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# Tax Payer Register Clean-Up

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# Newsletter

MBAYA AND ASSOCIATES

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## Introduction

Receive our April 2023 greetings. We are pleased to release the fourth edition of our tax newsletter as we appreciate the good relations that we have had over the period. We have had a lot of feedbacks and engagements in our previous editions and we hope for the same to continue into the future

This edition covers the recent 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](mailto:tax@mbaya.co.ke)

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## » From the TaxDesk »

### Taxpayer Register Data Clean-Up

Through a public notice dated 30<sup>th</sup> March 2023, Kenya Revenue Authority (KRA) notified all registered taxpayers of the on-going data clean up exercise of taxpayers' Personal Identification Number (PIN) registration details. The exercise is aimed at ensuring the integrity of the taxpayers' register with a view to enhance service delivery to all taxpayers.

All registered taxpayers are urged to update/correct their registration details as appropriate, on iTax, including their name, phone number, physical address, email address, physical location of businesses, residency status, directorships or partnerships held etc.

Taxpayers are guided to log onto [itax.kra.go.ke](http://itax.kra.go.ke) to access their profile and follow these simple steps to update the registration details as appropriate:

1. Under the registration menu, select the option "Amend PIN details";
2. Set the "Mode of Amendment" to Online and click the next button;
3. Check the box marked "PIN" and then select the sections you would like to update; and
4. Update the details as appropriate, attach supporting documentation where necessary and submit.

### Excise Duty

Excise Duty is a tax imposed on goods and services manufactured in Kenya or imported into Kenya and specified in the first schedule of the Excise Duty Act (2015).

**When are Excise Returns filed?** Excise returns are filed by 20<sup>th</sup> day of the following month. Licensed manufacturers or suppliers of excisable services are required to submit excise returns on iTax.

**What is the penalty for late filing?** Late payment penalty is 5% of the amount of tax payable under the return or Ksh. 10,000, whichever is the higher.

**What is an excise stamp?** An excise stamp is a type of revenue stamp affixed to some excisable goods to indicate that the required excise has been paid by the manufacturer.

Legal Notice No. 30 of 2023 titled; The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2023 has amended, among other provisions, the price of excise stamps effective 31<sup>st</sup> March 2023. The revised prices are as shown below;

Revision of excise stamp fees:

No.	Category of Excisable Goods	Fees in Ksh.
1	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	5 per stamp
2	Cigarettes containing tobacco or tobacco substitutes	5 per stamp
3	Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted" tobacco; tobacco extracts and essences.	5 per stamp
4	Electronic cigarettes and other nicotine delivery devices	5 per stamp
5	Liquid nicotine for electronic cigarettes	5 per stamp
6	Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health.	5 per stamp
7	Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	5 per stamp
8	Compounded spirits of alcoholic strength exceeding 6%	3 per stamp
9	Spirituous beverages of alcoholic strength not exceeding 6%	3 per stamp
10	Beer, Cider, Perry, Mead, Opaque beer, and mixtures of fermented beverages with non-alcoholic beverages	3 per stamp
11	Bottled or similarly packaged waters	0.5 per stamp
12	Other non-alcoholic beverages, not including fruit and vegetable juices.	2.2 per stamp

No.	Category of Excisable Goods	Fees in Ksh.
13	Fruit juices (including grape must), and vegetable juices, fermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	2.2 per stamp
14	Cosmetics and Beauty products of tariff heading 3303, 3304, 3305 and 3307	2.5 per stamp

## How does one get the excise stamps?

Excise stamps are issued by KRA to licensed persons only. Applications for excise stamps are made through the EGMS system. However, a person can initiate the process at an EGMS Service Desk in the various KRA Tax Service Offices.

## Employee Stock Ownership Plan (ESOPS)

An ESOP is an arrangement between an employer and an employee in which the employee is granted rights to own a defined number of shares in the company, usually at a discounted price and upon attainment of agreed key performance indicators (KPIs).

Therefore, under an ESOP a company may:

- Issue its own shares direct to its employees; or
- Allow its employees to buy shares in the company at less than market value; or
- Grant its employees an option to buy shares in the company at some future date. There are many variations of ESOPs, depending on the specific objectives of management and the risk appetite of the employees.

## Potential Benefits

In Kenya, since ESOPs are now recognized under Section 5 of the Income Tax Act and as investment vehicles under the Capital Markets Act; companies should consider the potential benefits of ESOPs. There are three important stages in any ESOP:

- **Grant** « This is when the employee is given the right to acquire shares of the company, usually prospectively upon attaining set KPIs.
- **Vesting** « This is the unconditional right to acquire the shares accrues to the employee and he can exercise his rights to acquire the shares.
- **Exercise** « When the employee acquires the vested shares at the strike price i.e., share price agreed at the grant date.

ESOPs are a clear favourite for small and medium size enterprises when developing an incentive compensation structure, principally because they do not involve a direct cash outflow, like a bonus payment would.

However, before a company can settle on an ESOP as a way of compensating its employees, it needs to consider issues such as;

- Its employee demographic profile - a company must consider its employees risk appetite. Older employees tend to be more risk averse and would generally prefer a compensation structure that is less risky and more structured and certain, such as higher contributions to a pension plan.

## Tax Liability on ESOPS

**Tax Point** « It is important to plan for the point at which the tax liability crystallizes on the employee (Tax point).

An ESOP scheme becomes a taxable benefit: i.e., upon issue (date the option was granted) there was a difference between the market value and offer price per share, as stated from an Income Tax extract below (Section 5(a)); "in the case of an employee share ownership plan, the value of the benefit shall be the difference between the market value, per share, and the offer price, per share, at the date the option is granted by the employer; and"

This means that for the company to avoid the tax burden/ liability to its employees which is likely to accrue as a result of the ESOP, it will be required to issue the shares at the market value.

