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DATA MIGRATION FROM LEGACY TO iTAX

VAT Inconsistencies .2

Excise Tax .3

Economic Outlook .4

Tax Due Dates .6



Newsletter

MBAYA AND ASSOCIATES

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Introduction

Warm greetings from all us at M&A!

We are pleased to release our third 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 discuss the VAT inconsistencies, an update on data migration from legacy to iTax and a discussion on the excise 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 matter.

Please provide any feedback at tax@mbaya.co.ke

In this issue



From the Tax Desk

- Data Migration from Legacy to iTax » 1
- VAT Inconsistencies » 2
- Excise Tax » 3
- Economic Outlook » 4
- Tax Due Dates » 6

Contacts

Head Office
3rd Floor, Western Heights
Karuna Road, Westlands
P. O. Box 45390 – 00100
Nairobi, Kenya
Tel. +254(20)4443868
254 20 4448938
254 20 4446466
Fax: 254 20 4449819

Mike Mbaya | Managing Partner

Email: mike@mbaya.co.ke

Muhungi Kanyoro | Partner

Email: mkanyoro@mbaya.co.ke

Andrew Bulemi | Partner

Email: abulemi@mbaya.co.ke

Leah Nganga | Partner

Email: lwambui@mbaya.co.ke

Christine Yego | Outsourcing Dept. Manager

Email: christine@mbaya.co.ke

Kevin Njenga | Tax Manager

Email: knjenga@mbaya.co.ke

Darlyn Mbaya | Manager and Partner

Savanna Associates

Email: darlyn@mbaya.co.ke

» From the **TaxDesk** »**DATA MIGRATION FROM LEGACY TO iTAX**

From July 2015, the Kenya Revenue Authority made it mandatory for taxpayers to file tax returns and make the tax payments on the online iTax system. Prior to this, taxes used to be filed and paid manually on a system that was prone to errors and omissions

The need to digitize the system and seal loopholes led to the development of the iTax system. KRA now wishes to migrate the tax balances and credits from the old system to iTax before they can entirely close the old system.

The migration process, which commenced with large and medium taxpayers, is being undertaken as follows:

- › KRA will undertake a reconciliation of a taxpayer's account in the old system to establish the correct balances to be migrated to the iTax system.
- › The taxpayer will receive a letter from their KRA station asking them to confirm the accuracy of their ledger balance. KRA has indicated that the confirmation request will not constitute an assessment; taxpayers are therefore entitled to provide documentary evidence in case they dispute the accuracy of the ledger balances indicated by KRA.

- › After validation by the taxpayer and KRA, the old system balances will be migrated to the iTax system, following which the taxpayer will be required to address the tax amount payable.

VAT INCONSISTENCIES

In the recent past many VAT registered taxpayers have received emails from KRA requesting them to amend their VAT returns to disallow those VAT invoices which do not match from the seller to the buyer of the goods or services.

This is with a view to disallowing incorrectly claimed input VAT. KRA is now validating input VAT credits claimed by VAT-registered taxpayers to ensure they pay the correct VAT amounts. KRA has indicated that the incorrectly claimed VAT largely stems from the following cases:

- › Claiming fictitious invoices;
- › Double claims on import entries or purchase invoices;
- › Post-dating of invoices;
- › Claiming of withholding VAT without declaration of corresponding sales;
- › Under-declaration of outputs and/or overstatement of inputs and falsification of credit notes (fraud).

Other reasons that would bring up the inconsistency issues is when the buyer or the seller:

- › Inputs different dates of the same invoice when filing the VAT returns;
- › Uses different rates when filing especially on invoices which have foreign currencies;
- › Makes an error in inputting the actual invoice amount;
- › Makes an error in inputting the invoice number.

When the above happens, the iTax system treats these as two difference invoices and sends email notifications to both the seller and buyer. KRA will require documentary evidence indicating that your filing is correct and if wrong, a taxpayer is required to amend the VAT return.

