EATGN

East Africa Tax and Governance Network

# CHANGING THE TAX ARCHITECTURE

## A Relational Analysis between the Income Tax Bill, 2018 and Tax Laws (Amendment) Act, 2018

## ABOUT EATGN

The East African Tax and Governance Network (EATGN) was founded in 2009 in Nairobi, Kenya, as a membership organisation of individuals and non-state actor institutions that share the understanding that taxation is fundamental in achieving social justice and development goals.

EATGN is therefore a network of more than 16 organisations across the East Africa Community (EAC) specialising in taxation, governance, public policy, research and capacity building specifically working to create links between its various constituencies in the region to improve tax policy while deepening democratic governance. Of interest is the importance EATGN attaches to understanding tax management and how these shape policy outcomes.
The network is working to establish strong and sustainable national tax justice platforms in the EAC by implementing a five-year strategic plan 2019-2023. This will be done through pursuit of substantial growth in research - to fill in the identified knowledge gaps, conduct evidence-based programming and facilitate policy dialogue. It also intendeds to achieve this through building its technical expertise and through the strengthening of its current partnerships while fostering new strategic linkages.

To implement its activities over the next five years, EATGN works through a steering committee and country focal point organisations to find clarity, build concise momentum, develop agenda and work towards a common East African tax strategy for its membership in relation to current regional tax debates and policy-making processes.

## ABOUT PATRIOTS KENYA

The Providing Appropriate Tools Required to Interpret and Observe Tax Structures in Kenya (PATRIOTS KENYA) initiative facilitated the conduct of research, development of a common civil society organisations (CSO) position, presentation of submissions to the National Treasury and presentation of memorandum to the National Assembly following the review of income tax legislation through the publication of the Draft Income Tax Bill of 2018 (ITB).
EATGN gratefully acknowledges the Oxfam Kenya office which generously supported the PATRIOTS KENYA initiative.

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## ACKNOWLEDGEMENTS

The publication of this analysis was made possible through the efforts of Lyla Latif and coordination of the Providing Appropriate Tools Required to Interpret and Observe Tax Structures in Kenya (PATRIOTS KENYA) Initiative by Leonard Wanyama of EATGN. The brief could not have been made possible without the financial assistance of the Oxfam Kenya office thanks to the support of Robert Maganga, Joy Ndubai, Joel Owegi, Wairu Kinyori-Gugu and Beth Wambui. The study also benefitted from comments and backing of: Alvin Mosioma, Jason Braganza, Jared Maranga of Tax Justice Network Africa (TJNA). Special appreciation also goes to the entire TJNA team who assisted logistically thanks to the hosting of EATGN within its premises.

Lastly, EATGN would like to express its gratitude to members of its steering committee: Cyrus Nkusi, Governance for Africa (Rwanda); Andrew Chikowore, formerly of ActionAid International (Tanzania), Regina Navuga, Southern and Eastern Africa Trade, Information and Negotiations Institute –SEATINI (Uganda); Emma Wanyonyi, International Institute for Legislative Affairs (IILA) and Prime Nkezumukama, Centre d'Appui aux Initiatives Locales de Développement et d'Assistance Vulnérables (CIDEP) Burundi for their guidance throughout this process. Finally, EATGN would also like to appreciate the support of Nelly Busingye of Publish What You Pay (PWYP) who previously served as the steering committee chair of the network.

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| | |
|---|---|
| ATAF | Africa Tax Administration Forum |
| ACH | Automated Clearing House |
| CGT | Capital Gains Tax |
| DRM | Domestic Resource Mobilisation |
| DTA | Double Taxation Agreement |
| EAC | East Africa Community |
| EATGN | East Africa Tax and Governance Network |
| EPZ | Export Processing Zones |
| IMF | International Monetary Fund |
| ITA | Income Tax Act |
| ITB | Income Tax Bill |
| IFF | Illicit Financial Flows |
| KRA | Kenya Revenue Authority |
| OECD | Organisation foe Economic Development and Cooperation |
| PE | Permanent Establishment |
| REIT | Real Estate Investment Trust |
| SEZ | Special Economic Zones |
| SME | Small and Medium Sized Enterprise |
| TP | Transfer Pricing |

## 1. INTRODUCTION

Article 209 (1) of the Constitution of Kenya, 2010 (Constitution) provides the basis for taxation in Kenya. The Article identifies four distinct categories of taxes that can only be imposed by the national government. These taxes are; the income tax, value added tax, customs duties and other duties on import and export goods; and the excise tax. Article 209 (3) goes a step further to confer counties with the conditional power to impose tax subject to three criteria - that the taxation and revenue raising powers of a county shall not be exercised in a way that first, prejudices national economic policies. Second, prejudices economic activities across county boundaries and third, prejudices the national mobility of goods, services, capital or labour. Article 210 expressly requires the enactment of legislation to impose, waive or vary taxes in the country.

The current Income Tax Act (ITA)[1] is the primary source of legislation that defines and sets out Kenya's tax structure and revenue base. The ITA predominantly borrowed from the 1920 Income Tax Ordinance and has remained unchanged save for piecemeal amendments, revisions and reform over the years.[2] Other statutes such as the Stamp Duty Act,[3] the Value Added Tax Act,[4] Miscellaneous Levies Act[5] and the Excise Duty Act [6] supplement the ITA by providing additional revenue sources for the government and regulating the business environment. The Tax Procedures Act [7] and the Tax Appeals Tribunal Act [8] are recent additions to the governance aspect of tax in Kenya. These two statutes explain the procedure that facilitates the administration and management of taxation on the one hand, and on the other, how to resolve tax disputes.

The Income Tax Bill, 2018 (ITB) is the most recent attempt by the government to align tax legislation with Article 10 (2) of the Constitution and its 'Big Four' Plan [9] under the Economic Transformation Agenda set out in the Vision 2030 to enhance the growth of the economy and to simplify doing business in Kenya. The government aspires to broaden its tax base with the proposals made in the ITB and to reduce the inconsistencies within the tax regime that have led to ambiguity in the application of the law and covert tax avoidance/evasion practices. Regrettably, the ITB proposals to broaden the tax base are not linked to the principles set out under Article 10 (2) of the Constitution and do not set out a vertical accountability of the tax system by ensuring that tax payers are more involved in the formulation of tax policy and planning for any further reforms. The ITB does not reflect the principles of equity, social justice, inclusiveness, equality, human rights, non- discrimination and protection of the marginalised.

