FOR MORE INSIGHT INTO OUR EXPERTISE AND SERVICES

8 DECEMBER 2023

Tax & Exchange Control ALERT

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SOUTH AFRICA

BPR 398: Will you be the yield to my instrument?

The tax treatment of interest and dividends is quite different.

Generally, interest paid on money borrowed in the production of trading income is deductible for tax purposes, while the interest derived by the creditor from a loan or investment of money is taxable

On the other hand, where a company declares a dividend, the dividend may be exempt from normal tax in the hands of the shareholder recipient, however, the company will not be able to deduct the amount as an expense. Further, the dividend may be subject to dividends tax (unless – among other things – the shareholder is a company), which burden is borne by the beneficial owner, i.e. the person entitled to the benefit of the dividend attaching to a share.

The South African Revenue Service (SARS) recently issued Binding Private Ruling 398, dated 17 November 2023 (BPR 398) which provides a great opportunity to refresh one's memory of the anti-avoidance provisions contemplated in section 8E and 8EA of the Income Tax Act 58 of 1962 (Act).

Facts of BPR 398

The applicant in BPR 398 was a resident company that wholly owned a resident property holding company (PropCo) which, in turn, owned land situated in South Africa.

In terms of the ruling, the applicant and another resident company (DevelopCo) intended to incorporate a joint venture for the purposes of developing the land owned by PropCo and *"unlock[ing] the inherent value of the land"*.

It is noted in the ruling that given the uncertainty around the ability to *"unlock the inherent value of the land"*, a third-party buyer would be unwilling to pay for the speculative value of the land.

As such, it was proposed that:

- PropCo would issue preference shares to the applicant as a capitalisation share issue which would give the applicant a preferential right equal to the speculative value of the land; and

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BPR 398: Will you be the yield to my instrument?

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- the applicant would, thereafter, dispose of 51% of the ordinary shares in PropCo to DevelopCo.

The preference shares to be issued to the applicant by PropCo would incorporate, *inter alia*, the following terms:

- the preference shares would rank in priority with respect to distributions by PropCo and the repayment of shareholder loans;
- each preference share would be or may be redeemable, as the case may be:
    - on a scheduled redemption date (which will be five years after the original date of issue); or
    - at the voluntary and sole discretion of the board of PropCo; or
    - if a trigger event, illegality event or a sanction event arises; and
- if a trigger event occurs, a dividend rate of 7% would be applied to any outstanding payments in respect of the preference shares.

The rationale for issuing the preference shares was to protect the applicant against divestiture of control in the shareholding of PropCo. In this context, the preference shares intended to enable the applicant to have a preferential claim which would be secured by the land, enabling it to have direct access to the land as security in the event that the joint venture was not successful, and the preference shares could not be redeemed.

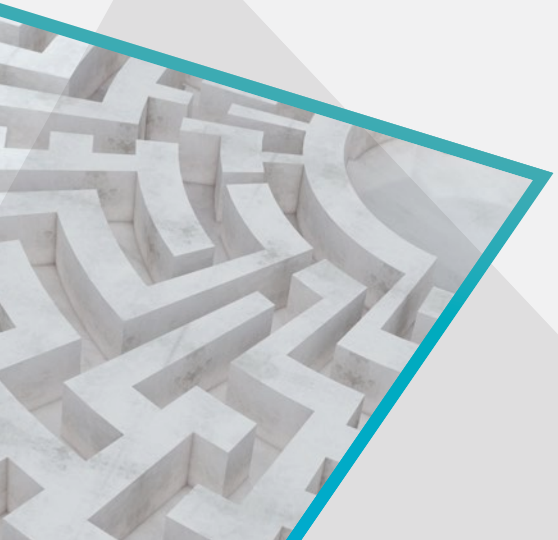
The ruling further notes that on redemption, the preference shares would be redeemed out of profits and not out of capital.

Ruling issued by SARS

Based on the above facts SARS' ruling noted, amongst other things, that:

- The preference share dividends and/or redemption amounts received by or accrued to the applicant would constitute "*dividends*", as defined in section 1(1) of the Act.
- The preference shares would not constitute "*hybrid equity instruments*" as defined in section 8E(1). As such, the dividends would not be deemed to be income under section 8E(2) of the Act.
- The preference shares would not constitute "*third-party backed shares*" as defined in section 8EA(1) of the Act either, and any dividends declared would not be deemed to be income under section 8EA(2) of the Act.
- As soon as the applicant became entitled to compel PropCo to redeem the preference shares within three years of the date of issue, the preference shares would constitute "*hybrid equity instruments*" as contemplated in section 8E(1)(a)(ii) of the Act.

