

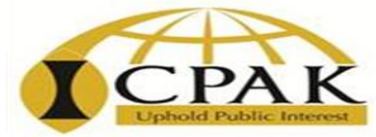
Emerging Tax Issues

Presentation by:

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Thursday, 23rd August 2018

Contents

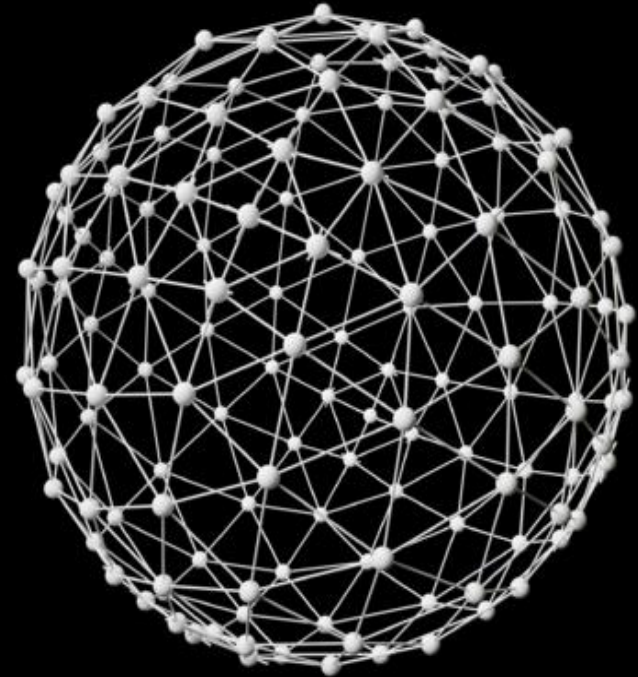


- 
- Finance Bill 2018

- 
- Tax Laws Amendment Act 2018

- 
- Q&A

Finance Bill 2018



Corporate Income Tax



- Manufacturers to be eligible to claim an additional 30% of their electricity bills subject to conditions set by the Ministry of Energy.
- Clarification that transfer of property by general insurance companies to be taxed as capital gains.
- Deemed dividends to include distribution of any cash or assets to a shareholder or person related to the shareholder, discharge of any obligation or settlement of debt on behalf of a shareholder or use of any amount for the benefit of the shareholder or related person.
- Replacing the compensating tax provisions with corporate tax on dividends paid out of untaxed profits.

Withholding Tax



- Withholding tax of 20% introduced on demurrage charges paid to non-residents.
- 5% withholding tax introduced on insurance premiums paid to non-residents excluding insurance premiums paid for insurance of aircrafts



Presumptive Income Tax



- Presumptive tax of 15% of the business permit or license fee introduced for businesses whose turnover is below KES 5 Million per annum.
- Does not apply to corporate entities; rental income or income from management and professional services.



PAYE



- The proposal to introduce a 35% tax rate on individuals earning more than KES 750,000 per month under the draft Income Tax Bill 2018 has been dropped. The current top rate of 30% will be maintained.
- Amendment of the Employment Act to introduce a 1.0% contribution on employee's gross monthly salary and a matching contribution by the employers to go into the National Housing Development Fund.



Tax Amnesty



- The period of tax amnesty on foreign incomes has been extended from 30 June 2018 to 30 June 2019.
- Under the tax amnesty, only income accrued up to 31 December 2017 is eligible. The returns and accounts for the year 2017 have to be filed before the deadline and the income declared must be transferred back to Kenya.
- Funds declared under the amnesty will be exempt from provisions of the Proceeds of Crime and Anti-Money Laundering Act or any other act relating to reporting and investigation of financial transactions. The exemption will not apply to proceeds of terrorism, poaching and drug trafficking.

Tax Dispute Resolution



- Tribunal proceedings shall not be adjourned where a panel member is not available or ceases to be a member.
- Settlement of tax disputes outside the Tribunal is now set to be embedded in law. The time to be taken in such an arrangement shall be excluded from the 90 day period allowed for a Tribunal to issue a ruling.



