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Newsletter

MBAYA AND ASSOCIATES

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Introduction

Warm greetings from all of us at M&A!

We hope you and your families are keeping safe and that the Covid-19 vaccines and continued observation of all the health protocols will lead to an improved environment both for health and business. We appreciate the lively and fruitful engagements we have had from previous editions of our newsletter. We hereby release the fifth edition for the year 2021.

The newsletter covers recent updates on the Fringe Benefit Tax rates, intended deregistration of non-compliant PINs and Investment Allowances.

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 any topics you would like to see featured in upcoming issues of the newsletter.

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

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» From the **TaxDesk** »



Fringe Benefit Tax and Deemed Interest Tax Rate

Through a public notice dated 28th April 2021, the Kenya Revenue Authority (KRA), informs the members of the public that the Fringe Benefit Tax (FBT) and Deemed Interest Tax rates have changed as follows:

Fringe Benefit Tax

With reference to section 12B of the Income Tax Act, the Market Interest Rate is 7%. This rate shall be applicable for the three months of April, May and June 2021.

Deemed Interest Rate

With reference to section 16 (5), the prescribed rate of interest is 7%. This is applicable for the months of April, May and June 2021.

Withholding tax at a rate of 15% on the deemed interest shall be deducted and paid to the Commissioner by the 20th day of the month following the month of computation.

Intended De-Registration of Non-Compliant Pin Numbers

Through a public notice, the KRA has notified taxpayers of their intention to deregister non-compliant personal identification numbers (PIN). Taxpayers have been given a one-month window to ensure compliance before the notice is enforced. The affected taxpayers will be those who have not been filing their statutory monthly and annual returns.

At the expiration of the said period, the affected PINs will be deregistered unless a cause is shown to the contrary. This is part of the taxman's efforts to push hard and expand the tax base with a view to seal any tax gaps. This will affect well over sixty-two thousand, seven hundred and twenty-seven taxpayers. If you are one of the affected tax payers, we will be happy to offer you our services to avoid any inconveniences that may come with the intended deregistration.

Voluntary Tax Disclosure Programme

The taxman has encouraged the general public to come forward and take advantage of the Voluntary Tax Disclosure Program which runs from January 2021 to December 2023 where taxpayers are required to declare the rightful taxes for the period between July 2015 and June 2020. In this program, taxpayers will be required to pay 100% of the principal tax and get:

- > 100% waiver of penalties and interests if total principal tax is paid in 2021
- > 50% waiver of penalties and interests if total principal tax is paid in 2022
- > 25% waiver of penalties and interests if total principal tax is paid in 2023

We kindly ask that you get in touch with our dedicated tax team to assist you with any information you may need on the program.

Duty-Free Imports on Returning Residents

A returning resident is a person changing residence from a place outside Kenya to a place within Kenya. A returning resident is allowed to import personal and household effects or a motor vehicle duty-free. This is in exclusion of buses and minibuses of a seating capacity of more than 13 passengers and commercial vehicles of 2 tonnes and above.

However, there are conditions to be met by a returning resident before importation:

- a) The person has attained the age of eighteen years
- b) The vehicle was used by him/her outside Kenya for at least twelve months (excluding the period of voyage in the case of shipment)
- c) The vehicle is owned and registered in his/her name and/or his spouse's.

The following documents will be required for an exemption of a returning resident to be processed:

- a) Passport - original, (if issued within last 2 years, the old passport is also required)
- b) Residence Visa/Work Permit - original
- c) PIN Certificate
- d) Bill of Lading/Air Waybill - original
- e) Comprehensive Valued Inventory - 3 copies, detailed per box w/boxes numbered, signed by owner
- f) Packing List
- g) Power of Attorney - giving authority for Destination Agent to arrange customs clearance.

In case the Kenyan resident is returning from a country that operates left-hand drive (LHD) motor vehicles, he/she is allowed to import a replacement right hand drive (RHD) vehicle from any other source under the following conditions:

- a) The replacement motor vehicle current retail selling price should not exceed that of the previously owned left-hand drive vehicle.
- b) The returning resident must show proof that they owned and personally used the left-hand drive vehicle in the country of former residence for a period of at least one year prior to their return.
- c) They must also provide proof of disposal (transfer of ownership) of the previously owned vehicle before changing residence from the former country of residence.

Investment Allowances

Where a person incurs capital expenditure, an investment allowance may be deducted in computing the gains or profits of that person at the corresponding rates for each year of income as tabulated below.

