Tax Alert

Highlights of the Finance Bill, 2019

Three weeks after the reading of the budget statement by the Cabinet Secretary (CS) for the National Treasury, the Finance Bill ("the Bill") has now been introduced into the National Assembly via Kenya Gazette Supplement No.104. We provide a quick highlight of the various provisions in the Finance Bill.

It is noted that a number of the provisions in the Bill are in respect of tidying up and clarifying provisions introduced in the Finance Bill, 2018.

Watch a recording of our webcast on the **Finance Bill, 2019,** held on **16 July 2019.** Click on the link below to access the recording.

https://webcastportal.pwc.com/open/f28ab096-50fc-4bb6-b8ae-20083029c248

www.pwc.com/ke

Corporate Tax

Description	Comments
Taxation of digital economy	• In attempting to tax income arising from a digital market place, the Bill has defined a “digital market place” as a platform that enables direct interaction between buyers and sellers of goods and services through electronic means. The Bill further introduces a provision that affirms that income arising from a digital market place is accrued from Kenya. • It is unclear how the mere addition of the definition of a digital market place or the affirmation that income from a digital market place is accrued from Kenya will help resolve the difficult issues arising from the taxation of digital transactions. • Income accruing from the digital market place has never been beyond the ambit of income tax and an introduction of a definition of the same may not achieve the intended purpose of taxing the digital economy. • The main challenge with taxing the digital market place is defining the point of taxation for non-resident companies whose income is sourced from Kenya. As presently drafted, the taxation of the digital economy remains unclear, simplistic and a fertile ground for tax disputes on the point at which income sourced from Kenya by the non-resident persons through a digital platform becomes taxable in Kenya, to what extent it is taxable and in what proportion.
Turnover / presumptive tax	• The Bill proposes to reintroduce turnover tax in respect of businesses with a turnover that does not exceed five million shillings. The existing presumptive tax of 15% of the single business permit has been retained and can be offset as an advance tax credit against the turnover tax payable. • These changes are now the third amendment in as many years since the introduction of the turnover tax. Last year, the turnover tax was abolished on account of being unsuccessful and was replaced by a presumptive tax. • The constant amendments in respect of the turnover tax create significant uncertainty for potential taxpayers and it is unlikely that there will be any significant compliance by taxpayers in the absence of extreme and disproportionate enforcement measures. The new provisions (whereby presumptive tax is an advance payment to the turnover tax) are overly complicated and significantly increase the compliance burden on the informal sector – which is contrary to the rationale for the introduction of the turnover tax. • It is also unclear what incentives accrue to unincorporated persons to prompt them to make advance payments, submit tax returns and claim credits. This casts doubt on the likelihood of success for the voluntary compliance system.
Tax incentive to encourage plastic recycling	• Companies operating plastics recycling plants will pay corporate income tax (“CIT”) at a reduced rate of 15% for the first five years of commencing operations. • The proposed CIT benefit may not materialise as most newly set up manufacturing entities are in a tox loss position in their first years of operations. Even if they were commercially profitable, it is unlikely that they will have taxable profits owing to the tax depreciation of 100% to 150% on capital expenditure on plant and machinery in the year of first use. The benefit would have been more realistic if it was applied from the first year that the entities make a taxable profit.

