

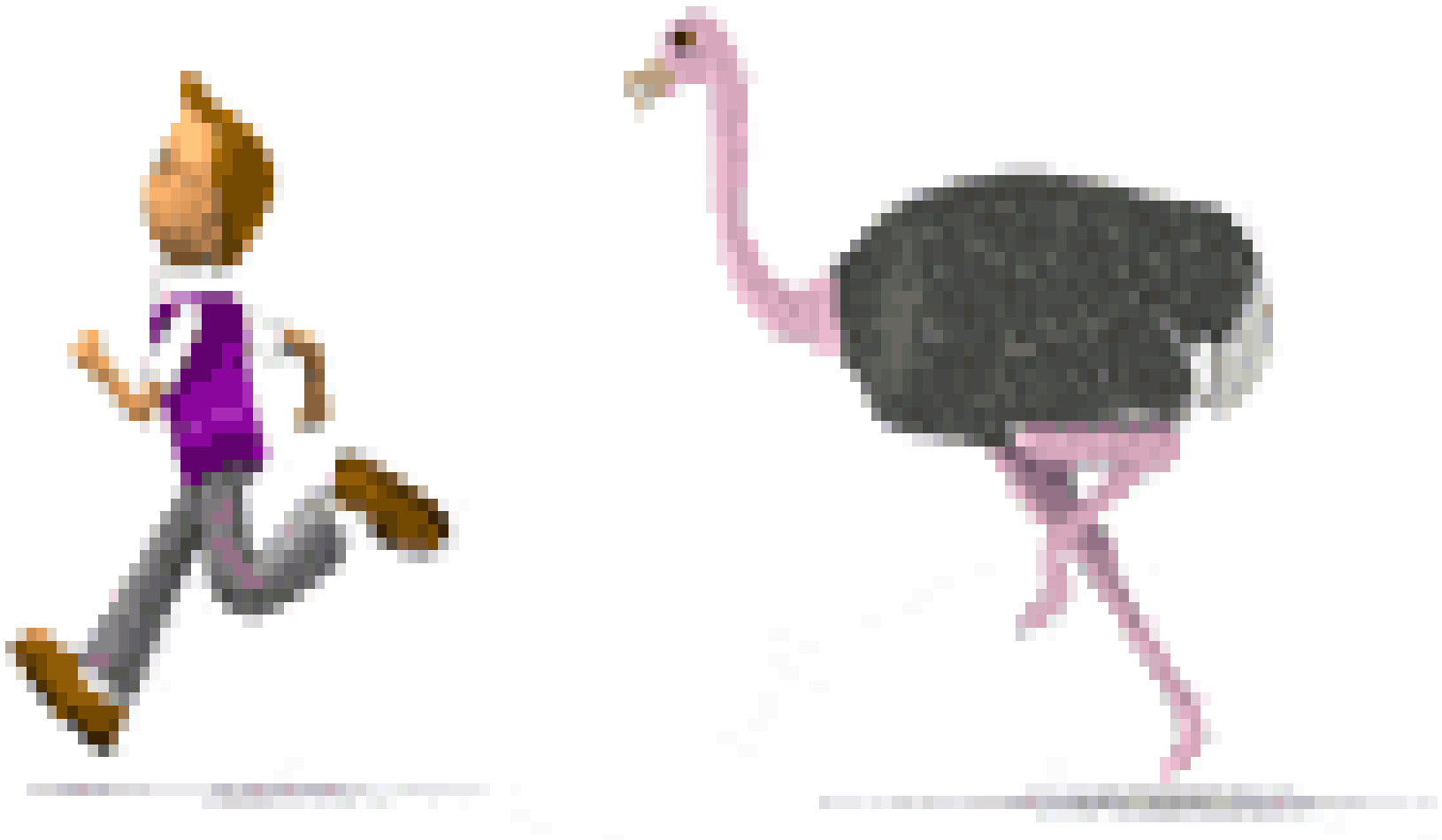
# Current Developments in Regulation in the NPO Sector

Presentation by:

CPA Dr. Githae CPA(K), B.Com, MBA, PhD  
Matengo Githae & Associates, (MGA)  
Head Office: Chaka Place, 2<sup>nd</sup> floor  
[www.matengogithae.com](http://www.matengogithae.com)



# CHALLENGES FACING NPOS IN COMPLIANCE MATTERS



There is need for NPOs to  
comply with Tax regulations  
to avoid this scenario of  
sinking into challenges /  
problems.....!!



