
# KENYA BUDGET HIGHLIGHTS

2018 – 2019

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

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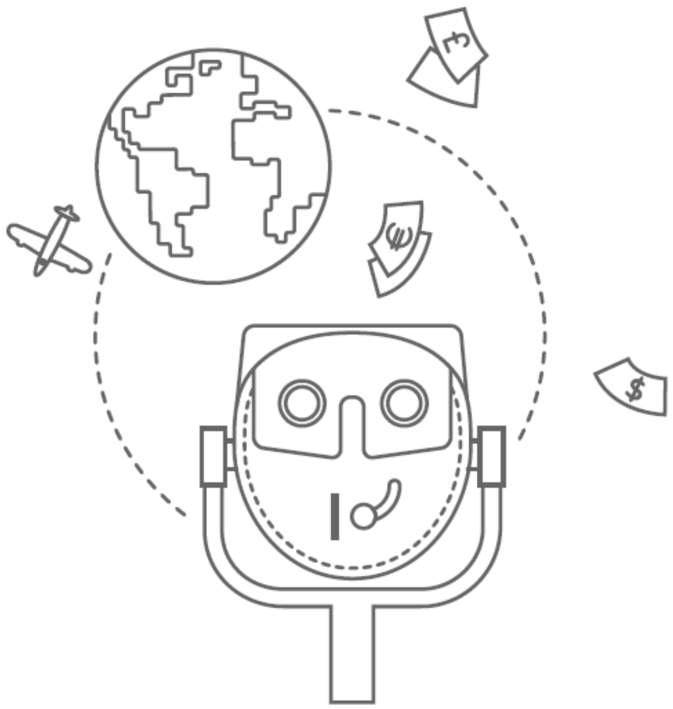
# CONTENTS

# ECONOMIC PERFORMANCE IN 2017

## GLOBAL ECONOMIC HIGHLIGHTS 2017



- In 2017, the global economy expanded by 3.6%, up from 3.2% in 2016, and is expected to grow at 3.9% in 2018, on the back of favourable global financial conditions, strong world trade and improved business confidence.
- The Euro Zone expanded 2.3% in 2017, the highest in a decade. Growth was powered by a huge stimulus program by the European Central Bank, which saw the ECB slash its main interest rate to zero and pump in billions of euros a month in buying financial assets.
- China's GDP rebounded marginally to 6.8% in 2017, up from 6.7% in 2016, bolstered by a 7.9% increase in exports. However, growth is expected to weaken in the medium term as the impact of tightening financial conditions in the world's second largest economy begin to emerge.
- China's property investment and construction are seen slowing, as more cities attempt to curb rising house prices, while the government cracks down on risky lending thus driving up borrowing costs.
- In the USA, GDP growth surged to 2.3% in 2017, compared to 1.5% in 2016, supported by an increase in household income, driving both private consumption and investment. Imports increased at their highest rate in 7 years.
- Significant risk factors going forward stems from the rise in nationalist and populist policies being advanced by certain countries, and this has gained traction, resulting in a number of political crises in key Euro Zone economies. Additionally, the upending of US international policy by the Trump administration has raised the risk of trade wars among advanced economies, threatening global economic growth.

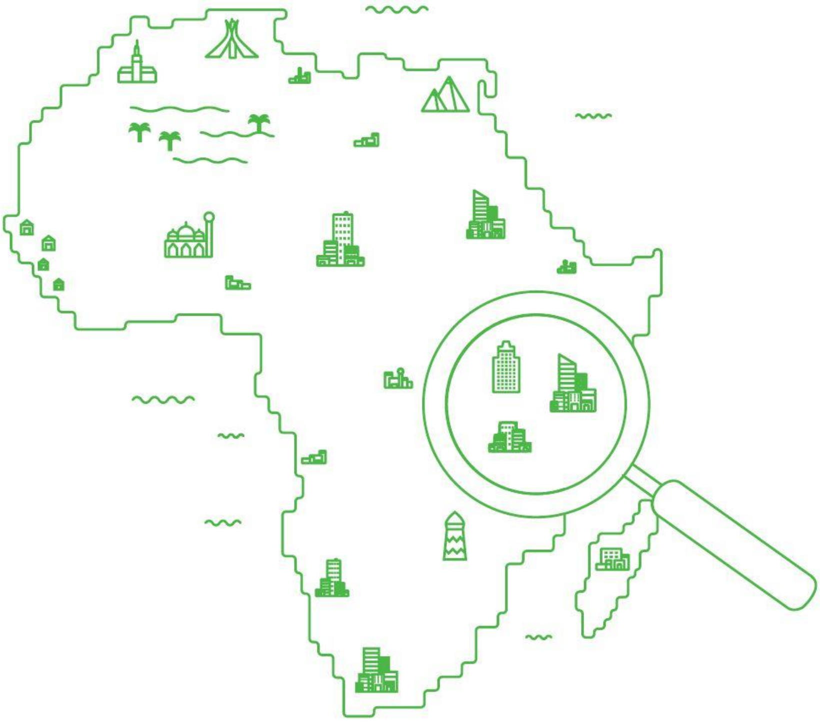
**Real GDP growth in %**

| | 2014 | 2015 | 2016 | 2017 | 2018* | 2019* |
|---|---|---|---|---|---|---|
| Japan | 0.4 | 1.4 | 0.9 | 1.7 | 1.2 | 0.9 |
| UK | 3.1 | 2.3 | 1.9 | 1.8 | 1.6 | 1.5 |
| USA | 2.6 | 2.9 | 1.5 | 2.3 | 2.9 | 2.7 |
| Euro Area | 1.3 | 2.1 | 1.8 | 2.3 | 2.4 | 2.0 |
| China | 7.3 | 6.9 | 6.7 | 6.9 | 6.6 | 6.4 |
| India | 7.4 | 8.2 | 7.1 | 6.7 | 7.4 | 7.8 |
| World | 3.6 | 3.5 | 3.2 | 3.6 | 3.9 | 3.9 |

