OCTOBER 2018 | 4.40

AMENDMENTS TO THE VAT ACT .1

Newsletter

MBAYA AND ASSOCIATES October 2018 | Issue 040 | Volume 4

Introduction

We welcome you to our tenth edition of our newsletter this year. This month's issue focuses on the review of the revised 2018 Finance Bill which was approved by the President on 20th September 2018.

On the right column of the newsletter you will find contact details for the senior members of our team who can help answer any questions you may have about the issues highlighted in this newsletter or any other questions.

We are interested in your feedback on the items covered and what topics you would like covered in the future.

Please provide any feedback at **tax@mbaya.co.ke**

" "

This new tax will have an adverse impact on the growth of mobile money services which has played a significant role in the growth of financial market.

» OUR TAKE ON DATA INTERNET CHARGES TAX

In this issue

From the Tax Desk

Contacts
Head Office
3rd Floor, Western Heights
Karuna Road, Westlands
P. O. Box 45390 – 00100
Nairobi, Kenya
Tel. +254(20)4443868
254 20 4448938
254 20 4446466
Fax: 254 20 4449819

Mike Mbaya | Managing Partner
Email: mike@mbaya.co.ke
Muhungi Kanyoro | Partner
Email: mkanyoro@mbaya.co.ke
Andrew Bulemi | Partner
Email: abulemi@mbaya.co.ke
Leah Nganga | Partner
Email: lwambui@mbaya.co.ke
Christine Yego | Outsourcing Dept. Manager
Email: christine@mbaya.co.ke
John Ogutu | Tax Manager
Email: jogutu@mbaya.co.ke
Darlyn Mbaya | Manager & Partner
Savanna Associates
Email: darlyn@mbaya.co.ke

M&A Newsletter
MBAYA AND ASSOCIATES October 2018 Issue 040 | Volume 4

Source: https://cdn.presstv.com/photo/20180304/de72db48-a955-4d60-885c-7fb8d5bccd3f.jpg

From the *Tax***Desk**

Introduction

*On 30th August 2018, the National assembly rejected the revenue raising measures proposed by National Treasury which includes the infamous "**Robin Hood Tax**". The members of the National Assembly also sought to suspend the introduction of the VAT on petroleum products, which was to take effect as of 2nd September 2018 for a further two years.*

On 13th September 2018, the Speaker presented the Bill to the President for his assent. The President declined to assent to the Bill, by exercising his rights as provided to him on Article 115 of the Constitution. He did however refer back the Bill to Parliament to reconsider their move stating that changes would interfere with key government agendas whose budget had already been approved by parliament.

On 20th September 2018, Parliament deliberated and approved the President's memorandum of changes. On 21st September 2018 the President assented to the revised finance Bill, whose revenue measures and implication have been provided in the given summary.

AMENDMENTS TO THE VAT ACT

VAT on Petroleum Products

The Finance Act 2018 introduced a VAT rate of 8% charge on importation and supply of petroleum products with effect from 20th September 2018. This was a reduction from the initial 16% proposed in the Bill after a lot of hue and cry from the public. The debate in parliament was acrimonious and the eventual vote was equally cantankerous. In the end a figure of 8% was arrived at. However, the 16% VAT initially imposed between 2nd September 2018 to 19th September 2018 would still be payable to KRA.

Reclassification

With effect from 1st July 2018, the Finance Act 2018 proposed to amend the First and second schedule of the VAT Act. The Act proposes to increase the number of VAT exempt supplies by reclassifying some of the selected Zero rated items to exempt supplies as summarized below;

Item	Previous	Current
Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products.	Zero rated	Taxable
Medicaments containing ephedrine or its salts	Taxable	Zero Rated
Medicaments containing pseudoephedrine or its Salts	Taxable	Zero rated
Medicaments containing norephedrine or its salts	Taxable	Zero rated
Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces	Taxable	Exempt
Maize flour containing cassava flour by more than ten percent in weight, maize (corn flour), cassava flour, wheat or meslin flour and maize flour	Exempt	Zero Rated
Hearing aids (excluding parts and accessories)	Taxable	Exempt

Our take

The essence of the VAT legislation was to increase tax collection and reduce the cost of administering VAT legislation; this is to be achieved by reducing the number of products that were classified as exempt or zero rated.

The sellers of products that use petroleum products during manufacture should ideally not increase the price as a result of the VAT imposition. This is because the sellers would be allowed to claim the deduction on the VAT paid on petroleum products. However, for taxpayers who supply exempt services and goods will not be allowed to deduct the VAT on their purchases. Hence the taxpayers in these industries will have to pass the burden to customers by increasing the prices of their products/ services. This could lead to some inflationary pressure in the short term.

VAT on Computer Parts

The Finance Act provides for VAT exemption for imported or locally produced computer parts that are to be used for the assembly of computers. This is an extension of earlier exemption on parts imported or purchased locally meant to be used for the assembly of primary school laptops/tablets.

VAT on Solar Energy Equipment

Initially the VAT Act provided a general VAT exemption on all specialised solar equipment and accessories including solar water heaters. The term "specialised" however was vague and hence this lead to disputes between the Authority and the taxpayers.

The Finance Act 2018 now restricts now restricts this exemption to specialized equipment used in the development and generation of solar and wind energy only.

Our take

The implication of this amendment is that solar bulbs or lights, solar water heaters and other accessories will be subject to 16% VAT. The government should reconsider and exempt all solar equipment, to encourage the adoption of solar as an alternative source of energy especially in rural parts of the country.

