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Kenya Budget Insights 2018

Understand. Reflect. Respond.

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Introduction

The Cabinet Secretary, Henry Rotich, tabled a KES 2.5 trillion budget to Parliament themed "Creating jobs, transforming lives and sharing prosperity". The theme captures the need to address the growing youth unemployment problem as well as address the inequality gap, with a majority of the population still living in poverty. Indeed, based on the Kenya Intergated Household Budget Survey 2015/2016 survey, 63.7 percent of the population live on less than USD 3.20 per day which is the poverty line for lower middle-income countries. This has a great bearing on taxation, as it implies the tax base is smaller than would otherwise be the case as only a small segment of the population is able to contribute to the coffers. It is therefore critical to grow the economy and the middle class in order to not only sustain growth in tax revenues, but also to share the tax burden widely.

Tax will continue to be the main source of financing for the budget, with tax collection expected to account for 76% of the budget. The KES 1.9 trillion revenue target represent a steep 17.5% increase from the projected KES 1.7 trillion revenue collection for 2017/18. With economic growth for FY19 projected at about 6%, this means that a lot of the growth in tax revenue is expected to come from enhanced administrative/enforcement measures by the revenue authority, besides the tax increases contained in the Budget and the yet to be finalised Income Tax Bill 2018. Taxpayers should therefore expect to dig deeper into their pockects to finance the Budget and we should expect a more aggressive stance by the revenue authority as they seek to meet the ever growing target.

The expenditure side continues to be skewed towards recurrent expenditure at the expense of development spending. In this financial year, KES 1.5 Trillion has been allocated to recurrent spending, and out of the KES 376 billion allocated to County Governments, 70% is expected to be spent on recurrent expenditure. A total of at least KES 1.8 trillion will therefore go to recurrent spending, which is almost the entire tax revenue collection for FY19. Another item of note is debt repayment, which is expected to take up KES 686 billion in principal and interest repayments. This is a cause for concern and calls for measures to contain the mounting public debt and to ensure prudent investment of the debt proceeds.

In line with the theme of the Budget, the priority areas for the Government under the "Big Four Agenda" are growing manufacturing, affordable housing, food security and healthcare. These priorities will no doubt resonate well with the populace. Specific tax measures have been proposed to address these priorities, many of which are positive. However, what is critical to the success of the Government Agenda is how the initiatives will be executed as this is where many well laid out plans have come up short in the past.

Corporate Tax

Clarification of applicability of Capital Gains Tax on insurance companies

The measure

Section 19 of the Income Tax Act is to be amended by introduction of a proviso that specifies that gains from transfer of property by general insurance companies are subject to capital gains tax (CGT) while that of life assurance companies is exempt.

Who will be affected

Insurance companies.

When

Effective 1 July 2018.

Our view

Initially the issue of CGT on transfer of property by insurance companies was not clear and led to protracted disputes between the Kenya Revenue Authority ("KRA") and insurance companies. This measure is therefore meant to clarify that CGT is applicable on capital gains arising from the transfer of property by general insurance companies while the same is exempt for life assurance companies.

While a welcome measure, the provisions relating to taxation of insurance companies needs to be revisited in light of the proposed changes under International Financial Reporting Standards (IFRS 17).

Manufacturers to benefit from additional 30% deduction for electricity

The measure

The Bill proposes to amend Section 15 of the Income Tax Act to provide for an additional deduction of 30% of the electricity bill incurred by manufacturers in addition to the normal deductible electricity costs. Effectively, manufacturers would get a 130% deduction in respect of electricity bills subject to the conditions to be set by the Ministry of Energy.

Who will be affected

Manufacturers.

When

Effective 1 January 2019.

Our view

This measure aligns to one of the Government's big four agenda of increasing the contribution of the manufacturing sector to the GDP to 15% by 2022.

This is a welcome relief for manufacturers as electricity/ energy is one of the highest costs incurred by manufacturers and is relatively high compared to other countries in the continent. If well implemented, this should enhance the competitiveness of local manufacturers and encourage growth and investment in the sector. However, it is hoped that the conditions to be set by the Minister will not be too restrictive as to limit the benefit and work against the noble objective. In the long run, concerted measures to reduce the cost of energy in the country will be required as subsidies are intended to be short-term.

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15% Presumptive Income Tax introduced for traders

The measure

The Bill proposes to replace turnover tax with a presumptive income tax ("PIT") of 15% of the business permit (or licence fee) for businesses whose turnover is below KES 5 million per annum. PIT shall not apply to incorporated companies, income from rental (which is taxed under residential rental income tax regime) and income from management or professional services.

Who will be affected

Unincorporated businesses that operate on single business permits issued by County Governments.

When

1 January 2019.

Our view

For businesses that have a turnover of upto KES 5 million, the 15% of business licence permit fees, which averages KES 15,000, is quite an insignificant amount as compared to the turnover tax currently levied at 3% of turnover. This, in our view, may be an attempt to bring the target businesses within the tax net and thereafter come up with a more effective taxation measure after the implementation of the existing turnover tax mechanism proved ineffective.

This measure will require cooperation with County Governments to effectively collect the tax.

Expansion of the scope of deemed dividend

The measure

The Bill proposes to amend Section 7 of the Income Tax Act by expanding the scope of deemed dividends to include the following:

- Distribution of any cash or assets to a shareholder, or person related to the shareholder;
- Discharge of any obligations or settlement of debt on behalf of a shareholder or a connected/ related party to the shareholder;
- Use of any amount for the benefit of the shareholder or related party; and
- Transfer pricing adjustments – i.e. amounts representing additional taxable income or reduced tax losses arising from adjustments by virtue of any transactions with a shareholder or a shareholder's related party.

Who will be affected

All companies making relevant distributions and/ or payments to their shareholders or parties related to the shareholders.

When

1 July 2018.

Our view

This provision significantly widens the scope of deemed dividend provisions to cover various dealings with shareholders of a company.

The provision will have a negative impact on companies and shareholders, as their dealings will likely trigger adverse tax consequences.

One would have expected a threshold on the value of benefits to minimise the administrative burden on accounting for insignificant benefits such as the promotional items issued to shareholders during Annual General Meetings.

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Repeal of Compensating Tax and introduction of tax on dividends distributed from untaxed profits

The measure

The Bill proposes to repeal the compensating tax provisions under Section 7A of the Income Tax Act and replace them with a corporation tax on distributions made out of untaxed profits.

Who will be affected

All companies paying dividends except registered collective investment schemes.

When

1 January 2019.

Our view

This provision is, in essence, similar to the current compensating tax regime save for the fact that as per the new provisions, companies will no longer be required to maintain a dividend tax account for purposes of determining the tax due on untaxed profits. This therefore simplifies the tax regime. In addition, under the new provision, tax will only be applicable where a dividend is distributed out of untaxed profits, unlike under the prevailing regime where compensating tax could apply. This is where profits have been taxed at a rate lower than the prevailing corporation tax rate.

However, the provision does not define what constitutes untaxed profits and this will present significant challenges in interpretation and could impact a number of taxpayers negatively. For example, holding companies which receive dividends from subsidiaries and distribute the same to shareholders would be negatively impacted if their dividend income were to be treated as untaxed income, since it would have been taxed in the hands of the subsidiaries but exempt in the hands of the holding company under the current income tax provisions. There is therefore an urgent need to clarify the extent of this provision.

Similar to concerns regarding compensating tax, this new provision could also claw back tax incentives. For instance, income that was hitherto exempt from tax, such us interest from infrastructure bonds, would be subject to tax upon dividend payment. We believe this provision should be done away with as it introduces significant uncertainty in taxation.

