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Budget 2013

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Revenue measures

Ambitious growth, attainable revenues?

Revenue measures

Introduction

The Cabinet Secretary has tabled ambitious revenue growth projections in his budget speech. However, how attainable is this projected growth in tax revenues?

In FY 2010/11, the Government raised Kshs 586 billion in tax revenues, increasing to Kshs 652 billion in FY 2011/12 and whereas the projection for FY 2012/13 was Kshs 817 billion, it is estimated that this will end up at Kshs 723 billion at the end of the current fiscal year.

The plan for FY 2013/14 is to raise tax revenues of Kshs 880 billion, a massive increase of Kshs 157 billion in revenues, whereas the increase in revenues from FY 2011/12 and FY 2012/13 was only Kshs 71 billion.

Income tax

Introduction

The Government raised Kshs 259 billion from income tax in Fiscal Year 2010/11, which increased to Kshs 313 billion in FY 2011/12 and was followed by a marginal increase to Kshs 359 billion in FY 2012/13. It is projected that income tax will generate revenues of Kshs 454 billion in FY 2013/14.

Tax reforms

Capital Gains Tax to be reintroduced

The Cabinet Secretary intends to kick off the process to reintroduce capital gains tax on real estate, marketable securities and other saleable assets.

Re-introduction of capital gains tax considered

The re-introduction of Capital Gain Tax (CGT) is likely to have an impact on all sectors of the economy. However the major impact is likely to be felt in the property and financial markets if the exemption on marketable securities (such as shares) is not retained. The construction and property markets are currently growing at a rapid pace and hence a major contributor to economic growth.

It will be interesting to see how the proposed tax regime for CGT will deal with the following issues:

- Use of technology to track property and its owners for example financial instruments or physical assets such as land and buildings;
- Relief on re-investment or reorganisation of assets or property;
- Relief for first time home owners; and
- Gains arising due to inflationary pressures such as whether an indexing factor will be considered for the valuation of costs of property.

We hope that the process to come up with CGT legislation will be consultative in order to incorporate the views of relevant stakeholders.

Taxation of Extractive Sector unclear

The Finance Act 2012 introduced withholding tax on the sale of property or shares in respect of oil companies, mining companies or mineral prospecting companies. This created significant confusion and uncertainty in the extractive sector as the taxation of proceeds from assignment of rights was already provided for under the Income Tax Act. This led to concerted lobbying by the nascent extractive sector players for a change in the new legislation in order to create certainty in the taxation of transactions in this sector and restore investor confidence. Although the Cabinet Secretary did not make specific mention of proposals to address concerns of this sector, we hope that the Finance Bill once published will shed some light.

Winnings from gaming and betting to be subject to withholding tax

Gaming and betting to be taxed

The Cabinet Secretary has proposed amendments to the Income Tax Act to tax winnings from gaming and betting. If successful, withholding tax will apply at 20% of gross winnings to both residents and non-residents. The withholding tax will be a final tax and the effective date will be specified in the Finance Bill once published.

Companies to benefit from hiring inexperienced job seekers

In order to encourage employment of inexperienced job seekers, the Cabinet Secretary intends to introduce tax incentives to tax compliant employers who engage college and university graduates who have no job experience.

The details of the proposed incentive are not yet clear but it is expected that the Cabinet Secretary will issue guidelines on parameters such as the educational level of the targeted youth as well the regulations for administering the tax rebates/incentive programme.

Rental income on the line

Last year , the Minister directed the KRA to map out residential and commercial areas in order to bring non compliant landlords into the tax net. The KRA has now been directed to leverage on technology in order to complete the mapping exercise by 31 December 2013. Hopefully, once the mapping exercise is completed, the taxman will able to tax rental income previously untaxed due to adminstrative challenges in capturing this income . This will support the government's intention to expand the tax base in order to enhance revenue collection.

Transforming the tax administration system…

Single tax appeals tribunal

Expediating dispute resolution

The Cabinet Secretary intends to table a Tax Appeals Tribunal Bill that seeks to establish a single tax appeals body.

This is in line with the amendment introduced in the Income Tax Act in 2012 which specified the qualifications, appointment, conduct and dismissal of members of the appellate bodies.

This measure will enhance dispute resolution process between KRA and taxpayers and instil professionalism and efficiency in determination of tax cases.

Compounding of offenses

In order to expedite dispute resolution, the Commissioner has now been given more powers to impose fines in lieu of prosecution where an offense liable to prosecution has been committed by a taxpayer.

This amendment seeks to bring the Income Tax Act in line with other tax statutes which already vests the powers to compound offenses on the Commissioner. We hope that the Commissioner does not exercise these powers arbitrarily.

It is expected that the framework will encourage taxpayers with tax offenses to engage the KRA and sort out their tax cases expeditiously without resorting to the lengthy court process.

Other administrative measures

The Cabinet Secretary also intends to introduce legislation to give the Commissioner increased powers to obtain financial records from taxpayers. The Commissioner already has these powers and we wonder what additional measures will be introduced.

Streamlining revenue administration

Under the Income Tax Act, directors and senior officers of corporate bodies can be held liable for tax offenses committed by the corporate body. The Cabinet Secretary proposes amendments to allow the Commissioner to collect the tax due from officers of the corporate body if they are convicted of tax fraud by a court of law.

Customs and Excise Duty

Introduction

Customs revenues have not increased significantly over the years. In FY 2010/11, the revenues were Kshs 67 billion and increased marginally to Kshs 76 billion in FY 2011/12, rising to Kshs 84 billion in FY 2012/13. A modest increase is expected in FY 2013/14 as revenues are projected to increase to Kshs 97 billion.

