

Tax & Legal Alert  
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## Voluntary Tax Disclosure Program

### 100% waiver of penalties and interest ends on 31 December 2021

The advent of the Voluntary Tax Disclosure Program (“VTDP”) on 1 January 2021 as provided for in the Finance Act 2020 gave taxpayers a window to voluntarily and confidentially disclose any tax liabilities that were previously undisclosed to the Kenya Revenue Authority (KRA) covering the period of five years running up to 30 June 2020.

The benefit of the disclosure would be eligibility to benefit from up to 100% remission of penalties and interests, relief from prosecution and a chance to pay the liabilities in installments over a one-year period. Please access our previous tax alert on the VTDP [here](#) for more details.

The opportunity to enjoy 100% waiver expires on 31 December 2021. Disclosures and payments made in 2022 and 2023 will be eligible for a 50% and 25% remission respectively. Therefore, in order to benefit from maximum remission, it is now an opportune time to undertake a tax review to determine whether a voluntary disclosure is necessary.

Below are some of the key aspects that you need to know regarding the VTDP.

### Is the remission of penalties and interest automatic?

The remission is dependent on specific conditions including:

- The tax liabilities should be voluntarily disclosed and should not be part of an ongoing or a pending KRA audit or investigation.
- The liabilities should relate to the tax period between 1 July 2015 and 30 June 2020. It is important to consider the statute of limitation in determining the period to disclose.
- Only liabilities disclosed and paid in the 2021 calendar year are eligible for a 100% remission. 2022 and 2023 disclosures are eligible for a 50% and 25% remission respectively.

### Are all taxpayers eligible to participate?

The VTDP excludes taxpayers who are under audit for undisclosed tax, those served with a notice of intention to audit or taxpayers who are party to an ongoing litigation in respect to a tax liability. However, there are cases where the revenue authority has put on hold intended audits to afford taxpayers the opportunity to utilise the VTDP.

Customs Duty and other levies such as Railway Development Levy (RDL) and Import Declaration Fee (IDF) liabilities do not qualify for the VTDP.

### How do I make the disclosure?


In July 2021, KRA rolled out the VTDP module on iTax and has subsequently issued a step-by-step guide on how to navigate through the iTax VTDP return. However, the KRA is yet to complete the rollout of Withholding Tax and Excise Duty functionalities on iTax. We hope KRA will finalize this immediately to avoid challenges during declaration.

In addition, KRA released Frequently Asked Questions in a bid to provide clarity on the legal and operational framework of the VTDP. Clarifications provided include the requirement to have the VTDP return reviewed, approved or rejected by a KRA officer. A successful applicant will receive a VTDP certificate as evidence of participation.

### Can I extend my payment plan beyond 31 December 2022 and still enjoy 100% waiver of penalties and interest?

KRA's view is that as per the provisions of Section 37D(4)(a)(i) of the TPA, 100% waiver of penalties and interest will be granted only if a taxpayer discloses and pays the principal liability in 2021.





We understand that iTax has also been configured to only allow for 100% waiver to the extent that the liability and payment is made in 2021. This is despite the provisions of Section 37D(7) of the TPA, which provides that upon approval of the waiver, the KRA can enter a payment plan with the taxpayer for the principal liability for up to 12 months.

Procedurally, KRA needs to approve the VTDP returns and grant a waiver before a taxpayer makes the payment.

As such, in our view, pegging 100% remission of penalties and interest to payment of the principal liability is a disadvantage to the taxpayer seeing that the events preceding the payment are a preserve of the KRA and thus beyond the taxpayer's control. Taxpayers may consequently be negatively impacted by KRA's internal approval procedures.

### Conclusion

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.

To benefit from the 100% waiver, it is advisable that the process of review and disclosure, where necessary, is made before 31 December 2021.

We expect that the KRA will ramp up tax audits in the next few months which would deny those taxpayers under audit the opportunity to take advantage of the VTDP. It is thus advisable to take the earliest opportunity to undertake a self-review.

Should you wish to discuss this further, kindly feel free to contact any of the contacts 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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