

## SEVENTH SCHEDULE (s. 28)

### INVOICES, RECORDS AND RETURNS

1. Subject to paragraph 2, a registered person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing the prescribed details-

(a) in the case of a supply on credit, at the time of the supply or within fourteen days of the completion thereof; or

(b) in the case of a cash sale, immediately upon payment for the supply:

Provided that the registered person may, subject to such conditions as the Commissioner may impose-

(i) where cash sales are made from retail premises, furnish the purchaser with a simplified tax invoice containing the prescribed details; or

(ii) where cash sales to any one person in a day do not exceed five hundred shillings, account for tax in such manner as the Commissioner may authorize.

2. Notwithstanding the provisions of paragraph 1, where upon application by a registered person, the Commissioner is satisfied that owing to the nature of a business, it is impracticable for the registered person to issue a tax invoice in accordance with that paragraph, the registered person may account for tax in such other manner as the Commissioner may authorize.

3. The amount of tax payable, if any, shall be recoverable by the registered person from the purchaser in addition to the sale price.

4. (1) No invoice showing an amount which purports to be tax shall be issued on any supply-

(a) which is not a supply of taxable goods or taxable services; or

(b) by a person who is not registered.

(2) Any person who issues an invoice in contravention of subparagraph (1) shall be guilty of an offence, and any tax shown **thereon** shall become due and payable to the Commissioner within seven days of the date of the invoice.

5. (1) Any person who fails to comply with the requirements of paragraph 1 shall be guilty of an offence and any goods in connection with which the offence was committed shall be liable to forfeiture.

(2) Notwithstanding the provisions of subparagraph (1), any person who fails to comply with the provisions of paragraph 1 shall be liable to pay a default penalty of not less than ten thousand shillings but not exceeding two hundred thousand shillings.

6. (1) Every taxable person shall, in accordance with the regulations, keep full and true records written up-to-date of all transactions which may affect his tax liability.

(2) Any person who fails to keep records as prescribed under subparagraph (1) shall be liable to pay a default penalty of not less than ten thousand shillings but not exceeding two hundred thousand shillings.

(3) Every person required by subparagraph (1) to keep records shall at all reasonable times make them available to an authorized officer and shall give the officer every facility necessary to inspect the records.

(4) Any person who contravenes subparagraph (3) shall be guilty of an offence.

(5) For the purposes of this paragraph, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register of such type and description as may be prescribed, for the purpose of accessing information regarding any matter or transaction which may affect the tax liability of such person.

(6) A person to whom subparagraph (5) applies shall be entitled, with the prior approval of the Commissioner, to recover the cost of the electronic tax register from the tax payable by such person.

7. Every registered person shall, not later than the twentieth day of each month, submit to the Commissioner a return in the prescribed form-

(a) showing separately for each rate of tax particulars of the total value of supplies, the rate of tax to which the supplies are liable and the amount of tax payable, for any taxable supplies made by him during the month immediately preceding that in which the return is made;

(b) showing separately for each rate of tax the total value of taxable supplies, the tax rate at which tax was paid, and the amount of tax paid in respect of which deductible input tax is claimed;

(c) if such be the case, stating that no such supplies were made or received during the preceding month; and

(d) containing such other matters as may be prescribed.

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8. A return sent by a registered person by post shall be deemed to have been received by the Commissioner on the post mark date provided that the envelope containing the return is sent on or before the 15th day of the month referred to in paragraph 7:

Provided that if the post mark date is not legible, the return shall be deemed to have been received by the Commissioner within three working days before the date of receipt.

9. (1) Where, in the opinion of the Commissioner, any person has failed to pay any of the tax which has become payable by him under this Act by reason of-

(a) his failure to keep proper books of account, records or documents, required under this Act, or the incorrectness or inadequacy of those books of account, record, or documents; or

(b) his failure to make any return required under this Act, or delay in making any such return or the incorrectness or inadequacy of any such return; or

(c) his failure to apply for registration as a taxable person under this Act,

the Commissioner may, on such evidence as may be available to him, assess the amount of tax due and that amount of tax shall be due and payable forthwith by the person liable to pay the tax:

Provided that the Commissioner may, in special cases referred to him by an authorized officer, adjust or review the amount of tax assessed under this paragraph in such manner as may be just and reasonable in the circumstances.

(2) Any registered person who fails to submit a return as required under subparagraph (1) within the period allowed shall be liable to a penalty of ten thousand shillings or five percent of the tax due, whichever is the higher.

(2A) a registered person who fails to submit a return under paragraph 7(c) shall be liable to a penalty of ten thousand shillings.

Provided that a registered person who submits a return within the period allowed under paragraph 7 but fails to pay the tax as required under section 13 shall be liable to a default penalty of ten thousand shillings.

(3) The Commissioner may grant remission of a default penalty imposed under paragraphs 5(2), 6(2) and 9(2) in individual cases where he is satisfied that it is justifiable to do so and shall make quarterly reports to the Minister on each remission so *granted*:

Provided that where the amount of the penalty exceeds five hundred thousand shillings, the grant of remission shall be subject to the written approval of the Minister.

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**EIGHTH SCHEDULE [s.8 (2) (3)]****PART A - PUBLIC BODIES, PRIVILEGED PERSONS AND INSTITUTIONS WITH ZERO-RATED STATUS ON IMPORTS AND PURCHASES**

Taxable goods shall be zero-rated when imported or purchased before clearance through the customs or purchased before the imposition of tax by or on behalf of the following public bodies, privileged persons and institutions subject to the limitations specified in this Schedule:

**1. The President.**

Goods for use by the President.

**2. The Kenya Armed Forces.**

All goods, including materials, supplies, equipment, machinery and motor vehicles for the official use of the Kenya Armed Forces.

**3. Commonwealth and Other Governments.**

(1) Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth Government for their personal use or for consumption on board such a vessel.

(2) Goods for the use of any of the armed forces of any allied power.

**4. Diplomatic Privileges.**

(1) Goods for the official use of the United Nations or its specialized agencies or any Commonwealth high commission or of any foreign embassy, consulate or diplomatic mission.

(2) Goods for the use of a high official of the United Nations or its specialized agencies or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such zero-rated status is made by the Minister responsible for foreign affairs.

(3) On first arrival in Kenya or within ninety days of the date of arrival, the household and personal effects, including one motor vehicle, imported or purchased by an employee of the United Nations or of its specialized agencies, a Commonwealth high commission, or a foreign embassy, consulate or diplomatic mission where the employee -

(a) is not engaged in any other business or profession in Kenya; and

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(b) has not been granted a zero-rated status under item 5(1) and (2) under this Part, or item 4(3) of Part B, of this Schedule.

### **5. Aid Agencies.**

(1) Household and personal effects of any kind including one motor vehicle imported or purchased by entitled personnel or their dependants within ninety days of their first arrival in Kenya, or such longer period, not exceeding three hundred and sixty days from the date of arrival, as may be approved by the Treasury in specific cases, where the entitled personnel and their dependants have not been granted zero-rated status under item 4(3) of this Part, or item 4(3) of Part B, of this Schedule:

Provided that this zero-rated status shall apply –

- (i) to entitled personnel who may have arrived for a new contract for a term of not less than two years notwithstanding their previous residential status in Kenya while in execution of another aid project;
- (ii) only once in every four years in respect of a motor vehicle where there is an ongoing project;
- (iii) to an additional motor vehicle where there is a bilateral agreement between the Government and an aid agency entered into prior to 10<sup>th</sup> June, 1999.

One motor vehicle which the Commissioner is satisfied is imported or purchased as replacement for a motor vehicle originally imported or purchased under paragraph (1) which has been written off due to accident, fire or theft where the Minister's written approval of such importation or purchase is obtained:

Goods imported for official use of the Aid Agencies subject to approval by the Treasury.

Provided that the tax shall be payable at the appropriate rate if the goods referred to in paragraphs (1), (2) and (3) of this item are disposed of locally, unless they are sold to persons or a body entitled to purchase such goods without the payment of tax.

### **6. The East African Development Bank.**

Goods and equipment imported by the East African Development Bank for its official use.

### **7. The War Graves Commission.**

Goods, including official vehicles but not including office supplies and equipment or the property of the Commission's staff, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission.

### **8. The British Council.**

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Goods for use by the British Council which are or will be a charge against the funds of the Council, not including goods for resale or for the personal use of the staff of the Council.

## 9. Charitable Institutions.

### (1) Goods, being *bona fide* gifts -

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(a) which the Commissioner is satisfied are imported or purchased by or consigned to charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act, or by the Non-Governmental Organisations Co-ordination Board under section 10 of the Non-Governmental Organisations Co-ordination Act, 1990 and whose income is exempt from tax under paragraph 10 of the First Schedule to the

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Income Tax Act and approved by the Commissioner of Social Services for free distribution to poor and needy persons or for use in medical treatment or rehabilitation work in charitable institutions, provided that the Treasury, has given its approval in writing where the tax would exceed Sh.500,000 ;

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(b) consigned to or imported or purchased by any organizations if the Commissioner is satisfied that they are for free donation to charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act, or by the Non-Governmental Organisations Coordination Board under section 10 the Non Governmental Organisations Co-ordination Act, 1990 and whose income is exempt from tax under paragraph 10 of the First Schedule to the. Income Tax Act and approved by the Commissioner of Social Services for free distribution to

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poor and needy persons or for use in medical treatment or rehabilitation work provided that the Treasury has given its approval in writing where the tax would exceed Sh. 500,000.

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(c) including equipment, motor vehicles,(excluding passenger motor vehicles of a seating capacity of upto twenty-six persons), vessels and aircraft, consigned to or imported by any organization, if the Commissioner is satisfied that they are for free donation to charitable organizations registered as such, by the Registrar of Societies under section 10 of the. Societies Act, or by the Non-Governmental Organisations Co-ordination Board under section 10 of the Non Governmental Organisations Co- ordination Act, 1990 and whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act and approved by the Commissioner of Social Services for

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use by the charitable organization in medical treatment or rehabilitation work, provided that the Treasury has given its approval in writing where the tax exceeds Sh. 500,000.

(2) Goods consigned to or purchased by the St .John Ambulance for use in its activities and for first aid training.

(3) (a) Goods consigned to or purchased by the Kenya Red Cross for free distribution in relief work, subject to such limitations and conditions as the Commissioner may impose; and

(b) equipment, motor vehicles and aircraft donated for alleviation of hardship or disaster, subject to such limitations and conditions as the Commissioner may impose, provided the Treasury has given its approval in writing where the tax exceeds Sh. 500,000.

(4) Articles or equipment not intended for resale and not including consumable stores or provisions, for use by the Missions to Seamen or other similar organizations approved for the purpose of this paragraph by the Minister, subject to such limitations and conditions as the Commissioner may impose.

(5) Foodstuffs, vehicles, equipment and other commodities imported or purchased for the National Freedom from Hunger Committee in Kenya exclusively for use in connection with the official activities of the National Freedom from Hunger Campaign of Kenya.

