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OVER 40 YEARS OF ACCOUNTING EXCELLENCE

2022

Happy New Year

Newsletter

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Introduction

Happy new year 2022 and warm greetings from all us at M&A. We hope you and your families had some time to take a break and bond during the December festivities while keeping safe. 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 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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» From the TaxDesk »

Filing and Payment of Industrial Training Levy

Filing and payment of National Industrial Training Levy is done by KRA in agency by the National Industrial Training Authority (NITA).

The levy is payable at Kshs. 50 per employee per month by all employers who have been in operation for more than 12 months. The levy is payable once, by the 9th of the next month following the end of the accounting period.

The filing is done through the normal PAYE return under M1 where the employer populates the employees' details (ID, name PIN & amount) in the PAYE. The amount is calculated at Kshs. 50 per month for the number of months each employee has worked with the employee in that particular year.

Payment of this levy is done just like any other tax through the bank. Processing of the slip is done through the portal (but different from the PAYE payment slip) using the agency revenue and NITA Levy as the tax head and subhead respectively.

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

Special Economic Zones, established and defined by the Special Economic Zones Act 2015 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.

The policy intention of including the service industry into the SEZ regime is to leverage Kenya's young and educated demographic in industries such as business process outsourcing.

The Special Economic Zone Authority is the regulator of all SEZs. It is responsible for designing, approving, establishing, developing, operating, promoting and regulating an SEZ. It also issues licenses and implements Government policies and programs. Further, the Authority is in charge of determining the investment criteria and investment thresholds for the businesses in the zone and maintains records of the enterprises and residents operating in each zone. An example of an SEZ is **Tatu City** in Kiambu County.

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.

Export Processing Zones (EPZs) have been in existence in Kenya since 1990. They are governed by the Export Processing Zones Act, 1990. There are currently over 40 gazetted zones in Nairobi, Voi, Athi River, Kerio Valley, Mombasa and Kilifi in various stages of development by both private and public zone developer/operators. An example is **EPZ Athi River** and **Kapric Apparels EPZ Ltd** in Mombasa.

Comparison of the Tax Incentives between EPZs and SEZs.

Details	EPZ	SEZ
Value Added Tax	EPZ enterprises are exempt from VAT registration. The supply of taxable goods and services to EPZs is zero rated.	The supply of taxable good and services to SEZs is zero rated.
Income Tax	Exempt for the first 10 years (Tax holiday). 25% for the next 10 years. 30% rate from the 21st year.	10% for the first 10 years of operation, and thereafter 15% subsequent years.
Investment Deduction	100% of the capital expenditure on building and machinery in the first year of use.	100% of capital expenditure on building and machinery in the first year of use.
Import Declaration Fee	Goods destined to EPZs are exempt from Import Declaration Fees.	Goods destined to SEZs are exempt from Import Declaration Fees.
Withholding Tax	Dividends and other payments to non-residents during the 10 year tax holiday. Subsequently, withholding tax for non-residents applies as follows: Interest: 15% Dividend: 10% Management & Professional Fees: 20% Royalties: 20%	Payments to non-residents: Interest: 5% Dividend: 0% Management & Professional Fees: 5% Royalties: 5%.

Capital Gains Tax

Capital Gains Tax is a tax chargeable on the whole of a gain which accrues to:

- An individual on transfer of land and shares excluding those listed on the NSE or
- A company on transfer of assets and shares excluding those listed on the NSE.

The tax was suspended in 1985 and later reintroduced effective 1st January 2015. The said property should be situation in Kenya, whether or not the property was acquired before 1st January 2015.

Rate of Tax

The rate of tax is 5% of the net gain. It is a final tax and cannot be offset against other income.

What constitutes a property.

The definition of 'property' is widely drawn. It refers to land, buildings and marketable securities including securities in Kenyan resident private companies (though a specific exemption from CGT exists for securities listed in NSE).

Who is liable to pay the tax?

The tax is to be paid by the person (resident or non-resident) transferring the property, referred to as transferor. The transferor can either be an individual or a corporate body.

How do you determine the net gain?

The net gain is the excess of the transfer value over the adjusted cost of the property that has been transferred. It is this excess that is subjected to tax at 5%.

The **Transfer Value** of the property is the amount or value of consideration or compensation for transfer of the property less incidental costs on such transfer.

The **Adjusted Cost** is the sum of the cost of acquisition or construction of the property; expenditure for enhancement of value and/or preservation of the property; cost of defending title or right over property, if any; and the incidental costs of acquiring the property. The adjusted cost shall be reduced by any amounts that have been previously allowed under section 15 (2) of the Income Tax Act.

What is the due date/ tax point?

The tax should be paid upon transfer of property but not later than the 20th day of the month following that in which the transfer was made.

What happens when a loss is made?

The loss may be carried forward to be offset/ deducted against a gain of a similar nature at a future date.

Exempted Transactions from Capital Gain Tax.

- Transfer of property between spouses.
- Transfer of property within a group as part of a re-organization or re-construction.
- Transfer of title of immovable property to a registered family trust.
- Issuance by a company of its own shares.
- Disposal of property for purpose of administering the estate of a deceased person.

» From the Secretarial**Desk »**

Company Secretarial Service Bouquet

In this issue we mention duties that we as your Company Secretary can do for you.

Duties we can do for your Company:

- Monitor and ensure compliance with relevant laws, statutory regulations, codes of governance and global best practices in corporate governance in the organization.
- Ensure that the procedure for directors' appointment is properly carried out.
- Ensure that the annual returns are promptly filed with relevant authorities.
- Ensure accurate recording of minutes of all meetings and certify that the minute books are properly maintained.
- Participate in the implementation of the corporate strategy.
- Provide guidance and advice within the organization on matters of business ethics and good governance.
- Ensure that an annual Governance Audit is carried out by a competent qualified professional accredited by the Institute for that purpose.
- Ensure that the recommendations from the Governance Audit are considered by the Board in a formal Board meeting
- To oversee a governance self-assessment and preparation of governance report in a format approved by the Institute

We can also do the following:

- Participate as a key member in corporate mergers, acquisitions and disposals in protecting the organization's interests by ensuring that due diligence have been undertaken.
- Ensure that procedures are in place to allow adequate historical archives are maintained
- Maintain the following registers:
  a. Conflict of interest register
  b. Register of charges and debentures
  c. Members registers
  d. Register of directors and secretaries
  e. Seal register (where applicable)
- Coordinate the publication and distribution of the Organization's annual report and accounts and interim statements, in consultation with the Organization's internal and external advisors.
- Maintain the Organization's register of members; dealing with transfers and other matters affecting shareholding.

To Shareholders, we can provide the following services:

- Facilitate effective communication between the Organization and the shareholders.
- Ensure that due regard is paid to shareholders' interest.
- Arrange payment of dividends.
- Be primary point of contact for institutional and other shareholders, and enlighten them about Corporate Governance.

- Ensure that all shareholders are treated fairly and equally.
- Ensure that an Annual General Meeting is held in accordance with the requirements of the relevant statutory provisions and obtaining internal and external documentation for circulation to shareholders.
- Ensure that the voting process is carried our correctly.

Get in touch

To enjoy these services, feel free to get in touch with us at **darlyn@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

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