# Introduction

Cabinet Secretary Henry Rotich has tabled a Kshs 2.26 trillion budget to Parliament this year with considerable amounts of money allocated to various projects and ministries. The government intends to fund this budget mainly through net fiscal revenue collections (taxes) with the difference being financed through debt. In line with the foregoing, There is however a budget deficit of Kshs 603.2 billion. The Government intends to finance this deficit through domestic and external borrowing. The overall gap will be financed by net domestic borrowing of KShs 225.3 billion and KShs 462.3 billion net external borrowing and other domestic financing of Kshs 4.0 billion.

As in the previous year's budget the government has in this year's budget largely focused on infrastructure development with an allocation of Kshs.169.5 billion to various infrastructural projects. Additionally, the government has indicated its commitment to a number of infrastructural projects including the construction of the East Africa Road Network to boost regional trade. Whether the government will achieve its target in revamping the infrastructure network in the country is pegged on prudent expenditure of this allocated amount to priority projects.

On the tax measures, this year's budget focused on items subject to Value Added Tax ('VAT') exemptions, Customs Duty exemptions and income tax amendments. Additionally, there were several miscalleneous amendments made to various sectors of the economy, most notably the financial sector.

Budget 2016 expanded the number of items exempted from VAT and customs duty. This is however contrary to the spirit of VAT Act 2013 that was meant to limit the number of VAT exempt items. Although this is the case, the VAT exemptions proposed in the 2016 budget seem to be tailored towards promoting the growth and development of various local industries.

Overall the 2016 Budget was presented as being geared towards improving the livelihood of low income earners. For instance, the PAYE changes in the budget provide some relief to especially the low income earners through exemptions of certain incomes such as overtime, bonuses and airtime paid to individuals on the lowest tax bracket.

# Tax Measures

# Withholding Tax

## Withholding Tax on Rent Paid to Resident Persons

Enabling provisions for withholding Tax (WHT) on rental income payable to resident persons introduced

### The measure

The Finance Act 2015 introduced withholding tax at the rate of 12% upon payment of rent, premium or similar consideration for the use or occupation of immovable property to a resident person. However, there were no enabling provisions under Section 35 that would obligate a person to deduct such tax.

The Finance Bill 2016 therefore proposes to amend the Income Tax Act to include the provision to deduct tax on rental payments to resident persons under Section 35. However, only agents appointed by the Commissioner in writing will have the obligation to withhold such taxes.

The Bill also proposes to reduce the withholding tax rate from 12% to 10% in order to avoid situations that would lead to refund cases arising from residential rental income tax, whose tax rate is 10%.

### Who will be affected

Landlords, letting agents

### When

Introduction of enabling provisions to apply w.e.f 9 June 2016

Reduction of the WHT rate from 12% to 10% to apply w.e.f 1 January 2017

**Our view**

This is an effort to widen the tax net and there is a likelihood that the property managers and other large tenants will be appointed agents. This measure is expected to enhance compliance as regards the taxation of rental income. As with other agency taxes, it will result in additional administrative burden and risk for the appointed agents.

## Withholding Tax Penalties

Repeal of withholding tax penalties stipulated under the withholding tax rules.

### The measure

The Bill proposes to remove withholding tax penalties stipulated under the Income Tax (Withholding Tax) Rules, 2001. The rules stipulate a penalty of 10% of the tax involved subject to a maximum of KES 1 million.

### Who will be affected

All persons making payments liable to withholding tax.

### When

9 June 2016.

**Our view**

This amendment could be interpreted on one hand as a clarification of the penalty that should apply for failure to withhold tax on eligible payments and on the other hand as an attempt to make it more punitive on withholding tax offenders.

The Income Tax Act under Section 72D stipulates a penalty of 20% for late payment of tax. This in addition to the penalty under the withholding tax rules provided room for varied interpretations on what penalty should apply in case of failure to deduct withholding tax. The amendment could therefore be viewed as an attempt to harmonise the penalties and therefore avoid room for application of different penalties.

It is also important to note that the KRA has in most instances in the recent past been applying the 10% penalty where a taxpayer fails to comply with the withholding tax obligation. Notable is that the penalty, where the withholding tax rules are applied, is always capped at KShs 1 million, hence providing some relief to withholding tax offenders in the process. However, with the proposed amendment in the Finance Bill 2016, it could be interpreted that the government wants to make it more punitive for withholding tax offenders as the 20% default penalty for late payment of tax as stipulated under Section 72D would apply henceforth. In addition, no capping of the penalty is provided under Section 72D.

## Tea Levies

Removal of tea levies.

### The measure

The Cabinet Secretary for Agriculture, Fisheries and Livestock, through Legal Notice 104 of 2016 has revoked the Tea (Ad Valorem Levy) Regulations, 2012. The Regulations imposed an ad valorem levy of 1% on the customs value of all tea exports and imports.

### Who will be affected

Tea farmers and traders.

### When

9 June 2016.

**Our view**

The removal of the levy should make Kenya's tea competitive on the global market by pushing down its prices. It will also act as a boost to local tea farmers as they will now be at par with their counterparts from other East African countries using the Mombasa auction. This is based on the fact that the Levy was not applicable to tea being traded at the Mombasa auction from other EAC states.

## Sugar Cane Development Levy

Removal of sugar development levies.

### The measure

The Cabinet Secretary for Agriculture, Fisheries and Livestock, through Legal Notice 103 of 2016 has revoked the The Sugar (Imposition of Levy) Order, 2002.

Whilst the intention of this amendment is understood, it appears to be erroneous in view of the fact that the The Sugar (Imposition of Levy) Order, 2002 was already revoked in 2006 by the then Minister for Agriculture, Kipruto Arap Kirwa. The Sugar (Imposition of Levy) Order, 2002 was revoked by the Sugar (Sugar Cane Development Levy) Order, 2006 that came into operation on 1 January 2007.

The Sugar (Sugar Cane Development Levy) Order, 2006 further stipulated a Sugar cane Development Levy (SDL) at 7% of the gross amount payable on the sugar cane that is delivered to a miller.

SDL is a consumer based levy that is charged on the ex-factory price of sugar at the mills and on the Cost Insurance & Freight (CIF) value of sugar imported into the country.

It is therefore our considered view that the Cabinet Secretary's intention was to revoke the Sugar (Sugar Cane Development Levy) Order, 2006 and consequently remove the 7% sugar cane development levy..

### Who will be affected

Consumers, sugar cane growers, out growers and out grower institutions.

### When

9 June 2016.

**Our view**

The removal of the sugar cane development levy should come as a boost to consumers by pushing down sugar prices.

The move by the Cabinet Secretary has however been widely critisicised as a death knell for the sugar industry. The sugar development levy was the only source of loans for cane development. It also funded the building of roads and bridges in the sugar belt and financed subsidised fertiliser. In recent times, the government has also resorted to the levy to raise money to bail out the struggling sugar millers. However, with its removal, it is understood that the National Treasury will now fund sugar research directly from the exchequer. Critics cite that nearly all agricultural research institutions, factories and farmers that depend on money from the National Treasury suffer chronic underfunding.

