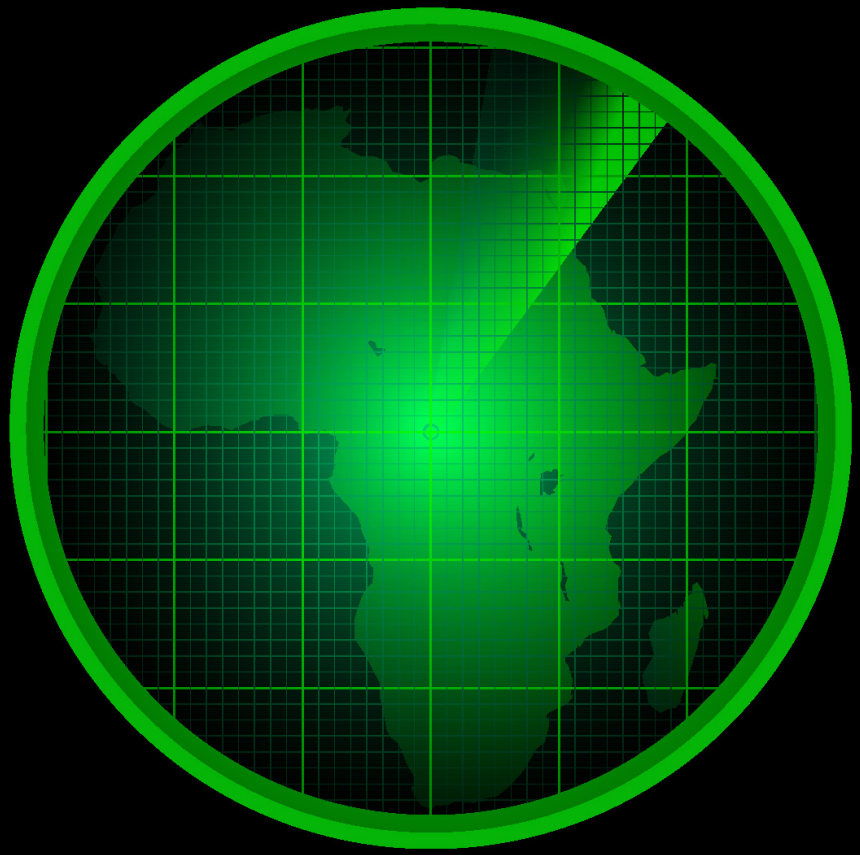
Deloitte.



Kenya Budget Insights 2017

Navigating headwinds

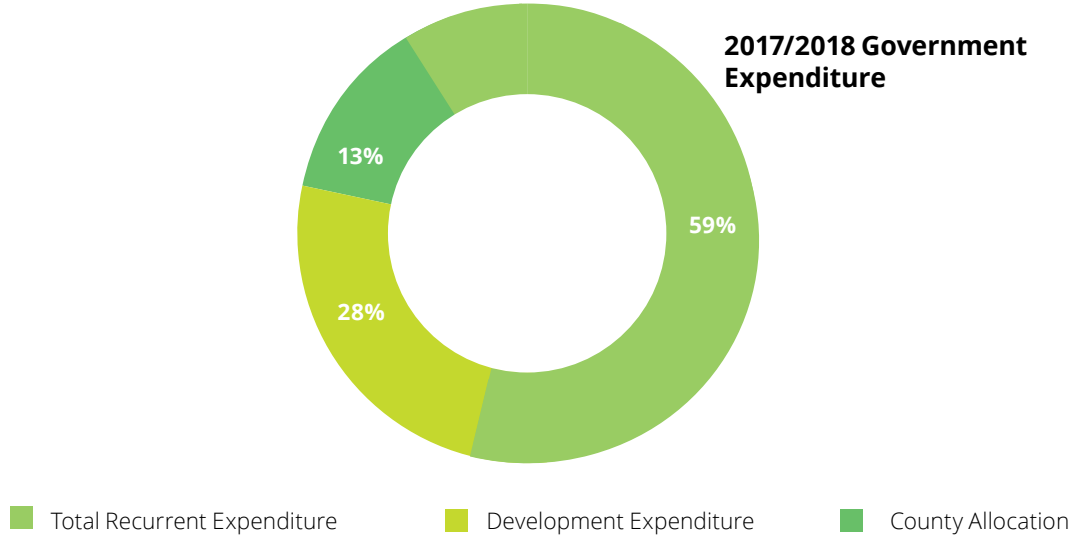
Introduction

Cabinet Secretary Henry Rotich has tabled a KShs 2.29 trillion budget to Parliament themed "Creating Jobs, Delivering a better life for all Kenyans". The government intends to fund this budget mainly through net fiscal revenue collections (taxes) and debt. The budget deficit of KShs 524.6 bilion will be financed by net domestic and external borrowing of KShs 268.6 billion and KShs 256 billion respectively.

As in the year 2016/2017 budget, the government has largely focused on infrastructure development to which is has allocated KShs 415.7 billion to finance ongoing road construction, completion of the Standard Gauge Railway, the LAPPSET project and other infrastructural projects. The government has also committed significant allocations to improvement of national security, ease of doing business and development of industries. Various sectoral reforms and taxation measures have also been proposed in the budget aimed at promoting economic growth.

In our view, the Government's ability to achieve its targets will be determined by prudent spending of the budget allocations, accountability and good governance.

The chart below gives a clearer understanding of the Government's expenditure allocation for the 2017/2018 financial period.



On tax measures, this year's budget focused on items subject to Value Added Tax ('VAT') exemptions and Customs Duty exemptions. Few changes were announced in respect of income tax as the CS indicated that a new Income Tax Bill would be released for public input shortly. Additionally, there were several miscellaneous amendments made to various sectors of the economy, most notably the financial sector.

Budget 2017/2018 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 2017/2018 budget seem to be tailored towards promoting the growth and development of various local industries such as motor vehicle assembly. Overall the 2017/2018 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 expansion of the tax brackets whereas the zero rating of maize flour is aimed at easing the high cost of basic products whose impact is greatly felt by low income earners.

Withholding Tax

Withholding tax on Islamic finance return

Finance Bill, 2017 proposes to amend Section 2 of the Income Tax Act by including a definition for Islamic Finance Arrangements. A definition has also been included for Islamic Finance Return being any amount received or paid in relation to Sukuk or an Islamic finance arrangement. Islamic Finance Return has been included under the definition of interest as well.

The measure

The inclusion of the Islamic Finance Arrangement and Return as specific definitions is to recognise the growing importance of this sector. Including Islamic Finanial Return under interest would mean this return would be subject to withholding tax similar to any other interest payment.

Who will be affected

Taxpayers entering into transactions structured in accordance with Islamic law.

When

Effective from 3 April 2017.

Our view

The tax measure aims to bring clarity on the applicability of withholding tax on returns earned from Islamic Finance Returns and introduce the concept of Islamic products in our tax legislation. Given the increasing importance of such products in the economy today, this is a welcome move.

