ANALYSIS OF THE FINANCE BILL, 2020

The 2020/2021 Budget (Herein referred to as the Budget) was read by CS Ukur Yatani on the 11th of June 2020. The current Budget is unique and differs from prior year budgets for the following reasons;

I. The Finance Bill 2020 (herein referred to as the Bill) was tabled in Parliament prior to reading of the Budget unlike prior year budgets. It is the first budget following the Court Directives issued last year following the ***Okiya Omtatah Okoiti v The Cabinet Secretary, National Treasury and 3 others, Constitutional Petition No. 253 of 2018 case.*** In which the Court directed that no provisions in the Bill can come into force unless the Bill is assented into Law as a result no taxes can be collected until the Finance Act is assented and the respective tax provisions take effect.

II. The Bill unlike prior year Bills does not include the effective date of the provisions outlined. This follows the reasons outlined above. It is therefore expected that the proposals shall take effect once the Bill is assented into Law.

III. The 2020/2021 Budget is set at Kes 2.7 Trillion a drop from 2019/2020 budget which was set at Kes3.8 Trillion. Unlike other budgets, the 2020/2021 Budget has not increased from the preceding year's budget. This however is expected as Budget comes at a time when the economy has been adversely impacted due to the Covid-19 Pandemic.

IV. The Budget has been presented during a Global Pandemic hence the theme of the budget is to institute measures to stimulate the economy and revive business activity and Industries as a whole.

We proceed to highlight various tax measures outlined in the Finance Bill 2020 and provide our insight on the impact of these proposals.

A. INCOME TAX ACT

1. Residential Rental Income

The Bill proposes to increase the threshold for the residential income from Kshs. 10 Million to Kshs. 15 Million per annum. Previously, the Act limited the same to between Kshs. 144,000 to Kshs. 10 Million. The applicable tax rate remains at 10%.

With the proposed amendment, it means that the residential rental tax base has been widened to include more Landlords and property owners.Noting the success of the monthly rental income tax introduced in 2016, the Government, through the Budget Statement for the FY 2020/21, acknowledged the positive impact of the simplified tax regime that had played an important role in boosting tax compliance among landlords.

In light of this, the Government seeks to broaden the tax regime by including more landlords taxable under the monthly residential rental income tax regime umbrella. This is a welcome move that will enhance tax compliance within the residential rental industry.

Although Landlords still have the option of staying in the Corporation tax regime which allows them to utilize their expenses against taxable income and any tax losses accrued in prior years.

2. Introduction of Minimum Tax

The Bill proposes to introduce a Minimum Tax of 1% of Turnover. The proposed tax shall be paid in installments due on the 20th day of each period ending on the 4th, 6th, 9th and 12th months of the year of income.

The tax if passed will see business pay corporation taxes even if in a loss making position. This is because the Bill also proposes to delete provisions that allow loss making entities to forego Installment taxes where they are certain they will not have an income subject to tax.

The said provision has been replaced so as to exclude a taxpayer from paying instalment tax where the minimum tax payable under the new Section 12D is higher than the instalment tax.A measure perhaps to ensure that the highest possible tax is due and payable.

Of note is that the proposed Section 12D(c) notes that the minimum tax shall be payable where the instalment tax payable is higher than the minimum tax. This beats the logic behind the introduction of the minimum tax considering that its introduction was targeted to instances where instalment tax was excluded or not payable. The same is also in contradiction to proposed Section 12(1) (a).

The proposed minimum tax will not be applicable if;

- the income is not exempt under the Income Tax Act.
- the income is not from employment; rental income; turnover tax; capital gains or income from companies extracting oil and gas and carrying out mining activities; and
- If the instalment tax payable is higher than the minimum tax.

The tax will more likely be a burden to most business more so those in a tax loss making position which would ordinarily not have an income subject to tax. Further it will be higher than the current corporation tax cost as it is based on the gross turnover. The tax will also be a final tax whereas it would make more sense if it were utilized to offset against any corporation taxes owed or as an advance tax in the case of loss making businesses once they are in a profitable position.

The Minimum tax will increase financial strains on most companies, negating Kenya's economic stimulus programs employed to boost local economic growth dampened by the coronavirus. It is our opinion that the Government should rethink the minimum tax which could have negative ramifications to the economy.

