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Kenya Budget 2017/2018:
Creating Jobs, Delivering a Better Life for all Kenyans

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Highlights

Direct Taxes

1. Corporate Income Tax

New Income Tax Act...Almost there but not quite

In his 2015/2016 budget speech, the Cabinet Secretary announced an overhaul of the existing Income Tax Act. Close to 2 years on, this is yet to be realized. However, the Cabinet Secretary has now announced that a new draft Income Tax Act is set to be published for public review shortly. This will give all stakeholders, including the business community and members of the public at large an opportunity to review the Act and give their input.

Among the issues mentioned as being addressed in the new legislation include Taxation of Capital Gains, Compensating Tax, Taxation of pensions, Taxation of Extractive Industries and Taxation of cross border transactions.

Tax amnesty on foreign income

The Cabinet Secretary has proposed the extension of the timeline for filing returns for taxpayers with offshore investments from 31 December 2016 to 30 June 2018 as part of the tax amnesty on foreign incomes granted under the Finance Act, 2016. This amnesty applies provided that the voluntarily declared funds are repatriated to Kenya.

The Cabinet Secretary further expects KRA to issue guidelines on the amnesty. However, this pronouncement does not take into account the fact that KRA already issued guidelines with respect to the amnesty in early March 2017.

Allowability of Donations towards National Disasters

In a move to address the ongoing drought in the country, which has been declared a national disaster, the Cabinet Secretary has proposed to allow deductions for expenditure incurred on donations for the alleviation of distress during national disasters declared by the President.

Only donations channelled through the Kenya Red Cross, County Government or institutions responsible for national disasters will be tax deductible

Reduced Corporate Income Tax for new vehicle assemblers

The Cabinet Secretary has proposed to reduce the rate of Corporate Income Tax for new assemblers of vehicles from 30% to 15% for their first five years of operation.

> "Corporate Income Tax for new assemblers of vehicles has been reduced to 15%"

It is worth noting that the specific rate of 30% mentioned by the Cabinet Secretary is specific to Kenyan resident companies, hence, it will be interesting to see whether or not the reduced rate also applies to foreign companies operating Kenyan branch offices.

Investment Deduction for the Marine industry

Players in the blue economy are set to benefit from Investment Deduction allowance at the rate of 150% on capital expenditure.

Tax incentives for Special Economic Zone (SEZ) Entities

The Cabinet Secretary has proposed specific changes aimed at encouraging investment in Special Economic Zones. These include:

- Dividends paid by SEZ entities to non-residents are to be exempted from Withholding Tax (WHT).
- Interest paid by SEZ entities to non-residents is to be subjected to WHT at the rate of 5%, down from 15%.
- Deduction of 100% of the investment cost of buildings and machinery.

Direct Taxes

1. Corporate Income Tax (continued)

Low Cost Housing

Finance Act 2016 introduced a reduced corporation tax rate of 15% for Companies constructing at least 400 residential units annually.

The CS has now proposed to introduce incentives to further encourage private sector investment in low cost housing units. What these are remains to be seen.

This time ‘The House’ doesn’t win

In a move geared at curbing the betting industry, the Cabinet Secretary has raised taxes on betting, lottery, gaming and competition which stood at 7.5%, 5%, 12% and 15% respectively to a whopping 50% across the board.

This seems especially punitive considering that some of these taxes are levied on gross revenues.

Direct Taxes

2. Pay As You Earn

Expanded tax brackets and increased relief for employees

Employees are set to benefit from the widening of the PAYE brackets and increased rates of relief, both of which have been increased by 10%.

Under the proposed amendments, the lowest taxable income is set to rise from Kshs. 11,135 per month to Kshs. 13,486 per month.

Indirect Taxes

3. Value Added Tax

VAT Regulations coming soon!

The Cabinet Secretary announced that the publication of VAT Regulations is under way. The Regulations are expected to support the implementation of the VAT Act, 2013.

VAT exemption for SEZ entities

There is a proposal to exempt SEZ entities from VAT. The intention of this amendment is unclear since under the current VAT Act, 2013, supplies to SEZs are considered exports and are therefore zero-rated. It will therefore be interesting to see how the proposed amendments will take into account the existing position.

