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FRAUDULENT PERSON(S) MASQUERADING AS KRA STAFF

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Newsletter

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Introduction

Warm greetings from all us at M&A. We are pleased to release our second edition of the year 2022 tax newsletter. The newsletter covers recent important developments in Kenya's tax regime. We are grateful for your interaction and are happy to be of service to you.

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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Fraudulent Person(s)

Masquerading as KRA Staff » 1

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» From the **TaxDesk** »

Fraudulent Person(s) Masquerading as KRA Staff

[The Kenya Revenue Authority (KRA) informs members of the general public that there are some fraudulent persons masquerading as KRA staff to solicit bribes from taxpayers.]

Kindly note that all KRA staff on duty must always provide identification before entering your premises or transacting on behalf of the Authority.

KRA urge the public to utilise the **Thibitisha KRA Staff** using the imposter detection system available on the KRA website; USSD via *572# or through the KRA M-service App. If in doubt, call 0726984668 and report the matter.

Further, the public is urged to report all tax related offences. Taxpayers are also advised to abide by the law and uphold compliance.

Fringe Benefit Tax, Deemed Interest Rate and Low Interest Benefit

Fringe Benefit Tax (FBT) is applicable when employers provide loans to their employees and charge an interest lower than the prescribed rate (ITA-section 12(b)). This becomes a benefit to the employee, for which the employer needs to file and pay Fringe Benefit Tax. FBT is paid by the employer at the corporate tax rate of 30 % on total taxable value each month. The tax is payable on or before the 9th day of the following month to KRA.

Deemed Interest is the amount of notional interest assumed to be payable by a resident person in relation to any outstanding loan provided or secured by a non-resident person, where such loan has been provided interest free.

The reviewed 2022 annual rates are as follows:

Tax	Rates	Period
Fringe Benefit Tax (FBT)	7%	January, February & March 2022
Deemed Interest	7%	January, February & March 2022
Low Interest Benefit	7%	January to June 2022

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.

An example of a Fringe Benefit Tax computation:

On 1st February 2022, an employee gets a loan of Kshs 3million from his/her employer at a rate of 3%. FBT will be calculated as follows:

Loan amount	Interest charged	Market Interest rate for the month
Kshs 3,000,000	3% per annum	7% per annum

Fringe Benefit Rate on saving by employee = 7% - 3% = 4% per annum

Fringe Benefit = 3,000,000 x 4% = 120,000 per Annum; that is, Kshs 10,000 per Month.

Fringe Benefit tax payable by the employer for the month of February 2022 is therefore Kshs 3,000 (10,000 x 30%). The tax should be payable by the 9th of March 2022 together with the PAYE for the same month of February 2022.

The FBT computation should be done and tax paid monthly using the applicable rates until the loan has been cleared in full.

Tax Planning

Tax planning can be termed as legal ways of mitigating tax payable by individuals and corporate entities. Tax planning is bound to gain increasing significance with the ever-greater aggressiveness and sophistication of the Kenya Revenue Authority and other tax collecting bodies. The trend of increased aggressiveness and sophistication in tools and methods is occurring against a backdrop of a public policy of domestic sources being the primary sources of revenues for budgetary purposes. This results in governmental pressure on tax collecting agencies to improve their revenue collection performance.

The result of this trend is the more stringent enforcement of taxation laws. Many individuals and corporate entities who in the past did not pay tax due on any or all of their income are now having to do so or face severe consequences. The same scenario is playing out with regard to Customs and Excise duties as well as Value Added Tax. The introduction of Electronic Tax Registers (ETR's) that are compliant with the Tax Invoice Management System (TIMS) for businesses is just one tool for effecting greater compliance with tax laws.

This public issue highlights the possible and legitimate ways to mitigate the tax burden.

A. Individual Tax Planning

There are a limited number of methods, vehicles and techniques by which individuals can avoid taxes. These are highlighted below.

1. *Contribution to Retirement Benefit Schemes*

Income tax laws have provided that contributions to registered retirement benefit schemes can be deducted from gross income before taxable income is determined. An employee's contribution to any registered defined benefit fund or defined contribution fund is an admissible deduction in arriving at the employee's taxable pay of the month.