Dividends paid by Special Economic Zone (SEZ) entities

Finance Bill, 2017 proposes to amend the First Schedule of the Income Tax Act by including dividends paid by SEZ enterprises, developers and operators to any non-resident. This means that such dividends will be exempt from tax and therefore withholding tax under section 35(2) of the Income Tax Act will not apply.

The measure

Dividends paid by SEZ enterprises, developers and operators to any non-resident person are exempt from tax.

Who will be affected

All SEZ enterprises, developers and operators with non-resident shareholders.

When

Effective from 1 January 2018.

Our view

The tax measure aims to encourage foreign investment in Special Economic Zones by exempting dividends from tax. This move is seen as part of the Government's aim to encourage the use of SEZs.

Withholding Tax Rates on payments made by Special Economic Zone entities

Finance Bill 2017 seeks to amend the rates of withholding tax levied on the following payments made by SEZ entities to non-residents:

- Management, professional or training fees - from 20% to 5% of gross amount payable;
- Royalties - from 20% to 5% of gross amount payable; and
- Interest - from 15% to 5% of gross amount payable.

The measure

The withholding tax rates applicable to various payments to non-residents by SEZ entities have been reduced.

Who will be affected

Non-resident suppliers of SEZ entities, SEZ entities.

When

Effective from 1 January 2018.

Our view

This measure is aimed at nurturing special economic zone enterprises, developers and operators by providing cheaper access to foreign management services, credit and intellectual property.

Corporate Tax

Islamic finance return, Islamic finance arrangement and Sukuk defined under the Income Tax Act.

The Finance Bill 2017 proposes to amend the definition section in the Income Tax Act to include the definition of Islamic finance arrangement, Islamic finance return and sukuk. Further, Islamic finance return has been added to the definition of interest in the Income Tax Act.

The measure

Any amount received or paid in relation to Sukuk or an Islamic finance arrangement will now fall under the definition of interest under the Income Tax Act.

Persons who engage in Islamic finance arrangements will therefore be liable to tax on the Islamic finance return in the same manner that interest income is liable to tax in other businesses.

For the person paying the Islamic finance return, the same would be an allowable deduction if incurred in the production of taxable income. Deductibility restrictions as a result of thin capitalisation would also apply to the Islamic finance return as is the case for interest expenses currently.

Who will be affected

Persons engaging in Islamic banking.

When

3 April 2017.

Our view

This measure is intended to bring returns earned from an Islamic arrangement under the ambit of income tax recognising their growing use in the Kenyan economy and to harmonise the tax treatment of the return with interest earned from conventional financial products.

Donations to specified institutions for alleviation of a national disaster to be allowable for tax purposes.

Section 15 of the Income Tax Act is to be amended to include a provision allowing a deduction in respect of donations made towards alleviation of a national disaster declared by the President.

The measure
Expenditure incurred in a particular year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President, shall be deducted in computing the taxable income of a person.

Who will be affected
Any person making stipulated donations.

When
3 April 2017.

Our view
This is a welcome move to encourage corporate and individual contributions towards national emergencies such as famine.

Arm's length dealing requirement when trading with an entity enjoying a preferential tax regime.

The Income Tax Act is to be amended to introduce a requirement for arm's length dealing on transactions involving a resident party in a non-preferential tax regime and a related resident party in a preferential tax regime.

The measure

The Finance Bill has introduced a requirement that would require a resident person operating outside a preferential tax regime to deal at arm's length with a related resident person operating within a preferential tax regime. Where the Commissioner considers such dealings not to be at arm's length, he is empowered to adjust the taxable profits of the person operating outside the preferential regime.

A preferential tax regime has been defined as *"any legislation, regulation or administrative practice which provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or the tax base".*

Who will be affected

Resident related entities operating within and outside preferential regimes.

When

3 April 2017.

Our view

Previously, the scope of the Income Tax (Transfer Pricing) regulations applied to cross border transactions. The measure will introduce the requirements for transfer pricing considerations on domestic intercompany transactions where one party is within a preferential tax regime. The definition of preferential regime is wide and potentially captures almost every possible incentive that would be accorded to an entity. This measure will have wide reaching effects on most resident related parties. Some of the entities that enjoy preferential tax regimes in Kenya include:

- Entities operating in gazetted Special Economic Enterprizes (SEZs);
- Newly listed companies on the Nairobi Securities Exchange with at least 20% of their share capital listed; and
- Investors operating outside Nairobi, Mombasa and Kisumu who benefit from 150% investment deduction; etc.

With effect from 1 January 2018, motor vehicle assembers would also fall within the preferential regime for the first five years of their operation as their income would be taxed at a reduced rate of 15%.

This measure is intended to prevent shifting of profits from high tax entities to low tax entities.

Repeal of section 108 of the Income Tax Act

The Finance Bill 2017 proposes to repeal section 108 of the Income Tax Act.

The measure
Repeal of section 108 of the Income Tax Act which stipulated additional penalties to a person where no specific penalty was available.

Who will be affected
All taxpayers.

When
3 April 2017.

Our view
This is a clean-up measure intended to align the Income Tax Act to the Tax Procedures Act, 2015.

Grant of investment deduction on capital expenditure incurred on buildings and machinery for use in a Special Economic Zone

The Finance Bill 2017 proposes to grant investment deduction on capital expenditure incurred on buildings and machinery for use in a Special Economic Zone.

The measure
The Second Schedule to the Income Tax Act is amended to introduce investment deduction at the rate of 100% on capital expenditure incurred on buildings and machinery for use in a Special Economic Zone. The allowance will be claimable in the year in which the building and/or machinery is first used.

Who will be affected
Special Economic Zone entities.

When
1 January 2018.

Our view
This measure is intended to give an incentive for investment into the Special Economic Zones which is anticipated to spur the economy.

Removal of condition for Special Economic Zones entities to qualify for preferential corporation tax rate

The Finance Bill 2017 proposes to add an expression that clarifies that the preferential corporation tax rate applicable to Special Economic Zones entities will be available regardless of the market of products.

The measure

The Finance Bill 2017 proposes to add an expression under paragraph 2 (h) of the Third Schedule to the Income Tax Act which clarifies that the preferential corporation tax rate of 10% for the first ten years and 15% for another ten years granted to enterprises, developers and operators in a special economic zone shall be available whether the enterprise sells its products to markets within or outside Kenya.

Who will be affected

Entities, Developers and Operators in Special Economic Zones.

When

1 January 2018.

Our view

This measure is intended to attract investment into the Special Economic Zones by removing any restrictions on application of the preferential corporation tax regime accorded to such entities. Since enterprises operating in SEZs enjoy significant incentives, it is expected that the price of products offered to the local market will be relatively low compared to products offered by other businesses. It is understood that this is a deliberate measure to make locally produced products cheaper for locals which in turn will make imported products uncompetitive.

Existing EPZs are only permitted to supply 20% of their output in the local market.

Reduction of corporation tax for local motor vehicle assembly companies

The Finance Bill 2017 proposes to provide a lower corporation rate of tax for companies engaged in motor vehicle assembly.