The ITB fundamentally shifts the traditional understanding of taxation within the parameters of the current ITA by proposing three distinct tax features. One, to increase tax rates and remove exemptions. Two, to tighten restrictions on expense deductions for the determination of taxable income and three, to broaden the provisions that deem income derived by a non- resident from Kenya to be taxable in Kenya. The ITB is silent on incorporating international best practice from the implementation of the four minimum standards of the Organisation for Economic Cooperation and Development (OECD) Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and in realigning the taxation of services and intellectual capital to take into account their key role in Kenya's business environment and digital growth.

[1] Income Tax Act, Chapter 470 of the Laws of Kenya.
[2] See generally the report by Moyi, Eluid and Ronge, Eric. Taxation and Tax Modernization in Kenya: A Diagnosis of Performance and Options for Further Reform. Institute of Economic Affairs, 2006 and the book by Waris, A. 2013. Tax and Development. LawAfrica, that document the tax reform in Kenya.
[3] Stamp Duty Act, Chapter 480, Laws of Kenya.
[4] Value Added Tax Act, No. 35 of 2013.
[5] Miscellaneous Levies Act, No. 29 of 2016.
[6] Excise Duty Act, No. 23 of 2015.
[7] Tax Procedures Act, No. 29 of 2015, Laws of Kenya.
[8] Tax Appeals Tribunal Act, No. 40 of 2013.
[9] The Big Four Plan is outlined in the Draft 2019 Budget Policy Statement. It sets out the decisive steps the government has taken/is taking to achieve (i) 500,000 affordable houses; (ii) 15% of GDP from the manufacturing sector; (iii) 100% food and nutrition security, and (iv) 100% universal health coverage.

## 2. OVERVIEW AND CONTEXT SETTING

The objective of this policy brief is to conduct further tax research on two crucial points. The first relates to an analysis of the proposed tax changes in the ITB to assess whether they align with the recommendations made in a report prepared by civil society led by OXFAM and East Africa Tax and Governance Network (EATGN). That report followed from a previous review of the ITA by the civil society to recommend specific reform measures. The present policy brief seeks to identify further recommendations with which to inform economic policy measures for input into the National Fiscal Budget 2019/2020.

The second point is to consider how the ITB relates to the Tax Laws (Amendment) Act, 2018. This is important to establish whether there will be any inconsistencies between the Act and the ITB when enacted, and to ensure coherency between the provisions of the two legal documents in ensuring that Article 10 (2) principles and the Smithian canons of taxation are properly implemented.[10] Overall, the aim is to suggest recommendations to effectively engage with parliament on tax legislation and to ensure that the concept of tax justice underpins the Kenyan tax regime. The first civil society led review of the ITA identified specific recommendations to include in reforming the ITA that would result in maximising domestic revenue mobilisation (DRM). These recommendations are subjected to a further review in this policy brief with the objective of establishing whether they are reflected in the proposed ITB. It is intended that such review shall provide a strategic, achievable and reliable position to lobby support through advocacy in getting parliament to input these recommendations in the ITB or in the next Finance Bill.

### 2.1. Taxing illegal income

The civil society led review of the ITA suggested guidelines to be developed on taxing illegal income. Income earned through corruption arguably falls under this proposed tax bracket. This is a challenging recommendation considering the trends in illicit financial flows (IFF), which are difficult to detect because of several reasons. First, complex global wealth chains located in tax havens or in jurisdictions with which Kenya has no automatic exchange on tax information make it entirely impossible to detect capital flows, profit shifting and transfer pricing. Second, taxing illegal income would require a definition of what constitutes illegal income. The High-Level Panel Report on Illicit Financial Flows[11] defines IFF as income earned or received from corruption. Corruption is an economic crime under the Anti-Corruption and Economic Crimes Act[12] and corrupt proceeds are subject to confiscation by the government on the suspect's conviction. Thus, the taxation of income from corruption cannot be subject to the civil society led recommendation.

Third, dodging tax through digital presence results from digital currencies, which currently remain unregulated and untaxed in Kenya. The use of digital currencies for illegal money has been confirmed by several criminal investigations against currency providers, such as E-gold or Liberty Reserve.[13] Second, it is a well-known fact that digital currencies, like Bitcoin, are used for payments at the online underground markets.[14]

[10] The negative effects of the tax system on welfare and economic efficiency should be minimised; the administration and compliance costs should not exceed the amounts collected; fairness should be enshrined – fairness of procedure, avoidance of discrimination and fairness with regards to legitimate expectations; and transparency should be upheld – a tax system that citizens cannot understand cannot achieve its intended objectives, a transparent tax system is preferable to one that taxes by stealth. Institute for Fiscal Studies. 2011. Reforming the Tax System for the 21st Century: The Mirrlees Review.

[11] Report of the High-Level Panel on Illicit Financial Flows from Africa commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development, available online at.
http://www.uneca.org/sites/default/files/publications/iff_main_report_26feb_en.pdf.

[12] Anti-Corruption and Economic Crimes Act, No. 3 of 2003

[13] Samani et al. 2013. Digital Laundry. An analysis of online currencies, and their use in cybercrime. White Paper, McAfee Labs.
http://www.mcafee.com/de/resources/white-papers/wp-digitallaundry.pdf; FATF (Financial Action Task Force). 2014. FATF Report. Virtual Currencies. Key Definitions and Potential AML/CFT Risks. http://www.fatf-gafi.org/media/fatf/documents/reports/virtual-currency-key-definitionsand-potential-aml-cft-risks.pdf

[14] Federal Bureau of Investigation. 2012. "Bitcoin Virtual Currency: Intelligence Unique Features Present Distinct Challenges for Deterring Illicit Activity." April 24. www.wired.com/images_blogs/threatlevel/2012/05/Bitcoin-FBI.pdf

What makes the situation even more difficult is that many of those currencies are decentralized and thus hard to control; for example, shutting down Bitcoin literally requires shutting down the internet because there is no core node that can be taken down.[15] The use of the unregulated digital architecture can make it possible to transfer corrupt earning first, without detection, and second to redirect such proceeds into tax-exempt business investments. The ITA offers no mechanisms for control and monitoring of such capital flows. A systematic approach to tapping illegal income is not yet been well developed in Kenya. Illegal markets exist to offer a number of possibilities for such transfers; there are websites, both in legal and illegal parts of the web, anonymous and non-anonymous, which offer not only to exchange Bitcoins for money via PayPal, Automated Clearing House (ACH), or Western Union, but also to turn Bitcoins into cash, sent directly via mail.[16] Digital currencies remain an untapped revenue source that neither the ITA nor the ITB have captured for taxation.