Special tax rates under a special operating framework with the government

The measure

The Bill proposes to amend the Third Schedule to the Income Tax Act to provide for a special corporation tax rate for Companies engaged in business under a special operating framework arrangement with the Government.

The rate of corporate tax shall be to the extent provided in the arrangement, rather than the normal set of corporate tax rates

Who will be affected

Companies working under special agreements with the government.

When

1 January 2019.

Our view

This measure is likely aimed at entities that partner with the government to carry out specific flagship projects under the Public-Private Partneship ("PPP") model or as part of the Big Four Agenda.

If well packaged, this should enhance the attractiveness of PPP projects and mobilise investment in projects that contribute to the Big Four Agenda, such as affordable housing.

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Withholding Tax

Introduction of 20% withholding tax on demurrage charges

The measure

The Bill proposes to introduce withholding tax at the rate of 20% on demurrage charges paid to a non-resident ship operator. The Bill defines demurrage charges as penalties paid for exceeding the period allowed for taking delivery of goods or returning any equipment used for transportation of goods.

Who will be affected

Non-resident shipping lines/ operators and their customers.

When

1 July 2018.

Our view

This measure is likely to have a negative effect on business and make the country less competitive in terms of the shipping business. It is likely that the affected taxpayers could either pass on the impact of the tax by increasing the demurrage charge or increasing the original freight charges in lieu of the demurrages, to avoid the tax.

The importers will bear the burden if the ship owners take this approach. It does not also help that in most cases, demurrage charges arise out of inefficiencies within government agencies. While the revenue authority may be looking at bringing demurrage charges into the tax net, it would have been more appropriate to capture demurrage under Section 9, which imposes tax on the income of non-resident shipping operators.

Introduction of withholding tax on insurance premiums paid to non-resident persons

The measure

The Bill has proposed to charge withholding tax on insurance premiums paid to non-residents at the rate of 5% of the gross amount of premium payable excluding insurance premiums paid for insurance of aircrafts.

Who will be affected

Non-resident insurance companies receiving premiums from Kenya.

When

1 July 2018.

Our view

The measure is aimed at expanding the tax net and may be intended to promote the take-up of insurance with local insurance companies. It is however not clear if this is also intended to cover reinsurance premiums. If this is the case, there will be an impact on insurance businesses in Kenya if the foreign reinsurance companies quote their premiums net of tax, thereby shifting the burden to the resident taxpayer.

Pay As You Earn (PAYE)

New contribution by employees and employers for housing fund

The measure

The employment Act will be amended to introduce a contribution of 1.0% of an employee's gross monthly emoluments subject to a maximum of KES. 5,000 and a matching contribution by the employers towards the National Housing Development Fund.

Note that the Bugdet Speech indicated the contribution rate as 0.5% whereas the Finance Bill indicated 1%. The Cabinet Secretary ("CS") has since been reported to have clarified that the contribution will be 0.5%. It is thus expected that the Finance Bill will be amended to capture the intended rate.

Who will be affected

All employers and employees.

When

1 January 2019.

Our view

Whereas the purpose for the contribution is noble; i.e. to ensure that Kenyans have access to affordable housing, there is still lack of clarity on how this Fund will operate.

It is also unclear whether the Fund will benefit contributors only, or both contributors and non-contributors, and the nature and extent of the benefits.

In addition, it is not clear whether or not the contribution will be allowable for tax in the hands of the employees.

It is recommended that the detailed framework for this fund should be put in place, sooner rather than later, and stakeholders input be obtained to avoid pitfalls that would make this move ineffective.

This contribution amounts to an additional tax for employees and increases the cost of employment for employers. One would expect that if the beneficiaries will not be limited to employees, then measures to expand the contributor base should be put in place.

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Tax Amnesty on foreign income extended

The measure

The period of tax amnesty on foreign income has been extended from 30 June 2018 to 30 June 2019. In addition, the amnesty will include income accrued up to the period 31 December 2017.

Furthermore, the funds declared under the amnesty will be exempt from the provisions of the Proceeds of Crime and Anti-Money Laundering Act or any other Act relating to reporting and investigation of financial transactions.

Who will be affected

Taxpayers earning taxable foreign income.

When

1 July 2018.

Our view

This is a move by the government to encourage the uptake of the Amnesty, which has previously been slow. It also serves as assurance to the taxpayers taking advantage of the Amnesty that the repatriated funds will be exempt from further investigations with regards to possible crimes or scrutinty under other laws. Fear of investigations or prosecution was cited as one of the possible reasons for the slow uptake of the Amnesty.

However, the amendments fail to address other critical questions with regard to the Amnesty, including the requirement for repatriation of funds where such income would have been consumed or where invested in illiquid assets, as well as the limited scope of the Amnesty considering the extent of foreign income that is taxable in Kenya.

While it is expected that the uptake will increase due to the changes contained in the Finance Bill, the above challenges will limit the success of this Amnesty.

Late filing penalty and interest for individual tax returns

The measure

The penalty for late filing of tax returns by individuals has now been reduced to 20% of principal tax due, subject to a minimum of KES. 2,000.
In addition, the interest on late payment of tax has been revised upwards from 1% to 2% of the principal tax due.

Who will be affected

Individual Taxpayers.

When

1 July 2018.

Our view

This reduction of the minimum penalty applicable on late filing of tax returns to KES 2,000 (from KES 20,000) is a welcome move, as high penalties discourage filing by those who may have missed the deadlines. Furthemore, there is a separate penalty on late payment of tax so late filing should not be highly penalized. The increase in the interest chargeable on late payment of tax is rather paradoxical, given that the Government has been at the forefront of advocating for lower interest rates in the market. We also believe that this measure is unfair to the taxpayers, since the Government does not currently pay interest on overpaid tax or refunds.

Customs Duties

Preamble

The East Africa Community Council of Ministers ('Council') reviewed the East Africa Community Customs Management Act (EAC CMA) and The East Africa Community Common External Tariff (EAC CET) and approved several measures on custom duty rates, stay of application of the CET, remission of duty on inputs imported for manufacture of goods and the exemption regime under the Fifth Schedule of the EAC CMA. The Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) in their meeting held in May 2018 adopted these changes which were subsequently published in the EAC Gazette Notice no. 8 of 2018 on 30th June 2018.

The approved measures are generally geared towards promoting industrialization, encouraging local investments and creating incentives in the agricultural and manufacturing sectors. We have summarized notable measures contained in the EAC Gazette Notice and analyzed the impact of these changes on the affected parties. The changes contained in the Gazette Notice came into force on 1st July 2017.

Review of the EAC Customs Management Act 2004 (EAC CMA) and the EAC Common External Tariff (EAC CET)

The measure

The EAC CMA and the EAC CET are currently undergoing a comprehensive review.

Who will be affected

Importers and Exporters.

When

1 January 2019.

Our view

The EAC CMA, 2004, which lays out the legal substantive framework for Customs management within the EAC, is undergoing a comprehensive review to address the following issues:

- Obsolete and redundant provisions of the EAC CMA Act, 2004;
- Inapplicable provisions of the Act in current customs operations;
- Interpretations of the Act by different Customs Administrations;
- Interpretations of legal provisions by Courts and tax tribunals in Partner States;
- Practices that are not sanctioned by law;
- Mechanisms and forms used in making advance rulings; and
- National legislations, mechanisms and forms used in countering anti-counterfeit.

