Introduction

The Cabinet Secretary (CS) to the National Treasury presented the National budget on 14th June 2018. During the budget speech, the CS highlighted some of the proposed tax changes contained in the Finance Bill (2018).

Kenya government expects the proposed changes to contribute additional tax revenue amounts of kshs 27.7 billion towards the National budget of kshs 3.074 trillion during the Financial year 2018/2019.

The tax revenues will be utilised in the government's initiative of accomplishing the four pillars of development in addition to the normal budgetary requirements.

The Four Pillars
For the period up to 2022, the government has targeted four pillars of development - "The Big Four".
1. Boost manufacturing activities.
2. Enhance food and nutrition security.
3. Achieve universal health coverage.
4. Support construction of at least 500,000 affordable houses.

The proposed tax changes have different effective dates (not included here). The changes are in Value Added Tax (VAT), Income Tax, Excise Duty, Customs, Export Levy, Tax Procedures Act and Tax Administration.

This newsletter contains the proposed changes and a brief analyses of their effects on the taxpayer.

Value Added Tax

Exemptions
1. Exemption of equipments and machinery (Tariff 85 $ 84) is applicable for manufacturing using television images, sound recorders, reproducers, electrical equipment and machinery, nuclear reactors and, mechanical appliances and machinery. Effect: Reduced cost of the equipments and machinery.

2. Equipment and machinery used in construction of grain storage facilities. Effect: This will reduce cost of construction and equipping of the facilities hence encourage investments in more facilities.

3. Imported or locally purchased parts for local assembling of computers. Effect: Availability of cheap locally assembled computers.

4. Raw material used in manufacturing of animal feeds. Effect: Lower cost of production and benefits will be passed to the consumers.

5. Exemption of renewable energy limited to specialised equipments used for generation and development of wind and solar energy and batteries that store or use power.

6. Other exempted goods - Wheat, meslin and barley seeds, Posta services, cereal straws, husks, lucerne (alfalfa) meal and pellets for manufacture of animal feeds, alcoholic and non-alcoholic beverages supplied to KDF Canteen, imported goods and, goods and services purchased locally for joint special arrangements projects with the government .

Taxable
Import of maize (corn) seed and, garments and leather footwear made in EPZ are vatable.
Income Tax

**v Tax Collection**

1. Turnover tax will be replaced with Presumptive tax.
   **Effect:** Once approved, Turnover tax will not be implemented in Kenya again. The taxpayers will no longer be expected to comply with the provisions of Turnover tax. However, taxpayers remain responsible for Turnover tax for the period the tax was in place.

2. Presumptive tax introduced based on business permit or trading licenses fees at the rate of fifteen (15) per cent.
   **Effect:** All taxpayers who were under Turnover tax will be shifted to Presumptive tax. In addition, every person who requires a license to conduct business will start paying tax. County governments will correct the tax.

3. The manufacturing sector to deduct thirty (30) percent of the total electricity bill from corporate profits in addition to normal deductions subject to the conditions set by the Ministry of Energy.
   **Effect:** This will reduce corporate tax payable and make local manufacturing competitive.

4. Cash advancement, debt settlement or asset acquisition from a company by a shareholder or persons related to the shareholder will be treated as distribution of dividend.
   **Effect:** Companies will pay tax on any cash advancement, debt settlement or asset acquisition.

5. Distribution Tax to replace compensating tax at the rate of 30% on distribution of dividends from untaxed gains and profits. 
   **Effect:** No need to maintain a dividend account and no further tax will be levied.

6. Special investment incentives for select projects to be provided through VAT Act, Excise Duty Act and Miscellaneous Fees and Levies Act. In addition, preferential tax rates will be provided under the Income Tax Act.
   **Effect:** Will encourage investments by lowering cost of tax. The country will benefit through job creation, infrastructure development, skill transfer, economic development etc.

**Withholding Tax**

1. Introduction of five (5) percent withholding tax on winnings in Betting, Lotteries and Gaming.
   **Effect:** Winnings in the Betting, Lotteries and Gaming will be paid less by the amount withheld. The winners have to comply with the provisions of income tax. This will increase tax compliance levels.

2. Demurrage charges to non-residents persons to be subjected to withholding tax at the rate of twenty (20) percent.
   **Effect:** This may increase charges as the non-resident businesses pass the tax charges to the clients.

3. Insurance premiums paid to non-residents excluding premium paid for aircrafts to be subjected to five (5) percent tax.
   **Effect:** Increase the cost of premiums by five (5) percent since insurers will pass the cost to the premium holders.

**Capital Gains Tax**

Capital gains tax at five (5) percent on transfer of property by general insurance companies.
**Effect:** This may increase the cost of the properties. In addition, this will be an extra source of tax for the government.

**Other Changes**

The revenue from Betting, Lotteries and Gaming to be used for development of sports, arts and cultural activities.
**Effect:** This is targeted tax collection. Hence, the tax revenue from the Betting, Lotteries and Gaming activities is not available for government use outside the prescribed uses.
### Increased Duty

1. Import duty on some iron and steel product increased to thirty-five (35) per cent.
   **Effect:** Importation of some iron and steel products will be expensive because of the high duty and VAT. Will discourage importation and make locally manufactured iron and steel products competitive.

2. Paper and paper board products duty increased to thirty-five (35) per cent.
   **Effect:** Importation expensive due to higher duty and VAT. Prices will increase since cost will be passed to the consumers.

3. Textiles and footwear including second hand clothing and footwear specific duty set at USD 5 per unit or 35% whichever is higher.
   **Effect:** Importation of the goods will be expensive because of thigh duty and VAT, will discourage importation and make locally manufactured goods more competitive. Cotton industry will be revamped.