### 2.2. Permanent establishment to include digital presence

The civil society led review recommended the ITA definition of a permanent establishment (PE) to be broadened to include the digital presence of companies and businesses. There are specific characteristics of digital businesses that are particularly pertinent to taxation challenges that the civil society led review overlooked. These features have also been highlighted by the OECD and European Commission. Digital enterprises rely heavily on intangible assets, particularly intellectual property, that are often hard to value.[17] Furthermore, user participation, user generated content, network effects (for example, when users are the building blocks of networks) and data collection and mining are common for highly digitalised businesses. While they are precious assets in a digital economy and help to generate profits, it is difficult to value and tax these aspects.[18] While valuing intangible assets is very difficult, they can be moved around the globe instantaneously in the digital space and this provides opportunities for aggressive tax planning. Although permanent establishment exists, by shifting intangible assets to low tax jurisdictions companies can lower their effective tax rates significantly. Despite recognition of these challenges at the international level, the outcome of the work of bodies such as the OECD has been limited and there is not yet a common understanding of the concept of 'value creation' in relation to the digital economy. All this creates a disconnect between where the value is created, and taxes are paid.

Further, the digital economy is defined as ‘the global network of economic and social activities that are enabled by platforms such as the Internet, mobile and sensor networks.’[19] Value creation online can be referred to as virtual or digital labour. There are ‘blurred boundaries’ between production and consumption in the digital age. This is represented by the amalgam ‘prosumer’, highlighting the weak distinction between consumer and producer.[20] Although one cannot clearly define the boundaries of the digital economy, the transactions in the digital economy can be categorised as follows: ‘electronic services, supply over the Internet of services other than electronic services and supply of goods ordered online.’

[15]Brito and Castillo. 2013. “Bitcoin: A Primer for Policymakers.” Mercatus Center, George Mason University, Fairfax, Virginia, United States. www.mercatus.org/sites/default/files/Brito_BitcoinPrimer_embargoed.pdf
[16]Ciancaglini et al. 2015. “Below the Surface: Exploring the Deep Web.” TrendMicro, Forward-Looking Threat Research Team. http://www.trendmicro.co.uk/media/wp/exploring-the-deep-webwhitepaper-en.pdf
[17]Jones, B., et al. 2018. Taxing the Digital Economy; The Unilateral Approach. Tax Journal. Issue 1389. https://www.eversheds-sutherland.com/documents/services/taxation/tax-digital-economy-020318.pdf
[18]Li, J. 2014. Protecting the Tax Base in the Digital Economy. Paper No. 9. United Nations Department of Economic and Social Affairs. http://www.un.org/esa/ffd/tax/2014TBP/Paper9_Li.pdf
[19]Li, J. 2014. Protecting the Tax Base in the Digital Economy. Paper No. 9. United Nations Department of Economic and Social Affairs. http://www.un.org/esa/ffd/tax/2014TBP/Paper9_Li.pdf p. 5.
[20]Huws, U. 2014. The Cybertariat Comes of Age: Labour in the Global Digital Economy. Monthly Review Press, New York, 2014, p. 50

The digital economy is driven by 'content production, consumption and indexation'. The monetisation of personal data plays a key role in the digital sector.[21] At the same time, it is a challenge to calculate the value creation in the digital sector as consumers receive services free of charge in exchange for providing data,[22] let alone identify the appropriate base for taxation.

### 2.3. Taxing the informal sector

The 3% turnover tax imposed on the informal sector is recommended by the civil society led review to be abolished and instead a graduated rate apply starting at 1% and increasing to 3% on gross income between KES 4,500,000 and 5,000,000. It is argued that the graduated scale enhances fairness and justice in taxing the informal sector workers. This is in tandem with the Economic Transformation Agenda[23] detailed in the 2016 Budget Policy Statement, and thereafter presented to parliament as the Medium-Term Budget 2017/18 - 2019/20. The Agenda recognises the state's limited fiscal capacity and need to ensure rapid economic growth. Taxing the informal sector therefore aligns with the aim of the Agenda. Taxing the informal sector advances the Big Four Plan's vision of shared prosperity and entrenches the tax canon of equity.

### 2.4. Exemptions

The civil society led review seeks to curb the Cabinet Secretary's power in granting tax exemptions. This power is recommended to be transferred to a board or office within the revenue authority. This recommendation should instead align with Articles 10 (2) (a) and 201 (a) of the Constitution that subjects financial matters to public participation. This ensures vertical accountability in the making of tax policy, legislation and directives.

### 2.5. Double tax agreements (DTA)

All double taxation agreements between foreign states and Kenya are recommended for review and renegotiation. A further recommendation is for the DTAs to be based on Africa Tax Administration Model (ATAF) model to curb IFF and increase domestic resource mobilisation (DRM). This recommendation assumes that the problem of IFF will be solved by adopting a different DTA model and reviewing the existing DTAs. While the assumption is correct to some extent, the DTA architecture is solely based upon substantive law and not the intricate procedural and technical aspects that make it possible for money to move out of the jurisdiction untaxed. The substantive part can be corrected through a review process. However, the local and global architecture along with the wealth chains and secrecy jurisdictions through which capital flows following a DTA cannot be addressed through their review. For this a number of challenges have to be overcome. First, to start by developing a shared trade price data within the East Africa Community (EAC) which would automatically expand the dataset against which Kenya can judge and identify abnormal pricing between the different jurisdictions within the EAC in which companies operate to identify IFF. . This can be done in real time. EAC states can start a regional Open Government Guide on 'following the money' partnerships, to work with major trading partners in identifying abusive pricing happening at each end of the same transactions.[24] Starting such a process on a regional basis could be effective in reducing IFF irrespective of the DTA regime.

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[21]Li, J. 2014. Protecting the Tax Base in the Digital Economy. Paper No. 9. United Nations Department of Economic and Social Affairs. http://www.un.org/esa/ffd/tax/2014TBP/Paper9_Li.pdf, p. 5.
[22]European Parliament Directorate General for Internal Policies. Policy Department A. Economic and Scientific Policy. In-depth Analysis for the ECON Committee (2015) Presentation: Challenges for Competition Policy in a Digitalised Economy, p.21.
[23]The National Treasury. 2016. Budget Policy Statement. Sustaining Prosperity in a Volatile Global Economy. https://www.internationalbudget.org/publications/kenya-budget-policy-statement-2016
[24]Open Government Partnership. 2016. Great Ideas for OGP Action Plans: Follow the Money. https://www.opengovpartnership.org/stories/great-ideas-ogp-action-plans-follow-money

Second, to digitise the registry of companies. There should be a clear register of companies for tax purposes where domestically registered companies and their foreign related party data ought to be accessible. This is currently one of the biggest problems in Kenya, forms are not filed, updated or if filed are misplaced. The current registry must be updated, triangulated with tax data, as well as stock exchange and even service-based data. Third, the government should establish effective transfer pricing (TP) laws. This law will empower the government to require companies operating locally to provide the revenue authority with a comprehensive report showing their disaggregated financial reporting on a country-by-country or subsidiary-by-subsidiary basis.[25]

