Tax Alert

Tax Laws (Amendment) Bill 2018

April 2018

Introduction

The Tax Laws (Amendment) Bill, 2018 dated 10th April 2018 was listed for its first reading in Parliament on17th April 2018. The Tax Laws (Amendment) Bill proposes to introduce some new provisions and amendments on some existing issues in the Income Tax Act ("ITA"), Value Added Tax (VAT) Act and Stamp Duty Act.

In this Alert, we provide an analysis of the changes introduced by the Tax Laws (Amendment) Bill.

Income tax and stamp duty amendments

Betting, lotteries and gaming industry

The Tax Law (Amendment) Bill proposes to introduce withholding tax of twenty percent on winnings arising from betting, lotteries, gaming and prizes. The specific changes in this regards are:

i) **Winnings definition expanded:** The Bill proposes to expand the definition of "winnings" in the ITA to include not only punters but also winners arising from betting, lotteries, gaming and prize competitions.

ii) **Winnings subject to final withholding tax regime:** The Bill also proposes to introduce a twenty percent withholding tax ("WHT") deducted at the source when winnings are paid to a resident or non-resident. The twenty percent withholding tax on residents is a departure from the five percent withholding tax generally applicable to residents.

The proposal mirrors the previous provisions that were deleted in the Finance Act of 2016. They were shelved due to the impracticability of enforcing the provisions especially in relation to persons who engaged in multiple transactions.

Tax incentives for house buyers

The Government is demonstrating a clear commitment to its Big 4 policy priority of affordable housing by proposing the following

changes in the Tax Laws (Amendment) Bill 2018:

i) **Doubling of deduction for Home Ownership Savings Plan deposits:** Depositors investing in registered Home Ownership Savings Plan ("HOSP") schemes have previously enjoyed a tax deduction of up to KES 4,000 per month or KES 48,000 per annum. Now, after almost two decades, this threshold is being reviewed and the proposal is to increase the deductible amount to KES 8,000 per month or KES 96,000 per annum. While the increased tax deduction is welcome, from an impact perspective it may not be entirely adequate given that the average house price in Kenya has increased almost fivefold since 2000.

ii) **Stamp duty exemption for first time house buyers:** The Government is also proposing a Stamp duty exemption for the purchase of a house by a first time home owner under an affordable housing scheme.

An affordable housing scheme is not defined so clarification on this point is required. Stamp duty would typically be charged at 2% or 4% of the value of the property, depending on its location so the exemption would be a meaningful incentive.

Additional tax exemptions provided to Special Economic Zones (“SEZ”)

The Tax Laws (Amendment) Bill proposes to exempt Licensed Special Economic Zone developers or operators from capital gains tax and compensating tax.

This proposal will ensure that the tax incentives provided to SEZ developers and operators are not eroded through stealth taxes such as compensating tax.

Value Added Tax

The Bill seeks to amend the Value Added Tax Act, no. 35 of 2013 by moving certain items from being taxable at zero rate to being exempt. The Bill also proposes new exemptions for certain goods and services that are currently standard rated.

The difference between exemption and zero-rating

Value Added Tax (“VAT”) is a consumption tax borne by final consumers of taxable goods and taxable services. The VAT rate applicable on taxable supplies is either the standard rate, sixteen percent (16%) or zero percent (0%). Zero rating of goods or services means that such supplies are taxable but at the rate of zero percent (0%) while exemption means that such supplies are not taxable. While it may appear as if zero rating and exemption have the same final impact on the price of any commodity, this is not the case.

Where supplies are zero rated, the supplier of such supplies is eligible to claim input tax credits in relation to VAT incurred in making such supplies. This essentially means that VAT does not result in additional cost to be passed on to the final consumer arising from unclaimed input tax.

On the contrary, for exempt supplies, the supplier is not eligible to claim any input tax credits in relation to the VAT incurred in making of such supplies. Accordingly, all the unclaimable input tax is factored in the price charged to the final consumer thus making such supplies more costly.

