

Thinking ahead  
and responding  
rapidly.

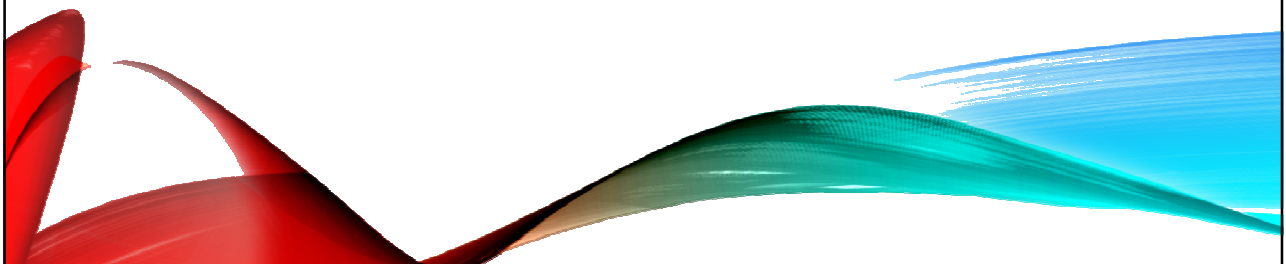


## KENYA BUDGET SEMINAR PRESENTATION

June 2018

# Is your business ready for the technological evolution?

Presenter: Mehul Shah | email: mehul@ultrared.biz | mobile: +254722944848



## What is happening?



### Mobile Internet

- Are you visible?
- Do you interact?



### Cloud Technology

- Are you agile?
- Are you unplugged?



### The Internet of Things

- How connected is your factory / office / home?
- Do you really know what's going on?

## What is happening?



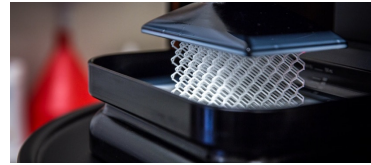
### Advanced Robotics

- How are things getting smarter?
- Which jobs will be replaced?



### Artificial Intelligence

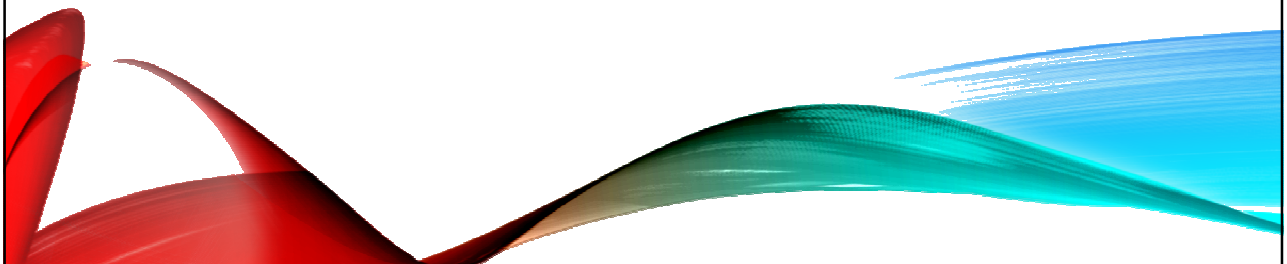
- Automation of knowledge?
- Which jobs will be farmed out?



### 3D Printing

- Additive manufacturing
- How flexible is your manufacturing?
- How fast can you develop?

## How will 3D Printing revolutionize manufacturing?



## What is 3D Printing?

- Additive manufacturing - adding material layer by layer
- From 3D design to physical product in a matter of hours
- Complex shapes possible
- No molds needed
- Highly customizable

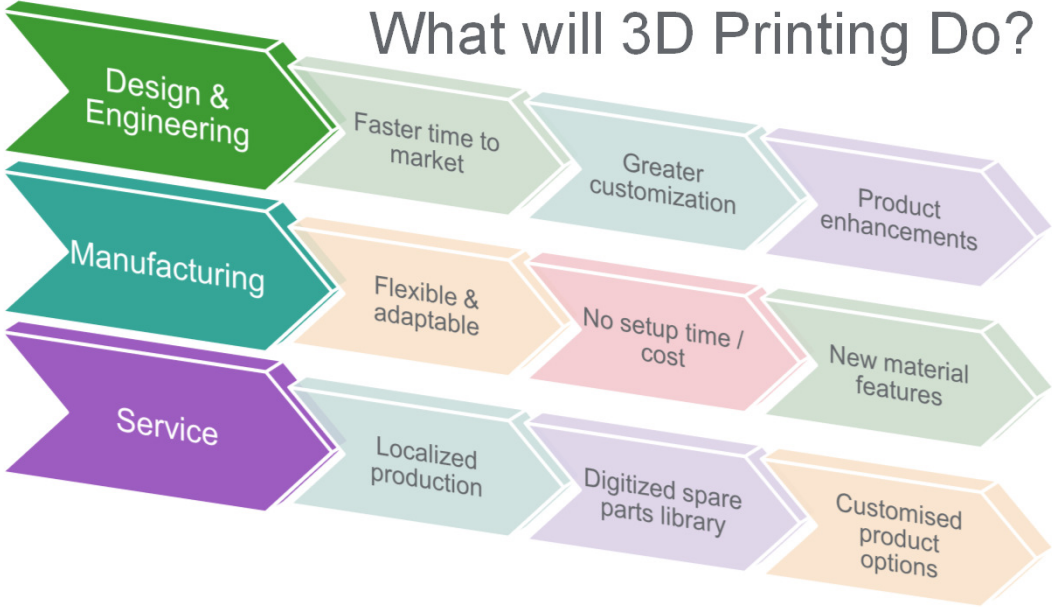


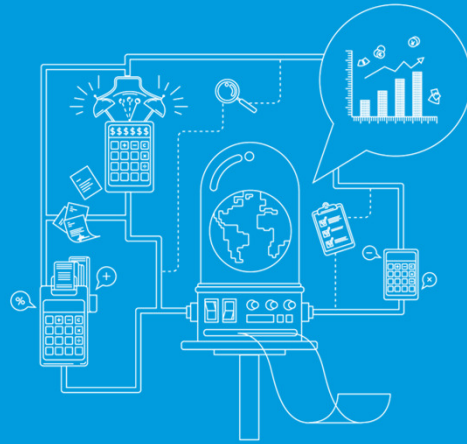
## Industries being impacted

- Aerospace
- Automotive
- Medical
- Light manufacturing



# What will 3D Printing Do?





## DRAFT INCOME TAX BILL, 2018

Presented by: Ashif Kassam



### Background and Transitional Provisions

- Last piece in the modernisation of tax laws
- 65 sections and 8 schedules compared to over 100 sections and 13 schedules
- Subsidiary legislation to remain in force, so far as not inconsistent with the Act
- Exemptions granted under the current Act to remain in force for periods not exceeding 3 years
- Not to effect any penalty, interest or punishment incurred in respect of an offence committed under the current Act
- General penalties - KShs 1 million or imprisonment not exceeding 3 years, or both



