



Voluntary Tax Disclosure  
Programme (VTDP) / (Tax  
Amnesty).

BDO East Africa Kenya  
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VTDP is effective January 1<sup>st</sup>, 2021



- The Finance Act of 2020 assented into law by the President on 30 June 2020 made several tax changes across several tax heads. One such piece of legislation is the Voluntary Tax Disclosure Programme (VTDP) popularly known as Amnesty. The programme allows taxpayers to voluntarily disclose any undeclared income(s) earned within the last five years up to 30 June 2020 and the applicable taxes. The five years declaration period will therefore run from June 2015 to June 2020.
- Provision of tax amnesty is a taxman’s way of inviting non-compliant taxpayers to the dialogue. In addition to enhancing tax compliance levels, tax amnesties play a crucial role of building good relations between the taxman and taxpayers, especially in this era where tax administration is gradually transforming from enforcement to facilitation and building of relations with the taxpayers. After meeting the minimum requirements for the amnesty, the taxman will basically “*forgive the sins of such taxpayers*” and move on.
- The program, that builds on the success of the 2004 and also 2015-2016 tax amnesty for landlords that saw a boost in revenue collection and enhanced compliance levels, will run for a period of three years to 31 December 2023 effective from 1 January 2021.

The key highlights of this programme, and which an applicant will benefit are listed below:

- Granting of relief from penalties and interest on the principal tax so disclosed. The principal tax however is payable in full.
- Confidentiality and immunity from prosecution with respect to the incomes and taxes disclosed. This provision implies that the other investigative arms and agencies of Government like Ethics and Anti Corruption Commission, Assets Recovery Agency and Directorate of Criminal Investigations (DCI) will not access the disclosed data. Probably the fear of criminal prosecution may have been the reason for the low uptake of Diaspora amnesty.
- Unlike the Diaspora amnesty that lapsed in December 2017 there is no requirement to repatriate or declare cash funds and/or other assets held either abroad or locally. The only declaration required is prior years' undisclosed income and taxes.
- From our past experience with such amnesties, provided the voluntary declarations disclose all material facts (full and true), amnesty is granted without detailed scrutiny or questions because the principle under amnesty is that of honesty devoid of antagonism and mistrust;
- An applicant if he/she so wishes to pay the tax in instalments, particularly in cases involving substantial amounts will be permitted to enter into an agreement with the revenue office that will extend for a maximum of one year.

## Other Amnesty Conditions

In addition to the above provisions the other fulfilling conditions are:

- Disclosures made and tax liabilities paid in the first, second and third years will enjoy 100%, 50% and 25% penalties and interest waivers respectively;
- Applications that result in payment of refunds shall not qualify;
- Where an instalment payment plan agreed is defaulted the remitted penalties and interest shall become payable in full.

- The applicant shall disclose all material facts, and in the event KRA establishes that it was not, the relief shall be withdrawn, and full taxes collected inclusive of penalties and interest.
- A person who is under audit or has been notified of an impending audit shall not qualify for the programme.



## Our take and advise

This is a welcome window to all taxpayers who may have prior undisclosed incomes either knowingly or unknowingly, that may result in significant principal taxes, penalties, interest and fines in the event it comes to the knowledge of tax authorities. Corporate tax, VAT, PAYE, withholding taxes, excise taxes, and any other tax administered by KRA will qualify. Undisclosed taxes will basically arise in several forms a few being:

- Incomes that were undisclosed intentionally with the knowledge of the business owners;
- Expenses claimed intentionally with the knowledge of business owners to suppress incomes and taxable income, where such expenses would otherwise not be allowable;
- Incomes that were undisclosed unintentionally and ineligible expenses claimed unintentionally;
- Taxable cash and non cash benefits falling under PAYE regime

## Approach to voluntary disclosures and tax health check audits

- Undisclosed incomes in the knowledge of a business owner (i.e. the intentional ones) is a simple process; follow the steps explained above, disclose all material facts, pay the principal tax and obtain amnesty certificate.
- Undisclosed incomes not in the knowledge of a business owner will call for a comprehensive independent in-depth review (audit) of taxes applicable to a business. With KRA having rolled out compulsory i-tax filing and reporting with effect from August 2015 it relies heavily on this technology, which is able to match data from multiple sources to pursue non-compliant taxpayers. It is imperative therefore, that businesses should be proactive and take all the necessary measures to minimize non-compliance risks and tax exposures.
- A tax health check audit - usually conducted by external auditors other than KRA involves carrying out a detailed tax compliance review of all, or specific in-house taxes borne and administered by a business. Common taxes under this category are: Payroll taxes (PAYE, NHIF, NSSF and NITA), withholding tax, VAT (including reverse VAT), corporation tax, customs and excise duty, Standards levies (KEBS) and transfer pricing issues. It is a self- initiated internal audit that will ultimately provide the level of risk a business has in relation to its tax obligations and formulating strategies to mitigate against any resultant risks