SOURCE: WORLD ECONOMIC OUTLOOK, IMF, APRIL 2018

## SUB-SAHARAN ECONOMIC HIGHLIGHTS

- Economic growth momentum for most Sub-Saharan Africa countries remains fragile. The jump in growth in 2017 to 2.8%, was primarily driven by one-off factors in the three largest countries – a recovery in oil production in Nigeria, higher public spending ahead of elections in Angola and the fading of drought effects in South Africa.
- Some of the largest western and eastern African countries are still expected to grow at 5%–7.5%. Nonetheless, the underlying regional momentum remains weak, and Sub-Saharan African growth is expected to fall short of past trends and barely exceed population growth.
- Growth in the region is expected to quicken slightly to 3.4% in 2018, bolstered by favourable commodity prices and reduced inflationary pressures.
- In non resource-intensive countries such as Kenya and Senegal, fiscal deficits have remained high for a number of years. While growth remains robust, vulnerabilities are emerging – public debt is on the rise, borrowing costs have increased and non-performing loans in the banking sector are surging.



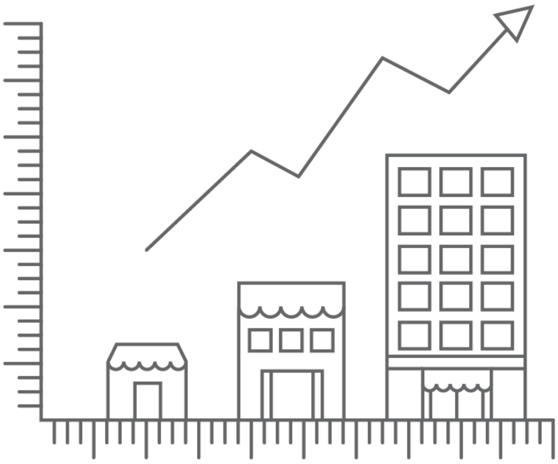
Real GDP growth in %

| | 2014 | 2015 | 2016 | 2017 | 2018* | 2019* |
|---|---|---|---|---|---|---|
| Sub-Saharan Africa | **5.1** | **3.4** | **1.4** | **2.8** | **3.4** | **3.7** |
| **EAC-5** | - | **6.1** | **5.4** | **5.4** | **5.9** | - |
| SADC | - | 2.7 | 1.5 | 2.2 | 2.5 | - |
| Nigeria | 6.3 | 2.7 | -1.6 | 0.8 | 2.1 | 1.9 |
| South Africa | 1.8 | 1.3 | 0.6 | 1.3 | 1.5 | 1.7 |
| **Kenya** | **5.4** | **5.7** | **5.9** | **4.9** | **5.5** | **6.0** |
| Tanzania | 7.0 | 7.0 | 7.0 | 6.0 | 6.4 | 6.6 |
| Rwanda | 7.6 | 8.9 | 6.0 | 6.1 | 7.2 | 7.8 |
| Uganda | 4.6 | 5.7 | 2.3 | 4.5 | 5.2 | 5.8 |

SOURCE: WORLD ECONOMIC OUTLOOK, IMF, APRIL 2018

## KENYA ECONOMIC HIGHLIGHTS

- The economy grew by 4.9% in 2017, down significantly from a growth of 5.9% in 2016. The slowdown was attributable to uncertainty associated with a prolonged electioneering period coupled with the adverse effects of poor weather conditions.
- The economy is projected to expand by 5.5% in 2018, bolstered by political stability, on-going investments in infrastructure and strong domestic consumption. The external economic environment, in the form of improvements in commodity prices expected to further boost growth in the medium term.
- Generally, key macroeconomic indicators remain largely stable and supportive of growth. A moderate build-up of inflationary pressures due to increases in oil and food prices saw the inflation rate rise to 8.0% in 2017 from 6.3% in 2016.
- Interest rates are expected to remain stable while the Kenya exchange rate is expected to remain competitive. Commercial banks' average lending rates on loans and advances remained stable at 13.6% in December 2017, while the 91-day Treasury Bill rate fell from 8.4% in December 2016 to 8.0% in December 2017.
- The Central Bank of Kenya lowered the Central Bank Rate (CBR) to 9.5% in March 2018, to support economic activity.
- Average commercial banks' liquidity and capital adequacy ratios stood at 44.6% and 18.5%, respectively, in February 2018. The ratio of gross non-performing loans (NPLs) to gross loans increased to 11.4% in February 2018 from 10.6% in December 2017 due to increased NPLs in the manufacturing, transport and communications sector.
- Fiscal deficit projected at KShs 558.9 billion – 5.7% of GDP, funded by net external financing of KShs 287.0 billion, and domestic borrowing of KShs 271.9 billion
- Kenya's ranking in the World Bank's Doing Business indicators has improved from 136 in 2014 to 80 in 2017 (up 12 places in 2017), making Kenya the third most competitive country in Africa. The rating was informed by improvements in the availability of credit, access to electricity and ease of starting a business.



- Kenya gross public debt increased from 44% of GDP at end-2013 to a projected 52.8% in FY 2018/2019 but is expected to shrink to 43.7% in FY 2021 / 2022 on higher projected revenue and rationalization of borrowing by the administration.

# BUDGET HIGHLIGHTS

The theme of this year's budget is "Creating Jobs, Transforming Lives for Shared Prosperity", with focus on realisation of the "Big Four Plan" by 2022.

