

TAX & EXCHANGE CONTROL ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
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The new tax amnesty: Time to get that waiver of penalties and interest

The Kenya Revenue Authority (KRA) recently issued a public notice on 1 September 2023, titled "*Tax Amnesty on Interest and Penalties for periods up to 31 December 2022*" (Notice). The Notice comes after the Finance Act, 2023 introduced a tax amnesty on interest and penalties for periods up to 31 December 2022. The tax amnesty will run from 1 September 2023 to 30 June 2024.

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The new tax amnesty: Time to get that waiver of penalties and interest

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To assist taxpayers, the KRA has further issued guidelines titled *"Taxpayer Guidelines on Tax Amnesty"* (Guidelines), whose main purpose is to guide taxpayers on the implementation of the tax amnesty.

Eligibility for the tax amnesty

The Guidelines provide that the tax amnesty will only be applicable to:

1. A person who has penalties and interest but **no principal taxes** owing for periods up to 31 December 2022. The amnesty under this category shall be automatic and taxpayers will not be required to apply.
2. A person who **has principal tax** accrued up to 31 December 2022, but who pays the outstanding principal tax debt by 30 June 2024. Persons under this category shall qualify if:
 - a. the taxpayer with outstanding principal tax debt applies for the amnesty; and

- b. the application for the amnesty is accompanied by a payment plan proposal for the outstanding principal taxes.

Exclusion from the tax amnesty

Interest and penalties imposed under section 85 (Tax Avoidance) of the Tax Procedures Act, 2015, shall not qualify for amnesty.

All penalties and interest relating to tax debts accrued for the periods after 31 December 2022, will also not qualify for amnesty.

Application for the tax amnesty

The Guidelines provide that a taxpayer who qualifies for amnesty shall apply for the amnesty in the KRA's iTax system. The application procedure is as follows:

1. The system shall display the taxpayer's debt status with all tax heads, and the taxpayer will apply for the amnesty by selecting the periods and tax heads which qualify for the amnesty.



The graphic features a gold diagonal stripe across a light blue background. At the top left, it displays 'The LEGAL 500 EMEA' logo. Below this, the text reads: 'Tax 2023 Rankings', 'Tax & Exchange control practice is ranked in Tier 1.', 'Leading Individuals: Gerhard Badenhorst | Emil Brincker', 'Recommended Lawyers: Petr Erasmus | Mark Linington Howmera Parak Ludwig Smith Stephan Spamer', and 'Next Generation Lawyers: Jerome Brink'.

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2. The taxpayer may then proceed to make a full payment of the principal tax due or enter into a payment plan agreement with the Commissioner for the KRA.
3. A taxpayer who opts to settle the outstanding principal tax in instalments must indicate the frequency of payments in the system-embedded payment plan agreement. The payment plan agreement shall not extend beyond 30 June 2024, and any penalties and interest relating to the principal tax under the tax amnesty period that remains unpaid after 30 June 2024 will not qualify for amnesty.
4. The taxpayer shall then proceed to be granted amnesty upon payment of the final instalment, as committed in the payment plan agreement.

Comment

The tax amnesty programme is meant to help taxpayers clean up their tax ledgers. Taxpayers who had applied for waiver of penalties and interest and cleared their principal tax up to 31 December 2022, should expect the KRA to automatically remove the penalties and interest from its iTax system. The amnesty programme is also a great chance for taxpayers to pay principal tax for the periods up to 31 December 2022 by June 2024 so that they also get a waiver of tax penalties and interest.

The amnesty programme is timely because the Voluntary Tax Disclosure Programme (VTDP) will end on 31 December 2023. A new programme is critical considering the success that the KRA had with the VTDP.

The programme is a validation of our efforts towards pushing for legislative reforms. Our firm pushed for an amnesty programme to be included in Finance Bill 2023 through submissions to National Treasury.

Overall, the tax amnesty programme is a win-win for both taxpayers and the Government. Taxpayers can apply for waiver of penalties and interest, save money and regularize their tax affairs. The government, through the KRA, will, on the other hand, hope to collect more revenue.

We encourage taxpayers to take advantage of this opportunity and apply for the tax amnesty programme and pay the principal tax before the deadline expires. Taxpayers should consult the tax team for any queries on the amnesty programme.

Alex Kanyi and Joan Kamau

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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