



Mbaya and Associates LLP
CERTIFIED PUBLIC ACCOUNTANTS

The National Health Insurance Fund Regulations, 2023

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Newsletter

MBAYA AND ASSOCIATES

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Introduction

We are pleased to release the eleventh edition of our tax newsletter.

We appreciate the lively feedback and fruitful engagement we have had in the previous editions of our newsletters. This issue will summarize the key aspects in changing tax matters in Kenya.

On the right column of the newsletter, you will find contact details for key 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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» From the **TaxDesk** »

Fringe Benefit Tax and Deemed Interest Rate

Through a public notice dated 31st October 2023, KRA notified the general public of the recent changes to the Fringe Benefit Tax and the Deemed Interest Rate as below. Low interest benefit results from the charging of a low rate of interest on an employment benefit as compared to the commissioner's prescribed marked rate of interest. The Low Interest Benefit has remained the same at the rate of 10 %. This is applicable for the months of July to December 2023.

Fringe Benefit Tax (FBT) » This is a tax applicable when employers provide loans to their employees and charge an interest lower than the prescribed rate (ITA-section 12(b)). This becomes a benefit to the employee, for which the employer needs to file and pay Fringe Benefit Tax. FBT is paid by the employer at the corporate tax rate of 30 % on total taxable value each month. The tax is payable to KRA on or before the 9th day of the month following the month of contribution. For the purposes of Section 12B of the Income Tax Act, the Market Interest Rate is 13%. This rate is applicable for the three months of October, November and December 2023.

Deemed Interest Rate » This is the amount of notional interest assumed to be payable by a resident person in relation to any outstanding loan provided or secured by a non-resident person, where such loan has been provided interest free. For purposes of section 16(2) (ja), the prescribed rate of interest is 13%. This is applicable for the months of October, November and December 2023.

Withholding tax rate of 15% on the deemed interest shall be deducted and paid to the Commissioner by the 20th day of the month following the month of computation.

An example of a Fringe Benefit Tax Computation

On 1st October 2023, an employee gets a loan of Kshs 5 million from his/her employer at a rate of 8%. FBT will be calculated as follows:

Loan Amount:	Kshs 5,000,000
Interest Charged:	8% per annum
Market Interest Rate for the Month:	13% per annum
Fringe Benefit Rate on Saving by the Employee:	13% - 8% = 5%
Fringe Benefit	
= 5,000,000 x 5% = 250,000 per Annum. i.e., Kshs. 20,833.33 per Month.	

Fringe Benefit tax payable by the employer for the month of October 2023 is therefore Kshs. 6,250 (20,833.33 x 30%). The tax should be payable by the 9th of November 2023 together with the PAYE for the same month of October 2023.

The FBT computation should be done and tax paid monthly using the applicable rates until the loan has been paid in full.



Step-by-Step Guide on Amnesty Implementation on iTax

Through a public notice dated 31st October 2023, KRA notified the public about the steps on amnesty implementation on iTax.

The Finance Act 2023 amended the Tax Procedures Act, 2015, by introducing a new section 37E which provides for the Commissioner to refrain from recovering penalties and/or interest on tax debt where a person had paid all the principal tax due before the 31st December 2022.

In addition, where all the principal tax due had not been paid before the 31st December 2022, a person shall apply to the Commissioner for an amnesty of interest or penalties on the unpaid tax, and propose a payment plan for the outstanding amount.

Amnesty application in iTax

In line with the legal changes specified above, the iTax system was enhanced and deployed to production on 1st October 2023. This caters for the following criteria of taxpayers:

- » Taxpayers with principal, penalties and interests in iTax for various tax heads for periods up to and/or beyond 31st December 2022. In such cases, the system will enable the taxpayer to apply for amnesty which will only be approved upon settlement of principal taxes but by 30th June 2024.
- » Taxpayers that have no outstanding principal taxes but with penalties and/or interests in iTax for periods up to and/or beyond 31st December 2022. The enhancement to address this category of taxpayers is currently undergoing development.

