



Tax for HR Practitioners

Helping you maintain control

Tax Training
3 December 2014



Objective

Participants will be able to understand the basic underlying concepts covering Pay As You Earn (PAYE), Immigration issues and Expatriate Tax Planning



Pay As You Earn (PAYE)

Areas covered

- Understanding basic PAYE concepts
- Residency/PE considerations
- What constitutes taxable income
- Non-taxable benefits
- Allowable deductions
- Tax reliefs
- Other employment payments – NHIF, NSSF, NITA
- PAYE forms and returns
- Penalties and offences
- Objections and appeals



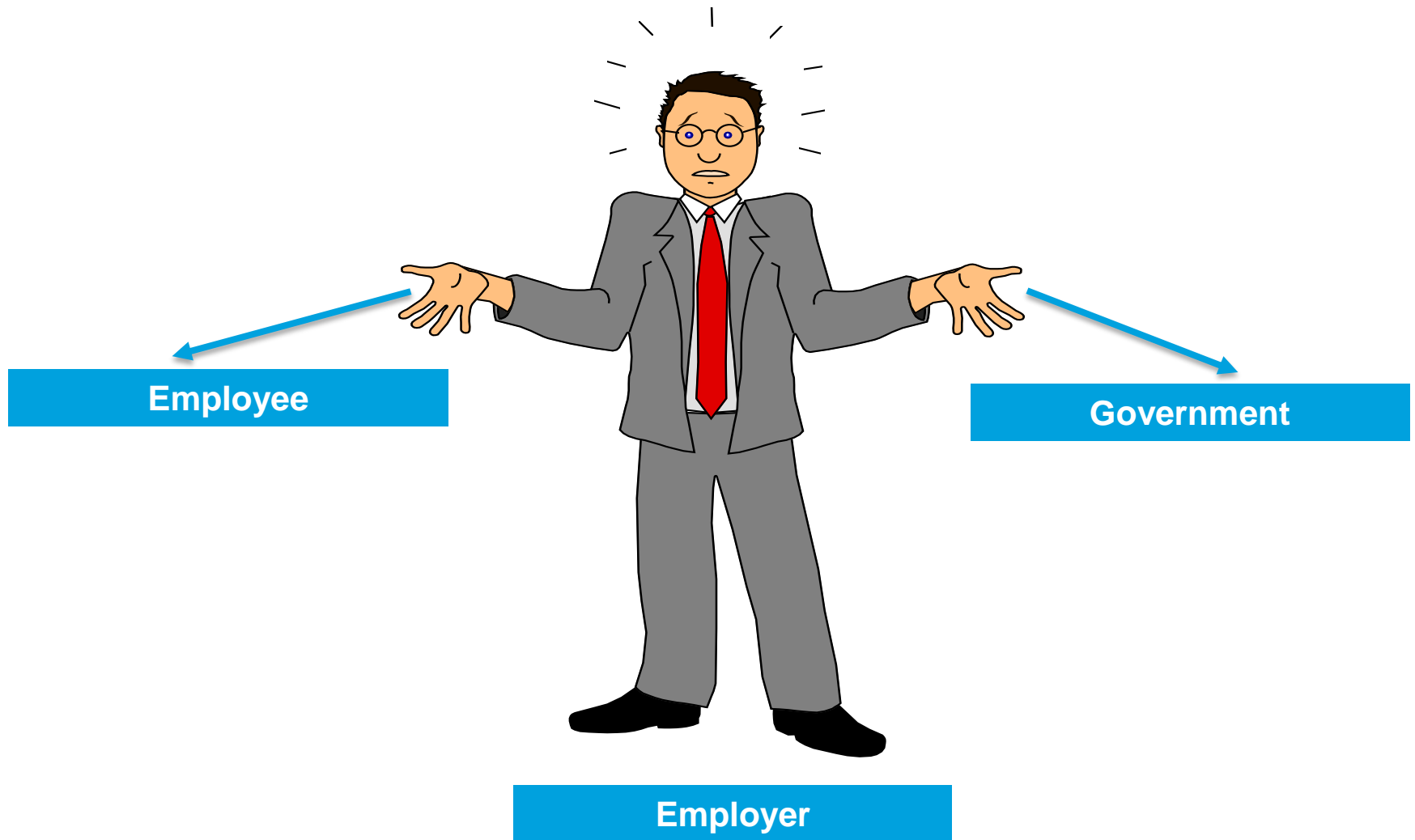
Pay As You Earn (PAYE)

Areas covered....

