

# BRANCH TAX WORKSHOP-BUSIA



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Venue: BUSIA

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Topic: County Tax Matters



## Overview and Objectives of the presentation

□ This presentation is designed to provide participants with the following:-

- ✓ an overview of the tax and levy issues that affect the counties as a source of County revenue executives have an obligation to collect and manage and
- ✓ Review the various taxes directly affecting County budgeting process as expenditure items.

## County Revenue-Taxes/Levies

❑ Chapter 12 of Kenya Constitution 2010 part 3 gives the revenue raising powers of each Government ( National and County Government)

❑ Sect 209(1) States " Only the national government may impose :-

- (a) Income tax;
- (b) Value-added tax;
- (c) Customs duties and other duties on imports and export goods; and
- (d) Excise tax

## County Revenue-Taxes/Levies

❑ Chapter 12 of Kenya Constitution 2010 part 3 gives the revenue raising powers of each Government ( National and County Government)

❑ Sect 209(3) States " A county may impose:-

(a) Property rates;

(b) Entertainment taxes; and

(c) Any other tax that it is authorised to impose by an Act of Parliament

(4) The national and county governments may impose charges for services

## County Revenue-Taxes/Levies

❑ Chapter 12 of Kenya Constitution 2010 part 3 gives the revenue raising powers of each Government ( National and County Government)

❑ Sect 209(5) States " The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour



## County Revenue-Taxes/Levies

❑ PFM Act 2012 sec 132 states “

- (1) Each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county government.
- (2) The County Executive Committee member for finance shall, on the same date that the revenue raising measures are pronounced, submit to the county assembly the County Finance Bill, setting out the revenue raising measures for the county government, together with a policy statement expounding on those measures.

## County Revenue-Taxes/Levies

❑ PFM Act 2012 sec 132 states “

(3) Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall –

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the County Allocation of Revenue Act;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of tax revenue with reference to direct and indirect taxes;

## County Revenue-Taxes/Levies

□ PFM Act 2012 sec 132 states “

Continue

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth; and

(f) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.



## County Revenue-Taxes/Levies-CESS

- ❑ See high court case at Nairobi constitutional and human rights division petition no. 385 of 2013. charging of cess by 8 counties was declared unconstitutional
- ❑ Petitioner was Cereal growers association 1<sup>st</sup> petitioner and Hugo wood 2<sup>nd</sup> petitioner vs 8 county governments.

## **COUNTY PROCESSES WITH TAX RISKS & OPPORTUNITIES**

☐ The processes to be reviewed would include the following:

☐ Budgeting;

☐ Procurement;

☐ Contract processing;

☐ Revenue Receipts

☐ Payments and recognition of expenses; and

☐ Payroll processes.

☐ Also review existing policies and procedures with a view to identifying the linkages with tax and ensuring that the Tax Policy and Procedures Manual is in line with the overall objectives of the

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## **Routine Taxes that will affect the County Governments**

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1. Pay As You Earn (PAYE)
2. Value Added Tax (VAT)
3. Withholding Tax
4. Excise/Import duty
5. Corporate taxes



## CASE EXAMPLES OF COUNTIES-TAX NON-COMPLIANCE RISKS

- ❑ On 16/06/2013-KRA froze 3 Accounts of Mombasa County over a tax arrears of Ksh 471 million arising from defunct council
- ❑ **Airtel Kenya Loses Kshs. 531 Million Tax suit Against Kenya Revenue Authority**  
Wed, July 29th 2015 at 00:00 GMT
- ❑ <http://nairobinews.nation.co.ke/jobs/why-nairobi-county-staff-risk-missing-salaries/> Ksh 1 billion tax arrears transferred by CBK to KRA
- ❑ **NOTE:**KRA tax problems do not go away unless you take actions!

# PAYE

## Definition of terms

**“employer”** includes any resident person responsible for the payment of, or on account of, emoluments to an employee.

**Resident individual-** A person is resident in Kenya where:

- they have a permanent home in Kenya and are in Kenya even for a single day in the tax year (calendar year)
- they do not have a permanent home in Kenya but are in Kenya for:
  - 183 days or more in aggregate during the current tax year
  - an average of more than 122 days per year in the current tax year and the two preceding years

**Payroll Management**-Include all taxable remuneration, including benefits and unaccounted for allowances and ensure that the correct tax treatment is applied .

# **PAYE - what is an emolument?**

## **Income Tax Act (Sec 5(2))**

“gains or profits” include: wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered.

## **PAYE guide**

- Wages, salary, leave pay, sick pay, payment in lieu of leave, directors’ fees and other fees, overtime, commission, bonus, gratuity or pension.
- Cash allowances
- The amount of any private expenditure of the employee paid by the employer otherwise than as a loan.
- Non-cash benefits where the aggregate value exceeds KES 3,000 pm
- Value of housing where provided by the employer.
- Car benefit
- Servants, Watchmen, telephone and any other allowances/benefits

## Deadlines

Obligation	Deadline
Remit monthly PAYE and FBT	9 <sup>th</sup> of the following month or last weekday before if 9 <sup>th</sup> is on weekend or public holiday. NB- directors!
File annual self assessment returns (SARs)	Effective 1 July 2013, all individuals earning income in Kenya are required to file an individual Self Assessment Return as per the Finance Act 2012 gazetted in February 2013.
Payment of monthly NHIF dues	1 <sup>st</sup> of the next month (by concession, can be paid by the 9 <sup>th</sup> ).
Payment of monthly NSSF dues	15 <sup>th</sup> of the following month.
Payment of monthly National Industrial Training Levy (NITA)	10 <sup>th</sup> of the following month

# VAT

- Note that Most organisation will pay VAT on all supply of Vatable services as per amended VAT Act 2013
- Organisation may also suffer from reverse VAT charged on imported services and VAT charged by residence.

## **WITHHOLDING TAX**

### **What is Withholding tax?**

- WHT is a portion of payment withheld by the party making payment to another (payee) and paid to the Tax Authority.
- WHT is payable to KRA by 20th of the month following the month in which WHT was deducted.
- The person who deducts WHT (Payer) Must furnish the Payee with the WHT certificate showing the amount of WHT deducted.

## **Payments subject to Withholding tax Sec 35**

As per the section the payments that are subject to withholding tax include:

- Management or professional fees (if more than 24,000 a month) – technical, management, contractual, training.
- Dividend
- Interest
- Pension in excess of tax exempt amounts
- Royalty-Right to use
- Commission/fee for provision of insurance cover
- Winnings - betting & gaming
- Natural resources from land

## WHT rates

Payment	Resident	Non- resident
Management and professional fees (management fees, technical fees, contractual, consultancy, training fees, agency fees, Rent)	5/10	20
Contractual fees	3	20
Dividend		
• >12.5%voting power	Exempt	10
• <12.5%voting power	10	10
• Qualifying divided	5	
Qualifying Interest:		
•Housing bonds	10	N/A
•Bearer Instruments	20	N/A
•Other	15	N/A
Royalties	5	20
Rent: Immovable property	N/A	30
Others	N/A	15

## What is Excise /Import Duty?

- An ***excise*** or ***excise tax*** (sometimes called a duty of excise or a special tax) is a tax on consumption levied on goods produced within a country.
- It is generally an indirect tax i.e. the consumer bears the burden of tax as opposed to the producer/manufacturer of the good(s).
- An import duty is a tax imposed on goods imported in the country.

# Questions



*Thank you!*

*WHY Worry!!*

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