



HAVE YOU REGISTERED FOR VAT BY DEFAULT?

In line with the Government's objective to increase revenue by way of tax collection, it is often a requirement to obtain a Tax Compliance Certificate (TCC) for any dealings with Government bodies e.g. during tendering, applications for high ranking appointments etc. The iTax platform is interactive and has made it much easier to obtain a TCC where one has been compliant with the remittance of their taxes.

It is however, during this process that many individuals and entities have been surprised to find out that they are registered for tax obligations that they may not have been aware of, and therefore owe the Kenya Revenue Authority (KRA) money for non-compliance. In our experience, the tax for which these liabilities arise most commonly is Value Added Tax (VAT).

Taxpayers are often astounded when they receive a tax demand from the revenue authority which they least expected. Upon further inquiry, they are taken aback by the fact that the monies owing are as a consequence of non-compliance with the provisions of the VAT Act.

With the above in mind, it is essential to note that the VAT Act provides for registration and deregistration for VAT and offers a threshold of KShs.5 Million in turnover for registration. Most instances that lead to the situation mentioned above, are unknowingly registering for VAT during the initial process of obtaining a PIN Certificate. It is imperative to note that the moment an individual or an entity is registered for VAT, one becomes an "agent" of the KRA and certain compliance obligations are immediately triggered.

Some of these obligations include: -

- Charging and collecting VAT whenever one is invoicing for a taxable supply of goods or services made,
- Remitting the collected VAT to the revenue authority, and
- Filing of VAT returns on or before the 20th day of the month succeeding the making of the taxable supplies.

The above obligations have significant consequences which many taxpayers are not aware of until it is already too late and a significant amount in tax liabilities has been accrued.

The consequences that arise as a result of failure to adhere to the above responsibilities include: -

- Where one has failed to charge VAT as required, the tax becomes the registered person's responsibility and the KRA can recover it directly from them,
- Where one has failed to file a VAT return, under the Tax Procedures Act (TPA), one is exposed to a monthly non-filing penalty of KShs. 20,000 and where tax was due, a further penalty of 5% of the tax due. It is imperative to note that these penalties are applicable for the period after 19th January 2016,
- For periods prior to 19th January 2016, the penalty was KShs. 10,000 for non-filing and a compounded interest of two percent where there was tax due.

Kindly note that even where there is no VAT due, one is still required to file a nil return as the penalty is still applicable.

Based on the foregoing the question arises, *can the above be remedied?* Our answer is, *yes it can.*

The VAT Act gives powers to the Commissioner for VAT to deregister a person where he is satisfied that there are sufficient grounds to do so. The consequences of deregistration is that one is no longer obligated to charge VAT or file any returns post deregistration. It is now possible to seek deregistration on the iTax platform.

On the question of the penalties and interest due for past non-compliance (prior to the adoption of the Tax Procedures Act), one can make an application for waiver of interest and penalties to the Commissioner. The taxpayer would however, require very solid grounds to convince the KRA to grant the waiver – ignorance of the VAT registration would not be an acceptable defence.



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