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Newsletter

MBAYA AND ASSOCIATES

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Introduction

Welcome to the eleventh edition of our newsletter this year. The newsletter covers a variety of the recent changes in the tax regime in Kenya and other topical issues.

On the right column of the newsletter you will find contact details for the senior members of our team who can help answer 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 what topics you would like covered in the future, please contact using tax@mbaya.co.ke



Many of the punters (players) are in dilemma on whether or not they are required by law to account for tax on their winnings. In this respect, it is important to understand how the tax regime on gambling industry has evolved in Kenya.

* FROM THE TAX DESK: TAXATION OF BETTING, LOTTERY AND GAMBLING

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From the **TaxDesk**

VAT on Mobilization Fee

Kenya Revenue Authority through a public notice dated 30th October 2017, clarified how tax payers should deal with mobilization fees for VAT purposes. Mobilization fees can be defined to include fees on preparatory and operations work incurred prior to beginning work. This may include the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all facilities necessary for work.

Most contractors do not charge or account for VAT on mobilization fee, rather they charge it on the subsequent invoices after the commencement of the project. However the act clearly specifies that VAT is also due and payable when payment for the supply is received, in whole or in part. This means that contractors should charge and account for VAT when billing for mobilization fee.

Equally withholding Tax Agents to withhold and remit 6% of the VAT when paying mobilization fee to contractors, and issue the contractor with a withholding tax certificate. The withheld amount shall be deducted and paid to the Commissioner on or before 20th of the month following the month which the taxes were withheld

Penalties

A person who fails to withhold VAT is liable on conviction to a penalty of ten per cent of the amount not deducted.
Interest 1%

Taxation of Betting, Lottery and Gaming

Many of the punters (players) are in dilemma on whether or not they are required by law to account for tax on their winnings. In this respect, it is important to understand how the tax regime on gambling industry has evolved in Kenya. The Government first attempted to tax betting, gaming and lottery winnings through the Finance Act, 2012 by introducing a 20% withholding tax on winnings from betting and gaming. However before the provisions could come into effect, they were deleted by the second Finance Act, 2012 which was published in January 2013.

Finance Act, 2016 sought to remedy this situation by amending the Betting, Lotteries and Gaming Act.

The Betting, Lotteries and Gaming Act introduced changes with effect from 1st January 2017, shifting the tax burden on the bookmakers and not the punters.

Under the current Finance Act 2016 amendments, Betting, lottery and gaming were to be taxed as follows:

- A monthly Betting tax chargeable at the rate of 7.5% of the gaming revenue. Gaming revenue is described by the act as gross turnover less the amount paid to customers as winnings. This tax should be paid to KRA by 20th of the month following the collection
- A monthly Lottery tax chargeable at 5% of the lottery turnover. This tax should be paid to KRA by 20th of the month following the collection
- A monthly Gaming tax (casinos) chargeable at the rate of 12% of the gaming revenue. This tax should be paid to KRA by 20th of the month following the collection

- Prize competition tax chargeable monthly on the cost of entry to a competition at 15% of the total gross turnover

However with effective from 1st January 2018 the Finance Bill

The *Finance Act, 2017* increased the tax rate for betting, gaming and lotteries operators to 35% of the total gross revenue effective 1 January 2018. This rate was initially 50% under the *Finance Bill, 2017* but reduced by the *Finance Act, 2017* as stated above.

Double Tax Agreement (DTA)

Double Taxation Agreement (DTA) is an international agreement concluded between two jurisdictions to allocate taxation rights between two countries that have negotiated the particular DTA in question.

The main reason that countries sign DTAs is to eliminate double taxation

There are basically two types of double taxations that DTAs seek to eliminate;

- i. Economical double taxation which means the inclusion, by more than one country's tax administration, of the same income in the tax base when the income is in the hands of different taxpayers
- ii. Juridical Double Taxation: The imposition of income taxes in two (or more) countries on the same taxpayer in respect of the same income.

Kenya has double tax agreement with the following countries:

- | | |
|------------|--------------------|
| 1) Canada | 7) Mauritius |
| 2) Denmark | 8) Norway |
| 3) France | 9) Sweden |
| 4) Germany | 10) United Kingdom |
| 5) India | 11) Zambia |
| 6) Iran | 12) South Africa |

Some of these treaties provide for preferential withholding tax rates. In most cases however, the standard tax rates set out above apply. The treaties will in most cases allow for the set-off of withholding tax against tax liability in the respective countries. Treaties with East African partner states, Kuwait, Iran, Mauritius and UAE have been concluded but not ratified.

M&A Members get Appointments

Mike Mbaya



Our Managing Partner, Mike Mbaya, was appointed as a member of the global IFAC - SMPC (Small and Medium Practices committee). IFAC is the global organization for the accountancy profession dedicated to serving the public interest by strengthening the profession and contributing to the development of strong international economies. IFAC is comprised of over 175 members and associates in more than 130 countries and jurisdictions, representing almost 3 million accountants in public practice, education, government service, industry, and commerce. It is the global accounting standard setting body.

