Structured Planning

Newsflash Kenya – Budget 2018/2019

Latest news on law, tax and business in Kenya

June 2018 · www.roedl.de/kenia | www.roedl.com/kenya

National Budget 2018/2019 Highlights

Overview of 2018/2019 National Budget, Kenya

> Theme: "Creating Jobs, Transforming Lives and Sharing Prosperity"

By George Maina Rödl & Partner Kenya

The National Budget Statement for the Financial Year 2018/2019 was presented on 14th June 2018 in Kenya's parliament in accordance with Section 40 of the Public Finance Management Act, 2012.

According to the Budget estimates, the total Government expenditure and net lending has been set at **KShs 2,5566 trillion**. This shall be financed by a projected revenue (taxes and Appropriations-in-Aid) of **KShs 1,9492 trillion**; and external financing of **KShs 558,9 billion.**

The Cabinet Secretary for National Treasury also tabled the Finance Bill 2018 which contained various taxation proposals aimed at realizing the 'Big Four' Plan. The Big Four Plan is comprised of:

- Support value addition and raise the Manufacturing sector's share to GDP to 15 % by 2022;
- Enhancing food and nutrition security to all Kenyans by 2022;
- Providing universal health coverage to guarantee quality and affordable healthcare to all Kenyans; and
- Provision of affordable and decent housing for all Kenyans

We have presented our understanding and analysis of the tax proposals as captured in the Finance Bill 2018.

Income Tax proposals

> Transfer pricing on local transactions? Effective date: 1st July 2018

The definition of dividends has been extended to include benefits arising out of related-party transactions such as discharge of intercompany debts (loan forgiveness) and external debts of a related party (loan novation).

This will in effect introduce transfer pricing (BEPS) adjustment mechanisms to transactions between related resident entities.

> Compensating tax out – Effective date: 1st January 2019

Compensating tax has been essentially replaced by a 30 % tax on dividends distributed out of 'untaxed income'. This is a measure towards simplifying calculation of tax.

> Shift from Turnover to Presumptive tax – Effective date: 1st January 2019

Presumptive tax has been reintroduced at a rate of 15 % of business permit or trade license fee cherged by a County Government. It will replace Turnover Tax and apply to resident persons with a turnover of less than KShs 5 million.

It is viewed as an effective alternative of taxing the informal sector.

> Powering Manufacturers – Effective date: 1st January 2019

The allowable cost of electricity will be increased by 30 % of actual electricity bill for taxpayers who shall meet the conditions set by the Ministry of Energy.

This is set to cushion local manufacturers who are competing with products originating from jurisdictions with low production costs.

> Application of Capital Gains Tax (CGT) in the insurance sector – Effective date: 1st July 2018

It has been clarified that CGT will apply on transfer of properties tied to general life insurance business. This reflects the practice in the business where property will always be held as a capital item generating steady income in the short term.

> Promoting Public-Private-Partnership (PPP) – Effective date: 1st July 2018

A special tax rate will apply where a company operates under a special operating framework arrangement with the Government as provided in the arrangement.

This incentive will help the Government obtain support for its development agenda (Big 4 plan).

> Withholding Tax updates – Effective date: 1st July 2018

Withholding tax has been introduced on payments to non-residents operating without a permanent establishment in Kenya as follows:

Fees	Proposed Rate
Demurrage charges	20 % of gross amount payable
Insurance premium other than premium for insurance of aircraft	5 % of gross amount payable

VAT proposals

> Exempted items Effective date: 1st July 2018

- Cereals of HS code 1001 (wheat and meslin) and 1003 (barley)
- Plants and machinery of HS code 84 and 85 used for the manufacture of goods
- Materials and equipment for construction of grain storage facilities upon recommendation by the CS responsible for Agriculture
- Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power
- Materials, waste, residues and by-products and preparations used in animal feeding of HS codes 1213.00.00 (cereal straw and husks), 1214.10.00 and 2303.20.00 (waste of sugar manufacture)
- Parts imported or purchased locally for assembly of computers (previously limited to primary school laptop tablets)
- Taxable goods for direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, upon recommendation by Health CS
- Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

- Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government
- Postal services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto
- Asset transfers and other transactions related to the transfer of assets into real estate investment trusts and asset backed securities
- Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government

> Standard-rated petroleum products – Effective date: 1st September 2018

The VAT Act 2013 initially provided a transitional period of 3-years for exemption of petroleum products. Finance Act 2016 extended this period by two years, a move viewed as political bearing in mind the forthcoming National Elections.

