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African Footprint

Technical Newsletter of the Crowe Horwath International African firms

Inside This Issue

Audit / Tax / Advisory

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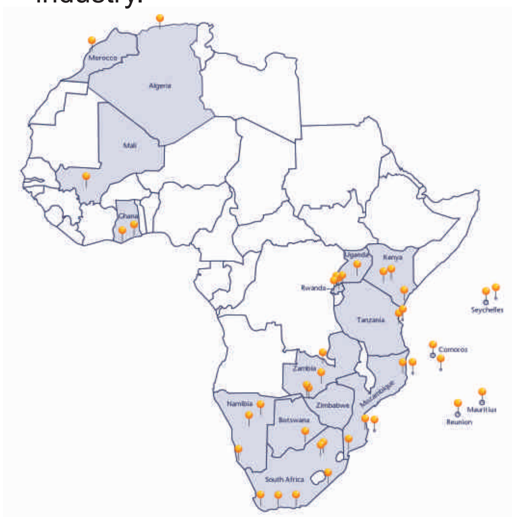
Horwath HTL (South Africa)

Michelè de Witt

Horwath HTL (South Africa) was established in August 2000 as the Cape Town-based independent member firm of Crowe Horwath International's Hotel, Tourism and Leisure Group. Throughout the years, we have gained unequalled experience and expertise through a combination of specialized local knowledge and international understanding.

We focus one hundred percent on consulting to the hotel, tourism and leisure sector and have successfully completed over 1 800 projects located throughout sub-Saharan Africa. When our clients work with us, it is because they need answers to very specific questions.

Maintaining the highest standards of client service and professional commitment ensures we are the number one choice for companies and financial institutions looking to invest and develop in the African hotel, tourism and leisure industry.



We offer services that cover the whole life cycle of the hotel real estate industry.

Business Line:	Key Services:	
Hotel Asset Management 	- Asset management advisory - Benchmarking - Capital expenditure - Cost/benefit analysis	- Operational reviews - Owner representation - Reposition strategy & analysis - Sales, marketing & revenue management
Hotel Planning and Development 	- Facilities programming - Highest & best use - Hotel management company selection & contract negotiation - Macro tourism analysis	- Market & financial feasibility studies - Market entry strategy - Product conceptualisation & financial structuring - Strategic planning
Strategic Advice 	- Growth strategy - Market strategy - Investment strategy	- Strategic business plans & reviews - Strategic & operational restructuring - Transactional support services
Hotel Valuations 	We employ a sophisticated Discounted Cash Flow (DCF) valuation approach recognized as the standard by investors in the hospitality industry. In our experience, sophisticated investors use replacement cost and sales comparisons only as secondary references.	

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Equity Law in Réunion

On the initiative of the Sciences Po section of Réunion and Crowe Horwath, a conference was organized on Friday 7 April with the participation of Philippe Naillet, Member of Parliament of Réunion Island and Dominique Vienne, President of the CPME [i].

Some sixty people attended this meeting in the presence of a delegation of different high school partners of Sciences Po Paris in the context of priority education conventions.

The students present were from Lycée Pierre Poivre of St Joseph, Jean Hinglo of Le Port, Sarda Garriga of St André, Georges Brassens of St Denis and from the high school in Trois Bassins.

After a few words of welcome, especially for the candidates eligible for the Sciences Po oral examination, which will take place at the end of May 2017, Abdoullah Lala, President of Sciences Po of Réunion Island and of Crowe Horwath Fiduciaire des Mascareignes, Réunion, spoke about the real equality law which came into force in March of this year.

He emphasised the measures implemented in the context of overseas economic development. He recalled the provisions which make it possible to extend tax deductions for two years provided by LODEOM [ii] but also the new count of payment deadlines for Ultramarine companies.

Abdoullah Lala then asked MP Philippe Naillet to present and explain the objectives of the law for real equality for overseas.

Philippe Naillet recalled the history of our territory and the handicaps it experiences compared to the Hexagon.

He stressed two objectives of the law. First, the catching-up of social benefits, and secondly, the possibility to define locally the plan for economic strategies.

He also urged the young people present to work for the development of our island which needs strong forces and skills to meet the challenges of tomorrow.

Dominique Vienne President of the CPME also contributed to present a mechanism set up by the law for real equality, the Small Business Act which allows reserving a part of the public orders to the small businesses in the territory.

He also emphasised the link which unites the companies settled in Réunion Island and the territory by recalling the stakes in terms of job creation and economic development of the island.

He also mentioned the commitment of the entrepreneurs of Réunion in the development of the activity, to generate development for the benefit of the population of Réunion.

The evening ended with a cocktail and exchanges where the young people present were able to question MP Philippe Naillet on the various subjects which caught their attention.

