Finance Act, 2018

A KPMG analysis

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Income Tax

Interpretation

Demurrage Charges

Enacted provision: The amendment introduces the definition of demurrage charges as a penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods.

Implication: This amendment introduces withholding tax (WHT) on demurrage charges. This matter had been widely litigated following the KRA's assessment of WHT on demurrage for some taxpayers even there was no enabling provision.

Taxing demurrage will increase the cost of shipping through the Mombasa port which could lead to loss of transit business.

Commencement: 1 July 2018

Winnings

Enacted provision: The amendment expands the definition of 'winnings' to include winnings of any kind.

Implication: The Tax Laws (Amendment) Act, 2018 had limited the term "winnings" to the net proceeds from betting and gaming. The new definition widens the meaning of winnings to include winnings, imposing tax on the gross rather than the net amount.

The tax deducted from winnings will be channeled into the Sports, Arts and Social Development Fund.

Commencement: 1 July 2018

Income from Dividends

Enacted provision: The amendment expands the definition of dividends to include a number of transactions carried out by companies for the benefit of shareholders such as:

a) distribution/transfer of cash/asset;

b) discharge of an obligation;

c) Payments for the benefit of the shareholder or their relatives;

d) the settlement of a shareholder's debt; and

e) adjustments to shareholder transactions leading to additional taxable income or reduction of tax loss

Implication: Some of the provisions expound on current provisions on the definition of a dividend. However, inclusion of adjustments to transactions with shareholders or persons related to the shareholder creates the possibility of deeming dividends on transactions with affiliates which are not necessarily the shareholders of the company.

Commencement: 1 July 2018

Income Tax

Compensating Tax

Enacted provision: The amendment replaces the current compensating tax provisions with a straight 30% tax on dividends paid out of untaxed (exempt) profits.

Implication: This amendment reduces the effective compensating tax rate from 42.86% to 30%. However, exempt income will be subject to tax at the rate of 30% thus negating the spirit of the exemption of tax on some incomes including dividends paid to residents companies which control 12.5% of the shareholding of the company paying dividend.

Holding companies that that receive tax exempt dividends will be exposed to 30% corporation tax on distribution of dividends. This will increase the effective tax charge for group companies to 58%, a key disincentive to establishing holding companies in Kenya.

Commencement date: 1 January 2019

WHT on Demurrage Charges and Insurance Premiums

Enacted provision: Demurrage charges and insurance premiums income paid to non-resident insurance companies will be subject to WHT as follows :

a) **Demurrage charges:** 20% of the gross amount; and

b) **Insurance premium (excluding aircraft insurance):** 5% of the gross amount.

Implication: This provides the basis for taxation of demurrage charges.

There is also a deliberate effort to discourage the procurement of foreign insurance policies in favour of local policies to promote and protect the local insurance companies.

Since the Insurance Act already bars foreign companies from procuring insurance business locally, the tax will impact foreign reinsurance business.

Commencement: 1 July 2018

Taxation of the Informal Sector

Enacted provision: The amendment repeals Section 12C of the ITA which provides for a turnover tax of 3% on the gross receipts for persons with a turnover of less than ***KES 5,000,000*** and replaces it with a presumptive tax.

Presumptive tax will be applicable to a resident person whose turnover from business does not exceed ***KES 5,000,000*** per annum. The tax will be 15% of the single business permit fee paid to the County Governments. This is a final tax.

However, this tax in not applicable to income derived from management and professional services, rental business and incorporated businesses.

Implication: This amendment seeks to expand the tax base. It taps into the informal sector and leverages on the County Government to enforce collection. While this appears to be a minimal tax, it may appear that the government intends to use this mechanism to enroll more taxpayers in the elusive informal sector commonly known as *'Jua Kali'* into the tax net.

We however foresee challenges in the administration and collection of the tax.

Commencement date: 1 January 2019

Income Tax

Deduction of electricity costs

Enacted provision: Introduction of an additional tax deduction of 30% of electricity cost incurred by manufacturers. This is however subject to conditions set by the Ministry of Energy. This is an effective tax credit of 9% of the electricity costs.

