



cutting through complexity™

ICPAK Tax Workshop

Employee Taxation

Withholding tax

24 January 2014

Employee Taxation

The tax year for individuals runs from 1 January to 31 December

Chargeable Income:

- For each year of income
- For resident and non-resident (for employment in Kenya)
- Accrued in or derived from Kenya (deemed)

Residency Rules / Income

Resident / Income

Permanent home – any period

No permanent home – 183 p.a; 122 over 3years

Presence in Kenya – aggregate physical days

Worldwide employment income

Non-resident / Income:

Test – accrued in or derived from Kenya

Types of taxable income

- **The two categories of emoluments/ incomes subject to tax are:**
 - **Cash emoluments**
 - **Non-cash benefits**



Taxable Cash Emoluments

Taxable cash emoluments

- **Per diems**
W.e.f 16 June 2006 the first KShs 2,000 is deemed to be reimbursement (allowable expense)
- **Net agreed (tax-free) emoluments (grossing up)**
– tax paid is taxable benefit
- **Compensation on termination (ex gratia payments)**

Non - cash Benefits

- The value of all benefits, advantages or facilities of whatsoever nature are taxable on employee
- However, non-cash benefits that in aggregate do not exceed **KShs 36,000 per annum** are not taxable
- The Commissioner's prescribed rates are applicable where cost/market value unascertainable

Non - cash Benefits (cont'd)

- **Furniture (1% per month)**
- **Telephone & Internet (30% of bill, Pay TVs?)**
- **Free housing – Housing benefit -15%**

When employer pays rent (arm's length?)

Where premises are owned by employer

Non - cash Benefits (cont'd)

- **ESOPs** – (Market Price, Offer price and Grant price)
- **Car benefit** (2% p.m of cost or prescribed cc rating)
 - Provision of a 'company' car
 - Provision of transport from home to office
 - Hired or leased, (w.e.f 16 June 2006)
 - Note: Reduced benefit may be granted on restricted use

Non - cash Benefits (cont'd)

- **Other benefits:**
 - **Meals;**
 - **School fees;**
 - **Pension contributions in excess on allowable limits;**

Tax - Exempt Income

- **Medical services**
- **Medical Insurance** (1M for Directors)
- **Employer's contributions to registered pension or provident schemes - KShs 240,000 p.a.**
- **Gratuity by employee**



Tax - Exempt Income

Meals to low income earners

- Exempt from taxation
- Definition of “low income earners” – below 20% tax bracket



Deductions & Reliefs from Income

- **Pension, provident and individual retirement schemes** (240,000, actual, 30% pp)
- **Mortgage interest deduction** (150,000 1 house)
- **Deposits into home ownership savings plan** (4,000 pm for 10 years)



Deductions & Reliefs from Income

- **Insurance relief** (15% premiums, max of 60K pa)
 - **Life insurance policies**
 - **Education policies (>10yrs)**
 - **Health Insurance policies**



Employer & Employee Responsibilities

•Employer

- Withhold tax and pay
- Returns (monthly
- online)

Employee

- PIN
- Self-assessment



Non Compliance

- **Failure to deduct & account for tax from employment emoluments**
- **Monthly for online filing or Quarterly returns manual returns**
- **Individual tax returns**
- **PIN transactions**



Q & A Session



Corporation Tax - Highlights

- A company or similar corporate entity is tax resident if it is incorporated under Kenyan law, if management and control are exercised in Kenya

Tax	Rate
Turnover tax (for business income only)	3% of turnover (with effect from 1 January 2007 for turnover of up to KES 5,000,000)
Resident companies	30%
Non-resident companies	37.5%.

Sources of income

- Business
- Rent
- Interests;
- Dividends;
- Farming (agricultural; pastoral; horticultural; forestry;e.t.c;
- Surplus funds withdrawn or refunded....from provident/pensions (Regd);
- Employment income (self and wife's)

KRA Focus

- Transfer pricing;**
- Deemed interest;**
- Thin capitalization;**
- Separate sourcing of income; and**
- Dividends distribution.**

Q & A Session



Withholding Tax - Highlights

What is WHT?

- ✓ Tax deducted **at source** on payments to both resident and non-resident persons on **taxable** income from various sources.
- ✓ Depending on the income source WHT can either be a final tax or an advance tax payment.

Payments subject to WHT

- ✓ Interest, dividends, agency fees, royalties management, professional and training fees
- ✓ Commissions excludingpaid to **non-resident agents** in respect of flowers, fruits or vegetables exported out of Kenya, audit fees for analysis of maximum residue limits paid to a non-resident **laboratory, auditor or** commissions paid to secure tickets for international travel;
- ✓ Surplus funds withdrawn from registered pension or provident fund

Why Withholding tax?

- ✓ **Cash flow to KRA & taxpayer**
- ✓ **Compliance issue (advance tax)**
- ✓ **Cost effective - Agency tax**
- ✓ **Non-resident issue**

Provisions of law

Income Tax Act - Section 35 and WHT rules 2001

Withholding tax is deductible upon *payment* of a taxable amount

- “Paid” is defined to include **crediting** (i.e. accrual) of the amount payable
- Tax point is earlier of accrual or payment

Obligations under WHT regime

It is the responsibility of the person making payment of income subject to WHT to:

- Compute and deduct the tax at the relevant rate; and
- Remit the tax so deducted by the 20th day of the month following that in which tax is deducted
- Make an end of year WHT return by the 28th day of February the following year

Withholding tax rates-payments to residents

Nature of payment	Rate
Management or professional fees: (>24,000) - Managerial, technical, agency, consultancy fees, and Training fees including ICPAK training * Inclusive of incidental costs(disbursements)	5%
Contractual fees:(>24,000) - Building, civil and engineering works	3%
Royalties	5%

Withholding tax rates-payments to residents

Nature of payment	Rate
Interest:	
▪ Bank interest and other sources	15%
▪ Bearer instruments:	
- 2 years;	25%
- Beyond 10 years w.e.f 12.06.09	10%
Dividends:	5%
EA citizens (Uganda and Tanzania) are now considered Kenyan residents for purposes of WHT on dividends	

Withholding tax rates – payments to non-residents

Nature of payment	Rate (%)
Management or professional fees:	20
Royalties - e.g. software licenses	20
Dividends	10
Contractual fees(building /civil/engineering)	20
Rents :	
-Real estate	30
Interest	15

Double Taxation Avoidance Agreements (DTAs)

Nature of payment	UK (%)	Germany & Canada (%)	Denmark Norway Sweden Zambia (%)	India (%)
Management & professional fees	12.5	15	20	17.5
Royalties	15	15	20	20
Interest	15	15	15	15

Finance Act, 2012

- ✓ Winnings from *betting and gaming* for both resident and non resident persons attract withholding tax at **20%**;
- ✓ Deemed interest on interest free loans from non-residents attracts **15% withholding tax**
- ✓ Rent or premium paid to *non-residents* for use of aircraft, aircraft engines, locomotives or rolling stock not subject to withholding tax.

Withholding tax – Think about it ??

- ❖ If you are paying tax on behalf of the other party, why should KRA treat it as your tax and still demand the tax and penalties on non-payment?
- ❖ What happens in case you overpay WHT based on the accrual concept?
- ❖ Do payments under a contract of service amount to a contractual payment?
- ❖ Should you deduct WHT tax on disbursements?
Conflicting Local Committee rulings.

Q & A Session



Caveat

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