

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





## Introduction

Section 67 of the Value Added Tax Act, 2013 (VAT Act) confers powers to the Cabinet Secretary (CS) for the National Treasury and Planning to draft the necessary legal guidelines for better implementation of the provisions of the VAT Act. Pursuant to the above, the CS on 10th September 2020, published the above regulations related to The Value Added Tax (Electronic Tax Invoices) Regulations, 2020.

The introduction of the new regulations aims to foster compliance through improved accuracy, better record management and also minimize the VAT Auto Assessment reconciliation challenges that have been facing taxpayers for the past 2 years. In a digital world Integrated Management Information Systems are core pillars of data collections, analytics and compliance. This has improved efficiency and effectiveness of revenue collection.

Kenya Revenue Authority rolled out the 7th Corporate plan for 2019 to 2021 in which it set out strategic goals to increase revenue. Through this KRA has taken steps to introduce new systems and software to aid in data collection, processing and sorting. Key among them is Taxpayers Information Management Systems (TIMS) project and Customs Management System.

Prior to this, the enactment of the Value Added Tax (VAT) Regulations 2017, brought about a debate on the legality of using electronic tax registers when issuing an invoice as the regulations deleted the relevant provision. We have tabulated some of the notable changes from the recently published guideline, introduced to regulate the operations of electronic tax invoices (ETI).

# Legal Notice: 189

## Electronic Tax Invoice Regulations, 2020 Alert

### Regulations

#### Use and availability of the register

(Regulations 5  
and 6)

### VAT(Electronic Tax Registers) Regulations, 2004

The user of the register refers to any person who was within the scope of Paragraph 6(5) of the Seventh Schedule of the VAT Act. The old Act has since been replaced with VAT Act 2013.

Regulation 5 of the old regulations provides that a user shall ensure

- Recording of own sales not of another supplier;
- Ensure each sale is recorded; and
- In times of non-availability /failure of register shall inform The Commissioner who shall approve a substitute means of recording.

### VAT Electronic Tax Invoice Regulations, 2020

The regulations apply to suppliers who fall within the scope of Section 34 of the VAT Act 2013. This requires suppliers who make taxable supplies above five million shillings per annum to register for VAT.

Regulation 6 provides that the use of a register shall ensure achievement of the following:

- Proper recording of each sale;
- Generation of invoice for each transaction;
- Transmit the invoice to the purchaser and invoice details to the Commissioner of Domestic taxes;
- Ensure continuity of operations of the register should there be a power interruption or failure.

### Grant Thornton Commentary

The new Regulations seeks to reinvigorate the original objective of introduction of ET where the requirements are largely similar save for the fact that, the invoice details must be transmitted to KRA upon issuance.

#### Availability of a register (Regulation 7)

- Regulation 7 of the Value Added Tax(Electronic Tax Registers) Regulations 2004 provides for the user to notify the Commissioner where continuity in operation has been hindered.

Regulation 7 provides that the user of the register shall:

- Ensure continuity of operations of the register if there is an interruption of power supply.
- User shall notify the Commissioner within 24 hours when ETR malfunctions and record sales using approved means by KRA.

### Grant Thornton Commentary

- This regulation provides that a user must ensure continuity of operations in the case an interruption of power supply. Consequently, they also require the business suppliers to ensure compliance by providing alternative means for recording. The guidelines do not however clarify the measures to be adopted by business to ensure alternative recording.





## Regulations

### Obligations of the user of a register (Regulation 8)

## VAT(Electronic Tax Registers) Regulations, 2004

Regulations 6 and 7 of the regulations provided for user duties and obligations as follows:

- Shall ensure preparation of daily, monthly and annual reports
- Ensure the
- Report any malfunctioning of the register;
- Keep copies of daily, monthly and annual reports for a period of up to 5 years;
- Ensure that there is inspection of the register by a service person every 6months.

### ▪ Grant Thornton Commentary

This regulation places emphasis on tax payers responsibilities with respect to proper maintenance of the registers

## VAT Electronic Tax Invoice Regulations, 2020

Regulation 8 of states that a supplier shall endeavor to ensure that:

- Availability of the register at all point of sale;
- ensure the register is regularly serviced to ensure the register's proper functioning at all times;
- Regular and proper maintenance of the machine; and
- Recording of the purchase and purchaser details is complete in the register as well as other requirements KRA may seek.

# Legal Notice: 189

## Electronic Tax Invoice Regulations, 2020 Alert

### Regulations

**Tax invoices, credit notes and debit notes.**

**(Regulation 9)**

**Specifications of a register**

**(Regulation 10)**

### VAT(Electronic Tax Registers) Regulations, 2004

Regulation 6 of the old regulations also provided that the ETR should prepare daily, monthly and annual reports. Additionally, the regulation sets out to ensure the following are contained in the reports.

- The date of the report;
- The name and address of the user;
- The VAT identification number of the user of the register;
- The unique identification number of the register;
- The total value of sales in respect of the period covered by the report;
- The total tax paid in respect of the period covered by the report.

#### ▪ Grant Thornton Commentary

In Comparison the 2004 regulation, the current regulations have introduced more features on the tax invoice. Specifically with respect to description of goods and services to be supplied. This is justified by embedding the QR codes feature in the ETI as well as creating room for addition of new descriptive data or features on the sellers.

