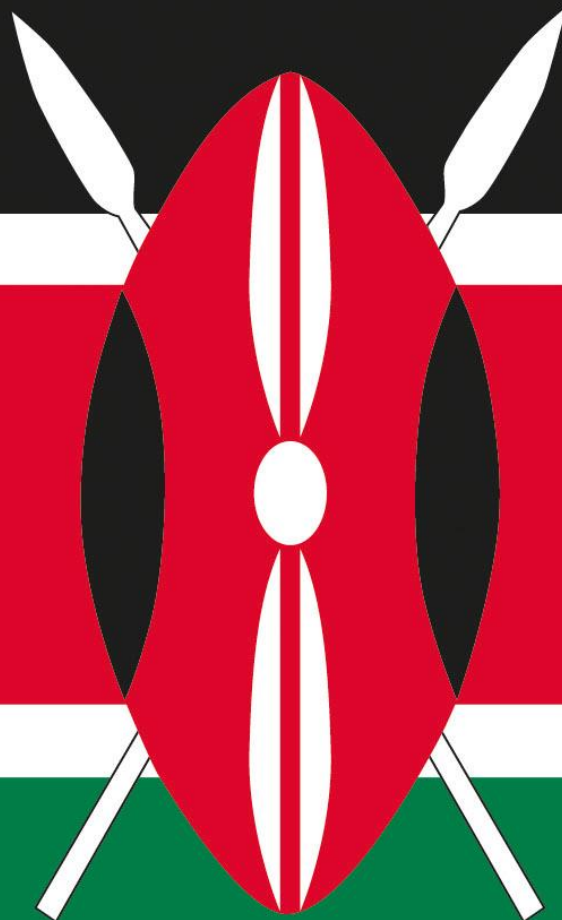


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Read in this issue:

- Preview of Finance Act 2019
- Income Tax change
- Value Added Tax changes
- Excise duty changes
- Other Tax Procedures changes
- Miscellaneous changes

→ Preview of Finance Act 2019

The Kenyan Finance Act 2019 ('the Act') was assented to on 7th November 2019 via Gazette Notice no. 23 of 2019. The Act has amended the law on various taxes and duties and other related laws. Most notably, the Act has culminated in the repeal of the contentious Law on interest rate capping.

A number of new tax proposals under the Finance Bill 2019 (especially on withholding tax expansion) have been left out in the Act.

We have in this edition outlined the various Taxation and Miscellaneous Legal changes under the Act.

→ Income Tax changes

NETTING THE DIGITAL MARKETS/ EFFECTIVE DATE: 7 NOVEMBER 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 platform that enables, by electronic means, direct interaction between buyers and sellers of goods and services.

The Cabinet Secretary has been empowered to publish regulations for taxing the digital economy. This reaffirms Kenya's commitment towards considering the recommendations under Action 1 of the BEPS Action Plan by the OECD.

DIVIDEND PAYMENTS FROM EXEMPT INCOME/ EFFECTIVE DATE: 7 NOVEMBER 2019

The Finance Act 2019 has clarified that dividends paid out of exempt income shall not be taxed at 30 per cent 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 KRA on the same matter.

REINTRODUCTION OF TURNOVER TAX/ EFFECTIVE DATE: 1 JANUARY 2020

The Act has re-introduced turnover tax at a rate of 3 per cent of gross monthly receipts of a business whose annual turnover does not exceed KShs five million. Turnover tax was abolished in Finance Act 2018 and replaced by a presumptive tax of 15 per cent of the single business permit fee.

The two taxes are set to now complement each other. Turnover tax will now be a monthly tax obligation.

This move will expand the tax base of SMEs and the informal sector if they elect to comply with this simple tax system.

EXTENDING REITS INVESTOR OPTIONS/ EFFECTIVE DATE: 7 NOVEMBER 2019

The Act has exempted income from an investee company of a Real Estate Investment Trust (REIT). This will validate investment structures set up REIT promoters and encourage consolidation of real estate companies that are currently experiencing financial distress.

TACKLING UNEMPLOYMENT AND PROMOTING THE HOUSING AGENDA/ EFFECTIVE DATE: 1 JANUARY 2020

- Exemption of income earned by individuals under the "Ajira Digital" program (Will apply to Ajira registered members who pay KShs 10,000 per year.)
- Thin capitalization interest restriction rules will not apply to a company implementing a project under an affordable housing scheme (upon recommendation by the Cabinet Secretary responsible for housing).
- Exemption of income of the National Housing Development Fund.
- Exemption of the amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.
- The calculation of affordable housing relief has been reduced to 15 per cent of employee's contribution from the earlier gross emoluments. This eliminates the possibility of gaining a relief that exceeds a person's contribution.

ENVIRONMENT CONSERVATION MEASURES/ EFFECTIVE DATE: 1 JANUARY 2020

- Exemption of 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: Provided that they mature within three years.
- Corporation tax of 15 per cent will apply to plastic recycling plant owners for up to five years from commencement of operations. This will encourage investments in the plastic recycling sector to complement the Government's plastics ban.

PROMOTING M&A'S - CGT EXEMPTION/ EFFECTIVE DATE: 7 NOVEMBER 2019

The Act has exempted CGT on transfers of property resulting from incorporation, re-capitalization, 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 save the on the transaction costs that sometimes delay and discourage mergers.

