Consumption taxes

Value Added Tax (VAT)

Introduction

Introduction of the timelines within which to lodge for VAT refunds

From the budget statement, the Cabinet Secretary for the National Treasury (CS) has proposed certain measures aimed at spurring growth in various sectors.

Most of these measures involve change of VAT status of supplies from the standard rate to the exempt status. The government's move to exempt these supplies as opposed to zero rating is aimed at alleviating the perennial VAT refund challenges.

While exemption may seem like a good measure, in our view, this measure may be ill advised as it leads to increased costs in the long run compared to zero rating of the supplies.

A journey for zero rating of services in respect of goods in transit

It is on this backdrop that we set out below some of the significant proposed VAT changes.

Timelines for VAT refund claims introduced

The VAT Act, 2013, does not provide a time limit within which VAT refund claims can be lodged. The CS has sought to restrict the claim lodgement period to 12 months from the date the refund becomes due.

In the spirit of equity, perhaps the CS should have also introduced time limits within which refund claims should be paid by the government and the interest payable for failure to adhere to such timelines.

A long journey to zero rating of services in respect of goods in transit!!!

Under the repealed VAT Act (Cap 476), services in respect of goods in transit were zero rated. However, upon enactment of the VAT Act, 2013, these services were standard-rated and later exempted from VAT through the Finance Act, 2014.

Both standard-rating and exemption led to increased prices of these services therefore hampering the competitiveness of Kenyan transporters and other service providers.

The CS seeks to zero rate these services in a bid to restore the competitiveness of Kenyan service providers and encourage sustained growth in the transport sector.

ICT in schools

One of the key priorities of the government is to enhance the use of computers among our school-age children.

The CS has seen it fit to encourage in-country local assembly of electronic devices by exempting from VAT inputs for the assembly of such devices. This is a welcome move.

Exemptions proposed in an effort to spur growth of local industries

VAT exemption for industrial parks

The CS has proposed to exempt taxable supplies for use in the construction of infrastructure works in industrial and recreational parks of 100 acres or more in five selected locations; Nairobi, Nakuru, Kisumu, Mombasa and Eldoret.

This is part of the government's industrialization strategy which is aimed at attracting investors and creating jobs.

Exemption of plastic bags biogas digesters

The CS has proposed to exempt from VAT plastic bag biogas digesters. This aims at encouraging use of clean and affordable biogas energy system for cooking and lighting to rural households.

Proposal to remove discrimination relating to left hand drive cars for returning residents

Incentives introduced for the film industry

The CS has proposed to exempt from VAT supplies purchased for use in the film making industry.

In addition, the CS has proposed to set up a fund for rebating of expenses by producers in this latent industry.

The above proposed incentives are intended to spur the growth of the film industry.

Discrimination removed on left hand drive cars for returning residents

Returning residents who own left hand drive vehicles will now be allowed to import replacement right hand drive motor vehicles duty and VAT free (zero-rated) subject to specific conditions. This is aimed at alleviating the existing inequity.

Other expectations in the Finance Bill, 2015

Withholding VAT changes

In addition to government agencies, the Commissioner for Kenya Revenue Authority is likely to be empowered to appoint any other persons as a withholding VAT agents.

We further expect that the Finance Bill will also amend the provisions of the VAT Act to provide clarity on the uncertainty around the base value for the calculation of withholding VAT.

Exemption of aircraft engines and spare parts

We also expect changes on the VAT status of aircraft engines and aircraft spare parts which are currently standard-rated with the aim of reducing VAT refunds backlogs.

Taxable goods for official aid funded project to be exempted

Taxable goods imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the CS are expected to be exempted from VAT.

Another expectation in the Finance Bill, 2015

From the above analysis, it's noteworthy that the exemptions proposed will be applicable to both goods and services supplied to the specific sectors, e.g., the film industry and businesses involved in construction of industrial parks.

This said, we note that for the oil and gas industry the VAT exemption introduced in the 2013/2014 budget was restricted to goods and not services. We had hoped that the CS would have introduced VAT exemptions for services supplied to contractors in the oil & gas sector as well.

Excise Duty

New Excise Duty Bill to be tabled in Parliament with the aim of simplifying the current excise regime

As part of the tax law reform process, the CS has tabled a new Excise Bill in parliament aimed at simplifying the current excise regime. The new Bill will see a change of excise duty structure from a hybrid to a specific regime which will levy excise duty based purely on units of quantity.

The reform will also see excise duty focus on specific products that are considered harmful such as alcohol, tobacco, fossil fuels, sweetened beverages and motor vehicles.

Excise Duty Bill is expected to raise approximately KES 25 billion per annum additional revenue

By implementing these changes the CS aims to increase excise tax collection by KES 25 billion per annum. Among the specific measures proposed by the CS include:

- To counter the consumption of illicit brew, beer and wine made from local agricultural products excluding barley will be granted excise duty remission. This is in line with the recently enacted Alcoholic Drinks Control (Amendment Act) 2015, which requires the CS to grant 90% remission. This measure will also help to promote local agriculture.

- Excise duty on alcoholic beverages will be adjusted upwards to cater for inflation, cigarettes will be taxed on a specific regime and duty on motor vehicle and motor cycles will be on a graduated scale based on age.

- Non-biodegradable plastics bags will be subject to duty at KES 120 per kg.

- All bottled water and other goods that have no harmful effect will not be taxable under the new excise law.