IFAC's SMP activities are supported by the Small and Medium Practices (SMP) Committee, which was established in 2005. The SMP Committee is comprised of 18 volunteers, including a chair and deputy chair, which represent a broad range of geographies and professional backgrounds.

As a strategic advisory body of professional accountants, the SMP Committee supports IFAC's work in three main activity areas:

- Standard Setting - providing regular and timely input to the international standard-setting process in order to help ensure the stability, relevance, and proportionality of international standards to SMEs/SMPs;
- Resources and Tools - developing and sharing practical guidance with a focus on implementation of international standards, practice management, and business advisory services; and
- Speaking Out - promoting the visibility and recognition of SMPs and representing and advocating on behalf of SMPs and SMEs worldwide.

IFAC resources and tools to support SMPs include a number of discussions and resources in the Global Knowledge Gateway, in particular, on Audit & Assurance, Ethics, and Practice.

Andrew Bulemi



Our firm is a member of GMN International, an association of legally independent accounting firms around the world.

GMN International is a well-established association of quality professional accounting firms which provide accountancy, audit, tax advisory and business consultancy services to businesses worldwide.

Through the personal, closely-forged relationships, the diverse networks of contacts available, and understanding of different clients businesses, all the member firms are able to provide financial and consultancy solutions in all major trading centres worldwide through access to professional and approachable experts with first - hand knowledge of

local regulations, culture and customs.

Our Partner, **Andrew Bulemi**, was appointed as the Vice Chairman of the GMN International African Region for a period of 3 years during the recently concluded 2017 African Regional meeting that took place in Mauritius. He is also a member of the global International Committee of GMN International which is responsible for developing and managing strategies of the association globally.

Leah Wambui Nganga



ICPAK in its' 340th meeting made a resolution to reconstitute its committees.

Our Partner, **Leah Wambui Nganga** was appointed as a member of the institute's Practitioners Development Committee for the period September 2017 to June 2019.

The Practitioners Development Committee is responsible for the following:

Coordinating participation of practitioners in shaping development plans by the Institute for members in practice.

Considering and if found appropriate providing guidelines for consideration by Council on different issues affecting members in practice.

- Coordinating the identification of work opportunities and the pooling of resources to build capacity of members in practice.
- Issue guidelines/publications aimed at supporting members in public practice.
- Oversee the operation of member networks including branches and chapters.
- Oversee the engagement with various publics to foster an understanding of the work of a professional accountant.
- Lobby for local and international recognition of the CPA Kenya brand.
- To champion the devolution agenda of the Institute.



We congratulate the team and wish them well as they offer service to the profession

Cancer Talk

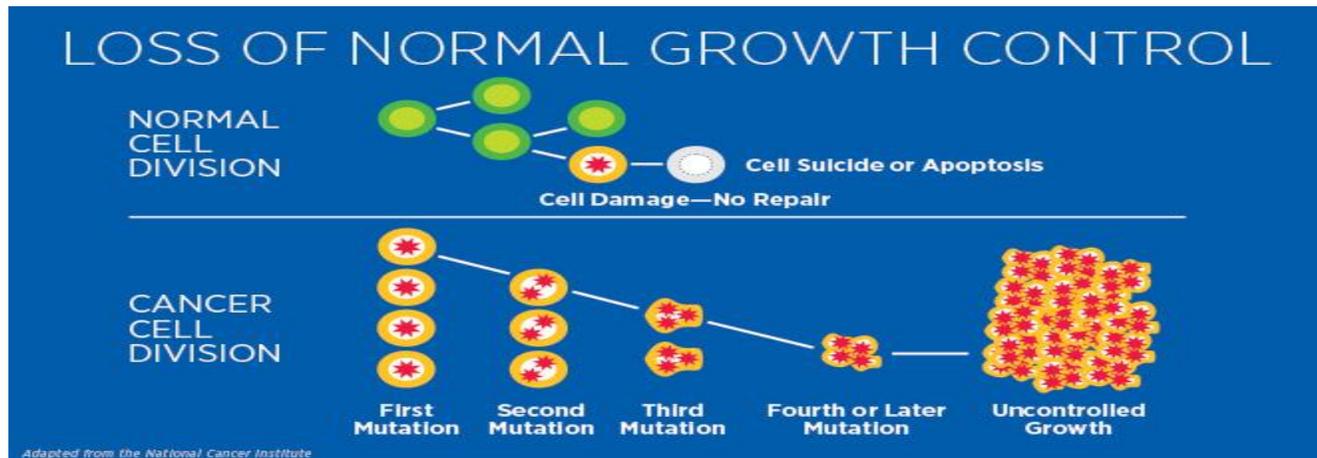
Article by Seth Adoli

On the 17th of October, 2017, we had a cancer talk courtesy of Faraja Cancer Support Trust. The Faraja presentation style was a one of a kind style because Cindy Ogana (Fundraising, Events and Communication Manager at Faraja Cancer Support Trust) managed to do the presentation verbally while using a PowerPoint presentation on the whiteboard. I think as much as she was educating us on cancer, I also learnt of some presentation skills from her; for example, making the presentation a two way thing between you and your audience, cracking jokes during the course of the presentation and using gestures, signs, and body postures to communicate your message to the audience.

