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Newsletter

MBAYA AND ASSOCIATES April 2018 | Issue 034 | Volume 4

Introduction

We welcome you to our fourth edition of our newsletter this year.

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 questions.

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**

“ ”

You can't know what people are going through when you are told. Until you meet them; that is when you know many people are in need. Most of the children we met had cancer and others had very bad burns and some have been in wards for many months, others close to a year

» JANE SANG, STAFF M&A ELDORET BRANCH

In this issue

From the Tax Desk

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From the TaxDesk

KRA Releases New Rules for Filing Nil Returns

Kenya Revenue Authority has released new rules for filing nil income tax returns. This is made possible through the introduction of a new digital form that the taxman has released to help in tracking down tax evaders who have been evading tax by filing nil income tax returns.

The new digital form which is effected through a reconfiguration of KRA's online tax platform iTax, will require filers of nil income tax returns to clearly indicate that they do not have any other source of income.

Information on the document is expected to help KRA better profile taxpayers in order to fish out evaders. However, in accordance with the Kenyan law it is mandatory for anyone who holds a personal identification number (PIN) to file a return annually.

While genuine taxpayers of nil income tax returns are allowed under the law to avoid any late or non-filing penalties. In mid-February, KRA suspended the processing of 'nil' income tax returns for 2017, citing the commencement of works on the iTax platform.

Taxpayers are further advised to observe timelines and accurate declarations in their returns besides making full payments of any taxes due. The filing of 2017 income tax returns commenced on 1st January 2018 and is expected to close on 30th June 2018. Taxpayers are encouraged to file their income tax returns before the deadline date, since in 2015 KRA raised the penalty for late filing from KES 1,000 to KES 20,000.

Alternative Dispute Resolution (ADR) in Tax

What is ADR?

ADR is an alternative method of handling tax disputes outside the confines of;

- Judicial process/ court of law
- Tribunals/ Quasi judicial process

It is an internal mechanism to expedite resolution relating to tax disputes, the settlement must have their legal basis within either the;

I. Constitution of Kenya 2010, Article 159(2)(c)
II. Revenue statutes
III. The Tax Appeal Tribunal Act – TATA (Sec.28)
IV. Tax Procedure Act (Sec.55)

ADR is normally a voluntary process and either party i.e. the commissioner or the taxpayer can initiate the kick start, which can take place at any stage of a dispute.

What are the benefits of ADR?

- They help to provide a taxpayer focussed approach to dispute resolution
- It helps in decreasing the cost of resolving a dispute
- It strengthens the relationship between the taxpayer and the Revenue authority
- Provide internal structures and processes which will support dispute resolution through oversight, monitoring and management of the ADR processes.
- It creates a central database on tax disputes handled in ADR to guide the future disputes resolution for consistency.
- It provides room for an additional approach for dispute resolution to complement the existing internal dispute resolution mechanisms provided in the Revenue statute.

The process of initiating ADR

This includes the following;

I. The process begins after an objection is communicated to the taxpayer
II. The taxpayer or the tax representative makes a formal appeal to the Tax Appeal Tribunal (TAT) first before requesting the ADR process.
III. Writing a formal application to the Tax Appeals Tribunal which is then forwarded to Corporate Tax Dispute Resolution Division (CTDR). CTDR is an office that is charged with the responsibility of facilitating the ADR process between the taxpayer and the commissioner.
IV. A settlement of the dispute should be arrived at within 90days of the date of Tribunal/ Court permits the settlement in reference to Sec 55(1) of TPA or it shall be referred back to the Tribunal/ Court as per Sec55 (2) of TPA.

Circumstances under which an ADR process can be terminated

- Where a conduct of one or both parties may be un-conducive for ADR
- If a party or both parties fail to attend the ADR meeting without a reasonable cause after he/she has been served.
- If a party fails to carry out a reasonable request by either the facilitator or the other party.
- Where both parties agree to terminate the proceedings.

Transfer Pricing

Transfer pricing is the pricing of goods, services and intangibles between related parties. Related parties are parties who control one another, or who are under the common control of another party, whether directly or indirectly. They include branches and head offices. Related parties must deal with each other at arm's length.

The Arm's Length Principle

The arm's length principle is a standard used to guide transfer pricing. It is an internationally accepted standard adopted for transfer pricing between related parties.

Where the pricing of related party transactions is not at arm's length and results in a reduced profit for the taxpayer, the relevant authorities may adjust and tax the adjusted profits.

The arm's length principle requires that transfer prices between related parties are equivalent to prices that unrelated parties would have charged in the same or similar circumstances. It involves identifying situations or transactions undertaken by unrelated parties that are comparable to the situations or transactions between related parties. This is commonly known as "comparability analysis."

Transfer Pricing Rules in Kenya

I. Section 18 (3) of the Act empowers the Commissioner to adjust the profits accruing to a resident from a course of business conducted with related non-resident persons to reflect such profit as would have accrued if the course of business had been conducted by independent persons dealing at arm's length. This amounts to powers to adjust the transfer price in international transactions between connected parties to reflect an arm's length price.

II. For the purposes of the Section 18 (3) of the Act and with specific reference to companies, a company is related to another company if: • it participates directly or indirectly in the management, control or capital of the business of the other • a third person participates directly or indirectly in the management, control or capital of the business of both of them

III. Section 18 (8) of the Act makes provision for the issuance of guidelines for the determination of an arm's length value of a transaction for purposes of Section 18 and for the specification of such further requirements as the Minister may consider necessary for the better carrying out of the provisions of the Section.