VAT exemption of pesticides

With respect to the agricultural sector, there is a proposal to exempt all inputs used in the manufacture of pesticides from VAT.

Since importation of pesticides into Kenya is zero rated, this proposal will allow local manufacturers of pesticides to compete with foreign manufacturers

'Tembea Kenya' in a locally assembled vehicle

The Cabinet Secretary has proposed to exempt locally assembled tourist vehicles from VAT. This measure, together with the proposed 15% waiver of corporation tax on new local motor vehicle assemblers, is likely to encourage the manufacture and purchase of locally manufactured vehicles.

Shot in the arm for specialized hospitals

The Cabinet Secretary has proposed to exempt medical equipment and apparatus for use in specialized hospitals with accommodation from VAT.

If the benefit of the tax saving from this exemption is passed on to patients, it will lower the cost of access to treatment in specialized hospitals. Seeing as goods used for construction of such hospitals are also exempt from VAT, this amendment will also encourage investment in the healthcare industry.

Cheaper unga for 'Wanjiku'

In a move that is set to lower the cost of living, the Cabinet Secretary has proposed to zero-rate maize flour and bread. Under the VAT Act, 2013 these items are currently VAT exempt. This amendment will allow dealers of maize flour and bread to claim input tax incurred rather than adding it onto the selling price of bread and maize flour. This will reduce the prices of these basic food items.

Towards a more sophisticated securities market

The Cabinet Secretary has proposed amendment of the VAT Act, 2013 to exempt from VAT transactions involving the transfer of assets into Real Estate Investment Trusts (REITs) and Asset Backed Securities (ABS).

If implemented, this proposal should encourage the use of these forms of capital market instruments.

VAT exemption on packaging material in the marine industry

The Cabinet Secretary has proposed VAT exemption for packaging material and other inputs to support the marine and fish processing industries.

Indirect Taxes

4. Excise Duty

Colouring your world...

The Government proposes to amend the Excise Duty Act 2015 to provide for the refund of Excise Duty paid on illuminating kerosene used in the manufacturing of paints and resin by manufacturers who are registered for Excise Duty purposes.

This proposal is aimed at promoting growth in the paint and resin manufacturing industry in order to promote the construction industry in Kenya. Local paint manufacturers and purchasers of locally manufactured paint will benefit as a result of cheaper inputs.

Variable Excise Duty stamp values on the way

The Cabinet Secretary has proposed to graduate the cost of excise stamps in place of the existing flat standard rate of Kshs. 1.50. This should ensure greater equity in the collection of Excise Duty.

Less tax on local brews for now

Excise Duty remission for locally manufactured beer There is a budget proposal to accord an 80% remission of Excise Duty in respect of locally manufactured beer made from locally produced sorghum, millet or cassava or any other produce, excluding barely.

This proposed amendment is aimed at discouraging consumption of illicit brew by making locally produced beer cheaper.

Conversely, an increase on the tax rate of spirits from Kshs. 175/litre to Kshs. 200/litre is proposed. Excise Duty on beer is also set to undergo an inflationary adjustment in July 2017.

Greater equity in taxation of cigarettes

To achieve equitable taxation of cigarettes, there is a proposal to replace the current blanket excise rate of Kshs. 2,500 per mille on all cigarettes with a two tier taxation structure. Under the proposed two tier structure, cigarettes with filters will be chargeable to excise at Kshs. 2,500 per mille while plain cigarettes will be chargeable at Kshs. 1,800 per mille.

Whereas this proposed amendment will contribute to fairer and more equitable taxation of cigarettes, the move is likely to have adverse consequences on the health of smokers if it leads to increased uptake of unfiltered cigarettes.

Indirect Taxes

5. Import Duty

Customs reform coming soon across the EAC

The East African Community (EAC) Common External Tariff which sets out the rates of duty applicable on imported goods is undergoing a comprehensive review and the final outcome will be released once adopted by the EAC Council of Ministers.

EAC Ministers for Finance are currently evaluating various proposals on matters relating to customs and measures that will be agreed upon by the EAC Ministers for Finance will be communicated through the EAC Gazette and implemented from 1st July this year.

Tax free maize imports!

