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**TREASURY CIRCULAR NO. 9/ 2018**

**TO: ALL CABINET SECRETARIES**

**ALL ACCOUNTING OFFICERS**

**GUIDELINES/Framework FOR REQUESTING, PROCESSING AND  
GRANTING OF TAX EXEMPTION/WAIVER/VARIATION/ REMISSION ON A  
NATIONAL TAX, A FEE OR A CHARGE**

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**I. PURPOSE**

1. These guidelines provide a framework to Ministries, Departments and Agencies (MDAs) for requesting, processing and granting of tax exemption/waiver/variation/remission on a national tax, a fee or charge payable on the goods, equipment including motor vehicles and for services. The guidelines are specific on the:
  - a. Requirements on the form, contents and presentation of tax exemption/waiver/variation/remission on a national tax, a fee, or charge requests to be considered for approval;
  - b. Steps to be undertaken during the review and approval of tax exemption/waiver/variation/remission on a national tax, a fee, or a charge request;
  - c. Communication of the approvals to the requesting Accounting Officer; and
  - d. Any other process to be followed.

2. For purposes of this circular, exemption means “exemption/waiver/variation/remission on a national tax, a fee, or a charge”

## II. BACKGROUND AND RATIONALE

3. Granting of exemptions is guided by Article 210 of the Constitution of Kenya, 2010 which requires, among other things, that:

(1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation.

(2) If legislation permits the waiver of any tax or licensing fee : (a) a public record of each waiver shall be maintained together with the reason for the waiver; and (b) each waiver, and the reason for it, shall be reported to the Auditor-General.

4. The window for granting an exemption is provided for under Section 77 of the Public Finance Management Act, 2012, which provides that the Cabinet Secretary may waive a national tax, a fee or charge imposed by the National Government and its entities in accordance with criteria prescribed in regulations provided that:

a) the National Treasury shall maintain a public record of each waiver together with the reasons for the waivers and report on each waiver in accordance with section 82 of the PFM Act;

b) each waiver or variation has been authorised by an Act of Parliament; and

c) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer.

5. In this respect, any request and approval of an exemption must be supported by the provisions of the Constitutions, the Public Finance Management Act, 2012 and the various specific tax laws and legislations.

6. Provisions for exemptions are outlined in various schedules of the different tax legislations. Pursuant to these provisions, the Government has continued to grant the same on different goods, equipment or services with the objective of encouraging economic activity and to enable provision of various goods and services for the benefit of the general public.

7. In order to achieve the intended objectives, it has been decided that the process of applying, processing and granting of exemptions be done in a structured manner. This will streamline the process of applications to the National Treasury received from MDAs for various projects.

8. Additionally, and more importantly, these guidelines will enhance accountability in the processing, granting and administering of exemptions that are provided for in the tax laws. Of importance to note is that Accounting Officers requesting for such exemptions/waivers will be accountable for the requests and approvals granted.

9. All Accounting Officers are expected to obtain concurrence from the National Treasury before finalizing any contract or agreement that provide for any exemption.

10. The principle intent of these guidelines is therefore, to:

- i. enhance accountability in the processing, granting and administering of exemptions that are provided for in the tax laws
- ii. Protect and promote the public interest;
- iii. Support the constitutional principle of the rule of law.

11. In this respect, the following guidelines shall strictly be followed while applying, processing and approving any exemption going forward.

### **III. THE SPECIFIC GUIDELINES**

#### **A. Requesting for Exemptions from the National Treasury**

12. All letters to the National Treasury requesting for an exemption shall be signed by the respective Accounting Officer (Principal Secretary) without delegation or by the respective Cabinet Secretary. In the event of delegation, the Accounting Officer shall notify the National Treasury, the person who will act on his or her behalf for the limited period when the respective Accounting Officer or the Cabinet Secretary is not available.

13. The Accounting Officers are further notified that henceforth, they are required to initial all the pages or documents supporting the requests for an exemption. Any letter requesting for the same including the supporting documents not initialed on all pages shall not be processed.

14. Any letter to the National Treasury requesting for an exemption will henceforth require a paragraph committing the Accounting Officer to state that he or she has confirmed that the items requested for, would be solely used for the specific project. The following is the proposed language:

***“I have confirmed that all the items listed in this request are consistent with the approved master list. I undertake to ensure that the requested goods, equipment including motor vehicles and services are used for the intended purpose during the implementation of the project and will ensure full accountability in line with paragraph 23 of these guidelines.”***

15. The letter shall also contain details of the project being implemented including its objectives and if the said project is approved and factored in the budget or not. The start and end dates of the project must be indicated in the letter.