## Retirement Benefits Act

Amendments to strengthen retirement benefit institutions.

### The measure

The Finance Bill has proposed the following amendments have been proposed to the Retirement Benefits Authority Act, 1997:

- Removal of annual licensing for institutions licensed by the Retirement Benefits Authority (RBA). In its place, Non-renewable perpetual licences which RBA can withdraw, if necessary, will now apply. in addition, annual fees to be paid by licensees will be prescribed by RBA from time to time.
- Retirement benefit institutions DUHnow required to submit to RBA audited financial statements, a list of the directors and top management, any changes in clientele and any further information as required by RBA by 30th September of every year.
- Retirement benefit institutions DUHnow required to communicate any changes in shareholding, directorship or top management to RBA within thirty days of the change.

In addition to the Finance Bill changes, the National Treasury Cabinet Secretary has also made amendments to the Retirment Benefits Regulations through Legal Notices 99 to 101 and LN 107. Below is a summary of the amendments:

<u>Legal Notice 99 – The Retirement Benefits (Individual Retirement Benefits Schemes) Regulations, 2000</u>

- Introduction of a paragraph in Regulation 9 that protects Trustees from victimization, unfair removal from office or discrimination; and
- Regulation 20 is amended to the effect that scheme funds should now vest to a member immediately and not within 5 years as initially stipulated.

<u>Legal Notice 100 – The Retirement Benefits (Minimum Funding Level and Winding up of Schemes) Regulations, 2000</u>

Regulation 8A is deleted and replaced with the following regulation:

The liquidator shall be required, in the preparation of the preliminary accounts, to provide for the distribution of surpluses identified which shall be on a 50-50 basis between the members and the sponsor.

**Our view**

This is a move to have checks and balances on the management of Retirement Benefit institutions by the managers, custodians and administrators of the funds.

Retirement benefit institutions will need to have in place audited accounts by 30 September.

Legal Notice 101 – Retirement Benefits (Occupational Retirement Benefits Schemes) Regulations, 2000

- Introduction of a provision in Regulation 8 that protects Trustees from victimization, unfair removal from office or discrimination;
- Introduction of a paragraph in Regulation 14 that allows a member to make additional voluntary contributions in respect of funding of a medical fund to be accessed at retirement.
- Regulation 19 is amended to allow a member to transfer a portion of his/her benefits to a medical-cover provider where he/she has been unable to build a post-retirement medical fund from additional contributions.
- Regulation 20 is also amended to the effect that benefits will now fully vest in a member immediately on commemncement of pensionable service and not within 1 year of pensionable service as earlier provided.

Legal Notice 107 – Retirement Benefits (Forms and Fees) Regulations, 2000

- Table G of the Regulations has been replaced by a new table that stipulates the maximum percentage of aggregate market value of total assets of scheme or pooled funds that can be invested by a scheme. Worth noting from the table is that the maximum percentage that can be invested in non-listed debt securities has been reduced from 30% to 10%.

### Who will be affected

Retirement benefit institutions, contributors/members.

### When

Finance Bill changes effective 1 January 2017
Changes introduced by Legal Notices 99 through 101 and LN 107 effective 9 June 2016

## Banking Act

Credit information sharing.

### The measure

The Bill proposes to amend the Banking Act to allow Saccos and utility companies to participate more effectively in the credit information sharing framework.

### Who will be affected

Borrowers, Saccos, public utility companies and any other institutions mandated to share credit information under any written law.

### When

1 January 2017.

**Our view**

Although this is a well intended move to ensure a complete credit profile of borrowers and ultimately reduce the risk of bad debts, there is a high risk of inaccurate data finding its way into the system given the history of disputes with some utility companies on incorrect bills.

## Banking Act

Capitalisation proposals and non-compliance penalties.

### The measure

- The Bill proposes to reintroduce the banking sector capitalization proposals that were proposed in the Finance Bill 2015. Under the proposals, the minimum core capital requirements for banks will be raised progressively from KES 2 billion by December 2017 to KES 5 billion by December 2019.
- The Bill also proposes to raise the cap on penalties for violating the Banking Act. In the case of institutions, the penalty will be raised from KES 5 million to KES 20 million up from KES 5 million. The penalty in respect of natural persons will be raised from KES 200,000 to KES 1 million. Additional penalties of KES 100,000 per day will be charged each day the violation continues.

### Who will be affected

Banking institutions, credit reference bureaus and individuals.

### When

1 January 2017.

**Our view**

The measures are aimed at enhancing compliance with the Banking Act and prudential guidelines within the Banking Sector. While positive, it is recognised that these measures are not, by themselves, sufficient to guarantee stability in the sector.

## Capital Markets Act

Regulation of online foreign exchange trading.

### The measure

The Bill seeks to amend the Capital Markets Act to facilitate the issuance of regulations to govern online foreign exchange trading which would strengthen governance of players and provide protection to consumers.

Rules and regulations will be formulated by the National Treasury Cabinet Secretary to regulate the operations and supervision of online forex trading activities and online forex brokers. In addition, online forex brokers will be required to obtain licences from the Capital Markets Authority in order to undertake online forex trade.

### Who will be affected

Online forex brokers.

### When

1 January 2017.

**Our view**

It is our view that this move is aimed at protecting unsuspecting Kenyans from unscrupulous forex traders.

## Public Finance Management

Second term for members of the Accounting Standards Board.

### The measure

The Bill seeks to amend the Public Finance Management Act, 2012, to provide for the possibility of a second term of three years for members of the Accounting Standards Board. Currently, members are not allowed to serve for more than three years.

### Who will be affected

Members of the Accounting Standards Board.

### When

1 January 2017.

**Our view**

This move is aimed at protecting the institutional memory and ensuring continuity in the affairs and business of the Board.

## Tax Appeals Tribunal

Amendment to the Tax Appeals Tribunal Act, 2013.

### The measure

The Bill seeks to amend the Tax Appeals Tribunal Act, 2013, to provide for the qualifications of the Secretary to the Tribunal and the appointment of a clerk to the Tribunal. The Bill further seeks to amend the Act to provide for the procedure to be applied when extending the time within which a taxpayer may file a Notice of Appeal and the Commissioner when filing the Statement of Facts.

The Commissioner will be required to serve the appellant with a copy of statement of facts and other relevant documents necessary for review by the tribunal within two working days from the date of submission to the Tribunal.

The Commissioner will also be allowed to apply to the Tribunal for an extension of the time required to submit the statement of facts and other relevant documents to the Tribunal.

The Appellant will also be allowed to be represented by an advocate if he so wishes.

### Who will be affected

Taxpayers, KRA and tax agents/ advocates.

