The National Government has now introduced several bills to the National Assembly seeking to give effect to the revenue raising measures contained in the Budget Statement.

Budget 2015: Tax measures and other amendments

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A look at the Finance Bill, 2015 and other proposed revenue raising legislative changes.

Foreword

Following the Budget Statement for the Fiscal Year 2015/2016 delivered by the Cabinet Secretary, National Treasury on Thursday 11 June 2015, the National Government has now introduced several bills to the National Assembly seeking to give effect to the revenue raising measures contained in the Budget Statement. This is in a bid to finance over KES 2 trillion budgeted expenditure.

The bills released include: **The Finance Bill, 2015; The Excise Duty Bill, 2015; The Miscellaneous Fees** & **Levies Bill, 2015; The Tax Procedures Bill, 2015;** and **The Betting, Lotteries and Gaming (Amendment) Bill, 2015.**

We provide an overview of the proposed changes to the tax legislation contained in the bills, followed by a more detailed analysis of the changes and the impact they may have on your business.

The changes are intended to accelerate growth, create employment and ease the cost of living for Kenyans.

Overview of proposed changes

The Finance Bill, 2015

Proposed VAT changes

The changes to the Value Added Tax Act, 2013 will be deemed to have come into operation on 12 June 2015 by virtue of the Provisional Collection of Taxes and Duties Order.

The proposed changes to the VAT Act, 2013 are aimed at fast tracking the government's Vision 2030 strategy. The focus seems to be on industrialisation, creation of employment, streamlining of administrative procedures and making local industries competitive while encouraging sustained growth in the services sector.

In this regard, certain goods have been exempted from Value Added Tax (VAT) e.g. aircraft engines, aircraft parts, plastic bag biogas digesters and parts for the assembly of primary school laptop tablets. Also exempted from VAT are taxable goods and taxable services for use in official aid funded projects; or by Kenya Film Commission; or in the construction of industrial and recreational parks subject to specified conditions.

Supply of taxable services in respect of goods in transit have now been zero rated; these services were previously exempted from VAT. Further, purchases from duty free shops are now zero rated.

The Finance Bill 2015 seeks to restrict the time limit within which refund claims can be lodged to 12 months from the date the refund becomes due and payable. The repealed VAT Act, Cap 476, allowed registered persons a similar period with an option of applying for an extension of time up to 24 months. No such extension is provided for under VAT Act, 2013.

Proposed income tax changes

The Finance Bill contains a number of proposed amendments to the Income Tax Act which, if passed by the National Assembly, will take effect on 1 January 2016.

Rental income not exceeding KES 10 million annually will be subject to a tax referred to as 'residential rental income tax'. A landlord may elect to have his rental income taxed in accordance with the rest of the Income Tax Act. The promise of amnesty for unpaid taxes, penalties and interest on undisclosed rental income has been entrenched into the Act.

Rent payments made to resident landlords in relation to immovable property will be subject to withholding tax. The Commissioner has the power to appoint an agent in writing to deduct the withholding tax on the rental income. This is likely to target real estate agents who often act as liaison between tenants and landlords.

Gains on transfer of NSE listed securities will be subject to a 0.3% withholding tax on the gross value of the shares to be deducted and accounted for by the stockbrokers as a final tax. Further, a lower corporation tax rate of 25% has been introduced for a company listing its shares through introduction.

The tax free threshold for land transfers has been revised to reflect current market realities. Capital gains made on the transfer by an individual of land worth less than 3million and agricultural land measuring less than 50 acres shall not be subject to tax. An attempt to prescribe the due date for tax on capital gains on immovable property has been made, the tax is due on or before the date of application for the transfer of the property is made at the relevant Lands Office.

The Cabinet Secretary in his speech proposed to extend the period investors are allowed to carry forward losses without requiring his consent from 5 to 10 years. However, the Finance Bill has not properly amended the Act to reflect this change. The five year period has not been deleted as the proposed amendment only allows the Cabinet Secretary, on application, to extend the losses beyond 10 (currently 5) years. Hopefully this is a drafting error which will be corrected in the Finance Act.

The film industry has cause to celebrate as payments made to non-resident film actors and crew members by approved producers will be exempt from currently applicable withholding tax of 20%. Further, a 100% investment deduction has been introduced for building in use for the training of film producers, actors or crew.

Employers of at least ten university graduates employed as apprentices for 6 – 12 months will enjoy tax rebates in the following year; rules to implement this will follow.

Of interest to investors is that the 150% investment deduction on construction of building or purchase of machinery worth KES 200 million or more located outside the cities is revoked.

Payments to non-resident mining subcontractors will now be subject to withholding tax at the rate of 5.625% (this is final tax) on the gross amount of the service fees. This aligns the taxation of mining subcontractors to that of the oil and gas subcontractors in the extractive sector.

The Finance Bill also proposes amendments to the Stamp Duty Act, the Insurance Act, the Banking Act, the Road Maintenance Levy Fund Act, the Retirement Benefit Act, The proceeds of Crime and Anti Money Laundering Act, the Kenya Deposit Insurance Act and the Tax Appeals Tribunal Act as highlighted below.

