



AMMENDMENTS TO TAT & TPA ACT

Presentation by:

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Uphold public interest

The Tax Appeals Tribunal Act, 2013



1) **Amendment to section 10(3) - Adjournment of Proceedings**

This amendment provides that where a member of the panel ceases to be such a member or is not available for the proceedings, the Chairperson of the Tribunal shall assign another member to the panel and the proceedings shall continue.

This will reduce delays in the hearing and determination of cases at the Tribunal.

Effective date: 1st July, 2018

The Tax Appeals Tribunal Act, 2013



2) Amendment of section 13: Hearing & Determination of Proceedings

This section introduces a subsection (8) to provide that when a matter is referred for settlement out of the Tribunal, the time specified for the Tribunal to hear and determine the dispute shall stop running until when the matter is referred back to the Tribunal.

This will provide fairness and allow for adequate time for resolution of disputes in the Tribunal.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



1. Clean up Amendments

- Section 3 on the definition of “prescribed form” – replace reference to section 70 with 71.
- Amendment of Section 12(4) – deletion of the word application.
- Section 62 – replace reference to section 62 with 63
- Section 80 - replace reference to section 48 with 47
- Section 104(2) – replace the word “and” with “or”.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



2) Amendment of section 16 - Liabilities and obligations of tax representative

Amended in subsection (3) by specifying that a tax representative shall only be responsible for the tax obligation for which they are appointed.

This will limit responsibilities of tax representatives and shield them from unnecessary litigation matters for which they were not appointed.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



- **3) Amendment to section 25: Extension of time to submit tax return:**
- The amendment provides that the application shall be lodged at least –
 - ✓ **15 days before the due** date in respect of monthly returns and
 - ✓ **30 days before the due** date in respect of annual returns.
- The Commissioner shall communicate his decision to the applicant at least **five days before the due date**,
- The late filing penalty shall not apply where an extension to file a return has been granted.
- Only one application for extension to file a return shall be granted for a tax period.

This is to bring clarity in the implementation of the section by providing conditions for application in terms of timelines.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



4) Amendment of section 31 (2) & (3)- Application for amendment of a return

- The amendment clarifies that a taxpayer who has made a self-assessment may submit an amended self-assessment return to the Commissioner within the period specified and the Commissioner may accept or reject the amended self-assessment return.
- In case he rejects, he shall furnish the taxpayer with the reasons for such refusal within 30 days of receiving the application.

This will clarify the manner in which an application for amendment of a return is to be made.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



5) Amendment to section 37B to extend amnesty to 30th June, 2019

- The Act extends the period of amnesty to 30th June, 2019, and the declaration year to be 2017.
- Money transferred shall not be subject to Proceeds of Crime and Anti-Money Laundering Act, 2009 or any Act.
- However, this excludes funds derived from proceeds of terrorism, poaching and drug trafficking.

This is to allow more time for persons seeking amnesty and create favorable environment for repatriation of funds.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



6) Amendment of section 38 - the late payment interest

The late payment interest retained at 1%.

7) Amendment of Sec. 42 - Replace the word 'payer' with 'agent'

- The usage of the word “payer” has caused confusion as it was interchanged with the word “taxpayer”.
- The Act amends the section by using the appropriate term, “agent”.
- Subsection (6) is amended by replacing the word “taxpayer” with the word “agent”.

This is to bring clarity to the section.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



8) Amendment to section 51(3) to introduce requirement for submission of relevant documents

The Act has introduced –

- arrangement for payment of taxes not in dispute as one of the conditions for validity of an objection; and
- a requirement for submission of all relevant documents at the objection stage, in order to facilitate the Commissioner to make an informed decision, failure to which the objection shall not be valid.

These are meant to accord fairness to taxpayers and fastrack dispute resolutions.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



9) Amendment of section 83 – Harmonization of late filing penalties -

- **5%** of the amount of tax payable under the return or **Ksh. 10,000**, whichever is the higher, if it is in relation to VAT or excise duty; or
- **5%** of the amount of tax payable under the return or **Ksh. 20,000**, whichever is the higher, in respect of a person other than an individual; or
- **5%** of the amount of tax payable under the return or **Ksh 2,000**, whichever is the higher, for an individual.

This is to provide distinction between the various tax heads and also between individuals and body of persons.

Effective date: 1st July, 2018

The Tax Procedures Act, 2015



10) **Section 83A – Introduction of late payment Penalty**

- This rationalizes the penalties and provides under TPA for ease of administration.
- The penalty is a uniform rate of 5% for all taxes (Finance Bill, 2018 proposed 20%).

This will provide clarity for applicability for late payment of tax and encourage prompt payment of taxes.

11) **Amendment of section 89 - Waive of penalties or interest**

- The Act allows the Commissioner to waive penalties or interest not exceeding Ksh. **1.5 Million**.
- The Commissioner shall also make quarterly reports to the Cabinet Secretary on each remission so granted so as to fast track the review and processing of waiver application.

Effective dates: 1st July, 2018

The Tax Procedures Act, 2015



12) Insertion of sections 103A and 103B – Introduction of a penalty on unauthorized access to or improper use of tax computerized system

This is to make it an offence and provide a penalty for unauthorized access to or improper use of tax-computerized system, which was under sections 40 and 41 of the VAT Act.

This is alignment of the Act.

Effective date: 1st July, 2018

End..



Thank you