**COUNTY GOVERNMENT(REVENUE RAISING PROCESS) BILL 2023**

**CIVIL SOCIETY SUBMISSION ON REVENUE RAISING BILL 2023**

**Objects of the Bill**

The Bill seeks to regulate the exercise by county governments of their powers to impose taxes, levies and duties by providing for the compliance by a proposed county government tax, levy or charge with the Constitution and the provisions of this Bill and to ensure that county government proposals are dealt with in accordance with Article 6(2) of the Constitution.

| **Section** | **Proposals** | **Proposed Amendments and**  | **Justification**  |
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| Clause3: 1 | A county government may not exercise its powers in terms of Art2019 and 2110 of the CoK2010 to impose tax, levy, fee or any other charge in a way that materially and unreasonably prejudices; 1. National economic policies
2. Economic activities across county boundaries or
3. the national mobility of goods, services, capital or labour.
 | No changes are proposed for this section.  | This is provided for under Articles 209(5) and 210This clause seeks to reinforce strict adherence to the provisions of the CoK2010 and fiscal policies in Kenya. |
| Clause 3 (2): | Before imposing a tax, fee, levy or any other charge, a county government shall follow the process provided in this Act and shall in addition;1. ensure compliance with subsection (1),
2. adhere to the principles of consultation and cooperation set out in Article 6(2) of the Constitution.
3. Ensure compliance with tariff and pricing policy as provided for under section 120 of the County Government Act 2012,
4. Where a fee is to be charged for a service, ensure that the fee does not exceed the cost of providing such service
 | We propose an introduction of part (e) to include adherence to principles of governance set out in Article 10(a) of the Constitution particularly on public participation.  | This clause attempts to provide clarity and compliance parameters to be observed by county governments when introducing a new tax. It addresses issues related to principles of taxation, tariff and pricing policies and the level of consultation required before such a decision is made. It, however, limits consultation undermining the principle of governance under Article 10.  |
| Clause 4: (1) | Where a county government intends to impose a tax, fee or charge, the CEC for Finance shall, ten months before the commencement of the financial year, submit particulars of the proposal to the National Treasury and the Commission.  | We propose an amendment to this clause to reinforce the role of Counties Assemblies and the Senate in the formulation of fiscal policies and to provide a framework for the implementation of fiscal policies at the county level. The National Treasury should not try to regulate counties’ fiscal autonomy by being a central player in the process rather they should provide technical support to counties to strengthen their own source of revenue generation.  | The clause introduces new requirements to be adhered to by county governments before introducing new taxes. It sets out a timeline within which requests can be made and when the Commission and National Treasury are expected to make their decision.However, this clause undermines the objects of devolution as set out in the Constitution particularly the 4th schedule of the Constitution. It purports to give the National Treasury powers to oversight county revenue-raising activities. This undermines the role of the County Assembly and Senate in legislating and oversighting the counties’ fiscal policies. Further, it makes no reference to County Fiscal Strategy Paper and how this process shall align with the county budget calendar. It creates a bureaucratic process that is likely to undermine counties’ ability to generate their own source revenues.  |
| Clause 4:(2) | The proposal under subsection (1) shall1. Set out the reasons for the imposition of the tax, fee, levy or charge
2. Giver particulars on the compliance with Article 209(5) of the Constitution and section 3 of this Act
3. Identify and where appropriate, describe the persons liable for the tax, fee, levy or charge and any relief measures or exemptions
4. Specify-
5. The collecting authority
6. The person responsible for remitting the collections
7. The method and likely cost of enforcing compliance; and
8. The compliance burden on taxpayers
9. Give particulars of and describe the estimation methods and assumptions used to determine-
10. The amount of revenue to be collected on an annual basis over three financial years following the introduction of the tax, fee, levy or any other charge
11. The economic impact on individuals and businesses residing in the county;
12. The economic impact on individuals and businesses in other counties; and
13. The impact on economic development in the county
14. Give particulars of any consultations conducted by the county, including consultations with affected counties.
 | No changes proposed in these section.  | The clause provides for a very comprehensive list of things to be considered by the county when developing the proposal.  |