Tax Procedures Act

- Late payment interest increased from 1% to 2%.
- Late payment penalty of 20% re-introduced.
- Late filing penalty for individuals reduced to 5% of tax due or KES 2,000 whichever is higher.
- Applications for extension of due dates for tax returns filing to be made at least 15 days before due date for monthly returns and 30 days for annual returns and Commissioner to respond at least 5 days before due date.

Tax Procedures Act



Late filing penalty for income tax returns:

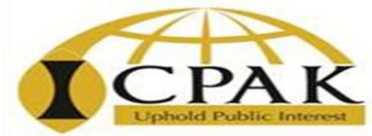
- For corporate bodies, the penalty will be 5% of tax payable or KES 20,000, whichever is higher, whereas for individuals, the penalty will be 5% of tax payable or KES 2,000, whichever is higher.
- Limited grounds for waiver of penalty or interest, i.e. hardship or equity, impossibility or undue difficulty or expense of recovery.

Tax Procedures Act

- Objection to an assessment to remain valid where a person applies for extension to pay tax not in dispute.
- Obligations of tax representatives restricted to the specific taxes for which they are appointed.
- New provisions and penalties introduced in relation to unauthorized access or improper use of computerized tax systems.



Stamp Duty



- The Stamp Duty Act to be amended to include exemption from stamp duty on instruments executed for purposes of collection and recovery of tax.
- The Stamp Duty Act to be amended to exempt stamp duty from instruments relating to activities of Special Economic Zones.



Other Key Changes



- The Banking Act to be amended by repealing Section 33B thus lifting the capping of interest rates.
- A Robin Hood Tax at the rate of 0.05% to be introduced on any amounts of KES 500,000 or more transferred through banks and other financial institutions.
- Proposed increase of the capital gains tax rate from 5% to 20% in the Income Tax Bill, 2018 to be dropped.



Value Added Tax



VAT exemption introduced on the following items

- Equipment for the construction of grain storage facilities.
- Additional raw materials for the manufacture of animal feeds.
- Parts imported or purchased locally for the assembly of computers.



Value Added Tax



- Taxable value of mobile cellular to be determined in accordance with the VAT Act.
- Late filing penalty to be moved from the VAT Act to the Tax Procedures Act but penalty remains the same.
- Wheat and barley seed which are currently VAT-able to be exempt.
- Maize (corn) seed to be subject to VAT.
- Garments and leather footwear manufactured in an EPZ to be VAT-able upon importation.
- Transportation of cargo to destinations outside Kenya to be deleted from exempt schedule.
- Alcoholic and non-alcoholic beverages supplied to DEFCO to be exempt.
- Exemption of goods and services for direct and exclusive use in projects under special operating framework with the Government.
- Exemption of postal services (postage, rental of post boxes and mail bags).

Emerging VAT trends



Increased global trade

- e-commerce – largely electronic services
- More imports & exports
- Triangulation arrangements



Compliance through technology

- iTax has greatly aided compliance
- Increased focus on industry specific audits
- Increased visibility by KRA on taxpayer dealings

