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PROPOSED CHANGES IN THE TAX PROCEDURES ACT BY 2019 FINANCE BILL AND TAX ASSESSMENTS PROCEDURES IN KENYA.

Tax Due Dates .5



Newsletter

MBAYA AND ASSOCIATES

August 2019 | Issue 050 | Volume 5

Introduction

We welcome you to the eighth edition of our tax newsletter. In this issue we highlight the key information in regards to the recent tax developments in the country, proposed changes in the Tax Procedures Act by 2019 Finance Bill and tax assessments procedures in Kenya.

You will find our contact details on the right column. Senior members of our team will assist you by offering clarity on any questions you may have about the issues highlighted in this newsletter or any other questions.

We are interested in your feedback on the items covered and please let us know the topics you would like us to cover in the coming days.

Feel free to provide any feedback at tax@mbaya.co.ke



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» TAX ASSESSMENTS PROCEDURES IN KENYA

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From the **TaxDesk**



Personal Identification Numbers (PIN) not in iTax

As per the notice issued on 13th May 2019 the Kenya Revenue Authority (KRA) notified all taxpayers whose PIN's are not updated on iTax to do so, and file all pending annual income tax returns by **30th JUNE 2019** to avoid accruing of penalties and suspension of the PINs. Taxpayers are advised to confirm if their PIN is on iTax through the PIN Checker on itax.kra.go.ke. Failure to update the PIN on iTax by the date above will render the PIN inactive and suspended from the KRA database. The affected taxpayers will not be able to apply for new PIN numbers but will be required to visit their respective KRA stations to have the PINs re-activated.

Fringe Benefit Tax, Deemed Interest Rate and Low Interest Benefit

Fringe Benefit Tax (FBT) is applicable when employers provide loans to their employees and charge an interest lower than the prescribed rate (ITA-section 12(b)). This becomes a benefit to the employee, for which the employer needs to

file and pay Fringe Benefit Tax. FBT is paid by the employer at the corporate tax rate of 30 % on total taxable value each month. The tax is payable on or before the 9th day of following month to KRA.

Deemed interest is the amount of notional interest assumed to be payable by a resident person in relation to any outstanding loan provided or secured by a non-resident person, where such loan has been provided interest free.

Low interest benefit is considered as fringe benefit extended to an employee and is taxable at a rate of 30%.

KRA through a public notice dated 21st July 2019 has reviewed the rate from 8% to 7% as follows:

- Fringe Benefit Tax(FBT): 7% for three months, July, August & September 2019
- Deemed Interest Rate: 7% for three months, July, August & September 2019
- Low interest Benefit: 7% for six months, July to December 2019

Proposed changes in the Tax Procedures Act by the 2019 Finance Bill

- A person can now apply to the Commissioner to be exempted from obtaining a PIN to undertake the transactions specified in the First Schedule of the Tax Procedures Act. (Including opening of a bank account).
- For purposes of recovery and collection of tax, withholding tax will be considered to be a tax of the withholder and the amount will be liable to penalties and interest.
- SMEs that list under the Growth and Enterprise Market Segment (GEMS) segment at the NSE to be granted amnesty penalties and interest covering the period preceding the date of listing. Payment of principal tax and full disclosure of assets, income and liabilities for preceding 2 years will be required.
- Commissioner will be allowed additional period to issue objection decision where further information is requested from a taxpayer after filing an objection. The 60 days will run from the date the additional information is received.
- The base for computing late filing penalty to be reduced by any tax paid and withholding tax credits.
- Tax shortfall penalty to apply only where the shortfall is as a result of deliberate omission.
- It is now a requirement to have a PIN in order to qualify for the following registrations:
 - › Registration and renewal of membership by professional bodies and other licensing agencies; and
 - › Registration of mobile cellular pay bill and till numbers by telecommunication operators.
- Travel prohibition orders may be issued against a tax representative where the Commissioner is of the view that a tax is or will become payable by a company for which he is a tax representative.

Tax Assessments, Re-Assessment, Pre-Tribunal and Tribunal Process

In the recent past, KRA has been very vigorous in imposing tax assessments on VAT and Income Tax. This has been driven by the intense pressure from the government to collect more by sealing the loopholes that have been there in the tax administration. The missed targets by KRA for the last couple of years have also contributed to the renewed efforts to bridge the revenue gap.

The renewed efforts have seen more taxpayers in disputes with the revenue agency. Most of which have remained unresolved for quite some time due to lack of a proper effective resolution mechanism. This scenario has adversely

affected several enterprises and causing some of them to grind to a halt or incur heavy liabilities in contingency measures.

Below we highlight steps to follow in case a taxpayer receives an additional assessment. Consulting an authorized tax agent can be very helpful and we at, - Mbaya & Associates are there to offer a helping hand.

Accept the position or Object to the assessment

By **accepting** to the assessment, a taxpayer needs to remit the taxes stated as owing.

