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CERTIFIED PUBLIC ACCOUNTANTS
AUDIT | TAX | ADVISORY

2019 KENYAN FINANCE BILL



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Anant Bhatt LLP has prepared a brief report on the newly adopted 2019 Kenyan Finance Act. The information is intended to inform our clients & stakeholders, and should not be relied on for decision making puposes.

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THE FINANCE ACT, 2019

The Finance Act, 2019 (FA2019) has received assent by the President on 7th November 2019. The Act sets a number of foundational changes to the taxation collection measures in Kenya. The changes are in lieu with the government's Big Four Agenda. A number of changes have occurred in respect to Income Tax, Excise Duty, VAT, the Tax Procedures Act and Customs Duty.

1. INCOME TAX

INTRODUCTION OF DIGITAL INCOME TAX

effective date: 7/11/2019

The new Act now aims to increase the Kenyan taxation base by putting in place a tax on the digital market platforms. A market has been defined as: A platform which electronically enables a direct interaction between buyers and sellers, of goods & services.

A number of concerns still remain, such as, how exactly will this be enforced for international firms, or those who use VPN aided networks for added security? The Cabinet Secretary of the Treasury is due to shed light on the matter.

SAVINGS PLAN FOR HOME OWNERS

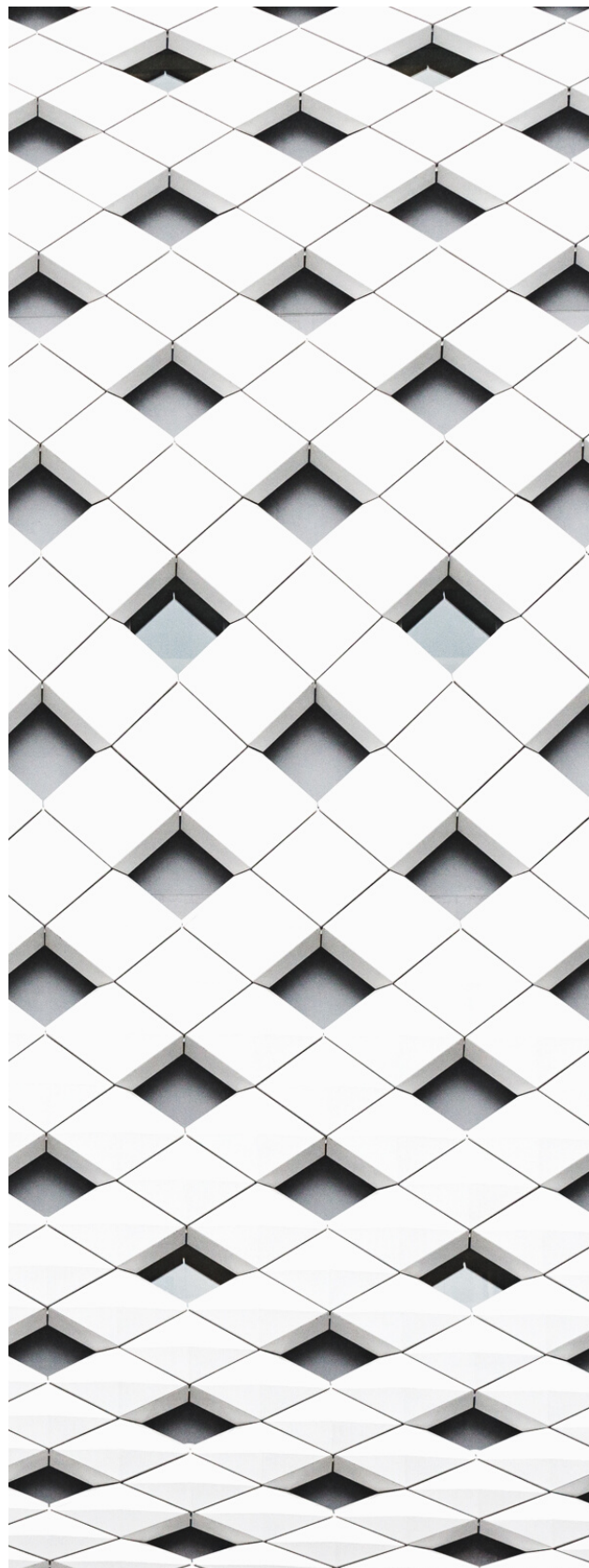
effective date: 1/1/2020

The Income Tax Act - Section 22C has been amended to see that all those who invest within a Home Ownership Savings Plan (HOSP) will consider and follow the set guideline rules of both the Capital Markets Authority, and the Central Bank of Kenya (CBK).

