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Newsletter

MBAYA AND ASSOCIATES

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Introduction

Warm greetings from all us at M&A!

We hope you and your families are keeping safe during these Covid times. We are pleased by the fruitful engagements that we have had in our previous editions of our newsletter. We now release our eighth edition of the year 2020 tax newsletter.

The newsletter covers recent developments in the taxation regime in Kenya which aims to keep you current and updated on tax matters.

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 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** »

Fringe Benefit Tax, Deemed Interest Rate and Low Interest Benefit

In a recent publication, KRA wishes to notify the public of the following rates of Fringe Benefit Tax, Deemed Interest and low interest benefits.

Fringe Benefit Tax - For the purposes of Section 12B of the Income Tax Act, the **Market Interest Rate is 7%**. This rate will be applicable for three months i.e. **July, August and September 2020**.

Deemed Interest Rate - For purposes of section 16(5) the **prescribed rate of interest is 7%**. This is applicable for the months of **July, August and September 2020**.

Withholding tax rate of 15% on the deemed interest shall be deducted and paid to the Commissioner by 20th of the month following the month of computation.

Low Interest Benefit - For the purposes of Section 5(2A) of the Income Tax Act, the prescribed interest rate for the period of six months (July- December 2020) **is 7%**. These would apply especially for organizations that lend money to staff at a rate lower than the applicable rate above. The actual benefit (savings that employee makes) is what is chargeable at 30% and not the loan or instalment amount.

Processing of Tax Waivers

The Tax Procedures act, 2015, under section 89(7), provides that a taxpayer may apply for waiver of penalty or interest where they meet the conditions specified therein.

The law requires that all applications for waiver of penalty and interest be properly justified and supporting evidence provided.

Through a recent publication, KRA has finalised the roll out of the system enhancements for processing of the waiver applications and has embarked on clearing the backlog of the applications.

In order to expedite processing of the pending applications, KRA has commenced contacting the applicants through emails or telephone messaging services using the contacts provided in the iTax profiles.

The applicants are required to submit the supporting documents for each application within 30 days from the date specified in the aforementioned communication.

It is important to note that waiver applications which will not have supporting documentations presented by the specific deadlines shall be rejected and the penalty and interest thereof demanded for payment.

Providing the proof of the documentary evidence is key in having the waiver approved early enough. We at M&A are and will be very much willing to offer a helping hand.

Amnesty on Voluntary Tax Disclosure

The Tax Procedures Act (TPA) 2015 has been amended by inserting a new section (37D) known as Voluntary Tax Disclosure Programme, which shall be for a period of three years with effect from 1st January 2021.

This is a programme where a person discloses tax liabilities to the Commissioner for the purpose of being granted relief of penalties and interests on the tax disclosed.

A person with tax liability will apply to the Commissioner for relief in the prescribed form with respect to tax liabilities accrued within a period of 5 years prior to 1st July 2020 (i.e. 1st July 2015 to 30th June 2020)

A person granted relief by the Commissioner under this section shall not be prosecuted in respect to the tax liability disclosed, and where the disclosure is made and tax liability paid in the:

- a) First year of the programme, a full remission of interest and penalties is granted.
- b) Second year of the programme, 50% remission of interest and penalties is granted.
- c) Third year/ Final year of the programme, 25% remission of interest and penalties is granted.

The application shall be voluntary and all material facts are disclosed. Where the Commissioner is satisfied with the facts disclosed in the application, he shall grant the relief applied for provided the relief shall not result in payment of a refund to the applicant.

Where the relief is granted, the Commissioner shall enter into an agreement with the person setting out the terms of payment of the tax liability and the period within which the payment shall be made which shall not exceed one year from the date of the agreement.

Where a person fails to meet the terms of the agreement, that person shall be liable to the full interest and penalty that had been remitted under the agreement.

A beneficiary of the relief shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted under this section by the Commissioner.

Where, before the expiry of the agreement between the Commissioner and the person, the Commissioner establishes that the person failed to disclose a material fact in respect of the relief granted, the Commissioner may:

- a) Withdraw any relief granted.
- b) Assess and collect any balance of the tax liability, or
- c) Commence prosecution.

A person aggrieved by any of the decision of the Commissioner as highlighted above, may appeal against the decision.

The amnesty on Voluntary Disclosure Programme is not applicable to:

- a) A person who is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability.
- b) A person who has been notified of a pending audit or investigation by the Commissioner.

The disclosure of a tax liability under this section shall be confidential.



COMPANY SECRETARY

A company secretary is responsible for the efficient administration of a company by ensuring governance and compliance. Despite the name, the role is not clerical.

All public and quoted companies registered in Kenya should/must have a company secretary.

According to the Companies Act 2015, private companies are required to have a company secretary if they have a paid up share capital of Kshs. 5 million or more. This notwithstanding, companies are advised to have a company secretary to ensure efficient and smooth administration of Board and compliance issues.

Qualification

To qualify as a company secretary one must:

- › Undertake the Certified Secretaries course offered by KASNEB.
- › Register with the Registration of Certified Public Secretaries Board.
- › Have a practising certificate issued by the Institute of Certified Public Secretaries in Kenya.

Appointment and Termination of a Company Secretary

The company secretary can be internal or an outsourced service and is appointed by the Board of Directors. Termination of the appointment can be done by the Board without shareholder approval.

Roles of a Company Secretary

1. Incorporation services - Company secretaries help in getting companies, partnerships, NGOs and societies registered at the Registrar of Companies and Registrar of Societies and ensuring all legal requirements have been met.
2. Filing of annual return - This is a return filed with the Registrar of Companies and is due every year on the date of incorporation of the company. Late filing leads to penalties.
3. Domiciliation services - The company secretary uses their physical address as the registered address where statutory records of the company are kept.
4. Directorship and shareholding services - A company secretary can facilitate any changes in a company's directorship or shareholding. They can also be appointed to act as a client's director and hold shares as per sector regulations for compliance purposes.
5. Annual general meeting (AGM) - At AGMs, companies let shareholders know the company's status in terms of profits or losses, dividends and any other major changes to the company. Company secretaries are professionally equipped to prepare, draft and handle AGMs.
6. Minutes - A company secretary takes minutes at AGMs and Board meetings.
7. Advisory role - The company secretary advises the Board of Directors on matters of governance and compliance.
8. Legal contact - During legal and governance audits the company secretary acts as the contact person.
9. Custody services - The company secretary maintains custody of statutory registers of directors and shareholders. This includes electronic custody. They also maintain custody of the company seal and a register of its use.
10. Changes in capital - Any change in a company's authorized share capital and its division is handled by the company secretary.
11. Drafting of governance documents - A company secretary is in charge of preparation of Board charters and policies; Board appointments, evaluation and training; conducting committee and stakeholder reviews; and conducting much needed internal governance audits.
12. Restructuring and mergers - A company secretary can oversee the process of restructuring a company including Board composition, shareholding, buyouts and takeovers.
13. Conversion of private companies to public companies and vice versa

Savanna Associates, a sister company to Mbaya & Associates, offers all the above outsourced company secretarial services. Please contact us for any further enquiries regarding the above.

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.

DISCLAIMER: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, Mbaya & Associates, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.