Other Legislation

The Excise Duty Bill, 2015

The Excise Duty Bill, 2015 has now been presented to the National Assembly for enactment into law. The bill is an updated version of the Excise Duty Bill, 2014 which was released by the National Treasury last year.

The objective of the law is to consolidate the provisions on the imposition and collection of excise duty into a separate law in order to allow for the repeal of the Customs and Excise Act. A few drafting errors in the bill require correcting, but overall, the proposed excise law is positive and a step in the right direction.

The Bill has streamlined and simplified the law on excise duty applicable in Kenya. The Bill introduces some major changes, e.g., shift to a specific rates structure, in-built inflationary adjustments and reduced list of excisable goods and services. Surprisingly, excise duty has been introduced on some classes of motor vehicles such as ambulances and hearses. In line with the Budget Statement, the Bill grants remission to certain alcoholic products made from local agricultural products.

Most of the matters of administrative procedures have been moved to the proposed Tax Procedures Bill. We expect that regulations will be issued to cater for specific matters not contained in the Tax Procedures Bill.

Deepening tax administration reforms to ease compliance and reduce the cost of doing business.

All the above notwithstanding, unless there is some inbuilt rate increase in the specific rate structure and the inflationary adjustments, it is difficult to identify what measures in the bill will lead to the significant increase in excise revenue of KES 25 billion envisaged by the Cabinet Secretary in the Budget Statement.

The Miscellaneous Fees and Levies Bill, 2015

This is a new piece of legislation which aims to provide the legal basis for charging Export Levy, Import Declaration Fee (IDF) and the Railway Development Levy (RDL). All these levies are currently anchored in the Customs and Excise Act which is set to be repealed. It is within this bill that the rate of IDF is reduced to 2%.

The Tax Procedures Bill, 2015

This bill seeks to harmonize the procedural rules administering the Income Tax Act, the Value Added Tax Act and the Excise Duty Act (awaiting legislation). This 2015 bill has updated the 2014 version of the bill with some changes to the current procedures. These include revoking the requirement to pay 30% of the tax in dispute before appeal to the tax appeals tribunal. What is required now is payment of the uncontested tax only. A provision has been incorporated to allow for settlement of disputes out of court or tribunal, this change sets the scene for the alternative dispute resolution agenda that the Kenya Revenue Authority plans to implement soon.

Of interest to tax practitioners is the inclusion of a new offence for a tax agent who assists a taxpayer to create a tax avoidance scheme or abets or aides a taxpayer to evade tax. Further, a fraudulent tax refund claim will be subject to a penalty twice the amount of the claim.

Rules are easier to apply and comply with if they are standardised and consolidated into a single source and the proposed bill will no doubt remove the burden of taxpayers having to contend with several pieces of legislation with markedly different procedures.

In our view, once passed into law, the proposals will aid in simplification and effective administration of various tax procedures and tax administration in

Kenya. That said, there are some drafting and transition issues that the consolidation of various procedures for taxes, that are based on different principles, has un-intentionally occasioned. It is expected that this will be addressed before the bill is enacted into law.

The Betting, Lotteries and Gaming (Amendment) Bill, 2015

The Betting, Lotteries and Gaming (Amendment) Bill, 2015 seeks to amend the principal statute to provide for the payment of tax on the gross revenues / turnover received from betting, gaming, lottery activities and prize competitions controlled and licensed under The Betting, Lotteries and Gaming Act.

This bill seeks to introduce a betting tax, lottery tax, gaming tax and prize competition tax. The proposed rate of tax varies between 5% and 12% of the gross turnover depending on the activity in question. This tax is due on the 20th day of the following month of collection of the revenue. It is also not clear whether this is a final tax.

The objective of this change is to bring into the tax net operators of these activities, however, it is not clear how these taxes will be enforced or the interplay with the general business taxation regime under the Income Tax Act. We will issue a more detailed analysis of this in a separate alert.

Proposed Customs Duty Changes

The Cabinet Secretary in the Budget Statement proposed changes to the Customs legislation seeking to protect local industries, ease international trade and facilitate better service delivery by government. These changes are contained in the EAC Gazette No. 9 of 2015.

We shall issue a separate alert on this.

> *"The potential of our gaming industry to create gainful employment and generate revenue for the government and private sector remains untapped in our country"*
>
> Budget Statement, 2015/2016

Detailed analysis

The Finance Bill, 2015

Income Tax changes

The following are the proposed amendments to the Income Tax Act. If passed by the National Assembly, the effective date for all the changes is 1 January 2016.

Residential rental income tax

In a bid to broaden the tax net and simplify tax administration, the Finance Bill proposes to introduce a 'residential rental income tax' applicable to annual rental income of less than KES 10 million received by a resident person. The Cabinet Secretary in his Budget Statement referred to a tax rate of 12% of the gross rental income however, the Finance Bill did not provide for the rate of tax. This is most likely an error which will be corrected in the Finance Act. Notably, the Cabinet Secretary has the power to prescribe rules to give effect to this tax.

A taxpayer may, by notice to the Commissioner, elect out of residential rental income tax in which case the rental income will be taxable in accordance with the other provisions of the Act i.e. at 30% on the tax-adjusted profits. This election provides a leeway for affected taxpayers to carry out some tax planning to establish the more tax efficient method of taxing their rental income.

