

CURRENT TAX MATTERS AFFECTING THE NFPO SECTOR

Presentation by:

**Rachel Muiru
Senior Tax Manager, EY LLP
Thursday, 23rd November 2017**

Presentation outline



- ❖ Business tax
- ❖ VAT
- ❖ Employee tax matters
- ❖ WHT considerations
- ❖ Other tax updates

Business Tax



Business Tax – Exemptions (1st Sch, Par 10.)



Application

- Application to the Commissioner
- Include a background, activities and sources of funds
- PIN certificate, registration doc and the constitution
- Proof of compliance in the prior period

Commissioner processing

- Acknowledges receipt of the application
- Institute a compliance check for the prior period
- May request for additional documentations from the entity
- Confirms compliance with the requirements for exemptions is done

Exemption certificate issued

- Issues certificate within 60 days if all documents are in order
- Certificate is valid for a period of five years but is renewable
- However, it can be revoked for any just cause

Business Tax – Exemptions (1st Sch, Par 10.)



any such income which consists of **gains or profits** from a **business** shall **not be exempt** from tax **unless** those gains or profits are **applied solely** to those purposes

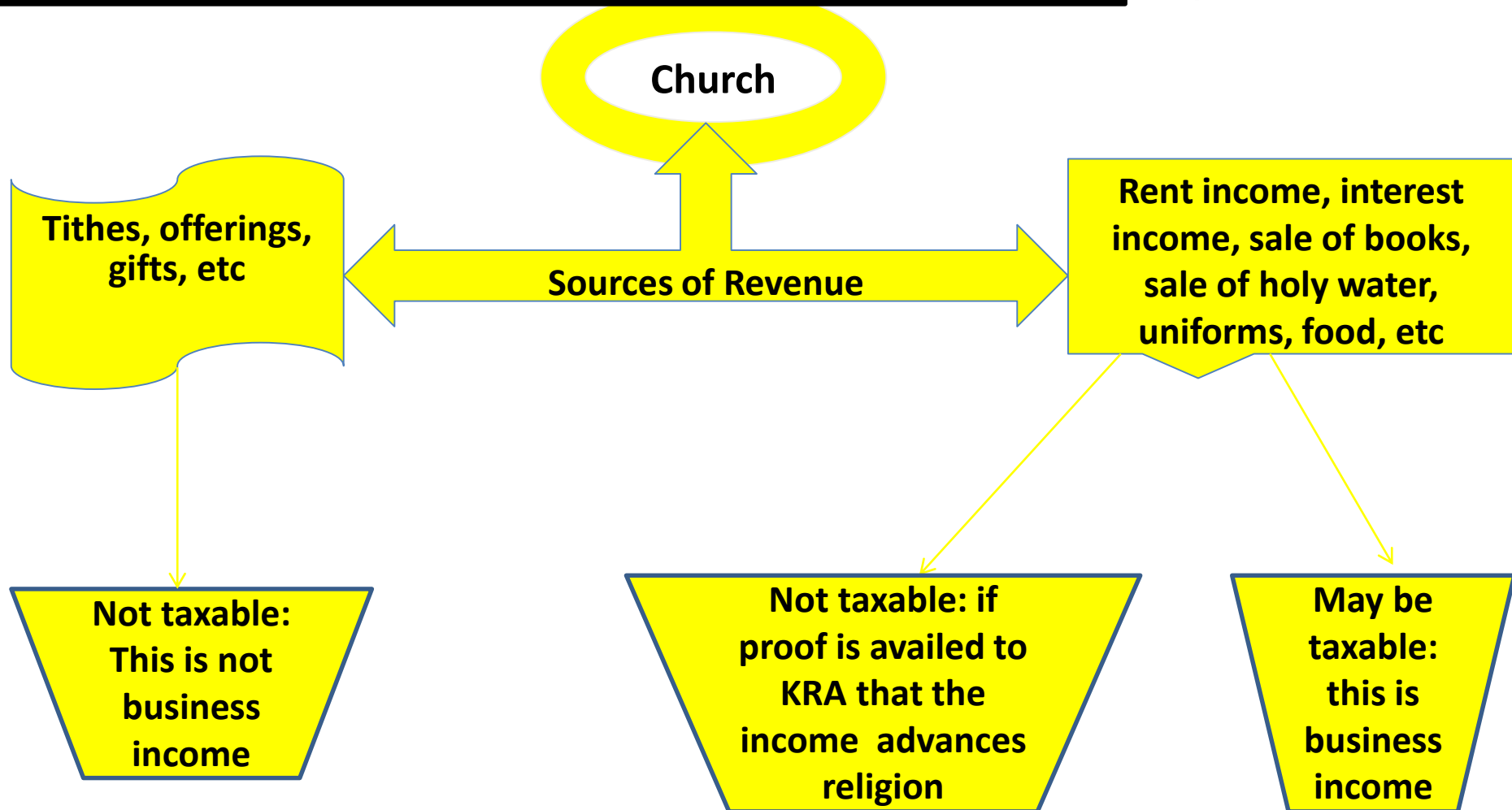
and either:-

The business is carried on in the course of the actual execution of those purposes; or

The work in connection with the business is mainly carried on by beneficiaries under those purposes; or

The gains or profits consist of rents received from the leasing or letting of land and chattels leased or let therewith

Business Tax – Exemptions (1st Sch, Par 10.)



Business Tax-Exemptions cont'd



- Expansion of the range of donations deductible for corporate income tax
- To include expenditure incurred on donations to:
 - the Kenya Red Cross
 - county governments or
 - any other institution responsible for management of national disaster **declared by the President.**

VAT



VAT Exemption Regime



- Para 11 of the 1st Schedule to the VAT Act 2013 exempts from VAT supply of services rendered by:
....political, religious and other philanthropic organizations to their members or social welfare services provided by charitable organizations as long as the services are not rendered by way of business.

VAT Exemption Regime



Is VAT applicable?

- Rental income for owned or leased property
- Operation of cafeteria
- Consultancy or advisory fee
- Management fee
- Other miscellaneous incomes
- Imported taxable services

VAT Registration



- Threshold for registration is KShs. 5M or more in 12 months (Sec 34) – taxable supplies
- Threshold to exclude
 - Sale of capital asset
 - Sale of whole or part of a business
- Registration and other formalities being done on-line, including VAT Returns – Sec 38 & 39

Imported Services – Sec 10



- Imported services – means a supply of services that:
 - Is made by a person who is not a registered person to a registered person
 - Supply would have been a taxable supply if it had been made in Kenya
 - Taxable person is not entitled to a full deduction of input tax
- Supply of imported services deemed as self supply
- VAT payable to the extent it relates to exempt supplies
- VAT on imported taxable services is declared/paid online by generating PRN

Current Developments under VAT



- Matching of input VAT claimed against customers invoices
- De-registration of several Tax Payers
- Review of long outstanding VAT credits

P.A.Y.E



- Host Country Agreements (HCAs) should be precise enough on taxation
 - avoid controversies with KRA during audits
- Bonuses, overtime and retirement benefits paid to employees whose taxable income before the above allowances does not exceed Kshs.11,180 p.m
- Strict immigration conditions for expatriates

Recent Changes



Expansion of PAYE bands by 10%.

From (KShs) Effective 01 Jan 2017	To (KShs) Effective 01 Jan 2018	Tax Rate (%)
On the first 134,164	On the first 147,580	10
On the next 126,403	On the next 139,043	15
On the next 126,403	On the next 139,043	20
On the next 126,403	On the next 139,043	25
All income over 513,373	All income over 564,710	30

PAYE changes



- Increase in personal relief
 - Relief prior to 01 January 2017 – KShs.1,162 p.m.
 - Relief effective 01 January 2017 – KShs.1,280 p.m.
 - Relief effective 01 January 2018 – KShs.1,408 p.m.

