Executive summary


The objective of this Act is to provide clear regulations on all procedural aspects and provisions relating to the Income Tax, Value-Added Tax (VAT), and Excise Duty, among other changes. The Act introduces amendments to existing provisions in the different tax laws. The Act also streamlines and clarifies income tax provisions, VAT provisions, and Excise Duty changes, as set forth in the Finance Bill, 2017.

This Alerts summarizes the key changes.

Detailed discussion

**Corporate Income Tax reforms**

**Special Economic Zones**

In relation to Special Economic Zones (SEZs), the Act provides for an Investment Deduction Allowance for capital expenditure on buildings and on machinery for use in the SEZs at a rate of 150% outside Nairobi and Mombasa counties where the capital expenditure is incurred on construction of building/purchase and installation of machinery by or for SEZs, effective 1 January 2018.
With respect to taxes on payments from SEZ enterprises, developers or operators, effective 1 January 2018:

- Dividends paid by SEZ enterprises, developers or operators to any nonresident will be exempt from withholding tax.
- Professional fees, management, training and royalties’ fees payable by a SEZ enterprise are subject to tax at the rate of 5%.
- Interest payable by a SEZ enterprise, developers or operators to a nonresident is subjected to 5% withholding tax.

Motor vehicles

The Act provides for a 15% corporate tax rate for local assembled motor vehicles for the first five years from the commencement of the operation and this tax rate shall be extended for another five years after the company has achieved “local content” equivalent to 50% of the ex-factory value of the vehicle. This provision will be effective 1 January 2018.

VAT reforms

Modifications to VAT Act

The Act has modified Section 2 of the Value Added Tax Act, 2013 as follows:

a) In the subsection (1) by inserting the following new definitions:

- Islamic Finance Arrangement to mean the meaning assigned to it in the Income Tax Act Cap. 470
- Islamic Finance Return to mean the meaning assigned to it as per the Income Tax Act Cap. 470
- Sukuk still holds its meaning as per the Public Finance Management Act, 2012

b) The following subsection has been inserted into the Value Added Tax Act, 2013 immediately after subsection (2):

- (3) For the purpose of this Act;

  - Whether received or paid on a financial arrangement, Islamic finance return shall be treated as “Interest”

Zero rated items

The Act has zero rated the following items which were previously exempt from VAT, effective from 3 April 2017:

- Milk and cream
- Cassava flour, maize (corn) flour, wheat or Meslin flour and ordinary bread

- Pest control products; this has been zero rated has per the Act but subject to the recommendation of the Agriculture Cabinet Secretary

VAT exempted products

The following items are now exempt from VAT as per the Finance Act, 2017, effective as of 3 April 2017:

- Grain storage facilities; materials for the construction of grain storages
- Services supplied to international and regional organizations, these are services imported or supplied to donor agencies, international and regional organizations with diplomatic accreditation
- Sharia compliant finance products, that is interest paid or received from Islamic finance return and Sukuk
- Disabled persons, this is in relation to materials, articles and equipment, including motor vehicles intended for the educational, scientific or cultural advancement
- Aircraft spare parts imported by persons engaged in the business of aircraft maintenance or operators but subject to the recommendations of the Cabinet Secretary in charge of the civil aviation
- Medical equipment and apparatuses for use in specialized hospitals with a minimum capacity of 50 beds upon the recommendation of the Health Cabinet Secretary
- Sharia compliant finance products, that is interest paid or received from Islamic finance return and Sukuk
- Disabled persons, this is in relation to materials, articles and equipment, including motor vehicles intended for the educational, scientific or cultural advancement
- Aircraft spare parts imported by persons engaged in the business of aircraft maintenance or operators but subject to the recommendations of the Cabinet Secretary in charge of the civil aviation
- Medical equipment and apparatuses for use in specialized hospitals with a minimum capacity of 50 beds upon the recommendation of the Health Cabinet Secretary
- Locally assembled tourist vehicles (subject to certain conditions as per the Finance Act, 2017)
- Inputs for the manufacture of pesticides upon the recommendation of the Agriculture Cabinet Secretary

Excise Duty Reforms

The Act has introduced new changes and also incorporates provisions provided for in the Finance Bill, 2017. All the stated provisions have been assented into law as of 21 June 2017.

Inflation rate adjustment

The Finance Act, 2017 has amended Section 10 of the Excise Duty Act, 2015 which provided for an annual adjustment of the Excise Duty rates into a biannual adjustment. This change is effective as of 1 January 2018.

Tax Procedures Act

Tax officers have been given powers to enter and search any premises or vessels and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law or tax appeals tribunal.
It is now possible to register a tax representative in the name of the nonresident person being represented effective 1 January 2018.

The Act also provides that a person may be a tax representative for more than one nonresident person, in which case the person shall have a separate registration for each nonresident person effective 1 January 2018. Additionally, a PIN (Preparer Identification Number) shall be issued by the Commissioner to the tax representative as per the Act.

According to the Finance Act, 2017, there is a provision for tax amnesty for income earned outside Kenya and this has been extended through 30 June 2018. Furthermore, the Act states that if there is no transfer for funds within the amnesty period, there shall be a five year period for remittance but a penalty of 10% shall be levied on the remittance.

Miscellaneous Tax Reforms

Increased Tax rates for betting, gaming and lottery enterprises

The Finance Act, 2017 has increased the tax rate for betting, gaming and lotteries operators to 35% of the total gross revenue effective 1 January 2018. This rate was initially 50% under the Finance Bill, 2017 but reduced by the Finance Act, 2017 as stated above.

Receivership

The Kenya Deposit Insurance Act, 2012 has been amended to give the Cabinet Secretary the power, under exceptional circumstances, to extend the term of receivership for a further period not exceeding twelve months. This provision allows the receivership period to be extended for a period not exceeding six months. The Act does not provide details as to when and which dates the said five year period would start but it is expected that it will lie in the permitted period for KRA to assess taxpayers that is the five year period.

Implications

The Act requires taxpayers and all respective parties to comply with the recent provisions and also monitor developments for the purpose of tax compliance to the tax regulations and laws provided for in the Finance Act, 2017. This is a positive step by the Government to improve tax collections and encourage investment in the key areas of the development.
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