

Taxation of individuals

Presentation by:

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PAYE issues facing taxpayers



- ☐ Failure to file monthly PAYE returns
- ☐ Non payment of PAYE due
- ☐ Omission of certain incomes/benefits
- ☐ Interest free loans advanced to employees
- ☐ Consultancy contracts with employees
- ☐ “Housing benefit” – employees houses treated as offices

PAYE issues facing taxpayers



- ☐ Cash allowance/cash payments to employees
- ☐ Excess pension contribution
- ☐ Payments made to expatriates in overseas accounts
- ☐ Unexplained variances between salary ledger and payroll
- ☐ Lack of supporting documents for payments made to staff

Introduction



❑ PAYE is chargeable on income:

- Of a resident or non-resident person
- Accrued in or derived from Kenya

❑ Kenyan residents taxed on their worldwide employment income.

❑ Non-residents taxed on Kenyan sourced employment income.

Who is a tax resident?



❑ Kenyan tax residency test:

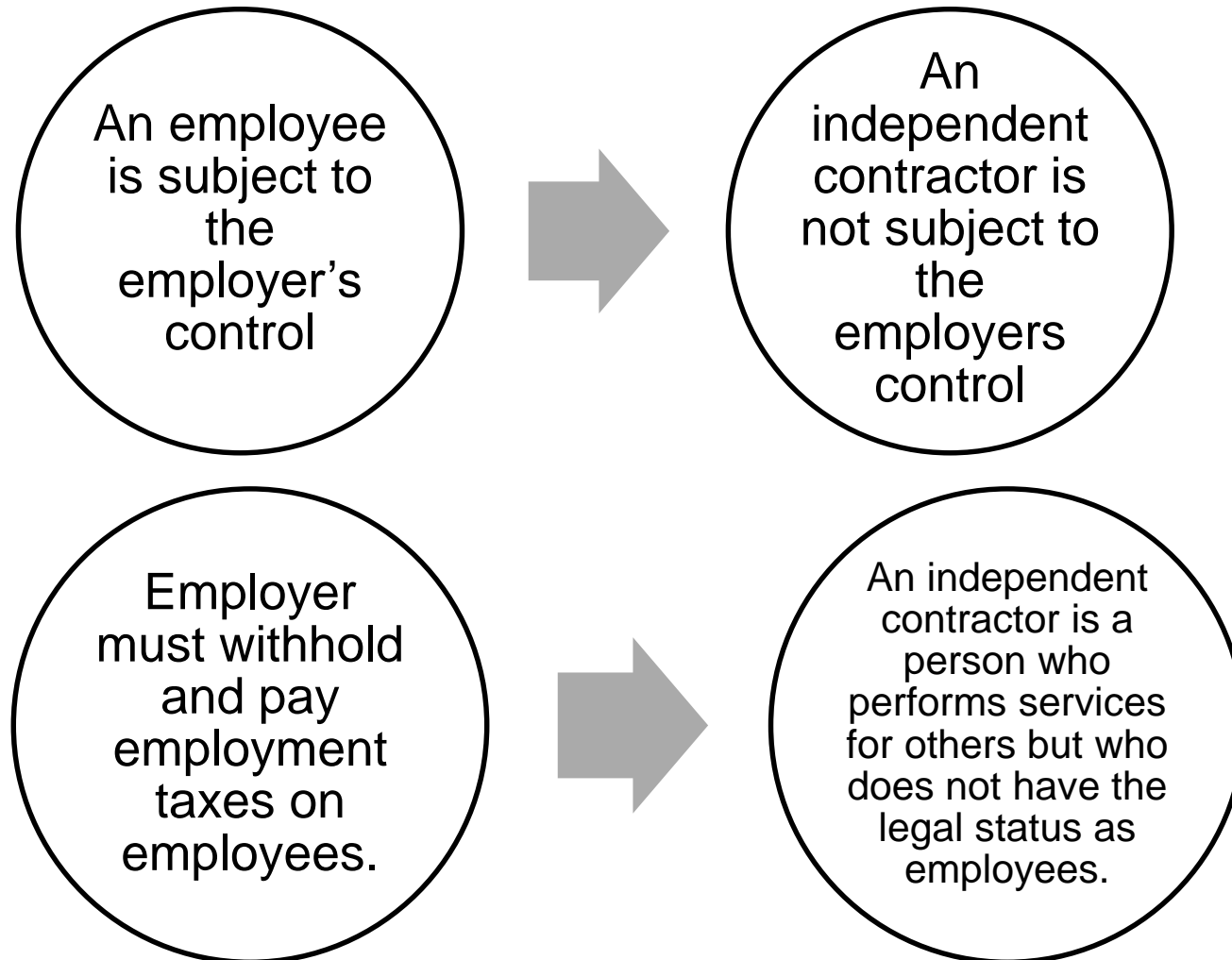
- One has a permanent home in Kenya and was present in Kenya for any period in a particular year of income; or
- No permanent home but was present in Kenya for an :
 - ❖ Aggregate period of 183 days or more in a particular year; or
 - ❖ Average period exceeding 122 days in a year of income and in each of the 2 preceding years.

Taxation of a non resident person



- ☐ When is a non-resident subjected to tax?
- ☐ Employment income for a non-resident person in relation to services rendered to an employer who is resident in Kenya or a Permanent Establishment in Kenya
- ☐ A non-resident is taxable on income which is accrued in or is derived from Kenya
- ☐ What about salaries paid to an overseas account ?

