the Tanzania Revenue Authority.</p> | |

10 Offences and penalties

10.1 General

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| <p>10.1.1 A fine not exceeding two hundred thousand shillings or imprisonment for a term not less than two months but not exceeding twelve months or to both will be imposed upon conviction after the commission of the following offences by any person:</p> <p>(a) Being required to apply for registration under the act, fails to do so within thirty days after becoming liable to apply;</p> <p>(b) Contravenes any term or condition of his registration; or</p> <p>(c) Holds himself out as being a taxable person when he is not.</p> | Section 44(1) |
| <p>10.1.2 Interest on overdue tax shall be charged at the commercial bank lending rate of the Central Bank together with a further five per centum per annum. This is in addition to the penalty stated in 10.1.1 above for failure to apply for registration.</p> | Section 44(2) |
| <p>10.1.3 A taxable person who fails to notify the Commissioner of any change in business circumstances within thirty days of becoming liable to do so commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings.</p> | Section 44(3) |

10.2 Failure to pay tax or lodge return

Any taxable person who fails to submit a return or pay tax by the due date commits an offence and upon conviction is liable to pay a fine not exceeding five hundred thousand shillings or to imprisonment for a term not less than two months but not more than twelve months or to both.

Section 45

10.3 False returns and statement

Any person who purports to comply with the Act, knowingly makes a return or other declaration, furnishes any document or information or makes any statement whether in writing or otherwise, that is false in any material particular, commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not less than three months but not exceeding two years or to both.

Section 46

10.4 Fraudulent evasion or recovery

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| <p>10.4.1 Any person who is involved in fraud, or takes steps with a view to fraudulently evade tax or with a view to fraudulently recover tax, commits an offence and upon conviction shall pay the tax which would have been paid had the offence not been committed and in addition shall pay a fine of a minimum of two million shillings or twice the value of tax evaded whichever is higher or imprisonment of two years or both fine and imprisonment.</p> | Section 47(1) |
| <p>10.4.2 An offence is committed by any person who deals in or accepts the supply or importation of any goods, or the supply of any services, and having reason to believe that the proper tax has not been or will not be paid or that any deduction or credit has been or will falsely be claimed in relation to it. Upon conviction by a court of law, that offender is liable to a fine not exceeding one million shillings or six times the amount of the tax evaded; whichever is greater or to imprisonment for a term not less than six months but not exceeding three years or to both.</p> | Section 47(2) |
| <p>10.4.3 The court on conviction, may order the forfeiture of the goods which are the subject of an offence under the Act.</p> | Section 47(3) |

10.4.4 Publications of names of offenders

- (1) The Commissioner may publish a notice in the Government Gazette or any other circulating news papers circulating in Tanzania, a list of persons who have been convicted of any offence in terms of:
- (a) Section 45, 46 and 47 of the Act; and
 - (b) The common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a). The notice may only be published after any appeal or review proceedings relating thereto have been completed or have not been instituted within the required period.
- (2) Every such list may specify:
- (a) The name and address of the offender;
 - (b) Such particulars of the offence as the Commissioner may think fit;
 - (c) Tax period during which the offence occurred;
 - (d) The amount of tax involved; and
 - (e) The particulars of the fine or sentence imposed.

Section 48

10.4.5 Detention of goods

Where there is reason to believe that VAT has been fraudulently evaded or claimed or deducted, the goods concerned may be taken from the possession of any person involved in the suspected offence and detained by the Commissioner pending the outcome of his inquiries or the completion of offence proceedings. A receipt listing any item detained shall be issued to the taxable person. However, the person from whom the goods are taken may appeal against the detention or continuing detention to the Tax Appeals Tribunal.

Section 50

10.5 Offences by body Corporate

Where any offence under the Act or any regulations made under the Act, has been committed by a body of persons, whether corporate or unincorporate, any person who, at the time of the commission of the offence, was concerned with the management of the affairs of the body of persons as director, partner, agent or an officer, shall be guilty of the offence.

Section 51

10.6 Compounding of offences

10.6.1	If a person alleged to have committed an offence under the Act, agrees in writing to pay a fine determined by the Commissioner which does not exceed the maximum fine provided by the Act for the offence, the Commissioner may compound the offence and impose the fine, provided that, if criminal proceedings have been instituted against the alleged offender for such offence, the power conferred by the Act, shall not be exercised without the written consent of the Director of Public Prosecutions.	Section 49(1)
10.6.2	A person accepting a fine shall be provided by the Commissioner with a certificate setting out the nature of the offence, the date or period of its occurrence, the fine paid, and any conditions to the compounding agreement.	Section 49(2)
10.6.3	If the fine imposed under the compounding of offences procedure, is not paid on demand the Commissioner may institute court proceedings or may take steps for recovery of the fine in any manner permitted by the Act for the recovery of unpaid tax.	Section 49(3)
10.6.4	The imposition of a fine under paragraph 10.6.1 above, shall not be regarded as conviction for the alleged offence and, provided the fine is paid in full, no prosecution for the alleged offence shall be instituted or maintained.	
10.6.5	The compounding of offences shall not in any way affect liability for the payment of tax or interest due under the Act.	Section 49(5)

Uganda

1 The Uganda Value Added Tax Act

The Uganda Value Added Tax Act was enacted in 1996 and came into force on 1 July 1996. Following the revision of the Laws of Uganda in 2002, the VAT Act was revised to the Value Added Tax Act, CAP 349.

