

Legal Notice No. _____

THE TAX PROCEDURES ACT

Cap 469B

<p>IN EXERCISE of the powers conferred by Section 112 of the Tax Procedures Act (CAP 469B), the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations –</p>	
<p>THE TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2023</p>	
<p>Citation</p>	<p>1. These Regulations may be cited as the Tax Procedures (Electronic Tax Invoice) Regulations, 2023.</p>
<p>Interpretation</p>	<p>2. In these Regulations, unless the context otherwise requires –</p> <p>“Act” means the Tax Procedures Act (CAP 469B);</p> <p>“authorised officer” means an officer appointed under section 3 of the Act;</p> <p>“commissioner” shall have the meaning assigned to it in section 3 of the Act;</p> <p>“emoluments” means income subject to section 5 under the Income Tax Act (CAP 470);</p> <p>“imports” means goods or services imported from a foreign country under the East Africa Community Customs Management Act,;</p> <p>“foreign country” means any country other than Kenya;</p> <p>“Personal Identification Number” or “PIN” has the meaning assigned to it under section 3 of the Act;</p> <p>“system” means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and</p> <p>“user of a system” means a person who carries on business.</p>
<p>Application</p>	<p>3. These Regulations shall apply to any person carrying on business unless the person is exempted in accordance with Section 23A of the Act.</p>

<p>Use of a system</p>	<p>4. (1) A user of a system shall use the system in accordance with these Regulations.</p> <p>(2) The user of the system shall ensure that-</p> <ul style="list-style-type: none"> (a) each sale is recorded in the system; (b) an invoice is generated in respect of each sale through the system; and (c) each invoice generated through the system in respect of each sale shall contain the information specified in Regulation 7. <p>(3) The user of a system shall-</p> <ul style="list-style-type: none"> (a) transmit the invoice generated with respect to sale to the buyer; (b) transmit the invoice details to the Commissioner in accordance with Regulation 8; and (c) register, record and maintain the stock in and stock out in the system as follows - <ul style="list-style-type: none"> (i) The taxpayer shall record all local purchases and imports. (ii) The taxpayer shall notify the Commissioner in writing within 30 days before closure of business indicating records of current stock; (iii) In case there is transfer of stock upon closure of business, the taxpayer shall notify the Commissioner in writing the stock, quantity and their levels. (iv) Upon closure of the business, the taxpayer shall ensure that they account for all relevant taxes under the applicable tax laws. <p>(4) A system shall be exclusively used by the registered user of that system.</p>
<p>Availability of a system</p>	<p>5. (1) The user of a system shall ensure continuity of operations of the system at all times;</p> <p>(2) Where a user of a system cannot use the system for any reason, the user shall-</p>

	<p>(a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the system; and</p> <p>(b) record sales using any other means as may be specified by the Commissioner.</p> <p>(3) Once the user of a system is able to use the system, the user shall enter into the system the sales recorded under paragraph (2) (b).</p>
<p>Obligations of the user of a system</p>	<p>6. (1) A user of the system shall-</p> <p>(a) Ensure availability of the system at the point of sale;</p> <p>(b) facilitate the inspection of the system by an authorised officer;</p> <p>(c) ensure the system is regularly updated to ascertain the system's proper functioning at all times;</p> <p>(d) keep and maintain a system ledger in which a record of the maintenance and update of the system's software is entered into and which shall contain-</p> <p>(i) The name and address of the person maintaining the system; and</p> <p>(ii) An entry for each time the system is maintained, describing the maintenance and shall be signed by the person performing the service; and</p> <p>(e) Comply with such other requirements as may be specified by the Commissioner.</p> <p>(2) Where a user of a system intends to discontinue the use of system due to-</p> <p>(a) change of business model;</p> <p>(b) closure of business; or</p> <p>(c) any other reason,</p> <p>the user shall notify the Commissioner, in writing, of the intended discontinuation within thirty days prior to the discontinuation.</p> <p>Provided that, in the case of a notification under sub-regulation (2)(b) where the closure was unplanned, within 7 days after the event causing the closure.</p> <p>(3) Where a notification is made under sub-regulation(2), the</p>

	Commissioner may, by notice in writing and within thirty days, retire the system.
Tax invoices, credit notes and debit notes	<p>7. (1) An electronic tax invoice generated from a system shall contain-</p> <ul style="list-style-type: none"> (a) The PIN of the registered user of the system; (b) the time and date of issuance; (c) the serial number of the invoice; (d) the buyer’s PIN or details identifying the buyer where applicable; (e) the total gross amount; (f) the total tax amount where applicable; (g) the item code of supplies as provided by the Commissioner; (h) a brief description of goods and services; (i) the quantity of supply; (j) the unit of measure; (k) the tax rate charged where applicable; (l) the unique system identifier; (m) the unique invoice identifier; (n) a quick response (QR) code; and (o) any other requirement as may be specified by the Commissioner. <p>(2) Where a user of a system issues a credit note or a debit note, the credit note or debit note shall reference the original invoice number to which the supply relates.</p>
System Specification	<p>8. A system shall-</p> <ul style="list-style-type: none"> (a) be capable of inter-connectivity with information technology networks; (b) have sufficient storage to maintain records; (c) display clear messages in the official languages; (d) be secure and tamper-proof; and

	<p>(e) be capable of –</p> <ul style="list-style-type: none"> (i) integrating with the Authority’s systems; (ii) transmitting its data to the systems; (iii) allowing for any changes in the tax laws; and (iv) capturing the information required under these Regulations.
Transmission of invoice data and security	<p>9. A system shall be capable of –</p> <ul style="list-style-type: none"> (a) Transmitting to the Authority’s system, the electronic tax invoice data in the manner specified by the Commissioner; (b) printing or providing stored data; (c) maintaining the integrity of the data; (d) securing authentication for authorized users; (e) capturing the log of all activities; and (f) assigning a unique identifier to each invoice.
Electronic Tax Invoicing exclusions	<p>10. The following are the exclusions from the requirement of an electronic tax invoice:</p> <ul style="list-style-type: none"> (a) Emoluments; (b) imports; (c) investment allowances; (d) airline passenger ticketing; (e) interest; (f) a non-resident person without a permanent establishment in Kenya; and (g) any other exclusion as may be provided under section 23A of the Act.
Electronic Tax Invoicing exemption	<p>11. (1) The Commissioner may, by notice in the Gazette, exempt a person from the requirements of the use of an Electronic Tax Invoice.</p> <p>(2) The Commissioner may, by notice in the Gazette, revoke any exemption granted under sub-regulation 11(1) and give reasons</p>

	thereof.
Offences and Penalties	<p>12. (1) A person commits an offence if the person –</p> <p>(a) fails to comply with any provisions of these regulations; or</p> <p>(b) tampers, manipulates or interferes with the proper functioning of the system including uninstallation and change of the device without notifying the Commissioner.</p> <p>(2) A person who commits an offence under these regulations shall be liable to pay the penalty specified under Section 86 of the Act.</p>
Revocation L. No. 189 of 2020	<p>13. The Value Added Tax (Electronic Tax Invoice) Regulations, 2020 are revoked.</p>

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National Treasury and Economic Planning.