SARS also made some interesting rulings regarding the interpretation and application of paragraph 43A of the Eighth Schedule to the Act



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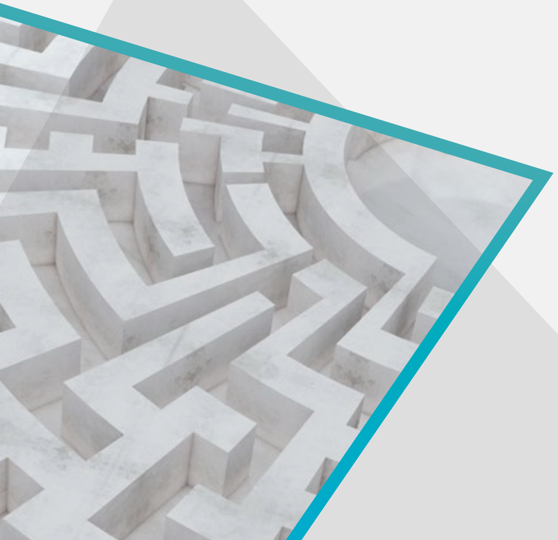

which pertains to the so-called "*anti-dividend stripping rules*", however, we have not (for the sake of brevity) addressed these issues in this note although they do warrant further analysis.

Recap on applicable provisions

Section 8E and 8EA of the Act are anti-avoidance provisions aimed at share-financing transactions (usually preference shares) that disguise otherwise taxable interest as tax-exempt dividend income.

In terms of section 8E(2) of the Act, a taxpayer who receives or to whom dividends or foreign dividends accrue, during any year of assessment in respect of a share or equity instrument, will be deemed to have received or accrued an amount of income to the extent that the share or equity instrument constitutes a "*hybrid equity instrument*" at any time during the year of assessment. The practical effect of this provision is that since the amount is deemed to be income, the basic dividend exemption in section 10(1)(i) of the Act will not be available.

The trigger for the applicability of section 8E is the presence of a "*hybrid equity instrument*".

The term "*hybrid equity instrument*" is defined in section 8E(1) and can be divided into five categories. However, for purposes of this article we only include two (out of five) of the subparagraphs of the definition that are contemplated in section 8E(1) of the Act.

In this context, section 8E(1) defines a "*hybrid equity instrument*" as:

"*(a) any share, other than an equity share, if:*

- *the issuer of that share is obliged to redeem that share or to distribute an amount constituting a return of the issue price of that share (in whole or in part); or*
- *the holder of that share may exercise an option in terms of which the issuer must redeem that share or to distribute an amount constituting a return of the issue price of that share (in whole or in part, within a period of three years from the date of issue of that share …*

(c) any preference share if that share is:

- *secured by a financial instrument;*
- *subject to an arrangement in terms of which a financial instrument may not be disposed of, unless that share was issued for a qualifying purpose.*"

Section 8EA, on the other hand, is triggered by the existence of a "*third-party backed share*". Similar to section 8E, any dividends or foreign dividends received or accrued in respect of a share or equity instrument will be deemed to be

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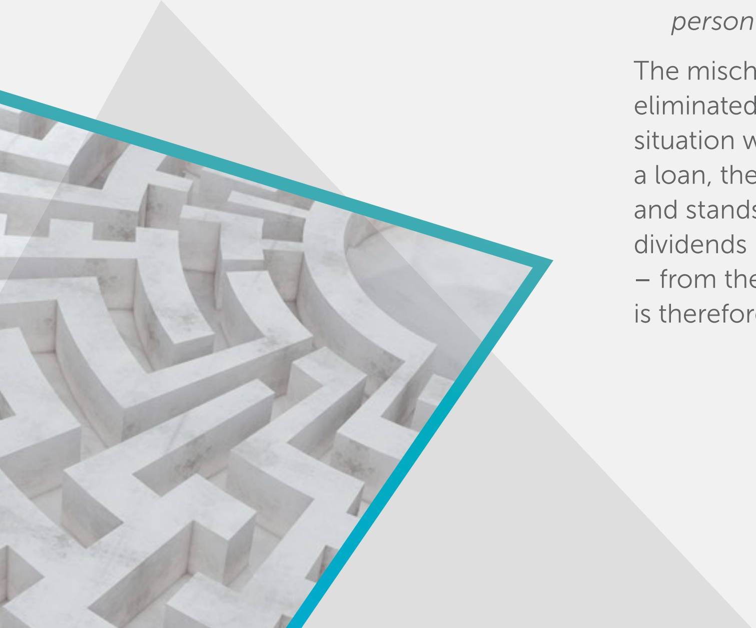

income in the hands of the recipient to the extent that the share or equity instrument constitutes a "*third-party backed share*".