In order to provide our clients with more up to date information we have incorporated the amendments to the Act up to and including the provisions of the Finance Act 2010 and the changes proposed in the Value Added Tax (Amendment) Act 2010 and the Budget speech 2011.

All the amendments to the Value Added Tax Act can be purchased from Government printers. We have also compiled all the amendments.

Please contact our tax department for further details.

2 Basis of charge to tax

2.1 VAT is charged on:

- Taxable supplies made in Uganda;
- Imports of goods which are not exempt; and
- Imported supplies of services by a taxable person in the furtherance of a business.

2.2 A taxable person may be an individual, a partnership, company, trust or any public authority or body, who makes or intends to make taxable supplies while registered or required to be registered.

Section 6

2.3 There are three categories of tax, standard rate of 18%, exempt and zero-rated. The Second schedule of the VAT Act specifies all goods and services that are exempt, whilst the third schedule lists all zero rated goods. Any goods or services that are not included in the two schedules are deemed to be taxable at the standard rate of 18%.

2.4 Tax is payable:

- For a taxable supply - by the person making the supply;
- On the importation of goods - by the importer; or
- On the importation of services- by the recipient of the imported goods. VAT will apply on imported services where the recipient of the services is a taxable person.

Section 5

3 Registration and de-registration

3.1 Registration

<p>3.1.1 Any person who carries on any commercial enterprise and is not registered for VAT, becomes liable to be registered:</p> <ul style="list-style-type: none"> • Within 20 days of the end of any period of three calendar months in which the commercial enterprise made taxable supplies whose value, exclusive of any tax, exceeds one-quarter of the annual threshold limit; or • At the beginning of any period of three calendar months, where the person expects the commercial enterprise to make taxable supplies whose value excluding VAT will exceed one-quarter of the annual threshold limit; or • If that person chooses to register voluntarily. 	<p>Section 7(1)(a)</p> <p>Section 7(1)(b)</p>
<p>3.1.2 The annual threshold is currently set at UShs 50 million.</p>	<p>Section 7(2)</p>
<p>3.1.3 It is possible for a person to register before the commencement of business under certain circumstances.</p>	
<p>3.1.4 If a business activity in which it is intended to make taxable supplies is commenced, the person may register as an investment trader. The Commissioner will only register such an enterprise, provided satisfactory evidence is produced supporting the intention to make taxable supplies. It is proposed to terminate the investment trader facility.</p>	
<p>3.1.5 Registration as an investment trader allows one to claim input tax suffered in the period prior to making taxable supplies, provided the period does not exceed two years.</p>	
<p>3.1.6 The effective date of registration for compulsory registration is the beginning of the tax period immediately following the period in which the liability to apply for registration arose. Consequently, if a person submits a late application the registration, he will be expected to account for the tax payable for the period during which the failure continued.</p>	<p>Section 8(3)(a)</p>
<p>3.1.7 Voluntary registration is permissible, at the discretion of the Commissioner-General, who may refuse to register any person who has no fixed place of abode or business, or where the Commissioner-General has reasonable grounds to believe that the person:</p> <ul style="list-style-type: none"> • Will not keep proper accounting records; • Will not submit regular and reliable tax returns as required; or • Is not a fit and proper person to be registered. 	<p>Section 8(2)(a&b)</p>
<p>3.1.8 As a registered person, one would have the following obligations:</p> <ul style="list-style-type: none"> • To maintain records as required by the law; • Submit monthly returns and pay the tax due on them; and • Charge VAT on all taxable supplies made by him. 	

3.2 The effects of VAT registration

<p>3.2.1 Registration takes effect from the beginning of the tax period immediately following the period in which the liability to apply for registration arises.</p>	<p>Section 8(3)(a)</p>
<p>3.2.2 For a taxpayer who makes a voluntary registration, registration takes effect from the beginning of the tax period immediately following the period in which the application was made. A person may apply to have a different effective date from the above.</p>	<p>Section 8(3)(b)</p>
<p>3.2.3 On registration the Commissioner-General will issue a registration certificate which will state, among others, the date of registration and number. The certificate must be displayed at the main business premises and VAT should be charged from that date.</p>	<p>Section 8(2) SI No. 38 of 1996 clause 5</p>

- 3.2.4** The taxpayer is then entitled to claim the tax charged on goods and assets held in the business at the date of registration, provided, general goods were acquired not earlier than four months, or six months in the case of capital goods, prior to the date of registration. Evidence that tax has been paid on the goods is required.

3.3 Change in the taxpayer's status

- 3.3.1** A registered person must communicate to the Commissioner-General within 14 days of the occurrence of a change in status for example:
- Name or address;
 - Circumstances which render the person ineligible for registration; or
 - Material change in the nature of business activities or taxable supplies being made.