**10. Youth Associations (Deleted by Finance Act 2001).**

**11. Disabled, Blind and Physically Handicapped Persons.**

Materials, articles and equipment, including motor vehicles, which-

(a) are specially designed for sole use by disabled or physically handicapped persons; or

(b) are intended for the educational, scientific or cultural advancement of the blind for the use of an organization approved by the Government for the purpose of this zero-rating;

***Provided that-***

The zero rating in paragraph (a) shall only apply-

( AA) once in every four years;

(BB) to a person who has not enjoyed another zero rating under the provisions of this Act;

Paragraph (b) does not apply to motor vehicles;

***12. Blind Persons (Deleted by Finance Act 2001).***

**13. The President's Award Scheme.**

Badges and record books for use exclusively in the President's Award Scheme.

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**14. The Desert Locust Control Organization and International Red Locust Control.**

(1) Goods, including motor vehicles, scientific equipment, apparatus, chemicals, petroleum fuels and other materials imported or purchased by the Desert Locust Control Organization for East Africa for its official use or for the personal use of such members of that organization as may be declared to be entitled officers by the Ministry responsible for foreign affairs.

(2) One motor vehicle imported or purchased within three months of first arrival in Kenya by an entitled officer of the Desert Locust Control Organization for his personal use.

(3) Goods imported or purchased for the official use of the international Red Locust Control Organization for Central and Southern Africa.

**15. The Navy, Army and Air Force Institute and the Armed Forces Canteen Organization.**

Goods for the Navy, Army and Air Force Institute and the Armed Forces Canteen Organization, subject to such limitations and conditions as the Commissioner may specify, provided that such goods are marked with the inscription "NAAFI" or "AFCO", as the case may be, or where it is unsuitable to mark the goods, the containers, bags or packets thereof shall be so marked.

**16. The Agricultural Society of Kenya (Deleted by Finance Act 2001).****17. The Wellcome Trust.**

(1) All equipment and drugs imported or purchased by the Wellcome Trust, with the prior approval of the Ministry of Health, for use in connection with medical research.

(2) Motor vehicles imported or purchased by the Wellcome Trust, with the prior approval of the Ministry of Health and paid for by the Trust, for use by personnel of the science laboratories operated by the Trust.

**18. The African Medical and Research Foundation.**

*Bona fide* gifts, or materials and equipment, consigned to or purchased by the African Medical and Research Foundation including-

(1) high frequency single side band radio transceivers, spares and accessories; antenna materials and fittings, radio alert alarm transmitter receivers and accessories;

(2) filming materials, strip slide projectors and surgical instruments;

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(3) drugs;

(4) aircraft, aircraft equipment and spares, but not including (either as gifts or otherwise) motor vehicles;

Provided that materials and equipment specified in paragraphs (1), (2) and (3) shall be for the sole use of the above Foundation or for loan to hospitals and clinics but not for the purpose of distribution to any person or institution by way of gift.

#### **19. Museum Exhibits and Equipment.**

(1) Museum and natural history exhibits and specimens and scientific equipment for public museums; and

(2) Chemicals, reagents, films, film strips and visual aids equipment, imported or purchased prior to clearance through customs by the National Museums.

#### **20. Deleted by Finance Act 2004**

#### **21. Returning Kenya Government's Foreign Missions Personnel.**

One personal motor vehicle (excluding buses and mini-buses of seating capacity of more than 13 passengers and a load carrying vehicle of a load carrying capacity exceeding two tonnes) imported by an officer or his spouse returning from a posting in Kenya's missions abroad and which is not zero-rated under item 6(4) of Part B of this Schedule:

Provided that the zero-rating under this item shall not apply -

(a) unless the public officer is recalled by the Government before he completes his normal tour of duty;

(b) unless, in the case of an officer's spouse, the spouse had accompanied the officer in the foreign mission and is returning with the officer;

(c) to an officer who has been recalled for re-posting to another mission outside Kenya;

(d) unless the motor vehicle was purchased prior to such recall;

(e) unless the zero-rating is approved in writing by the Treasury;

(f) if the officer or the spouse has either enjoyed a similar privilege within the previous four years from the date of importation or has imported a motor vehicle free of tax under item 6(4) of Part B of this Schedule within the two years immediately before his arrival.

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(g) unless the vehicle is imported within ninety days of the date of arrival of the officer or spouse, or such longer period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow.

## 22. Safari Rally Drivers.

(1) One motor vehicle for each Safari Rally driver and spare parts specified in paragraph (2), which-

(a) are imported or purchased prior to clearance through customs for use in the Safari Rally;

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(b) having been temporarily imported under section 143 of the Customs and Excise Act for use in the Safari Rally, are purchased during the period of temporary importation by a rally driver resident in Kenya for use in the Safari Rally;

(c) having been imported under conditions whereby they have been zero rated under this Schedule, or whereby remission or refund of tax has been granted by the Minister, are purchased by a rally driver resident in Kenya for use in the Safari Rally; and

(d) in the case of vehicles only, are assembled in Kenya and purchased by a rally driver for use in the Safari Rally.

(2) Paragraph (1) shall apply to the following spare parts imported by a rally driver for use in the Safari Rally-

(a) one engine assembly complete, or such individual parts making up one engine as the rally driver requires, including, in either case, a starter motor, alternator and clutch;

(b) one gear box assembly complete;

(c) one differential assembly and one front and rear axle assembly, or such individual parts making up one front and rear axle assembly as the rally driver requires;

(d) not more than four front suspension assemblies, or such individual parts making up those assemblies as the rally driver requires;

(e) not more than two sets of rear shock absorbers;

(f) not more than twelve rally type rims; and

(g) not more than thirty rally tyres.

(3) Zero rating under paragraph (1) is made on the conditions that-

(a) it applies only to motor vehicles and parts imported or purchased for use by bona fide rally drivers resident in Kenya and recommended by the Safari Rally Limited;

(b) where the motor vehicles or parts cease to be used, or, in the case of parts, to be assigned for use, for Safari Rally purposes, or are disposed of in Kenya to persons not entitled to zero rating, or remission of tax, tax shall, immediately become payable at the appropriate rate.

(4) Nothing in paragraph (3) (a) or (c) shall prevent a motor vehicle or spare parts from being used in other rallies in Kenya.

(5) Where a person to whom zero-rating or remission of tax has been granted under this item fails to take part in the rally, tax shall become payable at the rate applicable on the date the rally ends.

**23. Kenya Police, National Security Intelligence Service, Administration Police, Kenya Wildlife Service and Kenya Prisons.**

Equipment, machinery, uniforms, uniform materials and motor vehicles, including aircraft and vessels imported or purchased for the official use of the Kenya Police, National Security Intelligence Service, Administration Police, Kenya Wildlife Service and Kenya Prisons, with the written approval of the Treasury.

**24. University Lecturers (Deleted by Finance Act 2001).**

**25. Sports goods and equipment**

Goods imported or purchased by or on behalf of, or for donation to, the Ministry for the time being responsible for sports, with prior written approval of the Permanent Secretary to the Treasury given on the recommendation of the Permanent secretary to the Ministry responsible for sports, for sole use in the promotion of sports in Kenya;

**26. Registered Manufacturers in Customs Bonded Factories.**

Taxable goods imported by registered manufacturers approved by the Treasury, which are used in, wrought into or attached to goods manufactured by them for sale in the course of manufacture in a customs bonded factory.

**27. Permanent Secretaries, Provincial Commissioner, Clerk of the National Assembly and Judges (Deleted by Finance Act 2001).**

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**28. Aga Khan Development Network.**

Materials and equipment, including motor vehicles imported pursuant to the accord of co-operation for development, between the Government and the Aga Khan Development Network, subject to the written authority of the Permanent Secretary to the Treasury.

**29. Entrants in Motor Cycle Rallies.**

(1) One motor cycle specially designed for rallying for each entrant in a motor cycle rally and the spare parts thereof specified in paragraph (2), which-

- (a) are imported or purchased prior to clearance through Customs for use in a motor cycle rally;
- (b) having been imported under section 143 of the Customs and Excise Act for use in a motor cycle rally, are purchased during the period of temporary importation by an entrant in a motor cycle rally resident in Kenya for use in the rally;
- (c) having been imported under conditions whereby they have been zero-rated under this Schedule, or whereby remission or refund of tax has been granted by the Minister, are purchased by entrant in a motor cycle rally resident in Kenya for use in the rally; and
- (d) in the case of motor cycles, are assembled in Kenya and purchased by an entrant in a motor cycle rally for use in the rally.

(2) Paragraph (1) shall apply to the following spare parts imported or purchased by an entrant in a motor cycle rally for use in the rally-

- (a) one engine assembly;
- (b) four sets of front shock absorbers;
- (c) four sets of rear shock absorbers;
- (d) twelve pairs of tyres.

(3) Zero-rating under paragraph (1) shall be granted on condition that-

- (a) it applies only to motor cycles and parts thereof imported or purchased for use by bonafide entrants in a motor cycle rally resident in Kenya and recommended by the Automobile Association of Kenya;
  - (b) where the motor cycle or spare parts thereof cease to be assigned for use in rallying or are disposed of in Kenya to persons not entitled to zero-rating or
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remission of tax, tax shall become immediately payable at the appropriate rate; and

- (c) where a motor cycle imported or purchased pursuant to this item is not used in a rally, tax thereon shall immediately become payable at the rate applicable on the date the rally ends.

**30. Kenya Military and Police Officers returning from United Nations peace-keeping missions outside Kenya.**

One passenger motor vehicle (excluding buses and minibuses of a seating capacity of more than 8 passengers and load carrying vehicles of a load carrying capacity exceeding 1.5 tonnes) imported by a military or police officer returning from a United Nations peace-keeping mission outside Kenya:

Provided that: -

- (a) the motor vehicle was purchased prior to the return of the officer into the country;
- (b) the exemption from tax liability under this Act or any other Act shall not exceed the limits specified in the table hereunder:-

Category	Military Officers	Police Officers	Maximum Tax exempted
Category I	Private to Senior Sergeant	Constable to senior sergeant	<b>Kshs.800, 000/=</b>
Category II	Warrant officer to Captain	Inspector to Chief inspector	<b>Kshs.1,200,000/=</b>
Category III	Major to Full Colonel	Superintendent to Assistant Commissioner	<b>Kshs.1,500,000/=</b>
Category IV	Brigadier and above	Senior Assistant Commissioner and above	<b>Kshs.2,000,000/=</b>

**PART B - SPECIAL GOODS SUBJECT TO ZERO- RATING**

The following goods imported or purchased before clearance through the customs or purchased before payment of tax generally shall be zero rated:

**1. Aircraft Operations.**

(1) Any of the following goods which are imported or purchased for use by any airline designated under an air service agreement between Government and a foreign government-

(a) aircraft; parts and accessories thereof, including engines; air navigational instruments; lighting, radio and radar apparatus and equipment; equipment of a specialized nature for the repair, maintenance and servicing of an aircraft; specialized aircraft loading and unloading equipment; ground signs, stairways for boarding and loading aircraft; catering stores;

(b) kerosene and aviation spirit solely for use in aircraft engines.

(2) Any of the following goods which are imported or purchased for use by an approved ground handler or caterer –

(a) Equipment of a specialised nature for repairs, maintenance and servicing of an aircraft;

(b) Specialised aircraft loading and unloading equipment; and

(c) Stairways for boarding and loading aircraft.

