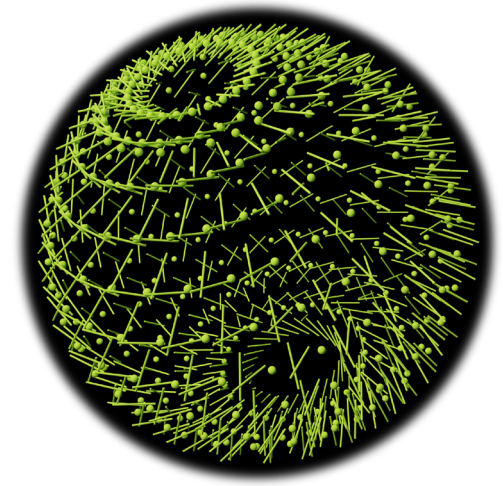




Proposed VAT amendment will make it impossible to claim input tax



The Finance Bill 2020 has proposed to amend Section 17 (2) of the VAT Act, 2013 to include a provision that requires taxpayers to claim input tax in their VAT returns on condition that the providers of the taxable goods or services must have declared the corresponding sale in their VAT return. The proposal if passed in its current form would impose an unnecessary compliance burden to taxpayers and be impractical to implement for various reasons.

Transfer of KRA responsibility

The requirement implies that it would be the responsibility of a taxpayer to confirm that a vendor has declared output tax prior to them claiming the same in their VAT return. This would be an unnecessary burden being pushed to taxpayers. It is the responsibility of the Kenya Revenue Authority (KRA) to ensure that VAT registered persons charge and declare VAT to the Commissioner as provided under the KRA Act. In any case, it would be impossible for taxpayers to confirm whether output tax has been declared by their vendors since they lack the legal mandate to inquire into the tax affairs or even to audit the vendors' returns to ensure that VAT has indeed been properly accounted for as required by the VAT law.

Potential lack of cooperation by vendors

Another concern with the proposal is that taxpayers are likely to be left at the mercy of vendors with respect to input tax deduction. The current law requires taxpayers to be in possession of certain documents in order to claim input tax, with the key document being a valid tax invoice or a certified copy of the same. With the proposal, it is expected that taxpayers will be further required to confirm from their vendors that they have declared output tax before claiming the attendant input tax. This implies that where a vendor fails to confirm to their customers that sales have been declared in the VAT return, such customers may not be able to include the purchases in the VAT returns until such a time they receive the confirmation. This would negatively affect cash flows of the customers. Where taxpayers fail to get the confirmations, irrespective of whether the vendors made the declarations, it is likely that such taxpayers will forego their right to claim input tax on their purchases. Such a requirement would not only be unfair (since the vendors would have in this case declared output tax to the Commissioner) but would adversely affect businesses.

For businesses that receive many invoices in a given month, such as those in the manufacturing and retail sectors, it would be impossible to get the confirmations from all the vendors to allow for deduction of input tax within the stipulated timelines.

iTax inconsistency reports

KRA iTax portal has already been enhanced to generate inconsistency reports where there are discrepancies between the invoice details declared by a seller and subsequently claimed by a purchaser. Taxpayers who receive inconsistency notices are expected to amend their VAT returns to reflect the correct details, otherwise KRA proceeds to assess the inconsistent input tax. The use of technology can be of great benefit in tax administration and if properly implemented can lead to a reduction in VAT leakage occasioned by fictitious claims. KRA should therefore be able to leverage on the data from iTax to identify taxpayers who are regularly flagged as non-compliant and enhance capacity to carry out more targeted VAT compliance checks.



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Legitimizing VAT Auto Assessments

There have been some pertinent issues raised around the legality of the VAT automated assessments (“VAA”) raised through the iTax portal, with arguments being advanced that the assessments are not anchored in the VAT Act. The proposal to amend Section 17 (2) of the VAT Act would appear to be a lopsided move aimed at legalizing the operations of the VAA without taking into consideration the adverse impact the amendment is likely to have on businesses.

Way forward

Whereas the efforts to curb VAT leakage are welcome, the proposed amendment is likely to be counterproductive owing to impossibility in implementation and should therefore be dropped. Alternatively, the Government through the KRA, should utilize iTax capabilities to identify non-compliant tax payers and improve compliance through enhanced compliance checks.

The next frontier to improving VAT compliance by KRA would be to expedite the development of the Tax Invoice Management System (“TIMS”) and the relevant legislative framework since the implementation of such a system with sufficient stakeholder engagement would ensure minimal human intervention, seamless flow of transactional information and ultimately increase VAT revenues.

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