

The TaxPoint

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Large Taxpayers Office

NEWS DESK

Acting Commissioner appointed

Alice Owuor has been appointed to act as Commissioner of Domestic Taxes in charge of the Domestic Revenue division that oversees operations of small and medium sized taxpayers. Her appointment follows the expiry of term for Fidelis Mulei, who served in the same capacity for the last three years but left to pursue other interests.

Ms Owuor takes to her new division a wealth of experience gained during her long working career with the KRA spanning a period of 28 years, the last three of which have been served as second in command at the Large Taxpayers Office.



Ms. Alice Owuor

Speaking to 'The Taxpoint', Ms Owuor outlined her priorities in the new role to include the establishment of the Medium Taxpayers Office (MTO), the improvement of tax dispute resolution and the tightening of tax compliance and audit processes. The MTO is meant to enhance taxpayer service delivery and other tax administration processes by adopting strategies similar to those in use at the LTO.

'The Taxpoint' congratulates Ms Owuor for the new appointment and wishes her success in achieving her ambitions.

Income Tax Tribunal

Moves are in high gear to establish the first ever Income Tax Tribunal as provided for under Section 23 of the Income Tax Act with the body expected to be operational within April this year. The tribunal unlike the Income Tax Local Committee is meant to hear cases involving tax avoidance.

The Section under which the Tribunal derives its mandate empowers the Commis-

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sioner, where he is of the opinion that the primary purpose of a transaction is to avoid tax, to direct an adjustment to be made to counteract the avoidance.

The decision to establish the body follows several incidences unearthed among large taxpayers and for which it was felt appropriate to invoke the provisions of Section 23. In Kenya, the litigation over the subject of tax avoidance is untested but experience elsewhere points to courts upholding action where it is proven that the primary purpose for which a transaction or series of transactions is entered into is the avoidance of tax. In most cases including the cases currently under audit at the LTO, tax avoidance involves a multiplicity of transactions and players.

Tax avoidance schemes pose significant challenges to tax administrators with data for the United Kingdom showing estimated tax revenue losses of up to 13 billion pounds! Tax avoidance should be distinguished from tax evasion, the latter being a criminal offence, punishable in Kenya as an economic crime under the Anti-Corruption and Economic Crimes Act.

Transfer Pricing

There is heightened interest within the business and professional circles in the subject of transfer pricing following KRA moves to enhance surveillance activities in this area. The initiative, spearheaded by the LTO aims to ensure compliance with the 2006 transfer pricing rules and follows evidence gathered which shows depressed corporation tax performance within business sectors susceptible to the menace.

Besides the requests sent to companies to forward their transfer pricing policies, the corporation tax annual return has been amended to require specific disclosures in this respect. Concurrently the KRA has instituted contacts with key players with a view to enhancing public appreciation of its new strategy.

A number of audits carried out in the recent past have resulted in substantial tax demands with some taxpayers opting to "confess" and settle the obligations amicably. The spotlight inevitably will focus on auditors in cases where material non-disclosures which impact the "fairness test" for the financial statements emerge.

With the emergence of the global economic crisis, tax authorities are more than ever before focusing on international tax avoidance schemes with calls for greater cooperation in this area. The LTO has already instituted moves to enhance capacity in this regard through the establishment of a dedicated unit to handle transfer pricing. Capacity building initiatives are also in progress including through subscription to international databases and the enhancement of cooperation efforts with tax authorities with strong expertise in transfer pricing.

Duke comes to Kenya

The KRA recently hosted a three week training session on tax forecasting and risk analysis facilitated by faculty from Duke University's Sanford School of Public Policy. Duke University has for long provided short duration residential courses in the subject area in its Durham, North Carolina campus at which small numbers of KRA staff have participated. The decision to "localize" the course was meant to increase participation at affordable rates besides providing opportunities for tailor-making the course to suit Kenyan circumstances. The course was meant to enhance analytical and conceptual skills of tax officers especially those involved in compliance monitoring and audit. Among the facilitators was

TECHNICAL RULINGS

Expenses on exempt income**Point at issue**

Whether expenses incurred specifically in supporting the earning of income exempt from tax may be deducted from income accruing from other sources in arriving at net taxable income.