Employee vs. Consultant



- Key considerations for employees
 - Control/ independence
 - Nature of contract/ substance over form
 - Nature of activities
 - Entitlement to social welfare benefits e.g. leave
 - Economic reality – risk of financial loss
 - Integration

Withholding Tax

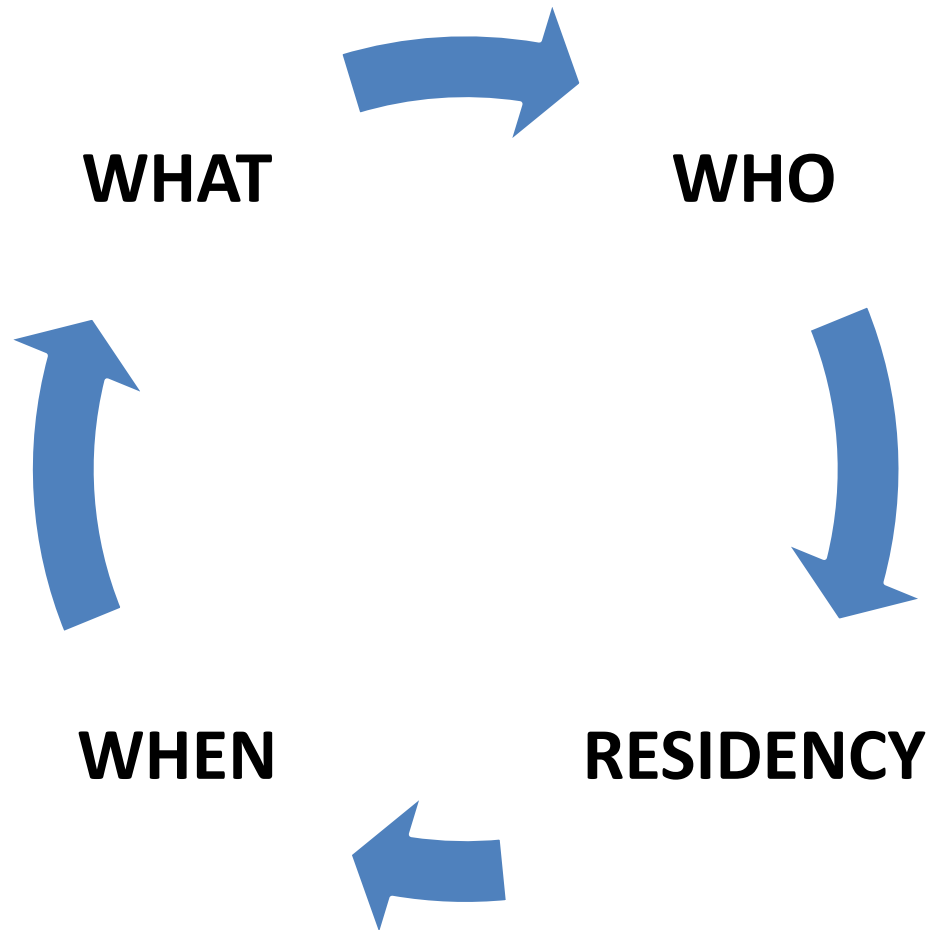


Withholding tax



- Withholding tax” is deducted on specific payments in accordance with the provision of the Income Tax Act.
- The payer acts as an agent for KRA.
- Withholding tax is an advance tax but can be a final tax for in other cases.
- Why withhold tax:
 - ✓ Cash flow to government
 - ✓ Compliance issues
 - ✓ More cost effective
 - ✓ Non resident issue

