

WELCOME

RECENT TRENDS ON TAXATION IN KENYA.
FINANCE ACT 2023

8 aM - 9:30 aM

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► TURN OVER TAX...

Rate Increased from 1% to 3 %

Threshold reduced from 50M to 25M but the lower retained at 1M

Take Away

Based on gross pay. Tax payer not allowed to deduct expenses.

Reduced in the technicality required with filling taxes

Turn over tax is final tax

No instalment tax payments required

TURNOVER TAX CONT....

Not all businesses required to file TOT

1. Rental income
2. Income that is subject to final withholding tax according to income tax.
3. Management, professional and training fees
4. Business with less than 1M in gross sales PA and above 25M PA.

► RENTAL INCOME TAX...

Reduced rate of the MRI from the current 10% to 7.5% of the gross rent collected.

Monthly rental tax is filed by landlords with income of between ksh 288,000 - 15M PA.

In the instance where there is no rental income received in a month, the landlord is required to file nil returns before 20th of the following month.

In the monthly rental income regime, the landlord is not allowed to deduct expenses such as maintenance, rates e.T.C

► REMISSION OF PENALTY AND INTEREST...

WEF 1st sep 2023

The commissioner will no longer have the power forfeit penalties and interest claimed by tax payers as the provision has been deleted.

We have seen on several occasions taxpayers make applications on the iTax portal for remission of penalties and interest.

This will, most likely going forward leave the parliament to be the only body that can forfeit such penalties and interest via approving tax amnesties like the one that was introduced in the current finance act.

Interest and penalties incurred on taxes fully paid by 31st Dec 2022 to be cleared upon application by tax payer

Tax payer can as well enter into a payment plan with the commissioner to clear the amounts by June 2024 to remission to be effected.

► INTRODUCTION OF RENTAL WHT AGENTS APPOINTED

There has been an introduction of section 42c of the TPA where the commissioner will have the power to appoint rental WHT agents.

This is applicable to landlords who have agents collect tax for them.
The rate is 7.5% of the gross tax collected.

These include payments made in relation to digital content monetization and the applicable withholding tax rate is 5%.

► WITHHOLDING TAX ON DIGITAL CONTENT MONETIZATION...

1. Fundraising for specific goals for the content creator another person.
2. Where a content creator is paid by a brand owner for promotion and content creation.
3. Adverts on social media, websites including endorsements from sellers.
4. Where an audience pays subscription fees to have access to content created by the content creator.
4. Membership services/programs with exclusive content for the subscribers.
5. Affiliate marketing -marketing arrangement by which an online retailer pays commission to an external website for traffic or sales generated from its referrals.

► WITHHOLDING TAX ON MARKETING SERVICES...

This is a re-introduction.

Payment made for sales promotions, marketing and advertising services will now be subject to withholding tax of 5% for residents persons, and as well non-resident person who have permanent establishments in kenya.

► DIGITAL ASSET TAX...

This will be at rate of 3% on the gross transfer value or exchange value payable by the owner of the exchange platform.

Aimed with increasing the tax base

► GENERATION OF
INVOICES THROUGH
E-TIMS...

Losses and expenditures shall not be allowable for deduction if the invoices are not generated via e-tims.

May compel the businesses to register for e-TIMS even if they do not meet the criteria to register for VAT.

► INCREASE OF TAX
BANDS FOR PERSONAL
INCOME TAX...

Two new tax bands introduced as follows.

Monthly income between ksh 500,000 – ksh 800,000 is to be taxed at an increased rate of 32.5%
income over ksh 800,000 per month is to be taxed at an increased rate of 35%.

► HOUSE LEVY AT 1.5%...

All employees incomes are to subjected to a monthly tax levy at 1.5% of their gross pay.

The employer is required to match the contribution of the employee of 1.5%

► CONTRIBUTION TO POST-RETIREMENT MEDICAL SCHEMES...

Contributions made to post-retirement medical schemes are to be allowed for deduction at 15% of the contribution made, however this is to be capped at ksh 60,000PA

More clarity will be needed so as to distinguish this from other schemes for purposes of claiming the already capped benefit.

► CLUB FEES, WELFARE CONTRIBUTION AND JOINING FEES...

Club joining and subscription fees is to be benefit taxable on the employee, where the same has been allowed for tax on the employer.

