



# Budget brief



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# Economic Highlights



## Global Highlights

The global economy recorded a slight dip in 2018, attaining a growth rate of 3.6% compared to 3.8% in 2017. The dip is attributed to decelerated economic growth in advanced economies, lower agricultural output attributed to climate change and the slow recovery of commodity exporting markets. The simmering US-China trade tensions no doubt slowed global economic growth, with China's GDP registering decelerated growth at 6%.

Oil prices remained volatile in the year, particularly in view of the geo-political conflicts in major oil producers. Despite stepping up production to meet the supply deficit, the price of oil rose from an average of USD 54.9 per barrel in 2017

to USD 71.5 per barrel in 2018, further dampening global economic growth.

The 2019 outlook points to an even slower growth projected at 3.3%. This will primarily be driven by revised auto emission standards resulting in reduced industrial production in countries like Germany. This has been complicated by the Brexit uncertainties. The US-China trade dispute will likely continue negatively impacting global economic growth with the International Monetary Fund (IMF) projecting that China's GDP growth will slow down to 6%, the lowest level in over a decade.

## Africa Highlights

In 2018, African economies reported a 3.5% growth, largely in tandem with global economic growth. In 2019,

Africa's GDP growth is projected at 4%, a performance that would rekindle the Africa rising narrative.

This economic growth is attributed to the willingness by more countries to embrace economic integration and invest in enablers of economic growth. The continent is also positioned to take advantage of shifting trade and supply chains occasioned by trade tensions among the major trading countries.

## Regional Highlights

East Africa remains the fastest growing sub-region in Africa, with an estimated growth of 5.9% in 2018 up from 5.3% percent in 2017. This was attributable to a rebound of the agricultural sector in Kenya, Uganda and Rwanda. AfDB projects growth in the region will hit 6.1% in 2019, driven by growth in the manufacturing sector.

Rwanda recorded the highest GDP growth rate in the region at 8.6%. However, the escalating diplomatic



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differences between Uganda and Rwanda will likely decelerate Rwanda's and indeed the region's growth in 2019.

Indicator	Kenya	Tanzania	Uganda	Rwanda
<b>GDP current prices (USD' M)</b>	89,045	64,657	25,995	9,135
<b>Real GDP growth rate (%)</b>	6.3	7.1	6.1	8.6
<b>Population (Million)</b>	47.8	52.6	45.6	12.5
<b>GDP per capita (USD)</b>	1,863	1,229	570	731
<b>Overall inflation rate (%)</b>	4.7	3.2	2.6	1.4
<b>Treasury bill interest rate (%)</b>	7.3	8.7	8.8	5.2
<b>Budget deficit % of GDP</b>	(2.6)	(2.3)	(5.8)	(5)
<b>Total public debt (USD M)</b>	56,784	27,692	11,500	4,399
<b>Trade deficit as % of GDP</b>	(10.2)	(6.5)	(11)	(9.8)

### Kenya Highlights

Kenya's 2018 real GDP rose to 6.3% from the 4.9% recorded in 2017. This was attributable to recovery from the effects of the 2017 long electioneering process, increased agricultural product value addition and a stable macroeconomic environment.

The government's Big Four Plan accounts for approximately 14.6% of the budget spend. The government is concentrating most of the funds on the Big Four enablers - Universal Health Care and Affordable Housing to support the 2 pillars - Food Security and Manufacturing.

Key macroeconomic indicators remained stable and supportive of growth in 2018. This saw the reduction of the Central Bank Rate (CBR) to 9% in July 2018. Average interest rates dropped during the year with the 91-Day Treasury Bill rate hitting a 5-year low of 7.34%.

The implementation of IFRS 9 in 2018 is expected to promote a stable and efficient banking system. However, this adoption is likely to result in a stringent risk assessment for borrowers, further dampening access to credit.

Building on experiences on demonetization from other countries, Central Bank of Kenya announced the demonetization of currency. While opinion is varied and the jury is still out, experts agree that if implemented well the demonetization will achieve its objective of aiding the fight against corruption and counterfeiting.

### Budget Overview

The theme for the 2019/2020 budget was "Creating Jobs, Transforming Lives - Harnessing the Big Four Plan" as a foundation for accelerated growth and shared prosperity.

