



DOMESTIC TAXES DEPARTMENT

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Dated, 30<sup>th</sup> November 2017

**TAX AMNESTY ON FOREIGN INCOME & ASSETS - SECTION 37B OF  
THE TAX PROCEDURES ACT, 2015**

**FREQUENTLY ASKED QUESTIONS – (FAQs)**

**1. What is this amnesty about?**

The amnesty is meant to provide an opportunity for Kenyans to declare their assets and incomes held abroad and to encourage their repatriation to Kenya for development of the Country.

**2. What is the legal basis of the amnesty?**

The amnesty has its legal basis in Section 37B of the Tax Procedures Act, 2015 which was an amendment introduced through the Finance Acts of 2016 and 2017.

KRA has also prepared guidelines on the implementation of the amnesty which are hosted on the KRA website.

**3. When did the amnesty take effect?**

The amnesty took effect on 1<sup>st</sup> January, 2017 and runs up to 30<sup>th</sup> June, 2018.

**4. What is the tax period covered under the amnesty?**

The amnesty covers the periods ending on or before 31st December, 2016.

**5. Who qualifies for the amnesty?**

The amnesty is available to any person (individual or corporate) who earns taxable income from outside Kenya and has not been declaring and accounting for tax on that income. This includes Trusts.

However, a person who has already been assessed in respect of tax on the undisclosed income or is under audit or investigation on matters relating to the undisclosed income shall not qualify for the amnesty.



**6. What am I supposed to do if I want to benefit from this amnesty?**

- a) Apply to Commissioner between 1<sup>st</sup> January 2017 and 30<sup>th</sup> June, 2018 using a prescribed form, through the iTax platform
- b) Declare your investments abroad
- c) Voluntarily declare the amounts of funds you would like to return to Kenya
- d) Return the funds to Kenya by 30<sup>th</sup> June, 2018

*You can find the step-by-step guide for filing the amnesty return on the KRA website.*

**7. Can the return be amended?**

The amnesty return may be amended provided that all such amendments are made before 30<sup>th</sup> June, 2018.

**8. Do the assets declared in the amnesty have to be repatriated?**

The purpose of the amnesty is to encourage voluntary repatriation of foreign held assets to Kenya and invest in the development of the Nation. However, under the Law, only voluntarily declared funds are required to be transferred back to Kenya.

The Amnesty Guidelines define “**Funds**” to mean *cash declared in the return for purposes of transfer back into the country, in the return and accounts for purposes of transfer back in the country.*

**9. What if I am unable to return the funds by the 30<sup>th</sup> of June, 2018?**

The Law provides for a five-year extension for the repatriation of funds not transferred by 30<sup>th</sup> June, 2018. However, such repatriation will be subject to a penalty of 10% of the returned funds.

Investors are at liberty to liquidate any of their foreign held assets to enable the repatriation of funds and thereby qualify for the Amnesty.

**10. Can a taxpayer repatriate the funds in instalments?**

Yes, but any repatriation after 30<sup>th</sup> June, 2018 will be subject to the 10% penalty. The Tax Amnesty Certificate shall be issued upon full repatriation of Funds declared in the Return



**11. Can the Funds be repatriated before filing of the return?**

Yes, the funds can be repatriated before the filing of the return, provided that the funds are subsequently reflected in the return to qualify for the amnesty.

**12. What if I do not return any funds?**

If you fail to transfer back the funds that you have voluntarily declared for repatriation, then you have not qualified for the amnesty since that is a condition required for one to get the amnesty.

**13. What happens where the Funds declared cannot be repatriated?**

All Funds declared have to be repatriated for purposes of the amnesty and if not repatriated, the amnesty application is not complete. However, in circumstances where the funds cannot be repatriated for reasons beyond the taxpayer's control, the Commissioner will review and guide on the matter, on a case by case basis.

**14. What happens if the funds are secured against a liability?**

Where funds are pledged or secured against a liability, funds net of the liability will have to be repatriated. Full disclosure of the Funds (Assets) and Liabilities is required.

**15. What if my assets abroad are say Kshs. 1 billion but I indicate that I want to return only Kshs. 1 million?**

We expect utmost good faith from applicants when applying for the amnesty if it is to achieve its objective. Nevertheless, it is only what is declared that is covered by the amnesty and in the event that in future undisclosed income not declared under the amnesty is discovered, then the enforcement measures as provided in the law will apply.