Section 8EA(1) defines a "*third-party backed share*" as:

> "*[A]ny preference share or equity instrument in respect of which an enforceable right is exercisable by the holder of the preference share or equity instrument as a result of any amount of specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share or equity instrument not being received by or accruing to any person entitled thereto.*"

The mischief that is sought to be eliminated by section 8EA is a situation where, instead of granting a loan, the lender acquires shares and stands to receive tax-free dividends – as opposed to interest – from the borrower. The objective is therefore to eliminate special purpose vehicles and other third-party guarantee mechanisms that allow the holder of preference shares to rely on guarantees from third parties, thereby avoiding the risk inherent in the issue of the preference shares itself. In essence, the concept of a "*third-party backed share*" is a preference share guaranteed or endorsed by a third party with regard to the specified dividend yield or return attached to it.

The difference between section 8E and 8EA is that the focus in 8E is on the instrument itself, whereas in 8EA it is on the dividend yield.

Comments

It is noted that in terms of the facts of BPR 398, the preference shares are subject to a scheduled redemption date of five years after the original date of issue. However, the facts also signal the possibility of redemption prior to the lapse of the five years – i.e. if the board of PropCo so decides or if a trigger event, illegality event or a sanction event arises.

It is therefore no surprise that SARS ruled, in the first instance, that the preference shares do not constitute "*hybrid equity instruments*".

However, and more importantly, the ruling does note that "*as soon as the applicant becomes entitled to compel PropCo to redeem the preference shares within three years of the date of issue, the preference shares will constitute hybrid equity instruments as contemplated in section 8E(1)(a)(ii).*"

This ruling is important because it confirms that even though there is no upfront obligation on the issuer (i.e. PropCo) in the first three years to redeem the preference shares (and concomitantly no right for the holder (i.e. the applicant) to redeem the preference shares within the first three years, if certain events arise and the applicant becomes entitled to compel redemption, then the instrument becomes a "*hybrid equity instrument*". All dividends then declared in that year of assessment will be recharacterised as income.

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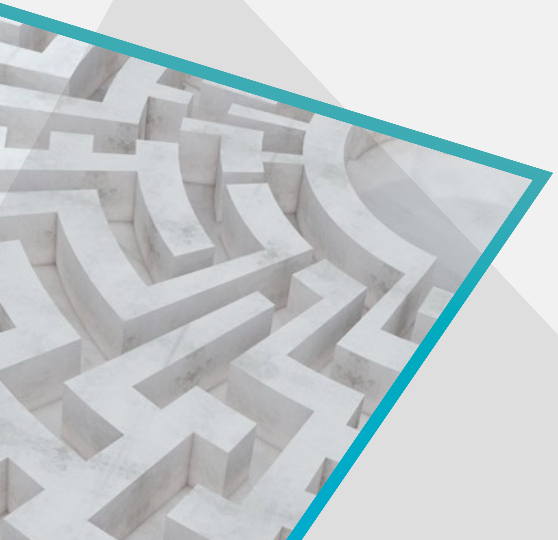
Furthermore, even though there is a type of security provided for the preference share holder in the facts in this ruling, SARS implied that the preference shares would not fall within subparagraph (c) of the definition of "*hybrid equity instrument*". This means that, in SARS' view, the security provided would not, among others things, be considered a "*financial instrument*" or a "*financial arrangement in terms of which a financial instrument may not be disposed of*".

Additionally, SARS implied that the security mechanism would not result in the preference shares becoming "*third-party backed shares*". In this context, the security rights held by the applicant were importantly exercisable against the issuer of the preference shares itself and not a "*third-party*".

This ruling also highlights the importance of reviewing the nature of a preference share or equity instrument on a regular basis as both sections 8E and 8EA will apply if the share or equity instrument constitutes a "*hybrid equity instrument*" or "*third-party backed share*", as the case may be, **at any time** during the year of assessment. These provisions are complex technical anti-avoidance sections with many nuances and one could unwittingly fall within these sections (with dire consequences – especially for the issuer) if a taxpayer does not seek professional tax advice prior to entering into the arrangement.

