Withholding value added tax (VAT) allows the Kenya Revenue Authority (KRA) to collect VAT in advance from suppliers of taxable supplies. Under the withholding VAT system, KRA appoints selected local entities to be withholding VAT agents. Registered withholding VAT agents are required to withhold 6% of the taxable value at the point of paying the suppliers.

The appointment of the withholding VAT agent was previously governed by Section 25A of the VAT Act 2013. Under Legal Notice No. 12, 19 January 2016 was set as the date the Tax Procedures Act (TPA) came into operation and deleted Section 25A of the VAT Act. However, while the Tax Procedures Act deleted Section 25A of the VAT Act 2013, it did not set forth similar provisions under the TPA.

It is important to note that KRA has continued to appoint withholding VAT agents after 19 January 2016. This turn of events has raised concern about the legality of the system and whether it is backed by either the VAT Act 2013 or the Tax Procedures Act 2015.
In response, KRA tax officers have indicated that the status quo remains in effect and the withholding VAT mechanism is still in force. Clarification is expected to be provided through a Public Notice and more importantly, a reinstatement of the governing provisions when tax measures are announced in the 2016-2017 fiscal budget in June this year.

Therefore, companies that are registered as withholding VAT Agents should continue withholding VAT until clear guidance is provided on the issue. Suppliers of taxable supplies or withholding VAT agents may want to obtain certainty on their position during this “interim period.”

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