Abdoullah Lala
Crowe Horwath Fiduciaire des Mascareignes
Réunion

[i] Small and Medium Enterprises Confederation

[ii] Law for the economic development of overseas territories

Horwath HTL Africa & Middle East

Earlier this year, Horwath HTL announced the opening of a fourth office in the Africa/ Middle East region. It was therefore logical for the Horwath HTL Africa & Middle East network to take advantage of the opportunity to introduce Horwath HTL MEA and the Principals of each office to attendees present at the recently convened Arabian Hotel Investment Conference 2017 which was hosted in Dubai between April 25th and April 27th. As the global leader in Hotel, Tourism and Leisure consulting, Horwath HTL is the industry choice and has been for more than a Century.

With project promoters, investors and developers focussing their attention on the Middle East and the African Continent, Horwath HTL reaffirmed its commitment to providing quality solutions for hotel, tourism and leisure projects in the region with four dedicated offices situated in Dubai, Cape Town, Kigali, and Abidjan.

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Overhaul of the Kenya Income Tax Act [Part One of Two]

In the past three years, the domestic tax statutes in Kenya, including the VAT and Excise Duty Acts, have undergone reforms to benchmark them with international practice and modern tax statutes. The only remaining tax statute is the Income Tax Act, Cap 470 which was enacted in the 1970's and has undergone numerous annual amendments which have made it complex and challenging to administer both by the authorities and by users.

Other than the complexity and the associated challenges, courts in Kenya have made numerous rulings in favour of or against many aspects of the Income Tax Act and some of its practices. The Income Tax Act is essentially tattered and needs a new lease of life.

In order to address the foregoing challenges, Kenya Revenue Authority (KRA) has produced the following as the guiding principles for the new Income Tax Act for the Republic of Kenya -

1 **Broadening Taxpayers Base**

The current taxation framework is skewed towards taxation of the formal sector, including employees and enterprises engaged in this sector. The new Act should be designed to include the informal sector and provide a platform that will encourage the sector to comply with ease.

The new tax framework should broaden the tax base through tax harmonization in accordance with the East African Community (EAC) common market protocol, remove market distortions and provide for tax rates that are competitive. This will enhance compliance, spur tax base expansion and reduce revenue loss.

2 **Inclusivity, Equity and Fairness**

The new tax system should enhance equity and fairness and achieve both vertical and horizontal equity. This means that in the new tax system, people who earn higher incomes should shoulder a proportionately higher tax burden than those with lower incomes.

To bring fairness the New Income Tax Act will target exemptions and capital deductions which have increased over the years and eroded the tax base. Exemptions should be restricted to needy persons and be based on identified objectives. In addition, persons with equal income or similar circumstances should shoulder an equal tax burden. In addition, the new tax policy should be designed to bring into the net the entrepreneurs and workers in the informal sector.

3 International Benchmarking

The new tax framework should not cause market distortions by unnecessarily subsidizing or penalizing any sector and should be aligned with the EAC Domestic Taxes Harmonization Policy. The tax rates should be competitive enough to spur investment and employment in Kenya. In addition, the framework should borrow from international best practices such as the UN and OECD Models on Double Taxation, especially on cross border transactions as well as Base Erosion and Profit Shifting Schemes (BEPS).

4 Flexibility and Predictability

The new Act should be flexible and dynamic enough to accommodate any technological and commercial developments in addition to meeting the current revenue needs of the Government. The new tax system should be predictable to enable the taxpayers to foresee the direction and potential changes in the law and to prepare to comply as required. Such a clear tax system, with proper regulations and guidelines, is essential for business planning to enable taxpayers to estimate future costs and tax liabilities and allow for economic forecasting and planning by the Government.

5 Simplicity, Transparency and Clarity

The tax system should be simple and comprehensible and not complex and beyond the understanding of the layman. It should be transparent and clear to empower the taxpayers to understand how taxes are assessed, collected and complied with. Complex tax systems with complicated language should be avoided so as to make it easy for taxpayers to comply voluntarily.

6 Constitutional Compliance

The new taxation framework should be aligned to the constitution and as a minimum ensure an open process in legislation. Allowing for public participation will cause the new legislation to be embraced without resistance.

Thematic Areas Identified for Review

1 Small Exemptions

The list has increased over the years while some exemptions are outside the tax statute. There is a need to review the objective of exemptions and to identify the qualifying persons in order to reduce exemptions and expand the tax base.

2 International Tax and Transfer Pricing

Thin Capitalization and Deemed Interest, Limitations of Benefits, and CFC (Controlled Foreign Company) rules should be revisited. There is need to review these laws and benchmark with international policies dealing with Base Erosion and Profit Shifting (BEPS).