# ROLE OF NPOS IN THE ECONOMY



- ❑ Transfer of Skills & Capacity Building County levels
- ❑ Enhancing Public Participation
- ❑ Employment creation
- ❑ Tax contribution to the Economy
- ❑ Funds flow into the Economy

# PBO ACT 2013



- ☐ The PBO Act 2013 was Assented to and awaiting operationalization
- ☐ The PBO Act once operationalized will repeal the Non-Governmental Organizations Co-ordination Act, 1990
- ☐ There were attempts to amend some of its provisions but it was published in its current form

# KEY HIGHLIGHTS



- ☐ Registration
- ☐ Governance
- ☐ Reporting
- ☐ Work Permits
- ☐ Self Regulation

# REGISTRATION REQUIREMENTS



Sections 6 to 13 of the PBO Act requires the following documents to be submitted together with the application:

- ☐ A copy of the PBO's constitution,
- ☐ Names and addresses of its founders,
- ☐ The public benefit purpose for which the PBO is organized,
- ☐ The postal and physical address of the PBO's principal place of business and the prescribed fee

# TIMELINES FOR REGISTRATION



- ☐ According to Section 9 the Authority shall consider applications and register an organization as a PBO within sixty (60) days after receiving the application.
- ☐ Where the Authority is not satisfied that the application complies with the requirements for registration, it shall notify the applicant, giving reasons, and provide the applicant up to thirty (30) days to comply.
- ☐ If the applicant fails to satisfy the requirements after being given an opportunity to comply, the Authority shall refuse to register the organization and shall notify the applicant.



# OFFENSES IN REGISTRATION



- ☐ To forge or utter a false a document for purposes of procuring registration;
- ☐ Make a false statement in respect of an application for registration;
- ☐ Make any material false statement in any document submitted to the Authority;
- ☐ To fraudulently hold out any organization as being registered under the Act;
- ☐ To fraudulently make use of a registration number, certificate or information contained in a certificate of registration;

# CONSEQUENCES



- ❑ Attracts a Penalty of Kshs. 300,000 or
- ❑ Imprisonment for a term not exceeding 2 years or both.

# GOVERNANCE OF NPOS



- ❑ The governing body of the NPOs must be distinct and separate from the administrative and day-to-day management body of the organization
- ❑ One third of the Board members must be Kenyans who are resident in the country
- ❑ The Act prohibits NPOs from composing more than a third of their Board with people who are related
- ❑ International NPOs that seek to either implement or raise resources in Kenya, are required to have a local Board
- ❑ One third of the Board members must be Kenyans who are resident in the country

# CONSEQUENCES FOR NOT COMPLYING



❑ Risk being deregistered

# REPORTING



Within six months after the end of financial years NPOs are required to prepare and submit the following reports:

- ☐ Audited financial statements
- ☐ A report on the programme of activities of the public benefit organisation

# SELF REGULATION REQUIREMENTS



The Act requires that:

- ☐ NPOs apply the principles of transparency and accountability to all their affairs and activities
- ☐ NPOs submit annual reports to the Authority within six (6) months after the end of each financial year.
- ☐ Their activities be open and accessible to scrutiny by stakeholders

# CURRENT ISSUES



- ❑ PBO Act not operationalized.
- ❑ NGO Board has been moved from the Ministry of Devolution to the Ministry of Interior
- ❑ The Regulations are ready awaiting gazettelement. Once gazetted it will be operational and should be complied with.

# BANK ACCOUNTS AND ANNUAL REPORTS



- ❑ NPOs are required to declare all their bank accounts details in their Annual Reports.



# WORK PERMITS



- ☐ Under Section 4(1) of the Immigration Act no person who is not a citizen of Kenya shall enter Kenya unless he or she is in a possession of a valid entry permit or valid pass.
- ☐ NPOs the seek work permits for their staff should apply through NGO Coordination Board.