### When

1 January 2017.

**Our view**

The above measures are aimed at streamlining the operations of the Tax Appeals Tribunal and also ensuring equity by specifying timelines for the KRA as well as the option to request the Tribunal for extension of timelines.

## Tax Appeals Tribunal

Amendment to the Tax Appeals Tribunal (Procedure) Rules, 2015.

### The measure

The Legal Notice No. 105 seeks to amend the Tax Appeals Tribunal (Procedure) Rules 2015 by amending the definition of the following terms:

- Clerk;
- Commissioner's representative.

This notice further seeks to amend the Tax Appeals Tribunal (Procedure) Rules 2015 by giving clarity that the Commissioner upon being served with an appeal shall file 9 copies or such number of copies as advised by the Tribunal of statement of facts, a statement giving reasons for the tax decision and all documents which are necessary to enable the Tribunal to review the decision.

The notice also seeks to give powers to the Tribunal to issue a warrant of arrest to a properly served witness who fails to appear before the Tribunal when summoned.
The notice also seeks to increase the number of days from 7 to 14, from the date of a decision made in the Tribunal, in which the Secretary shall submit a copy of that decision to the Kenya Law Reports for publication.

### Who will be affected

Taxpayers, KRA and tax agents/ advocates.

### When

9 June 2016.

**Our view**

The above measures are aimed at streamlining the operations of the Tax Appeals Tribunal and powers to issue warrants for arrest of properly served witnesses who fail to appear before the Tribunal.

## Kenya Deposit Insurance

Members of the Kenya Deposit Insurance Corporation.

### The measure

The Bill seeks to amend the Kenya Deposit Insurance Act, 2012,

- To include the Chief Executive Officer of the Kenya Bankers Association as a member of the board of the Kenya Deposit Insurance Corporation (KDIC); and
- To restrict the National Treasury CS' appointees to the KDIC board to persons who are not public officers nor members of any institution licensed by the Central Bank of Kenya.

### Who will be affected

Kenya Deposit Insurance Corporation.

### When

1 January 2017.

**Our view**
This move is aimed at avoiding conflicts of interest among members of the Board of Directors of KDIC and, thereby, enhancing good governance in the Corporation.

## Alcoholic Drinks Control Act 2010

Repeal of Section 68A.

### The measure

The Bill proposes to repeal Section 68A of the Alcoholic Drinks Control Act 2010 which was introduced through an amendment Act that was assented on 14 May 2015 but took effect on 4 June 2015.

Section 68A empowered the National Treasury Secretary to implement tax policies and grant remission of duty to locally manufactured alcoholic drinks so as to promote compliance of such drinks to the law. Further, the section provided for remission of excise duty at 90% on beer made from sorghum, millet or cassava grown in Kenya subject to certain conditions being fulfilled.

### Who will be affected

Manufacturers and sellers of alcoholic drinks.

### When

9 June 2016.

**Our view**
This move is aimed at aligning the Alcoholic Drinks Control Act with the recently enacted Excise Duty Act 2015.

# Corporate Tax

## Deemed Interest defined

The Finance Bill 2016 proposes to amend section 2 of the Income Tax Act by inserting the definition of deemed interest and deleting the same definition from section 16 of the Income Tax Act.

### The measure

Deemed interest is now defined under Section 2 to mean 'an amount of interest equal to the average ninety-one day treasury bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loan is provided free of interest.'

### Who will be affected

All taxpayers receiving interest-free loans from non-resident related parties.

### When

Effective from 9 June 2016.

**Our view**

The tax measure aims to ensure a uniform interpretation of the term "deemed interest" by including it under definitions. The imposition of tax on deemed interest remains a punitive measure for entities which have access to group financing and makes it critical to review all intra-group financing arrangements, to ensure there is no exposure. Given the wide definition of loans, it should be noted that this provision affects many forms of indebtedness.

## Residential rental income tax

The Finance Bill 2016 seeks to amend the provisions of the Income Tax Act by setting the taxable threshold for application of residential rental income tax.

### The measure

Under section 6A, rental income tax will now be payable by any resident person from income which is derived from Kenya for the use or occupation of residential property, and which is in excess of one hundred and forty four thousand shillings (KES 144,000) but does not exceed ten million shillings (KES 10,000,000) during any year of income.

Therefore, Kenyan tax residents earning residential rental income below KES 144,000 per annum (KES 12,000 per month) will not be subject to residential rental income tax.

### Who will be affected

Tax resident property owners within the stipulated threshold who elect to be taxed under the provisions of this section.

### When

9 June 2016.

**Our view**

This measure is aimed at aligning the residential rental income tax to the taxation threshold set under the PAYE regime.

## Residential rental income tax

The Finance 2015 amended the Income Tax Act by introducting a new tax regime for taxation of residential income on a gross basis. However, the regulations for the better execution of this tax measure had not been gazetted.

The Cabinet Secretary for the National Treasury has now gazetted the regulations for this tax through The Income Tax (Residential Income Tax) Regulations, 2016.

### The measure

Landlords owning residential properties and whose annual residential rental income is below KShs 10 million will be taxed at 10% of the gross rental income. This will constitute final tax on this kind of rental income.

The Regulations also provide more clarity on how to account for residential rental tax and the procedure to be followed in electing to be taxed under normal provisions of the income tax law.

### Who will be affected

All landlords earning residential rental income of more than Kshs 144,000 but less than Kshs 10 million annually..

### When

1 January 2016.

### Our view

This is a move to operationalise Section 6A (2) of the Income Tax Act. It also gives clarity to the tax regime for residential rental income and to increase the compliance rate for landlords. Even though taxing of gross residential rental income makes this an expensive tax in some cases, the Regulations now give landlords an election to be excluded from residential income tax.
We would however reiterate that the success of this measure will depend on enforcement measures employed by the revenue authority..

## Tax rebate scheme for apprenticeship programs

In a bid to build a resource base of skilled manpower, the Finance Act 2015 amended the Income Tax Act by introducing a tax rebate scheme for employers who will engage and train at least 10 university graduates for a period of 6 to 12 months. However, the mechanism for the rebate was not contained in the Finance Act 2015.

The Cabinet Secretary for the National Treasury has now gazetted the Regulations for this scheme through the Income Tax (Set-off Tax Rebate for Graduate Apprenticeships) Regulations, 2016.

### Who will be affected

University graduates, taxable employers.

### When

1 April 2016.

**Our view**

This is a welcome move that not only operationalises Section 39B (2) but also gives clarity regarding the graduate apprenticeships scheme. The regulations appear practical and are expected to be easy to implement since they will confer siginificant benefits to employers and graduate apprentices. However, the minimum number graduates (10) for an employer to be eligible for this tax rebate might be too high for many small and medium size employers.

## Instalment Tax

The Finance Bill 2016 proposes to amend the provisions of imposing instalment tax by deleting a part of Section 12(3) which deals with gains or profits of business in relation to stock stemming from a provision that was repealed from the Income Tax Act in 2000.

