

LEGAL NOTICE NO. 64

THE TAX PROCEDURES ACT

*(Cap. 469B)*THE TAX PROCEDURES (ELECTRONIC TAX INVOICE)
REGULATIONS, 2024

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THE TAX PROCEDURES ACT

(Cap. 469B)

IN EXERCISE of the powers conferred by section 112 of the Tax Procedures Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations —

THE TAX PROCEDURES (ELECTRONIC TAX INVOICE)
REGULATIONS, 2024

1. These Regulations may be cited as the Tax Procedures (Electronic Tax Invoice) Regulations, 2024. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“Authority’s system” means a system prescribed by the Commissioner;

“emoluments” means income subject to tax under section 5 of the Income Tax Act; Cap. 470.

“foreign country” means any country other than Kenya;

“imports” means goods imported from a foreign country in accordance with the East Africa Community Customs Management Act, 2004, or services imported from a foreign country;

“input tax” has the meaning assigned to it under section 2(1) of the Value Added Tax Act; Cap. 476.

“system” means an electronic tax invoicing or receipting system that is maintained and used in accordance with these Regulations; and

“user of a system” means a person who carries on business.

3. These Regulations shall apply to any person carrying on business unless the person is exempted in accordance with section 23A of the Act. Application.

4. (1) Each user of a system shall use the system in accordance with these Regulations. Use of a system.

(2) Despite the generality of subregulation (1), each user of a system shall ensure that—

- (a) each sale is recorded in the system;
- (b) an invoice is generated in respect of each sale through the system; and
- (c) each invoice generated through the system for a sale shall contain the information specified in regulation 7.

(3) The user of a system shall—

- (a) transmit the invoice generated with respect to the sale to the buyer;
- (b) transmit the invoice details to the Commissioner in accordance with regulation 8; and

- (c) maintain the stock in and stock out records in the system as follows—
 - (i) record each local purchase and import;
 - (ii) notify the Commissioner in writing within thirty days before closure of business indicating records of current stock;
 - (iii) in case there is transfer of stock upon closure of business, the person shall notify the Commissioner in writing of the current stock quantity or levels; and
 - (iv) upon closure of the business, the person shall account for all relevant taxes under the applicable tax laws.

(4) The Commissioner may require the following persons to use a system that does not maintain a record of stocks—

- (a) persons providing services;
- (b) persons who are not registered under the Value Added Tax Act, and who have an annual turnover that is less than twenty-five million shillings using a simplified system prescribed by the Commissioner; and
- (c) any other person using a system that is prescribed by the Commissioner.

Cap. 476.

5. (1) The user of a system shall ensure continuity of operations of the system at all times.

Availability of a system.

(2) Where a user of a system cannot use the system for any reason, the user shall—

- (a) notify the Commissioner in writing within twenty-four hours of the user's inability to use the system; and
- (b) record sales using any other means as may be specified by the Commissioner.

(3) Where the user of a system regains the use of the system, the user shall enter into the system the sales recorded under paragraph (2)(b).

6. (1) Each user of the system shall—

Obligations of the user of a system.

- (a) ensure the availability of the system at the point of sale;
- (b) facilitate inspection of the system by an authorised officer;
- (c) ensure the system is regularly updated to maintain the system's proper functioning at all times;
- (d) keep and maintain a system ledger in which a record of the maintenance and update of the system's software is entered and which shall contain—
 - (i) the name and address of the person maintaining the system; and

- (ii) an entry for each time maintenance is undertaken on the system, describing the maintenance and the name of the person performing the service; and
- (e) comply with such other requirements as may be specified by the Commissioner.

(2) Where a user of a system intends to discontinue the use of a system due to—

- (a) change of business model;
- (b) closure of business; or
- (c) any other reason,

the user of the system shall notify the Commissioner, in writing, of the intended discontinuation within thirty days before the discontinuation:

Provided that where the intended discontinuance is due to the closure of the business and the closure was unplanned, the user of the system shall notify the Commissioner within seven days after the closure of the business.

