

## Kenya Revenue Authority issues guidelines on tax amnesty on foreign income

---

### EY Global Tax Alert Library

Access both online and pdf versions of all EY Global Tax Alerts.

Copy into your web browser:

[www.ey.com/taxalerts](http://www.ey.com/taxalerts)

---

### Executive summary

Kenya's *Finance Act 2016* introduced a provision for tax amnesty on foreign income with respect to any year of income ending on or before the 31 December 2016. The Kenya Revenue Authority (KRA) has now issued guidelines on the eligibility and application process for the amnesty. According to the guidelines, the application for amnesty must be submitted online through the iTax platform using form A/37B on or before 31 December 2017. The application should give a complete and accurate disclosure with respect to the assets and liabilities that resulted from the foreign income. Physical repatriation of the asset is mandatory in order to be granted amnesty. The amnesty does not extend to a person who had already been assessed or was under investigation or tax audit in respect of assets, liabilities and income declaration that qualify for amnesty as of the date the *Finance Act 2016* was assented to.

### Detailed discussion

#### Overview

The *Finance Act 2016* introduced Section 37B into the *Tax Procedures Act, 2015*. The section provides for tax amnesty on foreign income earned in any year of income on or before 31 December 2016.

The amnesty covers the principal tax and any associated penalties or interest relating to income earned outside Kenya that would have been taxable under Kenyan tax laws if it had been accrued or derived in Kenya or deemed to have been accrued or derived in Kenya.

Therefore, the amnesty does not apply to income earned in Kenya.

### Disclosure, format and timelines

The application for amnesty will be made online through the iTax platform on form A/37B. The form is not available on the KRA platform currently as the iTax system is being upgraded in order to accommodate the return. Given that the application for the amnesty should be made on or before 31 December 2017, it is expected that the return should be available with sufficient time to submit before the deadline.

The guidelines further provide that a person will be required to make a complete and full disclosure of the foreign income and the underlying assets and liabilities. Once full disclosure is done on the return, a person will not be required to provide any further details or supporting documentation. Moreover, in order to qualify for amnesty, the full physical repatriation of the asset is mandatory.

Upon completing the online application, a person will be issued with an acknowledgement copy.

A system generated certificate will be issued to the applicant once the amnesty has been granted. From the guidelines; it is not clear how long the Commissioner will take to respond to an application for amnesty.

### Qualifying assets and income

The income subject to tax amnesty is foreign income subject to tax under Section 3(2) of the *Income Tax Act CAP 470*, if it had been accrued or derived in Kenya or deemed to have been accrued or derived from Kenya.

Assets held outside Kenya whose income could fall within the amnesty regime include bank deposits, investment portfolios, insurance policies, shares or other property<sup>1</sup> situated outside Kenya which are funded from income derived from or accruing from sources within or outside Kenya, including those held under Trust. The value of the asset will be the cost or the best estimate of the market value as determined by the applicant.

### Qualifying applicants

Persons who can apply for amnesty include an individual, a company, a partnership, a limited liability partnership, associations of persons, a trust, National Government, foreign government, political subdivision of the National Government or foreign government, or an international organization, if a tax resident of Kenya when generating the income.

A person who was a Kenyan resident at the time of earning the foreign income and did not declare the income qualifies for amnesty notwithstanding their residency status when applying for the amnesty.

A person who was a nonresident at the time of earning foreign income which should have been taxed in Kenya can also make an application for amnesty for such income.

Married couples may file a joint return and the assets and income of a minor may be declared by the parent or legal guardian.

For assets held in a trust, the application for amnesty may be submitted by the trustee, settlor or beneficiary/beneficiaries of the trust.

### Exceptions

The amnesty shall not apply to:

- ▶ Income earned in Kenya
- ▶ Income earned outside Kenya but already declared and taxed in Kenya
- ▶ A person who has been assessed or under a tax audit or investigation by the Commissioner with respect to assets, liabilities and income that qualify for the amnesty on the date the *Finance Act 2016* was assented to (13 September 2016)

### Implications

The tax amnesty on foreign income comes barely one year after the amnesty for rental income for landlords. This move is intended to increase the tax bracket and bring other taxpayers into the bracket to raise the tax revenues for the Government. Specifically this is intended to bring high net worth individuals with foreign incomes into the tax bracket going forward.

