CLIFFE DEKKER HOFMEYR

INCORPORATING
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Tax & Exchange Control ALERT

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Kenya's tax outlook for the new year

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SOUTH AFRICA

The end of a cycle and the beginning of a new one: Publication of the 2022 tax law amendment acts and Annexure C workshops for the 2023 Budget

It happens every year, and 2023 would be no different; on 5 January 2023, the key pieces of tax amendment legislation for the 2022 legislation cycle were promulgated in the Government Gazette, which included the Tax Administration Laws Amendment Act, 16 of 2022 (TALAA), Taxation Laws Amendment Act, 20 of 2022 (TLAA), and Rates and Monetary Amounts and Amendment of Revenue Laws Act, 19 of 2022 (Rates Act).

FOR MORE INSIGHT INTO OUR EXPERTISE AND SERVICES

KENYA

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KRA's tax revenue collection has risen over the recent past and hit a new record by collecting KES 2.031 trillion in fiscal year 2021/22. However, it is currently lagging behind in its revenue targets for year 2022/2023 according to the Statement of Actual Revenues and Net Exchequer Issues published on 16 December 2022. KRA therefore has an enormous task ahead.

The government will, without a doubt, take advantage of several tax measures in the Finance Act of 2022 that commenced on 1 January 2023. First is the taxation of gains from financial derivatives. Such a gain will going forward be subject to tax in Kenya at the rate of 15%. The Cabinet Secretary to the National Treasury is expected to issue regulations on taxing financial derivatives in January 2023. The regulations should at least specify the nature of financial derivatives subject to tax, the date when the regulations come into force, the due date for remitting the tax and how to remit the tax. Kenya should consider if introducing the tax will be counter-productive considering that it targets non-residents who often push back local tax to residents by insisting to be paid net of tax.

The Finance Act of 2022 also increased the rate of Capital Gains Tax (CGT) from 5% to 15% effective 1 January 2023. CGT applies on transfer of land and shares in companies that are not listed at the Nairobi Securities Exchange. Subsequent increase in CGT should be balanced with indexation to reduce the tax impact and maintain Kenya as a preferred investment destination in East Africa.

It is interesting to see how the government will increase revenue collection as anticipated by the President. We expect to see some newsworthy tax measures introduced through laws such as the anticipated Finance Act in 2023. The National Treasury is currently considering comments by stakeholders as they draft Finance Bill 2023. The public should look out for this Bill and thoroughly engage the National Treasury and Parliament in producing tax measures for 2023/2024.

The Legal 500 EMEA

2022 RESULTS

The Legal 500 EMEA 2022 recommended our **Tax & Exchange Control practice** in **Tier 2** for tax.

The Legal 500 EMEA 2022 recommended **Emil Brincker** as a leading individual for tax.

The Legal 500 EMEA 2022 recommended **Mark Linington, Ludwig Smith, Gerhard Bardenhorst, Stephan Spamer, Howmera Parak** and **Jermone Brink** for tax.

KENYA

Kenya's tax outlook for the new year

CONTINUED

The government is also likely to look at new frontiers for tax revenue such as the digital economy. While we already have income tax and Value Added Tax on services provided on digital platforms, the government may lay more emphasis on enforcing collection of such taxes to boost is revenues. Among the initiatives that KRA is implementing is the Tax Invoice Management Systems (TIMS) which is linked to a traders' invoicing system and transmits the information in the invoice directly to KRA. This will ensure that ensure that traders remit VAT to the government and seal the loophole of traders pocketing the VAT.

The low-income earners will also need to come in and bolster the government's tax revenue. While the current regime is keen on enabling low-income earners in the informal sector and agriculture to do business, it will certainly ask such businesses to pay their fair share of tax.

The KRA may also target high net worth individuals; the new regime has openly declared that KRA should prioritise taxing wealth over trade and expenditure. The new tax laws in 2023 may seek to define wealth and introduce new taxes on wealth. It has been argued that Kenya already has wealth tax in the form of property rates, rental income tax, CGT among other taxes. Kenya should therefore carefully think about the role and design of wealth taxes noting that other countries are abolishing wealth tax because of inefficiencies, administrative costs, capital flight and limited revenues that they tend to generate.

On a different note, taxpayers should take advantage of the Voluntary Tax Disclosure Program (VTDP) which ends in December 2023. The VTDP covered tax for the period 1 July 2015 to 30 June 2020. Taxpayers who will declare and pay tax liabilities for that period within the year will enjoy 25% remission of penalties and interest.

