



Mbaya and Associates ^{LLP}
CERTIFIED PUBLIC ACCOUNTANTS



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Newsletter

MBAYA AND ASSOCIATES

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Introduction

Happy new year 2024 and warm greetings from all us at M&A Family.

We hope you and your loved ones had some time to take a break and bond during the December holidays. We are delighted by your active engagements in our previous editions of our newsletter. We hereby release our first edition newsletter for the year 2024. This issue will summarize the key tax changes effective the year 2024, tax assessments and the recent amendments to IFRS in Kenya.

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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» From the **TaxDesk** »



Tax (Donations & Charitable Organizations Exemption) Rules, 2023

Through a public notice dated 14th December 2023, the Commissioner General notified the public about compliance with the Statutory Instruments Act, 2013.

The Commissioner General on behalf of the Cabinet Secretary, National Treasury and Economic Planning, has developed the Draft Income Tax (Donations and Charitable Organizations Exemption) Rules, 2023. The Rules provide guidelines and administrative procedures to be applied in granting exemptions to charitable organizations and further gives guidance on donations to such institutions.

In compliance with the same Act, and on behalf of the Cabinet Secretary, the National Treasury and Economic Planning, the Commissioner General invites interested members of the public, professionals and stakeholders to submit their inputs and comments for consideration in finalizing the Rules. The draft rules have been posted on the KRA website.

KRA Pledges to Support Taxpayers to Comply with Electronic Tax Invoicing Requirements

Through a public notice dated 29th December 2023, KRA reminded the general public about compliance with electronic management system (eTims).

In a move aimed at modernizing tax systems and fostering seamless compliance, the Tax Procedures Act 2015 was amended to require the use of electronic tax invoices by all taxpayers including those who are not VAT-registered.

Effective 1st September 2023, every person in business was required to issue, transmit Electronic Tax Invoices and maintain a record of stocks through an electronic management system prescribed by the Commissioner (eTims).

Effective 1st January 2024, all taxpayers are expected to support expenses claimed in their tax returns with electronic tax invoices that have been generated and transmitted to KRA's system.

The expansion of electronic tax invoices to incorporate all taxpayers is part of KRA's strategy to enhance tax compliance. KRA is leveraging on modern digital infrastructure to provide flexible tax solutions aligned with evolving business needs.

To ensure a smooth transition for taxpayers, KRA has tailored solutions within the eTims platform, to cater to various business models, sizes, and types of taxpayers that can be accessed on mobile phones, tablets, personal computers and laptops.

An online portal has been availed for those dealing with service-oriented businesses, while system-to-system integration options are available for entities utilizing software billing systems and those engaging in bulk invoicing.

To ensure a wide coverage and to support taxpayers with limited technology devices, KRA is partnering with government and private agencies for development of more simplified solutions that meet the taxpayers within their own eco-system while facilitating them to comply.

KRA has established a comprehensive support framework across its offices, nationwide. This initiative aims to assist taxpayers in the onboarding process and provide education on the most suitable eTims solutions tailored to their specific requirements.

These interventions are anticipated to enhance transparency in taxpayer transactions, thereby improving the accuracy of tax declarations. The move also seeks to streamline tax filing procedures, broaden the tax base, and ultimately bolster revenue collection efforts.

For existing non-VAT registered taxpayers, KRA through a public notice dated 27th December 2023, assured taxpayers that onboarding to the eTims platform will be available up to 31st March 2024. This is aimed to facilitate business continuity and allow for sufficient time for these taxpayers to make adjustments in their systems and business operations.

During the onboarding period, penalties provided in law for failure to issue electronic tax invoices will not be imposed on the non-VAT registered taxpayers. Once onboarded, they will be required to progressively capture manually generated invoices and receipts issued after 1st January 2024 up to the date of onboarding, onto the KRA system.

KRA remains committed to fostering a conducive environment for businesses while advancing its mission to modernize tax administration through innovative, user-friendly, and technology-driven solutions. KRA will continue supporting and facilitating all taxpayers to comply with the requirements of the law by conducting comprehensive stakeholder engagements, awareness campaigns, taxpayer education and availing varied solutions including simplified solutions that cater for the various taxpayer segments.

Tax Assessments

Towards the end of year 2023, taxpayers have seen a spike in the number of assessments raised by the Kenya Revenue Authority. Most of these assessments covered the 5 years period from 2018 to 2022. Below we analyze some key questions touching on assessments as follows:

- ***How do tax assessments arise? How does the Legal team get involved in the process?***

The Kenyan tax system is a self-assessment system where a taxpayer assesses himself or herself and makes payments to KRA. However, some individuals or business entities may abuse the trust bestowed on them by the law by either under declaring or failing to declare their income hence evading payment of taxes.

Before KRA makes a demand for taxes or issues an assessment, there is an elaborate engagement whereby documents, records and other information is requested for from the taxpayer for purposes of verifying the self-assessment. Where gaps are identified, leading to tax liability, the taxpayer is informed both orally and in writing and is requested to respond to the issues before an assessment or demand is issued in the iTax system. Thereafter the taxpayer is informed of his or her right to object to the demand or assessment.

The taxpayer has the option of paying the taxes raised in iTax or objecting to the demand or assessment and appealing to the Tax Appeals Tribunal.

