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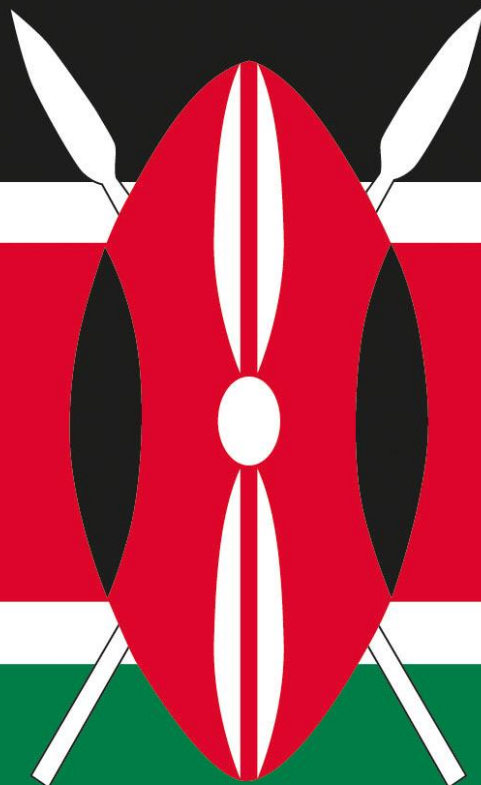
NEWSFLASH KENYA

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FINANCE ACT 2018

Latest news on law, tax and business in Kenya

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→ Background

The Kenyan Finance Act, 2018 was assented on 21 September 2018 after an acrimonious passing of Finance Bill, 2018 a day earlier by the National Assembly.

The Act essentially legitimizes all tax proposals and other related legislative amendments that support the implementation of the National Budget.

In this publication, we have summarized the changes made to the Income Tax Act, VAT Act 2015, Excise Duty Act 2015, Tax Procedures Act 2015 and other Miscellaneous changes to other related statutes.

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→ Income tax

Scope of dividend payments and winnings expanded

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 bring to tax some of the profit repatriation mechanisms applied on intragroup transactions. Dividends will also include any additional assessments arising from adjustments to related party transactions. Since the new definition does not exclude local related party transactions, it may implore local groups of companies to embrace arm's length pricing of any intercompany transactions. Winnings on gambling has also been expanded to cover winnings of all kinds and not strictly to winnings payable to punters by bookmakers. This expands the application of withholding tax on winnings.

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

Compensating tax has been replaced by a 30 % tax on dividends distributed out of 'untaxed income'.

This is a measure towards simplifying calculation of tax.

It will be important for regulations to be issued, or a definition presented, for 'untaxed income'.

→ Income Tax

Reintroduction of Presumptive tax

EFFECTIVE DATE: 1ST JANUARY 2019

Presumptive tax has been returned at a rate of 15 % of business permit or trade license fee charged 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 growing informal sector and expanding the tax base.

→ Income Tax

Reduced cost of production

EFFECTIVE DATE: 1ST JANUARY 2019

The tax deductible cost of electricity has been 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 lower production costs.

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 per cent of gross amount payable
Insurance premium order other than premium for insurance of aircraft	5 per cent of gross amount payable

→ Income Tax

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 held for revenue generation.

→ Income Tax

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. This incentive will help the Government collaborate with the private sector in its development agenda (Big 4 plan).

→ Income Tax

Withholding Tax updates

EFFECTIVE DATE: 1ST JULY 2018

→ Value Added Tax

Exempted items

EFFECTIVE DATE: 1ST JULY 2018

- Cereals of HS code 1001 (wheat and meslin) and 1003 (barley) projects under special operating framework arrangements with the Government
- Plants and machinery of HS code 84 and 85 used for the manufacture of goods - Hearing aids, excluding parts and accessories of tariff No.9021.40.00.
- Materials and equipment for construction of grain storage facilities upon recommendation by the CS responsible for Agriculture - Subject to certain conditions, one personal motor vehicle, excluding buses and minibuses of seating capacity of more than 8 seats, imported by a returning public officer from a foreign Kenyan mission posting and another motor vehicle by his spouse not already exempted by the VAT Act
- 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) → Value Added Tax
- 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

Taxation of petroleum products

EFFECTIVE DATE: 21ST SEPTEMBER 2018

VAT will now apply on the products in the next table at a rate of 8%. It should be noted that the taxable value of these petroleum products will exclude excise duty, fees and other charges.

→ Value Added Tax

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
- Maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10 % in weight.

