

THEME : HARNESSING SYNERGIES FOR EFFICIENCY IN TAX COMPLIANCE

ANNUAL TAX CONFERENCE - 17TH - 19TH SEPTEMBER 2014

SAROVA WHITESANDS HOTEL, MOMBASA

TOPICS :

“TAXPAYERS’ RIGHTS AND OBLIGATIONS”

“MANAGING KRA TAX AUDITS”

PRESENTER :

CPA ERASTUS KWAKA OMOLO

HORWATH ERASTUS & Co.

CERTIFIED PUBLIC ACCOUNTANTS

NAIROBI, KENYA

E-mail : erastuscpa@kenyaweb.com



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Harnessing Synergies for Efficiency in Tax Compliance

COVERAGE

- **Tax Payers Rights and Obligations**
 - **Taxpayers Charter**
 - **Constitutional Provisions**
- **Managing KRA Tax Audits**
 - **KRA Tax Audit Notices**
 - **Tax Audit Proper – Questions (Entry Meeting)**
 - **What KRA Asks For And The Deep End**
 - **Case Studies – Illustrative Court Cases**
- **And Finally ----- ?**

Tax Payer Rights and Obligations

The Tax Payers Charter

Rights of a Tax Payer : -

- 1. Information**
- 2. Impartiality**
- 3. Courtesy and Consideration**
- 4. Presumption of Honesty**
- 5. Privacy and Confidentiality**
- 6. Identification (to demand to see)**

The Tax Payers Charter

Tax Payers Obligations

All persons who are taxpayers have obligations to comply with tax laws on the various tax Acts.

Obligations include :-

- 1. Registration**
- 2. Filing your returns / payments**
- 3. Accuracy of your returns / customs entries**
- 4. Payment of tax and penalties**
- 5. Cooperation with KRA Officers**
- 6. Disclosure and production of relevant information, records and documents**

The Tax Payers Charter

Provisions Regarding – Types of Tax Audits

Compliance Audit: spot checks to review an organization's adherence to tax laws and guidelines

▪ **Comprehensive/In-Depth Audit: an audit covering many tax heads and multiple issues in the accounts of a taxpayer**

▪ **Investigative Audit: an audit that takes place as a result of a report of unusual or suspicious activity on the part of a taxpayer**

▪ **Customs (Post Clearance) Audit**

▪ **Excise Audit**

Be Alert - Excise Duty Bill, 2014

The Tax Payers Charter

Provisions Regarding – How Taxpayer Rights link to the Fundamental Rights Enshrined in the Constitution

Charter	Constitution
<p><u>Information</u></p> <p>entitled to complete and accurate information on your rights and obligations under the various Acts administered by Kenya Revenue Authority</p>	<p><u>Article 35 : Right of Access to Information</u></p> <p>held by another person and required for the exercise or protection of any right or fundamental freedom</p>

The Tax Payers Charter

Provisions Regarding – How Taxpayer Rights link to the Fundamental Rights Enshrined in the Constitution

Charter	Constitution
<u>Impartiality</u> You are entitled to demand impartial application of the law. It is the responsibility of KRA to collect only the correct amount of tax, duties and fees, no more no less	<u>Article 50 – Fair hearing</u> Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

The Tax Payers Charter

Provisions Regarding – How Taxpayer Rights link to the Fundamental Rights Enshrined in the Constitution

Charter	Constitution
<p><u>Courtesy and Consideration</u></p> <p>You are entitled to courteous and considerate treatment in all your dealings with KRA officers whether when requesting information, arranging for an interview or an audit.</p>	<p><u>Article 73 – Responsibilities of Leadership</u></p> <p>Authority assigned to a State officer must be exercised in a manner that : -</p> <ul style="list-style-type: none">i. Is consistent with the purposes and objects of this Constitutionii. Demonstrates respect for the peopleiii. Brings honour to the nation and dignity to the office; andiv. Promotes public confidence in the integrity of the office

The Tax Payers Charter

Provisions Regarding – How Taxpayer Rights link to the Fundamental Rights Enshrined in the Constitution