Failure to address the issues raised in 15 working days leads to KRA issuing an assessment on the VAT claimed with penalties and interest based on the adjustments made. In case this is not acted upon within a further 30 days, then KRA has a right to institute collection enforcement measures or even adjust the iTax account for the taxpayer and impose a debit adjustment of the tax in question.

The debit adjustments will require the taxpayers to input the VAT amount previously assessed when filing the next return. The iTax system will not allow a taxpayer to file the next VAT return without including the debit adjustment. This is to make sure that the tax has been captured as a payable amount.

We have however noted that the iTax system has not factored in the six-month period within which one can claim VAT inputs, as per the law. We have taken it up with the revenue authority and they claim to be adjusting their system to incorporate this. We hope that this will be expedited soon so as to avoid inconveniencing the tax payer.

We advise our clients to keep a close eye on their iTax linked emails and let us know in case they receive any KRA correspondence so that we can advise and take the necessary action.

EXCISE TAX (STAMPS ON BOTTLED WATER, JUICES, SODA, OTHER NON-ALCOHOLIC BEVERAGES AND COSMETICS)

Excise taxes are selective taxes on the sale or use of specific goods manufactured in Kenya or imported into Kenya and services, such as tobacco products, alcohol, cosmetics, juices and bottled water.

Characteristics of Excisable Goods and Services

1. Luxurious / Goods of ostentation – These are luxury goods consumed out of need for display of economic class rather than as a necessity designed to impress or attract notice.
2. They have negative effects - Excise charged as a sin tax. For example, alcohol and tobacco have been found to have serious health, social and economic effects on consumers.
3. Addictive / Habitual - Tobacco and alcohol and other excisable goods have an addictive effect on the consumer and its consumption is driven by the need to sustain an addiction.
4. They have low price elasticity - An increase in price creates a less proportionate decrease in demand.
5. Limited consumption – The goods are not for mass consumption.

Excisable Goods and Services

The list of Excisable goods and services can be found in the 5th Schedule of the Income Tax Act as read together with Section 117 (1) (d) of the Customs and Excise Act, CAP472 Laws of Kenya.

We wish to inform all our clients that the Kenya Revenue Authority has developed the Draft Excise Duty regulations, 2019. The regulations are currently hosted on the KRA website. You can access the regulations through the link: <https://www.kra.go.ke/images/publications/The-Excise-Duty-Regulations-2019-Draft.pdf>

The regulations give a guide on how to treat all the excise tax matters. We urge our clients to go through the regulations and be advised on how to treat excise taxes. In addition, most taxpayers fail to align the excise tax with VAT filed. Please note that KRA is working round the clock leaving nothing to chance in efforts to seal any leakages in tax administration. They have now been working to compare the filed returns to make sure that the tax declarations are correct.

We urge our clients to make sure that all excise tax declarations be aligned with VAT and Income Tax where applicable so as to avoid under-declarations on either of the above which in turn can inconvenience the taxpayer.



ECONOMIC OUTLOOK [Courtesy: Multiples]

Personal loan defaults have nearly **doubled** over the past three years to **52.3 BN KES** (508.2 MM USD) when **Kenya** economy has resulted in job cuts and near stagnant wages, leaving thousands of people in a debt trap. The latest Central Bank of Kenya (**CBK**) data shows that defaults from personal unsecured lending jumped **3.6 BN KES** (34.9 MM USD) in the three months to June 2019, the biggest increase when compared to other segments like mortgages, trade and manufacturing.