Section 8(10)

3.4 Cancellation of registration

- 3.4.1** The registration of a taxable person may be cancelled under the following circumstances:
- A registered person has ceased to make taxable supplies for consideration as part of his business activities; or
 - If the value of taxable supplies in respect of the most recent period of three months falls below one quarter of the annual threshold turnover (currently 50 million) and the value of taxable supplies for the previous 12 months does not exceed 75% of the annual threshold turnover.

Section 9(2)

- 3.4.2** The Commissioner-General may cancel the registration of a taxable person who has not applied for cancellation of registration if he is satisfied that the person is neither required nor entitled to apply for registration where the person:
- Has no fixed place of abode or business;
 - Has not kept proper accounting records; or
 - Has not submitted regular and reliable tax returns, is, in the opinion of the Commissioner-General, not a fit and proper person to be registered.

Section 9(5)

- 3.4.3** A person who made a voluntary application for registration cannot apply for cancellation of registration before the expiry of two years.

Section 9(3)

- 3.4.4** The cancellation of registration takes effect from the end of the tax period in which the registration is cancelled.

Section 9(7)

- 3.4.5** Upon cancellation of registration the taxable person is deemed to have made a taxable supply in respect of all goods on hand, including capital goods at the date of registration. Such a person is required to account for output tax on such goods on the basis of the fair market value of the goods at the time his registration is cancelled.

Section 9(9)

- 3.4.6** The registered person will be required to complete the final VAT return and pay any tax due within 15 days of the date of cancellation.

- 3.4.7** The above provision may result in a significant tax liability, so it is advisable to evaluate the consequences before a person makes a voluntary application for deregistration.

- 3.4.8** The consequences of de-registration are:
- The taxpayer ceases to be a taxable person and cannot charge VAT on supplies that he makes; and
 - As a non-taxable person, he will not be entitled to claim the VAT charged on supplies made to him.

4 Supplies of goods and services

4.1 Taxable supplies

Section 18

- 4.1.1** VAT is chargeable on the supply of goods and services in Uganda, where the supply and the goods or services are supplied by a taxable person for consideration in the course of a business carried on by him.
- 4.1.2** VAT is also charged on the importation of goods, which are not exempt imports and on the importation of any services.
- 4.1.3** A supply is made for consideration if the supplier directly or indirectly receives payment for the supply. The payment can be in money or in kind.

4.2 The supply of goods

Section 10

Section 10(1)

- 4.2.1** The supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods including a lease or an agreement of sale or purchase.
- 4.2.2** A supply of goods also includes:
- A supply of electrical or thermal energy, heating, gas, refrigeration, air conditioning or water; and
 - The application of goods for own use.
- 4.1.3** A supply is made for consideration if the supplier directly or indirectly receives payment for the supply. The payment can be in money or in kind.

Section 10(2)

Section 11(3)

Section 10

4.3 The supply of services

- 4.3.1** The supply of services is defined as a supply which is not a supply of goods or money, including:
- The performance of services for another person;
 - The making available of any facility or advantage; or
 - The toleration of any situation or the refraining from the doing of any activity.
- 4.3.2** The supply of services made by an employee to an employer by reason of employment does not constitute a supply made by the employee.

Section 11(2)

4.4 Taxable supplies

Section 12

- 4.4.1** Where a supply of services is incidental to the supply of goods it will be treated as part of the supply of goods.
- 4.4.2** Where a supply of goods is incidental to the supply of services, it will be treated as part of the supply of services.
- 4.4.3** A supply of services incidental to the importation of goods is treated as part of the import of goods.
- 4.4.4** A taxable supply is a supply of goods or services, other than an exempt supply, made by a taxable person for consideration as part of his or her business activities.
- 4.4.5** The business activities of an individual do not include activities carried on by him or her only as part of his or her hobby or leisure.
- 4.4.6** A supply is made for consideration if the supplier directly or indirectly receives payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or kind.
- 4.4.7** The application to own use by a taxable person of goods and services supplied to a person for the purposes of the person's business activities shall be regarded as a supply of those goods and services for consideration as part of the person's business activities.
- 4.4.8** For the purposes of 4.4.7 above, a supply of business goods and services for no consideration is an application to own use.
- 4.4.9** Where goods and services have been supplied to a taxable person for the purposes of the person's business activities, the supply of those goods and services for reduced consideration shall be regarded as a supply for consideration unless the goods and services are supplied or used only as trade samples.
- 4.4.10** A supply is made for reduced consideration if the supply is made between associates for no consideration or between associates for a consideration that is less than the fair market value of the supply.
- 4.4.11** The sale or disposal of a business asset by a taxable person is a taxable supply.

4.5 Supply by an agent

Section 13

- 4.5.1** A supply of goods or services made by a person as an agent for another person being a principal is treated as supply by the principal. Consequently, the goods or services by the agent on behalf of the principal are treated as supplies by the principal.
- 4.5.2** The agent must charge VAT on the goods or services supplied on behalf of the principal, if the principal is registered for VAT. If the principal is not registered for VAT, the agent cannot charge VAT whether the agent is registered or not. It is the responsibility of the principal to obtain registration for VAT in respect of the goods or services he supplies through an agent.
- 4.5.3** Where VAT is chargeable in respect of the goods or services supplied by the principal through the agent a tax invoice must be issued either by the principal through the agent if the agent has a written authority from the principal to do so. A tax invoice is issued only to customers who are registered for VAT otherwise a commercial invoice is issued.