Description	Comments
Increase in Capital Gains Tax ("CGT")	• The rate of CGT will increase from 5% to 12.5%. Increasing the CGT rate without providing for indexation will result in paying CGT on inflationary gains. We would have expected the Bill to propose a more fundamental review of the taxation of capital gains tax in Kenya. **Internal restructuring reprieve from CGT** • Transfer of property and shares by entities for internal restructuring purposes within a group will be exempt from CGT, provided that the restructure does not result in a transfer to a third party. • The exemption is a welcome move as it eases the process of internal restructuring when there is no change in beneficial ownership.
Compensating tax amendments	• The Bill provides clarity to the compensating tax provision (section 7A of the Income Tax Act ("ITA")) that was introduced in the Finance Act of 2018. The proposed provision excludes exempt income from the definition of untaxed gains or profits that are subject to compensating tax under section 7A of the ITA. • This has put to rest the anxiety of local holding companies around the taxation of the distribution of dividends that were earned from their subsidiary companies.
Withholding tax ***Additional services***	• Withholding tax ("WHT") will apply to services relating to security, cleaning and fumigation, catering services offered outside hotel premises, transportation of goods (excluding air transport), sales promotion, and marketing and advertising. • A 5% rate of WHT is applicable in respect of payments to a resident and a 20% rate on payments to a non-resident. The local WHT is a tax credit and may result in significant refund applications to the KRA where the affected services make tax losses or have net profit margin of lower than 16.6% (which is highly likely in relation to some of the low margin businesses such as cleaning, transport and catering). • Whereas the proposal will increase tax compliance, these services are notably routine in nature and accounting for and remitting WHT could prove to be an onerous task for persons paying for these services. It would have been helpful to include a minimum threshold similar to management and professional fees to ease the compliance burden on the payer.
Payments from branches to their parent companies	• WHT will be applicable to payments made by branches to their non-resident parent companies where a Double Tax Treaty ("DTA") allows a tax deduction for such payments. • Where the DTA does not specifically entitle Kenya to charge withholding taxes on such payments, then it is unlikely that the proposed withholding tax would be applicable to such payments regardless of this proposed amendment.
Reinsurance premiums	• The Bill clarifies that reinsurance premiums are subject to WHT at 5% (resident) or 20% (non-resident). This clarifies the provisions introduced in last year's Finance Act that subjected insurance premiums to WHT. This may have a moderate impact on the industry as it has been widely assumed that reference to insurance premiums includes reinsurance premiums.
WHT credits to cushion late submission penalties	• The Bill proposes to allow taxpayers to offset WHT credits against penalties and interest arising from late submission of tax returns.
Demurrage and detention charges	• The Bill proposes to charge to tax the gains or profits of shipping companies arising from demurrage and detention of containers at the rate of tax is 2.5% of the gross amount received. The Bill proposes to scrap the 20% WHT on demurrage and detention charges that was introduced in last year's Finance Act.

Corporate Tax

Description	Comments
Murky timelines for objection decisions	• The Bill proposes to allow KRA to issue an objection decision within sixty days of receiving a notice of objection or within sixty days of receiving any further information the KRA may require from the taxpayer. The introduction of the latter section is a moving target and defeats the purpose of the section which is to provide a predictable and time constrained dispute resolution process. The current provision requires the KRA to issue an objection decision within a fixed period of sixty days from the date the taxpayer lodged a notice of objection.
Tax amnesty for SME's listing on GEMS	• The Bill proposes to extend a two-year tax amnesty on penalties and interest to companies listing on Growth and Enterprise Market Segment (GEMS). A company listing on GEMS can only benefit from the amnesty upon making a full disclosure of its past income, asset and liabilities for the two years immediately preceding the date of listing. The tax amnesty however excludes any principal taxes payable and is lost if the company delists before the lapse of five years. • The proposal is intended to increase GEMS listing by SMEs but the restrictions tied to the tax amnesty could discourage the intended growth of the sector. Given the five-year statutory limitation period, the Bill should have considered extending the tax amnesty to five years prior to listing in order to enhance the effectiveness of the amnesty.

Value Added Tax (VAT)