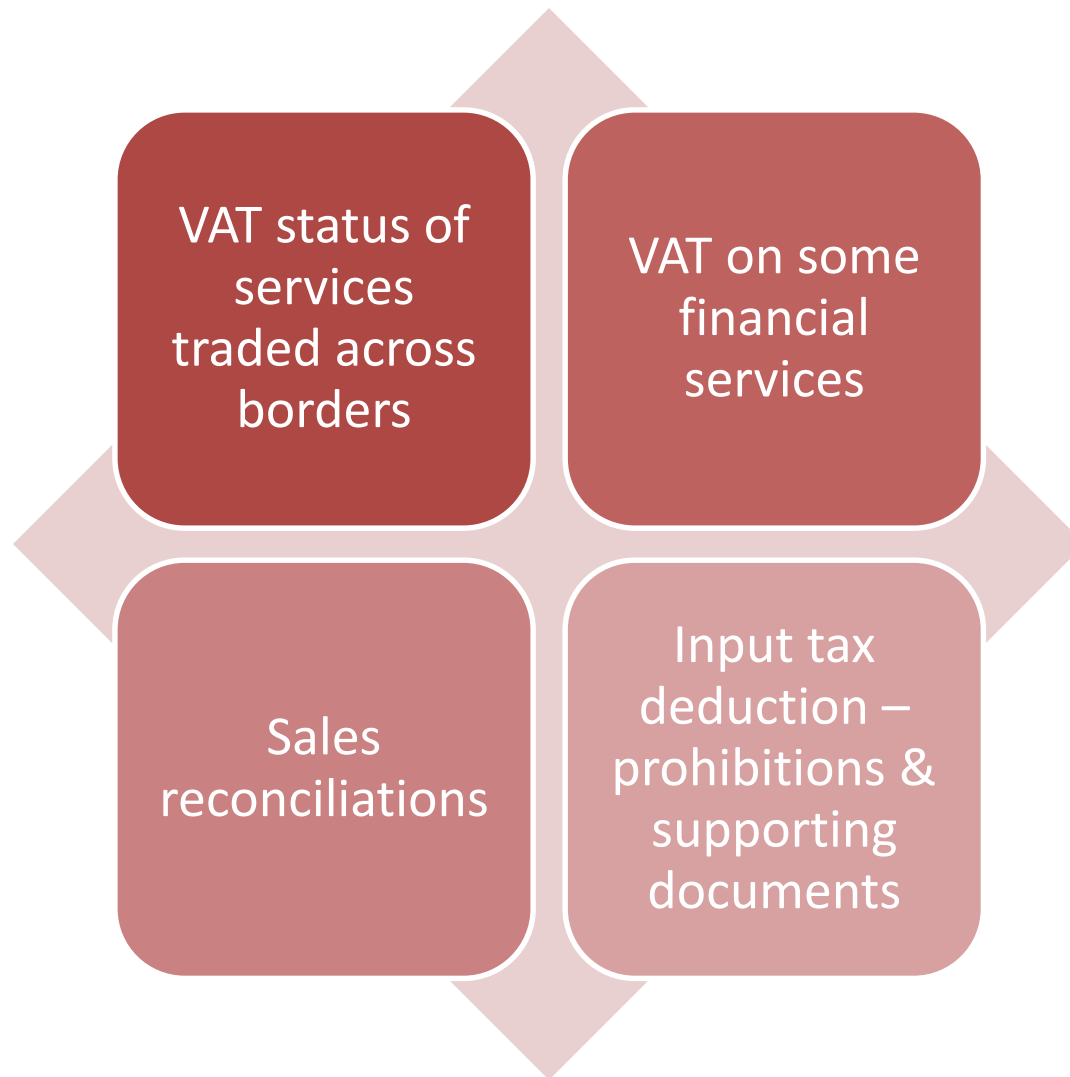
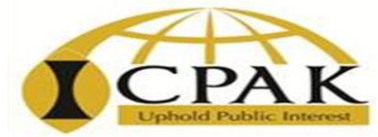


Pressure on revenue?

- List of zero rated and exempt supplies reduced
- Items under transition now becoming taxable - **Petroleum products & VAT remissions**
- KRA more aggressive - Audits



Key recent VAT areas of focus



Excise Duty



- Increase of excise duty on:
 - private passenger motor vehicles (diesel powered of above 2500cc and petrol powered of above 300cc) from 20% to 30%.
 - fees charged for money transfer services by cellular phone service providers from 10% to 12%.
 - kerosene from Kshs. 7,205 per 1000 litres to Kshs. 10,305 per 1,000 litres.
- Introduction of a Robin Hood Tax of 0.05% on any amounts of KShs 500,000 or more transferred by banks, money transfer agencies and other financial service providers.
- Introduction of excise duty on sugar confectionery and chocolate at Kshs. 20 per Kg
- Inflationary adjustment of specific rates to be effected annually.