- **Kenya** market is shielded by tariffs and import quotas that may need to be reviewed to make **imports** from alternative sources such as African markets affordable. Manufacturers have started feeling the cost pressures as a result of shortages of raw materials and intermediate goods after **China** put factories on a lockdown to manage the disease.
- **Kenya current account deficit** as a percentage of GDP increased to **4.9%** in January 2020 compared to 4.6% in December 2019 on the back of lower earnings from transportation services. The increase is an indicator that freighters and the port have been feeling the negative effect of disruptions in global trade due to the coronavirus outbreak.
- Kenya Coffee earnings decreased **2 BN KES** (19.4 MM USD) at the end of February 2020 compared to the same period last year following a slump in volumes and depressed prices at the auction. According to the Nairobi Coffee Exchange (**NCE**), the crop earned Kenya **6.6 BN KES** (64.1 MM USD) in February 2020 compared to 4.5 BN KES (43.7 MM USD) in February 2019.
- **Zimbabwe** and **Rwanda** will hold a join **Trade and Investment Conference** in Kigali as the two countries seek to deepen bilateral ties and increased economic cooperation for mutual benefit. Zimbabwe and Rwanda relations are at all-time high and the two countries are already planning to set up a Joint Permanent Commission of Cooperation, which will strengthen economic and political engagements.

- The successful implementation of the African Continental Free Trade Area (**AfCFTA**) could help **Eastern African countries** reap **1.8 BN USD** and revive the region's **intra trade**, according to the UN Economic Commission for Africa (**ECA**).
- The Central Bank of Uganda (**CBU**) pointed to "**abnormally low**" rates for U.S. Treasury securities as a major reason behind the reported loss of **2 TR UGX** (545 MM USD) in the past 15 years. **Over 90%** of Bank of Uganda earnings are from interest income on foreign reserve assets raising concerns about the bank's ability to deliver on its mandate.

Stock Market

- **Bonds** turnover at the Nairobi Securities Exchange (**NSE**) went up **28%** reaching **47.6 BN KES** (462.13 MM USD) in February 2020 compared to **37 BN KES** (359.2 MM USD) in January 2020 as investors looked for safety in government paper when turbulence hit equity markets due to the negative effects of coronavirus outbreak.
- In celebration of the **International Women's Day**, Rwanda Stock Exchange (**RSE**), joined with counterparts around the world to ring the market bell to draw attention to the critical role that business and markets can play in tackling gender inequalities. According to RSE officials, the participation of Rwandan women on the country's stock market is good; and there is no visible difference between the activity of the ladies and that of their male counterparts, and if they do better, there will be more benefit to the economy.

Companies Transactions

- Indian vehicle manufacturer **Mahindra** is planning to use **Kenya** as its **African assembly hub** as it aims to increase market share in both commercial and passenger segments. The firm unveiled its first batch of locally assembled double and single cab pick-up models, starting with a ceremony at State House yesterday and a customer event on Wednesday.
- The recent Small and Medium Enterprises (**SMEs**) Expo hosted by **National Media Group** two weeks ago was an eye-opener. The forum highlighted not only the challenges that the SMEs face, but also the opportunities that are available for them.
- **Kigali** is planning to expand its national carrier **RwandAir** across the continent, and challenge the dominance of regional leaders, **Kenya Airways** and **Ethiopian Airlines**. The airline has recorded sharp growth reaching **29 destinations** across the globe but the problem for Kigali has been the Qatar government's recent fixation with Rwanda's aviation sector.
- **Union Bank of Nigeria Plc** has signed a share sale and purchase agreement (**SPA**) with MBU BidCo to divest its **100%** equity stake in **UBUK**. MBU is an acquisition vehicle wholly owned by MBU Capital Limited. Subject to obtaining the relevant regulatory approvals in Nigeria and the United Kingdom, ownership of UBUK will be transferred to MBU. The proposed sale of UBUK is aligned with UBN's medium term strategy to focus primarily on the Nigerian market.
- **Safaricom** will launch **Kenya** first fifth generation (**5G**) mobile internet services targeting major urban centers in 2020, making it the inaugural operator to offer commercial and superfast services in the region.
- Logistics firm **Sendy**, which operates an app linking delivery drivers with customers, has raised **2 BN KES** (19.9 MM USD) in funding from a group of institutional investors including Japanese conglomerate Toyota Tsusho Corporation (**TTC**).

- Private equity firm **Kuramo Capital** risks losing a total of **699 MM KES** (6.9 MM USD) worth of loans given to **TransCentury**, the parent company of East African Cables, which is facing a liquidation suit.

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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