Description	Comments
Supply of imported services redefined to include supplies to unregistered persons	• The Bill proposes to amend the definition of supply of imported services to include supplies made to persons not registered for VAT. Currently, a supply qualifies as an imported service if it is made by a non-resident person to a VAT registered person. • This measure is likely to have far-reaching cost implications on entities currently not registered for VAT and import services as VAT on imported services will be an absolute cost to these organizations. Some of the sectors that will most likely be affected include oil and gas, financial institutions including the insurance sector, medical, educational and the not for profit organizations. • However, it is worth noting that the VAT legislation does not provide clarity on whether VAT on imported services should be accounted for by the non-registered importer or the non-resident service provider.
Clarification on what constitutes official aid funded project	• The Bill proposes to introduce a definition of the term “concessional loan” to mean “a loan with at least twenty five percent grant element”. This proposal seeks to address the existing lack of clarity as to what constitutes concessional loan for the purposes of an aid-funded project whose supplies are exempt from VAT. • Organizations looking to execute official aid funded projects that do not meet the twenty-five percent grant element threshold are likely to be impacted by this proposal since they will not benefit from the exemption, as is currently the case.
Taxation of the digital economy	• The Bill proposes to bring to charge supplies made through a “digital market place”, which is to be defined as a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means. In our view, these transactions have always been taxable and the government may only be reiterating this position. • The VAT Act currently provides for imposition of VAT on supply of electronic services in Kenya. The proposed amendment in the Bill, intends to impose VAT on transactions made through digital market place facilitated by both resident and non-resident entities in Kenya. Despite this proposed introduction, the Bill has not explicitly clarified the mechanism through which the tax will be collected. • Considering taxation of the digital economy is an area that is currently being reviewed globally, expectations were that the government would publish detailed regulations on the taxation of the digital economy including operationalization of the provisions on appointment of tax representatives or VAT registration of non-resident service providers providing electronic services.
Clarification on time of supply of imported goods to include goods removed from Special Economic Zones (“SEZ”)	• The Bill proposes to clarify the time of supply of imported goods to include goods removed from Special Economic Zones (“SEZ”). Currently the time of supply rules under the VAT Act only provides for goods removed from Export Processing Zones (“EPZ”). This is not a new requirement but clarification and alignment of the VAT Act in line with the tax treatment of entities operating in special economic zones. It should be noted that supplies from SEZ are deemed as imports into Kenya.
Solar equipment suppliers to seek exemption approval	• The VAT Act currently exempts from VAT specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power. Solar equipment suppliers currently importing their products obtain exemption for qualifying equipment through the Kenya Revenue Authority. The Bill proposes the exemptions to now be approved by the Cabinet Secretary responsible for matters relating to energy. • In our view, this measure is aimed at curbing potential misuse of tax exemptions.

Value Added Tax (VAT)

Description	Comments
Exclusion of road tractors for semitrailers from the VAT exemption	• The Bill proposes to exclude road tractors for semitrailers from the VAT exemption ambit, as currently the provision exempts all tractors. The term "tractors" is a general term that includes road tractors for semitrailers. In our view, this restriction is aimed at ensuring that exemption is only applied to tractors used primarily for agricultural purposes. We expect this amendment to impact businesses that import tractors for other uses than agriculture and may have been benefiting from VAT exemption.
Exemption of locally manufactured motherboards and inputs for manufacture of motherboards	• In a welcome move to promote local manufacturing, the Bill has proposed to exempt from VAT, locally manufactured motherboards and inputs for the local manufacture of motherboards. • This exemption will allow local manufacturers to be more competitive as well as boosting of the big four agenda.
Exemption of plant and machinery for use in the construction of plastic recycling plants	• The Bill proposes to exempt plant and machinery for use in the construction of plastic recycling plants. This is a welcome move by the government as it seeks to protect the environment by discouraging the use of plastic products and encourage plastic recycling activities.
Exemption on supply of maize (corn) flour, cassava, wheat or masline flour and maize flour containing cassava flour	• The Bill proposes to exempt the supply of maize flour, cassava, wheat or mesline flour and maize flour containing cassava flour by more than ten percent in weight. • Currently, the supply of these products attracts VAT at zero rate. The move to VAT exemption will ultimately result into increased prices since suppliers will not be allowed to recover input VAT costs incurred on business operations. Suppliers will eventually pass on the costs to final consumers through increased prices. The move could be counter-productive to the spirit of enhancing food security and nutrition.
A boost to the agriculture sector	• In a move to implement one of the Big 4 Agenda – Food Security, the Bill seeks to exempt agriculture pest control products. This follows the government's move from zero rating to standard rating these products under the Tax Amendment Act 2018. • The VAT exemption aims at increasing affordability of the product to farmers and ultimately spur agricultural production and food security.
Exemption of inputs for electric accumulators and separators	• The Bill proposes to change the VAT status of inputs and raw materials for electric accumulators and separators including lead battery separator rolls supplied to manufacturers of automotive and solar batteries in Kenya from zero-rated to exempt. As has been the case in previous years, the government continues to restrict zero rating to exports only. • In addition, the Bill proposes the exemption to be granted upon recommendation by the Cabinet Secretary responsible for Industrialization. In our view, this measure is aimed to curbing potential misuse of tax exemptions by ensuring the responsible ministry provides approval.
Clarification on exemption provided to securities brokerage services	• The Bill proposes to amend the exemption of brokerage services by replacing the term "stock" with "securities" to provide clarification that the exemption covers securities brokerage services. The amendment is intended to provide clarity on the scope of the VAT exemption on brokerage services to include securities as well.

