



Gazettement of Tax Appeals Tribunal members; Introduction of Tax Invoice Management System & Housing Fund levy update

01. Gazettement of members to the Tax Appeals Tribunal (TAT)

In accordance with the Tax Appeals Tribunal (TAT) Act, new members have been appointed to the TAT by the Cabinet Secretary for the National Treasury and Planning for a period of 3 years through a Gazette Notice published on 15 April 2019.

The reconstitution of the Tribunal, more than one year since the term of the previous members ended, is a long overdue move. The delay in reconstituting the Tribunal meant that tax disputes that proceeded to appeal at the TAT were not being resolved unless taxpayers opted for the Alternative Dispute Resolution mechanism within the KRA. This raised concerns given the need for expeditious resolution of cases.

The Tribunal will be faced with a huge backlog of tax disputes currently at the appeal stage and it is expected that the Tribunal will come up with a plan to deal with these cases promptly. We expect that the next steps required to enable the Tribunal to commence its sittings will also be finalised promptly.

02. Tax Invoice Management Systems

The Kenya Revenue Authority (KRA) has invited the public to participate in discussions on a new system referred to as the Tax Invoice Management Systems (TIMS). The public participation will be carried out in Nairobi for the general public and VAT registered taxpayers on 24 April 2019; for manufacturers, suppliers of Electronic Tax Register (ETR) devices and software developers on 2 May 2018; and for interested Business organisations e.g. ICPAK, KEPISA etc. on 3 May 2019. As per the public notice, TIMS is an enhancement of the current ETR programme, which allows for automatic reporting of tax invoice transactions. The use of TIMS is being introduced in line with the provisions of the VAT Act 2013 that mandate the Commissioner to require any person to use an electronic tax register of such type as may be described.

There is a global trend towards real time reporting by tax authorities. In countries where this system has been introduced, the invoicing system is linked to the revenue authority to ensure validation and tracking by the revenue authority. In our view, this system is meant to assist the KRA in enhancing tax compliance. However, we hope this will not add another layer of compliance burden on the back of taxpayers and that practical issues will be adequately addressed before the system is rolled out.

03. National Housing Development Fund Levy update

The Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works and the KRA have issued a public notice that the National Housing Development Fund Levy introduced through an amendment of the Employment Act 2007 via the Finance Act 2018 and supported by the Housing Fund Regulations have come to effect. Both the employee and the employer shall each contribute 1.5% of the employee's basic salary with the combined contribution capped at KES 5,000. As per the public notice, the first contribution is due by 9 May 2019. The payment process shall be communicated at a later date.

The Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works gazetted the Housing Fund Regulations 2018 on 21 December 2018. The housing levy was to have taken effect from the date of gazettelement but this was put on hold by a court order.

The Employment and Labour Relations Court, on 18 March 2019, extended its stay orders granted to Central Organisation of Trade Unions (COTU), on 19 December 2018, suspending the implementation of the housing levy.

The matter was scheduled for mention on 8 April 2019 wherein the Court was to determine the way forward, having considered the parties' out of court negotiations. We understand that the Federation of Kenya Employers (FKE) attended the mention and obtained an extension of the court orders suspending the implementation of the housing levy up to 20 May 2019.

On the other hand, according to media reports, the Government had reached an agreement with COTU regarding the implementation of the housing levy.

Until the stay order issued by the court lapses, the housing levy would not be enforceable. It would appear that concerns regarding the levy still persist and thus the need to create buy-in for this initiative cannot be overstated.

Should you have any question or happen to be affected by the above, kindly contact your relationship manager at Deloitte who will be more than glad to offer you guidance and assistance.

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