Potential new bill to introduce changes in tax administration for businesses

Businesses which overpaid tax to the Kenya Revenue Authority will have one year to apply for refunds if the new Tax Procedures Bill 2015 is signed into law.

The bill, which is currently seeking parliamentary approval, also gives the KRA Commissioner the option of conducting an audit of tax payments in order to ascertain the validity of the refunds claimed.

The existing law requires the taxpayer to apply to the KRA for a refund of the overpaid tax within two years of the date on which the tax was paid. The Commissioner is then supposed to notify the applicant in writing of the decision in relation to the application.

"This provision will disadvantage businesses because they will lose the refunds if they don't make a claim in one year," PKF senior tax partner, Michael Mburugu, said.

According to the existing law, when there is an overpayment of tax, the Commissioner can only refund the full amount if the taxpayer does not have any other tax arrears.

The new bill notes that it will be an offence to claim refunds you are not entitled to. It also seeks to amend the liability for directors and controlling members where a company fails to pay tax by the due date. Any director, general manager, company secretary, senior officer, or controlling member of a company shall be jointly held liable for the tax liability of the company, the bill reads.

It adds that executive management will be spared of the tax liability if they do not get paid using company revenues, or if they issue a written notification rejecting the liability. The managers will also be spared the liability if they can convince the Commissioner they were not part of the executive management of the company before the arrangement was made.

The bill seeks to introduce harsh penalties for tax avoidance that companies have been using to legally reduce their tax liability. "If the Commissioner has applied a tax avoidance provision in assessing a taxpayer, the taxpayer is liable for a tax avoidance penalty equal to double the amount of the tax that would have been avoided but for the application of the tax avoidance provision," the bill reads.

According to the bill, a business is required to keep any document required under a tax law for a five-year period, so as to ease the process of determining its tax liability.?

"Despite anything in any tax law, the regulations may provide for a system of simplified record-keeping for small businesses," the bill notes.