

# Navigating The Tax Landscape

23<sup>rd</sup> March 2021



Alpha Tax And  
Business Advisory  
Services

WEDNESDAY, MAY 13, 2020

# IMF seeks reversal of Corona tax cuts

**SHORT RELIEF** Fund says Kenya should reverse the income tax, VAT and sales levy cuts once Covid-19 crisis eases

**State rejects oil firms' bid to halt fuel price drop**

**A Lasting Legacy**

**Relief for Sanku after State printer revokes Act**

**Recognising the frontline heroes**

**Amount of cash in circulation stays on downward trend**

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**Recognising the frontline heroes**

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# Treasury tax deal to unlock Sh133bn from stalled cases

Tuesday February 23 2021

The Treasury and the Tax Appeals Tribunal have agreed to conclude stalled cases within 50 days, unlocking over Sh133 billion.



Nation is with Maina Wa Wanjiku and 2 others. 14m

CS Yatani- Brace yourselves for tough times



“Supporting the budget and preventing the economy from crashing is our main priority. We borrow to support the budget because revenue is either limited or not there. I will be dishonest if I say everything is okay. We are in a state never witnessed before. The drastic reduction in revenue and underperformance of the economy is a concern.”

December 2, 2020  
UKUR YATANI  
National Treasury CS

NATION WWW.NATION.AFRICA

# The Tax Landscape in Kenya

# Tax and the changing environment...

## Government

- A sophisticated response by Governments
- New Tax Laws to tighten the 'perceived' loop-holes
- More scrutiny by Revenue Authorities
- Focus on Cross Boarder Transactions
- Reliance on IT Systems

## Tax-Payer

- Tax Payers are experiencing increasingly complex tax legislations
- penalties for non-compliance and economic crime related disputes
- Cashflow issues
- decreased profitability
- increased restructures
- closure of companies



# Proactive Tax Management!



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# a) Tax Compliance



**Do you have an active tax compliant certificate?  
Does it mean you are clean from a tax perspective?**



# Tax Compliance Know!



## Instalment Taxes

- 20<sup>th</sup> of the 4<sup>th</sup> Month
- 20<sup>th</sup> of the 6<sup>th</sup> Month
- 20<sup>th</sup> of the 9<sup>th</sup> Month
- 20<sup>th</sup> of the 12<sup>th</sup> Month
- Balance of Tax  
30<sup>th</sup> of the 4<sup>th</sup> Month

## Tax Return

30<sup>th</sup> of the 6th Month



# Compliance

What if I do not have the money to pay the tax?

What if I forgot to declare the tax?

How does this affect obtaining a TCC?



**Declare it!**

- The penalties for non-compliance are high.
- Penalties of 10-20% and Interest accruing at 1%

The system is very interconnected

- **Corporate Tax** – Withholding tax exposes you
- **VAT** – Input VAT by the purchases exposes you
- **VAT** – Withholding VAT exposes you
- **Rental Tax** – Tenant or drawings submitted to the Ministry
- Request of supplier information by KRA to Corporates

## b) Tax Planning



Tax Planning is paying the **right amount** at the **right time** and in the **right way**.

It is the process of putting in place **tax strategies** that will help you to **exclude, defer or reduce** the amount of taxes that will have to be paid within the **Legal framework**.



1.



## How does this affect my cash-flows?

- **The tax point is the earlier of:**

- the date the goods/services are supplied;
- the date a certificate is issued by an architect;
- the **date an invoice** is issued; or,
- the **date payment** is received for all or part of the supply.

- **Tax Planning**

- Early invoicing cut offs to maximize on the credit period for accounting for output VAT.
- Bill on the first of every month – that buys you 50 days credit period.
- If client can commence processing using a profoma invoice or the contract.
- Negotiate shorter credit terms.

# VAT Refunds

Tax- payers are allowed to claim for refund of VAT in respect to:

- Making zero-rated supplies
- Taxes paid in error
- VAT relating to bad debts

## **Tax Planning Opportunity:**

- Timely and accurate applications for VAT refunds. KRA's new FIFO method
- Offsetting of VAT refunds (where applicable) against other taxes
- Claiming VAT on bad debts

2.