Further, the Finance Bill proposes a tax amnesty granting a waiver of the principal tax, penalties and interest on undeclared rental income earned by an individual landlord in 2013 and prior. In respect to 2014 and 2015, the waiver only extends to the penalty and interest upon payment of the principal tax and tax returns submitted by June 2016.

Withholding tax on rent payment to resident persons

The Finance Bill proposes to extend the obligation to withhold tax on rental payments made to resident persons. Currently, withholding tax only applies to rent payments made to a non-resident person. The proposed amendment imposes an obligation to withhold tax on the person making payment for rent, premium or other consideration for use of property or an agent appointed by the Commissioner in writing.

Capital Gains Tax

Listed shares

The Eighth Schedule of the Income Tax Act imposes an obligation on stockbrokers to collect and remit tax on the gain made by their clients on the sale of listed shares. This has been a controversial provision which is the subject of ongoing litigation. In an attempt to resolve the issues raised by the stockbrokers, the Finance Bill proposes to introduce

Facilitating private sector growth to accelerate industrialisation and the creation of jobs.

a final withholding tax of 0.3% on the gross value of the shares to be deducted and remitted to the Kenya Revenue Authority by the stockbrokers.

Gains on unlisted shares will continue to be taxed at 5%.

Exemptions from CGT

In recognition of the current market realities, the value of land that can be transferred by an individual without CGT liability has been increased hundred fold from KES 30,000 to KES 3 million. On the other hand, the maximum acreage of agricultural land situated outside the urban areas that an individual can sell without triggering CGT has been reduced from 100 acres to 50 acres or less.

Transfers of assets to immediate family members as part of a divorce settlement or bona fide separation agreement will also be exempted from CGT. In recognition of the length of time that succession cases take, the exemption from CGT for the transfer of such assets shall be applicable for two years after the date of finalisation of the court case.

Due date for CGT

In relation to gains made from the transfer of property other than listed shares transferred by individuals, the Finance Bill prescribes the due date for CGT as being on or before the date of application for transfer of property at the relevant lands office. The proposed amendment seems to limit itself to land transfers, an attempt has been made to prescribe a due date for unlisted shares in accordance with the withholding tax due date i.e. 20th of the month following the month of deduction of tax, however this needs to be clarified.

Losses carry forward period extended to 10 years

Though the intention was to extend the period within which losses can be utilised from 5 to 10 years, the proposed changes to the Income Tax Act do not achieve this. If effected as it is currently, the amendment allows Commissioner to extend the tax losses period beyond ten years (currently five years). Hopefully, this will be corrected before the Finance Bill is passed into law.

150% investment deduction abolished

The Income Tax Act currently provides for an enhanced investment deduction of 150% on capital expenditure incurred on construction of building and installation of machinery made outside the city of Nairobi and municipalities of Mombasa and Kisumu provided the investment is more than KES 200 million. The Finance Bill proposes to abolish this incentive making any such investment subject to a 100% investment deduction.

Enhanced capital allowances for ships

Ships of 125 tons (currently 495 tons) will enjoy a shipping investment deduction of 100% (currently 40%). This change will interest investors in the maritime industry at a time when the government is investing heavily in the construction of additional ports.

Reduced corporation tax rate

To encourage a more vibrant exchange, the Finance Bill proposes to introduce a reduced corporate tax rate of 25% for a company listing its shares by introduction. This cheaper option of listing will likely attract more companies to list their shares on the NSE.

Withholding tax on payments to film actors and crew members

Payments made to approved non-resident actors and crew members will be exempted from withholding tax. Withholding tax is currently applicable at the rate of 20%. This is a dual effort to attract foreign film industry players to develop this industry in Kenya and also to indirectly boost the tourism sector.

Tax rebates to employers hiring university graduate apprentices

Employers who hire at least ten university graduates as apprentices for a period of six to twelve months shall be eligible for a tax rebate. The Cabinet Secretary is empowered to make rules to provide for the application of this tax rebate.

Standardised withholding tax rates for the extractive sector

Similarly to the oil and gas subcontractors, payments to non-resident mining subcontractors will also be subject to a final withholding tax of 5.625% of the gross amount of the service fees. This aligns the taxation of subcontractors within the extractive sector.

Withholding tax on training fees

Training fees paid to non-resident entities by a oil and gas company will be subject to a lower withholding tax rate of 12.5%, down from 20%, on the gross amount payable. This amendment will harmonise the rate of withholding tax on training services, management or professional services. However, as drafted, it is unclear whether this change only applies to payments made by a mining company.

Rehabilitation fund income

Mining companies are currently allowed to make tax-deductible contributions to an approved rehabilitation fund to cater for any future remedial action covered by their mining rights. The amount accumulated in the fund is currently exempted from tax. The Finance Bill 2015, proposes to extend this exemption to interest and investment income earned by the fund.

Prior year's omitted deletions from the Income Tax Act

The 2014 Finance Act repealed the withholding tax on the sale proceeds of property and shares and replaced this with a tax on the gain. Some provisions

relating to the withholding tax regime were not deleted creating some confusion.

