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KENYA TAX ALERT – TAX PROCEDURES (ELECTRONIC TAX INVOICE) REGULATIONS, 2024

Background

On 25th March 2024, the Cabinet Secretary for the National Treasury and Economic Planning published the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 which provide clarity on Electronic Tax Invoice Management System (“eTIMS”). We provide a summary of the eTIMS Regulations below.

These Regulations apply to all persons carrying out business unless exempted.

eTIMS system specifications

The system shall:

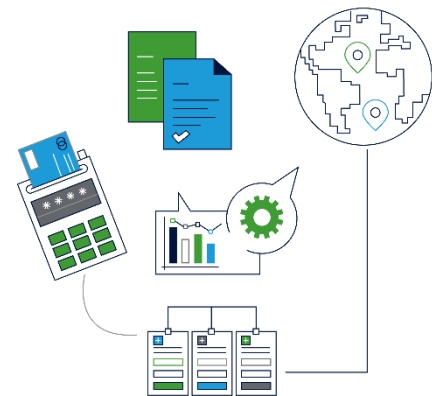
- Be capable of:
 - interconnectivity & integration with other IT networks, including Kenya Revenue Authority’s systems;
 - transmission of data to KRA’s systems in the manner specified by the Commissioner;
 - Maintaining the integrity of the data;
 - Printing or providing the stored data;
 - Securing authentication for authorized users;
 - being adjusted to comply with tax law changes;
 - Recording and storing a log of all system activities as well as information required under these regulations
 - Assigning a unique identifier to each invoice.
- Have sufficient storage capacity to maintain records;
- Clearly display messages in either English or Kiswahili;
- Be secure and tamper-proof;

Automatic eTIMS exemptions

The following expenses are exempted from the Regulations:

- Emoluments (Salaries, wages and benefits paid to employees);
- Imports;
- Investment allowances including internal accounting adjustments;
- Airline passenger ticketing;
- Interest;
- Fees charged by financial institutions;
- Expenses subjected to withholding tax that is a final tax;
- Services provided by a non-resident person without a permanent establishment in Kenya; and
- Any other person that has been expressly exempted by the Commissioner in the Kenya Gazette.*

**the Commissioner may revoke a gazette exemption by a further gazette notice providing reasons for the revocation*



Application for eTIMS exemption

A person may apply to the Commissioner, with reasons, to be exempted from the Regulations if:

- An alternative automated method for collecting, recording, storing and transmitting the data relating to the transactions to the Commissioner is available, upon recommendation by the relevant authority; or
- The person's transactions are not under the mandate of a Ministry or any other regulatory authority.

The Commissioner may also exempt a person from the requirement to issue an eTIMS compliant invoice where the business income in relation to that transaction is received through a payment platform recommended by the Commissioner and the information is transmitted to the Authority's system.

What are the obligations of persons who use eTIMS?

A person using the eTIMS system needs to:

- Ensure that the availability of the system at the point of sale;
- Facilitate inspection of the system by an authorised officer;
- Ensure that the system is regularly updated to maintain the system's proper functionality at all times;
- Maintain a system ledger recording maintenance and update of the system, including the name and address of the person maintaining the system and entry for each time maintenance is done
- Transmit the invoices to buyers and transmit the invoice details to the Commissioner;
- Each sale is recorded in the system;
- An invoice is generated for each sale through the system, containing all the required information;
- Invoices are transmitted to the Commissioner;
- Maintain the stock records that include local purchases imports;
- Notify the Commissioner of the following concerning stock records and ensure that all applicable taxes are accounted for:
 - Current stock records (within 30 days before closing a business);
 - Current stock records in case of stock transfers upon closure of a business;

What information should be contained in the electronic tax invoice?

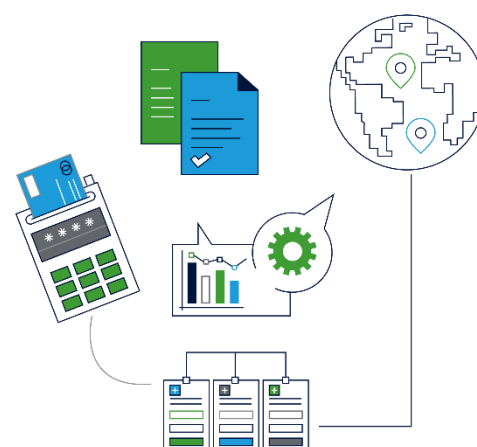
An eTIMS compliant invoice should contain:

- The PIN of the supplier;
- The invoice serial number and the date and time of the issuance of the invoice;
- **The PIN of the buyer, in the event that the buyer intends to claim the expense or the input VAT;**
- The total gross amount, applicable tax rate and amount of tax where applicable;
- The item code of the supplies as provided by the Commissioner;
- The quantity and unit of measure of the supply;
- a brief description of the goods or services;
- The unique system identifier and unique invoice identifier;
- A quick response code (QR code);
- Where a credit or debit note is issued, reference to the original invoice number to which the supply relates; and
- Any other information as may be specified by the Commissioner.

Are there any exemptions to use of the stock management module?

The following persons are exempted from using the eTIMS stock management module:

- Persons engaging in the provision of services
- Persons not registered under the VAT Act who have an annual turnover of less than KES 25 million using a simplified system.
- Any other person using a system that is prescribed by the Commissioner.



What happens if the system fails?

While businesses are obliged to ensure continuity of the system, there are instances that the system may fail or suffer downtime. During such instances, person must notify the Commissioner in writing within 24 hours of this failure and record the sales using any other means as may be specified by the Commissioner. Once the system is operational, the person must record the sales on eTIMS.

What should I do if I want to close my business or change my business model?

Where a person intends on discontinuing use of the eTIMS system due to closure of their business, change of their business model or any other reason, they must notify the Commissioner in writing, within 30 days before the discontinuation. This notification must also include records of current stocks, where applicable.

However, if the discontinuation of the eTIMS system is due to an unplanned closure of the business, the person may notify the Commissioner within seven days after the business closure.

The Commissioner may then retire the system within thirty days after receipt of such a notification.

If there is a transfer of stock upon closure of business, the person shall notify the Commissioner, in writing, of the current stock quantity or levels.

Upon closure of the business, the person must account for and settle all applicable taxes under various tax laws.

What are the penalties imposed under the Regulations?

A person who fails to comply with the provisions of these Regulations or manipulates, tampers with or interferes with the functioning of the eTIMS system (including uninstallation or change of device without notifying the Commissioner) shall be liable to a penalty of two times the tax due.



Should you need any assistance/clarifications in respect of the above, please reach out to the below or your usual RSM contact.

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