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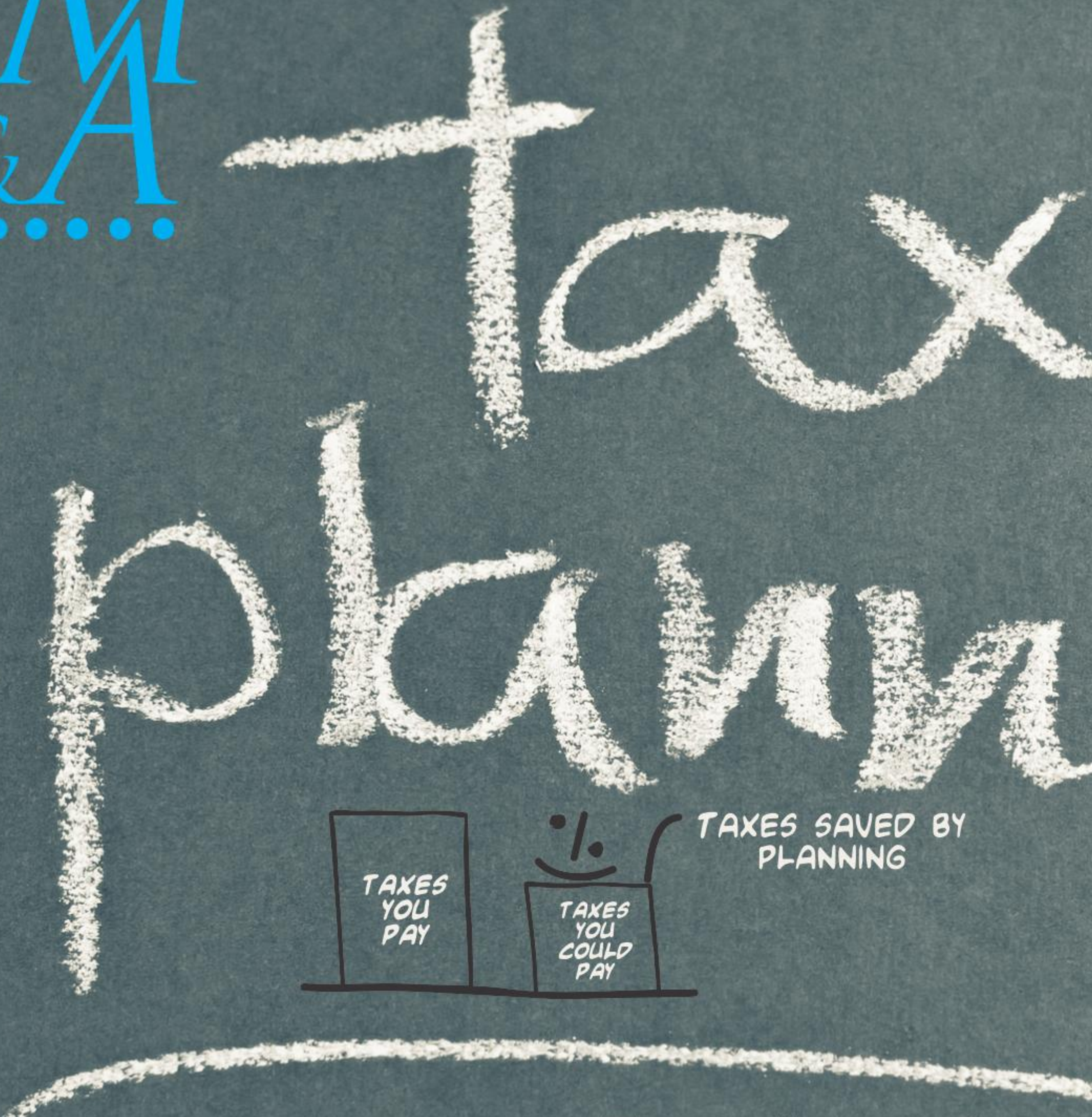

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Newsletter

MBAYA AND ASSOCIATES September 2017 | Issue 027 | Volume 3

Introduction

Welcome to the ninth edition of our newsletter this year. The newsletter covers a variety of the recent changes in the tax regime in Kenya and other topical issues. We will continue using these newsletters as a way of informing you on the significant changes taking place in the tax industry, as well as general information pertaining to the business world.