The measure
The Finance Bill 2017 to amend the Income Tax Act to provide for a lower corporation tax rate of 15% for the first five years to companies whose business is local assembly of motor vehicles.

Who will be affected
Local motor vehicle assemblers and purchasers of locally assembled vehicles.

When
1 January 2018.

Our view
This measure is intended to incentivise recently set up motor vehicle assemblers and to attract other similar businesses into Kenya. The expectation is that locally assembled motor vehicles will become affordable making locals to shun imported second hand vehicles.

As Kenya is keen to encourage local manufacturing one may ask why only motor vehicle assembly is being offered this incentive. Given that other type of assembly is envisaged – laptops being a case in point – it would perhaps be necessary to offer a similar incentive to more industries that would attract much needed investment and create jobs in the country.

Pay As You Earn

Increase of personal relief and expansion of personal income tax bands

The personal relief and personal income tax bands have been increased by 10%.

The measure

The Third Schedule of the Income Tax Act has now been amended such that a resident person with taxable income is now entitled to a personal relief of Kshs 1,408 per month (i.e. Kshs 16,896 per annum).

With respect to the personal income the new annual individual tax bands shall be:

	Rate in each shilling
On the first Shs.147,580	10%
On the next Shs.139,043	15%
On the next Shs.139,043	20%
On the next Shs.139,043	25%
On all income over Shs.564,709	30%

Who will be affected

All individual taxpayers.

When

Effective date for the above amendment is 1 January 2018.

Our view

This amendment is a welcome move by the Government coming soon after the revision last year and it serves to make up for the delay in reviewing the PAYE bands for over 10 years that subjected individuals to increased cost of living without commensurate relief for their income. However, one would have expected a more significant expansion of the tax bands to sufficiently cushion individuals from the harsh economic reality given the ever increasing inflation rates.

The effect of the increase in the tax bands and personal relief will 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.

Taxation of Surplus Pension withdrawals

Personal income tax bands on pension amounts in excess of the tax free amounts withdrawn from a registered pension/provident fund or the NSSF before the expiry of fifteen years from the date of joining the fund, have been increased.

The measure

Section 5d (ii) of the Third Schedule to the Income Tax Act has now been amended for the taxation of the surplus pension withdrawals by a resident individual from a registered fund or the National Social Security Fund in a year of income to reflect the new individual tax bands.
The new tax rates applicable on such withdrawals shall be:

	Rate in each shilling
On the first Shs.147,580	10%
On the next Shs.139,043	15%
On the next Shs.139,043	20%
On the next Shs.139,043	25%
On all income over Shs.564,709	30%

Who will be affected

The rates apply to resident persons making surplus withdrawals from locally registered pension funds or schemes including the NSSF before the expiry of fifteen years after joining the scheme.

When

Effective date for the above amendment is 1st January 2018.

Our view

This measure will act as an incentive for residents to make more contributions to the locally registered pension schemes and individual retirement funds irrespective of the time frame for making withdrawals as the taxable portion of the withdrawals will be subjected to lower tax rates.

In addition, it is a welcome move for the pension contributors as they will experience much needed relief on their pension withdrawals in view of the increased cost of living.

Value Added Tax

Islamic finance arrangements

Exemption of Islamic finance returns from VAT.

The measure
The VAT law exempts most financial services from VAT. This includes interest earned by financial institutions on loans or credit facilities. The proposed amendment now includes returns received from financial arrangements under Islamic law in the list of exempt services. Returns from "Sukuk" (Islamic bonds) will also henceforth be exempt from VAT.

Who will be affected
The Islamic banking sector.

When
3 April 2017.

Our view
Financial services are largely exempt from VAT under the VAT law. Specifically, interest is exempt from VAT and the wider banking sector is not required to charge VAT on interest earned.

While the VAT law does not expressly provide for the exemption of interest earned on credit by banks, the law exempts the "making of any advances or the granting of any credit". VAT law also exempts the issuance, transfer, receipt or any other dealings with instruments such as; bonds, debentures, treasury bills and securities in general.

It follows that consideration thereof (largely in the form of interest) is exempt from VAT.

Whereas it is arguable that the returns earned by Islamic banks from similar finance arrangements should be exempt from VAT under the above provisions, the amendment will clear any doubts that may have existed on the VAT status of returns from financial arrangements entered into by Islamic banks or financial institutions. A similar position applies for returns from "Sukuk".

Exemptions for physically handicapped persons

Exemption of materials for use in advancement of the disabled.

The measure
Before this change, VAT law exempted materials, articles and equipment, excluding motor vehicles for use in the educational, scientific or cultural advancement of the blind where such goods are acquired by an organisation approved by the national Government.

The proposed amendment seeks to extend this exemption to cases where such goods are acquired for advancement of the disabled generally and not just the blind.

Who will be affected
Persons with disability.

When
3 April 2017.

Our view
Approved organisations will now be in a position to acquire goods for the advancement of the physically handicapped at cheaper rates. While this exemption was existent, it only covered blind persons and the extension to cover the wider community of persons with disability is a welcome move.

Inputs for use in the manufacture of Pesticides

Exemption of all inputs used in the manufacture of pesticides.

The measure
Inputs for the manufacture of pesticides will, upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture, be exempt from VAT.

Previously, imported inputs for the local manufacture of pest control products were taxable while imported finished products (pesticides) remained exempt. This made the locally manufactured pesticides more expensive compared to imports thereby making locally manufactured pesticides less competitive.

Who will be affected
Local pesticides manufacturers and the agricultural sector.

When
3 April 2017.

Our view
The amendment is aimed at promoting the local pesticide manufacturing industry and reduce the cost of pest control products in the agricultural sector.

If properly implemented, the amendment is likely to result in cheaper locally produced pestcides to farmers.

Exemption of locally assembled vehicles for use in the transportation of tourists

Exemption of locally assembled vehicles for use in the transportation of tourists.

The measure
The Finance Bill seeks to exempt from VAT all locally assembled motor vehicles purchased before clearance through customs by tour operators. For the exemption to be granted, it will require the recommendation by the competent authority responsible for tourism promotion and meet the following conditions;

- The vehicle must be registered and operated by a company licenced under the Tourism Vehice Regime;
- The vehicle must be used exclusively for the transportation of tourists; and
- The vehicle should have provisions for camping sites, rescue and first aid kits, laggage compartments and communication fittings.

The change of use or disposal of such vehicles for other use shall attract VAT.

Who will be affected
Local motor vehicle assemblers and tourist operators.

When
3 April 2017.

Our view
The exemption of locally assembled tourism vehicles is a measure that aims to achieve multiple results in line with government policies.

It is within the government's plans to promote local motor vehicle assembling seen as a driver of job creation. The government has recently given various incentives to this sector attracting more players as evidenced by recent entries of players in the sector. Last year, the President ordered state agencies to buy locally assembled vehicles giving another boost to the industry.