Puleng Mothabeng



KENYA

An overview of the High Court's decision on the Finance Act, 2023: Was it just about the housing levy?

The Finance Bill, 2023 (Finance Bill) was passed by the National Assembly on 23 June 2023 and subsequently assented to by the President on 26 June 2023 thereby making it law, as the Finance Act, 2023 (Finance Act).

Multiple constitutional petitions were filed to challenge the constitutionality of the legislative process leading to the enactment of the Finance Act. The petitioners also faulted certain provisions in the Finance Act as being in violation of the Constitution of Kenya, 2010 (Constitution). The High Court subsequently consolidated the petitions and rendered its decision on 28 November 2023 in *Okiya Omtatah Okoiti and 51 Others* (petitioners) *vs The Cabinet Secretary for the National Treasury and Planning and 6 Others* (respondents), Constitutional Petition No. E181 of 2023.

The High Court in summary found that the housing levy as framed in the Finance Act, 2023 as unconstitutional. The court particularly found that the levy was discriminatory because only employed people would bear the burden, among other reasons. The court, however, later stayed its decision until 10 January 2024, meaning employers and employees will continue to pay the levy until then or until such time as may be extended by the High Court.

The 107-page, 221-paragraph decision is not just about the housing levy, although for the petitions and the decision, the housing levy took centre stage.

The decision considers other important legal issues such as the role of the Senate in the Finance Bill process, public participation and whether members of the National Assembly can introduce provisions in the Finance Bill after public participation. Here is a detailed analysis of the decision.

Issues

The High Court outlined the following as the issues for consideration:

a. Were procedural requirements pertaining to the legislative process of the Finance Bill adhered to? Including:

    i. Whether the Finance Bill is a money bill.

    ii. Whether the Finance Bill required concurrence of the Speaker of the Senate.

    iii. Whether estimates of revenue and expenditure were included in the Appropriation Act in accordance with the Constitution and the Public Finance Management Act.

b. Whether the public participation conducted was sufficient.

c. Whether certain taxes cited in the petition and as enacted by the Finance Act were unconstitutional.

d. Whether section 84 of the Finance Act introducing the housing levy was unconstitutional.

e. What reliefs, if any, should the court grant in the circumstances?

f. Who should bear the costs of the consolidated petitions?

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An overview of the High Court's decision on the Finance Act, 2023: Was it just about the housing levy?

CONTINUED

Analysis and determination

Were procedural requirements pertaining to the legislative process of the Finance Bill adhered to?

The petitioners argued that the Finance Bill concerned counties since it contained provisions affecting the functions and powers of county governments such as housing, making it imperative for the Senate to participate in the legislative process.

The respondents, on the other hand, averred that as the Finance Bill was a money bill and not a bill concerning county governments as contemplated in Article 110 of the Constitution, the concurrence of the Speaker of the Senate was not required, and the participation of the Senate was precluded by Article 114 of the Constitution.

A money bill is defined in Article 114 as one containing provisions on taxes; the imposition of charges on a public fund, or variation or repeal of such charges; the appropriation, receipt, custody, investment, or issue of public money; the raising or guaranteeing of any loan or its repayment or matters incidental to any of these matters. For purposes of the definition, "*tax*", "*public money*", and loan do not include those raised by a county.

The court agreed with the respondents and held that the Finance Act was a money bill, hence it held that the Speaker of the National Assembly was under no obligation to seek concurrence from the Speaker of the Senate prior to the introduction of Finance Bill. It held, however, that the Finance Act contains some matters that do not fall within the purview of or that are incidental to a money bill, although this fact did not change the basic character and substance of a money bill. The court therefore held that the extraneous amendments were unconstitutional, i.e. sections 76 and 78 of the Finance Act on appointment of board members of Kenya Roads Board; section 87 on allowing a beneficiary to appoint a proxy for unclaimed assets; and sections 88 and 89 of the Finance Act on removal of the expiry period for statutory instruments.

The High Court separately found that the estimates of revenue were approved through the Appropriation Bill and the Appropriation Act.

Whether the public participation conducted was sufficient

The petitioners also challenged the Finance Act on the basis that there was inadequate public participation.

The court considered that there was ample evidence that the National Assembly invited stakeholders to submit their comments on the Finance Bill though public meetings and submission of written memoranda. Some proposals were accepted while others were rejected.