The employee's deductible contribution is lesser of:

- i. 30% of pensionable pay
- ii. Employee's actual contribution
- iii. Kshs 20,000 per month.

The tax-deductible contribution is currently set at a maximum of Kshs 20,000 per month (Kshs 240,000 per annum)

2. *Insurance Relief*

Individuals are entitled to relief of 15% of premiums paid on life insurance policies, education (with a maturity of at least 10 years), or health policies taken out for oneself or a spouse or child.

Additionally, Finance Act, 2021 amended Section 31(1) of the Income Tax Act (ITA), Cap 470 to extend the existing Insurance Relief to include contributions made to the National Hospital Insurance Fund (NHIF)

ITA provides that the amount of Insurance Relief shall be fifteen percent of the amount of premiums paid but shall not exceed sixty thousand shillings per annum.

Contributions to NHIF will therefore be eligible in the computation of Insurance Relief as follows:

Insurance Relief = 15% (Insurance Premiums + NHIF Contributions) but shall not exceed Kshs 5,000.00 per month or Kshs 60,000.00 per year.

The effective date of this amendment was 1st January 2022

3. *Mortgage Interest deduction*

Interest incurred on personal mortgages is deductible from gross income before arriving at taxable income, subject to a limit of Kshs 25,000 per month or Kshs 300,000 per annum.

4. *Establishment of Charitable Trusts or Foundations*

Section 10 of the First Schedule of the Income Tax Act provides that; the income of an institution, body of persons or irrevocable trust, of a public character, established solely for poverty alleviation or distress of the public, or the advancement of religion or education, all for public benefit, shall be tax-exempt.

Section 13 of Income Tax Act, also provides that the income of a registered trust is exempt from income tax.

5. *Charitable Donations*

Donations to charitable organizations that hold a tax exemption certificate are tax-deductible.

6. *Remuneration through Non-Cash Benefits*

Where the value of a benefit, advantage, or facility is Kshs 3,000 per month or Kshs 36,000 per annum, then that benefit is not subject to tax.

7. *Remuneration through Meals*

An employer can provide meals to employees and limit the cost of these meals to the tax-free amount of KShs 4,000 per month (KShs 48,000 per annum).

8. *Voluntary Tax Disclosure Programme (VTDP)*

The (VTDP) was designed to assist taxpayers to achieve tax compliance, by allowing them to voluntarily declare their historical tax liabilities to the KRA and settle the principal tax. The VTDP shall run for three years, from 1 January 2021 to 31 December 2023.

All taxpayers qualify for the VTDP, provided that:

- a. The tax liabilities were, accrued by the taxpayer within, 5 years before 1 July 2020; that is, July 2015 to 30 June 2020;
- b. The taxpayer is not under audit or investigation and is not a party to ongoing litigation in respect of the tax liabilities or any matter relating to the tax liabilities; and
- c. The taxpayer has not been notified of a pending audit or investigation by the Commissioner.

Taxpayers who apply for the VTDP will qualify for relief in respect of:

- a. Penalties and interest; and
- b. Shall not be prosecuted for the tax liabilities disclosed.

For the relief to apply, the taxpayer will first be required to settle the principal tax liabilities, as the benefit is only available for penalties and interest.

Taxpayers who opt for the VTDP will be entitled to:

- a. 50% waiver, if the principal tax is disclosed and paid within the calendar year 2022,
- b. 25% waiver, if the principal tax is disclosed and paid within the calendar year 2023.

No waiver of the penalties and interest will be available if the principal tax is paid after 2023.

B. Corporate Tax Planning

In Kenya, as in many other countries, interest on corporate debt is tax deductible. Companies can take maximum advantage of this tax deductibility by determining the optimum amount of debt that they can carry and working with it. It should be noted that the revenue authorities attempt to limit abuse of tax deductibility. Section 16(2)(j) of the Income Tax Act provides that interest on debt that is in excess of thrice the shareholders' equity of a company (not being a bank) controlled by a non-resident, is not tax deductible.

The practice of over-financing companies with debt from associated sources so as to minimize taxable income (known as thin capitalization) is well known and tax authorities look out for it. Hence companies wishing to take advantage of tax deductibility should do so within the letter and spirit of the Income Tax Act.

