

ICPAK South Rift Branch Tax Workshop

29th Nov 2017. Taidy's Hotel, Kericho.

11:00 am – 12:30 pm

Personal Taxes

Facilitator: John C. Okore

Scope



1. Assessable Income
2. Deductions and Allowances
3. Withholding Tax
4. Tax filling/filing and payments
5. Taxpayers Rights, Obligations

1.0 Assessable Income

1.0 Income Chargeable

- ❖ Charge of tax – ITA S.3
- ❖ All income **accrued in, or derived from** Kenya.
 - Business Income
 - Employment income
 - Rent Income
 - Dividends
 - Interest
 - Pensions
 - HOSP withdrawals
 - Deemed income
 - Capital Gains
 - Natural resource income
- ❖ Tax is charged on a person. A partnership is therefore not taxed Income Tax (IT Act S.3(3)(a). A Partnership is a relationship (Partnerships Act 2012 S.2). Partnerships are however subject to all other Tax heads.

1.1 Specified Sources of Income (ITA S. 15{7})

Gains and profits computed separately. Profit in one cannot be used to offset losses in another.

- i. Rental Income (Immovable Property)
- ii. Employment income
- iii. Wife's employment income
- iv. Agricultural income
- v. Surplus funds refunded/withdrawn by an employer from a registered fund (Since such had been allowed as a deduction under S.15(2)(o).
- vi. Income of a licensee/contractor from one license area (petroleum explorers)
- vii. Other sources of income.

1.2 Contract of Service (Employment)

- The “*Contract of Service*” (IT Act S.2) is the main determinant of whether you deduct PAYE or WHT.
- It may be oral or in writing and may be implied.
- For any period of time and includes apprenticeship.
- As long as the employer has the power of selection and dismissal of the employee – KEY!
- Does not include foreign contract of Service (Employment Act S.2)
- A “Casual Employee” is one who is paid daily and not engaged for longer than 24 hours at a time (E.A S.2).
- The definition of “Paid” (IT Act S.2) is KEY!

1.3 Discussion Point



Is a resident citizen individual (*Physical domicile*) receiving regular monthly pay from a non-resident employer (*Fiscal domicile*) considered employed as per Kenyan Tax Law? How do we file such a return?

2.0 Deductions and allowances

2.1 Deductions and Allowances

- **Per diem** is only exempt up to a maximum of Ksh 2,000 per day. Amounts above this are considered income and subject to PAYE. There are however public rulings by KRA where you may submit a per diem policy to KRA and where approved, the amounts will be exempt.
- **Credit/Airtime** allowance may be treated in two ways:
 1. Exempt all when below Ksh 3,000 and tax all when above Ksh 3,000.
 2. As per KRA guidelines, tax a third of the amount of allowance.
- In either case, a consistent approach must be adopted across the organization.
- The above only apply where the allowance is given as airtime directly to a phone number or as top up cards. Where the same is paid as part of the salary or given as cash, it must be taxed in full as a cash benefit.

2.2 Deductions and Allowances

- Meal allowance (IT Act S.15(4)(f)). Was expanded by S.5 of Finance Act 2014 from low income employees to all employees. Annual limit is Ksh 48,000.
- Persons with disabilities. Exempt amount is Ksh 150,000 pm with allowance of additional Ksh 50,000 per month in “home care expenses”. (PWD Act S.12(3), LN 36 2010 P.4(2), P.5). The employee must first have necessary documentation before exemption.
- Housing benefit is fully chargeable. However, where the amount recovered is the market value, no tax applies.

2.3 Discussion Point



Does the law really require everyone with a PIN to file Income Tax Returns?

3.0 Withholding Tax

3.1 Withholding Tax

- Legal: IT Act S.10, S.35, 3rd Sch. Par 3 & 5. TPA S.3, S.42A. Several DTAs. (Where there's a DTA for a non-resident transaction, the DTA takes pre-eminence).
- Origins in World wars where governments needed money sooner rather than later.
- Applies to both VAT and Income Tax.
- The tax-point is **upon payment**. Remittance to KRA may be deferred to not later than 20th of the subsequent month. (IT WHT Rules R.8(1)).
- Penalties: 10% or Ksh 1m, whichever is less! (R.14). Failure to withhold shifts the incidence to the withholder.

3.2 Withholding Tax

- VAT withholders must be appointed by KRA while IT withholders are auto-appointed by virtue of the nature of transaction.
- A part of the payment is made by the withholder in the form of tax credits directly offset from the Withholdee's tax due for the period.
- The tax-point is **upon payment**. Remittance to KRA may be deferred to not later than 20th of the subsequent month.
- Used both as a source of intelligence and to expedite revenue (After all cash is king, right? This applies to the government too).

