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The Finance Bill, 2020 - The tax burden for businesses is not getting lighter

The Finance Bill 2020 (The Bill), which was gazetted on 5 May 2020 proposes a raft of changes to the tax laws barely a week after the President assented to the Tax Laws (Amendment) Act, 2020, whose primary objective was to cushion the public against the economic and social ravages of COVID19.

A number of the proposals in the Tax Laws (Amendments) Bill, 2020 were rejected by the National Assembly on the basis that they imposed additional burden on taxpayers rather than providing the much needed relief. Interestingly, the Finance Bill, 2020 proposes to reintroduce some of the changes that the National Assembly rejected including taxing pensions paid to persons aged above 65 years and bonuses and overtime paid to low income employees.

Further, through the bill, the National Treasury intends to introduce a new tax known as minimum tax, prescribing a minimum tax to be paid by all taxpayers. The proposed minimum tax rate is one percent of gross turnover and is to be remitted to the Kenya Revenue Authority (KRA) on a quarterly basis.

The minimum tax is different from the newly re-introduced turnover tax, which is imposed on small and medium sized companies with a turnover of less than fifty million shillings and is paid monthly at the rate of one percent of turnover.

The minimum tax is paid by companies irrespective of whether they are loss making which is a significant departure from a core tenet of income tax which is to tax profits rather than turnover. Where minimum tax has been implemented in other countries, it targets persons who are in perpetual tax losses. An example is Tanzania which implemented a Alternative Minimum Tax (AMT) in 2009. The tax which was initially set at 0.3% of turnover was recently increased to 0.5% of turnover and targets companies which make losses for three consecutive years, with the tax coming into force in the third year.

The proposed minimum tax in Kenya is at a much higher rate and punishes companies that have been awarded tax investment incentives or newly established start-ups which are still seeking to establish themselves in the market. It is also important to note that due to COVID-19 many companies will suffer losses which creates a paradox where the government reduces taxes for companies that are making profits while taxing those that are struggling to survive the tough economic times.

Given the government's desire to improve revenue collections, it will not come as a shock if this provision is enacted, but it is important to pick lessons from other countries and put in place measures to ensure that the tax is equitable. Some of these measures include reducing the minimum tax rate to 0.1% of turnover and making the tax an advance tax which can be set-off against future taxes.

It will be interesting to see how the National Assembly views this provision, especially in these tough economic times when businesses are waging a major struggle to remain afloat, so that they can have a fighting chance to once again thrive is an uncertain post COVID-19 world.

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