### 2.6. Export Processing Zones (EPZ)

The 10-year corporate tax break granted to EPZ is recommended to be abolished in favour of a fair and equitable scale. The civil society led review proposed that a 2-year tax holiday should instead be granted followed by a 75% exemption rate during the 3rd - 5th years. Thereafter, a reduction to a 50% exemption rate in the 6th - 8th year followed by nil exemptions. The provision of tax holidays has resulted in a race to the bottom for many developing states. The civil society recommendations sought to curtail abuse of the EPZ regime. A report by the African Department of the IMF, focusing on East Africa has noted that tax incentives are not an important factor in attracting foreign investment.[26] The Africa Development Bank reported that the main reasons for firms investing in Kenya are access to the local and regional market, political and economic stability and favourable bilateral trade agreements.[27] A further recommendation would be to enact legal rules to protect against attracting short to medium run projects thereby distorting investment away from long term (over 10 years) towards short/medium-term investments.[28]

### 2.7. Special Economic Zones (SEZ) and employment tax incentives

SEZs in Kenya are taxed within the first 10 years at a rate of 10% increased to 15% for the following next 10 years. The civil society led review recommended application of the South African approach. That is to subject the tax incentive to the employment of the youth and to additionally enable the employer to claim an employment tax incentive. Studies have shown that SEZs constitute a significant source of new employment and generate employment for unskilled labour by creating demand for physical infrastructure within the zone. This in turn stimulates the local construction industry giving employment to unskilled labour and reducing poverty.[29] It also promotes the objective under the Big Four Plan on accelerating and sustaining inclusive growth, and creation of job opportunities. A further recommendation would be for the revenue authority to set up a disaggregated tax database from SEZ and target it to achieve one of the Big Four Plans.

### 2.8. Investment Deduction Allowance

The civil society led review of the ITA recommended abolishing investment deductions allowances. These deductions can be carefully applied to avoid tax payments. Therefore, their removal while deemed as fair and just, disregards the capital and economic implications of investment. A failure to allow these deductions distorts economic decisions, encourages low-cost-low-revenue activities over equally valuable high-cost-high-revenue activities. Therefore, a limiting deduction to each year for the opportunity cost of capital previously saved/invested makes a fair recommendation.

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[25]Waris, A. 2016. Measures being Undertaken by African Countries to Counter IFF: Unpacking the Mbeki Report. High Level Conference on Illicit Financial Flows: Inter Agency Cooperation and Good Tax Governance in Africa. Pretoria.

[26]IMF, Kenya, Uganda and United Republic of Tanzania: Selected Issues, 1 December 2006.

[27]African Development Bank, Domestic Resource Mobilisation for Poverty Reduction in East Africa: Kenya Case Study, November 2010.

[28]This recommendation has previously also been identified in a report by Moyi, Eluid and Ronge, Eric. Taxation and Tax Modernization in Kenya: A Diagnosis of Performance and Options for Further Reform. Institute of Economic Affairs, 2006

[29]Aggarwal, A. 2007. Impact of Special Economic Zones on Employment, Poverty and Human Development. Working Paper No. 194. Indian Council for Research on International Economic Relations. https://www.econstor.eu/bitstream/10419/176213/1/icrier-wp-194.pdf

### 2.9. Special arrangements for relief from double taxation

Section 41 (5) of the ITA gives effect to arrangements made within a territory outside Kenya with a view to affording relief from double taxation. The civil society led recommendation to adopt the principle purpose test set out in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting is insufficient. The 'anti fragmentation' rule should also be adopted, which prevents the fragmentation of activities to avoid the creation of a PE, which would then give effect to section 41 (5).

### 2.10. Transfer pricing (TP)

The recommendation made by the civil society led review was to amend the existing TP rules in favour of the 'best method analysis' requirement and adoption of a specific method for each type of transaction; such as comparable profits method, comparable uncontrolled price. The problem with these recommendations is that there is a lack of adequate comparables within existing databases.[30] Different databases give different results not only for commodities, but also intellectual property- and royalty-based issues. The Kenya Revenue Authority (KRA) currently only accesses the Orbis system.[31] KRA subscribed to the Orbis database in 2011; Orbis has information on over 100 million private companies, 65 thousand listed companies and around 90 million individuals. Many taxpayers in Kenya use Amadeus, which is a sub-set of Orbis. Because of the inherent defects in foreign databases, the comparables derived end up not giving clear results, due to the difficulty of determining appropriate adjustment for economic circumstances. Currently Orbis has 2,662,476 companies listed from Africa. It has 12,529 companies from Kenya. However, a preliminary search conducted in 2016 produced only 100 companies from different industries with complete or largely complete data after 2004. Therefore, it is debatable whether this is usable at all for comparability.[32]

In order to even begin to build a usable database of comparables, certain markers must be in place. First, the local company registry must be updated and digitised to allow for local comparables. This is a problem in Kenya, as the company registry has still not been updated; digitisation began in the mid-1990s and remains incomplete. Second, many foreign-owned companies in Kenya are in effect economic monopolies, and it is not possible to compare prices with those paid by locally-owned businesses. Data shows that there are approximately 300 multinationals in Kenya in consumer goods, large-scale construction, and banking and finance. Since many of these products cannot be produced by local companies, these multinationals effectively control and set domestic prices. This makes it almost impossible to place them on the same footing as a local manufacturer of goods or services, whose products tend to be more expensive than the foreign multinational's. Third, some argue that digitisation of the economy has led to the loss of a paper trail, making an adequate audit almost impossible. Evidence rules in the court system often require hard copies; electronic copies are often considered unacceptable. Fourth, commercial databases are compiled from accounts filed by companies with the relevant administrative bodies and presented in an electronic format suitable for searches and statistical analysis.[33]

### 2.11. Capital gains tax (CGT)

The civil society led review recommended an increment in CGT starting from 0% on property valued at KES 2,500,000 to 30% for property valued at KES 40,000,000. The graduate scale thus recommended seeks to introduce fairness in the taxing gain on property value at different rates so that high-income earners pay more in line with traditional Smithian philosophy on progressive taxation. Having examined the civil society led recommendations for input into the ITA, the next section examines whether those recommendations are reflected in the ITB.

[30] UN. 2013
[31] Bureau van Dijk
[32] Waris, A. 2017. How Kenya has Implemented and Adjusted to the Changes in International Transfer Pricing Regulations: 1920-2016. Working Paper 69, ICTD.
[33] Waris, A. 2017. How Kenya has Implemented and Adjusted to the Changes in International Transfer Pricing Regulations: 1920-2016. Working Paper 69, ICTD.

