

# **HOSPITALITY INDUSTRY**

## **9<sup>th</sup> February 2012**

### **Taxation**

**Julius Mwatu**

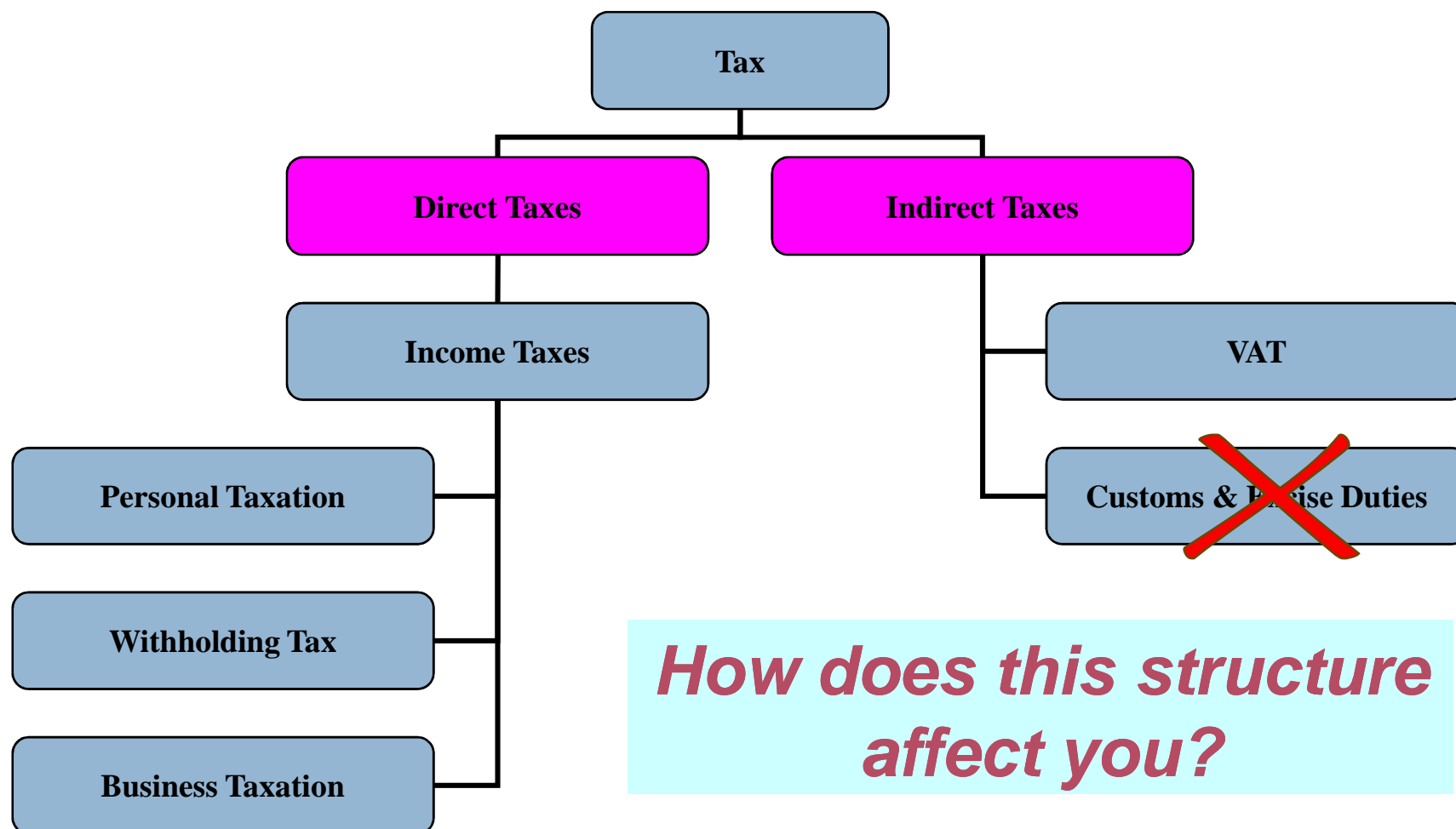
**CFO – Indigo Telecom**

**Council Member - ICPAK**

# Tax... some sort of food?



# The Tax Structure



# **Personal Tax**

# What is taxable?



- All income of a person which accrued in or was derived from Kenya
- Applies to both resident or non-resident persons
- It could be cash or/and non-cash
- The tax year for individuals runs from 1 January to 31 December

# Residency rules



- An Individual is deemed to be resident in Kenya if:
  - ▣ One has a permanent home (not defined) in Kenya and was present in Kenya for any period in a particular year of income under consideration, or;
  - ▣ Was present in Kenya:
    - Aggregate period (s) of 183 days or more in a particular year
    - Average period (s) exceeding 122 days in a year of income and in each of the 2 preceding years.
- A resident is liable to tax on worldwide employment income.
- A non-resident is taxable on income which is accrued in or is derived from Kenya .

