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Global Tax Alert

Kenyan Government introduces tax measures in response to COVID-19

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On 25 March 2020, the Kenyan President announced the following tax measures to help the Kenyan economy in response to COVID-19 and its impact on the local economy:

100% tax relief for gross income of up to KES24,000 per month

The Government has proposed to extend 100% tax relief to persons earning gross monthly income of up to KES24,000. This will provide additional disposable income of approximately **KES1,600** per month to the most vulnerable group in the society.

Highest PAYE bracket reduced to 25%

Reduction of the highest personal income tax rate (Pay As You Earn) by 5% from 30% to 25%. The implementation of the directive will require clarification of whether this will require an expansion of the tax bands or if income in excess of KES35,473 per month will be subject to PAYE at 25%.

It is not yet clear from the proposals whether people earning income between KES24,000 and KES47,059 per month will enjoy the tax relief other than the current normal tax relief. In our view, the lower income bracket can be increased to KES24,000 to which tax rate of 0% will be applied and a reduction of 5% applied to the tax rates imposed on the other income brackets. This will provide clarity and ensure that all individual taxpayers are covered.

Reduction of the Corporation Income Tax (CIT) rate from 30% to 25%

The proposal is aimed at providing companies additional resources to sustain their operations during this difficult economic time.

The period to which the lower tax rate will be applied is not yet clear. For instance, companies with a financial year (FY) end of December are required to pay their tax balance for FY 2019 by 30 April 2020. A lower rate applied to FY 2019 would help reduce the tax balance payable and thus retain cash as envisaged in the proposal. Installment taxes for FY 2020 would also be reduced if based on prior year. However, companies that have already paid taxes and filed returns for FY 2019 would be disadvantaged. If the proposal is meant to apply to FY 2020, it would be seen as deferring a relief that is needed immediately.

Further, the CIT rate of 30% applies to resident companies only. Branches of foreign companies which are subject to a CIT rate of 37.5%, were not mentioned in the President's proposal. We will await the legislative amendments to determine if this reduced tax rate also extends to branches.

A number of companies have already lost their key markets, some of which have been forced to close down their operations. As such, the proposal may not be beneficial in the immediate term. Therefore, the proposals should be sustained beyond the current crisis to assist in their recovery. A period of three to five years should be reasonable.

Reduction of the Value-Added Tax (VAT) rate from 16% to 14% effective 1 April 2020

This move is aimed at reducing the prices of commodities previously subject to VAT at 16% and accordingly promote consumption.

Under the *VAT Act, 2013*, the Cabinet Secretary for the National Treasury and Planning (TCS) is empowered to amend the VAT rate by 25% through a legal notice. The proposed reduction is within this limit and therefore we expect a legal notice from the TCS soon to allow for its implementation. It is, however, notable that the law requires all legal notices to be tabled in Parliament within seven days of publication for approval.

KRA to refund verified VAT refunds

The Kenya Revenue Authority (KRA) will expedite the payment of all verified VAT refund claims amounting to KES10 Billion within three weeks; or in the alternative, allow for offsetting of Withholding VAT, in order to improve cash flows for businesses.

As the COVID-19 pandemic has had significant impact on the international business, exporters are largely affected. As such, the release of the VAT refunds should be a big boost for the businesses.

Reduction of turnover tax

The Government has proposed a reduction of Turnover Tax from 3% to 1% for all Micro, Small and Medium Enterprises. This should bolster small traders who will be impacted by the pandemic.

Next steps

In Kenya, Presidential pronouncements do not effect changes in the tax law even though the pronouncement already directed the Treasury to implement the directives. These pronouncements must be implemented through the required legal instruments in order to take effect. Moreover, these instruments would provide more detail (as indicated above) that is not set forth in the presidential pronouncement.

The legal instrument will most likely be a tax amendment bill, which would need Parliamentary approval and Presidential assent before it comes into force.

Missed immediate tax measures

The following measures that were not proposed would have provided immediate cash to the taxpayers as envisaged by the pronouncements:

i. Abolishment of withholding tax and withholding VAT systems for local payments – this would release immediate cash to businesses and individuals

ii. Deferral of tax payments

In conclusion, with the exception of the proposal to reduce the VAT rate which only requires a legal notice from the TCS, it is unclear how the other changes will be implemented. An EY Global Tax Alert will be issued upon enactment of the other tax measures.

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