

SOUTHERN REGION DOMESTIC TAXES DEPARTMENT

Building Trust Through Facilitation

KENYA REVENUE AUTHORITY

Presentation

To

ICPAK Mombasa Branch

Coast Branch Office Boardroom, Jubilee Insurance Arcade

By

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SCOPE

- Emerging Issues in taxation of employment Income
- Taxation of the Transport sector
- Policy Changes
- Changes in relevant Acts

Taxation of Employment Income

Section 3(2)(a)(ii)

- This is the authority for the Commissioner, to charge Tax on the employee's emoluments.
- It defines the extent of the income in respect of gains or profits from employment or services rendered, which is chargeable to Tax.

Non cash benefits (Benefits in kind)

- Many employers choose to pay or grant part of the emoluments as benefits and/or allowances. The value of benefits and allowances must be included as emoluments and taxed accordingly.

Section 5(2)(b):

Authority to charge the value of benefit, advantage, or facility of whatever nature the aggregate value of which is not less than Ksh.36,000/ per annum- granted in respect of employment or services rendered

PAYE

- This is a system of charging Tax from employment income.
- Any employee earning above **Sh12,260** pays income tax at the graduated rates.
- The responsibility of charging and remitting the tax to KRA rests on the employer
- Any member who has employees earning above **Sh12,260** has to charge income tax at the graduated rates.

PAYE – Individual Graduated Monthly Tax Rates

- The following are the current monthly tax bands effective (2017)

Taxable income	Tax rate
Ksh. 0 – 11,180	10%
Ksh. 11,181 – 21,714	15%
Ksh. 21,715 – 32,248	20%
Ksh. 32,249 – 42,781	25%
Ksh. 42,782 and above	30%

- *N.B. Personal relief of Ksh.1,280 p.m. is allowed*

Enhancement of PAYE tax bands by a further 10%

New bands (KES)	Current bands (KES)	Rate
First 147,580	First 134,165	10%
Next 130,043	Next126,403	15%
Next 139,043	Next138,043	20%
Next 139,043	Next 139,043	25%
Over 564,709	Over 513,374	30%

The above changes will provide a welcome cushion to taxpayers whose income has been adversely affected by inflation.

Emerging Areas

1. Honoraria

- This is a payment in recognition of acts or professional services for which ordinarily no price tag is set.
- It is taxed at the time of receipt

2. Locum

- A locum is a person who temporarily fulfils the duties of another e.g. a locum doctor or nurse. This is mostly done as part time engagement.
- It is taxable at the relevant top rate of 30%

3. Employment versus Consultancy

- There are arrangements made by Professionals with institutions that pay them periodically over a long period of time. For example lecturers and doctors.
- The hospitals would bill the patient and withhold tax at 5% for consultancy services as they pay the doctor.
- The same doctor may be having an arrangement (written or unwritten) with the hospital to go and treat the hospital's patients once a week say for 3 hours for an agreed payment.
- This second scenario would be treated as an employment case due to the element of control.

4. Wife's Employment Income

- Wife's employment income is ordinarily taxed separately from the husband and subjected to the usual tax bands and reliefs.
- However, where a man operates a company where the voting power of which is held to the extent of twelve and a half percent or more at any time during the year of income by her or her husband or by both jointly, either directly or through nominees or,
 - A partnership in which her husband is a partner or,
 - An employee of her husband,
 - Such income would be treated as the husband's and taxed on him.

5. Lumpsum Payments

- **Gratuity** basically means a monetary gift from an employer to an employee especially for services rendered. . It is a lump sum amount that an employer pays an employee if he/she retires or resigns from employment. An employee does not contribute any portion of her salary towards this amount. It is only paid out at the time of retirement or resignation, and in the event of death or being rendered disabled because of an accident or illness.
- **Service pay** is similar to gratuity save that service pay is paid out at the end of employment while gratuity can be paid at the end of every year or at any time if the employer so wishes.
- **Severance pay** is only paid when an employee is declared redundant

6. Computation of Gratuity

- Where an amount is received in respect of employment or a service rendered in a year of income different from the year of accrual, such income is chargeable in the year of accrual.
- Sec.5(2)(a)(i), however, provides that where the year of accrual is earlier than 4years prior to the year of receipt, the income is to be treated as that of the year of income which expired 5years prior to the year in which the income is received or prior to the year of income in which employment ceased.