The Cabinet Secretary announced that maize would be imported into the country on a tax free basis for a period of four months. This implies that the imports will not be subject to VAT, Import Duties, Import Declaration Fees, or Railway Development Levy.

This move is geared at reducing the cost of maize, the country's staple food whose local production has been greatly reduced by drought. This move, coupled with the zero rating of maize flour for VAT purposes should result in a significant reduction in the retail prices of maize and maize flour thereby, reducing the cost of living for Kenyans.

No taxes on dates during Ramadhan

The Cabinet Secretary further announced that the importation of dates during the period of Ramadhan would be done free of taxes.

It remains to be seen whether the waiver of taxes is applicable solely for this year's Ramadhan or whether it will apply to subsequent Ramadhan periods as well.

Indirect Taxes

6. Miscellaneous Fees & Levies

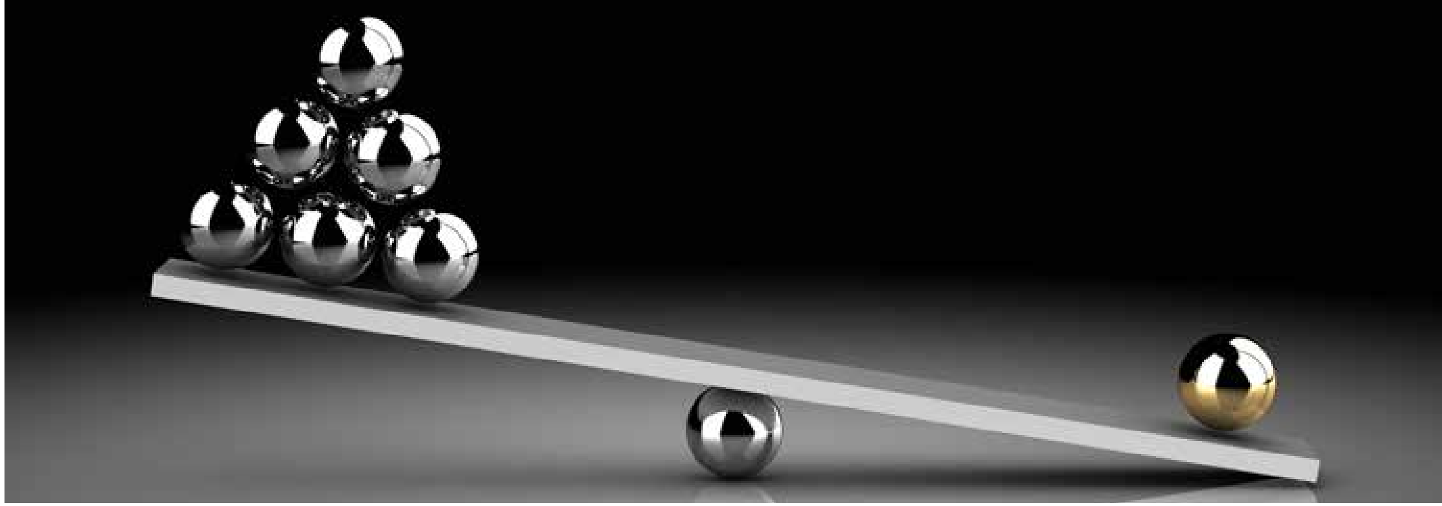
More goodies for SEZ entities

The Cabinet Secretary has proposed to amend the Miscellaneous Fees and Levies Act to exempt goods exported to and imported by an enterprise licenced under the SEZ Act from export duty and Import Declaration Fees respectively. This is aimed at attracting foreign direct investments by making SEZs favourable investment environments.

Yet another win for the blue economy

The Cabinet Secretary has proposed a 50% reduction in port charges for fisheries vessels.

Legal and Regulatory Reforms



7. Public procurement

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL REGULATIONS, 2017

Foreign tenderers to source at least 40% of their supplies from Kenyan citizens

The National Treasury is set to gazette the Public Procurement and Asset Disposal Regulations, 2017. These regulations aim at facilitating procurement at both the national and county levels of government.

The Preference and Reservation Secretariat

The establishment of the Preference and Reservation Secretariat as provided by the Public Procurement and Asset Disposal Act is at an advanced stage.