4.6 Types of supplies

- 4.6.1** Supplies of goods or services made are either:
- Standard rated;
 - Zero rated; or
 - Exempt.
- 4.6.2** Where a supply is not zero rated or exempt, it is deemed to be standard rated.
- 4.6.3** Where goods or services supplied are zero rated there are two significant consequences:
- No tax is chargeable on the supply; but
 - Input tax suffered may be recovered.

4.7 Exempt supplies

- 4.7.1** Supplies of exempt goods and services are business transactions on which VAT is not chargeable at either the standard or zero rated.
- 4.7.2** No tax is charged on exempt supplies. In addition, the value of exempt supplies will be disregarded in determining whether the value of supplies made by a person exceeds the annual registration threshold.
- 4.7.3** A person who makes only exempt supplies cannot register for VAT.
- 4.7.4** Exempted supplies are listed in the second schedule to the VAT Act, (Appendix).
- 4.7.5** The supply of goods as part of the transfer of a business as a going concern by one taxable person to another taxable person is treated as an exempt supply.
- 4.7.6** Both the transferor and the transferee are required to notify the Commissioner-General in writing of the details within 21 days of the transfer. This treatment as an exempt supply could adversely affect the input tax recovery for a partially exempt trader.

Section 19(1)

**Section 18(9),
Schedule II (1)(k)
Practice Note dd
216/08**

Section 19(2)

4.8 Exempt imports

- 4.8.1** An import of goods is exempted if the goods are exempt from customs duty under the Fifth Schedule of the East African Community Customs Management Act, 2004 (Act No. 1 of 2005 of the East African Community) or if it would be exempt had they been supplied in Uganda.

Section 20

4.9 Place of supply

The rules applied to determine whether goods or services are supplied in Uganda are as follows:

4.10 Supply of goods

- 4.10.1** A supply of goods takes place where the goods are delivered or made available by the supplier.

Section 15(1)

- 4.10.2** This means that the location of the goods is ignored but instead the point of delivery is considered. If the goods are delivered to a destination within Uganda the supply will be treated as having taken place in Uganda.

- 4.10.3** Supply of thermal or electrical energy, heating, gas refrigeration, air conditioning or water.

Section 15(2)

4.11 Supply of services

- 4.11.1** The supply of services takes place where the services are rendered.

Section 16(1)

4.12 Immovable property

- 4.12.1** A supply of services in connection with immovable property takes place where the immovable property is located.

Section 16(2)

4.13 Exports

- 4.13.1** Where goods or services are exported from Uganda the supply is treated as having been made in Uganda.

4.14 Imports

- 4.14.1** An import of goods takes place:
- (a) Where customs duty is payable, on the date on which the duty is payable; or
 - (b) In any other case, on the date the goods are brought into Uganda.

Section 15(1)

4.15 Transport services

- 4.15.1** A supply of transport services or any service incidental to transport takes place where the transport commences.

Section 16(3)

4.16 Time of supply

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|--|--------------------------------|
| <p>4.16.1 The time of supply is technically referred to as the tax point. The tax point has far reaching consequences for VAT purposes.</p> | <p>Section 15(1)</p> |
| <p>4.16.2 The general rule is that a tax point occurs on the earliest date on which:</p> <ul style="list-style-type: none"> • The goods are delivered or made available, or the performance of the service is completed; • Payment for the goods or services is made; and • A tax invoice is issued. | <p>Section 14(1)(c)</p> |
| <p>4.16.3 The tax point for goods or services supplied by way of gift is the date on which the ownership of the goods passes or the performance of the service is completed.</p> | <p>Section 14(1)(b)</p> |
| <p>4.16.4 A supplier of such goods is required to keep a record of the date on which the supply took place.</p> | <p>Section 14(4)</p> |

4.17 Hire purchase or Finance lease

- | | |
|---|--------------------------------------|
| <p>4.17.1 Under hire purchase arrangements or finance leases the tax point occurs when the goods are made available.</p> | <p>Section 14(2)</p> |
| <p>4.17.2 Where the goods or services are supplied under a rental agreement or an agreement or law which provides for periodic payments, then the goods or services are taken as successively supplied and the tax point for each successive supply occurs on the earlier of the date on which payment is due or received.</p> | <p>Section 14(2)(a&b)</p> |
| <p>4.17.3 Rental agreement is defined as any agreement for the letting of goods other than a hire purchase agreement or finance lease.</p> | <p>Section 14(5)</p> |

5 Value of supplies

5.1 Taxable value of supply

- 5.1.1** Generally, the taxable value of a supply is the total consideration paid in money or in kind. Section 21(1)
- 5.1.2** The taxable value is the fair market value of the goods and services at the time of supply, excluding any interest or finance charges. Section 21(2)(a)

5.2 Self supply of goods

- 5.2.1** The taxable value of a taxable supply of goods for own use is the fair market value of the goods at the time the supply is made. The time of supply is the date on which the goods are first applied to own use. Section 21(2)(b)