Budget allocations in the current year are as indicated below:

Details	Amount (KES Bn)
Recurrent expenditure	1,208.6
Development expenditure	686.1
Consolidated Fund	551.6
County Allocation	310.0
Contingency Fund	5.0
Net Lending	1.74

Among the key considerations of the Budget Statement is the government's promise to immediately settle the current backlog of VAT refunds and pending bills



which have negatively impacted the businesses.

### Inua Biashara

Micro, Small and Medium Enterprises (MSMEs) constitute 98% of businesses in Kenya. There is a contradiction between the impressive national economic growth and the MSMEs which have largely been struggling. This is attributed to limited access to credit, competition and a tough working environment.

To facilitate growth, the government has proposed the following measures:

- Faster clearance of cargo through strict vetting, registration and gazettelement of import and export consolidators. Additionally, goods will not be subjected to further inspection after the Pre-shipment Verification of Conformity at the port of export

unless there is prior intelligence on non-compliance;

- Consolidation of the Uwezo Fund, Youth Enterprise Fund and Development Fund into one fund - Biashara Kenya Fund. This is aimed at improving access to credit, reducing bureaucracy and supplementing the Stawi loans currently on offer to MSMEs; and
- A 60 day window for government to settle payments to suppliers.

### Tuajiri Vijana

Over one million youths will be engaged as digital freelance workers through the Ajira Digital Program aimed at bridging the gap between the demand and supply of skills.

By paying a one off registration fee of KES 10,000, the participants in this program

will get a three year income tax holiday. The registration fee, together with a KES 1 Bn capital injection by the government will prepare the Ajira Fund to ultimately facilitate growth of local businesses.

### Buy Kenya, Build Kenya

All locally manufactured, assembled, mined and grown products will be catalogued and given priority in public procurement. Importation of such goods will not be subject to any tax exemptions.

All government agencies will be required to provide exclusive preference in procurement of motor vehicles and motorcycles to assembly plants in Kenya.

### Review of Government Expenditure

In a bid to ensure effective and efficient use of funds, the government is committed to lowering its expenditure through the following measures:

- Limit on extension of service for civil servants retiring after the age of 60
- Restrictions on new recruitment of staff with an exception of key technical staff, teachers, security personnel and health workers
- Use of electronic cards for eligible expenditure on domestic and foreign travel
- Standardize institutional framework for fleet management and use of fuel cards across government to cut costs
- Lease of office space will be based on standardised rates;
- Use of an end-to-end solution to streamline all procurement procedures and introduction of new Public Procurement and Asset Disposal Regulations.

- Improved pension management through the IFMIS system as well as introduction of a new National Pensions Policy and the Public Service Superannuation Scheme (PSSS)
- Introduction of Public Investment Management Regulations to provide a framework for appraising and approving new government funded projects.

### The Debt Question

The current budget deficit is KES 607.8 Bn representing 5.6% of the GDP. The proportion of external debt to domestic debt has increased over the last 5 years and is now approximately equal. However, the growth of foreign debt has increased the country's foreign exchange exposure.

A large portion of debt relates to infrastructure projects and the government has committed to appraise all future projects prior to inclusion in the budget to establish value, affordability and economic return.

### The County Transition

The allocation to county governments in this year's Budget is KES 371.6Bn out of which KES 310Bn is the equitable share whereas KES 61.6Bn will be conditional transfers, including KES 38.7Bn from development partners.

The county governments' Revenue Raising Process Bill, 2018 is under debate in the National Senate with an aim to regulate Own – Source Revenue.

The government has also allocated additional funds to the CDF program, school infrastructure and financing programmes in marginalised areas.

### The Big Four Agenda

To achieve the Big Four Plan, KES 450.9 Bn has been allocated to the drivers and enablers of the plan, broken down as follows:

Pillar Agenda	Amount (KES Bn)
Universal Health Coverage	81.7
Affordable Housing	10.5
Manufacturing	4.2
Food & Nutrition Security	16.1
Critical Infrastructure	338.4
Total	450.9

The government's focus on critical infrastructure is set to feed into the Big Four Plan. Key projects include expansion of roads, Phase 2A of the SGR and power transmission and distribution.

Revitalisation of "Rivatex" will provide employment to over 3,000 people when at full capacity.

The elderly and disabled will receive NHIF cover while the Kenya Mortgage Refinance Company is now fully funded and ready to commence its role of expanding the mortgage market in Kenya.



