EASTERN AFRICA GRAIN COUNCIL

COMMUNIQUE

EAGC Stakeholders' Engagement Forum on The Finance Bill 2024

Held virtually on 23rd May 2024

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Introduction

Eastern Africa Grain Council in partnership with PKF in Eastern Africa convened an online forum on Thursday 23rd for grain sector stakeholders which brought together various value chain players within the industry to discuss the Finance Bill 2024, following its introduction by the National Assembly on 9th May 2024 and a notice for public participation invitation to stakeholders to provide proposals for consideration. The session was facilitated by James Mulili, Tax Director at PKF, who delivered an in-depth analysis of the Bill, focusing on key proposed changes within the grain sector and beyond.

In his opening remarks, Gerald Masila, Executive Director, EAGC, emphasized the significance of such forums, which enable members to voice critical industry issues and advocate for better policies that create a conducive business environment. He added that forums like this offer stakeholders a platform to learn, express their views, and contribute to the EAGC's policy submissions. Additionally, this advocacy process helps EAGC to better serve its members by providing solutions, addressing challenges, and fostering better policies, ultimately leading to increased trade and improved returns for members, he stated.

Key highlights of the Finance Bill 2024

i) Introduction of Motor Vehicle Tax

The bill proposes to introduce the motor vehicle tax at the rate of 2.5% on the value of the motor vehicles and it will be payable on each motor vehicle at the time of issuance of insurance cover. The bill further proposes that the insurer of the motor vehicle shall collect and remit the tax within five working days after issuing a motor vehicle with insurance cover. An insurer who fails to collect and remit the tax will be subjected to pay a penalty of 50% of the uncollected tax and the actual amount of the uncollected tax.

Exemptions; Motor vehicles that will be exempted from the tax are; those owned by the national government, county government, Kenya Defense forces, National Police Services, National Intelligence Services and ambulances.

Implications; The tax aims to expand the tax base and bring informal sectors that over time have been hard to tax such as the public transport industry. It is however unclear on who will be responsible to carry out the valuation of the motor vehicles, that is, where the insurance cover is a third party one and who will be liable in the event the valuation is done incorrectly. The tax will additionally lead an increased administrative and compliance burden for insurers who will be required to collect and remit the tax within 5 working days.

ii) Advance Pricing Agreements

The bill proposes to introduce a provision allowing person with related party transaction to enter into an advance pricing agreement with KRA, which will be valid for a period not exceeding 5 years. Where KRA deems the agreement was agreed upon through misrepresentation of facts, KRA will issue a notice in writing to the person declaring the agreement null and void from the date of inception.

Implication; Tax payers will be able to engage with KRA regarding their intercompany trans-

Implication; Tax payers will be able to engage with KRA regarding their intercompany transactions and agree at arm's length, the pricing of the transactions.

iii) **Contributions made to the Social Health Insurance Fund (SHIF), Post-retirement medical fund and the affordable Housing Levy (AHL) deductible for tax purposes**

The bill proposes to include the below allowable expenses to determine the taxable income of a person.

- SHIF Contribution to be made by every Kenyan household and a non-Kenyan resident ordinarily residing in Kenya for a period exceeding 12 months exceeding 12 months
- The AHL amount will be deducted by the employer in accordance with the affordable Housing Levy Act 2024
- Contribution to post-retirement medical funds subject to a limit of 10,000 per month.

Implications; The contributions made to the SHIF, post-retirement medical fund and AHL shall be deductible for tax purses and the tax payers will enjoy full tax benefits of their contributions.

iv) Increase of Non-taxable benefits

The bill seeks to increase the non-taxable benefits of employment as follow; Amend the non-taxable daily limit of an allowance paid to an employee working outside his usual place of work. The bill further proposes that an organization should have a policy guiding on the payment and accounting for substinence, travelling, entertainment or other allowances not exceeding 5% of the monthly gross salary earnings of the employee. This is a change compared to the current non-taxable daily limit of the allowance capped at Kshs 2,000**.** The bill also proposes to amend the limit of non-taxable benefits granted in employment from Kshs 36,000 to Kshs 48,000, and review meals provided in a cafeteria from Kshs 48,000 to Kshs 60,000

Implications; The bill seeks to address the cost-of-living concerns that has been on the rise, and allow employers to offer attractive employment packages to their employees. The introduction of the cap based on an individual's gross salary id welcomed as it recognizes the compensation of a person at different levels of employment

v) Imposition of Withholding tax on payments made for the supply of goods to a public entity

The bill proposes to subject to withholding tax any payments made to a person for the supply of goods to a public entity (the public entity means a ministry, state department, state corporation, county department, or any agency of the county or national government). The persons will be subjected to 3% Withholding tax for residents and 5% for non-residents. The bill further proposes to subject withholding tax on withdrawal department, or any agency of the county or national government). The persons will be subjected to 3% Withholding tax for residents and 5% for non-residents. The bill further proposes to subject withholding tax on withdrawal of pension before lapse of 20 years from the date of enrollment.