The measure is also aimed at promoting the tourism sector that has suffered greatly due to the wave of insecurity that sparked the country in recent years. Tourism is a big foreign income earner in Kenya and contributes imensely to the Kenyan economy, hence any measures to support its growth are welcome.

Exemption of medical equipment and apparatus for use in specialised hospitals

Medical equipment and apparatus for use in specialised hospitals are now exempt from VAT.

The measure

The Finance Bill seeks to exempt from VAT all medical equipment and apparatus for use in specialized hospitals with a minimum bed capacity of 50.

Previously, the government had only exempted goods used in the construction of specialised hospitals in a bid to attract more investors to the sector. This amendment is aimed at extending the incentive to equipment and apparatus with the hope to attract more investors into the health sector.

Who will be affected

The health sector.

When

3 April 2017.

Our view

This measure is aimed at increasing access to specialised health care against the backdrop of increased terminal and lifestyle related illnesses in Kenya.

The incentive is expected to attract more investors both local and foreign to set up hospitals and centres for specialised treatment. The setting up of a minimum bed capacity will ensure the industry players invest in projects that will benefit a larger number of Kenyans. This will increase access to specialised treatment to Kenyans and hopefully reduce the number of Kenyans flying abroad to seek treatment.

Promoting the blue economy

Zero rating of taxable goods supplied to marine fisheries and fish processors.

The measure
The Finance Bill seeks to zero rate taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department. These goods were previously subject to VAT making them expensive to the industry players and hence discouraging growth and value addition in the industry.

Who will be affected
Marine fisheries and fish processors.

When
3 April 2017.

Our view
The blue economy is a sector that is considered to be under performing. To tap into the potential of marine industries, the Government has introduced a raft of measures to spur the growth of the sector. From a VAT perspective, the zero rating of taxable goods supplied to marine fisheries and fish processors is expected to have a positive impact on the blue economy.

Perhaps this incentive should have been extended to the larger fishing industry which continues to face varying challenges.

Exemption for Real Estates Investment Trust (REITs) and Asset Backed Securities(ABS)

The measure

The government has exempted from VAT transfers and other transactions related to the transfer of assets into Real Estate Investment Trusts (REITS) and Asset Backed Securities (ABS).

Who will be affected

Real estate owners under REITs and ABS.

When

3 April 2017.

Our view

To achieve growth in the property sector and satisify the increasing demand for housing, the government seeks to promote more innovative ways of financing. To this end, the government aims to encourage private investment in the sector by offering attractive incentives through tax neautrality to support new and effective uptake of innovative infrastruture financing products. Exemption of REITs and ABS is a step in the right direction.

Liquefied Petrolium Gas (LPG) now VAT exempt

The measure

Effective 9 June 2016, LPG has been zero rated for VAT. The Government now seeks to change its VAT status to exempt. The exemption is also extended to goods used in the manufacture of LPG cylinders by licenced manufactures upon recommendation by the Cabinet Secretary responsible for Energy and petroleum.

Who will be affected

LPG consumers, LPG dealers, mainly the petroleum sector as well as manufacturers of LPG cylinders.

When

3 April 2017.

Our view

Last year the government zero rated LPG in an attempt to promote its use and reduce harmful effects associated in the use of charcoal and kerosene stoves. The immediate effect of that change was that LPG dealers were entitled to recover input VAT incurred in the business of selling LPG. The change to exempt status prevents LPG dealers from recovery of input tax. The impact of this is that nonrecoverable VAT will, going forward, be included in the cost of LPG which translates to a higher cost to the end user.

Therefore, while the move may be geared towards reducing the cases of VAT refund claim applications, it does not reduce the cost of LPG by the desired margin for the Mwananchi.

The exemption of goods used in the manufacture of LPG cylinders which was initially taxable at 16% will help reduce the cost of the cylinders. This will provide relief to the first time users of LPG who have to pay for the cylinders.

Mitigating the effects of drought

The government has zero rated maize flour, wheat or meslin flour and ordinary bread.

The measure

Prior to this amendment, maize flour, wheat or meslin flour and ordinary bread were exempt from VAT. This meant that businesses dealing in such products did not benefit from the deduction of input VAT incurred on their inputs. Unrecoverable VAT was therefore incorporated in the selling prices of these products thereby making them relatively expensive.

The move to zero rate these products will entitle registered persons dealing in such products to recover input tax and thereby remove the VAT element from the pricing of bread and maize flour.

Who will be affected

Manufacturers and retailers of bread and maize flour and the general public.

When

3 April 2017.

Our view

This measure comes in the wake of the hardship occassioned by the prolonged drought and the resultant high prices of maize flour and bread.

This measure is therefore a welcome relief for consumers especially low income earners who are hardest hit by a rise in prices of basic commodities. Manufacturers, wholesalers and retailers will be expected to pass the benefit to the final consumer by reducing the price of bread and maize flour accordingly.

VAT regulations now published

The measure
The Cabinet Secretary has published the VAT regulations to aid the implementation of the VAT Act, 2013.

Who will be affected
All VAT registered persons.

When
3 April 2017.

Our view
Following the enactment of the VAT Act, the Cabinet Secretary was expected to make regulations to guide the smooth operation of the Act. These regulations were drafted in 2014 but they were not formalised into law until the 2017/2018 fiscal budget cycle. Following his budget statement, the Cabinet Secretary has quickly moved to publish the VAT Regulations, 2017, a copy of which has now been Gazetted through Legal Notice 4855.

While this is a welcome move, we note from a review of the published regulations that they do not provide clear guidance on some key areas of contention. Particularly, the VAT regulations were expected to address the issue of export of services. However, the published regulations do not provide the much needed clarity in this regard.

Hopefully, going forward, the Cabinet Secretary should amend the published regulations to address obvious areas of concern to taxpayers.

We will separately provide a detailed analysis of the VAT regulations 2017.

Exemption of Aircraft parts

Exemption of any other aircraft spare parts from VAT.

The measure
The finance bill provides for exemption of any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance. This is upon recommendation by the competent authority in charge of civil aviation.

Who will be affected
The aviation sector.

When
3 April 2017.

Our view
The VAT law currently exempts most goods used by the aviation sector including; aeroplanes and helicopters, aircraft engines and engine spare parts among others from VAT. The exemption granted for these goods does not require recommendation from the competent authority in charge of aviation.

Through the Finance Bill 2017, the Cabinet Secretary proposes to extend the exemption to cover the importation of other spare parts that are not already exempted from VAT. However, such exemption will only be granted upon the recommendation the Kenya Civil Aviation Authority.

This is expected to have a positive impact in the growth of the aviation sector especially given that aircraft spare parts and engines tend to be very expensive.

Furthermore international carriers tend to accumulate VAT refunds due to zero rating and therefore this measure will ease their cash flow constraints.

Revised exemption conditions for vehicles imported by returning residents

Right hand vehicles imported in place of left-hand vehicles by returning residents should not exceed the current retail selling price of the previous vehicle.

