TAXATION OF PERSONS WITH DISABILITIES

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INTRODUCTION

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) established a modern human rights model of disability. This Convention describes persons with disabilities (PWDs) as "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (UN 2008). Human rights of Persons With Disabilities should be respected and protected through governmental policy, including tax policy. Taxpayers are not identical; therefore, they require different treatments under special circumstances.

The latter statement is supported by the implementation of progressive tax systems and common exemptions to the tax generality principle. However, this assumption should not consider merely income and family status, but also human variation (Seto & Buhai 2006). Impairment is a human variation that must be embraced and acknowledged on tax policy reforms. Nowadays, in most jurisdictions, tax rules relevant to people with disabilities (PWDs) are usually scattered around the national legislation without a sense of coherence but with a clear intimate relationship between the ability-to-pay principle and the human variation paradigm (Seto & Buhai 2006). This is reflected on the variety of disability-related tax measures focused on income and consumption taxes.

For this report, tax measures relevant to Persons With Disabilities are categorized in the following manner: i) Income tax exemptions and reliefs; ii) Income tax deductions and credits; iii) Value-Added Tax (VAT) and other consumption tax incentives; and iv) Disability-related services. The countries and jurisdictions assessed are Kenya, South Africa, Tanzania, Ghana, Uganda, Ivory Coast, Rwanda, Ethiopia, United Kingdom (UK), United States of America (USA) and Canada.

INCOME TAX EXEMPTIONS AND RELIEFS

Tax exemptions and reliefs are common incentives given to Persons With Disabilities on their individual income to address their ability to pay taxes. In this regard, tax exemptions and exclusions may vary depending on the earnings and type of income received by each person. Persons With Disabilities' employment is exempt (up to a certain amount) in various countries. Although, there are countries and jurisdictions that exempt other concepts of income that concern them.

In African countries such as Kenya, Ghana, and the Ivory Coast, there are tax exemptions and reliefs for Persons With Disabilities with employment income, accompanied by certain limitations. In Kenya, Articles 13.2. and 35.1. of the People with Disabilities Act (PWD Act) 2003, supplemented by Legislative Supplement No. 11 2010, establish that an employee with a disability is entitled to a tax exemption on all income derived from his employment, as well as other types of income under certification of the Kenya Revenue Authority (KRA). This exemption applies to those who earn below KES 150,000 per month or for their first KES 1,800,000 per year. Ghana provides tax relief granted to PWDs who have successfully demonstrated their disability status to the Tax Administration. In Ghana, instead of making an exemption on all PWD income, a 25% relief of their employment or business income is provided based on the Fifth Schedule of the Income Tax Act, 2015. As there is no limit on the amount of income to which this relief applies, this relief is progressive in accordance with the income level of the Persons with Disabilities. On the other hand, Ivory Coast exempts Persons With Disabilities from employment income tax according to Article 136 of the General Code Tax 2021. However, this exemption only applies for the first 5 years counted from the date of employment.

In the UK and USA, income tax exemptions for Persons With Disabilities are associated with the particular benefits they receive as employees. Generally, particular benefits such as work equipment or services provided to employees are considered as compensations that are part of taxable income. According to the UK's HM Revenue and Customs (HMRC) Employment Income Manual 2021, equipment and services provided to employees considered Persons With Disabilities are exempt from being considered taxable income. In the USA, the Internal Revenue Service (IRS) Publication 525 on Taxable and Nontaxable Income 2021 states that the value of goods, services, and cash that you receive for the training and rehabilitation of a Persons With Disabilities shall not be included on taxable income. Some excluded amounts listed by the IRS are payments for transportation and attendant care, which include interpreter services for the deaf, reader services for the blind, and services to help individuals with an intellectual disability do their work.

INCOME TAX DEDUCTIONS AND CREDITS

Additional income tax deductions and credits are awarded to Persons With Disabilities as individuals, as well as their employers and caregivers. Deductions are necessary costs and expenses that reduce the tax base on which income tax is calculated. Regarding Persons With Disabilities, deductions can be granted when the expense occurs or when certain conditions are met. On the other hand, tax credits are amounts that are directly subtracted from the amount of tax to be paid. In some countries, such as South Africa, there are tax credit mechanisms that grant a rebate against tax payable based on contributions to medical schemes, which is usually considered a deductible expense.