The Finance Bill 2015 has now addressed this issue by deleting the provisions. However, the proposed deletion are slated to take effect from 1 January 2016. We hope that the effective date of the Finance Act will address this issue properly.

Definition of certain terms

The term 'petroleum operation' has been defined to mean operations that have been authorised under a petroleum agreement and 'petroleum information' is defined to mean information relating to petroleum operations.

Focus on making local industries competitive while encouraging sustained growth in the services sector.

Value Added Tax changes

The following are the proposed amendments to the Value Added Tax Act. All these changes will be deemed to have come into effect on 12 June 2015 by virtue of the Provisional Collection of Taxes and Duties Order.

Time limit for lodging VAT refund claims

The Value Added Tax Act does not currently provide the time limit within which VAT refund claims can be lodged with the Kenya Revenue Authority ("KRA"). The Finance Bill 2015, proposes a period of 12 months from the date the refund becomes due and payable. Unlike under the repealed VAT law, Cap 476, extension of this period is not possible.

An area which remains unaddressed by the VAT law or the Tax Procedures Bill relates to the introduction of a period within which the KRA must pay the VAT refund claims or introduction of interest payable by KRA on outstanding VAT refunds.

Zero rating of supply of taxable services in respect of goods in transit

In order to restore competitiveness of Kenyan transport service providers and encourage sustained growth in the transport sector, the Finance Bill proposes to zero-rate the supply of taxable services in respect of goods in transit.

The Finance Act, 2014 exempted such services from VAT which resulted in increased costs associated with non-recoverable VAT for suppliers providing services in relation to transit goods. We anticipate that zero-rating of these services will allow the suppliers to recover all their input VAT and thereby reducing the cost of transport services.

Goods purchased from duty free shops

The Finance Bill proposes to zero-rate goods purchased from duty free shops by passengers departing from Kenya to destinations outside Kenya. This is a welcome clarification.

Duty free shops will now be entitled to input tax deductions in relation to the VAT incurred on the importation or local purchase of taxable goods or services. This may give rise to regular VAT refund claims which will need to be managed.

VAT exemption of inputs for the assembly of school laptop tablets

The Finance Bill proposes to exempt from VAT inputs imported or purchased locally for the assembly of primary school laptop tablets. This is subject to approval by the Cabinet Secretary for the National Treasury on recommendation by the Cabinet Secretary responsible for matters relating to information technology. This exemption relates to primary school laptop tablets only.

Commissioner can appoint additional withholding VAT agents

Government ministries, departments and agencies are designated withholding VAT agents under the VAT Act. The Commissioner can now appoint other additional persons to withhold VAT. Expansion of the withholding VAT law ignores the globally accepted principle of VAT collection and remittance being done by the supplier.

Unfortunately, the Finance Bill has not provided clarity on the base value for the calculation of withholding VAT; whereas the VAT Act refers to 6% of the tax payable, KRA have insisted that the 6% is based on the taxable value.

Incentives introduced for the film industry

In a bid to promote the film industry in Kenya, the Finance Bill proposes to exempt from VAT taxable goods and services imported or locally purchased for use by the Kenya Film Commission subject to approval by the Cabinet Secretary for the National Treasury. A bigger impact may be felt if the exemption is made available to the entire film making industry. The Cabinet Secretary also promised to set up a fund to provide rebates on expenses incurred by film producers, this proposal is yet to be legislated.

VAT exemption for construction of industrial and recreational parks

The Finance Bill proposes to exempt from VAT taxable goods purchased locally or imported and taxable services for direct and exclusive use in the construction and infrastructural works in industrial and recreational parks of 100 acres or more approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for industrialisation. However, VAT exemption results in non-recoverable VAT for the suppliers and leads to an eventual increase in project costs to absorb the non-recoverable VAT.

Exemption from VAT of aircraft engines and spare parts

The Finance Bill also proposes to exempt from VAT aircraft engines, aircraft spare parts and new pneumatic tyres of rubber for use on aircraft. Other than aircraft spare parts of tariff number 8803.30.00 which are currently exempt from VAT, the said items were previously taxable at 16 % resulting in huge refund claims by aircraft operators or persons involved in the business of aircraft maintenance. It is expected that this proposal will reduce the amount of future refund claims.

Supplies to official aid funded projects to be exempted

The Finance Bill proposes to exempt from VAT taxable goods (excluding motor vehicles) imported or purchased locally and services for direct and exclusive use in the implementation of official aid funded projects. This is subject to the approval of the Cabinet Secretary of the National Treasury. In the repealed VAT law, these were under VAT remission.

Exemption of plastic bags biogas digesters

To promote green energy and provide Kenyans with affordable alternative sources of energy for domestic use, the Finance Bill proposes to exempt from VAT plastic bag biogas digesters.

Zero-rating of motor vehicle imports for returning residents

Returning residents who own left-hand drive (LHD) vehicles will be allowed to import replacement right-hand drive (RHD) motor vehicles of equivalent value duty free and zero-rate for VAT. This is subject to certain prescribed conditions such as proof of ownership of LHD vehicle abroad for at least 12 months; proof of disposal of the previously owned LHD vehicle before changing residence and where

The Government will continue to heavily invest in the infrastructure development particulalrly the road network.

the LHD vehicle is sold and replaced, the RHD shall be similar to the previously owned LHD in make, engine rating and year of manufacture. This is a welcome move for returning Kenyan residents who own LHD motor vehicles as Kenya is a RHD country.