The bill further proposes that owners and operators of digital market place or platforms withhold 5% of the payment made to a resident person and 20% where the payment is being made to a non-resident person.

Implications; The bill aims to make sure that persons supplying goods to a public entity also pay tax on the income earned from such supplies. The taxation of income earned from a digital market place or platform, may not be welcomed by non-residents who may not derive income from Kenya but would still be requires to deduct the withholding tax of 5% when making or facilitating a payment to a resident person as it imposes an additional compliance burden.

vi) Exemption for goods originating from EAC

Imported goods from the East African Countries will be exempted from Excise duty, such goods include; imported eggs of tariff heading 04.07, and imported onions of tariff heading 07.03, imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00, imported cartons, boxes and cases of corrugated paper or paper board and imported folding carton boxes and case of non-corrugated paper or paper board and imported skillets.

vii) **E-tims (Electronic Tax Invoice)**

The bill proposes to introduce a definition of tax invoice to include an electronic tax invoice in accordance with section 23A of the Tax Procedures Act. The bill further proposes to include a penalty of Kshs 2,000,000 every month for non-complying companies and organizations.

Viii) Value Added Tax (VAT)

The Bill proposes the following changes to the VAT refunds regime:

- Excess input tax arising from withholding VAT to be paid to taxpayers similar to that arising from zero rating as opposed to refund/set off per section 47(4) of the Tax Procedures Act;
- Deletion of the requirement to lodge claims for refund of the excess tax within 24 months from the date the tax becomes due and payable to introduce a 6 months period
- Deletion of the provision on claim of refund of excess input tax by manufacturers due to supplies made to an official aid funded project approved by the Cabinet Secretary responsible for matters finance; and
- Deletion of the provisions on entitlement to full input VAT credit where the input tax attributable to taxable supplies is more than ninety percent (90%) and the disallowing of the full input VAT credit where the input tax attributable to taxable supplies is less than ten percent (10%).

ix) Deletion of sixty-day (60) timeline for return of tax to the KRA for tax on bad debt

The Bill proposes to delete the following amendments introduced in the Finance Act, 2023: If a supplier was refunded by the KRA for tax paid on a bad debt but the supplier subsequently covered the tax refunded from the buyer, the supplier would be required to return the tax to the KRA within sixty (60) days from the date of recovery. An interest rate of 2% per month would be applicable on the tax refunded.

recovered the tax refunded from the buyer, the supplier would be required to return the tax to the KRA within sixty (60) days from the date of recovery. An interest rate of 2% per month would be applicable on the tax refunded.

Implication; The deletion of the sixty-day timeline and the interest rate provision would ensure clarity since the VAT Act already provided for a thirty-day (30) timeline for the taxpayer to return the tax refunded to the KRA upon recovery of bad debts and the same interest rate was also already provided in case of failure to comply with the said timelines.

x) Increase of VAT registration threshold

The Bill proposes to increase the threshold for mandatory VAT registration from Kenya Shillings five million (KES 5,000,000) to Kenya Shillings eight million (KES 8,000,000).

Implications; The threshold of Kenya Shillings five million (KES 5,000,000) has been in place for many years despite increased inflation. Kenya's monthly inflation rate has varied between 6% to 9%. The increased threshold would be a welcome move to reduce the number of businesses required to register. However, the Kenya Shillings eight million (KES 8,000,000) threshold may still be quite low and result in numerous businesses falling within the mandatory registration threshold.

Plenary Session

- There was a general concern that the Finance Bill did not include proposals for the agriculture sector, implying that agriculture is not being prioritized. This is concerning, given that agriculture significantly contributes to the country's GDP and overall economic improvement.
- Additionally, there is an observation about the reduction in fund allocation to the agricultural sector, despite the rising costs of agricultural inputs. This increase in input costs significantly impacts the cost of doing business in agriculture today.
- The introduction of a lower VAT rate for manufactured goods is favored instead of VAT exemption to reduce the cost of finished goods
- The proposed increase in insurance charges aims to subject insurance and financial services to a 16% VAT, as these services are currently exempt from VAT. This VAT will apply to all services except the premium amount paid by customers therefore Cost of doing business for manufacturers in Kenya including grain millers and manufactures of agricultural equipment and machinery will increase by 20%-30%.
- For businesses, deductibility involves offsetting the VAT charged on purchases against the VAT charged to customers. Businesses incur a 16% VAT on their purchases and charge a 16% VAT on their sales. They must net these amounts; if the VAT on sales exceeds the VAT on inputs, they must pay the difference. EAGC proposes for a provision for businesses that charge 0% VAT on their sales but incur 16% VAT on their inputs should apply for a VAT refund to reclaim the excess input VAT.