Charter	Constitution
<p><u>Presumption of Honesty</u></p> <p>You are presumed honest unless there is evidence to the contrary</p>	<p><u>Article 50(1) Innocent until proven guilty</u></p> <p>(a) to be presumed innocent until the contrary is proved;</p>

The Tax Payers Charter

Provisions Regarding – How Taxpayer Rights link to the Fundamental Rights Enshrined in the Constitution

Charter	Constitution
<p><u>Privacy and Confidentiality</u></p> <p>You are assured that the personal and financial information which you provide to KRA shall only be used only for purposes of carrying out our lawful duties</p>	<p><u>Article 31 – Privacy</u></p> <p>_Every person has the right to privacy, which includes the right not to have –</p> <ul style="list-style-type: none">a) their person, home or property searched;b) their possessions seized;c) information relating to their family or private affairs unnecessarily required or revealed; ord) the privacy of their communications infringed.

The Tax Payers Charter

Provisions Regarding – How Taxpayer Rights link to the Fundamental Rights Enshrined in the Constitution

Charter	Constitution
<p><u>Consistency and equity</u></p> <p>Application of the law consistently so everyone gets their entitlement and pays the right amount. We will take your particular circumstances into account as far as the law allows</p>	<p><u>Article 27 - Equality and freedom from discrimination.</u></p> <p>Every person is equal before the law and has the right to equal protection and equal benefit of the law.</p>

MANAGING KRA TAX AUDITS

A Typical Tax Audit Notice (IT - WHT - VAT)

Kenya Revenue Authority

Dear Sir,

- **NOTICE UNDER SECTION 56 OF THE INCOME TAX ACT**
- **NOTICE OF COMPREHENSIVE AUDIT (MULTIPLE TAXES)**
- **COMPLIANCE AUDIT**

Requirements:-

- 1. Income and expenditure statements**
- 2. Lease agreements**
- 3. Ledgers (all types however styled)**
- 4. Cash books including petty cashbooks**

MANAGING KRA TAX AUDITS

A Typical Tax Audit Notice Cont.....

- 5. PAYE records and returns e.g. payrolls, payment vouchers, P9's, P10, P10A and P11's for the period under audit**
- 6. Bank statements, including statements for director's personal accounts and cheque counterfoils**
- 7. Withholding tax listings and evidence of payments**
- 8. Service and employment contracts**

MANAGING KRA TAX AUDITS

A Typical Tax Audit Notice Cont.....

9. Income Tax Returns and accounts for 2010 to 2012 accompanied with respective audited accounts and tax computations

10. Director's personal returns (IT 1's) for the period under audit

11. Pension scheme registration certificate

KRA TAX AUDITS

A Typical Customs Audit Notice

KENYA REVENUE AUTHORITY

**Customs Services Department
Post Clearance Audit Division**

Dear Sir,

NOTICE OF INTENTION TO CONDUCT A CUSTOMS AUDIT

- 1. All customs files (with import entries, commercial invoices, packing lists, airway bills / Bills of lading, IDF forms / CCRFs and other supporting documents) for the period under review.**
- 2. Audited financial statements (Balance sheets, Income Statements, Trial Balances, Cash Flow Statements, etc)**

KRA TAX AUDITS

A Typical Customs Audit Notice Cont.....

- 3. Banks statements**
- 4. Inventory / stock records**
- 5. Cash book / petty cash book**
- 6. Ledgers / Journals (for purchases, sales, creditors, debtors, etc)**
- 7. Purchase documents (purchase orders, contracts, invoices, etc)**
- 8. Sales documents (sales orders, contracts, invoices, etc)**
- 9. Price list of all items on sale**
- 10. Business correspondences relating to imported goods**

KRA TAX AUDITS

A Typical Customs Audit Notice Cont.....

- 11. Business correspondences relating to imported goods**
- 12. Records / evidence of payments to suppliers, customs, shippers, insurance, ports authority and any other parties involved in the importation / exportation of goods**
- 13. Any other relevant document**

Please find enclosed a questionnaire for you to fill and forward to our offices together with copies of your signed audited accounts and trial balances for the year XXXX to XXXX within seven (7) days from the date of this letter.