The measure
Returning residents who owned and used left hand vehicles for a period of at least twelve months are under the VAT law allowed to sell such vehicles and in their place import right hand vehicles. The law requires that such vehicles be of equivalent value. The proposed change seeks to streamline the valuation of such vehicles with customs valuation by ensuring the current retail selling price of the right hand vehicles does not exceed that of the previously owned left hand vehicle.

Who will be affected
Returning residents.

When
3 April 2017.

Our view
This is a move aimed at streamlining the rules forr import of replacement vehicles by returning residents who acquire replacement for their left hand drive vehicles. it provides a more practical measure that does not require the replacement car to be similar to the previous car but rather limits the value.

Taxable services acquired by International and Regional Organisations, the National Red Cross Society and St. John Ambulance

A move to zero rate taxable services imported by the above referred organisations.

The measure
The VAT law currently zero rates goods and equipment imported by or supplied to donor agencies, international and regional organisations with diplomatic accreditation or bilateral or multilateral agreements with Kenya for their official use. A similar treatment applies for taxable goods imported by or supplied to the National Red Cross Society and the St. John Ambulance. However, the zero rated status does not extend to taxable services imported by such organisations. The Cabinet Secretary now proposes to stretch the zero rated status to taxable services as well.

Who will be affected
Everyone.

When
3 April 2017.

Our view
A welcome move especially for the National Red Cross Society and the St. John Ambulance as VAT on taxable services such as consultancy services formed part of their operational costs. This measure will hopefully free up more funds for use in extending medical outreach in the country.

Intention to alter the list of zero rated medicaments

Proposal to remove items of tariff code 3003.10.00 and 3003.90.00 from Part C of the Second Schedule and replace these tariff codes with new codes.

The measure
The Finance Bill seeks to delete tariff codes 3003.10.00 and 3003.90.00. from the list of zero rated medicaments and replace them with new codes. However, there seems to have been an error with this change and the replacements are similar to the deletions. Perhaps a rectification of this will be effected before the Bill is enacted.

Who will be affected
Pharmaceuticals and the health sector.

When
3 April 2017.

Our view
This amendment should be reviewed in light of the current error in the Finance Bill and a rectification made as appropriate.

More exempt items

Exemption of items of tariff code 4907.00.90 from VAT.

The measure
Tariff heading 4907 covers unused postage, revenue or similar stamps of current or new issue in the country which have, or will have, a recognised face value; stamp-impressed paper; bank-notes; cheque forms; stock, share or bond certificates and similar documents of title.

In line with the proposed change, all of these items, other than cheque forms and/or books of tariff code 4907.00.10, are covered under tariff code 4907.00.90 and will now be exempt from VAT.

When
3 April 2017.

Our view
This is aimed at addressing the challenges faced in respect of revenue stamps.

Customs

Customs related changes

Customs related changes to be communicated vide the EAC Gazette Notice before 1 July 2017.

The measure
The Cabinet Secretary (CS) stated in his budget speech that Customs changes will be communicated in July vide the EAC Gazette Notice.

When
1 July 2017.

Our view
Kenya is a member of the East Africa Community (EAC) where customs laws are applied uniformly across all the Partner States. The national budgets for all the Partner States have been traditionally held on the same day in June. However, this year Kenya was permitted by the EAC to present its budget in March to facilitate preparation for the elections scheduled for August 2017.

The CS mentioned in his speech that proposals by various stakeholders had been forwarded to the EAC Council of Ministers (Council) for consideration during the consultations to be held in May 2017. Further, the adopted Customs changes will be communicated through the EAC Gazette Notice likely to be released before the implementation date of 1 July 2017.

The CS further reiterated that the proposed changes will be geared towards promoting industrialization, encouraging local investments and creating incentives in the agricultural and manufacturing sectors. This measures will be particularly aimed at cushioning locally manufactured products from cheap imports.

Review of the EAC Common External Tariff (EAC CET)

The measure

The CS mentioned in his speech that the EAC CET is currently undergoing a comprehensive review with the changes to be announced on adoption by the Council.

When

On a date to be announced vide a gazette notice.

Our view

The EAC CET which sets out the import duty rates applicable on goods imported into the EAC is revised every 5 years. The EAC CET is currently undergoing a comprehensive review in line with the revised World Customs Organization (WCO) Harmonised Systems (HS) 2017 version, the last revision having being done in 2012. It is also likely that the current 3 band tariff of 0%, 10% and 25%; and the sensitive goods list will be reviewed to remedy any adverse effects any of the Partner States may be experiencing and to safeguard the EAC interests.

The reviews are necessitated by advances in technology and consideration by the EAC Council of Ministers on protectionism measures to be adopted.

Import Duty Exemption

Exemption of white maize and dates from all import duties.

The measure
The Cabinet Secretary has proposed exemption from all import taxes on white maize for an unspecified four month period; and for dates during the period of Ramadhan.

Who will be affected
Importers and consumers of white maize and dates.

When
Ramadhan period for dates. Effective date for maize to be communicated.

Our view
The exemption of white maize from all taxes is a welcome move aimed at reducing the effects of the widespread drought that the country is currently experiencing. However, the CS did not specify when the four month period would commence.

Dates are an essential fruit for the Muslim community during the month of Ramadhan. The exemption of dates from import duties is expected to reduce the cost of dates and make them affordable to the common mwananchi.

It is unclear whether the proposed exemptions from import duty have been adopted by the EAC Council of Ministers as is required. Furthermore Customs amendments within the EAC have traditionally taken effect on 1 July of the same year on adoption by the Council. This could delay the implementation of these measures.

Reduction of port charges for fishing vessels

Reduction of port charges by 50%.

The measure
The Cabinet Secretary has proposed a reduction of port charges for fisheries vessels by 50%.

Who will be affected
Owners of fishing vessels.

When
Date to be communicated vide a legal notice.

Our view
This move was amongst other proposed tax measures intended to promote the marine based economic activities in particular fishing through reducing their operational costs.

Amendment of the Miscellaneous Fees and Levies Act (MFLA)

The measure
The Cabinet Secretary proposed to amend the MFLA as follows:

- Exemption from export duty on goods exported to Special Economic Zones (SEZs); and
- Exemption from Import Declaration Fee (IDF) on goods destined for SEZs

Who will be affected
Enterprises licenced under the SEZ Act.

When
1 January 2018.

Our view
This move is an extension of the benefits already being enjoyed by EPZs and is aimed at reducing the cost of doing business for SEZ enterprises, attract foreign direct investment and in doing so, create employment.

Excise Duty

Refund of excise duty on illuminating Kerosene

The measure
The Cabinet Secretary has proposed to introduce refund of excise duty paid on illuminating Kerosene used in the manufacture of unexcisable goods by licensed registered manufacturers.

Who will be affected
Local manufacturers and consumers of paints and resins and other products manufactured using illuminating kerosene.

When
3 April 2017.

Our view
Illuminating kerosene is a key raw material in the manufacture of paints and resins. The move to introduce refunds of excise duty on illuminating kerosene used in the manufacture of unexcisable goods is intended to spur the local manufacture of paints and resins. It is expected that the cost of paint and resins manufactured locally will reduce due to this measure.