HS Code	Description
2709.00.00	Petroleum oils and oil obtained from bitumen, 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
2710.19.39	Other gas oils
2711.21.00	Natural gas in gaseous state
2711.29.00	Other natural gas in gaseous state

- 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)
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→ Value Added Tax

Standard-rated items

- Garments and leather footwear manufactured in an EPZ at the point of importation

→ Value Added Tax

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

- 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
- Hearing aids, excluding parts and accessories of tariff No.9021.40.00.
- Subject to certain conditions, one personal motor vehicle, excluding buses and minibuses of seating capacity of more than 8 seats, imported by a returning public officer from a foreign Kenyan mission posting and another motor vehicle by his spouse not already exempted by the VAT Act

→ Excise Duty Change

EFFECTIVE DATE: 1ST JULY 2018

Item	Old rate	New rate
Telephone and internet	0 %	15 % of excisable value
Fees charged for money transfer services by banks, agencies & other financial service providers	10 %	20 %
Other fees charged by financial institutions	0 %	20 %
Private passenger motor vehicle of over 2,500 cc for diesel & 3,000cc for petrol powered vehicles	20 %	30 %
Specified sugar confectionery & chocolates	Nil	Kshs 20 per kg
Illuminating kerosene	KShs 7,205 per 1,000 litres @20deg C	KShs 10,305 per 10,001 @20degC

→ Excise Duty Change

Exempted items

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- Subject to certain conditions, one personal motor vehicle, excluding buses and minibuses of seating capacity of more than 8 seats, imported by a returning public officer from a foreign Kenyan mission posting and another motor vehicle by his spouse not already exempted by the Excise Duty Act

→ Changes in Tax Procedures

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.

→ Changes in Tax Procedures

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	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.
	Sections 29A, 44A, 55A(2), 59B have been amended to reduce the rate of tax payable by Betting and Lotteries Companies under the Act from 35 % to 15 %	This move is meant to attract more investors in the Betting and Lotteries Industry	This will attract more investors to the industry, encourage existing industry player to grow and hopefully attract more revenues for the government.
	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 5 % and a late payment interest of 1 % 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	Section 63 of the Finance Act has included 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.
	Stamp duty for policies of life insurance and policies of insurance against accident is payable monthly as an aggregate for all policies issued within that month.	This will make the stamp duty payment process easier and more practical for insurers.	This will ease the administrative burden on insurers and make service delivery more efficient.
Central Bank Act CAP. 491	The amendment to the Act makes provision for Mortgage Refinance Companies, which are meant to provide affordable financing to primary mortgage lenders for housing finance. The Mortgage Refinance Companies will be regulated in much the same way as banks.	This will help pave the way for the incorporation of the Kenya Mortgage Refinancing Company (KMRC).	The KMRC will play a big role in supporting the achievement of the housing pillar of the Big Four agenda. It will lend money to primary lenders freeing them up to lend further. Though the KMRC is yet to be incorporated it already has a pot of KES 18.2 billion collected from the World Bank and various local commercial banks.

Banking Act, CAP. 488	Banks to collect information on next of kin and keep list updated annually. Fine of KES 1,000,000 for failure to comply.	These are enhanced KYC requirements intended to help detection and investigation of corruption and economic crimes.	Though potentially an infraction of citizens' constitutional right to privacy it will go a long way in assisting the fight against corruption and economic crimes
	Central Bank empowered to make regulations setting conditions for deposits and withdrawals in banks and financial institutions.	The regulations will contain further measures intended to help curb corruption, money laundering and other economic crimes	Though the guidelines have not yet been published it is probable that they will codify or be in the same vein as the guidelines already issued by the Central Bank on large cash transactions.
	Section 33B of the Act is amended by providing that banks shall set the maximum interest rate on facilities at no more than 4 % above the central bank rate.	Banks will be allowed to offer credit at different rates provided the rates do not go beyond 4 % of the Central Bank rate.	This will allow banks to offer loans to different customers at different rates based on credit scores of the customers.
The Retirement Benefits Act No. 2 of 1997	The Act has amended the RBA Act to penalize non remittance of contributions by administrators of pension schemes. The amendments also seek to penalize fund managers who fail to submit reports to RBA. Employers who fail to contribute to scheme will also be penalized.	The amended is meant to ensure compliance and this will in turn ensure contributions by employees to a pension scheme are protected.	The amended is welcomed as it will guarantee a pension to hard working employees who have struggled to contribute/save towards their retirement.

The Accountants Act No. 8 of 2008	The Act has been amended to broaden the definitions provided under the Act. Penalties for breach of the Act have been enhanced and now range between Kshs. 500,000 – Kshs. 2,000,000		Enhanced compliance is meant to reduce instances where parties are induced by inaccurate accounting reports. Compliance will also improve standardization in the industry.
Employment Act, No. 11 of 2007	The Finance Act has amended the Act by introducing a new statutory deduction / contribution to be remitted to the National Housing Development Fund. Employers and Employees will each contribute 1.5% of the employee's gross emoluments, subject to a maximum of Kshs. 5,000	The National Housing Development Fund is a new scheme by the Government to provide affordable housing which part of the Government's Big Four agenda.	This will reduce an employee's earning. The scheme is yet to be set up and we foresee implementation of this provision being challenged.
The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)	The Finance Act has amended 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 welcome 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.

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