Finance Bill 2018 has not provided for any further extension and VAT will now apply on the products in the next table at a rate of 16 %:

HS Code	Description
2709.00.00	Petroleum oils and oils obtained from bituminous minerals, crude.
2710.12.10	Motor spirit (gasoline) regular
2710.12.20	Motor spirit (gasoline), premium.
2710.12.30	Aviation spirit
2710.12.40	Spirit type jet fuel.
2710.12.50	Special boiling point spirit and white spirit.
2710.12.90	Other light oils and preparations.
2710.19.10	Partly refined (including topped crudes).
2710.19.21	Kerosene type jet fuel.
2710.19.22	Illuminating kerosene (IK)
2710.19.29	Other medium petroleum oils and preparations.
2710.19.31	Gas oil (automotive, light, amber, for high speed engines).
2710.19.39	Other gas oils.
2711.21.00	Natural gas in gaseous state
2711.29.00	Other natural gas in gaseous state.

> Zero-rated items

Medicaments containing alkaloids or derivatives and subject to zero rating will now comprise:

- 3004.41.00 – Containing ephedrine or its salts
- 3004.42.00 – Containing pseudoephedrine (INN) or its salts
- 3004.43.00 – Containing norephedrine or its salts
- 3004.49.00 – Other

> Standard-rated items

- Garments and leather footwear manufactured in an EPZ at the point of importation
- Maize seed of HS Code 1005.10.10

> Other changes under the Tax Law Amendments Bill 2018

Exempted items include:

- Taxable supplies, imported or purchased for direct and exclusive use in the construction of a minimum of 5,000 housing units, by any licensed SEZ operator, developer or enterprise upon recommendation by the CS for Housing
- Taxable supplies, imported or purchased for direct and exclusive use in the construction of hotels and/or conference facilities by any licensed SEZ operator, developer or enterprise upon recommendation by the Cabinet Secretary for Tourism
- The transfer of a business as a going concern by a registered person to another registered person.
- The supply of natural water, excluding bottled water, by a National Government, County Government, any political sub-division thereof.
- Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in fire fighting.
- Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department
- Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments subject to consultation and approval by the Cabinet Secretary for Health.
- The supply of liquefied petroleum gas (LPG).
- Milk and cream, not concentrated nor containing added sugar or other sweetening matter. It will apply to the following HS Codes (0401.10.00; 0401.20.00; 0401.40.00; 0401.50.00)
- Maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10 % in weight.
- Agricultural pest control products.
- Goods imported by passengers arriving from places outside Kenya, subject to certain limitations and conditions
- Taxable goods for emergency relief purposes for use in specific areas in and within a specific period, supplied to or imported by government or its approved agents under certain conditions.
- Certain medicaments and Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments. . It will apply to the following HS Codes (3002.20.00; 3002.30.00; 3003.10.00; 3003.20.00; 3003.39.00; 3003.40.00; 3003.90.00; 3003.90.10; 3003.90.90; 3004.10.00; 3004.20.00; 3004.32.00; 3004.39.00; 3004.40.00; 3004.50.00; 3004.90.00; 3004.90.90)

Excise Duty proposals

Effective date: 1st July 2018

Item	Old rate	Proposed rate
Sugar confectioneries (including chocolates)	Exempt	Kshs 20 per Kg
Cellular phones money transfer fees	10%	12%
Private passenger motor vehicles whose engine capacity exceeds 2500cc for diesel and 3000cc for petrol powered vehicles	20%	30%

Item	Old rate	Proposed rate
Transfer of KShs 500,000 or more by banks/ financial providers	Exempted	0.05%
Illuminating Kerosene	KShs 7,205 per 1000 litres	KShs 10,305 per 1000 litres
Bottled or similar packaged waters	Exempt	5%

