



Taxation and regulatory requirements for NPOs

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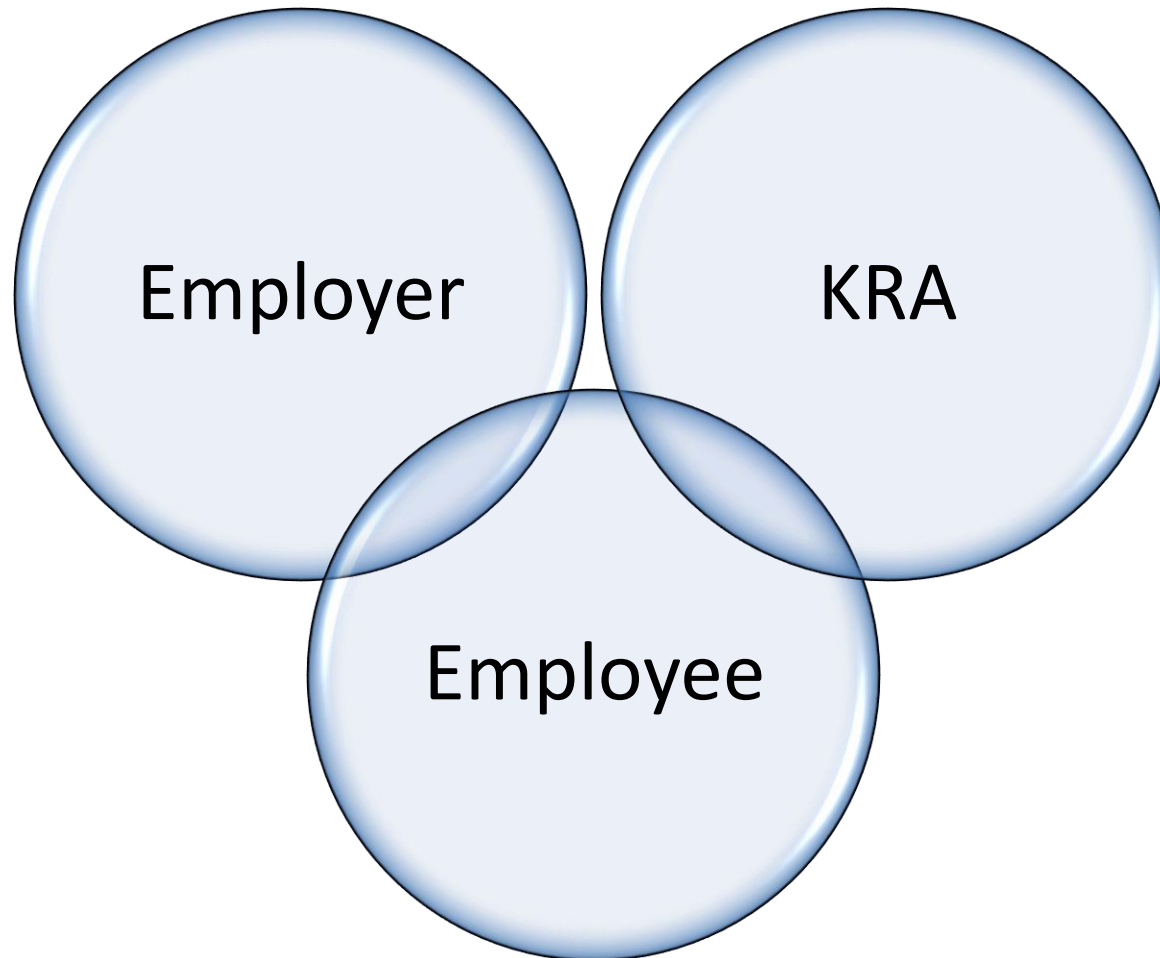
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PAY AS YOU EARN-PAYE



