Income Tax Development

PRESENTED BY:

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MEALS TO EMPLOYEES

Value of meals to employees provided by the employer not exceeding Kshs. 4,000 p.m per employee is not a taxable benefit. Effective date: 13th June, 2014

MORTGAGE RELIEF

Mortgage relief on owner occupied interest has been increased from Kshs. 150,000 p.a (12,500 p.m) to Kshs. 300,000 p.a (Kshs. 25,000 p.m)

Effective date: 1st January, 2017

PENSION

The exempt limit was increased from Kshs. 180,000 p.a (15,000 p.m) to Kshs. 300,000 p.a (25,000 p.m). The exempt limit for lump sum was increased from Kshs. 480,000 to Kshs. 600,000. Pension income is now taxable under the WHT regime and not under the PAYE regime.

Effective date: 1st January, 2010.

Monthly pension granted to a person who is sixty five (65) years old or more is exempt from tax.

GRATUITY

Gratuity paid into retirement schemes registered by the Commissioner subject to limit of Kshs. 240,000 p.a is not taxable.

Effective date: 1st January, 2011

EXEMPTION OF BONUS, OVERTIME ALLOWANCE & RETIREMENT BENEFITS

Bonuses, overtime allowance and retirement benefits paid are tax exempt where they are paid to an employee whose salary before the bonus and overtime allowance does not exceed Kshs. 11,180 p.m. (i.e. 134,164 pa). Effective date: 1st July, 2016

TAX PROCEDURES ACT, 2015

Penalties and interest are charged under this Act.

TAXATION OF PERSONS WITH DISABILITIES

- Legal Notice No. 36 of 2010 amended the Persons with Disabilities Act (Act No. 14 of 2003) by introducing an exemption from income tax for persons with disabilities for an amount of upto Kshs. 1.8 million p.a (Kshs. 150,000 p.m).
- Cost of devices allowable. Maxmum costs of Kshs. 50,000 p.m
- Non reimbursable home care and hospital costs are allowed.

Corporate Income Tax Development special economic zones

In relation to Special Economic Zones (SEZs), the Act provides for an Investment Deduction Allowance for capital expenditure on buildings and on machinery for use in the SEZs at a rate of 150% outside Nairobi and Mombasa counties where the capital expenditure is incurred on construction of building/purchase and installation of machinery by or for SEZs, effective 1 January 2018.

Corporate Income Tax Development special economic zones

With respect to taxes on payments from SEZ enterprises, developers or operators, effective 1 January 2018:

- Dividends paid by SEZ enterprises, developers or operators to any nonresident will be exempt from withholding tax.
- Professional fees, management, training and royalties' fees payable by a SEZ enterprise are subject to tax at the rate of 5%.
- Interest payable by a SEZ enterprise, developers or operators to a nonresident is subjected to 5% withholding tax.

Corporate Income Tax Development Motor vehicles

The Act provides for a 15% corporate tax rate for local assembled motor vehicles for the first five years from the commencement of the operation and this tax rate shall be extended for another five years after the company has achieved “local content” equivalent to 50% of the ex-factory value of the vehicle. This provision will be effective 1 January 2018.

VAT reforms
Modifications to VAT Act

The Act has modified Section 2 of the *Value Added Tax Act, 2013* as follows:

- In the subsection (1) by inserting the following new definitions:
- Islamic Finance Arrangement to mean the meaning assigned to it in the *Income Tax Act* Cap. 470
- Islamic Finance Return to mean the meaning assigned to it as per the *Income Tax Act* Cap. 470
- Sukuk still holds its meaning as per the *Public Finance Management Act, 2012*

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VAT reforms
Modifications to VAT Act

The following subsection has been inserted into the *Value Added Tax Act, 2013* immediately after subsection (2):

> *(3) For the purpose of this Act;*
>
> > *Whether received or paid on a financial arrangement, Islamic finance return shall be treated as "Interest"*

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VAT reforms
Zero rated items

The Act has zero rated the following Items which were previously exempt from VAT, effective from 3 April 2017:

Milk and cream

Cassava flour, maize (corn) flour, wheat or Meslin flour and ordinary bread

Pest control products; this has been zero rated has per the Act but subject to the recommendation of the Agriculture Cabinet Secretary

VAT reforms
VAT exempted products

The following Items are now exempt from VAT as per the *Finance Act, 2017*, effective as of 3 April 2017:

- Grain storage facilities; materials for the construction of grain storages
- Services supplied to international and regional organizations, these are services imported or supplied to donor agencies, international and regional organizations with diplomatic accreditation
- Sharia compliant finance products, that is interest paid or received from Islamic finance return and Sukuk

VAT reforms
VAT exempted products

- **Disabled persons-**Exemption of materials, articles and equipment, including motor vehicles intended for the educational, scientific or cultural advancement, will apply to all disabled persons.
- **Medical equipment-**Medical equipment and apparatus for use in specialized hospitals with a minimum bed capacity of 50 is exempt from VAT. This will however be subject to recommendation from the Cabinet Secretary responsible for health.
- **Postage and revenue stamps-**Unused postage, revenue or similar stamps are exempt from VAT and will reduce the burden on licensed manufacturers who bear the cost of excise stamps.
- **Aircraft spare parts -**Over and above the current VAT exemption provided to aeroplanes, other aircraft, and other parts of aeroplanes or helicopters, the Act exempts aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance. This will however be subject to recommendation from the Cabinet Secretary responsible for civil aviation.

