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M&A

OVER 40 YEARS OF ACCOUNTING EXCELLENCE

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Newsletter

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Introduction

Happy New Year and warm greetings from all us at M&A!

We hope you and your families are keeping safe during these unprecedented times.

> *We are pleased with the lively and fruitful engagements we had in the previous editions of our newsletter.*

We now release our first edition of the year 2021 tax newsletter. The newsletter covers recent important developments in Kenya's tax regime effective 1st January 2021.

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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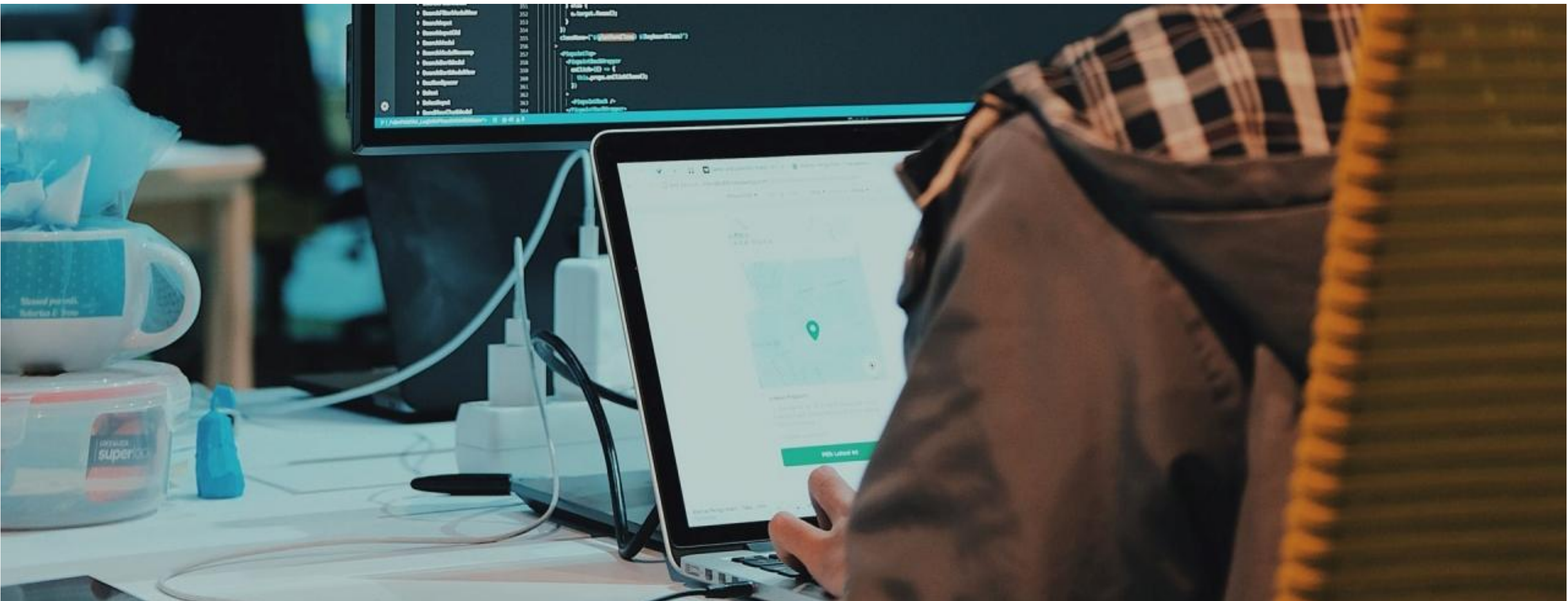
From the TaxDesk »



» From the *Tax***Desk** »

The Kenya Revenue Authority (KRA) and the National Industrial Training Authority (NITA) have developed a Unified Payroll Return (UPR) for joint declaration and payment of Pay as You Earn (PAYE) and National Industrial Training Authority contributions. The PAYE/NITA unified payroll return is ready for implementation and has been rolled out to all employers starting with the payroll month of December 2020 which was due by 9th January 2021.

Industrial Training Levy deductions are payable annually by the 9th of the subsequent month following the end of the employer's accounting period/financial year at the rate of **Kshs 600** per employee per annum. Late payments will be subjected to a late payment penalty of 5% per annum on a pro-rata basis. KRA and NITA hereby informs all employers that they are required to file their December 2020 PAYE and Industrial Training Levy returns through the unified payroll return available on the KRA iTax system. Employers are advised to use the national ID, alien ID or passport number of the employee as the NITA member number. We at Mbaya & Associates are on standby and ready to offer a helping hand.

Digital Service Tax

According to Income Tax Act regulations, **Digital service** means any service that is delivered or provided over a digital market place. **Digital service provider** means a person who provides digital services through a digital marketplace. **Digital marketplace provider** means a person who provides a digital marketplace platform. **Platform** means any electronic application that allows digital service providers to be connected to users of the services directly or indirectly. Digital Service Tax is deemed to have come into operation with effect from 2nd January 2021. Digital service tax shall apply to the income of a resident or non-resident person derived from or accrued in Kenya from the provision of services through a digital marketplace.

