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Motivation: Just how important is motivation?

Newsletter

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Introduction

We are pleased to release the eleventh edition of our tax newsletter. In this issue, we will mainly focus on double tax treaties and international policies. On the tax side lines, we will focus on "Motivation" as a key aspect of performance. We hope this insight will encourage you to be much more motivated.

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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Fringe Benefit Tax and Deemed Interest Rate

Fringe Benefit Tax (FBT) is applicable when employers provide loans to their employees and charge an interest lower than the prescribed rate (ITA-section 12(b)). This becomes a benefit to the employee, for which the employer needs to file and pay Fringe Benefit Tax. FBT is paid by the employer at the corporate tax rate of 30 % on total taxable value each month. The tax is payable on or before the 9th day of the following month to KRA.

Deemed Interest is the amount of notional interest assumed to be payable by a resident person in relation to any outstanding loan provided or secured by a non-resident person, where such loan has been provided interest free.

KRA through a public notice dated 18th October 2021 has reviewed the rates for this quarter from October to December 2021 as follows:

- Fringe Benefit Tax (FBT) - 7% for three months, October, November & December 2021
- Deemed Interest Rate - 7% for three months, October, November & December 2021

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

An example of a Fringe Benefit Tax computation: On 1st November 2021, an employee gets a loan of Kshs 3 million from his/her employer at a rate of 3%. FBT will be calculated as follows:

Loan amount		Kshs. 3,000,000
Interest charged		3%
Market Interest rate for the month		7%
Fringe Benefit Rate on saving by employee	=	7% - 3% = 4%

Fringe Benefit = 3, 000,000 x 4% =120,000 Per Annum; that is, Kshs. 10,000 Per Month.

Fringe Benefit tax payable by the employer for the month of November is therefore Kshs. 3,000 (10,000 x 30%). The tax should be payable by the 9th of December 2021 together with the PAYE for the same month of November 2021.

The FBT computation should be done and tax paid monthly using the applicable rates until the loan has been cleared in full.

Double Tax Treaties and International Policy

Double taxation is a tax principle referring to income taxes paid twice on the same source of income. It occurs when in international trade or investment when the same income is taxed in two different countries.

Double taxation is often an unintended consequence of tax legislation. It is generally seen as a negative element of a tax system, and tax authorities attempt to avoid it whenever possible. A key method authorities use to address double taxation problem is through Double Taxation Agreements (DTAs). DTAs are international agreements between two countries to allocate taxing rights between the two countries that have negotiated the particular DTA.

The purpose a DTA is to help the two countries to avoid double taxation. Kenya mainly uses DTAs to avoid double taxation at international level.

The Treaty & International Policy is an office tasked with managing international tax matters that include ***Double Taxation Agreements (DTAs)***, ***Mutual Agreement Procedures (MAP)***, ***Legislative Review*** and Implementation of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Agenda recommendations domestically.
The responsibilities of the Treaty& International Policy office are categorized into the following key functional areas:

1. Double Taxation Agreement (DTA) Management

A Double Taxation Agreement (DTA) is a treaty between two or more countries to avoid double taxation of income and to enhance economic cooperation.
This function of the office involves carrying out an in-depth analysis of the DTA network and domestic tax systems of countries with which Kenya intends to negotiate and sign DTAs. The team prepares a report on this and shares it with the National Treasury to be used during the preparation phase and actual negotiation of the DTA.
The office also provides interpretation of tax treaties which are in force between Kenya and other countries to ensure that they are properly applied and implemented. This interpretation is done upon request from taxpayers seeking to understand how treaties apply to their transactions.
As at 1st November 2021, Kenya has DTA's with the following countries; Canada, Norway, United Arab Emirates, Iran, Sweden, Denmark, France, Germany, India, Zambia, United Kingdom, South Korea, Qatar & South Africa. Other treaties in consideration are as follows:

