USAID | KENYA
FROM THE AMERICAN PEOPLE

Memorandum

To: USAID Partners and Their Sub-Recipients Conducting Operations within Kenya

From: Director Regional Acquisition and Assistance Office

Date: September 10, 2014

Subject: Taxation of U.S. Government Foreign Assistance within Kenya

U.S. Government Foreign Assistance made available by USAID to Implementing Partners and their Sub-Recipients in carrying-out USAID approved development assistance projects within Kenya are, pursuant to Bilateral Agreements between USAID and the Government of Kenya (GOK), free from all forms of Kenyan fees, duties, levies, and taxation. The GOK has established prescribed procedures for seeking exemption from these forms of taxation prior to the USAID Partner or their Sub-Recipient making purchases or imports of any goods, services, or commodities. All USAID Partners and Sub-Recipients should strive to seek exemptions in advance of the purchases or imports whenever practical. When USAID Partners are unable to obtain advance exemptions in a timely manner, Partners and their Sub-Recipients are expected to fully comply with Kenyan law on payment of taxes and obtaining refunds of taxes paid. Such compliance includes payment of fees, duties, levies, and taxation at the points of sale where they occur.

Partners and their Sub-Recipients which comply with Kenyan law and pay fees, duties, levies, and taxation at the points of sale must timely follow the prescribed procedures identified in this memorandum in order to charge those forms of taxation under their USAID Partner agreement. Failure to fully and timely comply with these prescribed procedures will result in the fees, duties, levies, and taxes as being unallowable costs under the USAID agreement. Any such unallowable costs will be absorbed by the Implementing Partner outside of the USAID agreement. USAID Implementing Partners are responsible for compliance with these policies on behalf of all Sub-Recipients.

The GOK provision for refunds of all forms of taxation requires that the refund be made by the original vendor which charged and collected the fees from the USAID Partner. The refund by the vendor must be made within 180 days of the date of the invoice when the taxes, duties, and fees were originally paid. Failure of the Partner to seek refund from the vendor within the 180 day time frame results in a forfeiture of the taxes, duties and fees to the GOK. The GOK procedures for seeking approval of refunds of taxation are accomplished by submission of a Form DA-1 package to the GOK Treasury Office. Partners are cautioned that only Form DA-1 packages for goods, commodities, and services specifically acquired for use under the USAID foreign assistance programs may be submitted to the GOK for refund application. Partners must be extra vigilant and not submit Form DA-1 packages for refunds of taxation not applicable to USAID assistance funding. Effective October 1, 2014, all USAID Partners, including Sub-Recipients under the Implementing Partner prime agreement, are required to follow the below prescribed procedures for submission of the Form DA-1 package to the GOK Treasury Office.USAID is committed to working with its partners to ensure compliance. This process will be discussed at partner forums, including post-award conferences and throughout the award administration.

Form DA-1 Refund Application Process

1. Partners are required to use Form DA-1 which is a four part (Original, Duplicate, Triplicate, and Quadruplicate) pre-numbered form issued by the GOK. These are controlled numbered forms. Partners may apply for batches of pre-numbered forms for the Partner and the sub-recipient use by submitting an email request to the following USAID Email box.

    NAIROBIVAT@USAID.GOV

    Partners should indicate in the email the number of forms they are requesting from USAID. Partners should anticipate the number of forms they will need during the life of their agreement or at least a one-year supply. The Partner should provide USAID with the full name of the Partner and a physical delivery address where a local Kenyan courier service can make delivery to. The Partner email sent to USAID should list a Partner Point of Contact, email, and telephone number in case USAID needs to contact the Partner about the DA-1 form request. USAID is required to track the pre-numbered GOK DA-1 forms provided to the Partner. Any DA-1 forms which are not used by the Partner MUST be returned to USAID by the end of the agreement. If the Partner makes uncorrectable mistakes upon a DA-1 form, those forms may NOT be destroyed, but must be defaced and returned to USAID.

2. Every USAID Partner and their Sub-Recipient must fully complete a GOK Form DA-1 package and deliver the package to USAID not later than 30 days from the date of the invoice where taxation duties and fees were incurred and paid to the vendor. Form DA-1 packages received by USAID after the 30 day deadline will be considered as not timely submitted and not processed by USAID. The taxes, fees, and duties paid by the Partner due to late submission may NOT be charged to the USAID agreement.

