TAX ALERT!

Tax Procedures Act 2015

As you may already be aware, the Tax Procedures Act No. 29 of 2015 was assented into law by the president on 15th December 2015. Subsequently, through a Gazette notice dated 14th January 2016; The Cabinet Secretary for the National Treasury appointed the 19th of January 2016 as the date the Act came into force. We discuss below several changes that have been introduced by the Act for your information.

Maintenance of tax records

Section 23 (c) of the Act provides that a taxpayer is expected to retain documents and tax records for a period of five years from the end of the reporting period to which the documents relate or such a shorter period as may be provided for by law.

This proposal now synchronizes the period for retention of tax records since previously the Income Tax Act (ITA) required one to keep records for up to seven years; the VAT Act 2013 as well as the Customs & Excise Act also required documents to be kept for up to five years.

However, in the case of proceedings relating to tax; the Act provides that the period may be extended accordingly.

Late payment interest

According to Section 38 of the Act, in instances where a person fails to pay tax on or before the payment due date; they shall be liable for a late payment interest at a rate equivalent to 1% per month.

The ITA had initially provided for a late payment interest of 2% per month on the outstanding liability.

Similarly, the penalty with regard to self-disclosure has been reduced to 10% under section 84 of the Act where a taxpayer voluntarily discloses to the commissioner of any omissions that resulted to under or non-payment of tax. The penalty for underestimation of taxes under the ITA was previously 20%.

With the introduction of the above favourable provisions regarding penalties & interest; it is worthwhile to note that the provision for an application for waiver of penalties and interest as initially provided for under the ITA has now been scrapped.

Late submission penalty

The penalty relating to late submission of a return has now been standardized in the Act as below:

- Either 25% of tax due or KShs. 10,000 whichever is higher if the return relates to employment income;
- KShs. 5,000 if the return relates to turnover tax; or
- Either 5% of the tax payable or KShs.20,000 whichever is higher in any other case (including VAT and Corporation tax).

Refund of tax

In a bid to synchronize the duration within which overpaid taxes can be refunded across all relevant tax laws, the Act in Section 47 stipulates a refund duration of within one year from the date on which the tax overpayment occurred and the application for refund approved by the commissioner.

Transferred tax liabilities

According to Section 46 of the Act, where a taxpayer has a tax liability in relation to a business carried on by himself and transfers all or some of the business' assets to a related person (transferee); the transferee shall become liable for the tax liabilities of the transferor.

Objection to tax decisions

Under section 51(11) of the Act, in case of an objection by a taxpayer; the commissioner is given up to sixty days from the date when the taxpayer lodged a notice of objection to decide on the objection failure to which the objection by the taxpayer shall be allowed.

Amendment of assessments

A taxpayer is allowed to amend their original (self) assessment return within five years of filing. Initially under the ITA; an application under section 90 was available for up to seven years of filing the latest return

Extension of time to submit a tax return

The Act has a provision allowing taxpayers in instances where they are unable to file a return on time because of one reason or the other to apply in writing to the Commissioner and seek for an extension of time to file the return.

In Section 25 of the Act however; such an application for extension should be made before the due date of the submission of the relevant tax return.

Extension of time to pay tax

Similar to the extension above, the Act in Section 33 allows for a taxpayer to apply in writing to the Commissioner for an extension of time to pay their tax due under a tax law. Under the current ITA, such a provision does not exist and taxpayers have been negotiating with the KRA for a phased out settlement of their tax liabilities granted only at the mercies of the Commissioner with no clear basis in law.

Companies experiencing significant cash flow challenges but with tax obligations to settle can now utilize this provision to their benefit.

Definition of tax avoidance

The new Act essentially penalizes any tax avoidance schemes by a taxpayer. Section 3 of the Act defines tax avoidance as any transaction or scheme designed to avoid liability to pay tax under the law. In the same breadth the penalty associated with any tax avoidance scheme by a taxpayer is now 200% (or double) the amount of tax avoided under section 85 of the Act. This provision by and large now portrays the commissioner as essentially being against tax planning.

Definition of a tax representative

The definition of a tax representative has been expanded under section 15 of the Act to include in the case of a non-resident person; a manager of a local business belonging to a non-resident person so long as it is being controlled (managed) locally by that person on behalf of the non-resident individual. This now means that such a person shall be required to account for the taxes of the non-resident person's business as though they were his own.

Priority of tax in the event of liquidation

In case of liquidation or bankruptcy, any taxes payable in form of VAT, Excise duty and Withholding tax shall take priority before any distribution of property is made in the liquidation.

This is because Section 34 of the Act now allows the commissioner to safeguard his dues in the event of such bankruptcy.

Electronic documents and returns

The Act enforces the use of electronic returns and documents as may be required by the Commissioner under certain instances.

With the provisions to submit returns and settle taxes electronically, tax returns and obligations can now be processed even on weekends and public holidays provided the stipulated deadlines in the respective tax laws are met.

Previously under the ITA, if such payment deadlines fell on weekends or on public holidays; the due dates would be the last working day immediately preceding the holiday or weekend.

Similarly, with the introduction of electronic processing of tax returns and documents; the provisions under section 71 of the ITA which required a person in authority in a company to physically sign off on a return or document before submission to the Authority has been deleted. This is because such returns will now be filed online thus negating the need for manual attestations through signing.

Contacts

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