- The Employment contract
- Immigration considerations
- Compensation Structures
- Taxation of Mobile Employees
- Gray Areas
- Tax Planning ideas
- Handling KRA Audits



P.A.Y.E.



Employee

- Any holder of an office for which remuneration is payable.
- Includes an individual receiving emoluments in respect of any employment, office, appointment or past employment.

Appointments

- Directors – executive and non-executive
- Directors allowances and benefits – PAYE or WHT?

Casual employee

- One who is engaged for a period less than one month and emoluments are calculated in reference to the period of the engagement.
- Regular casual employees are not considered as casuals.

Employer

- Any person paying remunerations.
- Any agent, manager or representative of employer who is outside Kenya.
- Any trust, insurance or body of persons paying pension.



The agency burden

- PAYE is the employers responsibility.
- The normal PAYE year runs from 1 January to 31 December.



Residency & source of Income

Chargeability to tax

- Tax is charged on the basis of source and/or residency.
- Income is charged on all income of a person whether resident or non-resident which accrues in or is derived from Kenya
- Non-residents - income paid by a resident employer or permanent establishment of a non resident employer.
- Resident individuals – Kenya and worldwide employment income.

Residency & Source of Income

- Permanent Establishment is a fixed place of business e.g. a branch or a liaison office. A building site, a construction site or assembly project which has existed for more than 6 or more is deemed to be a fixed place of business.
- Individuals who are appointed representatives of foreign companies in Kenya can also form a PE for their foreign employers

Residence rules for individuals

- Permanent home and presence in Kenya in that year of income.
- No permanent home, but:
- *183 days presence in Kenya in that year of income.*
- *122 days or more in that year and each of the two preceding years.*

Taxable income

- All emoluments in cash.
- Non cash benefits exceeding KShs 36,000 p.a. in the aggregate, with a few exceptions.
- Club subscriptions.
- Per diems in excess of KShs 2,000 per day (Local/Foreign Travel).

Fringe Benefit Tax (FBT)

- Loans at concessionary interest rates.
- Loans from unregistered pension or provident fund.
- FBT applies even after an employee leaves employment as long as the loan remains un-paid.
- Calculated using the 91 day treasury bill rates(market rates of interest).
- Benefit taxed on employer at corporation rate of tax.

Housing benefit

- Director and a whole time service director:
 - Higher of:
 - 15% of total income;
 - Fair market rental value; and
 - Actual rent paid by employer.
- Other employees: 15% of gains or profits from employment or rent paid by the employer (at arm's length), whichever is higher.
- Where premises are provided by a third party under an agreement at arm's length, taxable value is as above.
- Where premises are provided by a third party under an agreement which is not at arm's length: Taxable value is the higher of fair market value & rent paid by the employer.

Housing benefit

- Where premises are owned by the employer: Housing benefit is the fair market rental value of the premises.
- Occupied for part of the year: to be reduced proportionately.
- Occupied part of premises: value to be reduced proportionately.
- Rent contribution: to reduce value by amount of contribution.

Car benefit

- Chargeable benefit for private use shall be the higher of the rate determined by the Commissioner and the prescribed rate of benefit (2% p.m. of the initial cost of the vehicle).
- Where the vehicle is leased or hired from a third party, the benefit will be equal to the cost of hiring or leasing.

Other taxable benefits

- Other benefits subject to higher of cost to employer or fair market value.
- Benefits taxed at prescribed rate only – by concession of CIT where the cost or fair market value cannot be determined.
- Furniture – 1% of original cost p.m.
- Communal water supply – Kshs.500 p.m.
- Telephone (landline & mobile) – 30% of bills p.m.
- Communal electricity supply – Kshs.1,500 p.m.

Non – Taxable benefits

- Leave passages: expatriate employees.
- Medical services.
- Employer's contribution to pension funds.
- *Exception: Contributions by non taxable employers:*
 - to unregistered schemes;
 - excess contribution to registered schemes.
- Education fees taxed on the employer.
- Reimbursement of expenses incurred by employee wholly and exclusively in production of income.

Allowable deductions

(Against taxable income)

- Pension contribution – maximum KShs 20,000 p.m.
- Home ownership savings plan – maximum Shs.4,000 p.m.
- Owner occupied interest – Maximum Shs.12,500 p.m.
- Persons with Disabilities.

Persons With Disabilities

- Must apply to the Commissioner.
- Registered with the Council of Persons with Disability.
- Submit relevant form to the commissioner.
- Commissioner issues certificate of exemption within 30 days after application and is valid for 3 years.
- First KShs 150,000 pm is exempt from tax.
- Expenses related to personal care and home care allowable up to a maximum of KShs 50,000 per month.

