



# Finance Bill Changes, Trends and Incentives

## Presentation by:

Caleb Mokaya

CPA

Thursday, 11<sup>th</sup> May 2017

Upholding Public Interest

1. Background
2. Finance Act provisions affecting PBOs
3. Trends in Taxation and Incentives
4. Q&A



# Background

□ Public Benefit Organizations (PBOs) are:

- ❖ Autonomous
- ❖ Non-partisan
- ❖ Non-profit making
- ❖ Engaged in public benefit activities

□ They raise money through donations of cash, securities, and in-kind contributions; bequests; membership fees; gifts; grants; real or personal property or any other lawful income generating activities

- ❑ PBOs/NGOs target every sector of society and continue to play a critical role in economic growth and development
- ❑ The PBO Act was a combine effort between the Government and stakeholders in recognition of:
  - A weak operational definition of NGOs
  - Lack of accountability
  - Internal wrangling affecting the NGO Council
  - Misappropriation of resources
  - Lack of transparency

- ❑ PBO Act was assented to on 14<sup>th</sup> January 2013
- ❑ Current Act has been accused of restricting civil society in Kenya – attempts to remove restrictions rejected by parliament
- ❑ Ministry of Devolution sought consensus through a taskforce for proposed amendments and submitted these to the CS



# Public Benefit Organizations



- ❖ A number of NGOs went to Court to compel the CS to commence the Act
- ❖ Commencement was announced on 9 September 2016 – No gazette notice to this effect though



# Finance Bill 2017





- ❖ Tax deductions for donations made to the Kenya Red Cross are allowable
- ❖ Excisable goods imported or purchased by Kenya Red Cross for official use in the provision of relief services in Kenya will be exempt from Excise duty
- ❖ These amendments recognize and facilitate the role that Red Cross plays in responding to emergencies
- ❖ A major reason for this is the recognition of the role of such NGOs/PBOs in socio-economic development and relief activities

- ❖ Should a similar relief be available for all registered PBOs?
- ❖ In Netherlands, UK and a number of developed countries donations are incentivized
- ❖ This allows individuals to make tax savings whilst promoting a noble cause
- ❖ It is a powerful incentive for charitable giving
- ❖ However such benefits have been used to reduce inheritance tax by offsetting the taxable gains on inheritance with the tax deduction from donations



# Incentives To NPOs and Trends

PBOs registered with the Authority enjoy the following benefits:

Indirect government support in the form of:

a. Exemptions from:

- income tax on membership subscription, donations and grants;
- income tax on the PBOs income generating activities if the income is wholly used to support the purposes of which the PBO was established;

- tax on interest and dividends earned on assets or the sale of assets;
- stamp duty; and
- court fees.

b. Preferential treatment under the VAT and customs duties in relation to the importation of goods and services

c. Incentives for donations by legal and natural persons



# Incentives



- d. Employment tax preferences
- e. Special tax incentives for donations to form endowments, prudent investment policies, etc





- ❑ PBO Act will permit tax deductions for donations to all registered PBOs that are tax exempt
  - There are currently insufficient tax incentives to encourage local fundraising
  - Tax exemption certificates are difficult to obtain
  - Lengthy process
  - No blanket exemption available at present
  - No feedback mechanisms on progress of application for exemption and no reasons for denial
  - Process is uncertain

- Are courts interfering with the NGO board?
- Are NPOs used to launder money?
- What do huge surplus balances translate to?
- Are NPOs compliant?
- Why the increased focus and banks account freezing?
- International donor agencies perception towards Kenya
- What next for NPOs and the GoK

# Q & A Session