Considering the success of the VDTP, KRA should in 2023 come up with another one to cover the period 1 July 2020 to 30 June 2022.

Finally, the nation anticipates seeing how the draft national tax policy will be finalised in 2023. The policy intends to guide the government on collection of taxes, provide a basis for review of tax laws, provide a framework for granting and monitoring tax incentives, among others. Some of the objectives are likely to be implemented in 2023, with or without the tax policy, for example the reduction or elimination of tax exemptions so that the country can collect maximum revenue and reduce dependence on debt.

If the political pronouncements are anything to go by, Kenya's tax environment in 2023 is set for a radical shift. Taxpayers should tighten their belts and expect some turbulence on the way. Bon voyage!

Alex Kanyi and Joseph Macharia

SOUTH AFRICA

The end of a cycle and the beginning of a new one: Publication of the 2022 tax law amendment acts and Annexure C workshops for the 2023 Budget

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The promulgation of these amendment acts brings to an end the 2022 legislation cycle, including the public consultation process that followed the publication of the draft tax amendment bills in July 2022. Whereas the TALAA deals with provisions regarding tax administration across various pieces of tax legislation, including the Tax Administration Act, 28 of 2011, the TLAA contains amendments to substantive provisions of South Africa's tax legislation, including income tax, corporate tax, international tax and carbon tax. The Rates Act includes amendments to tax rates, rebates and excise duties prescribed in tax legislation, most of which were announced in the 2022 Budget.

The amendments in each of these pieces of legislation will not all come into effect at the same time - some of the amendments will apply retrospectively while others will only come into effect at the beginning of the next tax year, that is 1 March 2023. The date on which a specific amendment provision comes into effect is in many instances indicated in the provision itself. Where the date of commencement is not indicated, that amendment will be deemed to come into effect when the relevant amendment was promulgated, being 5 January 2023.

2023 tax legislation cycle and Annexure C workshops

Although the 2022 cycle only came to an end recently, the 2023 cycle already started in November 2022 when National Treasury (NT) invited the public to submit technical tax proposals for possible inclusion in Annexure C of the 2023 Budget. Following the submission of proposals, NT hosted workshops on 8 and 9 December 2022, during which the public was given an opportunity to present and engage NT on their proposals.

2022 RESULTS

CHAMBERS GLOBAL 2018 - 2021 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by **CHAMBERS GLOBAL 2003 - 2022** in Band 1: Tax.

Gerhard Badenhorst was awarded an individual spotlight table ranking in **CHAMBERS GLOBAL 2022** for tax: indirect tax. **CHAMBERS GLOBAL 2009–2021** ranked him in Band 1 for tax: indirect tax.

Mark Linington ranked by **CHAMBERS GLOBAL 2017 - 2022** in Band 1: Tax: Consultants.

Ludwig Smith ranked by **CHAMBERS GLOBAL 2017 - 2022** in Band 3: Tax.

Stephan Spamer ranked by **Chambers Global 2019-2022** in Band 3: Tax.

TOP RANKED Chambers Global 2022

Cliffe Dekker Hofmeyr

SOUTH AFRICA

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CONTINUED

A considerable number of submissions were made by the public; one of the most interesting and topical issues discussed during the workshops related to the proposed withdrawal of Practice Note 31 (PN 31), which the South African Revenue Service (SARS) has proposed withdrawing from 1 March 2023. When SARS indicated its intention to withdraw PN 31, which has been in place for almost 30 years, it suggested that legislative amendments would likely be made that would apply instead of PN 31 and that the intention to withdraw was done to give the public an opportunity to propose amendments for inclusion in Annexure C. PN 31 states that even if a person earning interest on capital or surplus funds does not carry on the trade of a moneylender, it is SARS' practice to allow expenditure incurred in the production of interest to the extent that it does not exceed the interest income earned. A significant number of taxpayers rely on this provision to claim an interest deduction, and many will be waiting with bated breath to see what is announced in the 2023 Budget. Although the decision to withdraw PN 31 will ultimately be SARS' decision and not NT's, the 2023 Budget will hopefully give some indication whether the intended withdrawal will take place and if so, what provisions will be proposed to address the void.

Given the current energy challenges South Africa faces, another interesting proposal made related to expanding the deductions for investments made into renewable energy, including the deduction in section 12B of the Income Tax Act, 58 of 1962.

2023 Budget

The 2023 Budget will likely be published in the second half of February 2023, on the same day that the Budget Speech is also given by the Minister of Finance. It will then be revealed whether proposals made by the public during the Annexure C process were accepted.

Louis Botha

OUR TEAM

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR
Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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