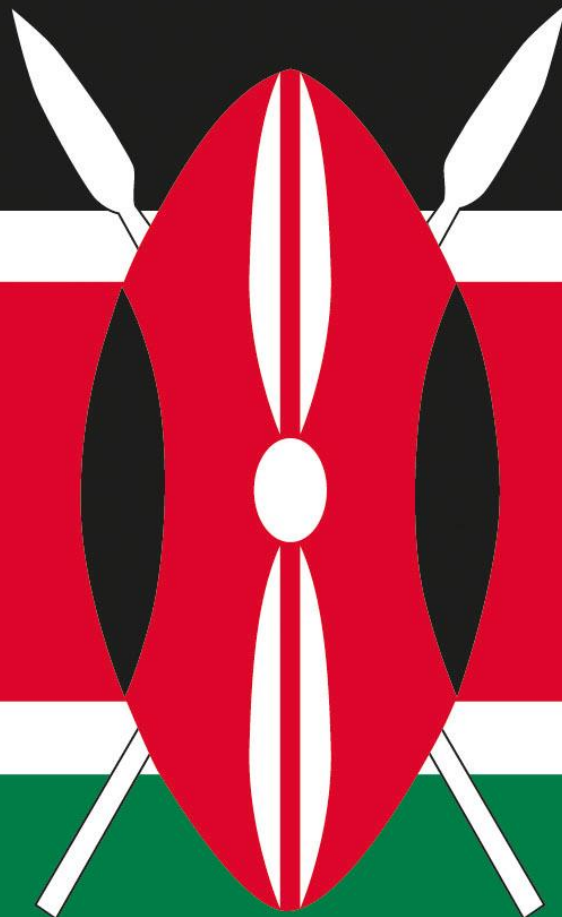


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## → Background

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In July 2019 the Kenya Revenue Authority (KRA) released a Public Notice to inform the manufacturers and suppliers of fiscal devices about the issuance of new specifications of the Electronic Tax Registers (ETR) in line with the requirements of the VAT Act 2013. In the recent past the KRA have been on a mission to reduce the amount of fraud and non tax-compliance that arises from manipulation of the ETR machines by taxpayers and complicit ETR suppliers.

The Public Notice states that the new ETR specifications will require online transmission of transaction data to KRA through the Tax Invoice Management System (TIMS) as well as enable seamless population to the taxpayers VAT returns hence reducing filing errors and ultimately reducing the cost of tax compliance.

THE ETR SPECIFICATIONS ARE UNENFORCEABLE WITHOUT THE GAZETTEMET OF THE DRAFT ELECTRONIC TAX INVOICE REGULATIONS & HENCE THEIR PUBLICATION

## → Draft Electronic Tax Invoice Regulations, 2019

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### OVERVIEW

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The draft Electronic Tax Invoice Regulations, 2019 have been released to provide a legal grounding for the revised ETR specifications. to the draft Regulations propose to repeal and replace Regulation 9 of the VAT Regulations, 2017 which currently specify details of a tax invoice. The draft Regulations also seek to fill the vacuum created

by repeal of the ETR Guidelines under VAT Act Cap 476 upon enactment of VAT Act 2013 contain provisions outlining the obligations of a user of the ETR; obligations of the supplier of the ETR as well as provisions relating to the specifications and security requirements of an ETR machine. We've outlined the significant provisions of the draft Regulations below:

### MAJOR PROVISIONS OF THE REGULATIONS

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1. A user of the register shall ensure recording of each sale and printing of the receipt in respect of each sale. The register shall exclusively be

used to record the sales of the user. The Regulations also state that the Commissioner may specify an appropriate type of register to be used by persons in a specific industry.

2. A tax invoice printed from a register shall include contain the following:

- Time and date of the tax invoice	- Payment Mode (Cash, Debit Card, Credit Card, Pre-paid Card, Mobile Money, EFT, RTGS, Credit Note)	- Unit of measure
- Tax invoice serial number	- Tax invoice total gross amount; Tax invoice total tax amount; Tax invoice total net amount	- Tax Rate charged
- Buyer's PIN (Optional)	- Barcode of the goods (For Exempt and Zero rated)	- Unique register identifier
- Invoice Type (Original/Duplicate;	- Brief description of goods or services	- Digital Signature

3. In relation to specification of the ETR devices, the Regulations propose that the ETR should be secure and tamperproof; have capability for interconnectivity with Information Technology networks; and integrate with any system as required by the Commissioner.