(3) Aircraft spare parts imported or purchased by aircrafts operators or persons involved in the business of aircraft maintenance,

Provided that such spare parts shall be imported or purchased on the recommendation of the Director of Civil Aviation in such quantities and subject to such conditions as the Commissioner may specify.

(4) Jet fuel (Kerosene type) purchased by an aircraft owner or operator for use in an aircraft engine.

**2. Deceased Persons' Effects.**

Used personal effects, subject to such limitations as the Commissioner may impose, which are not for resale and have been the property of a deceased person and have been inherited or bequeathed to the person to whom they are consigned.

**3. Life Saving Apparatus.**

Life-belts, lifebuoys and other life saving equipment.

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**4. Passengers' Baggage.**

Goods imported by passengers arriving from places outside Kenya subject to the limitations and conditions specified in the following paragraphs.

(1) The goods shall be -

- (a) the property of and accompanying the passenger, except as provided in paragraph (8);
- (b) for the personal or household use of the passenger in Kenya;
- (c) of such kinds and in such quantities as the proper officer may allow.

(2) Notwithstanding paragraph (1)(c), the following goods shall not be zero-rated under this item -

- (a) alcoholic beverages of all kinds, perfumed spirits and tobacco and manufactures thereof except as provided in paragraph (7);
- (b) fabrics in the piece;
- (c) motor vehicles except as provided in paragraphs (3) and (4);
- (d) any trade goods, or goods for sale or disposal to other persons;
- (e) aircraft and vessels of all kinds;

(f) motor vehicles imported for temporary use or purpose including  
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(3) Subject to paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person on first arrival in Kenya whom the proper officer is satisfied is *bona fide* changing residence from a place outside Kenya to a place within Kenya, where that person has neither been granted zero-rating under this paragraph nor resided in Kenya before his arrival other than on temporary non-resident visits -

- (a) wearing apparel;
  - (b) personal or household effects of any kind which were for his personal or household use in his former place of residence;
  - (c) one motor vehicle (excluding buses or minibuses of seating capacity of more than 13 passengers or load carrying vehicles of a load carrying capacity exceeding two tonnes) owned by the person and registered either in his name or in the name of his spouse or in both names and
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used by him outside Kenya for at least ninety days (excluding the period of voyage in the case of shipment):

Provided that -

(i) the person has attained the age of eighteen years;

(ii) notwithstanding the definition of "owner" in section 2 of the Act, only the registered owner of a motor vehicle, or a person who satisfies the Commissioner either that the motor vehicle is registered in the name of his spouse or in both his name and that of his spouse or, where the motor vehicle is purchased on hire purchase terms the first instalment in respect thereof was paid and delivery taken at least ninety days prior to importation, shall qualify for zero-rating under this item;

(iii) the person is granted a work permit or a dependant's pass for a period of not less than two years.

(4) Subject to paragraphs (1), (2) and (5), the following goods may be zero-rated under this item when imported as baggage by a person whom the proper officer is satisfied is *bona fide* changing his residence from a place outside Kenya to a place within Kenya where that person has been residing outside Kenya for a period of at least two years and has not resided in Kenya for a period or periods amounting in aggregate to ninety days or more within the two years immediately before his arrival or return to Kenya -

(a) wearing apparel;

(b) personal or household effects of any kind which were for his personal or household use in his former place of residence;

(c) one motor vehicle (excluding buses and minibuses of a seating capacity of more than 13 passengers and load carrying vehicles of load carrying capacity exceeding two tonnes) owned by the person and registered in his name or in the name of his spouse or in both names and used by him outside Kenya for at least three hundred and sixty days (excluding the period of the voyage in case of shipment):

Provided that –

(i) the person has attained the age of eighteen years;

(ii) notwithstanding the definition of "owner" in section 2 of the Act, only the registered owner of a motor vehicle, or a person who satisfies the Commissioner either that the motor vehicle is registered in the name of his spouse or in both his



name and that of his spouse or, where the motor vehicle is purchased on hire purchase terms first instalment in respect thereof was paid and delivery taken at least three hundred and sixty days prior to importation, shall qualify for zero-rating under this item;

- (iii) Where the person has previously been granted zero-rating under this paragraph, any subsequent zero-rating shall not apply unless such person has used the goods so imported in Kenya for a period of not less than four years.

(5) The Commissioner may waive the ninety days condition referred to in paragraph (4) in respect of any period not exceeding three hundred and sixty days spent in Kenya, if he is satisfied –

(a) that the goods are imported by sportsmen who are recalled to participate or to represent Kenya in national or international sports competitions, subject to confirmation to that effect by the Permanent Secretary in the Ministry for the time being responsible for sports; or

(b) that the goods are imported by students who in the course of study in recognised educational institutions return to Kenya to carry out research, subject to confirmation by the sponsor and the educational institution, and on production of written approval by the Permanent Secretary in the Office of the President that the research is authorised;

(c) that the goods are imported by a returning resident, being an employee of an international organisation the headquarters of which are in Kenya and who had been recalled for consultations at the organisation's headquarters.

(d) that the goods are imported by a returning resident who has proved to the satisfaction of the Commissioner that the circumstances occasioning his stay beyond that period are beyond his control.

(6) Subject to the provisions of paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person whom the proper officer is satisfied is making a temporary visit not exceeding three months to Kenya –

- (a) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves Kenya at the end of his visit;
- (b) consumable provisions and non-alcoholic beverages in such quantities and of such kinds as are in the opinion of the proper officer consistent with his visit.
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(7) Subject to paragraphs (1) and (2), the following goods may be zero-rated under this item when imported as baggage by a person whom the proper officer is satisfied is a resident of Kenya returning from a visit to any place outside Kenya and who is not changing residence in accordance with paragraphs (3) and (4) –

- (a) wearing apparel;
- (b) personal and household effects which have been in his personal use or household use, but not including bicycles, cine or still projectors, record players, amplifiers, loudspeakers, gramophones, gramophone records, refrigerators, refrigeration equipment, cookers, typewriters, cassettes, tapes, sound recording machines, tuners, radio and television receiving sets, radiograms; telephones, fax machines, photocopier, video recording or reproducing apparatus, computer, computer diskettes, office machines, stationery, or consumable provisions;
- (c) instruments and tools for his personal use in his profession or trade.

(8) (a) Subject to paragraph (1) and to subparagraph (b) of this paragraph, tax shall not be levied on the following goods imported by, and in the possession of a passenger –

- (i) spirits (including liqueurs) not exceeding one litre or wine not exceeding two litres;
- (ii) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume;
- (iii) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grams in weight;

(b) these tax free allowances shall be granted only to passengers who have attained the age of eighteen years.

(9) Subject to paragraphs (1) and (2), the zero-rating granted in accordance with paragraphs (3), (4) and (6) may be allowed in respect of baggage imported within ninety days of the date of arrival of the passenger or such longer period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow, and the tax free allowance granted in accordance with paragraph (8) shall not be allowed in respect of goods specified in that paragraph imported in unaccompanied baggage.

(10) Where any person who has been granted zero-rating under paragraph (3) or (4), changes his residence to a place outside Kenya within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period not exceeding sixty days, from the date he changes residence to the place outside Kenya as the Commissioner may allow, otherwise tax becomes due and payable from the date of importation.

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**5. Printed Matter (Deleted as per the Finance Act 2002.)****6. Protective Apparel, Clothing Accessories and Equipment.**

Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by local authorities in fire fighting.

**7. Ships and Other Vessels.**

(1) Passenger and cargo vessels of all kinds of twenty-five net register tonnage or more, cable ships, ice breakers, floating factories, whale-catching vessels, trawlers and other commercial fishing vessels (other than sport-fishing vessels), weather ships, hopper barges; lighters, pontoons (being flat decked vessels used for the transportation of persons or goods) and ferry boats; parts and accessories, but not including batteries and sparking plugs.

(2) Lighthouses, buoys and other non-portable accessories imported or purchased for installation to guide vessels.

**8. Fuel for Coasting Vessels (Deleted as per the Finance Act 2002)****9. Motor Vehicle Speed Governors and Speed Recording Devices and Accessories (Deleted by Finance Act 2001).****10. Materials and Equipment for use in the Construction or Refurbishment of Tourist Hotels.**

All materials and equipment, excluding vehicles, and goods for regular repair and maintenance, the purchase or importation of which is approved by the Permanent Secretary to the Treasury, for use in the construction or refurbishment of tourist hotels, subject to the production of such evidence as the Commissioner may require as to the quantity, quality and type of good required from the project.

**11. Jet Fuel and Aviation Spirit (Deleted by Finance Act 2001)****12. Diagnostic Reagents. (Deleted as per the Finance Act 2002.)****13. Dentists' Chairs (Deleted by Finance Act 2001).****14. Rewards Earned by Kenyan Sportsmen.**

Goods including one motor vehicle (excluding buses and minibuses of seating capacity of more than 13 passengers and load carrying vehicles of load capacity exceeding two tonnes) imported under written authority of the Permanent Secretary to the Treasury on the recommendation of the Commissioner responsible for sports and games, by a returning

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Kenyan sportsman (excluding rally drivers), and upon the production of a certificate issued by a national or internationally recognised sports organization that the goods have been received as his or part of his award.

**15. Containers.**

(1) Imported containers specially designed for repetitive use, printed or inscribed with the name of a foreign buyer of Kenyan produce, for packing and exporting Kenyan produce.

(2) Imported containers which the Commissioner, on the recommendation of the Director of Veterinary Services, is satisfied are specially designed for storing semen for artificial insemination.

**16. Contraceptives. (Deleted as per the Finance Act 2002)**

**17. Equipment for Electric Power Generation.**

Capital equipment, excluding motor vehicles, spare parts and office equipment, for privately financed power generation projects with capacity to sell electricity into the national grid, subject to a written approval by the Permanent Secretary to the Treasury:

Provided that the zero-rating granted under this item shall, unless earlier revoked, expire on 31st December, 2003.

**18. Chemically Defined Compounds Used as Fertilizers.**

Calcium Nitrate, Magnesium Sulphate, Magnesium Nitrate, Potassium Nitrate, Plant Nutrient Chelates (Iron, Zinc, Sulphur, Calcium, Molybdenium, Manganese and Boron) or such other compounds as the Minister may approve, which are used as fertilisers and which the Commissioner is satisfied, upon the recommendation of the Director of Agriculture, are for agricultural use, in such quantities and on such conditions as the Commissioner may specify.

**19. Urine Bags Diapers for Adults and Hygienic Bags**

Urine Bags, diapers for use by adults and hygienic bags for medical or hygienic use, in such quantities as the Commissioner may allow.

**20. Coffee and Tea Supplied to Coffee and Tea Auction Centres.**

Coffee and Tea purchased from coffee and tea auction centres, provided that such coffee and tea shall be exported by the purchaser.

**21. Specialized ship loading and unloading equipment.**

Specialized loading and unloading equipment for ship, imported or purchased by gazetted Port Operators and Inland Container Depot Operators, in such quantities as the Commissioner may allow.