# CONSEQUENCES FOR NOT OBTAINING WORK PERMITS



- ❑ Any foreigner who enters or remains in Kenya without an entry permit, valid pass or visa commits an offence punishable by a fine not exceeding Kshs. 100,000 or imprisonment to a jail term of up to 3 years or both.
- ❑ Any person who harbors a person unlawfully present in Kenya is guilty of an offence punishable by a fine not exceeding Kshs. 100,000 or imprisonment to a jail term of up to three years or both.



# STATUTORY REQUIREMENTS

# Causes of Non Compliance with Tax requirements



- ❑ Weak Governance for PBOs
- ❑ Low awareness of the requirements of Tax laws
- ❑ Lack of Technical and Professional Tax support
- ❑ Failure to navigate through the Tax process / Arbitration

# KEY STATUTORY BODIES



- NHIF – Payable by 9<sup>th</sup> of Each Month
- NSSF - Payable by 15<sup>th</sup> of Each Month
- KRA
- Under the KRA Taxes Include - Income Tax, VAT, Withholding Tax, Customs Duty & Exercise Duty

# INCOME TAX



- For its income to be exempt from Income Tax, an organization must have been established solely to relieve poverty or distress of the public, or to advance religion or education.
- The Commissioner of Income Tax must conclude that the income is expended either wholly within Kenya or in ways that benefit the residents of Kenya ([Income Tax Act First Schedule, Cap 470, Para. 10 as amended by Legal Notice No. 6 of 2001](#)).

# INCOME TAX



The Income tax is managed through CAP 470 of the Kenya Laws and include:

- PAYE
- Corporation Tax
- Withholding Tax

# TYPES OF INCOME SUBJECTED TO TAX



- Business Income from any trade or profession.
- Income from employment or from services rendered.
- Rent Income.
- Pensions Income.
- Investment Income - dividends and interest among others.



# TYPES OF INCOME SUBJECTED TO TAX



- No exemption on PAYE- For Locals. Expatriate will depend on case basis.
- NO exemption on Withholding tax.
- Corporation tax is based on the organization meeting the criteria providing that the income received falls within the schedules described under the Income Tax Act.

# VALUE ADDED TAXES



- Under Regulation 30 of the NGO Coordination Regulations 1992, if an organization requires exemption from VAT on goods and services required to meet its objectives and on income generating activities (or income for expatriate employees), an application must be made through the NGO's Board to the Cabinet Secretary of Finance.

# VALUE ADDED TAXES

## CONT:



- It must be registered under the Societies Act or NGO Act, or exempted from registration by the Registrar of Societies or the NGO Coordination Board; and
- Its income must be exempt from tax under the Income Tax Act and approved by the Commissioner of Social Services.
- Such services are not treated as taxable supplies, and no VAT is charged on them (VAT Act, Part 2 Para. 11).

# CUSTOMS DUTY



- NGOs are not automatically entitled to exemptions on import custom duties. To obtain such exemptions, an application must be made to the Cabinet Secretary for National Treasury through the NGO Board.

# CUSTOMS DUTY CONT:



- The Treasury must approve any duty exemption that exceeds Kshs. 500,000 (approximately USD 5,700) (Customs and Excise Act Third Schedule, Para. 12(1)(a)).

# TAX EXEMPTION



- The grant of all of the above exemptions is purely discretionary on the part of the Cabinet Secretary for National Treasury, based on recommendations by the Commissioner of Domestic Taxes and the NGO Board.

# TAX EXEMPTION PROCESS



1. Inspection on the organization by KRA field office
2. PAYE and withholding Income Tax audit.
3. Case received by Senior Deputy Commissioner
4. Put on register
5. Analyzed
6. Application approved or rejected.
7. If approved - An Exemption certificate will be issued in the system and sent to the Taxpayer.

# TAX EXEMPTION PROCESS

## CONT:



- Tax Exemption is on the reserves / income carried forward.
- Exemption certificate valid for five (5) years.
- Institution must file Annual Income Tax Return and Accounts.
- No Tax Exemption on PAYE or withholding Tax.
- If rejected - will be communicated to the Station who will communicate to the Taxpayer.



# TAX EXEMPTION PROCEDURE



- Tax Exemption for NGOs commences by obtaining a referral letter from the NGO board on the following :
  - Registration certificate
  - Constitution
  - PIN Certificate
  - Evidence of the projects carried out in the last three years of operations.

