

Emerging issues from Finance Act 2019

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Effective dates



After the Omtatah ruling

- Finance Bill changes cannot come into effect before being assented into law by president. (Deadline is usually three months after reading/Sept)
- Effective dates 1 Oct
- Inflation adjustment for excise 1st October

Dividend Tax Account



Section 7A of the Income Tax Act
provided for the Dividend Tax Account

FA 2018 No longer required to maintain a
Dividend Tax Account

FA 2019 – Compensating tax
Not applicable to exempt income

Capital Gains Tax



CGT Rate remains at 5%

Exemption from CGT on Restructuring

- a legal or regulatory requirement;
- as a result of derivative or compulsory acquisition by the Government;
- an internal restructuring within a group which does not involve transfer of property to a third party; or
- in the public interest and approved by the Cabinet Secretary.

Taxation of the informal sector



Turnover Tax

3% of gross turnover where
does not exceed KShs 5 million

Effective 1st January 2020

Election in writing to the
Commissioner to opt-out

Excludes rental income,
management, professional and
training fees, and incorporated
companies

Presumptive Tax

Finance Act 2018 re introduced
presumptive tax

Replaced ToT

Widen the tax net by capturing

15% presumptive tax to be paid
when renewing the single
business permit

Affordable Housing



National Housing
Development Fund's income
is exempt

Transfers exempt from stamp
duty

Housing Relief 15% of gross
emoluments /KES 108k

Withdrawals to purchase a
house are tax exempt

Thin capitalization rules will not apply to companies implementing
projects under affordable housing schemes

Withholding tax



Insurance premiums
Reinsurance business

Payments to head office
where the DTA allows
deduction

WHT on additional services

- Security services
- Cleaning and fumigation
- Catering services
- Transportation of goods
- Advertising services
- Sales and promotion
- Marketing services

Duty to withhold



S29 of The Finance Act 2019 introduced Section 39A in the TPA

“

Where a person who is required deduct under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld **as if it were tax due and payable by that person** and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

”

Effective 7th November 2019

Manufacturing



Import Declaration Fee (IDF)

The Bill proposes to reduce the Import Declaration Fee (IDF) on intermediate goods and raw materials used by manufacturers from 2% to 1.5%

However, the rate on finished goods will rise from 2% to 3.5%. This is aimed at cushioning local manufacturers and facilitate growth of the manufacturing sector

Railway Development Levy

Railway Development Levy for finished products will be increased to 2% from 1.5%

The objective of this is to encourage and promote local manufacturers

Transactions Requiring a PIN



The First Schedule of the TPA provides a list of transactions for which a PIN is required. There are now two additional transactions for which a PIN is required:

- Registration and renewal of **membership by professional bodies** and other licensing agencies
- Registration of mobile cellular **paybill and till numbers** by telecommunication operators

The above additions will give KRA access to data on active professionals and other self-employed taxpayers to expand their data collection on taxpayers.

Departure Prohibition Order (DPO)



The Finance Act 2019 expands the scope of persons to whom the DPO could be issued, to include tax representatives of a company and controlling members of a company. The tax representatives of a company include the CEO, managing director, company secretary, treasurer, trustee, resident director or similar officer of the company acting or purporting to act in such position.

This is to ensure the tax representatives of companies whose controlling members are not resident in Kenya do not evade their responsibilities of ensuring that taxes from the companies are accounted for

Digital Economy



VAT Act and Income Tax Act have now defined “digital market place”

“a platform that enables direct interactions between buyers and sellers of goods and services through electronic means”.

The Cabinet Secretary for National Treasury will issue regulations outlining mechanisms on the taxation of the digital economy

Digital Economy



3. Section 3 of the Income Tax Act is amended—

**Amendment of s.
3 of Cap. 470.**

(a) in subsection (2) by inserting the following new paragraph immediately after paragraph (c)—

(ca) income accruing through a digital marketplace;

(b) by inserting the following new subsection immediately after subsection (2)—

(2A) The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of subsection (2) (ca).

