Kenya Budget Insights 2019/20
Unravelling the Puzzle
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Introduction

The Cabinet Secretary on 13 June 2019 delivered the budget speech themed “Creating Jobs, Transforming Lives – Harnessing the “Big Four” and subsequently tabled the Finance Bill 2019. The bill contains the taxation measures announced in the Cabinet Secretary's Budget speech as well as other measures not announced in the speech. The Finance Bill 2019 illustrates the governments' priorities, which include increasing revenue mobilization and a growing focus on the digital marketplace.

The proposed budget spending for the year 2019-2020 stands at Kshs. 3.1 trillion with a major emphasis on the Big 4 Agenda i.e. Universal health, affordable housing, increasing manufacturing to the economy and improving food, and nutrition security.

The Kenyan economy grew by 6.3% in 2018 compared with 4.9% growth in 2017 with a forecasted growth of 7.0% in 2019/2020 when the Big 4 Agenda gains momentum. This is the one of the highest recorded figures in Sub Saharan Africa with an average growth of 3.0% and a global average of 3.6%.

The 2018/19 budget has twin objectives of reducing the fiscal deficit to prevent escalation of public debt while prioritising budgetary allocations to the Big Four Agenda sectors. There is an estimated deficit of Kshs. 607.8 billion, an increase from Kshs. 562 billion last financial year. The government is likely to borrow more in the next fiscal year to bridge the deficit as the Kenya Revenue Authority (KRA) is expected to miss this year’s revenue collection target. According to the Central Bank of Kenya (CBK), Kenya’s public debt stands at Kshs 5.4 trillion. In the financial year beginning July 1, 2019 Kenya will spend Kshs. 800 billion to repay maturing loans mostly owed to foreign lenders.

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Capital Gains Tax

Capital gains tax rate to be increased from 5% to 12.5%

The measure
The Bill seeks to increase the Capital Gains Tax (CGT) rate from the current 5% to 12.5%

Who will be affected
Transferors of property

When
Effective 1 October 2019

Our view
The government has indicated its intention to increase the CGT rate to move it closer to its East African peers with a view to raise more tax revenues while being seen to enhance equity and fairness. The CGT rate in the other EAC member states such as Uganda and Tanzania is 30%. Indeed, the re-introduction of CGT at 5% in 2015 was widely viewed as a way to test the waters and it was only a matter of time before the rate was progressively increased until it matches rates in EAC and more importantly the tax rate for other incomes in Kenya.

Whereas this measure will increase the tax revenue collected from gains realised on transfer of property, it is coming at a time when there is a slowdown in the real estate sector and may thus negatively affect investment in this and other affected sectors.

It is worth noting that the Bill does not provide for indexation and as such gains arising from inflation will be subject to CGT. This gap should be addressed.
Corporate restructuring now exempt from CGT

The measure
The Bill proposes to exempt capital gains arising from restructuring of corporate entities from CGT.

The exemption covers transfer of property necessitated by a transaction involving the incorporation, recapitalisation, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity as a result of: a legal or regulatory requirement; a directive or compulsory acquisition by the government; an internal restructuring within a group which does not involve a transfer to a third party; or where the transfer is in the public interest and approved by the Cabinet Secretary.

Who will be affected
Companies and shareholders

When
Effective 1 October 2019

Our view
Exemption from CGT is currently granted by the CS if the transferor, upon application, satisfies the CS that the reorganisation is undertaken in the interest of the public. The scope of public interest is not explicitly defined under the ITA and this made it extremely difficult to obtain any exemption especially for private corporate entities.

The proposal is a welcome move as it will eliminate the tax burden that would arise when undertaking group reorganisations. This is especially so where the reorganisation is within the group and there is no change in beneficial ownership. Furthermore, there will be no need to apply to the CS for exemption going forward except where the only qualifying ground is public interest. This measure will enhance Kenya’s attractiveness to investment.
Corporate Tax

Reduced corporate tax rate for plastic recycling plants

The measure
The Bill proposes to introduce a reduced corporate tax rate of 15% for companies operating plastics recycling plant. The rate will be applicable for the first five years from the year of commencement of the company’s operations.

Who will be affected
Companies operating a plastics recycling plant

When
Effective 1 October 2019

Our view
Over the recent past, the government has increased measures that are geared towards discouraging the use of plastics in a bid to reduce pollution. This move, will incentivize companies to setup plastic recycling plants which is in line with the government’s clean environment agenda.

The proposal restricts the incentive to only companies operating recycling plants. It may be necessary to extend similar incentive to all companies operating a recycling plant and extended to other companies in the green energy space.

Tax penalties and interest amnesty on SMEs listed under the GEMS segment at the NSE

The measure
The Bill proposes to amend the Tax Procedures Act by introducing an amnesty on penalties and interest on any outstanding tax in respect of any years prior to listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing. The amnesty is not applicable on principal unpaid taxes, which shall be paid in full.

The proposed amnesty will not apply where the company has been assessed in respect of the tax or is under audit or investigation in relation to the undisclosed income and where a company delists before the expiry of five years from the date of listing.

Who will be affected
SMEs planning to list on the Growth Enterprise Market Segment (GEMS) of the Nairobi Securities Exchange (NSE).

When
Effective 1 October 2019

Our view
The GEMS segment was created in 2013 to enable SMEs list at the NSE. In spite of the favourable requirements on listing in the GEMS segment as compared to the main market segment, SMEs have not taken up the chance to list. There has been speculation that the listing would expose them to the taxman’s scrutiny, especially on prior years; hence, the reason SMEs have been shying away from the listing.

It is expected that the incentive will encourage listing of SMEs on the NSE. However, one would have expected that the amnesty would also cover principal tax.
Renewed focus on taxation of the digital economy

**The measure**
The Bill proposes to amend Section 3 of the Income Tax Act by introducing a new paragraph under the charging section, which emphasizes that income accruing through a digital marketplace is chargeable to tax. Digital marketplace has been defined to mean “a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.”