This will be a great relief for a taxpayer who complies, as the KRA will not demand any back taxes or penalties because of prior non-compliance but will expect the individual to comply going forward and pay the correct tax liability.

With respect to the practical application of the guidelines, they do not provide clarity on what full and complete disclosure means or specifically what income they are targeting. However, it is expected that once the return A/37B is available online, affected taxpayers may get a better understanding of the extent of the details they are expected to disclose regarding their foreign assets, liabilities and income.

Further, the guidelines also provide for the physical repatriation of the asset. For an asset such as cash, the repatriation could be straight forward if the cash has not been utilized. For an immovable asset such as real estate, the guidelines are not clear on how such repatriation will be conducted and whether a taxpayer would need to dispose of such an asset or be required to declare the income attributable to that asset going forward. More details are required on the physical repatriation of the asset requirement.

The guidelines also do not stipulate a timeline within which the Commissioner will respond to the application. The timeline for the Commissioner's response would be important for planning purposes to ensure timely feedback and that a way forward is provided to the taxpayer.

The amnesty should be undertaken with precaution as there is the potential for abuse with respect to money laundering under the pretense of repatriating assets under the amnesty program.

Overall, the guidelines will assist taxpayers who have foreign assets and income that they are willing to repatriate. The repatriation of cash and other assets should promote trade and business opportunities in Kenya.

Persons qualifying for amnesty should endeavor to collate and maintain proper records pertaining to such assets and liabilities held outside Kenya as well as details on the corresponding income as they await the release of the A/37B return. The period for filing is open until 31 December 2017.

The KRA held a stakeholders meeting on 14 March 2017 to get feedback on the guidelines provided. As such, revised guidelines may be issued in the future taking into consideration the potential challenges in applying the guidelines.

---

## Endnote

1. The definition of property with respect to the guidelines is as defined in the Interpretation and *General Provisions Act of Kenya*. Under the Act, property is defined as "includes money, goods, choses in action, land and every description of property, whether movable or immovable; and also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as herein defined."

For additional information with respect to this Alert, please contact the following:

**Ernst & Young (Kenya), Nairobi**

- |                       |                 |                               |
|-----------------------|-----------------|-------------------------------|
| ▶ Geoffrey Karuu      | +254 20 2715300 | geoffrey.g.karuu@ke.ey.com    |
| ▶ Catherine Mbogo     | +254 20 2715300 | catherine.mbogo@ke.ey.com     |
| ▶ Francis Kamau       | +254 20 2715300 | francis.kamau@ke.ey.com       |
| ▶ Christopher Kirathe | +254 20 2715300 | christopher.kirathe@ke.ey.com |

**Ernst & Young Advisory Services (Pty) Ltd., Africa ITS Leader, Johannesburg**

- |                     |                 |                             |
|---------------------|-----------------|-----------------------------|
| ▶ Justin Liebenberg | +27 11 772 3907 | justin.liebenberg@za.ey.com |
|---------------------|-----------------|-----------------------------|

**Ernst & Young LLP (United Kingdom), Pan African Tax Desk, London**

- |                          |                  |                      |
|--------------------------|------------------|----------------------|
| ▶ Leon Steenkamp         | +44 20 7951 1976 | lsteenkamp@uk.ey.com |
| ▶ Byron Thomas           | +44 20 7951 4144 | bthomas4@uk.ey.com   |
| ▶ Gonçalo Dorotea Cevada | +44 20 7951 2162 | gcevada@uk.ey.com    |

**Ernst & Young LLP, Pan African Tax Desk, New York**

- |                   |                 |                         |
|-------------------|-----------------|-------------------------|
| ▶ Silke Mattern   | +1 212 360 9707 | silke.mattern@ey.com    |
| ▶ Dele A. Olaogun | +1 212 773 2546 | dele.olaogun@ey.com     |
| ▶ Jacob Shipalane | +1 212 773 2587 | jacob.shipalane1@ey.com |

**About EY**

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit [ey.com](http://ey.com).

© 2017 EYGM Limited.  
All Rights Reserved.

EYG no. 01202-171Gbl

1508-1600216 NY  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

**[ey.com](http://ey.com)**