The initial confusion around this has been cleared as the tax is to be incurred by the employee as far as the employer has allowed it for tax purposes.

Deferral of taxation for award of shares of a start-up to employees
taxation of the benefit from shares allocated to an employee by an eligible start-up
shall be deferred and taxed within thirty days of the earlier of:

- a) expiry of 5 years from the end of the year of the award of the shares;
- b) disposal of the shares by the employee;
- c) the date the employee ceases to be an employee of the start-up

► DEFERRAL OF
TAXATION FOR AWARD
OF SHARES OF A
START-UP TO
EMPLOYEES ...

ELIGIBILITY

1. Have annual turnover of not more than KES 100 million shillings;
2. Do not carry on management, professional or training business;
3. Have not been formed as a result of splitting or restructuring of an existing entity; and
4. Have been in existence for a period of not more than 5 years.

Contract of service and contract for service

- ▶ Employers changing their contracts with employees. Possible?

Remuneration - wages/ salaries or commission

Frequency of engagement.

Who provides the tools of work

Who controls the working time

Delegation and determination of duties.

Carrying work out of employers premises

► TAX REFUNDS ON TAX PAID ON BAD DEBTS...

Duration to claim was 4 years now increased to 10 years.

The tax payer can claim under the following circumstances have been fulfilled.

1. The tax payer has not received any payment after three years after the supply was done.
2. Where the person to whom the supply was made has been placed under a statutory management through a receiver, a liquidator or an administrator.
3. In addition, the amount being claimed for refund may be credited in the tax payers VAT account and applied to clear future VAT liabilities.

Further, the act states that when the recovery of the amount declared as bad debt has been done a refund done to the tax payer, then the tax payer is to pay the amount refunded **after sixty days from the earlier 30 days** after which an interest of 2% P.M will be applicable.

▶ VAT ON FUEL PRODUCTS...

Increased from 8% to 16%.

This has been effected so as to level the playing field and eliminate the perennial VAT refund position for the traders.

Notably, LPG has been moved to zero rated.

► VAT ON INSURANCE COMPENSATIONS

The act introduced VAT on insurance compensation for compensation received of loss of vatable good. The following two scenarios are explained.

A) if the compensation includes value added tax, the compensation shall be declared and the value added tax thereon remitted to the commissioner; or

(b) if the compensation does not include value added tax, the compensation shall be declared and subjected to value added tax and the tax remitted to the commissioner

► EXPANSION OF VAT OBLIGATIONS FOR SUPPLIERS OF SERVICES WITHOUT A FIXED PLACE OF BUSINESS IN KENYA

The suppliers of goods and services to customers in Kenya are now required to register for VAT.

The non-resident suppliers are henceforth required to register for VAT by the virtue of making supplies to customers in Kenya.

VAT regulations on supply through DMS 2023

► VAT ON EXPORT OF SERVICES

The act has retained the proposal of taxable export services as zero rated.

Aligns well with the destination principle and OECD guidelines

► TAX REFUNDS OF OVERPAID TAXES

The act has increased the options that the tax payer has with regards to the utilisation of vat refunds of tax paid in error and overpaid tax.

Tax payer can now apply to have their overpaid taxes

1. applied to future tax and existing liabilities. The previous provision we have only allowed for the offset of the previous liabilities
2. For a refund in 5 years and 6 months for VAT

► **Additional restriction on deductibility of input tax.**

The bill proposed to amend section 17 (2) of the VAT act by deleting the word 'or' and substituting it with the word 'and', thereby requiring a person to hold both the documentation prescribed under the act and still ensure the registered supplier has declared the sales invoice in a return for them to deduct input tax.

The introduction of the connector 'and' in the law implies that taxpayers must fulfil both conditions set out in the law for the deduction of input tax to be allowed.

This contradicts what KRA is promising they have real data on e-TIMS and what we will most likely see, is the taxpayer to have verified the date in their e-TIMS before booking or paying an invoice. Not applicable for the cases of cash sales but may be applicable to credit purchases.

SAMPLE TAX OBLIGATIONS

- ▶ VAT
- ▶ Corporate Tax
- ▶ PAYEE
- ▶ Excise Duty
- ▶ Turn Over Tax
- ▶ With Holding Tax
- ▶ Levies and fees

What to consider

Registration

Due Dates

Penalties

Record Keeping

Tax Payers rights

Crossborder activities

THANK YOU

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