Deletion of goods of HS Code 3004.90.10 and 3004.90.90 from the VAT Act

The above tariff numbers were merged into tariff number 3004.90.00 under the East Africa Customs Management Act (EACCMA). Tariff number 3004.90.00 is already exempted under the VAT Act so this change merely seeks to align the tariff numbers under the VAT Act with EACCMA.

Definition of "supply of imported services" amended

The Finance Bill has amended the definition of supply of imported services to exclude supplies made to a non-registered person. This is a correction of an error existing in VAT Act, 2013 which defines supply of imported services to include among others "supplies by a non-registered person to another non-registered person".

VAT on petroleum products

The VAT Act, 2013 provided exemption from VAT for refined and crude petroleum products on a transitional basis for three years. This period will expire in September 2016. The Finance Bill has not extended this period, if this is not extended by the end of the transition period then these products will be subject to 16% VAT from October 2016.

Other legislative changes

Changes to the Road Maintenance Levy Fund Act

An amount of 3 shillings per litre of petroleum sold shall be paid into the Road Annuity Fund established under the Public Finance Management Act, 2012. This is aimed at fundraising for the expansion of the road network in the country.

The effective date for this change is 1 October 2015.

Changes to the Tax Appeals Tribunal Act

As part of the objective of simplifying tax legislation with the aim of improving tax compliance and easing tax administration, the Government enforced the Tax Appeals Tribunal Act on 1 April 2015, thereby harmonising and consolidating the tax appeal process.

The Finance Bill seeks to extend the time within which the tax tribunal is required to hear and determine inherited cases which were filed with the legacy quasi-judicial appellate bodies to one year. Further, the tribunal can, within its first year of sitting, extend the period provided for hearing a fresh appeal by an additional 60 days.

The effective date for this change is 1 October 2015.

Ongoing tax modernisation agenda: "introducing a simple and modern stand-alone Excise Bill incorporating international best practices."

CS, National Treasury

The Excise Duty Bill, 2015

What is excisable?

The Excise Duty Bill sets out the supplies subject to excise duty under its First Schedule. Some notable additions are motor cycles, electronic cigarettes and some classes of motor vehicles including ambulances, hearses and unassembled motor vehicles. In addition, the bill has extended the definition of money transfer services to include withdrawal of money and has classified motor vehicles into two categories according to age; those less than three years will be subject to excise duty at KES 150,000 per unit while those over three years will attract an excise duty of KES 200,000.

Insurance premiums, cosmetics and computers have been excluded from excise duty.

Simplification of excise duty administration

There is a deliberate move to specific rate of excise duty making it simpler to administer the tax. The bill moves away from ad valorem (percentage of value) and hybrid (a mix of percentage and specific rate of duty) to specific duty structure for all excisable goods except food supplements. The duty is based on the number of excisable units delivered. This proposed change disregards the price of the goods and will impact the cost of the products especially the cheaper variety.

Inflationary adjustment

The bill requires the Commissioner to adjust specific rate of excise duty annually to take into account inflation through a notice in the Gazette. This will take into account the general rise in price levels.

The adjusted rates will be computed based on the formula below:

A x B

where:

A *is the rate of excise duty on the day immediately before the adjustment day;* and

B *is the adjustment factor calculated as one plus annual average rate of inflation of the preceding financial year.*

Variation of rate of duty

The Cabinet Secretary has the power, by order in the gazette and subject to parliament's approval, to vary the rates of excisable items; however, he cannot impose excise duty on any goods or services that are not excisable in the Act.

The Cabinet Secretary may increase or decrease any rate of excise duty on excisable goods or services by an amount not exceeding twenty-five per centum of the rate set out in respect of those goods or services in the First Schedule. This will be subject to the National Assembly passing a resolution approving the change.

Move from tariff classification to mere description

Some of the goods listed in the First Schedule have no tariff numbers. This is likely to create uncertainty as to the chargeability to excise and the applicable rate.

Unfulfilled promises:… "bottled water and all other goods that have no harmful effect, will not be subject to excise duty."

Excisable value

The excisable value of goods manufactured or services supplied in Kenya at arm's length is the price payable. In any other case, the excisable value is the open market value which is the price they would fetch in an arm's length transaction at the wholesale level. In the event of a difficulty in determination of the value, the Commissioner is empowered by the Bill to determine the same based on generally accepted principles of valuation. This provision may be contentious as no further guidance is provided on what generally accepted principles of valuation consist of.

Price control

The Bill provides that excise duty shall have effect on excisable goods or services irrespective of any existing price controls or price regulation in force at the time of imposition of the excise duty. Certain petroleum products, insurance brokerage and insurance agency are some of the items whose prices or fees are fixed by law.

Remission of excise duty on beer and wines made from local agricultural products

The Bill empowers the Cabinet Secretary to remit excise duty wholly or partly in respect of beer or wine made from agricultural products, excluding barley, grown in Kenya. The Cabinet Secretary shall specify conditions to be met and the products which qualify for the remission.

