



## TAXPAYERS GUIDELINES FOR APPOINTMENT AND REVOCATION AS WITHHOLDING VALUE ADDED TAX (WHVAT) AGENTS

Section 42A of the Tax Procedures Act, Cap 469B gives powers to the Commissioner to appoint a person to withhold two per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner.

These guidelines are for the proper **operation of withholding VAT** on taxable supplies received by VAT withholding agents:

1. VAT withholding agents are required to withhold two per cent (2%) of taxable value indicated on a tax invoice on purchasing taxable supplies at the time of paying a registered supplier and remit the same to the Commissioner within five (5) working days after the deduction is made.
2. As per VAT Regulations 2017 paragraph 5, where a VAT registered supplier has not indicated the VAT amount on an invoice for a taxable supply, it shall be deemed that the supply is VAT inclusive.
3. Withholding VAT shall not apply on payments for taxable supplies to:
  - a. Official aid funded projects;
  - b. The taxable value of zero-rated supplies;
  - c. Registered manufacturers whose value of investment on 31<sup>st</sup> December 2024 is at least two (2) billion shillings. (*The Registered manufacturers are required to apply for an exemption certificate (letter) to the Commissioner for Domestic Taxes*); and
  - d. Non-VAT registered persons.
4. VAT withholding agents shall be required to withhold VAT in the name and PIN of the supplier of taxable supplies.
5. A VAT Withholding agent shall apply for cancellation of a withholding VAT certificate through iTax, due to any of the following reasons:
  - a. The certificate was issued to the wrong person.
  - b. The certificate was issued in error.
  - c. A credit note was issued resulting to a reduction of transaction value.
  - d. Any other reasonable cause.
6. Upon cancellation of a withholding certificate, the system shall generate a Withholding Adjustment Voucher, which can be utilized to make future withholding VAT payments.



7. The tax withheld under this section shall be remitted to the Commissioner within five working days after the deduction was made as provided for in Tax Procedure Act, Cap 469B Section 42A (4B).

*The tax withheld under this section shall be remitted to the Commissioner within five working days after the deduction was made*

8. A VAT withholding agent commits an offence when they fail to abide to the requirements of Section 42A (4C) of the TPA CAP 469B. The offence is committed when the agent;

*A person who is required under this section to withhold tax and, without reasonable cause—*

*(a) fails to withhold the whole amount of the tax which should have been withheld; or*

*(b) fails to remit the amount of the withheld tax to the Commissioner by the fifth day of the following month, shall be liable to a penalty of ten per cent of the amount not withheld or remitted.*

9. A VAT withholding agent will be liable to a penalty as spelt out in Section 39A of the TPA CAP 469B when they fail to deduct or withhold tax and remit the tax;

*Penalty for failure to deduct or withhold tax.*

*Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.*



## GUIDELINES FOR REVOCATION OF A WITHHOLDING VAT (WHVAT) AGENT'S APPOINTMENT

Section 42A (2) of the Tax Procedures Act, Cap 469B provides that the Commissioner may, at any time, revoke the appointment of a tax withholding agent, if the Commissioner deems it appropriate to do so.

These guidelines are to guide appointed Withholding VAT (WHVAT) agents on the requirements and procedures, where they seek **revocation of their WHVAT agent appointment**.

1. The following appointed WHVAT agents are eligible to apply for revocation of their appointment –
  - a) WHVAT agents who cease operations or carrying out business and notifies the Commissioner attaching a **business deregistration certificate**;
  - b) WHVAT registered agent who is already withholding and remitting the two per cent of the taxable value on purchasing taxable supplies and whose purchases and sales achieve 100% TIMS or eTIMS compliance for six consecutive months;
  - c) Public bodies, privileged persons and institutions listed in Part B of the Second Schedule to the VAT Act, 2013, provided that they are not carrying on any business.
2. Appointed WHVAT agents falling within the criteria listed in (1) above can apply to their Tax Service Office (TSO) in writing for consideration for revocation of their WHVAT agent appointment citing any one of the reasons with evidence.
3. A WHVAT agent who has applied for revocation of their appointment will continue to withhold and remit to the Commissioner within the requirements of TPA CAP 469B until notified otherwise.
4. Where the Commissioner reviews the application for revocation by the WHVAT agent and the grounds stated are deemed sufficient, the Commissioner shall revoke the appointment and a Withholding VAT Agent Cancellation Notice will be forwarded to the taxpayer's iTax registered email.
5. The revocation of a WHVAT agent will take effect on the Notification date indicated on the Withholding VAT Agent Cancellation Notice.
6. The Commissioner reserves the right to re-appoint a taxpayer as a WHVAT agent where information is obtained that contradicts the grounds provided in the taxpayer's revocation application letter.
7. Where the Commissioner determines that the applicant is not eligible for revocation, the Commissioner shall reject the application for revocation in writing citing reasons. The applicant shall receive a rejection notice through their iTax registered email.



8. The WHVAT agent shall continue to operate WHVAT on all payments for purchases as guided in their WHVAT appointment letter.

**GUIDELINES ON PROCESSING OF WITHHOLDING VAT EXEMPTION APPLICATIONS PURSUANT TO SEC 42A (1) OF THE TAX PROCEDURES ACT, CAP 469B.**

Section 42A (1) of the Tax Procedures Act CAP 469B exempts operation of Withholding VAT on payments to registered manufacturers whose value of investment on 31<sup>st</sup> December 2024 was at least two (2) billion Kenya shillings.

These guidelines have been developed to provide a framework for applications for **Withholding VAT exemption** applications by taxpayers.

1. A taxpayer shall apply for Withholding VAT exemption application task in iTax, attaching the relevant supporting documents which include;
  - i. Evidence of being a registered manufacturer.
  - ii. Annual signed accounts showing the taxpayer's cumulative value of investment on 31<sup>st</sup> December 2024 was at least two (2) billion Kenya shillings.
  - iii. The taxpayer is compliant in all applicable tax obligations for all the applicable tax periods.
2. Upon receipt of the application, the respective Tax Service Office (TSO) shall review the application together with the supporting documents thereof against declarations on iTax.
3. The TSO having been satisfied that the taxpayer qualifies for Withholding VAT exemption, approve the application in iTax. iTax shall automatically generate and send the Withholding VAT exemption certificate to the taxpayer's iTax registered email address.
4. Where the application fails to meet the requirements, the KRA shall reject the application in the system indicating the reasons for the rejection. iTax shall generate and send the rejection notice to the taxpayer with reasons as provided by the TSO head.
5. Approval and Rejection of applications for withholding VAT shall be done within 14 days from receipt of application and all supporting documents.
6. Appointed Withholding VAT agents will cease to withhold VAT from payments made to the taxpayers who have been granted the exemption under paragraph 42A of the Tax Procedures Act, CAP 469B upon presentation of the exemption certificate. iTax will not generate a withholding VAT payment registration slip for a taxpayer who has been exempted from Withholding VAT..

7. Where it is established that the information availed by the taxpayer in support of their Withholding VAT exemption application was inaccurate or erroneous, the TSO head may revoke the issued Withholding VAT exemption and appoint such taxpayer as a Withholding VAT agent.