Compensation for loss of office Sec.5(2)(c)

- This occurs where one's services are terminated prior to the expiry of the contract.
- Applies whether the contract was written or verbal, or whether or not there was provision in the contract for such payment.
- There are three methods of computing compensation
 - Where contract is for specified term
 - Contract for specified term and provides for terminal payment
 - Contract for unspecified term and does not provide for compensation

Fringe Benefit Tax (FBT) Sec 12B

- Occurs when an employer provides loan to an employee and charges interest which is below the prescribed rate of interest. The difference between the interest charged by the employer and the prescribed rate is a benefit from employment chargeable to tax on the employer.
- Features:
 - It is taxable at corporate rate of 30% of the determined value of benefit
 - Market interest rates are determined by the average 91day Treasury bill rate of interest for the previous quarter
 - Incidence of tax falls on the employer
 - Remittance done alongside monthly PAYE

Low Interest Benefit

- Same as FBT but applies to loans provided prior to 12th June 1998
- Applicable rate is graduated rates 10 – 30%
- Incidence of tax falls on the employee

TREATMENT OF SUPPLY ON GOODS IN TRANSIT

VAT Act 2013 did not provide for zero rating of supply with respect to goods in transit, this was however reinstated in 2015.

However there were changes in legislation as follows:

PERIOD	STATUS	Implication
1 st January 2011 to 1 st September 2013	Zero Rated	Can Claim input tax probably putting TP on Refund position
2 nd September 2013 to 18 th September 2014	Taxable @ 16%	Can Claim input tax and no possibility of TP being on Refund position
19 th September 2014 to 11 th June 2015	Exempt	Cannot Claim input Tax; possible apportioning of common input tax
12 th June 2015 to date	Zero Rated	Can Claim input tax probably putting TP on Refund position

TAXATION OF MOBILIZATION FEE

- **Mobilization fee or advance payments received by contractors will attract VAT at the time the payments are made in compliance with the provisions of Section 12 (1) (d) of the VAT ACT, 2013.**
 - Contractors are therefore required to charge and account for VAT on the paid amounts
 - Withholding Tax agents are also required to withhold and remit withholding VAT on such payments
 - Sec. 63 and 64 of TPA outline the procedure of making and withdrawing a public ruling; **with the publication of the new ruling published on 31/10/2017 mobilization fee will attract VAT**

TAXATION OF MATATU OWNERS

- **Matatu Business just like any other transportation business (e.g. buses) is taxed as provided for by Sec. 3 and Sec 4 of the Income Tax Act. (c.f Sec 3 and 4 of Income Tax Act).**
- By the very nature of the business; they are expected to pay advance Tax (Sec. 12A and Advance Tax conditions and procedures). The advance tax is set off against income tax (Sec. 39)

INCOME TAX CHANGES

Changes affecting Special Economic Zones

The Finance Act includes a number of provisions which are designed to encourage investment in the special economic zones. These are as follows:

- Dividends paid by SEZ Enterprises on the construction of a building or on the purchase and installation of machinery for use by the enterprise in carrying out its business are eligible for 100% investment deduction in the first year of use (paragraph 24C of the Second Schedule to the ITA).
- Preferential withholding tax rates for payments to non-resident persons as follows (Third Schedules):

Changes affecting Special Economic Zones

	Current non-resident rate (%)	New SEZ rate (%)
Management, professional and training fees	20	5
Royalties	20	5
Interest	15	3

EFFECTIVE DATE : 1 January 2018

Reduction of tax rate for motor vehicle assemblers (Third Schedule)

- The Act reduces corporation tax rate of 15% for companies incorporated to carry out local assembly of motor vehicles.. The reduced rate is applicable for the first five years from the commencement of operations

EFFECTIVE DATE : 1 January 2018

Enhancement of PAYE tax heads by a further 10%

- For the second year in a row, the Cabinet Secretary has expanded the individual PAYE bands by 10%. This follows an expansion of the bands by a similar margin with effect from 1 January 2017.
- The new bands are as follows:

EFFECTIVE DATE : 1 January 2018

Enhancement of PAYE tax heads by a further 10%

New bands (KES)	Old bands (KES)	Rate
First 147,580	First 134,165	10%
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Next 139,043	Next 139,043	25%
Over 564,709	Over 513,374	30%

The above changes will provide a welcome cushion to taxpayers whose income has been adversely affected by inflation.

