

Income Tax Act Review Presentation by:

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Its Time!



“The National Treasury has commenced the review of the present Income Tax Act in order to make it productive, simple to comply with and supportive of the growth of the economy in order to achieve Vision 2030,” said Treasury Principal Secretary Kamau Thugge



Summary of Taxes

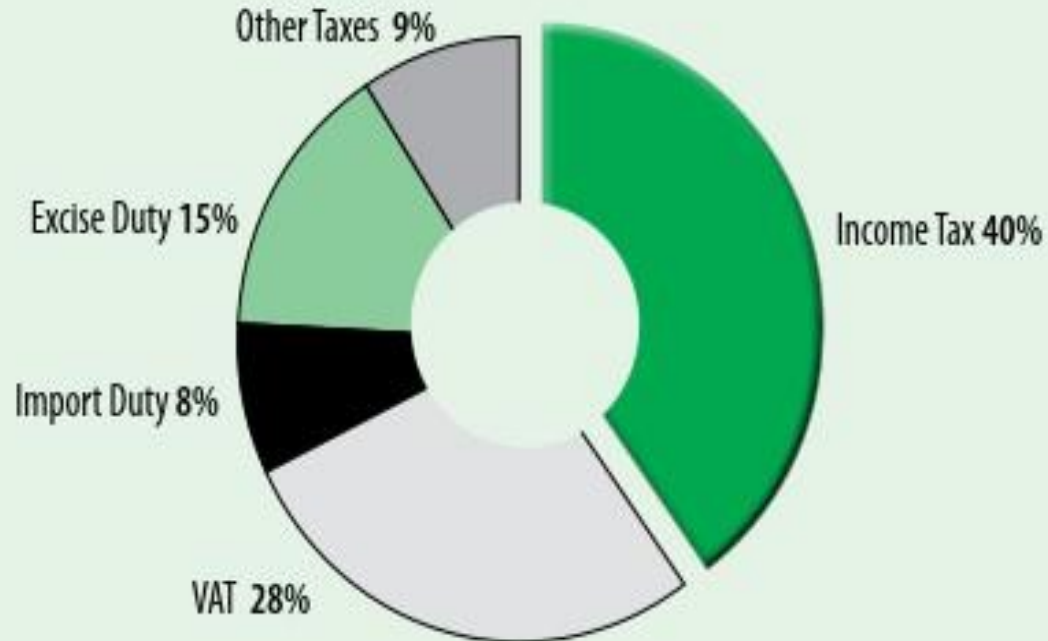


National Government taxes	County Government taxes
<ul style="list-style-type: none">• Income tax	<ul style="list-style-type: none">• Property tax
<ul style="list-style-type: none">• Value added tax (VAT)	<ul style="list-style-type: none">• Entertainment tax
<ul style="list-style-type: none">• Excise tax	<ul style="list-style-type: none">• Other taxes
<ul style="list-style-type: none">• Custom duty/Import duty	

Source: RoK, Constitution of Kenya 2010



Tax Performance in Kenya



Need to relook at ITA



- ✓ The ITA became effective in 1974 but has undergone amendments through the various Finance Acts making it complex overtime.
- ✓ Need to simplify ITA as well as make it an effective tool towards facilitation of growth of the economy
- ✓ Need to align it with international best practice to reflect the modern business environment

Other Reasons . . .



- ✓ Raise Tax-Revenue GDP Ratio- Self sustenance
- ✓ Promote savings and investments by removing disincentives
- ✓ Equitable distribution of income
- ✓ Buoyant and elastic tax system
- ✓ Reduce compliance and administrative costs
- ✓ Seal leakage loop holes
- ✓ Growth of capital market

Income Tax Act Review



The ITA Governs the following:

- ✓ Corporation Income Tax for all forms of legal entities;
- ✓ PAYE;
- ✓ WHT;
- ✓ Turnover Tax; and
- ✓ Transfer Pricing; among others



For Thought?



