TAX PROCEDURES ACT 2015

An Update on Kenya's Taxation Regime

Tax Procedures Act 2015

The Budget Statement FY 2015 proposed to introduce a Tax procedure bill with a view to harmonize and consolidate the procedural rules that govern tax laws in Kenya. The Tax Procedures Act (TPA) 2015 was assented into law on 15th December 2015 and effected through a legal notice issued on 14th January appointing 19th January as the commencement date.

This update aims to highlight the key provisions in the act in order to educate tax practitioners, tax agents and professionals at large on implications to tax administration in Kenya.

The procedures outlined in the new act apply to all taxes in Kenya, unless provided in a tax law specifically for the administration of a specified tax, from ***19th January 2016.***

1. **Registration of Taxpayers**

   (Sec 8 & 10)

   The new act requires persons - who have attained the tax liability age or expect to accrue tax liability under the Income Tax Act or the VAT Act- to apply to the Commissioner for registration within **30 days.**

   Similarly, a person who ceases to be required to register as a tax payer for the purposes of any tax law is required to apply for deregistration within the same period (30days).

These provisions provide certainty and uniformity in the timeline for registration and deregistration.

2. **Tax Representatives**

   (Sec 15)

   The Act has outlined various instances where a tax representative may be required. Previously, this provision was only contained in the VAT act.

   The provisions further places responsibility on the tax representative for the performance of any duty or obligation imposed by a tax law on the taxpayer, including the submission of returns and the payment of tax.

This implies that going forward; tax representatives will be faced with significant increase in tax exposure for the non compliance of a tax payer.

That said, this provision will ensure compliance and reduce the burden of carrying out business in Kenya, particularly for nonresident tax payers.

3. **Tax Agency**

   (Sec 19-22)

   The act provides for the registration of individuals or partnerships wishing to discharge the role of a tax agent, through an application to the Commissioner.

   The provision also bars persons, other than tax agents, from representing tax payers or discharging the roles of a tax agent.

   The provisions however grant exemption to legal practitioners acting the ordinary course of their profession.

This provision intends to promote accountability through the regulation of tax agents.

However, the regulation of tax agents by the Authority may introduce actual or perceived conflict of interest in tax payer matters. It would *therefore be prudent to have the tax agents regulated by an independent body, such as the existing tax agents committee.*

4. Obligations for Record Keeping

The new act requires the retention of documents required under tax law, for a period of 5 years, from the end of the reporting period to which it relates.

It further provides that where these records relate to proceedings that commenced before the end of the 5 year period, such documents will be retained until all proceedings are completed.

The current Income Tax act provides for a period of 7 years while the VAT act provides for a 5 year period of document retention.

5. Extensions for Filing of Returns & Payment of Taxes

The new act provides for the extension of time to file returns and pay taxes, through an application to the commissioner prior to the due dates.

With regard to the application for extensions in the payment of taxes, the commissioner may grant the request or require the tax payer to pay the tax in installments.

The current tax law does not provide for the extension of time to settle taxes. This provision will serve to enhance the tax compliance.

6. Interest on Late Payment

The TPA has reduced the late payment interest rate from 2% to 1% per month, *providing relief to tax payers*.

7. Overpaid Taxes and Remission of Penalties

The new act provides for the application of refunds by tax payers for overpaid taxes, within 1 year of the date of payment.

It however also provides that the Commissioner may subject the refund claim to an audit process to verify the claimed amount.

Although this provision seeks to harmonize the timeframe for tax refund applications, to 1 year, the audit process may lead to the current delays in repayment of tax refunds.

The act further provides for the remission of penalties by the Commissioner, upon approval by the National Treasury Cabinet Secretary. This is excluding remissions relating to tax avoidance.

8. Rulings

The TPA provides that Commissioner may issue a public ruling which will be binding on him until the ruling is withdrawn. The public ruling is however not binding on the taxpayer.

The Act also provides that a taxpayer may apply to the Commissioner for a private ruling and further obligates the Commissioner to revert back within 45 days. It however provides that a private ruling shall not be binding on a taxpayer.

The TPA clarifies that where there is any inconsistency between a public ruling which is in existence and private ruling, the private ruling shall supersede.

These provisions allow taxpayers to access the commissioner's interpretation of ambiguous statutes within an established timeframe.

9. Admission of Electronic documents and utilization of Information Technology

The TPA provides for the admission of statements contained in electronic form, as evidence of any fact stated in that document, if the production of the documents is carried out in a manner consistent and prescribed by the TPA or any other tax law.

The TPA further embraces the use of information technology for the submission of returns, payment or repayment of a tax under tax law.

The use of IT will ease the process of compliance and improve the efficiency of tax administration.

10. Offences and Penalties

OFFENSE	**PENALTY**
1. Failure to Register or deregister for tax purposes	KES 100,000 per month but not more that KES 1 Million
2. Failure to retain records and documents	10% of the amount payable to which the document relates Where no tax is payable for the reporting period, KES 100,000 shall apply as the penalty
3. Late submission of returns	• PAYE ï the higher of 25% of the amount due or KES 10,000 • Turnover Tax ï KES 5000 • In the case of any other return- the higher of 5% of the tax payable or KES 20,000
4. Failure to comply with electronic tax system	KES ï 100,000
5. Tax Avoidance	Double the tax liability