

# **DOMESTIC TAXES DEPARTMENT**

**Emerging Issues**

**Presentation to ICPAK Mombasa Branch**

# Changes affecting Special Economic Zones

The Finance Act includes a number of provisions which are designed to encourage investment in the special economic zones. These are as follows:

- Investment deduction for enterprises licenced to operate in the Special Economic zones with higher rate outside Nairobi and Mombasa. The rate of deduction is 100% of the cost of construction and the rate outside the two is 150%(paragraph 24C of the Second Schedule to the ITA).
- Exemption of dividends from withholding Income tax on payment to a non resident person.(1<sup>st</sup> schedule) from Special Economic Zones,developers and operators.
- Introduction of section 18A on transfer pricing adjustment to transaction between preferential tax regime(PTR) ie SEZ and EPZ and related resident outside the (PTR)
- Preferential withholding tax rates for payments to non-resident per sons as follows (Third Schedules):

# Changes affecting Special Economic Zones

|  | Current non-resident rate (%) | New SEZ rate (%) |
|--|-------------------------------|------------------|
| Management, professional and training fees | 20                            | 5                |
| Royalties                                  | 20                            | 5                |
| Interest                                   | 15                            | 3                |

## **Reduction of tax rate for motor vehicle assemblers (Third Schedule)**

- The Act reduces corporation tax rate of 15% for companies incorporated to carry out local assembly of motor vehicles.. The reduced rate is applicable for the first five years from the commencement of operations

**EFFECTIVE DATE : 1 January 2018**

## Enhancement of PAYE tax heads by a further 10%

- For the second year in a row, the Cabinet Secretary has expanded the individual PAYE bands by 10%. This follows an expansion of the bands by a similar margin with effect from 1 January 2017.
- The new bands are as follows:

## Enhancement of PAYE tax heads by a further 10%

| New bands ( KES) | Old bands (KES) | Rate |
|------------------|-----------------|------|
| First 147,580    | First 134,165   | 10%  |
| Next 130,043     | Next126,403     | 15%  |
| Next 139,043     | Next138,043     | 20%  |
| Next 139,043     | Next 139,043    | 25%  |
| Over 564,709     | Over 513,374    | 30%  |

The above changes will provide a welcome cushion to taxpayers whose income has been adversely affected by inflation.

**EFFECTIVE DATE : 1 January 2018**

## Enhancement of personal Relief by a further 10%

- Similarly, the personal relief has increased by a 10% from KES15,360p.a. to KES 16,896 p.a following the change, the lowest taxable income will increase from KES12,260p.a. to KES13,486p.a.

**EFFECTIVE DATE : 1 January 2018**

## **Enhancement of tax rates in respect of payments or withdrawals from pensions**

- Taxation on pension withdrawals have been harmonized with those of individuals as has been the case in the past
- The new tax bands for withdrawals in excess of the tax free amount, will be as follows:

**EFFECTIVE DATE : 1 January 2018**



# Enhancement of tax rates in respect of payments or withdrawals from pensions

| New bands ( KES) | Old bands (KES) | Rate |
|------------------|-----------------|------|
| First 147,580    | First 121,968   | 10%  |
| Next 139,043     | Next 114,912    | 15%  |
| Next 139,043     | Next 114,912    | 20%  |
| Next 139,043     | Next 114,912    | 25%  |
| Over 564,709     | Over 466,704    | 30%  |

**EFFECTIVE DATE : 1 January 2018**

## Taxation of the Gambling Industry

### Section 29A(1), 44A(1), 55A(1) and 59B(1) of the Betting, Lotteries and Gambling Act (CAP 131)

- The amendment raised the taxes for betting, lottery, gaming and completion from the current rates of 7.55, 55, 12% and 15% to a uniform tax rate of 35%. (To be withheld from the winner)
- The business person prepares the accounts for corporation purpose to be taxed at 30%
- The move is an attempt by the Cabinet Secretary to the Treasury to cash in on the phenomenal growth that this industry has experienced in the recent past.

**EFFECTIVE DATE : 1 January 2018**

# Recognition of Islamic Financial Products

## **Sections 2,5,27,68A,96B and paragraph 4 of the Schedule to the Stamp Duty Act Section 2,205 (3A) &(3B) of the Public financial Management Act**

- The amendments relate to inclusion of various definitions and Sharia compliant products in the substantive laws to facilitate the operationalization of Islamic financial products in Kenya, these include amendments to:

**EFFECTIVE DATE : 1 January 2018**

# Recognition of Islamic Financial Products

- **The stamp Duty, Act** – amendment intended to create tax neutrality for Islamic Financial products to enable them favorably compete with other conventional financial products in the Kenyan Market:
- **The Co-operative Societies Act** – amendment seeks to address the lack of recognition of Islamic Financial in the cooperative sub-sector of the Kenyan market, and
- **The SACCO Societies ACT** – amendment intended to define “deposits” and “deposit taking SACCO business” to include the principles of Islamic law for recognition of Islamic SACCOs in Kenya.

