



THE FINANCIAL MANAGEMENT CONFERENCE FOR PUBLIC SECTOR

Taxation & Other Statutory Aspects in the Public Sector

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Uphold Public Interest

Structure of the Presentation

- **The Legal Framework**
- **Corporation Tax**
- **PAYE**
- **Withholding Tax**
- **Due Dates**
- **Sanctions**



Legal Framework for Taxation in Kenya

Main sources of legal force for tax laws:-

1. The Constitution of Kenya

2. Legislation:

✓ *Income Tax Act*

✓ *VAT Act*

✓ *Excise Act*

✓ *Customs & Excise Act*

✓ *Tax Procedure Act*

✓ *Tax Appeals Tribunal Act*

✓ *East Africa Community Customs Management Act*

✓ *Finance Acts*

✓ *The Kenya Revenue Authority Act*

3. Case law



Corporation Tax

Who is liable to Income Tax?

Income tax **shall be charged** for each year of **income** upon all the **income** of a **person**, whether resident or non-resident, which **accrued** in or was **derived** from Kenya.

The Income Tax Act (Cap. 470)



Sources of Income Chargeable to Tax

Gains or profits from:

- ❖ A **business**, for whatever period of time carried on
- ❖ **Employment** or services rendered
- ❖ **Royalty, rent, premium** or **similar** consideration received for the **right** granted for the **use** or **occupation** of property
- ❖ **Dividends** or interest
- ❖ Lumpsums, **Pensions** & Withdrawals from Funds & HOSP
- ❖ An **amount deemed** to be the income
- ❖ Gains arising out of transfer of property - CGT
- ❖ A natural **resource** income and **disposal of an interest**



Specified Sources of Income S.15(7)

1. Income from **rights** granted to other persons for the use or occupation of immovable **property**;
2. Income from **employment** - including former employment
3. **Wife's** employment income
4. Income from **agricultural**, pastoral, horticultural, forestry or similar activities



Specified Sources of Income S.15(7)

5. Surplus funds withdrawn or refunded to an employer in respect of registered **pension** or registered provident funds which are deemed to be the income of the employer
6. Income of a **licensee** from one license area or a contractor from one contract area for extractive industries;
7. **Other** sources of income chargeable to tax under section 3(2)(a), not falling within 1 - 6.



Corporation Tax

Business: includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment;

Indicators of trade:

- ☐ Profit seeking motive
- ☐ Mode of acquisition of asset
- ☐ Nature of asset and quantity involved
- ☐ The length of time an asset is held
- ☐ Treatment of asset while held
- ☐ Number of transactions



Deductions allowed Against Income

- ❖ Expenditure **wholly** and **exclusively** incurred in the production of **that** income.
- ❖ **Debts** that have gone **bad** and properly estimated **doubtful** debts.
- ❖ Donations towards **National Disaster** and specified charities.
- ❖ Expenditure for **prevention of soil erosion**.
- ❖ **Capital** expenditure on **lease** for a period up to ninety-nine years, of premises.
- ❖ **Pre-commencement expenses**
- ❖ Diminution in value of any **implement, utensil**



Deductions Allowed Against Income

- ❖ Expenditure incurred with the **prior approval** of the Minister on the construction of a **public school**, hospital, road or any similar kind of **social infrastructure**.
- ❖ For landlords, sums expended for structural alterations to the premises to **maintain** the existing rent - not the cost of an extension to, or replacement of those premises
- Sponsors of sports - allowed a deduction with **prior approval** of the Cabinet Secretary for sports



Deductions Allowed Against Income

- ❖ Expenditure of a capital nature incurred by the owner or tenant of agricultural land on clearing that land, or on **clearing** and **planting** thereon permanent or semi-permanent crops;
- ❖ Expenditure on **advertising**
- ❖ Trade deficits (loss) for a year of income shall be an allowable deduction in ascertaining the total income of that person for **that** year and the **next nine succeeding** years of income



Expenditure on Scientific Research

Expenditure of **capital or revenue** nature incurred by a person:-

On **scientific research**,

A sum paid to an approved scientific research association

A sum paid to a university, college, research institute

Shall be an allowable deduction



Capital Deductions - Second Schedule

Industrial Building Deduction Par 1, 5

- Industrial Building – 2.5% - Forty (40) years-
- Hotels - 4% -Twenty Five (25) years - up to 2006
 - - 10% - Ten (10) years – 2007 onwards
- Hostels and Educational Buildings -10% Ten (10) years – 2007, 50% for 2010 onwards
- Building in use for the training of film producers, actors or crew – **100%**
- Rental Residential Building - Planned Development Area - 5% -Twenty (20) years

*Rate may be increased by the Commissioner - **Par 1 (b).***



Allowances under the Income Tax Act

- **Commercial Building Allowance – S6A**
- Capital expenditure on the construction of a commercial building and has provided roads, power, water, sewers and other social infrastructure, then
- A deduction equal to **twenty five percent** per annum shall be allowed.



