

# FINANCE ACT 2018

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Presentation by:

CPA Hesbon Omollo  
Bon&Drew Associates-CPA-K

# Introduction



## Overview of the Finance Act 2018

- ❑ The Finance Act 2018 will no doubt remain in the minds of many Kenyans as it was a controversial act that was passed under acrimonious circumstances after the president returned the bill for some amendments including 8% VAT on petroleum products.
- ❑ It is a historic act for it has brought changes in the Accountants Act 2008.

# Introduction



## Overview of the Finance Act 2018

- ❑ Finance Act was signed into law on the 21<sup>st</sup> September 2018.
- ❑ A court case has been filed challenging the Finance Act 2018, by activist Okiya Omtata on interpretation of 2/3rds requirement to overturn presidential memorandum accompanying rejection of a bill passed by parliament.

# Introduction



## Overview of the Finance Act 2018

□ The Act has amended various tax legislation mainly:

1. Income Tax Act(ITA)
2. VAT Act
3. Excise Duty Act
4. Betting, Lottery& Gaming Act(BLGA)
5. Stamp Duty Act
6. Employment Act
7. Retirement Benefits Act
8. Miscellaneous Fees&Levies Act
9. Tax Procedures Act(TPA)
10. Accountants Act 2008.

# Income Tax Act(ITA) changes



## 1. Withholding Tax on Winnings

Definition of 'Winnings' has been expanded to incorporate winnings of any kind from betting. A withholding tax of **20%** is now applicable.

# Income Tax Act(ITA) changes-contd..



## 2. Demurrage Charges and Insurance Premiums paid to non residents-

Demurrage charges by non resident transporters(ship owners) will attract **withholding tax of 20%**.

**Withholding tax of 5%** imposed on gross insurance premiums paid to non resident insurance companies except those that insure aircrafts.

# Deemed dividends



## 3. Deemed dividends-

The definition of deemed dividends has been expanded by the finance act 2018 to include:

- a. Any **measurable obligation** in monetary terms discharged from a shareholder or any person related to a shareholder by the company.
- b. Any **cash or asset distributed** or transferred to the shareholder/s or any person related to shareholders
- c. Any **amount used in any way** by the company to benefit a shareholder or any person related to the shareholder/s.

# Deemed Dividends--Contd



- d. Any **debt owed** by a shareholder or a related party to a shareholder to a third party that is settled by the company.
- e. **Transfer pricing adjustment** resulting into additional taxable income or reduced assessed loss of the company by virtue of any transaction with the shareholder or related party to the shareholder

# Compensating tax



## 4. Compensating Tax

The Finance Act has repealed section 7A of ITA and proposes a simpler method of computing compensating tax.

The Finance Act charges to tax any distribution of untaxed gains or profits by a company at the resident corporate tax rate of 30%.

The requirement to maintain a **dividend tax account** by a resident company has been removed.

This provision takes effect from 1<sup>st</sup> January 2019.

# Presumptive Tax



## 5. Presumptive Tax

A presumptive tax of 15% of Business permit /license charged by the County government with effect from 1<sup>st</sup> January 2019.

This tax is only applicable to businesses with less than Kshs **5m** turnover.

It does not apply to incorporated companies, rental businesses, management and professional services.

# Additional Tax deduction on electricity cost by manufacturers



## 6. Additional Tax deductions on electricity cost by manufacturers.

An additional corporation tax deduction of 30% of electricity bill.

This additional tax is subject to conditions set by the Energy Ministry.

Guidelines to operationalize the clause are yet to be issued but expected soon.

This provision takes effect from 1<sup>st</sup> January 2019.

# Special Operating Framework Arrangement



## 7. Special Operating Framework Arrangement with government of Kenya.

- ❑ The Finance Act grants the Government leeway to negotiate for special corporate tax rates for businesses under a special operating framework arrangement.
- ❑ This is a tax incentive for investment by entities investing in areas where government has earmarked as priority areas. The big 4 agenda comes to mind.
- ❑ This provision comes into effect from 1<sup>st</sup> January 2019.