Implication: This is to bolster the realization of one of the Big Four Agenda which is to increase the contribution of the manufacturing sector to GDP from 9% to 15% by 2022. Manufacturers will thus take a 130% deduction of their electricity expense incurred for purposes of their operations.

Commencement date: 1 January 2019

Capital gains on transfer of property by general insurance companies

Enacted provision: The Act has introduced a new subsection that brings to tax capital gains arising from the transfer of property by general insurance companies.

Implication: This provision provides clarity on the taxation of transfers of property by insurance companies, bringing out the difference in tax treatment for general and life insurance companies.

This therefore means that capital gains arising from transfer of properties connected to life insurance companies is not subject to capital gains tax.

Commencement: 1 July 2018

Taxation of companies engaged in business under a special operating framework arrangement with the Government

Enacted provision: The Act introduces a new provision under the Third Schedule to the ITA, allowing the government to enter into agreements on taxation with persons engaged in business under special operating framework agreements with the Government.

Implication: This will allow the government to negotiate and agree on incentives for investors in special operating framework agreements with the government without making changes to the tax legislation.

Commencement date: 1 January 2019

Excise Duty

All commencement dates are 1 July 2018

Conditions for exemption

Enacted provision: The Act introduces further conditions for exemption from excise duty requiring the commissioner to ensure:

a) Goods have been received and consumed by an exempt person; and

b) Goods or services for export shall not be consumed in Kenya.

Implication: This is an introduction of further conditions to prevent revenue leakages and abuse of the excise duty exemption privileges conferred by the Act.

Annual inflation adjustments

Enacted provision: The Act has reduced the period for specific excise duty rate adjustment by the Cabinet Secretary from two years to one year.

Implication: This amendment reverses the provision in the Finance Act, 2017 which introduced the two year period. Inflationary adjustments to the specific excise duty rates will therefore be annual and will affect the prices of products such as petroleum, alcohol and tobacco amongst others.

Stiffer penalties imposed

Enacted provision: The Act has imposed a penalty of the higher of double the tax payable or ***KES 5,000,000*** for manufacturing or importing excisable goods without a license.

Implication: This amendment imposes stiffer penalties to discourage non-compliance and will be useful in the fight against counterfeits which has continued to have a negative impact on the local manufacturers.

Conditions for suspension and cancellation of licenses

Enacted provision: The existing legislation obliges the Commissioner to give a 21 days' notice before suspending an excise duty license. The Act nonetheless has given the Commissioner powers to cancel a license without giving notice where the licensee:

a) Has engaged in tax fraud;

b) Is found to be in possession of counterfeit excise stamps;

c) Has goods bearing counterfeit excise stamps; or

d) Has violated any regulations relating to health and safety, standards or packaging of goods.

Implication: This is to enhance the Commissioner's powers to control counterfeiting of excisable goods.

Some of the powers seems to overlap with the obligations of the Kenya Bureau of Standards and the National Council for Occupational Safety and Health on issues of health and safety standards and it will be interesting to see how the Commissioner interacts and aligns his actions with those of these bodies.

Funding social causes

Enacted provision: The Act has made it mandatory for the Commissioner to pay into a Sports, Arts and Social Development Fund established under the Public Finance Management Act 16% of the excise duty collected from money transfer services by cellular phone service providers. The funds will be used to sports and universal health care,

Implication: This is a deliberate effort by the government to provide targeted support for specific projects. Care is needed to avoid loss of funds through duplication of roles and functions.

Excise Duty

All commencement dates are 1 July 2018

Forfeiture of goods

Enacted provision: The Act provides for forfeiture of any plant, excisable goods, any materials or finished goods in respect of which an offence has been established in addition to any other penalties set.

Implication: This will further discourage non-compliance and strengthen the fight against counterfeit goods.