**Who will be affected**
Entities generating income through a digital marketplace/ e-commerce.

**When**
Effective 1 October 2019

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**Our view**
The heightened technological advancements and continuing digitisation of the global economy has been viewed as contributing to base erosion by avoiding a taxable presence in the countries in which they generate revenue. Therefore taxation of the digital economy is seen as creating significant revenue potential for tax authorities around the world.

Nonetheless, taxation of this area poses significant challenges and complexities. Indeed, the OECD’s Base Erosion and Profit Sharing (BEPS) action plan recognises the need of addressing the challenges associated with digital economy to enhance tax collections. Among these challenges include the determination of taxable nexus, and allocation of profits arising out of crossborder activities.

In the Budget Speech, the CS stated that he would propose a raft of measures on taxation of digital economy but it is worth noting that besides the above amendments, the Bill has not proposed any specific tax measures.

It is also important to note that although digital economy will now be expressly mentioned in the Income Tax Act, the inclusion does not appear to make much difference to the current legislation. This is because Section 3(2)(a)(i) of the Income Tax Act already provides for the taxation of income from business, the definition of which includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade.

It is therefore expected that specific tax measures may be contained in the proposed Income Tax Bill or regulations that will be issued separately. We hope that the measures proposed by the CS will be practical and in line with the emerging global principles on taxation of the digital economy.
Clarification of the scope of compensating tax

The measure
The Bill proposes to amend Section 7A of the Income Tax Act by substituting the current proviso, which excludes registered collective investments schemes from the compensating tax regime with a proviso that seeks to the effect that compensating tax shall not apply to any dividends distributed out of income that is exempt under the Income Tax Act.

Who will be affected
All companies that receive income that is exempt from tax.

When
Effective 1 October 2019

Our view
The Finance Act, 2018 amended the Income Tax Act by repealing section 7A and replaced it with a new compensating tax provision with effect from 1 January 2019. The new provisions had the effect of clawing back any tax exemptions granted on income as the same would be subject to tax upon distribution as dividends. In response to the concerns raised by affected entities, the Commissioner issued a public ruling which clarified that the compensating tax provision does not apply to certain income that is exempted from tax under any provision of the Income Tax Act. The amendment in the Bill therefore anchors this position in the law and ensures that distribution of dividends arising from exempt income does not trigger compensating tax.

This a welcome move. However, our view is that there are still grey areas that may lead to exposure to compensating tax. For instance, where a company has distributable profits but has not paid taxes as a result of being in a tax loss position arising from significant capital allowances, the company would incur liability for compensating tax.

It would be recommended that the compensating tax provision is repealed altogether because it does not encourage capital investment but also limits ability to of companies to distribute profits through dividends.
Non-resident ship owners to pay tax on demurrage charges

**The measure**
The Bill proposes to amend Section 9 (1) of the ITA by introducing a proviso, which clarifies that all income of a non-resident ship owner, including demurrage charges fall within the scope of the taxable income of a non-resident ship owner.

**Who will be affected**
Non-resident ship owners

**When**
Effective 1 October 2019

**Our view**
The proposed amendment is a clarification that demurrage charges forms part of the taxable income of a non-resident ship-owner that will be taxed under the provisions of Section 9. This amendment is necessitated by the repeal of the 2018 measure to tax demurrage through withholding tax that was considered to be punitive.

Tax exemption extended to investee companies of Real Estates Investment Trusts (REITs)

**The measure**
The Bill seeks to expand the scope of income tax exemption to include the income of companies through which REITs hold property (investee companies).

**Who will be affected**
REITs, investee companies and investors.

**When**
Effective 1 October 2019

**Our view**
Currently, the ITA only exempts REITs from income tax. As such, the income of investee companies owned by a REIT is subject to tax. The proposal to exempt the income of investee companies from tax is therefore a welcome move and is expected to positively impact on the affordable housing pillar of the Government’s Big Four Agenda. More importantly, the proposed amendment will ensure that the objectives of REITs are fully achieved.
**Penalty on unpaid tax**

**The measure**
The Finance Bill proposes to delete Section 72D of the the Income Tax Act that provides for a late payment penalty of 20% of any unpaid tax.

**Who will be affected**
All taxpayers

**When**
Effective 1 October 2019

**Our view**
The Tax Procedures Act 2015 (TPA) was enacted with the sole intention of consolidating all the tax administrative and procedural aspects under one Act. The proposed repeal of Section 72D of the Income Tax Act is in line with the spirit of ensuring that all tax administrative and procedural aspects are provided for under the TPA.

Upon repeal, the applicable late payment penalty will be 5% of the unpaid tax as is the case with all other taxes, save for PAYE, as provided for under the TPA.

**Income of National Housing Development Fund (NHDF) exempted from tax**

**The measure**
The Bill proposes to exempt the income of the National Housing Development Fund from income tax by inclusion in the First Schedule to the ITA.

**Who will be affected**
National Housing Development Fund.

**When**
Effective 1 January 2020

**Our view**
The proposal by the government to exempt income earned by the Fund is a good move as this will ensure that the Fund’s income is fully utilised to enable it undertake its objectives of delivering affordable housing. This is in line with the government’s Big Four Agenda.
Personal Income Tax

**Individuals registered under Ajira Digital Program to enjoy income tax exemption**

**The measure**
The Bill proposes to exempt the income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1st January 2020. However, a registration fee of KES 10,000 per annum will be payable by the individuals.

**Who will be affected**
Registered members of the Ajira Digital Program.

**When**
Effective 1 January 2020

**Our view**
Kenya has high levels of unemployment and underemployment. The Ajira Digital Program aims at enabling the youth to engage in digital freelancing activities whereby they will develop skills necessary for employment and earn a living.

The tax exemption is therefore welcome. In our view the requirement to pay KES 10,000 up front for an individual to be eligible for the tax exemption may prove to be a challenge for the unemployed youths who may not be able to raise the fee. It would have been prudent for the government to consider spreading the payment over the three year period.

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**Change of base for the affordable housing relief**

**The measure**
The Bill proposes to amend the affordable housing relief under the ITA to be computed at 15% of the employee's contribution and not the gross emoluments as is currently provided.

