



TAX PRINCIPLES AND EMERGING ISSUES SEMINAR

Presentation by: Nickson Omondi

Voluntary tax Disclosure program/tax amnesty
as tool of tax compliance
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What is Tax Amnesty



What is Tax Amnesty



A tax amnesty can be defined to exhibit;

- a) *A limited-time offer by the government to a specified group of taxpayers*
 - b) *An offer to pay a defined amount,*
 - c) *The amount is in exchange for forgiveness of a tax liability (including interest and penalties),*
 - d) *In relation to a previous tax period (s), as well as freedom from legal prosecution.*
- **Financial Amnesties** implies a reduction (in real terms) of taxpayers declared or undeclared tax liabilities as established by law.
 - **Legal Amnesties** includes a waiving of civil and criminal penalties

Rationale for Amnesties



- Tax amnesties differ from payment installment arrangements
- Tax Amnesties serve to;
 1. Raise revenue quickly;
 2. Increase future tax compliance (Encourages payment of undeclared tax, filing tax returns, or register to pay taxes—and stay current on their tax obligations); and
 3. Induce the repatriation of flight capital

History of Amnesties in Kenya



- PAYE amnesty (1993)
- Tax Amnesty of 1998- Covered Income Tax and VAT
- Tax Amnesty of 2004 on Income Tax, VAT, Customs and Excise and Traffic duties
- Tax Amnesty on Rental Income 2016
- Foreign Income Tax Amnesty of 2018

Voluntary Tax Disclosure Programme (VTDP)



- ✓ **Finance Act, 2020** introduced Voluntary Tax Disclosure Programme (VTDP) by inserting **Section 37D** to the Tax Procedures Act, 2015.
- ✓ It's a voluntary programme and a person is required to fully disclose their tax liabilities that were previously undisclosed to the Commissioner.
- ✓ A person who makes full and complete disclosure under the programme shall be granted whole or partial relief of penalties and interest on the tax disclosed after payment of principal taxes within the VTDP period.
- ✓ The VTDP commences on the **1st January 2021** and shall run for 3 years to **31st December 2023**.

Eligibility



✓ Any person can apply for the program. However, a person shall **not** qualify to join the programme if, the person:

- is under audit or investigation for the undisclosed tax, or
- has been served with a notice of intention to investigate or carry out an audit/compliance check for the undisclosed tax, or
- is a party to an ongoing litigation in respect to the tax liability or any matter relating to the tax liability.

Incomes Subject to the VTDP



Applies to tax liabilities accrued/derived in the period commencing on or after 1st July 2015 but not later than 30th June 2020 covering the following tax heads:

- ✓ Individual income tax
- ✓ Corporate tax
- ✓ PAYE
- ✓ Withholding income taxes
- ✓ Capital Gains Tax
- ✓ Value Added Tax
- ✓ Withholding VAT
- ✓ Excise duty
- ✓ Turnover Tax
- ✓ Monthly Rental Income Tax

Remission Timelines



Disclosure and payment in the periods are eligible and detailed;

✓ In the 1st year running from 1st January 2021 to 31st December, 2021, the person shall qualify for 100% remission;

✓ In the 2nd year running from 1st January 2022 to 31st December, 2022, the person shall qualify for 50% remission; and

✓ In the 3rd and final year running from 1st January 2023 to 31st December 2023, the person shall qualify for 25% remission.

VTDP and Tax Payment Plans



A person who makes disclosure and enters a payment plan with the Commissioner, shall only qualify for grant of appropriate remission of penalties and interest applicable for the period in which the application was made and payments made in full.

Where a person makes disclosure in one period but makes part payment in that period and partly in a subsequent period, the remission rate applicable shall be as prescribed for each period.

Illustration



Where a person who discloses Principal tax of Ksh 50M with interest and penalties of Ksh 10M in year one.

How much is the person eligible for in year 1?

