LEGAL NOTICE No. 138

THE TAX PROCEDURES ACT, 2015
(No. 29 of 2015)

IN EXERCISE of the powers conferred by section 112 of the Tax Procedures Act, 2015, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations—

THE TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

1. These Regulations may be cited as the Tax Procedures (Tax Agents) Regulations, 2018.

2. In these Regulations, unless the context otherwise requires—

   “Committee” means the Tax Agent Committee established under regulation 7;

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

   “practicing certificate” means a certificate issued to a person by a recognized professional association which permits that person to practice that profession;

   “registration certificate” means the certificate issued by the Commissioner under regulation 3; and

   “tax agent” means a person registered by the Commissioner as a tax agent under regulation 3.

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

   (2) An application made under subregulation (1) shall be accompanied by a non-refundable fee of twenty thousand shillings.

   (3) The Commissioner may register a person as a tax agent if that person is tax compliant and—

   (a) is a member of the Institute of Certified Public Accountants of Kenya;

   (b) is an advocate of the High Court of Kenya and holds a current practicing certificate;

   (c) is a former tax administrator with at least ten years’ experience in tax administration; or

   (d) is a holder of any other relevant qualifications and experience recognized by the Commissioner as sufficient for a tax agent.
(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.

4. 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 matters relating to tax;
   (c) advise and represent a taxpayer in matters relating to tax before the Commissioner or the Tribunal established under the Tax Appeals Tribunal Act, 2013; and
   (d) deal with any other matters that relate to tax on behalf of a taxpayer.

5. (1) The Commissioner shall maintain a register of tax agents which shall contain—
   (a) the names of all tax agents;
   (b) the qualifications of the tax agents;
   (c) the address of the principal places of business of the tax agents and any other place where the tax agents may 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.

6. (1) A tax agent shall act in a professional manner in providing service to his or her clients to enable them to comply with the requirements of any tax law.

   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 period 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 physical addresses, postal addresses and any other contact details of each client; and
      (iv) information relating to the nature of the business that each client is engaged in; and
   (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.

7. (1) The Cabinet Secretary shall, for the purpose of these Regulations, appoint by notice in the Gazette, 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' relevant experience and holds a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya;

(b) a representative of the Institute of Certified Public Accountants of Kenya;

(c) a representative of the Law Society of Kenya;

(d) three other persons who have at least five years' relevant experience and hold a degree in taxation, finance, accounting, economics or law from a university recognized in Kenya; and

(e) a representative of the Commissioner, who shall be the secretary to the Committee.

(3) The members of the Committee shall serve for a term not exceeding three years and shall be eligible for re-appointment for one further term not exceeding three years.

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

8. 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 Cabinet Secretary;

(b) is convicted of any offence;

(c) is declared bankrupt by a court of competent jurisdiction;

(d) fails to meet his or her tax obligations; or

(e) fails to attend three consecutive meetings without notice to the chairperson or in case of the chairperson to the Commissioner.
9. (1) The Commissioner shall, upon receiving any allegation of misconduct against a tax agent, refer the matter to the Committee to investigate the allegation.

(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 such disciplinary or similar action as it may consider necessary be taken against 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 related to the allegation 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 investigation.

(6) The Committee shall, expeditiously, but not later than seven days after the conclusion of the investigation, 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 the Commissioner may consider appropriate.

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

10. 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;
(c) knowingly and willfully 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) operates as a tax agent without being registered,

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.

Dated the 14th June, 2018.

HENRY ROTICH,

Cabinet Secretary for the National Treasury and Planning.