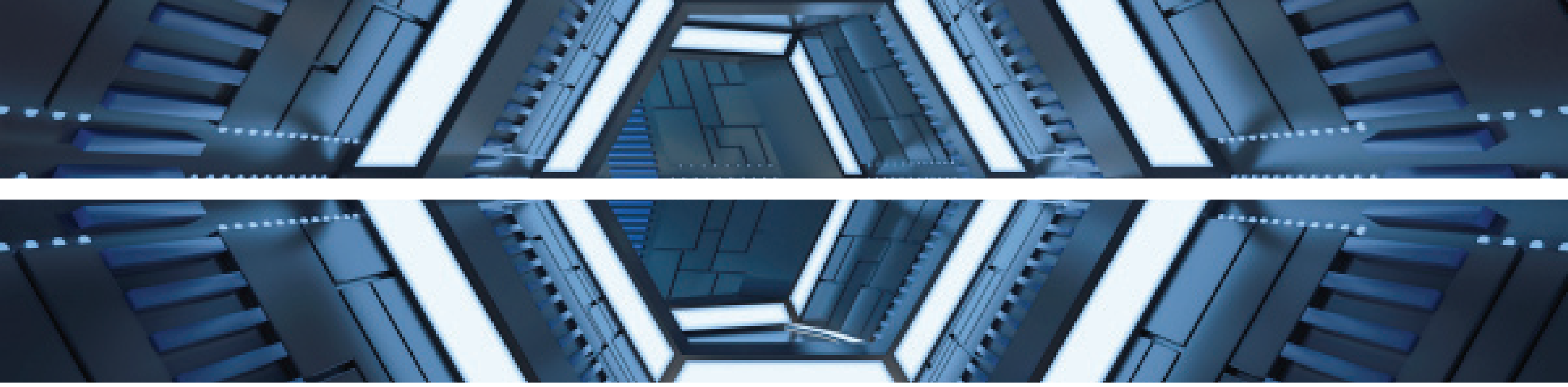
Description	Comments
Zero rating of denatured ethanol	• In a move to encourage the use of clean energy stoves, the Bill proposes to zero-rate the supply of denatured ethanol. The use of firewood, charcoal and kerosene causes pollution and presents adverse health exposure to users. • The proposed amendment is aimed at leading to a reduction in the usage of dirty fuels and encourage the use of ethanol as a fuel as it has clean combustion with negligible emissions and no soot. Ethanol is also considered a safe and affordable alternative to LPG.
Reduction of Withholding VAT rate	• In a move to address taxpayers' cash flow burden as a result of Withholding VAT (WH VAT) credits, the Bill proposes to reduce the WH VAT rate from 6% to 2% and exclude zero rated supplies from the application of WHVAT. • This is a welcome move by the government as it is likely to reduce the accumulation of VAT credits and free up cash that businesses need to continue investing. We hope that in the next budget cycle the government will do away with the Withholding VAT regime as was the case previously.
Amendment of the VAT refund formula	• Legal Notice 86 dated 13 June 2019 has amended the VAT refund formula as contained in Regulation 8 of the VAT Regulations, 2017. This is aimed at ensuring that suppliers of zero rated supplies are fully refunded on their input claims. We expect the funds freed from the above measures to spur economic growth and yield more taxes for the exchequer. • However, the proposal still does not enable businesses to fully recover input VAT. In addition, the proposal does not address historically under-recovered VAT credits that are stuck within the VAT system.
Amendment of the VAT regulation on exported services	• Legal Notice No. 86 dated 13 June 2019 has amended the VAT Regulations 2017, specifically Regulation 13 by deleting the provision that excluded services paid for by a person who is not resident in Kenya from the ambit of exported services. The amendment has added a provision that clarifies the location of the payer is not a factor. This clears the contradiction that was there between the principal VAT legislation and the subsidiary legislation. • We note that neither the Finance Bill nor the Legal Notice has attempted to address the contentious issue of VAT treatment of exported services in Kenya i.e. the lack of clarity in the VAT legislation on what constitutes 'use' or 'consumption' of services outside Kenya. These are critical terms in determination of whether services are exported or not. We expect this issue to remain a challenge which is attested by the numerous disputes between taxpayers and the tax authority both at the Tax Appeals Tribunal and in the courts of law.

