



BUDGET REVIEW AND EMERGING ISSUES

Highlight of the Draft Income tax bill

Presentation by:

Erick Onyango

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Introduction



The income tax act (ITA) was enacted in 1974

Numerous amendments, new taxes introduced, others dropped, inconsistencies in ITA

Over 43 Years much has changed, economy, technology and business culture.

Indication of overhaul in 2017/2018 budget

Clamor for amendment

Patchwork in the old law

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Personal Relief

30. A resident individual in receipt of taxable income shall be entitled to a tax relief in this Act referred to as the personal relief.

31. (Repealed by 8 of 1996, s.36)

32. (Deleted by 8 of 1991, s.62)

33. (Repealed by 8 of 1996, s.38)

PART VI - RATES, DEDUCTIONS AND SET-OFF OF TAX AND DOUBLE TAXATION RELIEF

A - Rates of tax

34.(1) Subject to this section -

(a) tax upon the total income of an individual, other than that part of the total income comprising wife's employment income, fringe benefits and the qualifying interest, shall be charged for a year of income at the individual rates for that year of income;

(b) tax upon that part of the total income which consists of wife's employment income, and wife's professional income and wife's self employment income other than income arising from fringe

Rates of tax
2 of 1975, s.5,
13 of 1975, s.2,
8 of 1978, s.9,
12 of 1980, s.3
6 of 1981, s.5,
10 of 1987, s.33
10 of 1988, s.32
5 of 1998 s.36.

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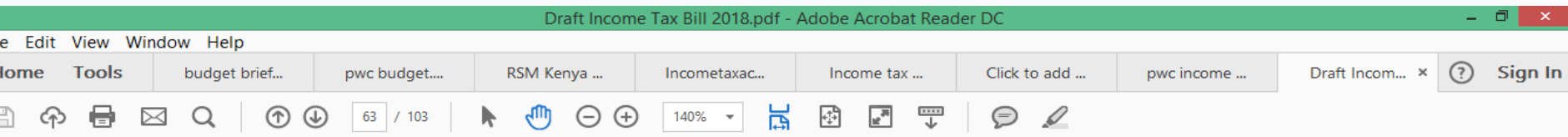
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Principle of simplicity



Capital expenditure incurred on -	Rate of Investment Allowance
(i) Buildings -	
(a) Commercial building.	10% per annum in equal instalments
(b) Hotel building - in the first year of use.	60%
(c) Building used for manufacture - in the first year of use.	100%
(d) Petroleum gas storage facilities – in the first year of use	60%
(e) Residual value in (b) and (d) above.	25% per annum in subsequent years in equal instalments
(f) Educational buildings.	10% per annum in equal instalments
(g) Hospital buildings.	100%
(ii) Machinery –	
(a) Machinery used for manufacture.	100%
(b) Hospital equipment.	100%
(c) Ships or aircrafts – in the first year of use.	60%
	50% per annum in subsequent



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Need to increase revenue

Income Tax Bill (ITB) attempts to;

- Reduce exemptions
- Tighten restrictions on expense deductions
- Puts obligation to Govt institutions to account for WHT and PAYE
- Make the ITB reformed and modernised

Clamor for new law



Change in other tax laws

- Vat act- 2013
- Excise Duty Act
- Miscellaneous Levy Act
- Tax procedures act 2015 which prevails over the draft
- Tax Appeal Tribunal Act

Proposed measures



There is retention of specified sources of income as it is in the **ITA**

The specified losses **OTHER THAN FOR THOSE IN EXTRACTIVE INDUSTRIES** shall be carried forward for **ten years**, one may apply to the Commissioner for **further extension** of not more than **two years**, this shall be **approved** by the **Cabinet Secretary** on the **recommendation** of the **Commissioner**.

Proposed measures



The **ITB** provides for loss of power to carry forward of such losses if:

- Change in more than **50% of shareholding of the loss making company** or
- Where there is **change in business activity in whole or in part** that gave rise to the loss

NB. ITB PROVIDES FOR BENEFICIARIES TO SOLE TRADER ESTATE INHERIT TAX LOSSES IF IN THE WILL/IN PROCESSING SUCCESSION

Proposed measures



The specified losses FOR THOSE IN EXTRACTIVE INDUSTRIES shall be carried forward for upto the next fourteen years *(departure from the indefinite time as is in the ITA)*

The loss carry backwards provisions upon cessation of petroleum operations in a license area, which was allowed for **up to 3 years**, has now been **removed in the ITB**.