(3) Where a notification is made under subregulation (2), the Commissioner may, by notice in writing, and within thirty days after receipt of the notification, retire the system.

7. (1) Each electronic tax invoice generated from a system shall contain—

- (a) the Personal Identification Number of the user of the system;
- (b) the time and date of issuance of the invoice;
- (c) the serial number of the invoice;
- (d) where the buyer intends to claim the expense or the input tax, the buyer's Personal Identification Number ;
- (e) the total gross amount;
- (f) the total tax amount where applicable;
- (g) the item code of supplies as provided by the Commissioner;
- (h) a brief description of the goods and services;
- (i) the quantity of supply;
- (j) the unit of measure;
- (k) the applicable tax rate;
- (l) the unique system identifier;
- (m) the unique invoice identifier;
- (n) a quick response code; and
- (o) any other information as may be specified by the Commissioner.

Tax invoices,
credit notes and
debit notes.

(2) Where a user of a system issues a credit note or a debit note, the credit note or debit note shall make reference to the original invoice number to which the supply relates.

8. Each system shall— System specifications.

- (a) be capable of interconnectivity with other information technology networks including the Authority's systems;
- (b) have sufficient data storage capacity to maintain records;
- (c) clearly display messages in English or Kiswahili;
- (d) be secure and tamper-proof; and
- (e) be capable of—
 - (i) integrating with the Authority's systems;
 - (ii) transmitting data to the Authority's systems;
 - (iii) having adjustments made to it so that it may be consistent with any changes to the tax laws; and
 - (iv) recording and storing information required under these Regulations.

9. Each system shall be capable of— Transmission of invoice data and security.

- (a) transmitting to the Authority's system electronic tax invoice data in the manner specified by the Commissioner;
- (b) printing or providing stored data;
- (c) maintaining the integrity of data;
- (d) securing authentication for authorized users;
- (e) recording and storing a log of all activities on the system; and
- (f) assigning a unique identifier to each invoice.

10. The following transactions shall be excluded from the requirement of an electronic tax invoice— Electronic tax invoicing exclusions.

- (a) emoluments;
- (b) imports;
- (c) investment allowances including internal accounting adjustments;
- (d) airline passenger ticketing;
- (e) interest;
- (f) fees charged by financial institutions;
- (g) expenses subject to withholding tax that is a final tax;

- (h) services provided by a non-resident person without a permanent establishment in Kenya; and
- (i) any other exclusion as may be provided under section 23A of the Act.

11. (1) The Commissioner may, by notice in the *Gazette*, exempt a person from the requirements of the use of an Electronic Tax Invoice.

Electronic tax
invoicing
exemption.

(2) The Commissioner may, by notice in the *Gazette* for reasons to be specified in the notice, revoke an exemption granted under subregulation (1).

(3) The Commissioner may exempt a person from the requirement of issuing an electronic tax invoice where—

- (a) the business income in relation to a transaction is received through a payment platform recommended by the Commissioner; and
- (b) the information is transmitted to the Authority's system.

(4) A person who is required to issue an electronic tax invoice may, with reasons, apply to the Commissioner in writing to be exempted from the requirements of these Regulations where—

- (a) an alternative automated method for recording, storing and transmitting the data relating to the transactions to the Commissioner is available and upon recommendation by the relevant authority; or
- (b) the person's transactions are not under the mandate of a Ministry or any other regulatory authority.

12. (1) A person commits an offence if that person—

Offences and
penalties.

- (a) fails to comply with any provisions of these Regulations; or
- (b) tampers with, manipulates or interferes with the proper functioning of the system including uninstallation and change of the device without notifying the Commissioner.

(2) A person who commits an offence under these regulations shall be liable to the penalty specified under section 86 of the Act.

13. The Tax Procedures (Electronic Tax Invoice) Regulations, 2023, are revoked.

Revocation.
L.N. 225/2023.

Dated the 25th March, 2024.

NJUGUNA NDUNG'U,
Cabinet Secretary for the
National Treasury and Economic Planning.