Withholding Tax: Example 1

- Supply

Supply Value = 1,000

VAT = $1,000 \times 16\% = 160$

Invoice Value = 1,160 (i)

WHVAT = $1,000 \times 6\% = 60$ (ii)

WHIT (say) = $1,000 \times 5\% = 50$ (iii)

- Payment

1. Cash = (i) – ((ii)+(iii)) = $1,160 - (60+50)$
= **1,050** (*Pay to supplier*)

2. WHT Certs = **WHVAT (60) + WHIT (50)**
(*Pay to KRA via iTax*)

Withholding Tax: Example 2

- Supply

Invoice Value = 1,000 (i)

VAT = $(1,000/1.16) \times 16\% = 137.93$

Supply Value = 862

WHVAT = $862 \times 6\% = 51.72$ (ii)

WHIT (say) = $862 \times 5\% = 43.10$ (iii)

- Payment

1. Cash = (i) – ((ii)+(iii)) = $1,000 - (52+44)$
 = **904** (*Pay to Supplier*)

2. WHT Certs = **WHVAT (52) + WHIT (44)**
 (*Pay to KRA via iTax*)



3.3 Withholding Tax - Advantages

- **To the government**
 - ✓ Safeguard revenue
 - ✓ Revenue Advance
 - ✓ Free agency for Tax Collection (TPA S.34)
 - ✓ Data collection and Intelligence gathering
- **To the Taxpayer**
 - ✓ Prepayment where there's excess liquidity (withholdee)
 - ✓ A chance to defer cash outflows for longer (withholder)
 - ✓ Reduces the perceived final “pinch” of tax through many small prepayments.

3.4 Withholding Tax - Disadvantages

- **To the government**
 - ✓ Complicates the tax system
 - ✓ Risk of loss of tax through non-remittance
 - ✓ Risk of out-of-control refund claims
- **To the Taxpayer**
 - ✓ Increased costs and time of compliance
 - ✓ They are prepayments – Undesirable
 - ✓ Complicated tax system
 - ✓ Work for no pay as an agent for the government – Is that even business?

3.5 Discussion Area



PAYE is a Withholding Tax. True or False? Discuss.

4.0 Tax filling/filing and Payments

4.1 Filling/Filing



- The English: Filling vs Filing ...
- Electronic filing has been mandatory since 1st August 2015.
- The system is fully online and does not need any software downloads.
- The iTax system has a dependency on Ms. Excel for filing returns.
- Detailed reports are required for all returns
- The detailed reports are used to match declarations and accuracy is therefore key to avoid unnecessary inquiries.
- Lumping of invoices is convenient but frowned upon. Will also attract undue attention.
- Where you are making a payment for withholding tax, it pays to have another person confirming your work after generating the payment slip, or yourself counter-checking your own work the next day. This is because in case of errors, you can easily cancel the payment slip and do it all over again.

4.2 Payments



- Taxpayers generate payment slips that they present at banks.
- This process is still manual
- Plans are underway to introduce the direct online payments by card (VISA et al), Paypal etc.
- Bankers cheques cannot be issued across banks because of the clearing time viz a viz the time allowed for the bank to sweep the cash to CBK.
- International payments can be successfully done by RTGS.
- Cash payments may be made at any bank, the selection notwithstanding.
- Always ensure to confirm receipt of your payments through crediting of the ledger.
- Withholding tax certificates are only generated when the money has been reconciled in the system.
- PAYE credits are posted on the employees' ledgers upon FULL payment of the TOTAL tax due in the return.

4.3 Discussion Point



Will online payments add value? Say through reliable last-minute tax payments and avoiding cheques and trips to the bank?

5.0 Taxpayer Rights and obligations

5.1 General Rights

- Common law judicial precedence: Where there is any equivocality in interpretation of a statute, the law must be interpreted to the advantage of the taxpayer (against charging the tax).
- Constitution of Kenya 2010 (Article 50(2)(p)): Right to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing. E.g. Penalties imposed in 2016 for 2012 returns filed in 2014 after changes by Sec 83 of TPA 2015.
- Right to Access to Information (at least yours) – COK 2010, A.35

5.2 Statutory Rights

- Amended returns must be processed within 30 days or your position stands (TPA 2015 S.31(3)(b)).
- Right to request (in writing before the due date) for extended time to file returns (TPA 2015 S.25)
- Right to request (in writing before the due date) for extended time to pay tax (TPA 2015 S.33).
- Objections must be **responded** to within 60 days or your position stands (S.52(11)). KRA must immediately notify you of an invalid objection and not merely ambush you with a technicality (S.51(4)).
- Treatment of your information with confidentiality (TPA 2015 S.6).
- Statement of reasons for refusal of an application (S.49).
- To object to KRA's decisions (S.51) and appeal subsequent decisions (S.52 – 54)
- To public and private rulings (S.62-65)
- To APPLY for a TCC (S.72)

5.3 Responsibilities/Obligations (TPA 2015)

- To duly register/deregister within 30 days (S.8, S.10)
- Supply of information upon change of particulars (S.9)
- State your PIN in your business documents (S.13)
- Not to act as a tax agent unless registered (S.21)
- Maintain proper records (S.82) for 5 years (S.23, 93)
- Submit returns in prescribed manner (S.24) on time (S.94)
- Submit electronic self assessment returns (S.28, 86)
- Pay tax due (S.32) on time (S.77, 95)
- Comply with agency notices (S.42)
- Use the correct PIN (S.91)
- Provide information when required to (S.99)
- Not to obstruct a KRA officer on official duty (S.100)

5.4 Discussion Point



Is there a change in the way KRA treats taxpayers today compared to say ten years ago? How? What areas of improvement exist?

The End

Change Missing!