# Income Tax Act(ITA)



## 8. Gains from disposal of property by a general insurance business

- ❑ The Finance Act 2018 has clarified that gains arising from transfer of property under the general insurance business will be taxed as capital gains.

# VAT Act Amendments



## 1. VAT on Petroleum Products

The Finance Act 2018 has introduced 8% VAT on petroleum products.

The value to be charged excludes excise duty, fees and the charges.

## 2. Zero rating of flour

Maize flour, cassava flour, wheat or meslin flour, maize flour containing cassava flour of more than 10% in weight. These have been zero rated.

# VAT Act Exemptions



## 3. Exemptions

### ➤ Exemption of Seeds

Wheat meslins and barley seeds have been exempted from VAT while maize seeds have lost the exemption

### ➤ Exemption of grain storage equipment and animal feeds

**Equipment** used for construction of grain storage facilities are VAT exempt.

**Raw materials** used in production of finished animal feeds are VAT exempt.

In addition, the Finance Act has exempted unprepared cereal straw and husks, lucerne meal, pellets and beet pulp and baggase from VAT.

# VAT Act Exemptions



## Limited exemptions under plant and machinery

The exemption has been granted on machinery used in manufacture of goods.

Prior to this change , exemption was open to all plants and machinery under chapter 84&85.

This exemption may hurt the agricultural sector which is highly dependent on heavy mechanization.

## Exemption of hearing aid from VAT

This however excludes parts and accessories under tariff no 9021.40.00

# VAT Act Exemptions



## Exemption of goods for equipping Specialized hospitals

Taxable goods used for direct and exclusive use in the construction and equipping of specialized hospitals with minimum bed capacity of 50 approved by CS treasury upon recommendation by CS health.

## Exemption of footwear and garments

The VAT exemption on garments and footwear manufactured in an EPZ imported into Kenya has been withdrawn.

The main reason for this is to ensure those products manufactured outside EPZ are competitive.

# VAT Act Exemptions



## VAT Base increase for cellular airtime.

The Act has increased the VAT base for the supply of mobile cellular services to include **15% excise duty** on the services.

## VAT on Computer parts

VAT exemption has been granted on parts imported or purchased locally for assembly of computers. Previously this was restricted to parts for assembly of school laptops.

# VAT Act Exemptions



## VAT on Solar Equipments

VAT exemption previously existed for all specialized solar equipment and accessories.

The act has now restricted specialized equipment to those used in the development and generation of **wind** and **solar energy** only.

# VAT Act Exemptions



**Zero rating of transportation of cargo to destinations outside Kenya**

The Finance Act has deleted the provision in the VAT Act that exempts transportation of cargo to destination outside of Kenya from VAT.

**Exemption of alcohol and non-alcohol beverages supplied to the DEFCO**

The Finance Act has exempted alcoholic and nonalcoholic beverages supplied to the Defense Forces Canteen Organization (DEFCO) from VAT.

# VAT Act Exemptions



## VAT exemption of Postal Services

Postage stamps, Post box rental, mail bags and subsidiary services have all been exempted from VAT.

## VAT exemption on Motor Vehicles imported by returning officers from Kenyan Missions:

The act exempts personal motor vehicles from VAT excluding buses and mini buses that carry more than 8 passengers and another by his/her spouse. It applies on recall from that mission.

The spouse must have accompanied the officer in the mission abroad and vehicle imported within 90 days from arrival.

# VAT Act Exemptions



**Goods and services provided to special operating framework arrangements (SOFA) in government**

The Finance Act has exempted from VAT supplies to SOFA. However, we note that guidelines to establishing SOFAs have not been issued

**Prescription of Credit Note and Debit Note.**

Prior to the Finance Act 2018, the commissioner required credit and debit notes to be serialized, including name, pin and the beneficiary and related invoice.

