



Tax Alert

Kenya introduces a Voluntary Tax Disclosure Program

The Finance Act (“FA”) 2020, assented into law on 29 June 2020, introduced a raft of key tax measures, including the Voluntary Tax Disclosure Programme (“VTDP” or “the Programme”).

The VTDP, a tax amnesty programme established vide Section 37D of the Tax Procedures Act (“TPA”) 2015, is effective for a period of three years w.e.f. 1 January 2021. Under the tax amnesty programme, taxpayers may disclose tax liabilities that accrued within five years prior to 1 July 2020 to the Commissioner of Domestic Taxes (the Commissioner) and may be granted relief from the penalties and interest thereon, subject to criteria highlighted under Section 37D of the TPA 2015. The Programme will cover all taxes.

Operating mechanisms of the VTDP

In order to benefit from the VTDP, taxpayers would be required to apply – in the prescribed form and disclosing all material facts – to the Commissioner pursuant to Section 37D (3) of the TPA 2015.

Satisfied with the application, the Commissioner and taxpayer would thereafter be required to enter into a settlement agreement, highlighting the terms of payment of the accrued tax liabilities, provided that the period of payment shall not exceed one year from the date of the agreement.

What is the relief?

Where the above conditions are met, the Commissioner shall grant relief from penalties and interest in the following manner:

Where principal tax settled in full, within

- the first year of operation of the VTDP, the taxpayer would be entitled to 100% remission of penalties and interest;
- the second year of operation of the VTDP, the taxpayer would be entitled to 50% remission of penalties and interest; and
- the third year of operation of the VTDP, the taxpayer would be entitled to 25% remission of penalties and interest.

However, where a taxpayer fails to adhere to the terms set out in the settlement agreement, the taxpayer would be liable for the entire penalties and interest subject to remission under the settlement agreement.

Further, where the Commissioner establishes that the taxpayer failed to disclose all facts material and pertinent to the application, the Commissioner may withdraw relief granted under the VTDP, assess and collect any tax liability due and outstanding, or commence prosecution pursuant to Section 80 of the TPA 2015. The taxpayer may, however, appeal against this decision of the Commissioner before the Tax Appeals Tribunal.

Who is not eligible?

The Programme shall not apply to a person who:

- is under audit, investigations or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
- has been notified of a pending audit or investigation by the Commissioner.

Our View

The introduction of the VTDP is a welcome move that stands to benefit both taxpayers and the revenue authority.

Taxpayers keen on ensuring that their tax affairs are in order should take advantage of the VTDP to normalise or settle any tax liability that may be outstanding within five years prior to 1 July 2020. Further, in order to maximise on this window of opportunity, it is advisable that disclosures and payment under the VTDP be made within the first year of the programme. This will guarantee the taxpayer 100% waiver of penalties and interest.

The VTDP is likely to result in additional revenue collections within the duration of the programme, thereby easing collection pressures facing the revenue authority. Further, in the medium to long term, it is expected that the programme may positively impact the general compliance status of taxpayers in Kenya.

What next?

Taxpayers should proactively review their compliance status with an intention of establishing any areas of non-compliance and determine the necessity of lodging an application for relief under the VTDP.

We, at Deloitte, have a dedicated team to assist you in carrying out a comprehensive review of your tax compliance status and thereafter recommending the best way of dealing with the identified exposures. Our review would not only be limited to the risks or exposure areas but would also focus on identifying any areas of tax inefficiency and recommending appropriate measures.

Should you wish to discuss this further, please contact our team indicated on the next page or your usual Deloitte contact who will be more than glad to offer you guidance and assistance.



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