Use KRA to fight corruption

KRA should tax income from corruption and fraud

KRA turns to electronic system to detect tax evasion and corruption

Kenya's tax authority says tackling corruption, misconduct



For Consideration



❖ Paid

Specific Issue

- ❖ There's confusion in the interpretation of the term especially with respect to WHT

Recommendation

- ❖ The following definition should be adopted:
- ❖ “Paid” means provision of a consideration either in monetary or in kind to settle an obligation or obtain a good or service



For Consideration



❖ Business

Specific Issue

- ❖ The definition is broad and also lacks clarity

Recommendation

- ❖ The following definition, as given in the VAT Act 2013, should be adopted:
 - a. Trade , commerce or manufacture, profession, vocation or occupation;
 - b. Any other activity in the nature of trade, commerce or manufacture, profession vocation or occupation



For Consideration



- c. Any activity that is carried on by a person continuously or regularly, whether or not for gain or profit and which involves, in part or in whole the supply of goods or services for consideration; or
- d. A supply of property by way of lease, license or similar arrangement.

But does not include:

- a. Employment;
- b. A hobby or leisure activity of an individual; or
- c. An activity of a person other than an individual that if carried on by an individual would come within subparagraph (b).



For Consideration



❖ Co-operative Societies

Specific Issue

- ❖ This is not defined in the current ITA

Recommendation

- ❖ Introduce the following definition:

“Co-operative society” means a society registered under the Co-operatives Societies Act, Cap 490



For Consideration



❖ Commercial Vehicle

Specific Issue

- ❖ There's a conflict on the understanding of the term between the VAT Act, Traffic Act and ITA

Recommendation

- ❖ Reconcile the ITA definition to the Traffic Act:
“Commercial Vehicle” Has the meaning assigned to it under the Traffic Act.



For Consideration



❖ Management or professional fee

Specific Issue

- ❖ The current definition is too broad

Recommendation

- ❖ Include a provision under the interpretation of “management or professional fee” to define the term “technical” and limit the interpretation of “however calculated” as follows:



For Consideration



❖ Management or professional fee

Provided that:

The term technical services shall refer to a service which the provider will need a formal training to be able to provide such service; and the term however calculated shall be limited to incidental costs of providing the service computed as a percentage of service fees



For Consideration



❖ Section 4(b): Limited Liability partnerships

Specific Issue

- ❖ The section does not recognize existence of a Limited Liability Partnerships (LLPs)

Recommendation

- ❖ The inclusion of a provision immediately under section 4 (b) (ii) as follows:

“Provided that for the purpose of this Section, a partnership shall include a Limited Liability Partnership”



For Consideration



❖ Section 5 (3)

Specific Issue

❖ The imputed value of housing is very punitive

Recommendation

❖ Repeal the 15% or 10% housing benefit determination

The housing benefit for all employees or directors should be **determined at the higher of the actual rent paid or the market value**

Market value may be determined by an independent valuer



For Consideration



❖ Section 10 (1) (c): Deemed Interest

Specific Issue

- ❖ Deemed Interest is regarded as income derived from Kenya whereas no actual payment is made

Recommendation

- ❖ Delete the term “deemed interest” appearing in subsection 1 (c)



For Consideration



❖ Section 12 B: Fringe Benefit Tax

Specific Issue

- ❖ This section defines a loan to include a loan from an unregistered pension or provident fund

Recommendation

- ❖ The definition should be expanded to include amounts that remain outstanding for over six months



For Consideration



❖ Section 12 C: Turnover Tax

Specific Issue

- ❖ Section 12C (1) provides that turnover tax be chargeable on business with income that does not exceed five million shillings during any year of income

Recommendation

- ❖ The threshold be increased from five million shillings to ten million shillings during any year of income



For Consideration



❖ Section 15 (2) (w): Deductions allowed in the ascertainment of total income

Specific Issue

❖ Donations

Recommendation

- ❖ Donations be deductible up to a maximum of 5% of gross income or KShs 10 million, whichever is lower
- ❖ *The definition of “cash donation” be amended to include donations in kind.*



For Consideration



❖ Section 15 (4) & (5): Deductions allowed in the ascertainment of total income

Specific Issue

❖ Tax Losses

Recommendation

❖ Inclusion of the following provision immediately after Section 15 (4A):

Provided that no such application is required where the tax deficit results from capital deductions under the Second Schedule to the Income Tax Act or other incentives granted under this Act.



How many Fs?



FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS...



How many Fs?