3. Digital Service Tax

The Bill proposes the introduction of Digital Service Tax (DST) chargeable at the rate of 1.5% of the gross transaction value. This tax shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place. This will be an advance tax for resident person or non-resident person with a permanent establishment in Kenya hence they may offset the tax paid against the tax payable for that year of income.

The Finance Act, 2019 defined a digital market place as a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means. The introduction of the DST is in furtherance of the amendments introduced in the Finance Act. This tax shall be due at the time of the transfer of the payment for the service to the service provider.

Under, the Finance Act, the Cabinet Secretary is to come up with regulations to guide in the taxation of the digital market place. As at now, the said regulations are yet to be released. It will be interesting to see how the regulations would direct the taxation of the digital economy considering that most global countries are still struggling to implement the tax.

It is however imperative to note that regulations for VAT on transactions undertaken through a digital marketplace have been drafted for public consideration, although the Bill does not highlight on this.

In his Budget Reading for the FY 2020/2021, the Minister of Finance took cognizant of the rapid advancement of technology which had increased digital transactions in the economy. The Government views the digital economy as a rich untapped revenue source, with the potential to seal revenue gaps for the Exchequer. However, taxing the digital economy can be a herculean task replete with myriad of challenges due to the nature of this economy.

In addition, the world being a 'global village' today, Kenya's introduction of digital service tax will likely create friction in the international community, with countries such as the US perceiving their companies as 'targeted audience'.

In our opinion, Kenya should shelve its DST until the Organisation for Economic Co-operation and Development (OECD) tables its proposals on how to tax the digital economy. Indeed, the DST is an emerging issue in Africa and beyond, however, Kenya should tread carefully not to introduce taxes which could spark tariffs wars with other countries who disapprove of taxes.

4. **Allowable expenses in computing taxable profits**

The bill proposes to minimize the expenses that are allowable in computing the taxable profit. This will include the following expenses namely:

- Entrance fees and annual subscription to a trade association;
- Incidental costs and capital expenditure incurred on legal costs to issue shares, debentures and securities to the general public or in the securities exchange or to issues shares without raising additional capital;
- Club subscriptions paid by an employer on behalf of an employee; and
- Capital expenditure incurred in by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure.

The CS mentioned in the budget speech that various measures will be put in place to limit tax incentives and recoup revenue lost as a result of such incentive. This proposed measures was introduced with this aim.

The implication of this is to reduce the allowable expenses in computing taxable profit. Of note is that these proposals were made in the Tax Law (Amendment) Bill, 2020 but were rejected due their adverse effects it will have on the targeted industries and hinder the growth of social infrastructure.

5. **Registered Home Ownership Savings Plan (HOSP)**

The entire Section 22C on allowable deductions contributions to Home Ownership Savings plan has been repealed. The implication of this is that the contributions to a registered HOSP shall no longer be an allowable deduction against employment income.

The introduction of this provision was meant to encourage more people to save under the registered HOSP in a bid to ensure affordable housing. However, its proposed repeal will discourage savings to the registered HOSP and hence contradicting efforts to attain one of the government's Big Four Agenda on affordable housing.

It should be noted that this proposal was made in the Tax Law (Amendment) Bill but the same was rejected as it negatively affects the government's Big Four Agenda on affordable housing.It will be interesting to see if the same proposal will be accepted or rejected once the Finance Act is assented.

6. Reduction of Exempt income under the First Schedule

The CS mentioned in the budget speech that various measures will be put in place to reduce tax exempt income in order recoup tax revenue lost as a result of various tax saving measures introduced via the Tax Law Amendment Act (TLAA).

This proposed measure was introduced with this aim in mind.The proposal includes the taxation of various income exempt from tax namely: -

- Income of registered HOSP;
- Income of NSSF Fund;
- Monthly pension granted to a person who is 65 years of age or more; and
- Income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band, that is, Kshs. 24,000.

The introduction of these amendments is clearly to increase the tax revenue for the government. However, the taxation of income from registered HOSP means that the those aspiring to own homes through the HOSP initiative will be discouraged considering that the interests will be subject to tax. It is a counter productive move since it directly contradicts the government's plan on affordable housing as a Big Four Agenda .

