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Mbaya and Associates LLP
CERTIFIED PUBLIC ACCOUNTANTS

Closure of the Voluntary Tax Disclosure Program (VTDP)

Newsletter

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Introduction

We are pleased to release the last edition of our tax newsletter for 2023.

We have had some intriguing comments and queries throughout the year and for that we are truly grateful. Allow us to take this opportunity to wish you, and your families a happy festive season. Take a deserved break, spend time with family and enjoy the festive season responsibly.

In this final issue for the year 2023, we summarize the onboarding of non-VAT taxpayers on eTims, simplified VAT filing system, the new KRA paybill payment, some tax mistakes people make and a tax alert on the affordable housing levy.

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

We are interested in your feedback on the items covered and what topics you would like covered in the future. Please provide any feedback at tax@mbaya.co.ke

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Closure of the Voluntary Tax Disclosure Program (VTDP)

Through a public Notice dated 22nd November 2021, Kenya Revenue Authority (KRA) reminded the public of the Voluntary Tax Disclosure Programme (VTDP) which allows a taxpayer to confidentially disclose tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest on the taxes disclosed. The VTDP which commenced on 1st January 2021 is running until 31st December 2023.

A taxpayer willing to make full and complete disclosure under the program shall be granted 25% relief of penalties and interest on the taxes disclosed after payment of principal taxes within the VTDP period.

Taxpayers who would like to enjoy the partial relief should therefore submit their applications under the VTDP in good time in order to obtain approval and make payments for the disclosed income before the end of the year. We are on standby to help in case of such a service.

On Boarding of Non-VAT Taxpayers on eTIMS

Through a public notice dated 17th November 2023, Kenya Revenue Authority notified the public that pursuant to the provisions of the Finance Act 2023, effective 1st September, 2023, Taxpayers carrying on business, including those not registered for VAT, are required to electronically generate and transmit their invoices via the Electronic Tax Invoice Management System (eTIMS).

Please note that any business expenditure not supported by an eTims generated tax invoice shall not be deductible for tax purposes with effect from 1st January, 2024.

This implies that all invoices generated through any other means other than through eTims will not be allowable for tax purposes. Currently taxpayers are in the process of registering in eTims. You can initiate it as well through this Link. This registration is happening to all taxpayers irrespective of whether they are VAT registered or not.

KRA will continue to support and facilitate all taxpayers to comply with the requirements of the Law. **We are available to assist/advice you further on this if needed to ensure compliance**

Tax Payment through PayBill Number 222222

Through a public notice dated 17th November 2023, Kenya Revenue Authority (KRA) notified taxpayers that all tax payments via mobile money shall only be made through the Government PayBill number 222222 with immediate effect. This is in line with the Kenya Gazette No. 16008 of 2022 and the Presidential Directive designating the use of Paybill Number 222222 as the Government's single payment platform.

Taxpayers are further advised to use the Payment Registration Number (PRN) or the Ref. Number on the Payment Slips generated from KRA Business Systems: iTax, iCMS, EGMS, and KESRA iStudent as the account number when making tax payment via mobile money. KRA guides taxpayers to proceed with tax payment through mobile money as follows:

1. Enter PayBill number 222222
2. Enter the PRN (payment registration number) as the account number
3. Key in the amount as indicated on the PRN
4. Enter your PIN and click send

OR

1. Dial *222#
2. Select Pay KRA bill option
3. Enter the E-slip (PRN) number
4. Select payment mode as M-Pesa
5. Enter M-Pesa PIN and complete the rest of the process.

Simplification of the VAT Return Filing Process

Through a public notice dated 28th November 2023, Kenya Revenue Authority (KRA) notified the public and all VAT registered taxpayers that in an effort to leverage on technology and improve taxpayer experience, the VAT return will be pre-filled with tax information available to KRA with effect from the January 2024 tax period, to simplify the VAT return filing process for taxpayers.