**16. Who will make the declaration?**

The declaration is to be made by the taxpayer. However:

- a) Married couples - may file a joint declaration irrespective of whether they file joint or separate self-assessment returns.
- b) Minors or persons under disability - the declaration can be made by the parent, or legal guardian.
- c) Assets held under trust - the declaration can be made by either the trustee, settlor or the beneficiary.

A Tax Agent may also make the declaration on behalf of the applicant.



**17. How is the declaration to be done for trusts?**

In the case of trusts, the declaration can be done by the trust (through the trustees), the settlor or beneficiary or through a tax representative or agent.

The declaration for trusts will be done under Section C of the return showing the aggregate of assets and the liabilities held under each individual trust as attributable:

- a) In case of a beneficiary making the application - to the beneficiary; and
- b) In case of the trustee or the settlor making the application - to the beneficiaries who are Kenya resident taxpayers and to any other person entitled to make the amnesty application.

**18. How is the amnesty process completed?**

Once the Foreign Amnesty return is submitted on the iTax platform, an automatic acknowledgement will be generated by the system signifying the acceptance of the declaration.

Where all the amnesty requirements are met including the transfer of funds that have been voluntarily declared for repatriation back to Kenya under the application, then a certificate confirming the grant of the amnesty shall be generated through the system.

**19. If I have applied and satisfied all other conditions except return of funds, can I be given an interim certificate?**

No, the acknowledgement is sufficient as it is proof that you have successfully lodged your application. iTax system is currently configured to issue a certificate upon full repatriation of the declared funds, besides fulfilling other conditions of the amnesty.

**20. If I declare any foreign income, how do I benefit from the amnesty?**

You will not pay any taxes, penalties or interest on such incomes; secondly Commissioner will not institute any enquiries as to the sources of those incomes. The amnesty therefore grants you an opportunity to clean up your past tax records and begin on a new tax compliant path in the books of the Tax Administration and the Government.



**21. What about immunity from investigations by other Government agencies?**

This is a tax amnesty and has nothing to do with any other agencies or any other matters outside the taxing laws. This amnesty is a legal process and cannot provide immunity on an illegal or criminal act. KRA in its dealing with Taxpayers, with or without an amnesty, cannot extend any immunity to any criminal act committed by the citizens.

**22. Why is the amnesty being provided on taxable foreign income which is not taxable in Kenya anyway?**

In Kenya, we operate a source-based taxation system whereby tax is charged on the income of a person which is accrued or derived in Kenya. The law however deems certain incomes though foreign sourced as having been accrued or derived in Kenya and therefore a person earning such income is required to declare and account for tax in Kenya. These include:

- a) where a business is carried on by a resident person partly within and partly outside Kenya, the whole of the gains or profits is deemed to have accrued in or be derived from Kenya;
- b) in case of employment income, the global employment income of a Kenyan resident and in case of a non-resident, any employment income arising from services rendered to a Kenyan permanent establishment of a non-resident employer;
- c) pension payments received by a resident individual from a pension scheme established outside Kenya to the extent that it relates to employment rendered by the individual, or the husband or parent of the individual, in Kenya;
- d) gains or profits from deposits, assets or other property held outside Kenya by a branch in Kenya of a foreign bank; and
- e) lease payments arising from cross-border leases.

**23. After declaration, will foreign income be taxable in Kenya?**

Unless the Law is amended, only the foreign sourced income listed in No. 22 above are taxable in Kenya.

**24. How do I get further help, if I wanted?**

The Tax Amnesty **Guidelines** and the **Step-by-Step Guide** on filing the return, are hosted on the KRA website. This set of FAQs has been compiled after a series of stakeholder engagements and with their input. You may, however, also contact any of the following officers/offices if you need further clarification on specific issues regarding this amnesty:-



KENYA REVENUE  
AUTHORITY

ISO 9001:2015 CERTIFIED

- a) **Mr. James Ojee** on +254 020 281 7094 or [James.Ojee@kra.go.ke](mailto:James.Ojee@kra.go.ke)
- b) **Ms. Lena Olum** on +254 020 281 7062 or [Lena.Achieng@kra.go.ke](mailto:Lena.Achieng@kra.go.ke)
- c) Any of the nearest KRA/DTD Offices
- d) Any of the Kenyan Embassies, for those Kenyans in the Diaspora.



Benson Korongo, OGW  
**Commissioner of Domestic Taxes Department**