WITTHOLDING TAX CHANGES/ EFFECTIVE DATE: 7 NOVEMBER 2019

Nature of payment	Current rate (%)	Proposed rate (%)
Demurrage charges paid to non-resident shipping lines	20%	2.5%
Reinsurance premiums to non-residents except in respect to aircraft	0%	5% of gross amount payable
Payments by a permanent establishment (PE) to its head office in instances where a Double Tax Agreement (DTA) permits	0%	DTA rate

TAX PROCEDURES CHANGES/ EFFECTIVE DATE: 7 NOVEMBER 2019

A three year tax amnesty has been declared for companies that list on the Growth Enterprise Market Segment (GEMS) of the Nairobi Securities Exchange (NSE). The amnesty will cover any year of income prior to the date of the listing upon:

- 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 five 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 sector as a source of financing and growth capital.

→ Value Added Tax changes

REINTRODUCTION OF REVERSE CHARGE BY UNREGISTERED PERSONS/ EFFECTIVE DATE: 7 NOVEMBER 2019

The definition of 'supply of imported services' has been 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 change will enable most governmental and public benefit organizations (PBOs) to collect this tax especially when dealing with foreign consultants in donor funded projects.

TAX ON ONLINE BUSINESSES/ EFFECTIVE DATE: 7 NOVEMBER 2019

Supplies made in digital economy transactions will be subject to VAT if made within a 'digital market place'.

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. The Cabinet Secretary has been tasked with publishing regulations on this tax.

WITHHOLDING TAX RATE DOWN!/ EFFECTIVE DATE: 7 NOVEMBER 2019

The rate of withholding VAT has been revised downwards to two per cent from six per cent. 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: 7 NOVEMBER 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: 7 NOVEMBER 2019

Item	Old rate	New rate
The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per cent in weight.	0%	Exempt
Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.	16%	Exempt
Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.	16%	Exempt
Propane gas	16%	0%
Agricultural pest control products	Exempt	0%
Locally manufactured motherboards	16%	Exempt
Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for ICT	16%	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant.	Exempted if for manufacturing, otherwise 16%	Exempt

→ Excise duty changes

EXCISE DUTY ON BETTING TRANSACTIONS/ EFFECTIVE DATE: 7 NOVEMBER 2019

This will apply at a rate of 20 per cent of the amount wagered or staked. The time of supply for a betting transaction is the time a person wagers or stakes money on a platform or other medium provided by a bookmaker.

INFLATIONARY ADJUSTMENT DATE/ EFFECTIVE DATE: 7 NOVEMBER 2019

The date of applying the inflationary adjustment factor has been pushed from the month of July to October.

This is consistent with a recent court ruling which outlawed the taking of effect of changes in Law prior assent of a Finance Bill.

GENERAL PENALTY/ EFFECTIVE DATE: 7 NOVEMBER 2019

All offences which are not subject to specific penalties shall be subject to conviction or to a fine not exceeding KShs two 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 (and lately gambling sector).

CHANGES IN DUTY RATES
EFFECTIVE DATE: 7 NOVEMBER 2019

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

- **Penalty for failure to deduct or withhold tax:** It has been harmonized under the Tax Procedures Act 2015 (TPA) with other tax obligations at five per cent.
- **Departure Prohibition Order:** This will also apply to tax representatives of defaulting taxpayers who intend to leave the country.
- **Timeline for issuance of objection decisions:** It has been extended to commence after receipt of additional information requested by the Commissioner.
- **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 telco operators.

→ Miscellaneous changes

Act	Amendment	Impact	Our Comments
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 amendments also require that the terms of agreements made before the repeal of the section relating to interest rates and the term of the contract shall continue to remain in force. The interest rate may however be reviewed downwards.	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.
Stamp Duty Act	The exclusion from stamp duty of the transfer of a house constructed under an affordable housing scheme from the developer to the National Housing Corporation	This amendment has been made in preparation for the affordable housing scheme under the Big Four Agenda and will remove potentially costly stamp duty for these transfers.	The government is taking active legislative steps to realise the affordable housing pillar in the Big Four Agenda. The cost of the stamp duty would have been passed on to the purchaser and defeating the affordability agenda of the scheme.
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	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.
Retirement Benefits Act	<p>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.</p> <p>The amendment seeks to have deemed and considered as unclaimed assets, the assets and the benefits and other accrued income of members of retirement benefits schemes who cannot be traced.</p>	<p>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.</p> <p>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.</p>	<p>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.</p> <p>The amendment is meant to move unclaimed funds from a Retirement Benefits scheme to the Unclaimed Assets Authority.</p>
Standards Act	With the amendment consolidators of air and sea cargo will be vetted and registered by the Kenya Bureau of Standards and in consultation with the Kenya Revenue Authority.	The registration of cargo consolidators will go some way to ensuring the adherence of their customers to the tax laws and the standards prescribed for the goods they are importing.	Cargo consolidators handle a large part of the importation needs of small and medium enterprises. This amendment is a recognition of the part they play in the economy and to gain their compliance in respect of paying importation duties and taxes and ensuring that goods are upto standard.

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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

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