3. It is recommended that Partners use courier services or hand-deliver the Form DA-1 package to USAID. Use of Kenyan mail services is discouraged due to the unreliability of delivery times. The

U.S. Embassy delivery point for hand-delivered packages and courier services is CAC-2 (Gate number 2) on Gigiri drive. Form DA-1 packages hand delivered or sent by courier services should be addressed as follows:

USAID/Kenya
C/O American Embassy
United Nations Avenue, Gigiri
P.O. Box 629-00621 Nairobi, Kenya
Attention: RFMS Caroline Mwanzia
Telephone No. 862-2405

4. The completed Form DA-1 package submitted to USAID should include a cover memorandum with the Partners Name, Address and Telephone numbers. The memorandum should list each separate pre-numbered DA-1 form submitted within the package and the total amount claimed for refund processing. The memorandum should also include the Partner point of contact and email address to which USAID may respond to.

5. Upon receipt of the Form DA-1 package, USAID will immediately send an email to the Partner acknowledging that USAID has either ACCEPTED or NOT ACCEPTED the Form DA-1 package for processing within the allowable time frame. The USAID acknowledging email (ACCEPTED or NOT ACCEPTED) will list and provide as an attachment a PDF copy of each DA-1 form submitted by the Partner. If the USAID acknowledging email "ACCEPTED the DA-1 package as timely received", the Partner is authorized to use the USAID email as official file documentation to support the recording of the duties, fees, or taxes under the USAID agreement. If the USAID acknowledging email indicates "NOT ACCEPTED the DA-1 package as timely received", the Partner may not charge the costs under the USAID agreement. Any such NOT ACCEPTED duties, fees, levies, and taxes paid will be the responsibility of the Partner.

6. USAID will track processing of the DA-1 Form packages through the GOK internal approval processes. Any GOK timely approved DA-1 Form package will be promptly returned to the Partner to obtain the refund of the fees, duties, levies and taxes from the Vendor.

7. USAID has set an internal policy that DA-1 Forms which are approved by the GOK and have at least 30 days remaining during the refund period (e.g. the GOK approved DA-1 Form package is approved not more than 150 days from the date of the original invoice paid by the Partner), will be submitted to the Partner by USAID for refund processing with the Partner vendor. USAID will notify the Partner by email indicating that the GOK has approved the DA-1 form package and the Partner MUST seek immediate refund from the vendor. The USAID email will include as an attachment, a PDF copy of the GOK approved DA-1 Package. USAID will immediately send the original GOK approved DA-1 form to the Partner using a Kenyan courier service.

8. USAID Partners and their Sub-Recipients must obtain immediate refund from the Vendor and notify USAID by return email when such refund was received. A copy of the Vendor refund receipt and Partner bank deposit slip must be provided to USAID via email to evidence the refund. The Partner must reference the DA-1 Form number for which the refund was received when transmitting the refund acknowledgement to USAID. Partners, who fail to provide the refund documentation to USAID within the refund period, will be issued a Bill for Collection by USAID disallowing the cost under the Partner agreement. If a Partner encounters issues with a vendor refusing to refund the GOK taxes when presented with the GOK approved DA-1 Form, the Partner must immediately notify USAID in writing stating all the pertinent facts surrounding the refund denial by the Vendor. All such official communications should be executed on the Partner's Letterhead and a PDF copy of the signed letter sent to USAID as an email attachment. All communication with USAID related to DA-1 forms are to be sent to the below USAID email box. All email communications from the Partner to the USAID email box will be acknowledged by return email.

   NAIROBIVAT@USAID.GOV

9. Partners are responsible for accurately completing DA-1 Forms and ensuring that the DA-1 Form package is supported by the GOK requisite information and vendor documentation. DA-1 Form packages not accepted by the GOK due to errors or omissions on the DA-1 form or if the requisite supporting information is incomplete or not attached, run the risk of non-timely submission within the 30 day window. All such GOK rejected DA-1 Form packages, will be considered by USAID as NOT ACCEPTED and the incurred taxation will not be an allowable cost under the Partner agreement with USAID. Partners are cautioned to ensure that all DA-1 Forms are completed accurately and contain the requisite GOK supporting documentation prior to submission to USAID for forwarding to the GOK Treasury Department. Attachment Number One to this memorandum contains guidance for completing DA-1 Forms.

ATTACHMENT
GENERAL INFORMATION
ON COMPLETION OF A
GOK DA-1 FORM

Guidance on how to complete a GOK DA-1 Form when seeking approval for REIMBURSEMENT of taxes, duties, fees, and levies paid by USAID Implementing Partners and their Sub-Recipients to VENDORS.

