Budgetary measures: Proposed tax relief measures to cushion the Kenyan economy against the negative impact of COVID-19

1 Introduction

1.1 On 13 March 2020, the Government of Kenya confirmed the first case of Corona Virus Disease of 2019 (**COVID-19**) in Kenya. Two more cases were shortly thereafter confirmed on 15 March 2020 in a statement delivered by H.E. Uhuru Kenyatta, the President of the Republic of Kenya.

1.2 As the Government of Kenya, the private sector and the public at large take precautions to mitigate the spread of the virus, it is no doubt that the Kenyan economy will be adversely affected unless certain mitigation measures are put in place. To encourage the private sector and the general public to actively join the Government of Kenya in the fight against COVID-19, we have set out below a number of proposed tax measures that should be considered by the Government of Kenya.

2 Corporate taxes

(a) Donations

2.1 Under the provisions of the Income Tax Act (Chapter 470, Laws of Kenya) (the **ITA**), only expenditure incurred on donations granted to a charitable institution with a tax exemption certificate or to any project approved by the Cabinet Secretary for National Treasury and Planning or donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President, are allowed as a deductible expense on the donor company.

2.2 To promote grant of donations by corporate entities to mitigate the spread of the virus and alleviate the negative effects of the pandemic, we propose that any expenditure incurred by corporate entities for donations made directly to the public or indirectly through hospitals or institutions for disaster management towards the effort to combat the COVID-19 pandemic, be deductible in computing the taxable income of the relevant taxpayer in the year of income.

2.3 We point out that a similar tax relief was introduced in the Republic of China as one of the measures to ensure combined efforts from all sectors in the fight against COVID-19.

(b) Business expenses

2.4 In a statement given by the President on 15 March 2020 regarding the measures to be taken to reduce the spread of COVID-19, the President encouraged businesses and companies to allow employees to work from home, with the exception of employees working in critical or essential services. This will require businesses and companies to incur additional expenses such as purchase of additional laptops to allow employees to work from home, internet expenses, transportation costs, airtime expenses, expenses relating to essential items such sanitizers, masks and gloves, and medical expenses incurred in relation to the employees.

2.5 Under section 15 of the ITA, only the expenditure wholly and exclusively incurred by a tax payer in the production of income is deducted when ascertaining the income of the tax payer for tax purposes. In order to ensure the business and companies take all reasonable steps to ensure the economy continues to function with minimal interruptions, we propose that the additional business expenses that will be incurred by businesses during the pandemic period be granted a 150% tax deduction.

(c) Instalment taxes and balance of tax

2.6 Due to the additional business expenses that are being incurred and/or are expected to be incurred by businesses and companies to mitigate the impact COVID-19 in the work places, it is certain that there will be a negative cash-flow impact on the businesses. Despite this, companies whose financial year-end is 31st December will be expected to pay their balance of tax in April and others expected to pay their instalment taxes in accordance with the provisions of the ITA.

2.7 To unlock cash flow to the fight against COVID-19 and to mitigate the negative cash-flow impact which may cripple the businesses, we propose that the Government considers the deferral of instalment taxes and balance of tax due in April 2020 by one month and subsequent instalment taxes be deferred for a further one month period for the financial year 2020 to cushion businesses from the negative cash-flow impact.

(d) Tourism and catering levy

2.8 It is no doubt that one of the sectors that have been greatly affected by COVID-19 outbreak is the hospitality sector. With the suspension of travel for all persons coming into Kenya from any country that has reported COVID-19 cases and the ban of all conferences, meetings and public gatherings, it is imperative that hotels and restaurants will scale down their operations or close until CIVID-19 is brought under control. This will result in huge losses to the businesses and employees risk being declared redundant.

2.9 Persons engaged in provision of tourism services are required to charge and remit tourism levy at 2% of the gross sales under section 105 of the Tourism Act (No. 28 of the 2011) (the **Tourism Act**). Similarly, hotels and restaurants offering accommodation and catering services are required to charge and remit catering levy at 2% of the gross sales. To cushion the hospitality industry from the negative impact of COVID-19, the Cabinet Secretary for National Treasury may grant tax rebates and waivers pursuant to section 106 of the Tourism Act. In this regard, we propose that a temporary suspension or waiver be granted to the hospitality sector in respect of imposition of the tourism and catering levy during the pandemic period.

3 Value Added Tax (VAT) on essential items

3.1 During this period when Kenya and the world at large is fighting to combat the spread of COVID-19, essential items such as sanitizers, toiletries, masks, gloves and specialised medical apparel for infectious diseases are required in plenty to meet the high local demand. These items are however subject to VAT under the Value Added Tax Act, 2013 (the **VAT Act**).