Digital service tax paid by a resident or non-resident with a permanent establishment in Kenya shall be offset against the tax payable by that person for that year of income. Digital service tax paid by a non-resident person without a permanent establishment in Kenya shall be a final tax.

A person shall be subject to digital service tax if that person provides or facilitates the provision of a digital service to a user who is located in Kenya.

A user of a digital service tax shall be deemed to be located in Kenya if:

- The user receives the digital service from a terminal located in Kenya, where terminal includes a computer, tablet and mobile phone.
- The payment for the digital service is made using a debit or credit facility provided by a financial institution or company located in Kenya.

- The digital service is acquired through an internet protocol address registered in Kenya or an international mobile phone country code assigned in Kenya.
- The user has a business, residential or billing address in Kenya.

Digital service tax shall be imposed on the gross transaction value of the digital service, which shall be;

a. In the case of the provision of digital services, the payment received as consideration for the services; and
b. In the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the platform.

The gross transaction value of a digital service shall not include the value added tax charged for the service.
Digital Service Tax will be applicable on the following digital services:

- Downloadable digital content including downloadable mobile application, e-books and films.
- Over-the–top services including streaming television shows, films, music, podcasts and any form of digital content.
- Sale of, licensing of, or any other form of monetizing data collected about Kenyan users which has been generated from the users' activities on a digital marketplace.
- Provision a digital marketplace.
- Subscription-based media including news, magazines and journals.
- Electronic data management including website hosting, online data warehousing, file sharing and cloud storage services.
- Electronic booking or electronic ticketing services including the online sale of tickets.
- Provision of search engines and automated help desk services including supply of customized search engines services.
- Online distance training through pre-recorded media or e-learning including online courses and training.
- Any other service provided through a digital marketplace.

The following digital services will not be considered for digital service tax:

a. Online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange carried out by:
   - A financial institution specified under the Fourth Schedule to the Act; or
   - A financial service provider authorized or approved by the Central Bank of Kenya.

b. Online services provided by Government institutions.

Change of Tax Rates

Tax Law (Amendment) Act No. 2 of 2020 published on 24th December 2020 replaces the rates introduced in April 2020 meant to cushion the public against the harsh effects of Covid-19. The tax rates are in respect of employment income, Corporation Tax and Value Added Tax and are effective from 1st January 2021.

Employment Income

The following tax rates shall apply to Individual Employment Income with effect from 1st January 2021. The first return under the new rate shall be due by 9th February 2021. The new tax rates are summarized as follows:

Tax Band	Rate of Tax
On the First Kshs 24,000 per month or Kshs 288,000 per annum	10%
On the next Kshs 8,333 per month or Kshs 100,000 per annum	25%
On all income amount in excess of Kshs 32,333 per month or Kshs 388,000	30%

The applicable monthly personal relief is **Kshs 2,400** per month or **Kshs 28,800** annually.

Pension

Pension Bands	Annual Tax Rates
Any amount in excess of tax free amounts	
On first Kshs 400,00	10%
On the next Kshs 400,00	15%
On the next Kshs 400,000	20%
On the next Kshs 400,000	25%
On any amount in excess of Kshs 1,600,000	30%

Minimum Tax

Minimum Tax was introduced by the Finance Act 2020. It is a base Income Tax, payable by all persons regardless of whether or not they make a profit. The tax is meant to foster equity and fairness in the tax system as everyone pay a base tax whether they earn profits or not.

The rate of the minimum Tax is 1% of the gross turnover of the company for a year of income. The effective date for the Minimum Tax is from 1st January 2021

The tax due shall be paid in instalments and shall be due by the 20th day of each period ending on the 4th, 6th, 9th, and 12th month of the year of income.

Where the Instalment Tax payable by a person is higher than the Minimum Tax, then the person shall pay the Instalment Tax, however, where the Minimum Tax is higher than the Instalment Tax, then the Minimum Tax shall be payable.

Incomes exempted from Minimum Tax

The following incomes are exempted from this tax:

- Income exempted by the Act
- Employment income
- Income that is subject to Residential Rental Income Tax
- Income that is subject to Turnover Tax
- Income that is subject to Capital Gains Tax
- Income from extractive sector

In case a loss is incurred and the minimum tax is paid then the loss will be claimable the next time the company makes a profit provided 10 years from the time the loss was declared will not have lapsed: If the 10year period lapses, then the loss is not claimable anymore and it is lost.

The tax is meant to foster equity and fairness in the tax system as everyone will pay a base tax whether they earn profits or not.

The newly introduced tax has come under sharp criticism from various sector players with Kenya Association of Manufacturers (KAM) considering legal action if the government ignores their pleas to review the blanket imposition of the tax.

Corporation Tax

The rate of Corporation tax has been increased from 25% to 30% of taxable income with effect from 1st January 2021.

