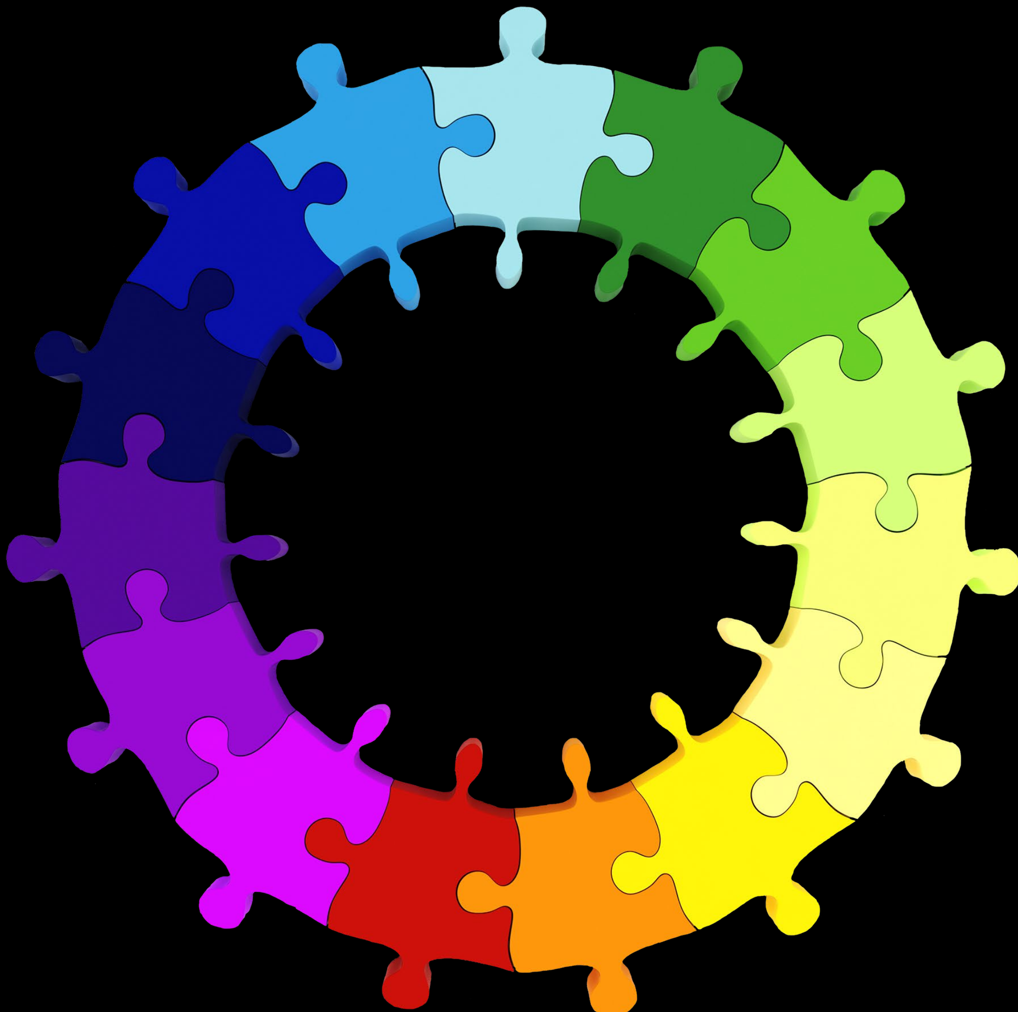

Kenya Finance Act 2019 Insights

Unravelling the puzzle

November 2019

Introduction

The President signed the Finance Act 2019 ("The Finance Act/ The Act") into law on 7 November 2019.

The Act has introduced amendments to the following laws:

1. Income Tax Act;
2. Value Added Tax Act, 2013;
3. Excise Duty Act, 2015;
4. Tax Procedures Act, 2015;
5. Miscellaneous Fees and Levies Act, 2016;
6. Privileges and Immunities Act;
7. Capital Markets Act
8. Standards Act;
9. Banking Act;
10. Retirement Benefits Act;
11. Employment Act, 2007;
12. Accountants Act, 2008;
13. Housing Act; and
14. Stamp Duty Act.

This publication summarizes some of the provisions of the Finance Act 2019, including the effective dates of the amendments to the laws.

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Income Tax

Renewed focus on taxation of the digital economy

The measure

The Act has introduced a new paragraph under Section 3 of the Income Tax Act, which provides emphasis that income accruing through a digital marketplace is chargeable to tax.

The Cabinet Secretary(CS) for the National Treasury has also been empowered to publish regulations that will provide the mechanisms of subjecting such income to tax.

Digital market place has been defined to mean "*a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means*".

Who will be affected

Entities generating income through a digital marketplace/ e-commerce entities

When

Effective 7 November 2019

Our view

The heightened technological advancements and continuing digitisation of the global economy has been viewed as contributing to base erosion by enabling businesses to avoid a taxable presence in the countries in which they generate revenue. Therefore taxation of the digital economy is seen as creating significant revenue potential for tax authorities around the world. Nonetheless, taxation of this area poses significant challenges and complexities. Indeed, the OECD's Base Erosion and Profit Sharing (BEPS) action plan recognises the need of addressing the challenges associated with digital economy to enhance tax collections. Among these challenges include the determination of taxable nexus, and allocation of profits arising out of cross-border activities.

In the Budget Speech, the CS stated that he would propose a raft of measures on taxation of digital economy but it is worth noting that besides the above amendments, the Act has not proposed any specific tax measures, leaving this to regulations that will be issued by the CS.

It is also important to note that although digital economy has now been expressly mentioned in the Income Tax Act, the inclusion does not appear to make much difference to the current legislation. This is because Section 3(2)(a)(i) of the Income Tax Act already provides for the taxation of income from business, the definition of which includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade.

It is therefore expected that specific tax measures to be issued under the regulations will be key to determining how income from the digital marketplace will be taxed going forward. We hope that the measures proposed by the CS will be practical and in line with the emerging global principles on taxation of the digital economy.

Income Tax

Companies implementing projects under the affordable housing scheme to be excluded from the thin capitalisation regime

The measure

The Income Tax Act has been amended in Section 16(2)(j) by introducing a provision that excludes companies implementing projects under the affordable housing scheme from the interest deductibility restrictions because of thin capitalisation.

Who will be affected

Companies implementing projects under the affordable housing scheme

When

Effective 1 January 2020

Our view

This amendment appreciates that companies that are to implement the affordable housing scheme will likely be highly geared owing to the capital intensiveness of these projects. Hence, if foreign controlled, the companies would likely be thinly capitalised. The effect of a company being thinly capitalized is that the company is not allowed to deduct interest expense on excessive debt. Excessive debt is debt in excess of a debt/equity ratio of 3:1.

This amendment is therefore aimed at attracting foreign investments in the affordable housing project.

We believe similar measures should be extended to start-up companies as well as other companies undertaking significant capital investments to promote investment.

Income Tax

Clarification of the scope of compensating tax

The measure

The Finance Act has introduced a proviso under Section 7A of the Income Tax Act, which excludes any income that is exempt from tax under the Income Tax Act from the compensating tax regime.