Employee Vs Independent contractor



Employee Vs Independent consultant



❑ MICE Test

M

- Mutual Obligation

I

- Integration

C

- Control

E

- Equipment

❑ Substance over form

❑ What are the tax implications of consultancy contracts in employment?

Taxable benefits



- ❑ Taxable employment income consists of:
- ❑ Cash and non-cash benefits.
- ❑ Tax paid on behalf of employees by the employer
- ❑ 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.

Taxable benefits



- ☐ Cash and non-cash benefits
- ☐ Expatriates- any monies paid to expatriates other than as reimbursement of passage expenses is a taxable benefit
- ☐ Employee Share Option plans- the difference between the market price per share and the offer price per share at the date the option is granted by the employer
- ☐ Provision of a company car - Taxable at the higher of 2% per month of the initial cost of the car or the Commissioner's prescribed rates

Taxable benefits



- ☐ Provision of 'furniture' – 1% of the cost of furniture
- ☐ Per diems.
- ☐ Any amount or allowance so received in respect of employment

Taxable benefits



Housing
benefit -
Higher of:

15% of
total
income;

Fair market
rental
value; and

Actual rent
paid by
employer.

Telephone/airtime
benefit
(30%)

Gifts to
employees

Per diem
above Kshs
2,000

Internet
provision in
employees
homes

Non-Taxable benefits



Leave passages
to expatriate
employees.

Employer's
contribution to
pension funds.

Club
subscriptions for
business
purposes

Reimbursement
of expenses
wholly and
exclusively in
production of
income.

Medical cover

Cost of meals
Served in
canteens and
cafeterias
operated by
employer Kshs
4,000 p.m.

Education fees
taxed on the
employer.

Allowable Deductions



- ☐ Employees contribution to pension funds are deductible for tax purposes up to a maximum of Kshs 20,000 p.m.

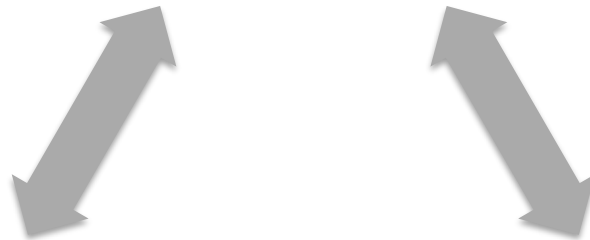
Exceptions

- ☐ Contributions by non taxable employers
- ☐ Contributions to unregistered schemes
- ☐ Excess contributions
- ☐ Mortgage interest of up to a maximum KShs 300,000p.a
- ☐ Home Ownership Saving Plan Kshs 48,000 p.m

Reliefs



Education , Life and
Health policies
covered under
Insurance relief



Insurance relief 15%
of premium up to a
maximum of 60,000
p.a



Personal relief of
KShs. 1,408 p.m

Non-taxable employment benefits



Group life insurance

In *Commissioner of Domestic Taxes Vs Standard Chartered (K) Ltd* the court was of the opinion that section 5(2)(f) does not encapsulate Corporate Owned Life Assurance Contracts and it was stated

Until such time as Section 5 (2) (f) of the Act is amended, the expenses on premiums paid under such a Corporate Owned Life Insurance Contract in Kenya shall remain excluded from the income of an employee.

Taxation of lump sum terminal dues



- ☐ Spread backwards and tax together with income earned in the relevant years.
- ☐ Income for fifth year and prior years deemed to be income for the 5th year.
- ☐ Payment in lieu of leave taxable in the year in which the leave days relates to.
- ☐ Notice pay is assessable in the period immediately after the date of leaving employment.

Taxation of terminal dues for contract employees



Specified term
contract

The amount of the compensation will be spread evenly over the unexpired period of the contract.

Unspecified term
contract which does
not provide for
compensation upon
termination

Compensation received should be spread evenly for three years following the termination.

Unspecified term
contract which
provides for
terminal payment

The compensation will be spread forward and assessed at the rate of the employee's remuneration per annum prior to the termination.

EXEMPT PERSONS



- ☐ The first Kshs.150,000 paid to a disabled person is EXEMPT
- ☐ An application for exemption to the Minister responsible for Finance should be done.
- ☐ Renewal should be done after every five years.

Tax evasion/ tax avoidance



- ❑ Tax evasion is the illegal act of failing to accurately declare income or deductions and failing to pay taxes
- ❑ Tax avoidance is the act of reducing taxes in ways that are legal and compatible with the law
- ❑ Objectives of tax planning
 - ✓ to maximize the amount of money that one can keep by legally minimizing the amount of tax payable

Tax planning measures for employees



- ☐ Mortgage interest paid by an employee - maximum KShs. 300,000 p.a.
- ☐ Reimbursement of expenses incurred by employee wholly and exclusively in production of income
- ☐ Insurance relief 15% of premiums up to a max of KShs 60,000 p.a
- ☐ Home Ownership Savings Plan – KShs 4,000 per month
- ☐ Passages to the home country for the expatriates.

Recent developments



- ❑ PAYE tax bands were revised as follows w.e.f. 1 Jan 2018.
- ❑ Personal relief increased from KShs. 1,280 p.m. to KShs. 1,408 p.m.
- ❑ Individuals earning KShs. 13,486 will not be liable to PAYE.
- ❑ Lowest income tax band – overtime, bonuses and retirement benefits not taxable w.e.f 1 July 2016

Penalties and interest



Penalties may be imposed if the employer fails to:

- ☐ Account for tax deducted
- ☐ Deduct a tax upon payment of emoluments to employees
- ☐ File a return

Q & A