Further, the EAC CET has been undergoing a comprehensive review from 2017, with the review expected to have been concluded by June 2018. Currently, the Secretariat has developed the CET concept note that outlines the principles and criteria, and suggests tariff bands for the comprehensive review of the EAC CET. During the SCTIFI meeting held in May 2018, preliminary proposals for reclassification and categorisation of goods were received by a number of the Partner States. The Secretariat has extended the deadline for finalisation of the review by one year to 30 June 2019. It is expected that the review of the CET will incorporate inter alia, a framework for handling duty remission requests for industrial inputs.
It is also expected that the current three band tariff of 0%, 10% and 25%, as well as the sensitive goods list, will be reviewed to remedy any adverse effects that the Partner States may be experiencing and to safeguard the EAC interests. The reviews are necessitated by advances in technology, consideration by the EAC Council of Ministers on protectionism measures to be adopted and the elimination of stays of the CET application.

Stay of Application of CET on various items

The measure

The EAC Council of Ministers has granted stay of application of the CET on certain items to allow Kenya apply the following rates for a period of one year:

- Road tractors for semi-trailers at 25% instead of 10%;
- Liquid gas cylinders at 25% instead of 0%;
- Flat-rolled products of iron or non-alloy steel of tariff codes 7210.41.00, 7210.49.00, 7210.61.00, 7210.69.00,7210.70.00, 7210.90.00, 7212.30.00, 7212.40.00 and 7212.50.00 at 35% or USD 250/MT, instead of 25% or USD 200 and those of tariff code 7212.20.00 at 35% or USD 250/MT, instead of 10%;
- Flat-rolled products of iron or non-alloy steel of tariff codes 7212.60.00 at 10% or USD 250/MT (whichever is higher), instead of 10%;
- U, I , H , L or T sections of iron or non-alloy steel of tariff codes 7216.31.10,7216.32.10, 7216.33.10 and 7216.40.10 at 35% or USD 250/MT (whichever is higher), instead of 0%;
- Worn clothing and other worn articles of tariff codes 6309.00.10, 6309.00.20 and 6309.00.90 at 35% or USD 0.20/Kg, instead of 35% or USD 0.40/Kg (whichever is higher);
- Copolymers of tariff code 3905.91.00 at 0%, instead of 10%;
- Particleboard, oriental strand board and other similar boards of tariff codes 4410.11.00, 4410.12.00, 4410.19.00 and 4410.90.00 at 35% or USD 110/MT (whichever is higher), instead of 25%;
- Fibreboard of wood and other ligneous materials of tariff codes 4411.12.00, 4411.13.00, 4411.92.00, 4411.93.00 and 4411.94.00 at 35% or USD 120/MT (whichever is higher), instead of 25%;
- Plywood, veneered panels and similar laminated wood of tariff codes 4412.10.00, 4412.31.00, 4412.33.00, 4412.34.00 and 4412.39.00 at 35% or 230/M3 (whichever is higher), instead of 25%;
- Block board and similar boards of tariff codes 4412.94.00 and 4412.99.00 at 35% or USD 200/MT, instead of 25%;
- Skillets and free hinge lid packets of tariff code 4819.20.10 at 35%, instead of 10%;

Our view

Kenya has sufficient capacity to manufacture products such as iron and steel products, liquefied gas cylinders, road tractors for semi-trailers, paper and paperboard products and vegetable oil. In a bid to shield local industries from competition arising from cheap imports, Kenya applied to the EAC Council of Ministers to be granted a stay of application of the CET, to enable it apply a higher import duty rate on several products which are locally manufactured. The increase in import duty on these products is expected to increase the cost of imported substitute products and protect local manufacturers from competition with cheap subsidised imports. Kenya was granted a stay of application to apply import duty rates lower that the CET rates on certain essential products where the local production capacity of such goods is inadequate, like rice and used clothing and footwear.

The EAC Partner States agreed in 2016 to gradually phase out the importation of second hand clothes and shoes to promote growth of the textile and leather sectors in the community. As a first step, import duty on second hand clothes was increased from 35% or USD 0.20/Kg to 35% or USD 0.40/Kg, with plans to gradually increase the rate and ban importation of these commodities by 2018. However, Kenya applied to stay the application of the CET rate and apply USD 0.20/Kg or 35% due to lack of capacity by the textile industry to meet the local clothes and shoes demand. Last year, Kenya was allowed to stay the application of the CET on garments and leather footwear manufactured in the EPZ on the 20% of the annual production allowed in the Protocol to be sold within the domestic market for one year.

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- Nails, tacks, drawing pins, corrugated nails and staples of tariff code 7317.00.00 at 35% or USD 350/MT (whichever is higher), instead of 25%;
- Coach screws, wood screws, screw hooks and screw rings of tariff codes 7318.11.00, 7318.12.00 & 7318.13.00 at 35% or USD 350/MT (whichever is higher), instead of 10%;
- Other threaded and non-threaded articles of tariff codes 7318.19.00, 7318.22.00, 7318.23.00 and 7318.29.00 at 35% or USD 350/MT (whichever is higher), instead of 10%;
- Iron or steel wool, pot scourers and scouring or polishing pads, gloves and similar items of tariff code 7323.10.00 at 35% or USD 200/MT (whichever is higher), instead of 25%;
- Coated electrodes of base metal for electric welding of tariff code 8311.10.00 at 35% or USD 250/MT (whichever is higher), instead of 25%;
- Rice at 35% or USD 200/MT instead of 75% or USD 345/MT (whichever is higher);
- Safety matches of tariff code 3605.00.00 at 25% or USD 1.35/Kg (whichever is higher), instead of 25%;
- Styrene acrylic at 10%, instead of 0%;
- Uncoated paper and paperboard in rolls or sheets, of tariff codes 4805.19.00, 4805.91.00, 4805.92.00 and 4805.93.00 at 35%, instead of 10%;
- Flat-rolled products of iron or non-alloy steel of tariff codes 7209.16.00, 7209.17.00, 7209.18.00, 7209.26.00, 7209.27.00, 7209.28.00 and 7209.90.00 at 10% or USD 125/MT (whichever is higher), instead of 10%;
- Flat-rolled products of iron or non-alloy steel of tariff code 7210.30.00 at 35% or USD 250/MT (whichever is higher), instead of 25%;
- Leaf springs and leaves thereof of tariff code 7320.10.00 at 25% or USD 250/MT (whichever is higher), instead of 25%;
- Bridges & bridge sections; towers & lattice masts; and equipment for scaffolding, shuttering, propping or pit propping of tariff codes 7308.10.00, 7308.20.00, 7308.40.00, and 7308.90.99 at 35% or USD 250/MT (whichever is higher), instead of 25%, and road guard rails of tariff code 7308.90.91 at 35% or USD 250/MT whichever is higher instead of 10%;

However, the stay was not extended and instead, import duty on textile products has been increased from 25% to 35% or USD 5 per ton and that of footwear from 25% to 35% or USD 10 per pair, to protect the local textile industry from competition with cheap imports. The EAC Secretariat intends to harmonise duty remission of raw materials and industrial inputs used in the manufacture of textile products, and has developed a list of the same for discussion and adoption during the next SCTIFI meeting scheduled for November 2018. At the moment, the Council has approved the duty remission on the aforementioned raw materials when imported by some of the Partner States.