Who will be affected

All companies in receipt of income exempt from tax

When

Effective 7 November 2019

Our view

The Finance Act, 2018 amended the Income Tax Act by repealing section 7A and replaced it with a new compensating tax provision with effect from 1 January 2019. The new provisions had the effect of clawing back any tax exemptions granted on income as the same would be subject to tax upon distribution as dividends.

In response to the concerns raised by affected entities, the Commissioner issued a public ruling which clarified that the compensating tax provision does not apply to certain incomes that are exempted from tax under any provision of the Income Tax Act. The amendment in the Finance Act 2019 therefore anchors this position in the law and ensures that distribution of dividends arising from exempt income does not trigger compensating tax. This a welcome move. However, our view is that there are still grey areas that may lead to exposure to compensating tax. For instance, where a company has distributable profits but has not paid taxes as a result of being in a tax loss position arising from significant capital allowances, the company would potentially incur liability for compensating tax.

It would be recommended that the compensating tax provision is repealed altogether because it does not encourage capital investment but also limits ability of companies to distribute profits through dividends.

Income Tax

Non-resident ship owners to pay tax on demurrage charges

The measure

The Act has amended the ITA by introducing a proviso in Section 9 (1), which clarifies that all income of a non-resident ship owner, including demurrage charges, fall within the scope of the taxable income of a non-resident ship owner.

Who will be affected

Non-resident ship owners

When

Effective 7 November 2019

Our view

The amendment is a clarification that demurrage charges form part of the taxable income of a non-resident ship-owner that will be taxed under the provisions of Section 9 of the Income Tax Act. This amendment is necessitated by the repeal of the 2018 measure to tax demurrage through withholding tax that was considered to be punitive.

Income Tax

Interest income accruing from green bonds with at least 3 years maturity to be exempt from tax

The measure

The First Schedule to the Income Tax Act has been amended by including interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services in the list of incomes exempt from tax.

These securities should however have a maturity period of at least 3 years for the interest income to be exempt from tax.

Who will be affected

Investors

When

Effective 1 January 2020

Our view

This measure is aimed at encouraging projects with environmental benefits, mostly related to climate change mitigation adaptation but also to natural resources depletion, loss of bio-diversity, and air, water or soil pollution.

Income Tax

Tax exemption extended to investee companies of Real Estates Investment Trusts (REITs)

The measure

The Income Tax Act has been amended in Section 20 by extending income tax exemptions to investee companies of REITs.

Investee companies of REITs are companies through which REITS hold property.

Who will be affected

REITs, investee companies and investors

When

Effective 7 November 2019

Our view

Previously, only REITs were exempt from income tax. The proposal to extend the exemption to the investee companies is therefore a welcome move and is expected to have a positive impact on the affordable housing pillar of the Government's Big Four Agenda, as it will encourage development of real estate through REITs.

Capital gains tax (CGT) rate to be maintained at 5%

The measure

The proposal contained in the Finance Bill 2019 to increase the rate of capital gains tax from 5% to 12.5% has been dropped.

Who will be affected

Shareholders and property owners intending to make transfers

When

N/A

Our view

The Finance Bill 2019 had proposed an amendment to the Income Tax Act in order to increase the capital gains tax rate from 5% to 12.5%. However the amendment was dropped following debate in the National Assembly. The decision to maintain the CGT rate at 5% is a welcome move, especially to real estate players owing to the fact that there appears to be a slow down in the sector. An increase of the rate could have had an implication of further discouraging investment in the sector.

However, there are those who contend that the current rate of 5% is low relative to the rates in the region. In light of the pressure to generate more tax revenue, we expect that the CGT rate will be revisited soon.

Income Tax

CGT exemptions on corporate re-organisations

The measure

The Act has amended Paragraph 13 of Eighth Schedule to the Income Tax Act by introducing CGT exemptions on the transfer of property that is necessitated by a transaction involving the incorporation, recapitalisation, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity as a result of:

a. a legal or regulatory requirement;

b. a directive or compulsory acquisition by the government; or

c. an internal restructuring within a group which does not involve a transfer to a third party;

Who will be affected

Any businesses undergoing a re-organisation

When

Effective 7 November 2019

Our view

Exemption from CGT is currently granted by the CS if the transferor, upon application, satisfies the CS that the reorganisation is undertaken in the interest of the public.

There have been calls for the exemption to be extended to transactions necessitated by regulatory changes, compulsory government acquisitions and internal restructures considering that such transactions are rarely undertaken for a commercial gain. The amendment is therefore a welcome move as it will eliminate the tax burden that would otherwise have arisen on transactions that were not undertaken for a commercial motive.

Income Tax

Repeal of Section 72D

The measure

Section 72D of the Income Tax Act, which provided for a penalty of 20% on late payment of tax, has been repealed.

Who will be affected

All taxpayers

When

Effective 7 November 2019

Our view

The Tax Procedures Act 2015 (TPA) was enacted with the sole intention of consolidating all the tax administrative and procedural aspects under one Act. There have been provisions in the TPA that contradict with provisions in other tax laws. For instance, the TPA stipulates a penalty of 5% on late payment of taxes. This provision contradicted section 72D of the Income Tax Act, which stipulated a 20% penalty on late payment of tax.

The repeal of Section 72D of the Income Tax Act is therefore aimed at ensuring that all tax administrative and procedural aspects are provided for under the TPA. The implication of this repeal is that all taxes, save for Pay As You Earn (PAYE), will be liable to a penalty of 5% in case the same is not paid by the due date. Unless provided otherwise, non-payment of PAYE by the due date will continue to attract a penalty of 25%.

Although this is a welcome move, it would also be recommended that the PAYE penalty is harmonised with other penalties.

Income Tax

Reduced tax rate for a company operating a plastics recycling plant

The measure

The Act has introduced a reduced corporate tax rate of 15% to any company operating a plastics recycling plant. The rate will be applicable for the first five years from the year of commencement of the company's operations.

Who will be affected

Any company operating a plastics recycling plant

When

Effective 7 November 2019

Our view

This move is aimed at encouraging companies to recycle plastics thereby reducing pollution.

The measure however restricts the incentive to only companies operating recycling plants. The government could also consider extending similar incentives to any other company operating a recycling plant and companies in the green energy space.

Income of the National Housing Development Fund exempted from tax

The measure

The scope of income tax exemptions under the First Schedule to the ITA has been expanded to include the income of the National Housing Development Fund.

Who will be affected

The National Housing Development Fund

When

Effective 1 January 2020

Our view

The move by the government to exempt income earned by the Fund is a good move as this will ensure that the Fund's income is fully utilised to enable it undertake it objectives of delivering affordable housing. This is in line with the government's Big Four Agenda.

Personal Tax

Turnover tax re-introduced

The measure

The Act has re-introduced turnover tax at the rate of 3% of the gross receipts per month. The tax will be payable by resident persons whose gross receipts do not exceed or are not expected to exceed KES 5 million per year. Turnover tax will be accounted for on a monthly basis, with the return and payment due on or before the 20th day of the month following that of the tax period.

However, a person eligible to pay turnover tax may elect not to be subject to turnover tax by notice to the Commissioner, in which case they would pay tax under the usual rules.

Turnover tax will not apply to rental income, management or professional or training fees, income of incorporated companies and any income which is subject to a final withholding tax.