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Basic PAYE Concept



Employee



- ☐ Any holder of an office for which remuneration is payable
- ☐ Includes an individual receiving emoluments in respect of any employment, office, appointment or past employment
- ☐ Casual employee is one who is engaged for a period less than one month and emoluments are calculated in reference to the period of the engagement
- ☐ Regular casual employees are not considered as casuals

Employer



- ☐ Any person paying remunerations
- ☐ Any agent, manager or representative of employer who is outside Kenya
- ☐ Any trust, insurance or body of persons paying pension

KRA-Kenya Revenue Authority



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What Constitutes Taxable Income



- ☐ All emoluments in cash
- ☐ Non cash benefits exceeding KES 36,000 p.a. in the aggregate, with a few exceptions
- ☐ Club Subscriptions
- ☐ Per diems in excess of KES. 2,000 per day (Local/Foreign Travel)

Fringe Benefits Tax -FBT



- ☐ Loans at concessionary interest rates
- ☐ Loans from unregistered pension or provident fund
- ☐ FBT applies even after an employee leaves employment as long as the loan remains un-paid
- ☐ Calculated using the 91 day treasury bill rates (market rates of interest)
- ☐ Benefit taxed on employer at corporation rate of tax

Other Taxable benefits



- ☐ Other benefits subject to higher of cost to employer or fair market value
- ☐ Benefits taxed at prescribed rate only – by concession of CIT where the cost or fair market value cannot be determined
- ☐ Furniture – 1% of original cost p.m.
- ☐ Communal water supply – Kshs.500 p.m.
- ☐ Telephone (landline & mobile) – 30% of bills p.m.
- ☐ Communal electricity supply – Kshs.1,500 p.m.

Non- Taxable benefits



- ☐ Leave passages: expatriate employees
- ☐ Medical services
- ☐ Employer's contribution to pension funds
- ☐ Exception: Contributions by non taxable employers:
 - to unregistered schemes**
 - excess contribution to registered schemes**
- ☐ Education fees taxed on the employer
- ☐ Reimbursement of expenses incurred by employee wholly and exclusively in production of income
- ☐ Lunch benefit subject to a maximum value of KES 4,000 per month

Tax reliefs (Against tax payable)



- ❑ Personal relief, KES 1,408 per month
- ❑ Life insurance and education policy – 15% of premium, maximum KES 5,000 p.m.

PAYE Forms/returns



- ☐ Remittance of monthly PAYE is before the 9th of the following month
- ☐ Online filing of monthly PAYE or Nil return submission to the Commissioner of Domestic Taxes via iTax
- ☐ Quarterly returns no longer required due to online filing

PAYE TAX RATES



	Annual	Monthly	PAYE Rates
On the first	KES. 147,580	KES. 12,298	10%
On the next	KES. 139,043	KES. 11,587	15%
On the next	KES. 139,043	KES. 11,587	20%
On the next	KES. 139,043	KES. 11,587	25%
On all Income Over	KES. 564, 709	KES. 47,059	30%

Penalties and Offences



- ☐ Tax recovered from employer
- ☐ Failure to operate PAYE system satisfactorily:
25%, minimum 10,000
- ☐ Interest thereon, 1% per month on the
principal tax underpaid
- ☐ General penalty, where no other penalty is
prescribed: KES 100,000, six months
imprisonment

Objections and appeals



- ❑ An employer can object against a PAYE tax computation to the Commissioner for Domestic Taxes (CDT)
- ❑ An employer has right of appeal to the Tax Appeals Tribunal against imposition of penalty or any other decision taken by the Commissioner under the provisions of the Tax Procedures Act
- ❑ Appellant required to pay all tax due and the penalty prior to making the appeal

KRA in-depth tax audit



- ❑ KRA selects taxpayers for in-depth examination
- ❑ Enforce tax compliance, full income disclosure, enhance collection and taxpayer education
- ❑ Taxpayer Charter has provided for procedure for audit and rights of a taxpayer