Directors

Tax/social security withholding and/or reporting obligations for directors

- There are no specific rules regarding tax/social security withholding and/or reporting obligations for directors – they are subject to the same withholding and reporting obligations as employees.

Overseas directors

- Overseas directors are subject to the same withholding and reporting obligations as employees, however they are also required to submit individual tax returns to the KRA in respect of income earned in Kenya.

Tax Reliefs

(Against tax payable)

- Personal relief, KShs 1,162 per month.
- Life insurance and education policy – 15% of premium, maximum KShs 5,000 p.m.



Lump sum payments

- Service gratuity pay: Includes gratuity, bonuses, salary arrears etc. relating to current and past years service-usually applies to retirees.
- Severance pay – relates to retrenchment/redundancy.
- Notice pay assessable in the period immediately after the date of termination of employment.

Taxation of Terminal Dues

- Leave pay assessed in the year to which it relates.
- Ex-gratia assessed in the year of receipt.
- Gratuity income is spread backwards for five years and taxed together with income earned in the prior years, balance taxed in the fifth year.
- Compensation for loss of office - Spread forward.

Tax is recomputed using the prior year rate.

Relief not granted in advance.

PAYE forms/returns

- Remittance of monthly PAYE is before the 9th of the following month.
- Form P11 - Remittance of monthly PAYE through banks, or Nil return submission to the Commissioner of Domestic Taxes;
- Quarterly PAYE return to be filed before the 10th day of the month following the end of each quarter. (e.g. quarter ending September, return is due by 10th October).
 - should be accompanied by
- Form P9A – employees tax deduction card detailing amount and details of all payments from which tax was deducted;
- Form P10 – Employers summary of monthly PAYE remittances including dates when payments were made to the bank;
- P10A – Details of tax deducted for each employee per P9A;
- P10B – FBT return;
- If return is filed monthly online, there is no requirement to file the quarterly returns.

National Security Social Fund (NSSF)

- Objective is to provide retirement benefit to members.
- Rate of Contribution -10% of the employee's wages subject to a maximum of KShs 400 per month of which half is contributed by the member.
- Special contributions (casual workers)-KShs 1 for each complete KShs 20 of wages. Contribution is by employer only.
- With effect from 1 May 2014, the New NHIF Act 2013 will take effect.
- Under the new Act, each employer must pay to the Pension Fund in respect of each of his employees:
 - employer's contribution at 6% of the employee's monthly pensionable earnings; and
 - employee's contribution at 6% of the employee's monthly pensionable earnings.

National Hospital Insurance Fund (NHIF)

- Objective is to provide health insurance coverage for members and their dependents.
- Rate of Contributions vary from a minimum of KShs 30 to a maximum of KShs 320 per month with respect to salaried employees. (New rates suspended).
- Informal sector - Voluntary contributions.
- Contribution is by the employee only. The employer only acts as an agent to collect and remit.

Suspended NHIF Rates

Gross Income (KShs)	Contributions (KShs)
< 5,999	150
6,000 to 7,999	300
8,000 to 11,999	400
12,000 to 14,999	500
15,000 to 19,999	600
20,000 to 24,999	750
25,000 to 29,999	850
30,000 to 49,999	1,000
50,000 to 99,999	1,500
Over 100,000	2,000
Self-employed (special)	500
Indigents (voluntary)	300

National Industrial Training Authority (NITA)

- Registration is Mandatory for all persons registered as an employer effective from July 2007.
- Rate of Contributions KShs 50 per employee on or before the 10th of the following month.
- Contribution is by the employer only. The employer only acts as an agent to collect and remit.
- The Industrial Training Act makes a provision for the industrial training levy and requires a person who is an employer to register and contribute to the industrial training levy.
- Only employers in the Hotel and restaurant Industry (registered under Hotels & Restaurants Act Cap 494 of Kenya) are exempt since they pay Hotel & Catering Levy.

National Industrial Training Authority (NITA)

- Subject to approval by NITA, employers who are registered with NITA and are up to date on levy payments can get a reimbursement of training costs if:
 - The employer makes an application to NITA two weeks before the training i.e. for local training and one month for overseas training;
 - The training provider is registered with the NITA and is up to date with the annual registration renewal;
 - The employer can prove that the training is relevant to the employees' duties/work; and
 - The reimbursement claim must be supported with receipts of payment of training costs and the approval letter from NITA.

Penalties for non-compliance

- Failure to pay the training levy attracts a penalty of 5% on the amount of levy due to the Authority.

