



ICPAK PRESS STATEMENT – REFLECTIONS ON THE FISCAL BUDGET 2022/23 AND FINANCE BILL 2022

12th April 2022

Ladies and gentlemen of press, Council members, the Chief Executive Officer and I are very pleased to welcome you to this press briefing. This press statement comes after the presentation of the Budget Statement FY 2022/23 by the CS Hon. (Amb.) Ukur Yatani, themed, *“Accelerating Economic Growth for Improved Livelihoods”*.

The Institute has over the years played and continues to play a pivotal role in budget making, implementation and monitoring process. To this end, and in fulfillment of its mandate under the Accountancy Act, ICPAK has reviewed the Budget Statement and draft Finance Bill 2022 - and wishes to point out the following policy interventions that have a direct bearing on the citizen:

a. Progressive Policy Interventions

The Institute commends the government and supports measures geared towards uplifting and protecting the local industry and safeguarding livelihoods. These measures include:

- i. Review of the Public Procurement framework through introduction of the Public Procurement & Asset Disposal (Amendment) Bill 2021 and harmonization of Qualification for Supply Chain Professionals, a move that we anticipate will help in the fiscal consolidation efforts;
- ii. Support to youth, women and Persons Living with disability through re-engineering of AGPO Portal to enhance economic inclusivity;
- iii. Exemption from VAT of plant and machinery for use by manufacturers of pharmaceutical products, a move that will support the UHC big 4 agenda pillar;
- iv. Proposed amendment of the Income Tax Act to allow all entities that donate cash to charitable organizations to deduct the donation from their taxable income. This will allow businesses to play their rightful role in supplementing government efforts especially in response to national disasters;
- v. Amendment to the Tax Procedures Act limiting the objection decision by the Commissioner to 60 days from the date of receipt of a valid notice of objection. This move will accelerate tax dispute resolution and unlock much needed revenue; and
- vi. Amendment to the Tax Procedures Act to provide for utilization of instalment tax overpayments against future instalment tax liabilities of taxpayers.

The Institute also commends the National Treasury for programmes set to promote the local industry, creating jobs and uplift the wellbeing of all Kenyans.

b. Proposal on Disputed Tax Revenue

Whilst appreciating the government's need to mobilize domestic revenue, the proposal to amend the Tax Appeals Tribunal Act, 2013 to require a deposit of 50% of the disputed tax revenue in a special account at the Central Bank of Kenya before a taxpayer can appeal a decision of the Tribunal requires further discussion and stakeholder engagement because of the following:

- i. **This proposal impedes the taxpayers rights of access to justice and fair administration in line with Articles 48 and 50(1) of the Constitution. Article 48 of the Constitution requires the State to ensure “access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”** The Institute is of the view that the requirement to pay 50% of the amount in dispute violates Article 48 and impedes taxpayers' access to justice. **We urge the National Treasury to consider and be guided by other progressive jurisdictions such as Uganda which have declared such deposit requirements as unconstitutional.**
- ii. We also note that the **requirement to pay 50% deposit only applies to taxpayers and not to KRA.** In any dispute there are at least two parties and the requirement for a deposit should apply to all parties equally. Therefore, **KRA should at the very least also deposit 50% of refunds due to taxpayers where KRA appeals a Tribunal decision in favour of the taxpayer.**
- iii. The High court and Court of Appeal have on numerous occasions decided on the issue of deposits of security in the public interest. It is the Institute's view and recommendation that **the High Court and Court of Appeal continue addressing this issue on a case-by-case basis in the interests of justice.**
- iv. **This proposal is bound to have far reaching consequences as affected taxpayers may not have the cashflows to allow for such deposits.** In the recent past, we have noted assessments running into billions of shillings. 50% deposit is a colossal amount and will cripple many businesses in the economy and deter foreign direct investment into the country.
- v. **There is a real concern by taxpayers of the risk of abuse of this provision by the KRA. Firstly, KRA may raise very high assessments with a view of collecting the 50% where the Tribunal rules in KRA's favour.** Secondly, taxpayers may be intimidated to settle their tax disputes under the Alternative Dispute Resolution (ADR) framework even though some of these disputes may be better resolved by the courts.
- vi. **Informed by previous and existing delays in repayment of tax refunds, there is a real concern from taxpayers that it will be difficult for the taxpayer to access the**

refund within the stipulated timeline of 30 days. Such an outcome worsens an already dire cashflow position and could lead to businesses shutting down.