Application of the Tax Procedures Bill

The Tax Procedures Bill, 2015 shall apply for the purposes of the administration of the Excise Duty Bill. This is a departure from the current structure of the Act which contains its administration procedures.

Penalties

Penalties under the bill have been streamlined and for most offences constitutes a penalty of double the tax payable. However, offences relating to licensing and excise control will attract a fine not exceeding KES 5 million or imprisonment for a term not exceeding three years or both.

Tax avoidance schemes

The Bill includes an anti-tax avoidance provision relating to excise duty schemes aimed at avoiding excise duty. This provision is similar to that included in other recently enacted tax laws.

Transitional provisions

Provisions relating to RDL and IDF

The bill states that the provisions relating to Railway Development Levy (RDL) and Import Declaration fees (IDF) in the Customs and Excise Act and subsidiary legislation shall continue to apply until those levies are enacted in another law.

Regulations

After the new excise law comes into effect, the subsidiary legislation under the current Act shall continue to apply in so far as it is not inconsistent with the provisions of the Excise Duty Act until new regulations are published under the new excise law.

Unfulfilled promises…

Excise duty only on 'harmful' products

The bill retains bottled water and fruit juices as excisable products despite the promise by the Cabinet Secretary in the budget statement that non-harmful products will not be subject to excise duty.

Harmonisation of the financial sector fees

The bill failed to address key concerns arising from the financial services sector with the introduction of excise duty on money transfer services and other fees charged by financial institutions. The bill does not provide clarity on what fees are chargeable to excise duty.

Certain drafting irregularities

The bill contains certain drafting errors especially in relation to the cross referencing of sections. Some examples are section 6 (5) which refers to section 34 instead of section 35, section 9 (6) to item 7 of part III which does not exist and the interpretation of the open market value under section 2 refers to section 4 instead of section 3. Hopefully, all these will be corrected before the bill is enacted into law.

Summary of the main changes in the rates of excise duty

Item	Current Rate	Proposed Rate under the Bill	Comments
Juices & carbonated drinks	7% of ex-factory selling price	KES 10 per litre	Effect depends on the cost of the juice/drink.
Waters and non-alcoholic beverages	Either KES 3 Per litre or 5% of ex-factory selling price (EFSP)	KES 10 per litre	Excise charge on non-harmful products contrary to expectations.
Beer	KES 70 per litre or 50% of EFSP	KES 100 per litre	Price insensitive resulting in potentially higher cost of cheaper beers, could be subject to remission.
Wines	KES 80 per litre or 50% of EFSP	KES 150 per litre	Price insensitive resulting in potentially higher cost of cheaper wines, could be subject to remission.
Spirits	KES 120 per litre or 35% of EFSP	KES 175 per litre	Price insensitive resulting in potentially higher cost of cheaper spirits.
Cigarettes	Percentage of EFSP or Per mille	Per unit	Price insensitive resulting in potentially higher costs of cheaper cigarettes.
Plastic shopping bags	50% of EFSP	KES 120 per Kg	
Motor vehicles	20% of Excisable value	Age based - Less than3 years - KES 150,000 per unit; Over 3 yrs - KES 200,000 per unit	
Motor cycles	Nil	KES 10,000 per unit	

The Miscellaneous Fees and Levies Bill, 2015

Import Declaration Fee

This bill provides for the imposition of import declaration fees (IDF) at a reduced rate of 2% from the current rate of 2.25% of the customs value of all goods imported into Kenya. IDF remains payable by the importer at the time of importing the goods into Kenya for home use.

The bill provides that IDF on goods imported under the East African Community Duty Remission Scheme shall be a flat rate of KES 10,000 at the time of importing the goods. The bill also provides for exemption from IDF on specific goods imported into the country e.g. goods destined for duty free shops, EPZs etc.

Railway Development Levy

The bill provides for the imposition of a railway development levy (RDL) at the rate of 1.5% of the customs value on all goods imported into Kenya for home use. The bill also provides for exemption from RDL on specific goods imported into the country e.g. goods for the implementation of an official aid funded project, for official use by a gazette diplomatic mission, the United Nations etc.

Export levy

The bill provides for the imposition of export levy on some specific goods exported out of Kenya. Further, where more than one rate is provided, i.e. ad valorem or specific rate, then the levy shall be the higher of the two.

Application of information technology

The bill provides for collection of the fees and levies by the use of information technology. We expect that the collection of RDL, IDF and export levies shall be through KRA's SIMBA system currently used to administer customs taxes.

Offences and penalties

The bill provides for a fine not exceeding KES 500,000 or imprisonment for a term not exceeding two years or both where an offence relating to the administration of these levies and fees is committed.

Tax Procedures Bill, 2015

Unified tax procedures aimed at easing the tax compliance burden

As part of the objective of simplifying tax legislation with the aim of improving tax compliance and easing tax administration, the Government has introduced the Tax Procedures Bill, 2015 ("TPB") to harmonise and consolidate the procedures for administration of taxes.