	Country	**Status**	**Date signed**
1	Algeria	Under Consideration	
2	Belgium	Under negotiation	
3	Botswana	Concluded but not signed	
4	Cameroon	Under Consideration	
5	China	Signed but not in force	21/09/2017
6	DRC	Under Consideration	
7	Egypt	Under negotiation	
8	Ethiopia	Under Consideration	
9	Ghana	Under Consideration	
10	Ireland	Proposed	
11	Italy	Signed but not in force	03/03/2016
12	Japan	Under negotiation	
13	East African Community	Signed but not in force	30/11/2010

2. Legislative Review

This involves providing comprehensive policy analysis and advice to the National Treasury on all matters of taxation of cross border transactions. It involves identifying gaps in the international tax legal framework and designing and recommending amendments to legislation on all issues of cross border taxation. The proposals made are mainly in line with the policies being adopted internationally in order to minimize cases of base erosion and profit shifting in order to preserve the country's tax base.

3. Participation in International Taxation meetings

The meetings are held to develop international tax laws and policies intended to seal loopholes in domestic tax systems and to ensure that taxes are paid in the jurisdictions where value is created. The main bodies that organize these meetings are the OECD (Organization for Economic Cooperation and Development), the UN (United Nations), ATAF (African Tax Administration Forum) and EARATC (East African Revenue Authority Technical Committee).

This engagement is beneficial because it ensures that developing country perspectives are incorporated in the development of international tax policies.

4. Mutual Agreement Procedure (MAP) - Dispute Resolution

A Mutual Agreement Procedure (MAP) is a process through which taxpayers approach the Competent Authorities of the parties to the DTA in order for them to address cases of double taxation or taxation not in accordance with the DTA. A Kenyan resident taxpayer can initiate a MAP with the Kenyan Competent Authority if he establishes that an action of KRA or one of Kenya's tax treaty partners, or both, will result in taxation not in accordance with a tax treaty in force between the two jurisdictions.

The MAP request must be filed within 3 years from the date of notification of the act. Where the Kenyan Competent Authority can resolve the taxation not in accordance with the DTA unilaterally, then the MAP case is closed at this stage. Where the taxation not in accordance with the DTA cannot be resolved unilaterally, the two Competent Authorities will enter into discussions and endeavour to resolve the issue.

5. Tax Residence Certificates (TRCs)

These are certificates issued to taxpayers to prove their tax residency in Kenya and that taxes are paid herein. The certificate is generally used to avoid double taxation in the other country where they may be conducting business and with which there is a DTA with Kenya in force. Tax residence is determined by Section 2(1) of the Income Tax Act. The standard documentation required in the processing of a TRC application is as follows:

Application for Individuals

- Full name and address of the applicant.
- I.D. Number and KRA PIN.
- Alien I.D and work permit, where applicable.
- The reason and period for which a certificate is required.
- The type and amount of foreign income received during the period for which a certificate is required.
- The Article of the DTA under which the request regarding this income is being made (attach form from the other country where applicable).
- If the individual is not in receipt of foreign income, details of the circumstances under which a certificate is required.
- Proof of a permanent home in Kenya (for example, utility bills in the applicant's name, lease agreements, etc.)
- If no permanent home, proof of presence in Kenya for 183 days or 122 days as required by Section 2 of the Income Tax Act.

Application for Companies

- Name and address of the applicant.
- Copy of Certificate of incorporation of the applicant.
- The reason and period for which a certificate is required.
- The type and amount of foreign income received during the period for which a certificate is required.
- The Article of the DTA under which the request regarding this income is being made (attach form from the other country where applicable).
- If the company is not in receipt of foreign income, details of the circumstances under which a certificate is required.

Application for Partnerships

- Name and address of the applicant.
- Business Registration details of the applicant.
- A signed list detailing the individual partners' names, separately identifying those that are residents of Kenya and those that are not, confirming whether each of the partners are Kenyan resident as at the date of the application (with supporting documents).
- The reason and period for which a certificate is required.
- The type and amount of foreign income received during the period for which a certificate is required.
- The Article of the DTA under which the request regarding this income is being made (attach form from the other country where applicable).
- If the partnership is not in receipt of foreign income, details of the circumstances under which a certificate is required.