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Finance Bill 2017, Key Issues Presentation by:

Stanley Ngundi
Tax Manager, Ernst and Young LLP

**“Creating jobs, delivering a better
life for all Kenyans”**

Income Tax Act Modernization



Income Tax Bill - WIP

- The Bill is to be published for public input shortly
- First in **43 years** aimed at
 - expanding the tax base
 - Align to best practice
- Key areas of focus to be addressed include:
 - Capital gains tax
 - Compensating tax
 - Pensions
 - Extractive industries
 - Cross-border transactions among others

Business Tax incentives



Capital allowances – 1 January 2018

- **150%** investment deduction on capital expenditure for the **Blue Economy (marine and fisheries) industry**
- **100%** investment deduction on cost incurred on building and machinery for enterprises licensed to operate under **Special Economic Zone (SEZ)**

Business Tax incentives



Reduced withholding tax rate for operations in SEZ – 1 January 2018

Description	Domestic rate for Non-resident	Proposed for Non-resident
Management and Professional Fees	20%	5%
Royalty	15%	5%
Dividends	10%	0%
Interest	15%	5%

Business Tax Incentives



Donations

Donations made towards declared national disasters and channeled through any institution responsible for national disaster are now allowable – 3 April 2017

Reduced corporation tax rates

New motor vehicle assemblers to enjoy a reduced corporate tax rate of **15%** for the first five years

Islamic finance products

Amendment of tax statutes to include the Islamic finance products- 1 January 2018

Taxing Investors?



Betting and gaming industry

Increase of tax on betting, lottery, gaming and competition tax from 7.5%, 5%, 12% and 15% respectively to a uniform rate of **50%**- **1 January 2018**

Inconsistency in Bill??

30%



Taxing Investors?



Current situation

Betting Firms 7.5% of net revenue

Gaming companies- 12%

Lottery operators-5% of turnover



Taxing Investors?



The Numbers:

1. More than half (54% of Kenyan Youths bet- highest in sub-Saharan Africa
2. Bet at least once a week unlike others once a month (Uganda, SA, Tanzania, Nigeria and Ghana)
3. Spend 50 USD on average per month compared to others
4. 79% bet on football
5. 96% use mobile platforms

Need to tax sector but not that much maybe?

Personal Tax Proposals



Preferential Tax treatment: New Transfer pricing rules covering domestic transactions to guard against abuse of preferential tax treatment for EPZs and SEZs – **3 April 2017**



Personal Tax Proposals

Taxation of employees

Income tax bands and personal relief to be increased by 10%- 1 January 2018

Rate	New KES	Old KES
10%	First 147,580	First 134,164
15%	Next 139,043	Next 126,403
20%	Next 139,043	Next 126,403
25%	Next 139,043	Next 126,403
30%	Over 564,710	Over 513,373

Other PAYE Changes

	New KES	Old KES
Personal relief	16,896	15,360
Low income earners	13,486	12,260

Personal Tax Proposals



Tax Amnesty for investors in diaspora

Period to file returns for the tax amnesty extended from 31 December 2017 to 30 June 2018

The investors should also repatriate the funds declared under the amnesty to Kenya- **3 April 2017**

Senior Citizen (70 years and above) to receive a monthly stipend and NHIF

VALUE ADDED TAX

Value Added Tax Proposals



Zero rating goods

Bread and maize flour now zero rated – previously exempt **3 April 2017**

Regulations

Proposal to Publish VAT Regulations to the VAT Act 2013 for smooth implementation of the Act

Proposed VAT Exemptions



Proposed Exemption	Expected Impact
Operations of industries in <u>Special Economic Zones</u>	To diversify manufacturing activities & create employment
<u>Inputs</u> used in manufacture of <u>pesticides</u>	To promote local manufacturers and reduce costs of production
Locally assembled <u>tourist vehicles</u>	To encourage local motor vehicle assembling
<u>Medical equipment and apparatus</u> used in specialized hospitals with accommodation	To promote the health sector
Packaging materials and other inputs intended to support <u>primary, secondary and ancillary marine fisheries and fish processing</u>	To revamp the blue economy and make it attractive
<u>Transactions related to transfer of assets into (REITs) and (ABS)</u>	To deepen the country's sources of infrastructure financing

Value Added Tax Proposals



WHVAT

Remittance of WHVAT within 14 days after deduction

Taxpayers in a VAT credit position for more than 24 months can now apply to be exempted from WHVAT- **3 April 2017**