VAT reforms
VAT exempted products

- **Inputs for the manufacture of pesticides-**This will however be subject to recommendation from the Cabinet Secretary for the time being responsible for matters relating to agriculture.
- **Locally assembled tourist vehicles-***T*he supply of locally assembled tourist vehicles shall be exempt from VAT. This is a positive move towards promoting local assemblers as well as the tourism sector. However, these must be purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet specified conditions. It is important to note that tax shall become payable upon change of use or disposal of the vehicle for other use.
- **Indirect taxation of REITS and ABS-** Asset transfers and other transactions related to the transfer of assets into Real Estates Investment Trusts (“REITs”) and Asset Backed Securities (“ABS”) are exempt from VAT. This is in line with the Government’s policy to increase sources of fi nuancing for infrastructure projects by increasing the uptake of alternative infrastructure financing products. This exemption will reduce the overall cost of setting up REITS and ABSs.

VAT reforms
WITHHOLDING VAT

Exemption from WHVAT requirements where a supplier proves to the Commissioner that they are likely to be in a credit position for more than 24 months due to the nature of their business and imposition WHVAT obligation.

- WHVAT is to be remitted to the KRA within 14 days from the date the tax is deducted. The practice has been to remit WHVAT by the 20th of the month following the month of deduction.
- Failure to withhold and/or remit WHVAT deducted within the 14 days is now an offence.

Effective date: 3rd April 2017

Excise Duty Reforms

- The Act has introduced new changes and also incorporates provisions provided for in the Finance Bill, 2017. All the stated provisions have been assented into law as of 21 June 2017.
- **Effective 3 April 2017,** the Excisable Goods Management Regulations (EGMS), 2017 were introduced to address the administrative and other compliance obligations of excisable persons and repeal EGMS Regulations of 2013.Among other administrative matters, the regulations set the price of excise stamps for various excisable products

Excise Duty
Licencing of Illuminating Kerosene Usage

- Finance Act 2017 amends the Excise Duty Act to include the use of illuminating kerosene in the manufacture of un-excisable goods as one of the activities requiring an excise licence in Kenya. This measure is meant to regulate the use of this kerosene and curb the adulteration of other fuels using the kerosene. ***(Section 15(1)(d)***

Excise Duty refund for Spirits and Illuminating Kerosene

The Act further makes provisions allowing for the refund of excise duty paid for spirits or illuminating kerosene by registered manufacturers in the manufacture of un-excisable goods upon application to the taxman (before-hand). This is meant to incentivize the local manufacture of paints and resins. ***(Section 29 (b))***

Excise Rate Changes *(1st Schedule)*

- The rate of Excise duty on alcoholic spirits has been increased from KES. 175 per litre to KES. 200 per litre. This is commensurate with the alcohol consumption trends in the country where the demand for spirit is ever increasing. However, this might inadvertently lead to increased consumption of illicit liquor amongst low income consumers, as manufacturers pass the additional tax burden on to them.
- The rate of excise duty on cigarettes has been reviewed from the single rate of KES. 2500 per mille to a two tier tax structure follows:

Description	**Rate of Duty (KES./Mille)**
Cigarettes with filters (hinge lid and soft cap)	2500
Cigarettes without filter (plain cigarettes)	1800

This will enhance equity in the excise taxation of the tobacco industry.

Other Excise Duty Changes *(1st & 2nd Schedules)*

- The Excise Duty Act has also been amended to define *powdered beer* as follows: any powder, crystals or any other dry substance which, after being mixed with water or any other nonalcoholic beverage, ferments to, or otherwise becomes an alcoholic beverage.
- Goods imported or purchased locally by *both* the Kenya Red Cross and St. John Ambulance for official use in the provision of relief services in Kenya shall be exempt from Excise Duty. Initially granted to the Kenya Red cross, the inclusion of St John Ambulance in the exemption is meant to recognize the importance of these relief services and facilitate the same.
- As an exempt excisable good, returning residents will now be allowed to buy a new right hand vehicle whose current retail selling price shall not exceed that of the previously owned left-hand drive vehicle in a foreign jurisdiction. This is meant to address the challenges faced by Kenyans in the diaspora when replacing their vehicles upon returning to the country.
- The Act has also been amended to include both imported and locally purchased goods, for the direct use in the manufacture of sanitary towels, as exempt from excise duty. This is aimed at cushioning local manufacturers from undue competition from imported products.

Inflation rate adjustment

The *Finance Act, 2017* has amended Section 10 of the *Excise Duty Act, 2015* which provided for an annual adjustment of the Excise Duty rates into a biannual adjustment. This change is effective as of 1 January 2018.

