

# *VAT ON INSURANCE*



# *INSURANCE COMPENSATION*

- Finance Bill Proposes to Impose VAT Compensation for loss which shall be treated as a taxable supply where bona fide owner of taxable supply has previously claimed / deducted input tax
- VAT payable shall be
  - a) if the compensation includes VAT, the VAT on the compensation shall be declared
  - (b) if the compensation does not include VAT, the compensation shall be declared and subjected to value added tax – ie treat the compensation as including VAT and declare the VAT so computed.

# *APPLICABLE TO REGISTERED*

- The proposal shall apply to persons registered for VAT ie someone supplying VATable goods or services (taxable) and is VAT registered
- “taxable supply” means a supply, other than an exempt supply, made in Kenya by a person **in the course or furtherance of a business carried on by the person**, including a supply made in connection with the commencement or termination of a business

# “SUPPLY OF GOODS”

- means –
- (a) a sale, exchange, or other transfer of the right to dispose of the goods as owner; or
- (b) the provision of electrical or thermal energy, gas or water;
- “supply of services” means anything done that is not a supply of goods or money, including –
- (a) the performance of services for another person;
- (b) the grant, **assignment**, or **surrender of any right**;
- (c) the making available of any facility or advantage; or
- (d) the toleration of any situation or the refraining from the doing of any act;

# *“INPUT TAX” MEANS -*

- (a) tax paid or payable on the supply to a registered person of any goods or services to be **used by him for the purpose of his business**; and
- (b) tax paid by a registered person on the **importation of goods or services** to be used by him for the purposes of his business;

# *“OUTPUT TAX”*

- means tax which is due on taxable supplies;

# PURCHASE & INSURANCE OF LAPTOP

		Kshs	Kshs	Kshs
•				
•				
•	01-Jan-22 Purchased laptop 58,000		50,000	8,000
•	05-Jan-22 Insured laptop			58,000
•	<b>20-Feb-22 Claimed input Vat</b>			<b>8,000</b>
•	<b>25-Dec-22 Laptop stolen</b>			
•	16-Feb-23 Received insurance compensation 34,800		30,000	4,800
•	<b>20-Mar-23 Paid output Vat</b>			<b>4,800</b>
•	02-Apr-23 Bought new laptop	50,000		8,000 58,000
•	<b>20-May-23 Claimed input Vat</b>			<b>8,000</b>

# *VAT REGISTRATION AFTER POLICY*

- Section 18 Relief Application in the prescribed form
- Make relief claim within 5 months from registration date for any supplies purchased, within 24 months immediately preceding registration where those taxable supplies will be used in making taxable supplies
- Where the Commissioner is satisfied the relief claim is justified, he shall authorise the registered person to make an appropriate deduction of the relief claimed from the tax payable on his next return.



# *PURCHASES ITEMS FROM NONREGISTERED PERSON*

- Is the original supplier of the item, for which compensation is received, was not VAT registered, so no input VAT was claimed at time of purchase:
- The compensation received, will still be subject to VAT.

# *INSURANCE SERVICES EXEMPT*

- Insurance and reinsurance services are VAT exempt **excluding** the following-
  - (a) management and related insurance consultancy services;
  - (b) actuarial services; and
  - (c) services of insurance assessors and loss adjusters;
- The VAT Act does not define what insurance services are. We thus default to the Insurance Act, *pari materia*, ie since they deal with the issue.

# "INSURANCE BUSINESS" MEANS

- the business of undertaking liability by way of insurance (including reinsurance) in respect of any loss of life and personal injury and any loss or damage, including liability to pay damage or compensation, contingent upon the happening of a specified event, and includes—
  - (a) the effecting and carrying out by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidental to some other business carried out by the person effecting them) in return for the payment of one or more premiums;
  - (b) the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on business which is insurance business apart from this paragraph, of capital redemption contracts;
  - (c) the effecting and carrying out of contracts to pay annuities on human life;
  - (d) takaful insurance business based on group participation guaranteeing each of the members against defined loss or damage;
  - (e) micro-insurance business;
  - (f) social insurance schemes;
- and **any business incidental to insurance business** as so defined

# AGENT PER INSURANCE ACT

- "agent" means a person, not being a salaried employee of an insurer who, in consideration of a commission, solicits or procures insurance business for an insurer or broker;
- Insurance Agency is incidental to the provision of insurance, under the insurance act.

# VAT ON INSURANCE AGENCIES

- Insurance agencies, insurance brokerage and securities brokerage services are exempt from VAT under the ruling by Kenya High Court
- In addition:
- Given that agency is incidental to insurance services, it is also exempt under paragraph 2 of part II of first schedule of the VAT Act on exempt services iro commission fees based on insurance premiums