ICPAK PRESS STATEMENT –INCOME TAX BILL,2018

24th May 2018

Ladies and gentlemen of the Fourth Estate, we are very excited to welcome you to this press briefing. First and foremost, and in tandem with the Institute's broad mandate of advising the National Treasury in matters of public finance, we commend the Cabinet Secretary for National Treasury for the steps he has taken in coming up with the draft Income Tax Bill, 2018 that seeks to overhaul the current Income Tax Act enacted in 1974.

An overhaul of Income tax expected to cure the inconsistencies in the Income Tax Act which have been occasioned by numerous amendments to the existing Tax Laws such as VAT Act, Excise Duty Act, Tax Procedures Act, Miscellaneous Levies Act and the Tax Appeal Tribunal Act.

Additionally, the Income Tax Act aimed seeks to;

- Broad the Tax Income net
- Foster tax compliance
- Improve collection of taxes particularly from the informal sector
- Seal the loopholes and addressing transfer pricing risks
- Promote inclusivity, equity and fairness
- Promote fiscal responsibility, and
- Enhance business environment for both local and foreign investors.

In this regard, the Institute has identified the following thematic areas that require attention of concerned stakeholders and the public in general:

a. Overarching policy

The ideal and recommended position in the legislative process is that policy precedes the formulation of a Bill or any other legislative instrument. This is important because having a policy framework first is intended to allow the executors to determine a clear road map, assess the problem and possible solutions, and define the opportunity to be embraced and the modalities or approaches to realize the benefit prior to proposing the necessary legal framework. In that way, the legislation deals with policy challenges at hand.

The absence of a policy framework to guide the formulation of a legislative instrument has in the past presented legal and practicality challenges at the implementation stage. This has subsequently led to monetary losses. Additionally, there is no clear indication of the various cannons to be observed at every step of the legislative process, especially exposition of the dictate that policy precedes legislation. This gap has continuously hampered the process of framing high quality legislative instruments, a that has inevitably impacted adversely on the socio-economic, political and legislative development of Kenya

The implementation of a tax system must foster the principles of equity, neutrality and predictability. Increasing tax incentives for public and private investment whilst reducing incentives for tax avoidance results into increased revenues that promote economic growth. The narrow tax base that Kenya has relied for years has led to underperformance in tax collection. In this regard, we are of the considered opinion that a policy framework should consider the following key themes is crucial to the success of the reform path:

i. Agree on a working definition of what constitutes income and put in place measures to ensure that all cadres of income and all segments of the economy bearing taxability are brought under the full purview of tax policies;

ii. The income tax regime should facilitate reliefs across the economic value chain, motivate investment into innovation, research and development and align to the country's overall economic agenda;

iii. The emergence of digital economy requires a responsive and digitally enabled tax framework;

iv. The income tax regime should enable the development of an economy wide data management policy that promotes digitization of information gathering, to facilitate ease of access, management and consolidation of data;

v. The design of the income tax regime should facilitate harmonization of various taxation aspects and definitions with accounting standards; and

vi. The Income tax framework should incorporate inflationary indexation in the taxation of all incomes. This can be achieved by applying an inflationary index on income. The index should capture overall economic environment of the nation to grow the disposable income for households.

b. Highlights of the Draft Income Tax Bill

The following are the tax outcomes expected from the Income Tax Bill, 2018;

1. A higher Corporate Tax rate of 35% as introduced is likely to increase tax revenues from big players in the market to fund the budget deficits. However, this heavy tax burden imposition is likely to scare away investors contrary to the global best practice of giving such corporate investors tax incentives to do business that in turn provides employment opportunities as well as growing the economy.

Average Corporate Tax Rate	
Global	22.5%
Africa	28.5%

2. The introduction of a new tax rate of 35% on individual incomes in excess of 9 million per annum or 750,000 per month is projected to increase collection from personal income tax for high income earners. This has not taken into account the implication of inflation in the economy. The income tax framework should capture overall economic environment of the nation to grow the disposable income for households.

	10%	15%	20%	25%	30%
2017	0-134,164	135,165-260,567	260,568-386970	386,971-513373	513,373 and above
2016	0-121,968	121,968-236880	236,880-351792	351,792-466704	466,704 and above
2014	0-121,968	121,968-236,880	236,880-371,792	371,792-466704	466,704 and above

3. Tax rate that is applicable to pensions or retirement annuities received by non-resident individuals has been increased from 5% to 10 % to increase revenues collections.
4. The Bill has also increased the exemption threshold for exempt dividend from 12.5% to 25%. This will certainly increase tax revenue.
5. It proposes to achieve simplification for ease of compliance and consequently administration.

On overall, we hold the opinion that the Income Tax reforms through the published Bill is not founded on a strong policy background. It is our understanding that it is crafted to address the short-term revenue objective at the expense of the overall policy objective to spur economic activity through the private sector which is the engine of growth.

c. Utilization of public finance

Article 201 of the Constitution outlines the Principles of Public Finance Management. The law anticipates that all revenues from all sources including income tax must satisfy the requirement of prudence in their management and utilization. Over the years, revenue targets have been increasing as well as budget deficit as demonstrated below;

i. Tax Income Trend versus Total National Government Budgets.

