



Kenya Revenue Authority seeks to introduce requirement for oil marketers to issue ETR compliant invoices on sale of petroleum products

In a stakeholder seminar held by the KRA on 25 October 2018 for the Petroleum and LPG sector, the revenue authority indicated that it is expected of oil marketers to issue Electronic Tax Register (ETR) or Electronic Signature Device (ESD) compliant tax invoices to all buyers. This directive was issued pursuant to the introduction of VAT on petroleum products at the rate of 8% through the Finance Act, 2018.



Our analysis

Whereas the petroleum sector is regulated by the Energy Regulatory Commission, including the pump prices chargeable on all products, we note that the KRA is still keen on implementing further control in the form of ETR receipts. KRA further indicated that they intend to undertake mock purchases with a view of reigning in on the marketers who are not issuing ETR/ESD compliant receipts. This said, we are of the view that implementing ETR on petroleum products may face the following hurdles:

1. The legality of the ETR requirements is a matter which remains unclear since the enactment of the VAT Regulations, 2017 effective 30 March, 2017. The VAT Regulations repealed the ETR Regulations, 2004 and failed to provide guidance on issuance of ETR compliant invoices/receipts. We also note that the principal VAT Act does not have a provision specifically directing taxpayers to issue ETR compliant invoices. This, in our view, implies that there is currently no requirement in law to have registered persons issue ETR compliant invoices. Rather, taxpayers comply with the ETR requirements (as previously required by the ETR Regulations) purely as a matter of good faith and trade facilitation rather than a requirement by the law.
2. Some oil marketers may experience challenges in calculating the base price on which VAT should be applied, noting that the retail pump price consists of numerous levies which would ordinarily be subject to VAT. However, in line with the amendments effected through the Finance Act, 2018, excise duty, fees and other charges should be excluded from the taxable value of petroleum products. A detailed guidance on how to calculate the tax base for VAT on petroleum products would be welcome.

03. We expect that the oil marketers will have to configure their systems to effect the 8% on petroleum products. This may even require acquisition of new ETR/ESD machines or reconfiguration of the existing ones, with associated costs.

Conclusion

The KRA's directive for oil marketers to issue ETR/ESD compliant tax invoices is arguably not supported by the current VAT law. As noted, the ETR Regulations, 2004 were repealed upon the enactment of the VAT Regulations, 2017. There is therefore a gap in the law as pertains the requirement to issue ETR/ESD compliant invoices. Therefore, we hold the view that this should be addressed through introduction of new regulations.

Further, even as the revenue authority seeks to enforce controls to ensure the right taxes are collected from oil marketers, there is need to issue guidelines on specific matters which are not very clear to players in the sector. This will ease the transition to taxing petroleum products and enhance compliance.

Should you have any question or happen to be affected by any of the measures enacted by the KRA, kindly contact your relationship manager at Deloitte who will be more than glad to offer you guidance and assistance.

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