## Tax Computation

Net Profit as per Accounts		XX
<u>Add</u>		
Disallowed Expenses	XX	
General Provisions	XX	
Restricted Interest	<u>XX</u>	<u>XX</u>
<u>Less</u>		
Capital Allowances	(XX)	
Other deductible expenses	<u>(XX)</u>	<u>(XX)</u>
Adjusted Taxable profit (loss)		XX



# Allowable Expenses (Section 15 of the ITA)

- Expenditure **wholly and exclusively** incurred in the generation of income



- **Are you working from home?**
  - Rent apportionment
  - Security apportionment
  - Wifi Costs.
  - Zoom subscriptions
  - Lunch
  - Travel and fuel costs
  - Online advertisement
  - Cost of Medical insurance



# Capital Allowances

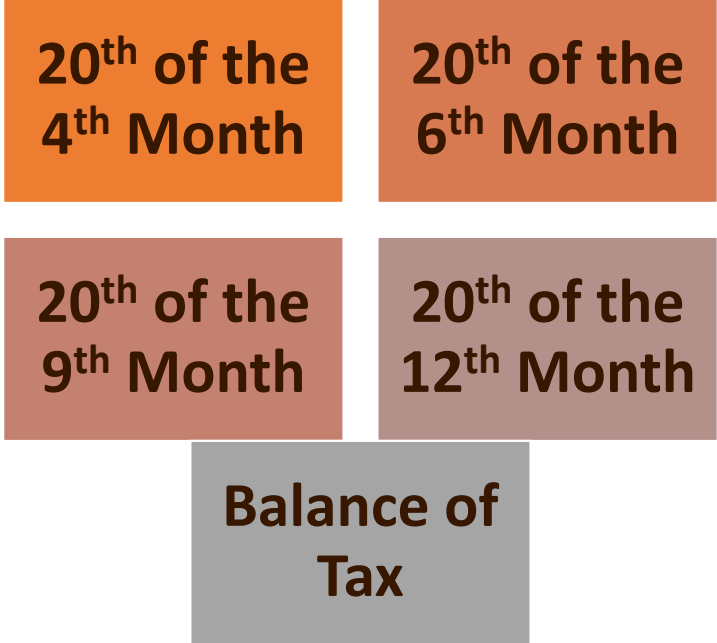
- Investment deduction
- Industrial building allowance
- Wear and Tear allowance
- Farm works deduction
- Mining deductions

Overhauled Under the Tax  
Laws (Amendment) Act 2020



# Other Corporate Tax measures

- Switching between **Current year vs Prior Year** for **instalment tax payments**
- Utilizing **withholding tax credits** at instalment tax payment.
- Defer capital investment to the end of the accounting period to manage cashflows.



# Employment Income

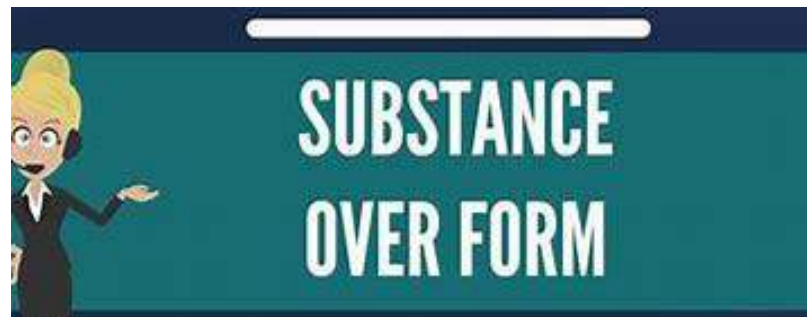
## Employee

- Employer has control over Employee
- Provision of leave days
- Paid a salary
- Employer provides tools of trade

## Consultant

- Is independent
- Has his own tools of trade
- Specific training and know how
- Not entitled to benefits

3.



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## Par Diem

- The first 2,000 is deemed a reimbursement and not subject to tax.
- For the balance not to be subjected to tax, invoices and receipts must be provided accordingly.

## Dependents School Fees

It is not taxable on the employee as long as it has been taxed on the employer.

i.e disallowed as an expense on the employer

## Non- Cash Benefits

- The value of all benefits, advantage or facilities of whatsoever nature are taxable on employee
- Note: non-cash benefits that in aggregate do not exceed KShs 36,000 per annum are not taxable





# Non- Cash Benefits

## Pension Contribution

- Contributions to a Registered pension scheme by an employer on behalf of the employee is not a benefit subject to tax.
- Excess of Kshs 20,000 Ee and Ey is not allowed for tax purposes on the employer.



