Rödl & Partner

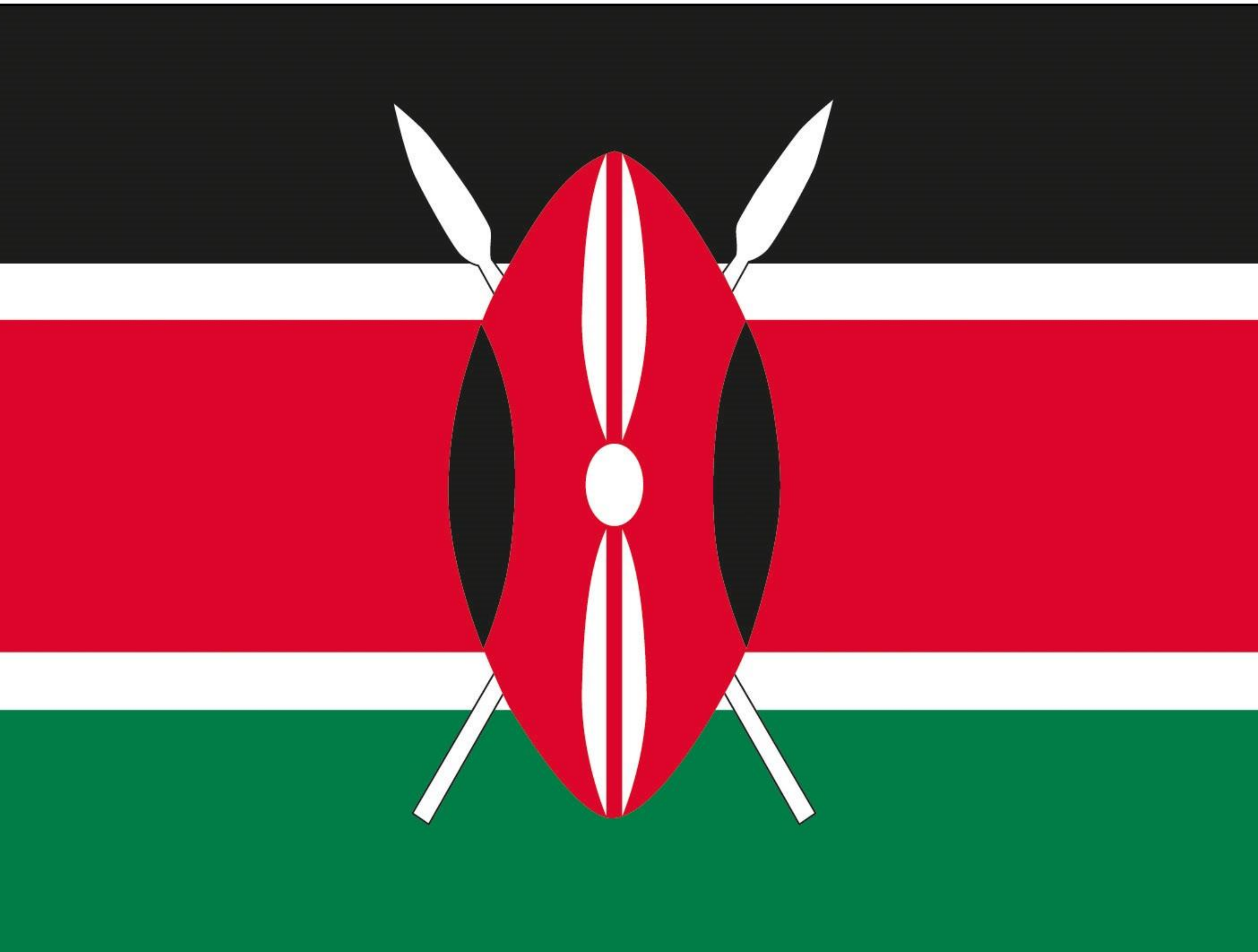
NEWSFLASH KENYA

COVID-19: KENYA'S TAX AND ECONOMIC MEASURES

Issue:
31 March
2020

Latest news on law, tax and business in Kenya

www.roedl.de/kenia | www.roedl.com/kenya



Rödl & Partner

NEWSFLASH KENYA

COVID-19: KENYA'S TAX AND ECONOMIC MEASURES

Issue:
31 March 2020

Read in this issue:

→ Background

The outbreak of the Covid-19 virus ("Corona virus") around the world in the past two months and the resulting pandemic has significantly disrupted the global economy and Kenya is no exception.