Procedures for KRA in-depth audit



- ☐ Letter from KRA for in-depth examination
- ☐ Mutually agreed date for commencement
- ☐ Tax agent to review/be involved
- ☐ Limit of time of audit specified in the Charter
- ☐ Audit to cover two years plus current

Advise- for KRA in-depth audit



- ☐ Don't give the KRA more than they ask for
- ☐ Skeletons in cupboard-advance planning required
- ☐ Cultivate mutually beneficial relationship
- ☐ Check the accuracy of KRA findings
- ☐ Discuss risk/potential liability with tax consultants

Immigration issues



- ❑ All non –Kenyan citizens coming to work in Kenya must have an entry permit, usually referred to as a “**work permit**”.
- ❑ WP’s are dependent on the period of time an individual will require to work in Kenya.

Immigration issues cont..



- ❑ Special Passes –“Temporary work permits”
- ❑ These are issued to persons who come to the country for specific assignments for a period not exceeding 90 days. The passes are renewable for an additional 90 days in any one calendar year.
- ❑ Work Permits
- ❑ These are issued to persons who come to work in the country for periods in excess of 183 days. Work permits are valid for one year or a maximum period of two years at any one time. They are renewable for a further period of one or two years as may be required. There are several classes of work permits depending on the nature of work an individual will be performing in Kenya as follows:

Immigration issues cont..



Class A:

Given to persons offered specific employment by a specific employer in Prospecting and Mining.

Class B:

A person who is offered specific employment or is engaging in Agriculture and Husbandry.

Class C:

A person who is offered specific employment for any prescribed profession.

Class D:

A person who is offered specific employment in by a specific employer and who is qualified to undertake that employment.

Immigration issues cont..



Class F:

A person who is offered specific employment in specific manufacturing.

Class G:

A person who is engaging in specific trade, business or consultancy.

Business Visa:

These are issued to business travelers coming into the country to attend meetings, training seminars, conferences and other business forums. They DO NOT entitle the holder of such visa to perform or engage in work in Kenya.

Tax considerations for entry permits



- ❑ Sponsorship: All work permit applications must be sponsored by an employer who is locally registered in Kenya.
- ❑ Duration of assignment: employer's must consider the duration of the individual in the country when determining the type of entry permit to take up. Employers can do some tax planning for Special Pass holders.
- ❑ Tax Registrations: Tax Registrations are dependent on the Entry Permit type. Holders of Work Permits/alien cards are entitled to tax registrations. Special Pass holders must obtain approval from the Commissioner to register for the tax PIN upon proof of taxable income in Kenya.
- ❑ Alignment of Work Permit and Employment Contract: For tax planning purposes employer's require to align their expatriate employment contracts to the work permits.

PAYE –it was



Kudos

TWO



Corporation-income tax



- ☐ Introduction
- ☐ Implications of Corporate Income Tax
- ☐ Exemptions from Corporate Income Tax
 - Circumstances to be considered tax exempt
 - Tax exemption certificates
 - Procedures for applying for tax exemption
 - KRA requirements
- ☐ PBOs –Tax Provisions
- ☐ Returns
- ☐ Assessments, Objections and Appeals
- ☐ Penalties and offences
- ☐ KRA in-depth Audits

Income Tax legislation



- ❑ Income Tax Act (ITA)
- ❑ Subsidiary legislation -Schedules, Income Tax Rules
- ❑ Tax Procedures Act, 2015 (TPA)
- ❑ Case Law

Basis of Charge



- ☐ Tax is charged on the basis of source and/or residence
- ☐ Income Tax is charged on all income of a person whether resident or non-resident which accrues in or is derived from Kenya
- ☐ For business carried on partly within and partly outside Kenya, the whole of the profit from that business is Taxable in Kenya, e.g. transporters and Kenyan incorporated companies with branches (offices) outside Kenya.

