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Tax Invoice Management System (TIMS) .1

TIMS

Fringe Benefit Tax and Deemed Interest Rate

Finance Bill 2022 .3

Tax Due Dates .5

Newsletter

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Introduction

We are pleased to release the fifth edition of our tax newsletter. We appreciate the lively feedback and fruitful engagement we have had in the previous editions of our newsletter. This issue will summarize the key aspects as highlighted in the Finance bill 2022 and VAT Tax Invoice Management System (TIMS).

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 what topics you would like covered in the future. Please provide any feedback at tax@mbaya.co.ke.

In this issue

Fringe Benefit Tax and Deemed Interest Rate » 1

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
Abner Fundi | Outsourcing Dept. Manager
Email: abner.fundi@mbaya.co.ke
Kevin Njenga | Tax Manager
Email: knjenga@mbaya.co.ke
Darlyn Mbaya | Manager and Partner
Savanna Associates
Email: darlyn@mbaya.co.ke

Table of Contents »

» From the Tax**Desk »** 1
Fringe Benefit Tax and Deemed Interest Rate 1
Fringe Benefit Tax (FBT) 1
Deemed Interest Rate 1
Tax Invoice Management System (TIMS) 1
Finance Bill 2022 3
Tax Due Dates 5
Instalment Tax 5
Digital Service Tax (DST) 5
Minimum Tax 5

» From the TaxDesk »

Fringe Benefit Tax and Deemed Interest Rate

Fringe Benefit Tax (FBT)

This is a tax 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.

For the purposes of Section 12B of the Income Tax Act, the Market Interest Rate is 7%. This rate is applicable for the three months of April, May and June 2022.

Deemed Interest Rate

This 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.

For purposes of section 16(5), the prescribed rate of interest is 7%. This is applicable for the months of April, May and June 2022.

Withholding tax 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.

Tax Invoice Management System (TIMS)

In a Public Notice issued on 13 July 2021, the Kenya Revenue Authority (“KRA”) indicated that all VAT registered taxpayers are expected to comply with the requirements of the Regulations within 12 months from the commencement date; that is, by 31 July 2022.

Where a VAT registered person is unable to comply within the set timelines, the person can apply to the Commissioner for Domestic Taxes for an extension of time to comply, which shall not exceed six months.

The application for extension should be made at least thirty (30) days before expiry of the specified period of 12 months; that is, before 30 June 2022 but approval of this extension will be at the discretion of the Commissioner of KRA.

KRA recently adopted the use of the Tax Invoice Management System (“TIMS”) as an enhancement of the current Electronic Tax Register (“ETR”) machine.

To comply with the Regulations, a VAT registered taxpayer should acquire a compliant tax register from an approved ETR supplier as published on 14 December 2021 on the KRA’s website.

The approved manufacturers and suppliers have various ETR models that have been categorized into four types as follows:

- **Type A** for manual invoicing applicable for small businesses without an accounting software;
- **Type B** for retail outlets like supermarkets or restaurants with Point of Sale (“PoS”) terminals;

- **Type C** for businesses with an automated invoicing system (ERP software) and are currently using an Electronic Signature Device ("ESD");
- **Type D** which is suitable for any type of business entity has the ability to connect to any of the invoicing systems (i.e., ETR, PoS or ERP).

Past experience has proved that the set-up time for the TIMS devices varies depending on the business complexity. We recommend that all VAT registered taxpayers consider migrating to TIMS as early as possible. The benefits to taxpayers among them will be:

- Foster fair business environment
- Faster processing of VAT refunds
- Simplified VAT return filing
- Automated activation of tax register
- Non-intrusive verification of tax processes

To the general public, the TIMs system will help the public to:

- Participate in enhanced Tax compliance by business entities. This will be achieved by confirming validity of tax invoice.
- Foster patriotism – *Kulipa Ushuru ni Kujitegemea*
- Build trust between the customer and the business entity.

In addition, early adoption of TIMS will provide for ample time to deal with any set up challenges. And also allow for post implementation reviews to ensure that all pertinent data has been captured and the TIMS devices are able to transmit information to KRA before the mandatory due date for compliance is due.

W advice our clients to change the ETR devices so as to be compliant with the law and avoid the last-minute surprises. Taxpayers using the current model of Mercury 130W can have the machine configured so as to comply with the new regulations. However, our view on this matter is that the cost of configuring the ETR device is high comparing this with the benefits. It is also not clear if the device will work properly as intended after it is configured and, in this light, we advise that it is better to purchase a new device to avoid future inconveniences.