Rates of Excise Duty (goods)

Item	New Rate	Old Rate
Illuminating kerosene	10,305	7,205
Sugar Confectionary	20/kg	-
Vehicles of 2,500CC and above	30%	20%

Implication:

a) The increase in excise duty is in addition to the anti-adulteration levy on illuminating kerosene of KES 18/litre. Though it seeks to curb the rise in cases of adulterated fuel, the increase on the cost of fuel negatively impacts on low income earners who use kerosene as the main source of fuel for cooking and lighting.

b) Imposition of excise duty on bottled water is now specifically provided for.

c) The excise duty on high engine capacity vehicles, sugar confectionaries and chocolate is a continuation of the government raid on products deemed to be luxury in nature to fund the fiscal deficit.

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Rates of Excise Duty (services)

Item	New Rate	Old Rate
Mobile cellular services	15%	10%
Telephone and internet services	15%	-
Money transfer services by banks, money transfer agencies and other financial service providers	20%	10%
Money transfer services by cellular phone service providers	12%	10%
Other fees charged by financial institutions	20%	10%

Implication: The Act seeks to increase the excise duty on transfers of cash by both banks and cellular phone providers.

This move is likely to increase the cost of the services dampening the gains made in growing financial inclusion.

Additionally, in the wake of Fintech, banks and cellular phone service providers have recently partnered to provide end-to-end products for their customers. The differential in excise duty rates will bring administrative challenges in collecting tax on such shared products.

Exempt excisable goods

Enacted provision: The Act has provided for additional exemption of excisable goods as shown below:

- Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.
- Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.
- One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his or her spouse.

Implication: There was no clarity as to the charging of excise duty on excisable supplies to the Kenya Defence Forces Canteen Organization. This has now been resolved.

Additionally, it appears that the government intends to enhance smooth transition of Kenyan citizens upon their return from special international assignments.

Value Added Tax Act

All commencement dates are 1 July 2018

Tax on petroleum products

Enacted provision: The Act introduces a new VAT rate of 8% on petroleum products. This is a reduction from the rate of 16% that was effective from September 2018. The taxable value excludes excise duty, fees and other charges

Implication: The introduction of VAT on petroleum products has generated heated debate, with the 8% rate being the compromise position adopted by government. Given the revenue constraints facing the government and the maturing debts that it needs to pay, the tax was inevitable even though it will negatively affect key industries such as transportation and the agricultural sector whose supply is exempt.

The cost of taxable products that use petroleum products in their manufacture or distribution should ideally not increase as a result of the imposition of VAT because the sellers of such products are allowed a deduction of the VAT paid on the petroleum products.

Taxable value of mobile cellular services

Enacted provision: The Act deletes the definition of the taxable value of mobile cellular services which excluded excise duty.

Implication:

The taxable value for VAT on mobile cellular services has in the past excluded excise duty but following the change the taxable value will include applicable fees and taxes such as excise duty, increasing the effective charge to 18.4%.

Added to the increase in excise duty rates, the cost of mobile cellular services will increase significantly.

Debit and credit note

Enacted provision: The Act states that any credit/debit notes issued should be in the prescribed form.

Implication: The amendment aligns the VAT Act with the proposed VAT Regulations, 2017 that prescribe the format for credit/debit notes.

Clean up amendments

Application of information technology and submission of returns

Enacted provision:

- The Act has deleted provisions relating to unauthorized access or improper use of a tax computerized system and interference with tax computerized system offences under the law.
- Additionally, the Act deletes the process of application for extension of time to submit a return.

Implication: This provisions removes duplication since the tax administration procedures are now covered under the Tax Procedures Act (TPA).

Zero rating & exempted supplies

Services

The deletion of the following services from exemption:

- Financial services relating to asset transfers and other transactions related to the transfer of assets into Real Estates Investment Trusts and Asset Backed Securities.

Addition of the following exempt services:

- Postal services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto.
- Asset transfer and other transactions related to the transfer of assets into real estate investment trusts and asset backed securities.
- Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

Value Added Tax Act

All commencement dates are 1 July 2018

Zero rating & exempted supplies

Goods

The following supplies have been classified as exempt supplies:

- Supply of seeds under heading "1001" (wheat and meslin) and "1003" (barley);
- Plant and machinery exclusively used for the manufacture of goods;
- Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets;
- Swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupines, vetches and similar forage products, whether or not in the form of pellets;
- Residue of starch manufacture and similar residues, beetpulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets;
- Specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power(wind energy equipment was not previously exempt);
- Parts imported or purchased locally for the assembly of computers (previously this exemption was restricted to school laptops but has now been extended to all computers to align with the incentives under the Big 4 agenda to encourage computer assembly in Kenya);
- Taxable good for the direct and exclusive use for construction of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who **may** issue guidelines for determining eligibility for the exemption (key change introduced by the Act is the removal of the word 'shall' and substituting it with 'may' which means that the Cabinet Secretary for health does not have to issue guidelines for this to take effect).
- Equipment for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture;
- Alcoholic /non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organisation;
- Goods imported/purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government;
- Hearing aids, excluding parts and accessories; and
- One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats imported by a public officer returning from posting in a Kenyan mission abroad and another motor vehicle for his spouse.

The following supplies have been removed from the list of exempt supplies:

- Solar accessories including solar water heaters;
- Garments and leather footwear, manufactured in an Export Processing Zone at the point of importation – ***this had been introduced to encourage local sales of clothes by EPZ enterprises***;
- Transportation of cargo to destinations outside Kenya; and
- The supply of maize (corn) flour, maize (corn) seeds, cassava four, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight.

Value Added Tax Act

All commencement dates are 1 July 2018

Second Schedule, Part A (Zero rated supplies)

Zero rating of the supply of maize (corn) flour, cassava four, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight. This was previously an exempt supply.

Second Schedule, Part A (Zero rated supplies)

The following medicaments have been omitted from zero rated supplies:

- Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 29.37 or antibiotics, put up in measured doses or in forms or packing for retail sale.

Supply of the following medicaments has been zero rated:

- Medicaments containing ephedrine or its salts;
- Medicaments containing pseudophedrine (INN) or its salts; and
- Medicaments containing norephedrine or its salts.

Tax Procedures Act

All commencement dates are 1 July 2018

Tax representative

Enacted provision: The TPA has been amended to provide that where a taxpayer has more than one tax representative, the representative shall only be responsible for the tax obligation for which he has been appointed.

Implication: The amendment provides clarity on separation of obligations where a taxpayer has more than one tax representatives shall be responsible to ensure compliance with specific tax obligations for which they have been appointed.

Extension of time to submit a return

Enacted provision: The application for extension of time to submit a return shall be in writing and be submitted to the KRA as follows:

a) Monthly returns: 15 days before the due date; and

b) Annual returns: 30 days before the due date.

The Commissioner will now be obliged to respond to applications at least 5 days before the return is due. Where no notification is received, the taxpayer will assume that the extension has been granted.

A taxpayer is only entitled to one extension in respect of a tax obligation relating to one tax period. Where the Commissioner has granted an extension for submission of returns, penalties for late submission shall not apply.

Implication: The changes provide clarity on the submission of applications for extensions, and grant of the extensions by providing specific timelines for the application and processing.

Amendment of returns

Enacted provision: The amendment provides that where an amended self-assessment return has been submitted, the Commissioner may accept or reject the return. In case of a rejection, the Commissioner shall furnish the taxpayer with the reasons for the rejection within thirty days of receiving the application.

Implication: The change is to provide clarity that the Commissioner cannot amend an assessment where a taxpayer has submitted an amended self-assessment. The Commissioner can only accept or reject the amended self-assessment in the circumstances.

Extension of the tax amnesty

Enacted provision: The period of filing returns under tax amnesty has been extended from 30 June 2018 to 30 June 2019. The extension also covers income received in the year 2017. This is subject to the condition that the funds declared are voluntarily transferred back to Kenya.

The amnesty provision shall not apply where the person who ought to have paid taxes is a party to ongoing litigation in respect of the undisclosed income or any matter to the undisclosed income. The Commissioner shall not question the source of the funds unless the funds are sourced from terrorism, poaching or drug trafficking.

Implication: The change addresses concerns that disclosing their foreign income would expose taxpayers to judicial action especially where the money was from illegal sources. It places an onus on the taxpayers to voluntarily transfer the declared assets back to Kenya.

The extension of the amnesty period on a "don't ask, don't tell" will encourage more person to take up the offer. It will however, be interesting to find out how the government will isolate the funds from terrorism, poaching and drug trafficking if they do not question the source.