Presumptive income tax (introduced through the Finance Act, 2018) will continue to apply to such income but will be an advance tax available for set-off against the turnover tax payable.

Who will be affected

Sole proprietors/ businesses whose annual turnover do not exceed KES 5 million per annum

When

Effective 1 January 2020

Our view

Presumptive tax which was introduced vide the Finance Act 2018 was intended to replace turnover tax. However, due to the marginal revenues realised from presumptive tax, the government is proposing to re-introduce turnover tax in a bid to increase tax revenues and expand the tax base. It is also likely that by applying the turnover tax and presumptive tax provisions concurrently, KRA will use the presumptive taxes paid to obtain information for compliance purposes.

This measure will, if well implemented, ensure that the tax burden is spread uniformly by netting businesses in the informal sector and thereby increasing the tax revenues. However, the quick about-turn suggests that the move to remove turnover tax was not well thought out. Furthermore, it is hoped that the implementation of turnover tax will be better taking into account the lessons since it was first introduced in 2015.

We are also of the view that turnover tax should be open to all businesses, including companies whose income is within the set threshold and should also cover consultancy fees within the set threshold. This will ease the compliance burden for small businesses/ consultants.

Personal Tax

Individuals registered under the Ajira Digital Program to enjoy income tax exemption

The measure

The income earned by an individual who is registered under the Ajira Digital Program to be exempt from income tax for three years beginning 1st January 2020. However, a registration fee of KES 10,000 per annum will be payable by the individuals.

Who will be affected

Registered members of the Ajira Digital Program

When

Effective 1 January 2020

Our view

Kenya has high levels of unemployment and underemployment. The Ajira Digital Program aims at enabling the youth to engage in digital freelancing activities whereby they will develop skills necessary for employment and earn a living.

The tax exemption is therefore welcome.
In our view the requirement to pay KES 10,000 up front for an individual to be eligible for the tax exemption may prove to be a challenge for the unemployed youths who may not be able to raise the fee. It would have been prudent for the government to consider a reduced entry fee and scale it up in later years.

Personal Tax

Change of base for computing the affordable housing relief

The measure

The affordable housing relief under the ITA to be computed at 15% of the employee's contribution and not the gross emoluments as currently provided.

Who will be affected

All employers and its employees

When

Effective 7 November 2019

Our view

This measure is a move to correct the current provision which based the relief on gross emoluments and would have led to a situation where the relief exceeds the affordable housing contribution.

Personal Tax

Withdrawals from the National Housing Development Fund for purposes of purchasing a house to be exempted from income tax

The measure

The First Schedule to the Income Tax Act has been amended by including an amount withdrawn from the National Housing Development Fund to purchase a house by a first-time home-owner in the list of incomes exempt from tax.

Who will be affected

Contributors to the National Housing Development Fund

When

Effective 1 January 2020

Our view

This is in line with the move to promote home ownership through the National Housing Development Fund. However, only first-time home owners will qualify for this exemption and therefore other contributors may feel that the measure is discriminatory.

Personal Tax

Deposits into registered home ownership saving plans may be invested based on the guidelines of the Capital Markets Authority

The measure

The Income Tax Act has been amended in Section 22C to allow registered home ownership saving plans (HOSPs) to invest in accordance with the investment guidelines issued by the Capital Markets Authority.

Who will be affected

Registered Home Ownership Saving Plans (HOSPs), fund managers and investment banks

When

Effective 1 January 2020

Our view

Currently, deposits into a registered home ownership saving plan can only be invested in a bank or financial institution registered under the Banking Act, an insurance company licensed under the Insurance Act or a building society registered under the Building Societies Act. Deposits held with these institutions are regulated by the Central Bank of Kenya (CBK); hence, the law currently provides that deposits may only be invested based on the prudential guidelines issued by CBK.

The Finance Act 2019 has now amended the Income Tax Act and allowed the deposits to also be held in a fund manager or investment bank registered under the Capital Markets Act (Cap. 485A). Hence, the reason for amending the Income Tax Act to allow deposits to be invested in accordance with the CMAs guidelines.

Withholding Tax

Reinsurance premiums paid to non-resident persons to be liable to withholding tax

The measure

The Income Tax Act has been amended by introducing withholding tax at 5% on non-resident reinsurance premiums (excluding reinsurance premiums paid for insurance of aircrafts).

Who will be affected

Insurance and re-insurance companies

When

Effective 7 November 2019

Our view

Following the introduction of withholding tax on insurance premiums paid to non-resident companies through the Finance Act, 2018, it was unclear as to whether re-insurance premiums were also covered. The amendment under the Finance Act 2019 therefore clarifies that re-insurance premiums were indeed outside the scope of the Finance Act 2018 amendment.

The introduction of withholding tax on re-insurance premiums could potentially increase the cost of reinsurance business in Kenya, as re-insurers are likely to pass the burden of this tax to local insurers.

Withholding Tax

Withholding tax on demurrage charges dropped

The measure

The requirement for withholding tax on demurrage charges paid to non-resident ship operators has been repealed.

Who will be affected

Non-resident shipping lines/operators and their customers.

When

Effective 7 November 2019

Our view

This amendment may have been informed by the proposal to include demurrage charges within the scope of the taxable income of a non-resident ship-owner; hence, the charges will be taxable in Kenya through a self-assessment mechanism.

When the withholding tax on demurrage charges was introduced in 2018, it was feared that the tax could be passed on to consumers. This amendment is therefore welcome, as it also aligns the taxation of this income with other incomes earned by non-resident shipping operators.

The removal of the withholding tax requirement will also reduce the administrative burden of accounting for withholding taxes placed on resident persons and potential back taxes as well as penalties in the event of any misstep in compliance.

Withholding Tax

Proposal to expand the scope of services liable to withholding tax dropped

The measure

The Finance Bill 2019 proposal to widen the scope of services liable to withholding tax has been dropped. The Bill had proposed amendments to the Income Tax Act in order to have the following services added to the list of services subject to withholding tax:

- Security services;
- Cleaning and fumigation services;
- Catering services offered outside hotel premises;
- Transportation of goods excluding air transport services;
- Sales promotion; and
- Marketing and advertising services

The services were to attract withholding tax at the resident and non-resident rates of 5% and 20%, respectively.

Who will be affected

Suppliers and recipients of the above services

When

N/A

Our view

We understand that the proposal to introduce withholding tax on the above services may have been aimed at enhancing tax compliance by providing information to KRA on income earned by the service providers in question. Although this could have widened the tax base, the withholding tax requirement may have led to the build-up of tax overpayments – especially since most of the targeted businesses are low-margin businesses. The decision to drop the proposed introduction of withholding tax on the services is therefore welcome.

Withholding Tax

Recharges to a PE by its non-resident head-office to be liable to withholding tax to the extent that they are deductible for corporate tax purposes

The measure

The Income Tax Act has been amended by including payments made by a permanent establishment (PE) to its non-resident head office within the scope of withholding tax if they are allowable for corporate tax purposes under a double taxation agreement (DTA).

Who will be affected

Permanent establishments in Kenya

When

Effective 7 November 2019

Our view

The Income Tax Act excludes management or professional fees, interest and royalties paid by a PE to its head office from the purview of withholding tax. The Act however prohibits a PE from claiming a corporate tax deduction of these expenses.