It is also important to note that after the toll out is done, tax payers are needed to keep safe the old ETR devices for at least five years so that in case of any VAT query, one can be able to generate the ETR receipts for the five years.

At M&A, we are willing to offer a helping hand and answer to any queries that you may have regarding this matter.

You can reach out to us through our contacts **+254 722 207 938** or info@mbaya.co.ke.

» The Budget 2022

Finance Bill 2022

The Finance Bill 2022 has recommended several changes to the current tax laws and this may have an impact on taxpayers several businesses. The Bill also expresses the National Treasury's policy of revenue mobilization by increasing tax rates, expansion of tax base and reduction of tax exemptions and incentives.
Some of the proposed changes are as follows: -

- **Digital service tax (DST) -** The Bill proposes to increase the DST rate from 1.5% to 3%. This represents doubling of the tax rate.
- **Donation to charitable organizations -** The Bill provides for deduction of any donation to a charitable organization whose income is exempt from tax. Currently, deduction of donation as an expense is limited to charitable organizations registered under the Societies Act or Non-Governmental Organizations Co-ordination Act, and whose income is exempt from tax.
- **Requirement to file a master file and a local file -** The Bill proposes to introduce a requirement by an Ultimate Parent Entity or Constituent Entity to file a master file and a local file with the Commissioner. This will be filed within 6 months of the last reporting financial year of the MNE group. Currently, there is no requirement to file a master file. The only current requirement is for the for taxpayers to prepare a transfer pricing documentation report and submit this to the Commissioner upon the Commissioner's request.

- **Capital gains tax rate -** The Bill proposes to increase the capital gains tax from the current 5% to 15%.
- **Payment of 50% of the disputed taxes before appeal to the High Court -** The Bill proposes to introduce a requirement for taxpayers to deposit with the Commissioner 50% of the tax in dispute tax in a special account at the Central Bank of Kenya before they file an appeal to the High Court against a decision of the Tax Appeals Tribunal("TAT"). The requirement to pay 50% of the dispute tax does not apply where the Commissioner is the one appealing to the High Court. Where all appeals have been exhausted and the court has ruled in favour of the taxpayer, the Commissioner is required to refund the monies deposited within 30 days after the determination of the court. This creates a significant barrier for the taxpayer to appeal to the High Court.
- **Offset or refund of overpaid tax -** The Bill proposes to amend the current Section 47 of the TPA to allow taxpayers who have overpaid tax to apply to the Commissioner for the overpaid tax to offset the taxpayer's future tax liabilities or to apply for a cash refund of the overpaid tax. Additionally, where a taxpayer has overpaid instalment tax under section 12A of the ITA, the overpaid tax shall be offset against a taxpayer's future installment tax liability. Where the KRA fails to refund the overpaid tax within 2 years of an application for overpaid tax, the amount due will accrue interest at a rate of 1% per month.
- **Input tax claims restricted to those incurred within 6 months upon amendment of Value Added Tax ("VAT") returns -** The Bill proposes to include a provision, in relation to making amendments of VAT returns, stating that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred. Currently, the Tax Procedures Act does not prescribe the period over which input tax is allowable for claim upon amendment of VAT returns. This proposal seeks to regularize iTax's current configuration. New input tax claims cannot be introduced to an amended VAT return unless it is within the 6-month period.
- **Timeline for application for refund of VAT paid in error -** The Bill proposes to restrict the period to apply for VAT refunds to 6 months. The current provision requires the Commissioner to refund such tax provided the application is made within 12 months from the date the tax became due and payable.
- **Refund of other taxes paid in error -** The Bill proposes to allow taxpayers who have paid tax in error to seek a refund of the amounts. In the Bill, "*tax paid in error*" is defined to mean tax paid which the Commissioner is satisfied ought not to have been paid. Currently there is no provision that expressly provides for refunds of taxes paid in error.
- **Objection to tax decision -** The Bill proposes to require the Commissioner to inform the taxpayer that their notice of objection has not been validly lodged within 14 days. The Bill also proposes to require the Commissioner to inform the taxpayer of their decision on an application for extension of time within 14 days. The Bill further proposes to require the Commissioner to make an objection decision within 60 days from the date of receipt of a valid notice of objection.
- **Clarification on when input tax may be deducted -** The Bill proposes to amend section 17(1) of the VAT Act to read as "input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, *in a return for the period*, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period". The proposal seeks bar taxpayers who occasionally benefit to claim input tax without filing the VAT return in dispute situations.

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