# Exempt Income



## Medical Benefit

- Medical insurance premiums paid by an employer to a locally registered insurer.



## Group Life Insurance

- Premium for an insurance on the life of an employee and for the benefit of that employee or any of his dependants.



# Allowable deductions

## PENSION CONTRIBUTIONS

Maximum: KShs  
240,000 pm

## MORTGAGE INTEREST RELIEF

Maximum: KShs  
300,000 a year



Tax planning opportunities

These are **allowable deductions** in arriving at the **Taxable income**

# Tax Reliefs

Life Insurance

Educational  
Policy

Health  
Insurance  
policies

Limit is 15% of  
premiums up  
to KShs 5,000

These are  
**deductible**  
reliefs against  
the **Tax**  
**liability.**



# Withholding Tax

- Take advantage of Double Tax Agreements.
- Utilization of unilateral tax credits
- Split invoice between the **service** and **disbursements** to ensure WHT is only applied on the service fee only.
- Fees less than KShs 24,000.

4.



## d. Management of Revenue Authority Audits



# Commencement of an Audit

- **Notice of Intention to Audit**
  - Production of documents (Including electronic format)
  - Provides the date for the commencement of audit
  - Areas which the audit will focus on
  - Details on the KRA Audit Officers



Section 59 of the  
Tax Procedures Act

# The Appeal Process

**Filing a Notice of Appeal**  
 Must be filed 30 days from the Objection Decision  
 Requires the payment of taxes not in dispute

**File and serve a Memorandum of Appeal and Statement of Facts**  
 File the Objection Decision  
 Must be filed 14 Days from Lodging of the Notice of Appeal

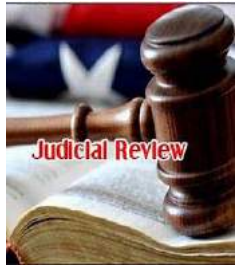
**Commissioner then files his statement of facts**  
 30 Days from the service of the Appeal



**Appeal to the Tax Tribunal**

**Audit Findings**

**Assessment is issued**



**ALTERNATIVE DISPUTE RESOLUTION**

• Allow Objection in whole  
**Vacate**

• Allow objection in part  
**Amend**

• Disallow the objection  
**Confirm**



**Objection decision is issued**

**Object to the Assessment**

Lodged 30 Days after receipt of the tax decision

Must be in writing

Must state the grounds of objection

Amendments required and reasons

Proof of payment of non-contentious issues

e. Emerging Tax issues...



## e. Emerging Tax issues





# VAT Changes

- VAT only claimable as input if supplier has **declared** it.
- How do you confirm supplier has paid?
- What if the invoice then gets time barred?
- Output is payable at the earlier of payment, why a different treatment for input?
- KRA already has other systems to enforce VAT collection

**Finance Act 2020  
Changes to section  
17 of the Act**

**Is the KRA  
Validating VAA  
Assignments?**

## 2. Minimum Tax

shall be payable by a **person** if the person's:

- a) Income is not exempt under the ITA;
- b) Income is not from employment, residential rent, capital gains, mining or oil exploration, capital gains or subject to turnover tax; or
- c) Instalment tax payable is lower than the minimum tax payable.
- d) *The person is not engaged in business whose **retail price** is controlled by **Government** (e.g Oil marketing companies)*
- e) *The person is not engaged in **insurance business***



# Minimum Tax

shall be payable by a  
**person.....**



## Who is a person?

Does minimum tax apply to

- A sole trader?
- Partners in a partnership?
- A company?



**KRA and Government's  
push for Minimum Tax**

# Minimum Tax

Minimum tax is based on 1% of gross turnover and paid on the 20th day of the fourth, sixth, ninth and twelfth months.

- What constitutes gross turnover?
- Is the tax paid a future tax credit?
- What happens to the tax losses?
- Can you use withholding tax to offset against minimum tax?
- Can you utilize DST to offset?
- How do you allocate turnover in the case of a partnership?
- Will KRA/ National Treasury provide regulations or guidelines for the implementation of the same?

