

Tax Alert*

June 2010

Special Tax Regime for Disabled Persons

New rules on tax exemptions and deductions for disabled persons were published in the Kenya Gazette on 26 March 2010. Disabled persons may now qualify to receive tax-free income of up to KShs 200,000 per month

What is the change?

With effect from 26 March 2010, disabled persons are entitled to certain tax incentives. This includes a tax exemption of up to KShs 150,000 per month for disabled persons in possession of a valid tax exemption certificate from the Commissioner of Income Tax. In addition, disabled persons can claim the following deductions when determining their taxable income:

- Non-reimbursed amounts paid by a person with disability for treatment or admission in a hospital, nursing home or any other health facility
- Non-reimbursed amounts paid by a person with disability for prescription drugs for that person's use
- Non-reimbursed amounts paid by a person with disability for goods and services that allow the person with disability to receive home care or personal care
- Cost of disability related assisting devices

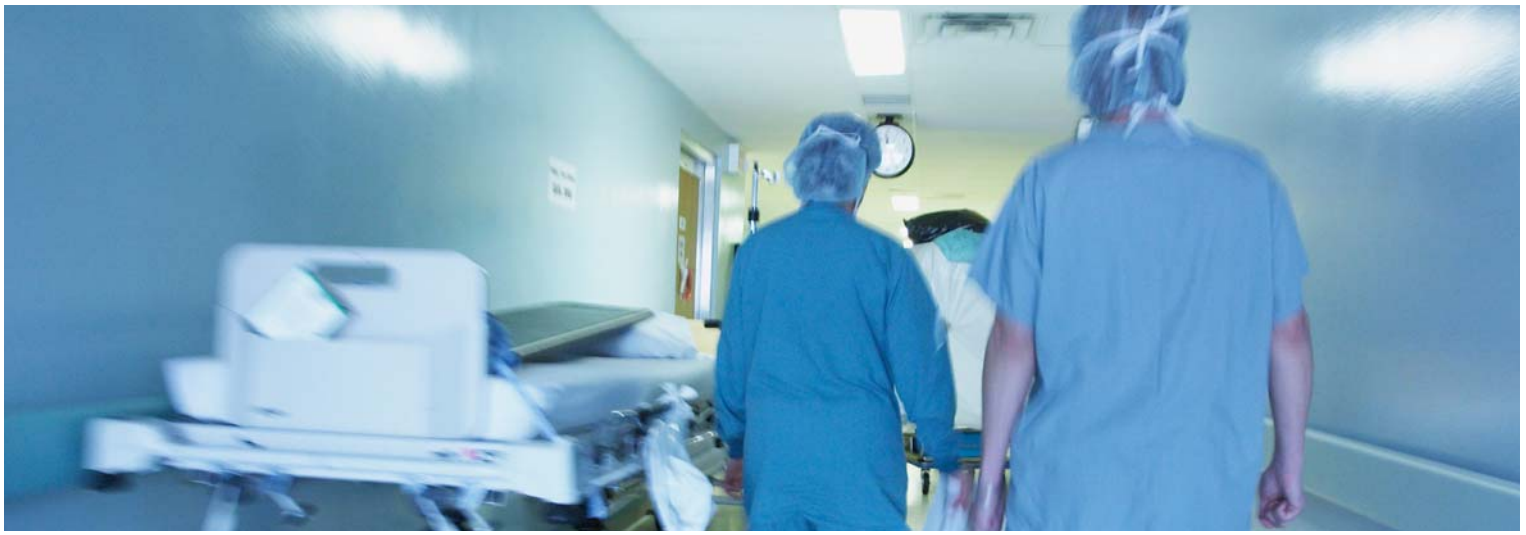
The monthly deductions that can be claimed are capped at KShs 50,000 per month.

What procedure should be followed?

According to the gazetted Legal Notice, the following procedure should be followed:

- i) The disabled person should complete an application for income tax exemption in the prescribed format (Form 1).
- ii) The completed application form needs to be submitted to the National Council for Persons with Disabilities who will then review and consider the submission.
- iii) The Council will then issue a recommendation to the Tax Commissioner as to whether the exemption should be granted.
- iv) The Commissioner has 30 days from receipt of the recommendation to either advise that the exemption has been denied or to issue a tax exemption certificate that is valid for 3 years.
- v) If the tax exemption is denied by the Commissioner, the disabled person may appeal to the Minister through the Council within thirty days of receiving the notification of the decision.
- vi) If a disabled person's status significantly changes such that they are no longer eligible for the exemption, they have 60 days to notify the Commissioner who will then revoke the tax exemption certificate.





Are the rules satisfactory?

On the upside, the taxman is deferring the question of eligibility for the tax exemption to the National Council for Persons with Disabilities as they are likely to be more knowledgeable. Having said that, the taxman is not compelled to accede to the recommendation issued by the Council i.e. the Commissioner has not abdicated his/her decision making responsibility but they are taking into consideration the input of the Council. The use of the Council as a vetting middle man is also advantageous in that it reduces the level of investigation and time required by the KRA when processing the applications.

We are glad to see that the application form recognises that the person with disability may be unable to complete their own form. In this case, there is a section to be completed by the person who has filled in the form and they must attach proof of their relationship to the person with disability.

Can the new tax incentives be abused?

Firstly, the use of a two step system where the application is vetted by the Council and by the KRA

should reduce the opportunities for fraudulent claims to succeed. In addition, the legislation includes some penalties. An offence is committed where a person fraudulently:

- Obtains or applies or attempts to apply to obtain an income tax deduction or exemption; or
- Gives or omits to give any material information which he or she is required to give under the regulations

The offence above could result in a fine not exceeding KShs 10,000 or imprisonment for a term not exceeding one year, or both. The financial penalty may not be significant when compared to the potential tax savings but the threat of a custodial sentence will act as a deterrent against the filing of sham applications.

Concluding remarks

On the whole, we welcome this new piece of legislation as it brings into force the promises issued by Mheshimiwa Uhuru Kenyatta during last year's National Budget. The tax incentives are also indicative of the fact that our government is disability sensitive and they are willing to suffer a thinner government wallet for this good cause.

Should you require to discuss this request any further, please contact either

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