5.3 Supplies for reduced consideration

- 5.3.1** Where goods have been supplied for reduced consideration they are treated as having been supplied for a consideration. A supply is made for a reduced consideration if the supply is between associates or between associates for a consideration that is below the fair market value; the taxable value for a taxable supply for reduced consideration is the fair market value. Section 22(2)(c)

5.4 Self supply of goods

- 5.4.1** A taxable person whose registration has been cancelled is treated as having made a supply of all the goods on hand, including capital goods and is liable to account for output tax at the time the registration is cancelled. In such a case, the value of the goods is the fair market value of those goods at the time of supply is deemed to have been made. Section 9(9)
- Section 14(1)(c)**

5.5 Imported goods

- 5.5.1** The taxable value of imported goods is the sum of:
- The value of the goods as ascertained for purposes of customs duty;
 - The amount of customs duty, excise duty, and any other taxes paid other than VAT; and
 - The value of any services supplied in connection with the import of the goods other than those services taken up in the value for duty.
- Section 23 (a,b,c)**

6 Calculation of tax payable

6.1 General

6.1.1 Tax payable on a taxable transaction is calculated by applying the rate of tax to the taxable value of the transaction.

Section 24(1)

6.2 Invoice basis of accounting for VAT

6.2.1 The common method of accounting for VAT is the invoice method.

6.2.2 In addition, the taxable person is entitled to claim deductible input tax on the basis of the invoices received, whether or not he has actually paid for the supplies made to him.

6.3 Cash basis of accounting for VAT

6.3.1 An alternative method is to account for VAT on a cash basis. Under this method the taxable person does not need to account for VAT to the URA until he has been paid for the supplies he has made.

6.3.2 The cash basis for accounting for VAT can only be used by small traders, one whose annual turnover does not exceed UShs 200 million.

Section 26(1)

6.3.3 A small trader may elect to account for VAT on a cash basis by applying in writing to the Commissioner-General by the due date for the first return in which the new method is to be applied.

Section 26(3)

6.3.4 The application must provide the following details:

- Details regarding the business, including the value of sales excluding VAT; and
- The date from which the taxpayer effectively wishes to use the method.

6.3.5 The election to apply the cash basis of accounting will remain in force until the taxable person withdraws it by a written notice to the Commissioner-General.

Section 26(6)

6.3.6 Alternatively, the Commissioner-General may, by notice in writing to the trader, direct that person to use the invoice method of accounting. A person who has elected to use the cash basis of accounting cannot withdraw the election before expiry of two years, unless he demonstrates that his annual turnover of taxable supplies has exceeded UShs 200 million and therefore he does not qualify to use the method.

Section 26(7)

6.3.7 Once a taxable person has elected to use the cash basis of accounting for VAT the person must account for both the output tax payable and the input tax credited on a cash basis.

Section 26(4)

6.4 Input tax

<p>6.4.1 This is defined as the tax paid or payable in respect of a taxable supply to a taxable person or on the importation of goods or services by a taxable person.</p>	Section 1(1)
<p>6.4.2 Registered suppliers are allowed to deduct the tax charged to them from the tax collected from their customers and the difference is paid to, or refunded by the URA.</p>	Section 28
<p>6.4.3 The general rule is that: Tax suffered can be claimed as input tax only by taxable persons if:</p> <ul style="list-style-type: none"> • It is attributable to the taxable supplies; and • That person has a valid tax invoice; unless • The tax relates to supplies in respect of which the law expressly prevents the claiming of a credit. 	
<p>6.4.4 Where a taxable person does not have a tax invoice evidencing the input tax paid, the Commissioner-General may allow an input tax credit where he is satisfied that:</p> <ul style="list-style-type: none"> • The taxable person took all reasonable steps to acquire an invoice; • The failure to acquire an invoice was not the fault of the taxable person; and • The amount of input tax claimed by the taxable person is correct. 	Section 28(12)

6.5 Specific rules

<p>6.5.1 Where a taxable supply to, or the importation of goods by, a taxable person is partly for a business use and partly for another use, the amount of input tax allowed as a credit is that part which relates to business use.</p>	Section 28(6)
<p>6.5.2 Where all the taxable person's supplies are taxable supplies then all the tax charged to the person can be claimed as input tax, except where the credit is expressly denied by law.</p>	Section 28(7)(a)
<p>6.5.3 Where only part of the taxable person's supplies are taxable, i.e. partly taxable and partly exempt, the amount of tax claimed as input tax is restricted to the tax in respect of the taxable supplies using the following formula:</p> <p>A X B/C</p> <p>Where A = the total input tax for the period B = the value of taxable supplies C = the value of all supplies other than transfer of business as a going concern</p> <p>B/C < 0.5 No input tax credit is allowed B/C > 0.95 All input tax is allowed B/C between 0.5 and 0.95 Apportion the allowed input</p>	Section 28(7)(b) AXB/C
<p>6.5.4 Where the value of taxable supplies is less than 5% of the total supplies then no credit for input tax is obtained.</p>	
<p>6.5.5 Where the value of taxable supplies is more than 95% of the total supplies all the deductible input tax is credited.</p>	Section 28(9)
<p>6.5.6 Where a taxable person makes both taxable and exempt supplies he may use other methods of approximating the deductible tax subject to the approval of the Commissioner-General.</p>	Section 28(10)

6.6 Output tax

6.6.1 This is the tax charged on the taxable supplies made by a taxable person.

Section 1(o)

6.7 Tax invoice

6.7.1 Taxable persons making taxable supplies to other taxable persons are required to provide them with a tax invoice at the time of supply. Whilst the tax invoice primarily provides written evidence of goods and services supplied they are virtually certificates of tax deduction, which will be indispensable to the persons acquiring the goods and services when obtaining relief for input tax suffered.