# Minimum Tax – The Effects of the Pandemic

- **Adverse effects on businesses from the ongoing COVID - 19 Pandemic**
  - Businesses are struggling to meet their variable and fixed costs including salaries and overheads
  - Massive restructures and closure of operations for survival.



Requirement to pay minimum tax by an already **cash trapped enterprise** will affect its ability to **survive, reinvest**, maintain its **workforce** and this will have a significant impact on **PAYE, VAT, Customs and future Corporate tax.**

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# Minimum Tax and Investment Allowances

## Investment allowances

- Their goal is to attract investments with a view of enhancing development which creates employment and wealth for the Nation.

## Effect of capital allowances

- May result into companies being in tax losses for a few years, or
- Reduced taxable profits.

**Minimum Tax erodes the benefits of already rationalized Capital allowances**

Overhauled Under the Tax Laws (Amendment) Act 2020

- Investment deduction
- Industrial building allowance
- Wear and Tear allowance
- Farm works deduction
- Mining deductions



# Minimum Tax – The Tech Companies



- They invest significantly in the first years of business.
- Most of them are in a loss position.
- They rely a lot on cashflows to develop further.
- Taxing them on turnover where us they are reporting losses has an impact on their lifecycle.

# Minimum Tax and Start-ups



- They invest significantly in the first years of business.
- They take 3-5 years before turning profitable.
- They rely a lot on cashflows to develop further.

# Minimum Tax and Low margin businesses



- Most retail businesses in Kenya are **low margin** businesses and depend heavily on volume.
- Computing tax on the turnover as opposed to the profits has an impact on these businesses.



## 2. Turnover Tax (TOT)

- Tax rate reduced from **3%-1%**
  - Minimum Turnover of **KShs 1 million. (up from 500k)**
  - Only applicable for Resident Persons
  - Maximum threshold **KShs 50 million. (Up from 5 million)**
  - Incorporated Companies can now apply TOT
- ...Note VAT threshold maintained at 5m and thus VAT obligations continue to apply***



### 3. Turnover Tax (TOT)



**Who cannot  
apply to be  
under  
Turnover Tax?**





## 4. Digital Tax

- The digital services tax deducted from **resident** entities and **non-resident entities**
- is to be treated as an **advance tax** for residents and non-residents with a permanent establishment
- available for setoff against the tax payable for the year of income.

digital service tax which shall be payable on income which is deemed to be derived or accrued in Kenya through a digital market-place

Rate is 1.5% of the gross transaction value

- (a) downloadable digital content including downloadable mobile applications, e-books and films;
- (b) over-the-top services including streaming television shows, films, music, podcasts and any form of digital content;
- (c) sale of, licensing of, or any other form of monetising data collected about Kenyan users which has been generated from the users' activities on a digital marketplace;
- (d) provision of a digital marketplace;
- (e) subscription-based media including news, magazines and journals;
- (f) electronic data management including website hosting, online data warehousing, file-sharing and cloud storage services;
- (g) electronic booking or electronic ticketing services including the online sale of tickets;
- (h) provision of search engine and automated held desk services including supply of customised search engine services;

## Scope of Taxable Services



(i) online distance training through pre-recorded media or e-learning including online courses and training; and

(j) any other service provided through a digital marketplace.

(2) Digital service tax shall not apply to income taxed under section 9 (2) or section 35 of the Act.

## Scope of Taxable Services

- Virtual trainings
- If the services are subject to **WHT**, they will be excluded accordingly.
- Services under Section 9 (2) also excluded.

### *Interplay between DST and WHT*



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(3) The following services shall not be digital services for the purposes of these Regulations—

(a) online services which facilitate payments, lending or trading of financial instruments, commodities or foreign exchange carried out by—

(i) a financial institution specified under the Fourth Schedule to the Act; or

(ii) a financial service provider authorised or approved by the Central Bank of Kenya; and

(b) online services provided by Government institutions.

## Scope of Taxable Services

- Mobile money transactions not subject to DST
- Government Online services excluded from DST



## Digital Service Tax

4. (1) Digital service tax shall apply to the income of a resident or non-resident person derived from or accrued in Kenya from the provision of services through a digital marketplace.

(2) Digital service tax paid by a resident or non-resident person with a permanent establishment in Kenya shall be offset against the tax payable by that person for that year of income.

(3) Digital service tax paid by a non-resident person without a permanent establishment in Kenya shall be a final tax.