## THE BIG FOUR PLAN

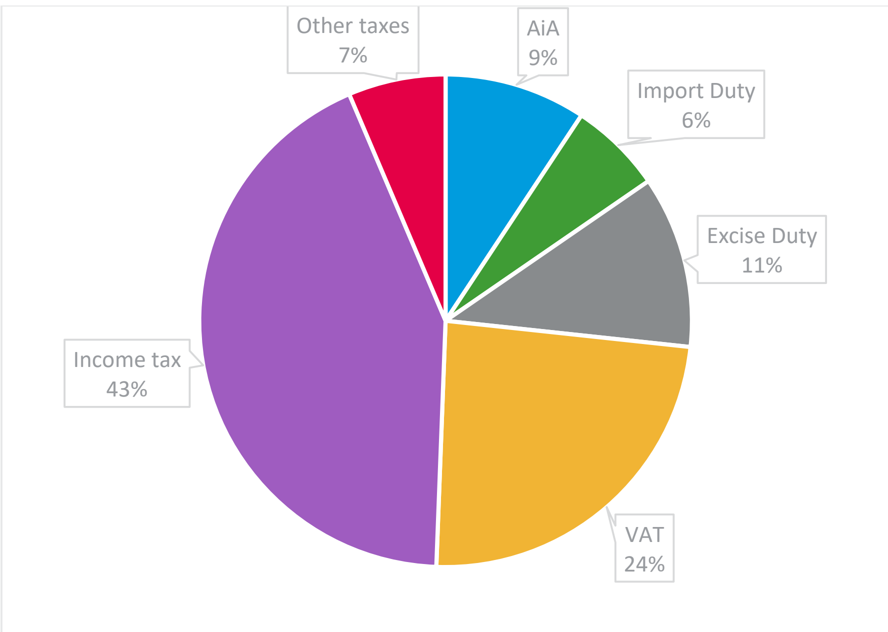
- KShs 2.4 billion to support value addition and raise the manufacturing sector's share of GDP to 15% by 2022
- KShs 20.3 billion to guarantee food security and nutrition to all Kenyans by 2022
- KShs 44.6 billion to provide Universal Health Coverage (UHC) and affordable healthcare to all citizens
- KShs 6.5 billion to provide affordable and decent housing for all Kenyans

## GOVERNMENT REVENUE AND EXPENDITURE

**Government expenditure and net lending for the Financial Year 2018/19 is KShs 2.6 trillion of which:**

- KShs 1.1 trillion – Ministerial recurrent expenditure (including judiciary – KShs 15.2 billion and parliament – KShs 36.8 billion)
- KShs 671.6 billion – Allocation for development expenditure
- KShs 490.5 billion – Consolidated Funds Services (CFS) excluding domestic bond redemption
- KShs 314.0 billion – Shareable transfer to counties
- KShs 5.0 billion – Contingency fund
- KShs 2.5 billion – Net lending

Total revenue (including A.I.A) for FY 2018/2019:



## BUDGET ALLOCATIONS

### Manufacturing & Industry

- KShs 0.4 billion for Kenanie Leather Industrial Park
- KShs 0.4 billion for Textile development EPZ hub
- KShs 1.4 billion for modernization of RIVATEX

### Food Security & Agriculture

- KShs 8.5 billion for ongoing irrigation projects
- KShs 4.3 billion for fertilizer subsidy
- KShs 1.4 billion for strategic food reserve
- KShs 1.9 billion for Kenya cereal enhancement

### Healthcare

- KShs 4.3 billion for free maternal healthcare
- KShs 9.4 billion for leasing medical equipment
- KShs 11.7 billion for Kenyatta National Hospital
- KShs 7.0 billion for CT (Computed Tomography) scanners used in the screening for diseases such as cancer
- KShs 2.5 billion rolling out of Universal Health Care to select counties in pilot program

### Infrastructure & Housing

- KShs 11.7 billion for Kenya Urban program
- KShs 87.5 billion for ongoing road construction (domestically financed)
- KShs 34.2 billion for foreign financed roads
- KShs 74.4 billion for construction of SGR Phase II (Nairobi – Naivasha)
- KShs 8.9 billion for LAPSSET project

### National Security

- KShs 9.2 billion for lease financing of police motor vehicles
- KShs 9.0 billion for enhanced security operations
- KShs 29.8 billion for police and military modernization
- KShs 4.8 billion for police and prison officers' medical insurance scheme

## Energy

- KShs 10.2 billion for geothermal development
- KShs 5.9 billion for rural electrification
- KShs 4.8 billion for exploration and distribution (oil & gas)
- KShs 6.7 billion for last mile connectivity
- KShs 9.6 billion for Loiyangalani-Suswa transmission line

## Leveraging on Information and Communication Technology

- KShs 8.3 billion for development of Konza metropolis
- KShs 11.9 billion for digital literacy program (school laptop project)

## Sustaining Water Supplies

- KShs 7.2 billion for water resource management
- KShs 33.6 billion for water sewerage infrastructure
- KShs 10.8 billion for forests and water towers conservation