Illustration



- ✓ When he pays principal tax of Ksh 25M in year one qualifies for 100% remission of interest and penalties of Ksh 5M proportionate to the tax paid.
- ✓ The balance of principal tax of Ksh 25 and interest and penalties of Ksh 5M is carried forward to year 2. Principal tax shall attract a further interest normally in that year and amount qualifying for 50% remission will be balance of interest and penalties from year one in addition to those accrued in year 2 say Ksh 1M.
- ✓ Hence, the total amount qualifying for remission in year 2 is Ksh 6M. Amount to be remitted in year 2 shall be Ksh 3M which is 50% on condition principal tax is paid within the arrangement period.

Defaulters and Amendments



Defaulters

A person who enters into an agreement with the Commissioner for staggered payment of disclosed taxes but fails to honour the arrangement within the agreement period, shall lose any relief granted and shall pay the taxes in full.

Amendments:

Amendment of the original VTDP Return maybe made once at any time within the VTDP payment arrangement period provided the amendments does not result into a refund of taxes already paid under the programme.

Other conditions



- ✓ VTDP only applies to a disclosure resulting in payment of taxes. The person shall not be granted relief which may result into a refund of taxes paid on or before the VTDP window or which may lead to an increase in their tax credit or loss carried forward.
- ✓ A person granted relief under the programme shall not be prosecuted on the same set of facts in respect of the fully disclosed and paid taxes.
- ✓ A person granted relief in accordance with the provisions of the VTDP shall not appeal or seek any other remedy with respect to the taxes, penalties and interest remitted by the Commissioner.

VTDP Application



- ✓ A person who wishes to take advantage of VTDP shall apply online on iTax in a prescribed return specific for the tax head under disclosure.
- ✓ When the submission is complete, the person shall receive an acknowledgement slip.
- ✓ A person making an application is guided to visit KRA website for the step by step process.

Certificate Issuance



- ✓ A person shall be issued with a VTDP certificate, which shall serve as evidence that the person took advantage of the VTDP for the taxes of the periods specified in that certificate.
- ✓ The Certificate issued shall only cover the taxes disclosed and the corresponding tax periods.

Penalties for non-utmost good faith in Declaration



✓ Before the expiry of the agreement between the Commissioner and the Taxpayer, the Commissioner establishes that the Taxpayer failed to disclose a material fact in respect of the relief granted, the Commissioner may-

- a) Withdraw any relief granted;
- b) Assess and collect any balance of the tax liability; or
- c) Commence prosecution under section 80, 2020 Finance

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Discussion Question



“In many developing and transition countries, despite reforms undertaken to date, the legal framework for tax administration is deficient; it does not provide the administration with the necessary powers to enforce tax collection and it lacks key provisions to encourage taxpayers to comply with their obligations voluntarily”. What deficiencies is noticeable in the Kenyan Law?

Suggested deficiencies



- Lack of a fair interest and penalty regime (interest rates and penalties are too high or too low, and are not structured to reflect the severity of different types of infractions);
- Limited ability of the tax administration to obtain taxpayer-related information (e.g., access to third-party or bank information);
- Nonexistence of a well-designed, fair installment payment system (e.g., one that facilitates payment for taxpayers who can show they are financially unable to meet their tax obligations in full, but are willing to pay over a longer period);
- Absence of tax administration powers to enforce collections (e.g., seize bank accounts, physical assets, accounts receivable) and reliance by the tax administration on the courts to carry out this critical function;
- Lack of tax administration powers to “write off” what the tax administration considers to be uncollectible tax debts; and
- Abuse of the appeals system to postpone payment of tax arrears. Taxpayer appeals of the tax administration’s decisions or rulings are often costless to the taxpayer and have the effect of immediately suspending or canceling the tax administration’s collection enforcement actions. Thus, taxpayers can easily interrupt collection enforcement actions via recourse to the appeals system.

*Thank
you*

