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Tax Alert Kenya

Latest news on law, tax and business in Kenya

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Income Tax Bill 2018:

A new era for the Income Tax regime in Kenya!

Preamble

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Preamble

By George Maina Rödl & Partner Kenya

The current Income Tax Act ("Act") has been in existence since 1974. This Act has over the years undergone various piecemeal changes after every annual national budget cycle. In the year 2016, the Kenyan Cabinet Secretary in-charge of the National Treasury announced in his national budget speech his intention to review the entire Act and table a Bill in the year 2017 as part of the Government's tax reform agenda.

A similar promise was made in his 2017 budget speech which promised to publish the draft Act for public input in accordance with the Constitution. Finally, a draft Income Tax Bill was released to the public on 15 May 2018 with a call for comments prior to finalization and submission of the Bill to Parliament.

In this issue we have highlighted some of the major proposals and will avail our detailed analysis of all proposed changes in a separate bulletin.

> Is the Income Tax Bill 2018 a new law?

A Bill becomes Law upon approval by Parliament and assent by the President. We expect the Income Tax Bill 2018 ("Bill") to be tabled in Parliament during this year's national budget reading in June 2018.

The approval process also requires public participation as conducted during the year 2017 after the National Treasury's call to the public for views on the Act in accordance with the Kenyan Constitution. Currently, the Bill has been published to allow further public scrutiny and submissions **before 24th May 2018**.

Rödl & Partner Kenya is available to assist clients, taxpayers or organized groups that may wish to submit their comments and/or lobby papers to the National Treasury before the set deadline.

> Proposed changes on individual income tax

- Introduction of new tax scale with a rate of 35 % for high income earners pocketing over Kes 9 million p.a (Kes 750,000 p.m.);
- Definition of Residency: An individual's permanent home has now been defined to include a place where personal and economic interests are closest. This is the definition used in modern double tax agreements to guide the taxation of cross-border employees;
- Taxation of non-cash benefits: The tax free limit of Kes 3,000 p.m. has been abolished;
- Medical benefit: The tax free benefit has now been extended to include insurance covers not approved by the Commissioner of Insurance. This embraces regional employees and expatriates with global medical covers;
- Taxation of Per diems: The tax free limit of Kes 2,000 p.m. has been replaced with the prescribed public service rates. These rates are economically realistic bearing in mind that the official trips made by public service employees closely mirror those of employees serving multinational employers;
- Introduction of presumptive tax at 15 % of single business permit fee charged by County governments, for sole proprietors (also applies to business forms other than companies and income from rental business or management/ professional services) with an annual turnover not exceeding Kes 5 million

> Proposed changes on Corporate tax

i. Introduction of graduated tax scales: The tax rates for both residents and non-residents (including permanent establishments) are now 30 % for taxable income below Kes 500 million and 35 % for all income over Kes 500 million;
ii. Increase of Capital Gains Tax (CGT) rate from 5 % to 20 % and inclusion of an index factor adjusting for inflation in computing the taxable value for CGT;
iii. Abolishing of tax holidays for Special Economic Zones (SEZ) and Export Processing Zones (EPZ) investors in place of 10 % rate (first 10 years) and 15 % (next 10 years);
iv. Abolishing of 150 % investment allowance and reduction of various capital allowances on buildings and machinery used in manufacturing, commercial real estate, film and education sectors;
v. Scrapping of tax exemptions on specified institutions and income currently numbering to over 50 (including govermental enterprises) and introduction of a new list of 21;
vii. Development of Regulations to guide the taxation of enterprises involved in the digital economies;

> Proposed changes on cross-border taxation

i. Application of reduced tax rates in double taxation agreements (DTAs) limited to enterprises with less than 50 % non-resident ownership. In addition the rates will not apply to fees charged for cross-border inter-company shared services ;
ii. Introduction of withholding tax on repatriated profits at a rate of 10 %;
iii. Revision of the thin capitalization threshold from the current debt-equity ratio of 3:1 to 2:1.

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> Proposed Transfer Pricing changes

i. Arm's length pricing requirements now extended to cross transactions between a resident entity and an independent non-resident in a 'preferential tax regime' or where the transaction lacks 'economic substance';

ii. Arm's length price for commodities whose prices are available at public commodity markets or exchange markets shall be the quoted prices subject to appropriate supported adjustments. In the case of exported goods where the ultimate customer pays a price higher than quoted price, then the agreed price will be the transfer price;

iii. Introduction of a substantial penalty of 2 % of transaction value for failure to disclose Transfer Pricing documentation;

iv. Country-by-country reports to be filed with the taxman within 12 months after the financial year-end of the group.

We shall release a detailed analysis of all proposed changes in a separate edition.

This is a general guideline tax alert and should not be a substitute for proper tax advice. For queries and clarification, kindly get in touch with Rödl & Partner.

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"With its growth potential, Africa is becoming an increasingly attractive investment destination. Many African countries enjoy political and economic stability and offer excellent opportunities for a business venture. The enormous range of opportunities poses, however, new challenges to companies venturing into Africa to do business there. Whether you are planning to start business in the renewable energies or the tourism sector, or want to launch an infrastructure project, you can always rely on our experienced Africa experts! They work to develop for you tailor-made solutions to help you break into new markets with a structured strategy and implement your business project in the African market."

Rödl & Partner

"Each element of our human towers supports another. This works only if we put to that more than just the physical abilities of all of us. It is the solidarity that gives us strength, structure, stability and – last but not least – the courage we need to develop great things."

Castellers de Barcelona

Each and every person counts" – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today.

„Força, Equilibri, Valor i Seny" (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

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