## Status Quo

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- Taxation still based on source based system of tax
- Income tax shall be charged for each **year of income** upon all the income of a person, whether **resident** or **non-resident**, which is **accrued or was derived from Kenya**
- **Business** carried on partly within and partly outside Kenya by a resident person
- **Cross Border Leases**
  - Lessor in Kenya - gross lease payments deemed to be income chargeable to tax on Kenya
  - Lessee in Kenya - gross lease payments subject to withholding tax



## Status Quo

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- **Employment** - accrued in or derived from Kenya if:
  - Resident person - employment or services rendered by him in Kenya or outside Kenya
  - Non-resident person - employment or services rendered to an employer who is resident in Kenya or a PE of an employer who is not so resident
- **Pension** - received by a resident individual from a foreign established pension scheme to the extent that it relates to Kenyan employment
- **Banking** - gains or profits from deposits, assets or other property held outside Kenya by a branch in Kenya of a foreign bank



## Corporation Tax

- 35% for companies with a taxable profit in excess of KShs 500m - no proposed change from Budget speech
- Company that lists 40% of its issued capital - 25% for 5 years following the year of listing
- Newly licensed EPZ enterprise (not engaged in commercial activity - trading, breaking bulk, grading, repacking, relabeling):
  - 10% for the first ten years
  - 15% of the subsequent 10 years
- TOT replaced with a tax of 15% of the single business permit (w.e.f. 1<sup>st</sup> Jan 2019)



## Corporation Tax - Expenses

- The following allowable expenses have been removed:
  - Expenditure on legal costs and stamp duty in connection with acquisition of leases of less than 99 years
  - Capital expenditure on structural repairs carried out by the landlord to maintain existing rent
  - 1/3 deduction on taxes payable by a non-citizen who is absent from Kenya for 122 days or more in a year of income
  - Cash donation to tax exempt charitable organisations registered or exempt from registration under the NGO or Societies Acts
- Expenses specifically disallowed include:
  - Premium paid under an annuity contract
  - Payments made by a taxpayer for failure to deduct withholding tax
  - Consideration to a person to the extent that an equivalent amount is not included in the income of a beneficiary





## Corporation Tax - Tax Losses

- Extension of tax losses beyond expiry period of 10 years limited to 2 years
- Tax losses not allowed to be carried forward where:
  - change in ownership or direct or indirect control by more than 50%
  - business activity of the person at the time the deficit had occurred has changed wholly or in part in the subsequent year of income



## Corporation Tax - Thin Capitalisation

- The ratio of highest amount of interest bearing loans to the sum of revenue reserves and issued and paid up capital - reduced from 3:1 to 2:1
- Now limited to loans from non-residents or their non-resident associates
- Foreign exchange losses on loans from a person in control of a company - reduced from 3:1 to 2:1
- Deemed interest - difference between the market interest rate (91-day average interest rate) in the country of the non-resident and the rate charged



## Dividend and Compensating Tax

- Tax exempt dividends to resident companies - threshold increased from 12.5% to 25%
- Bonus issue of shares now construed to be dividend and subject to withholding tax
- Dividends now includes:
  - settlement of a debt to a third party or discharge of an obligation measurable in money owed to the company by a shareholder or person related to the shareholder
  - an amount utilised for the benefit of the shareholder or a person related to the shareholder
  - 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
  - distribution or transfer of assets to or for the benefit of a shareholder or a person related to the shareholder (w.e.f 1<sup>st</sup> July 2018)



## Dividend and Compensating Tax

- No requirement to maintain a Dividend Tax Account
- Distribution of a dividend out of gains or profits on which no tax is paid - corporation tax in the year of income in which the dividends are distributed (w.e.f. 1<sup>st</sup> Jan 2019)
- Tax paid capital gains and income from Rental Residential Tax regime now distributable without payment of additional compensating tax
- Excludes collective investment schemes



## Permanent Establishment

- Taxed at 30% from 37.5%
- Tax on repatriated income - 10%  
 $R = A1 + (P-T) - A2$ 
  - A1 - net assets at the beginning of the year
  - P - net profit for the year in accordance with GAAP
  - T - tax payable
  - A2 - net assets at the end of the year
  - Net assets exclude revaluation reserves



## Permanent Establishment

- Definition extended to include:
  - a warehouse providing storage facilities to others
  - a sales outlet
  - a farm, plantation or other place where agricultural activities are carried on
  - building site, construction, assembly or installation project or any related supervisory activity exceeding 183 days
  - installation or structure used in exploration for natural resource exceeding 183 days
  - provision of consultancy services through employees for a period exceeding 91 days



## Insurance

- Transfer of property, excluding those connected to life business - subject to CGT (w.e.f 1<sup>st</sup> July 2018)
- Negative transfer to the life fund limited to the actuarial surplus transferred from the life fund for the previous 5 years
- Insurance (including reinsurance) premium paid to non-residents - 5% withholding tax (excluding aircrafts) (w.e.f. 1<sup>st</sup> July 2018)
- Commission or fees paid by an insurance company - 20%



## Agriculture

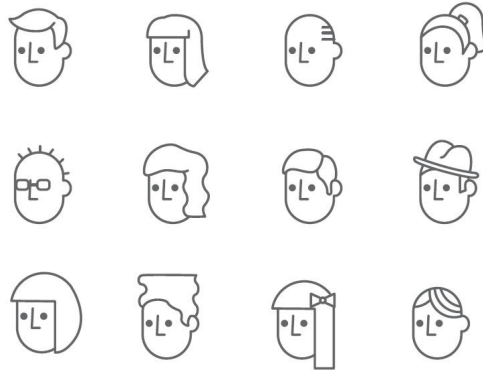


- Exemption allowing farmers not to account for stock (livestock and produce and crops which have been harvested) on hand and paying tax at the time of their disposal removed
- Exemption of payment of withholding tax of 20% on commission to non-residents in respect of flowers, fruits or vegetables exported from Kenya for auction and audit fees for analysis of maximum residue limits removed



## Members' Clubs and Trade Associations

- Members' clubs and trade associations to be subject to income tax on their total income including entrance fees and subscriptions paid by members




## INVESTMENT ALLOWANCE

PROPOSAL	IMPLICATION
<b>Key changes:</b> <ul style="list-style-type: none"> <li>Gains on sale of buildings or on cessation of business will now be treated as a trading receipt and taxed at 30%</li> <li>The restriction for a non-commercial vehicle increased from KShs 2 million to KShs 3 million</li> </ul>	The changes simplify the hitherto complex process of claiming investment deductions
<b>BUILDINGS (excluding land)</b>	<b>RATE</b>
Commercial building (including an office, showroom, godown, warehouse used for storage of raw materials and finished goods and a water or electric power undertaking)	10% per annum over 10 years
Hotel building licensed by the Tourism Ministry	60% in the first year of use and 10% over the next 4 years
Building used for manufacture (making or packaging of goods and electricity generation for supply to national grid; but excluding design, storage, transport and administration)	100% in the first year of use
Petroleum gas storage facilities	60% in the first year of use and 10% over the next 4 years
Educational buildings licensed by Education Ministry	10% per annum over 10 years
Hospital buildings licensed by Health Ministry	100% in the first year of use
<b>MACHINERY (including pipeline and plant and equipment)</b>	<b>RATE</b>
Machinery used for manufacture (used directly in the process of manufacture including for ancillary purposes of electricity generation, clean up of effluents and waste products, reduction of environmental damage, water supply and disposal, machinery maintenance and scientific research and development)	100% in year of first use






