Tax implications of the Finance Act 2018

Amendments to other legislations – Accountancy Act, Central Bank Act, Banking Act, Retirement Benefits Act and other legislation

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Stamp Duty Act

The Finance Act 2018 has exempted from stamp duty an instrument executed for purposes of:

- collection and recovery of tax
- An instrument relating to the business activities of Special Economic Zone (SEZ) enterprises, developers and Operators licensed under the Special Economic Zones Act, 2015.

Stamp Duty Act

Payment of stamp duty for policies of life insurance and insurance of accident:

- The Finance Act amends the Stamp Duty Act to provide for monthly payment of stamp duty for policies of life insurance and insurance against accident.

Employment Act

- The Finance Act 2018 amends the Employment Act to introduce a contribution of 1.5% of an employee's gross monthly emoluments and a matching contribution by the employers towards the National Housing Development Fund, subject to a maximum of Kshs. 5,000.

Employment Act

- The initial proposal, as contained in the Finance Bill 2018, stipulated a contribution of 0.5% of an employees gross monthly emoluments by both the employer and employee, amounting to a total of 1% of an employee’s gross emoluments.

Employment Act

- However, the Finance Act 2018 states that the Housing Development Levy will become effective upon the gazettement of regulations to be published by the Cabinet Secretary responsible for housing (Draft rules have been published)

Employment Act

- For employees who qualify for affordable housing, the contributions will accrue to the employee for purposes of financing the purchase of a home under the affordable housing scheme.
- Where employees do not qualify for affordable housing, the contributions will accrue to the employees after 15 years of making contributions or upon retirement.

Employment Act

- At that point, the contributions may be withdrawn by the employee in cash, transferred to a pension scheme, spouse or dependent children or to another person eligible for affordable housing.
- Contributions withdrawn in cash will be subject to tax.

Employment Act

- Employers will be required to remit the employee and employer contributions to NHDF by the 9th of the following month. Late remittance of the contribution to NHDF will attract a penalty of 5% per month.

Retirement Benefits Act

- The Finance Act amends the Retirement Benefits Act, 1997, to give powers to the Retirement Benefits Authority (RBA) to compel non-compliant employers to pay the outstanding contributions and interest with a penalty of 5% of the unremitted contributions or a minimum of KES 20,000.

Betting and Gaming Act

- The Finance Act reduces the rate of tax for betting, gaming, prize competition and lotteries operators from 35% of their revenue to 15% of their revenue.
- Proceeds from these taxes shall be paid into the Sports, Arts and Social Development Fund.

Betting and Gaming Act

- The Finance Act also introduces a late payment penalty of 5% of the tax payable and late payment interest at the rate of 1% per month.

Proceeds of Crime and Anti-Money Laundering Act

- Reporting institutions are now required to carry out enhanced due diligence on relationships or transactions originating from Countries which are deemed to pose a higher threat of money laundering by the Financial Action Task Force or the Cabinet Secretary.

Proceeds of Crime and Anti-Money Laundering Act

Reporting institutions may also be required to apply counter measures to mitigate risks to do with money laundering as follows:

- Limiting or terminating business relationships with concerned countries;
- Moving away from relying on due diligence carried out by 3rd parties in the concerned countries;

Proceeds of Crime and Anti-Money Laundering Act

- Submit a report-listing customers originating from Countries deemed as higher risk.
- The Sacco Societies Regulatory Authority (SASRA) has now been included as a supervising body.

Central Bank of Kenya Act

- In the spirit of meeting the Government Big Four Agenda, the Finance Act proposes to introduce Mortgage Refinance Company that will be mandated to conduct mortgage refinance business.

- The company will be licensed and supervised by the Central Bank of Kenya Act.

Anti-Adulteration Levy

- The Finance Act introduces a levy of KES 18 per litre payable on importation of illuminating kerosene into the country.
- The proposed levy is intended to harmonise the cost of kerosene and diesel to disincentivise fuel adulteration.
- The levy is however likely to unduly burden low income members of the public who rely on kerosene for cooking and lighting.

Miscellaneous Fees and Levies Act

- The Finance Act has amended the Second Schedule to the Miscellaneous Fees and Levies Act, 2016 to exempt goods imported for implementation of projects under special operating framework arrangements with the Government from both Import Declaration Fee (IDF) and Railway Development Levy (RDL).

Q & A

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