PROPOSED TAX LAWS (AMENDMENT) BILL, 2024

SUMMARY

The Finance Bill of 2024, which faced significant opposition from the public, particularly from the Gen-Z demographic, became a focal point of national discourse. The government had initially proposed a series of tax increments under the Bill, however, due to a series of protests and public outcry, particularly against the entire Bill which was seen as oppressive, the government was forced to withdraw the Bill. This move was framed as an effort to address public concerns and reduce economic strain on citizens.

However less than 7 months of this withdrawal, it seems that provisions from the original Bill have been subtly reintroduced in the guise of new tax proposals begging the question whether the draconian finance Bill was entirely done away with. It is in light of this that we share the highlights of the proposed amendments together with their potential implications to different sector players.

A. The Tax Laws Amendment Bill, 2024

The Bill proposes several tax proposals to amend the following laws:

1) Income Tax Act

a) The Significant Economic Presence Tax

The Bill proposes the introduction of a new tax know as the significant economic Presence Tax which will be payable by nonresident companies that earn through providing services in Kenya through the digital market place. The proposed amendment is intended to replace the Digital Service Tax. Instead of 1.5%, companies will be taxed at the rate of 6%.

Potential implications

- There is a risk of double taxation if companies are taxed both in their home countries and in Kenya;
- Introduction of this tax is likely to hamper growth in the digital economy and negatively affect Kenya's competitiveness;
- To maintain profit margins, MNCs are likely to pass on the increased tax costs to consumers which could potentially lead to higher prices for digital services in Kenya.

b) Minimum Top up Tax

The Bill seeks to introduce a minimum top up tax of 15% which will be payable in Kenya by Multi National Enterprises which have an effective rate less than 15% and have consolidated annual turnover of 100 billion shillings.

Potential implications

- Companies that have previously benefited from tax incentives or lower tax rates will now be subject to the Minimum Top-up tax, which will lead to higher overall tax obligations;
- Multi National Enterprises operating in Kenya will need to review their tax structures to ensure that they are compliant with the new regulations;
- MNCs are likely to reassess their investment decisions in Kenya based in the new tax implications, this could affect future expansions of new operations within the country;

c) Taxation of export Processing Zone

The Bill seeks to amend the 11th Schedule to the Income Tax Act to remove the penalty for failure by EPZ enterprises to submit a return since the penalty is being provided for under the Tax procedures Act.

Potential implications

- The removal of penalty under the Income Tax Act may be viewed as an encouragement for an EPZ enterprise to focus on compliance with the existing tax procedures without the fear of dual penalties for the same infraction. This will result to better compliance rates, as businesses are likely to feel that the regulations are less punitive;
- By simplifying the regulatory framework and reducing the penalties, the government is likely to attract more investment into the EPZs. A more business friendly environment could encourage both local and foreign investors to consider establishing operations within these zones.

d) Income which is exempt from Tax

The Bill proposes exempting pension payments, including gratuity and withdrawals from registered pension, provident funds and the National Social Security Fund from income tax. It also introduces a 5% tax rate on interest income from infrastructure bonds. Additionally, non-resident contractors involved in projects financed entirely by grants would be exempt from income tax. Lastly, the exemption of income from the National Housing Development Fund would be removed.

Potential implications

- Employers will need to ensure that they remain compliant with the new tax provisions.This includes updating their payroll systems and ensuring that employees are well informed of the changes;
- The exemption from income tax for non resident contractors involved in projects financed entirely by grants could make Kenya a more attractive destination for foreign investment in grant funded projects leading to an increase in international collaboration and investment in local projects;
- Nonresident contractors may benefit from reduced tax liabilities, which could enhance profit margins and encourage participation in projects that contribute to national development.

2) Tax Procedures Act

a) Appointment of VAT withholding agent

The Bill amends section 42A of the Tax Procedures Act to establish the offence where a withholding tax agent fails to withhold tax or fails to remit tax and sets a penalty of 10% of the amount not withheld or remitted.