INVESTMENT ALLOWANCE	
PROPOSAL	IMPLICATION
Hospital equipment	100% in year of first use
Ships or aircrafts	60% in year of first use and 20% over the next 2 years
Motor vehicles and earth moving equipment (restricted to KShs 3 million for non-commercial vehicles)	25% over 4 years
Computer and peripheral computer hardware, software, calculators, copiers and duplicating machines	25% over 4 years
Furniture and fittings and machinery not used in manufacturing	10% over 10 years
Diminution in value of implements, utensils and similar articles not being machinery	25% over 4 years
Telecommunications equipment	10% over 10 years
Filming equipment by a local film producer licensed by CS Communication	50% over 2 years
OTHER ITEMS	RATES
Purchase or acquisition of an indefeasible right to use fibre optic cable by telecommunication operator	10% per annum over 10 years
Farmworks (including farmhouses, labour quarters, immovable buildings, fences, daps, drains, windbreaks, water and electricity supply works excluding machinery and other works necessary for the proper operation of a farm)	100% in year of first use



## Double Tax Treaties - Exclusion

- Double Tax Agreement benefits limited to a person who:
  - is an ultimate beneficial owner of less than 50% of the underlying ownership and resident in the other state;
  - holds the ownership for a period of at least 183 days in a year of income; and
  - is engaged in the active conduct of business in the other state which excludes:
    - a holding company
    - providing overall supervision or administration of a group of companies
    - providing group financing (including cash pooling); or
    - making or managing investments.
- Excludes a company listed in a stock exchange in the other contracting state



## Withholding Tax

- The definition of management fees now includes any other payments incidental to the provision of such services
- “Payment” is defined to mean any amount paid or payable in cash or kind or any other means of conferring value or benefit on a person
- In addition, the definition of “Paid” has now been extended to include any payment or amount accrued or transferred
- Demurrage - 20% to non-residents (w.e.f. 1<sup>st</sup> July 2018)

### WITHHOLDING TAX RATES: PAYMENTS TO RESIDENT PERSONS

PROPOSAL	RATE
Dividend paid by a cooperative society which carries business as a savings and credit co-operative society - new	10%
Commission paid by an insurance company to an agent - previously 10%	5%
Lease payment for lease of immovable property - previously only paid by designated withholding tax agents	10%
Distribution of investment income to unit holders or shareholders of a collective investment scheme	5%



## Withholding Tax

### WITHHOLDING TAX RATES: PAYMENTS TO NON-RESIDENT PERSONS

PROPOSAL	RATE
Repatriated income of a non-resident company - new	10%
Service fee payable by a licensee, or contractor to a subcontractor in the extractive sector - increased from 5.625%	10%
Demurrage charges paid to non-resident ship operators - new	20%
Lease payments for lease of locomotives and rolling stock - new	20%
Lease payments for use of property - reduced from 30% for movable but increased from 15% for immovable	20%
Commission or fees paid by an insurance company - new	20%
Insurance premium - new	5%
Pension or retirement annuity - increased from 5%	10%
Ship operator or charterer, air transport operator or charterer or ship or aircraft owned or chartered - increased from 2.5%	3%
Telecommunication services - receipt of messages for transmission by cable, radio, optical fibre, television broadcasting, satellite and any other similar method of communication - increased from 5%	10%
Distribution of investment income to unit holders or shareholders of a collective investment scheme	10%
Dividends payable to Special Economic Zone operators, enterprise or developers - new	5%



## Anti Avoidance

- The Commissioner has powers to direct adjustments to transactions which are effected with intent to avoid or reduce the tax liability
- Provision now gives the Commissioner broader powers - previously this was restricted to transactions where the main benefit was expected to accrue from the transaction in the 3 years immediately following the completion and the aim was the avoidance or the reduction of liability to tax
- The Commissioner currently has powers to direct a company to distribute dividends which could be distributed without prejudice to the requirements of the company business. Used within 12 months after the company's accounting year end. The proposal now sets a limit for such distribution to 60% of the accounting profits



## Personal Tax

- Permanent home - a place where a person lives in or is available to him for purposes of residing while in Kenya or the place where personal and economic interests are closest
- Individual income earners of over KShs 9 million per annum (KShs 750,000 per month) to be taxed at 35% - proposal in the Budget speech to drop this
- Tax bands and relief slightly expanded
- Allowable amount be aligned to the Public Service prescribed rates, which vary with job grading
- The HOSP which allowed for a deduction of KShs 48,000 per year towards the purchase of a first time home removed



## Personal Tax

- Wife to file a separate return
- Provision combining the wife's and husband's income where they work in a company controlled by them removed
- The current provision of allowing KShs 36,000 per year of non-cash benefits to employees removed



## Capital Gains Tax

- Rate increased to 20% - proposal in the Budget speech to drop this
- Indexation formula - acquired before 1<sup>st</sup> January 2015:
  - $ADJUSTED\ COST = (MP * CPIA) / CPIT$
  - Where:
    - MP - Transfer Value
    - CPIA - published CPI for the month prior to acquisition
    - CPIT - published CPI for the month prior to the transfer
- Indexation formula - acquired on or after 1<sup>st</sup> January 2015, the higher of:
  - the cost as determined using the formula above; and
  - actual expenditure incurred adjusted for inflation.



## Capital Gains Tax

- Due date for payment - on or before the date the transfer is effected at the Lands Office
- Property transferred to a REIT to be exempt from CGT



## Transfer Pricing

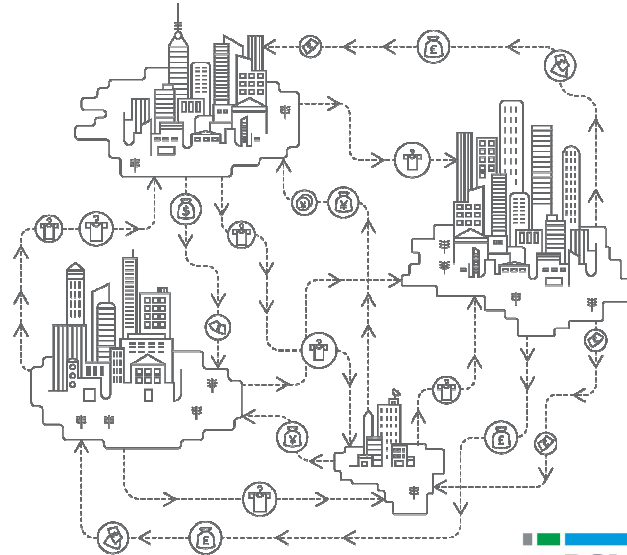
- Control definition extended to include:
  - holding shares not less than 20% of the voting power;
  - loan of not less than 70% the book value of the total assets excluding loans from financial institutions;
  - guarantee for any form of indebtedness of not less than 70% of total indebtedness, excluding guarantees from financial institutions;
  - power to appoint half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board;
  - the manufacture or processing of goods or articles or business carried out by one person being wholly dependent on the use of know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature;
  - 90% or more of the purchases by one person are supplied by the other person, or the prices and other conditions relating to the supply are influenced by such other person;
  - 90% or more of the sales by a person to the other person and the prices and other conditions relating thereto are influenced by such other person; or
  - any other form of control that the Commissioner may establish.