Section 29(1)

6.7.2 The requirement to issue tax invoices is limited to the provision of tax able goods and services to another taxable person and they may not apply where:

A tax invoice must record the following particulars:

- The word “ tax invoice” written in a prominent place;
- The commercial name, address, place of business and the Taxpayer identification and VAT registration number of the taxable person making the supply;
- The commercial name, address, place of business and the Taxpayer identification and VAT registration number of the recipient of the supply;
- The serial number and the date on which the tax invoice is issued;
- A description of the goods or services supplied and the date on which the supply is made;
- The quantity or volume of goods or services supplied;
- The rate of tax for each category of goods and services described in the invoice;
- The total value of the supply, the amount of tax charged and the total tax inclusive value of the supply; and
- Where the consideration includes the tax element, the consideration for the supply, a statement that it includes the tax and the rate at which tax was charged.

Section 29(8), 4th
Schedule clause 2

6.7.3 The person making the taxable supply is required to retain a copy of the tax invoice.

Section 29(2)

6.7.4 If a customer loses the original tax invoice the supplier may provide a duplicate clearly marked “copy”.

Section 29(3)

6.7.5 A person who has not been issued with a tax invoice may, within 30 days of the date of the supply, request the supplier to provide one. The supplier is required to comply with the request within 14 days.

Section 29(5)(6)(7)

7 Returns and assessments

7.1 The VAT return

- | | | |
|--------------|--|-------------------------|
| 7.1.1 | A taxable person is required to lodge a return for each tax period to the Commissioner-General within 15 days after the end of the tax period. Any tax due is paid on the same date. | Section 31(1) |
| 7.1.2 | The Commissioner-General may extend the period in which a tax return is to be lodged upon application in writing by the taxable person, where good cause is shown by the taxable person. | Section 31(4) |
| 7.1.3 | A person who is not satisfied with the return he has submitted may apply in writing to the Commissioner-General to make any additions or alterations. Such an application should be made within three years after the date on which the return was lodged. | Section 32(4)(5) |

8 Collection and recovery of tax

8.1 Refund of tax

8.1.1	If, in any tax period, a person's input tax claimed exceeds the output tax for the period, the Commissioner-General will refund the excess within two months of the date when the return was made.	Section 42(1)
8.1.2	This time limit will not be binding on the Commissioner-General if he requires the taxpayer to provide accounts and records to substantiate the claim for refund and the taxpayer fails to do so within 7 days of being requested.	Section 42(6)
8.1.3	A claim for refund must be made within three years of the tax period in which tax was overpaid.	Section 42(4)
8.1.4	Once the claim for refunds has been submitted, the Commissioner-General will serve a notice in writing of his decision in respect of the claim.	Section 42(7)
8.1.5	The Commissioner-General will be required to pay interest on refunds due at a rate of 2% per month compounded on the tax to be refunded.	Section 44(1)
8.1.6	The following persons are also entitled to a refund of tax paid: <ul style="list-style-type: none"> • Any person enjoying full or limited immunity, rights or privileges under any local or international law applicable in Uganda or under recognised principles of international law; and • Any diplomatic or consular mission of a foreign country. 	Section 45(1)
8.1.7	The refunds are to be authorised by the Minister responsible for Finance with the concurrence of the Minister of Foreign Affairs.	
8.1.8	The refunds are not available to any citizen or permanent resident of Uganda.	

8.2 Recovery of tax

8.2.1	Where a person liable fails to pay tax on the due date, the Commissioner-General is empowered to require any person listed below by a notice in writing to pay the money to him on the date specified in the notice: <ul style="list-style-type: none"> • Any person owing or who may owe money to that person; • Any person who may subsequently hold money for, or on account of the person; and • Any person having authority from some other person to pay money to the delinquent taxpayer. 	
8.2.2	Any person appointed as a receiver in Uganda must write to notify the Commissioner-General of his appointment within 14 days after being appointed.	Section 41(1)
8.2.3	No receiver shall part with any asset in Uganda, which is held by the receiver in his capacity as receiver without the prior permission of the Commissioner-General.	
8.2.4	The Commissioner will notify the receiver in writing of the amount which, in his opinion, appears to be sufficient to provide for any tax which is or will become payable by that person whose assets are in the possession of the receiver.	Section 41(2)
8.2.5	The receiver will be required to set aside this amount out of the proceeds of sale of an asset.	Section 41(4)
8.2.6	However, the receiver may pay any debt that has priority over the tax due.	Section 41(4)(c)