### The measure

Reference to section 17(A) which was repealed in the year 2000 has now been removed.

### Who will be affected

N/A

### When

Effective from 9 June 2016.

**Our view**
This is a clean-up of the Act since the section 17(A) was repealed in 2000.

## Pay As You Earn (PAYE) Appeals

Prior to the enactment of the Tax Procedures Act, appeals against the Commissioner's decision on PAYE were made to the Local Committee. The Finance Bill proposes to delete the sections of the Income Tax Act stipulating the procedures to be followed by an employer aggrieved by imposition of a penalty.

### The measure

Sections 37(6) and 37(7) have now been deleted. PAYE appeals will now be lodged to the Tax Appeals Tribunal as provided for under the Tax Procedures Act 2015 and The Tax Appeals Tribunal Act 2013.

### Who will be affected

Employers who are aggrieved by the Commissioner's assessment and decisions on PAYE.

### When

9 June 2016. However this has been effective since 19 January 2016 when the Tax Procedures Act came into force..

**Our view**
This is a measure aimed at aligning the provisions of the Income Tax Act to the Tax Procedures Act.

## Official Language and unit of currency

The ITA requires any return and records to be maintained in the official languages of Swahili and English and the Kenya shilling as the unit of currency. The Finance Bills seeks to repeal these provisions.

### The measure

The provisions on official languages and the Kenya Shilling as the unit of currency in the Income Tax Act have been deleted. However, the provisions of the Tax Procedures Act are a replica of the repealed section of the ITA thus no effective change in the law.

### Who will be affected

All taxpayers.

### When

9 June 2016.

**Our view**

This is a measure aimed at aligning the provisions of the Income Tax Act to the Tax Procedures Act.

## Additional tax for failure to furnish returns

The Finance Bill 2016 proposes to repeal section 72 of the Income Tax Act which stipulates the penalties due on failure to submit a self-assessment return or fraud in relation to a return.

### The measure

Section 72 of the Income Tax Act has been deleted. The penalty provisions are contained in the Tax Procudres Act.

### Who will be affected

All taxpayers.

### When

9 June 2016 although in practice this was effective 19 January 2016 when the Tax Procedures Act came into force.

**Our view**

This is a clean up of the Income Tax Act.

## Assessment of leavers and persons in liquidation

Prior to the enactment of the TPA, the commissioner would by notice in writing require a person who in his opinion was at risk of not paying tax by reason of imminent departure from Kenya or being a company, by reason of being about to be liquidated, wound up or cease business, to pay the tax on or before the due date specified in the notice. The TPA has now repealed the ITA to provide that bankruptcy, liquidation or winding up procedures have to have been commenced and the tax payer has to file a return and pay the tax due as per the return.

### The measure

The Finance Bill deletes Section 75(A) as the measures are now covered in the TPA.

### Who will be affected

Tax payers leaving Kenya, winding up or in liquidation.

### When

9 June 2016 though this was practically effective on 19 January 2016 when the Tax Procedures Act came into force.

**Our view**

This measure is a welcome move as it removes the possibility of arbitrary assessments by the Commissioner without justifiable cause. The measures also promotes equity and fair treatment to all taxpayers. Taxpayers affected by this measure will now be accorded the opportunity to assess their tax liability prior to payment.

## Collection of tax from persons leaving or having left Kenya

The Finance Bill 2016 seeks to repeal section 98 of the Income Tax Act which provides for collection of tax from persons leaving or having left Kenya.

### The measure

The Commissioner is now empowered to issue a departure prohibition order to the Director General of the Kenya Citizens and Foreign Nationals Management Services. The Director or any officer authorised by him, would after the issuance of such an order, prevent the named person from departing Kenya including by detention and confiscation of his identity and travel documents.

### Who will be affected

Tax payers leaving Kenya, winding up or in liquidation.

### When

9 June 2016 though this was practically effective on 19 January 2016 when the Tax Procedures Act came into force.

**Our view**

This measure is largely aimed at aligning the provisions of the Income Tax Act to the Tax Procedures Act. It gives the Commissioner far reaching powers to prevent a taxpayer from travelling. Even though this is a well intended move to curb tax evasion by non-Kenyans, the KRA will be required to step up its efforts to maintain accurate records to avoid inconveniencing compliant taxpayers.

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The Finance Bill 2016 seeks to repeal section 98 of the Income Tax Act which provides for collection of tax from persons leaving or having left Kenya.

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The Commissioner is now empowered to issue a departure prohibition order to the Director General of the Kenya Citizens and Foreign Nationals Management Services. The Director or any officer authorised by him, would after the issuance of such an order, prevent the named person from departing Kenya including by detention and confiscation of his identity and travel documents.

### Who will be affected

Tax payers leaving Kenya, winding up or in liquidation.

### When

9 June 2016 though this was practically effective on 19 January 2016 when the Tax Procedures Act came into force.

**Our view**

This measure is largely aimed at aligning the provisions of the Income Tax Act to the Tax Procedures Act. It gives the Commissioner far reaching powers to prevent a taxpayer from travelling. Even though this is a well intended move to curb tax evasion by non-Kenyans, the KRA will be required to step up its efforts to maintain accurate records to avoid inconveniencing compliant taxpayers.

## Repeal of the provisions for refund of tax under the Income Tax Act

The Finance Bill 2016 proposes to repeal the provisions on refund of overpaid tax under the Income Tax Act. The Tax Procedures Act, 2015 currently provides for matters on refund of overpaid tax. The repeal is therefore intended to streamline both laws.

### The measure

Section 105 of the Income Tax Act has been repealed.

### Who will be affected

All taxpayers.

### When

Effective from 9 June 2016.

**Our view**

The tax measure is a clean-up following the enactment of the Tax Procedures Act, 2015.

## Tax exemption on interest income earned from bonds issued by the East African Development Bank

The Finance Bill 2016 proposes to exempt interest earned on bonds issued by the East African Development Bank.

### The measure

Interest income on bonds issued by the East African Development Bank have been included under the First Schedule to the Income Tax Act that specifies income exempt from tax.

### Who will be affected

Investors in bonds issued by the East African Development Bank.

### When

1 July 2016.

**Our view**

This tax measure aims to encourage investment in the East African Development Bank which will assist in raising necessary funds for the East African Community.

## Capital Gains Tax exemption on transfer of assets to wholly owned family companies

The Finance Act 2015, introduced Capital Gains Tax ('CGT') exemption on transfer of assets to immediate family members although the wording of the exemption was unclear. The Finance Bill 2016 provides for clearer wording of the CGT exemption on transfer of assets to immediate family members.

### The measure

The Finance Bill 2016 has amended Para 6(20(h) of the Eighth Schedule to the ITA to provide that the following transfers of assets are not subject to CGT:

- Between spouses;
- Between former spouses in the case of a divorce or a bona fide separation agreement;
- To immediate family; or
- To a company wholly owned by spouses or a spouse and immediate family.