The petitioners further complained that some of the submissions by members of the public were rejected without giving reasons. The court found that it was not mandatory for Parliament to provide reasons, but this would be a good practice.

The petitioners also challenged the provisions of the law that were introduced after public participation.

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An overview of the High Court's decision on the Finance Act, 2023: Was it just about the housing levy?

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The court found that the National Assembly is not precluded from effecting amendments to the Bill before it is passed as doing so would curtail the law-making powers of Parliament.

Whether certain taxes cited in the petition as enacted by the Finance Act were unconstitutional

The petitioners challenged tax raising measures introduced by the Finance Act. The court, while relying on Articles 94(1) and 210(1) of the Constitution, opined that the National Assembly has broad powers to levy tax provided the power is not exercised in a manner that infringes or violates provisions of the Constitution, more particularly the process prescribed and the Bill of Rights.

Consequently, the court proceeded to analyse each of the challenged taxes, such as taxes on entertainment, digital asset tax, tax on 'winnings' from betting, gaming and lotteries, the introduction of new tax bands, the introduction of 16% value-added tax (VAT) on insurance compensation and collection of excise duty within 24 hours from betting companies and alcohol manufacturers.

None of the petitioners' challenges regarding the taxes were upheld mainly because the taxes were imposed by Parliament in compliance with the Constitution, hence there was no justification to intervene.

Whether section 84 of the Finance Act introducing the housing levy was unconstitutional

The petitioners challenged the introduction of the housing levy on the basis that the levy is an alien tax; that gross salaries of employees will be impacted; that salaries of judges, members of constitutional commissions, and holders of independent offices will be adversely affected; that the housing levy is discriminatory: that there is a lack of a legal framework to govern the imposition and administration of the levy; that the absence of a foundational statute results in uncertainty; that the Constitution places an obligation on the National Government to deposit all monies it raises in taxes in the Consolidated Fund; and that no fund as envisaged in Article 206 (1) of the Constitution has been put in place and that the Kenya Revenue Authority's (KRA) mandate does not include receipt of the funds arising from the levy.

Other grounds laid out by the petitioners included that the levy violates the Housing Act; that the deduction is unconscionable and impractical; that public participation in respect of the levy was cosmetic and a mockery of the sovereignty of the people; that the Employment Act, 2007 already obligates employers to provide housing for employees and that the imposition of the levy amounts to double taxation; and that the imposition of the tax under the Employment Act amounts to a limitation of labour rights among others.

The respondents argued that the amendment was aimed at taxation on income which the National Government is empowered to impose,

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An overview of the High Court's decision on the Finance Act, 2023: Was it just about the housing levy?

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and that the establishment of the housing fund was a policy decision aimed at enabling the Government to provide adequate housing for all citizens towards fulfilling the dictates of Article 43(1)(b) of the Constitution. They further argued that the introduction of the levy was not a novel issue as there are other levies, such as the sugar development levy, railway development levy and others imposed by the National Government that are geared towards collecting funds for various key priority areas.

The High Court, in its analysis, considered that the amendment in the Employment Act did not set out either on the face of it or by reference to other legislation how the stated purpose is to be achieved. The court further relied on Article 210 (1) of the Constitution, which provides that no tax or licensing fee may be imposed, waived, or varied except as provided by legislation, and on Article 10(2)(b) and (c) of the Constitution that outline national values and principles of governance, to hold that section 84 of the Finance Act had shortfalls that negate these principles.

The court also held that section 84 of the Finance Act did not set out how the levy will be administered once collected, and that the legislation did not state how it supports the housing policy function of the National Government. It further held that the framework for the housing levy legislated by section 84 of the Finance Act did not meet the requirements of Articles 201 on principles of public finance, 206(1) on the Consolidated Fund, 210 on imposition of tax, and Article 10 of the Constitution on national values and principle of governance.

Consequently, the court held that the introduction of the housing levy lacked a comprehensive legal framework in violation of Articles 10, 201, 206 and 210 of the Constitution, and that the imposition of the housing levy against persons in formal employment to the exclusion of other non-formal income earners to support the national housing policy was without justification, unfair, discriminatory, irrational, and arbitrary and in violation of Articles 27 (discrimination) and 201 (b)(i) of the Constitution.

The court separately found that the KRA had no power to collect the housing levy because the Employment Act was not listed as one of the acts which KRA had power to administer under the KRA Act.