Regularly, medical and professional expenses incurred by PWDs or by employers on behalf of PWDs are a deductible expense from the income tax base. For example, Article 5 of the Kenya Legislative Supplement No. 11 2010 lists a series of additional deductions that include non-refundable amounts paid by the Persons With Disabilities for treatment or hospitalization, medications, personal and home care services, and costs of assisting devices as long as they do not exceed KES 50,000. In the USA, impairment-related work expenses are considered as miscellaneous deductions while medical expenses are deductible up to a maximum of 7.5% of a taxpayer's adjusted gross income (AGI) (IRS 2020). For the latter, the concept of medical expenses may cover from drugs and medical equipment to capital expenses and special education that are detailed in IRS Publication 502. For Canadian taxpayers, medical, childcare (including children with a physical or mental impairment) and home accessibility expenses can also be claimed on the income tax return (CRA 2020).

Regarding medical expenses, there are tax mechanisms to convert these expenses to tax credits. South Africa has two types of credits for medical expenses called medical scheme fees tax credit (MTC) and additional medical expenses tax credit (AMTC) (SARS 2020). Both are applicable in respect of qualifying contributions to a medical scheme. While the MTC deals with general contributions, the AMTC includes other qualifying expenses that covers those incurred by a taxpayer, his or her spouse or child who is considered a Persons With Disabilities. According to the SARS' Guide on the Determination of Medical Tax Credits, the taxpayer is given a total monthly credit (MTC) for being a contributor, with an additional amount for every dependent person under his scheme. This monthly credit is aggregated for twelve months and then subtracted from the tax payable. Following the same logic, the AMTC is an extraordinary credit applied after the MTC to include other medical expenses that were not entitled to any deduction. It is important to grant specific tax deductions and credits to employers in order to incentivize the hiring of Persons With Disabilities. For example, in Uganda, an additional deduction equal to 2% of the income tax payable is allowed for employers if 5% of their full-time workers are Persons With Disabilities (Uganda Income Tax Act 2020). In Kenya, an employer who hires a person with a disability as a regular employee or apprentice can apply a deduction equal to 25% of the total amount paid in wages and salaries to that employee (PWD Act 2003). Differently, Ivory Coast presents a series of incentives in the form of a tax credit for companies. Natural or legal persons liable to income tax can benefit from an annual tax credit of 1,500,000 francs per job created if a contract is signed with a person of Ivorian nationality who is considered a PWD (General Tax Code 2021). Also, Article 111 bis of their General Tax Code grants a tax credit of 150,000 francs (up to 750,000 francs) for every apprentice with a disability hired.

Lastly, disability tax credits may be given to help persons with disabilities or their supporting persons (caregivers), having to meet certain requirements or have a poor financial condition. The US grants different types of tax credits, such as the credit for the elderly or the disabled and the refundable earned income credit (EIC) (IRS 2020). The first one provides a tax credit (with a maximum allowance of USD 7,500 for 2020) to those Persons With Disabilities of any age to allow relief for disability costs while the latter is given to people who work and have earned income under USD 56,844. The EIC is granted for a person whose child is personally and totally disabled, relieving a caregiver with financial needs (IRS 2020). Like the US, Canada also grants a non-refundable disability tax credit to help PWDs or their supporting persons (up to CAD 8,576) and several refundable tax credits for low-income individuals (CRA 2021).

VALUE-ADDED TAX (VAT) AND OTHER CONSUMPTION TAX INCENTIVES

Regarding VAT and other indirect taxes, tax exemptions are common in several countries around the world. Par excellence, exemptions for essential products used by Persons With Disabilities is a way of protecting them from additional costs as final consumers. This incentive enacts that essential products are not taxed with consumption taxes or are zero-rated when imported or sold locally. Some countries and jurisdictions that maintain this type of benefit are detailed below:

- Kenya: Materials, articles and equipment, including motor vehicles, that are modified or designed for the use of Persons With Disabilities shall be exempt from import duty, value added tax and other government levy (PWD Act 2003). Also, all goods donated to institutions and organization of or for PWD are exempt of any type of taxes, import duties and other levies.

