

A Career in Tax Practical Tips, Learning from the Experts

Session Facilitator

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Topics



- 1. A Career in Tax**
- 2. Kenya Tax Space**
- 3. An Overview of the Kenya Tax Laws**
- 4. OECD Principles - Basic**

Topics (Cont....)



5. Common Standards

**6. Tax Work in Practice –
Complexities - Case Study**

**7. What You Must be Prepared
For**

8. So, How Does One Start?

A Career in Tax



❑ **Qualifications for a career in Tax Work**

✓ **Certified Public Accountant**

A person is qualified for registration as a tax agent if that person is:

- ✓ **registered as an accountant in accordance with the Accountants Act No. 15 of 2008 and a member of the Institute of Certified Public Accounts of Kenya; or**
- ✓ **an advocate of the High Court of Kenya and holds a current practicing certificate; or**

A Career in Tax



- ✓ **a former tax administrator with at least ten years' experience in tax administration; or**
- ✓ **a holder of any other relevant qualification and experience recognized by the Commissioner as sufficient for a tax agent; and**
- ✓ **tax compliant**

❑ **Professional Body Regulating Tax Career**

- **Institute of Certified Public Accountants of Kenya (ICPAK)**
- **Environment may change with time**

A Career in Tax



☐ **Code of Ethics – Essential !**

- ✓ **ICPAK Code of Ethics for Professional Accountants**
- ✓ **Accountants Act Kenya No. 15 of 2008**
- ✓ **Disciplinary Committee**

☐ **Tax Disputes Resolution – Know Process!**

- ✓ **Tax Appeals Tribunal / High Court / CoA**
- ✓ **Alternative Dispute Resolution**

A Career in Tax



Reality versus myths of a tax career

Myth	Reality
I will have to work with numbers all day. NOT SO	Problem solving, interacting with people, communication, People skills.
You have to spend time and money to become a qualified tax professional	There is no question that a prestigious profession takes time, money and work
It takes too long to qualify as a tax professional.	In as little as two years of full-time study and passing exams a person can be qualified then do internship

Kenya Tax Space



Tax Areas with Common Work

Pay As You Earn (PAYE)	Value Added Tax
Corporation Tax	Advance Tax
Capital Gains Tax	Withholding Tax
Turnover Tax	

An Overview of the Kenya Tax Laws



No.	Act Name	Parts	Sections	Sch.
1	Income Tax Act Cap 470	14	133	13
2	Value Added Tax Act No. 35 of 2013	17	68	2
3	Excise Duty Act No. 23 of 2015	9	46	2
4	EAC Customs Management Act, 2011	21	253	6

An Overview of the Kenya Tax Laws



No.	Act Name	Parts	Sections	Sch.
5	KRA (TAX AGENTS) REGULATIONS, 2012	11	-	-
6	Withholding VAT Guidelines 2014	-	21	-
7	Tax Procedures Act No. 29 of 2015	13	113	2
8	Tax Appeals Tribunal Act No. 40 of 2013	5	44	1

An Overview of the Kenya Tax Laws



1. Income Tax Act

Makes provision for the charge, assessment and collection of income tax: for the ascertainment of the income to be charged; for administrative and general provisions relating thereto;

An Overview of the Kenya Tax Laws



2. Value Added Tax (VAT) Act

Enacted to review and update the law relating to value added tax; to provide for the imposition of value added tax on supplies made in, or imported into Kenya;

An Overview of the Kenya Tax Laws



3. Tax Appeals Tribunal Act

Makes provision for the establishment of a Tribunal; for the management and administration of tax appeals

4. Tax Procedures Act

Enacted to harmonize and consolidate the procedural rules for the administration of tax laws in Kenya,

An Overview of the Kenya Tax Laws



5. Excise Duty Act

Provides for the charge, assessment and collection of excise duty and gives administrative provisions relating thereto.

6.EAC Customs Management Act

Provides for the management and administration of Customs and for related matters

OECD Principles - Basic



These are principles that provide for effective corporate governance framework.