Penalties and offences

- Tax recovered from employer.
- Failure to operate PAYE system satisfactorily: 25%, minimum 10,000.
- Interest thereon, 2% per month on the principal tax underpaid.
- General penalty, where no other penalty is prescribed: KShs 100,000, six months imprisonment.

Objections & appeals

- An employer can object against a PAYE tax computation to the Commissioner for Domestic Taxes (CDT).
- An employer has right of appeal to the Local Committee against imposition of penalty or any other decision taken by the Commissioner under SECTION 37 (i.e. section dealing with PAYE) of the Income Tax Act.
- Appellant required to pay all tax due and the penalty prior to making the appeal.

The Employment Contract - Tax Considerations

- Employment Contract is mandatory under the Employment Act of Kenya (S.10);
- The Employment contract is the first tax trigger for any taxing authority and tax considerations must be made when incorporating the following Information in the contract letter:
 - Name of employer – agency burden, PE considerations;
 - Date of commencement of employment – Tax point considerations;
 - Form and duration of contract – specified term (open-ended), unspecified term, consultancy;
 - Remuneration and benefits, cash and non-cash. Wording of contract will trigger different tax treatments e.g. Benefits vs Allowances, Reimbursements etc.;
 - Off-shore contractual arrangements – e.g. pension payments made by offshore entity.

Immigration Issues

- All non – Kenyan citizens coming to work in Kenya must have an entry permit, usually referred to as a “work permit” (WP).
- WP’s are dependent on the period of time an individual will require to work in Kenya.

Special Passes – “Temporary work permits”

- These are issued to persons who come to the country for specific assignments for a period not exceeding 90 days. The passes are renewable for an additional 90 days in any one calendar year.

Work Permits

- These are issued to persons who come to work in the country for periods in excess of 183 days. Work permits are valid for one year or a maximum period of two years at any one time. They are renewable for a further period of one or two years as may be required. There are several classes of work permits depending on the nature of work an individual will be performing in Kenya as follows:

Immigration Issues

Class A:

Given to persons offered specific employment by a specific employer in Prospecting and Mining

Class B:

A person who is offered specific employment or is engaging in Agriculture and Husbandry

Class C:

A person who is offered specific employment for any prescribed profession

Class D:

A person who is offered specific employment in by a specific employer and who is qualified to undertake that employment.

Immigration Issues

Class F:

A person who is offered specific employment in specific manufacturing

Class G:

A person who is engaging in specific trade, business or consultancy

- **Business Visa's**
- These are issued to business travellers coming into the country to attend meetings, training seminars, conferences and other business forums. They **DO NOT** entitle the holder of such visa to perform or engage in work in Kenya.

Immigration Issues – Tax Implications

Tax Considerations of Entry Permits

- **Sponsorship:** All work permit applications must be sponsored by an employer who is locally registered in Kenya.
- **Duration of assignment:** employer's must consider the duration of the individual in the country when determining the type of entry permit to take up. Employers can do some tax planning for Special Pass holders.
- **Tax Registrations:** Tax Registrations are dependent on the Entry Permit type. Holders of Work Permits/alien cards are entitled to tax registrations. Special Pass holders must obtain approval from the Commissioner to register for the tax PIN upon proof of taxable income in Kenya.
- **Alignment of Work Permit and Employment Contract:** For tax planning purposes employer's require to align their expatriate employment contracts to the work permits.

Compensation Structures

- Gross pay
 - Employee gets a net pay
 - Net Pay
 - Assumes employer takes care of taxes
 - Gross up has to be done correctly
 - Split Pay
 - Pay received in home and host
 - Is it legal from a labour law point?
 - Tax implications
- Bonus pay
 - When do you accrue for bonus pay
 - Corporate tax implications
 - Expatriate bonus
 - Trailing bonuses
 - Deferred Bonus
 - Delayed bonus payout
 - Tax Implications

Share Schemes

- Employee Share Option Schemes (ESOPs)
- Restricted Share Units (RSUs)
- Share Awards
- Matching Shares



ESOPs

- Rights granted to employees to purchase or sell shares at a predetermined price subject to certain restrictions
- ESOP - introduced through Finance Bill 2006
- Effective 1 July 2006

Definitions

- “Grant Date”- Date when options are granted to an employee.
- “Vesting period” –period within which employees cannot exercise their options.
- “Vesting date” – First date at which options can be exercised.