### **B. Amendment and Rejection of an Exemption**

16. In the event that any of the requests for an exemption does not conform to all the requirements specified in these guidelines, the Principal Secretary, National Treasury shall write a letter to the respective Accounting Officer who had made the application requesting for the necessary amendments so as to conform to these guidelines.

17. The request for an exemption shall be rejected if: (i) the National Treasury has reason to believe that the request was made based on inaccurate or erroneous information; or (ii) there is no provision in the tax laws to grant the request; or (iii) does not meet the requirements for the Special Operating Framework in Section G of this circular. Such rejection will be communicated back to the requesting Accounting Officer by the Principal Secretary, National Treasury.

### **C. Processing of an Exemption**

18. The National Treasury will review and process all the applications to ensure they comply with the respective tax laws and these guidelines. After the review, a recommendation will be forwarded for consideration to the Cabinet Secretary, National Treasury and Planning.

19. The National Treasury will communicate the decision on any request for exemption through the Principal Secretary/National Treasury to the Accounting Officer who had made the request.

### **D. Exemption on Goods and Equipment, including Motor Vehicles**

20. When applying for an exemption in respect of goods and equipment, including motor vehicles, the following information/documents (**sample table I**) shall be provided:

- a. A master-list. This is a list of all the goods and equipment, including motor vehicles that are to be used in the implementation of the identified project;
- b. The master list should separate the categories of goods as follows:
  - i. The goods that will be consumed in the implementation of the project – the consumables;
  - ii. The goods that will be transferred to the Government on completion of the project;
  - iii. The goods belonging to the contractor and which will be re-exported on completion of the project.
- c. A copy of the Funding Agreement and the contract for the project implementation;

- d. A copy of the contractor's request/application letter;
- e. The commencement and completion dates of the project;
- f. Recommendation by the Ministry on the exemption being applied for, which shall include the language in Paragraph 14.

**At this point, no invoices are required. However, the quantities and the estimated costs of the goods should be provided.**

**Sample Table I**

| NO. | Master List No | Description | Quantity of Goods | Unit cost | Value |
|-----|----------------|-------------|-------------------|-----------|-------|
| 1   |                |             |                   |           |       |
| 2   |                |             |                   |           |       |
| 3   |                |             |                   |           |       |

**Specific Exemptions after the Approval of the Master List**

21. Upon receipt of the approved master list from the National Treasury, the Accounting Officer shall be required to apply for specific exemption **on a case-by-case basis. The application for imported goods and those purchased locally should be made separately so as to make the processing of the exemption more efficient.** The specific items applied for in this second case, **must** be contained in the master list that was initially approved by the National Treasury and Planning.

22. The application letter for the specific tax exemption must provide **(Sample Table II)**:

- a. The quantity/amount approved in the Master list (a copy of the approved master list must be attached);
- b. The quantity/amount already imported and exempted;
- c. The quantity/amount being applied for in the current application
- d. The balance of goods initially approved

**Sample Table II**

| NO. | Master List No | Description | Quantity/Amount of Goods Initially Approved | Quantity/Amount of Goods Purchased/Imported | Balance of the Quantities/Amount of Goods from the Approved Master list | Quantity of goods applied for | Unit cost | Value |
|-----|----------------|-------------|---|---|---|-------------------------------|-----------|-------|
| 1   |                |             |   |   |   |                               |           |       |
| 2   |                |             |   |   |   |                               |           |       |
| 3   |                |             |   |   |   |                               |           |       |

23. The application must be accompanied by the purchase/import documents such as invoices, packing lists, Airway bills/Bills of Lading and road consignment note among others to facilitate the processing of the tax exemption /waiver/variation /remission on a national tax, a fee or charge letter for forwarding to Kenya Revenue Authority.

**Please note:**

- i) the consignee of the goods including the motor vehicles should be the contractor implementing the project or the MDA's implementing the project;
- ii) the motor vehicles imported under the project should be registered in the name of the project and transferred to the Ministry or the public institutions implementing the project after the completion of the project; and
- iii) a customs security bond for imported goods must be executed to secure the revenue on the goods exempted by the Contractor. The security bond shall be cancelled only when the Commissioner of Customs and Border Control in consultation with the respective Accounting Officer, is satisfied that the imported goods have been used in the project works or taxes and other fiscal charges payable have been paid by the contractor on the remaining goods upon completion of the project.