The textiles and footwear industry in Kenya is still underdeveloped and there are questions as to whether they have capacity to meet local demand. By increasing import duty on apparel and footwear, the Government is likely to hurt local businesses that deal in the affected textile and footwear products, due to the expected reduction in demand. The Government appears to have contradicted its objective of promoting the local textile industry by seeking to apply an import duty rate lower than the CET rate on second hand clothing, as this will lead to unfair competion against cheaper second hand clothing. However, the plan by the EAC Secretariat to introduce duty remission on raw materials for manufacture of textile products appears to be a more effective measure for promoting growth of the local textiles industry, since this will reduce their cost of production while at the same time, maintain the cost of imported textile products.

- Screws and bolts of tariff code 7318.15.00 at 35% or USD 250/MT (whichever is higher), instead of 25%, and nuts of tariff code 7318.16.00 at 35% or USD 250/MT (whichever is higher), instead of 10%;
- Flat-rolled products of iron or non-alloy steel of tariff code 7211.29.00 at 35% or USD 125/MT (whichever is higher), instead of 25%;
- Wire of iron or non-alloy steel of tariff code 7217.10.00 at 35% or USD 250/MT (whichever is higher), instead of 10%;
- Bars, rods, angles, sections or shapes of stainless steel of tariff heading 7222 at 35% or USD 250/MT (whichever is higher), instead of 10%;
- Flat-rolled products of tariff code 7225.50.00 at 35% or USD 125/MT (whichever is higher), instead of 10%, and those of tariff codes 7225.91.00 and 7225.92.00 at 35% or USD 250/MT (whichever is higher), instead of 10% and those of tariff code 7225.99.00 at 35% or USD 275/MT (whichever is higher), instead of 10%;
- Tubes, pipes and hollow profiles of tariff code 7306.30.00, 7306.50.00, 7306.61.00, 7306.69.00 and 7306.90.00 at 35% or USD 200/MT (whichever is higher), instead of 25%;
- Doors, windows & their frames of tariff code 7308.30.00 at 35% or USD 250/MT (whichever is higher), instead of 25%;
- Stoves, ranges, grates, cookers, barbecues, braziers, gas-rings, plate warmers & similar non-electric domestic appliances of tariff codes 7321.19.00 and 7321.89.00 at 35%, instead of 10%;
- Footwear of tariff heading 6405 at 35% or USD 10 per pair (whichever is higher), instead of 25%;
- Aluminum bottle tops of tariff code 8309.90.90 at 35% or USD 0.01/Kg (whichever is higher), instead of 25%;
- Prefabricated buildings of tariff code 9406.90.90 at 35% or USD 250/MT (whichever is higher), instead of 25%;
- Refined vegetable oils of tariff codes 1507.90.00, 1511.90.30, 1511.90.40 1511.90.90, 1512.19.00 and 1515.29.00 respectively at 35% or USD 500/MT (whichever is higher),;
- Fabrics, apparels and garments of Chapter 60,61 and 62 excluding kitenge, khanga and kikois of tariff codes 62.11.4210, 62.11, 4310 and 62.11.4910 at 35% or USD 5/ton (whichever is higher);

The Government has in the recent past been introducing measures to protect the local steel and iron industry from stiff competition with imported cheap iron and steel products. To further protect the local industry, Kenya has been allowed to apply an import duty rate of 35% instead of 25%/10% on a wide range of iron and steel products. The demand for iron and steel products has grown significantly, especially with the increased Government infrastructural projects. It remains to be seen whether the local iron and steel industry will satisfy this local demand given the expected increase in the cost of imported iron and steel products.

Rice is a sensitive item in the EAC CET and the council increased the duty rate from 75% or USD 200/MT to 75% or USD 345/MT in 2015, to protect local farmers from cheap imports. Kenya, however has been granted an extension to stay the application of the CET on rice at 35% or USD 200/MT for a further period of one year. This measure is geared towards addressing the food insecurity in Kenya and is in line with one of the Big Four Agenda pillars of providing food security. This is a welcome move that is expected to go a long way in addressing food shortage as experienced last year.

The Government has increased import duty on paper and paperboard products and a wide range of wood products including plywood, blockboards and similar boards. This measure will increase the cost of importing these products which is likely to lead to increased deforestation. With the recent ban on logging as part of the Government`s intitiatives to protect

- Wooden furniture of tariff codes 9403.30.00, 9403.40.00, 9403.50.00 and 9403.60.00 at 35%, instead of 25%;
- Paper and paperboard products of tariff codes 4804.11.00, 4804.31.00, 4804.41.00, 4805.24.00 and 4805.25.00 at 35% instead of 25%;

Who will be affected
Manufacturers, importers and consumers.

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key water towers, one would have expected the Government to reduce the cost of acquring alternative wood and wood products. In our view, this measure will pose a serious challenge on implementation of the Government's directive on logging.

Duty Remission under Section 140 of the EACCMA, 2004

The measure
The Council has approved remission of duty on the following goods when imported by gazetted manufacturers in Kenya:

- Wheat grain at an import duty rate of 10%, instead of 35%;
- Gum base at a duty rate of 10%, instead of 25% for one year;
- Aerosol cans used in the packaging of insecticides and acaricides at a duty rate of 0%, instead of 25%;
- Inputs used in the manufacture of pesticides, fungicides, insecticides and acaricides at a rate of 0%;
- Inputs for the manufacture of toothbrushes at 0%;
- Inputs and raw materials used in the manufacture or energy saving stoves at a rate of 0%; and
- Inputs used in the manufacture of roofing tiles coated with acrylic paint and the weather side coated with natural sand granules, at 0%.

The Council has further extended the stay of application of the conditions contained in legal notice no EAC/39/2013 of 30th June 2013 on duty remission for motor cycles assembly for one year. This legal notice allows for duty remission for assemblers of Completely Knocked Down Kits (CKD) motor cycles who procure or manufacture the following specified parts within the EAC: main frame, suspension, or a combination of seat and seat frame, mudguard, wheel rim, break gear and exhaust pipe.

Our view
The Council has approved the remission of import duty on several inputs imported by gazetted manufacturers in Kenya, to reduce their costs of production and thereby improve competitiveness of these products in the export market. The above measures are geared towards facilitating implementation of the pillars of the Big Four Agenda by promoting agriculture and local industrialisation. The approval of duty remission on inputs for manufacture of pesticides, and aerosol cans for packaging of pesticides, is expected to reduce the cost of farming and is amongst other tax incentives introduced by the Government to boost agriculture, such as Value Added Tax (VAT) exemption on inputs for manufacture of animal feeds and equipment for manufacture of grain storage facilities.

The Government has over the last couple of years introduced tax incentives to encourage the use of clean energy, in a bid to protect the environment. To further reduce the cost of clean energy, duty remission has been approved on inputs for manufacture of energy saving stoves.

Furthermore, the Council has revoked the application of the conditions contained in item 12 of Legal Notice No EAC/32/2016 on duty remission for sugar for industrial use. The Legal Notice had provided for progressive reduction of remitted levels as follows:

- 2016/2017 - 85% and apply import duty rate 15%;
- 2017/2018 - 80% and apply import duty rate 20%;
- 2018/2019 - 75% and apply import duty rate 25%

This implies that duty remission of sugar for industrial use will continue to be 90%, therefore the product will be imported at a rate of 10%.

Who will be affected

Gazetted manufacturers and consumers.

Decrease in the CET rate for Polyvinyl Alcohol

The measure

The Council of Ministers has approved the reduction of the CET rate for Polyvinyl Alcohol from 10% to 0%.

Who will be affected

Importers.

Our view

This move will benefit manufacturers of paper and textiles who use Polyvinyl Alcohol as a raw material.