**22. New Passports (Deleted by Finance Act 2001).****23. Plastic Sheetings for Agricultural, Horticultural, or Floricultural use.**

- (a) Shade netting of materials of plastics;
- (b) Reinforced sheeting of polymers of vinyl chloride (P.V.C.) or of polyethylene;
- (c) High Density Polyethylene (H.D.P.E.) sheetings in rolls for use in lining dams in a farm;
- (d) Polyvinyl Chloride (P.V.C.) or polyethylene for use in covering green houses,

Which the Commissioner is satisfied, upon the recommendation by the Director of Agriculture, that they are for agricultural, horticultural or floricultural use in such quantities as the Commissioner may allow.

**24. Mosquito Nets ( Deleted as per the Finance Act 2002).****25. Films and Plates (Deleted as per the Finance Act 2002)****26 Jet fuel and Aviation spirit.**

Jet fuel and aviation sprit purchased by an aircraft owner or operator for use in an aircraft engine.

**27. Electrical energy imported for distribution into the national grid.****28. Electronic Tax Register**

Electronic tax registers of such type and description as may be prescribed, imported or purchased locally prior to the 30<sup>th</sup> June, 2006 on the recommendation of the Commissioner and subject to such conditions as the Commissioner may specify.

**PART C - ZERO-RATING OF GOODS AND SERVICES IMPORTED OR PURCHASED BY PERSONS WITH DIPLOMATIC PRIVILEGES**

Taxable goods or services imported or purchased by persons with diplomatic privileges under the Privileges and Immunities Act certified by the Minister for the time being responsible for foreign affairs subject to such conditions as the Commissioner may require.

**NINTH SCHEDULE (s.3 (6))**

**10 of 1990 S. 33**

**DECLARATION BY OFFICER**

**I, ....., do declare that I will be true and faithful to the best of my knowledge and power in the execution of the trust committed to my charge and inspection in the service of the Value Added Tax Department, and that I will not acquire, take or receive any fee, perquisite, gratuity or reward whether pecuniary or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter or thing done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment on any account whatsoever, over than my salary and what is, or may be, allowed me by law or by a special order of the Government.**

**LEGAL NOTICE NO. 195****THE VALUE ADDED TAX ACT**  
(Cap. 476)

**IN EXERCISE** of the powers conferred by Section 58 of the Value Added Tax Act, Cap. 476 the Minister for Finance makes the following Regulations:-

L.N. 400/89

L.N. 83/90

L.N. 219/90

L.N. 195/94

L.N. 121/96

L.N. 42/97

L.N.100/97

L.N.544/97

L.N.70/98

L.N.67/99

L.N 165/99

L.N.176.2001

L.N.94/2002

L.N 52/2004

**THE VALUE ADDED TAX****REGULATIONS, 1994**

Citation and commencement

**1.** These Regulations may be cited as the Value Added Tax Regulations, 1994 and shall come into operation on the 17<sup>th</sup> June, 1994

Interpretation.

**2.** In these Regulations, unless the context otherwise requires -

"personal identification number" means the personal identification number required under section 132 of the Income Tax Act.

Application for registration.

**3. (1)** Applications for registration under paragraphs 1 and 3 of the Sixth Schedule to the Act shall be submitted on Form VAT 1.

**(2)** Any person who knowingly:-

(a) gives false information on Form VAT 1; or

(b) fails to give full information on Form VAT 1; or

(c) makes application on Form VAT 1 to register a person who is already registered,

shall be guilty of an offence.

**(3)** The certificate of registration shall be issued on Form VAT 2.

Tax invoice.

**4 . (1)** The tax invoice to be issued under paragraph 1 of the Seventh Schedule to the Act shall be serially numbered and shall be issued in serial number order.

**(2)** The tax invoice shall include the following information -

- (a) the name, address, VAT registration number and personal identification number of the person making the supply;
- (b) the serial number of the invoice;
- (c) the date of the invoice;
- (d) the date of the supply, if different from that given under sub-paragraph (c);
- (e) the name , address ,VAT registration number, if any, and Personal Identification Number of the person to whom the supply was made, if known to the supplier;
- (f) the description, quantity and price of the goods or services being supplied;
- (g) the taxable value of the goods or services, if different from the price charged;
- (h) the rate and amount of tax charged on each of those goods and services;
- (i) details of whether the supply is a cash or credit sale and details of cash or other discounts, if any, that apply to the supply; and
- (j) the total value of the supply and the total amount of VAT charged.

Simplified tax invoice.

**5. (1)** The simplified tax invoice referred to in the proviso to paragraph 1 of the Seventh Schedule to the Act shall include the following information -

- (a) the name, address, VAT registration number and personal identification number of the person making the supply;
  - (b) the serial number of the invoice;
  - (c) the date of the invoice;
  - (d) a brief description of the goods or services being supplied;
  - (e) the total amount charged to the customer, VAT included; and
  - (f) the explicit statement that the price includes VAT.
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(2) Where, under the proviso to paragraph 1 of the Seventh Schedule to the Act, the Commissioner has authorised other methods of accounting for tax -

- (a) the registered person shall record the value and brief details of each supply as it occurs and before the goods, or the customer, leaves the business premises;
- (b) the registered person shall keep a cash register, book, or other suitable record at each point of sale in which shall be entered details of all cash received and cash payments made at the time that they are made and at the end of each day the record shall be totalled and a balance shall be struck;
- (c) at the end of each day the output tax chargeable on supplies made and the deductible input tax shown on tax invoices in respect of supplies received shall be recorded in the appropriate records.

Credit note and  
debit note.

6. (1) Where goods are returned to the registered person or, for good and valid reason the registered person decides for business reasons to reduce the value of a supply after the issue of a tax invoice, a credit note may be issued for the amount of the reduction.

Provided that a credit note may be issued only within twelve months after the issue of the relevant tax invoice.

L.N.52/2004.

(2) Where a credit note is issued under this regulation it shall be serially numbered and shall include details of the name, address, VAT registration number and personal identification number 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.

(3) A registered person who issues a credit note under the conditions specified in this regulation may reduce the amount of his output tax in the month in which the credit note was issued by an amount that bears the same proportion to the tax originally charged as the amount credited bears to the total amount originally charged and the amount of tax so credited shall be specified on the credit note.

(4) A registered person who receives a credit note for the supply in respect of which he has claimed deductible input tax, shall reduce the amount of deductible input tax in the month in which the credit note is received, by the amount of tax so credited.

(5) Where a registered person has issued a tax invoice in respect of a taxable supply and subsequently makes a further charge in respect of that supply, or any transaction associated with that supply, he shall in respect of the further charge being made, issue either a further tax invoice, or a serially numbered debit note containing all the details specified in regulation 4, and shall show on it the details of the tax invoice issued at the time of the original supply.

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(6) A registered person who receives a further tax invoice or a debit note issued in compliance with paragraph (5) may, if the supply is eligible therefor and in so far as it has not previously been claimed, claim as deductible input tax such further amount of tax that is being charged, in the month in which the further charge was made, or in the next subsequent month.

Records to be kept by taxable persons.  
L.N. 121/96.

7. (1) Records to be kept and produced to an authorized officer under this regulation include -

- (a) copies of all invoices issued in serial number order;
- (b) copies of all credit and debit notes issued, in chronological order;
- (c) all purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
- (d) details of the amounts of tax charged on each supply made or received;

L.N. 121/96.

- (e) a VAT account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
- (f) details of goods manufactured and delivered from the factory of the taxable person;

L. N. 96/2001.

- (g) copies of all stock records kept periodically as the Commissioner may determine.
- (h) details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time.

(2) All records required to be kept under this regulation shall be included in the audit of accounts of the taxable person that may be subject to such audit by a competent person.

L.N. 121/96.

(3) Where the Commissioner considers that a taxable person is not complying with requirements of this regulation, or where he considers that other records should be kept by the taxable person to safeguard the tax revenue, he shall issue a notice to the taxable person requiring him to keep such records or take such action as the Commissioner may specify and any person failing to comply with such notice shall be guilty of an offence.

(4) Where a notice issued under paragraph (3) is not complied with and without prejudice to any other action that he may take, the Commissioner may, from such information as is available to him, assess the amount of tax that he considers to be due from the taxable person during each period that the offence continues.

(5) All records required to be kept under this regulation shall be maintained up-to-date and details of all tax charged shall be entered in the appropriate records without delay.

(6) All records shall be kept in the Kiswahili or English language and shall be kept for a period of five years from the date of the last entry made therein.

(7) Where records relating to a business are being kept in any language other than those prescribed, the Commissioner may require a registered person to produce, at that person's expense, an authenticated translation of those records.

Samples of taxable goods.

**8.** Where taxable goods -

(a) are distributed free as samples by a registered person for furtherance of his business; and

(b) have a value of less than two hundred shillings for each sample; and

(c) are freely available; and

(d) are not limited in distribution to fewer than thirty persons in any one calendar month,

they shall not be liable to tax.

VAT returns and payments by cheques.

L.N. 121/96.

**9. (1)** The return required by paragraph 7 of the Seventh Schedule to the Act shall be on Form VAT 3;

(2) Where payment is made by cheque, the cheque shall be made payable to the "Commissioner of Value Added Tax" and shall be crossed and endorsed with the words "account payee only";

L.N. 52/2004.

(3) All tax payments shall be made by banker's cheque, bank guaranteed cheque or cash or by such other method of payment as may be approved by the Commissioner.

(4) Where any cheque is not honoured upon presentation, the amount stated thereon shall be deemed not to have been paid and additional tax shall become due and payable in respect of that amount until such time as it is paid, notwithstanding that the cheque may subsequently be honoured on presentation.

(5) Any fraction of a shilling due on any return shall be ignored.

Export of taxable goods and services.  
L.N. 219/90.  
L.N. 121/96.  
L.N. 42/97.

**10. (1)** Subject to section 8 of the Act and the Fifth Schedule to the Act, any taxable goods or taxable services exported by a registered person shall be zero-rated if evidence of exportation consisting of -

- (a) a copy of the invoice showing the sale of the goods or services to the purchaser; and
- (b) in the case of goods, copies of the bill of lading, road manifest or airway bill, as the case may be; and
- (c) in the case of goods, the export entry duly certified by the proper officer of customs at the port of export, is maintained on file by the registered person for examination by an authorized officer on demand and;
- (d) in the case of sugar and all excisable goods, a certificate signed by the Commissioner of Customs and Excise that the goods have been examined and loaded into sealable vehicles or containers under a tamper proof seal and seal number duly endorsed on the export entry.

L. N. 42/97.

**(2)** Subject to section 8 of the Act and the Fifth Schedule to the Act, any taxable goods or taxable services supplied by a registered person to an export processing zone enterprise, or to a registered person manufacturing goods in a customs bonded factory for the Eighth Schedule to the Act shall be zero rated if evidence of the supply consisting of -

- (a) a copy of the invoice showing the supply of the goods or services to the purchaser;
- (b) proof of the payment made in respect of the goods or services supplied;
- (c) a certificate signed by the purchaser that the goods have been received, and
- (d) in the case of goods, the export entry duly certified by the proper officer of Customs at the port of export.

is maintained on the file by the registered person for examination by an authorized officer on demand.

