

# Tax Alert

## Finance Bill, 2016 - Managing change

***The Finance Bill (the “Bill”), 2016 was gazetted by the Cabinet Secretary of the National Treasury on 10 June, 2016. This bulletin is an update from our previous publication issued on 9th June, 2016 and provides a summary of the key provisions of the Finance Bill and the effective dates.***

### ***Automotive Industry***

#### ***Increase of excise duty***

From 9 June, 2016, the import and sale of motor vehicles will attract excise duty at the rate of 20% of the excisable value. While this change was intended to address all inequalities in the excise duty charged on motor vehicles, it has not addressed the fact that completely knocked down kits for manufacture and new motor vehicles remain taxable at the same rate of 20%.

#### ***Official Aid Funded projects***

From 9 June, 2016, motor vehicles purchased or imported for the direct and exclusive use in Official Aid Funded Projects shall be exempt from VAT.

In addition all excisable goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid Funded project shall be exempt from excise duty. *Effective from 9 June 2016.*

### ***Real Estate sector***

#### ***Reduced corporation tax rate***

Where a company constructs at least one thousand housing units in a given year, the corporation tax rate shall be reduced from 30% to 25% for that year of income. This will however be subject to approval by the Cabinet Secretary responsible for housing. *Effective from 1 January 2017.*

#### ***Withholding tax on rental income***

From 1 January, 2017, payments made in respect of rent, premium or occupation of immovable property to persons who



are resident or who have a permanent establishment in Kenya shall be subject to withholding tax at a rate of 10% subject to appointment by the Commissioner. This will most likely lead to property holding companies being in a tax refund position especially in respect of new developments.

#### ***Low earnings exempt from tax***

In order to simplify the administration of residential rental income tax, the Bill introduced a minimum rental income threshold of KES 144,000 per annum. Any rental income below the threshold shall be exempted from residential income tax. *Effective from 9 June 2016.*

### ***Banking and insurance sector***

#### ***Higher capital requirements***

The Bill re-introduces the requirement for banks to hold core capital of at least KES 5 billion by 31 December 2019 with a progressive

June 2016

increase in the intervening period. Only 22 out of the 44 banks met the higher core capital requirement at 31 December 2015. This is expected to trigger discussions around mergers and acquisitions and to create larger, better funded and more stable banks. *Effective from 1 January 2017.*

### *Higher penalties*

The maximum penalty for violation of the Banking Act or CBK Prudential Guidelines has been increased from the current KES 5 million to KES 20 million, with additional penalties for each day that the violation continues. *Effective from 1 January 2017.*

### *Banks in distress*

The Central Bank of Kenya (CBK) will now need to consult with the Cabinet Secretary in the management, control and conduct of the affairs of banks in distress. This includes involvement of the Cabinet Secretary in the appointment of the Kenya Deposit Insurance Corporation (KDIC) as receiver.

Also, the Chief Executive Officer of the Kenya Bankers Association (or his representative) will be a member of the Board of Directors of the KDIC while public officers and persons from institutions licensed by the CBK cannot be appointed by the Cabinet Secretary to the KDIC Board. *Effective from 1 January 2017.*

### *Credit information sharing*

The Bill seeks to amend the Banking Act to provide for cross-border sharing of credit information sharing where a mutual legal framework exists. *Effective from 1 January 2017.*

### *Licensing*

Retirement benefit scheme managers, custodians and administrators will be issued with a perpetual license from the Retirements Benefits Authority (RBA). However, as part of compliance, they will be required to submit audited financial statements, lists of directors and top management, changes in clientele and any other required information to the RBA by 30 September of every year. *Effective from 1 January 2017.*

### *Online forex trading*

In recognition of the volume of online forex trading taking place in the country



with intermediaries based overseas, online forex brokers will be regulated under the Capital Markets Act. *Effective from 1 January 2017.*

### *Exempt interest income*

From 1 July 2016, interest income from bonds issued by the East African Development Bank shall be exempt from income tax. This change merely seeks to harmonise the rates with the other East Africa member states.

### *Agriculture Sector*

#### *Raw materials for animal feeds exempt from VAT*

The Bill seeks to broaden the exemption of raw materials used in the manufacture of animal feeds with the view to making animal feeds affordable to farmers and attract more investment from potential animal feeds manufacturers. *Effective from 9 June 2016.*

#### *Wheat seeds exempt from VAT*

The proposal to exempt wheat seeds from VAT will be consistent with exemption of other seeds e.g. sunflower, cotton and safflower seeds. *Effective from 9 June 2016.*

### *Tourism, Hospitality and Entertainment Industry*

#### *Tourism*

From 9 June, 2016, chemicals, reagents, films, film strips and visual aid equipment

imported or purchased prior to clearance through customs by the National Museums of Kenya shall be exempt from VAT in line with exemptions provided under East African Community Customs Management Act.