3.2 To encourage mass production of these items by local industries and also ensure that the same are readily available to patients and medical personnel, we propose that sanitizers, toiletries, masks, gloves and specialised medical apparel for infectious diseases manufactured locally and supplied for use in Kenya during the pandemic period be zero rated from VAT under the Second Schedule to the VAT Act.

3.3 We also propose that the importation of sanitizers, toiletries, masks, gloves and specialised medical apparel for infectious diseases for use in Kenya during the pandemic period be exempt from VAT under the First Schedule to the VAT Act.

3.4 Note that a similar tax relief was introduced in the Republic of China to promote mass production of the essential items to help fight COVID-19.

4 Waiver of late payment and late filing penalties

(a) Stamp duty

4.1 Following a directive by the President on 15 March 2020 to government offices, businesses and companies encouraging them to allow employees to work from home, the Cabinet Secretary for Lands and Physical Planning, Hon. Farida Karoney issued a statement on 16 March 2020 directing all land offices and registries throughout the country to close for 28 days effective 17 March 2020. This means that registrable documents and other instruments that require stamping under the Stamp Duty Act (Chapter 480, Laws of Kenya) within a period of 30 days upon execution will not be lodged with the Collector of Stamp Duty at the Land Registries for assessment and stamping during the 28 day period when the registries will remain closed.

4.2 We propose that a waiver of stamp duty penalties for late assessment and payment of stamp duty be granted in respect of instruments executed during the pandemic period and instruments that had been executed but had not yet been lodged for assessment and payment of stamp duty by 17 March 2020 and were within the prescribed 30 day period.

(b) Statutory filings at the Companies Registry

4.3 The Companies Act, 2015 provides for filing of notices and documents with the Companies Registry relating to certain changes in a company within a prescribed period. These changes include changes in the shareholders of a company, the share capital, board of directors, change of registered office, amendment of articles, winding up, et cetera. Where these changes are not notified and relevant documents lodged with the Companies Registry within the prescribed period, late filing penalties may be imposed by the Registrar of Companies.

4.4 We propose that a waiver of penalties be granted in respect of statutory filings that are/were due to be filed during the pandemic period until operations in the Companies Registry normalise.

5 Payroll taxes

(c) Personal and mortgage relief

5.1 A resident individual with taxable income is entitled to a personal relief of KES 16,896 per annum (i.e. KES 1,408 per month) under the ITA. In order to ensure more money to the ordinary employees to meet the essential demands during the pandemic period, we propose that the personal tax relief to resident individuals be enhanced by 100% until COVID-19 is brought under control in Kenya.

5.2 On the same basis, we also propose that mortgage relief on owner occupied interest be enhanced by 100% from KES 300,000 per annum (i.e. KES 25,000 p.m.) to KES 600,000 per annum (KES 50,000 p.m.) until COVID-19 is brought under control. This will enhance liquidity on individuals servicing mortgages.

(d) Temporary Pay As You Earn (PAYE) waiver for lower tax bands

5.3 Low income employees are likely to be hardest hit by the COVID-19 relative to those in the higher tax bands. To cushion these employees from the negative economic impact of the pandemic, we propose a temporary waiver on PAYE on low income employees earning KES 23,885 and below per month until COVID-19 is brought under control.

5.4 The United States is also considering a tax relief on payroll taxes to cushion employees against the negative impact of COVID-19 on the economy.

6 Working from home and other employment issues

6.1 With the risk of continued spread of COVID-19 through work places, employers have taken steps to allow the employees to work remotely from home. Working from home, especially for businesses and companies in the service industry, may be a challenge as most employees might not be in a position to offer full service that would ordinarily be offered in a workplace. In this regard, it is expected that businesses will scale down their services and certain employees might not render their services at the same level when working from home.

6.2 In this regard, we would propose an amendment of the Excise Duty Act to introduce a waiver of excise duty on data bundles sold by mobile telephone providers to members of the public during this pandemic period to facilitate those who will need to be connected via internet to their workplaces.

6.3 To ensure that the employers are able to retain their employees during the pandemic period without declaring redundancies, employers may need to reduce salaries during this period, or reduce leave days where employees are quarantined in their homes. However, under the provisions of the Employment Act 2007, an employer is not allowed to offer reduction of salaries to employees, reduction of leave days and sick leave entitlements.

6.4 We propose that the Employment Act 2007 is amended by allowing employers the discretion to reduce employees' salaries (in consultation with the affected employees) for the period until the pandemic is brought under control. This should only apply to those employees who are not expected to work from home or where the relevant employer has scaled down its services.

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