9 Offences and penalties

Offence	Penalties
Failure to apply for registration under compulsory registration deliberately or recklessly	Fine of up to UShs 500,000 or imprisonment for up to two years or both.
Failure to apply for registration under compulsory registration, for any other reason	Fine of up to UShs 300,000 and or imprisonment for up to six months.
Failure to notify the Commissioner-General of a change in status, deliberately or recklessly.	Fine of up to UShs 500,000 and/or imprisonment for up to two years.
Failure to notify the Commissioner-General of a change in status, for any other reason.	Fine of up to UShs 300,000 and/or imprisonment for up to two years.
Failure to apply for cancellation of registration as required, deliberately or recklessly.	Fine of up to UShs 500,000 and/or imprisonment for up to two years.
Failure to apply for cancellation of registration as required, for any other reason.	Fine of up to UShs 300,000 and/or imprisonment for up to two years.
A person who fails to apply for registration will, in addition to the above penalty, be liable to a penal tax to double the amount of the tax payable for the period during which the failure continued.	
Failure to issue a tax invoice, credit or debit note, at the time of supply.	Fine not exceeding UShs 500,000 and/or imprisonment for a term of up to two years
Failure to issue a credit or debit note following adjustments to a taxable supply.	Fine not exceeding UShs 500,000 and/or imprisonment for a term of up to two years
Issuing a tax invoice or credit or debit notes in contravention of the Act deliberately or recklessly.	Fine not exceeding UShs 500,000 and/or imprisonment for a term of up to two years
Issuing a tax invoice or credit or debit notes in contravention of the Act in any other case other than deliberately or recklessly.	Fine not exceeding UShs 300,000 and/or imprisonment for a term of up to six months or both
Failure to pay tax by the due date	Penal tax on the tax payable at a rate 2% per month compounded.
Failure to comply with the Commissioner's notice to hold payment to a person who has not paid tax.	Fine not exceeding UShs 500,000 and/or imprisonment for up to two years. In addition, the Court may order that person to pay the outstanding tax.
A receiver who does not comply with the requirements of the Act in relation to the assets of a delinquent taxpayer.	Fine not exceeding UShs 500,000 and/or imprisonment for up to two years.
Deliberate or reckless failure to keep proper records.	Fine not exceeding UShs 500, 000 and/or Imprisonment for up to two years.
Failure to keep proper records for reasons other than the above.	Fine not exceeding UShs 300, 000 and/or Imprisonment for up to six months.
Failure to provide the Commissioner or authorised officer with all reasonable facilities and assistance.	Fine not exceeding UShs 300, 000 and/or imprisonment for up to six months.
Improper use of TIN or using someone else's TIN on a return.	Fine not exceeding UShs 500,000 and/or imprisonment for up to two years.
Making a false or misleading statement to an officer of URA in a material particular, knowingly or recklessly.	Fine not exceeding UShs 500,000 and/or imprisonment for up to 5 years.
Obstructing an authorised officer of the URA in the performance of his duties.	Fine not exceeding UShs 500,000 and/or imprisonment for up to two years.
Offering or making payment or reward to an officer of URA where ultimately tax revenue is or may be defrauded.	Fine not exceeding UShs 500,000 and/or imprisonment for up to five years.
An officer of URA committing the above offence.	Fine not exceeding UShs 500,000 and/or imprisonment for up to five years.

9.1 Returns

- 9.1.1** Failure to lodge a return or any other document within the time limit prescribed is an offence for which a fine not exceeding UShs 300,000 and /or imprisonment for a term not exceeding six months will be imposed.
- 9.1.2** After conviction, if that person still does not submit the return or document required within the period specified by the Commissioner-General, he will on conviction, be liable to a fine of UShs 50,000 for each day during which the failure continues and to imprisonment for three months without the option of a fine in lieu of imprisonment.
- 9.1.3** A person who fails to lodge a return within the time required will, in addition to the above fine, be liable to a penal tax of the greater of 200,000 or the 2% per month compounded of the tax payable for the period the return remains outstanding.
- 9.1.4** Where an offence is committed by a company, every person who, at the time of the commission of the offence, was a nominated officer, director, general manager, secretary or other similar officer is deemed to have committed the offence, unless that person can prove the offence was committed without his knowledge or consent and that he exercised all diligence to prevent the commission of the offence.

Section 53(2)

Section 62

9.2 Assessments

- 9.2.1** The Commissioner-General may issue an assessment for tax in the following cases:
- A person fails to lodge a return;
 - The Commissioner-General is not satisfied with the return lodged; or
 - The Commissioner-General has reasonable grounds to believe that a person will become liable to pay tax but is unlikely to do so.
- 9.2.2** The time limit for the Commissioner-General to issue an assessment as follows:
- Where fraud or gross or wilful neglect has been committed by, or on behalf of a person an assessment may be made at any time;
 - In any other case, an assessment will be made within five years after the date on which the return was lodged by the person.
- 9.2.3** The Commissioner-General may amend an assessment, as he considers necessary within the following time limits:
- Where fraud, or gross or wilful neglect has been committed by, or on behalf of a person, in respect of the period of assessment, the assessment may be amended at any time; and
 - In any other case, within three years after the service of the notice of assessment.