L.N.94/2002

**(2A)** Where taxable goods are manufactured or purchased for export, supplied to an export processing zone enterprises, or to a registered person

manufacturing goods in a customs bonded factory or are subject to remission, rebate or refund of value added tax, such goods as may be specified by the Commissioner shall be marked with the inscription "FOR EXPORT ONLY"

(3) Subject to paragraph (4), where an exporter who is not a registered person exports by way of business any taxable goods that he has imported or purchased from a registered person and claims a refund of the tax paid on those goods he shall submit his claim to the Commissioner on Form VAT 4 and shall attach to any such claim, the following -

- (a) a copy of the invoice showing the sale of the goods to the purchaser; and
- (b) the export entry duly certified by the proper officer of customs at the port of export; and
- (c) evidence of the value of the goods and the payment by him of tax due thereon, being a copy of the tax invoice issued by a registered person, or a copy of the customs entry on which the goods were imported, as the case may be; and
- (d) proof of payment made in respect of goods exported;
- (e) in the case of sugar, a certificate signed by the Commissioner of Customs and Excise that the sugar has been examined and loaded into sealable vehicles or containers under a tamper proof seal and the seal number duly endorsed on the export entry.

L.N. 42/97.

(4) The Commissioner shall not issue a tax remission certificate referred to in Form VAT 4B unless the application is accompanied by -

- (a) bond security on Form VAT 4 B1 duly executed and guaranteed by a bank, insurance company or financial institution licensed to operate in Kenya; and
- (b) an irrevocable letter of credit, and proof of payment made in respect of the exported goods;
- (c) a proforma invoice from the registered manufacturer or dealer.

(5) A VAT remission certificate issued under paragraph (4) shall be valid for ninety days only from the date of issue.

(6) Upon completion of exportation, the exporter shall resubmit to the Commissioner within ninety days from the date of issue, the duplicate copy of the VAT remission certificate supported by documentary evidence of exportation of the goods.

(7) A bond security provided under paragraph 4(a) shall be cancelled upon the exporter satisfying the Commissioner -

(a) that the goods have been duly exported;

(b) that appropriate payment in respect of the exported goods has been received by him.

L.N. 70/98.

(8) Where an exporter fails to comply with the provisions of paragraphs (6) and (7), the appropriate tax shall be payable in full forthwith together with a penalty of two percent per month or part thereof calculated from the date of issue of the tax remission certificate by the Commissioner under paragraph (4):

Provided that the Commissioner may, in individual cases grant remission of the penalty if satisfied that such remission is justified and shall make quarterly returns of all remissions so granted but such remission shall be

subject to the prior written approval of the Minister where the amount of the penalty exceeds five hundred thousand shillings.

(9) No refund shall be made under this regulation -

(a) where the amount to be refunded is less than five hundred shillings; or

(b) where the exportation took place more than twelve calendar months previously or such further period as the Commissioner may in any particular case determine.

(10) Zero-rating of exported goods or refund of tax paid shall not be allowed under this regulation in respect of any goods which have been used before they were exported.

L.N. 121/96.

(11) Where the Commissioner considers that there is doubt about the exportation of any goods he may require any person exporting the goods to produce to him within a reasonable time a certificate, signed and stamped by a competent customs authority outside Kenya that the goods were duly landed and reported to the proper customs authority at the port or place of foreign destination, and payment of any claim may be deferred until such a certificate has been produced and accepted as satisfactory by the Commissioner.

L.N. 121/96.

(12) Where a person who is not a registered person supplies by way of business any taxable goods that he has imported or purchased from a registered person to an export processing zone, to a foreign aid funded investment project or to a person manufacturing goods in a customs bonded factory and claims a refund of the tax paid on those goods he shall submit his claim to the commissioner on Form VAT 4 and shall attach to any such claim, the following-

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- (a) a copy of the invoice showing the sale of the goods to the purchaser; and
- (b) evidence of the value of the goods and the payment by him of tax due thereon, being a copy of the tax invoice issued by a registered person or a copy of the Customs entry on which the goods were imported, as the case may be; and
- (c) a certificate signed by the purchaser that the goods have been received and that they have been purchased as part of a specified project or in accordance with the approved operations of the export processing zone, as the case may be.

Application for tax  
refund.  
L.N. 121/96.

**11.** An application for tax refund under sections 11(2), 24(a),(b) or (c) and 24A of the Act shall be made on Form VAT 4.

Claims for tax  
refund.

**12. (1)** Any claim for refund of tax by a registered person under section 24A of the Act shall be accompanied by -

- (a) a document issued to him by the person with whom he proves in the insolvency of the debtor, specifying the total amount proved, except where a claim is made because over three years have elapsed since the registered person paid the tax;
- (b) a copy of the tax invoice provided in respect of each taxable supply upon which the claim is based;
- (c) records or other documents, showing that the tax has been accounted for and paid on each supply upon which the claim for a refund of tax is based;
- (d) evidence that every reasonable effort has been made to have the debt settled; and
- (e) a declaration by him that he and the buyers are independent of each other.

**(2)** No refund is payable unless the registered person is up-to-date in submitting all VAT returns on Form VAT 3 together with the appropriate tax.

Tax paid on stocks  
on hand, assets,  
building, etc.

**13.(1)** A registered person shall submit to the Commissioner, his claim for relief from tax paid on stocks on hand, assets, building or civil works on the date he becomes registered on Form VAT 5 within thirty days of that date.

**(2)** Where the Commissioner considers that there is good and valid reason why the registered person could not submit his claim under paragraph (1) within the thirty days he may accept a claim made within such longer period as he deems to be fair

and reasonable.

(3) The Commissioner may require the registered person to produce to an authorised officer evidence of -

- (a) the quantities, descriptions and values of goods in stock on the date of registration;
- (b) the proper use or disposal of such goods after the date of registration.

L.N. 544/97.

**13A.(1)** Every application for tax refund and every claim for relief from tax of an amount exceeding one million shillings shall be accompanied by an auditor's certificate that the application or claim is true and that the amount is properly refundable under the Act.

L.N. 70/98.

(2) An auditor who issues a certificate in contravention of paragraph (1) shall be guilty of an offence.

Security.

**14. (1)** A security required by the Commissioner under section 29 of the Act shall be in such sum not exceeding the total tax payable and, unless the person from whom the security is required opts to deposit the required sum or equivalent securities with the Commissioner, shall take the form of a bond in such form, and given by such sureties, as the Commissioner may approve.

(2) Where a bond given under this regulation is discharged, the Commissioner shall cause the bond to be cancelled and shall advise the person giving it accordingly.

(3) Where any person who is a surety to a bond under this regulation -

- (a) dies; or
- (b) is adjudged bankrupt or enters into any composition with his creditors; or
- (c) leaves Kenya;

the person on whose behalf the bond was given shall notify the Commissioner accordingly and the Commissioner may cancel the bond and require a fresh surety to be given.

Powers of  
Commissioner of  
Customs and  
Excise.  
Cap. 472.

**15.** By virtue of section 57 of the Act -

- (a) the Commissioner of Customs and Excise appointed under section 3 of the Customs & Excise Act shall be responsible for the collection of tax chargeable in respect of imported taxable goods and shall account for that tax to the Commissioner; and



- Cap. 472. (b) the Commissioner of Customs and Excise and other proper officers of Customs appointed under the Customs and Excise Act shall, subject to the Act and Customs and Excise Act have and exercise in respect of imported taxable goods all the powers and duties conferred or imposed on them by the Customs and Excise Act.
- L.N. 100/97. **15A.(1)** For the purposes of section 6(6) of the Act, any person who receives any imported taxable services shall make a declaration of such services on form VAT 7.
- (2) Any person who contravenes this regulation shall be guilty of an offence.
- Determination of selling price. **16.** For the purposes of section 9(b) of the Act, the price determined by the Commissioner shall be the open market selling price where the seller and buyer are independent of each other.
- Deductible input tax.  
L.N. 83/90. **17.(1)** Where a registered person supplies both taxable goods and services and exempt goods and services, he can only deduct that part of his input tax which is attributable to taxable supplies which attribution shall be approved by the Commissioner, but he may use either of the under mentioned methods to determine the amount of deductible input tax without the approval of the Commissioner -
- (a) 
$$\frac{\text{Value of taxable supplies} \times \text{Input tax}}{\text{Value of total supplies}}$$
- Deductible input tax
- (b) (i) full deduction of all the input tax attributable to taxable goods purchased and sold in the same state;
- (ii) no deduction of any input tax which is directly attributable to exempt outputs, and
- (iii) deduction of the input tax attributable to the remainder of the taxable supplies, calculated as under sub-paragraph (a).
- (2) Notwithstanding paragraph (1) where the amount of input tax attributable to exempt supplies is less than five per cent of the total input tax, then all the input tax can be deducted.
- L.N. 121/96. **(3)** Where there is a difference between the amount of claimable input tax for a year and the total amount deducted for the same period, the amount so calculated shall be declared as over declaration or under declaration, as the case may be, and such amount shall be entered in the return for the first tax period following the end of the accounting year.

L.N.94/2002  
Sale of taxable  
goods in returnable  
containers.

**18.** Where taxable goods are sold by a registered person in returnable containers then-

- (a) if the registered person has purchased or imported those containers tax paid, the amount of any tax payable by virtue of subsection (2) of section 9 of the Act in respect of the containers shall be remitted; or
- (b) in any other case, the amount of tax so payable upon those containers which are returned to the registered person, and upon which he has given a credit to the purchaser, shall be remitted by means of a credit taken by the registered person on his next succeeding tax return.

**19.** (a) Where a registered person is a retailer or is primarily supplying taxable goods or taxable services to unregistered persons, prices of such goods or services shall be quoted or labeled including the amount of the tax.

- (b) Where prices are quoted inclusive of tax, the value of the tax shall be estimated in the case of *ad valorem* tax rate by a tax that is multiplied by such a tax inclusive price reduced by any exclusion from the taxable value allowed under section 9 of the Act. The tax factor is equal to  $(t/(1 + t))$  where  $t$  is the *ad valorem* tax rate specified in the First Schedule to the Act.

Rehabilitation of  
public roads  
L.N..94/2002

**19A. (Deleted by Finance Act 2004)**

Revocation of L.N.  
400/89.

The Value Added Tax Regulations are revoked.

***Made on the 16<sup>th</sup> June, 1994***

**MUSALIA MUDAVADI**  
***Minister for Finance.***

**THE VALUE ADDED TAX ACT**

*(Cap 476)*

**IN EXERCISE** of the powers conferred by section 37 of the Value Added Tax Act, the Chief Justice makes the following rules:-

LN. 229/90

**THE VALUE ADDED TAX (APPEALS) RULES, 1990**

Citation. **1.** These Rules may be cited as the Value Added Tax (Tribunal) Rules, 1990.

Interpretation. **2.** In these rules, unless the context otherwise requires-  
 "appeal" means an appeal to the Tribunal under section 33(1);

"appellant" means a person entering an appeal and the advocate or duly authorized agent of that person;

"chairman" means the chairman of the Tribunal appointed under section 32 (2);

"memorandum" means a memorandum of appeal presented under rule 4;

"secretary" means the secretary to the Tribunal appointed pursuant to rule 3;

"section" means a section of the Act

Appointment of secretary **3.** (1) The Commissioner shall appoint a person to be the secretary to the Tribunal, and that person may be an officer of the Value Added Tax Department.

