

BRANCH TAX WORKSHOP-BUSIA



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Venue: BUSIA
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Topic: Tax procedure ACT 2015



Presentation

- **Introduction**
- **The key provisions**

Tax Procedure Act 2015

- ❑ The tax procedure Act 2015 introduced by the cabinet secretary is to harmonize tax procedures across various tax legislations.
- ❑ The objective of this Act is to provide uniform procedures for administering the tax laws for the promotion of consistency and efficiency .
- ❑ The procedures outlined in the new act apply to all taxes in Kenya, unless provided in a tax law specifically for the administration of a specified tax from January 2016.

Key Highlights

- ❑ Sec 5(3) A decision made, and a notice or communication issued or signed by authorized officer may be withdrawn or amended by the commissioner or by that authorized officer, and shall, for the purpose of the tax law to which it relates and until it has been withdrawn, be deemed to have been made, issued or signed by the Commissioner.

Key Highlights-Authorized officer , Tax representatives

- ❑ Authorized officer according to sec. 7 will have all the powers, rights, privileges and protection of a police officer.
- ❑ A tax representative of a taxpayer shall be responsible for performing any duty or obligation imposed by a tax law on the taxpayer, including the submission of returns and the payment of a tax.

Key Highlights-Personal Liability of Tax representative

- ❑ Sec 15(6) shift the obligation of tax payment to the tax representative where:-
 - ❑ The tax representatives disposes monies received without accounting for tax or
 - ❑ Disposes of or parts with any moneys or funds belonging to the taxpayer that are in the possession of the tax representative or which come to the tax representative after tax is payable, when such tax could legally have been paid from or out of such moneys

Taxpayer's tax representative

- ☐ Persons who can act as tax representatives, among them;
 - ☐ A legal representative of an Individual under legal disability;
 - ☐ Chief Executive Officers, Managing directors, Company secretary, treasurer, trustee or a resident director or similar officer acting in such a capacity;
 - ☐ Accounting officers in regard to the National government, county government, the Judiciary and the Parliamentary Service Commission;
 - ☐ A partner or a manager of a partnership in the case of a partnership
- ☐ A tax representative shall be responsible for:
 - ☐ performing any duty or obligations of the tax payer as required under the Act
 - ☐ including filing of returns; and
 - ☐ shall be held personally liable for payment of any tax due

Key Highlights-Liability of Tax payable by a company



- ❑ Under sec. 17(1) where a private company has not paid any tax by the due date, every person who was a director or controlling member of the company at the time the tax was due shall be jointly and severally liable for the tax liability of the company
- ❑ Where an arrangement is entered with the intention or effect of rendering a company unable to satisfy a current or future tax liability under a tax law, every director or controlling member shall be liable for the tax liability of the company.
Sec 17(2)

Key Highlights-Licensing of Tax Agents



- ❑ Sec 18. Gives direction on how and ho can apply to be a Tax Agent.
- ❑ Section 19 gives the qualification to be a tax agent
- ❑ Sec 19(4) gives powers to set guidelines to determine fitness of a person to be a tax agent
- ❑ Sec 19(5)/(6) gives the validity of the tax agent license and how the applicant is to be communicated to on application.(Valid until revoked)

Key Highlights-Tax agents certificate to clients



- Sec 23(3) requires a tax agent who prepares or assists in preparation of a tax return of a taxpayer to provide the taxpayer with a certificate, in the prescribed form certifying that the agent has examined the documents of the taxpayer and that , to the best of the tax agent's knowledge, the return together with any documentation accompanying the return correctly reflects the data and transactions to which the return relates.

Key Highlights>Returns / interest/Security



- Sec 24. gives a window for a taxpayer to ask for an extension of time to submit a return.
- Sec 25 Gives the commissioner powers to require a taxpayer to submit a tax return.
- Sec 37. set the rate of interest on outstanding tax after the due dates to be 2 percent per month and unlike in the previous legislation, the interest is to be simple interest.
- Sec 39. gives powers to the commissioner to secure a charge on a taxpayers land or building

Key Highlights- Objection to tax decision



- Sec. 50 gives procedure on objection to tax decision.
- The taxpayer is to make an objection within 30 days unless the taxpayer has been granted an extension by the commissioner.

Key Highlights- Appeal to the Tribunal/High court/Court of Appeal

- ❑ Sec. 51. requires the taxpayer to pay 30% of the disputed tax for the appeal to be valid.
- ❑ Sec. 52 and 53 relates to appeal to High Court and court of appeal respectively.
- ❑ The burden of proof that a tax decision is incorrect shall be on the taxpayer.
- ❑ Appeal to High Court and the Court of Appeal shall be on a question of law only.

