KPMG

Statute Law (Miscellaneous Amendment) Act

Effective date – 4 May 2017

May 2017

Changes touching on taxation

Subject	Changes
Income Tax Act (ITA)	
Exemption from income tax Paragraph 45A of the First Schedule to the ITA	The income of the National Hospital Insurance Fund (NHIF) which is established under the NHIF Act, 1998 consisting of contributions and other payments into the Fund and income from investments is now exempt from tax. This provision provides clarity on the tax status of the NHIF, giving the fund a reprieve from tax on the fund's investment income which was previously not exempted. To make it more attractive to contribute to NHIF, the government should consider giving a tax credit/relief on contributions to the fund similar to those provided on life insurance premiums.
Investment deduction (ID) on construction of liquefied petroleum gas (LPG) storage facilities Paragraph 24C in Part V of the Second Schedule to the ITA	The amendment provides for ID of 150% on capital expenditure incurred in the construction of LPG storage facilities with a minimum capital investment of ***KES 4 billion*** and storage capacity of at least ***15,000 metric tonnes***. This incentive is designed to encourage investments in LPG infrastructure as one way of reducing shortages and possibly the cost of LPG. It is interesting that even as the government seeks to lure investments into LPG, in the Finance Bill, 2017 the Government has exempted LPG and LPG cylinders from VAT, which will increase their cost as it denies the suppliers the opportunity to claim input VAT on their purchases.
Value Added Tax (VAT)	
Exemption from VAT of supplies for LPG storage facilities Paragraph 30A (Goods) and 28 (Services) of the First Schedule to the VAT Act	The taxable supplies (goods and services) procured locally or imported for the construction of LPG storage facilities with a minimum capital investment of ***KES 4 billion*** and a minimum storage capacity of ***15,000 metric tonnes*** as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for LPG has been exempted from VAT. This is in line with the incentives offered under the changes in the ITA as stated above for purposes of encouraging investment in LPG infrastructure. However, an exemption rather than a remission or zero-rating favours importers more than local producers since the exemption denies the local suppliers an opportunity to claim input tax incurred to make the supplies, making their prices uncompetitive.
Excise Duty	
Exemption from excise duty Part I of the First Schedule to the Excise Duty Act, 2015	Locally assembled motor vehicles (passenger cars, minibuses and vehicles for the transportation of goods) and school buses for use by public schools falling under the tariff heading 87.02, 87.03 and 87.04 have now been excluded from excise duty. This incentive adds to the incentives given to new local motor vehicle assemblers under the Income Tax Act which are designed to grow the sector and make it one of the key contributors to economic growth.
Adjustment day Part III of the First Schedule to the Excise Duty Act, 2015	The adjustment day for purposes of adjusting the rate of excise duty has been clarified to mean the ***1st day of July*** of every year. This corrects a typographical error in the current legislation.

Miscellaneous Fees and Levies Act, 2016

Exemption for import declaration fee (IDF) and Railway Development Levy (RDL) Part A & Part B of the Second Schedule to the Miscellaneous Fees and Levies Act, 2016	The Cabinet Secretary has been empowered to exempt from IDF and RDL any goods which he has determined are in public interest or to promote investments whose value is not be less than ***KES 200 million***. One of the difficulties with the use of the term "public interest" is that it is open to multiple interpretations creating uncertainties on what investments qualify for exemption. Clarification on this issue will reduce uncertainties and prevent investors from making requests for exemption which are ultimately rejected because they do not meet the government definition of public interest.

Selected Changes from Other Acts

Insurance Act

Mandatory functions of the Insurance Regulatory Authority (the Authority) Section 3A(ha) & (hb) of the Insurance Act	The Act now requires the Insurance Regulatory Authority (the Authority) to: i) educate the public regularly on the right to independently select an underwriter or broker from a list of underwriters or brokers licensed by it; and ii) regulate the business of bank-assurance offered by banks in the same manner as the ordinary insurance business including enforcing capital and disclosures requirements. This may be seen as a way to prevent parties seeking insurance from being taken advantage of through the collusion between insurers, underwriters and brokers. In addition, it bring the various forms of insurance offered by banking institutions into the ambit of the regulatory provisions of the Insurance Act. This change provides for the regulation of bank-assurance services which have experienced exponential growth in the recent past.
Formulation and enforcement of standards for the conduct of insurance and reinsurance business in Kenya Section 3A(3) of the Insurance Act	The Authority is now required to publish standards formulated for the conduct of insurance and reinsurance business in Kenya. It may also provide for the punishment of a person who contravenes any of the standards by imposing a fine not exceeding ***KES 5 million*** or to imprisonment for a term not exceeding five years or to both.
Placing risks with unregistered insurers and reinsurers Section 20(4) of the Insurance Act	The penalty for an insurer, broker, agent or other person who directly or indirectly places any Kenya business other than reinsurance business with an unregistered insurer has been increased from ***KES 10,000*** or to imprisonment for a term not exceeding one year to ***KES 5 million*** or to imprisonment for a term not exceeding five years.
Choice of insurer for loans Section 71A of the Insurance Act	Banks when advancing loans to customers are now required to inform the customer in writing of the customer's right to select an insurance underwriter or broker of their choice. The customer may choose in writing to forfeit this right, at which point the bank can appoint an underwriter or broker of their choice. Banks that contravene this provision will be liable to a fine not exceeding ***KES 5 million***. This provision aims to level the playing ground especially in the bank-assurance business, ensuring that banks do not exercise a carte blanche right to appoint brokers of their choice.

