

# TAX MANAGEMENT FOR PUBLIC BENEFIT ORGANIZATIONS



**Applicable Tax Exemptions and Procedures for PBOs  
Including KRA Approval**

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# Introduction



Section 13 of the Income Tax Act States as follows;  
“Certain income exempt from tax, etc.

(1) Notwithstanding anything in Part II, the income specified in Part I of the First Schedule which accrued in or was derived from Kenya shall be exempt from tax to the extent so specified.

# Introduction



(2) The Minister may, by notice in the Gazette, provide—

- (a) that any income or class of income which accrued in or was derived from Kenya shall be exempt from tax to the extent specified in such notice;
- (b) that any exemption under subsection (1) of this section shall cease to have effect either generally or to the extent specified in the notice.

# Introduction



(3) A notice under subsection (2) of this section shall be laid before the National Assembly without unreasonable delay, and if a resolution is passed by the Assembly within twenty days on which it next sits after the notice is so laid that the notice be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder, or to the issuing of a new notice

# Income Tax Exemptions



- a) Income Tax exemptions include the following:
  - i. Exemptions of Charitable Organizations under paragraph 10 of the 1<sup>st</sup> Schedule .
  - ii. Exemptions of Persons with disabilities granted under Legal Notice No. 36 of 2010
  - iii. Retirement benefit schemes under paragraph 12, 13, 14, 15 and 43 of the 1<sup>st</sup> Schedule

# Income Tax Exemptions



- iv. Home ownership savings plans
- v. Venture Capital companies, collective investment schemes
- vi. Other tax exemptions provision e.g paragraph 11, 22, 27, 29, etc
- vii. Registered trust scheme, pension schemes, pension fund and provident fund.

# Paragraph 10 of the 1st Schedule



The Government exempts the income of NGOs/PBOs, Trusts, Churches and Institutions of a public character from taxation upon application since :

They provide important services that augment social welfare. These services should be provided free of charge, below cost or at the very minimum cost.



# Paragraph 10 of the 1<sup>st</sup> Schedule



The services provided by NGOs/PBOs in many fields supplement the social sector and social welfare services provided by the government by increasing the **range** and **volume** of services by **filling in gaps**.

The Commissioner is mandated to administer the exemption of Institutions or body of persons or/irrevocable Trust of a Public Character.

# Paragraph 10 of the 1st Schedule



These include:-

- ✓ Charities/NGOs/PBOs/Trusts
- ✓ Churches/Religion Organizations
- ✓ Hospitals
- ✓ Schools/Universities etc.

# Qualification for Exemption



1. Public Character
2. Established solely for the purpose of;
  - ✓ Relief of poverty or
  - ✓ Distress of the Public or
  - ✓ Advancement of religion or education
3. The Organization:
  - ✓ Is established in Kenya; or
  - ✓ Has its Regional Headquarters situated in Kenya.
  - ✓ Income results in the benefit of residents of Kenya

# Conditions for exempting Business Gains/Profits from Income Tax



The income shall not be exempt from tax unless those gains or profits are applied solely to those purposes and either:-

The business is carried on in the course of the actual execution of those purposes; or

The work in connection with the business is mainly carried on by beneficiaries under those purposes.

# Application Procedure



Taxpayer applies to the Station/TSO for Tax Exemption.

## Enclosures:-

- ☐ A copy of the registration certificate from relevant governing body
- ☐ Returns and Audited Accounts
- ☐ A copy of the PIN Certificate.
- ☐ Constitution/Trust Deed, Rules and Regulations (Any changes should be sanctioned)

# Application Procedure



- ☐ Bank Statements in the name of the organization.
- ☐ Letter from County Government Representative.
- ☐ Proof of the projects carried out for the last 2 , 3 years or for whatever period.
- ☐ Any other relevant document.

# Exemption Process



After the receipt of all the required documents, the application is subjected to an evaluation process by:

- Carrying out an audit mainly PAYE / WHT/ Corporation taxes.
- Carrying out a field inspection.
- Analyzing the sources of funds and the usage.

# Exemption Process



- When the commissioner is satisfied that the organisation's operations are in line with paragraph 10 of the first schedule, the exemption status is granted.
- If the opposite, the application is rejected
- Certificate of Exemption is issued which is valid for five (5) years within 60 days of lodging the application.



# Exemption Process



- An organization makes an application for renewal before expiry of the current certificate, preferably 6 months before the expiry period.
- Attaches documents submitted earlier apart from Registration certificate, PIN certificate and a letter from the County Government Representative

# Tax Obligations of the Exempt Organizations



- a) Voluntary Registration
- b) Cooperate by submitting all the required documents.
- c) Deduct and remit PAYE
- d) Operate Withholding tax where applicable
  - Deduct and remit Withholding Tax

# Tax Obligations of the Exempt Organizations



- d) Continue submitting returns of income and audited accounts even after acquiring the Exemption status in accordance with Sec 52B (1b) and Section 62.

# VAT Exemptions: Legal Provisions



- Section 23, 5<sup>th</sup> and 8<sup>th</sup> schedule of the VAT Act.
- Legal Notice No. 51: gives guidelines on how to deal with remissions on capital goods
- Legal notice no.67: procedure of dealing with remissions on official aid funded projects.
- Legal notice no. 68 which dealt with remissions for charitable organizations was deleted in the budget of June 2007.

# VAT Exemptions



Remissions under Second schedule to the VAT Act 2013:

1. **Donor Agencies** [with bilateral or multilateral agreements]



*Thank  
you*