- vii. **To fast-track dispute resolution at the court level and unlock revenue for government, the Institute proposes that the Judiciary considers setting up a dedicated division of the High Court to deal with tax matters.**

The Institute proposes that this proposal be deleted from the Finance Bill pending exhaustive stakeholder consultations and agreement.

c. Change of name from “Kenya Revenue Authority” to “Kenya Revenue Service”

The Institute notes the proposal to amend the Kenya Revenue Authority Act to change the name of the Authority from ‘Kenya Revenue Authority’ to ‘Kenya Revenue Service’, in line with KRA’s 8th Corporate Strategy. Unlike Shakespeare in *Romeo and Juliet* who thought “*a rose by any other name shall smell as sweet,*” **we are hopeful that the proposal will achieve the intended objective of making the tax authority responsive to customer needs to enhance tax compliance.** With this change, Kenya joins South Africa and Nigeria who have their revenue administered by a service.

d. National Tax Policy

The Institute notes that a draft National Tax Policy has been developed and ready for stakeholder input. However, it is noteworthy that national tax policy framework has taken long to be availed to the public. ICPAK recognizes that any legislation, including subsidiary legislation, should trace its foundation on an agreed policy framework.

Kenya and other governments around the world are constantly faced with fiscal policy challenges as they seek to deliver public services to an increasingly informed and demanding citizenry. These challenges must be seen in the context of meeting budget deficits, increasing voluntary compliance, broadening the tax base, or more long-term and strategic goals, such as addressing trends in an evolving and dynamic economy including the digital economy.

A country’s tax policy may negatively or positively influence investment into the country. A good tax policy should offer a tax system that is attractive to investment, while at the same time raising revenues to support the key pillars of a business-enabling environment such as provision of security and infrastructure.

The Institute **looks forward to engaging and contributing to this process of crafting and finalizing Kenya’s tax policy. We urge the National Treasury to expedite the process and if possible to finalize it within this financial year (2022/23).**

e. Pending bills

The Institute applauds government for robust measures to tackle the pending bills problem. ICPAK urges the two levels of government to adhere to the prescribed timeline of 30th June 2022 to settle all pending bills.

According to the Annual Controller of Budget Reports, pending bills for MDAs stood at more than Kshs.36.35 billion, while County Governments reported an outstanding pending bill of Kshs. 96 billion as of 30th June 2021.

- i. The Institute urges the spending units to adhere to this timeline for the benefit of MSMEs in the country.
- ii. The Institute implores upon Parliament to enact the Prompt Payment Bill, 2021 to curb future delays and ensure businesses not only survive but thrive and make their rightful contribution to the exchequer.

f. High Cost of Living

The Institute is concerned by the high standard of living caused by persistent increase in the cost of food and fuel prices. According to data from the Kenya National Bureau of Statistics, the overall year on year inflation rate as measured by the Consumer Price Index was 5.56% as at March 2022:

- i. With such a rise in inflation, the Institute urges the Government to continue introducing measures that cushion citizens such as a reduced VAT rate for basic and essential commodities.
- ii. **The Institute notes with concern, that the ongoing fuel crisis in the country, has and continues to affect productivity in key sectors of the economy.** This will have significant impact in growth projections this year. We implore upon government to urgently engage stakeholders in the petroleum sector to avert fuel shortage crises in future. We also urge the government to consider longer term supply interventions including enhancing the country's strategic fuel reserves to address similar risks in the future.

The Institute will continue playing its financial and advisory role to help the government achieve its development agenda; and in the interest of the accountancy profession and public. Consequently, the Institute looks forward to engaging on the Finance Bill, 2022, County Government (Revenue Raising Process) Bill, 2022, Draft National Tax Policy and other proposed pieces of legislation for the benefit of all Kenyans.

Thank you.

FCPA George Mokuia
Chairman, ICPAK
