



IS THERE A RENTAL TAX AMNESTY?

In his budget statement for the year 2015-2016, the Cabinet Secretary for National Treasury acknowledged the potential of Kenya's real estate industry in financing the national budget. In a bid to widen its tax base by bringing on record the numerous non-compliant landlords, the Cabinet Secretary announced the Government's intention to offer incentives in the collection and administration of tax on residential rental income in Kenya. These incentives were contained in the Finance Act (2015) and included an amendments to the Income Tax Act which came into force in January 1, 2016. These include:-

- a. Prescribing a lower tax rate of 10% on the gross rental receipts for all Kenyan resident persons who earn rental income of KES 10 million or less.
- b. Directing the Commissioner of Domestic Taxes to refrain from assessing or recovering:-
 - i. taxes, penalties or interest in respect of all rental income earned before and during the 2013 year of income; and
 - ii. penalties or interest on rental tax payable in respect of the years 2014 and 2015.

The direction to the Commissioner to refrain from collecting taxes from rental income (the amnesty) was accorded by Government, to the applause of landlords in Kenya. The amnesty provided for the waiver of the principal tax,

interest and penalties on all rental income generated prior to January 2014. This was the Government's tact to encourage landlords who have not been paying rental tax to declare and voluntarily pay any undisclosed taxes. For the years 2014 and 2015, landlords would be incentivized by asking them to only account for the principal tax payable on all rental income during such periods. To encourage swift and faster compliance, KRA made this amnesty available only up to June 30, 2016. What has followed has been an intense nationwide sensitization program that has seen very many landlords declare and file taxes on their rental income.

However, on January 19 2016, the Cabinet Secretary of National Treasury issued a *gazette* notice announcing the commencement of a separate Act, the Tax Procedures Act. This Act was put in place to consolidate and harmonise the procedural rules for the administration of tax laws in Kenya. It amends the various tax laws with a view of encouraging taxpayers' compliance as well as collection of taxes in an efficient and effective manner.

Among the amendments brought about by the Tax Procedures Act includes a **deletion of the amnesty on tax on rental income previously granted under the Income Tax Act**. This brings into doubt the legality of the rental tax amnesty granted by parliament. Can the KRA, after comprehensively collecting all data on landlords, jump ship and declare that the amnesty was in fact illegal based on law? Can they go ahead and demand taxes, penalties and interests on the landlord's rental income? What recourse would a landlord have in such a situation? Is it likely that the provisions of the law will take precedence in case of a dispute between landlord and KRA? In our assessment, there is a slim chance the landlord would emerge victorious.

Looking at it more practically, it is possible that the effective deletion of the amnesty was erroneously made on the Income Tax Act. However true this may

be, if this is the case, this is still not a defence in law. KRA and the Ministry of Finance should move in, engage parliament and seek a way of re-granting the amnesty. Failure to do so leaves a potential tax exposure on the taxpayer/ landlord.



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