With uncertain times ahead, Governments around the world have been forced to come up with economic and fiscal measures in order to contain the health crisis as well as to support citizens and businesses. In this issue, we'll examine some of the economic and tax reliefs instituted by the Kenyan government as well as others around the world.

→ Covid-19: Kenya's status

As of 26 March 2020, official figures from Kenya's government put the number of confirmed positive Covid-19 cases at 31 including one fatality.

The increasing numbers of cases has led to the Kenya government to put in place policy changes and behavioural protocols to try and stem the spread of the virus.

In addition to the "social distancing" guidelines issued by the Ministry of Health previously, the Kenyan President also announced the imposition of nationwide curfew from 7 p.m. to 5 a.m. effective from 27 March 2020.

→ Kenya: Emergency tax and economic measures

In his speech on 25 March 2020, the President announced several directives intended to provide relief to businesses, employees and other taxpayers at large.

Specifically, the President directed that the National Treasury implements the following immediate reliefs:

SPECIFIC TAX MEASURES (PROPOSALS)

- 100 per cent Tax Relief for persons earning gross monthly income of up to KShs 24,000;
- Reduction of Income Tax Rate (Pay-As-You-Earn) from 30 per cent to 25 per cent;
- Reduction of Resident Income Tax (Corporation Tax) from 30 per cent to 25 per cent;
- Reduction of the turnover tax rate from the current 3 per cent to 1per cent for all Micro, Small and Medium Enterprises (MSMEs);
- Reduction of the VAT from 16per cent to 14 per cent, effective 1st April,2020; and
- Kenya Revenue Authority (KRA) directed to expedite the payment of all verified Value Added Tax (VAT) refund claims amounting to KShs 10 Billion within 3 weeks; or in the alternative, allow for offsetting of Withholding VAT, in order to improve cash flows for businesses.

OTHER ECONOMIC MEASURES

- Appropriation of an additional KShs 10 Billion to the elderly, orphans and other vulnerable members of our society through cash-transfers by the Ministry of Labour and Social Protection, to cushion them from the adverse economic effects of the COVID-19 pandemic;
- Temporary suspension of the listing with Credit Reference Bureaus (CRB) of any person, Micro, Small and Medium Enterprises (MSMES) and corporate entities whose loan account fall overdue or is in arrears, effective 1st April, 2020;
- All Ministries and Departments directed to pay KShs 13 Billion of the verified pending bills, within three weeks from 25 March. Similarly, and to improve liquidity in the economy and ensure businesses remain afloat by enhancing their

cash flows, the private sector is also encouraged to clear all outstanding payments among themselves; within three weeks from 25 March; and
- KShs 1 billion from the Universal Health Coverage kitty, be immediately appropriated strictly towards the recruitment of additional health workers to support in the management of the spread of COVID-19.
- The lowering of the Central Bank Rate (CBR) to 7.25 per cent from 8.25 per cent which will prompt commercial banks to lower the interest rates to their borrowers, availing the much needed and affordable credit to MSMEs across the country.
- The lowering of the Cash Reserve Ratio (CRR) to 4.25 per cent from 5.25 per cent will provide additional liquidity of KShs 35 Billion to commercial banks to directly support borrowers that are distressed as a result of the economic effects of the COVID-19 pandemic.

→ Our Comment on proposed tax measures

The directives issued by the President are welcome in these trying times however there are still a few issues to be resolved in regard to their implementation.

We outline below some of the important points to be addressed:

- In his speech, Uhuru Kenyatta provided effective dates for some measures (1 April 2020). We note that the Gazette Notice has alredy been published in respect of the VAT change as is envisaged by the VAT Act. The new rate of 14 per cent is therefore effective 1 April 2020.
- The PAYE and corporation tax changes will have to await a miscellaneous bill from tressury to be tabled and passed by Parliament.
- The issue on public participation may be discarded for now in view of the national emergency and the COVID-19 pandemic. There is therefore no legal basis for these changes to be effected "immediately" as directed in the Presidential speech.
- The High Court in 2019 ruled that tax measures introduced through a Bill cannot be effected prior to its enactment into an Act. This means that any Bill tabled in Parliament containing these proposed tax changes will have to be passed into law first before becoming effective.
- It's unclear how the reduction of the top rate of PAYE to 25 per cent will be effected practically. Will the PAYE bands be adjusted accordingly or will all salaries over KShs 24,000 be taxed at a flat rate of 25 per cent? This should be clearer once a Bill containing these proposals is tabled before Parliament. As they say the 'devil is in the details'.
- The reduction of the VAT rate from 16 per cent to 14 per cent should legally be effected by the issuance of a Gazette Notice by the Cabinet Secretary of the National Treasury as the VAT Act contains provisions for changes in the VAT rate to be effected through a Gazette Notice. We note that this has already been effected as per Gazette Notice dated 26th March 2020.
- There have been no guidelines on how to proceed with the dispute resolution process that taxpayers may currently be engaged in. The Tax Procedures Act provides strict timelines for objections and appeals. Matters at the Tax Appeals Tribunal may be particularly affected due to the Judiciary directing its staff to work from home. We hope that the Bill presented to Parliament may provide guidance on timelines and any special procedures to be instituted.