Non-Taxable Income



- ☐ **Income of Govt. Ministries, exempt NGOs**
- ☐ **Income of County Governments**
- ☐ **Income of a registered pension and provident scheme/fund**
- ☐ **Interest income from all listed bonds (3-year maturity or more) used to raise funds for infrastructure & social services**
- ☐ **Dividend received by a resident company from a company where it controls 12.5% or more of the voting shares**

Gains or profits from a business shall be exempt from tax where:



- ☐ The gains or profits are put to use solely for the mentioned 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; or
- ☐ The gains or profits consist of rents (including premiums or similar consideration in the nature of rent) received from the leasing or letting of land and chattels leased or let therewith

Procedures to apply for a tax exemption certificate



- ☐ Review whether the exemption is covered under either:
 - a) Bilateral or Double Tax agreements; or
 - b) Paragraph 10 of the Income Tax Act
- ☐ Where one qualifies under option 1 (a) above –then there is no requirement to make the application as one automatically qualifies.
- ☐ Where you fall under category 1 (b) above –you are required to make a formal application for exemption to the relevant KRA policy unit station

Procedures to apply for a tax exemption certificate cont..



- ❑ The KRA to conduct a comprehensive tax audit to ensure that the organization complies with all relevant legislation i.e. PAYE, Withholding Tax
- ❑ Where KRA is satisfied that the organization is fully compliant with all tax heads they will then issue the exemption certificate
- ❑ Application for renewal of this certificate to be done after every 5 years. In practice, this application must be made 6 months prior to the expiry of the existing exemption status

KRA requirements –First time applicants



- ☐ A letter of application for Income Tax exemption status
- ☐ Returns of income and audited accounts
- ☐ Copies of the bank statements –for at least 6 months
- ☐ Constitution or Trust Deed
- ☐ A letter from the representative of Central Government stating the activities carried out by the organization
- ☐ Registration certificate
- ☐ PIN Certificate
- ☐ Evidence of the projects carried out for the last 3 years or for whatever period of operation
- ☐ Any other useful information in support of the application

KRA requirements –Renewal cases



- ☐ A letter of application for Income Tax exemption status
- ☐ Returns of income and audited accounts
- ☐ Copies of the bank statements
- ☐ Proof of the projects carried out for the last 3 years
- ☐ Any other useful reconfirming information in support of the application

PBOs Act – Tax Exemptions



- ☐ Income tax on sums received as membership subscription, donations and grants
- ☐ Income tax on the PBOs income generating activities if the income is wholly used to support the purposes of which the PBO was established.
- ☐ Income tax on interest and dividends on investments and gains earned on assets or the sale of assets, and
- ☐ Stamp duty

Tax risks for PBOs / NPOs



- ❑ **Exemptions:** not understanding scope of tax exemptions or not adhering to the requirements or required processes, especially as regards KRA. Failure to lodge correct paperwork could invalidate the exemption
- ❑ **Compliance:** organizations failing to submit returns where required e.g. Corporate Income Tax returns required, even if there is no taxable income to report. VAT returns also required if you are VAT registered, even if VAT registration is done in error

PBOs Act – Tax Exemptions



Agency taxes: Withholding Taxes and PAYE obligations typically not covered by exemptions, unless there is a specific provision in the ITA or government agreement. Tax not withheld becomes responsibility of withholding 'agent'. Examples of such cases:

- ☐ Failure to account for withholding tax on payments to research consultants based in Kenya or outside Kenya
- ☐ Failure to account for PAYE on benefits provided to staff e.g. unaccounted per diems, pension contributions made by the organization to an unregistered pension schemes etc.

Tax risks for PBOs / NPOs cont..