Split of HS code 8903.99.00

The measure

The EAC Council of Ministers has approved the split of HS code 8903.99.00 as follows:

- 8903.99.10 – motor boat ambulance at 0%; and
- 8903.99.90 – other at 25%

Who will be affected

Healthcare providers and residents of areas within close proximity to water bodies.

Our view

Motor vehicle and motor cycle ambulances are separately classified in the EAC CET and attract 0% import duty rate. The split of tariff code 8903.99.00 is intended to harmonise classification and taxation of motor boat ambulances with other types of ambulances. This move is geared towards reducing the cost of importing motor boat ambulances and improve healthcare accessibility in areas where movement by boats is possible. This is a welcome move.

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Amendments to the Exemptions Regime under the 5th Schedule of the EACCMA

The measure

The Council has amended the exemption schedule as follows:

- Item 9, Part A been amended to include motorcycles or bicycles used for racing and specified spare parts thereof;
- Item 32, Part B on exemption of motor vehicles for transportation of tourist has been amended to include sightseeing buses and overland trucks imported by licenced tour operators subject to the following conditions;

Sight seeing buses

- Basic lavatory facilities;
- They have provisions for first aid equipment and communication fittings;
- They operate and have clear and conspicuous label or marking of " Tourist vehicle";
- Are of a seating capacity above 20; and
- Any other condition the commissioner may impose or vary.

Overland trucks

- High clearance for off road driving;
- They have provisions for camping, kitchen equipment and food storage;
- They have rescue and first aid equipment, baggage compartment and communication fittings;
- Clear and conspicuous label or marking of " Tourist vehicle";
- Any other condition the commissioner may impose or vary.

Item 7, Part B on exemption of ships and other vessels has been amended to include tourism boats imported by licenced tour operators.

Who will be affected

Racing riders and tour operators.

When

1 July 2018.

Our view

The Fifth Schedule of the EACCMA previously exempted racing cars imported by rally drivers and specified spare parts thereof from import duty. The Council has now extended a similar exemption to motor cycles and bicycles imported by racing riders to promote fairness in the sporting activity. The exemption will apply to 1 motor cycle or bicycle imported by racing riders for use in a race, and will also cover spare parts such as gear box assembly, assembled engine, front suspension assemblies, shock absorbers and spare parts outlined in paragraph 9, Part A.

The EAC CMA previously exempted specially designed and built motor vehicles for transportation of tourists when imported by tour operators upon recommendation by the Ministry of Tourism, provided the vehicles met some conditions. The scope of this exemption has been expanded to include sight-seeing buses and overland trucks. The exemption will only apply to sight-seeing buses and overland trucks that meet the above mentioned conditions subject to approval by the KRA, upon recommendation by the Ministry of Tourism. The Council has also provided for exemption of import duty on tourism boats. These measures are expected to further boost tourism by reducing the cost of acquiring a wider range of vehicles and boats.

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Excise Duties

Amendment of Excise license suspension provisions

The measure

The Finance bill has amended Section 23 of the Excise Duty Act on suspension of excise duty licenses as follows:

- Deleting the period within which a licensee is required to take remedy action required by the Commissioner and the period within which the Commissioner should acknowledge the action taken.
- Deleting the provision providing for appeal of the Commissioner`s decision to suspend a license, to the Tax Appeals Tribunal.

The Finance Bill further proposes to grant the Commissioner powers to suspend an excise license without notice, where the licensee:

- Has engaged in tax fraud;
- Has been found in possession of, or using, counterfeit stamps on excisable goods;
- Has been found in possession of goods bearing counterfeit stamps; or
- Has violated any regulations relating to health and safety standards or packaging of goods.

Who will be affected

Manufacturers of excisable goods.

When

1 July 2018.

Our view

The removal of timelines on suspension of excise licenses procedures will lead to uncertainty on the suspension process and may create room for the Commissioner to impose unreasonable timelines.

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Amendment of Part VIII of the Excise Duty Act on offences and penalties

The measure

The Finance Bill has proposed the following amendments to offences and penalties provisions under the Excise Duty Act:

- Introduction of a minimum penalty of KES 5 million on persons who manufacture excisable goods or import excisable goods requiring stamps, without being licensed.
- Introduction of powers by the Commissioner to forfeit any plant or excisable goods in respect of an offence that has been committed with regards to :
  - Carrying out activities requiring a license;
  - Contravention of licensing obligations; and
  - Contravention of excise stamp obligations.

Who will be affected

Manufacturers of excisable goods.

When

1 July 2018.

Our view

Section 38 of the Excise Duty Act currently imposes a penalty of double the excise duty payable. The CS has proposed to introduce a minimum penalty of KES 5 million to further discourage undertaking of the aforementioned activities without a license This measure, coupled with powers granted to the Commissioner to forfeit goods, is expected to enhance compliance and bring more manufacturers of excisable goods under the Commissioner`s control.

Expanded scope of Excise duty on bottled water

The measure

The Finance Bill has proposed to amend the scope of water subject to excise duty to cover bottled and similarly packaged water.

Who will be affected

Manufacturers, importers and consumers of bottled water.

When

1 July 2018.

Our view

The Finance Act 2016 excluded ordinary water of tariff code 2201.90.000 from waters subject to excise duty, which implied that only mineral water of tariff code 2201.10.00 was subject to excise duty. The aim of that move was to exempt ordinary tap water from the ambit of excise duty while imposing excise duty on bottled water. However, it has been argued by some industry players that purified water is classified as ordinary water and therefore not subject to excise duty.

This measure is therefore aimed at bringing clarity on waters falling under the realm of excise duty. Whereas the measure provides clarity for water bottling companies, it fails to recognise the current challenges regarding water shortage in most parts of the country. In effect, consumers are forced to turn to bottled water for drinking largely due to shortage or unavailability of clean water from public water supply sources. Therefore, imposition of excise duty on bottled water without addressing access to clean water could be seen as punitive, given that water is largely a public good.

Increase in excise duty

The measure

The CS has proposed to increase excise duty on the following goods and services:

- Private passenger cars of tariff code 8703.24.90 (Petrol powered cars with an engine rating exceeding 3000cc) and 8703.33.90 (Diesel powered cars with an engine rating exceeding 2500cc) from 20% to 30%.
- Money transfer services by cellular phone service providers from 10% to 12%.
- Illuminating kerosene from KES 7,205 per 1,000 litres to KES10, 305 per 1,000 litres.

Who will be affected

Importers of motor vehicles, consumers and importers of kerosene, consumers and mobile money transfer service providers.

When

1 July 2018.

Our view

The increase in excise duty on the aforementioned goods and services by the CS was primarily driven by the Government's appetite for more revenue to finance the budget deficit.

Whereas the rationale given for the increase in excise duty on the relatively more expensive high capacity motor vehicles is that it is intended to promote equality by ensuring excise duty is paid based on a person`s purchasing power, it is clear that the Government's objective here is to collect more revenue from individuals who can afford the high engine rating motor vehicles. The prices of the affected motor vehicles is expected to soar due to increase in excise duty and the indirect increase in VAT, since tax is compounded. Given the already high taxation of imported vehicles, the Government risks losing revenue due to a possible reduced demand on the high end motor vehicles.

In his budget speech, the CS indicated that the additional revenue collected on mobile money transfer services will be used to fund Universal Health Care. The Finance Bill further provides that 16% of excise duty paid on money transfer by cellular phone service providers will be paid to the Sports, Arts and Social Development Fund. The cost of mobile money transfer services will increase, since service providers are expected to pass on the additional excise duty to the consumers. We view this measure as targeting the easy sources of revenue. It is also unclear why transfers through mobile money should be taxed at a higher rate (12%) than other transfers (10% for bank transfers). This is inequitable.

