



APPLICABLE TAX EXEMPTIONS AND PROCEDURES FOR PBOs AND APPROVAL PROCEDURES

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CPA Evaline Otindo

apotaa@gmail.com



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Introduction



- What is a Public Benefit Organization(PBO?)
- Defined in Section 2 of the PBO Act 2013(note yet operational) as an activity that supports or promotes public benefit by enhancing or promoting economic, environmental, social or cultural development or protecting the environment or lobbying or advocating on issues of general public interest or the interest or well-being of the general public or a category of individuals or organizations.

Introduction



- This therefore includes
 - Non-governmental organisations(NGOs)
 - International NGOs
 - Foundations
 - Societies
 - Religious Organisation
 - Among others
- Trade unions, public bodies, religious organizations, societies, cooperative societies, sacco, micro-finance institutions and community based organizations whose objectives include the direct benefit of its members are not considered PBOs

Introduction



- They are general known as Not for profit organizations whose work is generally to address inequality and breaching the poverty gap. They normally step in to assist the government and that is why the need for exemption.
- Their incomes are largely from donations and grants which are sourced from other taxpayers

Tax Exemption



- The tax exemptions available in Kenya for PBO are driven through the following tax laws:
- Income Tax
- Value Added Tax(VAT)
- Customs Duty
- Excise Duty

Exemption under the Income Tax Act



- Governing legislation

- Section 13 of the Income Tax Act Cap 470 of the laws of Kenya provides:

‘(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.

(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.

(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.’

Exemption under the Income Tax Act



- Pursuant to S. 13 of the ITA , the exemptions available are largely outlined under Paragraph 10 of the 1ST schedule to the Income Tax Act which limits the exemptions to organizations established solely for the purposes of the relief of the poverty, or distress to the public or for the advancement of religion or education
- Examples organizations include NGOs ,INGOs , Foundations, Churches , Hospitals, Schools, Universities etc.
- The tax exemption procedure is outlined below:

Exemption procedure under the Income Tax Act



- Organization registers with the relevant organization-
 - NGO/INGO- NGO Co-ordination Board
 - Foundations-State Law Office if it is a company limited by guarantee (Registrar of companies)or a society(Registrar of societies)
 - Schools- Ministry of Education or Commission of University Education
 - Churches, trusts and any other societies-State Law Office – Registrar of Societies
- Once the organization is registered by the relevant body, the tax payer applies to the Commissioner of Domestic Taxes through the relevant Tax Service Office for Tax Exemption.
- The application should be drafted on a letter on the organization's letter head and should be accompanied by the following:

Exemption procedure under the Income Tax Act



- A copy of the registration certificate from the relevant body
- Annual income tax returns and audited financial statements.
- A copy of the PIN Certificate
- Constitution/Trust Deed, Rules and Regulations.
- Evidence of projects carried for the last three years of operations
- Letter from the Central government confirming the activities if it is an NGO/INGO.
- Brochures on project activities
- Memorandum and Articles of Association- for a company limited by guarantee

Exemption procedures under the Income Tax Act



- List of beneficiaries
- List of trustees
- Bank statements
- Evidence of any taxes paid e.g. PAYE ,VAT and Withholding tax
- Any other relevant documentation to support the application.

Once the Commissioner receives the documents the application is subjected to an evaluation process which may include:

Visiting the projects

Carrying out an audit of the accounts which includes reviewing the source and usage of fund

Exemption procedures under the Income Tax Act



Once the Commissioner is satisfied an exemption will be provided through Itax.

The exemption is valid for a period of 5 years and it should be issued within sixty days of lodging the application.

NB

- The exemption can be revoked at any time if the organization breaches its purposes e.g. moves into commercial purposes
- Renewal for exemption should be made at least 6 months before expiry to allow the Commissioner time to carry out the necessary reviews
- The organization should ensure tax compliance on other taxes e.g. PAYE ,WHT and VAT to retain the exemption

Exemption procedures under the Income Tax Act



- The organization should also continue filing its income tax returns even after receiving the exemption.
- The donations received are tax deductible by the donee.
- Any income for trade purposes is not subject to tax exemption e.g. investment income.
- The employees are not exempt from PAYE unless it is clearly stipulated by their terms of employment or employer like the employees of United Nations.
- The organization should withhold tax on payments in respect of management, professional fee and other relevant payments.

