TAXATION FOR NPOS

Meshack Matengo
PARTNER
MATENGO GITHAE & ASSOCIATES

Tax Exemption

- Not for Profit Making Organizations general objectives are to address the general inequality in the country , by subsiding government effort in breaching poverty gap.
- The income are contributions from other tax payers , thus the need to seek exemption on activities geared towards benefiting the community

Cont…

- The Tax exemption in Kenya is driven through different tax regime which are :
  - Income tax
  - VAT
  - Customs Duty
  - Exercise Duty

Tax Exemption-Procedures

- Tax Exemption for NGOs commences by obtaining a referral letter from the NGO board on the following :
  - Registration certificate
  - Constitution
  - PIN Certificate
  - Evidence of the projects carried out in the last three years of operations

Cont…

- Letter from the Central government confirming the activities carried out by the NGO,
- Any other useful information in support of the application.

Deductibility of Charitable Contributions

- As of January 2007, individuals and corporations generally can deduct any cash donations from their income tax to a charitable organization, provided the charitable organization:
  - The charitable organization is registered or exempt from registration under the Societies Act or the NGO Act 1990 or the PBO Act; and
  - Its income is exempt from tax under the provisions of Para. 10 of the First Schedule (Income Tax Act Section 15(2)(w)).

Deductibility of Charitable Contributions

- Expenditures of a capital nature by a person on the construction of a public school, hospital, road, or any similar kind of social infrastructure can be deducted as well, with prior approval of the Cabinet Secretary (Income Tax Act Section 15(2)(x)).

- Furthermore, deductibility is permitted for expenditures on scientific research to advance the donor's business, including sums paid to approved scientific research institutes or universities, provided that certain conditions are satisfied (Income Tax Act Section 15(2)(n)

Income Tax

- For its income to be exempt from income tax, an organization must have been established solely to relieve poverty or distress of the public, or to advance religion or education.
- The Commissioner of Income Tax must conclude that the income is expended either wholly within Kenya or in ways that benefit the residents of Kenya (Income Tax Act First Schedule, Cap 470, Para. 10 as amended by Legal Notice No. 6 of 2001).

Income Tax

- The Income tax is managed through CAP 470 of the Kenya Laws and include:
  - PAYE
  - Corporation Tax
  - Withholding Tax

Types of income subjected to tax

- Business Income from any trade or profession
- Income from employment or from services rendered
- Rent Income
- Pensions Income
- Investment Income - dividends and interest among others.

Income Tax

- No exemption on PAYE- For Locals. Expatriate will depend on case basis.
- NO exemption on Withholding tax
- Corporation tax is based on the organization meeting the criteria providing that the income received falls within the schedules described under the Income Tax Act.

VALUE ADDED TAXES

- Under Regulation 30 of the NGO Coordination Regulations 1992, if an organization requires exemption from VAT on goods and services required to meet its objectives and on income-generating activities (or income for expatriate employees), an application must be made through the NGOôs Board to the Cabinet Secretary of Finance.

VALUE ADED TAXES

- It must be registered under the Societies Act or NGO Act, or exempted from registration by the Registrar of Societies or the NGO Coordination Board; and
- Its income must be exempt from tax under the Income Tax Act and approved by the Commissioner of Social Services.
- Such services are not treated as taxable supplies, and no VAT is charged on them (VAT Act First Schedule, Part 2 Para. 11).

CUSTOMS DUTY

- NGOs are not automatically entitled to exemptions on import custom duties. To obtain such exemptions, an application must be made to the Cabinet Secretary for National Treasury through the NGO Board.

Cont..

- Gifts to charitable institutions are exempt from customs duties under the following circumstances:
  - Goods donated or purchased for donation to a non-profit organization or government-approved institution for: their official use; free distribution to the poor and needy; use in medical treatment, education, religious, or rehabilitation work; or other purposes approved by the government (Customs and Excise Act Third Schedule, Para. 12 (1)(b)).

Cont…

- Certain goods, including some passenger motor vehicles, and office, audio and visual electronic equipment, are excluded from the custom duties exemptions.
- Textiles, new and used clothing, footwear, and certain foods also are excluded from the customs duties exemption; unless donated or purchased for donation to registered homes for poor and needy persons.

CUSTOMS DUTY

- The Treasury must approve any duty exemption that exceeds Kshs. 500,000 (approximately USD 5,700) (Customs and Excise Act Third Schedule, Para. 12(1)(a)).

TAX EXEMPTION

- The grant of all of the above exemptions is purely discretionary on the part of the Cabinet Secretary for National Treasury, based on recommendations by the commissioner of Domestic Taxes and the NGO Board.

TAX EXEMPTION PROCESS

1. Inspection on the organization by KRA field office
2. PAYE and withholding Income Tax audit.
3. Case received by Senior Deputy Commissioner
4. Put on register
5. Analyzed
6. Application approved or rejected.
7. If approved – An Exemption certificate will be issued in the system and sent to the Taxpayer.

PLEASE NOTE!

- Tax Exemption is on the reserves/income carried foward.
- Exemption certificate valid for five (5) years.
- Institution must file Annual Income Tax Return and Accounts.
- No Tax Exemption on PAYE or withholding Tax.
- If rejected – will be communicated to the Station who will communicate to the Taxpayer.

LIMITATION

- The Finance Act 2012 limits the validity period of income tax exemption certificates. A tax exemption certificate shall be renewed where an application is made to the Minister of Finance, through the Commissioner, at least six months before the expiry period. The Ministry may also revoke an exemption on the basis of any just cause (Finance Act 2012 First Schedule, Para. 10).

CONCLUSION

- QUESTIONS AND ASANTEE SANA