## Scope of the TP Guidelines

- TP rules apply to **beneficial and preferential tax regimes**
- Defined as regimes that do not tax income or tax income at a tax rate less than 16% or which do not have an effective exchange of information or arrangement or does not allow access to banking information or lacks transparency on details of the corporate structure



## Transactions Subject to TP Adjustments

- Purchase, sale, transfer, lease or use of tangible or intangible property and provision of services
- Financing transactions, including any type of borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance payments or deferred payment or receivable or any other debt arising during the course of business
- Insurance and re-insurance transactions
- A transaction of business restructuring or reorganization entered into by a person with an associated person
- Cost contribution arrangements

## Determining ALP of Commodities

– To ascertain arm's length price, where a **quoted or public price** is obtained at the date of the transaction from:

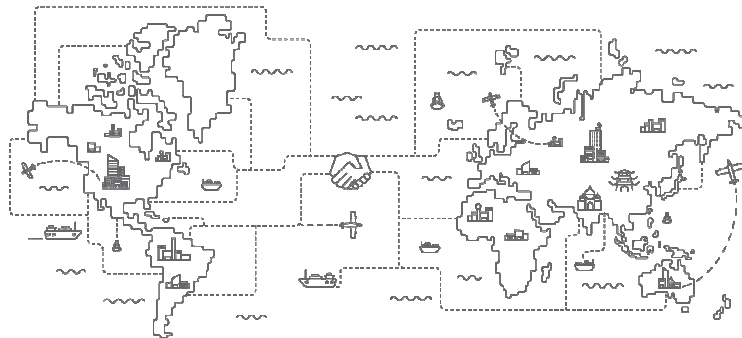
- ✓ an international or domestic commodity exchange market;
- ✓ recognized price reporting statistical or governmental price-setting agencies; or
- ✓ any other index that is used as a reference by unrelated parties to determine prices in transactions between them;

the transfer price will be determined on the shipping date unless the person proves that adjustments are appropriate.



## Country by Country (“CBC”) Reporting

- Each ultimate parent entity or a constituent entity which is not the ultimate parent entity of a multinational enterprise group that is resident for tax purposes in Kenya is required to file a CBC report
- The CBC reports are proposed to be submitted with the Commissioner not later than twelve months after the last day of the reporting financial year of the multinational enterprise group



## Services Between Associated Persons

Services between associated persons will not be considered to be at arm's length unless:

- the services are actually rendered;
- the services result in an economic or commercial value to enhance the commercial position;
- the services would have been sought by an independent person in comparable circumstances or performed in-house; and
- the charges correspond to an amount which would have been agreed between independent persons for comparable services in comparable circumstances.



## Other Provisions

- DEMPE of Intangibles - determination of arm's length conditions for controlled transactions involving the exploitation of an intangible must take into account the contractual arrangements in respect of the **development, enhancement, maintenance, protection and exploitation** of the asset
- Where a capital rich and low function person is involved in a controlled transaction and does not control the financial risk associated with its funding activities - it shall not be allocated the profit associated with those risks and shall be entitled to no more than a risk-free return
- A penalty of **2%** of the value of the controlled transaction involved, for failure to maintain contemporaneous TP documentation for the relevant year of income





## DIRECT TAXES

Presented by: Ashif Kassam



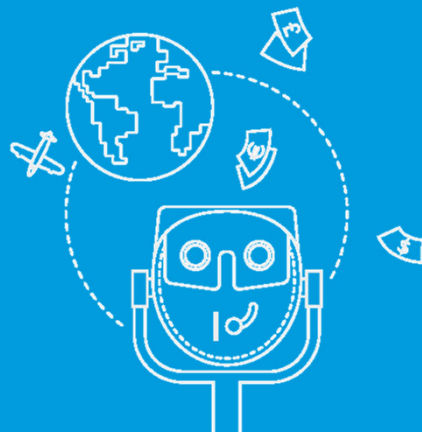
## Tax Amnesty

- Extended - filing of the return by 30<sup>th</sup> June 2019
- Reporting period moved to 31<sup>st</sup> December 2017
- 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
- Exemption excludes funds derived from terrorism, poaching and drug trafficking
- Not clear what happens to amnesty forms already filed or will be filed by 30<sup>th</sup> 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 30<sup>th</sup> June 2018 can use 31<sup>st</sup> December 2016 as the reporting period



## Other Key Changes

- Deduction of 30% of total electricity bill (in addition to the bill) subject to conditions set out by the CS Energy (w.e.f. 1<sup>st</sup> Jan 2019)
- 20% withholding tax proposed under The Tax Laws (Amendment) Bill, 2018 to be used for development of sports art and social development (w.e.f. 1<sup>st</sup> July 2018)
- Businesses operating under a special operating framework arrangement with the Government - taxed in accordance with the provisions in the agreement (w.e.f. 1<sup>st</sup> Jan 2019)



## ECONOMIC REVIEW - GLOBAL

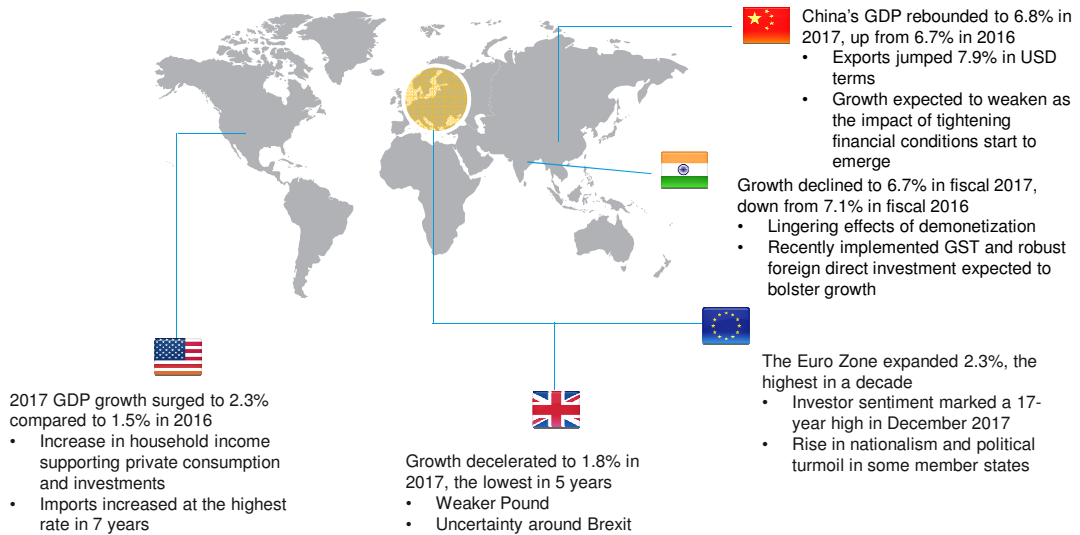
Presented by: Ashif Kassam





## Global Economy Overview

In 2017, the global economy expanded by 3.6%, compared to a growth of 3.2% in 2016.