It was a worthwhile experience. For those who missed, no need to worry because I have got it all covered for you in this article. If you were to be diagnosed with cancer today, I'm 100% sure that your world would stop. The first thing that would hit your brain is how much time you still have on this earth.

To give us a start, what is cancer? In a healthy body, cells grow and divide in a controlled, orderly fashion to replace those that have grown old or have been damaged and die by design in a process called apoptosis. Cancer occurs when these natural processes go awry.

Ignoring the body's signal to stop, malignant cells multiply to form tumours in organs and tissues or, in the case of blood cancers, crowd out normal cells in the blood stream and bone marrow.



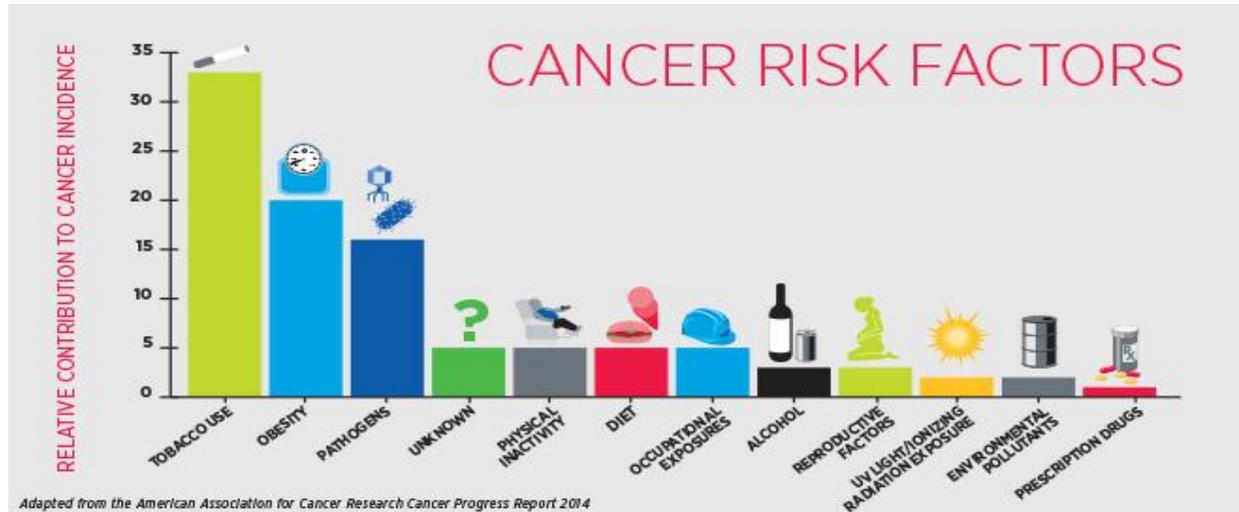
The common adult cancers are: Bladder Cancer, Breast Cancer, Colon and Rectal Cancer, Endometrial Cancer, Kidney Cancer, Leukaemia, Lung Cancer, Melanoma, Non-Hodgkin Lymphoma, Pancreatic Cancer, Prostate Cancer, Thyroid Cancer.

Avoiding tobacco use is the single most important step we can take to reduce the burden of cancer.

