

# Structured planning

## Newsflash Kenya – Tax Amnesty on Foreign Incomes

Latest news on law, tax and business in Kenya

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### > Preamble

The Finance Act 2016 introduced a new Tax Amnesty as provided by Section 37B of the Tax Procedures Act, 2015 (TPA). This Section allows the the Commissioner of Income Tax in certain instances to refrain from assessing tax.

This new Tax Amnesty shall be applicable on income earned from outside Kenya on or before 31st December 2016.

This amnesty was set to take effect between 1st January 2017 and 31st January 2017. The Kenya Revenue Authority (KRA) has now issued the **Foreign Income and Assets Tax Amnesty Guidelines 2017 (the Guidelines)** on 8th March 2017 which outlines the requirements for taxpayers who are interested in applying for the Tax Amnesty.

The Guidelines set out the conditions, procedures and mechanisms for the application and approval of the Tax Amnesty.

We have highlighted the impact of some of the key guidelines below.

### > An overview of the Guidelines

#### Who qualifies for this tax amnesty?

Any person earning taxable income outside Kenya and who shall declare such income in the year 2016 tax return qualifies for this amnesty.

The Guidelines define a person as:

*an individual, company, partnership, limited partnership, association of persons, trust, National Government, foreign government, political*

*subdivision of the National Government or foreign government, or an international organisation*

#### Which income qualifies for this Tax Amnesty?

Qualifying income is set out in the Guidelines as:

*Taxable income earned outside Kenya which would have been taxable in Kenya under Kenyan tax laws if it had been accrued or derived in Kenya or deemed to have been accrued in or derived in Kenya*

#### What should an interested taxpayer do?

Section 37B of TPA requires interested taxpayers to submit their returns and accounts for the year 2016 on or before the **31st December 2017**.

The return is set out in *iTax* as Form A/37B. The accounts relate to a Statement of Assets and Liabilities that shall be made in the return. Assets are defined as:

*Assets (including bank deposits, investment portfolio, insurance policies, shares or other property) that are situated outside Kenya and are funded from income derived from or accruing from sources within or outside Kenya including those held under Trust.*

All applications, declarations and filing of returns shall be submitted online on *iTax* and an acknowledgement issued thereafter. A certificate shall be generated through the system where the amnesty requirements are met.

**Additional conditions to be met by interested taxpayers.**

The Guidelines confirm that physical repatriation of the Assets (as defined above) is a condition under the amnesty.

Furthermore, full and accurate disclosure of incomes and assets is a mandatory requirement in order to qualify for the amnesty.

The amnesty shall also not extend to any person that has already been assessed or was under audit or investigation in respect to assets, liabilities and income declaration that qualify for the amnesty on **13th September 2016**.

**> Our Comment**

The Foreign Income and Assets Tax Amnesty Guidelines, 2017 have responded to some important issues that were not clear under Finance Act 2016.

Kenya is among 39 other countries that have, or are currently implementing, tax amnesty programs. These countries include Indonesia, Argentina,

Pakistan, South Korea, Brazil, India, Israel, Malaysia and Russia. The last 5 countries are currently conducting an offshore voluntary disclosure program which is only focused on asset disclosures without repatriation.

According to Section 37B of the TPA, physical repatriation is not set out as a condition for the amnesty. In our opinion, this is a requirement which may be challenged and may not be enforceable in law.

In order to take advantage of this tax amnesty, taxpayers should ensure they receive proper and sound legal and tax advice that guarantees filing of returns and accounts and asset repatriation in a timely fashion.

**Rödl & Partner** is comprised of a dedicated and experienced team of legal and tax experts that are willing to assist taxpayers who are keen on taking advantage of this tax amnesty. In addition, interested taxpayers who contact us for assistance, shall also have access to our colleagues spread out globally in over 102 wholly-owned locations in 46 countries.

*This is a general guideline tax alert and should not be a substitute for proper tax advice. For queries and clarification, kindly get in touch with Rödl & Partner.*

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*„Each element of our human towers supports another. This works only if we put to that more than just the physical abilities of all of us. It is the solidarity that gives us strength, structure, stability and – last but not least – the courage we need to develop great things.“*

*Castellers de Barcelona*



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolize in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

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