**IN ALL KRA TAX AUDITS
BOTTOM LINE IS**

“TAX REVENUE”

MANAGING KRA TAX AUDITS

- **1. Tax Audit Proper**
 - **Questions Often Asked (Entry Meeting)**
- **2. What KRA Asks for and the Deep End**

KRA TAX AUDIT PROPER – ENTRY MEETING

KRA INTERVIEWS – Questions to Expect (Sample)

❑ MOTOR VEHICLES

- ❖ **Number of motor vehicles and registration numbers**
- ❖ **Motor vehicles assigned to any specific individual**
- ❖ **Where vehicles are parked at the end of the day and over the weekends**
- ❖ **Vehicle log book and movement schedule**
- ❖ **Motor vehicle use policy**



KRA TAX AUDIT PROPER – ENTRY MEETING

KRA INTERVIEWS – Questions to Expect (Sample)

❑ EMPLOYEES

- ❖ **Number of employees both permanent & casual, based in Kenya and elsewhere**
- ❖ **Where employees are based - if outside Kenya**
- ❖ **Names of Senior Employees**
- ❖ **Benefits (cash & non-cash) accorded to employees**

❑ PRODUCTS

❑ LEASES (RENT)



MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

1. AUDITED ACCOUNTS AND TAX RETURNS

Salaries and Benefits

- ❖ **Seek to establish if monies paid as salaries were to national or expatriates, permanent or casual employees**
- ❖ **Bonuses and other Benefits**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

1.AUDITED ACCOUNTS AND TAX RETURNS cont.....

❖ **To establish if monies paid to employees and / or expatriates were taxed accordingly**

☐ **Pension Contributions**

- **Pension / provident fund scheme and if registered or not**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

1.AUDITED ACCOUNTS AND TAX RETURNS cont.....

- Ascertain if excess pension was taxed accordingly

☐ Management

- ❖ To tie the names of top management to the organizational structure

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

1. AUDITED ACCOUNTS AND TAX RETURNS cont.....

☐ Tax Returns

➤ **Corporate Tax (Local or Foreign)**

➤ **Withholding Tax (WHT)**

➤ **Value Added Tax (VAT)**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

2. BANK STATEMENTS INCLUDING DIRECTORS PERSONAL BANK STATEMENTS

- **To compare the bank statements, cheque counterfoil and the payment vouchers for any variation**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

2. BANK STATEMENTS INCLUDING DIRECTORS PERSONAL BANK STATEMENTS cont.....

- Establish any payments / transfers to foreign bank accounts e.g Management Fees, Rent, etc.
- To establish bank accounts not disclosed in the audited accounts

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

3. CASH BOOKS INCLUDING PETTY CASH BOOKS

- ✓ **Pick items that are likely to lead to taxation e.g. consultants, contractors, staff, rent and spin-off cases**
- ✓ **Undisclosed income?**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

4. PURCHASE INVOICES

- Seek to establish names of suppliers – providers of goods and services. Source of spin-off information.

5. LEDGERS

- Cross checking - to establish any payment that may give rise to tax e.g. travel, subsistence and per-diems, consultants ledgers, loans to staff etc.

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

6. PAYROLL / PAY SHEETS

- ❖ **To re-compute payments to confirm if taxes were computed correctly**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

7. PAYMENT VOUCHERS AND RELATED INVOICES (CHEQUE PAYMENTS & PETTY CASH)

- **To discover payments to individuals and consultants that may give rise to tax and to ascertain if they were taxed accordingly**
- **To find spin – off tax information about other tax payers e.g. Consultants**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

8. PERSONNEL FILES

- **Seek to establish benefits given to employees; cash or non-cash**
- **Cross-check contracted compensation information against actual amounts declared in tax records (bonuses, gratuity, airtime etc)**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

9. COPIES OF PAYE END OF YEAR / QUARTERLY / MONTHLY / VAT RETURNS

- **To verify if PAYE / VAT returns were filed with KRA on due dates**
- **To establish any variance between the amounts in the return and the payroll / payment vouchers / billings**
- ❑ **i-Tax system – Automation will reduce many of the above !**