One technique for taking advantage of debt is the use of lease financing arrangements for the acquisition of assets, rather than outright purchase with company funds as (for the time being) the lease payments made under both capital and operating leases are tax deductible on the lessee.

1. Capital Investment Allowances

The Income Tax Act enables companies to charge their income with certain allowances on capital expenditure. These allowances include Wear and Tear Allowance for fixed assets, and Investment Deduction. They are covered in Section 15(2) and the Second Schedule of the Act. These allowances serve as investment incentives.

2. Write Off of Trade Bad Debts and Charging Other Allowable Deductions

Section 15(2)(a) of the Income Tax Act allows the tax deductible write off of bad debts subject to the approval of the Commissioner. The Commissioner is in the process of developing guidelines for the write off of bad debts. It is also possible to get a refund of Output VAT paid on bad debts, within a period of 2 years after the expiry of 3 years since the bad debts came into existence. Inventory written off as defective or obsolete is similarly tax deductible. There are many other allowable deductions detailed in the Income Tax Act which would enable businesses to reduce their taxable income if they actually utilize them.

3. Intelligent Procurement of Business Inputs

Businesses can mitigate their tax burden by sourcing intelligently. First, those subject to Value Added Tax should ensure that they source from suppliers who will charge VAT. That way, the business buying can deduct input VAT from their output VAT and lower tax payable.

Another way of mitigating the tax burden is by importing inputs from tax advantaged countries.

This entails, for example, importing from within the East African Community or the Common Market for Eastern and Southern Africa. Customs duty on imports from such sources is lower than duty on imports from other countries.

4. *Special Economic Zones (SEZ's) and Export Processing Zones (EPZ's)*

SEZ refers to designated geographical area where business-enabling policies are implemented and sector-appropriate on-site and off-site infrastructure and utilities are provided for by the Kenyan Government. SEZ regime provides for a broader array of incentives (tax and non-tax) as compared to EPZ, particularly, the recognition of service industries as having the same status as manufacturing and processing industries.

On the other hand, Export Processing Zones (EPZs) are designated parts of Kenya that are aimed at promoting and facilitating export-oriented investments and to develop an enabling environment for such investments. These zones are managed and promoted by the Export Processing Zones Authority.



Expected Dynamic Auditing Trends in 2022

Audit professional work has recently undergone one of the biggest and fastest changes that any of us have experienced in our working lives. COVID-19 is one the causes for these changes in the firms.

As we begin the second month of 2022, here are some of the audit trends that will continuously shape the industry:

1. *The Use of Artificial Intelligence and Robotic Process Automation*

The adoption of machine learning in accounting has led to a tremendous improvement in the accounting process. Accountants can now do more complex tasks by automating the time-consuming tasks, tighten controls by using relevant software, and finally produce high-end results. As more tasks are performed by using these tools, auditors need to find ways that will ensure they identify, monitor and evaluate their risks. Furthermore, they need to understand how the systems are designed and how they affect the business operations, administration, or even the structure of the organization as a whole.

2. *Data Analytics*

Modern businesses are now depending on data to optimize their products or service lines. Companies have collected data to identify bottlenecks and reduce unnecessary costs. Thus, auditors use the capabilities of data analytics software to check irregularities in data trends or patterns and identify any errors that might arise.

Data analytic tools are necessary to auditors especially when they look at the bulk of data collected and processed by their organizations. Furthermore, auditors will be able to produce smarter, faster, and better results just like any other professionals in the industry.

3. *Dynamic Planning*

This can be an unforgivable luxury in an era of rapid and dramatic change. Now the trend in internal audit is planning in real-time when changes to plans are made promptly, as new risks emerge.

When planning, internal auditors need to look ahead and not in the rear-view mirror when planning, update plans regularly (once every six months is not enough), leave a reserve of time in the schedule for completing unpredictable tasks that will inevitably arise throughout the year.

In conclusion, audit functions are changing, and the technologies used in internal audits are changing. Demand for knowledge/skills of internal auditor's changes accordingly. The demand for analytical/critical thinking, persuasion and conflict resolution skills, skills in working with big data, using artificial intelligence applications, knowledge in the field of cyber security is growing rapidly.

At the same time, the demand for communication skills and knowledge of the industry/business remains consistently high in internal audit.

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

Minimum Tax

Applicable where minimum tax is higher than instalment tax payable

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