The CS introduced excise duty of KES 7,205 per 1,000 litres on kerosene through the 2016 Finance Act to discourage adulteration of fuel. Adulteration of fuel is motivated by the relatively low price of kerosene as compared to diesel and petrol. The CS has proposed to harmonise the excise duty applicable on kerosene with that of diesel, to further bridge the gap between the price of kerosene and diesel and discourage adulteration. This measure, coupled with the expected introduction of VAT on petroleum products (including Kerosene), will significantly increase the price of kerosene and may render kerosene out of reach to the ordinary citizens. While the problem of adulteration ought to be addressed, this measure will be seen as punishing the poor who rely on kerosene as a source of fuel and may not readily access other sources of fuel. It also works against efforts to save our forest as those in rural areas could resort to wood fuel/ firewood.

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Introduction of a Robin Hood Tax on money transfers

The measure

The CS has proposed to introduce excise duty of 0.05% on transfer of money by banks, money transfer agencies and other financial institutions where the amounts transferred exceed KES 500,000.

Who will be affected

Consumers, financial institutions and money transfer agencies.

When

1 July 2018.

Our view

The Robin Hood Tax, also known as a Financial Transaction Tax (FTT), is an activist tax that was championed as a means to raise money from the financial sector to fund programs for the less priviledged members of society. Being a transaction tax, this measure is expected to increase the cost of doing business, particularly for medium size and large companies who transfer significant amounts of money in the course of their business.

Furthermore, there is lack of clarity on the transactions covered. This poses significant challenges and risks for financial institutions, since there are many forms of transfers including internal transfers, repayments, interbank transactions and other movements of funds that could be caught in the net, with adverse consequences.

We believe that this measure should be reviewed to clarify the scope, and ensure it does not hamper circulation of money, which is critical to the overall economy. If the intention is to raise additional tax from the wealthy, we believe this should be done through a tax-on income, rather than transactions which may affect all players in the economy.

Please note however, that following the ruling by the High Court, delivered on 20 July 2015, the Robin Hood Tax has been suspended pending the the definition of 'money transferred by the bank', for the purposes of the Act.

Introduction of excise duty on sugar confectionery

The measure

The CS has proposed to introduce excise duty at KES 20 per Kg on sugar confectionery of tariff heading 1704 and chocolate of tariff codes 1806.31.00, 1806.32.00 and 1806.90.00.

Who will be affected

Importers, manufacturers and consumers of sugar confectionery and chocolate.

When

1 July 2018.

Our view

This measure is aimed at generating additional revenue for the Government and discouraging the consumption of these products which are high in sugar content. Excise duty was also previously applicable on confectionaries in Uganda but this was recently removed through the Excise Duty (Amendment) Act 2018. It remains to be seen whether Kenya will eventually follow suit.

Whereas the manufacturers of such products will be negatively impacted, there is the other side of the debate which considers that consumption of such products should be limited for health reasons, among others.

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Amendment of the exemption schedule

The measure

The Finance Bill 2018 has proposed to include the following items in the excise duty exemption schedule:

- Alcoholic or non-alcoholic beverages supplied to Defence Forces Canteens Organization (DEFCO).
- Goods procured for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

Who will be affected

DEFCO and suppliers to DEFCO;

Companies which conclude special project agreements with the Government

When

1 July 2018.

Our view

The Excise Duty Act 2015 repealed the provision for exemption of excise duty on supplies made to the Kenya Defence Forces (KDF) and DEFCO, that was previously provided for in the repealed Customs and Excise Act. Subsequently, the Finance Act 2016 re-introduced the exemption but only on supplies to KDF and the National Police Service, to reduce the operation costs of the security forces. There has been uncertainty and debates amongst suppliers, the Government and KDF as to the exemption applied to DEFCO, since DEFCO is considered to be an extension of KDF. The inclusion of DEFCO is therefore aimed at clarifying the position. It is worth noting that whereas supplies to KDF are generally exempted from excise duty, this measure proposes to only exempt beverages supplied to DEFCO.

In the recent couple of years, the Government has focused on infrastructure development projects. Generally, most of the contracts signed between the Kenyan Government and the contractors provide for tax exemptions on the project activities albeit the supporting legislation has been lacking in some instances. This measure, together with similar provisions introduced in VAT and Income Tax Acts, gives legal backing to such agreements which provide for tax exemption, in this case exemption from excise duty, on goods acquired for implementation of the projects. We expect that clarity on the projects, which will qualify under this provision, will be provided.

Change to the inflationary adjustment period

The measure

The Finance Bill 2018 has proposed to amend the period within which the Commissioner may adjust the specific excise duty rates to take into account inflation, from 2 years to 1 year.

Who will be affected

All consumers, manufacturers and importers of excisable goods.

When

1 July 2018.

Our view

Last year, the Government changed the inflationary adjustment period from 1 year to 2 years to promote stability in the prices of goods with a specific duty rate. The CS has however proposed to reverse the change made last year and the Commissioner will be expected to adjust the specific excise duty rates by the average inflation for the previous financial year on 1st July of every year.

This is likely to see instability in prices of excisable goods, particularly over periods where the macroeconomic environment in Kenya is unstable.

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Value Added Tax (VAT)

Big Four Agenda

Food security

The measure

Exemption of equipment to be used in the construction of grain storage facilities.

Who will be affected

Consumers, players in the grain storage sector, suppliers of construction equipment for grain storage facilities and farmers.

When

1 July 2018.

Our view

The proposal to exempt construction equipment for grain storage facilities follows the initial exemption of construction materials, which was introduced through the Finance Act, 2017. This is aimed at further incentivising investment in grain storage facilities, with a view to arrest post-harvest grain losses and to curb an already high cost of storage.

Ultimately, this is expected to enhance food security and reduce the prices of basic food commodities such as maize flour.

Agriculture

The measure

Exemption of additional raw materials for manufacture of animal feeds.

Who will be affected

Manufacturers of animal feeds and farmers.

When

1 July 2018.

Our view

Materials and preparations of a kind used in animal feeding became exempt under the VAT law in 2014. Additional elements of such materials were exempted from VAT through the Finance Act, 2016. In a bid to make animal feeds more affordable to farmers, the Finance Bill 2018 seeks to further exempt items of tariff numbers 1213.00.00, 1214.00.00 and 2303.20.00.

It is hoped that by exempting these items, the cost of production of animal feeds will decline and therefore improve livestock husbandry. However, there is some limitation of this measure since the unclaimable input tax incurred by the suppliers would be passed on as a cost to the manufacturers.

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ICT

The measure

Exemption of parts, imported or purchased locally for the assembly of computers.

Who will be affected
Players in the ICT sector and computer users.

When
1 July 2018.

Our view
To encourage local assembly of computers, innovation and job creation in the ICT sector, the proposal to exempt parts imported or purchased locally in this regard would be a welcome move. It is worth noting that this exemption initially only covered parts imported or purchased locally for the assembly of primary school laptop/tablets.

Export Processing Zones (“EPZ“)

The measure

Importation of garments and leather footwear manufactured in an EPZ to be subject to VAT.

Who will be affected
EPZ entities and ordinary citizens.

When
1 July 2018.