The TPB aims to provide uniform procedures for consistency and efficiency in the administration of tax laws, facilitate tax compliance by tax payers and promote the effective and efficient collection of tax. TPB covers procedures for Income Tax Act (ITA), Value Added Tax Act (VAT) and Excise Duty (Excise).

We highlight in the table below an analysis of some changes proposed under TPB and contrast them with the current tax procedures.

Issue	Current Tax procedures	Proposed Tax Procedures	PwC Comment
Penalty for failure to register or deregister as a taxpayer	**Failure to obtain:** PIN - KES 2,000 Excise licence - KES 500,000 VAT registration/deregistration - KES. 200,000 or imprisonment for a term not exceeding 2 years or both	The penalty for failure to register or deregister for taxes including licenses will be KES 100,000 per month up to a limit of KES 1,000,000	This is a significant penalty implication for non-compliance.
Record keeping	*ITA* - 10 years, KRA can audit 7 years back unless there is a fraud *VAT* – 5 years *Excise* – 7 years	Period harmonised to 5 years.	The TPB needs to delete the 10 years provision in ITA.
Extension of time to file tax return	No extension of time to file a tax return	Possible extension upon application but taxes still payable at prescribed due dates. Stay of late filing penalty where an extension has been sought	Allows for tax returns to be filed out of time, hopefully this will provide a basis for waiver of late payment penalty and interest.
Late submission penalty	**Higher of:** *PAYE* - 25% of unpaid tax or kes 10,000; *CIT* - 5% of unpaid tax or KES 10,000; Individual returns - 5% of unpaid tax or KES 5,000; *VAT* - 5% of unpaid tax or KES 10,000; *Excise* - Forfeiture of the excisable goods	**Higher of:** *PAYE* - 25% of unpaid tax or kes 10,000; *Turnover tax* - kes 5,000; *All other cases* - 5% of unpaid tax or KES 20,000.	Late submission penalties have largely remained the same.
Tax shortfall penalty in fraudulent declaration	*ITA* - KES 10,000 or double the amount of tax involved, whichever is the higher, or imprisonment for a term not exceeding 2 years or both. *VAT* – KES 1,000,000 or imprisonment for 3 years or both	75% of the tax shortfall where the statement or omission was deliberate; 20% of the tax shortfall in any other case; 10% increase for second time offence; 25% increase for beyond third time; 10% reduction in penalty on voluntary disclosure	Punitive in nature aimed at discouraging tax evasion. May need to provide guidance on this to guard against subjectivity.

Issue	Current Tax procedures	Proposed Tax Procedures	PwC Comment
Tax avoidance penalty	No penalty for tax avoidance schemes but Commissioner can reverse a transaction's tax benefit and impose taxes, penalty and interest.	A tax avoidance penalty of double the amount of tax avoided.	Punitive in nature aimed at discouraging tax evasion.
Types of tax assessments	Self-assessment; Amended assessment; Additional assessment; Assessments in cases of risk of non-payment of tax.	Self-assessment or original assessments; Default assessment; Advance assessment; Amended assessment.	The changes make it clear and simple to understand the different types of assessments.
Relief for mistake or error in self-assessment	Available on application within 7 years (ITA) and 5 years (VAT).	Available within 5 years and Commissioner required to respond within 30 days.	Positive change requiring Commissioner's response within 30 days. Should be extended so that a lack of response by Commissioner implies consent consent.
Extension of time to pay tax	No express provision for this, but practice of taxpayers negotiating to pay in installments.	Extension possible upon application. Stay of non-payment penalty provided but interest on late payment applies.	May be welcomed change for cash strapped businesses. The issue of interest still running should be reconsidered.
Order of settlement of tax liability	No order of settlement of tax liability prescribed.	Monies used to settle the principal tax(es) as accrued first, then penalty and interest last.	This clarifies the order of settlement of tax liabilities and grounds it in law.
Late payment interest	*ITA* - 2% per month simple interest *VAT & Excise* – 2% per month compounded interest	1% per month simple interest for all taxes.	Reduction of potential interest payable on tax arrears.
Transfer of tax liabilities	No provisions on this	Tax liability may attach to transferred assets of a business to a related person making the transferee liable for the tax.	This provision is primarily designed to ensure that assets are available to the KRA as security for non-payment of taxes.
Refund claim of overpaid tax	*ITA* – should be lodged within 7 years *VAT* – claim for VAT paid in error should be made within 12 months.	Refund of tax applications should now be lodged within one year of payment of the tax.	The Commissioner should also be required to refund the tax within a stipulated period of time.
Service of notices by the Commissioner	No clear guidelines currently in the tax laws.	Personal service, service by post and service by electronic format provided for.	This provision is in line with increased use of technology in tax compliance.
Objection to tax decision	*ITA* - objection within 30 days after date of service of the notice of assessment, no time limit for the Commissioner to respond. *VAT*- 30days and the Commissioner required to respond within 60 days.	30 days objection period has been retained under the bill and the Commissioner is required to respond within 60 days.	This provision provides certainty and finality on issues under dispute.