The court proceeded to hold that section 84 of the Finance Act was unconstitutional, null, and void. It consequently issued prohibitory orders against the respondents from charging, levying or in any way collecting the affordable housing levy.

Conclusion

The court's decision is a relief not only to employees but also employers who had an obligation to each contribute 1,5% of an employee's gross monthly salary as housing levy. The relief was, however, cut short when the court on the same day issued orders to

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An overview of the High Court's decision on the Finance Act, 2023: Was it just about the housing levy?

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stay implementation of this decision until 10 January 2024. We expect the respondents and the petitioners to file an appeal at the Court of Appeal to challenge the High Court's decision, and this means that the stay could be extended for a while. Employers and employees should be prepared to pay the housing levy until a final determination is made by the Court of Appeal (or the Supreme Court, as we see this going through to the apex court). In the meantime, the Government has gazetted the Affordable Housing Bill, 2023 which intends to cure most of the issues raised by the High Court. We will wait to see the impact of this on the ongoing case.

The court's emphasis on public participation is noteworthy. It confirmed that the same should not only be facilitative but also reasonable. It is, however, worrying that Parliament can introduce amendments to the bill even after public participation. While the court has indicated that it will be on standby to check against any excesses by Parliament, additional safeguards should be introduced to ensure that this is not abused.

The decision also reiterated the role of the Senate in the bill-making process by emphasising that there is no obligation for concurrence between the National Assembly and the Senate for money bills. However, it is important for the speakers of both houses to discuss and agree on whether a bill is a money bill or not.

It appears from the decision that there was not much focus on the electronic Tax Invoice Management System (eTIMS) and its implications. From January 2024, the KRA will disallow expenses that are not supported by eTIMS invoices. Low-income earners such as vendors and service providers will bear the brunt of this as corporates are likely to shun them in favour of more organised vendors such as supermarkets and professional outsourcing companies. Low-income earners can, however, engage the KRA to onboard them onto eTIMS.

Taxpayers should also be prepared to comply with other sections of the Finance Act, 2023 which come into force from 1 January 2024, such as taxation of employee shares in start-ups, taxation of branches, reduced monthly rental income tax of 7,5%, increased advance tax for commercial vehicles among others.

Alex Kanyi and Billy Oloo

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A review of the report on the National Tax Policy: Taxing tomorrow towards economic resilience?

The draft National Tax Policy (Policy) was presented in Parliament on 27 April 2023 and is aimed at facilitating revenue mobilisation, income distribution, regulation of goods and services with negative externalities, employment creation, price stability, economic development through investment promotion, and local value addition.

The Departmental Committee on Finance and National Planning (Committee) consequently held stakeholder meetings and considered the Policy and the submissions by members of the public and stakeholders. The Committee then made recommendations through its Report on the Consideration of the National Tax Policy, dated 23 November 2023.

The recommendations

1. The Policy's general structure

The Committee noted that the Policy should be aligned to the standard government format by providing for policy concerns, policy objectives, policy actions and policy outcomes. Further, it was recommended that a risk management framework be integrated into the Policy to outline procedures for identifying, assessing, mitigating and managing risks associated with the Policy's implementation.

To reconcile disparities and conflicts, the Committee recommended that the Policy be harmonised with the draft 2023 Medium-Term Revenue Strategy, and conscious of the need to respond to climate change, the Committee also recommended that the Policy be aligned to ensure that taxation supports the country's strategies in climate change mitigation.

2. Hard-to-tax sectors

The Committee recommended that the Policy's scope be expanded to incorporate the digital sector among the hard-to-tax sectors, which originally included the informal and agricultural sectors. Finding alternative tax strategies such as the use of withholding taxes at source when making payments was also recommended. To further expand the tax base, the Committee recommended the use of digital/electronic payments that leave a digital trail. Perhaps this explains the

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Chambers Global 2018 - 2023 ranked our Tax & Exchange Control practice in **Band 1**: Tax.

Emil Brincker ranked by **Chambers Global 2003 - 2023** in **Band 1**: Tax.

Gerhard Badenhorst was awarded an individual spotlight table ranking in **Chambers Global 2022 - 2023** for Tax: Indirect Tax.

Mark Linington ranked by **Chambers Global 2017 - 2023** in **Band 1**: Tax: Consultants.

Stephan Spamer ranked by **Chambers Global 2019-2023** in **Band 3**: Tax.

