

## When was Withholding VAT introduced?

Withholding VAT was introduced in Kenya w.e.f 1st October 2003. It is not a new tax but a reinforcement measure to ensure that all the VAT charged reaches the Government. Prior to this some suppliers were tempted to suppress declaration of the VAT due for payment.

## What Is Withholding VAT?

It is a system which involves the declaration of VAT by both the supplier and his customer who has been appointed as a withholding VAT Agent. Institutions appointed as withholding VAT Agents are Government institutions, parastatals, banks, financial institutions, Co-operative Societies, Insurance companies and regular exporters.

## How does Withholding VAT System Work?

When a taxpayer (trader) supplies and invoices an appointed withholding VAT Agent the payment for supply is made less VAT charged or that which ought to have been charged. The Agent withholds VAT irrespective of whether the supplier is registered for VAT or not. The Agent issues a withholding VAT certificate to the supplier indicating the VAT withheld. This certificate entitles the trader to claim back the withheld VAT to avoid double taxation since the same tax is declared and paid by the trader through a VAT 3 return. Withholding VAT on taxable supplies not charged VAT is computed using the formula  $X - X/1.16$  where X is the total value of the invoice or taxable supplies.

## Supplies Liable to Withholding VAT

Only taxable goods and services are liable to withholding VAT. No VAT is withheld on exempt goods, exempt services and Zero rated supplies. Any VAT withheld in exempt and Zero rated supplies is treated as tax paid in error and therefore refundable by the Commissioner.

## Submission Of Withholding Vat Returns

Withheld VAT is remitted by appointed withholding VAT Agents to the Commissioner on weekly basis unless the Commissioner has accepted an alternative method. The payments are made against VAT A taxpayer whose VAT has been withheld is still required to submit a VAT 3 return and pay the tax charged irrespective of whether the tax has been or will be withheld. The same case applies irrespective of whether the Supplier has been paid or not.

## Refund of Excess Credit

A taxpayer is authorized to claim back the withheld VAT on subsequent VAT 3 return(s) provided he is in possession of withheld VAT certificate (s). Where the excess arising from the system becomes a perpetual feature, the taxpayer has a right to claim it from the Commissioner. Suppliers of taxable Supplies who are not already registered for VAT are advised to register in order to benefit from claiming back withheld VAT.

## Offences Under Withholding VAT System

Offences under the System are as Follows:-

Failure by the appointed Agents to withhold VAT.

Failure to remit the withheld VAT or to Submit a return where there is no payment to make.

Failure to issue withholding VAT certificates.

Purporting to be a withholding VAT Agent.

A withholding VAT Agent who commit the above offences is liable to a penalty of Kshs 10,000 or 10% of the Tax due whichever is higher.