Rödl & Partner

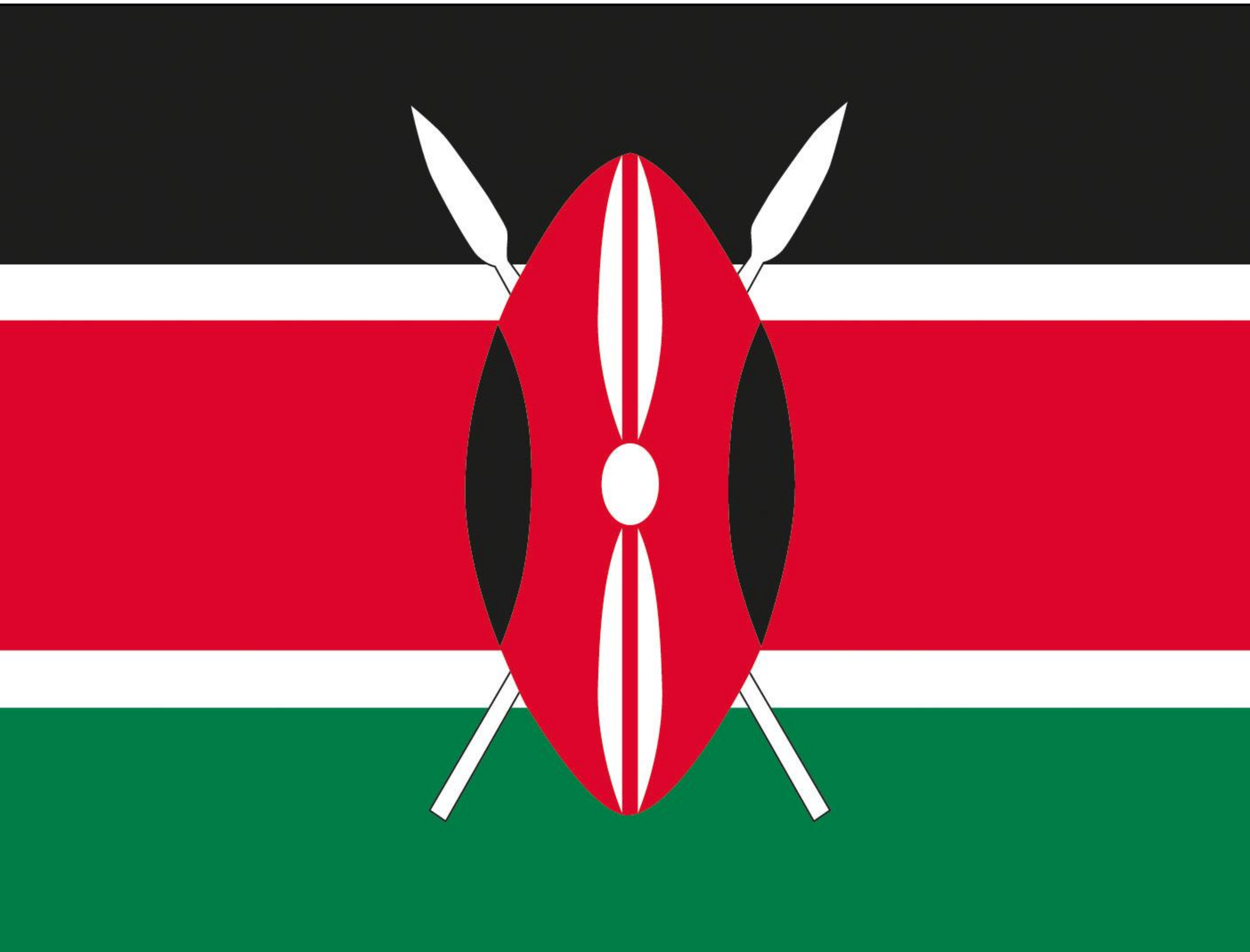
NEWSFLASH KENYA

NATIONAL BUDGET 2019/2020 HIGHLIGHTS

Issue:
June 2019

Latest news on law, tax and business in Kenya

www.roedl.de/kenia | www.roedl.com/kenya



Rödl & Partner

NEWSFLASH KENYA

NATIONAL BUDGET 2019/2020 HIGHLIGHTS

Issue:
June 2019

Read in this issue:

→ Overview of 2019/2020 National Budget

The Kenya National Budget policy statement for the financial year 2019/2020 was presented on June 13th, 2019 in fulfilment of the requirements of Section 40 of the Public Finance Management Act, 2012 and the National Assembly Standing Orders.