This Secretariat will be tasked to:

(i) Oversee the implementation of preference and reservations as provided for in the Public Procurement and Asset Disposal Act 2015 to advance the interests of youth, women, people with disabilities and other disadvantaged groups in public procurement;

(ii) Link Small and Medium Enterprises owned by the disadvantaged groups with the procuring entities; and

(iii) Extend preferences in public procurement to candidates offering goods locally manufactured, assembled, mined, extracted or grown in Kenya.

Islamic Financial Products

Facilitation of shariah compliant finance products:

The Cabinet Secretary will propose legislative amendments to the Capital Markets Act, the Cooperatives Societies Act and Sacco Societies Act to facilitate shariah compliant finance products.

Issuance of Sukuk bond (Islamic bond)

The Cabinet Secretary intends to amend the Public Finance Management Act to provide for issuance of Sukuk bond (Islamic bond) as an alternative source of financing development projects.

Equivalent tax treatment

The Cabinet Secretary intends to amend the tax statutes to provide for equivalent tax treatment of these new shariah compliant financial products with the conventional financial products.

Development of Takaful Retirement Benefits Schemes

The Cabinet Secretary will issue regulations to facilitate development of Takaful Retirement Benefits Schemes in Kenya.

Amendments to the Insurance Act

Insurance groups regulation

The Cabinet Secretary proposes to amend the Insurance Act to enhance supervision of insurance groups whose presence in Kenya has been increasing lately. This move is aimed at ensuring financial stability in the sector by monitoring interrelated risks.

Perpetual licensing

The Cabinet Secretary proposes to amend the Insurance Act to further provide for perpetual licensing of insurers, banks and retirement benefit schemes. It must be noted however, that the intermediaries such as insurance brokers, loss assessors, among others, will continue to be subject to annual licensing.

The Umbrella Retirement Benefits Scheme Regulations

The Umbrella Retirement Benefits Scheme Regulations have been prepared to govern the operations of common Umbrella Retirement Benefits Scheme set up by groups of employers' that provide retirement benefits to their employees. This is because a scheme covering employees from several employers has unique features that differ from ordinary occupational schemes.

... and finally

Guidelines on capital project expenditure

Guidelines on how capital projects should be planned, appraised and evaluated before funds are finally committed in the Budget have been issued by the National Treasury. This is aimed at improving the implementation and absorption capacity of projects and curbing non-priority expenditures.

Operationalization of the treasury single account

The treasury single account was created under the Public Finance (Administration and Management) Regulations, 2013. The treasury single account will now be operationalized as from the month of July this year.

Regulations and Code of Ethics of Suppliers

The Regulations and Code of Ethics for Suppliers of the National and County Governments have been finalized. These are aimed at strengthening the realization of the key principles and pillars of integrity, transparency, and accountability in the public procurement and asset system.

Automotive Industry Development Policy

The government is in the process of completing the development of a Comprehensive Automotive Industry Development Policy for Kenya and the finalization an actionable 10-year Automotive Industry Development Plan. The move is aimed at maintaining the momentum in the industry.

Waiver of land title search fees

This cost of land dealings in Kenya is set to go down due to the proposed waiver of land title search fees.

Revenue raising by County Governments

(a) Double taxation of business activities

Legislative proposals will be made to Parliament that will set out how County Governments may raise revenues without subjecting businesses to double taxation, violating the Constitution and in effect raising the cost of doing business.

(b)Enhancing County Government's revenue collection

The National Treasury has finalized a policy together with a legislative framework for supporting County Governments aimed at enhancing the County Governments' own-source revenue thus strengthening their ability to offer better services to the public. This legislative framework will be submitted to Parliament shortly.

The Movable Property Security Rights Bill, 2016

The Movable Property Security Rights Bill which aims at facilitating the use of movable property as collateral for credit facilities has been approved. This should facilitate lower lending rates.

The Nairobi International Financial Centre Bill

The Nairobi International Financial Centre Bill has been submitted to the National Assembly. This Bill seeks to establish the Nairobi International Financial Centre in a move to strategically position Nairobi as an international financial hub.

The Financial Services Authority Bill

The Financial Services Authority Bill is undergoing legal drafting and will soon be submitted for approval. This bill proposes to merge all non-bank financial sector regulators.

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