# Excise Duty Act



## 1. Change in Excise duty rates

- Excise duty on fees charged by banks, money transfer agencies and other financial service institutions . From **10% to 20%**
- Excise duty on fees charged for money transfer services by cellular phone service providers –from **10% to 12%**
- Excise duty on other fees charged by financial institutions. From **10% to 20%**
- Excise duty on telephone and internet data. Newly introduced **15%**

# Excise Duty Act



- **Excise duty on Illuminating kerosene.** Has increased from Kes 7.205 per litre to 10.305 per litre.
- **Private Passenger Cars**-Excise duty for those exceeding 2500cc (diesel) and petrol at 3000cc(petrol). From **20% to 30%**
- **Sugar Confectionery and chocolate**  
The Act has introduced excise duty of **Kes 20 per kg** on sugar confectionery of tariff heading 17:04 and chocolate in blocks, slabs or bars of tariff codes 1806.31.00, 1806.32.00 and 1806.90.00.

# Excise Duty Act



## 2. Exemptions from excise duty-DEFCO&SOFA

- Alcohol or non-alcohol beverages to “DEFCO”. Prior to this it only applied to KDF and NPS.
- Special operating framework arrangement. Imports of goods to be used implementation of projects under SOFA.

## 3. Sports , Arts and Social Development Fund.

The Act has amended the Excise duty act to allow 16% excise duty on money transfer on cellular phone providers and excise duty on internet data and telephone services.

## 4. Stiffer penalties for operating without licenses

The act has prescribed Kes 5m penalty or twice the excise duty avoided, whichever of the two is higher.

# Excise Duty Act



## 5. Clarity on Excise duty on Drinking water

The act has clarified drinking water subject to excise duty. The finance act imposes excise duty on bottled or similarly packed water.

The Finance Act has further clarified that for goods or services to qualify for exemption, they must not have been consumed in Kenya.

# Excise Duty Act



## 6. Provisions relating to suspension of licenses

The Finance Act requires the Commissioner to give 21 day notice to the licensee prior to suspending license.

Tax Appeal Tribunal which was available to an aggrieved licensee has been removed. The Commissioner now has the final say on cancellation of licenses.

# Excise Duty Act



Contd~~

Notwithstanding the above, Commissioner is now empowered to suspend a license without notice where the licensee has engaged in **tax fraud, possession or use of counterfeit excise stamps or has violated any regulations relating to health and safety.**

## **7. Affixing stamps outside designated areas**

The Finance Act has removed penalties associated with fixing stamps outside designated areas under section 39(1) of the act.

# Excise Duty Act



## 8. Annual Adjustment for Inflation

The Act has introduced an annual adjustment for inflation on certain excise duties, down from 2 years as has previously been the case.

# Excise Duty Act



## 9. Motor vehicles imported by public officers returning from a post in a Kenyan mission abroad.

The motor vehicles are exempted from excise duty. This is however restricted to one personal vehicle excluding **mini buses and buses** of more than 8 seats.

The return must be on recall, spouse also allowed another vehicle as long as she was accompanying the officer in the mission station and it is imported within 90 days from the date of return.

# Betting, Lotteries and Gaming Act



- ❑ The Finance Act 2018 has reduced the tax for betting, gaming, lotteries and prize competition operators from **35% to 15%**.
- ❑ The proceeds of these taxes are to be channeled to Sports, Arts and Social Development Fund.
- ❑ A late penalty of 5% of the tax and interest penalty of 1% per month applies.

The betting and gaming tax rates take effect as from 1<sup>st</sup> July 2018 while Lotteries and Prize competition tax comes into effect from 1<sup>st</sup> October 2018.

# Stamp Duty Act



Life Insurance policies and Accident Insurance will attract a stamp duty on a monthly basis.

Stamp duty exemption has been provided to Special Economic Zones(SEZ) enterprises, developers and operators.

Equally benefiting from Stamp duty exemption are instruments executed for tax collection or recovery of taxes.

# Employment Act



The Employment act 2007 is amended to introduce National Housing Development Fund(NHDF) which requires each employer and employee to contribute **1.5% each** of salary subject to a maximum sum(combined) total of **Kes 5,000/=**

For employees who qualify for affordable housing this will accrue towards acquisition of a house under the scheme.