Wear and Tear Deductions (Par 7)

- **i) Class i -37.5%**
- **Tractors, Combine Harvesters, Heavy Earth Moving Equipment, and such other heavy self propelling machines.**

- **ii) Class ii-30%**
- **- Computers, Peripheral computer Hardware, Copiers, and Duplicating Machines.**

- **iii) Class iii -25%**
- **-Other Self Propelling Vehicles including planes, Pick-Ups and Lorries of Three (3.5) tones or less, Motor Vehicles excluding Trailers.**



Wear and Tear Deductions (Par 7)

- **Class iv-20%**
- **Telecommunications Equipment**
- **Class v-12.5%**
- **All other machinery including ships**
- **vi) Class vi - 20 %(Straight Line) or 5 years**
- **Computer Software**



Withholding Tax

Withholding tax system refers to a mechanism in which tax is recovered at source, that is, the recipient of income is paid a net amount.

Withholding Tax is deducted upon **payment**

Resident persons - tax in advance

Non-resident person - final



Royalties

- ❑ Royalty - means a payment made as a consideration for the use of or the right to use -
- ❑ The **copyright** of a literary, artistic or scientific work; or
- ❑ A **cinematograph** film, including film or tape for radio or television broadcasting; or
- ❑ A **patent**, trade mark, design or model, plan, formula or process; or
- ❑ Any **industrial**, commercial or scientific **equipment**, or for information concerning industrial, commercial or scientific equipment or experience, and gains derived from the sale or exchange of any right or property giving rise to that royalty;



Third Schedule - Rates of WH Tax

Source	Resident	Non-resident
Royalties	5%	20%
Management/ professional fees	5%	20%
Rents	Appointed tenants 10%	Movable-15%, Immovalbe-30%
Contractual fees	3%	20%



PAYE

- **Who is liable to PAYE?**
- **Persons who are resident for tax purposes are taxed on their **worldwide** employment income.**
- **Non-resident persons are taxable on any income that is **derived** or deemed to be derived from **Kenya**.**
- **Employer's Authority to deduct S37**
- **Application to Government – S38**
- **Employer's indemnified against any prosecution S51 ITA & Sec.16(4) of TPA**
- **Director and every officer responsible for failure S 37A**



PAYE

- A person who fails to remit the amount of any deduction, provisions relating to the collection and recovery of tax, and the payment of interest thereon, shall apply to the collection and **recovery** of that amount as if it were tax due and payable by that person. **S 37(5)**
- Failure to deduct attracts a penalty of the higher of 5% of tax involved or 20,000/-



PAYE

- **Employee** - Includes any holder of an appointment of office, whether public, private or religious calling, for which remuneration is payable.
- **Consultant** - is an experienced individual in a given field who provides expert advice for a fee. Consultants typically work as independent contractors and are hired on a short-term basis. A consultant may also be an employee at a consulting firm.



Per Diem

- **Per diem Sec 5(2)(a) - Per diems are ‘per day’ allowances normally given for upkeep of staff when on official travel.**
- **W.e.f. 16 June 2006 the first Kshs. 2,000 is **deemed** to be a reimbursement.**
- **S.5 (2) (a) (ii) - Per diem amounts exceeding Kshs. 2,000 should ideally be supported preferably with vouchers from an arms-length arrangement.**
- **An employer can maintain a documented policy on the management of per diem to satisfy that the amounts paid are reimbursements of costs incurred by the employee.**



Tax Treatment Of Common Benefits

- **Motor vehicles** Provision of a 'company' car is taxable at 2% p.m. of the initial capital cost of the car or lease or hiring cost
- **Housing benefit** – If the employer pays rent under an agreement at arm's length, value of the benefit shall be the higher of :-
 - ▶ 15% of gross emoluments or actual cost to the employer.
- **Education fees** - Paid by the employer for employee's dependants are not taxable on the employees if taxed on the employer
- **Duty meals** are a tax exempt benefit where the value of the meal does not exceed Kshs. 4,000 p.m per employee.