From a Tax perspective there are two scenarios,

**Scenario 1** » The expense should be treated as revenue expense (employee cost) and therefore allowed for tax purposes.

**Scenario 2** » When the shares issued are treated as a capital expense (issuance of additional shares) this will not be deductible for tax purposes and it will be taxed.

## From The Secretarial Desk

### Duties, Liabilities of Officers of The Company by Bryan Yusuf

In relation to a company or other body corporate, an officer is:

- Any Director, Manager or Secretary of the Company or Body; and
- Any other person who is, because of a provision of the Companies Act, to be treated as an officer of the company or body for the purposes of the provision.

**Who is a director?** A Company's Director(s) are persons to whom the law looks to manage the affairs of a company on behalf of its owners.

This is so even in the case of small private companies which may have only one or two shareholders; such a company must still have at least one director even where the director and the shareholder are one and the same person.

In such a situation the law will still see a technical distinction between the interests of the shareholder as owner of the company and the responsibilities of the director as the person who makes decisions on its behalf.

#### Directors' Duties

These are series of statutory, common law and equitable obligations owed to a company. The general duties are contained in the Companies Act 2015 and are critical to corporate governance.

Directors owe duty to the company and not shareholders, employees or creditors. Below are some of the duties we would like to highlight:

- **Duty to Act within Powers** » A director of a company must act in accordance with the company's constitution and only exercise their powers for proper purposes for which they are conferred. If power is given for one purpose, they cannot exercise it for a different purpose.
- **Duty to Promote the Success of the Company** » A director of a company shall act in the way in which the director considers, in good faith, would promote the success of the company for the benefit of its members as a whole, and in so doing the director shall have regard to:
  - a) The long-term consequences of any decision of the directors;
  - b) The interests of the employees of the company;
  - c) The need to foster the company's business relationships with suppliers, customers and others;
  - d) The impact of the operations of the company on the community and the environment;
  - e) The desirability of the company to maintain a reputation for high standards of business conduct; and
  - f) The need to act fairly as between the directors and members of the company.



- **Duty to Exercise Independent Judgment** « A director of a Company must exercise independent Judgment and does not infringe this duty if he:
  - a) Acts in accordance with an agreement entered into by the company which restricts the future exercise of its director's discretion or;
  - b) Acts in a way authorized by the company's Constitution. A director must at all times act in the interest of the Company and it is a breach of duty for a director to act in accordance with the instructions of some other person.
- **Duty to Exercise Reasonable Care, Skill and Diligence** « Directors should carry out their duties with reasonable care and exercise such degree of skill and diligence as is reasonably expected of persons of their knowledge and status. If they have special skills or knowledge then they will be expected to exercise them.
- **Duty to Avoid Conflicts of Interest** « A director of a company must avoid a situation in which he has, or can have a direct or indirect interest.
- **Duty to Declare Interest in Proposed or Existing Transaction or Arrangement** « A director who is in any way directly or indirectly interested in a proposed transaction or arrangement with the company or any transaction or arrangement that conflicts, or possibly may conflict, with interest of the company. This duty applies particularly to the exploitation of any property, information or opportunity irrespective of whether the company would have taken advantage of the property, information or the opportunity.
  - This duty is not infringed if;
    - a) The situation cannot reasonably be regarded to give rise to a conflict of interest, or
    - b) The matter has been authorized by the directors.
- **Duty Not to Accept Benefits from Third Parties** « A director of a company must not accept a benefit from a third party conferred by reason of:
  - a) Fact that the person is a director of the company  
or;
  - b) Any act or omission of the person as a director.

The Third party means a person other than the company, an associated body corporate, or a person acting on behalf of the company or an associated body corporate. The company has entered into must declare the nature and extent of that interest.

The director should declare to the other directors; and in the case of a public company the director should declare to the members of the company.

## Duties of Directors under Mwongozo Code of Governance

Each Board Member must:

- c) Exercise the highest degree of care, skill and diligence in discharging their duties.
- d) Act in the best interest of the organization and not for any other purpose.
- e) Act honestly at all times and must not place themselves in a situation where their personal interests' conflict with those of the organization.
- f) Exercise independent judgment at all times.
- g) Understand and accept the principle of collective responsibility.
- h) Devote sufficient time to carry out their responsibilities.
- i) Regularly update their knowledge and enhance their skills.
- j) Promote transparency and accountability at Board level.
- k) Promote teamwork within the Board and the organization.
- l) Promote and protect the image of the organization.
- m) Owe their duty on the organization and not to the nominating or appointing authority.
- n) Owe the organization a duty to hold in confidence all information available to them by virtue of their position as a Board Member.

The above forms part of the duties and the responsibilities of an officer of a company. In our next issue, we will touch on the final bit of the Consequences of Breach of General Duties.

Would you like to get much more and deeper insights on these matters? Please send us a message through our mail [tax@mbaya.co.ke](mailto:tax@mbaya.co.ke) or [taxteam@mbaya.co.ke](mailto:taxteam@mbaya.co.ke) and on Secretarial bit, talk to us through [savanna@mbaya.co.ke](mailto:savanna@mbaya.co.ke) and rest assured, you will start on a right footing.

### Famous Tax Quotes «

**Steve Maraboli:** *“Life, Liberty, and the Pursuit of Happiness... but only when you pay your taxes? That means your freedom is rented, leased, & not unalienable.”*

## 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 | 20<sup>th</sup> 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



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