The taxation of income from the NSSF Fund and monthly pensions to persons above 65 years, means that the income of such taxpayers who are retirees will be reduced. This proposal was rejected when it was tabled under the Tax Law (Amendment) Bill, 2020 for the reason that it depleted the pension payable to retirees. The Cabinet Secretary, however in his speech reintroduced this proposal, the legislature's initial reservations notwithstanding.

On imposition of tax on the bonuses and overtime allowances of employees who earn Kshs 24,000 and below, the same might be informed by the fact that they are currently not subject to payment of PAYE. However, the proposed removal of the existing tax exemption will defeat the intention for the removal of PAYE imposition for such income earners considering that this may deplete their disposable income as opposed to increasing the same as intended.

B. VALUE ADDED TAX ACT

7. Validation of VAT Input Tax

The Bill proposes to be introduce various requirements relating to validation of input VAT.Under, the proposed new section the deduction of input tax shall not be allowed unless;

- the person has the requisite documentation, within 6 months at the end of the tax period in which the tax supply occurred; and
- the registered supplier has declared the sales invoice in a return in respect of the VAT being claimed.

The provisions outlined above support VAT Auto Assessment (VAA) measures currently being undertaken by the KRA. This is to ensure that there are no inconsistencies between the input claimed by buyer and the output VAT declared by the supplier as well as ensuring compliance on both ends.

This additional requirement is in a bid to align the current demands by Kenya Revenue Authority under the VAT Auto Assessment (VAA) system to the Law in requiring taxpayers to provide corresponding evidence in instances where a seller has failed to declare an invoice hence no declared the output VAT.

The implication of this is that a Taxpayer will end up being denied their legitimate claim for Input Tax. However it is not the buyer's obligation to ensure that the seller remains compliant hence there is no need to shift the obligation from KRA's hands to the buyer more so where the input VAT was validly incurred by the buyer within the provisions of VAT law.

8. <u>Reduction of items exempt from VAT</u>

The Bill proposes to introduce the imposition of 14% VAT on the following exempt goods: -

- Helicopters of an unladen weight both exceeding and not exceeding 2,000 kg;
- Aeroplanes and other aircraft of an unladen weight not exceeding 2,000 kg and other parts of aeroplanes;
- Air combat simulators; aircraft launching gear and their parts thereof;
- Other ground flying trainers and parts thereof;
- Supply of materials, waste, residue and by-products used for animal feeds;
- Specialized solar equipment and accessories, including solar water heaters and deep cycle-sealed batteries which exclusively use or store solar power;
- Tractors;
- Goods of tariff No. 4011.30.00;
- Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves
- Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, or iron or steel;
- One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse and which is not exempted from VAT the First Schedule;
- Plant, machinery and equipment used in the construction of a plastics recycling plant.

This reduction of the goods subject to VAT exemption is a move aimed at increasing tax revenues to recoup revenues foregone due to measures introduced to combat COVID-19 economic impact such as reduction of VAT rate from 16% to 14%.

However various incentives will be withdrawn at a time when many industries need these incentives the most. This includes introduction of VAT on inputs to manufacture of animal feeds and tractors which are key inputs in the agriculture sector. This is one of the sectors that is highly instrumental during this period.

These inputs will be more expensive and the costs will likely trickle down to the final consumers. The cost of energy will likely go up for clean energy appliances which will be subject to VAT. The same impact will be felt by manufacturers of recycling plants whose inputs will be subjected to

VAT. These proposed tax measures will serve a blow to efforts aimed at energy and environmental conservation which is an instrumental initiative for the country.

Another key industry that will be affected with the proposed amendments is the aviation industry. In the wake of the Covid 19, the said industry has already incurred a lot of financial strain and losses due to restricted movements and lockdown measures. The proposed imposition of VAT on some aviation materials will aggravate the industry negatively.

Of note is some of these proposals were made in the Tax Law (Amendment) Bill, 2020 but were rejected considering the implications it would have in highlighted industries that are currently struggling as a result of the coronavirus pandemic.