## Education

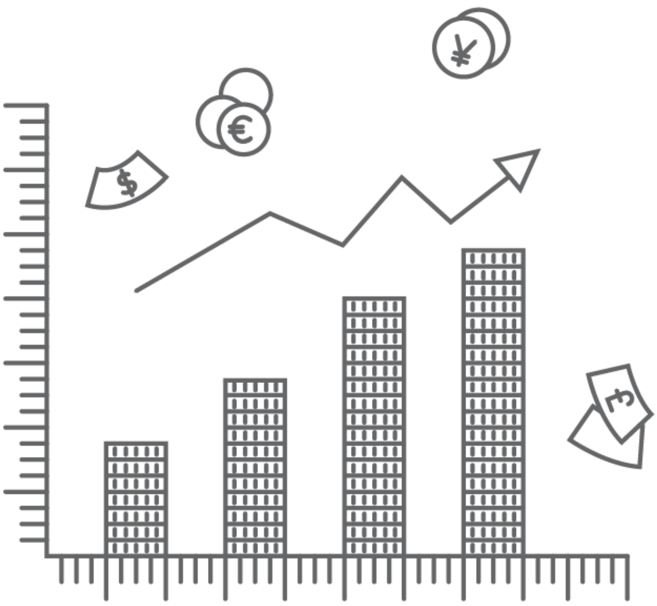
- KShs 59.4 billion for free day secondary education
- KShs 13.4 billion for free primary education
- KShs 5.0 billion for recruitment of additional teachers
- KShs 16.0 billion for vocational and technical training institutes
- KShs 9.6 billion for Higher Educations Loan Board (HELB)
- KShs 91.0 billion for university education

## Equity, Poverty Reduction and Social Protection for Vulnerable Groups

- KShs 7.9 billion for orphans and vulnerable children
- KShs 17.3 billion for cash transfer to the elderly
- KShs 35.7 billion for National Government Constituency fund
- KShs 8.5 billion for equalization fund

# FINANCIAL PROJECTIONS

| | KShs Billion |
|---|---|
| Revenue | 1,949.2 |
| Grants | 48.5 |
| | **1,997.7** |
| Ministerial recurrent expenditure | 1,073.0 |
| Development expenditure | 671.6 |
| County allocation | 314.0 |
| CFS excluding domestic bond redemptions | 490.5 |
| Contingency fund | 5.0 |
| Net lending | 2.5 |
| | 2,556.6 |
| **Overall budget deficit** | **558.9** |
| **Financed by:** | |
| Project loans | 235.8 |
| Commercial financing | 298.9 |
| Program support | 2.5 |
| Foreign payments | (250.3) |
| Net domestic financing | 271.9 |
| **Overall budget deficit** | **558.9** |



# DIRECT TAXES

## ALLOWABLE DEDUCTIONS

With effect from 1st January 2019, 30% of the total electricity bill incurred by manufacturers will be allowed as an additional deduction. This is in addition to normal electricity expense. However, such deduction will be subject to the conditions to be set out by the Cabinet Secretary responsible for energy.

## CAPITAL GAIN TAX – NON-LIFE BUSINESS

The gains arising from the transfer of property by an insurance company other than property connected to life insurance shall be subject to CGT at a rate of 5%.

## WITHHOLDING TAX

The Finance Bill has introduced withholding tax on the following with effect from 1st July 2018:

- Demurrage charges paid to non-resident ship operators - 20%. "Demurrage charges" have been defined to mean "the penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods".
- Insurance premiums excluding premium paid for aircraft insurance - 5% withholding tax.
- The Tax Laws (Amendment) Bill, 2018 proposed a 20% withholding tax (which shall be final tax) on winnings from gaming and betting. In order to convince the taxpayers of the necessity to pay this, the Cabinet Secretary has proposed an amendment to the Income Tax Act to state that the revenue shall be used for development of sports, art and social development initiative under the Public Finance Management Act, 2012.

## DISTRIBUTION OF DIVIDENDS AND DIVIDEND TAX ACCOUNT

With effect from 1st July 2018 a dividend includes:

- settlement by the company, of a debt owed to a third party by a shareholder or person related to the shareholder;
- a discharge of an obligation, measurable in money terms, by the company of a shareholder or a person related to the shareholder;
- an amount utilised by the company for the benefit of the shareholder or a person related to the shareholder;
- cash or asset is distributed for the benefits of a shareholder or a person related to the shareholder; or
- impact of the transaction with the shareholder or a person related to the shareholder which results in additional taxable income or a reduced assessed loss to the company.

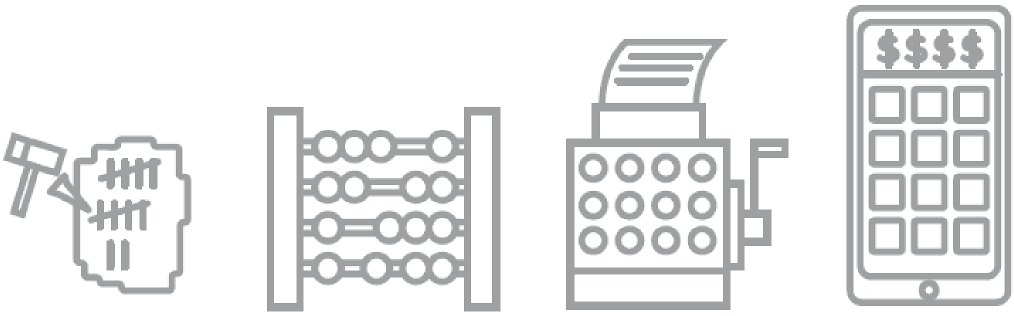
This means that a bonus issue of shares will now be construed as a dividend and subject to withholding tax. Moreover, a write-off of a trade debt in the ordinary course of business in relation to a related person could be construed to be a dividend.

With effect from 1st January 2019 the requirement to maintain a dividend tax account has been removed. However, where a dividend is distributed out of gains or profits on which no tax is paid, the person distributing the dividend shall be charged tax in the year of income in which the dividends are distributed at the resident corporate rate of tax on the gains or profits from which such dividends are distributed. This excludes collective investment schemes.