Year	***2013/14***	***2014/15***	***2015/16***	***2016/17***
Tax Income in Kshs Trillions	0.90	1.10	1.11	1.25
Budget in Kshs Trillions	1.61	2.11	2.28	2.62
Budget Deficit in Kshs Trillions	0.71	1.01	1.17	1.37
Public Debt	1.9	2.4	2.8	3.6

Source: Controller of Budget

Tax Income has been increasing albeit marginally while the budget and deficit have also been increasing at a rate that cannot be adequately be addressed by the tax income. Similarly, public debt has also been accruing at a level which is not sustainable for the economy as compared to the level of ordinary revenue.

Capital Gains Tax as proposed is set to increase from 5% to 20% this will affect both local and foreign investors and it will impact adversely on the projected growth of the economy. Kenya currently has the lowest CGT as compared to other regional countries.

Country	Percentage
Kenya	5% proposed to increase to 20%
Uganda	30%
Tanzania	30%
Rwanda	30%
South Sudan	20%
South Africa	40%
Nigeria	10%
Ghana	10%

Heavy taxation on property contravenes the spirit of the Big Four Agenda since it has a cost implication on transfer of property and other assets. Particularly, affordable housing being a core pillar of the Big Four Plan will be adversely affected since the imposition of 20% CGT will affect potential buyers and sellers.

ii. Corruption Scandals

Corruption in Kenya is a menace that has impeded the implementation of various projects and service provision for the good of the public. The infamous scandals such as the National Youth Service where money meant for provision of public services is being fleeced from the public coffers into private pockets must be firmly and ruthlessly dealt with.

We propose thorough investigations to be conducted and those found culpable be brought to book and lost public funds recovered. The Accounting Officers must be guided by code of ethics and stewardship for the resources they manage on behalf of the public. This will promote accountability and transparency to boost the taxpayer's morale.

iii. Ballooning Public Debt

Public discussion on government resourcing cannot be complete without mention of debt position we are in as country. According to data from the Central Bank of Kenya, public debt is currently at Sh4.57 trillion by December 2017, 13 percent above IMF's recommended benchmark for emerging countries. This exhibits a rapid increase given that the debt to GDP has gone up to 56.4 percent up from 51.50 percent of GDP in 2016, and further 40.5 percent in 2012. According to Treasury, nearly half of the external debt is concessional compared to the costly commercial loans, with the other half held in domestic debts through treasury bonds and bills.

We wish to state that discourses on public revenues must be undertaken in full cognizance of the funding gaps that occasion the necessity for public debt, and that fiscal policies of which revenue management is key, must anticipate sustainability in all aspects of public finance. In the FY 2017/18 KRA is expected to miss its revenue targets by about KES 80 billion. This taken against the FY 18/19 projected tax revenue targets KES 1,684.0 billion (17.2 percent of GDP) in FY 2018/19 up from KES 1,486.3 billion, fiscal consolidation has never been more necessary.

iv. The “Big Four” Agenda

The growth of the economy over the next four years is hinged on the four pillars of manufacturing, affordable housing, universal healthcare and food security through agricultural productivity. Achieving the agenda requires on top of resources, prudence in the utilization of public finances. Policies that promote fiscal consolidation to reduce budget deficit and consequently debt accumulation are imperative.

Tax policies and administration must be consistent with increased revenue generation, curbing revenue leakages, proper controls and monitoring of taxpayer’s activities to avoid tax evasion. The income tax framework must thus be aligned to the Country’s development agenda to facilitate mobilization of all resources to drive productivity.

Since the government will continue with the implementation of capital intensive infrastructure projects, debt accumulation is likely to grow higher to fund these projects. Adequate revenue sources must therefore be explored cushion the taxpayer against huge tax burdens.

d. Key Considerations

In conclusion, the Institute requests the Cabinet Secretary for National Treasury to consider the following in addressing the systemic weaknesses and loopholes in tax management systems:

a. Prioritize the development of an overarching tax policy to guide this legislative process;
b. Speedy enactment of regulations that would guide the enactment of the Income Tax Act to realize the objectives therein.
c. The Treasury should also align the Income Tax Bill with the Constitution and other existing revenue statutes to address the duplication and inconsistencies that could derail its implementation.
d. To realize full tax compliance by all the taxpayers, KRA should integrate information through a single identifier of all residents. This will help seal the tax loopholes that enable people to evade paying tax.
e. Leverage on simplified technological solutions that enhance integration of taxpayer information systems.

As we are all aware, the income tax regime must be designed to facilitate an enabling environment for business that would eventually promote economic growth. We therefore advocate for wide consultations amongst all stakeholders to agree on substantive policy issues that would enhance equity and eliminate distortion for the good of all citizens. Thank you

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