The Total budget for the central government including the county allocation and the Consolidated Fund Services (CFS) during the FY 2019/2020 is estimated at Ksh.3.08 trillion. According to the Treasury Cabinet Secretary, this year's budget seeks to address the following challenges facing our economy:

- Creating an enabling environment for businesses, and in particular for the micro, small and medium enterprises in order to accelerate the growth of our economy and create more jobs for our youth;
- The need to be prudent and efficient in our spending;
- The need to mobilize domestic resources to fund priority projects and programmes;

- The need to reduce our fiscal deficit in order to stabilize and reduce our debt; and
- The need to implement reforms that will enhance our efficiency and make us more competitive

We have in this edition outlined the various Taxation and Miscellaneous Legal proposals presented by the Cabinet Secretary in the budget policy statement.

CONTACT FOR FURTHER INFORMATION

George Maina
T +254 7759 740 50
george.maina@roedl.com

→ Income Tax Proposed Changes

Taxation of the digital economy
Effective date: 01/10/2019

It has been clarified that income accruing through a digital market place is chargeable to tax. The term "digital marketplace" is defined to mean a platfrom that enables, by electronic means, direct interaction between buyers and sellers of goods and services.
The section remains unclear on the global challenge of determining the nexus of such income.

Dividend payments from exempt income
Effective date: 01/10/2019

The Finance Bill 2019 proposes to clarify that dividends paid out of exempt income shall not be taxed at 30 % if classified as 'untaxed income'. This eliminates the ambiguity brought about by lack of a definition for 'untaxed income'. The clarification legalizes an earlier public notice by the Kenya Revenue Authority (KRA).

Reintroduction of Turnover Tax Effective date: 1/01/2020

The Bill seeks to re-introduce turnover tax at a rate of 3 % of gross monthly receipts of a business whose turnover does not exceed KShs 5 million annually. Turnover tax was abolished in Finance Act 2018 and replaced by a presumptive tax of 15 % of the single business permit fee. The two taxes are set to now complement each other.

This move will expand the tax base from electing SMEs and the informal sector.

Building up REITs investments Effective date: 01/10/2019

The Bill proposes to extend the exemption of income of Real Estate Investment Trusts (REITs) to cover their investee companies that they fully control or own. This incentive is set to promote REIT investments.

Capital Gains Tax (CGT) Up! Effective date: 01/10/2019

The Bill proposes to increase the rate of CGT from 5 % to 12.5 %.This will increase revenues through taxation of wealth creation although the proposed new rate is still lower than the applicable CGT rates in Uganda and Tanzania.

Tackling unemployment and promoting Big 4 Effective date: 01/01/2020

The Bill proposes to exempt:

– Income of the National Housing Development Fund; and
– Income earned by individuals under the "Ajira Digital" program (Will apply to Ajira registered members who are required to pay KShs 10,000 per year.)

Correction of Housing relief Effective date: 01/10/2019

The calculation of affordable housing relief has been reduced to 15 % of employee's contribution from the earlier gross emoluments. This eliminates the possibility of gaining a relief that exceeds a person's contribution.

Eliminating Plastic waste
Effective date: 01/10/2019

Corporation tax of 15 % will apply to plastic recycling plant owners for up to 5 years from the date of commencement of operations in Kenya.

This will encourage investments in the plastic recycling sector to complement the Government's plastics ban.

Promoting M&A's – CGT Exemption
Effective date: 01/10/2019

The Bill proposes to exempt CGT on transfers of property resulting from incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of corporate entity where such transfer is:

- A legal or regulatory requirement; or
- As a result of directive or compulsory acquisition by the government; or
- An internal restructuring within a group which does not involve transfer of property to a third party; or
- In public interest and approved by the Cabinet Secretary.