## 3. THE PROPOSED CHANGES IN THE INCOME TAX BILL, 2018

Taxes are at the heart of the social contract between citizens and the state.[34] The trust that the citizens have in the state is expressed by the continuous willingness to pay taxes. This willingness is based on seven attributes; transparency, accountability, responsibility, effectiveness, efficiency, fairness and justice of a tax system.[35] It is impossible to discuss all features of these broad attributes in this policy brief. Instead the focus is on fairness, justice, efficiency and effectiveness. Undermining any of these attributes leads to an unfair distribution of the tax burden and a reduction in the resources available for redistribution.[36] Accordingly, the tax burden and redistribution is reflected in the annual budget, which in turn defines the Kenyan state and society's fiscal relationship.[37] This means that the availability and accessibility of infrastructure and social services; such as health, education and welfare, depend on an increase or decrease in the budget. The state and society fiscal relationship is therefore, to some extent, subject to first; the tax architecture. Second, taxpayer compliance[38] and third, efficient and equitable taxation of businesses, which is a vital pillar of any strong fiscal system.[39]

The ITB targets mobilising additional revenue, which is in accordance with the 2019 Budget Policy Statement. The argument therefore, relates to whether the broadened tax base will result in the sustainable provision of social services in the country and simultaneously provide a competitive and conducive business environment in line with Vision 2030. The ITB has retained a source-based taxation system, contrary to the wide expectation that the Government would seek to introduce a worldwide or remittance-based taxation system. The sources of income previously set out under section 3 (2) of the ITA remain largely similar to those set out under the new clause 5 (2) of the ITB. What follows next is an examination of the main proposals under the ITB, which were also extensively commented upon by the civil society led review.

### 3.1. Permanent establishment (PE)

The ITB does not expressly provide for PE via a digital presence. The civil society led review proposed the OECD approach under the Base Erosion and Profit Shifting (BEPS) Action 1 to taxing the digital economy, which focuses on establishing economic presence. This approach has been countered and opposed by the European Union. Instead, a different approach on considering a 'significant digital presence' is advanced based on which a digital service tax will be applied.[40] The ITB provision on PE will benefit most if criteria is set out on determining a significant digital presence instead of the civil society recommended economic presence. Taxation should be on the basis of digital rather than physical or economic presence. Physical or economic presence in a digital economy is an obsolete concept.

### 3.2. Permanent home

The civil society led review argued that the definition of a permanent home under the ITB should include a test for determining the residence of an individual.

[34] OECD. 2012. Perspectives on Global Development 2012: Social Cohesion in a Shifting World. Paris: OECD Publishing.

[35] Waris and van Kommer. 2011. Key Building Blocks for Effective Tax Systems in Developing Countries Utilizing the Theory of the Development of the Fiscal State. International Bulletin of Fiscal Documentation, 65(11), 620-636.

[36] Waris. 2018. Developing Fiscal Legitimacy by Building State-Societal Trust in African Countries. Journal of Tax Administration, Vol. 4:2

[37] Latif, L.A. 2018. Framing the Argument to Broaden Kenya's Limited Fiscal Space for Health Financing by Introducing Zakat. Biomed J Sci & Tech Res 5(5)-2018.

[38] OECD/FIIAPP. 2015. Building Tax Culture, Compliance and Citizenship: A Global Source Book on Taxpayer Education. OECD Publishing, Paris.

[39] Gadenne, L., Jensen, A., and Phillips, D. 2016. Cross Cutting Research Agenda. Institute for Fiscal Studies.

[40] https://www.taxjournal.com/articles/econ-committee-report-significant-digital-presence-12122018

The recommendation made is to extend the OECD definition to the ITB. Instead, the definition under Article 5, paragraphs (a) to (d) of the ATAF Model Tax Agreement should be adopted in order to move away from the hegemonic OECD narratives on tax determinations.

### 3.3. Presumptive tax

The ITB proposes a 15% presumptive tax imposed on small businesses that do not exceed an annual income of KES 5,000,000. Civil society led review recommended a presumptive tax redesign based on a graduated scale of total income earned modelled on the South African rates. Other African countries apply either a graduated or a minimal rate. The Seychelles Revenue Commission imposes a 1.5% presumption tax rate on business with an annual turnover of less than SCR 1 million. Presumptive tax in Zambia is set at 3% on individuals and small firms with an annual turnover of USD 50000.[41] Zimbabwe imposes between 4-9% presumptive tax and Uganda imposes a presumptive tax between 1.5-3%. The 15% proposed under the ITB is therefore excessive.

### 3.4. Transactions designed to avoid tax liability

While a general anti-avoidance provision exists under section 23 of the ITA, demonstration of a justifiable commercial purpose would have rendered the provision inapplicable. Under the ITB, a new clause 34 seeks to introduce a broader anti-avoidance provision which will capture any transaction entered into with the intention (including an ancillary intention) to reduce or avoid the liability to tax. The civil society led review recommended that the ITB narrative under clause 34 should reflect guidelines for self-assessment. It is important to appreciate that the general anti-avoidance provision is designed to counteract the tax advantage which an abusive arrangement would otherwise achieve. To ensure that the taxpayer is given the benefit of any reasonable doubt when determining whether arrangements are abusive, a number of safeguards should be built under clause 34. For example, applying a 'double reasonableness test'- which would require the KRA to show that the arrangements 'cannot reasonably be regarded as a reasonable course of action' - this recognises that there are some arrangements which some people would regard as a reasonable course of action while others would not - the 'double reasonableness' test sets a high threshold by asking whether it would be reasonable to hold the view that the arrangement was a reasonable course of action - the arrangement is treated as abusive only if it would not be reasonable to hold such a view.

