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Happy New Year

OVER 40 YEARS OF ACCOUNTING EXCELLENCE

2023

Tax Changes Effective from 1st January

Newsletter

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Introduction

Happy new year 2023 and warm greetings from all us at M&A. We hope you and your families had some time to take a break and bond during the December holidays. We are delighted at lively and fruitful engagements we had in the previous editions of our newsletter.

We hereby release our first edition newsletter for the year 2023. The newsletter covers recent important developments in Kenya's tax landscape. We are grateful for your interaction and are happy to be of service to you.

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

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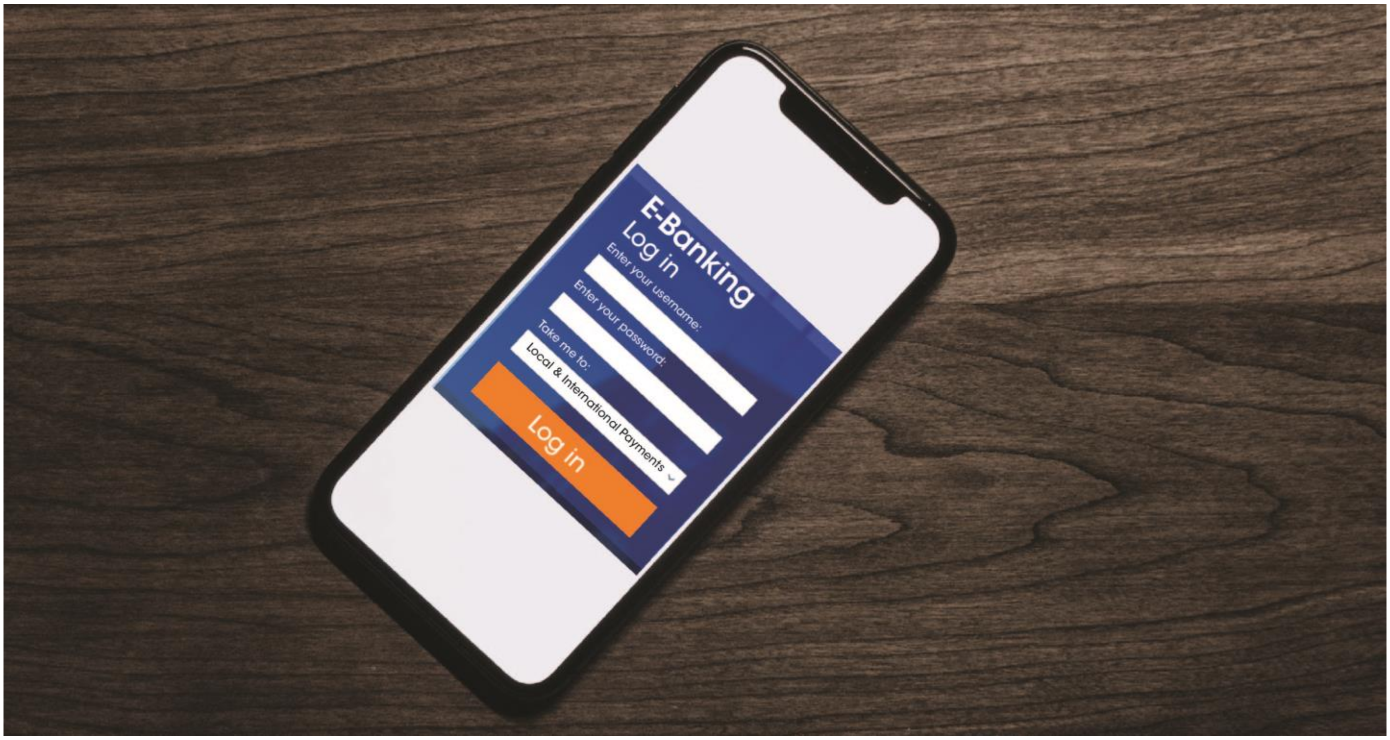
Tax Changes Effective from 1st January 2023



The Finance Act 2022 was assented by former president Uhuru Kenyatta and came into force on 21st June 2022. Some were effective from 1st January 2023 and we highlight them as follows:

a) Capital Gains Tax (CGT) Rate

Capital Gains Tax is a tax chargeable on the gain which accrues to:

- An individual on transfer of land and shares excluding those listed on the NSE or
- A company on transfer of assets and shares excluding those listed on the NSE.

The property being transacted should be situated in Kenya, and this tax will apply whether or not the property was acquired before 1st January 2015.

What constitutes a property - The definition of 'property' incudes land, buildings and marketable securities including securities in Kenyan resident private companies (though a specific exemption from CGT exists for securities listed in NSE).

Who is liable to pay the tax? - The tax is to be paid by the person (resident or non-resident) transferring the property, referred to as transferor. The transferor can either be an individual or a corporate body.

How do you determine the net gain? - The net gain is the excess of the transfer value over the adjusted cost of the property that has been transferred. It is this excess that is subjected to tax.

The **Transfer Value** of the property is the amount or value of consideration or compensation for transfer of the property less incidental costs on such transfer. The **Adjusted Cost** is the sum of the cost of acquisition or construction of the property; expenditure for enhancement of value and/or preservation of the property; cost of defending title or right over property, if any; and the incidental costs of acquiring the property. The adjusted cost shall be reduced by any amounts that have been previously allowed under section 15 (2) of the Income Tax Act.

What is the due date/ tax point? - The tax should be paid upon transfer of property but not later than the 20th day of the month following that in which the transfer was made.

