

Tax Alert

KRA tax demands arising from taxpayers ledger clean up

The Kenya Revenue Authority (“KRA”) has recently embarked on an exercise to clean up taxpayers tax ledgers (specifically corporate income tax, VAT and Withholding taxes) in the iTax system. As a result, several taxpayers have recently received notifications and statements of account demanding tax arrears.

iTax system

KRA's most recent tax technology platform, iTax system, was implemented about 4 years ago. This online filing system was to enable tax payers to make payments of their domestic taxes and file returns online.

There have been several benefits of the iTax system – the most notable being that taxpayers are now able to manage their tax compliance obligations and access their tax records held by KRA at the click of a button.

Legacy systems

Prior to 2009, the KRA employed a manual or semi-automated system to administer tax compliance. Under this system which could only be accessed by the KRA staff, taxpayers were required to file manual tax returns and the data therein was manually keyed into the system. One of the challenges with this system was in relation to withholding taxes deducted at source that was mostly not captured in the KRA's records.

In 2009, the KRA introduced the Integrated Tax Management System (“ITMS”). This was an on-line system accessible through the KRA portal which among other things, enabled taxpayers to pay their taxes directly to KRA's appointed banks through the RTGS system.

However, the posting of tax payments into the taxpayers ledger was still semi-automated and required the intervention of KRA staff. For example, a taxpayer had to physically take their RTGS record of tax payments to the KRA offices in order to be issued with receipts. The date of



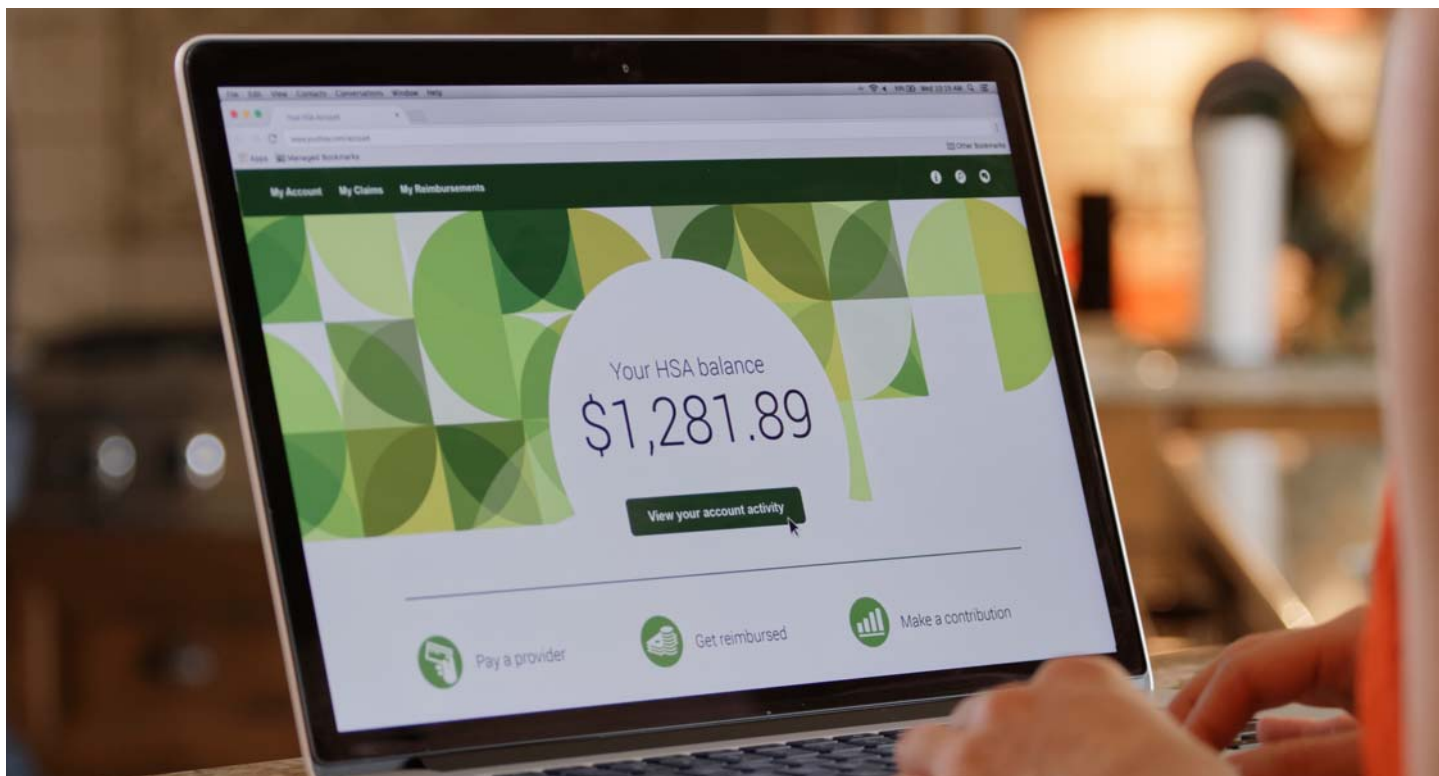
tax payments was when KRA issued the receipts as opposed to the RTGS date resulting in erroneous imposition of late payment penalties.

Data migration to iTax and tax demands

Despite the positive shift towards the implementation of iTax, the move from the legacy systems has come with its own challenges including the accurate migration of taxpayers data from legacy systems. There appear to be omissions and errors on migration of data in a number of cases leading to differences between the KRA and taxpayers records.

Consequently, a number of taxpayers are receiving tax demand letters from the KRA in relation to corporate income, VAT and withholding tax arrears. In some cases, the tax demands relate to periods as far back as 20 years ago.

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The KRA insists that they are not raising assessments but merely tidying up ledgers of taxpayers in their system. Some taxpayers have also received auto generated payment defaulter notices for income tax obligations on iTax.

In several cases, the KRA is giving tax payers only 14 days to respond to tax demand notices failure to which other enforcement measures shall be instituted to recover the tax arrears. This could mean agency notices being issued.

Record keeping

While the Tax Procedures Act, 2015 requires a taxpayer to maintain documents so as to enable the person's tax liability to be readily ascertained, this obligation is limited to a period of five years from the end of the reporting period to which it relates or such a shorter period as may be specified in a tax law.

The TPA further provides that the Commissioner has powers to amend an original self-assessment, five years after the date the tax payer submitted the self-assessment return to which the self-assessment relates. Therefore, under the Tax Procedures Act, taxpayers are not required to maintain tax records for a period longer than five years from the end of the reporting period (albeit there is an exception for fraud).

However, where taxpayers are utilizing tax credits from prior years, it would be prudent for them to maintain records for the whole period to show how the credits have being utilized.

What next?

The KRA tax demands and payment defaulter notices poses tax risks to businesses and therefore we recommend that they should be dealt with promptly.

Where the tax demands relate to the last five years, taxpayers should be prepared to support their tax payment records.

Kindly reach out to any of our experts below or your usual PwC contact for further information on this tax alert.

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