

Reverse VAT confuses taxpayers



Photo: Mr. Kairo Thuo; director with Viva Africa Consulting Limited.

VAT on importation of services, or reverse VAT as many of us prefer to refer to it as, continues to be as confusing today as it was nine years ago when the Revenue Authority realised that it was part of the VAT regime.

By way of definition, services imported into Kenya are services provided by a person who is normally resident out of Kenya and who is not required to register for tax in Kenya whether the services are provided from outside of Kenya or from Kenya or from both in and outside of Kenya.

Unfortunately, the VAT Act does not quite explain who a person who is not normally resident in Kenya is and further the registration requirements are based mainly on the nature of the supply and the estimated turnover.

This is the first complication with regards to reverse VAT.

If one simply reads the VAT Act, the whole reverse VAT issue is captured in one line (i.e. S.6(6) which states that the VAT on importation of services shall be payable by the person importing the services.)

This section alone seems to be the main course of confusion as unlike all other VAT charges, reverse VAT seems not to have anyone making the charge (i.e. in the case of normal trade, the supplier of the goods or services charges the VAT and pays it over to the KRA whilst in the case of imports the Customs Department charges the VAT).

What needs to be remembered in the case of reverse VAT is that S.6(6) work on the principal of subrogation, i.e. the recipient of the services is required by law to leave his position and take the position of the supplier of the services and to do so as though the supplier was a resident tax registered supplier.

However, this is not a complete subrogation in that the importer of the services is not required to raise a tax invoice.

Instead, he is expected to declare the imported services and pay the reverse VAT using a special form called a VAT 7.



As is the case in all subrogation scenarios, one is still allowed to revert to their normal position.

In the case of reverse VAT, once the VAT has been declared and paid, the recipient of the services is allowed to include the reverse VAT as part of his input tax and deduct the amount in accordance with his VAT status (i.e. if a fully taxable person, then they recover the full reverse VAT whilst is partially exempt then the reverse VAT will be restricted in accordance to the ordinary input tax restriction mechanism).

What is important to remember is that the importer will need to be in possession of reverse VAT payment receipt (in this case the VAT 28, which is the miscellaneous payment receipt).

What has made taxpayers grumble for a long time is why, in the case of a fully taxable person, one needs to pay the reverse VAT and thereafter claim it back.

At the end of the day, this causes an unnecessarily uncomfortable cash flow situation for the taxpayer whilst at the same time not securing any financial benefits to the revenue authority.

For a few months, in 2003, the proof of payment requirement had been eliminated for fully taxable persons only for it to be reinstated.

As no explanation was provided for this one is forced to conclude that it is only for the revenue authority's convenience that tax payers do actually need to undergo the bureaucratic process of paying reverse VAT in one month only to recover the same shortly thereafter (if well planned, one can recover the VAT within two days of making the payment).

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