- ***From a legal point of view, do taxation laws deprive citizens the burden of proof to successfully challenge income tax assessments?***

When a dispute arises, the taxpayer has the burden to support how he computed the self-assessed taxes. That burden can only shift where KRA has issued additional tax assessments. KRA must state the sources, the law and the reason for the additional assessments.

- ***What is the approximate time taken to conclude a tax case from assessment, dispute resolution to recovery of the taxes?***

It takes a minimum of two (2) years to conclude a case at the Tax Appeals Tribunal, the High Court and Court of Appeal. Tax recovery takes a maximum of six (6) Months from the time it is initiated. However, some cases may take a shorter period to conclude depending on the availability of the parties and readiness of the Tribunal or Court. There are situations where parties opt for ADR and this takes three (3) Months or 90 days. The timelines for concluding ADR is dictated by the law.

- ***Does the Alternative Dispute Resolution (ADR) unit handle some of these cases that are already in court? Is it the defendant or the complainant who initiates ADR, in such a case?***

Yes. KRA or the taxpayer can apply for ADR. The purpose of ADR is to enable the parties to engage and arrive at an amicable solution to the tax dispute, in a win-win situation.

- ***In case a taxpayer declares bankruptcy following a complete court case against her/him by KRA, what is the way forward?***

Bankruptcy proceedings are filed in the High Court and there is an elaborate process involved. The person seeking to be declared bankrupt must inform its creditors of the bankruptcy proceedings. The legal team would ensure that the KRA is listed as a creditor during the bankruptcy proceedings and further ensure that the tax owed is listed in priority to other creditors.

Currently, we have not had cases where a taxpayer moves to be declared bankrupt following a court case. However, there have been instances of company's being dissolved.

- ***Is there a time limit for KRA to assess tax arrears.***

The law allows taxpayers to keep records for a period of five (5) years so that KRA is able to assess taxes for the same period. However, where fraud is detected, the law allows KRA to go back as far as possible for purposes of prosecution of the offenders and the recovery of the taxes.

- ***What strategies has KRA instituted to ensure that cases are well handled in the Tax Appeals Tribunal and the court leading to revenue collection?***

There are a number of strategies:

- a) The lawyers work hand in hand with the tax auditors who raise assessments to ensure that they are aligned on the issues being addressed. In some cases, there are witnesses who are tax experts testifying in the cases and this ensures that technical questions are given first hand answers to the Tribunal or judge.
- b) All cases are evaluated by a Technical Evaluation Committee that ensures the KRA case is airtight if the case is to be litigated. If the case is weak the committee recommends settlement of the case by KRA. This ensures KRA only litigate strong cases that are likely to result in revenue collection.
- c) Within the litigation division, cases are handled by teams of lawyers as opposed by an individual counsel. This ensures objectivity, creativity, and support in the litigation process.
- d) KRA lawyers go on trainings from time to time to build capacity as both technical tax lawyers and in trial advocacy.
- e) KRA is a member of the Court users Committee which is a forum bringing together litigants to deliberate on the best ways to fast track the hearing and determination of cases.

Key Amendments in IAS and IFRS

In the recent past, there has been some key amendments in some IAS and IFRS, some of which are effective January 2024.

We highlight them as below:

- ***IAS 1 Classification of Liabilities as Current or Non-Current***

The amendments which is Effective 1 January 2024 specifies that the classification of liabilities as current or non-current is based on rights that are in existence at the end of the reporting period. The classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability. **Rights are in existence if covenants are complied with at the end of the reporting period.** The amendments also introduce a definition of 'settlement' to make clear that settlement refers to the transfer to the counterparty of cash, equity instruments, other assets or services. – Previously entities didn't have the right to defer settlement and thus reported as current liability.

- ***IAS 1 Non-current Liabilities with Covenants***

The amendment is effective on or after January 2024 published by IASB which amends IAS 1 to specify that conditions an entity must comply with in the twelve months after the reporting period do not affect classification of the corresponding liability as current or non-current. The amendments also require additional disclosure on the conditions an entity is required to comply with after the reporting period. Results to additional disclosures in the notes of FS-carrying amount of liability, information about covenant, facts about the circumstances.

- ***IAS 7/IFRS 7 Supplier Finance Arrangements***

In May 2023, the IASB published Supplier Finance Arrangements (Amendments to IAS 7 and IFRS 7). The amendments to IAS 7 require entities to provide **qualitative** and **quantitative** information about its supplier finance arrangements.

Entail requirements to **disclose information** about an entity's exposure to concentration of liquidity risk;

In particular, an entity would be required to disclose the changes in fair value during the period, showing separately the amount of the change that relates to investments derecognised in the period and the amount that relates to investments held at the end of the period

Contractual terms that could change the timing or amount of contractual cash flows

- ***General Presentations and Disclosures***

This amendment makes consequential amendments to IAS 7.

It proposes that entities would no longer have a choice as to where to present cash flows from dividends and interest. Previously accounting policy gave choices-possible location depends on the classification of the related income and expenses in the statement of profit or loss.

For most entities, dividends and interest paid would be cash flows from financing activities, while dividends and interest received would be cash flows from investing activities.

It would also require that the reconciliation presented using the indirect method would be reconciled to "operating profit or loss", a new subtotal proposed for the statement of comprehensive income as the starting point. The final Standard is expected in 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

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