The following table summarizes the VAT changes proposed by the Bill:

No.	Item	Current VAT Rate	Proposed VAT Rate as per the Bill	Impact
1.	Taxable supplies, imported or purchased for direct and exclusive use in the construction of a minimum of 5,000 housing units, by any licensed Special Economic Zone (“SEZ”) entity	16%	Exempt	The supply of residential housing is an exempt supply. As such, exempting construction material from VAT will eliminate the non-recoverable VAT currently borne by developers thus lowering the cost of housing in Kenya. This is seemingly a welcome move by the Government. However, this exemption creates an adverse effect for suppliers of the construction materials who are not able to claim input tax credits.
2.	Taxable supplies, imported or purchased for direct and exclusive use in the construction of hotels and/or conference facilities by any licensed SEZ entity	16%	Exempt	Exemption of services imported or purchased for construction of hotel facilities will lead to increased development costs of such facilities, which may negatively impact investors’ appetite for the sector.
3.	The transfer of a business as a going concern (“TOGC”) by a registered person to another registered person.	0%	Exempt	Any VAT incurred by the transferor and transferee in a TOGC e.g. VAT incurred on consultancy and legal fees will not be claimable as input tax.
4.	The supply of natural water, excluding bottled water, by a National Government, County Government, any political sub-division thereof.	0%	Exempt	Any VAT incurred by the affected suppliers of water on amongst others piping costs, costs of maintaining treatment and purification facilities will not be claimable as input tax. We expect the suppliers of water, which has been touted as a constitutional right, to pass on the non-recoverable VAT cost to their customers.

No.	Item	Current VAT Rate	Proposed VAT Rate as per the Bill	Impact
5.	Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in fire fighting.	0%	Exempt	The suppliers of the affected supplies will not be able to recover any input tax incurred in making of such supplies. We expect that such non-recoverable costs will be passed on to the hospitals.
6.	Taxable goods supplied to marine fisheries and fish processors.	0%	Exempt	The suppliers of the affected products will be saddled with non-recoverable VAT, which we expect to be passed on to the fisheries and fish processors thus defeating the relief envisaged for the sector.
7.	Certain medicaments and Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments.	0%	Exempt	We expect importers and local producers of these raw materials will pass on their non-recoverable costs to the manufacturers leading to an increase in production cost and ultimately the end product. For a country seeking to achieve universal health care coverage by 2022, there may be a need to reconsider this proposed exemption.
8.	The supply of liquefied petroleum gas (LPG).	0%	Exempt	Exemption of LPG will render it more costly, which may see users of LPG revert to alternative fuel sources including unclean sources of energy.
9.	Milk and cream, not concentrated nor containing added sugar or other sweetening matter.	0%	Exempt	Reverting to exemption of these basic commodities after barely a year of them being designated to be zero rated will lead to an increase in their prices rendering them less affordable to the ordinary citizen.
10.	Maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight.	0%	Exempt	Exemption of flour and bread will lead to similar implications as for milk and cream above.
11.	Agricultural pest control products and all input raw materials for manufacture of such products whether imported or local.	0%	Exempt	Importers and local producers of these raw materials will pass on their non-recoverable VAT costs to the manufacturers leading to an increase in production cost and ultimately the end product.

No.	Item	Current VAT Rate	Proposed VAT Rate as per the Bill	Impact
12.	Goods imported by passengers arriving from places outside Kenya.	0%	Exempt	The change is unlikely to have any adverse impact on this category of persons.
13.	Taxable goods for emergency relief purposes for use in specific areas and within a specified period, supplied to or imported by the Government or its approved agent, a nongovernmental organization or a relief agency.	0%	Exempt	The exemption will have similar implications as inputs for manufacturing of medicaments and pesticides as outlined above.

General impact of the proposed changes to the 'mwananchi'

Whilst the Bill will alleviate the burden of paying VAT refunds for the Government, the proposed changes are bound to increase the costs of certain goods.

As a general observation, if the Bill is enacted into law, the overall net implication will be an increase in the prices of basic commodities such as flour, milk, bread and medicaments.

For more information please contact one of the following or your usual PwC contact:

Steve Okello
Director/Partner
steve.x.okello@pwc.com
+254 20 285 5000

Simeon Cheruiyot
Director/Partner
simeon.cheruiyot@pwc.com
+254 20 285 5000

Titus Mukora
Director/Partner
titus.mukora@pwc.com
+254 20 285 5000

Job Kabochi
Director/Partner
job.kabochi@pwc.com
+254 20 285 5000

Nicholas Kahiro
Manager
nicholas.x.kahiro@pwc.com
+254 20 285 5788