Stamp duty

Transfer of Islamic property finance from one bank to another will be exempt from stamp duty.
Where the title or interest in a property is transferred to a financial institution from a vendor under an Islamic property finance arrangement and afterwards transferred to the purchaser, stamp duty will be chargeable on the transfer to the financial institution but not on the transfer to that purchaser.
Sukuk will be exempt from stamp duty.

Tax Procedures Act

- Tax officers have been given powers to enter and search any premises or vessels and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law or tax appeals tribunal.
- It is now possible to register a tax representative in the name of the nonresident person being represented effective 1 January 2018.

Tax Procedures Act

- The Act also provides that a person may be a tax representative for more than one nonresident person, in which case the person shall have a separate registration for each nonresident person effective 1 January 2018. Additionally, a PIN (Preparer Identification Number) shall be issued by the Commissioner to the tax representative as per the Act.
- According to the *Finance Act, 2017*, there is a provision for tax amnesty for income earned outside Kenya and this has been extended through 30 June 2018. Furthermore, the Act states that if there is no transfer for funds within the amnesty period, there shall be a five year period for remittance but a penalty of 10% shall be levied on the remittance.

Changes in P.A.Y.E
(3rd Schedule)

Further to the changes effected in the Finance Act 2016 (effective 1st Jan. 2017), there are amendments to the ITA through Finance Act 2017 to expand Pay-As-You-Earn (PAYE) bands by a further 10%.

PAYE changes to take effect from 1st Jan. 2018 are as follows

***Current* Monthly Taxable Pay (KES.)**	***Revised* Monthly Taxable Pay (KES.)**	**Tax Rate (%)**
Up to 11,180	Up to 12,298	10
Next 10,534	Next 11,587	15
Next 10,534	Next 11,587	20
Next 10,534	Next 11,587	25
Above 42,781	Above 47,059	30
Monthly Relief: KES. 1,280	Monthly Relief: KES. 1,408	

Changes in P.A.Y.E *(3rd Schedule)*

The expansion of income tax bands, together with the exemption of bonuses, overtime and retirement benefits of low income earners will marginally reduce the PAYE burden. Even though this doesn’t translate to a 10% PAYE reduction, this will increase the take home income for employees, with a significant impact on low income workers, thus marginally improving their purchasing power and helping mitigate the effects of inflation.

Miscellaneous Tax Reforms

Increased Tax rates for betting, gaming and lottery enterprises

The *Finance Act, 2017* has increased the tax rate for betting, gaming and lotteries operators to 35% of the total gross revenue effective 1 January 2018. This rate was initially 50% under the Finance Bill, 2017 but reduced by the *Finance Act, 2017* as stated above.

Miscellaneous Tax Reforms

Receivership

- The *Kenya Deposit Insurance Act, 2012* has been amended to give the Cabinet Secretary the power, under exceptional circumstances, to extend the term of receivership for a further period not exceeding twelve months. This provision allows the receivership period to be extended for a period not exceeding six months.
- The Act does not provide details as to when and which dates the said five year period would start but it is expected that it will lie in the permitted period for KRA to assess taxpayers that is the five year period.

Miscellaneous Fees and Levies Act (No. 29 of 2016). Export levy/duty

- **Effective 1 January 2018,** The Act has exempted from payment of export duty, goods exported to the Special Economic Zones (SEZs).
- In addition, imports by enterprises licensed under the SEZs Act will also be exempt from payment of Import Declaration Fee (IDF) when imported or purchased before clearance through customs.

Miscellaneous Tax Developments

Finance Act 2017 further makes changes to the following Acts, amongst others:

- The Tax Appeals Tribunal Act to remove the power of the Tribunal to extend the 90-day timeline for hearing and determining appeals.
- The Stamp Duty Act, Public Finance Management Act, Co-operative Societies Act and the Sacco Societies Act, to allow for the recognition of Islamic Financial products.
- The Retirement Benefits Authority (RBA) Act to increase the powers of the RBA and introduce new compliance requirements.
- The Public Procurement and Asset Disposal Act to bolster the Public Procurement Regulatory Review Board.
- The Marine Insurance Act to align provisions with the Insurance Act.
- The Kenya Deposit Insurance Act to extend receivership terms for financial institutions under the statutory management of the Kenya Deposit Insurance Corporation.
- The Miscellaneous Fees & Levies Act to:

- Exempt SEZs from export levies and import declaration fees.

- Exempt goods imported for the construction of LPG (Liquefied Petroleum Gas) storage facilities, from import declaration fees and the railway development levy.

Implications

The Act requires taxpayers and all respective parties to comply with the recent provisions and also monitor developments for the purpose of tax compliance to the tax regulations and laws provided for in the *Finance Act, 2017*. This is a positive step by the Government to improve tax collections and encourage investment in the key areas of the development.

REGULATIONS

- Excise Duty Act 2015
- Income Tax Act 2014
- Tax Procedures Act 2015
- VAT Act 2013 amended 2015
- Finance Acts Yearly
- Notices