Submission of the Application - All applicants are required to draft an application letter stating whether the application is by an Individual, Company or Partnership, together with the requirements specified above and address it to:

The Commissioner,
Intelligence & Strategic Operations Department -
Treaties & International Policy Office,
Kenya Revenue Authority,
Times Towers, 26th Floor,
P.O. Box 48240 – 00100,
Nairobi, Kenya.

Once all the required documents and information are received from the applicant, the application process takes 15 working days for processing, review and signature. At Mbaya & Associates, we will be happy to offer a helping hand in offering the needed professional advice and also in lodging in the application with the revenue authority.

MOTIVATION: JUST HOW IMPORTANT IS MOTIVATION?

What motivates you? What makes you do that which you are doing now? What drove you to achieve what you have achieved so far? What are your future expectations in both spheres of your life? What motivates you to think what you're thinking about your future? Where do you see yourself (in all spheres of your life) in the next ten (10) years? Where will your company be in the next ten (10) years? How do you see yourself achieving that which you've set to achieve?
All the above questions revolve around a drive to achieve. If you got answers for all the above questions, then you are lucky. Talk of self-drive, determination, the inner guiding force that wakes you up very early every morning, and sends you to bed very late in the night. Lupita Nyong'o, the Oscar award winner once quoted "your dreams are valid." But will they remain valid if you oversleep and don't apply yourself? No. What time will you have to work on the dreams so you can realize them. You need a driving force. **Motivation!** Read on.

Types of Motivation

1. Positive Motivation

This is the type of motivation that one has when doing something so as to achieve good results that lie in the future, whether immediate or distant. That expectation of better results that drive you to greater levels. That high spirit. That high energy for a brighter future. That anxiety for something better than what we have now. In office setting, positive motivation comes in the following ways;

1. **Vision:** The vision motivates the staff to work extra hard to attain the vision set by the leadership. Most organizations have strategic plans for a certain period of time. These plans describe where the company should be after the specified period of time.
2. **Objectives and goals:** The objectives and goals set should be in congruence with the overall vision of the company. Management should always be keen on the small objectives that they set such that they shouldn't at any one point in time deviate from the main vision.
3. **Personal development:** Personal visions play a big part in motivating the staff to build their brands, and in so doing the company indirectly benefits.
4. **Promotion:** That when you are hired as an entry level staff, never should you remain in that position for long. Work hard. Achieve results. And rise above your current position. All these will come as a result of hard work and self-motivation.
5. **Remuneration, incentives and rewards:** An underpaid staff is a demotivated staff by default. Remuneration comes in different forms apart from salary. Salary is the consideration an employee receives for dedicating their time in the service of their employer. Apart from salary, there are incentive schemes and rewards set by the management to reward the hard/smart working staff.
6. **Value:** Learn to value your staff. It costs you nothing to tell your staff 'Thank you'.

2. Negative motivation

This is the type of energy a person will have in doing a specific duty in order to avoid the adverse results. Like when a staff has been given timelines by the manager to finish their duties or else, they risk pay cut. The staff will be much zealous to achieve the targets so as to avoid the adverse results of them not meeting their deadlines. I believe negative motivation is the best pusher for the lazy and the not-serious people to meet their timelines and achieve better results. Negative motivators are used to take something away from the staff if performance levels are not met.

The following are examples of negative motivation;

a. Remuneration cuts
b. Disciplinary action
c. Denial of privileges
d. Demotion
e. Dismissal

Benefits of Motivation and their Impact on Performance

How does it feel to lead an enthusiastic team? A self-driven team? A motivated team, to be precise? It's the best scenario ever, definitely. It becomes so easy to achieve synergy when you have a motivated team. Though they work on different activities, but are all heading towards that one goal. It becomes so easy for the organization to realize its small objectives on time and eventually the bigger vision. Let's see the brighter impact of motivation to the organization as a whole;

a. Job contentment
b. Improved productivity
c. Brand development and growth
d. Improved communication

Conclusion

Staff are important. Clients are important. Results are important. Motivation is the link among all these. If we could draw a triangle and have staffs, clients and results on each side, then, motivation would be on the three edges of the triangle. This implies, motivation is the lubricating agent between staffs, results and the clients. Let employers invest in motivating their staff. You just never know what it will bring about in your office. ***Motivation is good. Its worthy***.

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