Potential implications

- The amendment will encourage timely and accurate remittance of tax to KRA by the agents;
- The introduction of a penalty of 10% of the amount not withheld or remitted creates a financial risk for agents who may inadvertently fail to comply.

b) Data management and reporting system

The Bill amends section 59A of the Tax Procedures Act to provide for integration of electronic tax system with iTax for purposes of submission of electronic documents and facilitate uptake and deployment of technology to facilitate cost effective revenue collection. The integration of the systems will also facilitate the transmission of electronic documents for tax purposes thus minimizing human interaction and enhancing revenue mobilization.

Potential implications

- The integration of electronic systems is likely to streamline the process of tax submissions for individuals and different industries. By reducing the need for physical documentation, the process is likely to become faster and more efficient, leading to quicker processing for tax returns and other related documents;

By facilitating the transmission of electronic documents and improving overall efficiency of tax administration, the government will be able to increase revenue collection;

B. Proposed Business Laws (Amendment) Bill,2024

The Business Laws (Amendment)Bill, 2024 consolidates several proposals to amend the following laws:

1) Investment Promotion Act

The Bill proposes provision for accreditation of persons who facilitate foreign direct investors by the Kenya Investment Authority. The Bill further seeks to introduce a provision to provide for the registration of foreign investments by KIA and issuing of investment certificate that guarantees them with various benefits in terms of the permits issued and fast tracking of incentives and exemption. Lastly, the Bill proposes for the provision of a centralized facility for ease of doing business.

Potential implications

- The accreditation of facilitators by the KIA will set standards ensuring that only qualified individuals or entities assist foreign investors, enhancing trust and security for foreign investors;
- Having a traceable system in place will ensure that foreign investors feel more protected against potential fraudulent activities thereby encouraging more investment;
- The registration of foreign direct investments will lead to a quicker establishment of foreign businesses in Kenya;

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- The establishment of a centralized facility will streamline processes, allowing investors to access multiple government services in one location thereby reduce the time and effort required to navigate bureaucratic hurdles. As such this will encourage more investors to establish their businesses in Kenya;
- A one stop centre will enhance the overall experience for investors by providing a clear and straightforward path for registration and compliance.

2) Employment Act

a) Obligation of BPO Companies

The Bill proposes amendment of the Employment Act to provide for obligations of BPO companies and all providers of IT enabled services to their employees.

Potential implications

- By recognizing the employer contractor relationship, employees in BPO are likely to receive enhanced protections under the law, including rights to fair wages, working conditions and benefits;
- BPO companies might be required to specific obligations related to employee rights such as providing contracts;
- Employers must be aware of the legal risks associated with non-compliance. Failure to adhere to the new provisions could result in legal disputes, penalties, or reputational damage.

3) Banking Act

The proposed amendments to the Banking Act seek to impose stricter penalties on banking institutions and credit reference bureaus for non-compliance with prudential guidelines set by the Central Bank, with fines of three million for body corporates and one million for natural persons. Additionally, the Bill introduces a provision to progressively increase banks' core capital, with the aim of reaching ten billion (10B) by 2027.

Potential implications

- The introduction of stiffer penalties for non-compliance will compel banking institutions to enhance their compliance mechanisms. Failure to adhere will lead to significant financial penalties.
- By mandating progressive increase in core capital, the amendments aim to promote the financial stability of banks. Higher capital reserves can absorb potential losses, reducing the risk of bank failures.

4) CBK Act

The proposed amendments to the Central Bank of Kenya Act aim to expand the regulation of non-deposit taking credit businesses, including digital lenders, to cover all such credit providers, ensuring they are regulated by the Central Bank. It also seeks to establish licensing requirements, approval of credit channels and parameters for credit provision along with provisions for sharing credit information. Furthermore, the Bill gives the Central Bank regulatory authority over credit guarantee businesses including their registration and licensing.

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Potential implications

The amendments may enhance consumer rights by ensuring that all credit providers adhere to fair lending practices. This includes transparent disclosure of credit terms and conditions thereby protecting borrowers from predatory lending

5) The Lands Act

The Bill proposes to amend Act to shorten the timeline within which a chargee can enforce remedies in the event of a chargor's default. The Bill also proposes to amend the Act to reduce the period within which a chargee can exercise the power of sale from 40 days to 20 days.

