

UNCLAIMED ASSETS: THE AUDITORS'S ROLE

Presentation by:

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UFAA Mandate & Role



- ❑ The Unclaimed Financial Assets Authority (UFAA) is a statutory organization established under the National Treasury pursuant to the Unclaimed Financial Assets (UFAA) Act No. 40 of 2011
- ❑ The primary mandate of the Authority is to receive unclaimed financial assets from holders of such assets, safeguard and reunite the assets to their rightful owners.

Objectives and Functions of UFAA



- ❑ Receive unclaimed financial assets;
- ❑ Manage UATFA
- ❑ Investments
- ❑ Making payments out of UATFA to rightful owners
- ❑ Advising CS, TNT on pertinent issues regarding UFA.
- ❑ Undertake examination of holders' records to examine extent of compliance.

Process of Identifying UFA



“unclaimed financial assets” means assets that:

- ❑ have been presumed abandoned and have become unclaimed assets under the provisions of this Act.
- ❑ have been transferred to the Authority as unclaimed financial assets.
- ❑ have been deemed under any other law to be unclaimed assets and payable to the Authority, and includes all income, dividend or interest thereon but excludes any lawful charges thereon.

How Assets become Unclaimed



One or more of these requirements must be satisfied for an assets to become unclaimed assets:

- ❑ the records of the holder do not reflect the identity of the person entitled to the assets.
- ❑ the holder has not previously paid or delivered the assets to the apparent owner or other person entitled to the assets.

How Assets become UnclaimedCont'd .



- ❑ the last known address, as shown on the records of the holder, of the apparent owner is in a country that does not provide by law for the escheat or custodial taking of the assets or its escheat or unclaimed assets law is not applicable to the assets and the holder is domiciled in Kenya.
- ❑ Death, Forgetfulness, Poor record keeping.
- ❑ Relocation... Ignorance, Negligence..

UFA Vs. Abandonment period



Asset	Period
Travelers cheques, money orders, and other related instruments	2 Years
Cheques, drafts or similar instruments- financial institution is directly liable	2 Years
Demand, savings or matured time deposits.	5 Years
Life endowment insurance policies or annuity contracts	2 Years
Demutualization of insurance company	2 Years
Deposit for utility services	2 Years
Determination or Order by Court of refund by holder	2 Years
Any stock, share or other intangible ownership interest in a business entity	3 Years

UFA Vs. Abandonment period...cont'd



Asset	Period
Assets from dissolved Business entity	2 Years
Assets held in fiduciary capacity	2 Years
Gift certificates or credit memo	5 Years
Unpaid wages	1 Year
Assets held in safe deposit box or repository	2 Years
Assets held for owner by court or Government department	1 Year

The CS NT may prescribe further categories of UFA through Gazette notice and respective qualifying criteria.

UFA Regulations, 2016



- ❑ UFAA has come up with UFA Regulations, 2016 to operationalize the Act. Regulations cover mainly the Holders reporting process and claims process by use of various Forms.
- ❑ Holders file UFA returns via Form 1, Form 2, Form 2A, Form 3 & Form 3A.
- ❑ Claimants are expected to fill Forms: 4A or 4B or 4C or 4D, and Form 5 to enable the Authority to process the claims & attach identity details together with holders' written remittance confirmation.

Reporting Time



- ❑ Holder(s) of any UFA shall file the reports to UFAA & remit equivalent value of funds to UATFA at CBK on or before 1st November of each year for the 12-month period ending on the immediate preceding 30th day of June.
- ❑ The Authority may extend the filing date up to 60 days after the deadline, **but IF.....**
- ❑ The holders are expected to provide reports in soft and hard copies using the format in UFAA Regs, 2016.

Benefits of Compliance



- ❑ The Authority assumes custody and responsibility for the safekeeping of assets.
- ❑ Anyone who remits UFA to UFAA in good faith shall be relieved of all liability to the extent of the value of assets paid or delivered to the Authority.
- ❑ Where the holder pays or delivers assets to the Authority in good faith, the Authority shall defend the holder against any claim and indemnify the holder against any liability on the claim.

Benefits of Compliance cont'd....



- ☐ Enhances shareholder/customer relations.
- ☐ Minimizes corporates “deadwood”.
- ☐ Reunites and reactivates missing owners with their assets.

- ☐ Reduces operating expenses/overheads.
- ☐ Eliminates regulatory/non-compliance risks.
- ☐ Reduces risk of operational fraud.

- ☐ Obviates embarrassing and awkward questions.
- ☐ Manage your time well.

Consequences for Non Compliance



The Authority may exercise powers prescribed under Secs. 31 & 33 in the event that a holder(s) is not complying with regards to due filing procedures. **Penalties** that can be instituted are:

- ☐ The holder to pay to the Authority interest at the current monthly rate of 1% above the adjusted prime rate per annum per month on the assets or value of the assets from the date the assets should have been paid or delivered.
- ☐ The adjusted prime rate shall be based on the Central bank of Kenya average rate during the twelve-month period ending thirtieth day of September.