The impact of this is that companies will now have to maintain a record of what items of income are taxable and what have not been taxed e.g. where a company has a taxable profit, but has claimed investment deductions, the distribution of such profits will be taxable. On the other hand, capital gains and rent taxed under the Rental Residential Tax regime can be distributed without any compensating tax.

## CORPORATE TAX

With effect from 1st January 2019, a company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be to the extent provided in the arrangement.



## PRESUMPTIVE TAX

With effect from 1st January 2019 the turnover tax (applicable to companies with a turnover of below KShs 5 million) will be replaced by presumptive tax at the rate 15% of the single business permit fee issued by the County Government. Like with turnover tax, this shall exclude income from management and professional services; rental business; or incorporated companies.

# INDIRECT TAXES

## VALUE ADDED TAX

### VAT Administrative Measures

Effective 1st July, 2018

- The provision in the VAT Act prescribing the contents of a "credit" or "debit" note is amended to allow the specific details to be included in the VAT Regulations.
- Deleting provisions relating to unauthorised access to/or improper use tax computerised system, interference with tax computerised system and submission of returns deleted and similar provisions inserted in the Tax Procedures Act 2015, which deals with the administrative aspects of all tax laws.

### VAT Revenue Measures

Effective 1st July, 2018

#### *Plant and Machinery*

- Plant and machinery falling under chapters 84 and 85 of the Common External Tariff (CET) not used in the manufacture of goods will now be taxable at the standard rate of 16%. Previously, while the Act exempted all such items, there was a circular from KRA stating that only those used in manufacture were exempt.

#### *Garments and Leather Footwear*

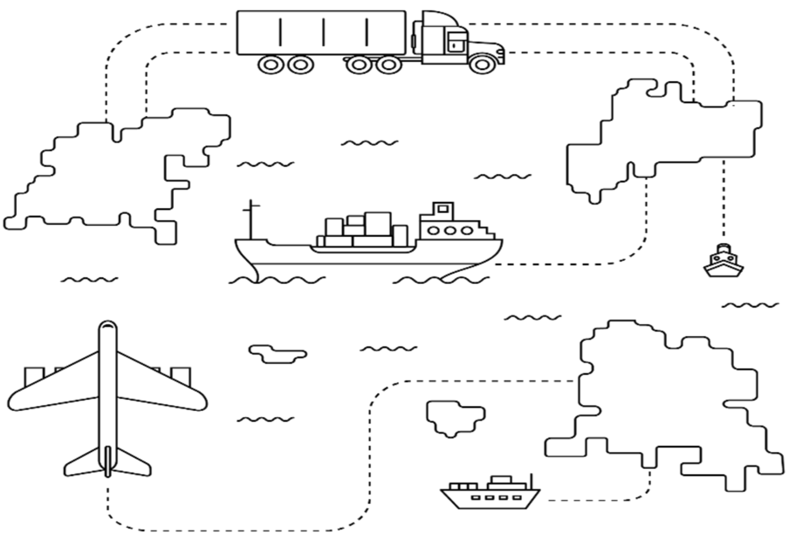
- Garments and leather footwear manufactured in an EPZ will now be taxable at the rate of 16% at the point of importation in to the country. They were previously exempt from VAT to encourage local manufacture.

#### *Solar and Wind Energy Generation*

- All specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power will now be exempt. Previously this was only extended to equipment used in solar heaters and deep cycle-sealed batteries.

#### *Transportation*

- Transportation of cargo to destinations outside Kenya, which was exempt under the last Finance Act, will now be vatable at the standard rate of 16%. Supply of taxable services in relation to goods-in-transit still remains zero-rated.



*Medicaments*

- Medicaments falling under the following tariff codes will now be zero rated:
  - ✓ 3004.41.00 – containing ephedrine or its salts;
  - ✓ 3004.42.00 – containing pseudoephedrine (INN) or its salts;
  - ✓ 3004.43.00 – containing norephedrine or its salts; and
  - ✓ 3004.49.00 – other.
- Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading 29.37 or antibiotics, put up in measured doses or in forms of packings for retail sale will now be taxable at the standard rate of 16%. These were currently zero-rated.

*Grains and Cereals*

- Wheat and meslin and barley falling under tariff code 10.01 and 10.03 of the Common External Tariff "CET" are now exempt. Previously these were taxable at 16%.
- Maize corn seeds of tariff No 1005.10 will now be taxable at the standard rate of 16%. Previously, it was exempt.

*Equipment Used in Grain Storage*

- Equipment used in the construction of grain storage facilities will now be exempt upon recommendation by the Cabinet Secretary responsible for Agriculture. Previously this only extended to materials used in the construction of grain storage facilities.

## *Manufacturing of Animal Feeds*

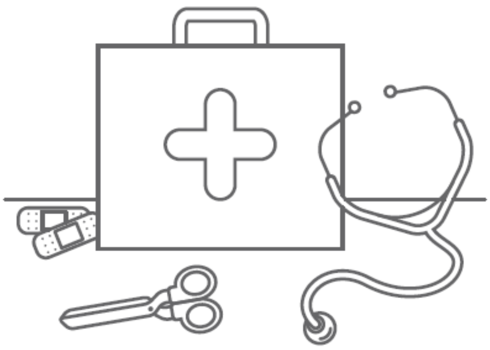
- Materials, wastes, residues and by-products, whether or not in the form of pallets and preparations of a kind used in animal feeding of items falling under the tariff codes below will now be exempt (previously vatable):
  - ✓ 1213.00,00 – cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets;
  - ✓ 1214.10,00 – lucerne (alfalfa) meal and pellets; and
  - ✓ 2303.20.00 – beet-pulp, bagasse and other waste of sugar manufacture.