Tax Procedures Act

All commencement dates are 1 July 2018

Validity of Objections

Enacted provision: A notice of objection shall be treated as validly lodged by a taxpayer where the tax payer has applied for an extension of time to pay that tax that is not in dispute.

Implication: This provision will now provide the legal basis for KRA accepting objections where a tax payer has agreed to pay the amount not in dispute in instalments.

Late submission penalty

Enacted provision: The new penalty rates on late submission of tax returns are as follows:

a) VAT and Excise Duty Returns – Higher of 5% the tax due or ***KES 10,000***

b) Non-individual returns - Higher of 5% of the tax due or ***KES 20,000*** ; and

c) Individual returns – Higher of 5% of the amount due or ***KES 2,000***.

Implication: The amendments to this section differentiate penalties for individual returns and corporates as well as bringing the Excise Duty and VAT filing penalties under the TPA. The penalty for failing to submit a return for individuals has now been reduced to ***KES 2,000*** from ***KES 20,000***.

Late payment penalty

Enacted provision: Late payment of tax obligations after the due date shall attract a late payment penalty of 5% on the tax due.:

Implication: The late payment penalty has been reduced from 20% to 5%.

Remission of interest and penalties

Enacted provision: The Commissioner shall have the power to waive penalties and interest for amounts not exceeding ***KES 1,500,000***. Where the application exceeds this amounts, the Commissioner requires the approval from the Cabinet Secretary for The National Treasury.

However, the Commissioner has no powers to waive the penalties imposed on a taxpayer due to tax avoidance.

Implication: This amendment seeks to reinstate the powers of the Commissioner to give a remission of penalties and interest without consulting the Cabinet Secretary for amounts below ***KES 1,500,000***. This will expedite the processing of smaller waiver applications.

Unauthorized access, improper use or interference with computerized tax system

Enacted provision: The amendment imposes a penalty for the offence of unauthorized access or improper use of computerized tax system as follows;

- Natural person – not more than 2 years imprisonment or a fine of not more than ***KES 400,000*** or both; or
- Body corporate - a fine of not more than ***KES 1,000,000***.
- The penalty for interference with a computerized tax system is not more than 3 years imprisonment or a fine not exceeding ***KES 800,000*** or both.

Implication: These provisions were provided for under the VAT Act but are now under the TPA which houses all the tax administration provisions.

Tax Appeals Tribunal Act

All commencement dates are 1 July 2018

Time for alternative dispute resolution

Enacted provision:

The amendment provides that the time taken to resolve or conclude a matter out of the Tribunal shall be excluded when calculating the 90 day period required for the determination of an appeal..

Implication:

The amendment will allow parties to engage in the alternative dispute resolution processes without the 90 day limitations in the Act for the tribunal to determine an appeal.

No adjournment

The Act gives the Chairman of the Tribunal powers to explicitly assign another member of the panel in case one of the members is not available, without adjourning the proceeding.

Implication :

This is meant to fast track the tax dispute resolution mechanism without undue delays due to lack of quorum.

Miscellaneous

Betting, Lotteries and Gaming Act

All commencement dates are 1 July 2018

Fit and Proper Criteria for Casinos

Enacted provision: The Finance Act (the Act) introduces a new provision which stipulates the criteria to be used by the Betting Control and Licensing Board (the Board) to process applications for licenses and permits under the Act.

The following will be taken into consideration:

- The financial status or the insolvency of the applicant;
- The educational or other qualifications or experience of the applicant;
- The status of any other license or approval granted to the applicant by any financial regulator;
- The ability of the applicant to carry on the regulated activity, competently, fairly and honestly; and
- The reputation, character and financial integrity of the applicant.

The amendment further provides for the applicant to be heard by the Board prior to determining whether the applicant is fit and proper for the purposes of the Act.

In addition, the amendment aims to make it an offence to provide false statements. A person found guilty of such an offence will be liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both.

Implication: This provision is in line with the Government's push to further regulate the betting industry to protect the public from unscrupulous investors.

