TAX ALERT
TAX PROCEDURES ACT 2015

1 March 2016

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Introduction

- The Tax Procedures Act No. 29 of 2015 was assented into law by the president on 15th December 2015. Subsequently, through a Gazette notice dated 14th January 2016, the Cabinet Secretary for the National Treasury appointed the 19th of January 2016 as the date the Act came into force.
- The Act has collated legal provisions from the Income Tax Act, the Value Added Tax Act, 2013, the Kenya Revenue Authority Act, 1995 and Excise Duty legislation relating to administration of tax laws.
- The Act has been introduced with a view to harmonize and consolidate the procedural rules that govern the administration of tax laws in Kenya. It simplifies tax compliance and collection of tax by the Kenya Revenue Authority (KRA). It also seeks to enhance tax compliance by imposing heavy penalties for various offences set out in tax laws.
- The Act introduces uniform procedures which will streamline and simplify administration of tax laws in Kenya. Currently, different tax laws provide for different treatment of similar actions or offences and this has been complicating the process of tax compliance as well as collection of tax revenues.
- We discuss below several changes that have been introduced by the Act for your information.

Changes to the Tax Act

- **Tax registration and deregistration**

  Under the Act, a person is required to apply for registration as a taxpayer to the Commissioner within 30 days after the person has accrued a tax liability or expects to accrue a tax liability under the Income Tax Act or the VAT Act, 2013. The person is also required to apply for deregistration within a similar period (30 days) once the person ceases to meet the registration requirements for the purpose of a tax law. This provision creates certainty of when a person is supposed to register or deregister for tax purposes.

- **Extension of time to submit a tax return**

  The Act has a provision allowing taxpayers in instances where they are unable to file a return on time because of one reason or the other to apply in writing to the Commissioner and seek for an extension of time to file the return.

  In Section 25 of the Act however, such an application for extension should be made before the due date of the submission of the relevant tax return.

- **Amendment of assessments**

  A taxpayer is allowed to amend their original (self) assessment return within five years of filing. Initially under the ITA; an application under section 90 was available for up to seven years of filing the latest return

Changes to the Tax Act…cont.

- **Objection to tax decisions**

  Under section 51(11) of the Act, in case of an objection by a taxpayer; the commissioner is given up to sixty days from the date when the taxpayer lodged a notice of objection to decide on the objection failure to which the objection by the taxpayer shall be allowed.

- **Transferred tax liabilities**

  According to Section 46 of the Act, where a taxpayer has a tax liability in relation to a business carried on by himself and transfers all or some of the business' assets to a related person (transferee); the transferee shall become liable for the tax liabilities of the transferor.

- **Refund of tax**

  In a bid to synchronize the duration within which overpaid taxes can be refunded across all relevant tax laws, the Act in Section 47 stipulates a refund duration of within one year from the date on which the tax overpayment occurred and the application for refund approved by the commissioner.

- **Late payment interest**

  According to Section 38 of the Act, in instances where a person fails to pay tax on or before the payment due date; they shall be liable for a late payment interest at a rate equivalent to 1% per month. The ITA had initially provided for a late payment interest of 2% per month on the outstanding liability.

Changes to the Tax Act…cont.

Similarly, the penalty with regard to self-disclosure has been reduced to 10% under section 84 of the Act where a taxpayer voluntarily discloses to the commissioner of any omissions that resulted to under or non-payment of tax. The penalty for underestimation of taxes under the ITA was previously 20%.

With the introduction of the above favorable provisions regarding penalties & interest; it is worthwhile to note that the provision for an application for waiver of penalties and interest as initially provided for under the ITA has now been scrapped.

- **Late submission penalty**

The penalty relating to late submission of a return has now been standardized in the Act as below:

- Either 25% of tax due or Kshs. 10,000 whichever is higher if the return relates to employment income;
- Kshs. 5,000 if the return relates to turnover tax; or
- Either 5% of the tax payable or KShs.20,000 whichever is higher in any other case (including VAT and Corporation tax).

Changes to the Tax Act…cont.

- **Extension of time to pay tax**

Similar to the extension above, the Act in Section 33 allows for a taxpayer to apply in writing to the Commissioner for an extension of time to pay their tax due under a tax law. Under the current ITA, such a provision does not exist and taxpayers have been negotiating with the KRA for a phased out settlement of their tax liabilities granted only at the mercies of the Commissioner with no clear basis in law.

Companies experiencing significant cash flow challenges but with tax obligations to settle can now utilize this provision to their benefit.

- **Priority of tax in the event of liquidation**

In case of liquidation or bankruptcy, any taxes payable in form of VAT, Excise duty and Withholding tax shall take priority before any distribution of property is made in the liquidation. This is because Section 34 of the Act now allows the commissioner to safeguard his dues in the event of such bankruptcy.

- **Maintenance of tax records**

Section 23 (c) of the Act provides that a taxpayer is expected to retain documents and tax records for a period of five years from the end of the reporting period to which the documents relate or such a shorter period as may be provided for by law.

Changes to the Tax Act…cont.

This proposal now synchronizes the period for retention of tax records since previously the Income Tax Act (ITA) required one to keep records for up to seven years; the VAT Act 2013 as well as the Customs & Excise Act also required documents to be kept for up to five years.

However, in the case of proceedings relating to tax; the Act provides that the period may be extended accordingly.

- **Electronic documents and returns**

The Act enforces the use of electronic returns and documents as may be required by the Commissioner under certain instances. With the provisions to submit returns and settle taxes electronically, tax returns and obligations can now be processed even on weekends and public holidays provided the stipulated deadlines in the respective tax laws are met.

Previously under the ITA, if such payment deadlines fell on weekends or on public holidays; the due dates would be the last working day immediately preceding the holiday or weekend.

Similarly, with the introduction of electronic processing of tax returns and documents; the provisions under section 71 of the ITA which required a person in authority in a company to physically sign off on a return or document before submission to the Authority has been deleted. This is because such returns will now be filed online thus negating the need for manual attestations through signing.

Changes to the Tax Act…cont.

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- **Offenses and penalties**

The act stipulates higher penalties and offenses committed as set below:

Offense	Penalty
Person liable to tax for failing to register for taxes	KES100,000 (approx. US$978) per month subject to a maximum of KES1 million (approx. US$9,785)
Failure to keep documents	KES100,000 or 10% of the amount of tax payable to which the document relates to
Late submission of tax return on account of employment Income	The higher of 25% of the tax due or 10,000 (approx. US$97.85)
Late submission of tax return on account of Turnover tax	KES5,000 (approx. US$49)
Late submission of tax return (individuals and corporates)	The higher of 5% of the tax due or KES20,000 (approx. US$196)
Failure to comply with electronic tax systems	KES100,000
Tax Avoidance	Double the amount of tax
Penalty for failure to submit a tax return online or pay a tax electronically when required to do so	Penalty of KES 100,000
Failure to file any other document, other than a tax return	Penalty of KES 1,000 per day subject to a maximum penalty of KES 50,000


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