JULY 2019 | 5.49

CELEBRATING 40 YEARS TOGETHER 1979 - 2019

2019 FINANCE BILL ANALYSIS

Newsletter

MBAYA AND ASSOCIATES July 2019 | Issue 049 | Volume 5

Introduction

We welcome you to the seventh edition of our tax newsletter. In this issue, we highlight the key information in regards to the 2019 finance bill.

You will find our contact details on the right column. Senior members of our team will assist you by offering clarity on any questions you may have about the issues highlighted in this newsletter or any other questions.

We are interested in your feedback on the items covered and please let us know the topics you would like us to cover in the coming days.

Feel free to provide any feedback at **tax@mbaya.co.ke**

"Government is seeking more funds by introducing VAT on transactions taking place in online digital platforms."

» FISCAL YEAR 2019/2020 BUDGET HIGHLIGHTS

In this issue

Contacts

Head Office

3rd Floor, Western Heights

Karuna Road, Westlands

P. O. Box 45390 – 00100

Nairobi, Kenya

Tel. +254(20)4443868

254 20 4448938

254 20 4446466

Fax: 254 20 4449819

Mike Mbaya | Managing Partner

Email: mike@mbaya.co.ke

Muhungi Kanyoro | Partner

Email: mkanyoro@mbaya.co.ke

Andrew Bulemi | Partner

Email: abulemi@mbaya.co.ke

Leah Nganga | Partner

Email: lwambui@mbaya.co.ke

Christine Yego | Outsourcing Dept. Manager

Email: christine@mbaya.co.ke

Kevin Njenga | Tax Manager

Email: knjenga@mbaya.co.ke

Darlyn Mbaya | Manager and Partner Savanna Associates

Email: darlyn@mbaya.co.ke

From the *Tax***Desk**

KRA Commissioner General Appointment

Through a Kenya Gazette notice number 4857, the Cabinet Secretary for National Treasury and Planning, Mr. Henry K Rotich appointed Mr. James Gathii Mburu on Monday 6th June 2019 to be the incoming Commissioner General of KRA. The appointment took effect from 1st July 2019 for a renewable term of 3 years.

2019 FINANCE BILL ANALYSIS

A finance bill is a legislative bill proposing changes to taxes and duties. The proposals from the government for levy of new taxes, modification of the existing tax structure or continuance of the existing tax structure beyond the period approved by Parliament are submitted to Parliament through the finance bill.

The finance bill is usually submitted to parliament by the Cabinet Secretary for Finance after he reads out the budget statement at the floor of the whole house. The finance bill is accompanied by a memorandum of objects and reasons for the proposed changes and it should be approved by parliament in 90 days.

On approval by the parliament, the bill is assented to by His Excellency the President and it becomes a Finance Act. The Finance Act is law, effective and binding.

The theme for this year's budget statement is creating jobs, transforming lives and harnessing the big four plan. In the coming financial year, the government is keen on improving the current business climate, implement favourable fiscal policies, reduce interest rates and reduce the cost of doing business in the country. In our previous issue, we highlighted the areas affected by the budget statement.

In this issue, we present below the various tax and policy measures that the government will implement to achieve its development agenda, and most importantly, under the Big four through introduction new and modification of other tax laws through the 2019/2020 finance bill. Below are some of the affected areas where changes have been proposed.

Income Taxes

Taxation of Income from Digital Economy

The bill proposes to tax income accruing from a digital market place.

Income of Non-resident Ship Owners

The bill proposes to do away with 20% withholding tax on demurrage. It proposes to tax in Kenya all income earned by non-resident shipping lines from Kenyan sources.

Dividends from Exempt Income

Proposes to exempt from tax all dividend distributions made from exempt income.

Our Comments

- *It will be interesting to see how KRA plan to implement this provision in light of cross border digital transactions.*
- *All income earned by non-resident shipping lines from their operations in Kenya, including charges for delays in returning containers, will be subject to tax at 2.5% of the gross amount.*
- *The above charges if approved will take effect on 1st October 2019.*

Additional Service Fees Subject to Withholding Tax

Previously services subject to withholding tax at 5% for resident and 20% non-resident were management, professional and training services. The bill proposes to expand the list to include security services, cleaning and fumigation services, catering services offered outside hotel premises, Transportation of goods excluding air transport services, sales promotions, marketing and advertising services.

Branch and Head Office Transactions

Management fees, royalty and interest paid by a branch to the head office are considered not to be income derived in Kenya and hence not taxable through withholding tax. The bill proposes that in cases where a Double Tax Agreement (DTA) provides for tax deductions, then these payments shall be taxed in accordance with the DTA.

Our Comments

- *The move to add services subject to withholding tax will result in identifying service providers who might not have been accounting for tax as well as earlier collection of taxes by KRA from these additional services.*
- *Proposed tax management fees royalty and interest recognizes the importance of DTA's in taxation of non-residents and will reduce disputes on which taxes apply.*
- *The above charges if approved will take effect on 1st October 2019.*

Turnover Tax

It was repealed by the finance act 2018 and replaced by presumptive tax. The bill proposes to reintroduce Turnover tax at 3%, payable on monthly gross receipts. A person subject to turnover tax shall submit a return and pay due tax by 20th of the following month. The presumptive tax (15% of business permit fee) will serve as a credit against the Turnover Tax.