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A review of the report on the National Tax Policy: Taxing tomorrow towards economic resilience?

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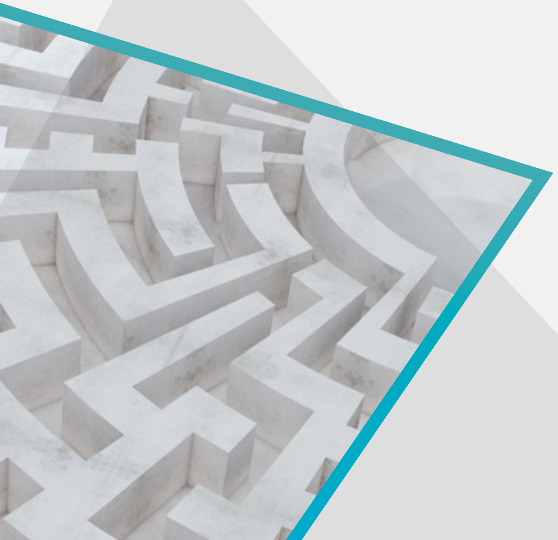

Government's push for invoices to be issued through the electronic Tax Invoice Management System (eTIMS).

The expansion of the Policy's scope to include the digital sector and the proposal of alternative tax strategies for hard-to-tax sectors demonstrate a forward-thinking approach to address the evolving economic landscape.

3. *Management of tax administration*

Another significant recommendation was the provision for an efficient funding structure to ensure that settlement of approved tax refunds is done within six months. Further, on tax administration management, the Committee recommended that there should be an objective criterion to determine tax incentives' eligibility, to guard against political and private interests, and that the tax sector players who enjoy such incentives should submit statistical data on the impact of the incentives on their business growth and the national economy to the National Treasury.

As a measure to improve budget transparency, it was recommended that tax expenditure estimates should be explicitly provided in the annual budget estimates presented before the National Assembly, and the National Treasury should publicise annual tax expenditures reports.

4. *Income tax*

The Committee further recommended that there is a need to ensure that income taxes are always at an optimal level so that salaried employees' disposable income and purchasing power are not eroded, and that there should be a progressive tax band structure that ensures the marginal rate is not higher than the corporate income tax rate.

In relation to inflation and its effects, the Committee recommended that there should be inflation adjustments in pensions, and to allow for five-year reviews to accommodate inflation, the rising cost of living and increasing tax burden. It also recommended that capital gains tax be made applicable to only actual gains by adjusting change in property value through the elimination of inflation's effect, as opposed to the current computation that does not accommodate losses occasioned by inflation.

5. *Value-added tax*

The Committee recommended that there should be multiple value-added tax (VAT) rates to allow an alternative rate to cushion the economy against shocks caused by global trends and adverse effects of increases in the prices of products. This would seem to reverse the intentions of the Government to remove the 8% VAT rate which was applicable to petroleum products before the change to the current 16% VAT rate.

Further, it was recommended that the granting of VAT exemptions should base on incentivising investment and cushioning Kenyans from economic shocks.

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6. Excise duty

On the definition of *"other goods"* as part of the list of products to be subjected to excise duty, the Committee recommended that this category should not include essential goods, basic necessities goods, food items, medicaments, or agricultural-related products.

The Committee also recommended that the excise duty on the prevention of consumption of harmful products should be aimed at tackling the products' effects in society.

7. Public participation and National Assembly's approval

The Committee recommended that amendments to the East Africa Customs Management Act and general customs administration should first undergo public participation, followed by National Assembly's approval, before the Government makes any proposals to the East African Community, the regulations should be approved by the National Assembly.

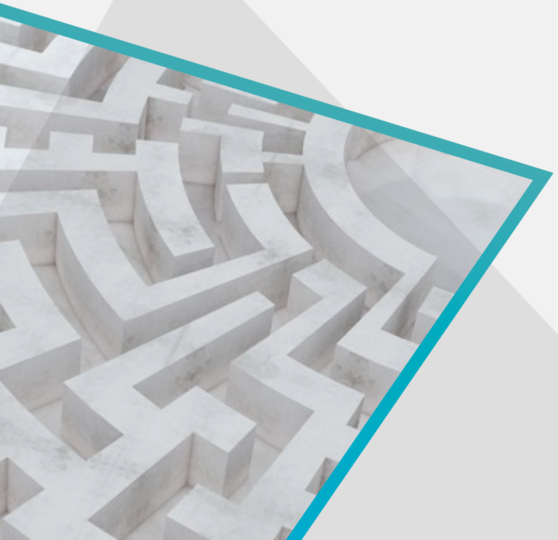
The Committee further recommended that the National Assembly's approval should be applicable in double taxation agreements before execution.

