

ICPAK South Rift Branch Tax Workshop

30th Nov 2017. Taidy's Hotel, Kericho.
11:30am – 12:30 pm

Tax Procedures Act 2015

Facilitator: John C. Okore

Scope



1. Penalties and interest
2. Expanded rights and obligations
3. Provisions on (de)registration
4. Tax Agents
5. Objections and ADR e.g. Rulings & Compounding
6. Gaps identified

1.0 Penalties and interest

1. Penalties



- There is now same treatment for all persons, individuals or otherwise for penalties.
- Late filing penalties enhanced to Ksh 20,000 for all returns except PAYE at Ksh 10,000 (S.83).
- Late (de)registration penalty set at Ksh 100,000 per month or Ksh 1 million, whichever is less (S.81).
- General penalty set at Ksh 1 million and/or 3 years imprisonment (S.104(1)).
- There is penalty for failure to honor a summon (S.87).
- Offences by KRA staff (S.102)
- Failure to declare all amounts in a return (S.97(a)).
- If your employee commits an offence, you too have (S.103(1)).

1. Interest



- Set at 1% (S.38(1))
- Now computed as simple interest rather than compound (S.38(3)).
- Interest is charged in addition to any penalties imposed.
- You may now apply for waiver of both penalties and interest.
- Departure prohibition order

1. Discussion Point



What is the ideal amount of penalty an individual should pay for failure to file a return?

Do you take advantage of the cheap loans the government gives (1% simple interest only on tax unpaid)?

2 Expanded rights and obligations

2 Statutory Rights



- Amended returns must be processed within 30 days or your position stands (S.31(3)(b)).
- Right to request (in writing before the due date) for extended time to file returns (S.25)
- Right to request (in writing before the due date) for extended time to pay tax (S.33).
- Objections must be **responded** to within 60 days or your position stands (S.52(11)). Where your objection is not valid, KRA must inform you. KRA can't just wait to throw out your objection on a technicality.
- Treatment of your information with confidentiality (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)

2 Responsibilities/Obligations

- (De)register 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)

2 Discussion Point



Have you started enjoying the new rights as per the TPA? Why?

3. Provisions on (de)registration

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- All common procedures and processes in tax are to be conducted as per the TPA, unless the said procedure is unique to the tax head (S.2(2)).
- The TPA anchored the PIN in S.8 from what was ITA S.132.
- Taxpayers must register within 30 days of becoming eligible (S.8(2)(c)). Failure leads to a penalty of Ksh 100,000 per month or part thereof subject to a limit of Ksh 1M (S.81). This provision also applies for deregistration (S.10).
- KRA may (de)register you without your application (S.8(6), S.10(5)).
- The Effective Date of Deregistration is the day your application is approved. Until then, all obligations apply. Where a response to an application for deregistration is not received in 6 months, you are deemed deregistered (S.10(7)).

3 Discussion Point



Do you take advantage of these time limits? Why not?

4. Tax Agents

4. Tax Agents

- Tax representatives provided for the following (S.15):
 - ✓ Individual under legal disability
 - ☐ Child
 - ☐ Person of unsound mind
 - ☐ Refugee?
 - ✓ Companies, association of persons, partnerships, Trusts, non-resident persons, etc.
- Tax representatives are responsible for performing all duties for the taxpayer. Where there is more than one, they are jointly and severally liable (S.15(3)).
- KRA can appoint a Tax representative for a person.

4. Tax Agents

- Registration of Tax Agents now provided for in Principal Legislation (S.19). This may be an individual or partnership. Licenses now have perpetual validity (S.20(4)).
- Qualifications (Tax Agents Regulations, LN 60, 2012 P.3(3)):
 - ✓ Registered accountant
 - ✓ Advocate of the high court of Kenya
 - ✓ Former KRA staff with 10 years experience.
 - ✓ Any other qualifications KRA may prescribe
 - ✓ Tax Compliant
- Functions listed in TAR P.5 (LN 60, 2012).
- Working as a Tax Agent without registration is illegal (TAR. P.3.(5)), TPA S.21. Penalty is Ksh 100k and/or up to 2 years imprisonment.

4. Discussion Point



Why do cyber café operators work as tax agents?

5. Objections and ADR

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- KRA now has powers without court orders to prevent taxpayers from travelling out of the country and instructing immigration to confiscate a passport where one is deemed a flight risk (S.45).
- KRA is now compelled to give reasons for rejection of an application (S.49).
- All objections must first be lodged under S.51 before proceeding under any other written law.
- A valid objection (S.51):
 - ✓ Is in writing
 - ✓ Is received by KRA within 30 days of an assessment
 - ✓ Precisely states the grounds of objection amendments needed on the assessment and reasons for each.
 - ✓ All amounts not in dispute have been paid
- Where an objection is invalid, KRA must notify you immediately.

5. Objections and ADR – Cont'd

- You may apply in writing for an extension of time to lodge an objection.
- A late objection may still be accepted for various reasons like:
 - ✓ Absence from Kenya
 - ✓ Sickness
 - ✓ Other just cause
 - ✓ And you did not unjustifiably delay in lodging the application.
- If KRA has not made a decision on the objection within 60 days, your objection fully stands (S.51).
- Appeals may go all the way to the court of appeal (S.53, S.54) but on a question of law only (S.56(2)). A court may allow an out-of-court settlement within 90 days (S.55).
- Burden of proof to show that a tax decision is wrong lies on the taxpayer (S.56).

5. Objections and ADR – Cont'd

- Private and public rulings are now moved from VAT only to all tax heads (S.62 – S.69)
- Both Private and Public rulings are binding on KRA but not on the taxpayer (
- Public rulings must be published in at least two newspapers on national circulation. This applies also to private rulings, only that identities shall not be revealed (S.67).

5. Discussion Point



What is your experience with objections?

6. Gaps Identified

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- No penalties for late payment of tax
- No specific penalties for failure to use PIN (As per repealed ITA S.132)
- (S.104(1)). The general penalty includes a mandatory prison sentence by the wording of it.
- What really are “Documents of Identity” (S.8(2)(b))? Can I use my identity card to register my Church for a PIN?
- Use of specific amounts without provision for inflationary adjustment. Eg. Penalty amounts that can be waived by KRA
- No provision for waiver of erroneous penalties.

6. Discussion Point



Should we have more prosecution of tax cheats? How will it help if at all?

The End

Change Missing!