**Who will be affected**
All employees.

**When**
Effective 1 October 2019

**Our view**
This measure is a move to correct the current provision which based the relief on gross emoluments and would have led to a situation where the relief exceeds the affordable housing contribution.
**Turnover tax re-introduced**

**The measure**
The Bill proposes to re-introduce turnover tax at the rate of 3% of the gross receipts per month. The tax will be payable by resident persons whose gross receipts do not exceed or are not expected to exceed KES 5 million per year. The tax will be accounted for on a monthly basis, with the return and payment due on or before the 20th day of the month following that of the tax period.

However, a person eligible to pay turnover tax may elect not to be subject to turnover tax by notice to the Commissioner.

Turnover tax will not apply to rental income, management or professional or training fees, income of incorporated companies and any income which is subject to a final withholding tax.

Presumptive income tax (introduced through the Finance Act, 2018) will continue to apply to such income but will be an advance tax available for set-off against the turnover tax payable.

**Who will be affected**
Sole proprietors/ businesses whose annual turnover do not exceed KES 5 million per annum.

**When**
Effective 1 January 2020

**Our view**
Presumptive tax which was introduced vide the Finance Act 2018 was intended to replace turnover tax. However, due to the marginal revenues realised from presumptive tax, the government is proposing to re-introduce of turnover tax in a bid to increase tax revenues and expand the tax base. It is also likely that by applying the turnover tax and presumptive tax provisions concurrently, KRA will use the presumptive taxes paid to obtain information for compliance purposes.

This measure will, if well implemented, ensure that the tax burden is spread uniformly by netting businesses in the informal sector and thereby increasing the tax revenues. However, the quick about-turn suggests that the move to remove turnover tax was not well thought out. Furthermore, it is hoped that the implementation of turnover tax will be better taking into account the lessons since it was first introduced in 2008.

We are also of the view that Turnover tax should be open to all businesses, including companies whose income meets the set threshold and should also cover consultancy fees within the set threshold. This will ease the compliance burden of small businesses/ consultants.
Additional services now subject to withholding tax

The measure
The Bill proposes to widen the scope of services liable to withholding to include the following:
- Security services;
- Cleaning and fumigation services;
- Catering services offered outside hotel premises;
- Transportation of goods excluding air transport services;
- Sales promotion; and
- Marketing and advertising services

The services will attract withholding tax at the resident and non-resident rates of 5% and 20% respectively.

Who will be affected
Service providers of the aforementioned services.

When
Effective 1 October 2019

Our view
This measure seeks to enhance tax compliance by ensuring that tax is deducted at source when paying for such services and thereby the Commissioner obtains information relating to the income of the service providers. Similar to management or professional fee payable to residents, it would be prudent to consider having a minimum threshold below which withholding tax should not apply.

This measure may result in tax overpayments given that margins earned by some of the businesses targeted are not high.

Consequently, the taxpayers get into perennial tax overpayment position. Whereas the law provides for refund of overpaid tax, in practice, it is difficult to receive a refund from the KRA. Our view would be that refunds should be paid within a fixed timeframe, or automatic set-off be provided for. To reduce the instance of refund, it would be prudent to revise the withholding tax rate downwards. This also ensures that businesses do not bear additional cost of services procured from non-residents because most non-residents tend to pass on the tax burden to the customer as the high rate of withholding tax (20%) may wipe out their margins.
Reinsurance premiums paid to non-resident persons to be liable to withholding tax

**The measure**
The Bill proposes to amend the Income Tax Act in order to include payment of reinsurance premiums (excluding reinsurance premiums paid for insurance of aircrafts) to non-resident persons within the ambit of withholding tax. The applicable rate will be 5% of the gross amount of premiums payable.

**Who will be affected**
Insurance and re-insurance companies.

**When**
Effective 1 October 2019

Withholding tax on demurrage charges dropped

**The measure**
The Bill proposes to repeal the provision relating to withholding tax on demurrage charges paid to non-resident ship operators, which was introduced through the Finance Act 2018.

**Who will be affected**
Non-resident shipping lines/ operators and their customers.

**When**
Effective 1 October 2019

**Our view**
This proposed amendment may have been informed by the proposal to include demurrage charges within the scope of the taxable income of a non-resident ship-owner; hence, the charges will be taxable in Kenya through a self-assessment mechanism.

When the withholding tax on demurrage charges was introduced in 2018, it was feared that the tax could be passed on to consumers. This amendment is therefore welcome as it also aligns the taxation of this income with other income earned by non-resident shipping operators. The proposal will also reduce the administrative burden of accounting for withholding taxes placed on resident persons and potential back taxes as well as penalties in the event of any misstep in compliance.
Certain payments made by PEs to their head-office to be liable to withholding tax to the extent that they are deductible for corporate tax purposes

The measure
Under the Bill, a permanent establishment of a non-resident person will be required to account for withholding tax on management or professional fees, interest or royalties paid to its non-resident head-office or its other offices if a double tax agreement (DTA) allows the PE to claim a corporate tax deduction in respect of these payments.

Who will be affected
Permanent establishments in Kenya.

When
Effective 1 October 2019

Our view
The Income Tax Act excludes management or professional fees, interest or royalties paid by a PE to its head office from the purview of withholding tax. The Act also prohibits a PE from claiming a corporate tax deduction of these expenses. Some of the DTAs that Kenya has signed entitle a PE to a corporate tax deduction of these expenses; hence, the need to align the withholding tax provision in this regard and avoid revenue leakage.
Value Added Tax

Reduction of the withholding VAT rate from 6% to 2%

The measure
The Bill proposes to amend the Tax Procedures Act (TPA) by reducing the withholding VAT rate from 6% to 2%.

Who will be affected
Taxpayers who make taxable supplies to customers who have been appointed as withholding VAT agents.

When
Effective 1 October 2019

Our view
While the TPA allows for application for exemption from withholding VAT, some taxpayers have continued to be in perpetual tax overpayment position as a result of withholding VAT and thus have their cash flow negatively affected.

