

# The Shifting Tax Landscape in Kenya

Presentation by:

**Mbiki Kamanjiri**  
**Tax Consulting Manager**  
**RSM East Africa**

# Agenda



Key recent legislative changes: challenges & opportunities

Becoming a tax agent, processes and procedures

Difference between a tax agent and a tax representative

# Recent legislative Changes - Challenges



## Migration of legacy system to iTax

- Credits in the legacy system;
- Transfer to iTax

## Request for documentation

S 23(1) of the TPA requires you to retain the document for a period of five years from the end of the reporting period to which it relates or such shorter period as may be specified in a tax law.

# Recent legislative Changes - Challenges



## Importing from a special economic zone

- SEZ sales are zero rated
- Poor controls at port of exit
- Issue of reverse VAT – not well communicated

# Recent legislative Changes



## Withholding tax on new services

- Security services;
- Cleaning and fumigation;
- Catering services offered outside hotel premises;
- Transportation of goods (excluding air transport);
- Sales promotion;
- Marketing; and
- Advertising

These are not subject to  
KES 24,000 threshold

# Turnover tax vs Presumptive Tax



## Turnover Tax is back

Presumptive tax was introduced last year

Tax at 15% of business permit license

Collections underwhelming – reintroduction of ToT @ 3%

Not payable by:

- Management or professional services;
- Rental business;
- Incorporated companies

# Recent legislative Changes - Challenges



## Taxation of the Digital Economy

Digital marketplace means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means

3 (2) (d) income chargeable to tax includes income accruing through a digital market place

5(7) of VAT Act supplies made through a digital marketplace



# Recent legislative Changes - Challenges



## VAT on Sale of Land

David Mwangi Ndegwa vs KRA

Paragraph 8 of part II of the Second Schedule provides - *supply by way of sale, renting, leasing, hiring, letting of **land** or residential premises;*

“residential premises” means land or a building occupied or capable of being occupied as a residence, but not including hotel or holiday accommodation.

**Ruling** – One cannot sell land without selling the property on it whether commercial or not.

### **Appeal and Stay of application granted**

KRA’s argument VAT Act exempts residential property only. Defines commercial property as mean “Land or building not occupied or not capable of being occupied as residential premises.



# Proposed Changes



## Exemptions on CGT for restructuring transactions

- Paragraph 13 of the Eighth Schedule to include..

No gain or loss shall be included in the computation of income... an internal restructuring within a group which does not involve transfer of property to a third party

Market value - Para 9(1) (d) as the result of a transaction between persons who are related... the amount of the consideration for the acquisition of the property shall be deemed to be equal to the market value of the property at the time of the acquisition

# Recent legislative Changes - Challenges



## Term ‘paid’ in relation to withholding tax

Civil Appeal No.311 of 2013: KRA Vs Republic (Ex Parte Fintel Ltd)

Point at which withholding tax should be deducted

### **High court ruling**

- Adopted the ordinary definition that “upon payment” must convey the meaning that money or some valuable thing was delivered

### **CoA Ruling**

- The word paid was accorded the technical meaning under the Income Tax Act (ITA)

# Tax Agent



## Qualifications

- ✓ Licensed under S 20 of the TPA
- ✓ Can be an individual or a partnership

### **Qualifications – Should be a fit and proper person to:**

- prepare tax returns, notices of objection, or
- otherwise transact business with the Commissioner under a tax law on behalf of a taxpayer;
- liaise with the Kenya Revenue Authority on behalf of a taxpayer on matters relating to tax

# Tax Agent



## Requirements – : Regulations

- Tax compliant;
- is a member of the [Institute of Certified Public Accountants of Kenya](#); or
- is an advocate of the [High Court of Kenya](#) and holds a current practicing certificate;
- is a former tax administrator with at least ten years' experience in tax administration; or
- is a holder of any other relevant qualifications and experience recognized by the Commissioner as sufficient for a tax agent
- Pay KES 20,000

# Tax Agent



## Requirements – :

- Full names as they appear on ID;
- PIN Details;
- Tax compliance certificate, Serial Number and Date of Issue;
- Registration number from ICPAK or LSK;
- Endorsement from professional body;
- Non-Professional applicants, KRA mentions that you need to attach a brief two-page curriculum vitae (CV) summarizing your work experience, academic and professional qualifications, if any;
- Proof of payment of KES 20,000

# Tax Agent vs Tax Rep



## Tax Representative

✓ Provided under S 15 of the TPA

Guardian/legal rep of disabled person

Trustee in a trust

CEO, MD,CS, Director or equivalent

Accountant of county gov, judiciary,  
PSC

Person accounting for association

Administrator, personal rep, executor of  
will, receiver

Partner

Manager of a non-resident person

# Tax Agent vs Tax Rep



## Differences

Tax Agent

Tax Rep

Has to apply to Commissioner

Commissioner may appoint you as one

Obligation of tax not assessed

Commissioner will assess obligations

# Recent legislative Changes - Challenges



## Tax representative module on iTax

- This is not yet running since the introduction in 2015;
- Supposed to introduce a PIN on a PIN on which the tax representative is supposed to account for the represented's tax on this;
- Module still under construction



# Connect with us

**Mbiki Kamanjiri**

**Tax Consulting Manager**  
RSM East Africa

E: [mkamanjiri@ke.rsm-ea.com](mailto:mkamanjiri@ke.rsm-ea.com)  
T: **+254 721 449 468**

## NAIROBI

Tel: +254 20 3614000/4451747/8/9  
Mobile: +254 706 347950/772 786111  
Email: [info@ke.rsm-ea.com](mailto:info@ke.rsm-ea.com)  
Website: [www.rsm.global/kenya](http://www.rsm.global/kenya)

## DAR ES SALAAM

Tel: +255 22 2137314/15  
Email: [info@tz.rsm-ea.com](mailto:info@tz.rsm-ea.com)  
Website: [www.rsm.global/tanzania](http://www.rsm.global/tanzania)

## MOMBASA

Tel: +254 41 2311778/2312640  
Mobile: +254 707 613329  
Email: [infomsa@ke.rsm-ea.com](mailto:infomsa@ke.rsm-ea.com)  
Website: [www.rsm.global/kenya](http://www.rsm.global/kenya)

## KAMPALA

Tel: +256 414 342780  
Email: [info@ug.rsm-ea.com](mailto:info@ug.rsm-ea.com)  
Website: [www.rsm.global/uganda](http://www.rsm.global/uganda)



LinkedIn  
Company: **RSM Eastern Africa**



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