



DOMESTIC TAXES DEPARTMENT
POLICY & TAX ADVISORY DIVISION

DTD 611

ORIGINAL

H.O. DECISION – STATION SUBMISSION

H.O. Ref: KRA/DTD/P&TA/1003/2F

Date: 13th September 2023

Taxpayer: Various

TSO: Public Sector Division

PIN: Various

**TAXATION OF SECONDARY EMPLOYEES AND CHARGEABILITY OF
AFFORDABLE HOUSING LEVY**

Reference is made to your submission dated 28th August 2023 on the above subject.

In your submission, you sought advice on whether: -

- a) Board members fall under definition of employees for purposes of implementing Section 31B of the Employment Act, 2007.
- b) Affordable Housing Levy (AHL) is chargeable in respect of secondary employees
- c) AHL applies to board of directors' allowances paid on a quarterly basis, honoraria paid on a monthly basis and salaries paid to casual workers.
- d) The rate of tax on secondary employees needs to be changed from 30% to 35% and if there is any legal backing on this since the Finance Act, 2023 has not directly conveyed the same.

Having reviewed your submission, we would like to guide as follows -

- a) Directors earn an income for rendering a service to the employer, just like all other employees. Therefore, AHL is applicable to all employees, including directors, notwithstanding their terms of engagement or contract of service.

The Employment Act, 2007 interprets an employee to “*mean a person employed for wages or a salary and includes an apprentice and indentured learner*” while an employer is interpreted to mean “*any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual..*”. The Act further guides that a contract of service may be an oral or written agreement, may be expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership. Thus, AHL applies to all employees with contracts of service irrespective of the terms.

- b) Where an employee earns employment income from two or more employers, one employer is referenced as primary and another secondary employer. Each primary or secondary employer makes payment separately to the employee hence should account for AHL on the Gross Monthly salary payable to the employee. The employee will have paid AHL on the total gross salary earned from all employers though remitted separately by each employer.



- c) In a public notice dated 15th August 2023 on AHL, the Commissioner guided that “*Gross monthly salary*” constitutes basic salary and regular cash allowances. Honoraria and directors allowances would qualify as regular allowances as director meetings often take place in scheduled intervals and as such have a degree of regularity. Honoraria paid on a monthly basis and directors’ allowances paid on a quarterly basis for a contract of service are therefore subject to AHL. Further, salaries paid to casuals for services provided for a period of time are also subject to AHL.
- d) Concerning the change of rate of PAYE on secondary employees from 30% to 35%, please note that while the secondary employee PAYE rate was delivered at 35% on iTax, the PAYE return form (P10) does not bind the employer to use the 35% rate as it is a self-assessment return. Therefore, the employer is given an opportunity to engage the secondary employee, compute and capture accordingly, the self –assessed tax for the secondary employee.



Esther Wahome,
Deputy Commissioner, Policy and Tax Advisory,
FOR: COMMISSIONER FOR DOMESTIC TAXES.