## *Computers Assembly*

- Imported or locally purchased parts for the assembly of computers to be exempted so as to encourage local manufacturing, innovation and job creation. Previously this exemption was only applicable to primary school laptop tablets. However, this is subject to approval by the Cabinet Secretary responsible for information technology.

## *Specialised Hospitals*

- In addition to exemption of taxable goods used in the direct and exclusive use of construction of specialised hospitals, taxable goods used for the direct and exclusive equipping of specialised hospitals will now be exempt from VAT. However, there is now a minimum bed capacity of 50 beds to qualify for this exemption.



## *Alcoholic and Non-Alcoholic Beverages*

- Supply of the above items to the Kenya Defence Forces Canteen Organisation will now be exempt from VAT. Previously, this exemption had been removed and the supplies were taxable at 16%.

## *Projects under Special Operating Framework Arrangement with the Government*

- Goods and services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government will now be exempt from VAT. Previously such exempt was provided under the Privileges and Immunities Act.

## *Postal Services*

- The supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto will now be exempt from tax. These were previously taxable at 16%.

# EXCISE DUTY

## Excise Administrative Measures

Effective 1st July, 2018

### *Suspension of Licences*

The amendments give the powers to the Commissioner to suspend a license without notice where a taxpayer has:

- engaged in a tax fraud;
- been found in possession of, or using counterfeit stamps on excisable goods;
- has been found in possession of goods bearing counterfeit stamps; or
- has violated any regulations relating to health and safety standards or packaging of goods.

### *Allocation and Utilization of Collected Duty*

- 16% of the excise duty collected in respect of money transfer services by cellular phone service providers and all of the excise duty on money transfers of KShs 500,000 or more transferred by banks, money transfer agencies and other financial service providers will be paid into the Sports, Arts and Social Development Fund established under Public Finance Management Act 2012. This money will be used to support social development including universal health care.

### *Offences and Penalties*

- A person who undertakes the manufacture of excisable goods in Kenya or the importation into Kenya of excisable goods specified by the Cabinet Secretary under Section 27 as requiring an excise stamp without a licence shall be liable to a penalty equal to double the excise duty that would have been payable if the person were licensed or five million shillings whichever is higher.
- A person who commits an offence relating to, activities requiring a licence, forms of licences, obligations of licenced persons and excise stamps and other markings will be required to forfeit the plant or excisable goods or any materials in respect of the offence established.

## Excise Revenue Measures

Effective 1st July, 2018

### *Illuminating Kerosene*

- Excise duty on illuminating kerosene of tariff code 2710.19.22 has been reviewed from KShs 7,205 per 1000 litres @ 20 degrees centigrade to KShs 10,305 per 1000 Litres @ 20 degrees centigrade.

### *Bottled or Similarly Packaged Waters and Other Non-Alcoholic Beverages*

- Bottled or similarly packaged waters and other non-alcoholic beverages not including fruit or vegetable juices will now be subject to excise duty at the rate of KShs 5 per litre.

### *Inflation Adjustments*

- The specific rates of excise duty on excisable goods specified in the First Schedule will now be adjusted for inflation annually. Previously, the said rates were to be adjusted for inflation in every two years.

### *Money Transfer Services by Cellular Service Providers*

- Excise duty is increased on money transfer services by cellular service providers from 10% of the excisable value to 12% of the excisable value.

### *Money Transfers*

- The Finance Bill has introduced excise duty on money transferred by banks, money transfer agencies and other financial service providers at an applicable rate of 0.05% of the amount transferred in case the money of KShs 500,000 or more.

### *Alcoholic and Non-Alcoholic Beverages*

- Supply of the above items to the Kenya Defence Forces Canteen Organisation will now be exempt from Excise Duty. Previously, this exemption had been removed and the supplies were dutiable.

### *Projects under Special Operating Framework Arrangement with the Government*

- Goods and services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government will now be exempt from Excise Duty. Previously such exempt was provided under the Privileges and Immunities Act.

### *Motor vehicles*

| Description | Rate of Excise Duty |
|---|---|
| Motor vehicles (excluding locally assembled motor vehicles, school buses for use by public schools, and motor vehicles of tariff no. 8703.24.90 and 8703.33.90) of tariff heading 87.02, 87.03 and 87.04 | 20% |
| Motor vehicles of tariff no. 8703.24.90 and 8703.33.90 | 30% |
| Sugar confectionery (including white chocolate) of tariff heading 17.04; chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00 | KShs 20 per kg |



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# CUSTOMS

The East African Community aims at introducing a raft of measures to protect local manufacturers and industries from competition from cheap and subsidised imports, encourage local production and create jobs for youth. The proposed customs measures include;

- To protect the Iron and steel industry – Increase import duty from 25% to 35%;
- Protecting the textile and footwear industry – Specific rate of import duty USDs 5 per unit or 35% whichever is higher;
- Vegetable oils – USD 500 per Metric tonne or 35% whichever is higher;
- Tourism Industry – Remission of duty on motor cars, sight-seeing buses and overland trucks imported by licenced tour operators;
- Agricultural – Remission of duty on inputs, raw materials for the manufacture of pesticides and acaricides;

- Production of clean energy – Remission of duty on taxable inputs and raw materials for assembly of clean energy cooking stoves imported by local manufactures;
- Paper and paper board - Increasing duty from 25% to 35%; and
- Timer and Furniture Industry- Introduction of specific rate duty of USD 110 per metric tonne on particle boards, USD 120 per metric board on medium density fibre boards, USD 230 per cubic metre on plywood and USD 200 per Metric tonne on block boards or 35% whichever is higher.

The above changes to be introduced were just a highlight of the ongoing comprehensive review of the Common External Tariff and a detailed report of the changes made will be made available in due time once the process is complete.