Custom Duty proposals

Construction industry

Tax	Item	Old rate	New rate
Import duty:	Iron and steel products; Paper & paper board	25%	35%
	Particle board	Nil	higher of 35% or USD 110/MT
	Medium density fiber board	Nil	higher of 35% or USD 120/MT
	Plywood	Nil	USD 200/MT
	Blockboards	Nil	higher of 35% or USD 230/MT
Export levy	Copper waste & scrap (7404.00.00)	0	20%

Agriculture, Textile & footwear sector

Item	Old rate	New rate	Comment
Inputs & raw materials for manufacturing pesticides & acaricides	0 - 25%	0%	Encourage local production of pesticides & acaricides
Textile & footwear	Nil	higher of 35% or USD 5 per unit	Guard against undervaluation

Food processing & household products

Item	Old rate	New rate	Comment
Vegetable oils	Nil	higher of USD 500/MT or 35%	To protect local manufacturers
Inputs & raw materials for assembly of clean energy cooking stoves	Nil	higher of 35% or USD 5 per unit	To promote local production and reduce cost

Automobile and ICT

Item	Old rate	New rate	Comment
Motor cars, sightseeing buses & overland trucks imported by licensed tour operators	0 - 25%	Exempt	To promote tourism

Tax Procedures changes

> Tax Amnesty period extended

- Application for Tax amnesty on undeclared foreign income has been extended from 30th June 2018 to 30th June 2019.
- Interested taxpayers to now submit their returns and accounts for the year 2017 on or before 30th June 2019.
- The funds transferred under the amnesty will now be exempt from the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 or any other Act relating to reporting and investigation of financial transactions, except for funds derived from proceeds of terrorism, poaching and drug trafficking.
- We expect the Commissioner to revise/re-issue guidelines that will incorporate these changes.

> Other changes

- Interest on late payment of taxes restored to 2 % per month or part thereof of taxes outstanding.
- Taxpayers to be allowed to lodge notice of objections upon applying for a payment plan of tax assessments not in dispute.
- Late filing penalties restated as follows:
  - For VAT & Excise duty: higher of 5 % of tax payable or KShs 10,000
  - For other obligations in respect to
  - incorporated persons; higher of 5 % of tax payable or KShs 20,000
  - For other obligations in respect to individuals; higher of 5 % of tax
  - payable or KShs 2,000

Act	Proposed Amendment	Impact	Our Comments
The Betting, Lotteries and Gaming Act CAP. 131	Introduction of new requirements i.e. a fit and proper test for applicants seeking to obtain a casino licence or permit under this Act.	The will raise the threshold of acquiring a licence with the aim of weeding out unscrupulous persons or individuals operating in this industry.	This will help protect punters from dishonest business persons who have infiltrated the gaming and lotteries industry. If properly implemented it will also lock out criminal elements that use such businesses to commit economic crimes such as money laundering.
	Taxes collected under this Act will be paid to the Sports, Arts and Social Development Fund.	This is meant to promote the development of sports, arts, culture and social development to benefit the youth.	Betting and gaming are considered vices in the Kenyan society. Utilising the taxes collected from these activities to benefit youth and social programmes compensates for their negative impact on society.
	Introduction of a late payment penalty of 20 % and a late payment interest of 2 % per month for late payment of taxes under the Act.	This will lead to timely payments of taxes and improved collection due to the imposition of high penalties for late filing.	This will increase the compliance burden for running gaming and lottery businesses.
Air Passenger Service Charge Act, CAP. 475	This proposal seeks to include the Tourism Promotion Fund as a beneficiary of the proceeds of the service charge imposed under this Act.	This increases the funds available for the Tourism Promotion Fund.	Tourism is one of Kenya's top forex earners but has suffered in the past year due to election jitters. The government is showing a clear commitment to supporting this crucial industry through this amendment.
Stamp Duty Act, CAP. 480.	The exemption of stamp duty for instruments relating to tax collection and recovery and instruments relating to businesses activities in SEZs.	This will facilitate tax collection activities by reducing costs and provide further incentives to SEZ enterprises, developers and operators.	This is intended to improve the offering to SEZ businesses and reduce the costs to tax collection authorities who will be expected to carry out extensive tax collection activities to meet tax collection targets.
Banking Act, CAP. 488	The Bill proposes to lift the interest rate cap.	The move is meant to increase access to credit as banks had slowed down on lending due to the cap.	This will most likely spur credit access, which will improve business and liquidity