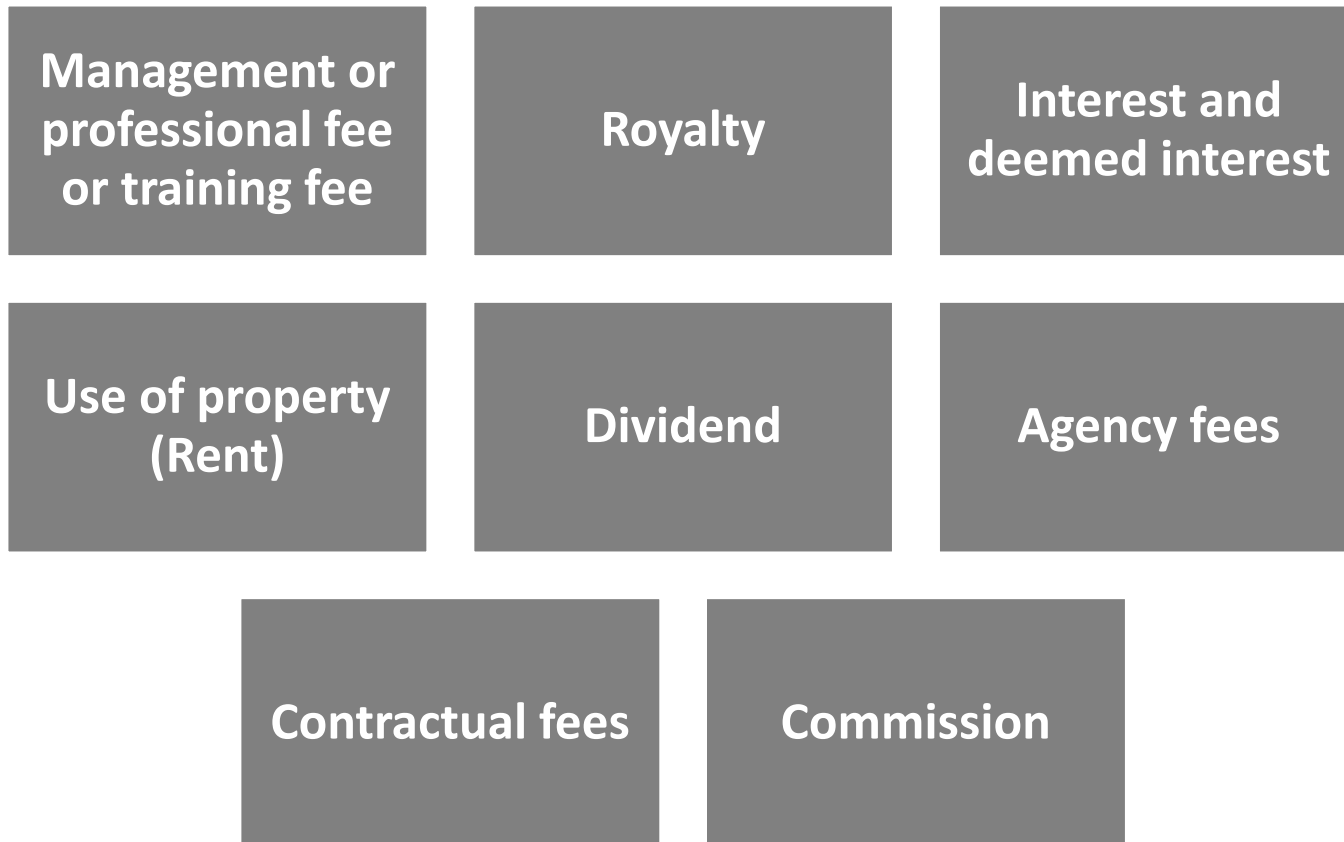
Withholding tax matrix



The WHAT question



The specific payments subject to withholding



The WHAT Question-Rent



- Withholding tax is due on rent paid to a resident person, on both the residential and commercial property.
- Withholding Tax on rent took effect on 01 January 2017
- Why withholding tax on rental income:
 - a) To meet Government's increased expenditures, the govt. is implementing various measures to ensure landlords contribute their fair share of taxes including;
 - b) Broadening the tax base.
 - c) Facilitating the normalisation of the tax affairs by all landlords.
 - d) Increasing and improving the tax compliance culture.
 - e) Facilitating participation of public corporations and private firms in revenue enhancement