Regulations

Proposal to Publish VAT Regulations to the VAT Act 2013 for smooth implementation of the Act- **WIP**

EXCISE DUTY

Excise Duty Proposals



Refund of Excise Duty

Allow for refund of Excise duty paid on illuminating kerosene used in the manufacture of paint and resin by registered manufacturers **3 April 2017**

Excise stamps

Introduction of regulations for differentiated prices of excise stamps based on cost of the product. The proposed price range will be KES 0.50 to KES 2.50 - **3 April 2017**

Remission of Excise duty- **3 April 2017**

Remission of 80% Excise Duty on locally manufactured beer made from locally produced sorghum, millet or cassava or any other produce, excluding barley – to discourage consumption of illicit brew

Excise Duty Proposals



Excise Duty rates on spirits - 3 April 2017

Increase rate of taxation of spirits from KES 175 to KES 200 per litre

Inflation adjustment rates - 3 April 2017

Adjustment of excise duty rates on excisable goods in line with inflation

Excise duty on cigarettes- 3 April 2017

Introduction of two tier tax structure to correct the inequitable tax structure

Cigarette with filter	KES 2,500 per mille
Cigarette without filter	KES 1,800 per mille

CUSTOMS DUTY

Customs and International Trade



Proposals on customs have been submitted to EAC Ministers for Finance aimed at

- ✓ promoting industrialization,
- ✓ encouraging local investments and
- ✓ creating incentives in the agricultural and manufacturing sectors

EAC Common External Tariff is undergoing a comprehensive review and the final outcome will be released once adopted by the EAC Council of Ministers

Custom Duties Proposals



Exemptions

- Exemption of Import Declaration Fees for goods imported by an enterprise licenced under the SEZ Act
- Exemption from import duty for goods imported by an enterprise licenced under the SEZ Act
- Duty free importation of white maize for the next four months (April to July 2017)
- Duty free importation of dates during the period of Ramadhan

Others

Ban on the use, manufacture and importation of ALL plastic bags for commercial and household packaging beginning September 2017

Proposal to reduce port charges for fisheries vessels by 50%

ADMINISTRATIVE

KRA Powers enhanced



Section 7 of the TPA Act to be amended to **empower KRA officers to initiate prosecution and produce seized evidence in the Tax Appeals Tribunal or Court of Law.**

While this could be **effective from the KRA's perspective**, it would lead to a **conflict of interest** as the KRA cannot be both a party to a High Court matter and at the same time the prosecutor.

Need for more efficient co-operation between the KRA and the National Police should be explored to enable the KRA to achieve its objectives.

3 April 2017

FINANCIAL SECTOR

Banking Sector



Interest rate Capping

Comprehensive assessment of effect of interest rate capping to be done by CBK and KBA

Bills at various stages of approval

Bill Description	Purpose
Movable Property Security Rights Bill, 2016	To facilitate <u>use of movable assets as collateral thus get lower lending rates</u>
Nairobi International Financial Centre Bill ,2016	To establish Nairobi International Financial Centre to position <u>Nairobi as an international financial hub</u>
Financial Services Authority (FSA) Bill, 2016	To merge all <u>non-bank financial sector regulators</u>

Insurance Sector



Proposal to amend Insurance Act (CAP 487)

- ▶ To enhance supervision of insurance groups in Kenya and ensure financial stability- **Risk based capitalisation for banks?**
- ▶ To provide for **perpetual licensing of insurers excluding brokers**



Other Financial Institutions



Shariah compliant finance products

- ▶ Proposal on legislative amendments to **Capital Markets Act**, the **Cooperatives Societies Act** and **Sacco Societies Act** to facilitate for **Shariah compliant finance products**
- ▶ Proposal to amend the Public Finance Management Act to provide for **issuance of Sukuk bond (Islamic bond)** as alternative source of financing



OTHER PROVISIONS

Other Financial Institutions



Land Titles Act

Proposal to amend the Act to waive land title search fees

Public Procurement and Asset Disposal Act, 2015

Proposal to Gazette the following Regulations to the Act;

- Regulations and Code of Ethics for Suppliers to the National and County Governments
- Public Procurement and Asset Disposal Regulations, 2017

QUESTIONS



Contacts



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