Investment allowance applicable to year of income prior to April 2020.	Rate (%)
Cost on industrial buildings and purchase of machinery used for manufacturing	100
Cost on construction of buildings or purchase and installation of machinery exceeding Kshs 200 million outside Nairobi, Mombasa and Kisumu.	150
New, used and re-furbished ship of 125 tonnes or more.	100

Wear and Tear allowances applicable to the year of income prior to April 2020.	Rate
Tractors and other heavy self-propelled machines	37.5% per year on a reducing balance.
Computers and peripheral hardware, calculators, copiers and duplicating machines.	30% per year on a reducing balance.
Motor vehicles (if not commercial, limited to a cost of Kshs 2 million)	25% per year on a reducing balance.
Ships, plant, machinery, furniture, fittings and other equipment.	12.5% per year on a reducing balance.
Telecommunication equipment used by telecoms operators.	20% on a straight line.
Computer software	20% on a straight line.
Indefeasible right to use fibre optic cable	5% on a straight line.

Industrial Building allowance applicable to the year of income prior to April 2020.	Rate (%)
Industrial building	10
Hotels	10
Hostels and education buildings in use for training.	50
Hostel and educational building used for training of film producers, actors or crew.	100.

However, the Tax Laws Amendment Act 2020 revised the above rates. The current prescribed rates are listed as follows;

Investment allowance on buildings applicable to the year of income from April 2020 onwards.	Rate
Hotel buildings	50% in the first year of use and then 25% reducing balance.
Buildings used for manufacture	50% in the first year of use and then 25% reducing balance.
Hospital Buildings	50% in the first year of use and then 25% reducing balance.
Petroleum or gas storage facilities	50% in the first year of use and then 25% reducing balance.
Educational buildings including student hostels	10% per year on a reducing balance.
Commercial buildings	10% per year on a reducing balance.

Investment allowance on machinery applicable to the year of income from April 2020 onwards.	Rate
Machinery used for manufacture	50% in the first year of use and then 25% reducing balance.
Hospital equipment	50% in the first year of use and then 25% reducing balance.
Ships or aircraft	50% in the first year of use and then 25% reducing balance.
Motor vehicle and heavy earth-moving equipment.	25% per year on a reducing balance.
Computers and peripheral computer hardware and software, calculators, copiers and duplicating machines.	25% per year on a reducing balance.
Furniture and fittings.	10% per year on a reducing balance.
Telecommunication equipment	10% per year on a reducing balance.
Filming equipment by a local firm producer licenced by the Cabinet Secretary responsible for filming.	25% per year on a reducing balance.
Machinery used to undertake operations under a prospecting right	50% in the first year of use and then 25% per year on the reducing balance.
Machinery used to undertake exploration operations under a mining right	50% in the first year of use and then 25% per year on the reducing balance.

Investment allowance on machinery applicable to the year of income from April 2020 onwards.	Rate
Other machinery	10% per year on a reducing balance.
Purchase or acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator.	10% per year on a reducing balance.

The following should be put into consideration while computing the investment allowance:

- 1) In the change of user of a building, the deduction should be restricted to the residual value or the unclaimed amount at the applicable rate.
- 2) In respect of a hotel, educational or hospital building, it shall be licensed by the competent authority.
- 3) Buildings used for manufacture includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of building.
- 4) Commercial buildings include:
 - a. A building used an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished goods or semi-finished goods; or
 - b. Civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade.
- 5) Machinery used for manufacture means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes:
 - a. Generation, transformation and distribution of energy
 - b. Clean-up and disposal of effluents and other waste products
 - c. Reduction of environmental damage
 - d. Water supply or disposal
 - e. Maintenance of the machinery, or
 - f. Scientific research and development.
- 6) Manufacture means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity.
- 7) Where an item is brought in to use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or the amount realized shall be deemed to be the market value.
- 8) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle other than a commercial vehicle, that capital expenditure shall be restricted to three million shillings.
- 9) Where the motor vehicle referred to in (8) above is sold, the sale price shall be deemed to be the proportion of the proceeds of sale, having regard to the original purchase price and three million shillings.
- 10) Where an existing building is extended by further construction, the extension shall be treated as a separate building.

- 11) Where capital expenditure is incurred on a construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.
- 12) Where a person purchases the building referred in (11) above, that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or the amount paid by him, whichever is lesser.

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.

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 July 2021

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

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