In this regard, we remind all taxpayers of their obligation to issue electronic tax invoices and transmit the invoice details to KRA as prescribed in law. Please note that any input VAT claim that is not validated through TIMS/eTIMS or against existing customs import declarations for import VAT claims will not be allowed. A list of approved eTIMS third party system-to-system integrators is available on the KRA website to facilitate compliance with electronic tax invoicing requirements.

Further, we advise taxpayers that the pre-filled VAT return shall be a self-assessment return as prescribed in Section 28(4) of the Tax Procedures Act, CAP 469B and a taxpayer shall not be relieved of the obligation to confirm the accuracy of the declaration before submission of the return.

KRA will conduct sensitization for taxpayers on the simplified VAT Return filing process and will continue to support and facilitate all taxpayers to comply with the electronic tax invoicing requirements. KRA takes this opportunity to thank all compliant taxpayers. Additionally, our tax team is available to offer more clarification or advice in case you have a challenge on the filing of the VAT returns.

Tax Alert

Kenya High Court Quashes Housing Levy Deduction Staying Deduction Till 10th January 2024

The Finance Act 2023 ('the Act'), received Presidential assent on 26th June 2023 and brought a raft of changes to various tax legislations. Most of the changes were effective from 1st July 2023, the Government's fiscal year, while a few will be effective from 1st September 2023 and 1st January, 2024.

The legality of the Act was subsequently challenged and this saw its enactment temporarily suspended. The suspension was however lifted through a Court of Appeal ruling delivered on the 28th July 2023. The decision to lift the suspension orders has since been challenged through an appeal to the Supreme Court.

Notable provisions coming into force from 1st July 2023 include the introduction of the Affordable Housing levy at 1.5% of the Gross monthly salary matched by 1.5% by the employer. Please note that this levy is not capped.

The Housing Levy is established under the Employment Act, not the Income Tax Act. The housing levy had the following key points:

- The Affordable Housing Levy is a mandatory contribution by all employees payable monthly at the rate of 1.5% of the employee's gross monthly salary and is to be matched by the employer at the same rate with no capping.
- The levy is to be computed on the gross pay which will be inclusive of allowances both cash and non-cash benefits advanced to the employee.
- The Housing Levy cannot be reduced by the Affordable Housing Relief. However, payments for houses purchased under the Affordable Housing Scheme will be allowable as a relief against income tax.
- The levy will be collected by Kenya Revenue Authority (KRA) and declared in the monthly Pay As You Earn (PAYE) return and paid together with PAYE.
- The levy is due by the 9th day on the month following the month of deduction.
- An employer who fails to comply with the provisions of the Affordable Housing Levy shall be liable to payment of a penalty of two percent of the unpaid amount for every month the same remains unpaid.

Through a public notice dated 15th August 2023, Kenya Revenue Authority provided clarification that the income subjected to the affordable housing levy should be gross income which constitutes basic salary and regular cash allowances. This include housing, travel or commuter, car allowances and such regular cash payments and would exclude those that are non-cash as well as those not paid regularly such as leave allowance, bonus, gratuity, pension, severance pay or any other terminal dues and benefits.

Through a case filed by the Busia Senator Hon. Okiya Omtata, Kenya's High Court on Tuesday 28th November 2023 declared unconstitutional a 1.5% levy intended to fund affordable housing that was imposed by the Finance Act 2023.

The court ruled that Section 84 of the Finance Act 2023, which amends the Employment Act to introduce the Housing Levy violates the principles of taxation for making distinction between formal and informal sectors, thus creating unequal and inequitable principles.

The court added that the enactment of laws must be supported with a rational explanation but in the case of the Housing Levy, the government failed to provide an explanation for the imposition of the levy or a legal framework to anchor the fees.

The judges however, later stayed the ruling by 45 days until 10th Jan 2024 to allow for the government to appeal, after which the levy will not be charged until the case is heard and determined.