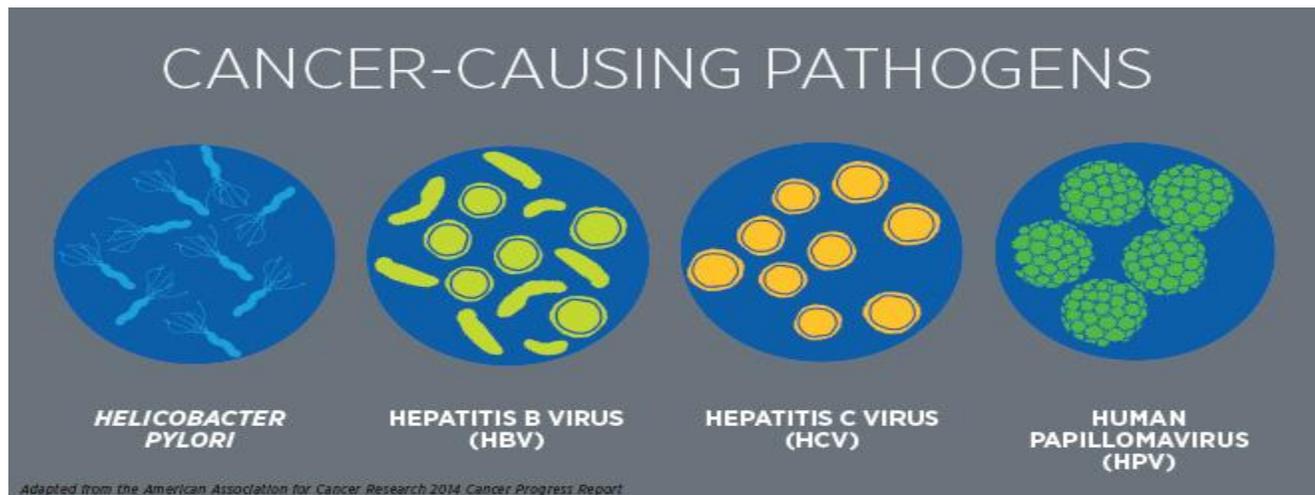
Poor diet, lack of physical activity, and obesity/overweight are known risk factors for many chronic diseases and conditions.

The relationship between diet and cancer is complex. Because people consume a variety of foods that keep changing every day, the contribution of a specific type of food or food component in preventing a type of cancer is difficult to determine.

Exposure to ultraviolet (UV) light from the sun or indoor tanning is the predominant cause of all three main types of skin cancer – basal cell carcinoma, squamous cell carcinoma, and melanoma. Adopting sun-safe habits and avoiding the use of indoor tanning devices can decrease the incidence of skin cancer.



Infections with cancer-related pathogens account for about one in five cancer diagnoses worldwide, and taking measures to prevent and treat these infections can help prevent certain cancers. Ken inquired about the cancers whose causes are clearly known. Cindy stated that there are only two cancers whose causes have been proved, these are; cervical cancer which is caused by Human Papilloma Virus (HPV) and liver cancer which is caused by Hepatitis B.



The session was a very interactive session. Members of staff were very eager to ask questions about cancer that they felt were in direct relation to their normal daily lives. Jane asked if cancer was genetic. Cindy's response to this was a no because cancer is something that you get into your body in the course of your life.

Winnie asked about the myth that microwaves cause cancer. Cindy said that microwaves don't cause cancer but it is not advisable to warm food in plastics. This is because when plastics are hot, they emit chemicals known as carcinogens which when in the body increase one's chances of getting cancer.

We also had a cancer survivor talk to us. His name is Stephen and he once suffered from oesophagus cancer. He explained his experience to the team. From his story, each and every listener got a chance to get into the world of a cancer patient and experience and know how it feels to suffer from cancer. All saw that the cancer world is really a tough world to live in. They all took their lessons from Stephen's story on how to keep off cancer. For example, a staff told me that he and alcohol will be no more of best friends from that day but he made a provision for them to just be friends, meaning that he would reduce his intake of alcohol.

In Kenya, Cancer treatment financing can be done by: NHIF (50%), A & K Global Health, APA Insurance, UAP Insurance Company Limited and Daisy's Eye Cancer Fund Kenya.

Hospitals in Kenya with Cancer treatment services include; Aga Khan University Hospital, Beacon Health Services Cancer Treatment Center, Coast Province General Hospital, Kenyatta National Hospital, Kijabe Mission Hospital, Mater Hospital, Moi Teaching and Referral Hospital, M.P. Shah Hospital/Cancer Care Kenya, Nairobi Hospice, Nairobi Hospital, Nairobi Women's Hospital, Tenwek Mission Hospital

At Faraja Cancer Support Trust, Cindy and her team offer complementary therapies, support groups and cancer resource and library information.

The staff also benefited by having some snacks as breakfast from Faraja Cancer Support Centre. These were cakes, burgers and some other snacks that I really wish I knew their names but my stomach just took them in.

It will be really unfair of me to end this article without thanking all the stakeholders that made this talk a successful one. These are; Faraja Cancer Support Centre (Cindy and Stephen), the partners for granting permission to Cindy and her team to come, Mr Wilfred Kaigua for organizing and overseeing the whole talk and the whole staff team for attending the talk.

As I finish, I leave you with a quote that Stephen left us with: "In real sense, it is not the cancer that kills someone, the people around you are the ones that determine whether you will heal or die from it."

This article is based on the presentation prepared by Dr. James Mbogo and presented on his behalf by Ms Cindy Ogana (Fundraising, Events and Communication Manager-Faraja Cancer Support Trust)

For more information, kindly load on to the following links:

<https://farajacancersupport.org/>

<https://kenyacancernetwork.wordpress.com/kenya-cancer-facts/>

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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