### 3.5. Double tax relief

The Finance Act, 2014 introduced a restriction on utilising double tax relief except where more than 50% of the underlying ownership was held by individuals' resident in the other DTA Contracting State. This provision has now been enhanced in line with recent OECD recommendations and international tax developments which now seek to restrict double tax relief to only those entities that meet a new "substance" test, in addition to the 50% underlying ownership test. This provision is laudable. The civil society led review took a different approach to analysing double tax relief. It proposed a review of existing DTAs in line with a DTA policy, which Kenya has not prepared. This brief posits that any DTA policy contemplated by the government must take into consideration the findings of the High-Level Panel Report on Illicit Financial Flows, the Addis Tax Initiative that follows the Addis Ababa Action Agenda[42] and critically examine the report by the Independent Commission for the Reform of International Corporate Taxation (ICRICT).[43]

[41] https://assets.publishing.service.gov.uk/me dia/5b3b64a6e5274a6fe8b7048e/Opportunities_and_challenges_ for_taxing_the_informal_ economy_and_subnational_taxation.pdf

[42] United Nations. 2015. Addis Ababa Action Agenda of the Third International Conference on Financing for Development. New York. http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

[43] ICRICT. 2018. A Roadmap to Improve Rules for Taxing Multinationals. https://www.icrict.com/icrict-documents-a-fairer-future-for-global-taxation/

### 3.6. Miscellaneous

The civil society led recommendations under sections 2.6, 2.7 and 2.11 above on EPZ, SEZ and CGT are reiterated in the review of the ITB provisions on these three areas. In addition, the review recognises that the ITB provisions on the taxation of the extractives sector and cross border transactions need to be further addressed. Taxation of derivative transactions should be included in the ITB, which would result in the mobilisation of additional revenue generated from value additions. In line with international tax development, the ITB has made provisions for TP and country by country reporting. The civil society led review however, noted that neither have these terminologies been clearly set out or their procedure explained. The OECD Action 13 on TP and country by country reporting has been referred to as the source material for input into the ITB.

## 4. HOW DOES THE INCOME TAX BILL 2018 RELATE TO THE TAX LAW (AMENDMENT) BILL 2018?

The main meeting point between these two Bills is on tax exemptions for SEZs.The ITB puts forward tax exemption clauses for capital gains and compensating tax accruing to licensed SEZ operators and developers. SEZs are designated trading areas that enjoy favourable business and industrial conditions such as lower production costs, some tax incentives, as well as closer proximity to raw materials. The tax exemption on capital gains and on compensating tax (a type of tax on dividends distributed by a company that already enjoys tax incentives), ensures that SEZ investors will not lose out on the tax benefits granted to these entities through taxes on profit distributions or capital gains during transfer or disposal. The measure is aimed at encouraging investment in SEZ and is in line with the Government's Big Four Agenda of increasing the contribution of manufacturing to GDP. The concerns relating to compensating tax under ITB also applies to companies operating outside SEZ's and should be addressed across the board. In particular, companies benefitting from investment deduction (mostly manufacturing entities) are likely to encounter compensating tax which effectively claws back the incentives. Furthermore, with the reintroduction of CGT under ITB, one would question whether compensating tax should be retained as it was targeted at distributions of untaxed income which mostly comprised capital gains.

## 5. RECOMMENDATIONS

In the early implementation of the Big Four Plan, the National Treasury under Treasury Circular No 14/2016 issued guidelines to all Ministries, Departments and Agencies on the process and procedures for preparing the Medium-Term Budget for the Financial Years 2017/18 – 2019/20. The upcoming budget for 2019/2020 therefore, seeks to continue the policy and strategic reform measures that the government set out in the Economic Transformation Agenda[44] initially detailed in the 2016 Budget Policy Statement, and thereafter presented to parliament as the Medium-Term Budget 2017/18 - 2019/20.The 2019 Budget Policy Statement continues the implementation of these policy and reform measures, which aim to create a sustainable fiscal framework that will achieve higher growth, generate employment and reduce poverty and inequality thereby realising the aspirations under Vision 2030.

[44]The National Treasury. 2016. Budget Policy Statement. Sustaining Prosperity in a Volatile Global Economy. https://www.internationalbudget.org/publications/kenya-budget-policy-statement-2016/

The input therefore, that the ITB makes to the realisation of the Economic Transformation Agenda is to scale up levels of investment in economic infrastructure, support rapid economic growth and development, and sustain macro-economic stability.

The achievement of these objectives is observed in the provisions of the ITB that propose to introduce graduated tax scales and withholding tax on repatriated profits at a rate of 10%; revising the thin capitalisation threshold from the current debt-equity ratio of 3:1 to 2:1; increasing capital gains tax rate from 5 to 20%; abolishing tax holidays for SEZs and EPZs; abolishing the 150% investment allowance and reduction of various capital allowances on buildings and machinery used in manufacturing, commercial real estate, film and education sectors; removal of tax exemptions; regulations to tax the digital economy, and introducing the presumptive tax at a rate of 15%. In order to build CSO awareness on the ITB for the development of a common position and to establish evidence base for policy and parliamentary engagements on tax legislation the following recommendations are made:

### 5.1. Lower presumptive tax rate and CGT

The aim of the Economic Transformation Agenda set out in the 2019 Budget Policy Statement is to reduce the cost of doing business and to make the Kenyan market competitive. The broadened tax base as contemplated in the ITB therefore, approbates and reprobates this aim. While an increase in taxes would result in additional revenue to meet the social and economic needs of the country, it also presents a burden to the different categories of taxpayers. While non-resident and foreign based multinational companies are deprived of the tax incentives under the ITA, small and medium sized enterprises (SMEs), youth led organisations, women owned businesses and persons living with disabilities face restrictions in developing their businesses and limiting their capacity for growth pursuant to the application of the presumptive tax.

This in turn limits investment in rural development by SMEs, youth, women and persons living with disabilities. It restricts their ability to then venture out in business and business led activities. The increase in the capital gains tax further imposes upon these tax payers an additional financial burden that is not commensurate with the levels of rural poverty and unemployment in the country. Various studies have demonstrated a strong link between taxation and people's livelihoods[45] and the negative impact taxes can have on small businesses and women.[46] A reconsideration of the 15% presumptive tax rate to align with the Ugandan rate set at between 1.5-3% would set a harmonised trend within the EAC. It will provide the informal sector with the incentive to move towards tax compliance. The civil society led recommendations for a graduated scale for CGT are also here reinforced. In view of this, civil society should advocate that a specific percentage of tax collected from the presumptive tax and the capital gains tax be directed into the Equalisation Fund set up under Article 204 of the Constitution so that the counties from whence these taxes are collected are redirected towards provision of basic services including water, roads, health facilities and electricity to rural and marginalised areas within the counties. The principles on equity, social justice, inclusiveness and sustainable development under Article 10 (2) of the Constitution can be made meaningful in terms of civil society proposals through parliament that demonstrate the application of tax justice and fiscal legitimacy in the allocation of the newly contemplated additional taxes towards rural development.

[45] World Bank. 2011 Facilitating Cross-Border Trade Between the DRC and Neighbours in the Great Lakes Region of Africa: Improving Conditions for Poor Traders, Washington, DC: World Bank; Pimhidzai, O. and Fox. L. 2012. Taking from the poor or local economic development: The dilemma of taxation of small informal enterprises in Uganda, Washington, DC: World Bank; Titeca with Kimanuka, C. 2012. Walking in the Dark: Informal Cross-Border Trade in the Great Lakes Region, London: International Alert; Bahiigwa, G., Ellis, F., Fjeldstad, O-H. and Iversen, V. 2004. Rural Taxation in Uganda: Implications for Growth, Income Distribution, Local Government Revenue and Poverty Reduction, Uganda: Economic Poverty Research Centre, and Ellis, F. 2005. Local Government Taxation Reform in Tanzania: A Poverty and Social Impact Analysis, Washington, DC: The World Bank Social Development Department.

