LEGAL NOTICE NO. 223

THE VALUE ADDED TAX ACT, 2013

(No. 35 *of* 2013*)*

THE TAX PROCEDURES ACT

(No. 29 *of* 2015*)*

IN EXERCISE of the powers conferred by section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations —

THE VALUE ADDED TAX (ELECTRONIC TAX INVOICE) (REVOCATION) REGULATIONS, 2023

1. These Regulations may be cited as the Value Added Tax (Electronic Tax Invoice) (Revocation) Regulations, 2023. Citation.

2. The Value Added Tax (Electronic Tax Invoice) Regulations, 2020, are revoked. Revocation. L.N. 189/2020

Dated the 29th December, 2023.

NJUGUNA NDUNG'U,
Cabinet Secretary,
The National Treasury and Economic Planning.

LEGAL NOTICE NO. 224

THE INCOME TAX ACT

(Cap. 470*)*

THE INCOME TAX (TURNOVER TAX) RULES, 2023

Rule

THE INCOME TAX ACT

(Cap. 470*)*

IN EXERCISE of the powers conferred by section 130 of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Rules—

THE INCOME TAX (TURNOVER TAX) RULES, 2023

1. These Regulations may be cited as the Income Tax (Turnover Tax) Rules, 2023. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

"income from business" includes gross receipt, gross earnings, revenue, takings, yield, proceeds or other income chargeable to tax under section 12C of the Act; and

"return of income" means a return of income furnished by a person under regulation 8.

3. (1) A person who elects not to be subject to section 12C of the Act shall notify the Commissioner, in writing, at least three months before the end of the year of income. Election to be excluded from turnover tax.

(2) The Commissioner shall, within sixty days from the date of receipt of the notice under sub-rule (1), acknowledge, in writing, the notification but if the Commissioner fails to acknowledge the notification, the person shall be deemed not to be subject to the provisions of section 12C.

(3) A person who has elected not to be the provisions of section 12C shall be subject to the other provisions of the Act.

4. The income from a business that is subject to turnover tax shall not be liable to any other tax under the Act. Turnover tax as final tax.

5. (1) Where the income from business of a person registered under rule 7 exceeds twenty five million shillings during a year of income, that person shall notify the Commissioner of the change of status. Change of status.

(2) Where the Commissioner is satisfied by the notification under sub-rule (1), the Commissioner shall approve the change of status.

(3) The approval granted by the Commissioner under sub-rule (2) shall be take effect in the subsequent year of income.

6. (1) A person whose income from business is more than one million but does not exceed or is not expected to exceed twenty five million shillings per annum shall be required to apply for registration for Turnover Tax in the prescribed form. Registration and deregistration.

(2) Where the Commissioner is satisfied that a person is eligible to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.

(3) A registered person—

(a) whose income from business falls below one million shillings in any year of income;

(b) whose income from business exceeds twenty five million shillings in any year of income;

(c) who ceases to carry on business;

(d) who may require deregistration for any other reason acceptable to the Commissioner,

may apply to the Commissioner for deregistration in accordance with section 10 of the Tax Procedures Act, 2015. No. 29 of 2015.

(4) Where the Commissioner is satisfied that the conditions of sub-rule (3) have been met, the Commissioner shall deregister the person.

Accounting and payment.

7. (1) A person subject to Turnover Tax shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(2) Where a business does not have income chargeable to turnover tax in any tax period, the business shall submit a nil return.

Records.

8. A person subject to Turnover Tax shall be required to keep records necessary for determining and ascertaining the tax in accordance with the Tax Procedures Act, 2015. No. 29 of 2015.

Penalties and interest.

9. A person who fails to comply with the provisions of these Rules shall be liable to the relevant penalties and interests prescribed under the Tax Procedures Act, 2015. No. 29 of 2015.

Revocation. L.N. 5/2008.

10. The Income Tax (Turnover Tax) Rules, 2007, are revoked.

Dated the 29th December, 2023.

NJUGUNA NDUNG'U,
Cabinet Secretary,
The National Treasury and Economic Planning.

LEGAL NOTICE NO. 225

THE TAX PROCEDURES ACT, 2015

(No. 29 of 2015)

THE TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2023

Regulation

THE TAX PROCEDURES ACT, 2015

(No. 29 *of* 2015*)*

IN EXERCISE of the powers conferred by section 112 of the Tax Procedures Act, 2015, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations —

THE TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2023

1. These Regulations may be cited as the Tax Procedures (Electronic Tax Invoice) Regulations, 2023. Citation.

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

"Authority's system" means a system prescribed by the Commissioner;

"emoluments" means income subject to tax under section 5 of the Income Tax Act; Cap. 470.

"foreign country" means any country other than Kenya;

"imports" means goods imported from a foreign country in accordance with the East Africa Community Customs Management Act, 2004, or services imported from a foreign country;

"input tax" has the meaning assigned to it under section 2(1) of the Value Added Tax Act, 2013; No. 35 of 2013.

"system" means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and

"user of a system" means a person who carries on business.

3. These Regulations shall apply to any person carrying on business unless the person is exempted in accordance with section 23A of the Act. Application.

4. (1) Each user of a system shall use the system in accordance with these Regulations. Use of a system.

(2) Despite the generality of subregulation (1), each user of a system shall ensure that—

(a) each sale is recorded in the system;

(b) an invoice is generated in respect of each sale through the system; and

(c) each invoice generated through the system for a sale shall contain the information specified in regulation 7.

(3) The user of a system shall—

(a) transmit the invoice generated with respect to the sale to the buyer;

(b) transmit the invoice details to the Commissioner in accordance with regulation 8; and

(c) maintain the stock in and stock out records in the system as follows—

(i) record each local purchase and import;

(ii) notify the Commissioner in writing within thirty days before closure of business indicating records of current stock;

(iii) in case there is transfer of stock upon closure of business, the person shall notify the Commissioner in writing of the current stock quantity or levels; and

(iv) upon closure of the business, the person shall account for all relevant taxes under the applicable tax laws.