# OTHER TAXES

## TAX PROCEDURES ACT – EFFECTIVE 1ST JULY 2018

### Tax Amnesty

The Amnesty period has been extended by a year allowing the filing of the return by 30th June 2019 and the reporting period has been moved to 31st December 2017. Moreover, the amendments now make it clear that the funds transferred shall be exempt from the provision of Proceeds of Crime and Anti-Money Laundering Act, 2009 or any other Act relating to reporting and investigation of financial transactions to the extent to the source of the funds. However, this excludes funds derived from terrorism, poaching and drug trafficking.

It is not clear what happens to amnesty forms that have already been filled or will be filled by 30th June 2018. Our view is that as the proposed provisions are a proposal to the Parliament and will take around 3 months to be passed, persons who have already filed returns or will file returns by 30th June 2018 can use 31st December 2016 as the reporting period.

### Tax Representative

Where a taxpayer has more than one tax representative, each tax representative shall be responsible for the tax obligation for which the tax representative has been appointed. Previously they were responsible for all of the obligation of the taxpayer.

### Extension of time to submit Tax Returns

A written application to the Commissioner for an extension must be made at least:

- In case of a monthly return - 15 days before the due date; or
- In case of an annual return – 30 days before the due date.

Previously the application had to be made before the due date.

Moreover, the Commissioner has to respond to the taxpayer at least 5 days before the due date and where no notification is received, the application shall be deemed to be granted. Moreover, only one extension can be granted in respect of a tax period.

### Amendment of Tax Returns

The Commissioner is now required to furnish the taxpayer with reason where he rejects an amended self-assessment tax return.

### Late Payment Interest

A taxpayer who fails to pay tax on or before the due date for the payment of the tax shall be liable for late payment interest at a rate equal to 2% per month or part thereof on the amount unpaid for the period commencing on the date the tax was due and ending on the date the tax is paid. This reverts to the rate that was there before the coming into effect of the TPA.

## Objection to Tax Decision

A notice of objection shall be treated as validly lodged by a taxpayer if the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute, or has applied for an extension of time to pay the tax not in dispute and all the relevant documents relating to the objection have been submitted. This amendment allows for the taxpayer to lodge an application where he has applied for an extension of time to pay the tax not in dispute.

## Administrative Penalties and Offences

Where a Commissioner commence a prosecution for an offence where a penalty was already paid by the taxpayer in respect of the same act or omission, the penalty shall be repaid to the taxpayer as a refund of overpaid tax.

## Late Return Submission Penalty

- VAT or excise duty – 5% of the tax payable or KShs 10,000
- Individual – 5% of the tax payable or KShs 2,000
- Company – 5% of the tax payable or KShs 20,000

Previously this was the higher of 5% of the tax payable or KShs 20,000 for all the above heads. For PAYE, it still remains 25% of the tax due or KShs 10,000, whichever is higher.

## Late Payment Penalty

The Finance Bill has introduced a late payment penalty of 20% on the tax due and payable.

## Computerised Tax Systems Offences

A person commits an offence for unauthorized access or improper use of computerized tax system and shall be liable in the case of:

- Individual- imprisonment for a term not exceeding two years, or to a fine not exceeding four hundred thousand shillings, or to both; or
- A body corporate-a fine not exceeding one million shillings.

A person commits an offence for interference with computerised tax systems and shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding eight hundred thousand shillings, or to both.

# TAX APPEALS TRIBUNAL

## Culture of Adjournment of Tax Proceeding Stopped

The Act stipulated that an appeal shall be heard before a panel constituted by the Chairperson, and at least three other members of the Tribunal, with at least one of the members being an Advocate of the High Court.

The proposed change provides that where a panel member ceases or is not available for the proceeding, the proceedings **shall not be adjourned** (as is currently) and the chairperson of the tribunal shall assign another member to the panel.

## Settlement of Cases out of Tribunal

Currently the Tribunal is required to hear and determine the appeal within 90 days of filing of the submission. Where parties choose to resolve or conclude the settlement through the Alternative Dispute Resolution Process (ADR), the 90-day time limit shall be calculated excluding the time spent on the ADR process.

# MISCELLLANEOUS AMENDMENTS

## STRENGTHENING GOVERNANCE

- Government has enhanced oversight and legislative role of Parliament and access to Justice by allocating KShs 36.8 billion to Parliament and KShs 15.2 billion to the Judiciary.
- Reforms to improve the Public Procurement and Disposal System following completion and submission to Parliament of the Public Procurement and Asset Disposal Act (PPAD) Regulations. The PPAD Regulations provide for:
    - Establishment of common user agency that will facilitate and manage the procurement of standard goods/items
    - Enhancement of the e-procurement platform to improve efficiency and effectiveness, accountability and transparency of the procurement process
    - Provisions to facilitate prompt payment for performed contracts within 60 days upon proper certification
    - Buy-Kenya-Build-Kenya policy which gives preference in the procurement evaluation to firms that supply items wholly produced or mined in Kenya
    - Preference extended to local contactors/suppliers where Kenyans are shareholders and the company is offering goods manufactured, assembled, mined, extracted or grown in Kenya.
- Increased transparency in the procurement process – all Accounting Officers are now required to publish and publicize all procurement contracts in their websites, the State portal and tender notice boards effective 1st July 2018.
- All the Accounting Officers will be expected to share the reports on contract awards to the National Treasury and the Public Procurement Regulatory Authority (PPRA) for publication on its website notices.
- Treasury is working closely with investigative agencies of Government, including the EACC, National Intelligence and the Director of Criminal Investigations to identify and seal any loop holes that corrupt individuals may be using within the IFMIS system.
- Multi-agency teams have been strengthened and enabled to investigate, prosecute and recover corruptly acquired assets by funding as follows:
    - KShs 2.9 billion to the Ethics and Anti-Corruption Commission;
    - KShs 2.9 billion to the Department of Public Prosecutions;
    - KShs 161.0 million to the Assets Recovery Agency;
    - KShs 587.0 million to Financial Reporting Centre;
    - KShs 6.4 billion to the Criminal Investigations Services; and
    - KShs 5.1 billion to the Office of the Attorney General.