The WHAT Question-Rent



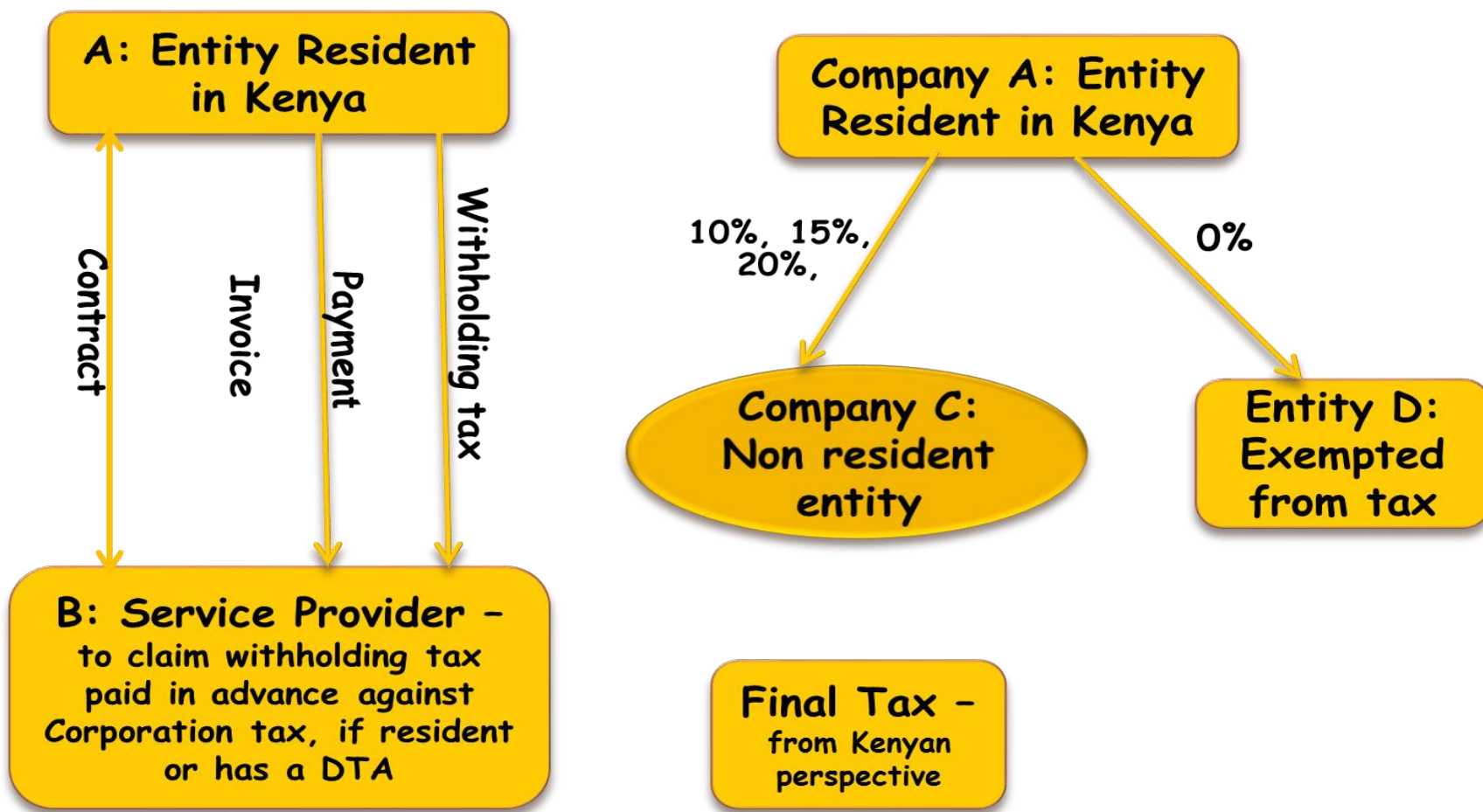
- The public notice by KRA indicated that the withholding tax would be collected by appointed agents via iTax system, to be notified of such appointment (through iTax and manually).
- One must be an appointed withholding tax agent to deduct withholding tax on rent.
- KRA is prioritizing the following for appointment as agents:
 - a) Private Institutions – supermarkets, banks, insurance companies, micro-financial institutions, advertising firms, telecom. companies
 - b) Public Institutions - government ministries, agencies and departments, universities, parastatals, county governments
 - c) Others - property/estate agents

The WHAT question-exemptions



- Recipient of the income is exempted from tax
- The payment is not eligible for withholding tax purposes where the Minister certifies
 - that a payment is required to be paid free of tax by the terms of an agreement to which the Government a principal or guarantor; and
 - that it is in the public interest that the income shall be exempt from tax (Para 11 of 1st Sch. and Sec. 13 of ITA).
- Instances where there is a double tax treaties or Host Country Agreements exempting tax deduction on specific line items

How withholding tax works



Other Tax updates-Overhaul of the Income Tax Act



•Seminar on Taxation of NFPOs, Charitable and Religious institutions

Review of Income Tax Act



- Current Act enacted in 1973 and became effective in 1974. Has undergone various amendments via the annual budgets- voluminous and complex
- Direct taxes account for 45% of tax revenue
- Re-write or review the tax code?
- The globalisation issue-best practice in tax legislation
- Incorporation of Case law in tax legislation
- To adopt the policy of issuance of Practice notes-simplify tax code and bring clarity
- CS expected to develop an exposure draft for discussions with stakeholders

Interactive Session

