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## COMMON TAX QUESTIONS ANSWERED

Emerging Issues on Turnover Tax (TOT) .1

Tax Due Dates .6



# Newsletter

MBAYA AND ASSOCIATES

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## Introduction

Welcome to the seventh edition of our tax newsletter.

*In this issue we consider turnover tax, capital gains tax and answers to nine frequently asked tax questions.*

You will find our contact details on the right column.

Senior members of our team will assist you by offering clarity on 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](mailto:tax@mbaya.co.ke)

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## » From the **TaxDesk** »

### *Emerging Issues on Turnover Tax (TOT)*

Turnover Tax (TOT) is a tax charged on the gross sales of a business as per Section 12(c) of the Income Tax Act and the Finance Act 2019 with effect from 1<sup>st</sup> January 2020.

TOT of 1% of gross receipts from the business shall apply to businesses with a turnover of between Kshs. 500,000 and Kshs. 50 million.

TOT does not apply to income from rent, management, professional or training fees.

The penalty for late filing has been reduced from Kshs. 5,000 to Kshs. 1,000 with effect from 25<sup>th</sup> April 2020. Late payment penalty is 5% of the tax due with interest being charged at 1% of the principal tax due.

Emerging Issues under TOT:

- The tax rate reduction from 3% to 1%;
- The removal of 15% Presumptive Tax with effect from 25<sup>th</sup> April 2020;
- The change in filing regime from quarterly basis to a monthly basis;
- The change in threshold from below Kshs. 1 million to between Kshs. 1 million and Kshs. 50 million. This will imply that business with a turnover above Kshs. 5 million will pay both TOT and VAT.

### *Capital Gains Tax*

Capital Gains Tax is a tax chargeable on the whole of a gain which accrues to a company or an individual on or after 1<sup>st</sup> January 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1<sup>st</sup> January 2015.

It was suspended in 1985 and later reintroduced effective 1<sup>st</sup> 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 taxes.

#### *What is property?*

Property refers to land, buildings and marketable securities including the shares of a private company.

#### *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 20<sup>th</sup> 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.



## Common Tax Questions Answered

With the tax filing season just recently over, a lot of us still have taxes on our mind. We wonder about all the different taxes and when they fall due, hoping we can keep all the facts straight. Below is a comprehensive list that answers all your tax questions.

### 1. *What happens if I file Income Tax Returns after the deadline?*

Income tax is a tax charged upon all the income of a person, whether resident or non-resident, which is accrued in or was derived from Kenya.

The deadline for filing one's Annual Tax Return with the Kenya Revenue Authority (KRA) is six months after the financial year-end. Failure to file by the due date results in penalties as follows:

#### *Individuals:*

Late filing: 5% of the tax due or Kshs. 2,000, whichever is higher.

Late payment penalty: 20% of the tax due

Late payment interest: 1% per month of the unpaid tax until the tax is paid in full

#### *Companies:*

Late filing: 5% of the tax due or Kshs. 20,000, whichever is higher.

Late payment: 20% of the tax due

Late payment interest: 1% per month of the unpaid tax until the tax is paid in full

## 2. *What if I am a sole proprietor (self-employed)?*

A sole proprietor's profit forms part of their consolidated annual income which they declare in their individual income tax return. The consolidated income is taxed at the graduated scale to arrive at the annual tax payable.

## 3. *Do partnerships pay corporation tax?*

The short answer is no. A partnership's profit/loss is distributed to the individual partners in their profit-sharing ratio. The profit then forms part of each individual's income, from where it is taxed.

## 4. *Does a company that incurred losses have to file a return?*

Yes, the company must file a return. It will then be allowed to carry forward its losses to be offset against future taxable income.

Carrying forward of losses is subject to a 10-year limit. However, companies in the mining, oil and gas industries are only allowed to carry forward losses for a maximum of three years.

However, please note that the Finance Act 2020 has introduced a *minimum tax payable* of 1% on the gross turnover payable irrespective of whether the company has made a profit or loss.