Excise Duty

Description	Comments
Amendments to definitions	• The Bill proposes to introduce a definition of the term “concessional loan” to mean “a loan with at least twenty five percent grant element”. This proposal seeks to address the existing lack of clarity as to what constitutes concessional loan for the purposes of an aid-funded project whose supplies are exempt from excise. • In our view, similar to the VAT proposal, organizations looking to execute official aid funded projects that do not meet the twenty five percent grant element threshold are likely to be impacted by this proposal since they will not benefit from the exemption as is currently the case.
Excise duty on betting	• A 10% excise duty has been introduced on the amounts wagered or staked in betting activities. Amount wagered or staked is defined as “the amount of money placed by a person for an outcome in a betting transaction”. According to the Betting, Lotteries and Gaming Act, a betting transaction includes the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker, i.e., one who carries on the business of receiving or negotiating bets. The time of supply for a betting transaction will be the time a person wagers or stakes money on a platform or other medium provided by a bookmaker. • This excise duty charge is in keeping with the Government’s intention to deter the youth and other vulnerable members of society from the undesirable effects of betting.
General penalty	• A general penalty of a fine not exceeding two million shillings or imprisonment for a term not exceeding two years, or both, have been introduced. In our view, it would be useful to have a general penalty provision under the Tax Procedures Act, 2015 (“TPA”) which is supposed to consolidate and harmonise the procedures for administration of all taxes.
Additional excise duty on tobacco products, wines and spirits	• Excise duty rates on tobacco products, wines and spirits will go up by 15%. • This sector seems to be a favourite of the government as it seeks to raise additional revenue.

The proposed excise duty rates are laid out below:

Description	Rates of Excise Duty	Rates of Excise Duty (post-adjustment)
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 10,520 per kg	Shs. 12,098 per kg
Electronic cigarettes	Shs. 3,156 per unit	Shs. 3,629 per unit
Cartridge for use in electronic cigarettes	Shs. 2,104 per unit	Shs. 2,420 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 2,630 per mille	Shs. 3,025 per mille
Cigarettes without filters (plain cigarettes)	Shs. 1,893 per mille	Shs. 2,177 per mille
Other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences	Shs. 7,364 per kg	Shs. 8,469 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs.157.80 per litre	Shs.181 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 210.40 per litre	Shs. 242 per litre



Description	Comments
Incentives for buyers of electric vehicles	• Buyers of 100% electric powered vehicles will only part with 10% excise duty; a 50% decrease from the 20% charged for the average vehicle with a cylinder capacity of less than 1500cc. This is a welcome incentive and may just help the country reduce its carbon footprint.
Increased excise duty rate on motor vehicles	• The Bill proposes to increase excise duty on motor vehicles in a bid to curb carbon emissions. The excise rates are based on the cylinder capacity of the vehicle. In a move to encourage local assembly and manufacturing, locally assembled motor vehicles are excluded from excise. • In addition, school buses for use by public schools have also been excluded. The First Schedule to the Excise Duty Act will be amended as follows:

Description	Proposed Excise duty rates
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding— I. locally assembled motor vehicles; II. school buses for use by public schools; III. motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and IV. imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	20%
Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04	25%
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	35%
100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00	10%

Description	Comments
Change in annual date for inflationary adjustment	• The Excise Duty Act empowers the Commissioner to adjust the specific rates of excise duty every year to take into account the average inflation rate. The annual date for adjustment is proposed to be changed from 1 July to 1 October every year. The proposed change in dates may have been necessitated by the requirement for sufficient time to allow for public participation.
Exclusions from “other fees” clarified	• Excise duty is applicable on other fees charged by financial institutions. The Bill proposes to amend the definition of “other fees” to read “insurance premium or premium based or related commissions **specified in the Insurance Act or Regulations.”** • In our view, this is aimed at capping commission income that is exempt from Excise to the amount provided for under the 11th schedule of the Insurance Act. Any commission above the capped rate will then be subject to Excise.
Removal of excise on plastic bags	• The proposal is to amend the First Schedule to the Excise Duty Act by deleting “plastic shopping bags” and the corresponding rate of Excise duty. This change is intended to align the tax law with the Government ban on plastic bags.

Miscellaneous fees and levies

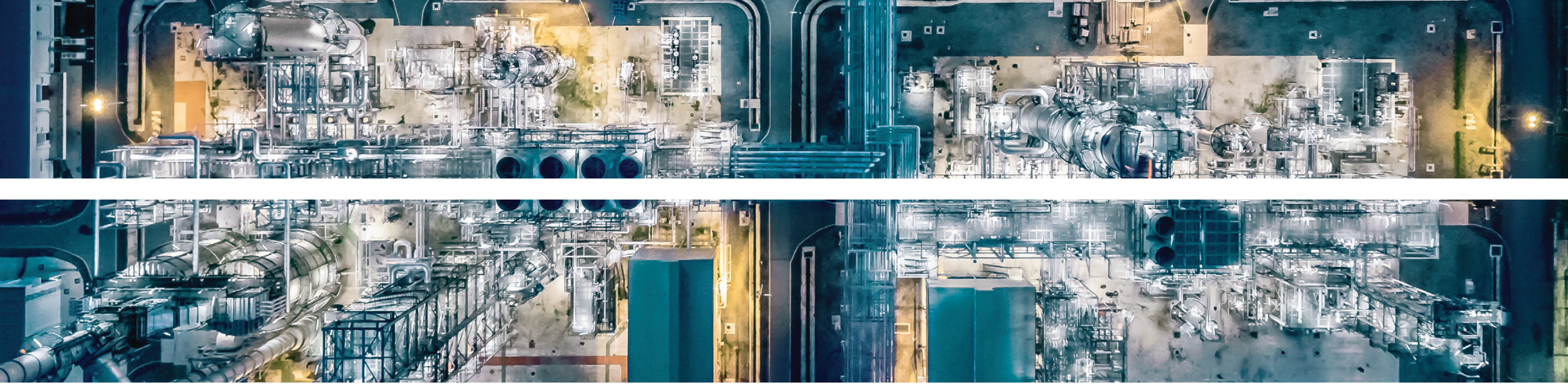
Description	Comments
Amendments to definitions	• Similar to the Excise Duty Act, the definition of concessional loan will be amended in the MFLA to be "a loan with at least twenty five percent grant element." However, the definition of official aid funded project has not been amended as has been proposed in the VAT and Excise Duty Acts.
Import Declaration Fees	• Import declaration Fee ("IDF"), currently charged at the rate of 2% of the customs value for all goods imported into Kenya, will increase to 3.5%. • However, the Bill proposes to reduce the rate on raw materials and intermediate goods from 2% to1.5% for approved manufacturers. The proposed changes reflect intention by Government to encourage local manufacturing.
Increase in Railway Development Levy	• Similarly the Bill proposes to increase Railway Development Levy ("RDL"), currently charged at the rate of 1.5% of the customs value for all goods imported into Kenya to 2%. • However, the proposal is to retain the rate on raw materials and intermediate goods at 1.5% for approved manufacturers. • The body responsible for the said approvals has not been stated .The proposed changes reflect the Government's agenda to encourage local manufacture.
Refund of anti-adulteration levy	• The MFLA imposed an anti-adulteration levy (at the rate of KES 18 per litre) on illuminating kerosene imported into Kenya, with the intention of curbing fuel adulteration. Importers of illuminating kerosene used by licensed or registered manufacturers of paint, resin or shoe polish, will be entitled to a refund of the anti-adulteration levy. The refund would certainly go a long way in reducing the cost of manufacture, however, it is not clear which body will be responsible for identifying the qualifying companies which are either licensed or registered. • However, the nature of the supply chain may pose a challenge for manufacturers who seek refunds, i.e. the targeted manufacturers do not import the illuminating kerosene themselves. Typically, oil marketing companies import illuminating kerosene, supply it to distributors who subsequently supply to manufacturers. To actualize the objective of this proposal the government will need to develop a framework for manufacturers to secure the refunds.
Export levy on tanned and crust hides and skins	• The Bill proposes an export levy at the rate of 10% on various tanned and crust hides and skins i.e. semi-processed The Government's intention is to discourage exportation of semi-processed hides and skins and encourage local manufacture of leather products.