This will reduce operational costs for companies or taxpayers that are in the process of a re-organization or amalgamation
.

Tax Procedures changes
Effective date: 1/10/2019

A 3 year tax amnesty will apply to companies that list on the Growth Enterprise Market Segment (GEMS) of the Nairobi Securities Exchange (NSE). The proposed amnesty will cover any year of income prior to the date of the listing upon fulfilling the following:

- making full disclosure of past income, assets
- and liabilities for the two years immediately
- preceding the date of listing; and
- Settling the principal tax arising in full.

If a company delists from the Exchange before the expiry of 5 years, all taxes, penalties and interest will be recovered for the years prior to its listing.

This tax amnesty is set to encourage SME companies looking to float shares on the GEMS Exchange as a source of financing and growth capital.

Withholding Tax changes
Effective date: 01/10/2019

Nature of payment	Current rate (%)	Proposed rate (%)
Demurrage charges paid to non-resident ship owners	20 %	2.5 %
Reinsurance premiums to non-residents except in respect to aircraft	0 %	5 % of gross amount payable
– Security services; – Cleaning an fumigation services; – Catering services offered outside hotel premises; – Transportation of goods (excluding air transport); – Sales promotion; and – Marketing and advertising services	0 %	5 % – if paid to residents 20 % – if paid to non residents
Payments by a permanent establishment (PE) to its head office in instances where a Double Tax Agreement (DTA) allows such payments to be tax deductible	0 %	DTA rate

→ Value Added Tax Proposed Changes

Reintroduction of Reverse charge by unregistered persons: Effective date: 01/10/2019

The definition of 'supply of imported services' will be restated again to include supplies to unregistered persons. The obligation was earlier removed from unregistered persons because of an iTax system challenge that only allowed registered suppliers to account for reverse VAT. This proposal will enable most governmental entities to collect this tax especially when dealing with foreign consultants in donor funded projects..

Tax on online businesses Effective date: 01/10/2019

The digital economy will be subject to VAT if it occurs within a 'digital market place'. This will be any platform that enables the direct interaction between buyers and sellers through electronic means

This sector appeared to have been covered under Section 8 of the VAT Act 2013 as 'electronic services'. We look forward to further clarification especially on the determination of place of supply.

Withholding tax rate down! Effective date: 01/10/2019

The rate of withholding VAT shall be revised downwards to 2 % from 6 %. This is a measure aimed at curbing the escalating VAT refund claims that are affecting various sectors of taxpayers.

New conditions for Exempt supplies Effective date: 01/10/2019

Item	Condition
Specialized solar equipment and accessories (Paragraph 45 of First Sched. To VAT Act)	Subject to recommendation by the Cabinet Secretary responsible for matters relating to energy
Tractors (Paragraph 47)	Excludes road tractors for semitrailers

Changes in classification
Effective date: 01/10/2019

Item	Current rate	Proposed rate
Inputs for electric accumulators and separators including lead battery separator rolls, whether or not rectangular or square, supplied to manufacturers of automotive and solar batteries in Kenya, upon the recommendation of the Cabinet Secretary for the time being responsible for industrialization.	0 %	Exempt
Agricultural pest control products	0 %	Exempt
Locally manufactured motherboards	16 %	Exempt
Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for information communication technology.	16 %	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant.	Exempted if for manufacturing, otherwise 16 %	Exempt
The supply of denatured ethanol	16 %	0 %

→ Excise duty proposed changes

Inflationary Adjustment date
Effective date: 01/10/2019

The date of applying the inflationary adjustment factor shall be pushed from the month of July to October.

This is in line with a recent court ruling which outlawed the taking of effect of the Finance bill prior to its enactment.

General penalty
Effective date: 01/10/2019

All offences which are not subject to specific penalties shall be subject to conviction or to a fine not exceeding KShs 2 million.This will enhance compliance. It is also aimed at harnessing revenue anticipated in the recent tax introductions especially in the financial and telcos sector..