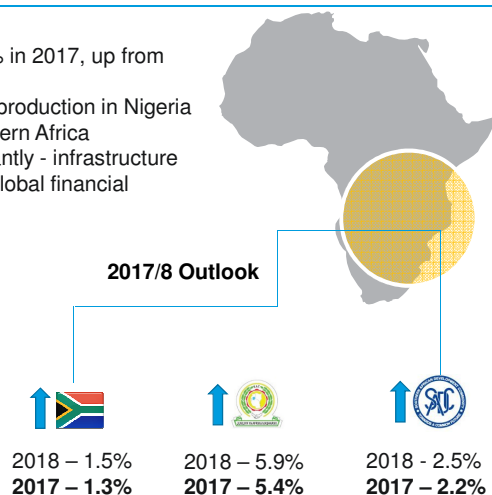
## Africa Economic Highlights

### Sub-Saharan Africa

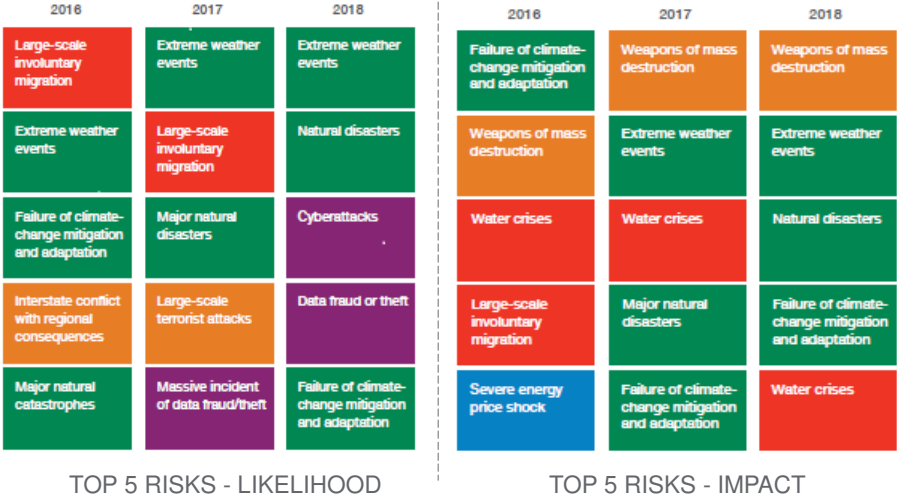
- Real GDP growth in Sub-Saharan Africa surged to 2.8% in 2017, up from 1.4% in 2016
- Growth was supported by increased oil and agriculture production in Nigeria and diminishing effects of drought in Eastern and Southern Africa
- Most regional economies are expected to grow significantly - infrastructure investment, strong private consumption and improved global financial conditions are key driving factors

### Outlook

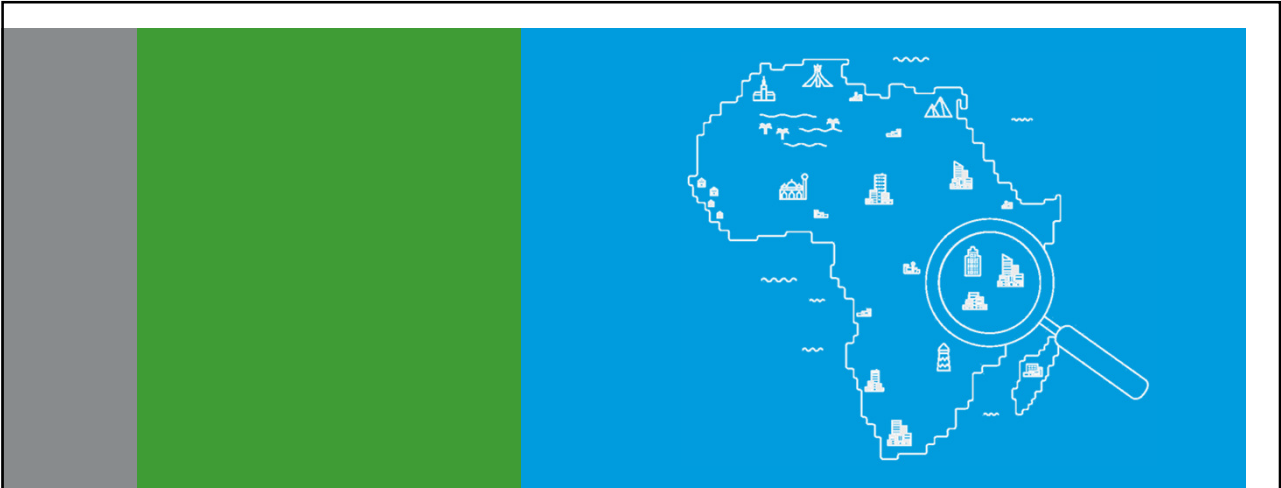
- Growth in Sub-Saharan Africa expected to quicken to 3.4% in 2018
- Favorable commodity prices and reduced inflationary pressures expected to bolster growth
- Stabilization of oil prices and interest rates will likely prop up the region's economy



# World Economic Forum - Global Risk Assessment 2017



■ Economic ■ Environmental ■ Geopolitical ■ Societal ■ Technological



## ECONOMIC REVIEW - KENYA

Presented by: Ashif Kassam



## Overview

- Kenya's economy is estimated to have expanded by 4.9% in 2017, down from a growth of 5.9% in 2016
- The economy is projected to grow at 5.5% in 2018:
  - Political stability, on-going investments in infrastructure and strong domestic consumption likely to support growth in 2018
- Central Bank Rate (CBR) currently at 9.5% (commercial bank lending rates capped at 4% above CBR)
- Inflation down from 8.0% in 2016 to 5.6% in May 2018
- CBK foreign exchange reserves stood at an all-time high of USD 8.8b (5.9 months of import cover) in March 2018
- Average commercial banks' liquidity in February 2018 was 44.6%, capital adequacy ratio at 18.5%, while gross non-performing loans ratio increased to 11.4%



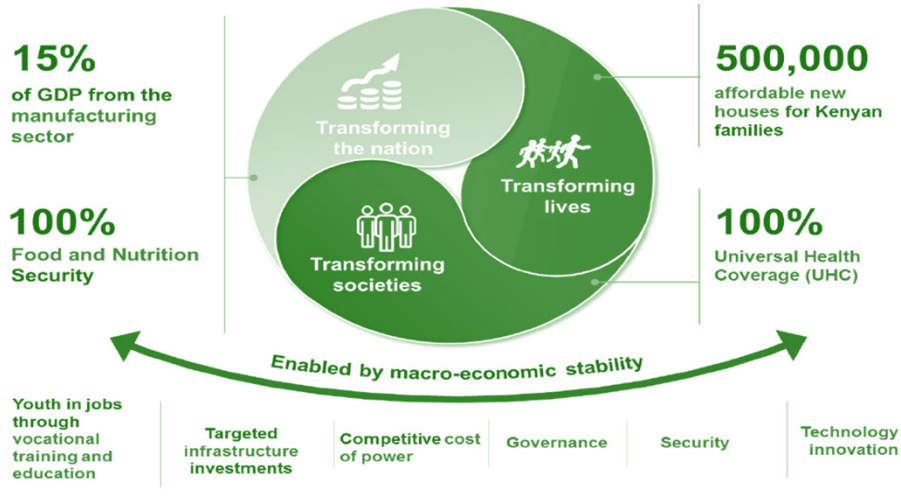
## FY 2019/2020 BUDGET HIGHLIGHTS

Presented by: Ashif Kassam



## “The Big Four” Plan

Budget Theme: Creating jobs, transforming lives and sharing prosperity



## “The Big Four” Plan - Enablers (FY 2018/2019)

- KShs 57.5b - Enhanced security for investment, growth and employment
- KShs 273.8b - Investment in infrastructure to unlock growth potential
- KShs 200.6b - Enhancing access and transforming the educational system
- KShs 60.4b - Environment management and protection, flood control and water harvesting
- KShs 68.9b - Equity, poverty reduction and social protection for vulnerable groups
- KShs 22.1b - Leveraging on information, communication and technology
- KShs 314.0b - Transfer to county governments