Subsidiary legislation

Description	Comments
The Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations, 2019	• The Cabinet Secretary ("CS") for National Treasury has published and gazetted regulations which provide for the approval, importation and assembly of motor vehicles and trailers, through Legal Notice ("LN") 84 issued on 13 June 2019. This is aimed at fulfilling the government's strategy of encouraging investments in the local motor vehicle assembly industry.
Miscellaneous Fees and Levies (Forms) Regulations, 2019	• The CS has also published and gazetted, through LN 85, regulations which prescribe the import declaration form. Section 7(4) of the MFLA, which came into force on 21 September 2016, provides that an importer of goods other than goods specified in Part A of the Second Schedule shall complete the prescribed import declaration form. However, a form has never been prescribed under the MFLA. Neither the effective date nor the date of issuance is specified.
The Excise Duty (Excisable Goods Management System) (Amendment) Regulations, 2019	• Previously, the Excise Duty (Excisable Goods Management System) Regulations, 2017 provided that excise stamp fees were KES 0.5 per stamp for "Mineral water and aerated water of tariff no. 2201.10.00". The amendment regulations vide LN 94, broadens the definition to read, instead, "bottled water or similarly packaged waters and other non-alcoholic beverages not including fruit or vegetable juices" in alignment with what is already stated as being excisable under the principal Excise Duty Act. • The requirement to affix excise stamps to the items had been deferred by the KRA to allow for further consultations with stakeholders in the industry. However, KRA has since released a Public Notice, dated 9 July 2019, notifying the public that the Excisable Goods Management System will be applicable to bottled water, juices, soda and other non-alcoholic beverages and cosmetics effective 1 September 2019.