Some of the DTAs that Kenya has signed entitle a PE to a corporate tax deduction for some of these expenses; hence, the need to align the withholding tax provision in this regard and avoid revenue leakage.

Value Added Tax

Withholding VAT rate reduced from 6% to 2%

The measure

The Finance Act has amended Section 42A of the Tax Procedures Act (TPA) to reduce the withholding VAT rate from 6% to 2%.

The Act has also introduced a proviso, which provides emphasis that withholding VAT should not apply to the taxable value of zero rated supplies.

Who will be affected

- Taxpayers who make taxable supplies to customers who have been appointed as withholding VAT agents; and
- Persons appointed to act as withholding VAT agents

When

Effective 7 November 2019

Our view

While the TPA allows taxpayers to apply for exemption from withholding VAT, some taxpayers have continued to be in perpetual tax overpayment positions as a result of withholding VAT and thus their cash flows have negatively been affected.

This measure will therefore reduce the build-up of VAT credits arising from withholding VAT and thus free up cash for crucial business needs.

The introduction of a proviso emphasizing that withholding VAT should not apply to zero-rated supplies is meant to provide clarity that withholding VAT should only apply to standard-rated supplies. It is reported that some taxpayers were applying the withhold VAT provisions on all taxable supplies including zero-rated supplies.

Value Added Tax

Imported services

The measure

The scope of imported services has been expanded to include all taxable services received from non-resident persons whether or not the recipient is registered for VAT.

Who will be affected

All entities and individuals receiving services from non-resident persons

When

Effective 7 November 2019

Our view

The Finance Act has amended the definition of imported services by deleting the words "a person who is a registered person" and substituting with "any persons" as had been proposed in the Bill. Effectively, this means that anyone who imports a service into the country, whether registered for VAT or not, is required to self-charge and account for VAT on the services received from non-resident persons. The Finance Act has further amended the deeming provision under Section 10 of the VAT Act, 2013 by replacing the term "a registered person" with "any person". This in effect implies that any person who imports a service will assume the role of a supplier of that service and will be required to self-charge and account for VAT on the imported service.

The above said, it remains unclear whether this deeming provision will affect the threshold for VAT registration. While the amendment is silent on this, there is need for clarification to be provided as to whether the value of imported services will be considered while assessing the threshold for purposes of VAT registration. Further, we note that as currently configured, iTax allows all individuals with PINs to generate payment registrations for VAT on imported services.

Value Added Tax

Supplies made through a digital market place

The measure

The Cabinet Secretary shall make regulations to provide mechanisms for implementing the provisions relating to taxation of supplies made through a digital market place.

Who will be affected

Entities which run digital platforms and their clients

When

Effective 7 November 2019

Our view

Whereas the Finance Bill provided clarification that supplies made through a digital market place are chargeable to VAT, it was silent on the approach the Commissioner intended to take in ensuring that these services are subjected to VAT.

The Finance Act has thus clarified that regulations will be put in place to provide for mechanisms for collection and recovery of VAT on supplies made through a digital market place.

Value Added Tax

Equipment for the generation of solar and wind energy

The measure

The Finance Act 2018 exempted from VAT specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power. The Finance Act 2019 has now made it a requirement that recommendation be sought from the Cabinet Secretary responsible for energy matters before such exemption is processed.

Who will be affected

Contractors for energy projects

When

Effective 7 November 2019

Our view

We view this to be a control measure introduced to ensure the exemption is not subject to misuse.

Scope of VAT exempt tractors reduced

The measure

Exclusion of road tractors for semitrailers from the scope of exempt tractors.

Who will be affected

Transport sector players

When

Effective 7 November 2019

Our view

Prior to this amendment, the VAT Act exempted all tractors from VAT.

The removal of road tractors for semitrailers from the exemption list appears to be geared towards narrowing the scope of exempt tractors to those that are largely used for agricultural purposes.

Value Added Tax

Exemption of locally manufactured motherboards

The measure

The Act has amended the VAT Act by introducing VAT exemption on locally manufactured motherboards and inputs for the manufacture of motherboards as approved by the Cabinet Secretary responsible for information communication technology.

Who will be affected

Players in the ICT sector

When

Effective 7 November 2019

Our view

It would seem that the exemption of locally manufactured motherboards and related inputs is primarily geared towards making such products more competitive against similar imported products. This amendment is also aimed at making Kenya the lead manufacturer, assembler and supplier of electronics and computers in the East African Community.

The amendment comes after the VAT changes passed through the Finance Act 2018, in relation to the ICT sector, which exempted parts, imported or purchased locally for the assembly of computers.

These series of changes in the recent past will make the sector more attractive to investors, lead to increased innovation and create job opportunities.

Exemption of plant, machinery and equipment for the construction of plastic recycling plants

The measure

VAT exemption has been introduced on plant, machinery and equipment used in the construction of plastic recycling plants.

Who will be affected

Suppliers/Importers of the plant and equipment for construction of plastic recycling plant.

When

Effective 7 November 2019

Our view

The government has in the recent past made deliberate effort to protect the environment. One of such recent measures was the ban of plastic bags. However, the problem of plastic waste persists.

In order to attract investment into plastic waste management, the move to exempt plant, machinery and equipment for the construction of plastic recycling plants in this sector is a welcome one.

Value Added Tax

Maize, wheat and cassava flour

The measure

The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight has been moved from the list of zero-rated supplies to the exemption schedule.

Who will be affected

Millers and the common Mwananchi

When

Effective 7 November 2019

Our view

Maize, wheat and cassava flour have once again been moved from the zero rating schedule to the exemption schedule. This would imply that millers will not be in a position to recover input tax incurred on their purchases, thereby increasing the cost of the final product pushed into the market.

We have seen the Government in the last couple of years shift these products between the VAT exemption and zero rating schedules which creates uncertainty for players in the industry and consumers. We are of the view that the Government should come up with a firm position on the VAT classification of these products to avoid price volatility since they comprise a staple diet for the common Mwananchi.

Affordable housing project

The measure

Exemption of goods imported or purchased locally for direct and exclusive use in the construction of houses under the affordable housing scheme. Such exemption will be approved by the CS Treasury upon recommendation by the Cabinet Secretary responsible for matters relating to housing.

Who will be affected

Government implementing agencies, contractors and beneficiaries of the scheme

When

Effective 7 November 2019

Our view

With the affordable housing scheme gaining traction, it is expected that the exemption will lead to reduced cost of inputs towards the project. We are of the view that such cost reductions will have a trickle down effect and thereby make the houses under this scheme affordable to the common Mwananchi.

Value Added Tax

Musical instruments and equipment for educational institutions

The measure

Exemption of musical instruments and other musical equipment imported or purchased for exclusive use by educational institutions, upon recommendation of the Cabinet Secretary, Education.

Who will be affected

Educational institutions and suppliers of such equipment/instruments

When

Effective 7 November 2019

Our view

We hold the view that this provision is intended to make musical equipment and instruments supplied for use by educational institutions affordable. With the roll out of the Competence Based Curriculum, this is a welcome move since students whose strength lies in music will have access to the requisite equipment and instruments to further their passion.

Zero - rating of agricultural pest control products

The measure

Agricultural pest control products have been included in the zero rating schedule.