# Per diems

- Per diems are ‘per day’ allowances normally given for upkeep of staff when on official travel.
- W.e.f 16 June 2006 the first KShs 2,000 is deemed to be a reimbursement.
- Should ideally be supported preferably with vouchers from an arms-length source.
- The Act does not provide special per diem rates for overseas travel.

# Which contract?



**When does a  
Consultant  
become an  
employee?**

***Is there any tax advantage for being a consultant  
as opposed to being an employee?***



# Little pertinent issues



**Meals &  
Housing**

# **Value Added Tax**

# VATable services

The following services are VATable

Car park services

Conference & exhibition services

Accommodation & restaurant services

Park fees ??????

# Exempt services...



## 3<sup>rd</sup> Schedule

Transportation of tourists by any means of conveyance

Tour operation & travel agency services – hotel, travel, holiday etc

Landing & parking services provided for aircraft

Entertainment services – stage plays & performances

Transportation of passengers – **excludes hired & chartered means**

# Approved Edu. & Training Institutions



## The following services are exempt

Education & training services

Conference & exhibition services

Accommodation & restaurant services

# Zero-rated services

## The following services are zero-rated

Services supplied by hotel establishments to foreign travel & tourism promoters undertaking a tour in the promotion of tourism in Kenya – **Tour need to be recommended by Director of Tourism & in conjunction with local tour associations**

Transportation of passengers by air carriers on international voyage or flight

# VAT pertinent issues

Food stuffs generally either exempt or zero-rated

Input tax apportionment

VAT remissions

Standard VAT rate versus catering levy

# **Business Tax**



# Gains or profits from business



- “Business” is defined to include any
  - trade,
  - profession or vocation
  - manufacture,
  - adventure and
  - concern in the nature of trade

but does not include employment.

# Specified sources of income



- ☐ Business income
- ☐ Employment income
- ☐ Investment income
- ☐ Farming income
- ☐ Rental income
- ☐ Any other

# No place to hide...



- Transparency in tax information – w.e.f Jan. 2012
  - Only 9 countries in Africa, none other in EAC
  - Only Kenya & Mauritius in COMESA
  - Motive
    - Transfer pricing?
    - Untaxed incomes hidden in foreign jurisdictions?
  - EAC? – Watch the space!

***The BIG Brother is watching***  
***The Global Forum for Transparency & Exchange of Info.***

# Transfer Pricing...



- Kenya:
  - Guidelines issued in 2005
  - Key revenue target
  
- Uganda
  - TP Regulations – July 2011
  
- Others?

**Cross-border transactions:**  
• *Is it the BIG Budget revenue source?*

# **Withholding Tax**

# WHT Rates



Nature of payment	Resident	Non Resident
<b>Management or professional fees:</b> - consultancy, managerial, technical, agency fees	5%	20%
<b>Royalties</b> - payment for use of or right to use a copyright patent, trademark, design, formula.....	5%	20%
<b>Contractual fees</b> - building, civil and engineering works	3%	20%
<b>Lease rentals - equipment</b>	0%	15%
<b>Lease rentals – Immovable property</b>	0%	30%
<b>Pension &amp; provident fund withdrawals</b>	10-30%	5%

# Double Tax Agreements



Nature of payment	UK	Germany & Canada	Denmark Norway Sweden Zambia	India	EAC
	%	%	%	%	%
Management or professional fees	12 ½	15	20	17 ½	20
Royalties	15	15	20	20	20
Consultancy fees to individuals	12 ½	15	20	17 ½	15

# Betting and gaming



- New para. 5(j) of 3rd Sch. introduces withholding tax at a rate of 20% on winnings from betting and gaming
  - ▣ Amendment against the backdrop of increased lottery promotions by numerous companies
- Challenge
  - ▣ Relevant charging section in the Income Tax Act omitted
  - ▣ Practicalities of withholding tax upon wins on property by taxable persons