Shs 0.7b for CT scanners



Shs 121.7b - road related

## Budget 2017/2018 Financial Projections

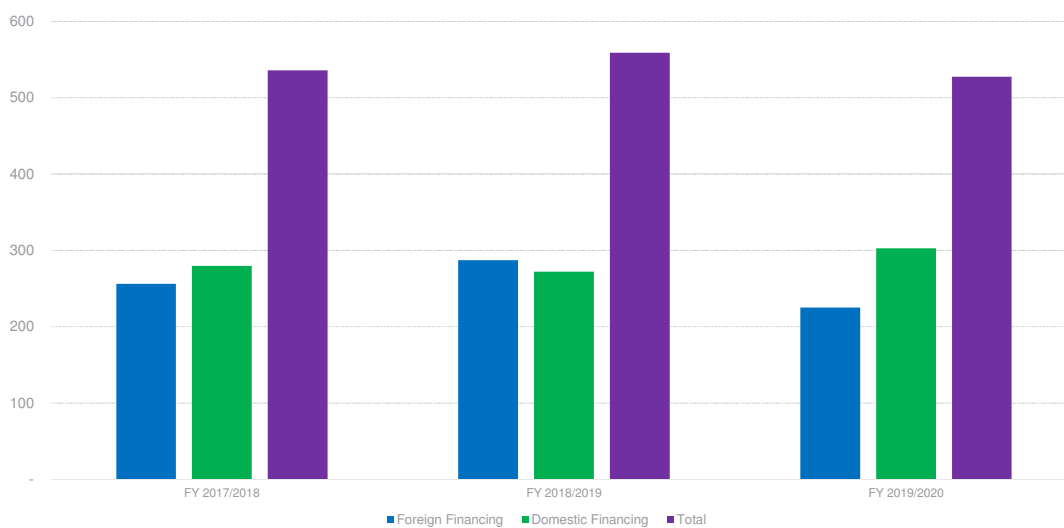
	KShs. Billion
Revenue	1,949.2
Grants	48.5
<b>Total revenue</b>	<b>1,997.7</b>
Ministerial recurrent expenditure	1,073.0
Development expenditure	671.6
County allocation	314.0
CFS excluding domestic bond redemptions	490.5
Contingency fund	5.0
Net lending	2.5
<b>Total expenditure</b>	<b>2,556.6</b>
<b>Overall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

### BUDGET OUTTURN HIGHLIGHTS

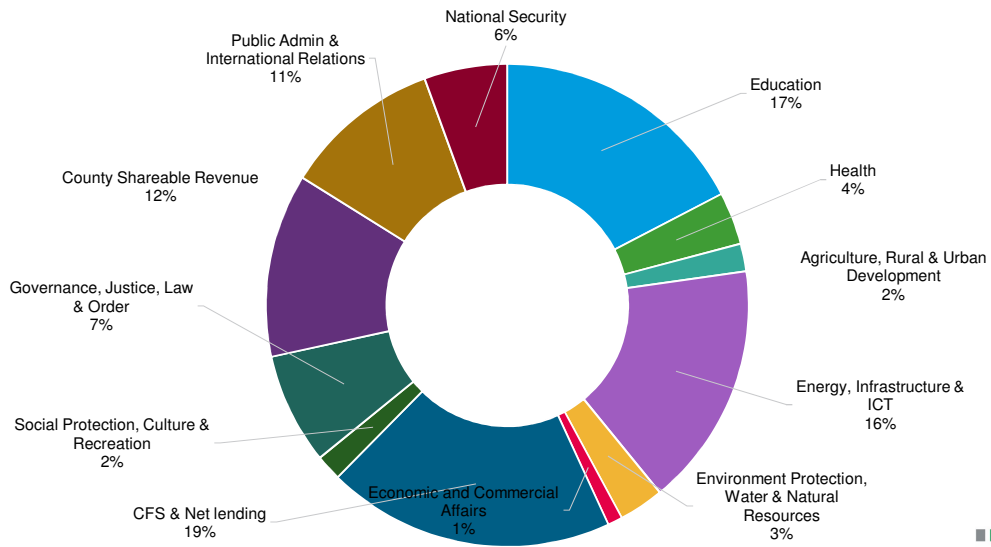
- Revenue collection projected at KShs 1.9t - 20.0% of GDP in FY 2018/2019, up from 17.5% in FY 2017/18
- Total expenditure projected at KShs 2.6t - 26.3% of GDP; of which recurrent expenditure is KShs 1.6t (15.9% of GDP) and development expenditure KShs 671.6b (6.8% of GDP)
- Fiscal deficit projected at KShs 558.9b - 5.7% of GDP, funded by net external financing of KShs 287.0b, and domestic borrowing of KShs 271.9b



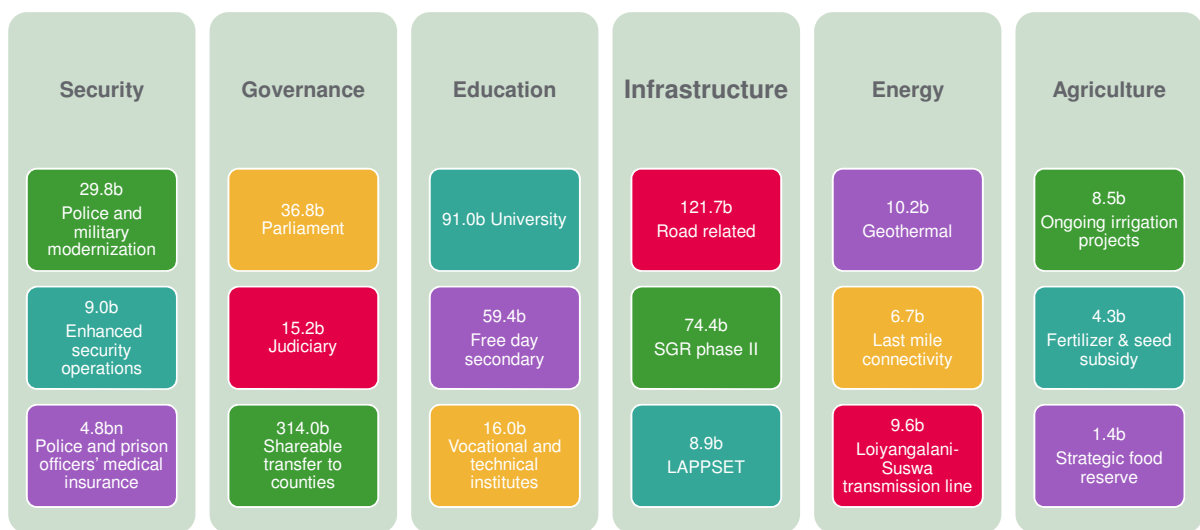
## Financing Trends and Composition (KShs B)