IV. Such guidelines have been issued by the Minister in the form of The Income Tax (Transfer Pricing) Rules, 2006 ('TP Rules'). The stated purpose of the TP Rules is to provide guidelines to be applied by related enterprises in determining the arm's length prices of goods and services in transactions involving them and to provide administrative regulations, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements.

V. Rule 6 lists the transactions which may be subject to adjustment of prices under the TP Rules to include:

- Sale and purchase of goods;
- Sale, purchase or lease of tangible assets;
- Transfer, purchase or use of intangible assets;
- Provision of services;
- Lending or borrowing of money; and
- Any other transactions which may affect the profit or loss of the enterprise involved.

VI. Rule 10 of the TP Rules requires a person who avers the application of arm's length pricing to develop an appropriate transfer pricing policy, to determine the arm's length price in accordance with the guidelines provided in the TP Rules and to avail documentation evidencing their analysis upon request by the Commissioner. In addition to the requirements set out in Rule 10, Rule 9 (1) gives the Commissioner Powers to request information, including documents relating to transactions where transfer pricing is applied.

VII. Whilst no hard and fast rules for compiling documentation or for the process that taxpayers should follow are laid down in the TP Rules, the documents which the Commissioner may request include documents relating to:

- The selection of the transfer pricing method and the reasons for the selection;
- The application of the method including the calculations made and price adjustment factors considered;
- The global organisation structure of the enterprise;

- The details of the transactions under consideration;
- The assumptions, strategies and policies applied in selecting the method
- Such other background information as may be necessary regarding the transaction.

VIII. This non-comprehensive list of the documents which the Commissioner may request is contained in Rule 9 (2).

IX. The effect of the above express and implied statutory requirements is to place the burden of proving that prices are arm's length on the taxpayer. A taxpayer who fails to provide transfer pricing documentation to support the arm's length nature of its prices is therefore at risk that the KRA will conduct a transfer pricing audit and examine its transfer pricing policies in detail. In the event that the KRA, as a result of the examination, adjusts the transfer price adopted by the taxpayer, the lack of adequate documentation will make it difficult for the taxpayer to rebut the adjustment.

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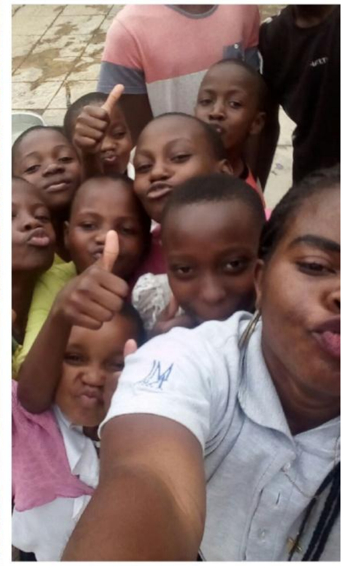


Corporate Social Responsibility and Team Building Activity

Over the years, people have become increasingly aware of the importance of the social and environmental impact companies and organizations have. Business norms have changed. The importance of corporate social responsibility (CSR) has hugely increased and has now become a priority for business leaders globally.

Tree Planting

Late last month our firm was involved in various CSR activities across our branches. The head office staff headed to Kereita Forest for a tree planting session where the main mission of the local community around is to restore the forest coverage to where it was originally using only indigenous trees. Giving back is a big part of our core ethos and for us, there is no better way of doing this than getting together and giving back to nature what it has so freely given to us.

This is also in a bid to create a tree planting culture in our staff given the recent statistics by the UNEP that in the next five years, desertification in Kenya will have risen to 65%. We believe we have a responsibility as a firm to support Kenya in addressing the challenges of climate change while still giving back to the community in meaningful ways.

Helping the needy

Before the tree planting, the head office team was honoured to present the new curriculum books to Prince of Peace School in Kawangware. This is a school started by The Lutheran Church where orphaned children are educated and go to the church every day for meals. The school is open to all children in the Kawangware slum.

Kakamega CSR

The Kakamega branch visited Mission to the fatherless children's home in Kakamega where they provided stationery supplies to the children. Mission to the fatherless is a Christian based organization that exists to liberate children and young people in Kenya from a life of abandonment, poverty, incest and abuse through practical care, education, employment and discipleship. Many children have lost their parents; others are abandoned when their parents are unwilling or unable to care for them; therefore, the children's home endeavours to supply children with a loving home environment, food, education and medical care and continue to provide encouragement and opportunities as they transition to adulthood.

Eldoret CSR

On the other hand, the Eldoret staff headed to the Eldoret Hospice where they took time to eat play and spend time with the sick. Jane Sang one of our staff said "You can't know what people are going through when you are told. Until you meet them; that is when you know many people are in need. Most of the children we met had cancer and others had very bad burns and some have been in wards for many months, others close to a year." The team was thrilled to spend time with the patients, their parents and care givers, giving them hope as well as a different atmosphere from the hospital one.

These CSR activities have turned out to be a big tool in team building too. It's amazing what a team with a world changing mentality can accomplish both in and out of the office.

Team Building

Many managers and leaders have acknowledged that a cohesive team is imperative to the success of any organization. Team building activities encourage a work place where people can be themselves and perform to their best abilities, as well as give opportunity for the staff to know each other's strengths, weaknesses and interests which leads to better cohesion in projects which leads to better results. Among the team building activities we took part in were, paintballing, bike riding, zip lining and archery. Learning was not excluded in the activities as we couldn't help but learn a few life lessons; for example, fortune favours the bold through paint balling. If you want something, you have to go and get it no matter the obstacles you may encounter. In bike riding, to keep your balance, you must keep moving and just like in archery, don't expect to get everything perfect quickly. Practice is what makes perfect.

Happy staff is productive staff.

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.

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