| Clause 4(3) | The Commission shall review the proposal submitted under subsection(1) and submit it to the National Treasury within one month upon receipt.  | The clause fails to provide a feedback mechanism between CRA and the county with respect to their mandate under Article 216. It also limits CRA to submit their recommendations only to National Treasury leaving out the key stakeholders like the Parliament. Therefore, we propose that this section be amended to expand the list of stakeholders to whom the CRA recommendation shall be submitted as stipulated in Article 216(5).  | This clause mandates the CRA to review the proposal by the county seeking to introduce new tax, fee, levy or other charge. It gives CRA one month to review and submit to the National Treasury.  |
| Clause 4(4): | The National Treasury may consult any other state organ or interested persons on the proposal contemplated in subsection(1)  | Public participation is a very important exercise that ensures the people are consulted before any decision is taken by the government. We, therefore, propose an amendment to this clause by replacing the word “may” with “shall”. Further, we propose an insertion of part (i) to provide the timelines for public consultation to be conducted at both the County and national levels.  | This section provides for further consultation however leaves the decision to consult at the discretion of the National Treasury.  |
| Clause 4(5): | In considering the proposal submitted by the county government, the National Treasury shall take into consideration the recommendations of the Commission under subsection (3), provisions of Article 209 of the Constitution, relevant administrative procedures, existing legislation and international treaties and agreements and shall notify the County Executive Member for Finance concerned of the decision, in writing, not later than three months after receipt of the proposal under subsection (1).  | The provision under this section erroneously assigns National Treasury an approval role which can only be undertaken by the County Assemblies and Parliament. It offends the doctrine of separation of powers between different arms of the government since the National Treasury has no role in approving any policy under the Constitution. Further, it contravenes provisions of section 123 of the PFM Act 2012 that sets out the requirements for the imposition of taxes and other charges by county governments, including the need for public participation and the approval of the County Assembly.  | This section provides clarity on how long the National Treasury shall take to consider the proposal by the county governments. It sets out a couple of considerations before a decision is taken by the National Treasury.  |
| Clause 5(1): | No tax or licensing fee including a fine or penalty may be waived or varied except as provided by the legislation.  | No proposed changes | It restricts the process of granting waivers. |
| Clause 5(2): | Where legislation permits the waiver of any tax or licensing fee as envisaged under subsection(1)-1. A public record of each waiver shall be maintained together with the reasons for the waiver; and
2. Each waiver, and the reasons for it, shall be reported to the Auditor General within three months of granting the waiver.
 | We propose that a report should also be sent to CoB and CRA under subsection 2(b).  | It provides for the accountability mechanism for the waivers by the county governments.  |
| Clause 5(3): | Waiver of variation of any tax or licensing fee shall-1. Indicate the reasons or policy objectives of such variation or waiver;
2. Identify the category of taxpayers to benefit or burden from such variation or waiver: Provided that the waiver or variation shall not apply to the same category of taxpayers in a financial year following a similar variation or waiver in the preceding year;
3. Outline the impact of the variation or waiver on revenue collection;
4. Indicate the likely economic impact of the variation or waiver including potential shifts in the tax burden and benefits.
 | We propose an insertion subsection 3 (e) to provide for the duration of the waiver or variation. Further, we propose that waivers and variation shall be reviewed every fiscal year.  | This further outlines accountability framework and economic benefits resulting from waivers or variations.  |
| Clause 6: | A county government may engage the Kenya Revenue Authority or any other designated person as the revenue collecting agent in accordance with section 160 of the PFM Act 2012 and regulations thereunder | No changes proposed in this clause  | This clause emphasizes on transparency and accountability of funds collected at the county level.  |
| Clause 7: | Any county tax or any revenue-raising measures including waivers and variations imposed by the concerned county prior to the commencement of this Act shall be deemed to have been imposed, waived or varied in accordance with this Act: Provided that-1. Such imposition, waiver or variation is in compliance with Article 209(5) of the Constitution, provisions of the 4th Schedule of the Constitution and any relevant national legislation; and
