COUNTRY PRESENTATION-KENYA

VAT FRAUD INVESTIGATION

VALUE ADDED TAX is….

- VAT is a consumer tax levied on taxable goods and taxable services supplied in Kenya or imported into Kenya.
- KRA is mandated to collect and account for VAT on behalf of the Government.
- The obligation of paying VAT falls on the registered person who then recovers the tax so paid from his clients (The consumer).
- VAT on imported services is payable by the importer (person receiving the taxable service).

RATES OF TAX

- **16%** - Applicable to all taxable goods and taxable services other than the zero rated supplies.
- **0%** - Supplies listed in the second schedule to the VAT Act 2013. Zero rating is geared to promoting trade and other key sectors in the economy. **Zero Rated Supplies** are taxable at the rate of 0% and the related input tax thereof deductible. Registered persons exclusively selling zero rated supplies are entitled to refund of the input tax paid in furtherance of the business
- **No rate** i.e. Exempt supplies which are not taxable and any related input tax therefore not deductible. These are listed in the first schedule to the VAT Act 2013.Persons supplying only exempt supplies are not qualified to register for VAT and are not entitled to any input tax deduction.

NB:Goods and services not listed in any of the schedules above attracts VAT at 16% and suppliers of such acquire the VAT obligation if qualified.

REGISTRATION FOR VAT

- Any person supplying or who expects to supply taxable supplies value of which is **Kshs 5 Million** or more in a year qualifies to register for VAT.
- Taxpayer to make application for registration within 30 days of becoming so liable.
- In determining the registration threshold, only the turnover on taxable supplies is taken into account. The Law also allows for voluntary registration for persons below the **5 Million** threshold.

HOW TO DETERMINE TAXABILITY OF SUPPLIES

The VAT Act has the following schedules that specify the VAT status:-

- **First Schedule:**
  - Part I -Section A :- List of Exempt Goods supplied locally or imported into Kenya
    - Section B:- Exempt Goods on Transition.
  - Part II -Exempt Services
- **Second Schedule**
  - Part A - Zero rated supplies
  - Part B – Zero rated supplies to public bodies , privileged persons and institutions.

REGISTRATION FOR VAT Cont'd

- Commissioner to register Taxpayers for voluntary registration if satisfied that:-shall make taxable supplies, has a fixed place of business, proper records, complied with other revenue laws
- Compulsory registration-by the Commissioner-taxpayer eligible for registration but has not do so
- Appointment of tax representative-No fixed place of business in Kenya.
- Registration for VAT done online.

REGISTRATION FOR VAT Cont'd

- The Taxpayer upon successful registration is able to print a Tax Registration Certificate.
- All the Tax Obligations selected by the taxpayer are clearly listed on the Tax Registration Certificate.
- The registration Certificate should be displayed on a conspicuous(visible) place in the business premises and copies at every other place at which business is carried out by the person.
- Taxpayer to notify the Commissioner in writing of any change in name, address, place of business, nature of business within 21 days of the change.

REGISTRATION FOR VAT Cont'd

- VAT registered persons are required to charge VAT as per the effective date of registration indicated on the Tax Registration Certificate.
- Every VAT registered taxpayer should install and use an Electronic Tax Invoice(TIMS) to account for ALL sale transactions and issue TIMS Generated receipts to every customer.
- Failure to charge VAT after registration is an offence.

HOW VAT WORKS

- VAT works under the **Input/ Output** Tax System.
- **Input Tax** refers to the VAT paid by a registered person on taxable supplies used directly in the registered business for production of taxable supplies.
- **Output Tax** means tax due on taxable supplies(Sale of taxable supplies).
- Tax payable to the Commissioner is the difference between the Output Tax and the Input Tax.
- **Output Tax – Input Tax = Tax Payable**

PLACE OF SUPPLY AND TAXABLE SUPPLY

- Supply of goods occur in Kenya if: the place of business of the supplier from which the services are supplied is in Kenya.
- Supply of goods occur in Kenya if: delivered in, installed or assembled in Kenya or delivered outside Kenya but were in Kenya when transportation commenced.
- Taxable supply-Supply other than exempt supplies made in Kenya by a person in the course or furtherance of a business by the person, including a supply made in connection with commencement or termination of a business.

INPUT TAX DEDUCTION

- Registered persons are entitled to input tax deduction at the end of the tax period in which the taxable supply or importation occurred.
- Input tax deduction is valid for only six months after the end of the tax period in which the supply or importation occurred.
- The input tax is only applicable on supplies or importations acquired to make taxable supplies and the registered person must be in possession of valid documentations to support the input tax.
- **Any excess input tax is carried forward and deducted in the next tax period.**
- Excess input tax may be refunded by the Commissioner if it arises from Zero rated supplies.

CHALLENGES AROUND VAT INVESTIGATIONS Cont'd

- Missing trader fraud.
- Registration.
- Unable to verify the beneficial ownership.
- Third party data access & data confidentiality restrictions.
- Existence of multiple shell entities to mimic entities involved in actual businesses.
- False exports-diversion of transit cargo more prevalent for cargo destined to S.Sudan & DRC (not EAC member states).
- Misapplication of output VAT and exemptions
- Sales suppression.
- Purchases over-declaration- fictitious claims

CHALLENGES AROUND VAT INVESTIGATIONS Cont'd

- Triangular sales.
- Out of scope supplies.
- Misclassification of goods and services.
- Composite supplies & valuation.
- Delayed liquidated damages.
- Exportation of taxable services.
- Lack of visibility of ecommerce transactions.
- Valuation of transactions settled in virtual currencies.
- Management of declared taxable and exempt transactions to make sure they are within range.

CHALLENGES AROUND VAT INVESTIGATIONS Cont'd

- Lack of precedence on decided cases on emerging issues.
- Lack of publicity of fraud cases.
- Delays on sharing of information requests with other tax jurisdiction.
- VAT on capital allowances.
- Focus on investigations with a view to prosecution, rather than deterrence.
- Qualitative data, its impossible to measure impact of investigations, for instance impact of deterrence.

SUGGESTED RECOMMENDATIONS

- Regular compliance check and audit.
- Multiagency collaboration- FRC, EACC, ARA, Judiciary.
- Capacity building.
- Regular updating of tax laws due to emerging issues.
- Adequate resource allocation.
- Timely resolution of cases.

END

THANK YOU