The Act seems to give a solution to the currently struggling Nairobi Stock Exchange (NSE) which is at a current low.



SOURCE: NAIROBI STOCK EXCHANGE (MARKET CAP.)



WHT ON NON-RESIDENT RE-INSURANCE PREMIUMS

effective date: 7/11/2019

Re-insurance premiums paid to non-resident companies of Kenya, now will be levy to WHT (plus the insurance premiums).

WHT ON BRANCH REPATRIATION, TO A HEAD OFFICE (NON-RESIDENT)

effective date: 7/11/2019

The new Act directs that 'Expenses' allowed by a Kenyan branch office to its non-resident head office under a Double Tax Agreement (DTA), will be subject to WHT.

TURNOVER TAX RE-INTRODUCED IN KENYA

effective date: 1/1/2020

Section 12C of the Finance Act re-introduces the turnover tax payable by resident companies. Residents whose annual turnover does not exceed Ksh 5 Million will be charged at 3% of gross business income. The Act indicates that persons liable to pay turnover tax, will also be liable to

pay presumptive tax. Since last year, presumptive tax has been an effective method of raising tax. As the situation stands, the presumptive tax will be offset from the final turnover tax payable to KRA.

NON-RESIDENT SHIP OWNERS FACE A DEMURRAGE TAX

effective date: 7/11/2019

The Finance Act states that If a non-resident of Kenya were to earn income from the delay in taking of goods, or the return of any equipment, they shall be liable to pay the normal resident taxation of 30%.

This precedent supersedes the previous law of 20% WHT on demurrage charges faced by non-residents.

REAL ESTATE INVESTMENT TRUSTS (REITS) TAXATION INCENTIVES

effective date: 7/11/2019

The Finance Act - Section 20(1), in order to support the expansion of REIT based investment flow, states that income tax of REIT investee companies will be exempt. This is a major boost, as previously only corporation tax was exempt.

THE AJIRA PROGRAMME

effective date: 1/1/2020

The Ajira programme is a government started initiative. It is an online portal that enables Kenyans to find work online, thus alleviating a number of barriers to entry that currently faces the youth.

The Finance Act incentives the programme by, exempting income tax for individuals registered for the programme for a period of 3 years, if registered.

However, a Ksh 10,000 registration fee is payable.



NHDF BASED INCOME TAX EXEMPTIONS

effective date: 1/1/2020

The Finance Act states that income and interest earned from the NHDF scheme will be exempt of income tax. Additionally, should a person withdraw money to invest in his/her *first* home, this amount shall also be exempt from income tax.

However, this exemption will only be available to the funds which are being used to support the infrastructure projects of Kenya (under the Green Bonds Standards), or other services listed. More so, the Act clarifies that income from the interest earned must be having a minimum maturity of 3 years.

CGT EXEMPTION AVAILABLE

effective date: 7/11/2019

The Finance Act (par. 8 schedule 13) aims to extend the availability of CGT exemption, for companies wishing to undergo internal restructuring procedures/corporate mergers. This exemption will not be available if restructuring procedures involve a property transfer to an external third party.

THIN CAPITALISATION AMENDMENTS

effective date: 1/1/2020

The Finance Act states that the general thin capitalisation restrictions will not be applied to those companies that undertake projects in the affordable housing scheme.

ENCOURAGING PLASTIC RECYCLING

effective date: 7/11/2019

The Finance Act takes a positive stand to boost environmental conservation by cutting the corporation tax rate for companies that recycle plastic to 15%, for the first 5 years.

TAXATION PENALTIES PAYABLE

effective date: 7/11/2019

Parliament in the Finance Act have decided to repealed section 72D of the ITA. This is good news for the tax payer as the rate was previously 20%, however in order to align with the 'Tax Procedures Act', the rate is now 5%.



2. EXCISE DUTY

INFLATION AMENDMENTS FOR EXCISE DUTY

effective date: 7/11/2019

The Finance Act has decided to give room for discussion and debate for the proposed inflation rates of excise duty rates. This has been done by moving the publication date from 1st July to 1 October.

BETTING ACTIVITIES TAXATION

effective date: 7/11/2019

The government has taken an important and pro-active step in discouraging Kenyans from engaging in betting activities. An excise tax of 20% will be placed on all bets, period.

