Moore JVB LLP

Certified Public Accountants (K)

THE FINANCE ACT, 2019
KEY HIGHLIGHTS

19 November 2019

Prepared by:

Moore JVB LLP
Certified Public Accountants, Kenya
P.O Box 69952 - 00400
Nairobi

CONTENTS

Introduction 3

Income Tax Act 4

Value Added Tax (VAT) 6

Tax Procedures Act (TPA) 7

Excise Duty Act 8

Miscellaneous Amendments 10

INTRODUCTION

The Finance Bill of 2019 was assented to in to law by the President on 7th November, 2019. The Budget Statement had been presented by the Cabinet Secretary (CS) in charge of the National Treasury on 13th June, 2019.

The theme of this year's Budget was ***"Creating Jobs, Transforming Lives - Harnessing the "Big Four" Plan"***.

Further to our budget highlights that we prepared in June 2019, we have put together an analysis of the key highlights of The Finance Act, 2019.

INCOME TAX ACT

Below are the key changes to the Income Tax Act

- The Finance Bill had proposed to increase the rate of Capital Gains Tax (CGT) from 5% to 12.5% in order to enhance equity and fairness as well as harmonize the rate with other jurisdictions, including the East Africa Community region, where the rate ranges from 20% to 30%. This was however rejected by parliament and the rate therefore remains at 5%.

- The Act has exempted the application of Capital Gains Tax (CGT) on the transfer of separation, dissolution or similar restructuring of corporate entity where such transfer is *(wef 7 November, 2019)*:
    - a legal or regulatory requirement; or
    - as a result of derivative or compulsory acquisition by the Government; or
    - an internal restructuring within a group which does not involve transfer of property to a third party; or
    - in the public interest and approved by the CS.

- The Act has introduced a corporate income tax rate of 15% as an incentive for the first 5 years for companies operating plastic recycling plants *(wef 7 November, 2019).*

- The Act exempted from the application of thin capitalisation, a company implementing a project under an affordable housing scheme upon recommendation by the Cabinet Secretary responsible for housing *(wef 1 January 2020)*.

- The Act has proposed to tax the income of a non-resident shipping line at the rate of 2.5% of the gross amounts received to be accounted for by the agent in Kenya of the non-resident ship owner on all income from a non-resident shipping line including income from delay in taking delivery of goods or returning any equipment used for transportation of goods which shall be deemed to have been derived from Kenya. This change reverses the provision of a withholding tax of 20% on demurrages which was payable by the person paying the demurrages to the non-resident ship owner *(wef 7 November, 2019)*.

- The Act has excluded income that is exempt from tax under the First Schedule of the Income Tax Act from distribution tax *(wef 7 November, 2019).*

- The Act has clarified the taxation of Digital Economy. The Act clarifies that income from digital market place includes income accrued in or derived from Kenya and Digital Market Place is defined as a platform that enables, by electronic means, direct interaction between buyers and sellers of goods and services *(wef 7 November, 2019).*

- The Act has re-introduce turnover tax at the rate of 3% for businesses whose turnover does not exceed Kshs. 5 million; however, presumptive tax will still be retained. This will however not apply to *(wef 1 January, 2020)*:
    - Rental income;
    - Management or professional or training fees;
    - The income of incorporated companies; or
    - Any income which is subject to a final withholding tax.

- The Act has extended the definition of approved institutions as far as Home Ownership Savings Plan (HOSP) is concerned to include Fund Managers registered under the Capital Markets Act. It has also provided that deposits in a Registered HOSP shall be invested in accordance with the prudential guidelines issued by the Central Bank or investment guidelines or regulations issued by the Capital Markets Authority *(wef 1 January 2020)*.

- The Act has expanded the scope of withholding tax on insurance premiums paid to non-resident insurance companies to include re-insurance premiums, excluding those paid in respect of aircraft *(wef 7 November, 2019).*

- The Act has introduced withholding tax on payments made by a branch to its foreign head office or related party where the Double Tax Treaty provides for such expenses to be tax deductible *(wef 7 November, 2019).*

- The Act has exempted from tax *(wef 1 January, 2020)*:

    - The income of the National Housing Development Fund;
    - The income earned by individuals enrolled in the Ajira Digital Platform (ADP) for a period of three years provided that the qualifying members pay a subscription on registration of Kshs. 10,000/=;
    - The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner; and
    - Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

- The Act has amended Affordable Housing Relief on Pay As You Earn from the initial 15% of gross emoluments of an employee to be 15% of employee's contribution.