- Where the instalment tax payable by a person is higher than the minimum tax, then a person shall pay the instalment tax; however, where the minimum tax is higher than the instalment tax, then the minimum tax shall be payable
- Minimum tax shall not apply to: income that is exempt under the Act; employment income; income subject to residential rental income tax; income that is subject to Turnover Tax; income subject to Capital Gains Tax and income of entities operating in the extractive sectors.

## 5. *What are instalment taxes and should I pay them?*

These are quarterly tax payments either on projected taxes from the previous accounting period or on analysis of tax of the current accounting period. This is applicable to all companies in a profitable position. For the loss-making ones, the minimum tax is applicable.

Individual taxpayers are required to pay instalment taxes if their previous year's tax payable exceeded Kshs. 40,000.

Instalment tax is paid in four instalments by the 20<sup>th</sup> day of the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> month of each financial year. The balance of tax is payable by the 30<sup>th</sup> day of the 4<sup>th</sup> month following the year end.

Instalment tax for companies in the agricultural sector is payable in two instalments by the 20<sup>th</sup> day of the 9<sup>th</sup> and 12<sup>th</sup> month of each financial year. The balance of tax is payable by the 30<sup>th</sup> day of the 4<sup>th</sup> month following the year end.

Failure to pay instalment taxes incurs a penalty of 20% of the tax due.

## 6. *What are withholding taxes and how do they work?*

A withholding tax is a tax deducted at source from certain classes of income at the point of making a payment, to non-employees. This means that it is remitted to the KRA by the recipient of the service rather than the provider of the service. Taxes are withheld as a means to facilitate compliance.

Withholding taxes vary depending on the type of income and whether the recipient of that income is a resident or non-resident. A tax treaty between two countries will also affect the rate of withholding tax charged.

Failure to deduct or pay withholding tax will incur a penalty of 10% of the amount of tax involved up to a maximum of Kshs. 1 million.

## 7. *What if I realize after I filed that I made a mistake?*

KRA gives one the option to amend the return on iTax.

- If the amendment results in an increase in tax liability, the amended return will automatically be approved.
- If the amended return results in a decrease in liability, a task will be created in iTax for an officer to validate the amended return prior to approval of the same.

## 8. *Can I apply for a waiver on taxes due?*

A taxpayer is eligible to apply for a waiver only if they have filed all tax returns and paid all principal taxes due in full. He will then submit a waiver application on iTax and attach a written explanation of mitigating factors as to why the waiver should be granted and documentary support for the grounds of mitigation.

## 9. *What other taxes do I need to file?*

### *Pay as you earn (PAYE)*

This is tax collected at source from individuals in gainful employment. It is deducted by the employer according to the prevailing tax rates and remitted to KRA on the employee's behalf. Due on or before the 9<sup>th</sup> of the following month.

### *Value added tax (VAT)*

This is tax charged on supply of taxable goods or services made or provided in Kenya and on importation of taxable goods or services into Kenya. Qualifying taxpayers should register for VAT if their annual revenue exceeds Kshs. 5 million. VAT is due on or before the 20<sup>th</sup> of the following month.

### *Rental income tax*

This is tax charged at 10% of the gross rental income received from renting out residential property.

The tax is charged under Section 6A of the Income Tax Act. It is payable with effect from 1<sup>st</sup> Jan 2016 by any resident person on income accrued in or derived from Kenya for the use or occupation of residential property.

The Finance Act 2020 has increased the upper threshold of Residential Rental Income from Kshs 10 million to Kshs. 15 million per annum. In addition, it has aligned the lower threshold from Kshs 144,000 to current lower individual tax band of Kshs 288,000 per annum.

It is due on or before the 20<sup>th</sup> of the following month. It is a final tax and therefore need not be declared in the annual income tax return.

### *Penalty for late filing:*

For individuals: Kshs. 2,000 or 20% of the tax due, whichever is higher.

For corporates: Kshs. 20,000 or 20% of the tax due, whichever is higher.

## *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 | 20<sup>th</sup> 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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