- **Target:**

- **Residents** or non-residents with a permanent establishment in Kenya. (Allowed for offset against Corporate Tax)

- **Non-Residents**

In this case, it is a final tax



6. (1) Digital service tax shall be imposed on the gross transaction value of the digital service which shall be—

- (a) in the case of the provision of digital services, the payment received as consideration for the services; and
- (b) in the case of a digital marketplace, the commission or fee paid to the digital marketplace provider for the use of the platform.

(2) The gross transaction value of a digital service shall not include the value added tax charged for the service.

## Gross transaction value





7. (1) A non-resident person without a permanent establishment in Kenya who provides a digital service to a user in Kenya may register under the simplified tax registration framework specified in regulation 9.

(2) A resident person, or a non-resident person with a permanent establishment in Kenya, who provides a digital service in Kenya shall be required to apply to the Commissioner for digital service tax registration in the prescribed form.

8. A non-resident person without a permanent establishment in Kenya who elects not to register in accordance with regulation 9 shall appoint a tax representative in accordance with section 15A of the Tax Procedures Act, 2015.

## Registration

- **Non – Resident**

May register under the simplified system; or

Appoint a tax representative

- **Resident**

Required to apply to the Commissioner for DST Registration.

- Commissioner then issues a PIN

## Accounting and payment

10. (1) Digital service tax shall be paid by—

- (a) the digital service provider or digital marketplace provider;  
or
- (b) the tax representative appointed under regulation 8.

(2) A person liable to pay digital service tax under paragraph (1) shall submit a return in the prescribed form and remit the tax due by the twentieth day of the month following the end of the month that the digital service was offered.

### • Who pays the tax?

- Digital Service Tax Provider
- Digital Market place provider
- The tax representative



10. (1) Digital service tax shall be paid by—

- (a) the digital service provider or digital marketplace provider;  
or
- (b) the tax representative appointed under regulation 8.

(2) A person liable to pay digital service tax under paragraph (1) shall submit a return in the prescribed form and remit the tax due by the twentieth day of the month following the end of the month that the digital service was offered.

## Penalty for non-Registration

- **Section 81 of the Tax Procedures Act**

- A person who fails to apply for registration as required under a tax law without a reasonable excuse shall be liable to a penalty equal to 100,000 for every month or part of a month.

<https://www.kra.go.ke/images/publications/USERGUIDE---DST-NON-RESIDENT-REGISTRATION-REVIEWED-FINAL-18.12.2020-1.pdf>

## 5. The Tax Amnesty Programme



# Voluntary Disclosure

- Disclosure by tax payers of undisclosed tax liabilities
- Applicable for a period of 3 years effective January 2021
- One gets immunity and waiver of penalties and interest
- Period covered 1st June 2015- 30<sup>th</sup> June 2020

## If Commissioner accepts application!

- **Full remission if declared in 2021**
- **50% Remission if declared in 2022**
- **25% Remission if declared in 2023**

- **Payment proposal is agreeable**
- **If you have an ongoing audit or have received a notification of an audit, are not eligible to the programme.**

# Voluntary Disclosure



- **No Ongoing Tax Audit, No Investigation or ongoing litigation**

• **Has not received a letter for intention to audit or investigation**



# What do I need to do?

**Engage your Tax Advisors for a Tax Health check or review**

**Discuss issues arising and arrive at a position on areas of potential exposure**

**Plan your cashflows accordingly to settle the Principal tax. Government is agreeable to a Payment plan**

**Make Application for waiver of penalties and interest**

**Ensure compliance going forward**

# Q&A



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## **TAX**

- Development and Execution of Corporate Tax Strategies
- Tax Dispute Resolution
- Engagement with Revenue Authorities
- Tax Compliance and Advisory Services
- Tax Structuring and Transfer Pricing Services
- Tax Health Checks
- Mergers and Acquisitions Tax related Services (Due diligence engagements)
- International Tax and Double Tax Treaties services

## **POLICY AND TRAINING**

- Public Tax Policy Development
- Government Engagement – Tax Lobby Services
- Engagement with Industry Body Associations
- Tax and Business-Related Training
- Pension Schemes Training and Tax Support

## **BUSINESS**

- Business Strategy Development
- Risk Management and Operational Control and Compliance
- Contract Development
- Policies and Procedures Development



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