→ Excise duty proposed changes

Changes in Duty rates: Effective date: 01/10/2019

Description	Proposed rate of Excise
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,098 per kg
Electronic cigarettes	Shs. 3,629 per unit
Cartridge for use in electronic cigarettes	Shs. 2,420 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,025 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,177 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 8,469 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs.181 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10 %	Shs. 242 per litre
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding— (i) locally assembled motor vehicles; (ii) school buses for use by public schools; (iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and (iv) imported motor vehicles of cylinder capacity exceeding 1500cc	20 %
Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	25 %
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	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	10 %

→ Other Tax Procedures Changes

1. Penalty for failure to deduct or withhold tax: It will be harmonized under the Tax Procedures Act 2015 (TPA) with other tax obligations at 5 %.
2. Departure Prohibition Order: This will also apply to tax representatives of defaulting taxpayers who intend to leave the country.
3. Timeline for issuance of objection decisions: It has been extended to commence after receipt of additional information requested by the Commissioner.
4. Additional transactions where PIN is required: This has been expanded to include registration and renewal of membership by professional bodies and other licensing agencies; and registration of mobile cellular pay bill and till numbers by telecommunication operators.

→ Miscellaneous Changes

Act	Proposed Amendment	Impact	Our Comments
Kenya Sovereign Wealth Fund Bill, 2019	The introduction of a Bill proposes amongst other things to create a sovereign wealth fund. The Bill seeks to provide a legal framework for investment of the revenues generated from oil gas and mineral resources.	The proposed SWF is intended to be used to finance critical development programmes, build savings for future generations and for stabilising budgetary expenditures. The Fund will contain revenues from oil, gas, and mineral resources.	A SWF is necessary in countries rich with natural resources. These resources are finite and therefore the revenues gained form their exploitation should be properly invested and used for the benefit of living and future generations.
Banking Act	To repeal section 33B of the Act that introduced interest rates ceilings/interest rate cap.	Removing the interest rate caps is intended to enhance access to credit by MSME's who have been starved of the same and strengthen financial access and monetary policy effectiveness.	The removal of the interest rate caps will be quite unpopular in a section of the market. However the resultant increase in availability of credit will be very welcome to many small and medium businesses that have been unable to grow due to a lack of credit.
County Governments Revenue Raising Process Bill, 2018	The Bill proposes to regulate the introduction of taxes, fees and levies by County Governments.	The Bill has been developed pursuant to Article 209 and 210 of Constitution and is intended to regulate county governments exercise of their power to impose taxes, fees and levies in a manner that does not prejudice national economic policies; economic activities across county boundaries; or the national mobility of goods, services, capital or labour.	The Bill will regulate the manner in which county governments introduce taxes and other revenue raising measures such as fees and levies and will even allow for the Kenya Revenue Authority to assist in the collection of these taxes and levies. The National Treasury will also have an oversight role ensuring that the imposition of these taxes, fees and levies do not hinder national economic policies and cross county activities.

Act	Proposed Amendment	Impact	Our Comments
Public Procurement and Asset Disposal Act	The introduction of the Public Procurement and Asset Disposal Regulations.	The regulations are needed to fully operationalise the Act.	Since the Act was passed in 2015, regulations are yet to have been developed thereby hindering the effective implementation. It is worthwhile to note that the Act required regulations a year after the enactment of the Act. Treasury expects that significant savings will be made once the regulations come into force due to Framework Procurement and the new institutional arrangement for Common User items. The regulations are meant to streamline Government procurement process to restrict loss of revenue in the procurement process.
Privileges and Immunities Act	The exemption of goods and services imported or locally purchased by privileged organisations from taxes	The amendment seeks to exempt goods and services imported or purchased locally by privileged organisations for their official use from taxes	This amendment seeks to exempt privileged organisations such as international organisations and diplomatic missions from taxes levied on goods and services sourced locally that was not initially covered by the exemption.