### Who will be affected

Persons wishing to consolidate their family held properties into a company structure.

### When

Effective from 9 June 2016.

**Our view**

The proposed CGT exemption for transfers to family members or family owned enterprises would reinforce the intention of encouraging people to consolidate their family owned properties into a company.

## Repeal of the provisions on transactions requiring a KRA PIN under the Thirteenth Schedule to the Income Tax Act

The Thirteenth Schedule of the Income Tax Act specified the transactions for which a person would be required to posses a Personal Identification Number ('PIN'). These provisions are replicated in the Tax Procedures Act.

### The measure

The Finance Bill proposes to repeal the Thirteenth Schedule of the ITA.

### Who will be affected

All taxpayers.

### When

Effective from 9 June 2016.

**Our view**

This is a clean-up measure following the enactment of the Tax Procedures Act, 2015.

# Pay As You Earn (PAYE)

## Bonuses, Overtime & Retirement Benefits

Under the current provisions of the ITA, all cash emoluments received in respect of employment or services rendered in a year of income are taxable. The Finance Bill proposes to exempt bonuses, overtime and retirement benefits made to low income employees.

### The measure

The First Schedule to the Income Tax Act has been amended to introduce an exemption for employment income paid in form of bonuses, overtime and retirement benefits to employees in whose employment income (before such bonuses/overtime) falls in the lowest tax band.

### Who will be affected

Employees who are in the lowest tax band i.e. earning Kshs. 10,164 (up to 31st December 2015) and 11,180 (w.e.f 1 January 2017).

### When

Effective 1st July 2016.

**Our view**

This is a welcome move for the low income earners as this it lower their tax burden and increase their disposable income. This will cushion such workers from the high cost of living. Employers may need to review the remuneration of such employees to determine their eligibility for this benefit.

## Increase of personal relief and expansion of personal income tax bands

A resident individual with taxable income was entitled to a personal relief of Kshs. 1,162 per month (i.e. Kshs.13, 944 per annum). This is a uniform relief to all resident individual taxpayers irrespective of their marital status. The personal relief has now been increased to Kshs.1,280 per month (i.e. Kshs. 15,360 per annum).

In addition to the above, the personal income tax bands have been expanded by 10%.

### The measure

The Third Schedule to the Income Tax Act has now been amended to increase the resident personal reslief to Kshs 1,280 per month (i.e. Kshs 15,360 per annum).

In addition, the individual tax bands have also been increased by 10% and the new bands are as below:

Rate in each shilling

| | |
|---|---|
| On the first Shs.134,164 | 10% |
| On the next Shs.126,403 | 20% |
| On the next Shs.126,403 | 25% |
| On all income over Shs.513,373 | 30% |

### Who will be affected

All individual taxpayers.

### When

Effective date for the above amendments is 1st January 2017.

**Our view**

The increase in personal relief and expansion of the tax bands will reduce the tax liability for all individual taxpayers. These above tax measures are meant to cushion individuals (especially employees) from the high cost of living.

However, given that the tax bands have remained unchanged for over 10 years, and given the high inflation rates, one would have expected a significant widening/ change in the tax bands to ensure that they reflect the present economic realities.

The effect of the increase in the tax bands and personal relief will probably be felt more by the low income earners who will realise a higher percentage increase in their disposable income as compared to the high income earners.

# Customs Duties

## Import duty rates

Under the current provisions of the ITA, all cash emoluments received in respect of employment or services rendered in a year of income are taxable. The Finance Bill proposes to exempt bonuses, overtime and retirement benefits made to low income employees.

### The measure

The EAC Common External Tariff(EAC CET) has been amended by increasing import duty rates as follows:

- Increase in import duty rate from 0% to 25% on the following items:
  - Bridges and bridge sections;
  - Tower and lattice masts;
  - Screws, bolts & nuts;
  - Prefabricated buildings;
  - Equipment for scaffolding, shuttering, propping or pit propping
  - Various bars and rods of iron or non-alloy steel;
  - Made up fishing nets;
  - Smart cards and sim cards;
  - Oil, petrol and air filters; and
  - Aluminum cans.
- Flat rolled iron and steel products from 0% to 10%;
- Worn articles from USD 0.20/Kg to USD 0.40/kg; and
- Introduction of a specific duty rate of USD 200/MT on a wide range of iron and steel products.

### Who will be affected

Local manufacturers, consumers and importers of the listed products.

### When

1st July 2016.

**Our view**

The local industries within the region have in the past faced stiff completion from cheaper imported substitute products. This has resulted in closure or scaling down of operations by several companies which has subsequently increased the level of unemployment in the region. The EAC Council of Ministers has increased the import duty rate on these products in a bid to cushion these industries currently facing competition from cheap imports and to create employment opportunities.

The EAC intends to gradually phase out the importation of second hand clothing in a bid to promote local cotton and leather industries. The increase in import duty on second hand clothes and shoes is aimed at discouraging the importation of these products.

## Import duty rates

Reduction of import duty rates.

### The measure

Reduction of import duty on energy efficient stoves that use solid fuel from 25% to 10%.

### Who will be affected

Importers and consumers of energy efficient stoves.

### When

1st July 2016.

**Our view**

Stoves and cookers that use gas and electricity attract import duty at the rate of 10%. In an effort to streamline import duty treatment on stoves and cookers as well as encourage the use of energy efficient stoves in the region the import duty on energy efficient stoves that use solid fuel has been reduced from 25% to 10%.

## Duty remission

Duty remission as per Section 140 of the EAC Customs Management Act.

### The measure

Introduction of the following items into the duty remission scheme:

- Inputs for manufacture of matches;
- Nylon yarn;
- Trigger sprays and lotion pumps;
- Inputs for manufacture of solar equipment and deep cycle batteries;
- Bar and bar rods for manufacture of automobile accessories;
- Aluminum plates and sheets for manufacture of cans;
- Motor cycle kits;
- Wheat grain;
- Inputs for agriculture equipment; and
- Raw sugar for refining into industrial sugar and industrial sugar.

### Who will be affected

Gazetted manufacturers, importers and consumers.

### When

1st July 2016.

**Our view**

The EAC Council of ministers has remitted import duty on several inputs used by gazetted manufacturers within the region to reduce the cost of these inputs and hence promote growth of local industries and improve competitiveness of these products in the export market.

## Application of CET

Stay of application of the CET.

### The measure

Kenya has been granted an extension of stay of application of the CET on rice and gas cylinders and granted a stay of application of the CET on the following items:

- Iron and steel structures, screws bolts and nuts at 25% or USD 250/MT whichever is higher instead of 10%;
- Revenue stamps at 25% instead of 0%;
- Made up garments and footwear from EPZ at 0% instead of 25%; and
- Paper and paperboard products at 25% instead of 10%.

### Who will be affected

Manufacturers, importers and consumers.