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# Proposed tax changes



On 13 June 2019, the CS submitted to Parliament the Finance Bill, 2019 and various legal notices containing the budget proposals. As at the date of this publication, these documents were not available to the public at the government printer. We will, therefore, provide an updated alert once the Finance Bill, 2019 and attendant legal notices have been published by the government printer and have been made available to the public.

## Corporation tax

### Big data, big tax?

Technology and particularly e-commerce has revolutionised how business is done globally. The digital space provides

endless possibilities and access to customers from all over the world.

The government recognises the increased use of technology and in a move to increase revenue collection, the CS has proposed to introduce measures to tax the digital economy.

Although this is welcome, the major issue in digital taxation shall be determining where value is created as most digital firms do not have a physical presence in the countries of operation.

## Dividends distributed out of untaxed profits

The Finance Act, 2018 repealed compensating tax and introduced a corporate tax rate on dividends paid out of untaxed profits. The implementation of the provision has been controversial as it may result in taxation of exempt income thus reversing the initial intention of the exemption.

To uphold the intended objectives of the provision, the government proposes to include a clause that explicitly exempts taxation of dividends distributed from tax exempt income.

## Diving Deeper into the Tax Pool of Non-Residents

The Bill seeks to expand the scope of taxable income of non-resident ship owners to include income from demurrage and detention of containers as income deemed to be derived from Kenya.

The current law provides that a non-resident ship operator shall be subject to tax in Kenya when traveling into ship ports in Kenyan territory and subsequently carrying passengers who embark in Kenya, other than those in Kenya solely as a result of transshipment.

## Free from Damage

The CS proposes to repeal the 20% WHT on demurrage charges which was introduced in the Finance Act, 2018.

This is to align it to the provisions on taxation of income derived from Kenya by non-resident ship owners.

## New-age taxable commercial services

Withholding tax has traditionally been applied to fees charged for management and professional services. In a move

to increase the revenue collection, the CS proposes to expand the scope of withholding tax by including additional services such as security, cleaning, fumigation, catering, transport, sales promotion and advertising.

This is a strategic move to expand the tax pool to companies providing such services on a commercial basis. This will also increase the tax compliance of people providing these services.

## Turn-over tax makes a comeback!

The CS has proposed the re-introduction of turnover tax, at 3% of gross receipts, after it was repealed last year. The tax will be payable by any person whose turnover does not exceed or is not expected to exceed five million shillings during any year of income.

The tax was replaced by presumptive tax which levied a 15% tax on annual business permits. Presumptive tax faced implementation and tax yield challenges which has undermined its success.

Interestingly, despite these challenges, the National Treasury has opted to retain the presumptive tax in tandem with the turnover tax to enable the Commissioner to obtain information for purposes of expanding the tax base and finally recruiting the newly enrolled presumptive taxpayers to Turnover Tax.

## The buck stops with Investees of REITs

The Income Tax Act exempts the taxation of Real Estate Investment Trusts (REITs). However, the exemption does not cover the investee companies owned by the REITs.

To promote investment in the real estate sector, the government proposes



to extend the exemption to the companies through which the REITs hold property. This is in line with the Big Four Plan, to promote affordable housing to all Kenyans.

#### **A House of Harmony**

The CS proposes to repeal Section 72D of the Income Tax Act which levied a 20% penalty for late payment of tax.

This is to harmonise it with the provisions of the Tax Procedures Act which provides for a late penalty of 5%.

#### **National Housing Development Fund**

The Employment Act was amended in 2018 to introduce the National Housing Development Fund (NHDF). Under the fund, the employer and employee will each contribute 1.5% of the employee's gross monthly earnings subject to a maximum of KES 5,000 to the NHDF.

The CS proposes to exempt the NHDF from tax on the funds received to ensure that the funds are available for the intended purpose in line with the Big 4 Plan for affordable housing.

#### **Affordable Housing Relief**

In this year's budget, an amendment has been proposed to the Third Schedule of the Income Tax Act. The proposed change involves amending the tax base from "gross emoluments" to "employee's contribution". This change has been proposed to avoid a situation whereby emoluments will result in a person getting relief that is in excess of their contributions.

This will increase the burden on the contributors as it significantly restricts

the relief, potentially making affordable housing contributions unaffordable to a majority of the target population.

#### **Reduce, Reuse, Recycle**

The government has in the recent past made efforts to protect the environment through deliberate measures such as banning the use of plastic bags. However, there is need to promote waste management for other forms of plastic through recycling.