Who will be affected

Producers and distributors of pest control products and farmers

When

Effective 7 November 2019

Our view

Effective 1 July 2018, the Tax Laws (Amendment) 2018 removed agricultural pest control products from the list of zero-rated supplies. As a result, these products assumed the standard rate (16%), making them expensive to farmers.

With their inclusion in the zero-rating regime, the products are likely to be affordable to farmers since manufactures are expected to deduct input tax incurred in their production and pass down the benefit to the end consumers. This will likely have a positive impact on food security as envisaged in the Government's Big 4 Agenda.

Value Added Tax

Zero-rating of propane

The measure

Zero rating of propane.

Who will be affected

The common Mwananchi

When

Effective 7 November 2019

Our view

This move is geared towards making propane an alternative cheap source of clean energy in addition to LPG. We note that whereas the Finance Bill had proposed to zero rate denatured alcohol, the proposal has been dropped in favour of propane.

Definition of concessional loan

The measure

The term "concessional loan" for purposes of official aid-funded projects has been defined to mean "a loan with at least twenty-five per cent grant element".

Who will be affected

Official aid-funded projects

When

Effective 7 November 2019

Our view

This is a clarification on what would constitute a concessional loan for purposes of exemptions granted on official aid-funded projects.

Taxable goods imported or purchased for direct and exclusive use in the implementation of such projects are exempt from VAT. For the avoidance of doubt, the law has now clearly defined the projects which would qualify as official aid-funded.

Value Added Tax

Time of supply of goods imported from Special Economic Zones (SEZ)

The measure

Amendment of Section 12(4)(c) to include the terms "or special economic zone" immediately after the words "export processing zone".

Who will be affected

SEZ entities and their local clients

When

Effective 7 November 2019

Our view

This change clarifies that the time of supply of goods imported from a SEZ is the time such goods are removed from the SEZ for home use. This treatment is aligned to that relating to export processing zones.

Exemption of security brokerage services

The measure

Amendment of Paragraph 10 of Part II of the First Schedule to replace the words "stock exchange brokerage" with "securities brokerage services".

Who will be affected

Entities undertaking brokerage of securities

When

Effective 7 November 2019

Our view

This change is aimed at expanding the scope of the exemption to cover supply of securities brokerage services. As previously worded, the exemption applied only to entities which undertake stock brokerage services.

Excise Duty

Introduction of excise duty on betting activities

The measure

The Finance Act has amended the Excise Duty Act 2015 (EDA) by introducing excise duty on betting at 20% of the wagered or staked amount.

The amount wagered or staked has been defined to mean the amount of money placed by a person for an outcome in a betting transaction.

The time of supply for betting transactions shall be the time when a person wagers or stakes money on a platform or other medium provided by a bookmaker.

A betting transaction has been defined to include the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker (as per the Betting, Lotteries and Gaming Act).

A bookmaker has been defined as a person who, whether on his own account or as servant or agent to another person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets, or who in any manner holds himself out, or permits himself to be held out in any manner, as a person who receives or negotiates bets, so however that a person shall not be deemed to be a bookmaker by reason only of the fact:

a) that he carries on, or is employed in operating, a totalisator in respect of which a licence has been issued under Section 18 of the Betting, Lotteries and Gaming Act); or

b) That he carries on, or is employed in a business that is wholly concerned with, a pool betting scheme in respect of which a licence has been issued under Section 22 of the Betting, Lotteries and Gaming Act).

Who will be affected

Bookmakers and stakers

When

Effective 7 November 2019

Our view

In the recent past, the Government has taken various measures to curb on the negative social effects caused by betting activities particularly amongst the youth. In addition to the 30% corporation tax on taxable profits earned by bookmakers, the Government, in 2017, introduced a turnover tax of 35% which was however subsequently reduced to 15% last year.
The Act has introduced 20% excise duty on the amount of money placed in a bet and the excise duty liability will arise at the time when the bet is placed. This measure is geared towards further discouraging betting activities in the society.

Excise Duty

Exemption of excise duty on official aid funded projects

The measure

The Act has amended Section 2 of the EDA to define the following terms for purposes of exemption of excise duty on official aid funded projects:

- "Official aid funded project" means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency.
- "Concessional loan" means a loan with at least 25% grant element.

Who will be affected

Importers/Suppliers of goods for use in official aid funded projects

When

Effective 7 November 2019

Our view

In 2016, the Finance Act exempted excisable goods imported or purchased locally for direct and exclusive use in the implementation of an official aid-funded project from excise duty. However, in the absence of a definition of official aid funded projects in the EDA, it was not clear which projects were exempted from excise duty under the exemption provision. This change is therefore intended to provide clarity and certainty on the nature of projects considered to be official aid funded for purposes of excise duty exemption.

Introduction of a general penalty of KES 2 million

The measure

The Act has introduced under Section 41A of the EDA, a general penalty on offences where no specific penalty is provided. Persons who commit such offences will be liable on conviction to a fine not exceeding 2 million shillings or to imprisonment for a term not exceeding 2 years or both.

Who will be affected

Persons licensed under the EDA

When

Effective 7 November 2019

Our view

The EDA and the Tax Procedures Act 2015 provide for penalties on persons who contravene certain provisions of the EDA. The introduction of the general penalty is intended to cover contravention of provisions where no penalty is specified to further encourage compliance with the law.
This measure is also in line with other tax legislations such as the VAT Act and the East African Community Customs Management Act.

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Excise Duty

Increase of excise duty on cigarettes, spirits and wines

The measure

The Act has increased excise duty on cigarettes, spirits and wines by approximately 14.35% pursuant to Section 8 of the EDA. The revised rates will be as in the table alongside.

Who will be affected

Importers and manufacturers of cigarettes, spirits and wines

When

Effective 7 November 2019

Description	Current rate	Proposed rate
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	KES 11,061.78 per Kg	KES 12,624 per kg
Electronic cigarettes	KES 3,318.53 per unit	KES 3,787 per unit
Cartridge for use in electronic cigarettes	KES 2,212.36 per unit	KES 2,525 per unit
Cigarette with filters (Hinge lid and soft cap)	KES 2,765.45 per mille	KES 3,157 per mille
Cigarettes without filters (plain cigarettes)	KES 1,990.49 per mille	KES 2,272 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	KES 7,743.25 per kg	KES 8,837
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KES 165.93 per litre	KES 189 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	KES 221.24per litre	KES 253 per litre

Excise Duty

Increase of excise duty on cigarettes, spirits and wines (continued)

Our view

The move by the CS to increase excise duty on cigarettes, spirits and wines is in our view primarily geared towards generating additional revenue for the government. The 14.35 % increment in excise duty is in addition to the 5.15% inflationary adjustment made by the Commissioner General through Legal Notice 109 of 9 July 2019. According to the CS, the amount of excise duty collected by the Government has been on a downward trend having declined from 3% of the GDP in 2003 to 2% in the last financial year. Further, the Government`s view is that the inflationary adjustment alone will not be adequate to reverse the declining trend in excise duty collections.

In our view, the 14.35% increase in excise duty rates seems to be in contravention of Section 8 of EDA which limits the amount by which excise duty rates may be increased by the CS to 10% of the existing rates.