Excise Duty



- 16% of excise duty collected on money transfer services by cellular phone service providers to be paid into the Sports, Art and Social Development Fund.
- Clarification of excise duty on bottled or similarly packaged water.
- Exemption of:
 - Alcoholic and non-alcoholic beverages supplied to DEFCO.
 - Goods procured for direct and exclusive use in the implementation of projects under the special operating framework arrangements with the Government.

Implementation of EGMS



Introduction of EGMS

- Introduced in 2013 vide EGMS Regulations 2013.
- Required all excisable goods except motor vehicles be affixed with stamps.
- EGMS Regulations 2017 introduced in 2017 repealed EGMS Regulations 2013
- The Regulations varied the prices of stamps per product; Previously a standard price of KES.1.50 per stamp applied.

Implementation of EGMS

- KRA scheduled to implement the EGMS in 2 phases:
 - Phase 1 covering spirits, wine and cigarettes implemented in 2013
 - Phase 2 was scheduled to take effect on 1 November 2018.

Court process

- The High Court, on 12 March 2018, invalidated the EGMS Regulations 2017 on the basis that they were enacted in a manner that violated the Constitution and the Statutory Instruments Act.
- The Court of Appeal stayed the execution of the High Court judgement pending hearing and determination of the appeals before it.

Parliament

- The National Assembly also weighed in on the matter and on 26 July 2018 made a decision that the EGMS Regulations were null and void since they were not discussed and approved by Parliament.

Postponement of implementation

- The KRA postponed the implementation of the EGMS on bottled water and juices that was to commence on 1 August 2018.

Robin hood tax



0.05% excise duty on money transfer

Finance Bill 2018 proposed to impose excise duty of 0.05% on **money transferred by banks, money transfer agencies and other financial service providers** in case of money transfer of KES 500,000 or more.

Effective date – 1 July 2018

The High Court issued a conservatory order delaying the implementation of the excise duty on 19 July.

The order is effective until such a time a proper definition of “money transferred by banks” is provided and sufficient time allowed for alteration of computer systems operated by banks to charge excise duty.

Excise duty is not collectable from 1 July 2018

Any excise duty collected by financial institutions since 1 July 2018 is not payable to KRA

Annual inflationary



Annual inflationary adjustment of specific rates

The Commissioner adjusted specific excise duty rates for inflation on certain excisable goods effective 1 August 2018.

Adjustment done vide a Gazette notice in accordance with Section 10 of the Excise Duty Act.

Inflationary adjustment should be made at the beginning of every financial year

Calculated as the average rate of monthly inflation of the preceding financial year.

Average inflation for FY 18 was 5.25% as per KNBS statistics

Rates were adjusted at varying rates of between 4% and 5.2%

Affected products include fruit juices, waters and other non-alcoholic beverages, beers, wine e.t.c

Petroleum products not affected.

First time inflationary adjustments are being implemented by the CG since the law took effect on 1 December 2015.

Inflationary adjustments



Description	Current rate (KES)	New rate (KES)
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	10 per litre	10.5 per litre
Waters and other non-alcoholic beverages not including fruit or vegetable juices.	5 per litre	5.20 per litre
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	100 per litre	105.20 per litre
Powdered beer	100 per kg	105.20 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	150 per litre	157.80 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	200 per litre	210.40 per litre
Cigars, cheroots and cigarillos, containing tobacco or tobacco substitutes	10,000.00 per kg	10,520.00 per kg
Electronic cigarettes	3,000 per unit	3,156 per unit
Cartridge for use in electronic cigarettes	2,000 per unit	2,104 per unit
Cigarettes with filters (hinge lid and soft cap)	2,500 per mille	2,630 per mille
Cigarettes without filters (plain cigarettes)	1,800 per mille	1,893 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	7,000 per kg	7,364 per kg
Motor cycles of tariff heading 8711 other than motor cycle ambulances and locally assembled motor cycles	10,000 per unit	10,520 per unit

Miscellaneous Fees & Levies



- Introduction of export levy on copper waste and scrap at 20%.
- Exemption of goods imported for implementation of projects under special operating framework arrangement with the Government from RDL and IDF.



Q & A



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