4. The Regulations also propose that the the register should have the following security capabilities: store data in such manner as to be unintelligible to persons not authorized to access it; maintain integrity of data; secure authentication for authorized users; capture the log of activities; and record transactions identified by a unique identifier.

5. Any person who fails to comply with these Regulations shall be guilty of an offence and shall be liable to a penalty of one hundred thousand shillings.

The draft Electronic Invoice Regulations signal a sea change in the operations of taxpayers' invoicing systems and also signals much stronger integration with KRA's online iTax platform. It should be noted that the Regulations are placing the onus of ETR integration with KRA's IT system on the taxpayers and suppliers of ETR machines. This may be seen as unfair as the taxpayers and suppliers may be found to have committed an offence in instances where the ETR devices don't meet the security and operational criteria as envisioned by the draft Regulations.

While the new proposed system should result in fewer cases of fraud using ETR machines, it's our view that a lot of training and education of taxpayers will be needed to ensure the smooth transition to the new proposed Regulations as well as use of the upgraded ETR devices.

## → Revised ETR Specifications

KRA have released the revised ETR specifications in order to achieve synchronicity with the implementation of the Tax Invoice Management System (TIMS). TIMS is an information technology integration system that will integrate trader systems (Electronic Tax Registers, Point of Sale, and ERP-Billing/Invoicing system) with iTax in order to monitor the generation of electronic tax invoices and their transmission through the internet to it. KRA intends to use TIMS to achieve validations and authentications of tax invoices at trader tills before generation of invoices along with their real time or near real time transmission.

This will be accomplished by use of a Control Unit connected or integrated to existing trader systems. The control unit will perform the functions of tax invoices validation, encryption, signing, transmission and storage. The communication between the control unit and the TIMS application server at KRA will be over the Internet. However, the connection between the Control Unit and the Trader System does not have to be over the Internet as it can either be integrated into the Trader System or attached to it.

The basic requirements for the Control Unit will be its capacity to:

1. Ensure invoice validations i.e. *HS Code & VAT Rate Validations; Invoice Sequence Validations; PIN of the user of the Control Unit ; Time and date of the tax invoice; Tax invoice serial number; Buyer's PIN; Invoice Type (Original/Duplicate); Payment Mode (Cash, Debit Card, Credit Card, Pre-paid Card, Mobile Money, EFT, RTGS, Credit Note); Tax invoice total gross amount; Tax invoice total tax amount; Tax invoice total net amount; Brief description of goods or services; Quantity; Unit of measure; Tax Rate charged; Control Unit serial number*
2. Have storage capacity to store encrypted TIMS server, invoice data and Control Unit details
3. Have date and time synchronization with TIMS server

4. 100 per cent support for the TIMS communication protocol for communications with TIMS server

5. Generate a QR code (unique code details for the invoice) for each invoice corresponding to the value of Control Unit invoice number

From the above, it is clear that with the new specifications, ETR will be able to provide KRA with much more information and data on taxpayers invoicing system and also provide much greater integration with iTax than is currently available.

In our opinion, the revised ETR specifications raise concerns regarding privacy and security of taxpayers' data due to the integration and data access requirements. In addition, the adoption of the new specifications will inevitably be costly to taxpayers due to the many additional features.

## HOW CAN WE ASSIST YOU

The public were invited to submit their views on the draft Regulations until the 30 September 2019 deadline. Given the period for public participation has now ended we'll await any amendments when the final revised Regulations are released.

At Rödl & Partner, we have a qualified and experienced team of financial, legal and tax experts who have advised clients seeking to ensure compliance with tax laws.

Rödl & Partner has an able and experienced tax team that can guide you with the following:

- Advise on the potential implications of the proposed regulations to business operation
- Assist in redesigning business operations to meet the proposed regulations

## CONTACT FOR FURTHER INFORMATION



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This is a general guideline tax and legal alert and should not be a substitute for proper advice. For queries and clarification, kindly get in touch with Rödl & Partner.

## Imprint

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