(2) The secretary shall, in matters relating to appeals to the Tribunal and procedure therefor, comply with general and special directions lawfully given by the chairman.

(3)The secretary shall by notice in the Gazette notify his address for the presentation or service of documents for the purposes of these Rules, and shall in the same manner notify any change in that address.

Form and time for lodging an appeal. **4.** An appeal shall be entered by presentation of a memorandum of appeal, together with ten copies thereof, to the secretary within fourteen days after the date on which the appellant gives notice of appeal in writing to the Commissioner pursuant to section 33 (1); but where the Tribunal is satisfied that, owing to absence from his normal place of residence, sickness or other reasonable cause, the appellant was prevented from presenting a memorandum within that period, and that there has been no unreasonable delay on his part, the Tribunal may extend that period notwithstanding that the period has already expired.

Memorandum of appeal **5.** A memorandum shall be signed by the appellant and shall set out concisely under distinct heads, numbered consecutively, the grounds of appeal without argument or

narrative.

Statement of Facts of Appellant

6. Each copy of a memorandum shall be accompanied by -

(a) a copy of the decision of the Commissioner disputed by the appellant;

(b) a copy of the notice of appeal; and

(c) a statement, signed by the appellant, setting out precisely all the facts on which the appeal is based and referring specifically to documentary or other evidence which it is proposed to adduce at the hearing of the appeal, and to which shall be annexed a copy of each document or extract from a document upon which the appellant proposes to rely as evidence at the hearing of the appeal.

Service of memorandum of appeal.

7. Within forty-eight hours after the presentation of a memorandum to the secretary, a copy thereof and of the statement of facts of the appellant and the documents annexed thereto shall be served by the appellant upon the Commissioner.

Statement of facts of Commissioner

8. (1) The Commissioner shall, if he does not accept any of the facts of the appellant, within twenty-one days after service thereof upon him under rule 7, file with the secretary a statement of facts together with **ten copies** thereof and the provisions of rule 6 (c) shall *mutatis mutandis* apply to the statement of facts.

(2) At the time of filing a statement of facts pursuant to paragraph (1), the commissioner shall serve a copy thereof, together with copies of any documents annexed thereto, upon the appellant.

(3) If the Commissioner does not desire to file a statement of facts under this rule, he shall forthwith give written notice to that effect to the secretary and to the appellant, and in that case the Commissioner shall be deemed at the hearing of the appeal to have accepted the facts set out in the statement of facts of the appellant.

Notice place of hearing.

9. (1) As soon as may be convenient after receipt by him of the memorandum the secretary shall notify the chairman thereof.

(2) The chairman shall, after the Commissioner has filed a statement of facts or has notified the secretary that he does not intend to do so, fix a time, date and place for a meeting of the Tribunal for the purpose of hearing the appeal, and the secretary shall cause notice thereof to be served on the appellant and the Commissioner.

3. The secretary shall cause to be supplied to each member of the Tribunal a copy of the notice of hearing and of all documents received by him from the parties to the appeal.

(4) Unless the parties to the appeal otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing of the appeal.

Procedure at  
hearing of  
appeal.

10. At the hearing of an appeal, the following procedure shall be observed-

(a) the Commissioner shall be entitled to be present or be represented;

(b) the appellant shall state the grounds of his appeal and may support it by any relevant evidence. but, save with the consent of the Tribunal and upon such terms as it may determine, the appellant may not at the hearing rely on a ground of appeal other than a ground stated in the memorandum and may not adduce evidence of facts or documents unless those facts have been referred to in, and copies of those documents have been annexed to the statement of facts of the appellants:

(c) at the conclusion of the statement, and evidence on behalf of the appellant, the Commissioner may make submissions, supported by relevant evidence, and subparagraph (b) shall *mutatis mutandis* apply to evidence of facts and documents to be adduced by the Commissioner:

(d) the appellant shall be entitled to reply but may not raise a new issue or argument:

(e) the chairman or a member of the Tribunal may at any stage of the hearing ask any questions of the appellant or the Commissioner or a witness examined at the hearing, which he considers necessary to the determination of the appeal:

(f) a witness called and examined by either party may be cross-examined by the other party to the appeal;

(g) a witness called and examined by the Tribunal may be cross-examined by either party to the appeal;

(h) the Tribunal may adjourn the hearing of the appeal for the production of further evidence or for other good cause, as it considers necessary, on such terms as it may determine;

(i) before the Tribunal considers its decision, the parties to the appeal shall withdraw from the meeting, and the Tribunal shall deliberate the issue according to law and reach its decision thereon;

(j) the decision of the Tribunal shall be determined by a majority of the members present and voting at the meeting, and in the case of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote;

(k) minutes of the meeting shall be kept and the decision of the Tribunal recorded

therein.

Tribunal to determine own procedure in certain matters.

**11.** In matters of procedure not governed by these Rules or the Act, the Tribunal may determine its own procedure.

Copies of documents admissible.

**12.** Save where the Tribunal in any particular case otherwise directs or where a party to the appeal objects, copies of documents shall be admissible in evidence, but the Tribunal may at any time direct that the original shall be produced notwithstanding that a copy has already been admitted in evidence.

Fees and costs.

**13.** No fees shall be payable, and a Tribunal shall not make any order as to costs, on an appeal save where the grounds of appeal are held by the Tribunal to be frivolous, in which case the Tribunal may order the appellant to pay costs to the Commissioner a sum not exceeding one thousand shillings.

Made on the 29th May, 1990.

A. R. W. HANCOX,  
*Chief Justice.*

**THE VALUE ADDED TAX ACT**

*(Cap 476)*

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IN EXERCISE of the powers conferred by section 58 of the Value Added Tax Act, the Vice-president and Minister for Finance makes the following Regulations-

LN. 227/90  
LN. 123/96

**THE VALUE ADDED TAX (DISTRRAINT)  
REGULATIONS, 1990**

Citation.           **1.** These Regulations may be cited as the Value Added Tax (Distraint) Regulations, 1990.

Interpretation.   **2.** In these Regulations, unless the context otherwise requires-

"distrainee" means the registered person or debtor named in an order;

"distrainor" means an officer in the service of the Value Added Tax Department who is authorized to levy distress;

"distrain agent" means a person appointed as such under regulation 3;

"distress" means a distress levied pursuant to an order;

"distress debt" means the amount of tax and interest charged thereon, specified in the order;

"goods" means all movable property of distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court;

"order" means an order issued by the Commissioner under section 18 (1) of the Act.

Distrain agents.

3. (1) An authorized officer may appoint distraint agents to assist him in the execution of orders.

(2) No person shall be appointed a distraint agent unless he satisfies the authorized officer that he-

(a) is of good repute and of good financial standing;

(b) is qualified under the law relating thereto to levy distress by way of attachment of movable property in execution of a decree of a court; and

(c) has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of goods which may be placed in his custody by reason of the performance of his duties as a distraint agent.

Distrain agent to  
Furnish security.

4. (1) A distraint agent shall on appointment furnish the Commissioner with security, by means of deposit of the sum of thirty thousand shillings, or in such other manner as the Commissioner may approve, and that security shall be refunded or canceled on the termination of the appointment of the agent unless it is forfeited under this regulation.

(2) If a distraint agent is convicted of an offence involving fraud or dishonesty in connection with any function performed by him as agent, the court by which he is convicted may make an order as to forfeiture of the security furnished by him under paragraph (1), or any part thereof, and the provisions of the Criminal Procedure Code, in so far as they relate to forfeiture of recognizance, shall apply *mutatis mutandis* to the forfeiture of security under this regulation.

Execution of  
orders.

5. (1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by regulation 6.

(2) An order shall be executed by attachment of such goods of the distrainee as in the opinion of the distrainor are of a value which on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by the distrainor.

Service of  
orders.  
LN. 123/96.

6. (1) Every order shall be issued by the Commissioner in duplicate and service thereof shall be effected by the service by the distrainor of a copy of the order on the distrainee in person or, if after using all due and reasonable diligence the distrainee cannot be found, by service of a copy on an agent of the distrainee empowered to accept service or an adult member of the family of the distrainee who is residing with him.

(2) A person served with a copy of an order under this regulation shall endorse on the order acknowledgement of service, and if he refuses to make endorsement the



distrainor shall leave the copy of the order with the person or his agent after stating in writing thereon that the person or his agent upon whom he served the order refused to sign the acknowledgement and that he left at the time, date and place stated therein, a copy of the order with that person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

Forceable entry.

7. (1) In executing any distress, no outer door of a dwelling-house shall be broken open unless the dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainor executing distress has duly gained access to a dwelling-house he may break open the door of any room in which he has reason to believe any goods of the distrainee to be.

(2) When a room in a dwelling-house is in the actual occupancy of a woman who, according to her religion or local custom does not appear in public the distrainor shall give notice to her that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter the room for the purpose of attaching any goods therein, using at the time every precaution consistent with these provisions to prevent their clandestine removal.

Steps subsequent to attachment.

8. As soon as practicable after the attachment of goods under these Regulations, the distrainor shall-

(a) issue a receipt in respect thereof to the distrainee:

(b) forward to the Commissioner a report containing an inventory of all items attached, the value of each item as estimated by the distrainor, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale by public auction of the goods on the expiration of ten days from the date of attachment.

Limitation on sale of attached goods.

9. On the sale by public auction of any goods attached under these Regulations, the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon any of the goods remaining unsold shall at the cost of the distrainee be restored to the distrainee.

Return on completion of sale.

10. Immediately after the completion of a sale by publication of goods attached under these Regulations, the distrainor shall make a return to the Commissioner specifying the items which have been sold, the amount realized by the sale and the manner in which the proceeds of the sale were applied.

Restoration of attached

11. (1) Where a distrainee has within ten days of attachment of his goods under these Regulations, paid or given security accepted by the Commissioner for the whole

goods on  
payment, etc.

of the tax due from him together with the whole of the costs and expenses incurred by the distrainor in executing the distress, the distrainor shall at the cost of the distrainee forthwith restore the attached goods to the distrainee and return the order to the Commissioner who shall cancel it.

(2) Any money paid by a distrainee under this regulation shall be applied by the Commissioner first in settlement of the costs and expenses incurred by the distrainor and as to the balance in settlement of the distress debt or such part thereof as the Commissioner shall direct.

Livestock.  
LN. 123/96.

**12.** Where any goods attached under these Regulations comprise or include livestock, the distrainor may make appropriate arrangements for the transport, safe custody and feeding thereof and any costs and expenses incurred by the distrainor thereby shall be recoverable from the distrainee under regulation 9 or 11, as the case may be, as costs and expenses.

Costs for  
levying distress.

**13.** In addition to a claim for any other costs and expenses which may be incurred by the Commissioner or the distrainor in levying distress under these Regulations, there may be claimed by the distrainor and recovered under regulations 9 and 11, as the case may be, costs at the rate specified in the schedule.

Remuneration  
of distraint  
agents.

**14.** The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainor for his assistance in executing a distress under these Regulations, and which may be recovered by the distrainor under regulations 9 and 11, as the case may be, shall be those specified in the Schedule.

Commission  
payable to  
auctioneer.

