



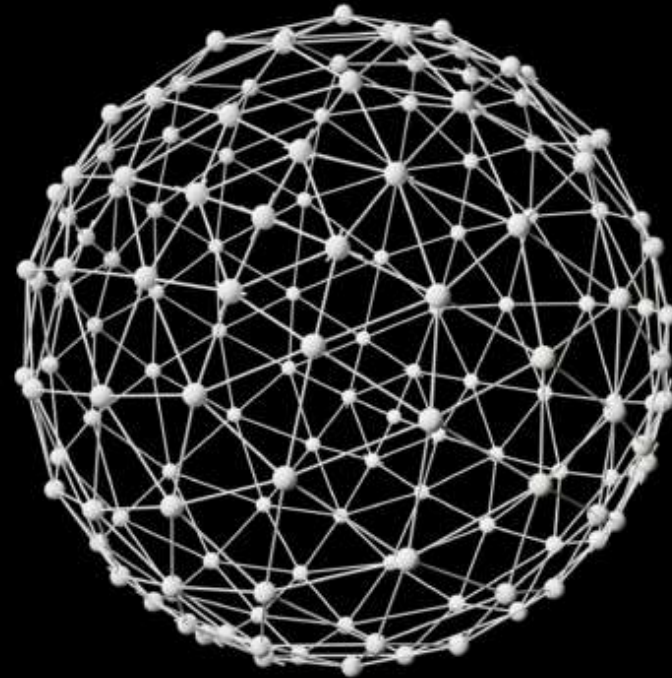
Direct & Indirect Tax Amendments through the Finance Act, 2018

Presentation by:

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CPA

Friday, 22 February 2019

Direct Tax Amendments



Contents



- Corporate Income Tax

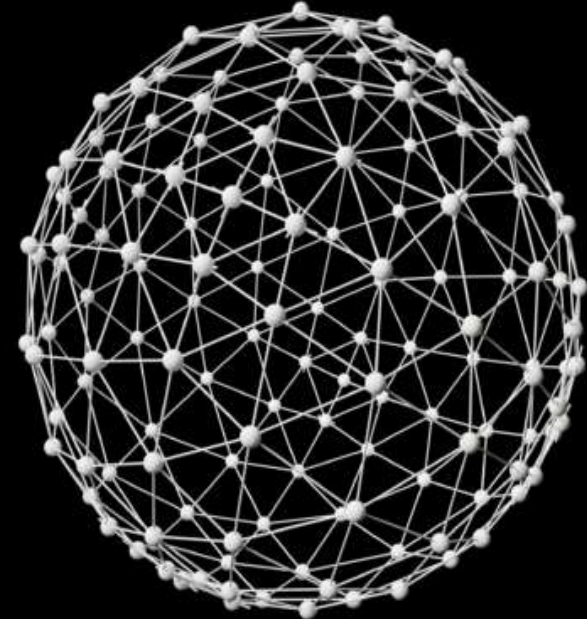


- Withholding tax



- PAYE

Corporate Income Tax



Deemed Dividends



The Finance Act 2018 amended the Income Tax Act (ITA) by expanding the scope of deemed dividends to include the following:

- Distribution of any cash or assets to a shareholder or person related to the shareholder;
 - Discharge of any obligations or settlement of debt on behalf of a shareholder or a connected/ related party to the shareholder;
 - Use of any amount for the benefit of the shareholder or related party; and
 - Transfer pricing adjustments made by KRA – i.e. amounts representing additional taxable income or reduced tax losses arising from adjustments by virtue of any transactions with a shareholder or a shareholder's related party.
- Any other benefit advanced to shareholders will be considered dividends
 - If a company forfeits a loan receivable from a shareholder/ person related to the shareholder, the amount so forgiven/ forfeited will be considered a dividend distribution;

Compensating Tax



- The compensating tax provisions under Section 7A of the ITA have been repealed and replaced with a corporation tax of 30% if a company makes distributions out of *untaxed profits*
- In our view, there are challenges in implementing this tax. For instance, how will a company be required to determine dividends distributed out of untaxed profits?
- There may therefore be need for guidelines on how this tax will operate

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.