- The penalty of 20% on unpaid tax has been deleted in order to align it with the provisions of the Tax Procedures Act, which provides for a penalty at the rate of 5% *(wef 7 November, 2019).*

- The Act has extended the exemption from tax of REITS to cover income earned by investee companies of the REITS *(wef 7 November, 2019).*

VALUE ADDED TAX (VAT)

Below are the key changes to the Value Added Tax Act, all with effect from 7 November, 2019

- The Act has now clarified the taxation of Digital Economy. The Act clarifies that income from digital market place includes income accrued in or derived from Kenya and Digital Market Place is defined as a platform that enables, by electronic means, direct interaction between buyers and sellers of goods and services and is vatable. The Act has further required the Cabinet Secretary to make regulations to provide for the mechanism for implementation of Vat on supplies made through the digital marketplace.

- Non Vat registered persons will now be required to account for reverse Vat on imported services; this was only a requirement for registered persons.

- The Act has limited the exemption on supply of tractors to those that are used only for agricultural purposes only.

- The Act has now exempted from Vat:

  - Locally manufactured motherboards;
  - Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for information communication technology;
  - Plant, machinery and equipment used in the construction of plastics recycling plants;
  - The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight;
  - Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing;
  - Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education; and
  - Securities exchange brokerage services and scope will also cover all financials securities traded at the Securities Exchange.

- The Act has clarified that exemption from Vat on specialised equipment used for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power is subject to approval of CS responsible for Energy.

- The Act has zero rated propone. It is worth noting that the Finance Bill had proposed zero rating of denatured ethanol, this was declined by parliament and therefore its treatment remains the same.

- The Act has also zero rated Agricultural pest control products.

TAX PROCEDURES ACT (TPA)

Below are the key changes to the Tax Procedures Act, all with effect from 7 November, 2019

- The Act has clarified that the late submission penalty of 5% on tax due shall be calculated after deducting from the tax total tax liability, the tax already paid and withholding tax credit, this was a provision before TPA;

- The Act has extended the period within which the Commissioner is required to issue an objection decision to beyond the 60 day period currently provided for where additional information is to be provided by the taxpayer;

- The Act has provided that the Commissioner may exempt a person or class of persons in certain circumstances from the requirement of obtaining a PIN number when opening a bank account;

- The Act has introduced PIN requirements for:
    - Registration and renewal of membership by professional bodies and other licensing agencies; and
    - Registration and mobile cellular paybill and till numbers by telecommunication operators.

- The Act has reduced the rate of Withholding VAT from 6% to 2%.

- The Act has granted a three year Tax Amnesty on penalties and interest for Companies listed on Growth Enterprise Market Segment (GEMS) to cover any year prior to the date of listing where the company makes full disclosure of its past income, assets and liabilities for two years immediately preceding the date of listing provided the principal tax is paid in full;

- The Act has given powers to the commissioner to recover the taxes from a person who fails to deduct or withhold tax under a tax law such as withholding taxes, PAYE, withholding Vat etc;

- The Act has expanded the scope to which Departure Probation Order (DPO) can be issued to include Tax Representatives. These will include, CEO, Managing Director, Company Secretary, treasure, trustee or a similar officer of the Company acting in such a position; and

- The Act changed the applicability of penalties on tax shortfall to exclude liabilities arising from acts of omission that are not deliberate. The applicable tax rate has therefore been streamlined with the Tax Procedures Act that provides for the penalty at 5%.

EXCISE DUTY ACT

Below are the key changes to the Excise Duty Act, all with effect from 7 November, 2019

- The Act has now introduced a definition of an official aid funded project to mean: *"a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organisation or any other agency"*.

- The Act has introduced a general penalty of a fine not exceeding Kshs. 2 million or imprisonment not exceeding two years or both to cater for offenses where a specific penalty is not provided.