MANAGING KRA TAX AUDITS

WHAT KRA ASKS FOR AND - THE DEEP END

10. ASSETS REGISTER

- ❖ **To establish the location of assets if at the Office or the employee residence**
- ❖ **To establish if there are any assets assigned to specific individuals and the benefit attached thereto e.g. vehicle, a specific parking lot, furnishing, etc.**

MANAGING KRA TAX AUDITS

Empowering Constitutional Provisions

Article 73 – Responsibilities of Leadership

Authority assigned to a State officer must be exercised in a manner that : -

- i. Is consistent with the purposes and objects of this Constitution**
- ii. Demonstrates respect for the people**
- iii. Brings honour to the nation and dignity to the office; and**
- iv. Promotes public confidence in the integrity of the office**

Illustrative Court Decisions

CASE STUDIES – Based on the Bill of Rights

CASE STUDY (1)

GEOHERMAL DEVELOPMENT COMPANY LIMITED (GDCL) VERSUS KENYA REVENUE AUTHORITY (KRA) & 3 OTHERS [2013]

Facts:

- 1. GDCL entered into a contract with Great Wall Drilling Company Ltd to provide drilling services for ten geothermal wells in Olkaria area. The total value of the contract was USD 39,615,890.88. GDCL paid substantial Value Added Tax (VAT) payments on this contract.**
- 2. An Audit was carried out by KRA whereupon GDCL received from KRA a demand letter and schedules showing how tax demanded was arrived at. KRA proceeded to issue Agency Notices to bankers of GDCL which had the effect of freezing the accounts.**

Respondent's (KRA's) Case:

- 1. Tax Demand served as an assessment of the outstanding tax found due after the audit. It was not mandatory that the assessments be raised using Notice of Assessment since there was no requirement in law that the notice take a particular form and that the Tax Demand was in substance a demand for taxes.**
- 2. GDCL did comply with the demand by making payment and it is only after a year that the issue of assessment arose. Similarly, the timelines for lodging of objections were not observed and thus the objection lodged by GDCL was time barred.**

3. Notice of Assessment was not issued to GDCL at the material time as it is computer generated and KRA computer systems were not working.

Findings:

1. The right of every person to fair administrative action enunciates various values and principles of public service including:- responsive, prompt, effective, impartial and equitable provision of services, transparency and provision to the public of timely, accurate information.

- 2. As a component of due process, it is important that a party has reasonable opportunity to know the basis of allegations against it. Elementary justice and the law demands that a person be given full information on the case against him and given reasonable opportunity to present a response.**
- 3. Fair and reasonable administrative action demands that the taxpayer would be given a clear warning on the probable consequences of non-compliance with a decision before the same is taken.**

4. KRA as the state agency charged with the collection of taxes is bound by the provisions of the Bill of Rights to the fullest extent in the manner in which it administers the laws concerning the collection of taxes. The values contained in the Constitution must at all times permeate its functions and activities which it is mandated to carry out by statute.

Decision:

- 1. I find that the Tax Demand sent to GDCL fell short of the requirements of a proper notice in as far as it did fail to disclose its nature and the implication and consequences of non-compliance as well as notifying the taxpayer of the avenues of appeal or review available to it.**

A notice of the nature issued to enforce collection of taxes must clearly state to be such a notice, state the amount claimed, state the legal provision under which it is made and draw the taxpayers attention to the consequences of failure to comply with the law and the opportunity provided by the law to contest the finding.

- 2. Conclusion: the rights of GDCL to a fair administrative action afforded by the Constitution were violated by issuing the Tax Demand and acting upon it to enforce the collection of taxes. Consequently any action based upon it cannot stand and as such the Agency Notices are hereby quashed.**
- 3. KRA (& 3 Others) be and are hereby restrained from collecting or enforcing the collection of Withholding Tax and PAYE pursuant to the Tax Demand until a proper notice of assessment is issued to GDCL.**

Dated and delivered at Nairobi this 18th day of March 2013

Judge D.S. Majanja.