It is hoped that this measure will reduce the pile up of VAT credits arising from withholding VAT and free up cash flow for crucial business needs.

Supplies made through a digital market place

The measure
Clarification that supplies made through a digital market place are chargeable to VAT. A digital market place has also been defined to mean “a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.”

Who will be affected
Entities which run digital platforms and their clients.

When
Effective 1 October 2019

Our view
There has been an upward surge of transactions through digital platforms in Kenya and, in this digital age, it would be expected that such transactions could only increase going into the future.

It must be noted that, based on existing provisions of the VAT law, such supplies have all along been taxable. However, it would seem that the government makes this clarification for the avoidance of doubt especially given the technical and complex considerations relating to the VAT treatment of services.
Imported services

The measure
Proposal to widen the scope of imported services to include all taxable services received from non-resident persons whether the recipient is registered for VAT or not.

Who will be affected
All entities and individuals receiving services from non-resident persons.

When
Effective 1 October 2019

Our view
The Finance Bill proposes to amend the definition of imported services by deleting the words “a person who is a registered person” and substituting these words with the words “any persons”.

In effect, it would seem that this is intended to widen the scope of imported services so that any person, whether registered for VAT or not, will be required to self-charge and account for VAT on services received from non-resident persons.

However, there are a few key factors that the government needs to reconsider for this proposed change to work. These include the following:

- VAT on imported services is accounted for through the reverse-charge mechanism. Therefore, the recipient assumes the role of supplier, self-charges and accounts for VAT on imported services. Under Section 10 of the VAT law, if a supply of imported services is made to a registered person, the person is deemed to have made a supply of taxable services to himself. This deeming provision enables the application of the reverse-charge mechanism. However, it does not cover persons who are not VAT registered. The amendment, as currently proposed, may not work for non-registered persons. Therefore, if the intention is to bring non-registered persons under the purview of imported services, there is need to further amend Section 10 of the VAT law to reflect this.

- This proposed change is also likely to mean that the value of imported services should be considered for purposes of VAT registration. Under the VAT law, a person should register for VAT as and when he/she triggers the registration threshold. One triggers the threshold when he/she makes or expects to make taxable supplies the value of which exceeds KES 5 million in any period of 12 months. If the scope of imported services is stretched to include those received by non-registered persons, the value of such services is also likely to be considered for registration purposes.

It must however be appreciated that the reverse-charge mechanism for imported services is largely intended to ensure VAT is collected where applicable. It is to services what customs is to goods. In our view, the deeming provision should not unnecessarily lead to VAT registration. We therefore hold the view that this proposed change should be reconsidered as, in its current form, it is likely to create confusion and unnecessary disputes between taxpayers and the Kenya Revenue Authority (KRA).
Equipment for the generation of solar and wind energy

The measure
The Finance Act 2018 exempted from VAT specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power. The Finance Bill 2019 now proposes that recommendation be sought from the Cabinet Secretary responsible for energy matters before such exemption is granted.

Who will be affected
Contractors for energy projects.

When
Effective 1 October 2019

Our view
We view this to be a control measure introduced to ensure the exemption introduced through the Finance Act 2018 is not subject to misuse.

Scope of VAT exempt tractors reduced

The measure
Exclusion of road tractors for semitrailers from the scope of exempt tractors.

Who will be affected
Transport sector players.

When
Effective 1 October 2019

Our view
Currently the VAT law exempts all tractors from VAT. However, we understand that the aim of the proposed removal of road tractors for semitrailers from the exemption list is to narrow the scope of exempt tractors to those that are largely used for agricultural purposes.

This notwithstanding, we note that, barring any further amendments to the Finance Bill in this regard, single axle tractors, track-laying tractors and tractors of the type used on railway station platforms will remain exempt from VAT.
**Exemption of inputs for electric accumulators and separators**

**The measure**
Exemption of inputs for electric accumulators and separators including lead battery separator rolls, whether or not rectangular or square, supplied to manufacturers of automotive and solar batteries in Kenya, upon the recommendation of the Cabinet Secretary for the time being responsible for industrialization.

**Who will be affected**
Manufacturers of automobile and solar batteries.

**When**
Effective 1 October 2019

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**Exemption of agricultural pest control products**

**The measure**
Exemption of agricultural pest control products.

**Who will be affected**
Producers and distributors of pest control products and farmers.

**When**
Effective 1 October 2019

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**Our view**
Effective 1 July 2018, the Tax Laws (Amendment) Act 2018 zero-rated the supply of the above-referred inputs for electric accumulators and separators. The Finance Bill 2019 however proposes to change the VAT status of such inputs from zero-rated to exempt. Further, the proposed change to exemption will be subject to recommendation from the Cabinet Secretary responsible for industrialization.

It is likely that the intention of this proposed change is to reduce cases of VAT refund claims associated with zero-rating.

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**Our view**
Effective 1 July 2018, the Tax Laws (Amendment) Act 2018 removed agricultural pest control products from the list of zero-rated supplies. As a result, these products assumed the standard rate (16%). Application of VAT at 16% has made these products more expensive to farmers. In effect, this has affected farmers’ ability to ensure that they protect their crops and/or animals from pests. This has a negative bearing on farm yield.

A move to exempt these products will make them less expensive. This may in turn have a positive effect in promoting food security, a key pillar in the Government’s Big Four Agenda.
Exemption of locally manufactured motherboards

The measure
Exemption of locally manufactured motherboards and inputs for the manufacture of motherboards as approved by the Cabinet Secretary responsible for information communication technology.

Who will be affected
Players in the ICT sector.

When
Effective 1 October 2019

Our view
The exemption of locally manufactured motherboards and related inputs is primarily geared towards making such products more competitive against similar imported products. In line with the budget statement made by the Cabinet Secretary for the National Treasury, this move is also aimed at making Kenya the lead manufacturer, assembler and supplier of electronics and computers in the East African Community.