Minimum capital requirements Paragraph 3 of the Second Schedule to the Insurance Act	The timelines for compliance with the minimum capital requirements for insurers has been extended from 30 June 2018 to 30th June, 2020.
Advocates Act (Cap 16)	
Registration requirements (Section 2A)	Going forward, the Law Society of Kenya is required to issue to each practising advocate a stamp or seal bearing the advocate's name, admission number and the year of practise. This seal is to be affixed to every professional document drawn by the advocate to be lodged in any registry in Kenya or to be used for any other purpose. A professional advocates who in any one year fails to take out a practising certificate commits an act of professional misconduct which opens them to sanctions. However, the fact that a practising advocate does not have a valid practising certificate does not invalidate any documents (pleadings, affidavits, deeds etc) drawn by that advocate.
Business Registration Service Act	
Functions of the Service Section 4(1) of the Business Registration Service Act, 2015	The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws, and other matters relating to: a) the registration of Companies, partnerships and firms; b) individuals and corporations carrying on business under a business name; c) bankruptcy; d) hire-purchase; and e) chattels transfers This amendment effectively consolidates the functions of the Business Registration Service as per the provisions introduced by the Act in 2015 and conform it to the subsequent regulatory changes.
Companies Act	
Amendments to the register of members Section 93(9) of the Companies Act, 2015	The Companies Act required that all companies lodge with the Registrar a copy of any amendment to its register of members within fourteen days after making the amendment. Given the logistical challenges facing public companies, this provision has now been amended to exclude public listed companies from the requirements of this provision.
Functions of the Attorney-General transferred to the Director-General Section 245(1) & (2) of the Companies Act, 2015	The enforcement requirements for a public company to have at least one secretary have been transferred to the Director-General of the Service as provided under the Business Registration Service Act, 2015. This amendment appears to have been advised by the fact that this aspect of enforcement appears to be administrative rather that legal.
Nominal value of a public listed company Section 518 of the Companies Act, 2015	For the purposes of the requirement for minimum share capital and the procedure for obtaining trading certificate for a public company, the authorised minimum nominal value of a public listed company's allotted share capital is ***KES 6,750,000***. This provision corrects a typographical error in the current legislation.

Power of limited company to issue redeemable shares Section 520 of the Companies Act, 2015	A company with ordinary share capital is now able to issue redeemable shares. Previously, the Act appeared to bar companies with ordinary share capital from issuing redeemable shares. This change cures this anomaly in the legislation.
The Kenya Information and Communications Act, 1998	
Premium rate services (Section 3A and 3B)	All telecommunications operators are required to inform subscribers before levying or allowing to be levied any charges for premium rate services. The notification should include details on the service, the amount and frequency of the charge.
The Kenya Citizenship and Immigration Act, 2011	
Citizenship through marriage (Section 11)	In addition to the requirement that a person seeking citizenship by virtue of marriage to a Kenyan citizen must have been married to a Kenya citizen for a period of seven years, there is an additional requirement that such a person should have acquired residency status in Kenya prior to making the application.
Stateless persons and immigrants (Section 15 and 16)	Stateless persons and immigrants who have been lawfully resident in Kenya since 12 December 1963 will now be eligible to apply for citizenship in Kenya with seven years from the commencement of the Act (30 August 2011) an increase of 2 years from the five years initially prescribed under the Act.
Permanent residency (Section 37) – Widows, widowers and dependant of Kenya citizens	Widows and widowers of Kenya citizens are eligible for permanent residency in Kenya. Dependants of Kenyan citizens who are born outside Kenya are also eligible for permanent residency in Kenya.
Work permits (Section 40) - Remedies in case of rejection of application	Previously, persons whose work permits were rejected by the Permits Determination Committee (PDC) had recourse in the High Court. This has now been amended to allow such persons to appeal to the Cabinet Secretary for review of the decision within 90 days of receipt of the PDC decision. If the applicant is not satisfied with the decision of the Cabinet Secretary, he can appeal the decision to the High Court for determination.

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