# Employment Act



For those who will not qualify for affordable housing, this contribution can be withdrawn in cash in 15 yrs or upon retirement.

It can also be transferred to a registered pension scheme or transferred to a spouse, child or any other eligible person for affordable housing.

Withdrawn contribution will be subjected to tax.

# Employment Act



These taxes are to be remitted by the 9<sup>th</sup> of every month. Failure to do so attracts monthly penalty of 5% of tax due.

The provisions of this act comes into effect as soon as the Cabinet Secretary gazettes the regulations prescribing qualifications for affordable housing..

The CS Housing in consultation with the CS treasury to gazette regulations.

# Retirement Benefits Act



The act has been amended to allow RBA to compel non compliant employers to remit outstanding contributions and interest of 5% of unremitted contributions subject to a minimum of Kshs 20,000/=

These changes take effect as from 1<sup>st</sup> October 2018.

# Miscellaneous Fees & Levies Act



## Anti Adulteration levy

A levy of Kshs 18 on importation of kerosene has been introduced and takes effect as from 1<sup>st</sup> October 2018.

This levy is meant to address the challenge of adulteration of Petrol by mixing with kerosene.

# Miscellaneous Fees & Levies Act



## Export levy/duty on scrap metal and copper waste

An export levy of 20% has been levied on copper waste and scrap metal of code 7404.00.00

This measure is meant to encourage local smelting and discourage vandalism with export market in mind.

It takes effect as from 1<sup>st</sup> October 2018.

# Miscellaneous Fees & Levies Act. Contd...



## Exemptions under Special Operating Framework Arrangement(SOFA)

This Act has been amended to allow exemption of goods imported for implementation of SOFA with government from both Import Declaration Levy(IDL) and Railways Development Levy(RDL)

It is operational as from 1<sup>st</sup> July 2018

# Tax Procedures Act



## Extension of time to file returns

A tax payer can now apply for an extension of time to file returns.

This must however be done 15 days before the deadline for monthly returns and 30 days for annual returns.

The tax authority has 5 days to the due date of that tax return to respond ,otherwise the request will be deemed to be accepted.

It is operational as from 1<sup>st</sup> July 2018

# Tax Procedures Act



## Late payment of penalty and Interest

The Finance Act has imposed a late payment penalty of 5% of tax due.

The Interest on late payment is however retained at 1%.

There is a reprieve for individuals who file late returns as the penalty has been reduced from Kshs 20,000/= to 5% of tax payable or Kshs 2,000/= whichever is higher.

# Tax Procedures Act



## Foreign Income tax Amnesty extension

The deadline for filing for amnesty on foreign income and assets has been extended to 30<sup>th</sup> June 2019.

This amnesty applies to taxes ,penalties and interests for repatriated income earned on or before 31<sup>st</sup> December 2017 and which would have become taxable in Kenya.

# Tax Procedures Act



The act exempts the income declared from provisions related to **Proceeds of Crime and Anti Money Laundering Act** as well as other acts that relate to investigations on financial transactions.

It does not however extend to money from **terrorism, drug trafficking and poaching**

# Accountants Act



## New definition of accountant

A person registered under section 24 of this act and is a member as defined in section 4(2)a&b with expertise achieved through formal education and expertise.

## Trainee Accountant

“means a person registered by the examination board and who has commenced professional accountancy education or training or is practicing accountancy as part of initial professional development required for qualification as an accountant”.

Now required to register with ICPAK

# Accountants Act



## The definition of Accountancy

“Means practice in accounting, financial reporting, control systems, systems auditing, assurance, forensic accounting and auditing, finance, financial management, public finance management, taxation, financial risk management, management accounting, and advisory services related thereto”

# Accountants Act



## Remuneration order

ICPAK to prescribe remuneration order with the approval of the Cabinet Secretary.

## Liability reprieve

An accountant shall not be liable for taking such actions or decision or rejecting instructions from a client if such action is in pursuance of ethical guidelines in section 30a&b.

Ethical guidelines and applicable standards take precedence over instructions from a client.

END OF PRESENTATION



Questions and Answers

# END OF PRESENTATION