Conditions

- » Amnesty cannot be initiated for periods with liability existing on principal tax for the selected Tax Obligation.
- » Principal tax has to be cleared by 30/06/2024. The number of payment plan instalments cannot therefore go beyond 30/06/2024.
- » Amnesty shall only be applicable for periods up to 31st December 2022 where all the pending principal taxes have been cleared.
- » The first payment plan instalment is due on the date of the Amnesty application.
- » Any penalties and interest relating to the principal tax under the tax amnesty period that remains unpaid after 30th June 2024 shall not qualify for amnesty.
- » Upon default of the payment plan agreement without an acceptable explanation or solution, enforcement measures shall be applicable.
- » The taxpayer has to agree to the terms and commit to honouring the payment plan agreement.

iTax Enhancements and Resolved System Defects

Through a public notice dated 17th October 2023, KRA notified the public about some of the challenges on iTax which had been resolved to ease the filing processes.

Tax Credit and Refunds Module

- » Reprint of Approval Order for Refund: Taxpayers had reported that the reprint option for Approval Orders for Refunds under the 'Consult and Reprint Acknowledgement Receipt and Certificate' functionality in iTax has not been operational. This issue has been resolved and taxpayers can make use of this service.

Payments Module

- » **Withholding Rent Payment Challenges** » Following recent enhancements emanating from the Finance Act 2023 changes, appointed withholding rent agents had reported that they were facing challenges in paying WHTRENT through the iTax portal. This issue has been resolved.

- » **Housing Levy Payment for Tax Representatives and Branches** » Employers who file PAYE returns through Tax Representatives and as Branches could not make payments for housing levy even though the return allowed them to declare employees in the return. This issue has been resolved and affected employers who filed PAYE Returns and declared Housing Levy can now generate a payment slip and effect payment.
- » **NITA Levy Payment by Branches** » Employers who file PAYE as a branch and declare NITA levy have been having challenges making payments. This issue has been resolved.
- » **Housing and NITA Levy Computation on Multiple Files** » Employers who upload several zipped files for PAYE return have been having challenges when generating payment slip for NITA and Housing Levy as system picks liability from only one of the zipped files. This issue has been resolved.

Excise

- » **Excise Returns for 'Mobile Money'** » Taxpayers registered for Excise under 'Mobile Money transfer by cellular phone service providers or licensed payment service providers' had a challenge in filing returns as when they declare their excise license, the system erroneously displays the message "taxpayer needs to declare the approval notice number(s) KRA2023..." for mobile money for the period'. This issue has been resolved.
- » **Additions to Import Certificate** » The following class of goods have been added into the import certificate application functionality in iTax and taxpayers can apply certificates for the same where applicable.

On Boarding of Non-VAT Taxpayers on eTIMS

Through a public notice KRA notified the public that pursuant to the provisions of the Finance Act 2023, effective 1st September 2023, all persons carrying on business, including those not registered for VAT, are required to electronically generate and transmit their invoices via the electronic Tax Management System (Etims).

Any business expenditure not supported by eTims generated tax invoice shall not be deductible for tax purposes with effect from 1st January, 2024.



The National Health Insurance Fund Regulations, 2023

The National Health Insurance Fund Act, the National Health Insurance Fund Board of Management, in consultation with the Cabinet Secretary for health, made the following Regulations. The regulations, cited as the National Health Insurance Fund Regulations 2023, were signed by the president on 19th October 2023, is awaiting gazettelement so as to take effect.

The objects of these Regulations are_

- » Ensure that every person who has attained the age of majority and resident in Kenya is registered as a contributor of the Fund;
- » To prescribe the mode of identification of beneficiaries;
- » Set out the criteria and procedure for empanelment and contracting of healthcare providers;
- » Ensure that the public can access health services from qualified and licensed healthcare providers;
- » Set out the criteria for payment of claims under the Act.

Contributors to The Fund_

Pursuant to section 15 of the Act, the following persons shall be liable as contributors to the Fund

- » A person who derives an income from salaried employment.
- » A self-employed person who meets the criteria set out in section 15(1) of the Act.
- » The National Government on behalf of indigent and vulnerable persons as provided under section 15(1B).
- » A person who is not employed or listed as and indigent person or vulnerable person.

A contributor in salaried employment shall pay a standard contribution at a rate of 2.75% of the gross monthly income derived from employment in the preceding month.

Contribution by self-employed person. A contributor in self-employment shall pay a special contribution to the Fund at a rate of 2.75% of the declared or assessed gross monthly income of the contributor.

Minimum contribution will be three hundred shillings (Kshs.300).

NHIF is payable before the 9th of the following month.