The implication of this is that the employees and employers are expected to continue and deduct and pay the housing levy for the month of December 2023 which is due by 9th January 2024

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Common Tax Mistakes Small Businesses Make

Failing to File or Make Payments.

Some taxpayers are not aware that they are supposed to file their taxes and make tax payments on the declarations done. With regard to the legal structure, industry and number of employees a business has, it is required to file a number of returns and make payments to KRA.

Some returns have to be filed monthly like payroll, VAT and sales (Turnover) taxes. Others are submitted annually like income tax. When some tax returns have been missed, penalties accrue and as such, it is advisable to file the due returns and pay the taxes including the penalties charged so as to remain in good books with KRA.

Underestimating and Underreporting.

Some taxpayers under declare their turnovers and possible overclaim their expenses. In the case of being self-employed or filing as a small business, the requirement is to make quarterly tax payments based on an estimated tax bill for the year. The tax man may not know the business probably and therefore can't guess the exact amount to be paid. Though it would expect that tax paid would get a close estimate. If it does not, it can face a penalty for underestimating and underpaying.

If KRA suspects there was negligence or carelessness in reporting income or substantial understatement of the amount owed, it can fine, penalize or file criminal tax fraud charges on the business proprietor (s). Generally, this "mistakes" are more wilful than errors therefore the need for accuracy and honesty.

To arrest this situation, taxpayers should keep proper records of all the incomes earned and expenses incurred for the year so that the accurate tax position of the business can be determined.

Mixing Business and Personal Expenses.

Sometimes this happen when personal expenses are lumped together with the business expenses. While being self-employed, it is easy to get things mixed up with funds. Only business-related expenses can be deducted from the income for tax purposes. Hence finances should be kept separate by having separate business bank accounts and cheque book when making purchases for the business. Personal assets such as car or home office should have detailed records to support any deductions.

To avoid this situation, taxpayers should keep proper records of all the incomes earned and expenses excluding any personal expenses incurred for the year so that the accurate tax position of the business can be determined.

Poor Record-Keeping and Organization.

Some small businesses run without proper record keeping. Without Records, a business person will not be able to know the direction that the business is taking so as to take proper actions Even for businesses that don't have quarterly filing obligations, taxes should be more than once-a-year proposition. The business misses out on deduction they are entitled to when they wait till the last minute to file, due to not keeping track of it's spending over the period. It will probably cost the business more in accounting fees to get the books in order.

Ensure the business has a system in place such as QuickBooks to help in tracking income and expenses on an ongoing basis. Reconciliation of the cash flow with the bank statements and cashbook should be prepared each month. This will help in the preparation of tax returns and to stay on top of the finances and manage them better.

Not Taking the Proper Deductions.

This is a situation by the business failing to claim the relevant allowables and reliefs offered by the tax systems. In order to take the proper deductions all expenses should be those incurred in the ordinary and necessary running of the business. Undeserved deductions shouldn't be taken as they may raise audit queries with KRA and possibly penalties. Caution should be taken when the business claims more in expenses than in come when it keeps showing a loss over several years instead of profit. Claiming proper deductions ensures that the correct tax position is arrived and the accurate tax is paid.

We are hopeful that our client will heed to the advice and keep proper records to avoid inconveniences that may be caused by the untimely and abrupt tax audits. In case such happens, we are always hands on to provide accurate and timely assistance so as to mitigate the effects and ensure that your business runs unaffected

Finally, we the Mbaya Family appreciate you for being our valued client. We are grateful for the interactive sessions and the feedback that we have received to help us improve our services.

As the year comes to a close, we are grateful to God for sustaining you and we are thankful for always choosing us throughout the year. We thank you for all your support.

In this festive season, let us all celebrate God's goodness by being considerate of those in need.

We wish everyone of you a happy festive season as we look forward to a better and brighter year 2024.

As indicated above, we are interested in your feedback on the items covered and what topics you would like covered in the future. Please provide any feedback at **tax@mbaya.co.ke**

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

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.

Digital Service Tax (DST)

20th day of the following month