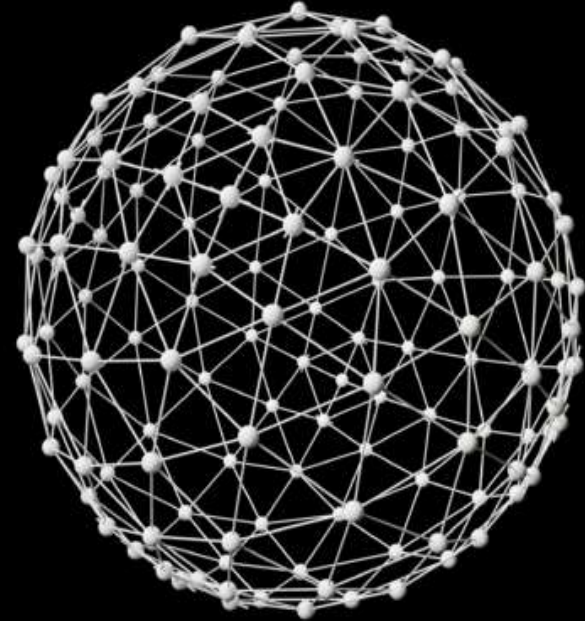
Others



- Manufacturers can now claim an additional 30% of their electricity bills subject to conditions set by the Ministry of Energy.
- Transfer of property by general insurance companies to be taxed as capital gains.



Withholding Tax



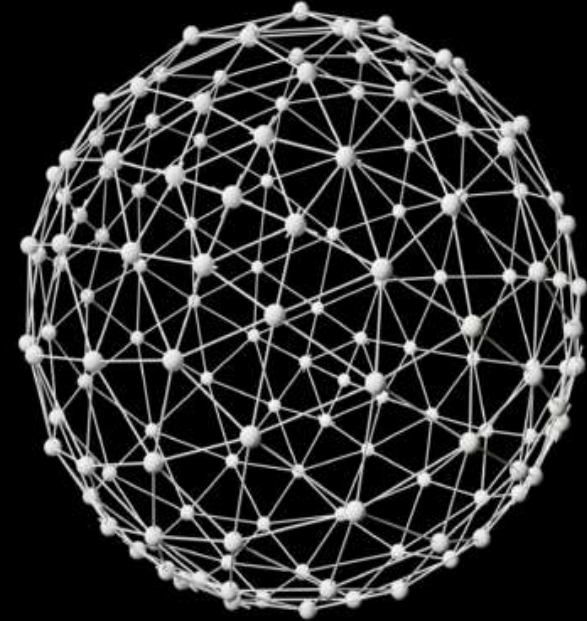
Demurrage and Insurance premium



- Demurrage charges defined as penalties paid for exceeding the period allowed for taking delivery of goods or returning equipment used to transport goods
- 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



PAYE



National Housing Development Fund



- The Employment Act has been amended to introduce a levy 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 KES 5,000
- Non eligible employees to either get a refund, transfer to pension or dependents at the earlier of expiry of 15years or retirement.
- Amounts paid in cash to be included in the employees taxable income and taxed.
- 5% penalty for failure to remit by the ninth of the following month.
- Effective upon gazettelement of regulations by the CS.