Conclusion

In conclusion, the Committee's recommendations are thoughtful, emphasising alignment with government standards, risk management integration, and harmonization with the 2023 Medium-Term Revenue Strategy. The expansion of the policy's scope to include the digital sector, coupled with proposals for alternative tax strategies, reflect a proactive stance in adapting to economic shifts.

The Committee's focus on efficient funding structures, objective criteria for tax incentives, and increased transparency in tax expenditures demonstrate a commitment to fiscal responsibility, while the recommendations regarding income tax, VAT rates and excise duty reveal a nuanced approach to balancing economic growth with the well-being of citizens. This includes the recommendation to consider the effect of inflation on a property's value while computing capital gains tax. This will cushion investors and property owners, ensuring they only pay capital gains taxes on the actual gains in the event that they transfer their property.

Further, the recommendation to process tax refunds within six months is a welcome one in light of the current long timelines, for instance, refund of non-VAT related refunds



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is done within two years after application. Lastly, the emphasis on public participation and National Assembly approval underscores a dedication to democratic processes in shaping the nation's tax framework.

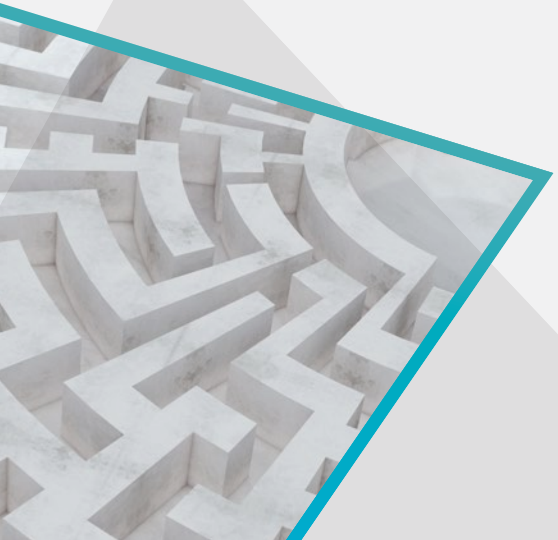
Together, these recommendations provide a comprehensive roadmap for optimising the National Tax Policy to foster economic development and safeguard public welfare.

The Policy, together with the Committee's recommended revisions, once approved, shall be instrumental in guiding any future revisions of tax-related laws.

The next step on the National Tax Policy is a comprehensive review of the policy by the National Treasury so as to incorporate the recommendations of the Committee and resubmission to the National Assembly by 8 January 2024.

We will wait to see if the National Tax Policy will be a driver of Kenya's economic resilience considering the rapid and uncertain tax changes that taxpayers have had to deal with in the recent past. Taxpayers, and particularly investors, prefer a predictable and certain tax environment so that they can make long-term investments into the country. The investments will generate much-needed revenue for the Government.

Alex Kanyi and Billy Oloo



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For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:

Emil Brincker
Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com

Sammy Ndolo
Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com

Gerhard Badenhorst
Director:
Tax & Exchange Control
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com

Jerome Brink
Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com

Petr Erasmus
Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com

Dries Hoek
Director:
Tax & Exchange Control
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com

Alex Kanyi
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.kanyi@cdhlegal.com

Heinrich Louw
Director:
Tax & Exchange Control
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com

Howmera Parak
Director:
Tax & Exchange Control
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com

Stephan Spamer
Director:
Tax & Exchange Control
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com

Tersia van Schalkwyk
Tax Consultant:
Tax & Exchange Control
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com

Louis Botha
Senior Associate:
Tax & Exchange Control
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com

Varusha Moodaley
Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com

Abednego Mutie
Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E abednego.mutie@cdhlegal.com

Nicholas Carroll
Associate:
Tax & Exchange Control
T +27 (0)21 481 6433
E nicholas.carroll@cdhlegal.com

Joan Kamau
Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E joan.kamau@cdhlegal.com

Puleng Mothabeng
Associate:
Tax & Exchange Control
T +27 (0)11 562 1355
E puleng.mothabeng@cdhlegal.com

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.

PLEASE NOTE
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JOHANNESBURG
1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN
11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI
Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

STELLENBOSCH
14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com