Our view
Domestic sales by EPZ entities are considered as importation of goods from a customs perspective, and should ordinarily be subjected to VAT. However, such sales are currently exempt from VAT to encourage ordinary citizens to access high quality garments and leather footwear at affordable prices.
Perhaps the move to subject garments and leather footwear to VAT is targeted at encouraging the establishment of local leather and textile industries. The intention is to provide an even playing ground between EPZ entities and those established locally, when competing for the local market.
However, questions remain as to whether this move will yield the intended results. Locally made garments and leather footwear tend to be more expensive than imported ones. As such, exemption remains key to enhancing affordability for such items.

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Late filing penalty

The measure

Late filing penalty moved from the VAT Act to the Tax Procedures Act.

Who will be affected

All taxpayers.

When

1 July 2018.

Our view

The measure to move the late filing penalty to the Tax Procedures Act is meant to harmonize the application of tax laws. Most administrative penalties covering domestic taxes have been moved to the Tax Procedures Act.

The penalty however remains at the higher of 5% of the tax payable or KES. 10,000.

Computation of taxable value for cellular services

The measure

Taxable value of mobile cellular services to be determined in accordance with the VAT Act.

Who will be affected

Telecommunication companies and ordinary citizens.

When

1 July 2018.

Our view

The proposal will change the taxation of mobile cellular services by including excise duty in the taxable value. This move is a departure from the previous practice where the value of mobile cellular services was determined in accordance with the Excise Duty Act, implying that the taxable value for VAT excluded excise duty.

The measure will likely result into higher costs of cellular services, since VAT will be chargeable on the excise duty component (which will also increase by 2%). The net effect is an increase in the cost of these services, with the Government expected to collect more VAT revenue.

Exempt machinery restricted

The measure

Exemption of plant and machinery of Chapters 84 and 85 to be restricted to those used for manufacture of goods.

Who will be affected

Manufacturers and suppliers of machinery.

When

1 July 2018.

Our view

Restriction of machinery under the above mentioned chapters to those used in the manufacture of goods is a measure aimed at clarifying the provision relating to this exemption. Taxpayers previously relied on guidance by the KRA on the tariff headings that the KRA deemed to qualify for exemption under the said provision. This provision may however have an adverse effect on the taxpayers who import or purchase machinery classifiable under chapters 84 and 85 which are not used in manufacture of goods. Further, it is important that clarity is provided on what constitutes "manufacture of goods" in this regard, to minimise costly disputes.

Cross border transportation

The measure

Transportation of cargo to destinations outside Kenya removed from the exemption schedule.

Who will be affected

Transporters.

When

1 July 2018.

Our view

Transportation to destinations outside Kenya is currently exempt under the VAT Act. The VAT Regulations however provide that where transportation begins in the country and ends outside the country, such a service should be considered as exported and hence zero-rated.

We are therefore of the considered view that this move is aimed at aligning the VAT Act with the VAT regulations in order to clarify where transporation begins in the country and ends outside the country, then the transport service is considered as an export of service and therefore zero rated. This position would be welcome and in line with best practice.

Exemption of beverages supplied to DEFCO

The measure

Alcoholic and non-alcoholic beverages supplied to DEFCO to be exempt.

Who will be affected

DEFCO and suppliers to DEFCO.

When

1 July 2018.

Our view

Supplies to DEFCO were exempt from VAT under the repealed VAT Act but became taxable with the enactment of the VAT Act, 2013. The move to exempt from VAT alcoholic and non-alcoholic beverages supplied to DEFCO therefore restores the privildege that was available to the defence forces.

However, there remain concerns regarding the misuse of such priviledges.

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Exemption of goods and services for special projects

The measure

Exemption of goods and services for use in projects under special operating framework with the Government of Kenya.

Who will be affected

Suppliers and implementers of the projects under Government of Kenya's Special Operating Framework.

When

1 July 2018.

Our view

Goods and services intended for exclusive use in projects implemented under the Special Operating Framework with the Government of Kenya will be exempt from VAT. While it is not immediately clear which projects qualify, we believe that these would include projects under Public-Private Partnerships (PPPs) and other flagship projects under arrangments similar to official aid funded projects.

Exemption for postal services

The measure

Exemption from VAT of postage using stamps and rental of post boxes and mail bags.

Who will be affected

Postal Corporation of Kenya and consumers.

When

1 July 2018.

Our view

This measure may be aimed at making postal services more affordable, perhaps with the intention of wooing the public to reconsider taking up postal services that have been affected by the advent of internet and other technology.

However, since exemption of these services will imply that the Postal Corporation will not be in a position to deduct related input tax, this measure could lead to an increase in their operating costs and ultimately an increase in the cost of their services contrary to the intention of making the services cheaper.

Perhaps a better option would be zero rating the postal services.

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Tax Administration

Alternative Dispute Resolution now anchored in the law

The measure

The parties to an appeal may apply, in writing, to the Tribunal to settle the dispute out of the Tribunal. In such a case, the time taken to resolve or conclude the settlement out of the Tribunal shall be excluded when calculating the period of 90 days, within which the dispute should be determined by the Tribunal as provided under section 13(7) of the Tax Appeals Act.

Who will be affected

All taxpayers.

When

1 July 2018.

Our view

This measure reinforces the current practice where taxpayers and the KRA have been settling disputes out of the Tribunal. This is a plausible move as it strengthens the Alternative Dispute Resolution mechanisms that have been ongoing between disputing parties.

Responsibilities of tax representatives

The measure

The Tax Procedures Act has been amended to specify that where a taxpayer has more than one tax representative, each tax representative shall be responsible for the tax obligations for which the tax representative has been appointed.

Who will be affected

Taxpayers and their tax representatives.

When

1 July 2018.

Our view

This measure is aimed at clarifying the obligations of each tax representative and is aimed at achieving a greater level of compliance for tax representatives. It is a positive move, considering tax representatives would not want to bear additional obligations or risks in respect of tax obligations for which they are not engaged.

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Guidelines for application for extension of time to submit tax returns

The measure

The Bill has set out the guidelines below for application of the extension of time to file returns;

- The extension shall be made at least fifteen days and thirty days before the due date, in the case of a monthly return and annual return respectively;
- The Commissioner may grant an application, if satisfied that there is a reasonable cause, and shall notify the applicant accordingly at least five days before the due date;
- Where no notification is received at least five days before the due date, the application shall be deemed to have been granted;
- Only one extension may be granted in respect of a tax period;
- The grant of an extension shall not alter the date for payment of any tax due under the return as specified in the tax law under which the return has been made; and
- Provisions relating to penalties for late submission shall not apply where an extension to submit a return has been granted in accordance with this section.

Who will be affected

Taxpayers

When

1 July 2018.

Our view

This provides clarity regarding the process and timelines for application for extension of time to file tax returns. This should assist taxpayers in planning and therefore to avoid incurring late filing penalties. It also commits the revenue authority to respond within a particular timeline and therefore removes the exposure and uncertainty currently experienced where a taxpayer does not receive a reponse from the revenue authority before the due date.

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Amendments of self-assessment returns

The measure

The Bill deletes the current provision on amendment of self-assessment return and substitutes it for the following;

'Where an amended self assessment return has been been submitted the Commissioner may accept or reject the amended self-assessment return and where he rejects, he shall furnish the taxpayer with reasons for such rejection'.

Who will be affected

Taxpayers who have filed returns and wish to make amendments.

When

1 July 2018.

Our view

Under the provision proposed to be deleted the taxpayer would make an application to the Commissioner and the Commissioner would amend the self-assessment return or refuse application to make the amendment and communicate the refusal within thirty days. The proposed amendment does not provide a time limit for the Commissioner to communicate the rejection of the amendment.

In our view, the proposed provision is a step backwards towards making compliance easier for taxpayer.