Reduction of taxes

Enacted provision: The Act reduces the tax charge from 35% to 15% for gross revenues earned by betting, lotteries and gaming companies.

Implication: The changes see the earlier 35% tax split into two between the punter (20% WHT) and the betting companies (15% betting tax).

Taxes to be paid into a fund and the attendant late payment penalty and interest

Enacted provision The amendment requires the Commissioner to remit all taxes collected from betting, lotteries and gaming into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

Additionally, the Act imposes a late payment penalty of 5% of the tax payable and a late payment interest of 1% per month or part thereof on the amount that remains unpaid by the due date. The interest continues to accrue until the tax is paid.

Implication: Given that gambling is considered a social ill, the amendment seeks to ensure that the proceeds from the industry are channeled to social causes.

Further, the penalties have been introduced to enforce compliance.

Miscellaneous

All commencement dates are 1 July 2018

Marine Insurance Act

Harmonization to the Insurance Act

Enacted provision: The Act adopts the definition of the "Commissioner" as provided for in the Insurance Act. This is the Commissioner of Insurance appointed by the Board.

The Act amends Section 16A of the Marine Insurance Act to read that a person with insurable interest in marine cargo shall place marine cargo insurance with an insurer registered under the Insurance Act.

Implication: This is in line with the deliberate policy to encourage procurement of marine insurance policies from local insurers as opposed to foreign ones.

Air Passenger Service Charge Act

Imposition of passenger service charge

Enacted provision: The Act amends Section 3 (3) of the Air Passenger Service Act, to include the Tourism Promotion Fund in the apportionment of the proceeds of passenger service charge.

Implication: This is to increase the funds available for the promotion of Kenya as a preferred tourist destination.

Stamp Duty Act

Payment of stamp duty on policies of insurance

Enacted provision: The Act provides that stamp duty on insurance policies ('policies of life insurance' and 'policy and insurance against accident') shall be payable monthly as an aggregate of all policies issued within the month.

Implication: The provision seek to remove the requirement for individual stamping of policies. This will facilitate the issuance of e-policies by insurance companies and reduce administrative costs by way leveraging on technology.

Exemptions from Stamp Duty

Enacted provision: The Act amends section 117 of the stamp duty Act which provides for exemption for stamp duty for the following matters;

a) Instrument executed for purposes of collection and recovery of tax;

b) An instrument relating to the business activities of special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act, 2015 (SEZ).

Implication: This implies that where the KRA executes a document for purposes of recovering taxes, the KRA shall not pay stamp duty.

Also, companies licensed under SEZs are exempt from stamp duty.

Miscellaneous

All commencement dates are 1 July 2018

The Banking Act

Information of next of Kin

Enacted provision: Banks are required to maintain the details of next of kin in respect of all its customers.

Implication: The provision will make it easier to trace the next of kin upon the demise of the account holders.

Failure to comply with this requirements will result in a default fine not exceeding ***KES 1,000,000*** for each account.

Interest Rate Cap

Enacted provision: The Banking (Amendment) Act, 2016 introduced a cap on interest rates on loans and prescribed the minimum interest payable on deposits. The Finance Act has amended the Banking Act to remove the prescription on the minimum interest payable on deposits.

The maximum interest rate chargeable by banks for credit facility in Kenya remains at not be more than four percentage points above he Central Bank Rate (CBR).

Implication: The change will provide a relief for banks whose cost of funds had increased as a result of the higher interest rates on deposits.

Regulations on deposits or withdrawals by customers in banks and financial institutions

Enacted provision: The amendment introduces a requirement for the Central Bank to issue regulations setting conditions for deposits and withdrawals by customers in banks and financial institutions

Implication: The regulations will provide guidance on the processes to be carried out by banks to identify and prevent the circulation of proceeds of crime through the system.

Central Bank of Kenya Act

Mortgage Re-financing

Enacted provision: The Act provides for the licensing and supervision of the mortgage refinance business. The primary objective of these businesses will be to provide long term financing to primary mortgage lenders.