Act	Proposed Amendment	Impact	Our Comments
Capital Markets Act	Amendment of the Act to provide for financial penalties imposed the Act to be collectible as civil debts by the Capital Markets Authority.	The amendment seeks to enhance the enforcement and recovery of financial penalties imposed by the Capital Markets Authority.	This amendment will give the Capital Markets Authority more tools in its arsenal in exercising its regulatory and enforcement powers and in obtaining compliance from market intermediaries.
Proceeds Of Crime And Anti-Money Laundering Act	The addition of advocates, notaries and other legal professionals amongst entities required to report to the Financial Reporting Centre.	The amendment seeks to designate advocates, notaries and other independent legal professionals as amongst reporting entities to whom the Anti-Money Laundering/Combatting the Financing of Terrorism obligations shall apply.	This amendment if it takes effect shall mandate advocates to reveal large and suspicious transactions effected through them by clients to the Financial Reporting Centre. This could be for an amount exceeding the one million shillings mark and the advocates deems the source or use of the funds as suspicious. This could also curtail the work of the advocates and cause the breach advocate-client confidentiality.
Insurance (Motor Vehicle Third Party Risks) (Certificate of Insurance) Rules	To require all passenger-carrying motor bikes and tuk-tuks to have insurance covers for their passengers and the pedestrians.	This shall ensure that the passengers and or pedestrian are compensated in the case of an accident.	This is a welcome move in light of the increased number of grievous body injuries and fatalities being occasioned by motor bike accidents.

Act	Proposed Amendment	Impact	Our Comments
Insurance Act, CAP 487	To operationalize the Policy Holder's Compensation Fund which has not been utilized since its establishment in 2004.	The Fund shall provide a cushion to holders of insurance policies in the event that the insurance company is wound up.	This is a good proposal as it will protect the interests of policy holders as the current law only protects the claimants of an insolvent insurer. This may potentially encourage more persons to take up insurance policies.
Public Finance Management Act, 2012	To introduce the Public Investment Management Regulations that shall provide a framework for appraising old projects and approving new projects to be funded by the Government's budget through the Public Investment Management Information System portal.	This shall be important in enhancing transparency and accountability.	This is a good measure that may go a long way in curbing corruption by ascertaining that the projects being undertaken by the Government are necessary and they actually benefit the public.
Competition Act, 2010	To include provisions that shall empower the Competition Authority to deal with abuse of buyer power and ensure prompt payment of suppliers. The proposed amendment shall also provide for penalties for infringement of these provisions.	This is a measure to protect all the parties in a transaction.	This is will go a long way into ensuring that all parties in a transaction deal on fair terms. However, the proposed amendments should not usurp the powers of the dispute resolution agencies such as the courts which ordinarily resolve commercial disputes. The proposal should not interfere with arm's length deals.

Act	Proposed Amendment	Impact	Our Comments
Retirement Benefits Act	The amendment seeks to provide a limit to the time in which approved issuers shall transfer scheme funds in guaranteed funds to 1 year to protect the interests of members by reduction of the exposure to low returns over an extended transfer period	The amendment seeks to provide a limit to the time in which approved issuers shall transfer scheme funds in guaranteed funds to 1 year to protect the interests of members by reduction of the exposure to low returns over an extended transfer period	This proposal shall help depositors and members (issuers) of schemes to access funds faster during exit from schemes or transfer of money from one fund to another and thus encourage the schemes to save and invest more in guaranteed funds.
	The amendment proposes to activate the benefits and other accrued income of members of retirement benefits schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act.	The amendment proposes to activate the benefits and other accrued income of members of retirement benefits schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act.	The amendment is meant to move unclaimed funds from a Retirements Benefits scheme to the Unclaimed Assets Authority

→ Our Services

At Rödl & Partner, we have a qualified and experienced team of financial and legal experts who offer integrated professional services in legal, management and IT consulting, tax consulting as well as tax declaration and BPO service lines.

This is a general guideline tax and legal alert and should not be a substitute for proper advice. For queries and clarification, kindly get in touch with Rödl & Partner

Imprint

Tax Alert Kenya | Issue June 2019

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