THE ICPAK 2015/2016 BUDGET - THE SCORE CARD

INTRODUCTION

The focus of the third Budget of the Jubilee Administration for the fiscal year 2015/16 is on *pro-poor growth and sustainable development guided by Vision 2030 so as to generate jobs and wealth for our citizens.* This year's budget is framed against a backdrop of uneven and sluggish global recovery with global economic growth projected at 3.5 percent in 2015 and 3.8 percent in 2016.

Overall, the Institute's efforts in lobbying for specific policy proposals in the Fiscal budget FY 2015/16 realized fruitful outcomes. However, a key concern lies in the drafting of the Finance Bill 2015 which reflects numerous errors, which if enacted in its current format will prove impossible to implement. It is therefore critical that parliament considers the Bill with due regard to the existing statutes governing tax in Kenya.

SUMMARY ICPAK BUDGET SCORECARD FY 2015/16

Tax/Policy Issue		Institute Proposals	Finance Bill 2015/Budget Statement Proposals 2015/16
1.	**General Administrative Issues and Tax Reforms**	The Institute has consistently advocated for various tax reforms particularly; the Tax Procedures Bill 2014 and Excise Duty Bill 2014 among many others. FY 2015/2016, ICPAK made submissions to expedite the enactment of the above statutes in order to deepen Tax reforms.	The Cabinet Secretary proposed to effect the following tax reforms: • Tax modernization by harmonizing tax procedures across the three tax legislations- Value Added Tax, Excise Duty and Income Tax- under one common law- The Tax Procedures Bill. The Bill is aimed at simplifying tax administration and hence reduce the cost of compliance; • Complete the review and modernization of the Income Tax Act by end of September 2015;

2.	**Income Tax Act (Cap 470) Proposals** The Institute proposed a number of issues in relation to the reform of Income Tax Act.	**Re-Introduction Of Capital Gains Tax** **(i) Transfer of Land** The base value used in 1975 and has not been adjusted when re-introducing CGT. According to Schedule 1, para 36, the transfer of land with value not exceeding 30,000 is exempt from CGT. We proposed an adjustment the value to an exemption limit of **Shs 1,000,000** to take into account inflation. **(ii) Inheritance:** Transfers of property as provided by the Eighth Schedule paragraph 6(2) are not considered as transfers for the purpose of CGT. Provide that ớwhere inheritance happens to immediate family members, CGT will not be applied to the transfer of propertyộ **(iii) Transfer of Gifts** 8th Schedule Para 6 (1) (a) includes gifts for purposes of establishing CGT. Provided that this Section shall not apply to transfer of property between spouses or to a child, or from a child to a parent. **(iv) Listed Shares** The 8th Schedule part II paragraph 15 provides for CGT on listed shares owned by individuals. Provide for a transaction fee for sale of shares at the NSE. This can be aligned to the current rates	**Transfer of Land** • On transfer of land, where the transfer value is not more than Kshs 3 million, it is exempt from income tax. *In the Finance Bill 2015(Clause 16)-The exemption limit has been adjusted to Ksh. 3 million by amending the First Schedule to the Income Tax Act.* **Inheritance and Gifts** Clause 19 of The Finance Bill amends the 8th Schedule of the Income Tax Act, para (6)(2)(h) to provide for that where transfer of property happens to immediate family members, CGT will not apply. **Listed Shares** In the Budget statement, the Cabinet Secretary removed the 5 percent tax on capital gains arising from sale of shares and introduced a 0.3 percent withholding tax on the transaction value of the shares.

		used at the NSE.	Clause 19 of the Finance Bill 2015 amends the 8th Schedule of the Income Tax Act by inserting a new paragraph providing that the deduction of costs of property shall not apply in case of securities listed on any Securities Exchange approved under the Capital Markets Authority (CMA) Act. *Other clauses that are impactful on the Capital Gains Tax in the Finance Bill 2015 are -Clauses 9, 10, 11 and 12.*
		Tax Losses In order to encourage investment, The Institute proposed that a one-off capital deduction be considered automatic grounds for extension of tax loss utilization when applying section 15(4A) of the Income Tax Act.	**Tax Losses** To accommodate the utilization of tax losses beyond the stipulated period of 5 years, Clause 10 sub clause (a) amends section 15 of the Income Tax Act to substitute 5 Years for 10 years.
3.	**VAT Proposals**	**VAT Refunds** The process of VAT refunds and the timeframes continue to pose a challenge. The VAT Refund requirements keep on changing without any proper backing of law.. The Act does not provide for the timeliness under which the Kenya Revenue Authority (KRA) should refund such tax due. We recommended that a Public Ruling or a Regulation be developed on refunds to make the process transparent.	**VAT Refunds** The Cabinet Secretary proposed an amendment to the law to provide that the claim for tax refunds shall be made within twelve months from the date the tax became due and payable *The Finance Bill 2015(under Clause 3) proposes amendment to section 17 of the Value Added Tax Act, 2013 to provide that any such excess shall be paid to the registered person by the Commissioner where—* *(a) the Commissioner is satisfied that such excess arises from making zero rated supplies; and* (b) *the registered person lodges the claim for the refund of the excess tax within twelve months from*

			the date the tax becomes due and payable.
		Second Schedule – Zero Rated Supplies – Goods In Transit The Institute proposed clarification on the treatment of these services. These services are similar to the provision of ship-stores and services supplied to international sea or air carriers on international voyage or flights and would be zero-rated under the (1) the export of goods or taxable services, and therefore a formal clarification of the zero-rated status of supplies to transit goods needs to be clarified to avoid any confusion and the taxable services provided in respect to goods in transit need to be zero-rate	**Taxable Services in Respect to Goods in Transit zero rated** Services in respect to Goods in transit are zero rated. This is aimed at sustain and accelerate growth in cross-border transport services provided by Kenyan transporters in the regional market *Clause 5 sub clause (c) of the Finance Bill* *The supply of taxable services in respect to goods in transit was provided in The First Schedule of the VAT Act 2013 as exempt supplies. The Finance Bill 2015 deletes Item 19 rendering it zero-rated.* The Finance Bill 2015 then amends *the Second Schedule of the VAT Act, 2013 that lists zero rated supplies by including* the s*upply of taxable services in respect of goods in transit*

	KEY CONCERNS WITH THE FINANCE BILL 2015	
1	Clause 10 (a) seeks to amend Section 15 of the Income Tax Act	there is no words five years in Section 15 (5) of the Income Tax Act, therefore this amendment needs to be revised to say delete the word four years and replace it with ten years
2	Clause 10 (b) seeks to amend Section 15 of the Income Tax Act	This amendment is hanging as Section 15(7) (e) has only 6 specified sources. They should include the 7th specified source ie interest.
3	Clause 12 (a) seeks to amend Section 35 (1) of the Income Tax Act	It does not indicate in which paragraph Section 35 (1) the amendment should be inserted
4	Clause 19 (a) seeks to insert in The Eighth Schedule to the Income Tax Act in paragraph 11A-	This paragraph determines the due date for CGT. What happens to other types of property?
5	Clause 6 (a) seeks to insert in Part A of The Second Schedule to the Value Added Tax Act new paragraph 10.	Revise the propose d amendment to read as follows: 10. Supply of taxable services in respect of goods in transit. Where "goods in transit" means (a) goods for export or (b) goods imported from a foreign place through Kenya to a foreign destination; or (c) goods imported from a place outside Kenya to a place in Kenya