

Insights and Commentary from Dentons

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TAX AMNESTY GUIDELINES ON FOREIGN INCOMES

Tax Amnesty Guidelines issued under Section 37B of the Tax Procedures Act

1. These Guidelines may be cited as the Foreign Income and Assets Tax Amnesty Guidelines 2017 and shall come into force on **1st January 2017**.

2. In these Guidelines, unless the context otherwise provides:

“*Accounts*” means the Statement of Assets and Liabilities made in the return;

“*Assets*” means 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;

“*Certificate*” means a certificate issued upon approval of the amnesty application;

“*Income*” means 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;

“*Liabilities*” means liabilities situated outside Kenya;

“*Person*” takes the meaning assigned to it under Section 2 of the Tax Procedures Act, 2015;

“*Property*” shall have the meaning assigned to it in the Interpretations and General Provisions Act;

“*Return*” means a return made in the format set out in iTax as Form A/37B.

3. A person who makes an application for amnesty under the provisions of Section 37B of the Tax Procedures Act, 2015 shall complete and make full disclosure using a return in the prescribed format on or before **31st December 2017**.

Tulipe Ushuru Tujitegemee!

4. Where assets are held under trust, the application for amnesty may be made by the Trustees or the Settlor or the beneficiary or beneficiaries of the Trust (as the case may be).
5. The value of the asset shall be the cost or the best estimate of the market value as assessed by the applicant.
6. The amnesty shall extend to taxable income earned by the person seeking the amnesty from sources outside Kenya.
7. If a person was a resident in the year in which he earned taxable income outside Kenya, he may file the declaration, regardless of his residential status at the time of making the declaration.
8. If a person was a non-resident in the year in which he earned taxable income outside Kenya and such income 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, then such income would qualify for declaration.
9. A person who makes a claim under the amnesty provided for under Section 37B of the Tax procedures Act, 2015, shall not be required to provide any further details or supporting documentation other than those set out in the prescribed return format.
10. Married couples, filing joint or separate returns, may file a joint declaration.
11. For the purposes of declaration, assets held by and income earned by a minor can be declared by the parent or legal guardian.
12. The amnesty shall 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 the date the Finance Act, 2016 was assented to.
13. Physical repatriation of the Assets is a requirement under the amnesty. Full and accurate disclosure of Incomes and Assets is a mandatory requirement for the Applicant to qualify under the Amnesty.

14. **Filing of Amnesty Return(s) under iTax:** All applications, declarations and filing of Returns shall be made on iTax and an acknowledgment shall be issued thereafter. A certificate shall be generated through the system where the amnesty requirements are met.

15. **Exceptions:** The Amnesty shall not apply : -

- a) To income earned in Kenya
- b) To incomes earned outside Kenya but have already been declared and charged to tax in Kenya.
- c) Where a person making an application for this Amnesty is under a tax audit or Investigation by the Commissioner.

16. **Stakeholder Engagement and System Support:** The Commissioner undertakes to provide every necessary support in the spirit of trust through facilitation to all taxpayers who would wish to take advantage of this amnesty.

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