



Happy New Year
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2020

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Newsletter

MBAYA AND ASSOCIATES

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Introduction

Happy New Year from all us at M&A! We are pleased to release our first edition of the year 2020 tax newsletter. The newsletter covers recent changes in the **tax** regime and **accounting** practice in Kenya to keep you current and updated on tax matters and the latest in business trends.

In this issue we detail the approved changes in withholding VAT, revised Electronic Tax Register Specifications, and the re-introduction of turnover tax.

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 provide any feedback at tax@mbaya.co.ke

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» From the **TaxDesk** »

[Announcement]

The Income Tax Filing season for the year 2019 begins on 1st January 2020 and ends on 30th June 2020. Employers are requested to release the P9 forms to their employees to facilitate early filing.

REVISED WITHHOLDING VAT RATE OF 2% HAS BEEN EFFECTED

The long awaited Finance Act, 2019 received Presidential assent on 7th November 2019. In our previous issues, we summarized the changes of the new legislation. Most of the proposals in the 2019 Finance Bill were maintained with a few additions. One of those maintained was a reduction of withholding VAT from 6% to 2%.

The withholding VAT rate has been reduced from 6% to 2% effective 7th November 2019 when the president assented the bill into law. Withholding VAT is not applicable on zero-rated supplies.

The change has now been effected and set in the iTax platform and all outstanding VAT payments shall be withheld at 2%. Remember that this applies only to registered VAT withholding agents.

REVISED ELECTRONIC TAX REGISTER (ETR) SPECIFICATIONS

KRA is implementing a Tax Invoice Management System (TIMS) to achieve validations and authentications of tax invoices at trader tills before generation of invoice along with their real time or near real time transmission. TIMS is an information technology integration system that will integrate trader systems (Electronic Tax Registers (ETRs), Point of Sale (POS), and ERP-Billing/Invoicing System) with iTax to monitor the generation of electronic tax invoices and their transmission through the internet to it. TIMS will enable KRA to make enhancements to iTax so as to increase its efficiency and effectiveness in tax administration through simplification of its user's interaction.

Further to the public notice issued on 16th July 2019, Kenya Revenue Authority informs manufacturers, distributors and suppliers of the fiscal devices about the issuance of the new specifications of the Electronic Tax Registers (ETRs) in line with the requirements of the VAT Act 2013.

The enhancements follow a review of the reporting system in iTax to require online transmission of transaction data to KRA through TIMS.

Expected Benefits of the Enhanced Devices

- › Faster processing of application for VAT refunds.
- › Reducing the time and cost of filing VAT returns through automatic upload of the transaction data into iTax thereby enhancing efficiency and reducing the cost of tax compliance.
- › Enhancing the quality of taxpayer data in the KRA system hence eliminating erroneous assessment, interest and penalties.

Registration of Manufacturers and Distributors

Registration of device manufacturers, distributors and suppliers is currently ongoing and is open to any interested **parties who meet** the revised ETR specifications.

All interested parties are encouraged to submit their applications through the process outlined in the technical specifications

The list of the registered device manufacturers, distributors and suppliers will be published by 10th March 2020. There after any person who will successfully complete the registration process shall be added to the list. The revised ETR specifications are accessible on the KRA website (<https://www.kra.go.ke>).

It is good to note that all VAT registered taxpayers will need to acquire the enhanced ETR devices by 30th June 2020. As discussed above, the devices which will be GPRS enabled will be used to feed the invoices automatically in the iTax system and the system will not allow taxpayers to file the VAT returns from using manual invoices.

Tax payers will need to place orders to the manufacturers, distributors and the suppliers who will be published by the 10th March 2020 so as to continue processing the online invoices smoothly. We believe that KRA will also conduct countywide seminars to educate taxpayers how to use the devices and will also ensure a smooth transition.

THE RE-INTRODUCTION OF TURNOVER TAX

Traders operating small and mid-sized businesses will from 1st January 2020 start paying a 3% monthly turnover tax on their sales to the Kenya Revenue Authority (KRA) following the re-introduction of the levy by the Finance Act 2019.

The new tax takes effect amidst concerns about deteriorating business conditions, with additional operating costs. The turnover tax is applicable for businesses whose annual sales are below Kshs. 5 million. Though it will hurt enterprises struggling with low revenues, the taxman is optimistic to boost tax collections.

Brief History

From January 2019, presumptive tax was introduced to replace turnover tax (TOT). KRA's analysis ahead of introduction of presumptive tax in 2018 indicated that some 1.56 million taxpayers with single business permits had not registered under the turnover tax regime.

Presumptive tax is charged at the rate of 15 percent of the single business permit fee issued by county governments when renewing their permits. Presumptive tax allowed KRA to gather additional data on small traders, setting the stage for the return of the TOT.

From 1st January 2020, presumptive tax will be retained alongside the turnover tax. The reason to retain it is that, it will be key in collecting data on small traders who largely operate informally for the purposes of enforcing the 3% monthly turnover tax.