The role of the CBK in the regulation of mortgage refinance companies will include:

- Licensing of mortgage refinance companies;
- Determination of the capital adequacy standards and requirements for mortgage refinance companies;
- Prescribing minimum liquidity requirements and permissible investments for mortgage refinance companies;
- Supervision of mortgage refinance companies; and
- Revoking or suspension of a licence.

Implication: The mortgage refinance companies are one of the avenues that the government is proposing to increase the uptake of mortgages.

The aim is to provide funding to financial institutions that provide mortgages to enable them to reduce the interest rates and lengthen the repayment periods for mortgages.

This together with other provisions currently under consideration on housing will allow the government to deliver on its promise to provide affordable housing.

Miscellaneous

All commencement dates are 1 July 2018

Kenya Revenue Authority Act

Increased scope of collection of the Kenya Revenue Authority (KRA)

Enacted provision: The Act amends Part II of the First Schedule to the Kenya Revenue Act to include the Public Finance Management Act, 2012 (PFMA).

Implication: This change will give the KRA power to collect surplus funds from the regulatory bodies created under the PFMA and remit the funds to the National Treasury. The change is attributed to failure by the statutory bodies to remit their excess funds as provided for under the legislation.

Retirement Benefits Act

Deterrence of non- compliance

Enacted provision: The Act amends the Retirement Benefits Act by requiring employers who fail to remit an employee's contributions to the respective schemes to pay contributions and interest accrued to the scheme within a specified period.

Non-compliant employers will be liable to a penalty equivalent to the higher of 5% of the unremitted contributions and ***KES 20,000***. This amount will be payable within 7 days from the receipt of the notice.

Non-compliant employers will also be required to cease deductions from employees' emoluments and notify them of the cessation which will be applicable until the RBA lifts the cessation order.

The RBA will also be able to take further action where an employer does not regularize non-compliance, including initiating the process of the winding up of the scheme and facilitating the members to join individual schemes where their contributions shall be remitted.

Implication: These amendments are geared towards increasing compliance by employers and protecting the employees' savings for their retirement.

It will likely result in a reduction in instances where employers make deductions on their employees but do not remit the same to the relevant schemes.

Miscellaneous

All commencement dates are 1 July 2018

The Proceeds of Crime and Anti-Money Laundering Act

Enhanced customer due diligence and inclusion of the Sacco Societies Regulation Authority

Enacted provision: The Act seeks to introduce the requirement for enhanced customer due diligence in respect to relationships and transactions with any natural and legal persons from countries identified as posing a higher risk or money laundering, terrorism financing or proliferation.

Reporting institutions will be expected to carry out enhanced customer due diligence which includes:

- limiting or terminating business relationships or financial transactions with natural and legal persons, legal arrangements, or financial institutions located in the concerned countries;
- stopping reliance on third parties located in the concerned countries for customer due diligence;
- applying enhanced due diligence measures on correspondent banking relationships with financial institutions located in the concerned countries;
- when considering the establishment of subsidiaries or branches or representative offices of financial institutions from the concerned countries, take into account whether the financial institution is based in countries identified as having higher money laundering or terrorism financing risks or inadequate money laundering or terrorism financing systems;
- submit a report listing customers, both natural and legal persons, and legal arrangements, originating from the higher risk countries to the Financial Reporting Centre on an annual basis; and
- any other measures as may be specified by the Financial Reporting Centre.

Apart from the above, SASRA will now be included as a regulatory body under the Act.

Implication: The amendments provide additional safeguards against money laundering, terrorism financing and poaching.

Additionally, the inclusion of SASRA recognizes the important role of SACCOs as an alternate source of funding.

The Employment Act

National Housing Development Fund (NHDF)

Enacted provision: Section 31 of the Employment Act has been amended to introduce National Housing Development Fund (NHDF) deductions.

Under the new provision, the employer and employee will each contribute 1.5% of the employee's basic monthly salary subject to a maximum of sum of **KES 5,000** to the NHDF.

Implication: The payments from the employers will be in the form of a housing levy while the employee deduction will be a contribution that eventually accrues to the employer.

Where the employee qualifies for affordable housing their portion of the contributions will be used to offset the purchase cost of the houses. Employees who do not qualify for affordable housing will be eligible to receive their portion of the contribution at the end of 15 years.

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