SAGAMORE HILL

TAX ALERT

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Foreword

The recently rejected finance 2024 has put the government in a crossroad. With a budget to meet, and the revenue raising measures not accented to by the president, the CS for treasury aims to find the missing piece in the jigsaw, and meet the governments' expenditure, in addition to the austerity measure already put in place.

In this newsletter, we will look into the recent Tax Procedures Amendment Bill that seeks to raise revenue in a positive manner, for the government, given the political mood that the country is in.

We will discuss the proposals contained in the bill.

Tax Amensty

The tax Amnesty programs have been very successful across the globe with the most successful regime being in Indonesia.

In the year 2016, Indonesia ran the biggest tax amnesty program that saw the government raise an equivalent of today's Ksh 1.2 Trillions. This say the government reduce significantly on it's external borrowing.

The design of a tax amnesty, must, however, be designed in such a manner that it does not seem to punish the compliant tax payers.

Care has to be exercised so that taxpayers can plan their cashflow properly.

This seems to be case as the government has not extended the period for which outstanding taxes qualify for the amnesty.

Tax Amnesty

Tax payers who were not in a position to utilized the amnesty program due to cash flow constrains will now have a chance to do it.

Who qualifies for the tax amnesty? This will be any tax payer who…

1. Has paid the principle taxes balances
2. Has taxes outstanding as 31^{st} December 2022.
3. Will have committed to have paid all principle taxes by 30^{th} June 2024.

Additionally, it is important to note that customs are not covered in this program.

Tax payers facing penalties and interests arising from assessments premised on Section 85 of the Tax Procedures Act will not be able to utilize the program. These are assessments relating to **Tax Avoidance Schemes.** A tax avoidance scheme is a transaction or a scheme designed to avoid liability to pay tax under any tax law.

Lastly, any penalties and interest incurred after 31^{st} December 2022 will not be allowed

Calculation of time.

The Bill is also seeking to amend the calculation of time within which the tax payers is required to lodge an;

- Objection of a tax decision
- Appeal of an appealable decision to the tribunal
- Appeals to the High Court
- Appeals at the Court of Appeal

With the current drafting of the bill as it is, care and redrafting will be required so as to give clarity as it is not yet clear whether this is only limited to lodging of the objections with the commissioner, or appealing to the tribunal and the courts, even though this really seems to be the intent.

We hope that these matters will be clarified and this amendment redrafted as the sections references, that is, Sections 51, 52, 53 and 54 of the Tax Procedures Act, sections 52, 53 and 54 relate to appeals with the tribunal, high court and the court of appeal respectively. The wording of the amendment is making reference to appeals with the commissioner and this is erroneous.

Difficulty in recovery of tax

The Finance Act 2023 had repealed the section 37 of TPA that relieved the commissioner from collecting taxes in cases where it was difficult or impossible to do so. The commissioner would however, do so with the written approval of the Cabinet Secretary.

The amendment being introduced further adds additional checks and varies the process of the abandonment by the commissioner in the following ways.

1. The commissioner is now required to publish the names of the taxpayers, the amounts abandoned and the reasons for abandonment every four month. The proposal contained in the Finance Bill 2024 required the commissioner to publish this twice every year; by 30th June and 31st December of every year. This is a welcome move as it requires more accountability on the commissioner.
2. The published notice, shall further be laid before the parliament to either be approved or annulled

This aims to cub the abuse of the provision whereby the commissioner has been previously under pressure to explain how for a period of five years, taxes worth 20 Billions were waivered.

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