We also note that this move comes after the VAT changes passed through the Finance Act 2018, in relation to the ICT sector, which sought to exempt parts, imported or purchased locally for the assembly of computers.

This series of changes in the recent past will make the sector more attractive to investors, lead to increased innovation and create job opportunities.

Exempting securities brokerage services

The measure
Amendment of Paragraph of 10 Part II under the First schedule by substituting the words “stock exchange brokerage” with “securities brokerage services.”

Who will be affected
Stock brokers and investors.

When
Effective 1 October 2019

Our view
We view this as a clarification on the type of brokerage services that would qualify for exemption.
**Time of supply of goods imported from Special Economic Zones (SEZ)**

**The measure**
Amendment of Section 12(4)(c) to include the terms “or special economic zone” immediately after the words “export processing zone”.

**Who will be affected**
SEZ entities and their local clients.

**When**
Effective 1 October 2019

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**Definition of concession loan**

**The measure**
The term “concession loan” for purposes of official aid-funded projects defined to mean “a loan with at least twenty-five per cent grant element”.

**Who will be affected**
Contractors for official aid-funded projects.

**When**
Effective 1 October 2019

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**Our view**
This proposed change clarifies that the time of supply of goods imported from a SEZ is the time such goods are removed from the SEZ for home use. This treatment is aligned to that relating to Export Processing Zones.

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**Our view**
This is a clarification on what would constitute an official aid-funded project in the event a project is financed through a concessional loan between the government of Kenya and any foreign government, agency, institution, foundation, organisation or any other aid agency. Taxable goods imported or purchased for direct and exclusive use in the implementation of such projects are exempt from VAT.
Zero-rating of denatured ethanol

The measure
Zero rating of denatured ethanol.

Who will be affected
Common Mwananchi.

When
Effective 1 October 2019

Our view
We understand that this proposal is geared towards making denatured ethanol an alternative cheap source of clean energy and encourage the use of clean energy stoves. The Government has over the years promoted the use of clean sources of energy. The Finance Act 2016 exempted inputs or raw materials locally purchased or imported by manufacturers of clean and energy saving cook stoves.

Exemption of inputs for the construction of plastic recycling plants

The measure
Exemption of plant, machinery and equipment used in the construction of plastics recycling plants.

Who will be affected
Waste management organisations.

When
Effective 1 October 2019

Our view
The government has in the recent past made deliberate effort to protect the environment. One of the recent measures to this end was the ban of plastic bags. However, the problem of plastic waste persists. In order to attract investment into plastic waste management, the move to exempt plant, machinery and equipment for the construction of plants in this sector is welcome.
Exemption and expansion of PIN requirement for certain transactions

The measure
The Bill proposes to amend the Tax Procedures Act to empower the Commissioner to grant exemption from the requirement to provide a PIN (upon application), in certain circumstances, when carrying out transactions for which a PIN is required. In addition, the Bill proposes to amend the First Schedule to the Tax Procedures Act by making a PIN a pre-requisite for the following registrations:

- Registration and renewal of membership by professional bodies and other licensing agencies; and
- Registration of mobile cellular pay bill and till numbers by telecommunication operators.

Who will be affected
Financial institutions, other relevant organizations and the general public.

When
Effective 1 October 2019

Our view
The exemption of certain transactions from the PIN requirement (upon application) will ease the burden of administration on the relevant bodies required to obtain PINs for certain transactions where there are justifiable reasons. For instance, non-resident entities who need to operate a local bank account but have no Kenyan tax filing obligations would now be able to obtain exemption from this requirement that presented practical challenges given the requirements to register locally in order to obtain a PIN.

However, the discretion to decide on the exemption is left to the Commissioner. To eliminate the bureaucracy of case by case application, it would have been prudent for the Bill or regulations to enlist the specific cases which would be exempt.

The expansion of the list for requirement of the PIN demonstrates the resolve by the government to bring more taxpayers to the tax net.
**Tightening the noose on withholding tax non-compliance**

**The measure**
The Bill proposes to amend the Tax Procedures Act to enforce collection and recovery of the tax and penalties and interest from persons who fail to withhold and remit taxes on liable payment. The taxes, penalties and interest shall apply as if the tax were due and payable by the person.

**Who will be affected**
Recipients of services liable to withholding tax.

**When**
Effective 1 October 2019

**Our view**
Though not expressly provided under the current tax legislation, this has been the practice. The proposal seeks to provide legal framework upon which such tax, penalties and interest will be demanded from non-compliant persons.

However, we note that the provision was previously under the ITA but may have been inadvertently repealed by the Finance Act, 2016.

**Tax representatives now subject to Departure Prohibition Orders**

**The measure**
The Bill proposes to amend the provisions of the TPA in relation to persons that may be subject to Departure Prohibition Orders (DPO) to include tax representatives.

**Who will be affected**
Tax representatives.

**When**
Effective 1 October 2019

**Our view**
The proposed amendment is aimed at enhancing the effectiveness of a DPO by ensuring that the tax representatives in addition to the controlling members are included. This amendment imposes an obligation on the tax representatives to ensure that their clients comply fully with tax legislation. However, it may present a disincentive for potential tax representatives.
**Tax paid to be taken into account in determining penalties on late submission of a return**

**The measure**
The Bill proposes to amend the TPA in relation to the penalty on tax payable under a return by adding a provision that tax already paid and withholding tax credits shall be taken into account in calculating the late submission penalties.

**Who will be affected**
All taxpayers.

**When**
Effective 1 October 2019

**Our view**
In practice, taxpayers have been taking such tax and withholding tax paid into account in arriving at the tax due under a tax return. This provision provides certainty by expressly providing for the same under the law. It is a positive move.

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**Tax shortfall penalty to apply only in cases of deliberate omission**

**The measure**
The Bill proposes to amend the provisions of the TPA by deleting the provision for tax shortfall penalty in any case other than as a result of deliberate omission.

**Who will be affected**
Tax representatives.

**When**
Effective 1 October 2019

**Our view**
The tax shortfall penalty provision was introduced to cover underpayment of tax occasioned by a deliberate omission or falsification. Therefore, the provision stipulating the shortfall penalty in cases of non-deliberate omissions was redundant in the first place. Hence, the amendment is welcome.