# TAX EXEMPTION PROCEDURE



- Letter from the Central Government confirming the activities carried out by the NGO.
- Any other useful information in support of the application.

# LIMITATION



- A tax exemption certificate shall be renewed where an application is made to the Minister of Finance, through the Commissioner, at least six months before the expiry period.
- The Ministry may also revoke an exemption on the basis of any just cause.

# STATUTORY BENEFITS



Outlined in the Second Schedule to the Act. PBOs are, by law, entitled to the benefits set out in this Schedule, namely:

(a) Exemption from

- Income tax received from membership subscription, donations and grants;
- Income tax from 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 on the sale of assets;
- stamp duty; and court fees.

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

# STATUTORY BENEFITS CONT:

- (c) Incentives for donations by legal and natural persons.
- (d) Employment tax preferences.
- (e) Special tax incentives for donations to form endowments, prudent investment policies, etc.
- (f) Indirect government financing e.g. budget subsidies, grants for specific purposes and contracts to perform certain work.
- (g) Preferential treatment in public procurement procedures.
- (h) Provision of information to PBOs.
- (i) Access to training offered by Government institutions.

# Risks of Non Compliance



- ☐ Risk being deregistered / Prosecution
- ☐ Penalties / Interest
- ☐ Freezing of accounts
- ☐ Loss of moral authority to push others to comply to Tax and other regulations.

# CURRENT ISSUES



- ❑ PBO Act not operationalized.
- ❑ NGO Board has been moved from the Ministry of Devolution to the Ministry of Interior
- ❑ The Regulations are ready awaiting gazettelement. Once gazetted it will be operational and should be complied with.

# WORK DONE ON NPOS BY MGA



- ❑ Conducting Tax Health Checks for NPOs
- ❑ Training NPOs on VAT, Work permits, Tax Exemptions,  
Income Tax Act (Finance bill 2015)
- ❑ Compliance Assessment to determine capacity gaps
- ❑ Act as Tax advisors to resolve any disputes with KRA/  
NGO board





# Transformational Leaders for PBOs (Drivers of change)

# Your place in life





# Focus



# Seed in you



# Planting the Seed





# Contd....



# Gift





# Contd...



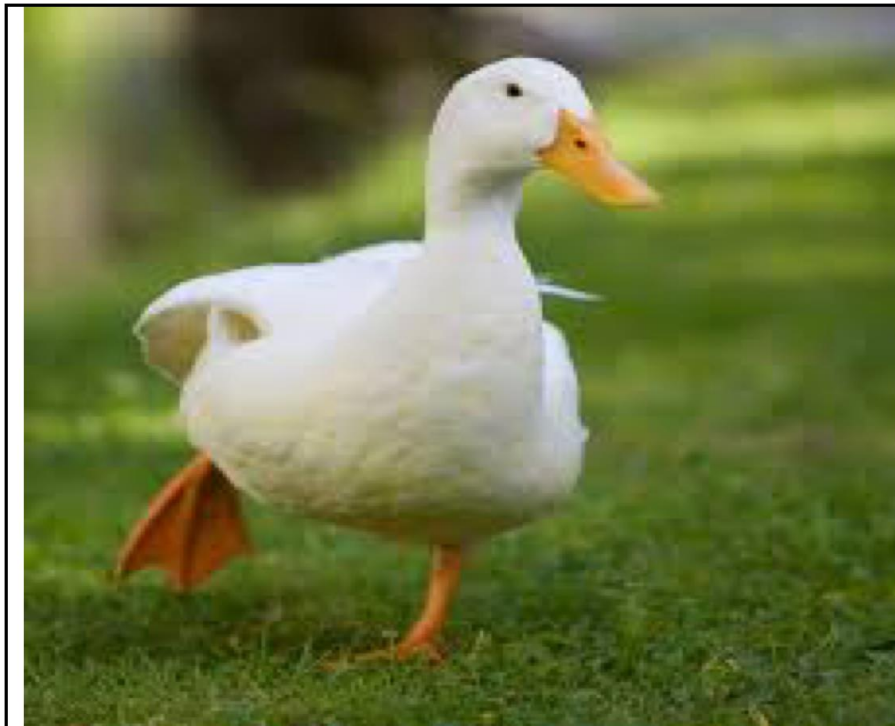


# Contd....



# Impact





# Q & A



