



# Tax Management for Public Benefit Organization – Kisii

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# Public Benefit Organization Tax Compliance



Are PBOs subject to taxation in Kenya?

- ❑ Similar to profit oriented firms, PBOs are also liable to income tax in Kenya on the gains or profits from business they carry out.
- ❑ Sec. 3(1); “Subject to, and in accordance with, this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya”

# Income liable to tax in Kenya



□ Sec. 3(2); “Subject to this Act, income upon which tax is chargeable under this Act is income in respect of”:

(a) gains or profits from:

(i) any business, for whatever period of time carried on;

(ii) any employment or services rendered;

(iii) any right granted to any other person for use or occupation of property;

# Income liable to tax in Kenya



(b) dividends or interest;

(c) (i) a pension, charge or annuity; and

(ii) any withdrawals from, or payments out of, a registered pension fund or a registered provident fund or a registered individual retirement fund; and

(iii) any withdrawals from a registered home ownership savings plan;

# Income liable to tax in Kenya



- (d) an amount deemed to be the income of any person under this Act or by rules made under this Act;
- (e) gains accruing in the circumstances prescribed in, and computed in accordance with, the Eighth Schedule;
- (f) subject to section 15(5A), the net gain derived on the disposal of an interest in a person, if the interest derives twenty per cent or more of its value, directly or indirectly, from immovable property in Kenya; and
- (g) a natural resource income

# What constitutes business?



- ❑ Sec. 2 defines business as “includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment;
- **Trade** - action of buying and selling for gain;
- **Profession** - an occupation requiring specialized knowledge and often long and intensive academic preparation such as by a doctor, lawyer, accountant etc;
- **Vocation** - means a calling or career
- **Adventure** - an undertaking usually involving unknown risks. Could include smuggling, poaching
- **Concern** - would mean any commercial enterprise.

# Tax Exemption for Public Benefit Organizations



❑ Though PBOs are subject to income tax, they may be exempted from income tax under the following provisions of the law:

Sec. 13(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.

# Tax Exemption for Public Benefit Organizations



- ❑ Sec 13(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.



# Tax Exemption for Public Benefit Organizations



Paragraph 10 of First schedule of ITA:

- ❑ Subject to section 26, the income of an institution, body of persons or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education:

# Tax Exemption for Public Benefit Organizations



- (a) established in Kenya; or
- (b) whose regional headquarters is situated in Kenya, in so far as the Commissioner is satisfied that the income is to be expended either in Kenya or in circumstances in which the expenditure of that income is for the purposes which result in the benefit of the residents of Kenya:

# Tax Exemption for Public Benefit Organizations



- ❑ Provided that any such income which consists of gains or profits from a business shall not be exempt from tax unless such gains or profits are applied solely to such purposes and either:
  - (i) such business is carried on in the course of the actual execution of such purposes;
  - (ii) the work in connexion with such business is mainly carried on by beneficiaries under such purposes; or

# Tax Exemption for Public Benefit Organizations



(iii) such gains or profits consist of rents (including premiums or any similar consideration in the nature of rent) received from the leasing or letting of land and any chattels leased or let therewith; and provided further that an exemption under this paragraph:

# Tax Exemption for Public Benefit Organizations



(A) shall be valid for a period of **five** years but may be revoked by the Commissioner for any just cause; and

(B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within **sixty** days of the lodging of the application.

# Tax obligations of PBOs



- ☐ Compute and pay applicable income tax (PBOs without exemption)
- ☐ Comply with PAYE compliance requirements
- ☐ Compliance to other statutory deduction requirements (N.S.S.F& N.H.I.F)
- ☐ Submission of tax returns including annual SAR

# Tax obligations of PBOs



- ❑ Maintain all financial transaction documents for at least 5 years (Finance Bill, 2021, 7 years) in either of the official language
- ❑ Apply for a PIN immediately after registration
- ❑ Register for various applicable tax obligations
- ❑ Apply for tax obligation cancellation when applicable

# THE END



## Q& A