This provision means that taxpayers will not be penalized where they have a tax shortfall that is not occasioned by a deliberate omission. This is a positive move since in many instances a shortfall is occasioned by acts or omissions that are not a deliberate attempt to understate tax liability, for instance differences in interpretation.
60 day window for issuing objection decision relaxed for KRA

The measure
The Bill proposes to amend the TPA in order to allow the Commissioner additional time to issue an objection where further information is requested from a taxpayer after filing an objection. The 60 days period within which the Commissioner ought to provide the tax decision would in such an instance run from the date the additional information is received.

Who will be affected
Taxpayers and the Kenya Revenue Authority.

When
Effective 1 October 2019

Our view
This amendment opens up the time frame within which the Commissioner is required to issue an objection decision. We believe this measure is informed by the recently established practise requiring objections to go through an independent review within the KRA. The review team, may request for additional information or representations from the taxpayer and the audit team to enable them consider the contentions and arrive at the objection decision.

While the intention of this amendment is positive, it could cause delays in the process of dispute resolution since the process could be held up where numerous requests of additional information are made before issuing an objection decision. In our view, the additional time should be capped further through a proviso that ensures that the extended period should in any case not exceed a specified duration from the date of filing the objection.
Introduction of excise duty on betting activities

The measure

The Finance Bill 2019 proposes to introduce excise duty on betting activities at 10% of the wagered or staked amount. The Bill has also proposed the following changes to the Excise Duty Act 2015 (“EDA”) with respect to betting transactions:

- The amount wagered or staked has been defined to mean the amount of money placed by a person for an outcome in a betting transaction.
- The time of supply for betting transactions shall be the time when a person wagers or stakes money on a platform or other medium provided by a bookmaker.
- A betting transaction has been defined to include the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker (as per the Betting, Lotteries and Gaming Act).
- A bookmaker has been defined as a person who, whether on his own account or as servant or agent to another person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets, or who in any manner holds himself out, or permits himself to be held out in any manner, as a person who receives or negotiates bets, so however that a person shall not be deemed to be a bookmaker by reason only of the fact:
  - that he carries on, or is employed in operating, a totalisator in respect of which a licence has been issued under Section 18 of the Betting, Lotteries and Gaming Act); or
  - that he carries on, or is employed in a business that is wholly concerned with, a pool betting scheme in respect of which a licence has been issued under Section 22 of the Betting, Lotteries and Gaming Act).

Who will be affected

Bookmakers and stakers

When

Effective 1 October 2019
Exemption of excise duty on official aid funded projects

The measure
The Finance Bill 2019 proposes to amend Section 2 of the EDA to define the following terms for purposes of exemption of excise duty on official aid funded projects:

- “Official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency.
- “Concessional loan” means a loan with at least 25% grant element.

Who will be affected
Importers of goods for use in official aid funded projects.

When
Effective 1 October 2019

Our view
In 2016, the Finance Act exempted excisable goods imported or purchased locally for direct and exclusive use in the implementation of an official aid-funded project from excise duty. However, in the absence of a definition of official aid funded projects in the EDA, it was not clear which projects were exempted from excise duty under the exemption provision. This change is therefore intended to provide clarity and certainty on the nature of projects considered to be official aid funded for purposes of excise duty exemption.

Introduction of a general penalty of KES 2 million

The measure
The Finance Bill 2019 has proposed to introduce a general penalty on offences where no specific penalty is provided. Persons who commit such offences will be liable on conviction to a fine not exceeding 2 million shillings or to imprisonment for a term not exceeding 2 years or both.

Who will be affected
Persons licensed under the EDA.

When
Effective 1 October 2019

Our view
The EDA and the Tax Procedures Act 2015 provide for penalties on persons who contravene certain provisions of the EDA. The introduction of the general penalty is intended to cover contravention of provisions where no penalty is specified to further encourage compliance with the law.

This measure is also in line with other tax legislations such as the VAT Act and the East African Community Customs Management Act.
Increase of excise duty on cigarettes, spirits and wines

The measure
The Finance Bill 2019 has proposed to increase excise duty on cigarettes, spirits and wines by 15%. The revised rates will be as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Current rate</th>
<th>Proposed rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes</td>
<td>Shs. 10,520 per Kg</td>
<td>Shs. 12,098 per Kg</td>
</tr>
<tr>
<td>Electronic cigarettes</td>
<td>Shs 3,156 per unit</td>
<td>Shs. 3,629 per unit</td>
</tr>
<tr>
<td>Cartridge for use in electronic cigarettes</td>
<td>Shs 2,104 per unit</td>
<td>Shs. 2,420 per unit</td>
</tr>
<tr>
<td>Cigarette with filters (Hinge lid and soft cap)</td>
<td>Shs. 2,630 per mille</td>
<td>Shs. 3,025 per mille</td>
</tr>
<tr>
<td>Cigarettes without filters (plain cigarettes)</td>
<td>Shs. 1,893 per mille</td>
<td>Shs. 2,177 per mille</td>
</tr>
<tr>
<td>Other manufactured tobacco and manufactured tobacco substitutes;</td>
<td>Shs 7,364 per kg</td>
<td>Shs. 8,469 per kg</td>
</tr>
<tr>
<td>“homogenous” and “reconstituted tobacco”; tobacco extracts and essences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wines including fortified wines, and other alcoholic beverages obtained by</td>
<td>Shs.157.80 per litre</td>
<td>Shs.181 per litre</td>
</tr>
<tr>
<td>fermentation of fruits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous</td>
<td>Shs. 210.40 per litre</td>
<td>Shs. 242 per litre</td>
</tr>
<tr>
<td>beverages of alcoholic strength exceeding 10%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Who will be affected
Importers and manufacturers of cigarettes, spirits and wines.