Capital Gains Tax (CGT)

The current applicable rate of CGT is 5%. The bill proposes to increase CGT rate to 12.5%. Currently, CGT exemption applies to company restructuring transfers deemed by the Cabinet Secretary to be in the public interest. The bill proposes to amend this and include restructuring due to: A legal or regulatory requirement; Compulsory acquisition by the Government; Internal restructuring without transfer to a third party; or Is in the public interest as approved by the Cabinet Secretary.

Reinsurance Premiums Paid to Non-residents

The Finance Act 2018 introduced withholding tax on insurance premiums paid to non-residents except insurance premiums paid for insurance of aircraft. The bill proposes to tax reinsurance premiums paid to non-residents at 5% withholding tax.

Penalty on Unpaid Tax

The Income Tax Act provides for a penalty of 20% on late payment of tax. The bill proposes to delete the penalty and clarifies that only the penalties provided for in the Tax Procedures Act are applicable.

Our Comments

- *Presumptive tax was aimed at bringing small traders within KRA sights. The re-introduction of Turnover tax now seeks to increase tax revenue for the Government from these small traders. If approved, the turnover takes effect on 1st January 2020.*
- *The increase in the CGT rate, though anticipated, will counter the Government's Big 4 agenda of affordable housing since this move will lead to an increase in the cost of property. The move to exclude restructuring transactions from the Cabinet Secretary Approval process is a welcome move as it provides certainty to business transactions.*
- *The move to introduce 5%withholding tax on reinsurance services aligns the tax treatment for insurance and reinsurance premiums paid to non-residents.*
- *The above charges if approved will take effect on 1st October 2019.*

Tax Exemption for National Housing Development Fund

The bill proposes to exempt the income received by the National Housing Development Fund from income tax.

Exemption from Tax of Income from Ajira Digital Program

The bill proposes to exempt the income earned under the Ajira Digital Program (digital freelance workers). The individuals under this program will be required to pay registration fee of Kshs. 10,000 per year for three years in lieu of income tax. The ICT Cabinet Secretary is expected to issue regulations on this scheme.

Affordable Housing Relief

Currently the affordable Housing Relief is available at 15% of the gross emoluments (capped at KShs 108,000 p.a.). The bill proposes to change the relief to 15% of the employee's contribution.

Income Tax on Plastic Recycling Companies

The current tax rate is the usual 30%. The bill proposes a preferential corporate tax rate of 15% for plastic recycling companies, for the first 5 years of operation.

Penalties and Interest for Small and Medium Enterprises (SMEs) who wish to list under Growth & Enterprise Market Segment (GEMS)

The bill proposes tax amnesty on the penalties and interest accrued prior to the listing of an SME on the Nairobi Stock Exchange (NSE) under the GEMS program. The SME is required to pay all principal tax due, in full. If the SME delists from the NSE before the expiry of 5 years, the penalties and interest for the years prior to listing will fall due. The amnesty will be in operation for 3 years and is not applicable to persons who are under audit or have been assessed tax by the KRA.

Our Comments

- *The gains accrued by the Housing Fund should be pooled back into the Fund, to maximize the funds available for the projects.*
- *Exempting the income earned through the Ajira program is aimed at creating employment opportunity for tech savvy youth. It will also create an avenue for the Government to include them in the tax net after the first three-year period. If approved, the turnover takes effect on 1st January 2020.*
- *Proposed reduced tax rate on recycling companies offers an incentive for investors to invest in this sector. Companies who have been engaging in recycling activities might feel short-changed. If approved, the turnover takes effect on 1st October 2019.*
- *Proposed Tax amnesty incentive may encourage the growth of the GEMS program in the NSE, and listed SMEs can then access capital for operations.*

VAT

VAT on Imported Services

Currently it is payable by a VAT registered person to the extent that he/she is not entitled to 100% input VAT deduction. The bill proposes that all persons be required to account for VAT on imported services.

Our Comment

- Persons not registered for VAT will now incur an additional cost of 16% on imported service.

Supplies made through a Digital Market Place

The bill proposes to impose VAT on transactions in a digital market place.

Our Comment

- *The Government is seeking more funds by introducing VAT on transactions taking place in online digital platforms.*

Special Economic Zones

Currently VAT is due when goods leave an Export Processing Zone for home use. The bill proposes that VAT also falls due when goods are removed from a SEZ destined for the local market.

Our Comment

- *This aligns the VAT treatment of locally consumed goods from an SEZ to that of similar goods from an EPZ.*

VAT Exemption on Solar and Wind Energy Equipment

Currently specialised equipment for generation of solar and wind energy are VAT exempt. The bill proposes VAT exemption on this equipment to apply on recommendation by the cabinet secretary for energy.