In order to promote this sector, the government proposes to lower the corporation tax rate for investors in plastic recycling plants to 15% for the first 5 years. This move is expected to attract investors in the sector which will in turn create employment while reducing pollution.

#### **Enactment of Income Tax Bill**

The Income Tax Bill proposes to repeal the current Income Tax Act and is expected to simplify tax compliance and align Kenya's tax regime to international best practice.

The CS has proposed to table the Income Tax Bill in Parliament for approval by mid-July 2019.

By modernizing the income tax legislation, Kenya is likely to shore up revenue mobilization.

#### **Withholding Tax**

##### **Re-insurance premiums paid to non-residents**

The government has clarified that withholding tax on premiums paid to non-resident persons includes re-insurance premiums.

This is likely to increase the cost of re-insurance especially where local firms are unable to insurance the full risk.

#### **Standardizing taxation - Permanent Establishments**

Currently, permanent establishment are not required to take a tax deduction on payments to their head office. Such payments are also not subject to withholding tax.

The government proposes that where a DTA allows a branch to take a deduction for head office expenses, such expenses will be subject to withholding tax.

#### **Capital Gains Tax**

##### **Capital rates for capital gains**

The CS announced changes to the CGT regime by increasing the capital gains tax rate from 5% to 12.5%. Although designed to align with regional CGT rates, this is expected to elicit strong reactions from stakeholders as the rise represents a 150% increase.

As a reprieve, the CS proposes to exempt from CGT, transfers of property which occur in the course of group restructure or reorganization.

The transfer should be as a result of legal and regulatory requirements, directive or compulsory acquisition by the government, internal restructuring within a group which does not involve transfer of property to a third party or in public interest approved by the CS.

However, for the restructuring / reorganization transactions to qualify for CGT exemption they should not result into change in the beneficial ownership.

Though the CS announced that the change was proposed in order to align with the regional rates, the CS missed a valuable opportunity to introduce



indexation to allow adjustment of gains to mitigate the impact of inflation.

## VAT Changes

### Widening the imported VAT net

The CS has proposed to expand the definition of supply of imported services to now also apply to persons not registered for VAT. Currently, only VAT registered persons are required to pay VAT on the imported services.

As it stands, there is no mechanism for non-registered tax payers to account for VAT and we expect administrative guidelines to support this compliance obligation.

### Just what is a concessional loan?

The VAT Act exempts taxable services and goods (imported or purchased) for direct and exclusive use in the implementation of official aid funded projects, upon approval by the CS, National Treasury.

An official aided project means a project funded by a grant or concessional loan in accordance with an agreement between the government and any foreign government, agency, institution, foundation, organization or any other aid agency.

The proposal by the CS defines a concessional loan as a loan with at least 25% grant element. This definition now brings clarity to the official aid funded projects for the purpose of granting tax exemptions by the government.

### Reaching for the cloud

In a bid to increase revenue, the CS has proposed to expand the scope of VAT to

include supplies made through the digital market place.

Although this proposal is in line with the global trends of taxing the digital economy, it remains to be seen how this new tax will be implemented.

### Time of supply of good and services

The VAT Act has now been amended to include Special Economic Zones in the definition of time of supply of goods and services.

The time of supply of imported goods will now include the time the goods are removed from the SEZ.

### Promoting green energy

The CS has proposed to exempt, subject to the CS Energy's approval, specialized equipment used for the development and generation of solar and wind energy.

This proposal resonates with the excise duty incentives for electric vehicles.

### Blow to the transport industry

The CS has proposed to exclude semi-trailers and road tractors from the current VAT exemption on tractors. This proposal will have a high cost impact on the agricultural and transport sectors.

### Reviewing the VAT restriction formula

The 2017 VAT Regulations introduced a formula for determining the VAT refund payable by restricting the excess input VAT in the ratio of zero-rated sales to total sales.

Based on this restriction formula taxpayers who were in a perpetual credit position could not claim the entire excess input VAT. This has adversely affected the cash flow of these exporters.

The CS has proposed to issue a new formula to mitigate the exposure on exporters.

### WHVAT reprieve

Withholding VAT (WVAT) was initially introduced in the 2004, suspended in 2011 and re-introduced in 2014. Appointed WHVAT agents withhold 6% of the taxable value of supplies.