☐ **Penalty regime:**

The penalties and interest charges are onerous, even where a genuine mistake has been made. Waiver applications to the Cabinet Secretary for the National Treasury take a long time to resolve

Managing your tax risks



- ❑ Make sure you know ALL about your various tax obligations –it is not enough to do what others are doing. Remember items like NHIF, NITA, NSSF etc. Please obtain specific advice based on your circumstances
- ❑ Meet all tax compliance deadlines –the penalties are harsh
- ❑ Regarding prior year activities, carry out a tax health checks to identify non-compliance issues that you may not be aware of. Consider options for dealing with the tax exposure. The earlier the problem is identified, the better!
- ❑ Keep up to date on tax matters and changes to legislation that impact you e.g. on pension, schooling benefit etc

Tax returns



- ☐ **Due date for return filing is six months following the end of the income year/ accounting year**
- ☐ Currently all filings need to be done electronically through the iTax system
- ☐ The following information need to be filed together with the return:
 - Audited financial statements
 - Tax Computation, and
 - Other support documents –e.g. withholding tax certificates, etc

Tax Offences and Penalties



Offences	Penalties
1. Late submission of the self assessment return	5% of Tax outstanding at the self assessment date - minimum of KES. 20,000
2. Omission of income or fraud in a return	75% of the resultant tax underpayment in case of fraud or deliberate omission; or
20% of the resultant tax underpayment if the omission was not deliberate.	Penalty for a second repeat offence increases by 10%. For a third or subsequent repeat offence, the penalty increases by 25%
3. Late payment penalty	20% of the tax involved
4. Late payment interest	1% per month of the tax involved
5. Penalty for failure to keep/maintain documents	10% of the tax payable or KES 100,000 where no tax is payable.
6. Late submission of a document required to be submitted other than a return	KES 1,000 for each day of delay/default subject to a maximum of KES 50,000.

Income tax - Kaput



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FOUR-WHT



Withholding Tax



- ☐ Introduction-principles of Withholding Tax (WHT)
- ☐ The legislation
- ☐ Payments/services subject to WHT
- ☐ Rates-residents
- ☐ Obligations to deduct
- ☐ WHT administration
- ☐ WHT penalties and interest
- ☐ Complex issues/KRA audit issues
- ☐ WHT Planning

Withholding Introduction – Principles of w/tax



❑ Is an agency form of tax where a person making certain types of payments which are income subject to tax in Kenya is required to deduct tax therefrom and remit the tax deducted directly to the KRA

The Legislation



- ❑ **Section 3 of the Income Tax Act (ITA):-**
- ❑ **Section 10 of the ITA:-**
- ❑ **Section 34 & the Third Schedule to the ITA-**Provides the income tax rates
- ❑ **Section 35 of the ITA:-**Lists the payments that are subject to w/tax.
- ❑ **Section 39 (1) of the ITA:-**Allows w/tax to be set off against income tax
- ❑ **Section 72D of the ITA –**Stipulates the penalty for late payment of tax
- ❑ **Section 38 of the Tax Procedures Act–**stipulates the late payment interest
- ❑ **Income Tax (Withholding Tax) Rules, 2001:-**

Payments/services subject to w/tax



Payments to Residents and PE	Payments to Non -Residents
•Management or professional fee whose value exceeds KES 24,000	•Management or professional fee
•Training fee	•Training fee
•Dividend	•Royalty and natural resource income
•Interest and deemed interest	•Rent for use or occupation of property
•Royalty and natural resource income	•Dividend
•Rent on commercial property	•Interest and deemed interest
•Pension/retirement annuities	•Payment to sportsmen or entertainers
	•Telecommunication service fees
	•Pension/retirement annuities

Elements of management or professional fee



- ❑ **Contractual fee**—payment for work done in respect of building, civil or engineering works -See Section 35(3)(f) of the ITA
- ❑ **Consultancy fees**—payment made to any person for acting in an advisory capacity or providing services on an consultancy basis
- ❑ **Agency fees**—payment made to a person for acting on behalf of any other person or group of persons, or on behalf of the government, but excludes any payments made by an agent on behalf of the principal when such payments are recoverable
- ❑ **Professional fees**—not defined but recognized professions set out in the **Fifth Schedule to the ITA**