Our Comment

- *The Government seeks to introduce an approval process before VAT exemption is achieved. This will create hurdles for companies that had invested in this sector.*

Other Proposed VAT related changes to take effect from 1st October 2019

Item	Current Rate	Proposed Rate	Comments
Withholding VAT	6%	2%	Reduction on VAT credits. Will not apply to zero rated suppliers.
Inputs for manufacture of automotive & solar batteries.	0%	Exempt	If approved, it is bound to increase the cost of manufacture of these batteries. This is because the investors will not claim input VAT
Road tractors for semitrailers	Exempt	16%	It is a way Government seeks for more funds. Exemption restricted to tractors used in agricultural activities.
Denatured Ethanol	16%	0%	Expected to reduce the cost of denatured ethanol.

Item	Current Rate	Proposed Rate	Comments
Inputs for manufacture of motherboards. Inputs for manufacture of electrical accumulators. Agricultural pest control products. Plant and machinery used in construction of plastic recycling plants.	16%	Exempt	The aim is to get more funds from manufacturing of these products. Suppliers of exempt products are unable to claim input VAT. They therefore pass this liability to the customers

Excise Duty

Item	Proposal by finance bill	Comments
Betting transactions	Proposes to introduce a 10% excise duty on amounts staked. The excise duty is payable by the 20th of the month following that in which a person places a bet	The Bill brings betting into the Excise Duty net and provides for the excise duty due date in respect to betting transactions The bookmakers may need to evaluate how to cushion themselves from the additional costs arising from the introduced excise duty If bill is approved, the changes to take effect from 1st October 2019
General penalty	Proposes a general penalty for contraventions of the Act for which a specific penalty is not prescribed The penalty is Kshs 2 million and/or imprisonment for a term	This proposal aims to penalize offences or contraventions that may previously have gone unpunished. If bill is approved, the changes to take effect from 1st October 2019

Revised Excise Duty Rates

The below table is a comparison of the current and proposed rate. The proposed rates will take effect 1st October 2019 if the bill is approved.

Item	Current Rate	Proposed Rate
Cigars, cheroots, cigarillos, containing tobacco substitutes	Kshs 10,000 per Kg	Kshs 12,098 per Kg
Electric cigarettes	Kshs 3,000 per unit	Kshs 3,629 per unit

Item	Current Rate	Proposed Rate
Cartridges for use in electric cigarettes	Kshs 2,000 per unit	Kshs 2,420 per unit
Cigarettes with filters (Hinge lid and soft cap)	Kshs 2,500 per mille	Kshs 3,025 per mille
Cigarettes without filters (plain cigarettes)	Kshs 1,800 per mille	Kshs 2,177 per mille
Other manufactured tobacco and substitutes	Kshs 7,000 per Kg	Kshs 8,469 per Kg
Wines including forfeited wines, and other alcoholic beverages obtained by fermentation of fruits	Kshs 150 per litre	Kshs 181 per litre
Spirits of un-denatured ethyl alcohol	Kshs 175 per litre	Kshs 242 per litre
Petrol (over 3,000 cc) and Diesel (over 2,500 cc) vehicles	30%	35%
Betting transactions	0%	10%

Acts affected by the Excise Duty

Act	Current Provision	Proposal by 2019 finance bill	Comments
The Miscellaneous fees and Levies Act	Anti-adulteration levy applies on Imported illuminating kerosene 10% export levy applies on raw hides and skins	Proposes to provide for a refund of anti-adulteration levy to importers where the Commissioner is satisfied that the levy was paid in respect of illuminating kerosene that was subsequently used by a licensed manufacturer to manufacture paint, resin or shoe polish. Proposes that the 10% export levy also applies on tanned and crust hides and skins	This is a move to discourage adulteration of fuel so as to improve the lifespan of vehicles and other machineries in the country.
Retirement Benefits Act	Provides for a trust fund to hold benefits for members who cannot be traced within 2 years of commencement of winding up of a scheme.	Proposes that the benefits of members who cannot be traced within 2 years after completion of winding up proceedings become unclaimed assets and be governed under the Unclaimed Financial Assets Act	

Act	Current Provision	Proposal by 2019 finance bill	Comments
Banking Act	The law provides for capping of interest rates on loans	Proposes to repeal the interest rate capping provisions in a move aimed at eventually increasing access to credit by SMEs	The repeal will see SMEs access loans. The increased interest rate not to affect existing loan facility.

The affected proposals will take effect on 1st October 2019 upon approval of the bill by parliament.

When the bill is assented to by the president, it will become law and binding. In our next issue, we highlight further changes in the Tax Procedures Act. We will also touch on a recent high court ruling on VAT on exported services. Please keep in touch.

Tax Due Dates

Withholding Tax | 20th Day of the following month
Pay as You Earn | 9th Day of the following month
VAT | 20th Day of the following month
Balance of Tax on Self-Assessment | 4th Month after year end
Monthly Rental Income | 20th Day of the following month

KENYA REVENUE AUTHORITY

Instalment Tax

1st Instalment |20th day of the 4th month after year end
2nd Instalment | 20th day of the 6th month after year end
3rd Instalment | 20th day of the 9th month after year end
4th Instalment | 20th day of the 12th month after year end
Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.