- ❑ Basis for an effective corporate governance framework**
- ❑ Protect and facilitate the exercise of shareholders' rights.**
- ❑ Encourage active co-operation between corporations and stakeholders in enterprise sustainability**

OECD Principles of Taxation



- ❑ **Enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate and contribute to the public finances of host countries by making timely payment of their tax liabilities**
- ❑ **OECD principles of Tax Governance and Tax Compliance are important elements of oversight and broader risk management systems.**

OECD Principles of Taxation



- ❑ **Corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated.**
- ❑ **Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies.**

OECD Principles of Taxation



- ❑ **An enterprise complies with the spirit of the tax laws and regulations when it reasonably determines the intention of the legislature and interprets tax rules consistent with the intention in light of the statutory language and relevant contemporaneous legislative history.**
- ❑ **Corporate citizenship and tax compliance entails co-operation with tax authorities and provision of the information they require to ensure an effective and equitable application of the tax laws**

OECD Principles of Taxation



- ❑ A member of a multinational enterprise group in one country may have extensive economic relationships with members of the same multinational enterprise group in other countries.**
- ❑ Such relationships may affect the tax liability of each of the parties.**

OECD Principles of Taxation



- ❑ The dramatic increase in global trade and cross-border direct investment (and the important role played in such trade and investment by multinational enterprises) means that **transfer pricing is a significant determinant of the tax liabilities of members** of a multinational enterprise group.

Transfer Pricing influences the division of the tax base between countries in which the multinational enterprise operates.

OECD Principles of Taxation



- ❑ **The OECD Transfer Pricing Guidelines focus on the application of the arm's length principle to evaluate the Transfer Pricing of associated enterprises.**
- ❑ **OECD Guidelines help tax administrations (OECD member countries and non-member countries) and multinational enterprises by indicating mutually satisfactory solutions to transfer pricing cases – minimizing:**
 - ✓ **conflict;**
 - ✓ **costly litigation****among tax administrations and multinational enterprises**

Common Reporting Standards (CRS)



- ❑ **The CRS contains the reporting and due diligence standard that underpins the automatic exchange of financial account information on a global level. Each jurisdiction must have rules in place that require financial institutions to report information consistent with the scope of reporting rules and procedures set out.**
- ❑ **CRS main objective is to enable tax authorities to obtain more information about their residents' tax affairs.**

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Common Reporting Standards (CRS)



- ❑ **CRS provides for all forms of administrative assistance in tax matters including: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations offshore and assistance in tax collection.**

Exchange of information involves the systematic and periodic transmission of taxpayer information by the source country to the residence on an annual basis.

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Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

Facts

Reuters (UK) a non-resident company entered into a contract with Stanbic where Reuters (UK) was to supply information, materials and support relating to world financial markets delivered by direct satellite via a Reuter's terminal to Stanbic.

Commissioner demanded tax on payments made to Reuters.

Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

Stanbic Case

The service from Reuters was no more than a subscription of information which attracted no tax liability under the Income Tax Act.

Commissioner's Case

The payment made by Stanbic was in consideration of managerial, technical or consultancy services provided by Reuters (UK) thus Stanbic ought to have withheld tax on the payments made.

Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

High Court Ruling

I am of the considered view that the services rendered by Reuters (UK) to Stanbic do fall under the management and professional fees category as the services rendered were technical and consultancy. It was the duty of Stanbic to remit Withholding Tax to the Commissioner. (Judge Wendoh, 23rd November, 2007)

(Stanbic Appealed to the CoA – 3 Judge Bench)

Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

COA Holding (Judge D. K. S. Aganyanya)

If the information provided by Reuters (UK) was of a general nature and available ordinarily, Stanbic would not enter into such a detailed contract to obtain and pay for it.

There was an element of skilled management and consultancy involved in the preparation and transmission of the requisite information by Reuters (UK)... I would dismiss this appeal with costs.

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Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

COA Holding (Judge Nyamu)

It is clear to me that the services provided by Reuters are technical, specialized and consultancy services...why would Reuters (UK) want to enter into contracts for the provision of services that are freely available on line, unless they are special and valuable...

I find no merit in the appeal and the same is dismissed with costs to the Commissioner.

Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

COA Holding (Judge Alnashir Visram)

Reuters does not give any professional advice, simply information of a generic nature which subscribers use to formulate their own decisions.

Every subscriber pays the same fee, and receives the same information. Again, I think it would be absurd to classify Reuters as the consultant of all its subscribers including Stanbic.

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Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008 **COA Holding (Judge Alnashir Visram)**

The online information service provided by Reuters was not “managerial, technical or consultancy”, and accordingly did not attract any withholding tax.

In any event, a tax payer’s liability to tax arises from what is stated clearly in our law, and not from what is stated or implied in forms or documents issued by non-residents. I would allow this appeal, with costs.

Tax Work in Practice – Complexities - Case Study



Stanbic Bank Case Civil Appeal 77 of 2008

COA Holding

Orders were as per the judgments of the majority → Judge Aganyanya and Judge Nyamu

Dated and delivered at Nairobi on 23rd day of October, 2009.

- ❑ YOU WILL MAKE CLEAN MONEY IF YOU CAN CORRECTLY HANDLE / SOLVE THIS TYPE OF CASE**

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What You Must be Prepared For



- ❑ **Keeping of up to date books of account by businessmen – offer help needed.**
- ❑ **Acquiring of Personal Identification Numbers (PIN) by all potential taxpayers**
- ❑ **Determining the taxable income according to the relevant law, rules and regulations**
- ❑ **Accurate determination of tax liability,**

What You Must be Prepared For



- ☐ **Filing returns of income by the statutory date**
- ☐ **Paying of tax dues by the statutory date, payment of fines and penalties for overdue taxes**
- ☐ **Audit by tax collectors if deemed necessary**
- ☐ **Be registered on i-Tax**

So, How does one start?



1. Go for “low hanging” fruits first

- ☐ **PAYE calculations**
- ☐ **Helping Clients register on i-Tax**
- ☐ **Advising on what tax obligations to pick for the PIN**
- ☐ **Turn – Over Tax (SMEs)**

So, How does one start?



2. Partnering in Tax Work Opportunities

- ☐ **Easy entry point is a KRA Tax Audit – Get one**
- ☐ **Joining forces, learning from the expert**

3. Specialize on simple things first. Do not try everything !

So, How does one start?



- 3. Attend KRA briefing meetings (FREE) and ICPAK Seminars (FEE)**
- 4. Cut and keep ALL KRA Public Notices and review the KRA website at least once a week**
- 5. Love to read Case Laws on tax. We do not have enough tax professionals in Kenya.**
- 6. Register as a Tax Agent through ICPAK**
- 7. Relax, even KRA Officers don't know all the laws off-head, they also refer...!!!**

TAX AGENTS REGULATIONS 2012

Extract

Duties of a Tax Agent -

- ☞ prepare and submit tax returns on behalf of a taxpayer;**
- ☞ liaise with the Kenya Revenue Authority on behalf of a taxpayer on all matters relating to tax;**
- ☞ advise and represent a taxpayer in matters pertaining to tax before the Commissioner, a tribunal or a local committee;**
- ☞ deal with any other matters that relate to tax on behalf of a tax payer.**

TAX AGENTS REGULATIONS 2012

Extract

Conduct of a Tax Agent.

☐ **A tax agent shall conduct himself in a professional manner and provide quality service to his clients in order to enable the clients to comply with the requirements of any of the laws.**

☐ **A tax agent shall:-**

a) comply with any notice served on the tax agent by the Commissioner within the time specified in the notice;

TAX AGENTS REGULATIONS 2012

Extract

b) Basic Information to be maintained:-

- (i) the names of all the clients;**
- (ii) the date of engagement by each client;**
- (iii) the full physical addresses, postal address and any other contact details of each client; and**
- (i) information relating to the nature of business that each client is engaged in;**

TAX AGENTS REGULATIONS 2012

Extract

(c) Basic Information to indicate :-

- i) the date when the last income tax return or specified notice was submitted to the Commissioner;**
- ii) the tax payable or paid; and**
- iii) such other particulars as the Commissioner may from time to time direct.**



BE SERIOUS OR DON'T ENTER THE TAX ARENA

☞ **What you sow is what you reap !!**

Questions



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