2. Within three upon commencement of this Act, county governments shall submit a list of all taxes, fees and charges imposed prior to the commencement of this Act to the Cabinet Secretary for onward transmission to the Inter-Agency Transitional Committee established under section 8 for review.
 | No changes to this section | This section provides for the framework for handling the taxes, fees, levies or charges imposed prior to this Act. It stipulates that all the taxes imposed prior to the Act shall be deemed to have been imposed, waived or varied in accordance with this Act. It further states that the county governments shall be required to submit a list of all taxes imposed, waived or varied prior to the commencement of this Act to the CS within three months after the commencement of this Act for onward transmission to the Inter-Agency Transitional Committee for review.  |
| Clause 8(1) | Upon the commencement of this Act, the Cabinet Secretary shall establish and constitute an Inter-Agency Transitional Committee to review the taxes, charges and fees envisaged under section 7 of this Act. (2) The Committee shall consist of-a) the National Treasuryb) the Commission on Revenue Allocationc) Intergovernmental Relations Technical Committeed) Council of Governorse) Kenya Revenue Authority | Under the current economic crisis, we don’t recommend another committee to set up, however, one of the independent oversight commissions or agencies, for example, KRA, under the National Treasury can be tasked to undertake this exercise and provide its recommendation to the Cabinet Secretary for review and onward submission to Parliament for consideration. This will save taxpayers a lot of money that can be put into more pressing expenditure lines.  | This section seeks to set up a Committee that shall sit to review the taxes, fees, levies and Charges imposed, varied, or waived prior to the commencement of this Act.  |
| Clause 9(1): | The Committee shall review the taxes, charges and fees envisaged under section 7 of this Act | The functions can be undertaken by the Agency designated as proposed in section(8).  | Outlines the functions of the Committee |
| Clause 9(2): | The Committee shall in consultation with the public, review the taxes, charges and fees under section 7 and make recommendations on the allowable list of such taxes, charges and fees to the Cabinet Secretary for consideration | The recommendations should be submitted to CS for review before they are sent to the Parliament for consideration.  | The section sets out the level of consultation required when reviewing the taxes, charges and fees submitted to the Committee for review.  |
| Clause 9(3): | After receipt of the recommendation under subsection (2), the Cabinet Secretary may within thirty (30) days from the date of receipt approve and publish the list in the Gazette or refer back to the Committee for the reconsideration, noting, in writing, any reservation that he/she concerning the recommendations.  | We propose an amendment to this section to limit the role of the Cabinet Secretary to receive the recommendation and only publish them after Parliament has approved them.  | This section sets out 30 days as the timelines within which the CS is expected to act on the recommendations from the Committee  |
| Clause 10: | The Committee shall be for transition purposes only and shall cease to exist after a period of two years or any other time as may be determined by the Cabinet Secretary from the time of its establishment | We propose that IBEC be the institution to determine the terms of reference of this particular exercise.  | This section outlines two years as the term of the Committee’s existence and it can be varied by the CS.  |
| Clause 11: | The Cabinet Secretary may, by notice in the Gazette make regulations regarding-1. Anything which shall or may be prescribed in terms of this Act; and
2. Any matter which is necessary to prescribe for the effective implementation of the provisions and objects of this Act

2) For the purpose of Article 94(6) of the Constitution-a) the purpose and objective of the delegation under this section is to enable the Attorney General to make regulations to provide for the better carrying into effect the provisions of this Act;b) the authority of the Attorney General to make regulations under this Act will be to into effect the provisions of this Act and fulfilment of the objectives specified under this sectionc) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provision Act and the Statutory Instruments Act. | Law-making is a sole function of the Parliament therefore Cabinet Secretary shall be overstepping his/her mandate. The proposed process overlooks the importance of consultation particularly public participation therefore we propose an amendment to adhere with the Constitution especially the legislative role of Parliament.  | This section stipulates that attendant regulations shall be developed by Cabinet Secretary and published by way of notice in the Gazette.  |