3 Banking Sector

The banking business model has changed as a result of competition and enhanced use of technology. New products have emerged such as *sharia* compliant products. There is need to do a review in light of these financial reforms and position Kenya as the region's financial centre in line with Kenya's Vision 2030.

4 Partnerships

Kenya has a tax system that is fiscally transparent in order to tax partners and not the partnership. In 2012, a Limited Liability Partnership Act was passed and the issue of whether to tax the partnership as a distinct legal person or the partners has now to be addressed in the new tax system. The law needs to be reviewed to capture the taxation of this new partnership model.

5 Co-Operatives

The Co-operative Societies' business model has changed over the years enabling some SACCOs to engage in activities akin to the banking sector. The co-operative taxation system was designed in the 1980's when the economy was under the control of the Government, mutuality was the driving agenda and co-operatives were restricted from transacting business outside the member saving and credit/borrowing circuit. There is need to review the co-operative taxation legislation to catch up with the changing business model and enhance voluntary compliance in the sector.

6 Territorial Tax Regime

Kenya is the only East African Community (EAC) state with a territorial taxation regime. This is not in tandem with international practice and therefore limits the scope of taxation. It also raises questions of equity where, for example, a Kenyan pensioner or employee would get taxed on income accruing from Kenya while a resident earning rental income or interest from overseas gets exempted; yet the exempted person is also enjoying public services for which the person has not paid. There is need to review the tax base and evaluate whether to move to a worldwide system.

7 Taxation of Married Women

The income of a married woman is deemed to be the husband's income unless she files her own tax return. This exposes husbands to unnecessary tax burden in a case where the wife defaults, complicates tax administration and is also against gender parity. There is need to empower the married women by reviewing this law so as to recognize them as distinct taxpayers and allow them to declare their personal incomes.

Feedback from our Readers!

Should you wish a specific topic to be covered in our next issue, please let us know by emailing your request to our editor kent.karro@crowehorwath.co.za

8 Tax Incentives

Kenya has generous capital deduction rates ranging from 10% to 150%. Investment and farm works deductions are 100% of the cost incurred. High deductions erode the tax base and are against the EAC Common Market Protocol as well as the principle of equity and fairness. There is need to review the current tax incentives and benchmark with regional and international best practices.

9 E-Commerce Taxation

Business models have changed. E-commerce has watered down the concept of the permanent establishment of a taxpayer and goods and services are traded online without tax compliance. There is need to amend the law to address these new business models and enhance tax compliance.

10 Real Estate Investment Trusts (REIT's)

REIT's are exempt from rental withholding tax and corporate tax but are taxable on interest and dividend income at withholding level as with unit trusts and collective investment schemes. There is need to review the REIT tax law and benchmark with international best practice.

[The above are exact extracts, with minor edits in some places, as given by the Kenya Revenue Authority in its guiding principles and thematic areas for review of the Kenya Income Tax Act in the first quarter of this year]

Erastus K Omolo
Horwath Erastus & Co.
Kenya

Is your Organisation ready for the next Major Incident?

Horwath Mak recently hosted a webinar on how to manage the risk and more importantly, the impact of a major incident.

New Year's Eve on 31 December 2015 in Dubai, saw the Address Downtown Dubai hotel catch fire.

Whilst the incident reported only a few guests with minor injuries, careful incident planning helped the hotel work efficiently with the Dubai Police and the Fire Department.

The result was a successful prompt evacuation of the entire area, within minutes. That is some feat considering the number of people who were there to watch the New Year fireworks. Whilst by no means can such events be predicted, it goes a long way if organisations are prepared.

Some key areas of the webinar were thought provoking.

The presenter really helped put in perspective that whilst we are unable to predict such events, having a proper plan in place will ensure that investigations, which commence from the day of the incident, are handled properly.

The professional team also made us aware that whilst non-specialist insurers often tend to have knee-jerk reactions, with new and emerging exposures like “loss of attraction” at a theme park, it is well worth planning for a major incident.

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About Us

Our African network of firms serve clients worldwide as independent members of Crowe Horwath International.

Crowe Horwath International is ranked eighth largest global accounting network with over 200 independent accounting and advisory services firms in close to 130 countries around the world. Crowe Horwath International's member firms are committed to impeccable quality service, highly integrated service delivery processes and a common set of core values that guide decisions daily. Each firm is well established as a leader in its national business community and is staffed by nationals, thereby providing a knowledge of local laws and customs which is important to clients undertaking new ventures or expanding into other countries. Crowe Horwath International member firms are known for their personal service to privately and publicly held businesses in all sectors and have built an international reputation in the areas of audit, tax and advisory services.