The aggregate increase in excise on the above mentioned products is in our view very significant and may increase the prices of these products to a level which is out of reach to the average Mwananchi. This will further encourage the consumption of illicit brew which has in the past had negative health and social impact on the society.

Excise Duty

Excise duty on motor vehicles

The measure

The Act has proposed to amend the excise duty rates on motor vehicles as shown in the table alongside.

Who will be affected

Importers of motor vehicles

When

Effective 7 November 2019

Our view

The Finance Act 2018 increased excise duty on petrol powered engine motor vehicles of a cylinder capacity exceeding 3000cc and diesel powered engine motor vehicles of a cylinder capacity exceeding 2500cc from 20% to 30% in a bid to discourage the use of these high engine capacity motor vehicles due to the relatively high level of carbon emissions associated with the motor vehicles.

The move to increase excise duty on motor vehicles exceeding 1500cc is aimed at further curbing the level of carbon emissions to protect the environment and generating additional revenue for the Government. It however remains to be seen whether this measure will generate additional revenue for the Government considering the demand for motor vehicles may decline in general.

On the other hand, the lower excise duty rate of 10% on electric powered vehicles is viewed as a move to encourage the uptake of such vehicles amid the global campaign aimed at adoption of environmental friendly technologies.

Description	Current rate	Proposed rate
• Motor vehicles with a seating capacity of 10 or more persons, including the driver (Heading 8702); • Motor vehicles principally designed for transport of persons with a sitting capacity of less than 10 people, including station wagons and racing cars (Heading 8703); and • Motor vehicles for transportation of goods (8704) excluding: a. Locally assembled motor vehicles; b. School buses for use by public schools; c. Diesel powered engine motor vehicles of cylinder capacity exceeding 2500cc of tariff code 8703.24.90 and petrol powered engine motor vehicles exceeding 3000 cc of tariff code 8703.33.90; and d. Imported motor vehicles of cylinder capacity exceeding 1500cc	20%	20%
Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	20%	25%.
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	30%	35%
100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00	20%	10%.

Excise Duty

Removal of excise duty on plastic shopping bags

The measure

The Act has deleted the provision for charging excise duty on plastic shopping bags.

Who will be affected

The local Mwananchi

When

Effective 7 November 2019

Our view

The proposal in our view is aimed at aligning the Excise Duty Act with the Government policy that banned the use of plastic shopping bags in the country.

Introduction of excise duty on imported gas cylinders

The measure

The Act has introduced excise duty on imported gas cylinders at the rate of 35%.

Who will be affected

Importers of gas cylinders

When

Effective 7 November 2019

Our view

Gas cylinders attract a 0% import duty rate as per the East African Community Common External Tariff (EAC CET). However, over the last couple of years the EAC Council of Ministers has granted Kenya a stay of application of the CET rate and apply a rate of 25% in a bid to promote local manufacturing of gas cylinders. The introduction of excise duty on gas cylinders is in our view a protectionist move aimed at cushioning local manufacturers from cheap imports therefore promoting local production.

Excise Duty

Excise duty on imported sugar confectionary and chocolate

The measure

The Finance Act has amended the excise duty provision charging excise duty on sugar confectionery and chocolate as follows:

a. Excluding locally manufactured sugar confectionery and chocolate from the purview of excise duty; and

b. Distinguishing excise duty rates applicable on imported sugar confectionery and imported chocolate as follows:

- Imported sugar confectionery of tariff heading 1704 to continue attracting excise duty at KES 20 per Kg.

- Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00 at KES 200 per kg from KES 20 per Kg.

Who will be affected

Local manufacturers and importers of sugar confectionery and chocolate products

When

Effective 7 November 2019

Our view

The Finance Act 2018 introduced excise duty on sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00 at the rate of KES 20 per kg. The excise duty applied on both locally manufactured and imported sugar confectionery and chocolates.

In our view, the exclusion of excise duty on locally manufactured sugar confectionery and chocolate is geared towards cushioning local manufacturers of these products from competition from cheap imports. The increase in excise duty rate on imported chocolate seems to be a deliberate move by the Government to promote local manufacture of chocolates particularly with the exit of some of the players in the market in the recent past.

Excise Duty

Change of effective date for inflationary adjustment

The measure

The Act has amended the effective date for adjusting specific excise duty rates for inflationary adjustment from 1 July of every year to 1 October of every year.

Who will be affected

Importers and local manufacturers of excisable goods with specific rates.

When

Effective 7 November 2019

Our view

The EDA empowers the Commissioner General (CG) of the Kenya Revenue Authority to adjust specific excise duty rates by the average inflation rate for the previous financial year. The adjustment is made on an annual basis and takes effect on 1 July of every year.

Last year, the National Assembly annulled Legal Notice 164 of 2018 through which the CG had sought to adjust specific excise duty rates for inflation. The National Assembly cited various reasons for annulling the Legal Notice, key amongst them being lack of public participation.

In our view, this measure is aimed at providing the CG with sufficient time to adhere with the public participation requirement and other requirements in accordance with the Statutory Instruments Act.

Excise Duty

Definition of "other fees"

The measure

The definition of other fees has been amended to read *"fees, charges or commissions charged by financial institutions relating to their licensed financial institutions, but does not include interest on loan or return on loan or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder".*

Who will be affected

Financial institutions

When

Effective 7 November 2019

Our view

This is a welcome move that provides clarity on the excise duty treatment of charges relating to loans or premiums levied by financial institutions. The EDA previously exempted only interest on loan or return on loan from excise duty. The change to the EDA has amended the definition of other fees not subject to excise fees to expressly include fees or commissions earned in respect of a loan or any share of profit.

The Insurance Act as read together with the Insurance Regulations restrict the amount of commissions that an insurer may pay a broker. However, the EDA does not define premium based commissions and does not restrict the amount of premium based commissions exempt from excise duty.

We are of the view that this clarification will help in resolving grey areas on some aspects of "other fees" that have led to disputes between taxpayers and the KRA.

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Miscellaneous Fees & Levies

Amendment of Import Declaration Fees (IDF) and Railway Development Levy (RDL) rates

The measure

The Act has amended IDF and RDL rates as follows:

- IDF on goods imported for home use has been increased from 2% to 3.5%;
- RDL on goods imported for home use has been increased from 1.5% to 2%; and
- IDF and RDL shall be 1.5% on the following goods:
    - Raw materials and intermediate goods imported by manufacturers approved by the CS for the National Treasury on recommendation of the CS responsible for matters relating to industry.
    - Input for the construction of houses under an affordable housing scheme approved by the CS for the National Treasury on recommendation of the CS responsible for matters relating to housing.

Who will be affected

Importers of goods into Kenya, approved manufacturers and importers of goods intended for use in construction of houses under the affordable housing scheme

When

Effective 7 November 2019

Our view

This measure is aimed at cushioning the local manufacturers against competition from imported finished goods and encourage growth of the local manufacturing sector. Equally, the reduced rate of IDF and RDL on inputs for the affordable housing project is likely to lead to a reduction in the cost of the houses, making them affordable to the common Mwananchi.