Act	Proposed Amendment	Impact	Our Comments
Central Bank Act CAP. 491	The Bill proposes to amend the Act to introduce Mortgage Refinance Companies, which are meant to provide affordable financing to primary mortgage lenders for housing finance. The amendments also seek to introduce regulations relating to Mortgage Refinance Companies	This is geared towards bringing mortgage refinance companies under the supervision of CBK.	Mortgage refinancing companies are big lenders and it follows that they would be brought under CBK supervision. Mortgage refinancing companies are intended to support the government's agenda to provide affordable housing as the mortgage refinance companies will provide affordable loans to primary mortgage lenders who will in turn provide affordable mortgages to the society at large.
The Retirement Benefits Act No. 2 of 1997	The Bill proposes to amend the RBA Act to penalise non remittance of contributions by administrators of pension schemes. The amendments also seek to penalise fund managers who fail to submit reports to RBA.	The move will ensure contributions by employees to a pension scheme are protected. This will reduce an employee's wage	The move is welcomed as it will guarantee a pension to hard working employees who have struggled to contribute/ save towards their retirement.
Employment Act, No. 11 of 2007	The Bill seeks to amend the Act by introducing a new statutory deduction/contribution to be remitted to the National Housing Development Fund. Employers and Employees will each contribute 1 % of the employee's gross emoluments, subject to a maximum of Kshs. 5,000		This proposal is not well thought-out. The National Housing Fund is yet to be set up. There are no known benefits of contributing to the fund accruing to employees.
The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)	The Bill seeks to amend the Act by introducing enhanced due diligence measures in relation to transactions with persons, and financial institutions originating from high risk countries as identified by the Financial Action Taskforce.	This is intended to aid the fight against money laundering and terrorism financing.	The move is commendable though the due diligence procedures it will introduce will appear unfair, burdensome and frustrating to honest business persons from high risk countries looking to do business in Kenya.
	The Bill seeks to introduce the Sacco Societies Regulatory Authority as a supervisory body under the Act.	The Sacco Societies Regulatory Authority will be bound by the reporting requirements under the Act.	

Rödl & Partner

Newsflash Kenya – Budget 2018/2019

June 2018

For more information please contact

George Maina
Head of Tax
Phone: +254 (775) 974 050; +254 (702) 463 272
E-Mail: George.Maina@roedl.com

Structured Planning

"With its growth potential, Africa is becoming an increasingly attractive investment destination. Many African countries enjoy political and economic stability and offer excellent opportunities for a business venture. The enormous range of opportunities poses, however, new challenges to companies venturing into Africa to do business there. Whether you are planning to start business in the renewable energies or the tourism sector, or want to launch an infrastructure project, you can always rely on our experienced Africa experts! They work to develop for you tailor-made solutions to help you break into new markets with a structured strategy and implement your business project in the African market."

Rödl & Partner

"Each element of our human towers supports another. This works only if we put to that more than just the physical abilities of all of us. It is the solidarity that gives us strength, structure, stability and – last but not least – the courage we need to develop great things."

Castellers de Barcelona

Each and every person counts" – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today.

„Força, Equilibri, Valor i Seny" (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

Imprint: **Tax Alert Kenya**
Issue June 2018

Publisher: **Rödl & Partner Limited**
4th Floor, K.A.M House (opp. Westgate Mall)
Peponi Road, Nairobi
+254 (775) 974 050 | www.roedl.com/kenya

Responsible for the content:
George Maina
George.Maina@roedl.com

Layout: **Samuel Okumu**
Samuel.Okumu@roedl.com