Late payment interest rate increased

The measure

The Bill has increased the late payment interest rate from 1% to 2%.

Who will be affected

Taxpayers who do not pay the taxes within the stipulated timelines.

When

1 July 2018.

Our view

The increase of the interest on late payment is aimed at increasing tax revenues and encouraging compliance with tax remittance timelines.

Notice of Objection to tax decision

The measure

The bill amended the provisions on validity of a notice of objection;

- By allowing a taxpayer to apply for an extension of time to pay the tax not in dispute based on section 33 (1) of the Tax Procdures Act; and
- Requiring that all relevant documents relating to the objection have been submitted when submitting the objection.

Who will be affected

Taxpayers lodging a notice of objection.

When

1 July 2018.

Our view

This is good move since the taxpayer may not be in a position to settle tax not in dispute, where it is significant, before filing of the notice of objection.

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Late submission penalty for tax returns

The measure

The bill has proposed the following changes as regards late submission penalties;

A person who submits a tax return after the due date shall be liable to a penalty of;

- 5% of the amount of tax payable under the return or KES. 10,000 , (whichever is the higher), in the case of Value Added Tax (VAT) or excise duty;
- In any other case;
  - 5% of the amount of tax payable under the return or KES. 20,000, (whichever is the higher), in respect of a person other than an individual; and
  - 5% of the amount of tax payable under the return or KES. 2,000, (whichever is the higher), for an individual.

Who will be affected

Taxpayers who submit the tax returns after the due date.

When

1 July 2018.

Our view

This reduced late filing penalty for VAT, Excise duty and for individuals is welcome. The twenty percent penalty previously applicable to individuals was punitive and out of reach for a majority of the individuals.

Late payment penalty

The measure

A person who fails to pay tax on the due date shall be liable to pay a late payment penalty of 20% of the tax due and payable.

Who will be affected

Taxpayers who fail to make payments within the stipulated timelines.

When

1 July 2018.

Our view

The re-introduction of the 20% penalty provides clarity by distinguishing the late payment penalty from the tax shortfall penalty which has been a subject of debate between taxpayers and the KRA. In our view, however, the 20% late payment penalty is punitive in light of the increase of late payment interest rate to 2%.

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Application for waiver of penalties and interest

The measure
The bill has excluded the application for waiver of interest and penalties on the ground of uncertainty as to any question of law or fact. As a result the reasons upon which the Commissioner may remit, in whole or in part, the penalties and interest following an application by a taxpayer have been reduced to;

- Consideration of hardship or equity; or
- Impossibility or undue difficulty or expense, of recovery of the tax.

Who will be affected
Taxpayers who are making applications for waiver of penalties and interest.

When
1 July 2018.

Our view
The measure narrows down the scope of application for waiver of interest and penalties by a taxpayer.

Unauthorized access or improper use or interference with the computerized tax system

The measure
The Bill has described the below as an offence in relation to unauthorized access or improper use of computerized system;

- Knowingly and without lawful authority, by any means, gains access to or attempts to gain access to any computerized tax system;
- Having lawful access to any computerized tax system, knowingly uses or discloses information obtained from such a system for a purpose that is not authorised; and
- Knowing that he is not authorized to do so, receives information obtained from any computerized tax system, and uses, discloses, publishes, or otherwise disseminates such information.

Our view
This move is aimed at safeguarding the information that is stored in the computerized tax system. Currently, data protection is key to the digital world, hence, this is a welcome move.

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The above offences are punishable by imprisonment for a term not exceeding two years or a fine not exceeding four hundred thousand shillings or both in the case of a natural person and a fine not exceeding one million shillings for a body corporate.

A person commits an offence, as defined in the bill relating to interference with a computerised tax system, when the person;

- Falsifies any record or information stored in any computerized tax system;
- Damages or impairs any computerized tax system; and
- Damages or impairs any duplicate tape or disc or other medium on which any information obtained from a computerized tax system is held or stored otherwise than with the permission of the Commissioner.

A person who commits the above offence is liable to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings, or to both.

Who will be affected
Persons who gain unauthorized access or improperly use or interfere with the computerized tax system.

When
1 July 2018.

Offences relating to recovery of tax and offences by officers and staff of the KRA

The measure
The bill has amended section 104 of the TPA by reducing the punishment relating to offences relating to recovery of tax and offences by officers and staff of the KRA from a fine not exceeding KES. 2million and imprisonment for a term not exceeding 5 years or both, to either a fine not exceeding two million shillings or imprisonment for a term not exceeding five years or both.

Who will be affected
Persons convicted to offences relating to recovery of tax, or officers and staff of the KRA convicted of offences.

When
1 July 2018.

Our view
The punishment was punitive and hence the reduction of the same to one or the other is reasonable.

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Betting, Lotteries and Gaming

The measure

The bill has introduced a late payment penalty of twenty per cent of the tax payable and a late payment simple interest at a rate of two per cent per month or part of a month on the unpaid betting tax, lottery tax, gaming tax and prize competition tax. These penalties and interest shall be payable to the Collector.

A person liable to a late payment penalty or interest may apply in writing to the Collector for the remission of the penalty or interest payable and such application shall include the reasons for the application.

In addition, the bill has enumerated the reasons the Collector may remit in whole or in part the penalties and interest following an application by a taxpayer as below;

- Consideration of hardship or equity; or
- Impossibility, undue difficulty or expense of recovery of the tax.

The Collector can only remit penalties and interest that are less than one million five hundred thousand shillings. For amounts greater than this, he has to seek prior approval of the Cabinet Secretary responsible for finance. The Collector is also required to make quarterly reports to the Cabinet Secretary on remissions granted.

Who will be affected

Taxpayers who are in the Betting, Lotteries and Gaming industry.

When

1 July 2018.

Our view

This is aimed at increasing the collection of revenues and is likely to increase compliance.

The lottery and betting industry has recently been under focus by the tax authority and this addittional measure is expected to enforce compliance in this sector.

Exemption from stamp duty

The measure

The bill has exempted from stamp duty an instrument executed for purposes of collection and recovery of tax and an instrument relating to the business activities of Special Economic Zone (SEZ) enterprises, developers and operators licenced under the Special Economic Zones Act, 2015.

Who will be affected

Taxpayers and persons engaged in business activities of Special Economic Zones.

When

1 October 2018.

Our view

This incentive will encourage investment in SEZs. The exemption of the stamp duty in relation to instruments executed for purposes of recovery of tax will ease the process of recovery of tax by the KRA.

Miscellaneous Fees and Levies

Introduction of export duty on copper waste and scrap

The measure

The CS has proposed to introduce an export levy of 20% on copper waste and scrap metal.

Who will be affected

Scrap metal dealers and manufacturers who use scrap metal as raw materials.

When

1 October 2018.

Our view

This measure is in line with the Miscellaneous Fees and Levies Act which imposes export levy on a wide range of scrap metal and waste. This measure is intended to discourage the exportation of copper scrap, which may be used by local manufacturers as raw materials in manufacturing and to discourage vandalism of public infrastructure.

IDF and RDL exemption on goods for implementation of projects under a special operating framework arrangement with the Government

The measure

The CS has proposed to exempt from IDF and RDL goods imported for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government.

Who will be affected

Companies executing projects under special arrangments with the Government.

When

1 October 2018.

Our view

This measure has been put in place to streamline the Miscellaneous Fees and Levies Act to avoid the need for the CS to make amendments to the Act, each time the Government intends to grant exemption of IDF and RDL on specific projects.

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