THE 4th CHAPTER SEMINAR – SOUTH AFRICA

Theme: *Harnessing Sustainable Economic Growth and Human Development in Africa*

Venue: The Capital Empire, 177 Empire Place, Cnr. Rivonia Road, Sandhurst, Sandton, Johannesburg, 2031, South Africa.

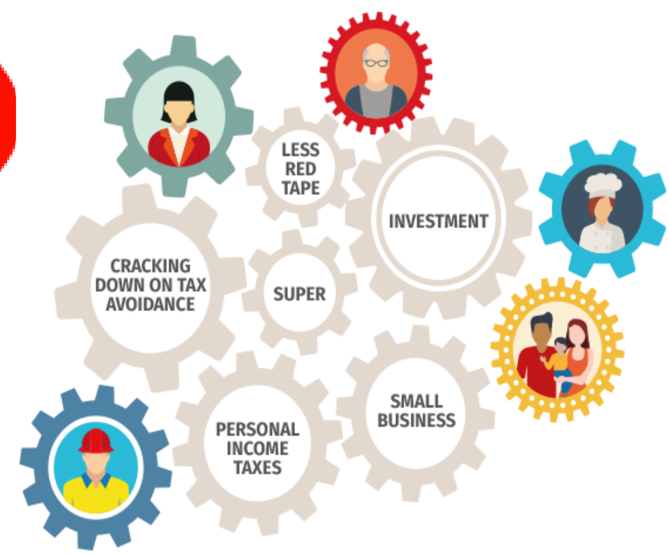
Date: 28th to 30th August 2019

Uphold public interest

Taxation in Africa

Composition of Tax Types in Africa

- Corporate Income Tax
- Personal Income Tax (PAYE and Social security
- Payroll tax/SDL
- Value-Added Tax, Customs and Excise duty
- Other taxes (stamp duty, CGT, transfer taxes, property tax, etc
- Exceptional taxes (inheritance taxes, net wealth / net worth taxes



Tax rates

- ❑The tax systems & tax types in Africa are mostly similar even though there are some peculiarities.
- ❑Most African Countries have residence as a basis for taxation.
- ❑Except for Botswana, DRC, Djibouti and Morocco, the basis of taxation is residence as opposed to source.
- ❑This means residents are taxed on their worldwide income. SA and Kenya both have residence as the basis of taxation.
- ❑Non-residents continue to be taxed on the basis of source in that particular country.
- ❑183 days outside SA gave an exemption but this law is being amended.
- ❑Expatriate exemption is possible if in Kenya for up to 3 years.

TAX RATES

ICPAK
Credibility . Professionalism . Accountability

KENYA REVENUE AUTHORITY

Tax rates

- Corporate tax rates in Africa countries range from 15% to 35%.
- The majority of the countries charge at 30% including all the East African countries (Tanzania, Kenya, Uganda, Rwanda and Burundi).
- South Africa is at 28% and have been at this for quite a while.
- South Africa increased VAT after 25 years from 14% to 15% while Kenya is sitting at 16%.
- Individual tax rates/Pay As You Earn in South Africa is at what we believe to be its peak 45% while Kenya enjoys 30% maximum rate.
- Non-residents only taxed on trading profits attributable to a PE in Kenya. Branch profits and PEs taxed at a rate of 37.5%
- South Africa does not consider a branch of a foreign entity as a separate entity.

Tax rates

- **Djibouti** 33%
- **Hungary** 27%
- **Croatia** 25%
- **Portugal** 23%
- **Italy** 22%
- **Argentina** 21%
- **Nigeria** 19%
- **Burundi** 18%
- **China** 17%
- **Kenya** 16%
- **South Africa 15%**

SOUTH AFRICA

OTHER TAXES COMPARISON

- South Africa introduced Capital Gains Tax on asset disposal on or after 1 October 2001. The tax is progressive and has exclusions and inclusions with a maximum rate being 18%.

- Withholding taxes in South Africa apply as follows –

  - Immovable property by non-resident at the rate of 7.5% for natural persons and 10% for companies;
  - Non residents receiving royalties at the rate of 12%;
  - Foreign entertainers and sportspersons at the rate of 15%;
  - Dividends withholding tax at the rate of 15%;
  - Withholding tax on interest at the rate of 15%;
  - Withholding tax on service fees at the rate of 15%.

We must however always look to applicable Double Taxation Agreements too as they might allow for some softening.

KENYA

ICPAK
Credibility . Professionalism . Accountability

KENYA REVENUE
AUTHORITY

OTHER TAXES COMPARISON

- Kenya suspended their CGT rules in 1985 and reintroduced it with effect from 1 January 2015 at a final rate of 5%.

- Withholding taxes in Kenya apply as follows –

  - Immovable property by non-resident at the rate of 4%;
  - Non residents receiving royalties at the rate of 25%;
  - Non-resident dividends withholding tax at the rate of 10% irrespective of voting rights percentage;
  - Non-resident withholding tax on interest at the rate of 15% for government bonds maturing over 2 years and no interest if maturing over 10 years;
  - Non-resident withholding tax on interest on bearer instruments taxed at 25%;
  - Withholding tax on management/professional service/consultancy fees at the rate of 15%.