Indirect Tax Amendments

Contents



- Excise Duty

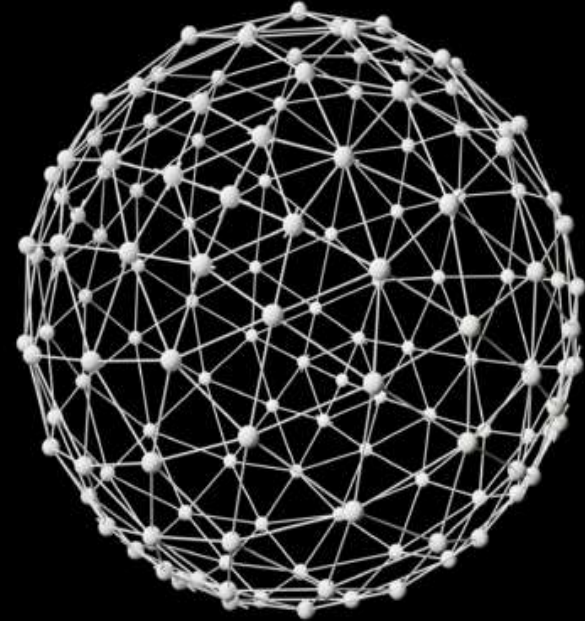


- Miscellaneous Fees and Levies



- Value Added Tax

Amendments to The Excise Duty Act



Excise Duty



Amendment of license suspension provisions

The Finance Act 2018 has amended Section 23 of the Excise Duty Act on suspension of excise duty licenses as follows:

- Deleting the provision on the period within which a licensee is required to take remedial action required by the Commissioner and the period within which the Commissioner should acknowledge the action taken.
- Deleting the provision providing for appeal of the Commissioner's decision to suspend a license to the Tax Appeals Tribunal.
- Deleting the provision requiring the Commissioner to give prior notice where the Commissioner seeks to revoke, cancel or not renew a license.

Excise Duty



The Finance Act 2018 has granted the Commissioner powers to suspend an excise license without notice where the licensee:

- Has engaged in tax fraud;
- Has been found in possession of, or using, counterfeit stamps on excisable goods;
- Has been found in possession of goods bearing counterfeit stamps; or
- Has violated any regulations relating to health and safety, standards or packaging of goods.

Excise Duty



Amendment of Part VIII of the Excise Duty Act on offences and penalties

The Finance Act 2018 has made the following amendments to the offences and penalties provisions under the Excise Duty Act:

- Introduction of a minimum penalty of Kshs 5 million on persons who manufacture excisable goods or import excisable goods requiring stamps, without being licensed.
- Introduction of powers by the Commissioner to seize any plant or excisable goods in respect of which an offence has been committed with regards to:
 - Carrying out activities requiring a license without a license;
 - Contravention of licensing obligations; and
 - Contravention of excise stamps obligations.

Excise Duty



Introduction of excise duty

The Finance Act has introduced excise duty on the following items:

- Sugar confectionery of tariff heading 1704 and chocolate of tariff codes 1806.31.00, 1806.32.00 and 1806.90.00 at Kshs 20 per Kg; and
- Internet data services at 15% of the excisable value.

Excise Duty



Increase in excise duty

The Finance Act 2018 has increased excise duty on the following goods and services:

- Private passenger cars of tariff code 8703.24.90 (Petrol powered cars with an engine rating exceeding 3000cc) and 8703.33.90 (Diesel powered cars with an engine rating exceeding 2500cc) from 20% to 30%.
- Money transfer services by cellular phone service providers from 10% to 12%.
- Illuminating kerosene from Kshs 7,205 per 1,000 litres to Kshs 10,305 per 1,000 litres.
- Money transfer services by banks, money transfer agencies and other financial service providers from 10% to 20%.
- Other fees charged by financial institutions from 10% to 20%.
- Telephone services from 10% to 15%.

Excise Duty



The Finance Act, 2018 has included the following items in the excise duty exemption schedule:

- Alcoholic or non-alcoholic beverages supplied to Defence Forces Canteens Organization (DEFCO).
- Goods procured for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.
- One personal motor vehicle, (excluding buses and minibuses of seating capacity of more than eight seats), imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his or her spouse and which is not exempted from excise duty under item 6 of Part A of the Second Schedule.

Excise Duty



This exemption will however apply under the following conditions:

- The officer should be returning to Kenya from a posting in a Kenyan mission abroad upon recall;
- The spouse must have accompanied the officer in the foreign mission and return with the officer;
- The officer/spouse must not have enjoyed a similar privilege within the previous four years from the date of importation.
- The officer/spouse must not have imported a motor vehicle free of duty as a returning resident as provided for under item 6 of Part A of the Second Schedule.
- The vehicle is imported within 90 days of the date of arrival of the officer or spouse or such longer period, not exceeding 360 days from such arrival as the Commissioner may allow; and
- The exemption will not apply to a state officer.