- Motor Vehicle Tax - The Bill proposes to introduce a motor vehicle tax of 2.5% of the value of the motor vehicle to be collected by insurer at the point of issuing motor vehicle insurance. The proposed tax amount shall be a minimum of KES 5,000 and a maximum of KES 100,000. The value will be determined based on factors such as make, model, engine capacity (in cubic centimeters), and year of manufacture, subject the Commissioner's prescribed guidelines on the valuation of the motor vehicle. This comes against the backdrop of revised insurance premium rates and high fuel prices that have pushed up the cost of operating motor vehicles in Kenya. The Medium scale and large-scale farmers own vehicles that are used for management of the logistics on the farms. The proposed annual 2.5% tax on the value of the car will push the cost of production even higher escalating cost of living through multiplier effect. The recommendation is removing the additional tax as farmers already pay insurance and fuel levy for the vehicles. The Bill also needs to clarify on whether tractors on the farm are considered in this tax bracket

- VAT Registration Threshold - The Bill proposes to change the requirement for registering for VAT from making taxable supplies from a worth of KShs. 5 million to KShs. 8 million. The industry views this as an incentive for small businesses where it has its agripreneurs working with smallholder farmers some of whom are considered SMEs

- Moving Zero Rated Items to Exempt Status - All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products and raw materials for fertilizer manufacturing have been moved from zero rating to exempt status. The supply of motorcycles has also been moved from zero rating to exempt status. The proposed reclassification of agricultural pest control products and inputs/raw materials for fertilizer manufacturing from zero rated to exempt is likely to have significant impact on the agriculture sector and the overall economy. The reclassification will increase the cost of production for the suppliers hence passing the cost to the farmers, which will ultimately lead to an increase in the cost of production and food. Most young farmers purchase motorcycles for their day to day running of their agribusinesses. This will make them more expensive hence unaffordable for young farmers and other informal actors who work with the farmers to support the transportation of produce from farms to the markets. Recommendation is the government to consider retaining zero rated status on these items

- Evo levy - The proposed levy is likely to make many commonly used items on the farm to become more expensive including, wheelbarrows, tires etc. Recommendation is for government to do away with this levy.

Way Forward

The forum reached an agreement on ways the industry can move forward in relation to the Finance Bill 2024

1. Develop a clear national position on Tax Policy and address concerns about the introduction of additional taxes as well as new proposals on zero ration in place of VAT exemption.
2. Highlight the lack of significant proposals supporting the agriculture sector and the need to address the observed reduction in fund allocation to the agricultural sector
3. EAGC to consolidate feedback from the industry and submit to the National Assembly on 28th May
4. EAGC to participate in the public hearing on May 30th which will be facilitated by National Finance and Planning Committee

Stakeholders in attendance

1) Dr. Daniel Kinoti, Director, Shalem Investment Ltd
2) Gerald Masila Executive Director, Eastern Africa Grain Council
3) James Mwangi, Proprietor, Meslen
4) Anthony Kioko, CEO Cereal Growers Association
5) Gillian Kipkemboi, Eastern Africa Grain Council
6) Hidaye Mahmood, CEO, Hijaz Suppliers Limited
7) Festus Pole, Eastern Africa Grain Council
8) Edward Mwangi Wairimu, Tax Accountant, Capwell Industries Limited
9) Jacinta Mwau, Eastern Africa Grain Council
10) Duncan Wambugu, Eastern Africa Grain Council
11) Priscilla Mosigisi, Project Manager, Express Communications Ltd
12) JudyAnne, Managing Director, EFKen Leasing
13) Margaret Wangari, Eastern Africa Grain Council
14) Priscilla Kerebi, Director, EDSource Africa Ltd
15) Nicholas Maina, Eastern Africa Grain Council
16) Lilian Mwangi, Operations Manager, Kilimambogo Millers Ltd
17) Mercy Maithya, Eastern Africa Grain Council
18) Joseph Kuria, Accountant, Burmar millers
19) Umuro Mamo, Eastern Africa Grain Council
20) Kennedy Nyagah, Chairman, Grain Mill Owners Association (GMOA)
21) Patrick Ngure, Manager, ABC Bank
22) Gladys Mwaka, Eastern Africa Grain Council
23) James Mulili, Tax Director, PKF
24) Patrick Kuria, Partner PKF
25) Martin Njue, Eastern Africa Grain Council
26) Kevin Koech
27) Charles Mwangi