The move is also intended to match the tax incentives enjoyed by local manufacturers who use spirits as a raw material in the manufacture of paint.

Licensing of manufacturers using illuminating kerosene to manufacture unexcisable goods

Licensing of manufactures using illuminating kerosene to manufacture unexcisable goods.

The measure
The Finance Bill has proposed to amend the Excise Duty Act to require manufacturers of unexcisable goods using kerosene to be licensed by the Commissioner prior to undertaking the manufacture.

Who will be affected
Local manufacturers of products using illuminating kerosene.

When
3 April 2017.

Our view
This is aimed at regulating the proposed refunds of excise duty paid on illuminating kerosene by registered manufacturers to curb against fraudulent refund claims.

The Excisable Goods Management System (EGMS) Regulations, 2017

Introduction of new EGMS Regulations.

The measure
The Cabinet Secretary has gazetted new EGMS regulations to address challenges experienced in the implementation of EGMS.

Who will be affected
Local manufacturers of excisable goods.

When
3 April 2017.

Our view
The key issues covered under the EMGS Regulations 2017 include:

- Different stamp fees based on the type of excisable good;
- Return or transfer of excise stamps due to reasons such as stoppage of manufacture, defective stamps, transfer of manufacturing plant etc;
- Marking of excisable goods supplied to the National Police Service; and
- Requirement for authentication of excise stamps and excisable goods by manufacturers, importers, distributors, retailers and any other person involved in the supply chain before admitting them in their premises.

The new EGMS Regulations are geared towards improving efficiency in the management of excisable goods by addressing the deficiencies in the EGMS Regulations 2013. The proposed change in pricing of excise stamps in particular will alleviate the inequity caused by use of fixed prices on all excisable products.

Excise duty remission on locally manufactured beer

The measure

The Cabinet Secretary has introduced new regulations dubbed "The Excise Duty (Remission of Excise Duty) Regulations 2017" which provide for 80% excise duty remission on locally manufactured beer made from sorghum, millet, cassava or any other produce except barley.

Who will be affected

Local manufacturers and consumers of beer, farmers of sorghum, millet and cassava.

When

3 April 2017.

Our view

There has been a lot of back and forth by the Government on this measure. Excise duty remission on locally manufactured beer was first introduced in 2006.
The remission has in the past led to a significant reduction in the consumption of illicit brew, promoted local farming of sorghum, millet and cassava and created employment to thousands of people in the keg supply chain. The reduction of the excise duty remission by 50% in October 2013 led to a reduction in the demand for keg and consequently keg manufacturers terminated contracts with thousands of sorghum farmers in addition to layoff of thousands of employees in the keg supply chain.

Despite the gains realised as a result of remission, the Finance Act 2016 repealed the provision in the Alcoholic Drinks Act that had provided for 90% duty remission introduced in June 2015. The re-introduction of the remission at 80% is aimed at meeting the aforementioned objectives.

Increase of Excise duty on Spirits

The measure
The Cabinet Secretary proposed an increase of excise duty on spirits from KES 175 per litre to KES 200 per litre.

Who will be affected
Manufacturers, importers and consumers of spirits.

When
3 April 2017.

Our view
This move is aimed at generating more revenue for the Government considering the ever increasing demand for high value spirits. However, it is likely that the consumption of the high value spirits may reduce as consumers seek for cheaper alternatives in illicit brew and unregulated spirits.

Definition of powdered beer

The measure
The Finance Bill has proposed to define *powdered beer as any powder, crystals or any other dry substance which, after being mixed with water or any other non-alcoholic beverage, ferments to, or otherwise becomes an alcoholic beverage.*

Who will be affected
Local manufactures, importers and consumers of powdered beer.

When
1 April 2017.

Our view
Powdered beer attracts an excise duty of KES 100 per kg. The definition of powdered beer will bring clarity on the scope of products attracting excise duty under this provision.

Inflationary adjustment on specific excise duty rates

Specific excise duty rates to be adjusted for inflation.

The measure

The Cabinet Secretary announced the intended inflationary adjustment of specific excise duty rates on all excisable goods pursuant to Section 10 of the Excise Duty Act.

Who will be affected

Manufacturers, importers and consumers of all excisable goods with a specific excise duty rate.

When

1 July 2017.

Our view

The Excise Duty Act 2015 empowers the Commissioner to adjust specific rates of excise duty annually to take into account inflation through a gazette notice. The Commissioner is expected to increase the existing excise duty rates by the average monthly inflation rate in the 2016/17 financial year and publish the revised rates through a gazette notice. With the average monthly inflation rate for the financial year 2016/2017 estimated at 7%, the excise duty rates of essential goods such as water and fuel are set to be increased by a similar margin. This change is aimed at raising more revenue for the Government. Other products whose prices are expected to increase include cigarettes, beer, juices, wines, motor cycles etc.

This will be the first time the Government is adjusting excise duty rates for inflation since the introduction of the Excise Duty Act in 2015. Such increase in the prices of products will exacerbate the cost of living in a year when the inflation is already at a high level.

Revision of excise duty rate on cigarettes

The excise duty rate on cigarettes has been revised to a two-tier tax structure.

The measure

The Finance Bill has proposed a change in the tax structure of cigarettes to a two-tier structure. Under the proposed structure, cigarettes with filters (hinge lid and soft cap) will be taxed at KES 2,500 per mille while plain cigarettes will be taxed at KES 1,800 per mille.

Who will be affected

Manufacturers, importers and consumers of cigarettes.

When

3 April 2017.

Our view

The Excise Duty Act 2016 subjected all cigarettes to a specific excise duty rate of KES 2,500 per mille (KES 2.5 per cigarette) irrespective of the type of cigarette.

There have been concerns within the industry that imposing a standard excise duty rate on all cigarette types was unfair to the local manufacturers of low value plain cigarettes. The proposed amendment is aimed at addressing this inequity.

It is expected that the reduction of excise duty on plain cigarettes to KES 1.80 per cigarette will make low value cigarettes affordable to low income earners where cigarette manufacturers, distributors and retailers pass this benefit to the end user.

Exemption Schedule

Amendment of the excise duty exemption schedule.

The measure

The Finance Bill has proposed the following amendments to the excise duty exemption schedule:

- Exemption of excisable goods imported or purchased locally by the St. John Ambulance for official use in the provision of relief services in Kenya;
- Amendment of the exemption provision on a motor vehicle imported to replace a left hand motor vehicle owned by a person changing residence as follows: deleting of the requirement that the replacement vehicle should be of equivalent value and replacing the same with the requirement that the current retail selling price (CRSP) of the replacement vehicle should not exceed the one for the left hand vehicle being replaced; and removal of the requirement that the replacement vehicle should be similar to the previously owned vehicle in terms of make, engine capacity and year of manufacture; and
- Inclusion of locally purchased excisable goods used in the manufacture of sanitary towels.

Who will be affected

Local manufacturers, importers and consumers of sanitary towels, St John Ambulance, returning residents from left hand drive countries.

