

Overhaul of the Income Tax Act is inevitable!

By Stephen Waweru

Globally, tax laws have been evolving over time to keep pace with the changes in socio-economic and political spheres. These changes have been precipitated by the desire to protect and expand the tax base. Internationally, these changes are reflected in initiatives such as Base Erosion and Profit Shifting (BEPs), Transfer Pricing/Mispricing, Double Taxation/Non-taxation and the related Limitation of Benefits (LoB), among others.

Kenya on its part has not been left behind. We have recently witnessed unprecedented overhauls of some of our tax statutes as well as enactment of new pieces of substantive, procedural and administrative tax legislations, save for the Income Tax Act (ITA) which was enacted in 1973 to replace the Management Act.

At the time of its enactment, the economy was largely driven by the agriculture and manufacturing sectors. As such, many of its provisions were substantively developed to address the tax issues associated with these sectors.

The world has since become a global village. Exponential developments in technology and advancement in the way people do business in the 21st century have resulted into industries that are largely service driven.



Despite the various piecemeal amendments to the ITA over the years, it has not kept pace with changes in our economic, social and technological landscape, leaving substantial gaps that are a threat to revenue mobilisation. For example, these amendments have not addressed the tax points of various unconventional trade flows which are an offshoot of operating in a digital world.

The debate on the shortcomings of the ITA have been ongoing for almost 43 years now with the key question being whether to revise or rewrite the ITA. More developed countries have rewritten their tax laws in plain and simple language to make them understandable. Rewriting the ITA, will go a long way in making income tax administration and compliance easier. This will significantly improve the country's ease of doing business, which has been on an upward trajectory.

We hope that the rewritten ITA will address various ambiguities and uncertainties in the current ITA. In addition, through adoption of international best practices of taxation, it will fully embrace the dynamics and challenges of operating in a digital world.

Across the world, trade barriers have come down such that customs duties are no longer a significant factor in the decision of where to establish a business. Increasingly, income taxes on businesses and employees have a greater impact on the business location. Therefore, it is important for Kenya to make the income tax regime regionally competitive as a way of attracting investors into the country.

This noble objective will only be realised if all the stakeholders when called upon to publicly participate once the Income Tax Bill is published, will diligently play their role. Tax affects every citizen and the opportunity to make an input into the drafting of the legislation should not be left to practitioners, KRA and National Assembly. We look forward to robust and objective insights from the public for the benefit of our beloved country.



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