- Tanzania: Under Section 6(1) of the VAT Act 2019, health care services and items designed for Persons With Disabilities are exempt of VAT. In addition, the VAT Act Schedule assembles a list of exempt items that include orthopedic appliances, white cane, spectacles, lenses, braille and mechanically propelled tricycle for carriage of Persons With Disabilities.

- Ghana: Articles designed exclusively for use by the Persons With Disabilities are exempt from VAT and other duties (e.g., the National Health Insurance Levy or NHIL) by the VAT Act 2013.

- Uganda: Due to the East African Community (EAC) Customs Management Act (5th Schedule) 2004, especially designed materials, articles and equipment and motor vehicles are VAT exempt at importation by virtue of Section 20 of the VAT Act.

- Rwanda: Same as Uganda, through Annex Five to the EAC Customs Management Act 2004, Rwanda has a VAT exemption regime that includes articles, materials and equipment designed for the Persons With Disabilities and the supply or importation of drugs and medical equipment made by authorized persons for medical use, to patients and Persons With Disabilities. Moreover, this exemption regime comprises those materials, articles and equipment intended for the educational, scientific or cultural advancement of the Persons With Disabilities for the use of an organization approved by the Government.

- Ethiopia: According to the VAT Proclamation 2002 and the Turnover Tax Proclamation 2002, the supply of goods or services by a workshop employing disabled individuals are exempt if more than 60 percent of the employees are disabled.

- UK: Supply of goods or services described Schedule 8, Group 12 of the VAT Act 1994 can be zero-rated if certain criteria are met. For example, the goods or services must be supplied to a Person With Disability or an eligible charity serving the needs of a Person With Disability and the goods must be for their personal or domestic use. The supplier is responsible for assuring that the customers meet the conditions to receive this VAT relief (VAT Notice 701/7 2014).

- Canada: Goods and services used by Person With Disability are exempt or zero-rated for purposes of the goods and services tax (GST) and the harmonized sales tax (HST) (CRA 2020). If a PWD paid the GST or HST in error, the supplier may give a refund or credit for the tax paid instead of asking for a tax credit from the Tax Administration. Furthermore, a person with a permanent mobility impairment and impossibility of using public transportation may ask for a partial refund of the federal excise tax on gasoline purchases (CRA 2020).

DISABILITY-RELATED TAX SERVICES

Besides monetary incentives in the form of deductions, credits or exemptions, there are other ways tax administration may aid Persons With Disabilities. Disability-related tax services give an opportunity for people to engage with those in need of additional assistance. For example, the USA and Canada have tax assistance programs in which volunteers help PWDs on preparing their own tax returns at no cost (IRS 2021; CRA 2020). The IRS Volunteer Income Tax Assistance (VITA) program and CRA Volunteer Income Tax Program are platforms where communities connect with PWDs and, at the same time, promote tax compliance.

CONCLUSIONS

Tax policy is an appropriate way to protect the human rights of Persons With Disabilities, recognizing them as a different type of taxpayer. Disability-related tax measures on income and consumption taxes can provide financial relief to Persons With Disabilities by reducing additional costs incurred as a result of their impairment. Tax measures that reduce their income tax payable can also be accompanied by assistance services, such as voluntary tax compliance programs. A mix of legal provisions and administrative measures seems like a winning combination for the inclusion of Persons With Disabilities in communities.

Similarly, it is important to create tax incentives that encourage the hiring of Persons With Disabilities in the private sector since their incorporation into the workforce can defeat stigmas that are prevalent in society. To do this, tax legislation must be updated frequently based on studies on the effectiveness of current measures. For example, an additional tax credit or deduction for companies that hire Persons With Disabilities may be considered ineffective if this incentive is underutilized and the employment impact of Persons With Disabilities is low. If the legislation and fiscal policy in favor of the Persons With Disabilities is not renewed in accordance with the socioeconomic evolution of the country, it will be difficult to achieve a paradigm shift that leads to their total inclusion in the economic activities of their society.

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