**EFFECTIVE DATE : 1 January 2018**

# Increased Powers of the RBA and additional compliance requirements

## Section 5,26 and 34 of the Retirement Benefit Act The SACCO Societies ACT

- The objects and functions of the Retirement Benefit Authority are proposed to include the approval of the remuneration of the trustees as approved by the members during the annual general meeting to the held every three years.
- There is also a proposed amendment that requires a person who fails to submit any stator return by the due date to the Authority to pay a penalty of **KES100,000** and a further fine of **KES1,000** for each day or part thereof during which the offence continues and where the return un-submitted.

**EFFECTIVE DATE : 1 January 2018**

# Appeals under the Tax Tribunal

## Proviso to Section 13(7) of the Tax Appeals Tribunal Act 2013

- The Tax Appeals Tribunal Act provides that the Tribunal can hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal, **Provided that during the period of one year from the date of its first sitting, the Tribunal may extend the period for the hearing an appeal for a period of up to sixty days if there are sufficient grounds to do so.**
- Since the Tribunal has been in existence for over a year, this proviso is no longer relevant hence its deletion

EFFECTIVE DATE : 1 January 2018

## Exemption from export levy and IDF

- **Part II of the First Schedule and item(ii) of part A of the Second Schedule to the Miscellaneous Fees and levies Act 2016**
- The proposed amendment is aimed at exempting Special Economic Zone Enterprises from export duty and Import Declaration Fees

**EFFECTIVE DATE : 1 January 2018**

# VAT CHANGES



## First Schedule Part A

The following items previously exempt are now zero rated;

- -Agricultural pests control products
- -Maize flour and ordinary bread
- -Taxable material for construction of specialized hospitals(previous) now added medical equipment and apparatus
- -Material for construction of grain storage upon recommendation by the CS

## **Second Schedule part A**

### **Schedule Part A**

The following items have now been zero rated;

- -Supply of Maize, and ordinary bread and cassava flour by more than 10% in weight
- -Milk and Cream

**EFFECTIVE DATE : 3<sup>RD</sup> APRIL 2017**

## **TREATMENT OF SUPPLY ON GOODS IN TRANSIT**

VAT Act 2013 did not provide for zero rating of supply with respect to goods in transit, this was however reinstated in 2015.

However there were changes in legislation as follows:

| PERIOD  | STATUS        | Implication   |
|---|---------------|---|
| 1 <sup>st</sup> January 2011 to 1 <sup>st</sup> September 2013    | Zero Rated    | Can Claim input tax probably putting TP on Refund position            |
| 2 <sup>nd</sup> September 2013 to 18 <sup>th</sup> September 2014 | Taxable @ 16% | Can Claim input tax and no possibility of TP being on Refund position |
| 19 <sup>th</sup> September 2014 to 11 <sup>th</sup> June 2015     | Exempt        | Cannot Claim input Tax; possible apportioning of common input tax     |
| 12 <sup>th</sup> June 2015 to date                                | Zero Rated    | Can Claim input tax probably putting TP on Refund position            |

# **TAXATION OF MOBILIZATION FEE**

- **Mobilization fee or advance payments received by contractors will attract VAT at the time the payments are made in compliance with the provisions of Section 12 (1) (d) of the VAT ACT, 2013.**
  - Contractors are therefore required to charge and account for VAT on the paid amounts
  - Withholding Tax agents are also required to withhold and remit withholding VAT on such payments
  - Sec. 63 and 64 of TPA outline the procedure of making and withdrawing a public ruling; **with the publication of the new ruling published on 31/10/2017 mobilization fee will attract VAT**

# **TAXATION OF MATATU OWNERS**

- **Matatu Business just like any other transportation business (e.g. buses) is taxed as provided for by Sec. 3 and Sec 4 of the Income Tax Act. (c.f Sec 3 and 4 of Income Tax Act).**
- Buy the very nature of the business; they are expected to pay advance Tax (Sec. 12A and Advance Tax conditions and procedures). The advance tax is set off against income tax (Sec. 39)



Thank you!

A handwritten note on a piece of aged, yellowed paper. The words "Thank you!" are written in a cursive script, with the "y" having a long tail that loops under the "n". Above the word "you" is a simple smiley face drawn with a circle and two dots for eyes.

*Any Questions!*