**E. Exemption from Value Added Tax (VAT) on Services**

24. On the exemption from VAT on services, the following procedure shall apply:

- i. The Accounting Officer of a State Department/Ministry will make an application to the National Treasury confirming that under a particular official aid funded project, there will be contractors for the provision of services, such as consultancies;
- ii. Upon receipt of the request, the National Treasury will process the request for exemption from VAT;
- iii. Upon approval of the application, the National Treasury will communicate to the Commissioner of Domestic Taxes confirming that services to the project are either tax exempt or zero rated, with a copy to the Accounting Officer who had made the request. The Accounting Officer will be required to forward any request for exemption or zero rating of services to the Kenya Revenue Authority (KRA) for processing; and
- iv. The Accounting Officer of the relevant State Department/ Ministry will provide a recommendation to the KRA for processing the tax exempt/zero rating before the service is provided based on the contract documents, quotation and invoices from the service provider. This will enable the Domestic Taxes Department at the KRA to authorize the service provider to do it on exempt/zero rated basis.

25. It is emphasized that since contracts for services, including consultancies, are given out based on the internal capacity of the contracted firms, there shall be **No** granting of tax exemption for vehicles or goods purchased for use by the Consultant or sub-Contracted firms. In this respect, all Accounting Officers are therefore, required to ensure that there are no provisions for such tax exemptions in the service contracts they sign.

#### **F. Temporary Importation**

26. Application for the facilitation of temporary importation of equipment for use in a specified project, should be forwarded through the responsible ministry/agency to the Commissioner of Customs and Border Control, KRA with the relevant documents and indicating the area and period of use.

#### **G. Exemption Under the Special Operating Framework with the Government**

27. All applications for exemption under the Special Operating Framework with the Government must strictly adhere to the requirements of this circular.

28. The Accounting Officer must attach a copy of the agreement signed between the investor (s) and the Government to the application for exemption.

29. The agreement with the investor (s) must have been negotiated and agreed upon between the respective MDA and the National Treasury. For avoidance of doubt, exemptions under this framework, shall not be concluded without the involvement of the National Treasury. In this regard therefore, the Accounting Officer must provide evidence/concurrence of the National Treasury in the negotiated and agreed exemptions under the framework.

30. The recommendation by the Ministry on the exemption being applied for shall include the language in Paragraph 14 of this circular.

31. Failure to adhere to the above requirements will result in the rejection of the application.

#### **H. Field Project Visits**

32. In order to ensure further transparency and accountability on the utilization of exemptions of a national tax or a fee or a charge approved, the National Treasury will undertake random field visits to the projects being implemented under this framework. The Officers from KRA and the respective MDAs will be part of the visiting team. The purpose of these visits will be to confirm the status of the projects, use of the items in the approved master lists and verify specific information as provided when seeking exemption. All the MDAs implementing the various projects are expected to provide full information during such visits. In the event that the goods and equipment imported or purchased locally under

this framework were not utilised for the intended purpose, appropriate action shall be taken in accordance with provisions of tax laws.

## **I. Reporting**

33. Upon commencement of any project benefitting from an exemption, the Accounting Officer is expected to file a report to the National Treasury every six months on the utilization of items (materials, equipment and services) approved in the master list. In this respect, Accounting Officers are expected to have dedicated reporting lines on all projects benefitting from the exemption window failure to which further and future requests for specific projects from the National Treasury will be declined.

## **IV. AUDIT OF EXEMPTIONS**

34. In order to ensure adherence to these guidelines and the law while implementing projects supported through exemptions, specific internal audits of the entire process right from the request, processing, approval and utilization of the same shall be done by the National Treasury on a regular basis. All the MDAs implementing the various projects are expected to cooperate fully during the internal audits and provide the internal audit team the required information.

## **V. CONCLUSION**

35. All Accounting Officers are required to ensure strict adherence to these guidelines and to bring the contents of this Circular to the attention of all Officers working under them, including the Heads of Parastatals and other Semi-Autonomous Government Agencies (SAGAs).



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*Please note: For the purpose of this  
Circular all the applications for  
exemptions sent to the National Treasury  
should be signed by the Governor*