The GOK DA-1 Form (Original, Duplicate, Triplicate, Quadruplicate) is the standard form used by recipients for either seeking EXEMPTION from or REIMBURSEMENT of taxation related costs from the Kenyan Government. The below line-item guidance on completing a DA-1 form is provided for those cases where the USAID Partner is seeking REIMBURSEMENT of taxes, duties, fees, and levies paid by the Partner to Kenyan Vendors. The GOK documentation requirements are different when the USAID Partner is applying for EXEMPTIONS.

An example DA-1 form is attached and the line item guidance provided below can be followed in RED FONT on the example DA-1 form. When completing the form, always place the USAID title and address in the upper right hand corner of the form. The date field should be the date the Partner completes the form. The Partner will be responsible for completion of Lines 1-10 of the form. The remaining lines should be left blank. Line item instructions as follows:

Line No. 1, Title – Always state the USAID Grant, Cooperative Agreement, or Contract number on this line.

Line No. 1 (i), Quote Article and/or Section giving the Exemption – The USAID Partner MUST reference the section of the USAID Grant, Cooperative Agreement, or Contract number which indicates the costs under the respective instrument are exempt for taxation, duties, fees, and levies.

Line No. 1 (ii), Date of Agreement – The USAID Partner should always state the date of the Original Grant, Cooperative Agreement, or Contract. Although grants, cooperative agreements, and contracts are amended during the term of the agreements, the Partner should always use the date on the original issued agreement and not the latest amendment.

Line No 2, Name of Project – The Partner should insert the correct name of the USAID Strategic or Development Assistance Agreement (SOAG/DOAG) with the GOK under which the USAID Partner Grant, Cooperative Agreement, or Contract was issued. Partner project titles or USAID project titles should NOT be used in this section. If Partners need assistance with identifying the correct SOAG/DOAG reference, please contact your AOR/COR.

Line No. 3, Name of Consignee – The USAID Partner should place their full legal name in this section. The Name must correspond to the name of the USAID Grant, Cooperative Agreement, or Contract Number as listed in item no. 1. If the Partner is submitting this reimbursement request on behalf of a sub-recipient, the Sub-Recipient's full legal name should also be included in this section annotating they are a sub-recipient of the Partner.

Line No. 4, Description of Items Purchased – The Partner should provide a description of the goods or services acquired. Vendor Invoices will be required to be submitted as support documentation to the DA-1 form. The description of the goods and services acquired should be the same as supported by the Vendor Invoice. The Partner should provide a summary of the total invoice allocation within this section. Total Costs of goods and services invoiced, Itemized Taxes, Duties, Fees, or Levies charged on the invoice and the Grand Total of the Invoice. The Electronic Tax Register (ETR) receipt must be attached to the invoice. If the invoice relates to vehicle maintenance and repair, then a vehicle Log Book showing ownership should be attached. If the receipt relates to Hotel Conference facilities, the list of attendees should be attached showing the numbers and the signature of the attendees. If the receipt relates to Newspaper Advertisement, attach a copy of the advert from the newspaper or relevant media.

Line No. 5, Bill of Lading/Airway Bill/Invoice No./Log Book – The Partner should indicate the Vendor Invoice Number in this section.

Line No. 6, Name of Carrier – This section is not applicable for locally procured goods and services. The Partner should state "NOT APPLICABLE" in this section.

Line No. 7, Port of Entry – This section is not applicable for locally procured goods and services. The Partner should state "NOT APPLICABLE" in this section.

Line No. 8, Name of Local Supplier – The Partner should state the full name and address of the Vendor in this section. The Name and Address must match the exact name and address on the Vendor Invoice.

Line No. 9, V.A.T. Registration Number – The Partner should populate this section with the exact Vendor VAT and PIN registration number as evidenced on the Vendor invoice. This information must be provided and the Vendor invoice must contain this information. The Partner may not submit a DA-1 package if the Vendor Invoice does not contain the GOK VAT Registration Number of the Vendor.

Line No. 10, Full Name of Applicant – The Partner should populate this line with "U.S. Agency for International Development.

Lines No. 11 to 18, The Partner should leave these lines blank.

REPUBLIC OF KENYA

DA1

ORIGINAL

NO. 2xxxxx

Name of Aid Agency US Agency for International Development
P.O. Box 629 – 00621 Village Market Nairobi…………………………………………
Date DAY/MONTH/YEAR………………………………

***The Commissioner of Customs and Excise,**
P.O. Box 40160,
Nairobi.

***The Commissioner of Value Added Tax,**
P.O. Box 49070,
Nairobi.

Thro'

The Permanent Secretary,
Ministry of Finance and Planning,
P.O. Box 30007,
Nairobi.

