Tax bulletin April-June 2009

DCDM Associates Kenya &

GITHONGO

Since 1969

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June 30th, 2009 income tax returns deadline

The deadline for filing 2008 income tax returns is 30 June 2009. This deadline applies to all individuals, sole proprietors and partnerships. Companies with a 31 December financial year-end date are also required to file by the same date.

The income tax returns are required to be completed and submitted along with income and tax supporting documents: business accounts, employment pay and tax forms, and withholding tax certificates.

Exempt income received by individuals, or that on which withholding tax is final, is not required to be reported. This includes exempt pension income, dividends and interest received from financial institutions.

It is advisable to submit these returns early so as to avoid the last minute rush. Failure to submit returns attracts a fine of 5% on any tax balance due subject to a minimum penalty of shs.1,000 for individuals and shs.10,000 for companies.

Kenya revenue authority financials

The Kenya revenue authority is required by statute to gazette annual audited accounts within six months of the accounting year-end: 30 June. The accounts for the year ended 30 June 2007 were published in the Kenya gazette on 16 January 2009. Per the KRA Act the revenue collection body earns commission income from the collection of taxes in Kenya. The commission is set at 1.5% of budgeted collections plus a bonus of 3% on surplus collections.

KRA's 2007 Financials

(*figure in K.shs. billions*)	2006/7	2005/6
Agency income Other income Total income	5.2b 0.9 6.1	4.0b 0.8 4.8
Total expenses	6.8 (64% staff)	6.0 (58% staff)
Net income / (deficit)	(0.7)	(1.2)
Gross tax revenues	360	298
Agency costs/revenue	1.8%	2%

Though a simple model, this indicates gradual improvement in tax administration efficiency.

Fringe benefits tax rates

Fringe benefit tax is paid by employers (at the 30% resident corporate tax rate) for low-interest loans facilities extended to employees. The benefit value is the differential between the prescribed interest rate (the previous quarter's average TB rate) and the rate applied on staff loans. The prescribed rates are currently as follows.

period	*rate*
Jan-March 2009	8%
April-June 2009	8%

2009 *Budget*

The minister of finance will read the 2009-2010 Budget in mid-June against a backdrop of an economic downturn, falling tax revenues and big expectations on government delivery on various fronts.

We wait with expectation to read how the government will propose to spur growth, deal with the competing demands for action on poverty, security, social services governance re-structuring and infrastructure. And all this without, hopefully, weighing down individuals and businesses with any additional tax burdens.

We can also expect to see measures enhancing tax collections and east African integration. We will prepare and send you a detailed analysis of the 2009-2010 Budget.

VAT & *customs duty investment incentives*

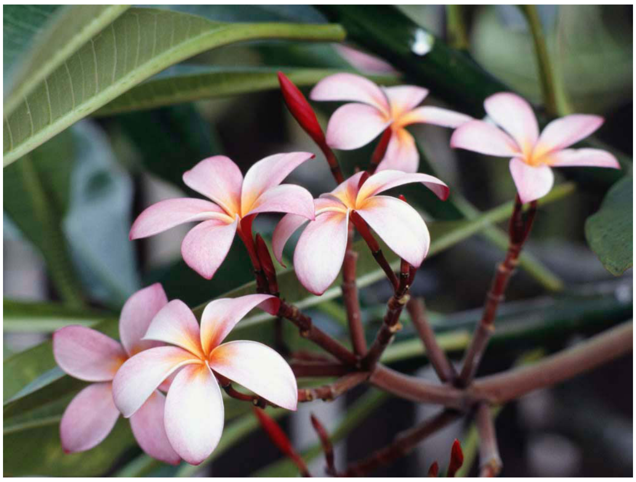
The Kenya VAT and income tax Acts have tax remission and recovery provisions that can prove beneficial to businesses embarking on qualifying investment projects. These are the VAT remission and the Customs duties set-off facilities.

Both these tax reduction provisions apply to capital goods (excluding passenger vehicles) purchases on the approved investment projects. The Vat remission exempts from Vat capital items imported or purchased locally. The customs duty set off provides for the setting off of future income tax liabilities against the import duties paid.

To qualify the investment projects must be of a value of shs. 1.0 million for the VAT facility and US$ 70,000 or higher for the duty set-off.

Applications are required to be made to the minister of finance at the Treasury and involve the compilation of the requisite support documents: a project profile, the expected social-economic benefits and a listing of the expected capital purchases..

Whilst the Vat on the capital purchases may otherwise be recoverable through the monthly input tax mechanism, this facility would nevertheless be very useful and for cash flow management. The duty set-off albeit deferred reduces the cost of investment. However it so happens that most manufacturing machinery is zero-rated for duty and therefore this facility is not very extensively used.



Kenya Tax Information Series

EXCISE DUTY IN KENYA

CONTENTS

Excise duties defined

Excise duty is a tax levied on certain goods and services made, imported, supplied and sold in the country. Like other taxes excise duties are levied with particular taxation and fiscal principles in mind including: raising government revenue and meeting socio-economic objectives.

The excise duty regime in Kenya is administered by the Kenya revenue authority under the auspices of the Customs and Excise Act. This Act prescribes the various licensing, administrative requirements regarding excise duties as well as the applicable tax rates.

Excise taxes are levied on a wide range of goods and services and therefore affect the pocket of many Kenyans.

Excisable supplies

Most countries that levy excise tax conventionally levy it (sin tax) on goods and services deemed to have injurious effects: the effects of alcohol abuse and tobacco use are well known as are those of excessive consumption of sugared soft drinks. Excise has also traditionally been levied on luxury items: cosmetics, perfumery and jewellery. In Kenya – for government revenue raising reasons – we have excise taxes charged on essential services such as mobile and wireless telephony and bottled mineral water.

Excise duty valuation

Excise duty is calculated on the basis of a product's ex-factory price. This is the price excluding VAT and excise duty. VAT is calculated on cost plus excise duty – and also Customs duty if applicable.

Excise duty rates

Excise duty rates applicable in Kenya are both ad valorem (tax based on the price or value of the tax base) and specific (tax based on the weight or size of the tax base). The ad valorem rates: 10%; 20%; 25% and 120%.

In Kenya excise duty is taxed on the following items:

- Alcohol – including beer, wines, spirits: shs.50-85 per litre
- Soft drinks, mineral water and juices: 10% or shs 6 per litre
- Cigarettes and other tobacco products: shs 500-2,000 per mille
- Petroleum products: shs.3.7-19.8 per litre
- Cosmetics: 10%
- Vehicles: 20%
- Used motor vehicle spare parts: 20% or shs.10 per K.g.
- Jewellery and precious stones: 10%
- Casino and gambling services:5%
- Mobile cellular and wireless services:10%
- Plastic bags:120%
- Used computers: 25%

Excise duty licensing and administrative obligations

Manufacturers of excisable goods are required to be licensed with the commissioner of customs and excise. They are required to comply with various stringent excise control requirements such as stock records keeping and room marking.

Excise duty refunds and rebates are available where excisable goods are exported.

Impact on business and personal expenditure

The impact of excise duty cuts across business and personal expenditure increasing costs of purchases. This is exacerbated by the tax-on-tax nature of the subsequent levying of VAT on the same goods and services on which excise tax has been charged. For businesses this not only eats into the margins but also may dampen demand.

In sectors prone to non-compliant players, tax evasion causes a serious challenge for compliant businesses. There are arguments for and against the levying of this tax on one hand because of the distortions it causes and on the other the social impact of some of the products on which it is levied.

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