DEFINING 'OTHER FEES'

effective date: 7/11/2019

The Finance Act has clarified a previously unclear definition of 'other fees'. Other fees now does not include the commission/fees a person may earn from the profit/loan/premium that have been made in the Insurance Act. Fees/commission which are not covered in the Insurance Act will be due for excise tax.

'GENERAL' PENALTIES THAT ARE NOW ENFORCEABLE

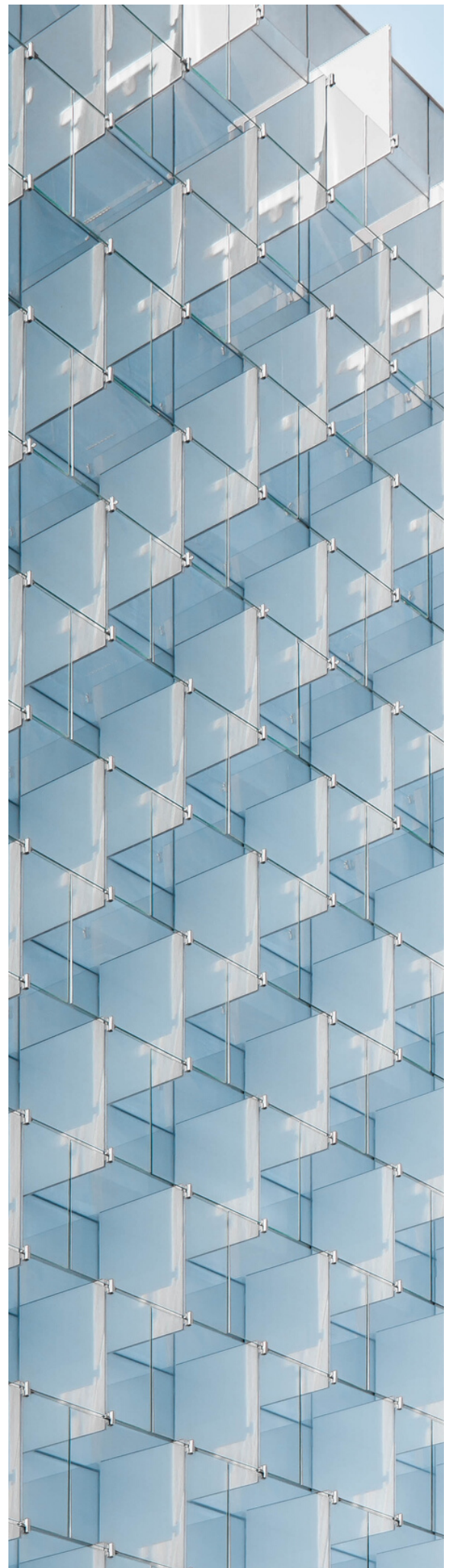
effective date: 7/11/2019

The Finance Act states that the general penalties for excise duty will be either; a fine not exceeding Ksh 2 million, imprisonment, or both. The penalty is such, only if the imprisonment term does not exceed 2 years.

REVISED EXCISE DUTY RATES

effective date: 7/11/2019

ITEMS	RATE
• Imported sugar confectionery under the tariff 17.04	Ksh 20/kg
• Motor vehicles under the tariff 87.02, 87.03 and 87.04	20%
• Motor vehicles (imported) exceeding 1500cc, under the heading 87.02, 87.03 and 87.04	25%
• Motor vehicles under the tariff 8703.24.90 & 8703.33.90	35%
• All imported gas cylinders	35%
• Imported chocolate (bars, blocs & slabs under the tariff 1806.31/32/90	Ksh 200/kg



3. VALUE ADDED TAX (VAT)

REVERSE VAT RE-INTRODUCED

effective date: 7/11/2019

The Finance Act has been updated to mean that; any person (registered/non-registered) in Kenya that imports a service, and is at such time not eligible for a complete input VAT claim, will be liable to pay reverse taxation.

INTRODUCTION OF DIGITAL VAT

effective date: 7/11/2019

Although, the regulation based guidelines are currently under consideration by the CS, the Act clarifies that income earned by means of a digital market place will be liable to pay the VAT.

ENVIRONMENTAL FOCUS

effective date: 7/11/2019

In order to further the cause of environmental conservation, the Act has exempted the supply of any plant and machinery that is being used in the construction of plastic recycling plants, from VAT charges.

ADDITIONAL VAT CHANGES *effective date: 7/11/2019*

IMPORT SERVICES TAXATION INCLUSION

effective date: 7/11/2019

The Finance Act states that any person who imports services, will be liable to pay VAT. One must now realize that the previous Ksh 5 million threshold will not be considered thus forth.

