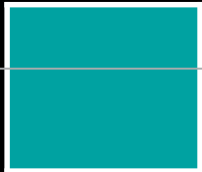


Direct Tax implications of the Fiscal Budget Presentation by:

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24 June 2019



Direct Tax Implementation of the fiscal budget



Role of the Tax Appeals Tribunal in tax policy and administration



Budget Implementation Gaps – The journey towards fiscal prudence

Direct Tax Implications of the 2019/20 fiscal budget

Income Tax

Taxation of E-commerce



- E - commerce has grown quite rapidly in the recent past
- The Finance Bill (FB 2019) proposes to tax on income accrued through a digital marketplace
- “Digital marketplace” - a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means

Dividends distributed out of untaxed profits



- The Finance Act, 2018, repealed compensating tax and introduced a corporate tax rate on dividends paid out of untaxed profits
- Controversial implementation - result in taxation of exempt income thus reversing the initial intention of the exemption
- The Finance Bill, 2019, proposes to exempt from “compensating tax” income which is tax exempt

Re-introduction of Turnover tax



- The FB 2019 proposes to re-introduce turnover tax, at **3%** of gross receipts, after it was repealed in 2018
- Payable by any person whose turnover does not exceed or is not expected to exceed **KES 5m** during any year of income
- The 15% presumptive tax on annual business permits that was introduced by the Finance Act, 2018, remains

Real Estate Investment Trusts Investee Companies



- The Income Tax Act exempts Real Estate Investment Trusts (REITs) from tax
- However, the exemption does not cover the investee companies owned by the REITs
- To promote investment in the real estate sector, the Finance Bill, 2019, proposes to extend the exemption to the companies through which the REITs hold property
- This is line with the Big Four Plan, to promote affordable housing to all Kenyans

WHT on Additional Services



- The Finance Bill 2019 proposes to subject the following additional services to WHT:
 - i. Security Services;
 - ii. Cleaning and fumigation services;
 - iii. Catering services offered outside hotel premises;
 - iv. Transportation of goods (excluding air transport services);
 - v. Sales promotion; and
 - vi. Marketing and advertising services.

The proposed WHT rates will be 20% -non - resident & 5% - resident

Affordable Housing Relief



- Proposal to amend the tax base from “gross emoluments” to “employee’s contribution”
- This change has been proposed to avoid a situation where emoluments will result in a person getting relief that is in excess of their contributions

WHT on re-insurance premiums paid to non residents



- The ITA is silent on whether WHT applies to reinsurance premiums paid to non-residents
- Finance Bill, 2019 has clarified that WHT on premiums paid to non resident persons includes re-insurance premiums
- This is expected to increase the cost of insurance especially in cases where local re-insurance are unable to insure the full risk

Capital Gains Tax Cont'd



- The Finance Bill, 2019, proposes to increase the CGT rate to **12.5%** from **5%**
- Although this is designed to align with regional CGT rates, this rise represents a 150% increase and is expected to elicit strong reactions from stakeholders

Capital Gains Tax Cont'd



- The Finance Bill proposes to exempt from CGT, transfers of property which is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity

Capital Gains Tax cont'd



- In order for the transfer to be exempt, it has to be:
 - i. A legal or regulatory requirement
 - ii. As a result of a directive or compulsory acquisition by the government
 - iii. An internal restructuring within a group which does not involve transfer to a third party
 - iv. In the public interest and approved by the Cabinet Secretary

Tax breaks



- **Income of the National Housing Development Fund**
- **Income earned by an individual registered under the Ajira Digital programme**

For 3 years effective 1 Jan 2020

- **Plastic recycling company – 15% CIT for first 5 years of operations**

Penalties



- **Late payment penalties**

The CS proposes a late payment penalty of 5% to harmonize all penalties as provided in the Tax Procedures Act (ITA still has 20% penalty under Sec 72D)

- **Late filing penalty**

The CS has clarified that late filing penalty should be computed on tax due less any taxes which have already been paid including withholding tax credits