Customs Duty Changes

Enhanced integration for expanded trade and investment

Relief for Kenyan manufacturers

The government intends to enhance reforms in the common external tariff structure under the EAC in a bid to expand trade and investments in the COMESA region and the rest of Africa.

A reason to smile for Kenyan manufacturers

The EAC Finance Ministers have agreed to reduce the “Uganda List” from 138 to 49.

The amendment seeks to address the current market distortion created by some member countries of the EAC imposing import duty on goods originating from the other partner states. This will now encourage Kenyan exports into Uganda by the reduction of the items listed in the “Uganda list”.

Incentives for the railways sector

The Cabinet Secretary further proposes to remove inefficient Customs procedures by reducing complicated rules of origin (ROOs) and non-tariff barriers (NTBs) to ease cross border trade as was envisioned in the EAC Protocol.

Win for the Rail Sector - Exemption from Import Duty

The Cabinet Secretary proposes to exempt import duty on importation of items used to facilitate railway operations in order to support the expansion and development of the railway network in the region. This move could go a long way in reducing overall transportation costs.

The Cabinet Secretary proposes to introduce a railway development levy of 1.5 per cent on all imported goods.

This move is aimed at mobilising additional funds for the construction of a standard gauge railway line from Mombasa to Kisumu. Whilst the levy will increase cost of importation, in the long run, the cost of freight should reduce.

Green Energy

To encourage the use of bio gas for energy generations, the Cabinet Secretary has proposed to exempt plastic bag bio-gas digesters from duty.

Protecting Local Industries

The government intends to cushion local manufacturers against cheap imports by increasing duty rate on the following items:

- Welding electrodes from 10% to 25%
- Millstones and grindstones from 0% to 25%
- Plastic tubes for packaging of toothpaste, cosmetics and similar products from 10% to 25%

Warehouse rent

The Cabinet Secretary has introduced customs warehouse rent on cleared goods that remain at the port of discharge for a period exceeding 21 days from the date of commencement of the discharge of the carrier. Previously such customs warehouse rent was only applicable to goods not cleared and stored in a customs warehouse.

The amendment is aimed at decongesting the port of cargo. This can also be seen as a revenue raising initiative. Going forward, we expect that importers will be more vigilant on the period that goods are stored at the port.

Excise Duty Changes

Introduction

Excise duty revenues have witnessed an interesting trend over the years. In FY 2010/11, Kshs 81 billion was generated, but fell to Kshs 79 billion in FY 2011/12. A slight increase to Kshs 85 billion was witnessed in FY 2012/13 with the projected revenue in FY 2013/14 being Kshs 107 billion.

Excisable Goods Management System

During the last budget, the Minister for Finance introduced a tax management system aimed at ensuring that all products produced by licensed manufacturers are fully accounted for by type and quantity.

The Cabinet Secretary proposes to issue new gazette notice known as “Excisable goods Management system” which prescribes procedures and guidelines for implementation of the system.

The effect of this is to enhance compliance by excisable firms.

Senator KEG will get expensive!

The Cabinet Secretary is proposing to reduce the remission on Senator Keg from 100% to 50%. Even this remission of 50% will be eliminated after three years. This proposal is intended to increase tax revenues. However, it may encourage beer drinkers to shift to illicit brews. Therefore this may even result in a reduction of tax revenue.

Stimulated agriculture through beer?

The Cabinet Secretary proposes a 50% excise duty remission on beer made from millet, sorghum and cassava to stimulate agricultural activities where these products are grown.

New Excise Bill…

The Treasury has begun developing a new Excise Bill that will simplify and modernise the excise system.

Value Added Tax

Value Added Tax Changes

Introduction

VAT has provided relatively significant revenues to the Government over the years. In FY 2010/11, revenues of Kshs 172 billion were generated, with a modest increase to Kshs 176 billion in FY 2011/12. The current projection of Kshs 211 billion in FY 2013/14 is ambitious, bearing in mind that in FY 2012/13 the revenues stood at Kshs 185 billion.

VAT Bill

VAT Bill to be re-tabled

Minimal changes are expected to the VAT Act as the Cabinet Secretary proposes to re-table the VAT Bill to the National Assembly.

We hope that the proposals from various stakeholders especially with regards to basic commodities submitted on the previous bill have been considered and the VAT Bill amended.

The VAT Bill is expected to generate more revenue for the Government and improve compliance.

Personal Tax

Tax exemption for persons with disability extended to five years

The rules on tax exemptions and deductions for persons with disability were introduced in the year 2010. Qualifying persons have been enjoying tax exemptions valid for three years.

Persons with disability currently qualify to receive a tax-free salary of Kshs 150,000 per month and an additional Kshs 50,000 per month on allowable medical expenses.

In his speech, the Cabinet Secretary has extended the validity of the tax exemption status to five years to align this with the charitable institutions exemption period.

The other rules and provisions of the Persons with Disabilities Act 2003 will continue to apply.

Group life & Group personal accident premiums not taxable

Group life insurance premiums paid on behalf of the employees by employers are now tax exempt. However, such premiums will remain taxable if there is a benefit accruing to the employee or his dependants. The amendment is intended to clarify the taxability of group life policy premiums.

It is however not clear which benefit is taxable, for example, is it the premiums paid or the compensation received. Any group life policy benefit would only accrue when the event crystallises (upon death of the employee).

The Cabinet Secretary also proposed to exempt group personal accident premiums from tax. However, the sub-section of the law the minister is seeking to clarify currently does not include group personal accident premiums.

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