## BANKING INDUSTRY

- Proposal to amend the Proceeds of Crime and Anti-Money Laundering Act to address money laundering and terrorism financing risks associated with non-face-to face business and transactions.
- Proposal to amend the Banking (Amendment) Act, 2016 by repealing section 33B of the said Act on interest rate capping. This is to enable banks and other lenders to provide more credit especially to borrowers they consider riskier.
- The Finance Bill seeks to amend the Central Bank Act to provide powers to CBK to regulate mortgage refinance business and to bring mortgage refinance companies within CBK's reporting framework.
- Proposal to put in place a number of reforms to optimize lending to the private sector and Micro, Small and Medium Enterprises (MSMEs):
  - Working jointly with the private sector and development partners to introduce a National Credit Guarantee Scheme 41 (NCGS) as a policy tool to direct credit to MSMEs. The Credit Guarantee Scheme will work through easing the financial constraints of MSMEs and start-ups by enabling them to access capital.
  - The Cabinet has approved Biashara Kenya Fund by merging Uwezo Fund, Youth Enterprise Development Fund and Women Enterprise Development Fund.
  - Development of a Financial Markets Conduct Bill, 2018 that comprehensively addresses the inadequacies in consumer protection and unregulated lending in the financial sector.
  - Digitization of land titling processes, development of a functional Collateral Registry to support provision of affordable credit to Kenyan businesses.
  - Implementation of the Treasury Mobile Direct and M-Akiba to offer retail individuals alternative savings mechanism.

## PARASTATAL REFORMS AND PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECTS

- Restructuring measures to ensure state corporations continue to play a catalytic role in the delivery of the economic and social agenda:
  - Reforming the Agricultural Finance Corporation (AFC) to help deliver on food and nutrition security.
  - Merging the Industrial and Commercial Development Corporation (ICDC) with the Industrial Development Bank (IDB) and the Tourism Finance Corporation (TFC) to create the Kenya Development Bank.
  - Implementing initiatives to address the challenges of government investments in the banking sector.
- Establishment of the National Toll Fund as a special fund to support development of world class national trunk roads.
- Government intends to revamp the PPP Unit with the aim of speeding up the pace of project preparatory activities.
- Government has completed the review of the PPP ecosystem and undertaken a legal audit of the PPP Act 2013.

- The proposed amendments focus on projects land acquisition and reduction of the bureaucracy associated with PPP project development.
- Undertaking the following administrative actions aimed at speeding up project turnaround times:
    - establishing shortlists of advisory service providers;
    - standardising project documents; and
    - resourcing the capacity of the PPP Unit to deliver its mandate.
- Launching the PPP Disclosure Portal where all stakeholders can access all Kenyan PPP data as part of government commitment under Access to Information Act, 2016.

## INSURANCE INDUSTRY

- Proposal to amend the Insurance Act to introduce index-based insurance which will lead to higher uptake of insurance by our farmers.

- Introduce provisions to criminalize insurance fraud and protect the consumers.
- Proposal to amend the Insurance Act to require the insured to make premium payments directly to the insurer.
- Proposal to introduce capital gains tax on transfer of property by general insurance companies.
- Proposal to amend the Income Tax Act to introduce five percent tax on insurance premium paid to non-residents excluding insurance premium paid for insurance of aircraft.

## SACCOS

- Proposal to amend the SASRA Act to allow the usage of ICT in submission of statutory reports on a real time basis which is critical for Risk Based Supervision (RBS) model of supervision.
- Proposal to include the Sacco Societies Regulatory Authority as one supervisory bodies under Proceeds of Crime and Anti-Money Laundering Act thereby giving the Authority a legal platform to monitor the compliance of deposit-taking SACCOs in respect of money laundering and combating financing of terrorism.

## RETIREMENT BENEFITS

- Proposal to amend the Retirement Benefits Act to enable the Authority intervene against any employer who fails to remit pension contributions to schemes. Requirement to pay the contribution and interest accrued and a penalty of five percent or twenty thousand shillings, whichever is higher.
- Introduce further amendments to the Retirement Benefits (Individual Retirement Benefit Schemes) Regulations and the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations to allow members who are unable to build medical funds during employment to utilize a portion of their retirement benefits for post-retirement medical cover.
- Exempt the post-retirement medical fund from the RBA levy in order to boost the member's contribution.

## EMPLOYMENT ACT

Effective 1st October 2018, there is a proposal to amend the Employment Act to provide that employers shall pay to the National Housing Development Fund in respect of each employee, subject to a maximum of five thousand shillings as follows:

- the employer's contribution at 1% of the employee's gross monthly emolument; and
- the employee's contribution at 1% of their monthly earnings deducted from the employee's earnings.

## OTHER PROPOSALS

- Proposal to amend the Capital Markets Act to introduce enhanced financial controls and provide for investor protection in the sector.
- Proposal to introduce a legal framework that will enable the Betting, Control and Licensing Board to take into account a wider criterion while undertaking the fit and proper test.
- Proceeds from tax from Betting, Lotteries and Gaming to go into Sports, Arts and Social Development Fund.
- Proposal to introduce a twenty percent penalty and two percent interest on late payment of tax in the Betting, Lotteries and Gaming Act.

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