Valued Added Tax

The rate of Value Added Tax has been increased from 14% to 16% with effect from 1st January 2021. The first return under the new rates is due by 20th February 2021.

DEVELOPING A STRONG FRAUD MITIGATION PROGRAM

Courtesy of Joshua Wiesenfeld, Andrew.Adamek@aicpa-cima.com

Recessions give rise to innumerable challenges to business operations, not the least of which are growing instances of fraud.

As the economic challenges caused by the COVID-19 pandemic drag on, business owners are at increased risk of fraud and embezzlement, with all its associated costs. One think tank organization recently reported that the cost of fighting fraud is set to increase 7.3% due to the coming surge of fraud.

Prudent managers will seek to root out fraud risk before the cost becomes prohibitive. CPAs, particularly those who specialize in forensic accounting Like Mbaya & Associates, are uniquely positioned to help business owners implement fraud-mitigation plans and minimize pandemic-induced malfeasance.

The following practices can aid in creating an effective fraud-mitigation plan.

Assess Risk

The first step to mitigating fraud in your organization is to establish a fraud risk assessment plan. Once management identifies and understands the risks to your business and internal control weaknesses, further steps can be taken to minimize loss.

There are several elements to a fraud risk assessment plan.

The first step is to identify any possible fraud schemes; these can include fraudulent disbursements, undisclosed relationships, revenue recognition schemes, manipulation of liabilities and expenses, inappropriate journal entries, and improper reporting and disclosures.

Once potential fraud schemes are identified, the next step is to identify which anti-fraud controls are currently in place and how effective they are at actually preventing fraud. Next, ascertain the likelihood of a fraudulent event and the impact on your organization. Finally, appoint a responsible party to oversee and monitor anti-fraud controls.

Segregate Duties

An effective fraud mitigation plan will include a requirement to separate duties between multiple parties. "The segregation of incompatible duties is key to the reduction of fraud, segregating the functions of initiating, authorizing, and recording of transactions is fundamental to effective fraud control. Where appropriate segregation of duties is not practical or feasible, mitigating controls may include reconciliations, supervisory reviews of audit trails and rigorous management oversight.

Manage Workflow

One of the challenges most organizations currently face is that an increasing number of employees now work from home, which can give rise to a host of organization headaches. In the current environment, workflow is harder to manage because of COVID-19, white-collar professionals are more likely to be working from home than in the past. In this unfamiliar environment, workers who can no longer walk over to their supervisor's desk are less likely to include proper supporting documentation, and their supervisors are more inclined to overlook it. There is a much heavier reliance on email as an authorization method than in the past. Supporting documents that are normally appended to workflow are often omitted from email authorization requests.

It is absolutely essential that organizations mandate the attachment of supporting documentation to email authorization requests.

Unethical employees may take advantage when managers authorize transactions via email even if the proper documentation is omitted. It is therefore crucial that any fraud-prevention plan mandates that supporting documentation be included in email requests, and that requests are not approved unless proper documentation is included.

Reconcile Everything

The regular review of transactions is an effective way to combat fraud. In the chaotic business environment engendered by the pandemic and the accompanying economic uncertainty, it is easy to overlook the financial record review process. Oversights of this kind can create opportunities for employees to take advantage and misappropriate assets, since business managers are more likely to be focused on ensuring business survival than on the routine review of the books.

Reconciling books and records is an effective way to fight fraud. "Good fraud prevention requires the regular reconciliation of accounts performed by one individual and reviewed by another, Businesses should take care to conduct regular bank reconciliations and also to reconcile sub ledgers to the general ledger. The reconciliation process should be monitored by a member of senior management for maximum efficacy.

Establish Bank Authorization Protocols

Organizations should instruct their banks to adopt a dual-authorization policy when it comes to monetary withdrawals. All money transfers above a certain threshold through banking organizations should involve a call back to an authorizing individual.

This practice can be easy to overlook in a work-from-home environment, which is why increased vigilance is necessary. It is critical that banks be instructed to only release funds under dual authorization.

Fraud is not the sole purview of low- and mid-level staff; ensure that even members of senior management are not authorized to withdraw funds without dual authorization. Lower-level employees are often hesitant to challenge their superior, that's why it is important to make sure any fraud mitigation program factors in management activity.

Look out for Red Flags

Fraud mitigation programs should be able to flag indicators of potentially fraudulent activity. by way of example, that journal entries posted at irregular times may indicate suspicious behavior. If a journal entry was created over the weekend or during a holiday, it might be a sign that someone is creating a fictitious transaction, perhaps to overstate revenue.

Another red flag is large transactions posted toward the end of the year. In an environment where there is a lot of pressure to demonstrate a high volume of sales many organizations are tempted to post fabricated transactions at year-end in order to pad their income statement. A strong fraud prevention program will be able to identify this type of activity."

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

KENYA REVENUE AUTHORITY

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.

Disclosure of Company Beneficial Ownership

Earliest date to be entered in the register of BOs | 21st day of February 2020

Deadline date for disclosure of company beneficial ownership | 31st day of January 2021