→ Global: Emergency Tax and Economic Measures

EU MEASURES

If Member States adopt financial aid measures to combat the economic impact of the coronavirus, these could possibly constitute prohibited State aid.

The European Commission has therefore adopted a framework within which Member States can support their economies without this qualifying as state aid. The objective of the framework is to ensure that sufficient liquidity remains available for businesses and to protect economic activities during and after the outbreak. State aid rules allow Member States to provide such aid when it is designed to remedy a serious disturbance in the economy of a Member State. Due to the EU-wide outbreak of the virus, this criterion is fulfilled in all Member States.

The temporary framework is in force until the end of 2020. An assessment will be made by then as to whether its operation should be extended. The framework provides for five concrete temporary measures which Member States may take. However, these are subject to conditions. The measures are:

1. Member States may support companies with an amount of EUR 800,000 per company to meet their urgent liquidity needs through direct subsidies, selective tax breaks or advance payments. The scheme does not apply to firms that already were in difficulties on 31 December 2019. Separate or additional rules apply to agricultural and fishing businesses.

2. Member States may provide State guarantees so that banks can continue to grant loans to customers who need them.

3. Member States may also grant loans at lower interest rates to businesses themselves. Such loans may help enterprises by providing direct working capital and meeting their investment needs.

4. Some countries plan to use and build on the lending capacity of banks, in particular to support SMEs through these banks. The framework does not see this as support to banks, but as support to individual customers.

5. The framework is flexible with regard to export credit insurance.

The European Commission has already indicated that it is possible for Member States to grant wage subsidies and defer payment of corporate income tax, VAT and social security contributions. In addition, Member States may offer financial support to consumers (e.g. for cancelled services). Member States may also provide financial support to companies, in particular when they have liquidity shortages and are in urgent need of support.

MAURITIUS TAX MEASURES

The Mauritius Revenue Authority announced that taxpayers that are unable to timely submit their tax returns or to timely remit tax payments because of the COVID-19 situation will not be subject to assessments of penalties or interest for late filing or late payments.

In addition, a “double tax deduction” and a 5 per cent tax credit on certain IT system purchases available to employers in an effort to promote employee telecommuting and working from home are available through 30 June 2020.

Companies also may be eligible for certain enhanced tax deductions for plant and machinery acquired during the period 1 March 2020 through 30 June 2020.

SOUTH AFRICA TAX MEASURES

Tax compliant businesses with a turnover of less than ZAR 50 million will be allowed to delay 20 per cent of their PAYE liabilities over the next four months and to delay a portion of their provisional corporate income tax payments without penalties or interest over the next six months.

The South African tax system will provide a tax subsidy of up to ZAR 500 per month for the next four months for those private sector employees earning below ZAR 6 500 under the Employment Tax Incentive (ETI). The South African Revenue Service (SARS) will also work towards accelerating the payment of ETI reimbursements from twice a year to monthly to get cash into the hands of compliant employers as soon as possible.

The South African government is exploring the temporary reduction of employer and employee contributions to the Unemployment Insurance Fund (UIF) and employer contributions to the Skill Development Levy Fund (SDL contributions) and to the Commissioner for Compensation for Occupational Injuries and Disease Fund (COIDA contributions).

CONTACT FOR FURTHER INFORMATION

George Maina
T +254 775 9740 50
M: +254 711 2249 51
George.Maina@roedl.com

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

Imprint

Tax Alert Kenya
Issue 31 March 2020

Publisher:
Rödl & Partner Limited
4th Floor, K.A.M House
(opp. Westgate Mall)
Peponi Road, Nairobi
+254 (775) 974 050 | www.roedl.com/kenya

Responsible for the content:
George Maina
George.Maina@roedl.com