- The Act has adjusted the excise duty rates on motor vehicles and below are the new rates:

Items	New rate
Motor vehicles of tariff heading 87.02, 87.03, and 87.04 excluding locally assembled motor vehicles, school buses for use by public schools, motor vehicles of tariff no. 8703.24.90 and 8703.33.90 and Imported motor vehicles of cylinder capacity exceeding 1500cc	20%
Imported motor vehicles of cylinder capacity exceeding 1500cc tariff heading 87.02, 87.03 and 87.04	25%
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	35%
Fully powered electric motor vehicles of tariff no. 8702.40.19, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8702.80.00	10%

- The Act has adjusted the excise duty rates on alcoholic beverages and cigarettes as follows:

Items	New rate
Cigars, Cheroots, Cigarillos containing tobacco or tobacco substitutes	Kshs. 12,624 per Kg
Electronic Cigarettes	Kshs. 3,787 per unit
Cartridge for use in electronic cigarettes	Kshs. 2,525 per unit
Cigarette with filters (hinge lid and soft cap)	Kshs. 3,157 per mile
Cigarette without filters (plain cigarettes)	Kshs. 2,272 per mile
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Kshs. 8,837 per Kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Kshs. 189 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Kshs. 253 per litre

- The Act has introduced excise duty on betting transactions at the rate of 20% on amount staked or wagered. The Act has also clarified that in relation to a betting transaction, the "time of supply" shall be the time a person wagers or stakes money on a platform or other medium provided by a bookmaker.

- The Act has also adjusted the duty rates on the below items as follows:
    - Imported sugar confectionary of tariff heading 17.04, new rate will now be Kshs. 20 per kg;
    - Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00, new rate will now be Kshs. 200 per kg; and
    - Imported gas cylinders have now been subjected to a new excise duty of 35%.

- The Act has removed duty relating to plastic shopping bags in line with the current ban on their manufacture.

- The Act has also changed the date of inflation adjustment on duty rates from 1st July to 1st October every year;

- The Act has amended the definition of “other fees” to exclude fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or Regulations.

MISCELLANEOUS AMENDMENTS

Miscellaneous, Fees & Levies Act

- The Act has increased Railway Development Levy (RDL) for finished products from 1.5% to 2%. However, the RDL on the below shall enjoy a reduced rate of 1.5%:
    - raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and
    - input for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

- The Act has increased the Import Declaration Fee (IDF) from 2% to 3.5%. However, the IDF on the below shall enjoy a reduced rate of 1.5%:
    - raw materials and intermediate products used by approved manufacturers;
    - raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry; and
    - input for the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

- The bill proposes to impose an export levy of 10% on tanned and crust hides and skins.

Banking Act

The Act has amended the Banking Act by repealing Section 33B that previously capped the interest rate chargeable on credit facilities at a maximum of 4% of the base rate set and published by the Central Bank of Kenya. The repeal of this Section will however not affect existing loans signed when the section was in force.

Capital Markets Act

The Act has now empowered the Capital Markets Authority (CMA) to enforce penalties and sanctions on players in the capital market who infringe rules and procedures. The financial penalties shall be recoverable as civil dates by the CMA.

Employment Act

The Act has deleted the definition of “employee’s earnings” and inserted a new definition of “basic salary” to mean an employee’s gross salary excluding allowances and other benefits.

The Accountants Act

The Act has deleted the requirement for a person to first register with the Institute of Certified Public Accountants of Kenya (ICPAK) before undertaking an examination in accounting with the examination board (KASNEB).

Disclaimer

Our review highlights the main aspects of the Finance Act, 2019 assented to by the President on 7th November, 2019. The information contained in this review has been compiled from the Finance Act and while all reasonable attempts have been made to ensure that the information contained herein is accurate, Moore JVB LLP accepts no responsibility for any errors or omissions it contains whether caused by negligence or otherwise. The review contains general information only and it is neither intended to be a comprehensive publication nor provides specific advice. This review should not be relied on solely, and we advise you seek appropriate professional advice before making any decision.

CONTACT US

Moore JVB LLP

T: +254 20 2083628/9
E: info@moore-jvb.com
W: www.moore-jvb.com

Location:
The Pride Rock, No. 6, Donyo Sabuk Avenue
P. O. Box 69952 – 00400, Nairobi, Kenya