The current WHVAT regime has caused a lot of cashflow strain for taxpayers as they are unable to utilize the WHVAT credits.

In response to the challenges the government has proposed to reduce the WHVAT rate from 6% to 2% and is also working on modalities to settle the credits arising from the WHVAT.

### Pushing ICT limits

Motherboards and inputs for manufacture of motherboards are taxable at the standard rate of 16% in Kenya.

The CS has proposed to exempt from VAT, locally manufactured motherboards and their components.

To better enhance local computer assembly's competitive edge, the CS should have considered zero rating the VAT on these components.

### A breath of fresh air

With the increased focus on environmental conservation, in 2017, the government introduced the ban on the usage of plastic bags.

Building on this, and to enhance environmental conservation, the government proposes to encourage the recycling of plastic waste by exempting from VAT, all services offered to plastic recycling plants and the machinery and



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equipment used in the construction of the treatment plants.

### **War on dudus**

There is a proposal to exempt agricultural pest control products from VAT, in a move to make them affordable to farmers.

Whilst this is a laudable move likely informed by the need to promote food security, zero-rating rather than exemption is the better option.

### **Expanding VAT exemption on Securities**

The VAT Act exempts stock exchange brokerage services from VAT. The CS now proposes to replace “stock” with “securities”.

This expands the brokerage services that were exempted from VAT to cover brokerage of all tradable financial assets in addition to stocks.

### **Green energy all the way**

The CS proposes to exempt the inputs or raw materials for electric accumulators and separators, supplied to manufacturers of automotive and solar batteries in Kenya which are currently zero-rated. This proposal will make the inputs more expensive as the suppliers of inputs will not be able to claim their input VAT.

Further the CS has proposed to zero-rate the supply of denatured ethanol which is used in clean energy stoves. This proposal will make the clean energy stoves more affordable.

### **Excise Duty changes High stakes gambling with?**

The betting industry has been painted as the poster child for sin tax. The CS has proposed to introduce a 10% excise tax

on the amount staked to cash in on the success of the betting industry.

The “amount wagered” or “staked” is defined to mean an amount of money placed by a person for an outcome in a betting transaction.

For the purpose of levying the excise duty, the CS has clarified that excise duty is payable when a person wagers or stakes money on a platform or other medium provided by a bookmaker.

The new tax adds to the heavy tax burden of 15% betting tax, 30% corporation tax and 20% withholding tax on winnings that the industry is under, and could be the straw that finally breaks the camel’s back.

### **Green energy....Climate change**

To reduce carbon emission, the government has proposed to reduce excise duty on electric powered vehicles from 20% to 10%.

This will complement the government efforts to promote the use of clean energy..

### **Annual inflation adjustment**

The Excise Duty Act, 2015 which came into force on 1 December 2015, changed the excise duty structure from ad valorem to specific rates for majority of excisable goods. The Commissioner has power to adjust the duty rates to take into account inflation.

In December 2018, the Commissioner implemented a 5.2% inflationary adjustment.

Although we expect the next annual inflationary adjustment to be in



December 2019, the CS has proposed the adjustment to be on 1st October of every year. The increase in the specific excise duty rates will likely be the new base for the inflationary adjustments to enhance tax revenues.

### Boozers-losers!

Alcoholic and tobacco products are once again the CS's usual suspects. The CS has increased the excise duty rates on these products by 15%.

Taxing the formal alcohol sector is a delicate balancing act if Kenya is to refrain from regressing to increased consumption of illicit brews.

### As clear as daylight

The definition of "other fees" has been a bone of contention among the industry players. The Excise Duty Act defines other fees mean to any fees, charges or commissions charged by financial institutions relating to their licensed financial institutions, but does not include interest on loan or return on loan or an insurance premium or premium based or related commissions.

The CS has clarified that premium based or related commissions are those specified in the Insurance Act or Regulations made thereunder.

This proposal clarifies that premium based or related commissions under the Insurance Act or Regulations are exempt from excise duty.

### General penalty

The CS has proposed to introduce a general penalty not exceeding two million shillings or a term not exceeding two years, or both to deal with offences without any specific penalties.

This ensures that there are no offences under the Act or Regulations for which no specific penalty is prescribed.

### Local motor vehicle assemblers powering on

In a bid to protect the local assemblers of motor vehicles, the CS has proposed to increase excise duty on imported vehicles

### Cleaning the Excise Duty Act

The CS proposes to delete the description of shopping bags and the corresponding rate of excise duty in line with the directive of the ban on use of plastic shopping bags that was effected in August 2017.