Consequences....cont'd



- ❑ A person who willfully fails to render any report or perform other duties required under the Act shall be liable to pay penalty of **Kshs 7,000** but not more than **Kshs 50, 000** for each day the report is withheld or the duty is not performed.
- ❑ A person who willfully fails to pay or deliver assets shall be liable to pay a penalty equal to 25% of the value of the Assets that should have been paid or delivered.


Consequences....cont'd



- ☐ These penalties under subsections (1), (4) and (5) shall be recoverable as a civil debt summarily.
- ☐ Authority shall have powers to assess the cost of the examination/audit against the holder.
- ☐ Where a body corporate commits an offence under UFA Act, 2011, an employee, officer, director or agent of the corporation who authorises, permits or acquiesces in the commission of the offence commits an offence.

Consequences....cont'd



- ❑ A person who wilfully refuses after written demand by the Authority to pay or deliver assets to the Authority as required under this Act commits an offence.
- ❑ A person Convicted of an offence under the Act, shall be liable to a fine of not less than fifty thousand shillings and not more than one million shillings or to imprisonment for not more than one year, or to both.
- ❑ Who is this person..........???

Consequences....cont'd



PENALTIES: Illustration of a sample case				
Amount assessed as unclaimed financial assets - Kes.			1,000,000	
Where:	First compliance cycle		Saturday, 1 November 2014	
	Last compliance cycle (date of audit)		Wednesday, 1 November 2017	
		Days overdue	1,096	(36 Months)
Section	Type of Penalty	Penalty Kes.		
Sec. 31(1) ¹	Interests (CBR +1 %) per month	3,600,000		
Sec. 31(4) ²	Daily penalty between 7,000-50,000	54,800,000		
Sec. 31(5) ³	25% of assets held	250,000		
Total Penalties ⁴		58,650,000		
	Total dues	59,650,000	Excludes cost of audit & Jail terms	
The UFA Act, 2011				
Sec. 31(1) ¹	Adjusted prime rate per annum (assumed at 10%)per month on the assets or value.			
Sec. 31(4) ²	Assumed Max - 50,000 shillings for each day the report is withheld or the duty is not performed.			
Sec. 31(5) ³	Liable to pay a penalty equal to 25% of the value of the assets that should have been paid or delivered.			
Total Penalties ⁴	Section 31(7) cost of audit / examination shall be assessed against the holder			

Role of A/C professionals in UFA Regime



- ❑ Understanding UFA Act, 2011 & areas of collaborations
- ❑ Assist holders in identification of qualifying UFA when preparing/reviewing financial statements.
- ❑ Ensure accurate and timely reporting on all categories of UFA, including **Nil** returns.
- ❑ Assist holders' management in re-unification prior....
- ❑ Develop/review sound ICS for continuous UFA filing.
- ❑ Internal staff capacity building on UFA matters.
- ❑ Quantity non-compliance risk

Progress on UFAA to date



- ☐ Authority now fully set up and fully functional in implementing the mandate
- ☐ Received Kshs 11B in UATFA and >400 MN units of Shares.
- ☐ Online reporting portal for holders, & claimants search
- ☐ Over 40% of lodged claims paid out
- ☐ Awareness campaigns.
- ☐ Signed MOUs with;
CBK, CMA, RBA, SASRA, IRA, IPRS, ICPAK, OAG
WIP: CA, KRA, FKE, IGTRC..etc
- ☐ Holders Audits – internal and external.
- ☐ Global partnerships – NAUPA member.

Progress....cont'd



- **Challenges**

- ☐ Education & Awareness
- ☐ Compliance
- ☐ Incomplete records
- ☐ Legislative/Reporting inconsistencies
- ☐ Non recognition of UFA in IFRS & IAS

Summary of roles and responsibilities



Holders	UFAA	Claimants
Identify UFA as stipulated in UFA Act, 2011	Receive Safeguard Re-United	Claim Proof of identity
File reports on UFA (both soft & hard copies)	General Administration of UFA Regime in line with (UFA 2011)	Continuous search of UFA
Institute Strong Internal Controls	Maintain searchable database on reported UFA,	Right to perpetual Re-unification
Reunification	Reunification	Reunification

Our Call to A/C Professionals



- ☐ Risk Assessment
 - i. Identify compliance issues and areas of potential exposure relating to UFA law
- ☐ Quantification of Actual Liability
 - i. Quantify liability by
 - i. Asset type
 - ii. Retrospective
- ☐ Voluntary Disclosures
 - i. Endeavor to resolve any outstanding compliance issues with UFAA
 - ii. Comply in preparation of financial statements
- ☐ Policies, Procedures and Process Improvements
 - i. Development of customized written policies and procedures and enhance compliance processes
 - ii. Contribute to the review of UFA Act, 2011 and Regulation, 2016

Q & A



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