Regulation 4 provided for the technical requirements to be inline with Regulation 6(5) of the Seventh Schedule of the VAT Act.

Therefore, the Commissioner required that the users to have:

- General Packet Radio Service (GPRS) enabled electronic tax register;
- A prescribed ETR machine by the tax man for purpose of data access.
- Have two display screens;
- Have emergency power supply;
- Have a module with a memory; and
- Have a safety device and potential for interconnectivity to external network

#### ▪ Grant Thornton Commentary

Regulation 10 is aimed at supplementing the Tax Invoice Management System (TIMS) which is a solution aimed at integrating KRA system with the trader systems. The program as part of KRA digitalization goal rolled out by the 7th Corporate Strategic Plan. We expect that, KRA will publish a list of authorized registers to facilitate smooth implementation of the regulations.

### VAT Electronic Tax Invoice Regulations, 2020

Regulation 9 states that a tax invoice generated from a register shall contain:

- The PIN of registered user;
- The time and date of issuance;
- The serial number of the invoice;
- The buyer's PIN;
- The total gross amount;
- The total tax amount;
- The item code of supplies;
- The description of goods & services;
- The unique register identifier;
- The unique invoice identifier; and
- A quick response code (QR Code)

Regulation 10 of the new regulations has introduced the following features for the new ETI machines:

- Interconnectivity with Information technology networks ;
- Ability to store records;
- Be secure & tamper proof;
- Transmission of tax invoice data at closure of business; and
- Quick Response code (QR code).

And also the ETI must have the ability to:

- Integrate with the Authority's systems;
- Transmit or connect to device that will transmit recorded data to the systems and
- Capture the information required under these regulations

# Legal Notice: 189

## Electronic Tax Invoice Regulations, 2020 Alert

### Regulations

#### Transmission of data (Regulation 11)

### VAT(Electronic Tax Registers) Regulations, 2004

Regulation 8 required the supplier to maintain the register ledger. The ledger stored the records of person servicing the ledger and also transaction details

Regulation 8(3) states that the A user of a register shall safely keep the register ledger and avail it for inspection whenever required by the Commissioner to do so.

Given the previous internet availability KRA relied on manual records prior to 2007 and later started the utilizing digital information relayed by register as technology upgraded.

### VAT Electronic Tax Invoice Regulations, 2020

Regulation 11 has added a new feature on the ETI that is the ability to submit tax invoice data to the Commissioner of Domestic Taxes (KRA) on a daily basis. Also the ETI machines shall be capable of:

- Printing or providing stored data;
- Storing data in an unintelligible manner to non authorised users;
- Maintenance of data integrity;
- Securing authentication for authorised users;
- Capturing a log of activities; and
- Assigning a unique identifier to each invoice.

#### ▪ Grant Thornton Commentary

In respect of the new data age and revolution in technology, the new rule on transmission of data on a daily basis is aimed to increase and improve data collection. This will allow KRA to estimate and establish data patterns to forecast tax collections in advance. The data sent will also be used for compliance purposes and also populate data models on local supplies as well as imports.

#### Failure to comply / Offence

Regulation 9 imposed a penalty for non-compliance. The failure to comply to the provisions outlined attracted a penalty.

Regulation 12 provides that a person who is registered as a supplier under VAT Act will be required to comply with the regulations within twelve months the regulations come in operations

The Commissioner of Domestic Taxes may grant an extension to comply where a business owner applies for it 30 days prior to the deadline of the September 2021.

#### ▪ Grant Thornton Commentary

This is considered a negative reinforcement aimed to deter non-compliance amongst the suppliers. The penalty applicable would be a fine not exceeding one million shillings





## Regulations

**Deadline /  
Waiver for  
registration**

**(Regulation  
13)**

## VAT(Electronic Tax Registers) Regulations, 2004

There was no deadline stipulate on the regulations. Taxpayers within the legal threshold of the “ User of the Register” were required to automatically enroll and install ETR machines in their point of sales.

## VAT Electronic Tax Invoice Regulations, 2020

Regulation 13 provides that a person who is registered as a supplier under VAT Act will be required to comply with the regulations within twelve months the regulations come in operations

The Commissioner of Domestic Taxes may grant an extension to comply where a business owner applies for it 30 days prior to the deadline of the September 2021.

### ▪ Grant Thornton Commentary

This is a tentative approach to gradually roll out the new system to the taxpayers and also to check for any challenges in implementing the new ETI requirements. Therefore KRA has adopted to offer a grace period of one year to ensure smooth transition of the regulations into the business environment.

## Conclusion

The government move to outline the regulations sets the platform for better compliance and to reduce the VAA reconciliation due to missing supplier records. The data collected is to be enjoined with i-Tax system to help curb non-compliant sales in the country.

We urge you as a business person to take the necessary steps to seek further guidance on how the new rules will impact your business. The ongoing roll out of new tax regulations on ETI and digital taxes will aide in achieving the TIMS strategic goal plan prior to 2021. Later we can expect a new government approach to dealing with indirect taxes and sales taxes.

## Get in Touch

Please get in touch with us to find out more about how this affects you.

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