**15.** The maximum rates of commission to be paid to an auctioneer by the distrainor as remuneration for his services for the sale by public auction of any goods attached under these Regulations, and which may be recovered by the distrainor under regulation 9, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent he shall be entitled, in addition to any commission, to remuneration for those services as provided in regulation 14.

Matters  
included in  
rates of  
remuneration.

**16.** The rates of remuneration specified in the Schedule shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safeguarding goods attached under these Regulations.

## SCHEDULE

### RATES OF REMUNERATION (r. 16)

#### 1. Distrainor's Charges

Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty

minutes thereafter the distrainee shall pay the distrainor the following costs-

	<i>Shs</i>
(a) where the distress debt does not exceed Sh. 3,000	300
(b) where the distress debt exceeds Shs. 3,000	120

## **2. Distraint Agent's Charges**

(a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainor are paid by the distrainee on demand or within thirty minutes thereafter the distraint agent shall be entitled to remuneration of ... sh.120

(b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the distress debt and costs and expenses, whichever is less-

(i) does not exceed Sh. 30,000 ... 4 per cent thereof

(ii) exceeds Sh. 30,000 ... .. 3 per cent thereof

(c) Where the goods or any part thereof are sold by public auction, the distraint agent's charges shall instead be calculated in the manner directed above by reference to the total amount realized on sale after deduction of the auctioneer's commission under regulation 15.

(d) For keeping possession of any attached goods after the expiration of ten days from the date of attachment for each day, or part thereof-

¼ per cent of the value of the goods with a maximum of Sh. 60.

(e) Reasonable expenses incurred by the distraint agent in transporting goods attached, and such travelling expenses by car, or a rateable proportion thereof, as the Commissioner may approve.

*Made on the 31st May, 1990.*

**GEORGE SAITOTI,  
Vice-President and Minister for Finance**

**LEGAL NOTICE NO 95****THE VALUE ADDED TAX ACT  
(Cap 476)**

**IN EXERCISE** of the powers conferred by section 11(6) of the Value Added Tax Act, the Minister for Finance makes the following Order :-

**THE VALUE ADDED TAX ACT (AMENDMENT)  
ORDER, 2002.**

**1.** This Order may be cited as the Value Added Tax Order 2002 and shall come into operation on the 14<sup>th</sup> June, 2002.

**2.** Any tax payable on the goods and services specified in the Schedule shall be excluded from deduction of input tax under sections 11 and 11A of the Act except where the goods are purchased as stock in trade.

L.N.545/97 **3.** The Value Added Tax Order, 1997 is revoked.

**SCHEDULE**

(Para. 2)

**1.** All oils for use in vehicles (including motor vehicles and similar vehicles), ships, boats and other vessels.

**2. (1)** Passenger cars and minibuses, bodies, parts and services for the repair and maintenance of such vehicles and the leasing or hiring services of such vehicles other than -

(a) goods and services used in the supply of passenger car and minibus hire and leasing services;

(b) bodies, parts, and repair and maintenance services, used in the supply of repair and maintenance services for passenger cars and minibuses; and

(c) passenger car and minibus parts used in the manufacture or repair and maintenance of taxable goods.

(d) vehicles specifically designed or modified and primarily used for supply of taxable goods or services subject to prior approval by the Commissioner.

**(2)** All motor vehicles (other than passenger cars and minibuses), bodies, parts and services for the repair and maintenance of such vehicles, except where the goods are used primarily for the supply of taxable goods and services.

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(3) For the purposes of this Order, "motor vehicle" means a self propelled vehicle intended for use on roads but does not include a tractor.

**3.** Furniture, fittings and ornaments of decorative items in buildings other than -

(a) items permanently attached to buildings; or

(b) such goods for use in hotels and restaurants subject to the approval of the Commissioner.

**4.** Household or domestic electrical appliances other than those approved by the Commissioner for use in the manufacture of taxable goods or the supply of taxable services.

**5.** Entertainment services.

**6.** Restaurant services.

**7.** Accommodation services.

**8.** Taxable supplies for use in staff housing and similar establishments for the welfare of staff.

Made on the 13<sup>th</sup> June, 2002.

***C. M. OBURE***  
***Minister for Finance.***

**LEGAL NOTICE NO. 51**

**THE VALUE ADDED TAX ACT**  
***(Cap.476)***

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**IN EXERCISE** of the powers conferred by section 58 of the Value Added Tax Act, the Minister for Finance makes the following Regulations –

**THE VALUE ADDED TAX (REMISSION) (INVESTMENTS)  
REGULATIONS, 2004**

- |  |   |
|--|---|
| Citation   | <p><b>1.</b> These Regulations may be cited as the Value Added Tax – (Remission) (Investments) Regulations, 2004 and shall come into operation on the 10<sup>th</sup> June, 2004.</p>   |
| Application for remission                            | <p><b>2.</b> (1) An application for remission of tax under section 23(3)(a) of the Act shall be made in writing to the Minister</p> <p>(2) The application referred to in paragraph (1) shall be submitted together with a detailed list of the goods in respect of which the application is made.</p> <p>(3) The application referred to in paragraph (1) shall include the following for the Investment referred to in section 23(3)(a) of the Act –</p> <p>(a) the total value of the investment in Kenya shillings;</p> <p>(b) a full description of the investment including, where applicable, the physical location of the investment;</p> <p>(c) the personal identification number of the applicant;</p> <p>(d) a report of a feasibility study of the investment with sufficiently detailed proforma cash flow statement including the itemization of the cash flows for –</p> <p>(i) all traded or tradable goods to be produced, undertaken or purchased; and</p> <p>(ii) any financial obligations or commitments.</p> |
| Minister may require further Information, Inspection | <p><b>3.</b> The Minister may require the applicant to -</p> <p>(a) furnish such further information as the Minister may consider appropriate; and</p> <p>(b) allow and facilitate the inspection of the goods to which the application relates</p>   |
| Only one application per investment                  | <p><b>4.</b> (1) Only one application shall be made with respect to an investment except as provided in paragraph (2)</p>   |

(2) A second application in respect of the same investment may be made if the applicant demonstrates to the satisfaction of the Minister that the additional application relates to a separate phase of the investment or an expansion thereof.

Remission not for certain goods

**5.** Remission shall not be granted in respect of stocks in trade, consumables, office furniture, typewriters, copying equipment, stationery, kitchenware, crockery, linen, draperies, carpets (in single pieces), safes and refrigerators.

Condition relating to inspection, etc

**6.** It is a condition of a remission that the person to whom a remission has been granted shall –

- (a) allow and facilitate the inspection of the goods in respect of which the remission relates; and
- (b) avail to the Commissioner the records of such goods for purposes of inspection and audit.

Further conditions to remission.

**7.** The Minister may attach such further conditions to a remission as he considers necessary.

Revocation of remission

**8.** The Minister may revoke a remission if any condition set out in regulation 6 or attached under regulation 7 is breached.

*Made on the 10<sup>th</sup> June, 2004*

**DAVID MWIRARIA,  
Minister for Finance.**

LEGAL NOTICE NO. 68

**THE VALUE ADDED TAX ACT  
(Cap. 476)**

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IN EXERCISE of the powers conferred by section 23 of the Value Added Tax Act, the Minister for Finance makes the following order-

**THE VALUE ADDED TAX (REMISSION)  
(CHARITABLE ORGANIZATIONS) ORDER, 1999.**

*(As amended by Legal Notice No. 95 of 14<sup>th</sup> June, 2001)*

*(As amended by Legal Notice No. 69 of 12<sup>th</sup> June, 2003)*

*(As amended by legal Notice No. 50 of 10<sup>th</sup> June, 2004)*

1. This Order may be cited as the Value Added Tax (Remission) (Charitable Organizations) Order 1999 and shall come into operation on the 1<sup>st</sup> June, 1999..

2. In this Order, unless the context otherwise requires –

“charitable organization” means a non-profit making organization

registered or exempt from registration by the Registrar of Societies under section 10 of the Societies Act and approved by the

Commissioner of Social Services, or registered by the Non-

Governmental Organizations Co-ordination Board under section 10 of

the Non-Governmental Organizations Co-ordination Act, 1990 and

whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act.

“Commissioner-General” means the Commissioner- General of the Kenya Revenue Authority appointed under section 11 of the Kenya Revenue Authority Act.

3. The tax payable on goods including motor vehicles and computers, (excluding passenger motor vehicles of a seating capacity of less than twenty-six persons, building materials, audio and audio-visual electronic equipment, spare parts, edible vegetable fats and oils, office furniture and other office equipment, stationery, textiles, new and used clothing and footwear, maize, wheat, sugar, milk and rice) donated or purchased locally for donation by any person to non-profit making organizations or institutions approved by the Government for their official use or for free distribution to poor and needy persons, or for use in medical treatment, educational, religious or rehabilitation work, is remitted subject to the conditions set out in paragraph.

Provided that remission under this paragraph may be granted in respect of-

(i) all goods (excluding passenger motor vehicles of a seating capacity of less than fourteen persons, building materials, audio and audio-visual electronic equipment, spare parts, office furniture and other office equipment



and stationery) donated or purchased for donation by any person to registered homes for poor and needy persons, subject to approval by the minister; or

(ii) maize, wheat, sugar, milk, edible vegetable fats and oils, rice, textiles, new and used clothing and footwear imported during periods of civil strife, national calamity or disaster declared under any law for the time being in force, or where they are intended for use in officially recognized refugee camps in Kenya.

4. The conditions referred to in paragraph 3 are that –  
an application for remission pursuant to this Order shall be lodged with the Minister through the Commissioner-General;

(b) an application under subparagraph (a) shall be accompanied by evidence that the goods to be imported or purchased for donation to the charitable organization are for the official use of the organization or are for free distribution to the poor and needy persons, or are for use in medical treatment, educational, religious or rehabilitation work or other Government approved projects;

(c) the Commissioner-General shall consider every application submitted under this paragraph and shall forward it to the Minister together with his recommendations thereon;

(d) every charitable organization in respect of which remission is granted under this order shall-

(i) make quarterly returns to the Commissioner- General on all goods on which remission is granted;

(ii) at all reasonable times, make records of such goods available for examination by the Commissioner-General or by an officer authorized by him for that purpose and shall give the Commissioner-General or the authorized officer every facility necessary to inspect and audit such records:

(e) the provisions of this Order shall apply to all remissions sought or granted under item 9(1)(c) of part A of the Eighth Schedule to the Act.

5. Tax shall become payable if the goods which are the subject of this Order are used or disposed of in a manner inconsistent with the purpose for which the remission is granted.