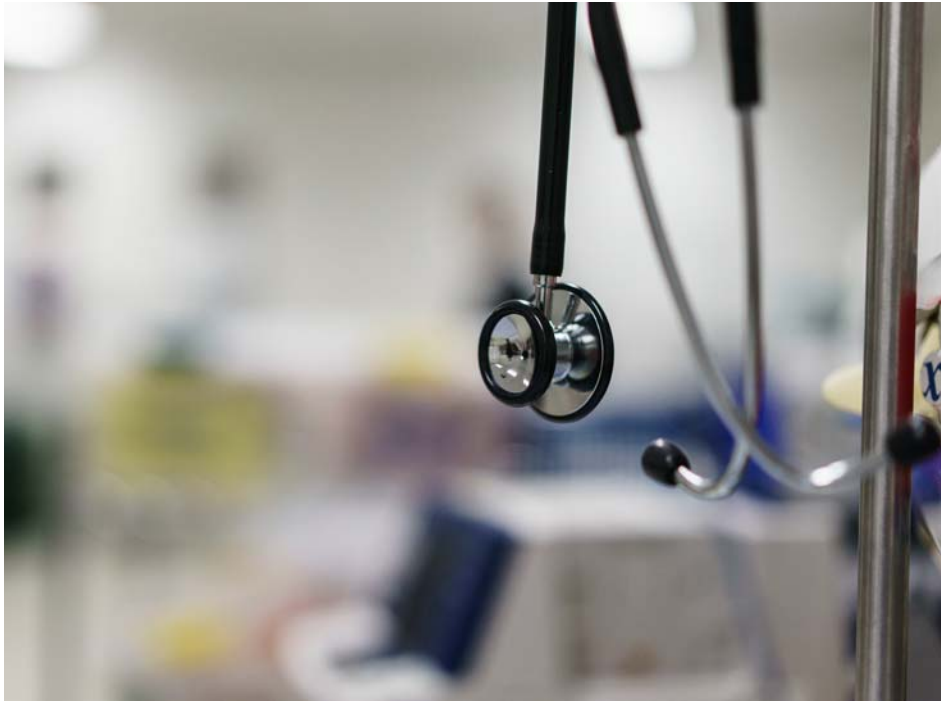
Entry fees into the national parks will now be exempt from VAT with the view to reduce cost of entry to parks and consequently encourage tourism. *Effective from 9 June 2016.*

From 9 June, 2016, services offered by tour operators on commission shall be exempt from VAT with a view to promote tourism and create employment opportunities for youth.

#### *Hospitality*

The definition of a "hotel" provided in the VAT legislation (subject to conditional exceptions) has been broadened to include service flats, service apartments, beach cottages, holiday cottages, game lodges, safari camps, bandas, holiday villas and other similar establishments. The definition brings clarity on premises offering similar services offered by ordinary hotels. *Effective from 1 July 2016.*

From 1 January, 2016, service charge paid in lieu of tips shall be excluded from the ambit of VAT, subject to set conditions.



### Entertainment

In addition to obtaining VAT exemption approval from the Cabinet Secretary to the National Treasury, local film producers and local filming agents are now required to seek recommendation from the Kenya Film Commission to import or purchase supplies for the film industry. *Effective from 9 June 2016.*

From 9 June, 2016, specimens and scientific equipment for public museums and exhibits of museum and natural history shall be exempt from VAT.

The Bill seeks to provide clarity on recreational parks by providing a definition of recreational parks in the VAT Act to include an area or a building constructed for the purpose of improvement of general health, wellbeing and development of skills.

Taxable supplies for construction of such parks are exempt from VAT subject to recommendation of the Cabinet Secretary responsible for matters relating to recreational parks. *Effective from 9 June 2016.*

### Oil and Gas

In order to promote the use of clean, modern and safe energy for environmental purposes, Liquefied Petroleum Gas has been exempted from VAT. *Effective from 9 June 2016.*

Excise duty has been re-introduced on kerosene, at a rate of KES 7,205 per 1000

litre @ 20 degrees centigrade in order to curb adulteration of petroleum products. *Effective from 9 June, 2016.*

### Consumer Products

The supply of cosmetics and beauty products shall now be excisable at the rate of 10%. *Effective from 9 June, 2016.*

The scope of “waters” chargeable to excise duty at a rate of KES 5 per litre has been narrowed down to mineral and aerated water. *Effective from 9 June, 2016.*

The Bill has clarified that excise duty shall be applicable to plastic sacks and bags of tariff nos. 3923.21.00 and 3923.29.00 except vacuum bags for food juices, tea and coffee”. *Effective from 9 June, 2016.*

### Healthcare

From 9 June, 2016, supplies used in construction of specialized hospitals with accommodation facilities shall be exempt from VAT subject to obtaining recommendation from the Cabinet Secretary responsible for health who shall issue guidelines for the criteria to be used for eligibility for the exemption.

