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Tax Amnesty on Overseas Employment Income

Kenya residents who are in receipt of employment income overseas (either exclusively or in addition to their Kenya employment income) are subject to income tax and are under an obligation to file their returns annually. For those who have failed to declare their employment income earned overseas, the Government is giving them an opportunity to do so, without facing any penalties by taking advantage of the amnesty that came into force on 1st January 2017. Initially, the amnesty period was set for one year, from 1st January 2017 to 31st December 2017. However, following the 2017/18 Budget statement, the Cabinet Secretary for National Treasury extended the amnesty for a further six months. Therefore, to qualify for the amnesty one must submit their returns and accounts on or before 31st June 2018.

The Kenya Revenue Authority ("KRA") recently published guidelines to be followed by those interested in applying for the amnesty. However, we note that the guidelines are unclear. For instance, in order to qualify for the amnesty, an applicant is required to make full and accurate disclosure of income and assets that are as a result of undeclared taxable foreign income. The declaration is made by completing a prescribed form, Form A/37B. KRA is yet to make available Form A/37B thus, at the moment, there is no telling the extent of disclosure an applicant will be required to make and whether it will be achievable.

Further, physical repatriation of the declared assets is a requirement of the amnesty (this is not provided in the Tax Procedure Act). The guidelines however, do not state whether, for one to qualify for the amnesty, one has to complete the repatriation process before the lapse of the amnesty. Another point of concern is the fact that the guidelines do not give an indication of the time frame that it will take for the Commissioner to issue a certificate to those who qualify for the amnesty. More so the guidelines are silent on what will happen to those who apply and do not qualify for the amnesty.

We are yet to see how the amnesty will work. However, due to the number of uncertainties contained in the guidelines, it is possible that the guidelines will be revised given that Commissioner has undertaken to engage stakeholders on a continuous basis.

If you require any further information or clarification on the contents of this note, please contact
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