*Made on the 10<sup>th</sup> June, 1999*

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**Y. F. O. MASAKHALIA**  
*Minister for Finance.*

**LEGAL NOTICE NO. 67****THE VALUE ADDED TAX ACT  
(Cap. 476)**

**IN EXERCISE** of the powers conferred by section 23 of the Value Added Tax Act, the Minister for Finance makes the following Order:-

**THE VALUE ADDED TAX (REMISSION)  
(OFFICIAL AID FUNDED PROJECTS) ORDER, 2003.**

1. This Order may be cited as the Value Added Tax (Remission) (Official Aid Funded Projects) Order, 2003 and shall come into operation on the 13<sup>th</sup> June, 2003.
2. The whole of the tax payable on taxable services, materials and equipment, including vehicles which the Commissioner is satisfied are for use in the construction equipping or execution of an aid funded project, to be, or in the process of being carried out pursuant to an agreement between the Government and a foreign government, or a foreign or international agency, institution, foundation or organization, supplying or making available aid funds, materials or equipment (in this Order referred to as "the aid agency") is remitted subject to the conditions set out in paragraph 3.
3. The conditions referred to in paragraph 2 are that:-
  - (a) the agreement expressly provides for remission of tax on taxable services, materials and equipment, including vehicles;
  - (b) the agreement provides that:-
    - (i) the materials and equipment, including vehicles, shall become the property of the Government, any public university, the Kenya Medical Research Institute, the Kenya Bureau of Standards or such other non-profit making organizations in Kenya as the Ministry may, by notice in the Gazette, specify for the purpose of this Order, or
    - (ii) the materials and equipment belong to, and whilst in Kenya, continue to belong to the aid agency; or
    - (iii) that both the conditions specified in this subparagraph apply;
  - (c) the implementing agency shall, at all reasonable times, make the records of the materials and equipment available to an authorized officer and shall give the officer every facility necessary to inspect and audit such records;

- (d) within ninety days after the completion of the project, the aid agency shall provide the Commissioner:-
- (i) in the case of a situation referred to in subparagraph b(i), with a detailed list of items of equipment which have been used in the execution of the project and which, not forming part of the project itself, have become the property of the Government or other organization referred to in that subparagraph;
  - (ii) in the case of a situation referred to in subparagraph b(ii), with a detailed list of items of equipment which have been used in the execution of the project and which remain the property of the aid agency; and
- (e) the Commissioner may, if he considers it necessary, inspect the project at any time during its execution.

**4.** The remission of tax under paragraph 2 shall not apply to:-

- (a) fuels and oils for use in vehicles and equipments for the projects, provided that;

The Minister may grant remission of tax under this subparagraph after taking into consideration the terms and conditions of the funding agreement; and

- (b) all taxable services except those specified in any remission Order published under section 23 of the Act.

**5.** Notwithstanding the provisions of paragraph 2, tax shall become payable if goods which are subject of this Order are used or disposed of in a manner inconsistent with the purpose for which the remission is granted.

**6.** Legal Notice No. 93 of 2002 is revoked.

Made on the 12<sup>th</sup> June, 2003.

**DAVID MWIRARIA**  
*Minister for Finance*

LEGAL NOTICE NO. 53

**THE VALUE ADDED TAX ACT  
(CAP.476)**

**IN EXERCISE** of the powers conferred by section 58 of the Value Added Tax Act, the Minister for Finance makes the following Regulations-

**THE VALUE ADDED TAX (TAX WITHHOLDING) REGULATIONS, 2004**

Citation and Commencement. **1.** These Regulations may be cited as the Value Added Tax (Tax withholding) Regulations, 2004 and shall come into operation on the 11th June, 2004.

Interpretation. **2.** In these Regulations, unless the context otherwise requires-  
‘supplier’ means a person who receives a payment for taxable supplies from a tax withholding agent;  
  
‘tax withholding agent’ means a person who has been appointed as such under section 19A of the Act.

Record, acknowledgement of payment. **3.** Upon making payment to a supplier and deducting tax therefrom, a tax withholding agent shall-  
  
(a) keep such records and in such form and manner as the Commissioner may direct; and  
  
(b) furnish the supplier with an acknowledgement of the payment in such form as the Commissioner may direct.

Where no tax is withheld for a period. **4.** Where no tax is withheld with respect to a period for which the tax withholding agent would otherwise remit tax to the Commissioner under section 19(A)(2) of the Act, the tax withholding agent shall furnish the Commissioner with a return showing that no tax was withheld in that period.

Supplier to issue invoice. **5.** A supplier who makes taxable supplies in respect of which tax is withheld by the tax withholding agent shall issue an invoice showing separately the amount of tax chargeable.

Suppliers still file returns. **6.** The withholding of tax by a tax withholding agent shall not

relieve a supplier of any obligation to file returns in accordance with the Act.

Inspection of  
Records.

7. For the purposes of obtaining full information in respect of accounting for tax withheld, the Commissioner may require any person-
  - (a) to produce for examination, at such time and place as the Commissioner may specify, records, books of accounts, documents and other records relating to the calculation or withholding of tax in respect of any period specified by the Commissioner;
  - (b) to attend at such time and place as the Commissioner may specify, for the purposes of being questioned, in respect of any matter of transaction appearing to be relevant to the tax liability of any person.

Made on 10<sup>th</sup> June, 2004

**DAVID MWIRARIA,**  
*Minister for Finance.*

LEGAL NOTICE NO. 110

**THE VALUE ADDED TAX ACT**  
*(Cap 476)*

**IN EXERCISE** of the powers conferred by section 58 of the Value Added Tax Act, Minister for Finance makes the following regulations:-

**THE VALUE ADDED TAX (ELECTRONIC TAX REGISTERS) REGULATIONS, 2004**

Citation and commencement.

**1.** These Regulations may be cited as the Value Added Tax (Electronic Tax Registers) Regulations, 2004, and shall come into operation on the 1<sup>st</sup> January 2005.

**2.** In these regulations, unless the context otherwise requires-  
"register" means an electronic tax register referred to in paragraph 6(5) of the Seventh Schedule to the Act and includes an electronic tax printer;

"user of a register" means any person required, under paragraph 6(5) of the Seventh Schedule to the Act, to use a register;

**3.** (1) These regulations apply to persons who are required, under paragraph 6(5) of the Seventh Schedule to the Act, to use a register.

(2) A user of a register shall use the register as required and in accordance with these regulations.

Prescribed type and description of register.

**4** Registers of the type and description that satisfy the technical requirements set out in the First Schedule to these Regulations are prescribed for the purposes of paragraph 6(5) of Seventh Schedule to the Act

Use of register, etc.

**5.** A user of a register shall –

(a) submit a logo unique to his business to the Commissioner, who shall keep a register of such logos;

(b) have the register examined and recorded by the Commissioner and obtain a unique register identification number in respect of that register before putting it into use.

(c) permanently affix the register's identification number obtained under paragraph (b) on the register;

(d) use the register to record only own sales and not to allow its use to record the sales of any other persons;

(e) ensure –

(i) the recording of sale with the use of the register;

(ii) the printing of the receipt (in duplicate) in respect of each sale and in which receipt shall contain the information set out in the Second Schedule to these Regulations and deliver the original receipt to the purchaser;

(f) in case of non-availability for use of the register, promptly inform the Commissioner and subsequently record the sales with the use of such substitute means as the Commissioner may approve.

User to prepare daily, monthly and annual reports.

**6.** A user of a register shall prepare daily, monthly and annual reports, which reports shall set out -

(i) the date of the report and the period in respect of which it applies;

(ii) the name and address of the user of the register;

(iii) the VAT identification number of the user of the register;

(iv) the unique identification number of the register obtained under regulations 5 (b);

(v) the total value of sales in respect of the period covered by the report;

(vi) the total amount of tax paid in respect of the period covered by the report.

User to ensure correct operations

**7.** A user of a register shall–

(a) ensure that the register operates correctly with particular regard to correctly with particular regard to correct programming of the names or descriptions of goods and services and the correct allocation of their respective tax rates;

(b) promptly report any malfunctioning of the register to a service person;

(c) on demand by a person authorized by the Commissioner, avail the register for inspection;

(d) ensure the inspection of the register by a service person every six months;



- (e) keep copies of the reports referred to in regulation 6 for a period of five years and avail such reports for inspection by the Commissioner whenever required to do so;
- (f) ensure the inspection, before further use, of a register which has been, or is suspected to have been, interfered with.

**Register Ledger** 8. (1) A user of a register shall keep a register ledger in which he shall record the servicing of the register.

(2) A user of a register shall ensure that the following are recorded in the register ledger-

- (a) the name and address of the person servicing the register;
  - (b) an entry for each time the register is serviced, describing the servicing and signed by the person performing the service;
- (3) A user of a register shall safely keep the register ledger and avail it for inspection whenever required by the Commissioner to do so.

9. Any person who fails to comply with these Regulations shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

#### FIRST SCHEULE

(r.4)

#### TECHNICAL REQUIREMENTS FOR A REGISTER

A register shall-

- (a) have a module with a memory and in case of a network system, the memory shall be inbuilt into each register being part of that network system;
- (b) have two display screens and a monitor; one screen for use by a purchaser and the other screen for use by the cashier;
- (c) have a memory built into the register and which memory shall-
  - (i) not be accessible to the user or to any other unauthorized person;
  - (ii) be placed in a socket and permanently placed in a casing and covered with a hard, no-transparent substance;

- (d) enable-
    - (i) the registration in memory of the reports referred to in regulation 6;
    - (ii) the resetting (to the zero status) of the register memory at the end of each report referred to in regulation 6;
    - (iii) modification of the rates of tax on goods and services;
  - (e) include a safety device to prevent the erasure of records in its memory;
  - (f) have a casing sealed with a leaden seal bearing the stamp of the Commission which would result in the seal's self destruction in case of an attempt to break into the memory;
  - (g) have an emergency power supply in the form of network battery (accumulator batteries) capable of lasting for forty-eight hours commencing at the time the network power supply ceases;
  - (h) have the potential for interconnectivity with external networks;
  - (i) have capability to record in its memory the following data –
    - (i) the date and time of commencing and ceasing the operations in its module;
    - (ii) the register's identification number and the user's personal identification number (PIN);
    - (iii) the tax rates assigned to the description of goods and services;
    - (iv) the value of the sales without the tax, the value of sales exempted from tax amounts divided into categories of individual tax rates, total amount of the tax and the total amount of the sales, including tax;
    - (v) the serial numbers and the dates for the resetting of the report every twenty four hours;
    - (vi) the numbers and dates of the resetting of the register memory and the information on the initiation of resetting and the methods of its performance;
  - (j) have capability to –
    - (i) store data in such a manner as to be unintelligible to persons not authorized to access it;
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- (ii) protect itself against change or erasure of data;
- (iii) print out the daily monthly and annual reports as per Regulation 6;
- (iv) print the sales records from its memory as per standard time units (day, month, year);
- (v) print data recorded in the memory and by commands given through the keyboard ;
- (vi) store the recorded data in the memory and record that data in the control paper roll;
- (vii) operate without loss of continuity in the event of interruption in power supply;
- (viii) record in the memory, the dates of all transaction;
- (ix) print in the English language.

**INFORMATION TO BE CONTAINED IN A RECEIPT PRINTED FROM A REGISTER**

A receipt printed from a register shall contain-

- (i) the name and address of the user of the register;
  - (ii) the VAT identification number of the user of the register;
  - (iii) the personal identification number (PIN) of the user of the register;
  - (iv) the identification number of the register referred to in regulations 5(b);
  - (v) the name, quantity, unit price, unit name, tax rate chargeable on, and the value of the recorded sale of goods or services;
  - (vi) the tax amount payable;
  - (vii) the date and time of issue of the receipt.
  - (viii) The total amount payable, inclusive of tax;
  - (ix) The logo referred to in regulation 5(a).
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Made on the 24<sup>th</sup> September, 2004.

DAVID MWIRARIA  
*Minister for Finance*