[46] Fjeldstad and Heggstad. 2012. Building Taxpayer Culture in Mozambique, Tanzania and Zambia: Achievements, challenges and policy recommendations, Bergen: Chr. Michelsen
Institute; D'Arcy, M. 2012. Taxation, Democracy and State-Building: How Does Sequencing Matter?, Gothenburg: University of Gothenburg Quality of Governance Institute; Itriago, D. 2011. Owning Development: Taxation to fight poverty, Oxford: Oxfam International, and Train4Dev. 2009. Increasing Revenue Collection Without Damaging the Livelihoods of the Poor, http://www.oecd.org/dac/povertyreduction/47466718.pdf

This can be done by parliament providing for a revenue allocation criterion under regulations stemming from the ITB. This would have the effect of entrenching the narrative that the civil society is aiming to achieve in linking tax, development and governance to people's livelihood.[47]

### 5.2. Lower threshold for application of 35% tax rate

The guidelines for the preparation of the medium-term budget for the period 2019/20 – 2021/22 were circulated vide Treasury Circular No. 8/2018 in accordance with Section 36 of the Public Finance Management Act, 2012. The guidelines recognise the country's limited fiscal space and therefore, leverages on the private sector. As such paragraph 3 of the Third Schedule to the ITB that introduces changes to the corporate rate of tax is not in tandem with this goal. The schedule has reduced the rate to 30% for both resident companies, and non-resident companies having a permanent establishment in Kenya whose income does not exceed KES 500 million.For taxable income exceeding KES 500 million, a rate of 35% will apply. This is an ineffective provision as Kenya does not have a lot of companies that make it to this threshold. Tax legislation in so far as practical should reflect the context within which companies operate in its jurisdiction. Accordingly, EATGN in submitting its position before parliament should suggest lowering the KES 500 million threshold to at least KES 100 million in order to ensure there is higher tax collection from those that earn more and generate available revenue to limit the growing debt crisis.

### 5.3. Match ITB to service delivery

The ITB does not indicate how its provisions link to the Big Four Plan, or at least one of them. Neither does the ITB match any of its provisions to service delivery. In the guidelines setting out the process and planning for the 2019/20 budget, the government aims to pursue a fiscal consolidation policy targeted towards reducing the overall fiscal deficit and debt accumulation.

### 5.4. Tax base under exploited

Increase in tax mobilisation serves to address the fiscal deficit and debt crisis. However, such increases must be commensurate with the market. Civil society should consider advocating for the following areas that merit parliament enacting subsidiary legislation or regulations to align the ITB to the global tax agenda. First, the higher rate of tax at 35% that is proposed to be imposed upon any individual earning more than KES 9 million per annum (KES 750,000 per month) results in a very narrow tax base or none at all. The taxpayer pool earning this stipulated amount is supposedly only a handful and that does not translate into any tax at all. The 35% rate should instead apply to individuals earning KES 350,000 per month. Second, the tax base has not fully been exploited by the ITB. There is a disconnect between technology and revenue mobilisation. Therefore, introduce regulation and taxation of digital currencies; impose the digital service tax for companies trading and providing services online. This captures the modern developments of the market economy. A tax system should respond to the emerging market trends. In so doing the tax regime creates a sustainable design that is all inclusive of business trends. In this regard, the taxing of SMEs falls within the equality principle when tax rates are also applied to foreign companies with a digital market presence. Third, DTAs have been exploited by tax dodging companies, thereby re-routing untaxed profits and income out of Kenya. This in turn has led to income inequality and erosion of the Kenyan tax base inhibiting spending on social rights, such as health, education and welfare.

[47] See Tax Justice Network-Africa website on Topical Reports at; http://www.taxjusticeafrica.net/en/resources/downloads/topical-reports/

The ITB has to expressly set out TP rules, country by country reporting measures, taxation of value additions and apply the ATAF Model Tax Agreement definition on permanent home as measures to combat IFF.

### 5.5. Remove application of CGT for SMEs

The CGT rate proposed at 20% unfairly tips the rich against the poor. SMEs are defined as the cornerstone of economies.[48] In this respect, civil society should consider using the South African Chamber of Business position condeming CGT as having adverse implications for entrepreneurship and job creation. Citing France, Germany and Italy as examples, it was argued that the South African government's decision to levy CGT on SMEs was a possible contradiction of its stated objective of tax equity aimed at combating poverty.[49]

[48]POTERBA, J. 1989. Venture capital and capital gains tax; Manuel, T. 2010. Budget speech (2010). Available at: http://www.treasuary.gov.za

[49]POTERBA, J. 1989. Venture capital and capital gains tax; Moore, S., and Silva, J. 1995. The ABCs of capital gains tax. Cato Institute: Policy Analysis, No. 242, October; Ededes, J. 2000. Capital gains tax. Financial Mail, 15 April.

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Excise Duty Act, No. 23 of 2015

Income Tax Act, Chapter 470 of the Laws of Kenya

Miscellaneous Levies Act, No. 29 of 2016

Stamp Duty Act, Chapter 480, Laws of Kenya

Tax Appeals Tribunal Act, No. 40 of 2013

Tax Procedures Act, No. 29 of 2015, Laws of Kenya

Value Added Tax Act, No. 35 of 2013

# 7. ANNEX

7.1. Appendix 1: Comparing the Civil Society Led Recommendations on the Income Tax Act with the Policy Brief Suggestions

| Area for reform | Civil society led recommendations on the Income Tax Act | Suggested recommendations – key points that need further input to strengthen the ITA |
|---|---|---|
| *Taxing illegal income* | Develop guidelines on taxing illegal income<br><br>Corrupt income to be taxed | Enact a comprehensive definition on what constitutes illegal income to follow the definition in the HLP report on IFF<br><br>Establish guidelines to also focus on tax dodging through the digital architecture<br><br>Proceeds from corruption cannot be subject to tax – subject to confiscation by government<br><br>Develop a systematic approach to tapping illegal income |
| *Permanent establishment* | Definition of a permanent establishment to be broadened to include the digital presence of companies and businesses | Address taxation challenges of broadening PE to include digital presence by focusing on:<br><br>*How to value intangible assets of digital enterprises*<br><br>*Common understanding on the concept of value creation regionally in order to implement a harmonised law aligning with the regional, continental and global approaches*<br><br>*Clarity on what to tax under the concept of value creation; content production, consumption or indexation?*<br><br>*Clarity on the jurisdiction to tax* |
| *Taxing the informal sector* | 3% turnover tax imposed on the informal sector to be abolished and instead a graduated rate apply starting at 1% and increasing to 3% on gross income between Kshs 4,500,000 and 5,000,000. | Graduated scale ensures fairness |
| *Exemptions* | Curb the Cabinet Secretary's power in granting tax exemptions. Transfer such power to a board or office within the revenue authority. | Power to grant exemptions to be subjected to Articles 10 (2) (a) and 201 (a) of the Constitution of Kenya |