SERVICES/ITEMS	RATE
• Goods being moved from a SEZ for domestic use in Kenya will be deemed to have been imported into Kenya, and thus be subject to the normal VAT at the time of its removal from the zone.	16%
• Withholding VAT has been changed from its previous 6%.	2%
• Input items for electric accumulators and separators (including lead batteries of separator rolls, that are supplied to manufacturers of solar batteries)	0%
• Locally manufactured motherboards	0%
• Agricultural pest control items	0%
• Denatured ethanol	Zero rated



4. TAX PROCEDURES ACT

DEPARTURE PROHIBITION ORDER (DPO)

effective date: 7/11/2019

The Finance Act has been updated to include tax representatives of a company, to be subject to a DPO. Previously only the CEO, Managing Director, Company Secretary, Treasurer, Trustee, or similar office holder were subject within the DPO scope.

PIN REQUIREMENTS CLARIFICATION

effective date: 7/11/2019

The Finance Act has been updated to the commissioner the authority to exempt individuals from the PIN requirements, when opening a bank account within institutions. This move is aimed at making foreign investment flows better for Kenya.

AMNESTY FOR SMEs THAT ARE LISTED IN GEMS

effective date: 7/11/2019

GEMS is a domestic platform that supports smaller companies with little/no financial history to list upon the Nairobi Stock Exchange (NSE), in order to raise capital. The Finance Act has provided a amnesty for GEMS listed firms - on the penalties and interest payable for upto 2 years prior to listing.

LATE SUBMISSIONS & OBJECTIONS

effective date: 7/11/2019

The Finance Act indicates that the calculation for the late submission penalties will be by: offsetting the amount of tax payable with the withholding tax credits. More so, the time extension for an objection is 60 days, from the date the commissioner receives the required information before any decision is made.

TAX SHORTFALL PENALTY

effective date: 7/11/2019

The Cabinet Secretary has updated all such that; penalties arising from unintentional tax omissions will be excluded from the penalties calculation. Tax rate on the shortfall is 5 %.



Kenya Competitive Index | Source: World Economic Forum

5. CUSTOMS DUTY

IMPORT DECLARATION FEES (IDF)

effective date: 7/11/2019

The Finance Act has indicated that the import declaration fee on finished goods is 3.5%, and on raw materials (including intermediate products imported by approved manufactures, and those approved by the CS) is 1.5%.

RAIL DEVELOPMENT LEVY (RDL)

effective date: 7/11/2019

The Finance Act has indicated that the rail development levy on finished goods is 2%, and on raw materials (including intermediate products imported by approved manufactures by the CS) is 1.5%.

6. MISCELLANEOUS

STAMP DUTY

effective date: 7/11/2019

The Finance Act has indicated that any transfers relating to houses built in the Affordable Housing Scheme, from any developers in the national housing corporation, will be granted an exemption from the stamp duty payable.

THE HOUSING ACT

effective date: 7/11/2019

The Finance Act has put in place stringent penalties and repercussions for persons convicted within this Act. A person may pay a fine not exceeding Ksh 1 million, or imprisonment of 3 years, or both.

KENYA ECONOMIC OVERVIEW

Markets	Actual	Q4	Q1	Q2	Q3	2020
Stock Market (points)	2652.95	2623	2603	2584	2564	2525
Currency	101.85	103	104	104	104	105
Government Bond 10y (%)	11.75	11.75	11.96	12.16	12.37	12.81

Overview	Actual	Q4	Q1	Q2	Q3	2020
GDP Growth Rate (%)	1.25	1.6	1.7	1.7	1.6	1.7
GDP Annual Growth Rate (%)	5.6	5.7	5.3	5.4	5.6	5.8
Unemployment Rate (%)	9.3	9.1	9	9	9	9
Inflation Rate (%)	4.95	6.4	5.1	5.3	5.4	5.3
Interest Rate (%)	9	9	8.5	8.5	8	8
Balance of Trade (Million KES)	-83197	-92500	-83000	-83000	-93900	-85500
Current Account to GDP (%)	-5.2	-5.1	-4.9	-4.9	-4.9	-4.9
Government Debt to GDP (%)	57	62	64	64	64	64
Government Budget (% of GDP)	-6.7	-5.6	-4.8	-4.8	-4.8	-4.8
Corporate Tax Rate (%)	30	30	30	30	30	30
Personal Income Tax Rate (%)	30	30	30	30	30	30

Kenya Economic Forecasting | Source: World Economic Forum



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