Section 34B

9.3 Objections and Appeals

- 9.3.1** Any person who is dissatisfied with a decision made by an officer of the URA may lodge an objection to the Commissioner-General within 45 days of receiving the notice of the decision. The objection must be in writing and must state the grounds for objection.
- 9.3.2** The Commissioner-General is expected to make a decision and notify within 30 days of the objection being lodged. If the Commissioner-General does not respond within this period, the objection is treated as being allowed.
- 9.3.3** The Commissioner-General may accept a late notice of objection if he is satisfied that owing to absence from Uganda, sickness or other reasonable cause, that person was prevented from lodging the objection within the time limit set and there has been no undue delay in lodging the objection.

9.4 Appeals

- 9.4.1** A person who is not satisfied with an objection may lodge an application for a review of the objection decision to the Tax Appeals Tribunal within 30 days of being served with a notice.
- 9.4.2** A person shall, before lodging an application with the Tribunal, pay to the Commissioner-General, thirty percent of the tax in dispute or that part of the tax assessed not in dispute, whichever is the greater.
- 9.4.3** A person who is dissatisfied with the decision of the Tax Appeals Tribunal may, within thirty days after being notified of the decision, lodge a notice of appeal with the Registrar of the High Court and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceedings before the Tribunal.
- 9.4.4** An appeal to the High Court shall be made on a question or questions of law that are to be raised in the appeal. The burden of proving that an assessment is excessive is on the person objecting.

Appendix: Exempt supplies (second schedule)

- a) The supply of unprocessed foodstuffs, unprocessed agricultural products and livestock;
- b) The supply of postage stamps;
- c) The supply of financial services;
- d) The supply of insurance services;
- e) The supply of unimproved land;
- f) A supply by way of lease or letting of immovable property, other than:
 - i) A sale, lease or letting of commercial premises;
 - ii) A sale, lease or letting of hotel or holiday accommodation; or
 - iii) A sale, lease or letting for periods not exceeding three months; or
 - iv) A sale, lease or letting for parking or storing cars or other vehicles; or
 - v) A sale, lease or letting of service apartments;
- g) The supply of education services;
- h) The supply of veterinary, medical, dental, and nursing services;
- i) The supply of social welfare services;
- j) The supply of betting, lotteries, and games of chance;
- k) The supply of goods as part of the transfer of a business as a going concern by one taxable person to another taxable person;
- l) The supply of burial and cremation services;
- m) The supply of precious metals and other valuables to the Bank of Uganda for the State Treasury;
- n) The supply of passenger transportation services (other than tour and travel operators);
- o) The supply of petroleum fuels, subject to excise duty, (motor spirit, kerosene and gas oil), spirit type jet fuel, kerosene type jet fuel and residual oils for use in thermal power generation to the national grid;
- q) The supply of dental, medical and veterinary equipment;
- r) The supply of feeds for poultry and livestock;
- s) The supply of machinery used for processing of agricultural or dairy products;
- t) The supply of photosensitive semiconductor devices, including photovoltaic devices whether or not assembled in modules or made into panels, light emitting diodes; solar water heaters, solar refrigerators and solar cookers;
- u) The supply of accommodation in tourist lodges and hotels outside Kampala District;
- v) Supply of computers, desk top printers, computer parts and accessories;
- w) The supply of computer software and software licences;
- x) The supply of life jackets, life saving gear, headgear and speed governors;
- z) The supply of mosquito nets, insecticides and acaricides;

- (aa) The supply of specialised vehicles, plant and machinery, feasibility studies, engineering designs, consultancy services and civil works related to hydroelectric power, roads and bridges construction, public water works, agriculture, education and health sectors.
- (bb) The supply of contraceptive sheaths and examination gloves;
- (cc) The supply of Liquefied Petroleum Gas.
- (dd) The supply of any goods and services to the contractor and subcontractor of hydroelectric power projects;
- (ee) The supply of diapers,
- (ff) The supply of salt;
- (gg) The supply of motor vehicles or trailers of a carrying capacity of 3.5 tonnes or more designed for the transport of goods.
- (hh) the supply of packing materials exclusively used by the milling industry for packing milled products;
- (ii) the supply of packing materials exclusively used by the dairy industry for packing milk.
- (jj) the supply of biodegradable packaging materials
- (kk) the supply of solar energy
- (ll) the supply of ambulance

The following supplies are specified for the purposes of Section 24(4) as zero-rated supplies under the Third Schedule:

- (a) A supply of goods or services where the goods or services are exported from Uganda as part of the supply;
- (b) The supply of international transport of goods or passengers and tickets for their transport;
- (c) The supply of drugs and medicines;
- (d) The supply of educational materials and the supply of printing services for educational materials;
- (e) The supply of seeds, fertilisers, pesticides, and hoes;
- (f) The supply of cereals, where the cereals are grown, milled or produced in Uganda;
- (g) The supply of machinery, tools and implements suitable for use only in agriculture;
- (h) The supply of milk, including milk treated in any way to preserve it;
- (i) The supply and installation of Mobile Toilets, Ekoloo Toilets, and components made from polythene with effect from 1 July 2004;
- (j) The supply of sanitary towels and tampons, and inputs for their manufacture;
- (k) The supply of leased aircraft, aircraft engines, spare engines, spare parts for aircraft and aircraft maintenance equipment.

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