



Paving the way for greater tax transparency in Kenya

On 17 August 2017, Nigeria joined the close to a hundred countries that have signed up to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI in simple terms, is a multilateral treaty whose objective is to amend the more than 3,000 double tax avoidance agreements (DTAs) in one fell swoop.

In an ideal world, nobody likes paying taxes, let alone paying more taxes that one ought to pay. This is without a doubt one of the reasons why failure to pay taxes attracts stiff penalties. DTAs therefore serve the useful purpose of eliminating the possibility of taxing the same income twice.

Though the oldest DTAs were first introduced in the late 1870s, it was not until after the USA great depression of 1929 that DTA use expanded. Today, there are more than 3,000 DTAs globally. Kenya itself has in the last 10 years doubled its DTAs.

Companies operating in more than one jurisdiction, have since time immemorial employed strategies to reduce their tax bills. However, such strategies have recently been frowned upon, with citizens boycotting products of multinational companies seen to be “dodging” tax.



Naturally, where companies employ such tax planning strategies, governments are an interested party because such strategies translate to lower tax revenues. As a result, governments have come together globally to minimize DTA abuse and eliminate double non-taxation. Consequently, governments are championing greater transparency of cross-border transactions. The thinking behind this is that if such information is publicly available, companies will have less incentive to engage in aggressive tax planning. Perhaps more importantly, revenue authorities will have a clear picture of the profits that companies make in their various jurisdictions and how much tax they pay. Transparency invariably involves disclosure of transactions and commercial data such as prices and profits realized in such cross-border transactions. One of the biggest challenges of transparency is data privacy and confidentiality laws. The recent ransom ware cases highlight the potential nightmare involved in accessing data.

Where is Kenya on all these global initiatives? First, Kenya has been an active participant in these fora, driving policy development from a developing country perspective. Kenya is preparing to sign the MLI which should pave the way for tax information exchange, given the Income Tax Act amendments four years ago to facilitate information exchange agreements. The Companies (Amendment) Act, 2017 which came into force on 16 August 2017, in my view, progresses Kenya’s readiness to facilitate transparency. Under the Companies Act, a company is now required to file its audited financial statements. In addition, each private company is required to file with the Registrar of Companies, a register of its members. Other details to be disclosed include the beneficial owners of companies, their names and addresses.

By simply conducting a search at the Companies Registry, anyone can now access this data. These developments, together with sophistication of taxpayers and increasingly aggressive tax authorities, suggest that it will not be long before Kenya starts implementing the tax information exchange initiatives. After all, KRA is proving its mettle in the

international tax arena by driving the tax agenda in Africa.

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