TAX RATES

ICPAK
Credibility . Professionalism . Accountability

KENYA REVENUE AUTHORITY

OTHER TAXES COMPARISON

- With the implementation of BEPS Action Point 13 and Country by Country reporting, both South Africa and Kenya have increased their Transfer Pricing policing.
- Thin capitalization rules apply for both South Africa and Kenya, the difference being in the allowable percentages;
- Debt to equity ratios and arms' length principles apply; These vary between 3.1 and 2.1;
- Both for South Africa and for Kenya a company that is thinly capitalised cannot claim a deduction on the interest expense considered to be excessive.
- The company also cannot claim a deduction for any foreign exchange loss realised by the company with respect to any loans from its shareholders in the period that the company remains thinly capitalised.
- South Africa has specific controlled foreign entities provisions while Kenya does not have any specific rules.
- But there are restrictions on the deductibility of interest and foreign exchange losses of companies that are foreign controlled.

Disputes, Interest & penalties

SOUTH AFRICA ADR

Legal Framework for ADR

- The Tax Administration Act – Chapter 9
- The Tax Board for disputes up to R1 000 000
- The Special Tax Court
- Alternative Dispute Resolution overseen by a Facilitator
- High Court/Supreme Court/The Constitutional Court

- One intriguing matter is the “Pay now, argue later” principle
- This implies that when taxes are assessment a taxpayer must pay the full amount irrespective of how they feel about the alleged debt;
- Considering that disputes take a minimum of 2 years to conclude and can go up to 10 years, this could have disastrous consequences for taxpayers.

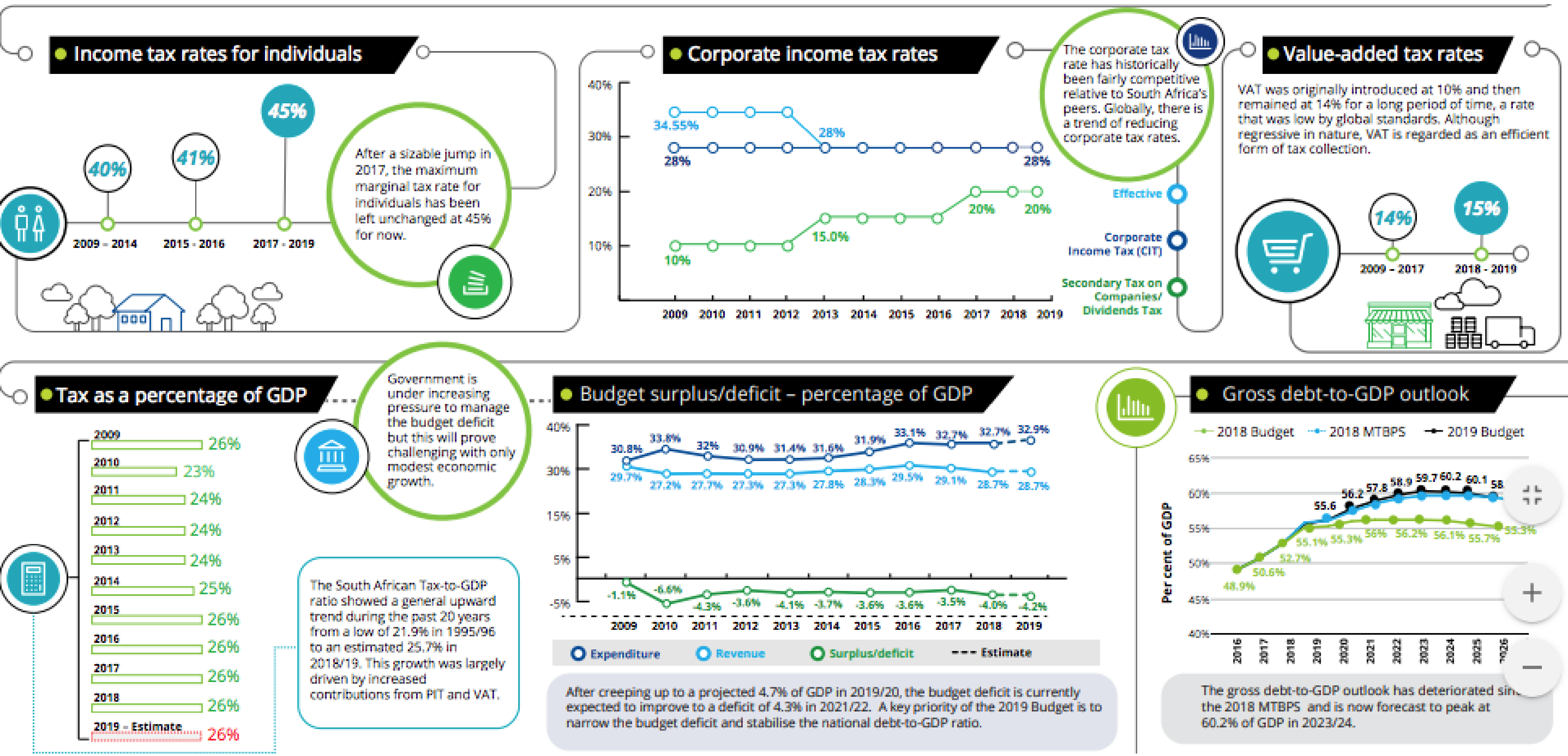
Kenya: ADR

Legal Framework for ADR

- Constitution of Kenya Article 159 2(c)
- Tax Procedure Act (TPA),2015 (Sec 55)
- Tax Appeal Tribunal Act (TATA), 2013 (Sec 28)
- Court Annexed Mediation Process
- Tax disputes start a tax assessment following audit or a routine compliance check.
- The Taxpayer can contest assessments through the objection and appeal process.
- This might culminate in a court process or Tribunals

- Unlike Tanzania, which is almost similar to South Africa in the application of the “Pay now, argue later” principle, Kenya only requires a non refundable deposit of 20 000 KES for disputes.

South Africa Tax landscape



Kenya vs SA Tax landscape

Q & A's