There is also a proposal to delete the words "Mineral water and aerated water

of tariff no. 2201.10.00" and replace it with "Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices".

Summary of proposed excise duty rates:

Item/	New rate	Old rate
<b>Betting stakes</b>	10%	0%
<b>Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes</b>	KES 12,098 per Kg	KES 10,000 per Kg
<b>Electronic cigarettes</b>	KES 3,629 per unit	KES 3,000 per unit
<b>Cartridge for use in electronic cigarettes</b>	KES 2,420 per unit	KES 2,000 per unit
<b>Cigarette with filters (Hinge lid and soft cap)</b>	KES 3,025 per mille	KES 2,500 per mille
<b>Cigarette without filters (plain cigarettes)</b>	KES 2,177 per mille	KES 1,800 per mille
<b>Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences</b>	KES 8,469 per Kg	KES 7,000 per Kg
<b>Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits</b>	KES 181 per litre	KES 150 per litre
<b>Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%</b>	KES 242 per litre	KES 200 per litre
<b>Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02,87.03 and 87.04</b>	25%	20%
<b>Motor vehicles of tariff no. 8703.24.90 and 8703.33.90</b>	35%	30%
<b>100% electric powered motor vehicles of tariff no. 8702.40.19, 8702.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00</b>	10%	20%



## Customs duty changes

### Logged and imported

In a bid to protect the local forest vegetation and fill the gap created by the logging ban, the government has proposed to reduce the customs duty on importation of raw timber from 10% to 0%.

Additionally, in a bid to protect the timber and furniture industry from proliferation of cheap finished timber products and to support local manufacture, the government has maintained the ad-valorem rate of import duty at 25%.

### Steeling the competition

The CS has come to the rescue of local manufacturers who are facing stiff competition from imported and subsidized iron and steel products by retaining the *ad valorem* rate of import duty at 25%.

This is expected to protect local manufacturers and expand local production.

## Supporting local paper manufacturers

In a move that speaks to the manufacturing pillar, the government has retained the existing 25% import duty on paper and paper board manufacturers.

## Tax Procedures Act amendments

### No PIN, No pain

The Commissioner General now has discretionary powers to waive the requirement of a Personal Identification Number (PIN) for purposes of opening a bank account for specific persons such as visiting foreigners, privileged persons and foreign investors. Previously, it was mandatory to have a PIN in order to open a bank account which is quite an onerous process especially for foreigners due to the rigorous KRA requirements.

The waiver of PIN requirement will positively improve Kenya's ease of doing business index as well as spur Foreign Direct Investment (FDI). Increased liquidity in the banking sector, which will ultimately improve their lending capacity

and hopefully reduce their risk profiling especially for SME's.

### Capital reprieve for SMES

SMEs seeking to raise funds under the Growth and Enterprise Market Segment (GEMS) program pioneered by the Capital Market Authority have been extended an olive branch. They have been granted amnesty on tax penalties and interest accruing within the two years prior to listing with GEMS.

Many SMEs struggled to meet the stringent listing requirements under GEMS, specifically the requirement to be fully tax compliant prior to listing with the GEMS.

This proposal will spur the growth of SMEs because they will be in a position to access cheap capital and ultimately accelerate Kenya's economic growth.

### Tough times for tax representatives

The scope of the persons to whom the Departure Prohibition Order (DPO) can be issued has been expanded to include tax representatives. The tax representative covered will now include CEOs, managing directors, company secretary, treasurer, trustee, resident director or similar officer.

This proposal will ensure that the non-resident taxpayers will not be in a position to depart from Kenya if they have not fulfilled their tax obligations and as a result enhance revenue mobilization.

### More time to decide

Currently, the Commissioner is mandated to issue an objection decision within 60 days from the date a taxpayer lodges an objection. The CS is proposing to provide the Commissioner a window to extend this period by way of requesting for additional information before the

Commissioner issues an objection decision.

This proposal is aimed at reducing the escalation of disputes to the tax appeals tribunal due to time limitations for resolving the disputes.

### Clarity on late filing penalty

There has been confusion on how to compute the penalty for late submission of the tax return. This is because the current legal provision provides that late filing penalty should be computed based on the higher of a fixed amount or a percentage on the tax due under the tax return.