Enhancement of personal Relief by a further 10%

- Similarly, the personal relief has increased by a 10% from KES15,360p.a. to KES 16,896 p.a following the change, the lowest taxable income will increase from KES12,260p.a. to KES13,486p.a.

EFFECTIVE DATE : 1 January 2018

Enhancement of tax rates in respect of payments or withdrawals from pensions

- Taxation on pension withdrawals have been harmonized with those of individuals as has been the case in the past
- The new tax bands for withdrawals in excess of the tax free amount, will be as follows:

EFFECTIVE DATE : 1 January 2018

Enhancement of tax rates in respect of payments or withdrawals from pensions

New bands (KES)	Old bands (KES)	Rate
First 147,580	First 121,968	10%
Next 139,043	Next 114,912	15%
Next 139,043	Next 114,912	20%
Next 139,043	Next 114,912	25%
Over 564,709	Over 466,704	30%

Taxation of the Gambling Industry

Section 29A(1), 44A(1), 55A(1) and 59B(1) of the Betting, Lotteries and Gambling Act (CAP 131)

- The amendment raised the taxes for betting, lottery, gaming and completion from the current rates of 7.55, 55, 12% and 15% to a uniform tax rate of 35%. (To be withheld from the winner)
- The business person prepares the accounts for corporation purpose

to be taxed at 30%

- The move is an attempt by the Cabinet Secretary to the Treasury to cash in on the phenomenal growth that this industry has experienced in the recent past.

EFFECTIVE DATE : 1 January 2018

Recognition of Islamic Financial Products

Sections 2,5,27,68A,96B and paragraph 4 of the Schedule to the Stamp Duty Act Section 2,205 (3A) &(3B) of the Public financial Management Act

- The amendments relate to inclusion of various definitions and Sharia compliant products in the substantive laws to facilitate the operationalization of Islamic financial products in Kenya, these include amendments to:

EFFECTIVE DATE : 1 January 2018

Recognition of Islamic Financial Products

- **The stamp Duty, Act** – amendment intended to create tax neutrality for Islamic Financial products to enable them favorable compete with other conventional financial products in the Kenyan Market:
- **The Co-operative Societies Act** – amendment seeks to address the lack of recognition of Islamic Financial in the cooperative sub-sector of the Kenyan market, and
- **The SACCO Societies ACT** – amendment intended to define “deposits” and “deposit taking SACCO business” to include the principles of Islamic law for recognition of Islamic SACCOs in Kenya.

EFFECTIVE DATE : 1 January 2018

Increased Powers of the RBA and additional compliance requirements

Section 5,26 and 34 of the Retirement Benefit Act The SACCO Societies Act

- The objects and functions of the Retirement Benefit Authority are proposed to include the approval of the remuneration of the trustees as approved by the members during the annual general meeting to be held every three years.
- There is also a proposed amendment that requires a person who fails to submit any statement return by the due date to the Authority to pay a penalty of **KES100,000** and a further fine of **KES1,000** for each day or part thereof during which the offence continues and where the return un-submitted.

EFFECTIVE DATE : 1 January 2018

Appeals under the Tax Tribunal

Proviso to Section 13(7) of the Tax Appeals Tribunal Act 2013

- The Tax Appeals Tribunal Act provides that the Tribunal can hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal, **Provided that during the period of one year from the date of its first sitting, the Tribunal may extend the period for the hearing an appeal for a period of up to sixty days if there are sufficient grounds to do so.**
- Since the Tribunal has been in existence for over a year, this proviso is no longer relevant hence its deletion

Exemption from export levy and IDF

- **Part II of the First Schedule and item(ii) of part A of the Second Schedule to the Miscellaneous Fees and levies Act 2016**
- The proposed amendment is aimed at exempting Special Economic Zone Enterprises from export duty and Import Declaration Fees.