ESOPs

Taxation of ESOPs

- Taxable benefit is difference between market value per share and the offer price per share at the date the option is granted
- Benefits accrue in cases where such plan is registered with the commissioner

Issues arising

- Taxation of offshore schemes;
- Cross - border & double taxation issues;
- Varying tax points in various jurisdiction;
- Distinction between employment income & capital gain;
- Corporate deductibility of related expenses; and
- Transfer pricing issues on stock options as elements of remuneration packages within Multinational Enterprises.(MNE`s).

ESOPs

Employee tax issues

Charge to tax

- Tax point
- Valuation of benefits
- Taxation of schemes not registered in Kenya

Restricted Share Units (RSUs)

- Similar to restricted stock
- The unit represents a promise that employees will receive stock in the future
- The units do not pay dividends until the stock is vested
- May pay dividends

Tax issues

- Charge to tax
- Tax point
- Valuation of benefits

Share Awards (Free Shares)

- Free shares granted to employees

Tax issues

- Charge to tax
- Tax point
- Valuation of benefits

Matching Shares

- Free shares granted to employees
- Employees have to first participate by buying shares, then employer matches the shares bought with either one full share or a percentage

Tax issues

- Charge to tax
- Tax point
- Valuation of benefits

Overview of Expatriate Tax Issues

- PE Considerations
- Depends on days present in Kenya
- Who pays the taxes? Individual or company? How?
- Business Travel
- Short term business travelers (STBT)
 - Residency trigger
 - How do you tax benefits?
 - Tax Considerations
- Long term business travelers
- Tax Equalization
- Term used to ensure that employees are neither worse off nor better off because they have accepted an international assignment
- Other terms e.g. tax protection

Overview of Expatriate Tax Issues

- Hypothetical tax
- Tax taken off in home payroll and not paid to tax authority but used to offset host country taxes
- Shadow payroll
- Expat payroll
- Foreign benefits schemes
- Medical schemes
- Not registered in Kenya?
- Tax implications? Taxable benefits?
- Relocation allowances
- Cash or in kind?

Overview of tax treatment of some benefits

- Temporary housing
- School
- Temporary Transportation

Other Expat Tax Considerations

- Cost allocation
- Trailing payments
- Double Tax Agreements (DTAs)
- Foreign Tax Credits (FTCs)

KRA in-depth tax audit

- KRA selects taxpayers for in-depth examination
- Enforce tax compliance, full income disclosure, enhance collection and taxpayer education
- Taxpayer Charter has provided for procedure for audit and rights of a taxpayer

Procedure

- Letter from KRA for in-depth examination
- Mutually agreed date for commencement
- Tax agent to review/be involved
- Limit of time of audit specified in the Charter
- Audit to cover two years plus current

KRA in-depth tax audit

Tips:

- Don't give the KRA more than they ask for
- Skeletons in cupboard- advance planning required
- Cultivate mutually beneficial relationship
- Check the accuracy of KRA findings
- Discuss risk/potential liability with tax consultants

Payroll Reconciliations

- Adjustments for over/under taxation
- Refunds
- Reliefs
- Currency/Forex Considerations
- Off-payroll payments – share options; foreign cash incentives/savings schemes

Gray Areas - General

- Shared benefits e.g.
- Servants
- Housing
- Sales vans/cars.
- Benefits provided and used within the employer's premises
- Alarm
- Electricity - shared among employees & between employees and employers

Gray Areas

- Mobile Phones
- Sale of products to staff at cost
- Benefit value is the cost or market price ?
- Employer guaranteed loans
- Employees charged at lower interest rate.
- Passages to destinations other than home country.
- Entertainment.
- Consultancy vs. employment

Tax Returns

- Annual self assessment returns from 1992 plus:
 - P9;
 - Mortgage certificate;
 - Insurance relief certificate; and
 - Other support documents – withholding tax certificates, etc.
- Due date for return is six months following the end of the income year.

Issues

- Kenyan citizens working abroad
- Expats
- Tax credits

2014 Budget snapshots

- **Employees vacation:** Section 5 of the Income Tax Act is now amended to allow employers to deduct expenditures paid on behalf of the employees on vacations destinations in Kenya up to 1st July 2015.
- Meals to low income employees has been amended to expand the scope of meal benefit to cover all employees

Tax Planning Ideas

- Maximize reliefs and deductions such as mortgage interest and insurance relief
- Mileage claim vs. car allowance
- Car loan vs. company car
- Telephone benefit (scratch cards) – only 30% taxable
- Benefits below threshold
- Per Diems up to 2,000 per day. Excess to be on reimbursement basis or accounted for

Conclusion

“The point to remember is what the government gives it must first take away”

John. S Coleman



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.