Ruling

Sections 15(1) and 16(1) (a) of the Income Tax Act provide for deduction only of expenditure incurred wholly and exclusively in the production of the income from which it is deducted. Further the definition of "total income" under Section 2 of the Act specifically excludes income exempt from tax.

In the circumstances therefore, expenses incurred to support the earning of income exempt from tax do not pass the test of being incurred "wholly and exclusively" in the generation of the income subject to tax. Such expenses are therefore not allowable as deductions for the purpose of deriving taxable income.

Income tax exemption status**Point at issue**

What the tax status is of a person who has submitted an application to be exempted from Income Tax under the relevant provisions. Paragraph 10 of the First Schedule to the Act provides for the right to apply for exemption for persons engaged in specified activities including trusts, charities, religious or educational institutions.

Ruling

The key issue is about the timing of when an applicant becomes eligible for exemption - i.e., is it from the date of application or date of approval by the Commissioner? The matter raises a philosophical question as to who grants the entitlement - the Commissioner or the law. The distinction is critical since an interpretation in favour of the latter implies the need to backdate the entitlement to the date of application. Moreover, if the former were accepted as the interpretation, there would be need for approval time commitments on the KRA's part.

This matter is presently under discussion and a formal communication will be issued in due course. In the meantime, applicants have the obligation to fulfil normal tax obligations until they receive notification of approval specifying the effective date.

NOTICE BOARD

VAT returns

The KRA wishes to notify persons claiming import-related input VAT to exercise due care in ensuring that documents used to support their declarations are proper and in order. It has lately come to our attention that certain declarations may not be supported by genuine import transactions, a fact which may lead to severe consequences for those filing the declarations.

Our investigations reveal that some importers may have fallen prey to unscrupulous Customs clearing agents who pocket money meant for duty payment who then procure fake receipts to cover up the fraud. Importers are therefore advised to follow the directions from the Customs Services department to adopt the two-cheque system with duty payments being made directly to the KRA. Under the Anti-Corruption and Economic Crimes Act, the filing of false tax refund claims may attract fines of double the amount claimed in addition to jail sentence of up to ten years.

Supplies to exporters.

Following the suspension of the scheme introduced in June 2009 allowing specified exporters access to VAT-free inputs, questions have been raised as to whether supplies made under that regime should be subjected to tax and the same demanded from the buyers.

We wish to clarify that the suspension announced vide Gazette Notice no. 8191 of 31st July 2009, did not have retroactive effect. Tax-free supplies made prior to the suspension were therefore properly done and no adjustments in the invoices previously issued are necessary.

Professor Graham Glenday, a long serving advisor at Kenya's Ministry of Finance in the 90's. He noted the significant strides made in institutionalizing the KRA which came into being during his tour of duty in Kenya. Consideration is being given to annually hosting the course which was this time round held at the high-tech Global development Learning Centre based at the Kenya Institute of Administration at Lower Kabete in Nairobi.

KRA Online services

Following the successful conclusion of the first phase of the Domestic Taxes automation programme, attention is now shifting to the next phase which involves the development of modules to improve back office efficiency mainly in compliance and audit activities. In this regard, vendor prequalification kicked off in early March setting in motion the process to pick the winning bidder by June 2010.

At the same time, discussions are in progress geared towards entrenching the use of electronic technology to support tax administration processes given the successful roll out and stabilisation of the e-registration and e-filing modules. Discussions are also in progress with the banking fraternity to launch e-payment with banks having the capacity to support such facility.

Meanwhile, the launch of the much awaited corporation tax annual declaration form is scheduled for April 2010. The launch will mark the conclusion of the main activities under phase 1 of the automation project after the successful automation of several other forms early in the year including, those for turnover tax, land rent and withholding income tax. To access the various declaration forms, please log onto www.kra.go.ke/portal/index.html.

Call Centre

The performance of the KRA's Call Centre (4 999 999) continues on an upward trend with almost 12,000 calls being received in February with the bulk relating to KRA Online services. The facility has witnessed heightened activity particularly since the full roll out of electronic services for Domestic Taxes one year ago.

The Centre's rating by standard performance statistics for such facilities also shows commendable achievement at 93% service level rating (calls picked within 5 seconds) and an efficiency score of 83% (calls responded to before disconnection).

The Centre is also reachable at callcentre@kra.go.ke