Turnover Tax and Presumptive Tax Regulations, 2019

The regulations below were made by the Cabinet Secretary for the National Treasury and Planning, in exercise of the powers conferred to him by Section 130 of the Income Tax Act (CAP 470).

1. **Persons Liable to Turnover Tax** - A resident person whose gross turnover from business does not exceed or is not expected to exceed five million shillings during a year of income. This regulation shall not apply to:
 - › Any person whose income is exempt from tax under the First Schedule to the Income Tax Act and has a valid exemption certificate.
 - › Any person who would otherwise pay tax under this regime but elects by notice in writing to the Commissioner not be subject to Turnover Tax.
 - › Any income excluded from Turnover Tax under Section 12C (3) of the Act.
 - › Any person registered for Value Added Tax under Value Added Tax Act, 2013.
2. **Applicability of Presumptive Tax:**
 - › A person liable to pay Turnover Tax shall also be liable to pay a presumptive tax.
 - › Presumptive tax shall be payable at the time of payment for the business permit or trade license or renewal of licenses.
 - › The presumptive tax paid as above shall be offset against the Turnover Tax payable.
 - › Presumptive Tax payable shall be treated as the minimum tax and shall not be refundable.
3. **Election to be Excluded from Turnover Tax:**
 - › A person who elects to be exempt shall make an application for exemption in writing to the Commissioner.
 - › Where the Commissioner approves the application for exemption, a person who has been exempted shall be subject to annual tax as indicated in section 3 of the Act.
 - › The exemption approved by the Commissioner shall take effect in the subsequent tax period.
4. **Turnover Tax as a Final Tax** - Any income from a business that is subject to Turnover Tax shall not be liable to any other tax under the Act.
5. **Registration:**
 - › A person whose turnover from business does not exceed Kshs. 5 million during the year of income shall be required to apply for TOT registration in the prescribed form.
 - › Where the Commissioner is satisfied that a person is required to be registered, the Commissioner shall issue a certificate of registration in the prescribed form.
6. **Change of Status:**
 - › Where the turnover from the business of a person exceeds 5 million shillings during a year of income, that person shall notify the Commissioner of the change of status.
 - › Where the Commissioner is satisfied of the change of status above, the Commissioner shall approve it and the other provisions of the Act shall apply to the person.
 - › The change in status under as above shall be effected in the subsequent tax period.
7. **Keeping of Records:**
 - › A person registered under TOT shall be required to keep records necessary for the determination and ascertainment of tax.

- › The records required above shall include daily sales summary in a prescribed form and any other document or record that the Commissioner may from time to time direct to be maintained having regard to the type and nature of business being undertaken.
8. **Submission of Returns and Payment of Tax:**
- › A person subject to Turnover Tax shall submit a return in the prescribed form and remit the tax due, in each tax period, to the Commissioner on or before the 20th day of the month following the end of the tax period.
 - › Where a person does not have income chargeable to turnover tax in any tax period, the person shall submit a NIL return.
9. **Penalties and Interest** - The provisions on penalties and interest under the Tax Procedures Act, 2015 shall apply mutatis mutandis to these regulations.
10. **Inspection of Records** - For purposes of obtaining full information in respect of accounting for Turnover and Presumptive Tax, the Commissioner may by notice require any person to:
- › Produce records relating to the calculation of the of turnover tax and presumptive tax;
 - › Appear at such time and place as may be specified in the notice.
11. **Collection and Recovery of Tax** - For purposes of collection, recovery and enforcement of tax, the Commissioner shall apply the provisions of the Tax Procedures Act, 2015.
12. **Expenditure and Capital Allowances** - No expenditure or capital allowances shall be granted against the turnover tax.
13. **Dispute Resolution** - Any dispute arising from the administration of these Regulations shall be dealt with in accordance with the provisions of Tax Procedures Act, 2015.

INDUSTRIAL TRAINING (AMENDMENT) ACT-CAP 237 – LAWS OF KENYA LEGAL NOTICE NO. 113 OF 14TH JUNE 2007

The Industrial Training Levy was created on 14th June 2007 by the Ministry for Labour and Human Resource Development via **Legal Notice NO. 113 of 14th June 2007**. All employers subject to the Act must register with the National Industrial Training Authority (NITA) and contribute to the industrial training levy at the rate of Kshs 50/= per employee per month with effect from July 2007, or within thirty days thereafter from commencement of the business.

The Industrial Training Levy is a statutory and Mandatory requirement provided under section 5B of the Act. The purpose of the Levy in accordance with the Act is to support in full or part, the cost of industrial or workplace training of employees locally, regionally and overseas and is employer driven and workplace based to enable employers upgrade the competencies and skills of the employees.

Failure to register and contribute is an offence under the provisions of the Act and late payment is subjected to penalty of 5% of the sum due each month it is late/unpaid. There are also other penalties provided in the Act for non-compliance.

We therefore encourage compliance with this statutory requirement by registering with the Authority and making contribution as per the legal Notice No. 113 of 14th June 2007.

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.

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