4. For timber and furniture, specific duty set at USD 110/m3 on particle board, USD 120/MT on medium density fiber board, USD 230/m3 on plywood and USD 200/MT on block boards or advalorem duty of thirty five (35) per cent whichever is higher.
   **Effects:** Expensive to import thus protection of local manufacturers. However, this may increase problems of deforestation.

5. Vegetable oils duty at USD 500/MT or thirty five (35) per cent whichever is higher.
   **Effect:** Exchequer will collect more tax revenue, protection of local suppliers, increased cost of imports through higher duty paid and VAT. Cost of tax will be passed to consumers through higher prices. Local markets will be protected thus create markets for locally available supplies.

### Introduced Duty

1. Transfer of kshs 500,000 or more through financial institutions and banks to attract tax at 0.05%.
   **Effect:** Transfer of money will become expensive.

2. Confectionary - chocolate bars including white chocolate to attract duty at kshs 20 per kg.
   **Effect:** Increased cost of confectionary.

3. Bottled water - duty retained at kshs 5 per litre.

### Suspension of licenses

1. Notice before suspension of licenses - Commissioner to give notice and opportunity to regularise operations before cancelation or suspension of licence.

### Penalties for unlicensed operation

Minimum kshs 5 million for operating without an excise duty license.

### Exemptions

1. Local consumption - taxpayer must provide evidence of consumption of goods by the exempt person.
2. For exports - taxpayer to provide evidence of consumption of excisable goods and service outside Kenya.
3. Alcoholic and non-alcoholic beverages supplied to Kenya Defence Forces Canteen Organisation
4. Goods imported and purchased locally for exclusive and direct use for implementation of joint projects with the government.

### Excise rates adjustments

Inflationary adjustment for excise rates to be reduced to one (1) year.

### Duty Exemption

1. Exemption of import duty for sight-seeing buses and overland trucks imported by licensed tour operators.
   **Effect:** Lower cost of importation of sight-seeing buses and overland trucks due to low taxes. Increased tourism and employment in the tourism sector.
Amnesty

1. Amnesty for income earned and assets held outside Kenya:
   a) Period extended to 30th June 2019.
   **Effect:** Higher compliance with the tax amnesty provisions.

b) Period covered extended to 31st December 2017.
   **Effect:** All the income generated up to 31st December 2017 is now subject to the amnesty.

c) Funds transferred to be exempt from provisions of Proceeds of Crime and Anti Money Laundering Act or any other Act relating to reporting and investigation of financial transactions.
   **Effect:** Has provided protection from prosecution.

d) Proceeds of terrorism, poaching and drug trafficking are not exempt.
   **Effect:** The affected persons will be prosecuted. Hence, some persons will not bring back the money.

Late payment of Tax - Penalties and Interest

1. Late payment interest increased by one hundred percent to two (2) per cent.
   **Effect:** More expensive to taxpayers. This will improve tax compliance.

2. Late payment penalty increased to twenty (20) per cent.
   **Effect:** More expensive to non-compliant taxpayers.

Late Submission of Tax Returns - Penalties and Interest

1. VAT and Excise duty - kshs 10,000 or 5% of tax due whichever is higher.
2. Corporate tax (income tax) - kshs 20,000 or 5% of tax due whichever is higher.
3. Individual (income tax) - kshs 2,000 or 5% of tax due whichever is higher.
4. Additional penalty of kshs 20,000 for any person who fails to pay tax by due date.
   **Effect:** More expensive to non-compliant taxpayers.

Liability of Tax representatives

Each tax representative is liable for the tax obligation they are contracted for.

Recover of tax liability from Debtors

Commissioner to collect from debtors to settle tax liabilities.

Section 51 - Valid Notice of Objection

Notice of objection is valid as long as the taxpayer has made payment arrangements with KRA of tax not in dispute.

Tax Appeals Tribunal

1. Adjournment of proceedings - non-availability of a member is not a reason for adjournment.

2. Settlement of Disputes Outside the Tribunal - Parties to a tax dispute can apply to have the case determined outside the tribunal.
   **Effect:** Cases will no longer be delayed.

Time Limit for Extension to Submit Tax Returns

1. Monthly returns - At least 15 days before due date.
2. Annual returns - At least 30 days before due date.
3. Commissioner to respond at least 5 days before due date - failure to respond - application is deemed accepted.
4. Only one (1) extension per tax period.
5. Time limit for amended self-assessment returns - Commissioner not time limited to reject or accept the returns.
   **Effect:** No penalties and interest for the period of extension.

Waiver of penalties and interests

Commissioner has powers to waive up to kshs 1.5 million More than kshs 1.5, Commissioner to seek approval from the CS in-charge if the National Treasury.
   **Effect:** Every taxpayers can seek for the waivers.

Tax Administration

Ammendments

1. Kenya Revenue Authority (KRA) Act and Public Finance Management Regulations will be amended to enable the tax authority collect surplus from regulatory authorities and remit to the Consolidated Fund.
   **Effect:** KRA’s mandate is expanded to beyond tax collection.

Penalties and Interest

1. Betting, Lotteries and Gaming Act introduced late payment penalty at twenty (20) per cent and interest at two (2) per cent.
   **Effect:** failure to remit tax from Betting, Lotteries and Gaming activities will attract late payment penalty and late payment interest. This will increase tax revues collected by the tax authority and improve tax collection.

Way Forward

These taxation proposals are not final. There is a process to be followed till they become law. However, the CS can decide on the effective date for the changes.

For more on the proposed taxation changes, get a copy of the Finance Bill (2018)