Proposed measures



Item	ITA (1974)	ITB (2018)
Tax on Resident Companies taxable income		
First kes 500 million income	30%	30%
Excess of kes 500 million income	30%	35%
Tax on branches	37.5%	30%

Proposed measures



Item	ITA (1974)	ITB (2018)
Repatriation of profits by branches/permanent establishments	0%	10%
EPZ Year 1- Year 10	0%	10%
EPZ Year 11-Year 20	25%	15%

From year 21 onwards, tax reverts to 30%
EPZ aligned with SEZ

Proposed measures



Item	ITA (1974)	ITB (2018)
Highest Tax rate on <u>Resident individuals taxable income</u> Excess of kes 750,000 p.m on taxable income	30%	35%
Withholding tax exemptions on dividend to resident companies	<i>Shareholding of 12.5% or more</i>	<i>Shareholding of 25% or more</i>

Proposed measures



Item	ITA (1974)	ITB (2018)
Deemed dividend <u>thresh hold</u> for ordinary shares, debentures and preference shares where issued at a price lower than the market /nominal / redeemable	5%	No thresh hold

These means that dividend shall apply even if the **exercise** price accounts for more than 95% of the nominal/market or exercise price

Proposed measures



Item	ITA (1974)	ITB (2018)
Tax on dividends distributed out of untaxed profits	Compensating tax	Taxed at 30% corporate rate on the distributor company in the year of distribution, shall tax the all the gains or profits that are the basis of financing the mentioned dividends

This provision does will not apply to registered collective investment schemes.

Proposed measures



Item	ITA (1974)	ITB (2018)
Thin capitalization debt equity ratio for companies closely controlled by non resident <i>Thin capitalization rules will not apply to licensed banking and microfinance institutions.</i>	Ratio of 3:1	Ratio of 2:1

Proposed measures



Item	ITA (1974)	ITB (2018)
Imposition of presumptive income tax : applies to unincorporated businesses with turnover less than KES 5 million p.a	Turnover tax at 3%	Presumptive tax is final tax at 15% of single business permit fee and is payable at the time of payment of the single business permit or renewal

Presumptive tax takes the place of turnover tax, will not apply to management and professional services; rental business; or incorporated companies

Proposed measures



Item	ITA (1974)	ITB (2018)
Payments for expenses that are subject to WHT but taxpayer fails to withhold the tax as required	Could be allowable when computing taxable profit	Such payments shall be deemed Disallowable expenses.

Dividends out of Untaxed profits



ITA required DTA and payment of compensating tax

ITB will tax distributions out of untaxed profits @ 30%, **Repealed Compensating tax**

A return on such to be submitted alongside self assessment return

Short fall distribution of Dividend



ITA talks of commissioner to determine that part of income that would have been distributed

ITB talks of the Commissioner may direct that an amount $> 60\%$ of that accounting profits shall be deemed as having been distributed

SACCOS



ITA taxes only 50% of non member interest

ITB proposes tax on total income being all income except interest from its members

ITB enhances the withholding tax on Cooperative Society dividend to **10%** (from **5%** in the **ITA**)

Deemed interest



ITA deems interest based on local market rate for interest free loans

ITB deems it at the market rate of interest in the country of non resident and shall also apply to loans having very low interest rate

Employment Income



Per diem- ITA taxes amounts in excess of shs 2000 per day

ITB talks of the amount not exceeding the public service prescribed rates for the duration

Benefits in kind ITA if less Shs 3000 p.m not taxed

ITB no such threshold, all benefits taxable

Employment income



Leave passages for expatriate staff- **ITA** specifies they must be solely serve their employer

ITB – silent

Medical benefit, **ITB** scheme need not be to be registered in Kenya

Age of beneficiaries increased from 21-24

Tax Incentives



Newly listed companies

Shares Listed (%)	ITA	ITB
20%	27% for 3 years	30%
20%	25% for 5 years	30%
40% or more	20% for 5 years	25% for 5 years

Investment Allowance



Capital allowance	ITA	ITD
Commercial BLdg	25% SL	10% SL
Hotel Building	100%	60%Y1--- 25%
Hospital Bldg	-	100%
Educational bldg	50%	10%
Manufacturing Bldg and equip	100%/150%	100%
Heavy Motor V and earth Moving machinery	37.5 % RB	25% SL

Capital allowances



Capital allowance	ITA	ITB
Motor V light	25% RB	25% SL
Furniture and other equip	12.5% RB	10% SL
Computers and peripherals	30% RB	25%
Software	20% SL	25% SL
Farm works	100%	100%
Telecomm equip	20% SI	10% SL

Capital allowances



Capital allowance	ITA	ITB
Fibre optic cable	5%	10%
Petroleum gas storage	150%	60%Yr 1– bal 25%SL
Ships	100% > 125tonnes	60%Yr 1– bal 50%SL
Aircraft	25% RB	60%Yr 1– bal 50%SL

Capital allowances



Capital allowance	ITA	ITB
Filming Equipment	100%	50% SL
Residential Buildings	5% SL	-

Other provisions



Capital gain tax increased to **20%**
from **5% of the** capital gains

**The capital gain tax shall be excess
of transfer value less CPI inflation
indexed adjusted cost**

Other provisions



Withholding tax introduced on Demurrage charges for non residents shipping business introduced at 20%

Withholding tax on professional and management fee paid by licensed contractors and mining companies to nonresident mining and petroleum subcontractors is reduced to 10% from 12.5%

Other provisions



Withholding tax to the non-resident tax rate in respect of rent, premium or similar consideration for the use or occupation of property now **20% on gross rent income** (whether immovable or any other property)

Permanent home redefined, Post bank interest income now taxable

What next?



Room for public participation
Parliamentary approval
Presidential assent