When

3 April 2017.

Our view

The existing exemption on excisable goods supplied to the Red Cross has now been extended to St John Ambulance to ensure equity in treatment of the 2 organizations involved in provision of relief services.

The Excise Duty Act 2015 allowed persons changing residence, and who previously owned left hand motor vehicles to sell the vehicles and import replacement vehicles of equivalent value and similar to the previously owned motor vehicle in terms of engine capacity, make and year of manufacture. The proposed changes will relax the stringent conditions imposed on the benefit and make it more practical to use the benefit as intended.

The Finance Act 2016 exempted from excise duty goods imported for use in the manufacture of sanitary towels but appears to have inadvertently left out locally purchased goods. The aim of the proposed amendment appears to be correcting the omission.

Tax Procedures Act

Exemption from withholding VAT

The Bill proposes to amend Section 42A of the Tax Procedures Act to empower the Commissioner to exempt a supplier from the withholding VAT regime.

The measure

The Bill proposes to introduce a provision in the Tax Procedures Act, 2015 that would exempt a supplier from the withholding VAT regime if the supplier demonstrates to the Commissioner that due to the nature of his business, he is going to be in a continuous credit position for a period of not less than 24 months.

Who will be affected

Withholding VAT agents and suppliers having continuous VAT credits.

When

3 April 2017.

Our view

This measure is intended to relieve suppliers who were plunged into continuous VAT credits as a result of reintroduction of the withholding VAT regime. When the provision was reintroduced, it was not anticipated that it would lead to VAT credits since it is only applicable at 6% of the taxable value.

As current VAT law does not permit refunds of credit arising from withholding VAT, this is a welcome measure. However, we continue to question the use of a withholding VAT regime which does not, in our view, increase tax collection or widen the tax net.

Due date of remitting withholding VAT

The Bill proposes to amend Section 42A of the Tax Procedures Act to provide for the due date within which a withholding VAT agent should remit the tax deducted to KRA. The Bill also proposes to make it an offence if a withholding VAT agent fails to comply with the withholding provision.

The measure
The Bill proposes to introduce a provision in the Tax Procedures Act, 2015 that requires withholding VAT agents to remit the VAT deducted to KRA within 14 days from the deduction date. This has previously been the requirement by KRA but was not anchored in law. A person who fails to comply with this provision commits an offence.

Who will be affected
Withholding VAT agents.

When
3 April 2017.

Our view
The amendment provides legal backing of what is currently the practice.

Authorised officer empowered to perform duties of a police officer

The Bill proposes to introduce an item under Section 7 of the TPA that gives an authorised officer the power to enter and search any premises or vessels and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law or tax appeals tribunal.

The measure
The measure enumerates the power of the authorised officer to enter and search any premises or vessels and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law or tax appeals tribunal.

Who will be affected
All taxpayers.

When
3 April 2017.

Our view
The Tax Procedures Act had a section empowering authorised officers to act as police officers but the scope of their mandate was not specified. The measure is intended to clarify the scope of mandate that may be exercised by an authorised officer in executing their tax collection functions as a police officer. It is hoped, however, that due process will be followed by the KRA when using these provisions.

Penalty now included as part of tax liability

The Tax Procedures Act is to be amended in Sections 16 (9), 17 (6) and 18 (3) to include penalties as part of tax liability.

The measure
The measure clarifies that penalty is now part of a tax liability. This amendment is intended to be used in the collection and recovery of taxes by the KRA.

Who will be affected
All Taxpayers.

When
3 April 2017.

Our view
Without expressly defining a penalty to be part of a tax liability, KRA would not have any basis to enforce some of the provisions relating to tax collections and recovery. This amendment therefore empowers KRA to apply collection measures on penalties as though it were a tax liability.

Clean-up of the TPA

The Bill proposes to amend various sections of the Tax Procedures Act, 2015 to remove typographical errors, spelling errors and duplications.

The measure
The Bill proposes the following amendments to the Tax Procedures Act:

- Section 6 (2) (h) – Deletion of the phrase "the of" and replacing it with "of the";
- Section 8 – Deletion of the expression (d) appearing immediately after paragraph (c); and
- Section 18 (2) – Deletion of paragraph (c). This paragraph was a duplicate of paragraph (b).

Who will be affected
Taxpayers.

When
3 April 2017.

Our view
These amendments are intended to clear errors and duplications in the TPA.

Miscellaneous

Period taken to hear and determine an appeal

Section 13(7) of The Tax Appeals Tribunal Act, 2013 is amended by deleting the proviso requiring an appeal to be heard and determined within ninety days.

The measure

There will be no time limit within which an appeal can be heard or determined.

Who will be affected

All taxpayers.

When

Effective from 1 January 2018.

Our view

This measure is aimed at allowing the tribunal sufficient time to hear and determine cases and also allow for cases to be resolved through other avenues such as the Alternative Dispute Resolution framework. However, with no time limit there is the inherent danger that decisions could take an inordinately long time to be issued which will add uncertainty to a taxpayer's affairs.

Betting, Gaming and Lottery Taxes

Sections 29A, 44A, 55A, 59B of the Betting, Lotteries and Gaming Act are amended by increasing the rates of betting tax, lottery tax, gaming tax and prize competition tax as follows:

- Betting Tax - from 7.5% to 50% of gaming revenue;
- Lottery Tax - from 5% to 50% of the lottery turnover;
- Gaming Tax - from 12% to 50% of gaming revenue; and
- Prize Competition Tax - from 15% to 50% of the total gross turnover.

The measure

All taxes under the Betting, Lotteries and Gaming Act have been increased to a uniform rate of 50%.

Who will be affected

Bookmakers, lottery promoters, casino operators, online betting companies, prize competition promoters.

When

Effective from 1 January 2018.

Our view

This measure is aimed at containing the growth of the sector due to its negative socio-economic impact on the youth and other vulnerable groups. The proceeds from this sector are to be directed to the newly created National Sports, Culture and Arts Fund to support development of sports, culture and arts in Kenya. However, there is concern that the proposed tax rate of 50% of revenue is too punitive and could jeorpadize the viability of businesses in the sector which will in turn affect revenue collection especially if some players pull out.

Written laws relating to revenue

The Finance Bill, 2017 has amended the Kenya Revenue Authority (KRA) Act by including the Value Added Tax Act, 2013, the Excise Duty Act, 2015, the Tax Procedures Act, 2015 and the Miscellaneous Fees and Levies Act, 2016 in the list of laws relating to revenue under Part I of the First Schedule.

The measure

The amendment gives KRA the power to administer and enforce the provisions of the Acts as well as to assess, collect and account for all revenues thereunder.

Who will be affected

The Kenya Revenue Authority, all taxpayers.

When

Effective 1 January 2018 though the KRA continues to administer the provisions of the statutes under their transitional provisions and its sweeping powers under section 5(1) of the KRA Act.

Our view

This amendment simply seeks to update the list of laws currently being administered by the KRA and afford greater clarity.