Miscellaneous Fees & Levies

Refund of anti-adulteration levy on kerosene used for manufacture of paints, resins and shoe polish

The measure

The Act has amended Section 8A of the Miscellaneous Fees and Levies Act (MFLA) to allow for claiming of refund of anti-adulteration levy paid on illuminating kerosene used by licensed or registered manufacturers to manufacture paints, kerosene and shoe polish.

Who will be affected

Licensed or registered manufacturers of paint, resins and shoe polish.

When

Effective 7 November 2019

Our view

The Government in 2018 introduced anti-adulteration levy on illuminating kerosene at the rate of KES 18 per litre to curb against adulteration of petrol and diesel. While the levy may have curbed adulteration of petrol and diesel to a certain extent, the same resulted in additional production costs for manufacturers who use kerosene as a raw material. This measure is therefore aimed at cushioning manufacturers against the additional production costs occasioned by the introduction of the levy through the 2018 Finance Act. To mitigate against abuse of this provision, the Act has introduced a condition that only licensed or registered manufacturers will be eligible for the refund and they will be required to apply for the refund in writing.

Miscellaneous Fees & Levies

Export levy on tanned or crust hides and skins

The measure

The proposal in the Finance Bill to introduce export levy on tanned or crust hides and skin at 10% has been dropped.

Who will be affected

Exporters of tanned or crust hides and skin

When

Effective 7 November 2019

Our view

The EAC Council of Ministers had through Legal Notice No. EAC/96/2019 introduced an export levy of 10% on tanned or crust hides destined outside the EAC for the financial year 2019/2020. The rate will subsequently be increased by 10% every financial year for the next 10 years.

The Finance Bill had proposed to amend the MFLA in line with the new EAC measure. To this end, it is unclear whether export levy will be imposed on tanned or crust hides since the MFLA, the legislation covering export levy, has not included the levy introduced by the EAC. In our view since the EAC laws take precedence over national laws for Customs purposes, then Kenya would be expected by the EAC to charge the export levy on tanned or crust hides.

Exemption of IDF and RDL on official aid funded projects

The measure

The Act has amended Section 2 of the MFLA to define the term concessional loan as a loan with at least 25% grant element.

Who will be affected

Importers of goods for use in official aid funded projects

When

Effective 7 November 2019

Our view

The MFLA provides for exemption of IDF and RDL on imported goods for direct and exclusive use in the implementation of an official aid-funded project. The MFLA further defines an official aid funded project as a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency.

The definition of concessional loan is intended to provide clarity on the scope of projects considered to be official aid funded for purposes of IDF and RDL exemption.

Tax Procedures

PIN requirement changes

The measure

The Finance Act has introduced the following changes on the PIN requirement in the Tax Procedures Act, 2015:

a. Persons who intend to register or renew their membership with professional bodies or to be licensed by licensing bodies will need to have a PIN;

b. Telecommunication operators will require a person's PIN before registering cellular pay bill and till numbers; and

c. The Commissioner may, upon application, exempt a person from the requirement to provide a PIN when carrying out transactions for which a PIN is required

Who will be affected

- Professional and licensing bodies;
- Telecommunication operators;
- Persons who require membership with professional bodies or licensing on a certain activity; and
- Persons who require exemptions from the PIN requirement

When

Effective 7 November 2019

Our view

The exemption of certain transactions from the PIN requirement (upon application) will ease the burden of administration on the relevant bodies required to obtain PINs for certain transactions where there are justifiable reasons. For instance, non-resident entities who need to operate a local bank account but have no Kenyan tax filing obligations would now be able to obtain exemption from this requirement that presented practical challenges given the requirements to register locally in order to obtain a PIN.

However, the discretion to decide on the exemption is left to the Commissioner. To eliminate the bureaucracy of case by case application, it would have been prudent for the Act or regulations to list the specific cases which would be exempt.
The expansion of the list for requirement of the PIN demonstrates the resolve by the government to bring more taxpayers to the tax net.

Tax Procedures

Tax penalties and interest amnesty on SMEs listed under the GEMS segment at the NSE

The measure

The Act has amended the Tax Procedures Act, 2015 by introducing an amnesty on penalties and interest on any outstanding tax in respect of any years prior to listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing. The amnesty is not applicable on principal unpaid taxes, which shall be paid in full.

The amnesty will not apply where the company has been assessed in respect of the tax or is under audit or investigation in relation to the undisclosed income and where a company delists before the expiry of five years from the date of listing.

Who will be affected

SMEs planning to list on the Growth Enterprise Market Segment (GEMS) of the Nairobi Securities Exchange (NSE)

When

Effective 7 November 2019

Our view

The GEMS segment was created in 2013 to enable SMEs list at the NSE. In spite of the favourable requirements on listing in the GEMS segment as compared to the main market segment, SMEs have not taken up the chance to list. There has been speculation that the listing would expose them to the taxman’s scrutiny, especially on prior years; hence, the reason SMEs have been shying away from the listing.

It is expected that the incentive will encourage listing of SMEs on the NSE. However, one would have expected that the amnesty would also cover principal tax.

Tax Procedures

The collection and recovery measures that apply to other taxes to also apply to withholding tax

The measure

The Act has amended the Tax Procedures Act, 2015 by introducing a provision that deems withholding tax to be a tax of the withholder for purposes of collection and recovery of the tax.

Penalties and interest for failure to comply with the withholding tax requirement shall apply as if the tax were due and payable by the withholder.

Who will be affected

Recipients of services liable to withholding tax

When

Effective 7 November 2019

Our view

Though not expressly provided under the current tax legislation, this has been the practice. The proposal seeks to provide the legal framework upon which such tax, penalties and interest will be demanded from non-compliant persons.

The provision was previously under the ITA but may have been inadvertently repealed by the Finance Act, 2016.

Tax representatives to be subject to departure prohibition orders

The measure

The Act has amended the provisions of the TPA in relation to persons that may be subject to Departure Prohibition Orders (DPO) to include tax representatives.

Who will be affected

Tax representatives

When

Effective 7 November 2019

Our view

This amendment imposes an obligation on the tax representatives to ensure that their clients comply fully with tax legislation. However, it may present a disincentive for persons to act as tax representatives.

Tax Procedures

60 day window for issuing an objection decision relaxed in favour of KRA

The measure

The Act has amended the TPA by allowing the Commissioner additional time to issue an objection decision where further information is requested from a taxpayer after filing the objection. The 60 day period within which the Commissioner is required to provide the tax decision would in such an instance run from the date the additional information is received.

Who will be affected

Taxpayers and the Kenya Revenue Authority

When

Effective 7 November 2019

Our view

This amendment opens up the time frame within which the Commissioner is required to issue an objection decision. We believe this measure is informed by the recently established practise requiring objections to go through an independent review within the KRA. The review team, may request for additional information or representations from the taxpayer and the audit team to enable them consider the contentions and arrive at the objection decision.

While the intention of this amendment is positive, it could cause delays in the process of dispute resolution since the process could be held up where numerous requests for additional information are made before issuing an objection decision. In our view, the additional time should be capped further through a proviso that ensures that the extended period should in any case not exceed a specified duration from the date of filing the objection.

Tax shortfall penalty to apply only in cases of deliberate omission

The measure

The Act has amended the provisions of the TPA by deleting the provision for tax shortfall penalty not resulting from deliberate omissions.

