

Tax Alert

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Withholding Value Added (VAT) Tax Refunds

Withholding VAT was reintroduced through the Finance Act, 2014 and over the years its scope has been significantly widened through the appointment of various agents who have been required to withhold VAT when settling supplier debts. Until the changes implemented under the Finance Act 2019, 6% out of the 16% (now 14%) VAT was required to be withheld by such agents (which dropped to 2% under the Finance Act, 2019). A number of taxpayers ended up with growing VAT credits as a result of such withholding VAT, particularly those taxpayers whose supplies were a combination of zero rated and standard rated products. The VAT legislation however made no provisions for the refund of the credits related to such withheld VAT.

The Statute Law (Miscellaneous Amendments) Act, 2019 amended Section 17 (5) of the Value Added Tax Act, 2013 to provide a mechanism for taxpayers to be refunded VAT that is in a credit/refund position as a result of VAT withheld by customers. This change was effective from 23 July 2019. This amendment permitted a retrospective refund application for such credits for a period of thirty-six (36) months prior to the commencement of the new law (representing the period 23 July 2016 to 22 July 2019).

Such refund claims are required be lodged within twelve (12) months from the commencement date of that law for this retrospective period. Therefore, the deadline for lodging the VAT withholding refund claim for the 36-month period above is 22 July 2020. The refund mechanism to enable tax payers to lodge the refund claims was only recently enabled on i-Tax and therefore a large volume of such claims are expected to be lodged over the course of the next few weeks.

VAT refunds arising from withholding VAT subsequent to 22 July 2019 may be claimed as a refund within twenty-four (24) months from the date the VAT was withheld. Credits for which refund claims are not lodged will remain available for utilisation within the normal VAT input/output cycle. However, for taxpayers who are in perpetual credits, there will effectively be no means to recover pre-July 2019 VAT withheld after 22 July 2020.

There is need for taxpayers to carefully consider the matters below before lodging refund claims:

- Whether the credit position arising from the VAT withheld may have already been utilised in subsequent VAT periods or whether it may naturally end up being utilised arising from various factors including changes in the business model, split of zero rated to standard rated supplies and other changes to the VAT legislation over a period shorter than the expected refund period;
- The status of withholding VAT as per their i-Tax account ledgers compared to the position as per their books of account; and
- Any other pending tax matters, including assessed taxes, penalties and interest to which such credits may be first applied.

We recommend that taxpayers review their VAT status with respect of withheld VAT, including the factors above to allow for timely application of refunds for such credits.

Should you require our assistance and advice in relation to such refund applications, please do not hesitate to contact **Rajan Shah** (rshah@ke.pkfea.com) or **Joseph Mwavua** (jmwavua@ke.pkfea.com) or your service team contact at PKF.

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