## Sector Allocation



## Allocation Highlights (KShs)



## Challenges & Risk Factors

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- ❖ Reduced availability of private sector credit due to cap on lending rates
- ❖ Impact of unpredictable weather on food prices and inflation
- ❖ Exchange rate volatility
- ❖ Surging non-performing loans in the banking sector
- ❖ High public debt burden
- ❖ Civil services not aligned to manage available resources
- ❖ Threat of inflationary pressures on the cost of living and employment
- ❖ Wastage in public expenditure and wage bill

A graphic of a human brain filled with various digital and business icons. The icons include a smartphone, a laptop, a shopping cart, a speech bubble with a hashtag, a person at a computer, a barcode, a server rack, a magnifying glass, a shopping bag, a bar chart, a pie chart, a padlock, a gear, a document, a mail icon, a location pin, a social media icon, a CSS icon, a www.com icon, and an SEO icon. In the center of the brain, there are four lines of binary code: 01110001, 00101000101001, 0111000110110100110, and 0001101010011101111000. The background is split into three vertical sections: grey on the left, green in the middle, and blue on the right.

## INDIRECT TAXES

Presented by: Winnie Kimotho

The logo for RSM, consisting of three horizontal bars in green, blue, and blue, followed by the letters 'RSM' in a bold, sans-serif font.

## VAT - ADMINISTRATIVE MEASURES

- Prescription of 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:
  - unauthorized access to/or improper use of a tax computerized system,
  - interference with tax computerized system; and
  - submission of returns.

Similar provisions inserted in the Tax Procedures Act 2015, which deals with the administrative aspects of all tax laws



## VAT - REVENUE MEASURES

**Unless specifically stated, all VAT changes are effective 1<sup>st</sup> July 2018**

### Plant and Machinery

- Plant and machinery falling under Chapters 84 and 85 of the CET not used in the manufacture of goods now be taxable at 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 now be taxable at 16%. In 2017/8, exempt from VAT to encourage local manufacture

### 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
- Exemption applies to hospitals with a minimum bed capacity of 50 beds





## VAT - REVENUE MEASURES

### Solar and Wind Energy Generation

- Specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries now 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 taxable at the standard rate of 16%
- Supply of taxable services in relation to goods-in-transit still remains zero-rated

### Grains and Cereals

- Wheat and meslin and barley falling under tariff code 10.01 and 10.03 of the CET now exempt. Previously taxable at 16%
- Maize corn seeds of tariff No 1005.10 now taxable at the standard rate of 16%. Previously exempt



## VAT - REVENUE MEASURES

### 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

### Equipment Used in Grain Storage

- Equipment used in the construction of grain storage facilities now exempt upon recommendation by CS Agriculture. Previously, this only extended to materials used in the construction of grain storage facilities



## VAT - REVENUE MEASURES

### Manufacturing of Animal Feeds

- Materials, wastes, residues and by-products, whether or not in the form of pellets and preparations of a kind used in animal feeding of items now exempt (previously taxable):
  - 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 exempted
- Previously, this exemption was only applicable to primary school laptop tablets
- Exemption subject to approval by CS responsible for information technology



## VAT - REVENUE MEASURES

### Alcoholic and Non-Alcoholic Beverages

- Supply to KDF canteen organisations now exempt
- 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 exemption 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 now exempt. These were previously taxable at 16%



## EXCISE DUTY - ADMINISTRATIVE MEASURES

**Unless specifically stated, all Excise duty changes are effective 1<sup>st</sup> July 2018**

### Suspension of Licences

- 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 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 to be paid into the Sports, Arts and Social Development. Monies to be used to support social development including universal health care



## EXCISE DUTY - ADMINISTRATIVE MEASURES

### 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 KShs 5 million, 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 DUTY - REVENUE MEASURES

### Illuminating Kerosene

- Excise duty on illuminating kerosene of tariff code 2710.19.22 increased from KShs 7,205 per 1,000 litres to KShs 10,305 per 1,000 litres

### 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 now 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



## EXCISE DUTY - REVENUE MEASURES

### Money Transfer Services by Cellular Service Providers

- Excise duty is increased on money transfer services by cellular service providers from 10% to 12%

### Money Transfers

- Excise duty introduced on money transferred by banks, money transfer agencies and other financial service providers at an applicable rate of 0.05% where the amount transferred is KShs 500,000 or more

### Alcoholic and Non-Alcoholic Beverages

- Supplies to KDF Canteen Organisations now exempt from excise duty. Previously, this exemption had been removed and the supplies were dutiable



## EXCISE DUTY - REVENUE MEASURES

### 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
- Previously, such exemption was provided under the Privileges and Immunities Act



## EXCISE DUTY - REVENUE MEASURES

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



## CUSTOMS - REVENUE MEASURES

- Iron and steel industry - import duty increased from 25% to 35%
- Textile and footwear industry - USD 5 per unit or 35%, whichever is higher
- Vegetable oils - USD 500 per mt. 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 used in the manufacture of pesticides and acaricides



## CUSTOMS - REVENUE MEASURES

- 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 - duty increased from 25% to 35%
- Timber and furniture industry - introduction of specific rate duty of:
  - USD 110 per mt. on particle boards
  - USD 120 per mt. on medium density fibre boards
  - USD 230 per cubic meter on plywood
  - USD 200 per mt. on block boards;
  - or 35% whichever is higher.





## OTHER TAX LAWS

Presented by: Maureen Shaba



## Tax Procedures Act

### **All provisions effective 1<sup>st</sup> July 2018**

#### **Extension of Time to Submit a Return**

- 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
- Commissioner 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
- Only one extension can be granted in respect of a tax period

#### **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



## Tax Procedures Act

### **Tax Representative**

- Each tax representative responsible for the tax obligation for which the tax representative has been appointed
- Previously, they were responsible for all of the obligations of the taxpayer

### **Reasons for Rejection**

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

### **Late Payment Interest and Penalty**

- A taxpayer who fails to pay tax on or before the due date - late payment interest at 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
- Late payment penalty of 20% on the tax due and payable
- This reverts to the rate that was there before the coming into effect of the TPA



## Tax Procedures Act

### **Objection to Tax Decision**

- A notice of objection treated as validly lodged - if the taxpayer has paid the entire amount of tax due that is not in dispute, or has applied for an extension of time to pay the tax not in dispute
- 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

### **Prosecution and Penalties**

- Where a Commissioner commences 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