On the right column of the newsletter you will find contact details for the senior members of our team who can help answer any questions you may have about the issues highlighted in this newsletter or any other questions.

We are interested in your feedback on the items covered and what topics you would like covered in the future, please contact using **tax@mbaya.co.ke**

> *"Where a person avers that **per diem** solely represents **reimbursement**, he shall furnish **evidence** to the Commissioner..."*

»FROM THE TAX DESK

In this issue

From the Tax Desk

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From the TaxDesk

Deadline for filing Returns not extended

The Kenya Revenue Authority (KRA) through a press release on 4th Sept 2017 has denied the claims made through the local dailies that it has extended the deadline for filing returns.

In the notice, KRA has asked the taxpayers to ignore the reports and instead ensure compliance with the provisions of the Tax procedure Act 2015.

The notice continue by stating that the 30 day period shown on the default notice, is not an extension, but rather the period within which a taxpayer should pay the dues to avoid enforcement measures.

Taxation of Per Diems

Section 5(2)(a) of the Income Tax Act imposes tax on subsistence, travelling, entertainment or other allowances received by an employee in respect of employment or services rendered. However, where the Commissioner is satisfied that the amounts so received solely represent reimbursement to the employee, the same shall not be chargeable to tax.

The following are the guidelines issued to clarify the procedures to be applied in determining the tax status of per diem payments.

In these guidelines, per diem refers to payments in respect of subsistence, travelling, entertainment and other allowances made by an employer to his employee while the employee is on official duties outside his usual station of work.

1. Where a person avers that per diem solely represents reimbursement, he shall furnish evidence to the Commissioner, provided that where the amount does not exceed two thousand shillings per day, no such proof shall be required.
2. For the purposes of satisfying the Commissioner that the amounts paid are reimbursements of costs incurred by the employee, an employer shall maintain a documented policy on the management of per diem.
3. The policy referred to under 3 shall include information relating to:
   i. The rates applicable for different cadres of employees to whom per diem may be payable.
   ii. The rates applicable to different geographical zones or localities within the country.
   iii. The rates applicable where duties involve overseas travel provided that where different rates apply, these are to be clearly stated.
   iv. A justification for the rates used in relation to among other things, the cost of living.
   v. The procedure of accounting for per diem.
4. The Commissioner may, at any time where he deems appropriate, require an employer to furnish him with documentary proof of travel outside the work station by his employee and such proof may include:

i. Motor vehicle work tickets.
ii. Bus or air tickets.
iii. Passport and immigration entries.
iv. Imprest accounting documentation.

5. Employers may if they deem it appropriate, seek the Commissioner's opinion regarding the admissibility of proposed per diem scales prior to or after payment.

Where there is Tax due on per diem it is to be recovered in the payroll month relating to the payment and remitted in accordance with PAYE procedures.

Tax Planning

There are many ways in which entities can defer income, maximise deductions and take advantage of other tax planning initiatives to manage their taxable incomes. Taxpayers should be aware that in order to maximise these opportunities, they need to start the year-end tax planning process early to provide them with a number of tax savings for entities.

Deferring assessable income

- Income received in advance of services being provided is, generally, not assessable until the services are provided.
- A taxpayer is required to calculate the balancing adjustment amount resulting from the disposal of a depreciating asset. If the disposal of an asset will result in assessable income, a taxpayer may want to consider postponing the disposal to the following income year.
- Rollover relief may be available for balancing adjustments arising from an involuntary disposal of assets where replacement assets are acquired.

Maximising deductions

Business taxpayers

- Taxpayers should review all outstanding debts prior to year-end to determine whether there are any potential debtors who will be unable to pay their bills. Once a taxpayer has done everything in their capacity to ascertain the repayment date of the debt, the taxpayer could consider writing off the balance as bad debt.
- The entitlement of corporate tax entities to deductions in respect of prior year losses is subject to certain restrictions. An entity needs to satisfy the continuity of ownership test before deducting the prior year losses. If the continuity of ownership test is failed, the entity may still deduct the loss if it satisfies the same business test.
- A deduction may be available on the disposal of a depreciating asset if a taxpayer stops using it and expects never to use it again. Therefore, asset registers may need to be reviewed for any assets that fit this category.