9. **<u>Exemption from VAT</u>**

The Bill proposes to exempt maize (corn) seeds from VAT. This is informed by the fact that Kenya is currently experiencing the coronavirus pandemic, as well as effects of locusts scourge on farms which have diminished food supplies.and there is a need to ensure food security. Moreover, this is in line with the government Big Four Agenda on ensuring food security.

Further, the supply of ambulance services is proposed to be exempt from imposition of VAT. This exemption means that the cost of the said services will reduce, especially bearing in mind the current health situation.

10. **<u>Reductions of items that are zero-rated</u>**

The Bill seeks to delete some items from the list of those zero-rated items hence proposing to tax these items namely: -

- The supply of ordinary bread;
- The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight;
- Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya

The implication of this is that the said products will no longer be zero rated and hence taxable at 14%.

The supply of ordinary bread and floor are essential commodities. Their taxation will likely lead to an increase of their costs which will be borne by consumers. Taking cognizance of the coronavirus pandemic, such amendments are untimely as most taxpayers are trying to survive with hard economic times. This contradicts the government efforts to ensure sustainable livelihood for its citizens during the pandemic. It is important to note that these amendments were proposed in the Tax Law (Amendment) Bill 2020 but were rejected.

C. <u>EXCISE DUTY ACT</u>

11. **<u>Expansion of the definition of License</u>**

The Bill proposes to expand the scope of the term ***"licence"*** to include the licence required to carry out activities in Kenya as gazetted by the Commissioner and requiring an excise licence.

This brings clarity on the licence required when other activities as gazetted by the Commissioner are involved in that a taxpayer does not need an additional licence as long as they have the excise duty licence.

12. Reduction of alcohol strength on Alcoholic Drinks

The Bill proposes to reduce the percentage of the alcohol strength on alcoholic drinks from 10% to 8 % as follows: -

- Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength ***not*** exceeding 8%
- Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 8%

The implication of this is that as for the beer, cider, perry, opaque beer and mixtures, the scope of alcoholic drinks chargeable to excise duty has been reduced whereas as for the spirits the same has increased. Currently, the excise duty chargeable in respect to the category of beers is Kshs. 100 per litre whereas for the spirits, the same is Kshs. 253 per litre. With the increased scope in respect to the spirits chargeable to excise duty, this means more revenue for the government.

D. TAX PROCEDURES ACT

13. Voluntary Tax Disclosure Programme

The Bill seeks to introduce a voluntary tax disclosure programme for a period of 3 years with effect from the 1st January, 2021.The program will enable the taxpayer to discloses their tax liabilities to the Commissioner for the purpose of being granted a relief on the penalties and interest for the tax obligations disclosed. Persons who wish to take advantage of this programme may apply to the Commissioner for relief in respect to tax liabilities that accrued within a period of 5 years prior July 1, 2020, that is, until June 2015.

A taxpayer who volunteers under this programme shall not be prosecuted with respect to the tax liability disclosed. Further, he shall be granted a remission of the interest and penalty due on the tax liability as follows: -

Period of Disclosure	% Remission
1st Year	100%
2nd Year	50%
Final Year	25%

An application shall be voluntary and the taxpayer will be required to disclose all material facts regarding the taxes payable.

Upon fulfillment of all the requirements, the Commissioner shall grant the relief, provided the relief shall not result in the payment of a refund to the taxpayer.

Once the relief is granted, the Commissioner shall enter into an agreement with the taxpayer setting out the terms of payment of the tax liability and the period within which the payment shall be made. This period shall not exceed 1 year from the date of the agreement.

Where a taxpayer fails to meet the terms agreed, the taxpayer shall be liable to pay the full penalties and interest that had been remitted under the agreement.

Once a taxpayer has been granted the relief, he shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner.

In instances where there is a discovery that full disclosure was not made to the Commissioner, then, there will be a withdrawal of any relief granted; assess and collection of any balance of the tax liability and commencement of prosecution of the Taxpayer. However, a Taxpayer can appeal against the decision of the Commissioner.

The application to the voluntary programme shall not be applicable where a Taxpayer is under audit, litigation, investigation or has been notified of a pending audit as relate to the tax liability the subject matter.