Key Questions for Audit Committees Overseeing Sustainability – Related Disclosure...*Source: International Federation of Accountants (IFAC)*

As reporting and assurance of sustainability-related disclosure evolves, audit committees have a critical role in expanding their existing oversight responsibilities for financial reporting compliance to sustainability-related disclosure.

Many professional accountants serve on and are accountable to audit committees.

There is also a key role for professional accountancy organizations (PAQS) to support their members to stay up to date with, and prepare for, expanding oversight responsibilities in relation to sustainability.

The key questions for audit committees overseeing sustainability-related disclosure to help guide audit committee members are as follows:

Roles and Responsibilities across the Organization

- » Are roles and responsibilities for sustainability reporting clearly defined and documented? Which professionals/individuals have the principal responsibility for the reporting process for mainstream disclosures and regulatory obligations?

- » How is sustainability integrated into policies and formal documents?
- » Are the CFO and finance team playing active roles in enabling an integrated mindset to enhance the connectivity and maturity of information and reporting processes? e.g., By connecting relevant teams including sustainability, operations, legal and compliance, and investors relations.
- » To what extent are the CFO and controllership function involved in sustainability-related reporting?
- » Does the audit committee itself have an integrated mindset?
- » Does the audit committee have the adequate knowledge, awareness, and expertise in the sustainability issues relevant to the company and its industry? How much reliance is placed on outside expertise?

Data Collection, Processes, and Controls

- » How is sustainability data currently collected? Do timescales align to financial reporting periods?
- » Is data gathered on a consistent basis and is it complete?
- » To what extent are same type of controls for financial reporting and filings extended to sustainability data and processes?
- » How is management addressing challenges in data collection? For example, gathering accurate data from suppliers and customers.
- » How manual (or automated) is the sustainability reporting process? Are investments in technology or existing systems being leveraged to automate data collection?

Audit and Assurance

- » How has internal audit sustainability into its audit plan, and what is it doing to review management controls over sustainability data?
- » Is the supporting documentation and evidence for sustainability accounting policies, procedures, and calculations adequate for review by an independent third party?
- » How has external audit considered materials sustainability risks and their potential impact on the audit of the financial statements?
- » What sustainability-related information is, and is not, externally assured, and what level of assurance is being obtained i.e., limited & reasonable assurance)?
- » Which audit and assurance standards are being used?
- » An assurance engagement should be conducted in accordance with globally accepted standards for assurance engagements, including the existing International Standard on Assurance Engagements (ISAE) 3000 (Revised).
- » The audit committee should consider whether the practitioner is subject to public oversight, and if there is a mechanism in place to determine that they are in compliance with, and consistently apply, the applicable professional standards.

- » With respect to external assurance, how is the audit committee:
 - » Monitoring the scope and quality of work, effectiveness, independence, objectivity, appointment, reappointment and removal of the assurance provider?
 - » Are they independent in fact and appearance? Including having no financial relationships with the entity, and not being in a position of providing assurance over their own work.
 - » Are they subject to record-keeping requirements with respect to work performed for the assurance engagement and what is the duration of any requirements?
 - » Approving assurance services by external auditor? (If using the existing firm providing the statutory audit as the assurance provider for sustainability reporting).
 - » Ensuring the oversight of assurance including key aspects such as materiality and risk assessments.

What is being reported?

- » Which sustainability standards and frameworks are currently being used by the organization, including across any subsidiaries in different countries?
- » Which shareholders may place reliance on the organization's sustainability-related information? Do these extend beyond investors and regulators?
- » How have risk and materiality assessments been conducted (linked to strategy and the business model), and how do these assessments drive reporting for investors?
- » Have the ethics related challenges been considered in the preparation of sustainability-related information?
- » How is management staying acquainted with, and preparing for, new and revised disclosure requirements, and how do these impact existing reporting requirements?
- How is management staying up to date on sustainability reporting standards developments, such as those being developed by ISSB?
- How is management monitoring the scope of mandatory disclosure requirements, including considering requirements due to its subsidiaries or operating activities?
- How is management ensuring connectivity and consistency between various information being reported, particularly where it is prepared by different teams?
- Are metrics and data in sustainability reporting consistent with periodic annual/financial reports and other investor communications?
- Do new reporting requirements impact existing reporting structure, processes, and responsibilities?

We hope the newsletter captures, covers and answers your queries. We hope that it motivates you to read more and we hope you have an enjoyable read. We wish you a fruitful month full of blessings and Favor.

As indicated above, 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

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