



ARE YOU REALLY EXPORTING SERVICES?

The VAT Tribunal through a case that was presented before it, sought to demystify the concept of **consumption** with regards to the supply of a service and consequently establish what rate (if applicable) VAT was chargeable at.

In the case, the Appellant being a Kenyan company was engaged by a company incorporated and domiciled in the United States of America (US), to conduct promotional and marketing services for one of its brands in Kenya. The promotional and marketing services entailed advertising on local Kenyan television stations, radio stations, local dailies as well as on billboards.

The pertinent issue that was in contention was whether the services provided by the Appellant were standard rated (VAT applied at 16%) or zero rated (VAT applied at 0%).

The Appellant's position was that the services were exported out of Kenya as they were consumed by the US company and were therefore zero rated. The Commissioner of Domestic Taxes (the Respondent) on the other hand was of the position that the services were local supplies and therefore VAT was chargeable at 16%.

Of note is that the now repealed VAT Act (Cap 476, Laws of Kenya) which was in force at that time defined a "service exported out of Kenya" to mean a service provided for use or consumption outside of Kenya. Such a service was zero rated.

The Tribunal sought to answer the following issues with a view to determining the place of consumption and hence determine if VAT was chargeable at the rate of 16%. The issues were: -

- Whether requisition/payment for services necessarily amounted to consumption, and
- Whether the services rendered by the Appellant were consumed in Kenya.

On the first issue, the Tribunal held that the location of a person making a requisition/payment for a service did not amount to a place of consumption. Essentially, consumption is not determined by reference to the payer, location of the payer of the services or location of the person who is requisitioning for the service. What is important is the place of the consumption of the services. Therefore, just because the US company requisitioned the services from the Appellant, it did not necessarily mean that it was the consumer of the promotional and marketing services.

On the second issue, the Tribunal held that the benefit that arose from the promotional and marketing services carried on by the Appellant was the creation of awareness amongst consumers of the product. This in turn translated into increased sales of the product and led to an increase in profits. Ultimately, it was the households within Kenya that were the final consumers of the promotional and marketing services. By hearing, seeing and reading the respective advertisements and promotional materials, the households indeed were the consumers of the services. In addition, were it not for these households the US company would not have had a market for its products in Kenya.

Based on the foregoing, the Tribunal ruled that the promotional and marketing

services that were rendered by the Appellant were consumed in Kenya and therefore subject to VAT at the rate of 16%.



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