Exemption under the VAT Act 2013 Kenya



- VAT is chargeable on taxable supplies or importation of taxable goods and services.
- Applicable VAT rates; zero or 16%
- Certain items also exempt or zero rated from VAT
- The supply of services by most PBOs are exempt. The exemptions are outlined in the following paragraphs of Part II of the 1st schedule to the VAT Act 2013.
 - Paragraph 3- The supply of education services(pre-primary, primary, secondary, college university) but they do not include business or consultancy services
 - Paragraph 4- Medical, veterinary or dental services
 - Paragraph 11-(a) services rendered by educational, political, religious, welfare and other philanthropic associations to their

Exemption under the VAT Act 2013 Kenya



- Paragraph 11-(a) services rendered by educational, political, religious, welfare and other philanthropic associations to their members
- (b) social welfare services provided by charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act (Cap. 108), or by the Non- Governmental Organizations Co-ordination Board under section 10 of the Non Governmental Organization Co-ordination Act (Cap. 134) and whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act (Cap. 470), and approved by the Commissioner of Social Services

NB does not apply where the services are for business purposes

Exemption under the VAT Act 2013 Kenya



- Paragraph 20 Taxable services for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary to the National Treasury.
- Paragraph 21 Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary in charge of health
- For exempt goods- these are outlined under Part 1 of the 1st schedule to the VAT Act 2013. These include:

Para 51. Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury

“official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency

Exemption procedures under the VAT Act 2013 Kenya



For the exemption of VAT on goods purchased for official aid funded project the organization must apply to the Cabinet Secretary for National Treasury through the relevant registering organization e.g. the NGO Board.

The procedure is as follows:

- A copy of the registration certificate from the relevant body
- Annual income tax returns and audited financial statements.
- A copy of the PIN Certificate
- Constitution/Trust Deed, Rules and Regulations.
- The specific invoices and documents in support of the goods that are to be purchased or imported, the VAT on the purchases and the expected benefit of the VAT saved.
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Exemption procedures under the VAT Act 2013 Kenya



- Evidence of projects carried for the last three years of operations
 - Brochures on project activities and the intended beneficiaries for the specific projects
 - Memorandum and Articles of Association- for a company limited by guarantee
 - Any other relevant documentation to support the application
 - Once satisfied the relevant body will send the application together with a recommendation letter to the CS National Treasury
 - If satisfied the CS National Treasury will recommend KRA to issue approval for the VAT exemption.
 - KRA will then give the VAT exemption approval on the specific invoices
- NB for VAT it is assessed on a case to case basis

Exemption for Customs Duty and Excise duty



PBO are not automatically entitled to the exemption on import duties(Customs, Excise and VAT)

The exemption can be attained upon application to the Cabinet Secretary National Treasury through the relevant registering organization e.g. the NGO Co-ordination Board.

Exemptions are outlined in the 5th schedule to the East African Community Customs Management Act(EACCMA) 2004.

The procedure is outlined as below

Exemption for Customs Duty and Excise duty



- A copy of the registration certificate from the relevant body
- Annual income tax returns and audited financial statements.
- A copy of the PIN Certificate
- Constitution/Trust Deed, Rules and Regulations.
- The specific invoices and documents in support of the goods that are to be imported, the import duty on the purchases and the expected benefit of the duty saved- include proforma invoice and Import Declaration Form(IDF) and any other agreements
- Evidence of projects carried for the last three years of operations
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Exemption for Customs Duty and Excise duty



- Brochures on project activities and the intended beneficiaries for the specific projects
- Memorandum and Articles of Association- for a company limited by guarantee
- Any other relevant documentation to support the application
- Once satisfied the relevant body will send the application together with a recommendation letter to the CS National Treasury
- If satisfied the CS National Treasury will recommend KRA to a specific import duty tariff code
- KRA, Customs and Border Control department will then give the specific tariff code to be used on the importation of the goods

CONCLUSION