APPLICATION TO PURCHASE OR IMPORT EQUIPMENT/MATERIALS/MOTOR VEHICLES/GOODS/SERVICES FOR PROJECTS OR PROJECT PERSONNEL ON A DUTY AND VALUE ADDED TAX-CUSTOMS WAREHOUSE RENT AND IDF FREE BASIS

1. **Title of Project Agreement/Exchange of Notes:** USAID Grant/Cooperative Agreement/Contract Number

(i) **Quote article and or section giving exemption:** Indicate the section number within the USAID Grant, Cooperative Agreement or Contract Number which provides exemption from taxation

(ii) **Date of Agreement/Exchange of Notes, etc**.: Indicate that DATE of issuance of the Original USAID Grant, Cooperative Agreement or Contract

2. Name of Project Insert the correct name of the Strategic or Development Assistance Agreement (SOAG/DOAG) under which the USAID Grant, Cooperative Agreement or Contract was issued.
3. **Name of Consignee**:.. Indicate the name of the Prime Partner and Sub-Recipient if applicable.

4. **Description of items being locally purchased/imported:** Provide a description of the goods or services acquired as evidenced on the vendor invoice and an itemization of the costs and taxes.
5. **Bill of Lading/Airway Bill/Invoice No./ Log Book No. :** Indicate the Invoice number issued by the vendor.
6. **Name of Carrier**: Not Applicable for locally procured goods and services.
7. **Port of Entry:** ...Not Applicable for locally procured goods and services.
8. **Name of Local Supplier:** State the Name of the Vendor as evidenced on the Vendor Invoice**.**
9. **V.A.T Registration No.:** List the Vendor VAT/PIN Registration Number as evidenced on the Vendor Invoice.
10. **Full Name of the Applicant and Designation:** US Agency for International Development
11. **Signature**

    ……………………………………………………………………………………………………
12. **Official Stamp……………………………………………………………………….................**

Delete whichever is not applicable.

13. **Implementing Ministry/ Agency ....**

    Recommended/Not

    Recommended...……………………………………………………………………........

    Full Name

    …………………………………………………………………………………………………...

    Designation

……………………………………………………………………………………………………

Signature of Authorized Officer and Official Stamp

………………………………………………...............

Date

……………………………………………………………………………………………………

.

MINISTRY OF FINANCE AND PLANNING

14. **Recommended/Not Recommended**

    ……………………………………………………………………..

    Signature

    ……………………………………………………………………………………………........

    Full Name ……………………………………………...……

    Date...…………………………………………........

AUTHORIZATION

15. **Approved/Not Approved……….……………………………………………………………………..**
Signature of Authorized Officer
…………………….………………………………………………………….
Full Name
…………………………………………………………………………………………………...
Designation …………………………………………….
Date...……………………………………..........

VAT DEPARTMENT

16. **Remarks……………………………………………………………………………………………**
……..
VAT Free Purchase Approved
…..…………………………………………………………...................
Full Name
…………………………………………………………………………………………………...
Designation
…………………………………………………………………………………………………….
Signature of Authorized Officer
…………………….………………………………………………………….
V. A.T Free Entry No.
……………………………………………………………………………………...
Date
……………………………………………………………………………………………………….

CUSTOMS AND EXCISE DEPARTMENT (Head Office)

17. **Remarks……………………………………………………………………………………………**
……..
Approved/Not Approved……….……………………………………………………………………..
Signature of Authorized Officer
…………………….………………………………………………………….
Full Name
…………………………………………………………………………………………………...
Designation …………………………………………….
Date...………………………………………….

CUSTOMS AND EXCISE DEPARTMENT (Port of Entry)

18. **Signature of Officer releasing goods…………………………………………………….........**
Duty Free Entry No.
…..……….……………………………………………………...……………
Full Name
……………………………………………………………………………………...…………
Designation …………………………………………….
Date...………………………………………….

Original, Duplicate to Customs or V.A.T Departments, Triplicate to Applicant and Quadruplicate to Treasury

IMPORTANT **– This application is submitted on the following conditions:**

1. **This application to clear imported/purchased goods duty-free is not transferrable.**
2. **The goods cleared under this application are for specific use as indicated in the project agreement.**
3. **Goods cleared duty free shall not be lent, sold, pledged, hired, given away, exchanged or otherwise disposed off without prior written permission of the Kenya Revenue Authority. Applications for this permission shall be made through the Ministry of Finance.**