VAT CHANGES

First Schedule Part A

The following items previously exempt are now zero rated;

- Agricultural pests control products
 - Maize flour and ordinary bread
 - Taxable material for construction of specialized hospitals(previous)
now added medical equipment and apparatus
 - Material for construction of grain storage upon recommendation by
the CS
- **Note ;Transportation of cargo to destinations outside kenya listed as zero rated is still contentious and PUT head office is trying to resolve it and once it is done we will communicate**

Second Schedule part A

The following items have now been zero rated;

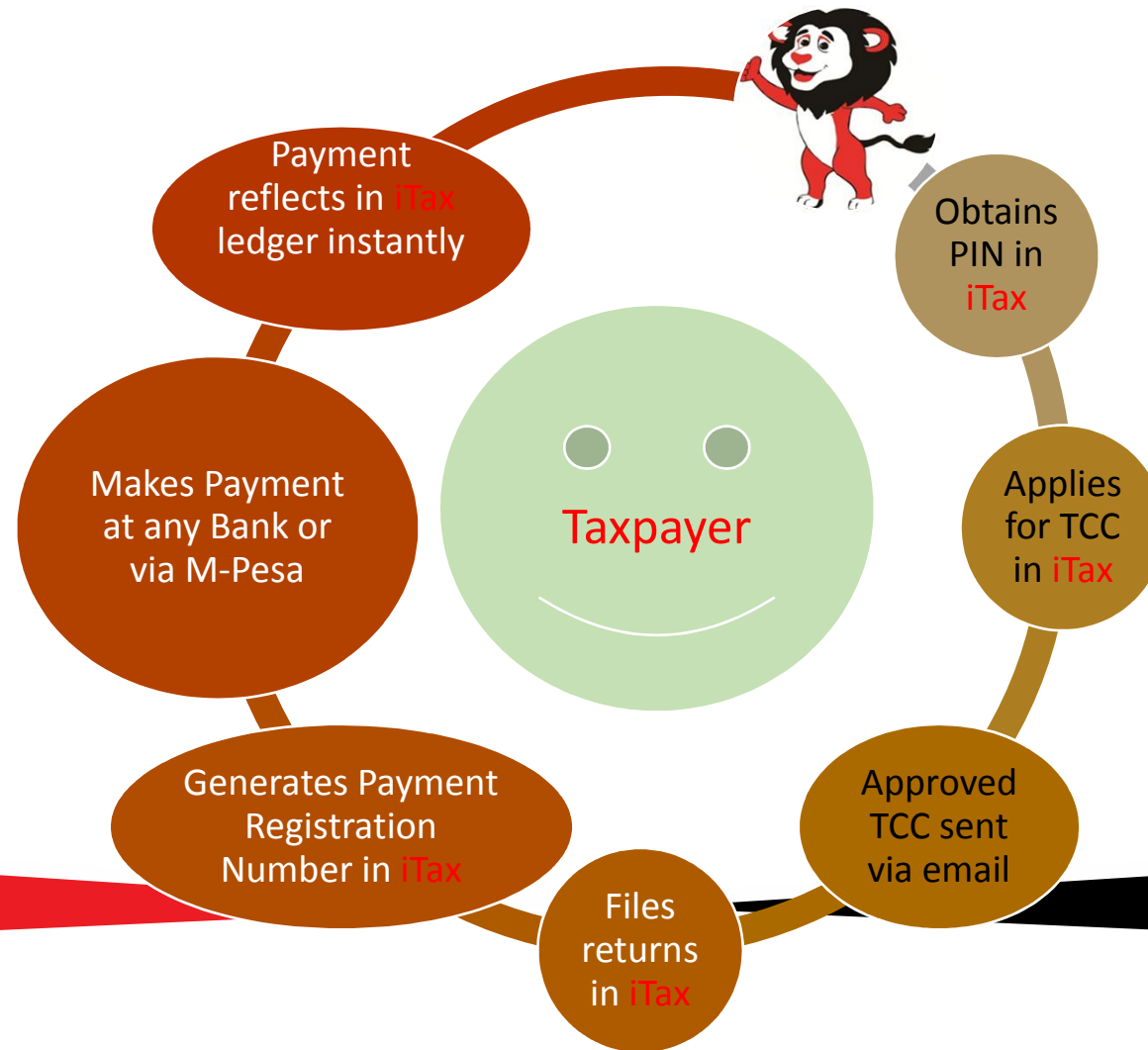
- Supply of Maize, and ordinary bread and cassava flour by more than 10% in weight
- Milk and Cream

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END OF PRESENTATION

THANK YOU