The "tax payable" under a return would essentially include any taxes already paid, and computing a penalty on tax that is already paid is inequitable.

This proposal has clarified that late filing penalty should be computed on tax due less any taxes which have already been paid including withholding tax credits.

### Could ignorance be a defence?

Taxpayers who unknowingly make material misstatements, by commission or omission, to an authorized officer where such misstatements lead to a tax shortfall shall be liable to a penalty of 20% of the tax shortfall.

This penalty has been punitive to taxpayer who perhaps do not have a proper tax control environment.

The CS is proposing to remove this penalty and allow taxpayers ignorance to be a reasonable defence. However, determination of intentional or unintentional misstatements is subjective



and may create a room for manipulation by unscrupulous taxpayers.

### Leveraging on technology to expand tax base

The CS has expanded the number of transactions which require a PIN. These transactions include registration and renewal of membership by professional bodies and other licensing bodies as well as registration for pay bill and till numbers.

This move is aimed at widening the tax base because the Commissioner will be able to bring the active professional and self-employed persons within the tax net and consequently shore up the tax revenue.

### Miscellaneous Amendments Ticktock...ticktock...60 days on the clock

To address delayed payments to suppliers, the CS has proposed to amend the Competition Act to empower the Competition Authority to address abuse by dominant purchasers and ensure prompt payment to suppliers within a maximum of 60 days.

Prompt payment should unlock the much needed liquidity for micro, small and medium enterprises (MSMEs).

### End of a capping era?

The CS has proposed to amend the Banking Act to repeal Section 33B.

Effectively, this will lift interest rate caps that were introduced in 2016. Repeal of the interest rate cap is projected to enhance access to credit especially for MSMEs which are key economic drivers.

To address potential concerns of return to high interest rates, bankers have amongst

other things, submitted a commitment plan to CBK to grow the MSME loan book.

### Paints and resins – not adulterated?

Manufacturers of paints and resin will be a happy lot following the proposal to refund the anti-adulteration levy on illuminating Kerosene under the Miscellaneous Fees and Levies Act, 2016.

Although government has committed to clear tax refunds expeditiously, paint and resin manufacturers will join the queue for tax refunds.

### Buy Kenya, Build Kenya – No Relenting!

In a bid to support local manufactures under the manufacturing pillar, the CS has proposed changes to various fees and levies as tabulated below:

Levy	Description	New rate	Old rate
Railway development levy	Finished goods	2%	1.5%
	Raw and intermediate goods	1.5%	2%
Import Declaration Fee	Finished goods	3.5%	2%
	Raw and intermediate goods	1.5%	2%
Export Levy	Tanned and crust hides and skins	10%	0%

### Cracking the whip at the bourse

The Capital Markets Authority is mandated to promote, regulate and facilitate the development of an orderly, fair and efficient capital market in Kenya. A key part of this is the ability to sanction errant players. The CS proposals will enhance CMA powers to enforce market discipline.

### All is not lost for policy holders

The Policy Holder's Compensation Fund was established in 2004 to cushion insurance policies holders in the event of insolvent insurers.

The CS proposes to amend the Insurance Act and Regulations for the Fund to settle claims for insurers under statutory management.

### Covered when you ride a boda boda

Transport on motor cycles ("boda bodas") and three-wheeler tricycles ("tuk tuks") has become increasingly popular for its affordability and convenience in traffic. It is however risky for the riders, passengers and pedestrians alike who in most cases lack medical insurance to cater for their medical expenses in the event of an accident.



To cover this risk, the CS proposes to amend the Insurance (Motor Vehicle Third Party Risks) (Certificate of Insurance) Rules to require all passenger-carrying “boda bodas” and “tuk-tuks” to have an insurance cover for passengers and pedestrians.

#### **Time is money**

Currently, Retirement Benefits Schemes that invest in guaranteed funds are subjected to unfavourable exit terms including withdrawal over 3 years in order to avoid a charge of up to 25% of the Fund value.

The CS proposes to amend the Retirement Benefits Act to reduce the period of transfer to one year to allow members access better returns.

#### **Who says you can't have it all?**

Defined contribution schemes are required to create reserve funds. However, the Individual and Occupational Regulations currently do not require the schemes to distribute the reserve funds.

The CS has proposed amendments to the Regulations to ensure that the exiting members leave with their equitable share of the reserve funds.