| Area for reform | Civil society led recommendations on the Income Tax Act | Suggested recommendations – key points that need further input to strengthen the ITA |
|---|---|---|
| *Double Tax Agreements* | All double taxation agreements between foreign states and Kenya are recommended for review and renegotiation.<br><br>DTAs to be based on ATAF's model in an attempt to curb IFF and increase domestic resource mobilisation. | The problem of IFF will not be solved by adopting a different DTA model and reviewing the existing DTAs. While the assumption is correct to some extent, the DTA architecture is solely based upon substantive law and not the intricate procedural and technical aspects that make it possible for money to move out of the jurisdiction untaxed.<br><br>The review, renegotiation and application of a different DTA model will work effectively if combined with law addressing<br><br>*Sharing trade price data*<br><br>*Digitalisation of the registry of companies and ensure its available for public search*<br><br>*Submission of disaggregated financial reporting on a country-by-country or subsidiary by subsidiary basis*<br><br>The transparency resulting from the foregoing three recommendations go towards addressing the challenges of detecting IFF |
| *Double Tax Agreements Export Processing Zones* | Abolish the 10-year corporate tax break granted to EPZ in favour a fair and equitable scale.<br><br>Proposal is made for a 2-year tax holiday followed by a 75% exemption rate during the 3rd – 5th years. Thereafter, a reduction to a 50% exemption rate in the 6th - 8th year followed by nil exemptions. | Additionally to enact legal rules to protect against attracting short to medium run projects thereby distorting investment away from long term (over 10 years) towards short/medium-term investments. |
| *Special Economic Zones* | Subject the tax incentive for SEZ to the employment of the youth and to additionally enable the employer to claim an employment tax incentive | A further recommendation would be for the revenue authority to set up a disaggregated tax database from SEZ and target it specifically to finance one of the Big Four Plans |
| *Investment Deduction Allowance* | Abolish investment deduction allowances | Limit deduction to each year for the opportunity cost of capital previously saved/invested |
| *Special Arrangements for Relief from Double Taxation* | Adopt the principle purpose test set out in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting | The principle purpose test in itself is insufficient. In addition the 'anti fragmentation' rule should also be adopted, which prevents the fragmentation of activities to avoid the creation of a PE, which would then give effect to section 41 (5). |

| Area for reform | Civil society led recommendations on the Income Tax Act | Suggested recommendations – key points that need further input to strengthen the ITA |
|---|---|---|
| *Transfer Pricing* | Amend the existing TP rules in favour of the 'best method analysis' requirement and adoption of a specific method for each type of transaction; such as comparable profits method, comparable uncontrolled price. | The problem with the civil society led recommendations is that there is a lack of adequate comparables within existing databases. KRA uses the Orbis database and taxpayers use Amadeus. Because of the inherent defects in these databases, the comparables derived will not give clear results. Therefore before the government can build a usable database of comparables, certain challenges have to be addressed:<br><br>*Local company registry must be updated and digitised to allow for local comparables*<br><br>*Many foreign-owned companies in Kenya are in effect economic monopolies, and it is not possible to compare prices with those paid by locally-owned businesses*<br><br>*Digitisation of the economy has led to the loss of a paper trail, making an adequate audit almost impossible* |
| *Capital Gains Tax* | Graduated CGT starting from 0% to 30% for low end to high end properties | Accept |

7.2. Appendix 2: Comparing the Civil Society Led Recommendations on the Income Tax Bill with the Policy Brief Suggestions

| Area for reform | Civil society led recommendations on the Income Tax Bill | Suggested recommendations – key points that need further input to strengthen the ITB |
|---|---|---|
| *Permanent establishment* | The OECD approach under BEPS Action 1 is proposed to taxing the digital economy, which focuses on establishing economic presence | The ITB provision on PE will benefit most if criteria is set out on determining a significant digital presence instead of the civil society recommended economic presence. Taxation should be on the basis of digital rather than physical or economic presence. Physical or economic presence in a digital economy is an obsolete concept. |
| *Permanent home* | The definition of a permanent home under the ITB is proposed to include a test for determining the residence of an individual. The recommendation made is to extend the OECD definition to the ITB | Definition under Article 5, paragraphs (a) to (d) of the ATAF Model Tax Agreement on permanent home should be adopted in order to move away from the hegemonic OECD narratives on tax determinations |
| *Presumptive tax* | Proposes a presumptive tax redesign based on a graduated scale of total income earned modelled on the South African rates | Apply either a graduated or a minimal rate. The 15% proposed under the ITB is excessive when compared with Seychelles, Zambia, Zimbabwe and Uganda for example |
| *Transactions designed to avoid tax liability* | The civil society led review recommends that the ITB narrative under clause 34 should reflect guidelines for self-assessment | Introduce safeguards under clause 34 by adopting for example the 'double reasonableness test' |
| *Double tax relief* | Proposes a review of existing double tax reliefs in line with a DTA policy, which Kenya has not prepared. | Develop a double tax relief policy taking into consideration the findings of the High-Level Panel Report on Illicit Financial Flows, the Addis Tax Initiative that follows the Addis Ababa Action Agenda and the reports by the Independent Commission for the Reform of International Corporate Taxation (ICRICT). |

| Area for reform | Civil society led recommendations on the Income Tax Bill | Suggested recommendations – key points that need further input to strengthen the ITB |
|---|---|---|
| *Miscellaneous* | Recommendations earlier made in Appendix 1 on EPZ, SEZ and CGT are here reiterated in the review of the ITB provisions on these three areas<br><br>ITB provisions on the taxation of the extractives sector and cross border transactions need to be further addressed<br><br>Clarity on the meaning and procedure of TP and country-by-country reporting | In addition the taxation of derivative transactions should be included in the ITB, which would result in the mobilisation of additional revenue generated from value additions. |

EATGN is thankful for the support of
our partners the Tax Justice Network Africa
(TJNA) and Oxfam Kenya

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ISBN 978-9966-131-01-0