Who will be affected

Taxpayers

When

Effective 7 November 2019

Our view

The tax shortfall penalty provision was introduced to cover underpayment of tax occasioned by a deliberate omission or falsification. The provision stipulating the shortfall penalty in cases omissions that were not deliberate was therefore redundant.

This amendment means that taxpayers will not be penalized where they have a tax shortfall that is not occasioned by a deliberate omission. This is a positive move since in many instances a shortfall is occasioned by acts or omissions that are not a deliberate attempt to understate tax liability, for instance differences in interpretation.

Miscellaneous

Repeal of the interest capping law

The measure

The Finance Act 2019 has amended the Banking Act by deleting Section 33B, which provided for capping of interest rates charged by banks.

The Act has however amended Section 56 of the Banking Act by introducing a provision that preserves the interest capping provision on any loan or deposit agreement/ arrangement that existed prior to the interest capping repeal.

Who will be affected

Commercial banks and its customers

When

Effective 7 November 2019

Our view

One of the unintended consequences of the introduction of interest capping in 2016, has been the significant reduction of credit to SMEs and individual borrowers as lenders opt for less risky assets such as government securities. This, according the government, has had a negative impact on economic growth.

The National Assembly had removed the provision relating to the repeal of the interest capping law in the Finance Bill prior to submission of the same to the President for assent. However, the President vetoed it in a memo to the National Assembly, citing unintended impacts of the capping. The interest capping provision will however continue to apply on loans and deposit agreements that existed prior to the interest capping repeal date.

Repeal of the capping is expected to enhance access to credit especially for SMEs. However, it is also worth noting the concerns that the lifting of the cap may lead to increase in the cost of borrowing. It is hoped that the regulator's and the industry's undertaking to put in place measures to align interest rates with the risk profile of the borrower will mitigate any negative impact.

Miscellaneous

Cargo consolidation to be undertaken only by registered consolidators

The measure

The Finance Act has amended the Standards Act by introducing a registration requirement on cargo consolidators. The registration shall be done by the Kenya Bureau of Standards (KEBS) in consultation with the KRA.

In order to qualify for registration as a cargo consolidator, a company:-

a. Should be tax compliant;
b. Should be a member in good standing with a recognised association for consolidators;
c. Should have a warehouse in the country of origin and country of destination; and
d. Should, except where the company was in the cargo-consolidation business before commencement of the Standards Act, not have committed any offence relating to importation of substandard or counterfeit goods.

Importation of consolidated cargo by unregistered cargo consolidators is an offence, which upon conviction could attract a fine of up to KES 1 million or imprisonment of up to 1 year, or both.

Who will be affected

Cargo consolidators and their customers

When

Effective 7 November 2019

Our view

The introduction of the registration requirement of cargo-consolidators could be aimed at regulating the cargo consolidation business with a view of curbing leakage of customs duties and importation of substandard and counterfeit goods.

Miscellaneous

Fines and penalties introduced for offences under the Housing Act

The measure

The Finance Act has amended the Housing Act by introducing fines and penalties where a person is convicted of an offence under the Act or where an act or omission of a person results in the loss of money from the National Housing Development Fund.

A person convicted of an offence under the Housing Act shall be liable to a fine of up to KES 1 million or imprisonment of up to 3 years or both.

Where an act or omission of a person results in the loss of money from the National Housing Development Fund, that person shall be liable to a penalty equivalent to 200% of the amount lost.

Who will be affected

Officers of the National Housing Development Fund.

When

Effective 7 November 2019

Our view

These amendments are aimed at deterring persons from committing offences that could derail the government's affordable housing initiative.

Miscellaneous

Stamp duty exemption on the transfer of a house developed under an affordable housing scheme to the National Housing Corporation

The measure

The Finance Act has amended Section 117 of the Stamp Duty Act by introducing duty exemption on the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation.

Who will be affected

The National Housing Corporation

When

Effective 7 November 2019

Our view

This move is aimed at ensuring that houses constructed under the affordable housing scheme are not subject to additional costs when transferred from a developer to National Housing Corporation and remain affordable.

Financial penalties imposed by the Capital Markets Authority to be recoverable summarily as civil debts

The measure

The Finance Act has amended the Capital Market Authorities Act by introducing provisions that empower the Capital Markets Authority to summarily recover financial penalties as civil debts.

Who will be affected

Entities that are regulated by the Capital Markets Authority and their key personnel.

When

Effective 7 November 2019

Our view

This move is aimed at enhancing good corporate governance practices by ensuring compliance with the Capital Markets Authority's rules and regulations.

Miscellaneous

Accrued benefits of a scheme member to be treated as unclaimed financial assets if the member is untraceable after 2 years of the scheme's winding up

The measure

The Finance Act has amended the Retirement Benefits Act by deleting Section 45A and introducing a new Section, which provides that accrued benefits of a scheme member should be treated as unclaimed assets, as stipulated in section 13 (1) of the Unclaimed Financial Assets Act, 2011, if the member is untraceable after 2 years of the scheme's winding up.

A trustee may also treat accrued benefits as unclaimed assets if:

a. A scheme member entitled to such accrued benefits has not lodged any claim and the trustee is unable to locate that member after taking the specified steps;

b. A scheme member has lodged a claim with the trustee but the trustee is subsequently unable to locate that member after taking the specified steps; or

c. The member or beneficiary has not:-

   - increased or decreased the principal;
   - accepted any payment in respect of the accrued benefits;
   - communicated with the scheme concerning the accrued benefits; or
   - indicated any other interest in the accrued benefits as evidenced by a record prepared by the trustees.

Who will be affected

Members of retirement benefit schemes.

When

Effective 7 November 2019

Our view

This amendment is aimed at activating the benefits and accrued income of members of retirement benefit schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act, 2011.

Miscellaneous

Privileged persons to enjoy exemptions on locally purchased goods and services for official use

The measure

The Act amends the Privileges and Immunities Act to expand the scope of tax exemption on goods and services purchased by privileged persons for official use.

Both goods and services imported or purchased locally shall be exempt from tax. Currently, only directly imported goods by such persons are exempt from tax.

Who will be affected

Privileged persons

When

Effective 7 November 2019

Our view

This will reduce the tax burden on privileged persons further supporting their objectives. The measure could be viewed as an attempt to align the tax treatment with most of the Host Country Agreements (HCAs), which largely, provide for a blanket exemption on the purchase of goods and services (whether locally or from outside Kenya).

Miscellaneous

Other allowances and benefits excluded from the meaning of basic salary

The measure

The Act amends the Employment Act by deleting the definition of employee earnings and introducing a definition of basic salary, which is defined to mean an employee's gross salary excluding allowances and other benefits.

Who will be affected

Employers and employees

When

Effective 7 November 2019

Our view
This is aimed at providing clarity on the base amount for computing the levy payable under the National Housing Development Fund (NHDF).

Accountancy students not required to register before they qualify as accountants

The measure

The Act repeals Section 17 (2A) of the Accountants Acts to remove the requirement for accountancy students to register with ICPAK before qualifying as accountants.

Who will be affected

Students pursuing accountancy

When

Effective 7 November 2019

Our view
This is aimed at ensuring that only qualified accountants are registered as members.
It, however, seems to counter the intention of introducing various categories of ICPAK membership such as student or practising members.

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