### When

1st July 2016.

**Our view**

Kenya has sufficient capacity to produce these products and meet the local demand. In a bid to promote production of these products locally, the Council has granted a stay of application of the CET and allowed Kenya to import these products at a rate higher than the CET rate. This is expected to protect local manufactures of these products from competition from cheap imports.

## Additions to Import duty exemption

Import duty exemption under Fifth Schedule of the EAC Customs Management Act.

### The measure

The following items were introduced in the import duty exemption schedule:

- Incinerators for use in hospitals;
- Blood collection tubes;
- Refrigeration equipment for use in hospital and county mortuaries; and
- HVAC air conditioning equipment.

### Who will be affected

Registered hospitals, manufacturers of pharmaceutical products and importers.

### When

1st July 2016.

**Our view**

Most hospital equipment are exempted from import duty under the 5th Schedule of the EAC Customs Management Act. The introduction of incinerators, refrigeration equipment and blood collection tubes is in tandem with duty treatment of most hospital equipment. This is targeted at reducing the cost of healthcare within the region. It remains to be seen whether these benefits will be transferred to the patients.

## Withdrawal from the Fifth Schedule of the EAC Customs Management Act

### The measure
The following items have been removed from the import duty exemption schedule:

- Uniform for hospital staff;
- Spare parts and accessories for solar equipment; and
- Inputs for manufacture of agricultural equipment.

### Who will be affected
Registered hospitals, importers and consumers.

### When
1st July 2016.

**Our view**

The EAC Customs Management Act under paragraph 26 part B of the Fifth Schedule provided for exemption from import duty of specialised equipment for development and generation of solar and wind Energy, including accessories, spare parts and deep cycle batteries which use and/or store solar power. This provision has however been abused by importers of appliances that use solar energy such as televisions and radios which are treated as "accessories that use solar energy". The removal of spare parts and accessories from the exemption schedule is a control measure providing clarity on the exempted items.

Inputs for manufacture of agricultural equipment have been moved from the exemption schedule to the remission scheme therefore only gazette manufacturers of these products will benefit from the reduced duty rate.

# Excise Duties

## Introduction of excise duty on beauty products and kerosene

Excise duty on beauty products and kerosene

### The measure

The Cabinet Secretary has proposed to introduce excise duty on the following products:

- Cosmetics and beauty products at the rate of 10%; and
- Kerosene at KShs. 7,205 per 1,000 litres at 20 degrees centigrade.

### Who will be affected

Local manufacturers, consumers, importers and petroleum marketers.

### When

9 June 2016.

**Our view**

The CS indicated that the proposal to introduce excise duty on cosmetic products is a step towards harmonization of EAC tax regime on excise duty. However, the introduction of the excise duty on this rapidly growing industry may be geared towards contribution to the Government's revenue.

Kenya has lost its petroleum products export market in Rwanda and Uganda as a result of adulteration of diesel and petrol using kerosene. Adulteration of fuel is encouraged by the relatively low price of kerosene. Kerosene has remained free of excise duty for five years following the removal of excise duty on the product in 2011 with an aim to protect low income earners against high kerosene prices. The re-introduction of excise duty on kerosene is to discourage unscrupulous traders from adulterating fuel in the country by bridging the gap between the price of kerosene and diesel. The resultant effect of the increase will be higher commodity prices for the final consumer. Whereas the prices of diesel and petrol have also been increased by KShs 6 per litre, the gap between kerosene and the other fuels has been reduced by an insignificant margin which may discourage but not entirely eliminate the adulteration of fuel.

## Change of excise duty regime on motor vehicles

### The measure

The Cabinet Secretary has proposed to remove the specific rate of duty and re-introduce an ad-valorem rate of 20% on the excise value of the vehicle.

### Who will be affected

Consumers and Importers.

### When

9 June 2016.

**Our view**

The Excise Duty Act 2015 which came into effect on 1st December 2015 changed the import duty rate on motor vehicles from 20% to a specific rate based on the age of the motor vehicle. Accordingly motor vehicles below 3 year old were subject to excise duty at the rate of KShs 150,000 per unit while those above 3 years old attracted excise duty at KShs 200,000 per unit. This was viewed as unequitable and oppressive to importers of used low value cars. The re-introduction of an ad-valorem rate of excise duty on motor vehicles imports will bring fairness into the charging of excise duty on motor vehicles as excise duty will be based on the value of the vehicle. On the other hand, importers of newer vehicles will have to pay more excise duty that they would have under the previous rate.

## Removal of excise duty on ordinary water

### The measure

The Cabinet Secretary has proposed to exclude ordinary water from waters subject to excise duty.

### Who will be affected

Consumers and vendors of tap water.

### When

9 June 2016.

**Our view**

The Excise Duty Act 2015 subjected all waters to excise duty at 5%. However, the Cabinet Secretary had not factored in the wide definition of water in drafting of this legislation. Consequently, both bottled mineral water and tap water would have been subject to excise duty. The intention of the policy makers was to charge excise duty on bottled water which is viewed as out of reach by most people.

In a bid to provide clarity on the matter, the Cabinet Secretary has excluded ordinary water from the ambit of excise duty.

## Excise duty on plastic bags

### The measure

The Cabinet Secretary has proposed to expand the provision of excise duty on "plastic shopping bags" to include plastic bags and sacks of HS Codes 3923.21.00 and 3923.29.00. However, vacuum bags for food products, juices, tea and coffee will be excluded.

### Who will be affected

Consumers, Importers, and local manufacturers.

### When

9 June 2016.

**Our view**

The Excise Duty Act imposed excise duty on plastic shopping bags at KShs 120 per Kg to control environmental degradation caused by improper disposal of low micron plastic bags. It was however difficult to differentiate the shopping bags from other plastic bags. Accordingly the Cabinet Secretary has amended the First Schedule of the Excise Duty Act to impose excise duty on plastic bags and sacks excluding vacuum bags for food products, juices, tea and coffee.

This is expected to discourage the use of plastic bags and reduce environmental pollution. But the measure may have adverse effects on the plastic and polythene industries and may indeed have repercussions on growth, profitability and value of investment in the plastics sector.

## Excise duty exemption on aid funded projects

### The measure

The Finance Bill has proposed the exemption of excise duty on goods acquired for direct and exclusive use in the implementation of official aid funded projects.

### Who will be affected

Suppliers of goods to aid funded projects.

### When

9 June 2016.

**Our view**

Most financing agreements provide for exemption from all taxes on goods acquired for implementation of aid funded projects. This move is in line with other tax legislations that exempt taxes on goods for direct and exclusive use in aid funded projects. The Finance Bill does not indicate the category of goods that will qualify for the exemption but it is expected that the change will be aligned with other tax legislation to include materials, equipment and motor vehicles for use in aid-funded projects.