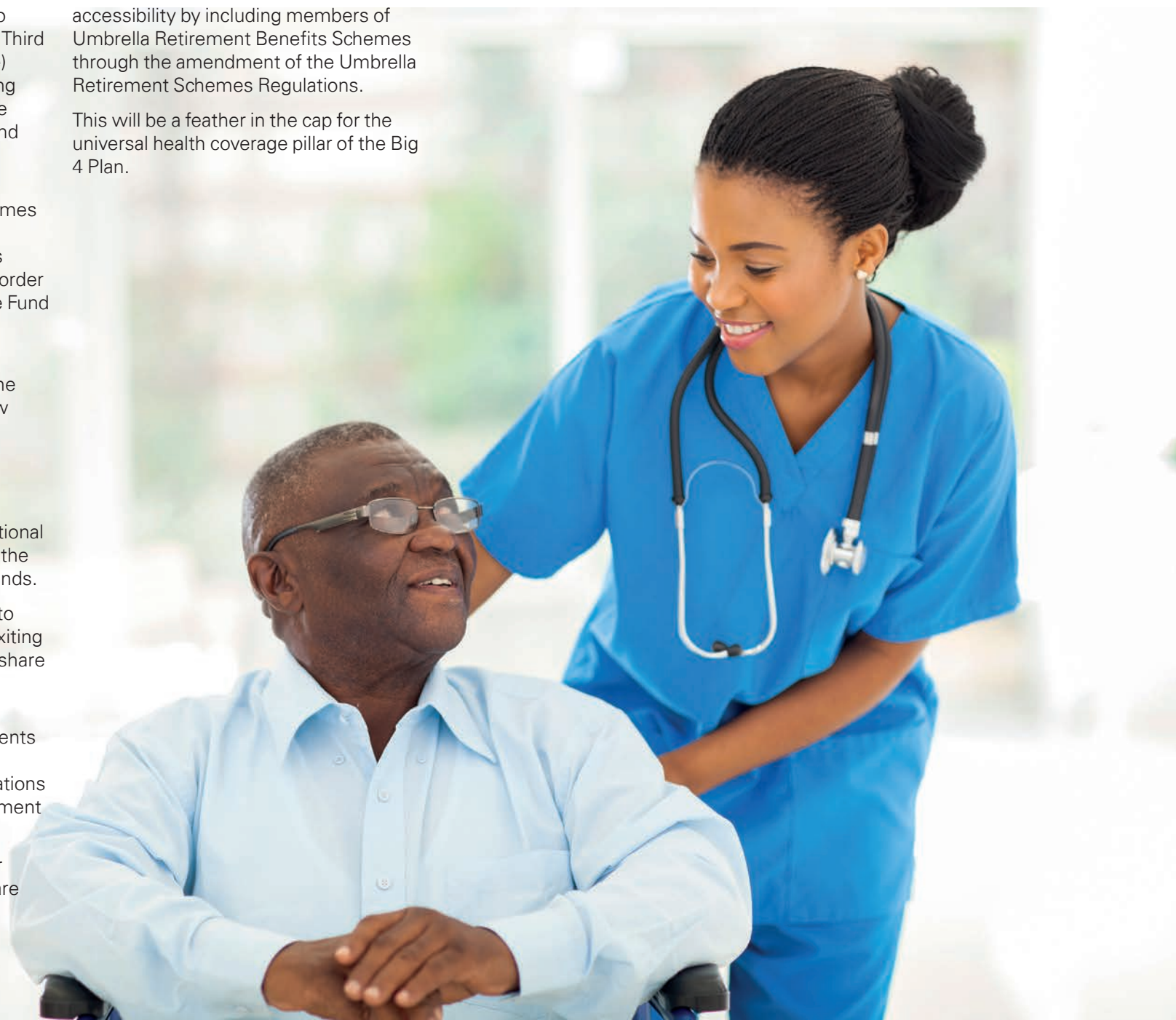
#### **Universal health for all**

In 2018, the CS introduced amendments to the Occupational and Individual Retirement Benefit Schemes Regulations to allow contributions for post-retirement medical funds.

This year, the CS proposes to further expand the post-retirement healthcare

accessibility by including members of Umbrella Retirement Benefits Schemes through the amendment of the Umbrella Retirement Schemes Regulations.

This will be a feather in the cap for the universal health coverage pillar of the Big 4 Plan.







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