The introduction of voluntary tax disclosure programme is meant to boost tax compliance at a time when the taxman is struggling to hit revenue targets. This is by encouraging non-compliant taxpayers to declare income and pay principal amounts owed as well as reduced penalties and interest. After which they shall be required to continue being tax compliant.

With many businesses struggling due to the current pandemic engaging in court disputes may not yield favorable results. Therefore, the voluntary disclosure comes in handy to boost compliance.However the programme leaves room for further investigation on KRA's end which may mean further assessment of the taxes owed where income is under declared This means that unlike previous amnesty programs, the taxpayer's declaration will be subject to scrutiny at a later date.It will be worth following on how the taxpayers will respond to the introduction of this programme.

14. <u>Appointment of Digital Service Tax Agent</u>

The Bill proposes the appointment of a Digital Service Tax Agent by the Commissioner for the purpose of collection and remittance of digital service tax.These appointments are in furtherance of the introduction of the digital service tax.

Moreover, the Commissioner will have the powers of revoking the appointment.Of note is that the Bill does not provide the circumstances upon which the Commissioner may revoke the appointment, which leaves the Commissioner with so much discretionary powers hence prone to abuse.

This measure is likely to increase the compliance burden of the appointed agents, however it remains to be seen if the agents will be granted the option to object to the appointment.

E. MISCELLANEOUS FEES AND LEVIES ACT

15. <u>Import Declaration Fee on goods imported under duty remission scheme</u>

The Bill proposes a charge on Import Declaration Fee (IDF) for goods imported under the East African Community Duty Remission Scheme from the current Ksh.10,000 to 1.5% of the Customs value.

The Cabinet Secretary for the National Treasury and Planning declared in the 2020/21 budget reading that the COVID 19 pandemic will affect the IDF and the Railway Development Levy (RDL)'s revenue in the year's budget.

The implication of the change is that the payable IDF is now dependent on the custom value rather than a fixed value. This will consequently lead to an increase in the IDF collected thus more revenues for the government. This will be in line with the Government's 2020/21 Budget theme which is ultimately steer economic recovery attributed to the COVID 19 pandemic.

16. <u>Duty on goods for home use from an export processing zone enterprise</u>

The Bill seeks to introduce an additional duty at a rate of 2.5% of the customs value payable in respect of goods entered for home use from an export processing zones (EPZ) enterprises.

These goods are currently subject to import duty once entered for home use and may bear a proposed additional import duty. This will apply to goods which are imported into the domestic market and will increase Government revenue.

17. Exemption from Import Declaration Levy

The Bill proposes the specificity on the exclusion from IDF in respect on aircrafts but the same excludes aircraft of unladen weight not exceeding 2,000kg and helicopters. Currently, the exemption from the IDF is broad as it covers aircrafts in general.

This move is going to limit the number of aircrafts qualifying for the Import Declaration Levy exemption. While it is going to increase revenue collection it will discourage importation of aircrafts as it will increase cost of importation. This will impact the aviation industry during these times of the coronavirus pandemic.

Further, the Bill proposes the exemption of IDF on goods including material supply equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Goods purchased for official use by the Kenya Defence Forces and National Police are already exempted from VAT, Import Duty, Customs and Excise Duty. The addition of this exemption will be an added benefit to the KDF and National Police service.

On revocation of exemption from IDF, the Bill proposes the payment of IDF for goods imported for implementation of projects a under special operating framework arrangement with the Government which defeats the purpose of the creation of the special operating framework aimed at incentive investment in such arrangements.

18. Railway Development Levy

The Bill seeks to exclude the following list of goods exempted from Railway Development Levy (RDL) that Cabinet Secretary may determine are in public interest to import, or to promote investments whose value shall not be less than Kshs. 200 Million.

Moreover, the Bill has proposed the inclusion of the following list of exempt goods;

- Currency notes and coins imported by the Central Bank of Kenya; and
- All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police

F. TAX APPEALS TRIBUNAL ACT

19. Documents used in appeal

The Bill proposes amend the Tax Appeals Tribunal Act to limit the grounds relied upon by an Appellant to appeal or the ***documents*** to which the decision relates. The implication of this is that an Appellant cannot rely on new documents but only those filed with the Tribunal relating to the Commissioner's decision.