CASE STUDY (2)

SAMURA ENGINEERING LIMITED (SEL) & 10 OTHERS VERSUS KENYA REVENUE AUTHORITY (KRA) [2012]

Facts:

The Petitioner was contracted by the Respondent (KRA) to install security equipment on its premises. After completion of the contract works, the Respondent refused to pay arguing that the work was not done in accordance with the terms and conditions of the contract.

KRA then, through its Officers and in the company of police men raided the Petitioners' offices and carried away the Petitioners' vital documents, equipment and personal items without prior notice.

Before carrying out the search and seizure, KRA's Officers ordered the Petitioners employees' to stand and move away from their working desks. The officers demanded and were given passwords of all the computers seized. An inventory was prepared for some of the documents seized but others were not listed as the officers were in such a hurry that they forgot to open the big boxes which they carried away.

The Petitioner wrote several letters requesting return of documents and equipment seized and which were required to facilitate the operations of the Petitioner companies to no avail.

Respondent's (KRAs) Case:

- 1. The Constitution makes provision for imposition of taxes and the body established by statute to execute this mandate is the Kenya Revenue Authority. KRA's actions were therefore guided by laws in force in Kenya which allows KRA to enter without warrant any premises and take possession of books and accounts if there is reasonable ground for belief that an offence has been committed.**
- 2. There has been no breach of the Petitioner's rights; the rights and freedoms under the Constitution are not absolute and may be limited in certain instances, thus the search, seizure and demand of taxes was done in accordance with the legislation.**
- 3. No notice or warrant was given because the Petitioners' would have had time to conceal documents and information that would have been relevant for the purpose of the investigation.**

Findings:

- 1. KRA as the state agency charged with the collection of taxes is bound by the provisions of the Bill of Rights to the fullest extent in the manner in which it administers the laws concerning the collection of taxes.**
- 2. KRA failed to show that it was entitled to conduct a warrantless search of the Petitioners' premises and seize their property. Warrantless search and seizure of the Petitioners property without a reasonable belief that the documents taken contain evidence of commission of any offence is a breach of the Petitioners' right to privacy.**

Decision:

I declare that the Petitioners' rights to privacy protected under the Constitution were violated by the Respondent's (KRA's) search and seizure of their property.

I award damages to the Petitioners as follows;

(a) Kshs. 800,000.00 jointly to the Petitioners;

(b) Kshs. 1,200,000.00 to the 9th Petitioner, the Company Director for seizing his medical records which had a negative impact on his general health;

(c) Kshs. 600,000.00 to the 11th Petitioner, the Company Director's wife for humiliation and harassment.

Dated and delivered at Nairobi this 9th day of March 2012

Judge D. S. Majanja

MANAGING KRA TAX AUDITS

AND FINALLY.....

- 1. WHERE YOUR RIGHTS HAVE BEEN INVADED – DO NOT BE AFRAID!**
- 2. GIVE FULL COOPERATION TO KRA OFFICERS**
- 3. IT IS TRUE THAT KRA HAS GREATLY REFORMED. IT IS FULL OF MANY WELL MEANING AND VERY LEARNED AND PATRIOTIC PEOPLE.**
- 4. IT CERTAINLY IS NOT THE DEVIL MANY MAY THINK IT IS.**
- 5. LOVE KENYA MORE THAN THE TAX**

MANAGING KRA TAX AUDITS

AND FINALLY.....

PHILLIPIANS 4:8

“Finally, brothers, whatever is true, - noble, - right, - pure, - lovely, - admirable – if anything is excellent or praiseworthy – think about such things”

**NOT ANYTHING ELSE
BE A GOOD KENYAN!!**

Tulipe Ushuru – Tujenge Kenya



THANK YOU / END
Qs & As



CPA ERASTUS KWAKA OMOLO

Horwath Erastus & Co.

Certified Public Accountants

P. O. Box 55268 – 00200, NAIROBI – KENYA

Tel : +254 (020) – 3860521 / 3860524 / 386 1120

E-mail : erastuscpa@kenyaweb.com

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