By **objecting** to the notice of assessment, a taxpayer is supposed to provide an "objection notice" to the Commissioner in writing. The objection notice must:

- a. **State the grounds** of the taxpayer's objection. The grounds should be supported by documentation and served to the Commissioner.
- b. Be received by the Commissioner **within 30 days** from the date on which the notice of assessment was served.

Once an objection notice has been duly filed, the Commissioner can either:

- a. **Amend the notice** of assessment in accordance with, or in the light of the objection notice. This should happen within 30 days of receiving the notice of the objection.
- b. **Refuse to amend** and confirm the assessment altogether.

In case a taxpayer is satisfied with the amended assessment, they can settle the taxes owing or agree on a payment plan. Note, the above should be in writing and should be done on the iTax platform.

Appeal to TAT - Tax Appeals Tribunal

Where a taxpayer is not satisfied with either the degree of amendment to the notice of assessment, or the failure of the Commissioner to amend the notice of assessment, he can appeal against the decision to the Tax Appeals Tribunal.

In this case, the taxpayer must file a notice of appeal within 30 days of the date of the Commissioner's decision.

A taxpayer must then submit appeal papers within 14 days of filing the notice of appeal. The taxpayer should submit **enough copies** of each paper as may be advised by the Clerk of the Tribunal (usually nine copies). The appeal papers should include the following:

- a. **A memorandum of appeal** stating the grounds upon which the appeal is based.
- b. **Statement of facts** setting out the circumstances leading to the KRA's decision on the objection notice submitted by the taxpayer.
- c. **The Commissioner's decision** on the objection notice submitted by the taxpayer.

Within seven (7) working days of receiving the notice of appeal from the taxpayer, the officer in charge of the registry will notify the Secretary to the Tribunal of the particulars of that appeal.

The taxpayer must serve a copy of the notice of appeal to the Commissioner of the KRA within two (2) days of filing the notice of appeal to the TAT. The Commissioner then has 30 days from receipt of the notice of appeal to file the following with the TAT:

- a. Copies of his statement of facts.

- b. A statement providing the reasons for the Commissioners' decision on the objection notice submitted by the taxpayer.
- c. All supporting documentation.

The TAT then sets out the hearing date for the appeal

At the tribunal (TAT), a taxpayer/Commissioner can also apply for alternative dispute resolution (ADR) and if application allowed then the matter will be referred back to the taxpayers' tax station.

Alternative Dispute Resolution (ADR) and its Process

In recent times, the Kenya Revenue Authority has established an alternative to the formal dispute resolution process described above in the form of **Alternative Dispute Resolution** (ADR). It can be invoked at various stages of the tax dispute resolution process. In Kenya, ADR is a **voluntary, participatory** and a **facilitated** discussion over a tax dispute between a taxpayer and the Commissioner that can be initiated by **either of the parties** by filing a notification to engage in ADR.

Where the notification to engage in ADR is made to either the Tax Appeals Tribunal (TAT) or to the court, the party making the request must submit a **written request** accompanied by a **settlement proposal**.

The settlement proposal must be submitted whether it is the taxpayer or the Commissioner (or his agent) making the request to engage in ADR. The TAT or the court can then **stay the hearing** of the dispute (and any existing orders) for the period that the dispute is subject to ADR discussions.

The parties must be guided by the rules of engagement that they agree between themselves, together with any applicable statutory rules. All relevant documentation must be provided during the ADR discussions to support the matters subject to dispute and guide the ADR process.

The taxpayer can opt to act on his own behalf during the ADR discussions, or can be accompanied by a representative of his own choosing or a tax adviser.

When the parties agree at the ADR, they then should record an agreement and consent and file with TAT. Once consent is adopted by the tribunal, the matter is closed indefinitely but if the parties disagree at ADR, then the matter proceeds to Tribunal.

Proceeding with TAT

The process will take its course if the parties disagree at the ADR.

Hearings in the TAT are conducted in private, and only the parties to the case are allowed to attend.

The Clerk of the Tribunal will provide at least 14 days' notice to all parties to the appeal of the date that has been fixed for the first hearing of the appeal. Dates for subsequent hearings can also be fixed by the Tribunal.

During the hearing, evidence can be given orally or through affidavits or in whichever other way the Tribunal may direct. The Tribunal is also empowered to call witnesses to attend a hearing or produce any document if it is thought that such evidence is relevant to the proceedings.

The Tribunal is additionally permitted to engage the services of an independent expert in any proceedings. Such evidence can be taken into account in the making of its decision. Upon the conclusion of a matter, the Tribunal is permitted to **award costs**.

If the taxpayer/Commissioner disagrees with tribunal ruling, then they can proceed to the high court and court of appeal thereafter.

Tax Due Dates

Withholding Tax | 20th Day of the following month
Pay as You Earn | 9th Day of the following month
VAT | 20th Day of the following month
Balance of Tax on Self-Assessment | 4th Month after year end
Monthly Rental Income | 20th Day of the following month



Instalment Tax

1st Instalment | 20th day of the 4th month after year end
2nd Instalment | 20th day of the 6th month after year end
3rd Instalment | 20th day of the 9th month after year end
4th Instalment | 20th day of the 12th month after year end
Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.

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