

Tax Alert

The Tax Procedures (Electronic Tax Invoice) Regulations, 2024

Introduction

On 25 March 2024, the Cabinet Secretary for the National Treasury and Economic Planning (CS) published the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 (“The Regulations”) through the Legal Notice (“LN”) 64 of 2024, that revoked the earlier similar regulations. These regulations are issued pursuant to Section 23A of the Tax Procedures Act, 2015 (“TPA”) that provides for the implementation of an electronic tax invoice management system (eTIMS). The Finance Act, 2023, amended the TPA to require persons carrying on business in Kenya, irrespective of their Value Added Tax (“VAT”) registration status, to issue electronic tax invoices and maintain a record of stocks, where applicable, via the eTIMS. We provide below our analysis of the key regulations contained in the Tax Procedures (Electronic Tax Invoice Regulations) 2024

Regulations	Core Provisions
Room for exemptions	The Commissioner is allowed to exempt a person from the requirements to issue electronic tax invoice through a Gazette notice. Further, the Commissioner may also exempt a person from e-invoicing requirements where; the business income in relation to a transaction is received through a payment platform recommended by the Commissioner; and the information is transmitted to the Authority’s system.
Citations and interpretations	“system” means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations
Who is required to comply with these Regulations?	The Regulations apply to any person carrying on business in Kenya and is not exempted in accordance with Section 23A of the TPA.
Offenses and penalties	If a person does not comply with these Regulations, or interferes with the proper functioning of the system including uninstallation and changes of the device without notifying the Commissioner, the person commits an offense and shall be liable to a penalty of two times the tax due as specified under Section 86 of the TPA.
Transactions excluded from electronic tax invoicing requirement	<p>In addition to the exclusions listed in Section 23A of the TPA, i.e., emoluments that have been subjected to employment tax, imports, investment allowances (capital deductions on assets), airline passenger ticketing and interest, The Regulations also exempt the following from eTIMS requirements:</p> <ul style="list-style-type: none"> ■ Fees charged by financial institutions; ■ Expenses subject to withholding tax that is a final tax; ■ Services provided by a non-resident person without a permanent establishment in Kenya ■ Internal accounting adjustments and any other exclusion as may be provided under section 23a of the act
Requirements of tax invoices, credit notes and debit notes	<p>Each electronic tax invoice generated from a system shall contain ;</p> <ul style="list-style-type: none"> ☑ The personal identification number (“pin”) of the registered user of the system. ☑ The time and date of issuance of the invoice ☑ The serial number of the invoice ☑ Where the buyer intends to claim the expense or the input tax, the buyer’s pin ☑ The total gross amount ☑ The total tax amount where applicable ☑ The item code of supplies as provided by the commissioner ☑ A brief description of the goods and services ☑ The quantity of supply and the unit of measure ☑ The applicable tax rate and the unique system identifier ☑ The unique invoice identifier and a quick response code ☑ Any other information as may be specified by the commissioner. <p>The debit notes and credit notes are required to make reference to the original invoice number to which the supply relates to.</p>

Regulations	Core Provisions
Use of the system-requirement to maintain records of stock	<p>In addition to recording sales and generating invoices through the system, The Regulations now require taxpayers to maintain records of stock in and stock out in the system. The stock records should include all local purchases and imports. In the event of closure of business, the user of the system should notify the Commissioner in writing (within 30 days before closure of business) indicating records of current stock and account for all taxes under the applicable tax laws. Although the following categories of persons are required to use an electronic tax invoicing system, the Commissioner may require them to use a system that does not maintain a record of stocks:</p> <ul style="list-style-type: none"> <li data-bbox="539 607 1251 734">  Persons in the service sector. <li data-bbox="539 757 1251 884">  Persons not registered for VAT and with annual turnover below twenty-five million shillings using a simplified system prescribed by the Commissioner. <li data-bbox="539 907 1251 1034">  Any other person using a system prescribed by the Commissioner.
System specifications	<p>The electronic tax invoicing or receipting system is required to have the capability to record and store the prescribed information and a log of activities carried out on the system, display message in English or Kiswahili, integrate and transmit data to the KRA system, allow adjustments to be made to it and maintain security and authentication for authorized users.</p>
Breakdown of System	<p>Taxpayers are expected to use the system at all times and in the event of any challenges, notify the Commissioner in writing within 24 hours of the breakdown. The Commissioner may provide an alternative method to record the sales and the taxpayer is required to transfer these sales into the system once the system is back in use.</p>



Conclusion

The publication of these Regulations sheds more light on the use of eTIMS and addresses some of the concerns that taxpayers had following the mandatory requirement to implement electronic invoicing from 1 September 2023. In as much as the adoption of eTIMS is expected to have benefits such as efficiency, and increased tax compliance, certain challenges that could impact the adoption need to be identified and addressed expeditiously.

These may include poor internet connectivity, knowledge gap on the tax laws and the usage of the platform, nature of data, among others. Active engagement by stakeholders is therefore necessary to enable the legislators and the regulators to continuously improve the user experience and efficiency.



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Our team is always available should you wish to discuss this or any other matter.

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