Excise Duty



Change to the inflationary adjustment period

- The Finance Act 2018 has amended the period within which the Commissioner may adjust the specific excise duty rates to take into account inflation, from 2 years to 1 year.

Excise duty on bottled water

- The Finance Act 2018 has amended the scope of water subject to excise duty to only cover bottled and similarly packaged water.

Amendments to The Miscellaneous Fees and Levies Act

Miscellaneous Fees and Levies



IDF and RDL exemption on goods for implementation of projects under special operating framework arrangement with the Government

- The Finance Act 2018 exempts from IDF and RDL goods imported for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

Miscellaneous Fees and Levies



Introduction of anti-adulteration levy

- The Finance Act 2018 has introduced an anti-adulteration levy on kerosene imported for home use at Kshs 18 per litre.

Amendments to The VAT Act

Value Added Tax (VAT)



Petroleum Products

- Section 5 (2) of the VAT Act, 2013 has been amended to introduce VAT at 8% on petroleum products which have previously been exempt, under transition, since the enactment of the VAT law in September 2013.

Specifically, the introduced paragraph states:

- (aa) in the case of goods listed in Section B of Part I of the First Schedule, eight percent of the taxable value, effective from the date of assent:

Provided that –

- i. The taxable value in respect of these goods shall exclude excise duty, fees and other charges; and
- ii. Despite Section I of the Finance Act, 2018, this paragraph comes into effect upon enactment of the Supplementary Appropriation (No. 2) Act, 2018.

Value Added Tax (VAT)



Food security

- Zero rating of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava.
- Exemption of equipment to be used in the construction of grain storage facilities.

Value Added Tax (VAT)



Manufacturing - ICT

- Exemption of parts, imported or purchased locally for the assembly of computers.

Manufacturing – Growing the local textile industry

- Importation of garments and leather footwear
- manufactured in an EPZ to be subject to VAT

Other

- Clarification on exemption of machinery of chapter 84 and 85

Value Added Tax (VAT)



The measure

- Late filing penalty moved from the VAT Act to the Tax Procedures Act.

Computation of taxable value for cellular services

- Taxable value of mobile cellular services to be determined in accordance with the VAT Act.

Cross border transportation

- Transportation of cargo to destinations outside Kenya removed from the exemption schedule.

Exemption of beverages supplied to DEFCO

- Exemption of alcoholic and non-alcoholic beverages supplied to DEFCO.

Value Added Tax (VAT)



Exemption of goods and services for special projects

- Exemption of goods and services for use in projects under special operating framework with the GoK.

Exemption of hearing aids, excluding parts and accessories, under tariff No. 9021.40.00

- Exemption of hearing aids, as under tariff No. 9021.40.00, from VAT, excluding parts and accessories.

Value Added Tax (VAT)



Exemption of personal motor vehicles imported by a public officer returning from a Kenyan mission abroad

- Public officers returning to Kenya from an official mission abroad may import at least one personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight, exempt from VAT. Similarly, the benefit is extended to their spouse who may also import at least one personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight, exempt from VAT.

Value Added Tax (VAT)



Exemption of personal motor vehicles imported by a public officer returning from a Kenyan mission abroad

- This exemption will however apply under the following conditions:
 - The officer should be returning to Kenya from a posting in a Kenyan mission abroad upon recall;
 - The spouse must have accompanied the officer in the foreign mission and return with the officer;
 - The officer/spouse must not have enjoyed a similar privilege within the previous four years from the date of importation.
 - The officer/spouse must not have imported a motor vehicle free of duty as a returning resident as provided for under item 6 of Part A of the Second Schedule.
 - The vehicle is imported within 90 days of the date of arrival of the officer or spouse or such longer period, not exceeding 360 days from such arrival as the Commissioner may allow; and
 - The exemption will not apply to a state officer.

Value Added Tax (VAT)



Exemption for postal services

- Exemption from VAT of postage using stamps and rental of post boxes and mail bags.

Changes to the list of zero rated medicaments

- Deletion of medicaments of tariff number 3004.40.00 from the schedule of zero rated items. Medicaments of tariff numbers 3004.41.00, 3004.42.00, 3004.43.00 and 3004.49.00 have however been

Q & A



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