Employment and Other Personal Taxes

Description	Comments
Income earned under the "Ajira Digital Program" will be tax exempt	• The Bill proposes to exempt from tax the income earned by individuals registered under the Ajira Digital Program. A one-off registration fee of KES 10,000 will be payable by the members of the program in order to enjoy the tax exemption for the subsequent 3 years effective 1 January 2020. • Ajira Digital Program is an initiative by the Government to create employment opportunities for the youth through online work, training and mentorship. • For effective implementation of the program, the Cabinet Secretary (CS) for Treasury in consultation with the CS for Ministry of Information, Communication Technology (ICT) are expected to introduce regulations in the coming days.
The base for calculating the affordable housing relief adjusted	• The Finance Act, 2018 introduced an affordable housing relief equal to 15% of gross emoluments for eligible members of an affordable housing scheme approved by the Cabinet Secretary in charge of housing. • Under the Finance Bill 2019, the amount of affordable housing relief shall be 15% of the employee's contributions. This means that the proposed relief shall not exceed KES 375 per month (or KES 4,500 per annum), since the limit of the combined employer and employee contribution is KES 5,000 per month. Where an employee is also making voluntary contributions in addition to the statutory ones, the housing relief would be 15% of the actual contributions.
"Basic salary" is defined for the purpose of calculating the affordable housing levy	• The Bill proposes to amend the Employment Act, 2007 to define the employee's basic salary as "an employee's gross salary excluding allowances and other benefits". Previously, the Act defined employee earnings as "the taxable amount determined under the Income Tax Act for purposes of levying income tax on the employee's emoluments." • This means that the base for calculating the affordable housing levy shall be lower compared to the base for calculating income tax on emoluments. This change is proposed to take effect from 1 January 2020.
Exemption from the requirement to obtain a PIN in certain circumstances	• The Bill proposes to exempt any person or class of persons from the requirement to obtain a Personal Identification Number ("PIN") for the purposes of carrying out any of the transactions specified in the First Schedule of the Tax Procedures Act, 2015. • This amendment stems from the Cabinet Secretary's proposal to exempt foreigners from the requirement to supply a PIN when opening bank accounts in Kenya. • Individuals seeking the exemption will be required to submit an application to the Commissioner.
Additional transactions when a PIN will be required	• The Bill proposes to amend the First Schedule to the Tax Procedures Act, 2015 to expand the list of transactions where a PIN is mandatory. The additional transactions that will require a PIN include: – Registration and renewal of membership by professional bodies and other licensing agencies; and – Registration of mobile cellular pay bill and till numbers by telecommunication operators.



Description	Comments
Penalty on unpaid tax	• The Bill proposes to repeal Section 72D of the Income Tax Act which provides for a late payment penalty of 20% on any tax which remains unpaid after the due date. • This harmonises the application of late payment penalties under Section 83A of the Tax Procedures Act, 2015, which provides for a penalty of 5% on late payment of tax.
Tax shortfall penalty	• Under the Tax Procedures Act, 2015, a person who deliberately omits a material statement or makes a false or misleading statement to an authorised officer leading to the calculation of a reduced tax liability is liable to a penalty equal to 75% of the tax shortfall. A penalty equal to 25% of the tax shortfall applies in any other case. • The Bill proposes to remove the above provision on 25% penalty.
Departure prohibition order extends to tax representatives	• The Bill proposes to amend the Tax Procedures Act, 2015 to extend the departure prohibition order to tax representatives. • When the Commissioner has reasonable grounds to believe that a tax representative may leave Kenya without paying a tax that is due or will become payable by the tax representative or by a company they were responsible for, the tax representative shall be prevented from departing Kenya. • In our view, there is need for the government to engage with stakeholders on this proposal as it may discourage persons to act as tax representatives for non-residents. This would negate the initial intention of introducing the tax representative concept in Kenya.

For further information on the Finance Bill 2019, please contact any of the people below or your usual PwC contact.

Steve Okello
Director/Partner
steve.x.okello@pwc.com
+254 20 285 55116

Titus Mukora
Director/Partner
titus.mukora@pwc.com
+254 20 285 5395

Simeon Cheruiyot
Director/Partner
simeon.cheruiyot@pwc.com
+254 20 285 5348

Obed Nyambego
Director/Partner
obed.nyambego@pwc.com
+254 20 285 5331

Job Kabochi
Director/Partner
job.kabochi@pwc.com
+254 20 285 5653

Lynda Muchiri
Senior Associate
lynda.muchiri@pwc.com
+254 20 285 5477

This publication has been prepared as general information 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.

© 2019 PricewaterhouseCoopers Limited. All rights reserved. In this document, “PwC” refers to PricewaterhouseCoopers Limited which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.