To provide insights into approach of a few select tax heads, tax health check audits follows the below processes:

## 1. Withholding Taxes

- Ascertainment of whether all qualifying payments were subjected to withholding tax;
- Determination of the correct rate of withholding tax - ranging from 3% to 30%;
- Application of a lower rate in cases of treaty countries;
- Deduction of withholding tax on aggregated amounts below Ksh 24,000 per invoice;
- Determination of treatment of interest free loans and withholding tax thereon;
- Determination of whether actual deductions from suppliers' invoices were remitted to the revenue office;
- Ascertainment of timely remittances and any late payments that may attract penalties and interest;
- Compliance with online tax filing obligations;
- Analysis of KRA's i-tax ledger accounts to ascertain whether any penalties and interest have been charged; and
- Claim of foreign tax reliefs.

## 2. Pay-as You-Earn (PAYE)

- Determination of whether all cash payments - salaries, wages, commissions, leave pay, bonuses, service gratuity, allowances, directors fees, overtime, pensions, staff loans have been charged to tax;
- Determination of whether all non - cash benefits - housing, utilities, motor vehicles, club subscriptions, school fees, provision of furniture, phone airtime, security, domestic servants, share options, life insurance premiums, personal foreign travel air tickets, directors' medical expenses exceeding prescribed limits and provision of meals have been charged to tax;
- Ascertainment of timely remittances and any late payments that may attract penalties and interest;
- Determination of residency for tax in cases of seconded expatriate staff;
- Application of the correct tax rates and the following reliefs: personal, life, health and education policies, mortgage and home ownership savings plans and individual retirement fund contributions;
- Taxation of employers' pension contributions for tax exempt organizations;
- Compliance with online tax filing obligations; and
- Analysis of KRA's i-tax ledger accounts to ascertain whether any penalties and interest have been charged.

### 3. Corporation Tax

- A review of the income tax computations to confirm compliance with the requirements of the Income Tax Act, rules and regulations especially the treatment of non- deductible expenses;
  - Determination of the correct treatment or otherwise of capital allowances;
  - A review of the related parties transactions, ownership and capital structure to confirm compliance with thin capitalization rules and transfer pricing;
  - Confirmation of taxation of the specified sources of income;
  - A review of the KRA's statements of account to ascertain the tax returns position as processed by the revenue office for all the years;
- A review of the correct tax payments, including compensating tax in cases of businesses reporting profits and timely submission of the returns; and
  - Analysis of KRA's i-tax ledger accounts to ascertain whether any penalties and interest have been charged.



## Disclosure of unreported Income and tax outside amnesty

1. Outside the official tax amnesty provisions, the tax authority encourages voluntary/self-disclosure of previously undeclared income and back taxes and will in most cases exercise leniency by way of extending waivers on fines, penalties and interest. This is possible where a voluntary disclosure is made, principal taxes paid in full and a formal application for waiver lodged with the Commissioner by the defaulting taxpayer.
2. From our experience and engagement with KRA on such assignments, waivers are granted upon application giving reasons and explanations as to why declarations were not made. This application process and engagement with KRA is handled by us.

## Final Report

1. At the end of our audit fieldwork, we will compile and present our final report of findings. Through our report we will:
2. Establish any inherent tax risks through an in-depth and systematic review of your books of accounts
3. Establish any risk of, and quantify any potential back-taxes discovered during our review;
4. Provide a plan of action on the mitigation and settlement of any resulting tax liabilities including engagement with KRA for a favourable settlement plan; and
5. Engagement with the revenue office for waiver of penalties and interest (if any) per provisions of the law.

## Summary and conclusion

- Tax amnesty and voluntary disclosures is for anyone to take especially considering the benefits accruing which we cannot over emphasize. It is a process premised on trust and honesty devoid of the intrusive questions and lengthy and tedious processes associated with the conventional KRA audits.
- It comes with the benefits of approval and grant of penalties waivers in an automatic fashion without navigating through the usual complex processes. Above all it provides certainty that at the conclusion of the exercise, business owners are confident of high level of tax compliance. In the words of the Commissioner General of KRA during the recent 2020 6<sup>th</sup> Annual Taxpayer Summit, KRA is moving from an enforcement authority to that of facilitation and persuasion. We therefore request you to please contact us to discuss your needs with a purpose to regularize any inherent tax exposures that your business may be exposed to.



# BDO East Africa Kenya

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