## Tax Procedures Act

### Computerised Tax Systems

- A person who commits an offence for unauthorized access or improper use of a computerised tax system shall be liable in the case of:
  - Individual - imprisonment for a term not exceeding 2 years, or to a fine not exceeding KShs 400,000, or to both; or
  - A body corporate - a fine not exceeding KShs 1 million.
- A person who commits an offence for interference with computerised tax system shall be liable to imprisonment for a term not exceeding 3 years, or to a fine not exceeding KShs 800,000, or to both



## Tax Appeals Tribunal

### Speeding up Appeals

- 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

### Timeframe for Settlement of Cases

- 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





## MISCELLANEOUS AMENDMENTS

Presented by: Elvis Ogeto



## WAR ON CORRUPTION

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- Enhanced oversight and legislative role of Parliament and access to Justice - KShs 36.8 billion to Parliament and KShs 15.2 billion to the Judiciary
- Multi-agency teams have been strengthened and enabled to investigate, prosecute and recover corruptly acquired assets by funding as follows:
  - Criminal Investigations Services - KShs 6.4b;
  - Office of the Attorney General - KShs 5.1b;
  - Ethics and Anti-Corruption Commission - KShs 2.9b;
  - Department of Public Prosecutions - KShs 2.9b;
  - Financial Reporting Centre - KShs 587m; and
  - Assets Recovery Agency - KShs 161m.



## WAR ON CORRUPTION - Continued

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- Reforms to improve the Public Procurement and Disposal System
- Public Procurement and Asset Disposal Act (PPAD) Regulations completed and submitted to Parliament
- The PPAD Regulations provide for:
  - Common procurement office to 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
  - Prompt payment for performed contracts within 60 days upon proper certification
  - Buy-Kenya-Build-Kenya policy: preference in the procurement evaluation to firms that supply items wholly produced or mined in Kenya or with Kenyan shareholding



## WAR ON CORRUPTION - Continued

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- Increased transparency in the procurement process - effective 1<sup>st</sup> July 2018, all Accounting Officers to publish and publicize all procurement contracts
- All the Accounting Officers now expected to share the reports on contract awards to the National Treasury and the Public Procurement Regulatory Authority (PPRA)
- Treasury is working closely with investigative agencies to identify and seal any loop holes within the IFMIS system



## BANKING INDUSTRY

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- No interest rate capping? Proposal to amend the Banking (Amendment) Act, 2016 by repealing Section 33B
- 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 businesses and transactions
- 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



## BANKING INDUSTRY - Continued

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- 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
  - Creation of Biashara Kenya Fund by merging Uwezo Fund, Youth Enterprise Development Fund and Women Enterprise Development Fund
  - Financial Markets Conduct Bill, 2018 - addresses the inadequacies in consumer protection and unregulated lending in the financial sector
  - Digitization of land titling processes, development of a functional Collateral Registry
  - Implementation of the Treasury Mobile Direct and M-Akiba to offer retail individuals alternative savings mechanism



## PARASTATAL REFORMS AND PPPs

- 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
- Establishment of the National Toll Fund as a special fund to support development of world class national trunk roads



## PARASTATAL REFORMS AND PPPs - Continued

- Government has completed the review of the PPP ecosystem and undertaken a legal audit of the PPP Act 2013
- The proposed amendments to 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

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- Proposal to amend the Insurance Act to require the insured to make premium payments directly to the insurer
- Proposal to amend the Insurance Act to introduce index-based insurance which will lead to higher uptake of insurance, for example by farmers
- Introduce provisions to criminalize insurance fraud and protect the consumers



## RETIREMENT BENEFITS

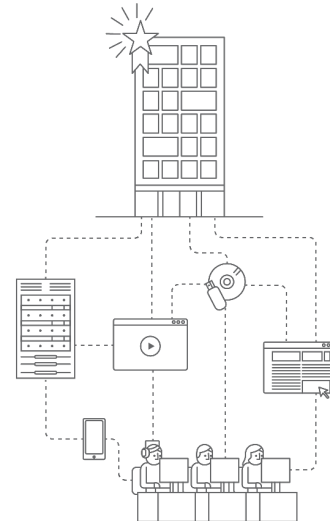
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- Proposal to amend the Retirement Benefits Act to enable the Authority intervene against any employer who fails to remit pension contributions
- Requirement to pay the contribution and interest accrued and a penalty of 5% or KShs 20,000, whichever 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



## 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 (SASRA) as one supervisory bodies under Proceeds of Crime and Anti-Money Laundering



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## EMPLOYMENT ACT

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 (effective 1<sup>st</sup> October 2018):

- 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.



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## 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 20% penalty and 2% interest on late payment of tax in the Betting, Lotteries and Gaming Act



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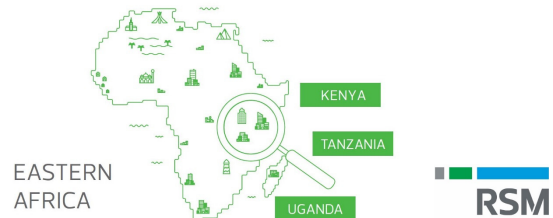
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### VALUES



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## NAIROBI

1st Floor, Pacis Centre,  
Slip Road, off Waiyaki Way, Westlands  
P.O. Box 349, 00606  
Nairobi, Kenya

Tel: +254 20 3614000/4451747/8/9  
Mobile: +254 706 347950/772 786111  
Fax: +254 20 4451773  
Email: [info@ke.rsm-ea.com](mailto:info@ke.rsm-ea.com)  
Website: [www.rsm.global/kenya](http://www.rsm.global/kenya)

**Contact: Ashif Kassam (Executive Chairman)**

## MOMBASA

3rd Floor, Bayview Place,  
Moi Avenue  
P.O. Box 87227, 80100  
Mombasa, Kenya

Tel: +254 412311778/2312640/2224116  
Mobile: +254 707 613329  
Fax: +254 41 2222397  
Email: [infomsa@ke.rsm-ea.com](mailto:infomsa@ke.rsm-ea.com)  
Website: [www.rsm.global/kenya](http://www.rsm.global/kenya)

**Contact: Nihla Mazrui**

## DAR ES SALAAM

16th Floor, Golden Jubilee Towers,  
Ohio Street  
P.O. Box 79586  
Dar es Salaam, Tanzania

Tel: +255 22 2137314/15  
Fax: +255 22 2137316  
Email: [info@tz.rsm-ea.com](mailto:info@tz.rsm-ea.com)  
Website: [www.rsm.global/tanzania](http://www.rsm.global/tanzania)

**Contact: Lina Ratansi (Group Chief Executive)**

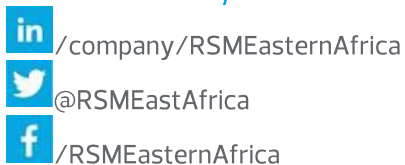
## KAMPALA

6th Floor, DTB Centre,  
Plot 17/19  
Kampala Road  
P.O. Box 31704,  
Kampala, Uganda

Tel: +256 414 342780  
Email: [info@ug.rsm-ea.com](mailto:info@ug.rsm-ea.com)  
Website: [www.rsm.global/uganda](http://www.rsm.global/uganda)

**Contact: John Walabyeki (Managing Partner)**

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