### Security

Equipment, machinery including specialised motor vehicles imported or purchased locally for official use by the Kenya Defense Forces, National Police Services and military supplies are now exempt from VAT. *Effective from 9 June 2016.*

## Human Resources

### Annual tax bands and relief

From 1 January, 2017, the annual tax relief shall increase to KES 15,360 and the new individual tax bands shall be as follows:

Annual Bands of taxable Income (KES)	Tax Rate (%)
0 - 134,164	10%
134,165-260,567	15%
260,568-386,970	20%
386,971-513,373	25%
Over 513,373	30%

### Special Economic Zones and Export Processing Zones

In order to harmonise the zero rating of goods or taxable services supplied to Export Processing Zones and those supplied to Special Economic Zones, the Bill proposes to zero-rate goods or taxable services supplied to the Special Economic Zones. *Effective from 9 June 2016.*

From 1 July, 2016, supplies to and from Special Economic Zones shall be treated as exports and imports respectively. This means that goods or taxable services supplied by a registered person to a Special Economic Zone enterprise, shall be zero-rated for VAT purposes. On the other hand goods or taxable services imported from a Special Economic Zone enterprise, shall be deemed to be imported into Kenya and therefore chargeable to VAT at the applicable rate.

Garments and leather footwear manufactured in Export Processing Zones are now exempt from VAT when sold to the local market. *Effective from 9 June 2016.*

### Tax reforms under the Tax Procedures Act

#### Withholding VAT reinstated

The Finance Bill has reinstated the Withholding VAT regime. The effective date for this provision has been back dated to 19 January 2016. This appears to be contrary to basic legal principles against retrospective application of laws. The retrospective application of the withholding VAT regime is bound to cause confusion amongst taxpayers.



### *Appointment of tax representative by non-resident*

From 1 July, 2016 non-residents without a fixed place in Kenya can appoint tax representatives to fulfil their VAT obligations in Kenya.

### *Response timelines*

In order to improve expediency and reduce instances of non-responsiveness, the Finance Bill proposes to introduce time limits within which the Commissioner must respond to the taxpayer's application. *Effective from 1 January, 2016.*

Section	Provision	Timeline
33	Application for extension of time to pay tax	Within 30 days
42	Notification by an agent of inability to pay tax on behalf of another taxpayer	Within 30 days
47	Application for refund of overpaid tax, excluding VAT refunds*	Within 90 days

### *Registration for tax agents*

From 1 January, 2017 applications for registration of tax agent licenses will have to be recommended by the Tax Agents Committee prior to grant of approval by the Commissioner.

### *Tax amnesty on rental income*

The 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 years. 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. This provision was previously in the Income Tax Act but was inadvertently deleted through the enactment of the Tax Procedures Act.

### *Tax amnesty on investment income earned outside Kenya*

From 1 January, 2016, persons with assets, investments and who earn income outside the country shall be eligible for a tax amnesty when they declare the income earned outside Kenya provided that they, submit their returns and

accounts for the year of income 2016 by 31st December 2017. Those who take up this amnesty shall have all principal taxes, interests and penalties for the year of income, 2016 and the prior years waived in full.

The amnesty shall however not be applicable to persons who have been assessed with respect to taxes relating to the said years or persons under investigation in respect of any undisclosed income.

### *Tax reforms under the Tax Appeals Act*

In order to improve efficiency at the Tribunal, the Bill proposes to make the following amendments;

- Upon application, the tribunal may extend the time for the appellant to file the notice of appeal.
- The Commissioner is required to serve the appellant with a statement of facts and other documents within 2 working days of submitting them to the tribunal.
- Upon application, the tribunal may extend the time for the Commissioner to submit and serve the appeal documents, provided there is reasonable cause and the delay.

### *Customs*

In his Budget Statement the Cabinet Secretary, highlighted changes to the Customs legislation seeking to protect local industries such steel and aluminum. The conclusive changes affecting all East African Community Partner States will be contained in the East Africa Community Gazette to be issued in the course of this month.

We shall issue a separate alert on this.

***For further information on the 2016 Finance Bill, please contact any of the people below or your usual PwC contact.***

#### **Steve Okello**

Partner  
steve.x.okello@ke.pwc.com  
+254 20 285 5000

#### **Rajesh Shah**

Partner  
rajesh.k.shah@ke.pwc.com  
+254 20 285 5000

#### **Richard Njoroge**

Partner  
richard.njoroge@ke.pwc.com  
+254 20 285 5000

#### **Job Kabochi**

Partner  
job.kabochi@ke.pwc.com  
+254 20 285 5000

#### **Titus Mukora**

Partner  
titus.mukora@ke.pwc.com  
+254 20 285 5000