When
Effective 1 October 2019

Our view
The move by the CS to increase excise duty on cigarettes, spirits and wines is in our view primarily geared towards generating additional revenue for the government. This will be in addition to the inflationary adjustment expected later in the year. According to the CS, the amount of excise duty collected by the Government has been on a downward trend having declined from 3% of the GDP in 2003 to 2% in the last financial year. Further, the Government’s view is that the inflationary adjustment alone will not be adequate to reverse the declining trend in excise duty collections. According to data from the Kenya National Bureau of Statistics, the average inflation for the financial year 2018/19 to May 2019 is 4.95. It is therefore expected that the excise duty rate on cigarettes, spirits and wine will increase by a further 4.95% (approximately) by 1 October 2019.

The increase in excise on the above mentioned products is in our view very significant and may increase the prices of these products to a level which is out of reach to the average mwananchi. This will further encourage the consumption of illicit brew which has in the past had negative health and social impact on the society.
Excise duty on motor vehicles

The measure
The Finance Bill 2019 has proposed to amend the excise duty rates on motor vehicles as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Current rate</th>
<th>Proposed rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Motor vehicles with a seating capacity of 10 or more persons, including the driver (Heading 8702);</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>• Motor vehicles principally designed for transport of persons with a sitting capacity of less than 10 people, including station wagons and racing cars (Heading 8703); and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Motor vehicles for transportation of goods (8704) excluding:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Locally assembled motor vehicles;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- School buses for use by public schools;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Diesel powered engine motor vehicles of cylinder capacity exceeding 2500cc of tariff code 8703.33.90 and petrol powered engine motor vehicles exceeding 3000cc of tariff code 8703.24.90; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- imported motor vehicles of cylinder capacity exceeding 1500cc</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 8702, 8703 and 8704</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Motor vehicles of tariff no. 8703.24.90 and 8703.33.90</td>
<td>30%</td>
<td>35%</td>
</tr>
<tr>
<td>100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00</td>
<td>20%</td>
<td>10%</td>
</tr>
</tbody>
</table>

Who will be affected
Importers of motor vehicles.

When
Effective 1 October 2019

Our view
The Finance Act 2018 increased excise duty on petrol powered engine motor vehicles of a cylinder capacity exceeding 3000cc and diesel powered engine motor vehicles of a cylinder capacity exceeding 2500cc from 20% to 30% in a bid to discourage the use of these high engine capacity motor vehicles due to the relatively high level of carbon emissions associated with the motor vehicles.

The move to increase excise duty on motor vehicles exceeding 1500cc is aimed at further curbing the level of carbon emissions to protect the environment and generating additional revenue for the Government. It however remains to be seen whether this measure will generate additional revenue for the Government considering the demand for motor vehicles may decline in general.

On the other hand, the lower excise duty rate of 10% on electric powered vehicles is viewed as a move to encourage the uptake of such vehicles amid the global campaign aimed at adoption of environmental friendly technologies.
Removal of excise duty on plastic shopping bags

The measure
The Finance Bill 2019 has proposed to delete the provision for charging excise duty on plastic shopping bags.

When
Effective 1 October 2019

Our view
The proposal in our view is aimed at aligning the Excise Duty Act with the Government policy that banned the use of plastic shopping bags in the country.

Change of effective date for inflationary adjustments

The measure
The Finance Bill 2019 has proposed to amend the effective date for adjusting specific excise duty rates for inflation, from 1 July of every year to 1 October of every year.

Who will be affected
Importers and local manufacturers of excisable goods with specific rates.

When
Effective 1 October 2019

Our view
The EDA empowers the Commissioner General of the Kenya Revenue Authority to adjust specific excise duty rates by the average inflation rate for the previous financial year. The adjustment is made on an annual basis and takes effect on 1 July of every year.

Last year, the National Assembly annulled Legal Notice 164 of 2018 through which the CG had sought to adjust specific excise duty rates for inflation. The National Assembly cited various reasons for annulling the Legal Notice, key amongst them being lack of public participation.

In our view, this measure is aimed at providing the CG with sufficient time to adhere with the public participation requirement and other requirements in accordance with the Statutory Instruments Act.
Clarity on premium based commissions exempt from excise duty

The measure
The Finance Bill 2019 has proposed to limit the scope of premiums and premium based commissions exempt from excise duty, to the extent specified in the Insurance Act or Regulations.

Who will be affected
Persons licensed under the Insurance Act.

When
Effective 1 October 2019

Our view
The EDA excludes premiums and premium based/related commissions from the ambit of “other fees” subject to excise duty. Further, the Insurance Act as read together with the Insurance Regulations restrict the amount of commissions that an insurer may pay a broker. However, the EDA does not define premium based commissions and does not restrict the amount exempt from excise duty. This measure is therefore intended to provide clarity on the scope of commissions exempt from excise duty.
Amendment of Import Declaration Fees (IDF) and Railway Development Levy (RDL) rates

The measure
The Finance Bill 2019 has proposed to amend IDF and RDL rates as follows:

• Increase IDF on goods imported for home use from 2% to 3.5% except for raw materials and intermediate goods imported by approved manufacturers whose rate will be reduced from 2% to 1.5%; and

• Increase RDL on goods imported for home use from 1.5% to 2% except for raw materials and intermediate goods imported by approved manufacturers whose rate will continue being 1.5%.

Who will be affected
Importers of goods into Kenya, and approved manufacturers.

When
Effective 1 October 2019

Our view
The reduced rate of IDF and RDL will apply to imports by approved manufacturers only. It is however not clear which mechanism will be adopted in determining approved manufacturers.

This measure is aimed at cushioning the local manufacturers against competition from imported finished goods and encourage growth of the local manufacturing sector.

Refund of anti-adulteration levy on kerosene used for manufacture of paints, resins and shoe polish

The measure
The Finance Bill 2019 has proposed to amend Section 8A of the Miscellaneous Fees and Levies Act (MFLA) to allow for claiming of refund of anti-adulteration levy paid on illuminating kerosene used by licensed or registered manufacturers to manufacture paints, kerosene and shoe polish.

Who will be affected
Licensed or registered manufacturers of paint, resins and shoe polish.