- Small business entities are entitled to an outright deduction for the taxable purpose proportion of the adjustable value of a depreciating asset, subject to conditions.

Companies

- Companies may want to consider consolidating for tax purposes prior to year-end to reduce compliance costs and take advantage of tax opportunities available as a result of the consolidated group being treated as a single entity for tax purposes.
- The Income Tax Act enables Companies to charge their income with certain allowances on Capital Expenditure. These allowances include Wear & Tear allowance for fixed assets, and Investment Deduction. They are covered in Sec 15(2) and the second schedule of the Act. These allowances serve as investment incentives.
- Payment of Withholding Tax on dividends can be avoided if companies pay dividends to shareholders by way of bonus shares or by way of a share repurchase program. Bonus Shares issued on pro-rata basis are not currently taxable. Section 7(1)(f) of the Income Tax Act provides that Stock Dividends are taxable only in scenarios where they are not issued on pro rata basis to shareholders.
- Investment Companies engage in purchase and sale of equity and fixed income securities, among other asset classes. Some of the positions they hold might have unrealized gains. Taxes payable can be minimized by deferring for as long as the gains have not been realized.
- Business, whose principal markets are foreign, can set up in licensed Export Processing Zones and enjoy a raft of Tax incentives. This includes a 10 year corporate tax holiday, significant capital allowances and VAT exemption.

Individuals

There are different ways in which individuals can apply to minimize their tax liability; the following are ways in which an individual is likely to avoid the taxes.

1. **Tax Deductable Contributions to a retirement Benefit Scheme-** Income Tax Laws provide that contributions to a registered retirement benefit scheme can be deducted from gross Income before Taxable income is determined. The tax deductable contributions are currently set at a Maximum of KES 20,000 per month (KES 240,000 per annum). These contributions achieve the twin aims of building retirement savings and reduce taxes paid.
2. **Contributions to a Registered Home Ownership Savings Plan**- The Income Tax Act has for some time provided that contributions to registered Schemes designed and established to enable savings for purchase of residences can be deducted from gross income up to a maximum of KES 4,000 per month (KES 480,000 per annum). As a result this has been enhanced by making interest earned on deposits of up to KES 3 Million into such a scheme tax free.
3. **Mortgage Interest Deduction**- Interest incurred on personal mortgages is deductible from gross Income before arriving at taxable income, subject to a limit of KES 12,500 per month or KES 150,000 per annum.
4. **Conducting Business Using Corporate Entity so as to enable Comprehensive Deductions of Business Expenses-** While Expenses legitimately incurred in the production of income are tax deductable regardless of the nature of business, conducting business using a corporate entity enables clearer segregation of business and personal expenses, thus enhancing the deduction of certain expenses. This enables them to reduce taxable income by charging their gross

income with certain tax deductible expenses they most probably would fail to deduct if they conducted their business as individual.

5. **Insurance Relief-** Individuals are entitled to relief of 15% of premiums paid on life insurance policies, education (with maturity of at least 10years) of health policies taken out for oneself or for one's spouse or child. This combined relief is subject to a maximum of KES 60,000 per annum.
6. **Charitable Donations-** Donations to charitable organizations which hold a Tax exemption Certificate or to charitable projects approved by the Finance Minister are Tax deductible.

Tax Due Dates

Withholding Tax | 20th Day of the following month

Pay as You Earn | 9th Day of the following month

VAT | 20th Day of the following month

Balance of Tax on Self-Assessment | 4th Month after year end

Monthly Rental Income | 20th Day of the following month

KENYA REVENUE AUTHORITY

Instalment Tax

1st Instalment |20th day of the 4th month after year end

2nd Instalment | 20th day of the 6th month after year end

3rd Instalment | 20th day of the 9th month after year end

4th Instalment | 20th day of the 12th month after year end

Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.