Key Highlights- Rulings

- Section 57. relates to Binding public rulings which are binding on the Commissioner but not on a taxpayer.
- Section 60. Relates to Binding private rulings which shall be binding on the Commissioner and not on the taxpayer
- A private ruling that is inconsistent with the public ruling shall supersede the public ruling to the extent of the inconsistency with the public ruling sec 60(6)

Key Highlights- Penalties and offences

- A person shall not be subject to both the imposition of a penalty and the prosecution of an offence in respect of the same act or omission in relation to a tax law.
- Registration penalty Ksh 100,000 each month or part of a month.
- Deregistration penalty is Ksh 100,000 each month or part of the month
- The penalty of registration or deregistration should not exceed Ksh 1 million

Key Highlights- Penalties and offences

- ❑ Penalty for failing to keep documents as required by the law shall be the higher of 10% of the amount of the tax payable or Ksh 100,000.
- ❑ Late submission of returns penalty shall be 25% of the tax amount due or Ksh 10,000 under PAYE regulations, Ksh 5,000 under TOT Rules or in other cases 5% of the amount of tax payable under the return; or Ksh 20,000 whichever is higher

Key Highlights- Penalties and offences

- ❑ Tax shortfall penalty shall be 75% of the tax shortfall when the statement or omission was made deliberately or 25% of the tax shortfall in any other case.
- ❑ Penalty to increase by 10% if the second application or 25% if the third application to that person.
- ❑ The amount of a tax shortfall penalty imposed under section 2 to be reduced by 10% points when the person voluntarily discloses to the commissioner the statement or omission to

Key Highlights- Penalties and offences

- ❑ Tax avoidance penalty to be equal to double the amount of the tax that would have been avoided but for the application of the tax avoidance provision.
- ❑ Penalty for failing to comply with electronic tax system Ksh 100,000

Key Highlights- offences

☐ OFFENCES

- ☐ Fail to register as a taxpayer or deregister
- ☐ Uses a false PIN on a return
- ☐ Offences by tax agents. Fail to notify commissioner as required under sec 21(1) or fails to provide a certificate to a taxpayer when making returns
- ☐ Failure to maintains documents
- ☐ Failure to submit tax returns or other documents
- ☐ Failure to pay tax
- ☐ False and misleading statements
- ☐ Offences relating to recovery of tax
- ☐ Offences relating to enforcement powers
- ☐ Aiding or abetting an offence

Key Highlights- Schedules

- ❑ First Schedule –Transactions for which A pin is required
- ❑ Second Schedule-Consequential amendments on Income tax Act 470 and VAT Act 2013.

Penalties and offences

Offence	Tax Procedure Act, 2015
Registration or de-registration	KES 100,000 per month or part thereof subject to a max of KES 1M
Maintenance of proper records	10% of the amount of tax payable subject to a min of KES 100,000
Late submission of employment related returns & Turn over tax	25% of the tax due or KES 10,000 whichever is higher Turn over tax - KES 5,000
Late filing of any other tax return	5% of the tax due subject to a min of KES 20,000 for both individual and corporates

Penalties/offence

Offence	Previous legal provision	Tax Procedure Act, 2015 provision
Failure to file other documents required under the tax law besides the return	No specific penalty apart from the general penalty	KES 1,000 per day subject to a max penalty of KES 50,000
Online filing of return and payment of tax electronically	No specific penalty apart from the general penalty	KES 100,000 if the tax payer fails to respond to the Commissioner within 14 days of the notice
Tax shortfall attributable to deliberate provision of false or misleading statement or omission	VAT- KES 1M or imprisonment of 3 years or both Income tax - 200% of the tax amount involved	<ul style="list-style-type: none"> • 75% on tax shortfall attributable to fraudulent tax filing • 20% applicable on tax shortfall not attributable to fraud • Penalty on tax shortfall increased by up to 25% for repeat offenders (i.e. 3rd or subsequent time) and by 10% for offenders committing the crime for the 2nd time • Penalty reduced by 10% when a person discloses tax shortfall voluntarily to the KRA

Penalties and offences.....Cont

Offence	Tax Procedure Act, 2015 provision
Tax Avoidance	<ul style="list-style-type: none">• 200% of the amount avoided by a taxpayer.• This penalty cannot be waived by either the Commissioner or the Cabinet Secretary
Fraudulent claim of tax refund	200% of the amount of claim under all tax laws
Fraudulent act of omission or commission in relation to a tax period	<ul style="list-style-type: none">• Fine $\leq 10M$ or 200% of the amount evaded to imprisonment of a term ≤ 10 yrs or to both

Penalties /offences

Offence	Tax Procedure Act, 2015 provision
Tax agents related offences e.g. acting as agents illegally	Fine equal to 200% of the amount of tax evaded or a fine of KES 5 million whichever is higher or to imprisonment for a term not ≤ 5 years, or to both
Failure to appear before the Commissioner when required to do so for committing an offense under tax law	KES 10,000 in case of an individual KES 100,000 for any other case

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Questions

Thank you!
Discussion points

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