(4) A system shall be exclusively used by the registered user of that system.

(5) The Commissioner may require the following persons to use an electronic tax invoicing system that does not maintain a record of stocks—

(a) persons providing services;

(b) persons who are not registered under the Value Added Tax Act, 2013, and with an annual turnover below twenty-five million shillings using a simplified system prescribed by the Commissioner; and No. 35 of 2013.

(c) any other person using a system that is prescribed by the Commissioner.

Availability of a system.

5. (1) The user of a system shall ensure continuity of operations of the system at all times.

(2) Where a user of a system cannot use the system for any reason, the user shall—

(a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the system; and

(b) record sales using any other means as may be specified by the Commissioner.

(3) Where the user of a system regains the use of the system, the user shall enter into the system the sales recorded under paragraph (2)(b).

Obligations of the user of a system.

6. (1) Each user of the system shall—

(a) ensure the availability of the system at the point of sale;

(b) facilitate inspection of the system by an authorised officer;

(c) ensure the system is regularly updated to maintain the system's proper functioning at all times;

(d) keep and maintain a system ledger in which a record of the maintenance and update of the system's software is entered and which shall contain—

(i) the name and address of the person maintaining the system; and

(ii) an entry for each time maintenance is undertaken on the system, describing the maintenance and the name of the person performing the service; and

(e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a system intends to discontinue the use of a system due to—

(a) change of business model;

(b) closure of business; or

(c) any other reason,

the user of the system shall notify the Commissioner, in writing, of the intended discontinuation within thirty days prior to the discontinuation:

Provided that where the intended discontinuance is due to the closure of the business and the closure was unplanned, the user of the system shall notify the Commissioner within seven days after the closure of the business.

(3) Where a notification is made under subregulation (2), the Commissioner may, by notice in writing, and within thirty days after receipt of the notification, retire the system.

Tax invoices, credit notes and debit notes.

7. (1) Each electronic tax invoice generated from a system shall contain—

(a) the Personal Identification Number of the registered user of the system;

(b) the time and date of issuance of the invoice;

(c) the serial number of the invoice;

(d) where the buyer intends to claim the expense or the input tax, the buyer's Personal Identification Number ;

(e) the total gross amount;

(f) the total tax amount where applicable;

(g) the item code of supplies as provided by the Commissioner;

(h) a brief description of the goods and services;

(i) the quantity of supply;

(j) the unit of measure;

(k) the applicable tax rate;

(l) the unique system identifier;

(m) the unique invoice identifier;

(n) a quick response code; and

(o) any other information as may be specified by the Commissioner.

(2) Where a user of a system issues a credit note or a debit note, the credit note or debit note shall make reference to the original invoice number to which the supply relates.

System specifications.

8. Each system shall—

(a) be capable of interconnectivity with other information technology networks including the Authority's systems;

(b) have sufficient data storage capacity to maintain records;

(c) clearly display messages in English or Kiswahili;

(d) be secure and tamper-proof; and

(e) be capable of—

(i) integrating with the Authority's systems;

(ii) transmitting data to the Authority's systems;

(iii) having adjustments made to it so that it may to with any changes to the tax laws; and

(iv) recording and storing information required under these Regulations.

Transmission of invoice data and security.

9. Each system shall be capable of—

(a) transmitting to the Authority's system electronic tax invoice data in the manner specified by the Commissioner;

(b) printing or providing stored data;

(c) maintaining the integrity of data;

(d) securing authentication for authorized users;

(e) recording and storing a log of all activities on the system; and

(f) assigning a unique identifier to each invoice.

Electronic tax invoicing exclusions.

10. The following transactions shall be excluded from the requirement of an electronic tax invoice—

(a) emoluments;

(b) imports;

(c) investment allowances including internal accounting adjustments;

(d) airline passenger ticketing;

(e) interest;

(f) fees charged by financial institutions;

(g) expenses subject to withholding tax that is a final tax;

(h) supplies by a resident person whose annual turnover is less than five million shillings;

(i) services provided by a non-resident person without a permanent establishment in Kenya; and

(j) any other exclusion as may be provided under section 23A of the Act.

Electronic tax invoicing exemption.

11. (1) The Commissioner may, by notice in the *Gazette*, exempt a person from the requirements of the use of an Electronic Tax Invoice.

(2) The Commissioner may, by notice in the *Gazette* for reasons to be specified in the notice, revoke an exemption granted under subregulation (1).

(3) The Commissioner may exempt a person from the requirement of issuing electronic tax invoice where—

(a) the business income in relation to a transaction is received through a payment platform recommended by the Commissioner; and

(b) the information is transmitted to the Authority's system.

(4) A person who is required to issue an electronic tax invoice may, with reasons, apply to the Commissioner in writing to be exempted from the requirements of these Regulations where—

(a) an alternative automated method for recording, storing and transmitting the data relating to the transactions to the Commissioner is available and upon recommendation by the relevant authority; or

(b) the person's transactions are not under the mandate of a Ministry or any other regulatory authority.

Offences and penalties.

12. (1) A person commits an offence if the person—

(a) fails to comply with any provisions of these Regulations; or

(b) tampers with, manipulates or interferes with the proper functioning of the system including uninstallation and change of the device without notifying the Commissioner.

(2) A person who commits an offence under these regulations shall be liable to the penalty specified under section 86 of the Act.

Dated the 29th December, 2023.

NJUGUNA NDUNG'U,
Cabinet Secretary,
The National Treasury and Economic Planning.

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