

Taxation of employment income

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Presentation Outline



- Over View of PAY As You Earn(PAYE)
- Types of taxable income
- Exempt Income
- Deductions and reliefs
- PAYE bands
- Employer/ Employee responsibilities
- Employer Vs Consultant
- Case Law
- Interactive Session

Tax Residency Rules



- **Permanent home** – any period
- **No permanent home** – 183 days p.a; 122 days over 3 years

Test for taxable income

- **Resident** - Worldwide employment income
- **Non-resident** – Accrued in or derived in Kenya

Taxable income - Types



The two categories of emoluments/
incomes subject to tax are:

- Cash emoluments
- Non-cash benefits

Cash Benefits



All cash benefits are taxable
except:

- Out of town cash allowance of ***KES 2,000*** per day
- Accounted for out of town cash allowance



Non- Cash Benefits



- Benefits, advantages or facilities
- Non-taxable non-cash benefits capped @ ***KES 36,000 p.a.***
- The Commissioner's prescribed rates for motor vehicle, Housing, telephone benefit

Non- Cash Benefits



- Furniture (1% per month)
- Telephone & Internet (30% of bill, DSTV?)
- Club subscriptions
- Meals (above KES 4,000 per month)
- School fees

Non-Cash Benefits- Housing Benefit



Directors: Executive/Non-executive

- Higher of 15% of **employment** or **total income**, fair market rental value and rent paid

Agricultural employee

- 10% - gains from employment

Non- Cash Benefits- Housing Benefit...



Other Employee

- Higher of 15% of employment income, or the rent paid

Owned

- Fair Market rental

Non- Cash Benefits



- Car benefit (2% p.m. of cost/prescribed c.c. rating):
 - Provision of a 'company' car
 - Transport from home to office
 - Hired or leased
 - Restricted use
- ESOPs – (Market Value and Offer price)

Employer loans



Low interest/ Interest free loans

- Low Interest Benefit (Before 11 June 1998)
 - **Employee tax**
- Fringe Benefit Tax (After 11 June 1998) –
Employer tax (30%)
- Commissioner's prescribed rate-**Quarterly**

Tax Exempt Income



- Medical services
- Medical Insurance
- Withdrawals from registered retirement schemes.....
- Passages/immigration costs



Deductions from Income



- Contributions to registered retirement schemes (KES 240,000)
- Mortgage interest (KES 300,000 p.a.-1 property)
- Deposits into home ownership savings plan (KES 4,000 per month for 10 years)

Deductions from Income



- Tax free annuity increased from **KES 180,000** to **KES 300,000** w.e.f. **1/1/2010**
- Tax free lump sum increased to the first **KES 600,000** w.e.f. **1/1/2010**

Tax Relief



- Insurance relief (15% premiums- maximum of KES 60,000 p.a.)
 - Life insurance policies
 - Education policies
 - Health Insurance policies
- Foreign employment tax



Final Tax (WHT)



- Qualifying interest
- Qualifying dividends
- “Qualifying” pension for persons aged 65+



PAYE Bands



	From Jan 2017 (KES)	From Jan 2018 (KES)	Applicable rate
On the first	134,165	147,580	10%
On the next	126,403	139,043	15%
On the next	126,403	139,043	20%
On the next	126,403	139,043	25%
On all income over	513,373	564,709	30%

Personal Reliefs



	From 1 Jan 2017 (KES)	From 1 Jan 2018 (KES)
Annual	15,360	16,896
Monthly	1,280	1,408

Tax - free emoluments limit is **KES 12,460** per month which will increase to **KES 13,706** from 1 January 2018

International Assignees- Expatriates



Taxation

Tax resident	Worldwide employment income	122/183 days average/aggregate
Non-resident	Derived or accrued in Kenya	
Immigration		
Special Pass	3 months	Renewable once
Work Permit (D)	For up to 2 years	Renewable

Terminal Dues



- Net Agreed Income.
- Pay in lieu of leave.
- Service Gratuity Pay
- Notice pay
- Terminal Dues/Lump Sums
- Compensation for loss of income i.e. Damages awarded by a Court of Law

Employer And Employee Responsibilities



Employer

- Deduct PAYE and pay
- File monthly returns

Employee

- Provide PIN
- Compute own taxes
- File annual return



Non Compliance



- Failure to deduct & account for tax from employment emoluments
- Monthly returns (online)
- Individual tax returns
- PIN transactions

Due Dates



Due dates:

- **Monthly returns – 9th day of subsequent month**
- **Penalty – the higher of 25% of the tax due or *KES 10,000***

Due Dates



- National Social Security Fund (NSSF) – 15th day subsequent month
- National Hospital Insurance Fund (NHIF) – 9th day subsequent month
- Higher Education Loans Board (HELB) – Monthly remittance
- Directorate of industrial Training Levy – Before end of the current month

Legal Requirement for Individual filing



- Section 83(1)(c) of the TPA, all individuals are required to file their self assessment returns
w.e.f 1 July, 2013
- Individuals should file their return via iTax
- Penalty of 5% of the tax due or KES 20,000
whichever is higher

Employee Vs Consultant



Employee vs Consultant



Contract of service - exercises control over the work done

‘exercise of control’ includes:

- Supervision of work
- Rules and regulations as to “clocking”
- Leave
- Tools of trade
- Can sue in court for dismissal



New Developments in Employment Tax



Everret Aviation Limited Vs Kenya Revenue Authority



- The dispute between Everret Aviation Limited (“Everret”), a Kenyan company providing helicopter charter services in Kenya and abroad and the KRA, involved taxation of freelance resident and non-resident pilots.

Everret Aviation Limited Vs Kenya Revenue Authority



- **Everret Aviation Limited** : Charged WHT on the fees paid to freelance pilots
- **Kenya Revenue Authority**: Provided that the freelance pilots' pay are subject to PAY

Everret Aviation Limited Vs Kenya Revenue Authority



- Judgment: The high court held that, freelance pilots were employees
- PAYE was applicable on their pay and not WHT
- Everret Aviation Limited has appealed this ruling

Case Law



KAPA Oil Refineries (Appellant) Vs The KRA (Respondent)

- The case involved taxation of Mr Ogode, hired by Kapa Oil Refinery Limited (“Kapa Oil”) as a ***management consultant***.
- Taxed on basis of WHT rules. After a tax audit, KRA categorized Mr Ogode as an employee
- Kapa Oil was found liable for taxes not remitted to the KRA

INTERACTIVE SESSION



Interactive
Session

