

Tax Alert

The Finance Act, 2012

After the dissolution of the 10th Parliament, the long awaited Finance Act is now here with us. The Finance Act (FA) 2012 was assented to on 7 January 2013 and gazetted thereafter. According to the FA, the date of publication is indicated as 9 January 2013. However, the Gazette Notice heralding the Act was published on 1 February 2013 and the FA released to the public on 5 February 2013.

In this issue we will review the main amendments made to the Finance Bill (FB) 2012 relating to:

- **Income Tax**
- **Value Added Tax**
- **Custom and Excise**

Income Tax Act

Winnings will not be subjected to withholding tax

The FA of May 2012 which arose from the June 2011 budget reading and which was assented to on 27 April 2012 amended the Income Tax Act (ITA) to subject winnings from betting and gaming paid by a resident person or a person having a permanent establishment to withholding tax.

The new FA has nullified this position and winnings from betting and gaming will be free of withholding tax. *This amendment is deemed to have come into operation on the publication of the FA.*

Extractive Industry to suffer new withholding tax

The Finance Act has amended the ITA to impose tax on consideration from the sale of property or shares in respect of oil and mining companies including mineral prospecting companies. Thus consideration from the assignment of rights, sale of companies / business and inventory takeovers will be subject to a final withholding tax of 10% and 20% (for a resident and non-resident respectively) of the gross amount received. This change is deemed to have come into operation on publication of the FA.

Individuals will now be required to file income tax returns

The FA of May 2012 amended the ITA to exclude an employee who renders services to one employer in a particular year of income from filing income

tax return if the employee had no income chargeable to tax for that year of income other than employment emoluments and if all the tax arising from the emoluments were recovered by the employer.

The new FA has deleted the proviso which excluded such employee from the filing of the income tax return. Going forward, all employees will be required to file their income tax returns with KRA.

The effective date for this change is 18 July 2013. Thus individuals (whose year of income is 31 December) will be expected to resume filing their income tax returns for the year of income 2013 for which the filing deadline will be 30 June 2014.

Commissioner can now serve notice through the print media

The FA has amended the ITA in relation to service of notices by the Commissioner to a taxpayer to include a public notice through a print media of national circulation.

Prior to this amendment, the Commissioner could serve a notice to a person by delivering the notice personally, or by leaving the notice at the person's last known address or sending it by post. The Commissioner has now been given powers to serve a notice to a person through the print media. This move is likely to raise issue of confidentiality on the tax affairs of the affected person.

This change is deemed to have come to operation on publication of the FA.

Tax Exemption Certificate to be issued within sixty days

The FA has amended the ITA to require the Commissioner to issue an applicant with a Tax Exemption Certificate within sixty (60) days upon receipt of the application. This will apply only where an application meets the requirements set

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out under the ITA. Further, the FA has increased the validity of the certificate to five years.

This is a welcome move to organizations exempt from tax since prior to this amendment, there was no mandatory time period within which the Commissioner was required to issue the certificate to the applicant and the validity of an exemption certificate was three years.

This change is deemed to have come to operation on publication of the FA.

Value Added Tax

Amendments to the VAT Act:

The FA 2012 has made changes to the tariff classification of goods in both the Second Schedule (exempt goods) and Fifth Schedule (zero rated goods) to the Act. This is in line with the updated version of the Common External Tariff (CET), 2012 on tariff classification of goods.

Customs and Excise

Time limit for issuance of licenses to manufacture excisable goods

The Commissioner has now been given thirty(30) days within which to communicate his decision on an application for license lodged with him by a manufacturer of excisable goods, failure to which the application shall be deemed to have been granted.

The effective date is 15th June 2012

Ad valorem duty on beer and wine to be charged on ex factory selling price

The basis of determining the excisable value of locally manufactured beer and wines (for purposes of levying ad valorem excise duty) has been amended from the retail selling price (RSP) to the ex factory selling price.

This change is deemed to have come to operation on publication of the FA.

Reprieve on payment of duty on appeal

Taxpayers shall not be required to deposit the full duty assessed while lodging an appeal to the Tribunal. The aggrieved person shall pay Commissioner that part of the assessed duty not in dispute and thirty percent of the duty in dispute. *The effective date of this change is 1 January 2013.*

Discouraging exportation of certain goods

The FA 2012 has increased the rate of export duty on raw hides and skins. This change is deemed to have come to operation on publication of the FA.

Tariff Classification of Goods

The FA 2012 has made changes to the tariff classification of certain goods such as juices, food supplements and other food preparations and gasoline, and motor/aviation spirit under the Fifth Schedule of the Act, in line with the updated classification version of the Common External Tariff, 2012

Change in duty rates for beer, wines and spirits

The ad valorem rate on these products has been increased from 40% to 50%. However, the increased rate would be applied on the ex factory selling price and not the retail selling price as has been the case.

This change is deemed to have come to operation on publication of the FA.

Money transfer service providers and financial institutions in the excise hook!

The FA 2012 has introduced excise duty on money transfer services and fees charged by financial institutions. Excise duty on fees charged for money transfer services by cellular phone service providers, banks, money transfer agencies and other financial service providers shall be 10%.

Excise duty on other fees charged by financial institutions shall also be applicable at the rate of 10%. The Act however, does not define a “financial institution” and this is likely to cause problems in interpretation and application. Moreover, the affected institutions will have to put appropriate systems in place to deduct and account for this tax.

This change is deemed to have come to operation on publication of the FA.

Proposed way forward

As mentioned on the first paragraph of this tax alert, the date of publication indicated on the FA is 9 January 2013 and the FA was released to the public on 5 February 2013. It is most likely that the KRA will seek to implement the FA with effect from the date of publication as indicated on the FA. This will have retrospective effects on the amendments whose effective date is the date of publication.

It is therefore very important for the affected taxpayers to engage the Ministry of Finance to clarify the effective date for the changes coming into operation. This is so given that the publication date for the FA is 9 January 2013, the Gazette Notice was released on 1 February 2013 and the FA itself became publicly available on 5 February 2013.

Should you require clarification or guidance please contact.

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