

NO. 2 OF 1995

THE KENYA REVENUE AUTHORITY ACT

SUBSIDIARY LEGISLATION

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THE KENYA REVENUE AUTHORITY (TAX AGENTS) REGULATIONS

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THE KENYA REVENUE AUTHORITY (TAX AGENTS) REGULATIONS

[Legal Notice 60 of 2012]

1. Citation

These Regulations may be cited as the Kenya Revenue Authority (Tax Agents) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"misconduct" includes, making false tax declarations, aiding and abetting tax evasion and any other conduct expressly prohibited by any other law relating to the collection of tax;

"practising certificate" means a certificate issued to a person by a recognized professional association which permits that person to practice that profession;

"registration certificate" means certificate issued by the Commissioner to a person authorising that person to be a tax agent;

"tax agent" means a person registered by the Commissioner as a tax agent under regulation 3;

"Tax Agents Committee" means the committee established under regulation 8.

3. Registration of tax agent

(1) A person shall not operate as a tax agent unless the person has been registered by the Commissioner as a tax agent.

(2) A person who wishes to operate as a tax agent shall apply in writing to the Commissioner for registration as a tax agent.

(3) A person is qualified for registration as a tax agent if that person is—

- (a) registered as an accountant in accordance with the Accountants Act (Cap. 531), and a member of the Institute of Certified Public Accountants of Kenya; or
- (b) an advocate of the High Court of Kenya and holds a current practising certificate; or
- (c) a former tax administrator with at least ten years' experience in tax administration, or
- (d) a holder of any other relevant qualifications and experience recognized by the Commissioner as sufficient for a tax agent; and
- (e) tax compliant.

(4) Where the Commissioner is satisfied that a person is qualified for registration as a tax agent, the Commissioner shall issue a certificate of registration in the prescribed form.

(5) These Regulations shall not apply to a non-resident who is temporarily in Kenya for the sole purpose of representing a client on tax matters.

(6) A person who operates as a tax agent without registration commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

4. Validity of registration

A person shall cease to be a tax agent if that person—

- (a) is suspended or struck off from the register of his professional association;
- (b) is suspended or deregistered by the Commissioner in accordance with regulation 10; or
- (c) is declared bankrupt by a court of competent jurisdiction.

[Subsidiary]

5. Functions of tax agents

The functions of a tax agent shall be to—

- (a) prepare and submit tax returns on behalf of a taxpayer;
- (b) liaise with the Kenya Revenue Authority on behalf of a taxpayer on all matters relating to tax;
- (c) advise and represent a taxpayer in matters pertaining to tax before the Commissioner, a tribunal or a local committee established under any of the laws set out in the First Schedule to the Act; or
- (d) deal with any other matters that relate to tax on behalf of a tax payer.

6. Register to be maintained by the Commissioner

(1) The Commissioner shall maintain a register of tax agents which shall contain—

- (a) the names of all the tax agents;
- (b) the qualifications of the tax agents;
- (c) the address of the principal place and any other place where the tax agents operate from; and
- (d) such other information as the Commissioner may consider necessary.

(2) A tax agent shall notify the Commissioner, of any change in the information in the register within fourteen days of such change.

7. Conduct of tax agent

(1) A tax agent shall conduct himself in a professional manner and provide quality service to his clients in order to enable the clients to comply with the requirements of any of the laws set out in the First Schedule to the Act.

(2) Without prejudice to the foregoing, a tax agent shall—

- (a) comply with any notice served on the tax agent by the Commissioner within the time specified in the notice;
- (b) maintain a register containing the following details—
 - (i) the names of all the clients;
 - (ii) the date of engagement by each client;
 - (iii) the full physical addresses, postal address and any other contact details of each client; and
 - (iv) information relating to the nature of business that each client is engaged in;
- (c) maintain proper records indicating—
 - (i) the date when the last income tax return or specified notice was submitted to the Commissioner;
 - (ii) the tax payable or paid; and
 - (iii) such other particulars as the Commissioner may from time to time direct.

8. Establishment of the Tax Agents Committee

(1) The Cabinet Secretary shall, for the purpose of these Regulation establish a tax agent Committee which shall consider applications for registration of tax agents and investigate any allegations of misconduct made against tax agents.

(2) The Committee shall comprise of—

- (a) a chairperson, who shall be from the private sector with at least ten years' experience and holds a degree in taxation, finance, accounting, or law from a university recognized in Kenya;
- (b) a representative of the Institute of Certified Public Accountant of Kenya;

- (c) a representative of the Law Society of Kenya;
- (d) three other persons who have at least five years experience and hold a degree in taxation, finance, accounting or law from a university recognized in Kenya;
- (e) a representative of the Commissioner, who shall be the secretary to the Committee.

(3) The members of the Committee shall be appointed by the Commissioner in writing, and shall serve for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) The quorum for a meeting of the Committee shall be the chairperson and two members.

(5) The Chairperson shall preside at every meeting of the Committee, at which the Chairperson is present, and in the absence of the Chairperson, the members present shall appoint one of their number to preside over the meeting.

(6) The members of the Committee shall be paid such remuneration as the Cabinet Secretary may determine from time to time.

9. Vacancy

The office of the Chairperson or a member of the Committee shall become vacant if the holder—

- (a) resigns by notice in writing to the Commissioner;
- (b) is convicted of any offence;
- (c) is declared bankrupt by a court of competent jurisdiction;
- (d) fails to meet his tax obligations; or
- (e) fails to attend three consecutive meetings without notice to the chairperson.

10. Investigation of allegations of misconduct

(1) The Commissioner shall upon receiving any allegation of misconduct against a tax agent, refer the matter to the Committee to investigate the allegations and make the appropriate recommendations.

(2) Where the complaint is against a member of a recognized professional association, the Committee may refer the matter to the association for investigation and determination in accordance with the code of conduct of that association.

(3) The Committee may recommend that such action as it may consider necessary be taken on the tax agent in addition to the action taken by the association.

(4) Where the complaint is against a person who is not a member of a recognized professional association, the Committee shall give the tax agent an opportunity to be heard and permit the tax agent to inspect any relevant documents at least seven days before the date of the hearing.

(5) The Committee may in the course of the investigations hear such witnesses and receive such documentary evidence as may, in its opinion, assist in the investigations.

(6) The Committee shall, expeditiously, but not later than seven days after termination of the hearing, submit a report, to the Commissioner recommending that the Commissioner—

- (a) clears the tax agent of the allegations;
- (b) cautions, warns or reprimands the tax agent;
- (c) suspends the registration of the tax agent,
- (d) deregisters the tax agent, or;
- (e) takes such other action that it considers appropriate.

(7) The Commissioner shall, within fourteen days of receiving the report of the Committee, take such action as may be appropriate.

[Subsidiary]

11. Offences

Any person who—

- (a) fraudulently makes, or causes or permits to be made, any false or incorrect entry into the register maintained for the purposes of these Regulations, or any copy thereof;
- (b) fraudulently procures or attempts to procure, registration as a "tax agent"; or
- (c) knowingly and wilfully makes any statement which is false or which is misleading, with a view to gaining any advantage, concession or privilege under these Regulations; or
- (d) not being a registered tax agent falsely presents himself as such,

commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or both.