G. MISCELLANEOUS

Public Roads Toll Act, CAP 407 Laws of Kenya

20. Expansion of the definition of toll collector

The definition of the toll collector has been expanded to include private and public entities. In essence, this means that the same is no longer restricted to public entities that the Cabinet Secretary or road authority may also appoint private entities to collect tolls.

21. **Removal of requirement for National Assembly Approval of Agreements**

Further, the Bill proposes the removal of the requirement to have an agreement entered into by the CS or road authority to get the approval of the National Assembly. This is a welcome move as it will fasten the process of concluding Agreements as entered into by the government.

22. **Levying of Tolls**

The Bill further seeks to amend the levying of tolls pursuant to an agreement such that the levying is no longer limited to the levying on erected tolling stations. With the proposed amendment, the agreement may include other alternative arrangements for the levying, collection and administration of tolls and management of toll infrastructure. Moreover, the CS may prescribe the base toll rate in the agreement and permit the person to adjust, vary or otherwise revise the toll in accordance with an adjustment mechanism provided in the agreement. Such a person will also be allowed to collect the unpaid tolls from defaulters as a civil debt recoverable summarily.

23. **Establishment of the National Roads Toll Fund**

The Bill proposes the establishment of the National Roads Toll Fund where all tolls collected shall be remitted to. The fund shall be administered in accordance with the Public Finance Management Act of 2012.

The proposed amendments pave the way for the establishment of toll roads in Kenya, more so under Public Private Partnership investment schemes which the government is encouraging.

Capital Markets Act, Cap. 485A. Law of Kenya

24. **Regulation of private equity and venture capital companies**

There Bill proposes to expand the functions and scope of the Capital Markets Authority (CMA) to include the licensing, approval and regulation of private equity and venture capital companies that have access to public funds. Currently, the CMA does not have regulatory oversight over private equity and venture capital companies.This move will enable Retirement Benefits Investment Schemes to invest in such companies.

25. **Unclaimed Dividends**

The Bill proposes to exclude the payment to beneficiaries from collected unclaimed dividends, as a function of the Investor Compensation Fund. This function is currently administered by the Unclaimed Financial Assets Authority which is responsible for tracing beneficiaries of unclaimed assets.

Insurance Act, Cap. 487 Laws of Kenya

26. **Time Limit for Filing Appeal to the Insurance Tribunal**

The Bill proposes to set the time limit for filing an appeal as against the decision of the Commissioner of Insurance to the Insurance Tribunal to be within 30 days of issuance of the decision. Currently, there is no specified time limit within which an appeal can be filed to the Tribunal.This is to ensure appeals are lodged timely. Currently, there is no specified time limit within which an appeal can be lodged to the Tribunal.

Standards Act, CAP 496 Laws of Kenya

27. Change in definition of Consolidator

The Bill proposes to introduce a new definition for the term "consolidator" to mean a ***firm that is licensed to consolidate goods belonging to different consignees at the country of export, which shall be under one Master Bill of Lading or Master Airway Bill, and breaks the consignment into smaller consignments at the port of destination for the different consignees for the purpose of individual customs declaration.***

With this proposed definition, consolidators will now be required to possess a license. Moreover, consolidator will be required to break consignment into smaller parts for custom declaration and payments hence curbing revenue leakages.

Road Maintenance Levy Fund Act, No. 9 of 1993

28. Removal of remittance of Transit Tolls

The Bill proposes to remove the remittance of transit tolls to the Road Maintenance levy Fund. This is in line with the proposed amendments to the Public Roads Toll Act where a Fund has been established for the remittance of the said tolls.

This measure will ensure that there is a separate Fund tasked with collection of transit toll levies only.

Kenya Revenue Authority Act, No. 2 of 1995

29. Establishment of an institution on Capacity Building and Training

There is proposes establishment of an institution for the provision of capacity building and training for the better carrying out of Authority's functions. It is proposed that the Board of Directors of KRA will be mandated to make regulations in respect to the training and capacity building.