When
Effective 1 October 2019

Our view
The Government in 2018 introduced anti-adulteration levy on illuminating kerosene at the rate of KShs 18 per litre to curb against adulteration of petrol and diesel. While the levy may have curbed adulteration of petrol and diesel to a certain extent, the same resulted in additional production costs for manufacturers who use kerosene as a raw material.

This measure is therefore aimed at cushioning manufacturers against the additional production costs occasioned by the introduction of the levy through the 2018 Finance Act. To mitigate against abuse of this provision, the Bill has proposed that only licensed or registered manufacturers will be eligible for the refund and they will be required to apply for the refund in writing.
Exemption of IDF and RDL on official aid funded projects

**The measure**
The Finance Bill 2019 has proposed to amend Section 2 of the MFLA to define the term concessional loan as a loan with at least 25% grant element.

**Who will be affected**
Importers of goods for use in official aid funded projects.

**When**
Effective 1 October 2019

**Our view**
The MFLA provides for exemption of IDF and RDL on goods imported or purchased locally for direct and exclusive use in the implementation of an official aid-funded project from excise duty. The MFLA further defines an official aid funded project as a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency.

The definition of concessional loan is intended to provide clarity on the scope of projects considered to be official aid funded for purposes of IDF and RDL exemption.

Introduction of export levy on tanned or crust hides and skins at 10%

**The measure**
The Finance Bill 2019 has proposed to amend the First Schedule of the MFLA to introduce export levy on tanned or crust hides and skin at 10%.

**Who will be affected**
Exporters of tanned or crust hides and skin.

**When**
Effective 1 October 2019

**Our view**
The MFLA provides for export levy on a wide range of raw hides and skins at 80% or USD 0.52 per kg to encourage value addition by increasing the cost of exporting these products in their raw or semi-processed forms. The measure has expanded the types of hides and skins subject to export levy to include tanned or crust hides and skins. In our view, the proposed change has imposed a lower rate of 10% in view of the fact that tanned or crust hides and skins are semi processed.

This measure is expected to further encourage value addition on hides and skins before exportation and therefore promote growth of the leather industry.
Three years later, interest rate capping set to be repealed

The measure
The Bill is proposing to repeal section 33B of the Banking Act, which introduced capping of interest rates.

Who will be affected
Commercial banks and borrowers.

When
Effective 1 October 2019

Our view
One of the unintended consequences of the introduction of interest capping in 2016, has been the significant reduction of credit to SMEs and individual borrowers as lenders opt for less risky assets such as government securities. Effectively, according to the Cabinet Secretary, this has had a negative impact on economic growth.

In response to the negative impact, the Bill proposes to repeal the capping. This will be the second attempt in a row as the same was proposed under the Finance Bill, 2018 but was not passed by the National Assembly. Repeal of the capping is expected to enhance access to credit especially for SMEs which in turn will spur economic growth. However, it is also worth noting the concerns that the lifting of the cap may lead to increase in the cost of borrowing. It is hoped that the regulator’s and the industry’s undertaking to put in place measures to align interest rates with the risk profile of the borrower will mitigate any negative impact.

Financial penalties by the Capital Markets Authority (CMA) to be considered as civil debts

The measure
The Bill proposes to amend various sections of the CMA Act imposing financial penalties by providing that such fines and penalties be recoverable summarily as a civil debt as provided for under the Debts (Summary Recovery) Act.

Who will be affected
Market players operating under the CMA Act.

When
Effective 1 October 2019

Our view
The amendment means that recovery of such fines and penalties may be brought before any magistrate court with competent jurisdiction. This will empower the CMA in enforcing such financial fines and penalties on market players who violate the laid down rules and procedures. This is expected to enable the CMA deliver its oversight mandate effectively and as a result enhance compliance.
Privileged persons to enjoy exemptions on locally purchased goods and services for official use

The measure
The Bill proposes to amend the Privileges and Immunities Act to expand the scope of exemption from tax to cover taxes on goods or services imported or purchased locally by privileged organizations for their official use. Currently, only directly imported goods by such persons are exempt from tax.

Who will be affected
Privileged persons.

When
Effective 1 October 2019

Our view
This will reduce the tax burden on privileged persons further supporting their objectives. This could be viewed as an attempt to align the tax treatment with most of the Host Country Agreements (HCAs), which largely, provide for a blanket exemption on the purchase of goods and services (whether locally or from outside Kenya).

Other allowances and benefits excluded from the meaning of basic salary

The measure
The Bill proposes to amend the Employment Act by deleting the definition of employee earnings and introducing a definition of basic salary, which is defined to mean an employee’s gross salary excluding allowances and other benefits.

Who will be affected
Employers and employees.

When
Effective 1 January 2020

Our view
This is aimed at providing clarity on the base amount for computing the levy payable under the National Housing Development Fund (NHDF).
Accountancy students not required to register before they qualify as accountants

The measure
The Bill proposes to amend the Accountants Acts to remove the requirement for accountancy students to register with ICPAK before qualifying as accountants.

Who will be affected
Students pursuing accountancy.

When
Effective 1 October 2019

Retirement Benefits Act to be amended in favour of members who cannot be traced

The measure
The Bill proposes to activate the benefits and other accrued income of members of retirement benefit schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act, 2011. The amendment also introduces a time limit of 12 months within which approved issuers are required to transfer scheme funds in guaranteed funds.

Who will be affected
Retirement benefits schemes, its members and the scheme trustees.

When
Effective 1 January 2020
Anti-Money Laundering reporting obligations extended to lawyers, notaries and other independent legal professionals

The measure
The Bill proposes to designate lawyers, notaries and other independent legal professionals as amongst the reporting entities to whom reporting obligations in respect of Anti-Money Laundering/combating Financing of Terrorism apply.

Who will be affected
Lawyers, notaries and other independent legal professionals.

When
Effective 1 October 2019

Our view
This amendment is an attempt at amplifying the law against money laundering and terrorism activities. However, this provision may be subject to challenge due to the principle of advocate-client privilege.
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