Potential implications

- The shortening of the timeline for charge to enforce remedies means that chargers will face greater pressure to meet repayment obligations promptly. If the borrower defaults, then the lender can take action more quickly potentially resulting in the loss of property in a short timeframe;
- The amendments will provide charges with a more efficient mechanism to recover debts thereby reducing the risks associated with lending. This could encourage more financial institutions to extend loans, especially for affordable housing projects;
- With a shorter timeline for enforcing remedies and exercising the power of sale,lenders may feel more secure in their lending practice;
- Financial institutions will need to communicate the implications of the amendments clearly to potential borrowers, ensuring that they understand the risks of default and the rapid enforcement processes that may follow.

6) Anti –Counterfeit Act

To enhance the effectiveness of enforcement the Bill proposes amendment of Act to grant inspectors powers to handle counterfeit goods more swiftly and efficiently. Further, the Bill seeks to amend the Act to give inspectors the authority to dispose of counterfeit goods directly, streamlining the process and reducing delays in enforcement actions. The Bill proposes that counterfeit goods seized by authorities be disposed of in a manner prescribed by the court, ensuring that the process is transparent and legally sound. Finally, the Bill proposes introducing a framework for the recordation of intellectual property rights.

Potential implications

- The introduction of a framework for the recordation of IP rights will help businesses safeguard their brands and innovations more effectively. This formal recognition will provide a stronger legal basis for legal action against counterfeiters;
- A more secure business environment will encourage businesses to invest in new products and services with the knowledge that their IP rights are better protected. In turn this will lead to increased innovation across various sectors.

7) The Standards Act

The Bill proposes several key amendments to the Standards Act. First, the Act will be amended to require manufacturers to register with the Kenya Bureau of Standards (KEBS).

The Bill also proposes to establish and designate laboratories and calibration facilities by KEBS. Further, the Bill seeks to amend the Act to allow for the appointment of inspection bodies based in the country of origin of goods. These bodies will verify whether imported goods conform to Kenyan standards. The Bill further seeks to introduce a newsection to allow the Director of KEBS to disburse funds from the Standards Levy Fund instead of the Bureau account, clarifying financial operations.

Potential implications

- The requirement for manufacturers to register with KEBS will enhance accountability leading to improved product quality as manufacturers will be compelled to comply with standards;
- Allowing for the appointment of inspection bodies in the country of origin of goods will ensure that imported good meet the Kenyan standards before their arrival, streamlining custom processes and reducing the chances of substandard good entering the Kenyan market;
- The requirement for manufacturers to comply with Kenyan standards will lead to increased scrutiny of imports and foster better compliance and quality assurance practices;
- The focus on improving traceability will empower consumers to make informed choices as they better identify the origin and quality of products, enhancing consumer confidence in the safety and reliability of goods in the market.

8) Special economic Zones Act

The Bill proposes the introduction of a new subsection which stipulates that goods sold within a customs-controlled area of an SEZ are entitled to the benefits conferred under the Act.

The Bill further proposes to amend The Act to empower the Special Economic Zones Authority (SEZA) with structures for setting the minimum acreage of land and the Minimum Investment Amount required for land to be considered for declaration as an SEZ.

Additionally, **Section 28** of the SEZ Act is proposed to be amended to enable public entities to qualify as SEZ developers and operators.
The Bill further seeks to insert a new Section into the SEZ Act to provide for the issuance of Special Economic Zone Business Service Permits.
The Bill proposes to amend the SEZ Act to allow for the lease, sub-lease or sale of land or buildings to SEZ service permit holders. Lastly, the Act is proposed to be amended to address the visibility and predictability of benefits enjoyed by investors within SEZs.

Potential implications

- Allowing public entities to qualify as SEZ developers and operators will lead to enhanced collaboration between the public and private sectors, attracting significant investments and promoting Public Private Partnerships (PPPs) driving economic growth;
- Outlining the benefits available to SEZ investors for a period of 10 years will enhance investor confidence. This predictability will ultimately lead to increased investments, as businesses will now be able to plan their operations with clearer understanding of the incentives available.

***Disclaimer**: The information provided in this document does not constitute legal advice as it may be subject to change as the legislative process progresses.*

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