WHT Rates- Audience



Obligation to deduct



- ❑ Section 35 of the ITA provides an obligation to the payer to deduct tax on eligible payments for payment to KRA directly
- ❑ Failure to deduct tax on an eligible payment and remittance of the same to KRA is an offence under the ITA and attracts penalties and interest

Withholding administration



- ☐ WHT is due by the 20th day of the month following the month of deduction.
- ☐ Upon deduction and payment of WHT, a person is required to keep a record of the name of the payee, PIN, gross amount paid, nature of payment and amount of tax deducted
- ☐ Withholding tax accounting is now supposed to be fully done through iTax platform
- ☐ Upon paying the tax, the iTax platform should generate a certificate that should be sent to the payee to enable the payee claim credit against income tax

Penalties and interest for non-compliance



- ❑ For purposes of recovery of tax, withholding tax is demanded from the payer as though it were the tax of the payer (recall WHT belongs to PAYEE and not PAYER)
- ❑ A penalty of 20% should apply for late payment of withholding tax –up until 9 June 2016, the penalty used to be 10% but capped to KES 1 million
- ❑ Late payment interest of 1% per month is chargeable on any tax remaining unpaid after the due date –the late payment interest charged is capped to the principal tax involved

Penalties and interest for Complex issues/ KRA audit issues



- ☐ **The tax point (actual payment vs accrual)** –Should w/tax be based on actual payment or accrual?
- ☐ **Mixed supplies** –WHT applies only to services. What happens where fees to be paid under a contract relate to both goods and services?
- ☐ **Disbursements and reimbursements**—should w/tax be based on disbursements and reimbursements? What is the difference between the two?
- ☐ **Gross up problem** –where a contract is negotiated net of tax, should w/tax be based on the contract fee or should it be grossed up?
- ☐ **Payment in kind** –How should w/tax be accounted if payment is made in kind?

WHT- Done



Three



Value Added Tax



- ❑ Introduction
- ❑ VAT status of supplies by NGOs
- ❑ VAT status of supplies to NGOs
- ❑ Process of applying for zero rating/exemption
- ❑ Potential VAT issues for NGOs

Introduction



- ❑ VAT is chargeable on taxable supplies or importation of taxable goods and services
- ❑ Applicable VAT rates; zero or 16%
- ❑ Certain items also exempt from VAT
- ❑ Registration threshold –taxable supplies of KES 5 million (app. USD 50,000)
- ❑ Registered person liable to charge and account for VAT on taxable supplies

VAT status of supplies by NPOs



Exempt supplies?

- ❑ The supply of social welfare services by charitable organizations is exempt. This is on condition that:
 1. The charitable organizations are registered as such; or
 2. Such charitable organizations are exempted from registration by the Registrar of Societies or by the Non-Governmental Organizations Co-ordination Board and their income is exempt from VAT under Para 10 of the First Schedule to the Income Tax Act (ITA).

VAT status of supplies by NPOs



Taxable supplies?

- ☐ VAT is applicable where social welfare services are rendered by way of business.
- ☐ Business defined to include:
 1. Trade, commerce or manufacture, profession, vocation or occupation;
 2. Any other activity in the nature of trade, commerce or manufacture, profession, vocation or occupation;
 3. Any activity carried on by a person continuously or regularly, whether or not for gain or profit and which involves in part or whole, the supply of goods or services for consideration;
 4. A supply of property by way of lease, license, or similar arrangement.
- ☐ Important to note that, while ITA may exempt gains or profits from business, VAT Act considers such income as subject to VAT.

VAT-Kwisha



In Summary



- ☐ Tax apply to all
- ☐ Be vigilant with new regulations
- ☐ Consult where necessary
- ☐ Attend refresher courses such as this one
- ☐ Don't be a lone ranger- share and shout
- ☐ ETC

HURAA!



Thank you



THE END