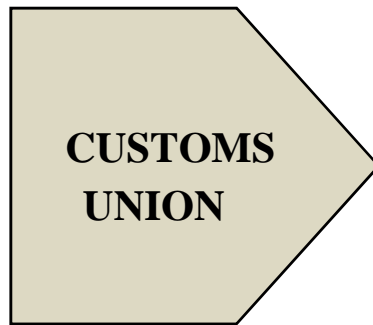
**Effective date: 01 January 2012**



# East Africa & the EAC...



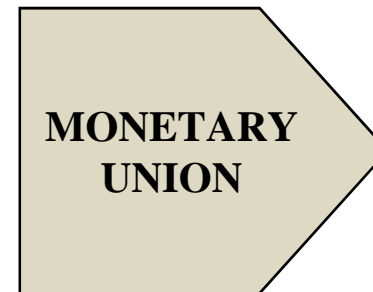
# THE EAC JOURNEY...



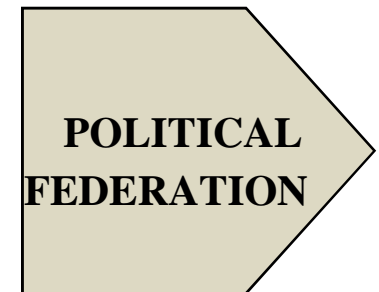
**2005 – 2010**



**July, 2010**



**2012**



**Ultimate**

# **Pertinent Issues**

# Tax crimes...



# It's a BIG risk!

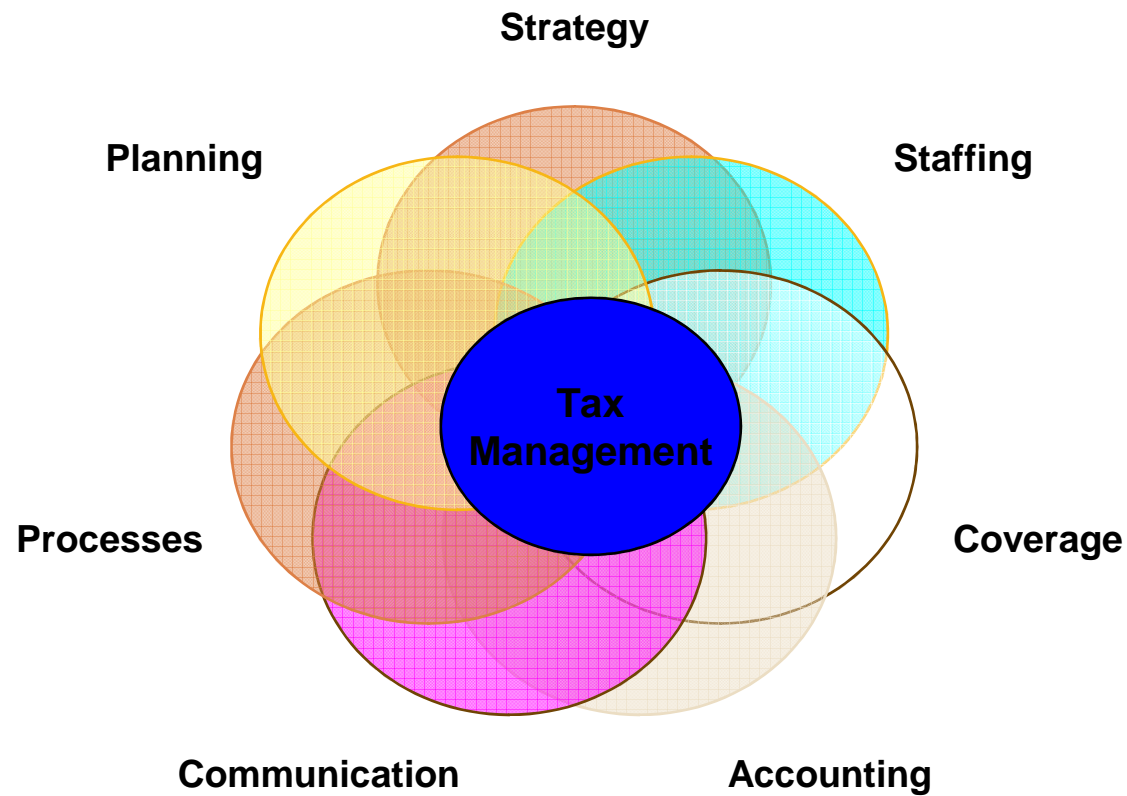




# Do you have a tax strategy...?



# Tax Risk Management...



# One country, three faces...





# Lets partner...





*THE END*

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