Islamic Finance Definitions

The Finance Bill seeks to amend section 2 of the Stamp Duty Act by including the definitions of "Islamic Finance Arrangement"; "Islamic Finance Return"; and "Islamic Property Finance" as per the Income Tax Act definition.

"Sukuk" definition has also been aligned to the definitions under the Public Finance Management Act, 2012.

The provision under Section 5 of the Stamp Duty Act that exempts stamp duty from being charged twice where a person moves a mortgage from one bank to another is also amended by including the words "or an Islamic property finance arrangement" immediately after the word "mortgage".

Section 27 of the Stamp Duty Act which provides for exclusion of interest in computing stamp duty on an instrument is amended by inserting the words "or an Islamic finance return" immediately after the word "interest" wherever it appears.

The measure

These provisions seek to bring Islamic banking and finance within the scope of the Stamp Duty Act.

Who will be affected

Mostly people entering into transactions structured in accordance with Islamic law.

When

Effective 1 January 2018.

Our view

This is a measure largely aimed at having Islamic financial products covered under all laws and ensuring that they are accorded equivalent tax treatment with similar conventional financial products.

Exemption from payment of stamp duty on transfer of title under an Islamic Property Finance Arrangement

Finance Bill, 2017 has introduced Section 68A in the Stamp Duty Act whereby any mortgage created under an Islamic Finance Arrangement enabling a person purchase property with the title thereto first being transferred to a financial institution, duty shall be charged only on the first transfer to the financial institution and not on the subsequent transfer from the financial institution to the purchaser.

The measure

Stamp duty shall only be payable on the transfer of property from the vendor to the financial institution but not on the transfer of property from the financial institution to the purchaser in a mortgage subject to an Islamic Property Finance Arrangement.

Who will be affected

Businesses and individuals entering into transactions structured in accordance with Islamic law.

When

Effective 1 January 2018.

Our view

This measure seeks to encourage the growth of Islamic Financing Arrangements by ensuring tax neutrality for Islamic financial products to favourably compete with similar products in the Kenyan market.

Exemption from payment of Stamp Duty on transfer of title relating to a Sukuk arrangement

The Finance Bill, 2017 seeks to amend the Stamp Duty Act by introducing section 96B which exempts transfer of title under a Sukuk arrangement where:

- At the beginning of the arrangement, the title is to be transferred from the original owner to the entity representing the Sukuk holders;
- During or at the end of the arrangement, the title shall be transferred back to the original owner from the said entity; and
- An asset is replaced by transfer of a new asset from its original owner to the entity during the term of the Sukuk.

This exemption does not apply where an arrangement is formed to evade tax or is otherwise not effected for genuine commercial reasons.

The measure

The transfer of property from an original owner to the entity representing Sukuk holders and back to an original owner of the property to act as security under a Sukuk arrangement shall be exempt from payment of stamp duty.

Who will be affected

Mostly people entering into transactions structured in accordance with Islamic law.

When

Effective 1 January 2018.

Our view

This measure seeks to encourage the growth of Sukuk Arrangements as a source of development expenditure in Kenya.

Other changes affecting Islamic financial arrangements

The Finance Bill, 2017, seeks to make the following amendments to incorporate Islamic financing arrangements:

- Section 4 of the Co-operative Societies Act by allowing a society which has its objects as *"the promotion of the welfare and economic interests of it's members or adherence to the principles or Islamic law"* to be registered by the Commissioner under this Act;
- Section 2 of the Co-operative Societies Act by including *"a return"* under the definition of the word deposit, by expanding the definition of 'deposit taking business' to include funding arrangements in compliance with the Islamic law and expanding the definition of *"sacco business"* to incorporate Sacco business in compliance with Islamic Law; and
- Sections 23 and 68 of the Sacco Societies Act by inserting subsection (3) to provide for the licensing and supervision of co-operative societies carrying out deposit taking business in compliance with Islamic Law.

The measure

This measure allows for the formation and supervision of Co-operative and Sacco Societies by the Islamic Community within the existing legal framework.

Who will be affected

Persons joining or forming Co-operative and Sacco Societies structured in accordance with Islamic law.

When

Effective 1 January 2018.

Our view

This measure seeks to encourage the growth of Shariah compliant finance products to boost savings and investment.

Amendments to the Retirement Benefits Act, 1997

The Finance Bill, 2017 seeks to amend the following sections of the Retirement Benefits Act, 1997:

- Section 5 by adding *"approve trustees remuneration approved by members during the annual general meeting after every three years"* to the objects and functions of the Authority;
- Section 26 by adding a restriction to prevent persons who *"do not comply with the guidelines or practice notes issued by the Authority"* from serving as a trustee of any scheme fund; and
- Section 34 by imposing a penalty of KES 100,000 on a person who fails to submit any statutory return by the due date to the Authority. In addition to the prescribed penalty, a further fine of KES 1,000 for each day or part thereor during which the offence continues shall be incurred. A person who pays a penalty under this section shall not be prosecuted in court for the same offence.

The measure
The amendments will enhance compliance among trustees and funds that are regulated by the Retirement Benefits Authority.

Who will be affected
Retirement Benefits Schemes, Trustees of Retirement benefit schemes and members.

When
Effective 1 January 2018.

Our view
This measure is aimed at extending the Retirement Benefits Authority's control to cover trustees' remuneration. The measure also seeks enhanced compliance by trustees by imposing a penalty where statutory obligations are not fulfilled. On the whole, these measures are welcome as they seek to safeguard the interests of members of retirement benefit schemes.

However, trustees will face additional sanctions such as being barred from serving where the RBA considers that they are non-compliant.

Amendments to the Public Procurement and Asset Disposal Act

The Finance Bill, 2017 seeks to amend the following sections of the Public Procurement and Asset Disposal Act, 2015:

- Section 10 of the Act to change the composition of the Public Procurement Regulatory Board while observing regional and gender balance;
- Section 29 to change the composition of the Review Board while observing regional and gender balance; and
- Section 49 dealing with Sector-specific procuring and disposal agencies by inserting a new section 114A spelling out a specially permitted procurement procedure to be allowed by the National Treasury in the following circumstances:
  - Where exceptional requirements make it impossible, impracticable or uneconomical to comply with the Act and the Regulations;
  - Where the market conditions or behaviour do not allow effective application of the Act and Regulations made under the Act;
  - For specialized or particular requirements which are regulated or governed by harmonized international standards or practices;
  - Where strategic partnership sourcing is applied;
  - Where credit financing procurement is applied; or
  - In such other circumstances as may be prescribed.

The measure

The amendments are aimed at improving the Public Procurement and Asset Disposal system and to provide alternative procurement options where circumstances justify.

Who will be affected

Suppliers, National and County Governments and Parastatals.

When

Effective 1 January 2018.

Our view

The government has been keen on strengthening integrity, accountability and transparency in the public procurement and asset disposal system. The proposed changes are therefore in line with the Government's aims to achieve this. We believe that this is a move in the right direction. However, more needs to be done to check the specially permitted procurement procedure as it could be subject to abuse by the procuring entities if not well checked.

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