

Offset or Refund of Excess VAT Credits Arising out of Withholding VAT

Tax
Alert
09-
2019

On 5th July 2019, the President Hon. Uhuru Kenyatta assented and passed into law the **Statute Law (Miscellaneous Amendments) Act, 2019** which, among other provisions, made amendments to the VAT Act, 2013 to allow for the offset or refund of excess VAT credits arising out of withholding VAT.

The changes became effective on 14 September 2019, but will apply retrospectively for 36 months prior to 23 July 2019.

What is withholding VAT?

The concept of withholding VAT was first introduced in Kenya in 2003. It involves a process whereby Withholding agents, appointed and approved by the Commissioner, are allowed to retain 6% of the total 16% VAT payable for taxable goods or services, from the monies payable to suppliers, and remit the same to the KRA on a weekly basis or within 14 days of retention. The supplier would then receive his/her payment for goods or services supplied less the 6% withheld VAT and would thereafter be required to remit the other 10% VAT to the KRA on or before the 20th day of the following month.

Past Practice

Initially, prior to the amendment, the only instances where excess tax could be refunded by the Commissioner for Domestic Taxes, under the VAT Act, 2013 was where the taxpayer incurred bad debts relating to goods/services for which VAT had already been paid or where the excess tax was paid in error. In both instances, the taxpayer would make an application to the Commissioner for a refund, and the latter would verify and approve the refund upon careful consideration.

The Change

With the introduction of the Statute Law (Miscellaneous Amendments) Act, 2019, the law has been amended to allow registered Taxpayers with excess withholding VAT to apply the excess amounts to offset any outstanding tax debt they may have with the KRA.

Alternatively, if they do not have any debt, they may apply to the Commissioner for a refund of the excess.

One notable difference with this new regulation is that it will also apply retrospectively to excess amounts, which accrued during a window period of **36 months** prior to **23rd July 2019** and subsequent periods up to **14th September 2019**.

The Application Process.

To claim a refund or offset for amounts accrued before 14th September 2019, the taxpayer should make an application within **Twelve (12) months from 23rd July 2019**. This means that if you have paid excess withholding VAT, which has accrued during the period between July 2016 and September 2019 you may apply for an offset of any outstanding tax debts on or before 23rd July 2020.

Similarly, from 23rd July 2019, all subsequent excess withholding VAT paid will be offset or refunded provided an application be made to the Commissioner within **Twenty four (24) months** from the date the tax becomes due and payable.



Offset or refund will be subject to the discretion of the Commissioner who must be satisfied that such excesses arose from withholding tax held by withholding tax agents and that the amount should be applied to offset any tax liability due from the taxpayer under the VAT Act, 2013 or refunded, then the same will be done.

Our take

While this amendment is a welcome relief to registered taxpayers, the same is yet to be implemented by the KRA given that the iTax portal is yet to be configured to allow for such applications.

Once the system is updated, the process of will be similar to that used in normal applications of refund for excess VAT and taxpayers should take advantage of this provision to reduce their tax liability.

Our value addition

We at TruQuantum Consulting are working with the taxpayers in ensuring they are compliant with the tax changes. As such we support you to ensure easy transition and continued tax compliance.

Our value addition services entail:

- Review of VAT refunds and advice on offset or refund application;
- Monthly filing of VAT returns;
- E-slip generation for making payments to the KRA;
- Tax planning; and
- Training on tax compliance.

Contact us

Website: www.truquantum.co.ke

TruQuantum Consulting
Nas Apartments No. 1, Milimani Road
P.O. Box 72516-00200 Nairobi, Kenya.

Tel: +254 20 440 8504/ 0722296536

Email: Eric.Kinoti@truquantum.co.ke

Hellen.Achieng@truquantum.co.ke