## Incorporation of Special of Economic Zones(SEZ) into the Excise Duty Act

### The measure

The Cabinet Secretary has amended the definitions of import and export in the Excise Duty Act to incorporate SEZs. Movement of goods into the SEZ from Kenya will now be treated as exports while movement of goods from the SEZ into Kenya will be treated as imports.

### Who will be affected

Local manufacturers, exporters, importers and consumers.

### When

1 July 2016.

**Our view**

This move is aimed at harmonising the Excise Duty Act with the Special Economic Zones Act which provides for exemption of taxes on goods supplied to the zone .The amendment of exports to include movement of goods from Kenya into the special economic zones will mean that such goods will be exempted from excise duty.

# Value Added Tax

## Appointment of Value Added Tax withholding agent

Withholding VAT has been reintroduced via section 42A of the Tax procedure Act (TPA).

### The measure

The Commissioner may appoint a person to withhold six percent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner. Further, the Commissioner may, at any time, revoke the appointment of a tax withholding agent if he deems it appropriate to do so.

Withholding VAT shall not apply to taxable supplies for official aid-funded projects. Being subject to withholding VAT does not relieve the supplier of taxable supplies of the obligation to account for tax as provided for in the TPA and VAT Act.

The CS has amended the effective date for the implementation of withholding VAT by withholding agents appointed under Section 25A of the VAT Act from 19 January 2016 to 9 June 2016 vide Legal Notice 117 of 21 June 2016. In addition, no penalties will be imposed on agents who failed to withhold VAT for the period following the repeal of Section 25A of the VAT Act up to 8 June 2016.

### Who will be affected

Withholding VAT agents.

### When

19 January 2016.

**Our view**

The reintroduction of withholding VAT via the TPA serves to correct the inadvertent deletion of section 25A of the VAT Act by the consequential amendments of the TPA.

This measure now gives the KRA legal authority to appoint withholding VAT agents going forward. Tax payers who had been appointed as withholding VAT agents, together with the newly appointed withholding VAT agents will be required to withhold VAT at 6% and remit the same to the KRA.

The Finance Bill had proposed a commencement date of 19 January, 2016 being the date when the TPA came into force. This would have resulted in retrospective application of the law considering the provision was reintroduced on 9th June 2016. The CS has vide Legal Notice 117 of 21 June, 2016 amended the effective date to 9 June 2016 which in our view is intended to correct what would have otherwise been an unfair application of law whose legality would possibly have been challenged. The Legal Notice also clarifies that no penalties will be imposed on appointed agents who ceased to withhold VAT after the repeal of Section 25A of the VAT Act.

We continue to be of the view that the withholding VAT regime is ill thought out and does not necessarily make inroads into widening the tax net. There are several anamolies in applying withholding VAT that are not catered for in the legislation. The regime will, and in some senses already has, significantly increased the cost of doing business in the country.

## Accommodation and Restaurant Service Charge

Service charge paid in lieu of tips which is less than ten percent of price of the service will not be subjected to VAT.

### The measure

Service charge paid in lieu of tips which is not more than ten percent of price of the service will not be subjected to VAT. The service charge should be governed by a written agreement between the employer and employee.

### Who will be affected

Players in the accommodation and restaurant services industry.

### When

9 June 2016.

**Our view**

The change is part of a raft of measures initiated by the government to boost the tourism sector by cushioning the employees in the restaurant services industry.

## Special Economic Zone Enterprise

Inclusion of Special Economic Zone Enterprise goods in the definition of imports and exports respectively for VAT purposes.

### The measure

Movement of goods in and out of Special economic zone enterprise is now included in the definition of imports and exports respectively for VAT purposes. The special economic zone enterprises will however not be required to be registered for VAT.

### Who will be affected

Special Economic Zones enterprises.

### When

9 June 2016.

**Our view**

This is aimed at aligning the VAT Act to the introduction of special economic zone enterprises as per the Special Economic Zones Act, 2015.

## Hotels

Definition of a hotel.

### The measure

The definition of a hotel has now been introduced in Section 2 of the VAT Act to include Service flats, service apartments, beach cottages, holiday cottages and villas and other premises or establishments of a similar kind. Medical, educational/training premises and premises under a lease or license of not less than a month have been specifically excluded from this definition.

### Who will be affected

Hotels and hospitality industry players.

### When

9 June 2016.

**Our view**

The definition of hotels has been introduced to provide clarity in relation to the amendment introduced in section 13 (7) relating to service charge.

## Fraudulent Claims of Tax Refunds

Penalties for fraudulent claims for tax refunds deleted from the VAT Act.

### The measure

Penalty for fraudulent claims of VAT refunds has been deleted from the VAT Act.

### Who will be affected

All VAT registered persons who lodge refund claims.

### When

9 June 2016.

**Our view**

This is to align this penalty to provisions of the 2015 Tax Procedures Act (TPA). The penalties have now been prescribed to be two times the amount of the claim under the TPA.

## Cancellation of Registration

Deregistration from VAT.

### The measure

Taxpayers applying to be deregister from VAT will be deemed to have made taxable supplies to the extent that they were granted relief in respect of input tax relating to trading stock.

### Who will be affected

VAT registered persons applying for deregistration.

### When

9 June 2016.

**Our view**

This is aimed at providing clarity in terms of VAT liability at the time of cancelling one's VAT registration status. The person applying for deregistration will have to declare output VAT to the extent that it relates to input tax credit granted on stock at hand at the date of dregistration.

## Input used in the manufacture of animal feeds

Introduction of more animal feeds in the exemption schedule.

### The measure

Introduction of animal feeds under tariff numbers 2302.10.10, 2302.30.00, 2306.10.10 and 236.30.00 in the exemption schedule.

### Who will be affected

Manufacturers of animal feeds.

### When

9 June 2016.

**Our view**

The inclusion of the above items into the exemption schedule in addition to animal feeds of tariff numbers 2308.00.00, 2309.10.00, 2309.90.10 and 2309.90.90 introduced through the Value Added Tax (Amendment) Act, 2014 will lead to a reduction in the production costs for animal feeds. This in turn is likely to lead to a decrease in the selling price of animal feeds, making them affordable to the farmers, hence contributing positively to the growth of the agricultural sector.

However, the list is not exhaustive and some tariff numbers covering key inputs used in the manufacture of animal feeds have been left out of the exempt schedule thus the prices on the animal feeds made from the affected items will still remain high.

## Motor vehicles for use in official aid funded projects

Inclusion of motor vehicles for use in aid funded projects into the exemption list.

### The measure

Inclusion of motor vehicles in exemption list for items that are directly and exclusively used in the implementation of official aid funded projects, upon approval by the Cabinet Secretary responsible for the National Treasury.

### Who will be affected

Beneficiaries of official aid funded projects.

### When

9 June 2016.

**Our view**

Motor vehicles for use in official aid funded projects were previously excluded from the exemption schedule. This was a drafting error which has now been rectified and will significantly reduce the project costs.

