

# Me & My Taxes

Presentation by:

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# Taxes



Direct

Indirect

Regressive

Progressive

Redistribute wealth

Pay for civilization

Control capital



# Obligations



## PART II – IMPOSITION OF INCOME TAX

Charge of tax  
13 of 1975, s.2,  
8 of 1978, s. 9,  
8 of 1978 s.9,  
14 of 1982, s.17

3 (1) Subject to, and in accordance with, this Act, a tax to be known as 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.

(e) an amount deemed to be the income of a person under this Act or by rules made under this Act;

5. (1) A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on –

- (a) a taxable supply made by a registered person in Kenya;
- (b) the importation of goods into Kenya;
- (c) a supply of goods or services by a person who is not a registered person.

Rates, etc. of duty.

Charge to tax

### DUTIES

#### *Liability to Duty*

110. (1) Shall be paid on goods at the rate and in the circumstances specified in the Protocol.

(2) Where under the provisions of the appropriate legislation goods are liable to duty on leaving a Partner State,

# Obligations



| Offense   | Penalty  |
|---|--|
| <ul style="list-style-type: none"> <li>• Person liable to tax failing to register for taxes</li> </ul>            | <ul style="list-style-type: none"> <li>• KES 100,000 per month subject to a maximum of KES 1 million</li> </ul>                      |
| <ul style="list-style-type: none"> <li>• Failure to keep documents</li> </ul>                                     | <ul style="list-style-type: none"> <li>• KES 100,000 or 10% of the amount of tax payable to which the document relates to</li> </ul> |
| <ul style="list-style-type: none"> <li>• Late submission of tax return on account of employment income</li> </ul> | <ul style="list-style-type: none"> <li>• The higher of 25% of the tax due or KES 10,000</li> </ul>                                   |
| <ul style="list-style-type: none"> <li>• Late submission of tax return</li> </ul>                                 | <ul style="list-style-type: none"> <li>• The higher of 5% of the tax due or KES 2,000</li> </ul>                                     |
| <ul style="list-style-type: none"> <li>• Late submission of tax return on account of Turnover tax</li> </ul>      | <ul style="list-style-type: none"> <li>• KES 5,000</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Failure to comply with electronic tax systems</li> </ul>                 | <ul style="list-style-type: none"> <li>• KES 100,000</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Tax Avoidance</li> </ul>   | <ul style="list-style-type: none"> <li>• Double the amount of tax</li> </ul>   |
| <ul style="list-style-type: none"> <li>• General offence penalty</li> </ul>                                       | <ul style="list-style-type: none"> <li>• KES 2million, or imprisonment not exceeding 2years or both</li> </ul>                       |

# Obligations



75%

- If omission is made deliberately

20%

- In any other case

10%

- Increase if second time

25%

- Increase if third time

10%

- Decrease on self declaration

- Not payable when one can prove that could not reasonably be expected to know that the statement was false;
- Commissioner must notify in writing of imposed penalty
- Taxpayer may apply for waiver of penalties

# Me and My Taxes



Six figure salary

30%

Direct taxes

16% VAT

Customs Duty

Excise Duty

RDL 1.5%

IDF 2%

Stamp

Disposable income

Fees

5%

Expenditure

Taxable  
income

30%

# Withholding tax



100

Professional, contractual, training, royalties, agency fees

5%

Withholding tax

70

Deductible expenses

30

× 30%

9

—

5

=

4

30<sup>th</sup> April

KES 500 NHIF

# Up coming changes



TOT at 3% less Presumptive tax

Security, cleaning, transport, catering, sale and promo, advertising

Digital economy

Renewal of professional membership to require a PIN

Ajira digital programme

Reverse VAT on non-registered persons

CGT up to 12.5% from 5%

35% on people earning over KES 9mil



# R v KRA ex parte Civicon



## Emergency

Income from employment,  
**etc**

8 of 1978; 13 of 1979; 10 of  
1987; 9 of 1989; 8 of 1996

## Facts

5 (1) For the purposes of section 3 (2) (a) (ii), an amount paid to-

- (a) a person who is, or was at the time of the employment or when the services were rendered, a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or
- (b) a non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment in Kenya of an employer who is not so resident,

shall be deemed to have accrued in or to have been derived from Kenya.



(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of -

- (a) gains or profits from –
  - (i) a business for whatever period of time carried on;
  - (ii) employment or services rendered;
  - (iii) a right granted to another person for use or occupation of property;

## Ruling

- S 3(2) is silent and ambiguous as to the location of employee and payment
- Followed judge Nyamu persuaded to follow intl best practice on avoidance of double taxation

# Rights



## David Mwangi Ndegwa vs KRA:

David bought land in Kiambu with buildings on it and forced to pay VAT.



### Facts

- Land purchased had commercial buildings
- Paid VAT of KES 11M under protest
- “Supply by way of sale, renting, leasing, hiring, letting of land or residential premises;”
- Can one sell land without selling the building
- Surface of the earth and airspace above

### Ruling

- Both Plaintiff and defendant agree on definition of land
- Para 8 ambiguous as it introduces the possibility that land can be distinct
- Which part to levy VAT
- Not time barred
- Purchaser has the right to claim

# Connect with us

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