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CLIFFE DEKKER HOFMEYR

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President Ruto's major tax proposals ahead of the Finance Bill, 2023

In late March, President Ruto made some key tax pronouncements in his speech at the American Chamber of Commerce (AmCham) Business Summit. Most elements of the speech are expected to feature in the Finance Bill, 2023 as part of wide tax reforms. In a further Cabinet meeting chaired by the President on 27 April 2023, additional proposals were made as part of the efforts to bolster the Bottom-up Economic Transformation Agenda and facilitate economic growth.

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From both the speech and the recent Cabinet meeting, some of the major proposals that the public can expect to see in the Finance Bill, 2023 include the exemption of liquefied petroleum gas (LPG) from value-added tax (VAT), import declaration fees (IDF) and the railway development levy (RDL); reassessment of the digital service tax (DST) framework; exemption of tea purchased from factories or auction centres for purposes of export from VAT; adoption of a consistent national tax policy; introduction of excise duty on imported fish and furniture; solving delays in tax refunds; scrapping of VAT on exported services; and the introduction of a one-year amnesty on penalties and interest for accrued tax debts.

These proposals carry a wide range of implications for all taxpayers should they be enacted into law.

Exemption of LPG from VAT, IDF and RDL

Currently, LPG is subject to taxes at the rates of 8% VAT, 3.5 % IDF and 2 % RDL. The proposal to exempt LPG from these taxes and levies would make cooking gas significantly more affordable to Kenyans. Additionally, the move will likely reduce the destruction of forests as well as the use of biomass fuel. This will pave the way for increased clean domestic energy consumption in Kenya.

Re-assessment of the DST

DST is a tax that is charged on the income derived or accrued in Kenya from services that are offered through a digital marketplace. A digital marketplace can be described as a platform that allows for direct interactions between both sellers and buyers of goods and services. DST, which took effect from 1 January 2021, is charged at the rate of 1,5% of the total transaction value.

President Ruto's pronouncement, if passed into law, implies that Kenya would abandon the unilateral approach that it has been embracing on DST and align with the Organisation for Economic Co-operation and Development's (OECD) Inclusive Framework, which is centred on a two-pillar solution. If this proposal is implemented, there is hope that the challenge of tax avoidance by multinational corporations will be effectively addressed. Under the first pillar of the framework, the primary aim is for large corporations to reallocate a portion of their taxable profits to market jurisdictions. The second pillar of the framework, on the other hand, imposes a minimum corporate income tax of 15%.

Under the previous Government, President Uhuru Kenyatta was hesitant to back the OECD Inclusive Framework because it would have resulted in the abolition of the DST without a guarantee of collecting more taxes from the OECD regime.

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Exemption of tea purchased from factories or auction centres for purposes of export from VAT

The proposal by the Government to exempt tea purchased from factories or auction centres for purposes of export from VAT is likely to be counterproductive as the factories cannot claim the input VAT for processing the tea. The factories will be forced to find a way to either absorb the cost or pass it on to tea importers.

Adoption of a consistent national tax policy

The need for a consistent national tax policy was emphasised not just by President Ruto but also the US Ambassador Meg Whitman at the AmCham Business Summit. This comes against the backdrop of numerous concerns from both investors and taxpayers regarding the existence of different tax regimes that are an impediment to business in Kenya.

A consistent national tax policy as fronted by the President is likely to result in not just consistency and predictability in taxation, but also the promotion of good investments because of the stability it can provide. As it stands, all the relevant stakeholders have been consulted and their input considered in finalising the policy before it can be put forward for parliamentary approval.

Introduction of excise duty on imported fish and furniture

The introduction of excise duty on imported fish and furniture is likely to be one of the features of the Finance Bill, 2023. This is likely to promote the local fish and furniture industries, if implemented.

It is not, however, clear if the local market is big enough to support the current demand for fish and furniture in Kenya. Local traders who were importing fish and furniture will be impacted negatively and the prices are likely to go up if the introduction of the excise duty is not implemented progressively.

Solving delays of tax refunds

Constant delays in refunding verified tax claims are a challenge that the National Treasury has constantly grappled with. To solve this issue, President Ruto announced in March that starting from June 2023 all verified claims of tax refunds will be payable within six months.
To demonstrate his commitment to resolving this problem, he further stated that in cases where a refund has not been made by the Kenya Revenue Authority (KRA) within the six-month period, taxpayers will have the right to offset their claims against future tax liability without making further applications to the KRA.

Since no techniques were provided on how this proposal would come in force after it is signed into law, all stakeholders will have to await the Finance Bill, 2023 to understand

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it in full terms. The effect of tackling delays in tax refunds would be highly beneficial to taxpayers, especially corporations that are owed large tax refunds by the KRA.

Scrapping of VAT on exported services

President Ruto also remarked in his speech at AmCham that the introduction of VAT on exported services by the Finance Act, 2022 had rendered the country uncompetitive and constantly hindered investors from making Kenya their regional services hub.

To this extent, he stated that VAT on exported services will be removed from the end of June 2023. This scrapping of this tax is also likely to feature in the Finance Bill, 2023 and will be subject to public participation and consequent approval from Parliament. It is possible that the implementation of this proposal may take the form of an exemption from VAT, as opposed to zero-rating.

If this proposal is passed into law, there is a likelihood that it will positively impact the Kenyan business environment by attracting numerous investments in the services industry.

Amnesty on penalties and interest for accrued tax debts

In recognition Kenya's tax debt portfolio, which currently stands at KES 1,5 trillion, Cabinet proposed a one-year amnesty to be introduced on penalties and interests.
This proposal is aimed at reducing the growing tax debt. It is also fashioned as a mechanism for encouraging tax debtors to come forward and make payments. We will wait to see if this will be couched in the same way as the Voluntary Tax Disclosure Programme, which comes to an end this year.

Conclusion

The current administration is aiming to attract business investors to the country and improve its economic outlook.

To achieve this, numerous tax proposals are likely to feature in the Finance Bill, 2023. While there is a lot of enthusiasm regarding some of the recent pronouncements, challenges are still likely to arise – especially with proposals such as the review of the DST framework.

The Government is also struggling to pay foreign debt, settle pending bills, pay salaries to civil servants, and disburse money to counties.

While the measures that have been announced are welcome, we expect some new taxes to be introduced and exemptions to be removed so that the Government can collect significant revenue to augment its ambitious budget for 2023/24.

We encourage everyone to be on the lookout for the Finance Bill 2023 and to participate in the process that will change Kenya's tax landscape for the next financial year, which commences on 1 July 2023.

Alex Kanyi and Brandon Otieno

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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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