## Goods for use by the local film producers and local filming agents

Recommendation of goods to be imported or purchased locally by the Kenya Film Commission.

### The measure

The Kenya Film Commission will be required to recommend to the Cabinet Secretary, National Treasury the list of goods to be imported or purchased locally for use by the local film producers and local filming agents.

### Who will be affected

Local film producers and local filming agents.

### When

9 June 2016.

**Our view**

The introduction of the "recommendation" element in the exemption schedule for the film sector will seek to ensure that the incentive is properly utilized and not subjected to misuse.

## Recreational parks

Recreational parks now aligned in the exemption regime.

### The measure

Deletion of recreational parks from paragraph 55 and its subsequent anchorage as a stand-alone exemption item under paragraph 63. Taxable goods purchased or imported for direct and exclusive use in the construction of recreational parks will continue to be exempt. However, such approvals will be granted upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

### Who will be affected

Contractors and developers undertaking construction and infrastructural works at recreational parks.

### When

9 June 2016.

**Our view**

Developers and contractors of recreational parks wishing to benefit from the VAT exemption need to make an application to the Cabinet Secretary responsible for matters relating to recreational parks, as opposed to the Cabinet Secretary responsible for Industrialization.

The amendment will result into more clarity in the exemption procedure.

## Taxable goods and services made to Special Economic Zone enterprises

Reclassification of taxable goods and services made to SEZ enterprises from the exemption schedule to zero rated schedule.

### The measure

Deletion of supply of taxable goods and services to SEZ enterprises from the exemptions schedule and its subsequent re-introduction into the zero-rated schedule.

### Who will be affected

Suppliers of taxable goods and services to SEZ entities.

### When

9 June 2016.

**Our view**

Taxable goods and services to SEZ entities to be zero-rated. This is a welcome move that will encourage investment in the SEZs.

Further, suppliers of goods to SEZ entities will thus be in a position to lodge claims for VAT refunds.

## Exemption Schedule Additions – Part A

Introduction of items in the Exemption Schedule – Part A.

### The measure

Introduction of the following items into the exemption schedule:

- Equipment and machinery, including specialized motor vehicles, imported or purchased locally for official use by the Kenya Defence Forces, the National Police Service and military supplies.
- Direction-finding compasses, instruments and appliances for aircraft.
- Liquefied petroleum gas.
- Wheat seeds of tariff number 1001.11.00 and 1001.91.00.
- Museum and natural history exhibits and specimens and scientific equipment for public museums.
- Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.
- Taxable goods for the direct and exclusive use for construction of specialized hospitals with accommodation facilities upon the recommendation by the Cabinet Secretary responsible for health who shall issue guidelines for the criteria to be used to determine eligibility for the exemption.
- Garments and leather footwear, manufactured in an Export Processing Zone at the point of importation.

### Who will be affected

- Kenya Defence Forces and the National Police Service;
- Aircraft operators/maintenance companies;
- The general public (LPG and EPZs incentives );
- Importers of garments/footwear and worn clothing/footwear;
- National Museums of Kenya; and
- Contractors and developers of specialized hospitals.

### When

9 June 2016.

**Our view**

The introduction of the above items into the exemptions schedule is likely to have the following impact:

- Security equipment will be cheaper hence will help bolster security measures being put in place by the Government;
- Aircraft maintenance charges likely to reduce in tandem with the exemption of the appliances;
- Cost of living likely to reduce for the Kenyan citizens due to reduction in cost of LPG although it is questionable whether the poor in society actually use LPG;
- Uptake of the trend towards purchasing new clothes is likely to be achieved with exemption of garments and leather shoes from EPZs; as opposed to the second hand cloth popularly known as “mitumbas.” However, the mitumba importers will suffer from this move which is likely to affect their livelihoods. In addition, the current importers of new clothes and shoes who have to pay the import taxes will be disadvantaged where prices for goods from the EPZs are reduced.

## Exemption Schedule Additions – Part B

Introduction of more services into the Exemption Schedule – Part B.

### The measure

Introduction of the following services into the exemption schedule:

- Entry fees into the national parks.
- The provision of services offered by tour operators on commission.
- Taxable services for direct and exclusive use for the construction of recreational parks upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.
- Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption.

### Who will be affected

- Kenya Wildlife Services and park visitors;
- Tour operators;
- Contractors and developers of recreational parks; and
- Contractors and developers of specialized hospitals.

### When

9 June 2016.

**Our view**

The introduction of the above items into the exemptions schedule for services is likely to have the following impacts:

- Park entry fees to reduce;
- Kenya Wildlife Services may need to have a change in their approach to accounting for their VAT;
- Improved tourism-related activities; and
- Cheaper access to specialized healthcare services.

## Changes affecting medicaments

Medicaments of  tariff 3003.20.00 included in the zero-rated schedule.

### The measure

Introduction of medicaments of tariff 3003.20.00 into the zero-rated schedule – Part C, while deleting tariff 3303.20.00.

### Who will be affected

Pharmaceutical companies and the general public.

### When

9 June 2016.

**Our view**

The change will most likely lead to a reduction in the cost of medicaments of tariff 3003.20.00 . This tariff covers medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale; but containing other antibiotics.

The purpose of this amendment is to correct the changes effected by the Finance Act 2015 which had introduced tariff number 3303.20.00 which does not exist in the EAC Common External Tariff.

## Other Amendments

Other amendments affecting VAT.

### The measure

Deletion of the definition of both “non-resident person” and “tax representative” from the VAT Act.

The 2015 Tax Procedures Act had earlier deleted the appointment of a tax representative.

### Who will be affected

Non Resident Persons and Tax Representatives.

### When

9 June 2016.

**Our view**

This is aimed at aligning the VAT Act to the 2015 Tax Procedures Act.

# Transfer Pricing

The Kenya's regulatory transfer pricing landscape has remained relatively unchanged since the introduction of Transfer Pricing rules in 2006. There have been attempts by the Kenya Revenue Authority to bolster the legislation including release of detailed draft TP Guidelines in 2014 and expansion of the definition of related parties to include relationships between natural persons.

In recognition of an increasingly interconnected world, and failure of national tax laws to keep pace with global corporations, fluid movement of capital, and the rise of the digital economy, the Organisation for Economic Cooperation and Development ("OECD") and G 20 countries adopted a 15-point action ("BEPS Action plan"). The BEPS package is considered as the first substantial renovation of the international tax rules in almost a century, and is aimed at addressing perceived flaws and gaps in international tax laws, and combating aggressive profit-shifting strategies.

It is notable that the BEPS Action plan is shaking up the taxation arena especially transfer pricing. The KRA has confirmed its participation in the adoption of the BEPS Action plans and it had been expected that the Finance Bill 2016 would include the adoption of some of the BEPS Action Plan's recommendations. This is however likely to be included in the anticipated review of the Kenyan Income Tax Act, as promised by the Cabinet Secretary for Treasury.

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