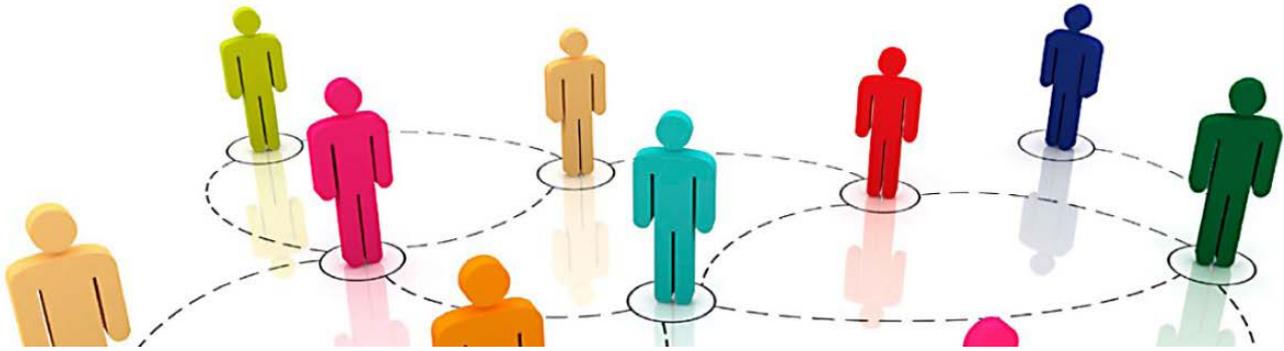




Kenya Revenue Authority comes up with new measure aimed at improving Value Added Tax compliance

The Kenya Revenue Authority (“KRA”) has come up with a raft of measures intended to improve Value Added Tax (“VAT”) compliance, increasing the tax base and reducing tax leakage. Most recently, the revenue authority has commenced implementation of an online tool that will generate automated VAT assessments through the iTax platform. In this alert, we discuss the key features of this tool and highlight our view on this initiative.



a) Key features of the VAA

VAA is a system based reconciliation tool that the KRA has rolled out with an objective of identifying inconsistencies between purchase and sales invoices declared in VAT returns. The tool then communicates the inconsistencies to both the buyer and the seller and raises an auto assessment on the buyer for any tax payable relating to the inconsistencies.

The tool is expected to curb claiming of fictitious and/or unsupported input tax by VAT registered persons and thereby enhance compliance. In so doing, the revenue authority will hopefully bring more registered persons to the tax net.

With this new approach, the KRA uses the VAA to undertake input tax reconciliation using the following steps:

01. The VAA reconciles input tax details declared by a registered person (the buyer) in a tax period to the corresponding output tax details that the supplier (the seller) to such registered person should declare;
02. Where inconsistencies arise from the reconciliation, a notification is sent to both the buyer and the seller;
03. The registered persons are then given 15 days to amend the affected return, after which the VAA runs another check. Should the inconsistencies persist, a reminder notice is sent to both the buyer and the seller;
04. If the inconsistency is not resolved within 15 days, an auto assessment is sent to the buyer. The buyer is expected to settle outstanding tax where he/she agrees to the assessment. However, the buyer may object to the assessment where he/she does not agree to it;
05. Should the auto assessment be outstanding for another 30 days, the debt section will proceed to institute recovery measures.

b) Our Analysis

The VAA in our view is a step in the right direction towards achieving VAT compliance and resolving the mismatch of input tax and output tax declared by registered persons. From KRA records, this mismatch has remained at a consistently high level with the revenue authority only able to match less than 30% of input tax to output tax since July 2016. This obviously presents a possible revenue leakage.

Its implementation is however expected to be challenged by taxpayers because it may be viewed as contradicting some provisions of tax laws as elucidated below:

01. The VAT law allows a registered person to deduct input tax for expenses that have been incurred in the generation of taxable supplies, subject to certain restrictions. Deduction can be made within a period of six months from the date of receipt of a tax invoice whereas the VAA is expected to run a check for the sales and purchases declared in a particular month. Should this be the case, it is likely that VAA will issue assessments on input tax claimed against invoices which are still within the six month allowable timeline. It therefore remains to be seen how the KRA is going to mitigate against this key issue.
02. As currently structured, the law only puts an obligation on the buyer to ensure that they are in possession of the requisite documentation, ensure that the input tax claimed is attributed to taxable supplies (or apportioned appropriately) and claimed within six months. However, the VAT law does not put an obligation on the purchaser to ensure that the seller declares a particular transaction in the seller's return. In our view, restricting input tax claimable by a taxpayer on the premise of a seller not having declared

a transaction would not only be unfair on the taxpayer but also unlawful. We therefore expect a lot of disputes with the KRA should assessments be raised merely on this ground.

Conclusion

While the introduction of the VAA should be applauded, we hold the view that it should be structured in a way to ensure that its use does not become burdensome on the part of taxpayers or create unnecessary disputes. The first step is to ensure that the application of VAA conforms to the provisions of the VAT law and does not infringe on the rights of taxpayers. This way, its use will play a big part in sealing revenue leakage and foster compliance.

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

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