Postal Services

The Finance Act exempts from VAT postal services like rent of post boxes, postage stamps or any subsidiary service. This provision reduces the VAT burden on the users of such services and will lead to more affordable circulation of information.

EXCISE DUTY ACT AMENDEMENTS

Bank Charges

The Finance Act 2018 has increased the Excise Duty charged by financial institutions on fees from 10% to 20% with effect from 25th September 2018. This move is expected to be particularly painful for both the bank and the customers. For Bank customers, the "pinch" will be felt on the increased bank charges due to the increase in taxes on bank transaction fees, whereas the bank will have to first pay the taxes before they could enjoy their profits made on commissions and fees.

Telephone Charges

The Finance Act 2018 has increased the Excise Duty charged on mobile telephone services from 10% to 15%. This will result into a higher tax cost on mobile cellular services. Mobile and telephone service providers will opt on whether to shift the tax burden to consumers or absorb the costs themselves.

Data Internet Charges

The Finance Act 2018 has increased Excise Duty on internet data services from 10% to 15%. The increase will see the Treasury earn an extra 5% on excisable value of the services.

Our take

The tax applicable on mobile money transfers and other fees charged by financial institutions has now doubled, whereas the tax on internet and telephone services has increased by 50%. This new tax will have an adverse impact on the growth of mobile money services which has played a significant role in the growth of financial market.

Excise Duty on Confectionery

The Finance Act 2018 reinstates excise duty on sugar confectionery (including white chocolate) containing and not containing cocoa at the rate of 20 per kilogram.

Our take

This part of the tax measures was proposed by the National Treasury which parliament had initially rejected following intense lobbying by industry players. This is a continued measure by the government to raise funds through the taxation of items deemed to be luxurious in nature. The price of sugar confectionary will go up as a result of the new tax. For the industry in general, this appears to be the start of the introduction of a sugar tax, which like in many developed countries.

Excise Duty on Illuminating Kerosene

The Approved Finance Bill introduces a new levy under the Miscellaneous Fees and Levies Act to counter the adulteration of Diesel with illuminating kerosene. The levy of KES 18/litre which seeks to harmonise the cost of kerosene to that of diesel is to be paid by the importer at the time of entering the illuminating kerosene into the country. The importer will then pass on the cost to the consumers.

Our take

Illuminating kerosene is used as the primary fuel by low income households and therefore the levy of KES 18/litre will hit them hard. It is important to note that this levy is in addition to the 8% VAT on petroleum products, which means that even with the reduction of VAT from 16% to 8%, the cost of illuminating kerosene will go up.

Excise Duty on Private Passengers Cars

The Finance Act 2018 has amended the Excise Duty Act 2015 by increasing the Excise Duty charged on private motor vehicles, whose engine capacity exceeds 2,500cc for diesel and 3,000cc for petrol powered vehicles from 20% to 30%.

NATIONAL HOUSING DEVELOPMENT FUND (NHDF) CONTRIBUTION

The Finance Act introduces an employee and employer housing levy of 1.5% on the worker's gross salary with a monthly maximum deduction of KES 2,500 for individuals earning a basic salary of KES 166,000 and above.

Employers will be required to pay a similar amount for every employee to the National Housing Development fund. This brings the maximum contribution per worker at KES 5,000 per month. The contributions are to be made on or before 9th day of the following month to NHDF, failure of which will attract a penalty of 5% of the contributions made by the employer.

Contributions will however commence once the regulations for qualification to the affordable housing scheme has been publicised.

Our take

The proposed Act measure seeks to raise resources for the low cost housing facet of the president's "Big Four" Agenda. Currently, home ownership is out of reach for many Kenyans, due to lack of access to credit.

The government's proposal is very promising as it will enable individuals to access cheaper home ownership alternative; however, it is still not clear how those who are in self-employment will be able to participate in the scheme. Perhaps there should be provisions for voluntary participation for those who are un-employed or self-employed to be able to participate and benefit from this proposal.

DEFINITION OF "WINNINGS"

The Finance Act 2018 amends the definition of "winnings" under section 2 of the Income Tax Act (ITA), to include winnings of any kind, with references to the amount or to the payment of winnings being interpreted accordingly.

Our take

The expansion of this tax category to include all kind of winnings will broaden the tax base to include promotional winnings and sport prize money, since all are subjected to a withholding tax of 20% applicable both to residents and non- residents.

TAXATION OF BETTING, GAMING & LOTTERIES COMPANIES

The approved Finance Bill 2018 reduces the Betting, Gaming and Lotteries Tax from 35% to 15% with effect from 1st January 2018.

Our take

Following the introduction of the 20% withholding tax on winnings, the reduction of the betting, gaming and lottery tax distributes the tax burden to both the punter and the betting company.

INTRODUTION OF PRESUMPTIVE TAX

Businesses whose annual turnover is less than KES 5Million will now be required to pay presumptive tax at the rate of 15% on the business permit or trading license fee. This replaces the Turnover Tax that is currently levied at 3% of turnover. This move is aimed at increasing revenue by tapping into the informal business sector. This will be enforced from 1st January 2019.

Tax Due Dates

Withholding Tax | 20th Day of the following month
Pay as You Earn | 9th Day of the following month
VAT | 20th Day of the following month
Balance of Tax on Self-Assessment | 4th Month after year end
Monthly Rental Income | 20th Day of the following month

KENYA REVENUE AUTHORITY

Instalment Tax

1st Instalment |20th day of the 4th month after year end
2nd Instalment | 20th day of the 6th month after year end
3rd Instalment | 20th day of the 9th month after year end
4th Instalment | 20th day of the 12th month after year end
Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.

DISCLAIMER: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, Mbaya & Associates, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.