30. Commissions to constitute funds of the Authority

The Bill proposes to widen the scope of what constitutes the funds of the Authority to include any commission received by the Authority for collecting any revenue on behalf of a county government or government agency. Such commission has been capped at 2% of the total revenue collected on behalf of the county government or government agency.

31. Limitation of Action against the Authority

The bill introduces a limitation of action provision as against the Authority as follows: -

- it is commenced within 12 months after the act, neglect or default complained of;
- in the case of continuing injury or damage, within 6 months after the cessation of the act; and
- at least 1 month written notice is issued specifying the particulars of the claim and intention to commence the action or legal proceeding

This provision is meant to prevent random institution of suits as against KRA and also to ensure that KRA effectively prepares for the same.

Retirement Benefits Act, No. 3 of 1997

32. Penalty for failure to remit Actuarial Evaluation Report

The Retirement Benefits Authority Act provides for submission of actuarial evaluation reports by retirement benefit schemes within the specified timelines but does not provide for any penalties on non-compliance

The Finance Bill 2020 proposes to impose penalties of Kshs. 100,000 and a further Kshs 1,000 per day on continuing default by the schemes in failure on trustees who fails to submit the actuarial evaluation report within the specified timelines. The budget statement 2020/2021 also proposes the imposition of penalties on the same but does specify the amounts to be paid.

The move will ensure compliance by RB schemes and also assist the Retirement Benefit Authority in making informed decisions on the funding on the scheme.

Insolvency Act, No. 18 of 2015

33. **KRA to be ranked under second priority claims in case of liquidation of its appointed bank agent**

The Bill seeks to include amounts held on behalf of Kenya Revenue Authority by an appointed agent under the Banking Act as falling under the second priority claims where such Bank falls under liquidation or receivership.

This amendment will ensure that the monies held on behalf of KRA by a Bank as an agent are treated as a debt owing to KRA hence prioritized and remitted to KRA regardless of the Bank being liquidated.

H. CUSTOMS

34. **Proposed Customs Measures**

The East African Community has proposed various measures to cushion and protect local manufacturing industries. This is done by ensuring that the imported substitutes or products are more expensive hence less attractive, more so at a time when encouraging purchases of local products is encouraged to revive the local manufacturing industry. These proposed measures are as follows;

- Proposals to maintain Import Duty on Iron and Steel products at 35% for one more year. This is to protect the metal and allied sector from stiff competition.
- Proposals to maintain Import duty on Paper and paper board products at 25% for another year, so as to protect manufacturers of these products from cheap imported products.
- Proposed import duty exemption on inputs used to manufacture baby diapers to support the manufacture of these items locally.
- Proposals to exempt import duty on inputs used in the textiles and apparels sector.These measures will safeguard Government revenues by curbing under valuation on such imported products/to protect this sector from cheap imported products in order to encourage investments in the sector.
- Proposals to exempt import duty on inputs used to assemble and manufacture mobile phones in order to stir growth in the telecommunication sector and encourage local investments.
- Proposals to maintain import duty rates on leather and footwear sector introduced in the Finance Act 2019.
- Proposals to remit duty on inputs used in the manufacture of masks, sanitizers,ventilators and Personal Protective Equipment (PPE), with a view of enhancing measures aimed at containing Covid-19, in addition to encouraging local production of such products.

- Proposed remissions on import duty supplies used for diagnosis, prevention, treatment and management of epidemics, pandemics and health hazards.This to ensure that the EAC will be in a position to mitigate risks and deal with any future occurrence of such nature

Of note is that the Customs measures are set to be effected by ***1st July 2020.***

Conclusion

The Government has outlined various measures to stimulate economic activities which also include budgetary allocations and tax incentives in some cases. On the flip side majority of the measures are aimed at recouping tax revenues foregone either through incentives or exemptions previously issued which as per the Budget speech represent 6% of the Country's GDP Kes 535 Billion. This also includes revenues foregone via tax measures instituted to cushion against the Covid-19 pandemic's economic impact.

However most of the measures may have an adverse effect as they take away incentives previously included and later turned down in the TLAA.

We look forward to seeing how the proposed measures will fare once finalized and assented into law through the Finance Act 2020.For further information on proposed changes or any other tax queries kindly contact your regular Taxwise Africa Analyst or the contacts below.

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