Issue	Current Tax procedures	Proposed Tax Procedures	PwC Comment
Appeals	High Court - on a question of law or of mixed law and fact Court of Appeal - matters of law.	Under the TPB, appeals to the High Court and Court of Appeal have now been restricted to points of law only.	Issues of facts to be examined and determined by the Tax Appeals Tribunal.
Out of court settlement	No restriction on period or time limit for out of court settlement.	Out of court settlement to be settled within 90 days if not the matter reverts back to court.	Will promote the expeditious settlement of tax disputes.
Public and private rulings	Only available under the VAT Act.	Introduces public and private rulings on interpretation of tax laws for all taxes. Public and private ruling shall bind the Commissioner but not the taxpayer. The Commissioner is required to issue private rulings within 45 days of application.	Public and private rulings provides an opportunity for certainty in transactions. To enforce compliance with the timelines provided for, the Commissioner should be deemed to have accepted the taxpayer's interpretation if he fails to respond in time.
Penalties and prosecution	Currently, a person may be subject to either a penalty or prosecution or both for a tax offence.	A person shall not be subject to both the imposition of a penalty and the prosecution of an offence in respect to the same act or omission under a tax law. If a person is liable to both under a tax law, the Commissioner shall decide which of the two shall apply.	The exercise of the Commissioner's discretion in determining which option to pursue should be exercised judiciously to ensure fair treatment of taxpayers.

Encouraging growth and stability of the financial sector.

Streamlining the financial sector

Aiming for an efficient, globally competitive financial sector

The Finance Bill 2015 contains proposed amendments to various Acts governing the financial services sector. We have summarised the significant changes in the sections below.

Changes to the Insurance Act

Capital requirements

The Cabinet Secretary has proposed to give the Insurance Regulatory Authority (IRA) powers to amend the minimum capital requirements and minimum admitted assets for insurers based on the nature, scale and complexity of their insurance business and their risk profile.

The minimum capital requirements shall consist of government securities, deposits and cash, subject to 10% limit on any one bank or group of banks and cash and cash equivalents for new insurers. The deadline for compliance is 30 June 2018.

The minimum capital requirements proposed are set out in the table below:

Business	Requirement
General insurance business	**The higher of:** • KES 600 million; or Risk based capital determined by IRA from time to time; or • 20% of net earned premiums of the preceding financial year
Long term insurance business	**The higher of:** • KES 400 million; or • Risk based capital determined by IRA from time to time; or • 5% of liabilities of the life business for the financial year
General reinsurance business	**The higher of:** • KES 1 billion; or • Risk based capital determined by IRA from time to time; or • 20% of net earned premiums of the preceding financial year
Long term reinsurance business	**The higher of:** • KES 500 million; or • Risk based capital determined by IRA from time to time; or • 5% of the liabilities of the life business for the financial year

The IRA could issue directives requiring an insurer to hold more than the minimum capital specified in the Regulations or increasing the capital adequacy requirement for an insurer to a higher sum than specified in the Regulations.

The risk based capital will be determined based on the risk based model that IRA is currently working on. It is expected that this will result in significant additional capital requirements for most insurance companies and this could result in mergers and acquisitions in the insurance sector.

Investment guidelines

Sections 41 and 50 of the Insurance Act provide guidelines and restrictions on investments for insurance companies. The Cabinet Secretary proposed that IRA be granted powers to prescribe the investment guidelines for insurers.

These investment guidelines are expected to consider security, liquidity and income of investments as well as restrictions arising from articles of association or other rules of the insurer which impose restrictions on investments.

Insurance companies will be required to submit an investment policy to IRA for a period of not less than three years or such longer period as determined by IRA from time to time.

Changes to the Banking Act

Capital requirements

The Cabinet Secretary has proposed to progressively increase the minimum core capital requirements for banks and mortgage finance companies to 5 billion by 2018 as set out below:

Date	Minimum Core Capital Requirement
31 December 2016	KES 2 billion
31 December 2017	KES 3.5 billion
31 December 2018	KES 5 billion

This is expected to result in mergers and acquisitions in the banking sector and to create larger, better funded and more stable banks.

Licenses

Licenses issued by Central Bank of Kenya (CBK) shall remain valid unless revoked. However, annual fees will still be payable in amounts and in a manner determined by CBK.

Any institution that fails to pay the annual fee by the end of the financial year will be required to pay double the fee, if payment is made within 90 days of the year end. Failure to pay within the 90 days will result in the license being revoked.

Vetting of shareholders

CBK may vet any shareholder who is not a significant shareholder (a person other than the government or public entity who controls more 5%) where there is suspicion that they are able to exercise direct or indirect control in an institution or they reduced their shareholding to below 5% to avoid vetting.

Changes to the Stamp Duty Act

The Cabinet Secretary proposed to exempt from stamp duty, the transfer of assets for approved Real Estate Investment Trusts (REITs) from one trustee to another or to an additional trustee and into approved REITs. Instruments to effect such transfers should be stamped with a particular stamp denoting that they are not chargeable to duty. This exemption will apply to instruments executed before 31 December 2022.

The exemption is not expected to significantly impact the uptake of REITs as the uncertainty relating to Value Added Tax and Capital Gains Tax on such transfers has not been addressed by the Finance Bill.

Changes to the Retirement Benefit Act

Pension schemes will be required to submit audited accounts within three months after year end. This will align the reporting timeline for pensions to that

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