Contributions to Pension Scheme

- An employee's contribution to any **registered** defined benefit fund or defined
- Contribution fund is now an admissible deduction in arriving at the employee's taxable pay of the month. The employee's deductible contribution is the **lesser** of:
 - a. 30% of pensionable pay.
 - b. Employee's actual contribution.
 - c. Ksh.20,000 per month



Mortgage Interest Deduction

- Available to owners of residential houses who **occupy** them; no claim for more than **1 residence**
- Applies to purchase or improvement of premises.
- Deduction of up to Kshs. 300,000 p.a. W.e.f. January 2017
- Deduction given on interest from banks, insurance companies, building societies and National Housing Corporation. S.15(3) (b)



Tax Treatment of Common Benefits

. Honoraria

- This is a payment in recognition of acts or professional services for which ordinarily no price tag is set.
- It is taxed at the time of receipt

. Locum

- A locum is a person who temporarily fulfils the duties of another e.g. a locum doctor or nurse. This is mostly done as part time engagement.
- It is taxable at the relevant rate in most cases top rate of 30%.



Reliefs

Personal Relief - Kshs. 16,896 (1,408 PM)

Insurance Relief - Relief against life insurance premiums paid by the individual or by the employer or for the life of the individual, spouse or child

An education policy with a maturity period of at least **ten years qualifies for Insurance relief;**

Insurance Relief given of 15% of premiums paid up to a maximum of Kshs. 60,000 p.a



Non-taxable benefit/ exempt

- **Medical benefit** Non-taxable benefit for full time employees and whole time service directors.
- **Bonus/overtime/retirement benefits** to an employee whose salary before the bonus and overtime allowance is in the lowest tax band is exempt. W.e.f 1st July, 2016
- **Disabled persons** First Kshs. 150,000 per month exempted from tax
- The monthly pension granted to a person who is sixty five (65) years or more is exempt from tax.



Tax Exemptions

- The income of an institution, body of persons, or irrevocable trust, of a public character established solely for the purposes of:-
- The relief of the **poverty** or distress of the public or the advancement of **religion** or **education**:-
- Established in Kenya; or regional headquartered in Kenya
- Whose income is for purposes which result in the benefit of the residents of Kenya



Due Dates

PAYE – Before the 9th day following the end of every month or before any other day which may be notified by the Commissioner

WHTax - on or before 20th day of the month following the end month when deducted.

VAT - on or before 20th day of the month following the end of the tax period.

Corporation Tax – Installment Dates, Balance of Tax and filing of SA - S52B, **Instalment assessment** S74A.



Due Dates

Fringe Benefit Tax – Before the 10th day following the end of every month or before any other day which may be notified by the Commissioner



Prosecutions under tax laws

- A person shall **not** be subject to **both** the imposition of a **penalty** and the **prosecution** of an offence in respect of the same act or omission in relation to a tax law
- If a person has committed an act or omission that may be liable under a tax law to both the imposition of penalty and the prosecution of an offence, the Commissioner shall decide whether to make a demand for the penalty or to prosecute the offence.

S80

- **S108**—Tax to be paid despite prosecution.



Sanctions for Offences

- ***General Penalty:-***
- **A person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings and to imprisonment for a term not exceeding three years, or to both. **S104****



Sanctions for Offences – Tax Fraud – S97, 104

- (a) **omits** from his or her return any amount which should have been included; or
- (b) **claims** any relief or refund to which he or she is not entitled; or
- (c) makes any **incorrect** statement which affects his or her liability to tax; or
- (d) prepares **false** books of account or other records relating to that other person or falsifies any such books of account or other records; or



Sanctions for Offences – Tax Fraud – S97, 104

- (e) deliberately **defaults** on any **obligation** imposed under a tax law
- On conviction shall be liable to a fine not exceeding **ten million** shillings or **double the tax** evaded, whichever is *higher* or to imprisonment for a term not exceeding **ten years**, or to **both**.



Dynamism - Tax Matters

1. **Amendments to Tax Laws**

- Tax laws are usually amended every budget cycle.
- The commissioner or minister in charge of national treasury may also make certain rules operationalizing certain sections of the existing laws.
- Parliament legislative role- Enactment of new laws.
- **The above may require reconfiguration of accounting and tax systems to ensure compliance.**



Tax Amnesty on Foreign Incomes

- **Section 37B of the Income Tax Act (FA 2018)**
- **Tax Amnesty Guidelines on Foreign Incomes extended up to 30th June, 2019**



National Housing Development Fund

FA 2018 S86

- **Employer's Contribution 1.5%**
&
- **Employee's Contribution 1.5%**
- **Of monthly basic employee's salary**
- **Due date 9th day of the following month**
- **Effective Date 1st July, 2018**



How to Enhance Tax Compliance

- **Filing Correct returns on Time and Paying all tax due on time**
- **Utilization of double tax treaties**
- **Developing In house tax capacity**
- **Annual Tax Health Checks and implementing tax consultant's advice**
- **Seeking tax advice before major business decisions**
- **Review agreements and contracts – integrate tax into all aspects of business**
- **Tax Training**



Thank you



DISCUSSIONS