What happens when a loss is made? - The loss may be carried forward to be offset against a gain of a similar nature at a future date.

Exempted Transactions from Capital Gain Tax.

- Transfer of property between spouses.
- Transfer of property within a group as part of a re-organization or re-construction.
- Transfer of title of immovable property to a registered family trust.
- Issuance by a company of its own shares.
- Disposal of property for purpose of administering the estate of a deceased person.

So, what is the rate of CGT Tax??

The rate of tax has been 5% from the time the tax was introduced in 2015. With reference to the Finance Act 2022, the rate of tax has now been revised upwards to 15% of the net gain. This implies that the taxpayers will pay more by 10%. This move is designed to align the Kenyan CGT rate with the regional CGT rates, despite stakeholders' proposal to retain the same at 5% given the fact that significant portion of capital gains on disposal of properties is often attributable to inflation.

Example »

Mr. Kamau bought a piece of land in the year 2007 for Kshs. 675,000. The following were his additional expenses.

- Legal fees: Kshs. 67,500
- Land transfer fees: Kshs. 45,000
- Stamp duty: Kshs. 25,400
- Commissions: Kshs. 30,000

In the year 2017, Mr. Kamau sod the same piece of land at Kshs. 3, 150,000 and he incurred the following expenses.

- Legal fees: Kshs. 315,000
- Tax advisory expenses: Kshs. 100,000
- Commissions: Kshs. 50,000

Following from the above transaction, Capital Gains Tax payable will be Kshs… computed as follows:

- Transfer value: 3,150,000 - 315,000 – 100,000 – 50,000 = 2,685,000
- Adjusted cost: 675,000 + 67,500 + 45,000 + 25,400 + 30,000 = 842,900
- Net gain: 2,685,000 – 842,900 = 1,842,100

- **CGT: 15% *1,842,100 = 276,315**

b) Taxation of Gains from Financial Derivatives Accruing to Non-Residents

The Act defines a financial derivative to mean "a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date."

The enacted provision brings to tax, gains accruing to non-resident persons from transactions involving financial derivatives in Kenya, excluding financial derivatives traded on the Nairobi Securities' Exchange.

The gains will be subjected to withholding tax at 15%, subject to Regulations to be issued by the CS National Treasury.

This provision will widen the tax base by bringing to tax gains accrued by non-resident persons from financial derivatives, while still maintaining the competitiveness of the financial derivatives traded on the Nairobi Securities' Exchange. It will also help to promote equity as such gains have previously been taxed on resident persons only.

c) Transfer Pricing Implications for Entities Operating in a Preferential Tax Regime

The Act has amended section 18 (A) of the ITA to include within the ambit of Transfer Pricing (TP), transactions between ***resident persons*** and the following persons located in a ***preferential tax regime***. They are a ***related resident person, a non-resident person, an associated enterprise of a non-resident person; and a permanent establishment of a non-resident person***.

A preferential tax regime has been defined as any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base.

The provision aims to widen the scope of transactions falling within the ambit of transfer pricing by including non-resident persons operating within the preferential tax regime. The provision will see increased scrutiny and compliance burden on taxpayers transacting with non-resident persons in a preferential tax regime.

d) Annual Inflation Adjustment

The Act has amended the annual inflation adjustment provision to empower the Commissioner General, by notice in the Gazette and with the approval of the CS, to exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year.

This is aimed to protect consumers from increase in prices due to annual inflation adjustments on excise duty of specified products.

However, the Act does not provide the parameters that the Commissioner General will use in determining the products to be excluded from the inflation adjustment review.

e) Mobile and Bank Transactions

The Act has reintroduced the excise duty on all mobile and bank transactions at a rate of 20%.

The tax had been scrapped at the height of covid-19 pandemic to cushion the taxpayers against the expensive money transfer charges when the government was encouraging cashless transactions to reduce the spread of the covid-19 virus.

Voluntary Tax Disclosure Program (VTDP)

The VTDP commenced on 1st January 2021 and shall run for a period of 3 years to 31st December 2023.The program allows a taxpayer to confidentially disclose tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest on the taxes disclosed.

A person who makes full and complete disclosure under the program shall be granted whole or partial relief of penalties and interest on the taxes disclosed after payment of principal taxes within the VTDP period. KRA encourages taxpayers to take advantage of the last year of VTDP to obtain the maximum 25% relief of the penalties and interest before the end of the program. At Mbaya & Associates, we are on standby to offer a helping hand. Reach out to us and be assured that your journey to tax compliance has commenced.

Implementation Of Tax Invoice Management System (TIMS)

As indicated through a public notice dated 24th November 2022, the Kenya Revenue Authority (KRA) reminded the public and all VAT registered taxpayers that they are required to acquire and install the TIMS compliant Electronic Tax Registers (ETRs). The deadline which was by 30th December 2022 has since lapsed and KRA has not yet issued any further extension or guidance. This therefore means that the TIMS system takes effect from 1st December 2022 and that all the invoices outside the TIMs system will not be utilised and are therefore deemed invalid.

We therefore encourage all our clients to continue using the TIMS ETR devises so as to remain compliant and avoid imposition of assessments in future which may be as a result of the use of invalid VAT invoices.

Kindly, please ensure all invoices are transmitted on real time and the same is declared on or before the 20th of the month following the month of the VAT declaration so as to avoid rush hours and penalties.

It is also likely that the KRA, going forward, may not continue to grant payment plans on current payment returns being filed without making payments and we encourage that you file and pay the VAT as required to avoid inconveniences.

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