Finance Bill, 2018 Analysis

June 2018

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Proposed Amendments to the Income Tax Act, Cap 470 (ITA)

Subject	Changes to the ITA	KPMG Comments	Effective Date
Interpretation – Demurrage Charges	The Bill proposes to amend Section 2 of the ITA to include the following definition; "**demurrage charges**" to mean a penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods.	The proposed amendment provides clarity on the term "demurrage charges" for purposes of imposition of tax in subsequent provisions.	1 July 2018
Income from Dividends	The Bill proposes to replace Section 7 of the ITA which imposes tax on dividends. The Bill provides that a dividend paid by a resident company shall be deemed to be income of the year of income in which it was payable. According to the Bill, deemed dividend shall include: a) distribution or transfer of any cash or asset by a company to or for the benefit of that shareholder or any related person to that shareholder; b) discharge of a shareholder or related person from any obligation, measurable in money, which he owes to that company; c) use of any amount by that company in any other manner for the benefit of the shareholder or related person; d) payment or settlement by that company of any debt owed by shareholder or related person to any third party; and e) adjustments to transactions with a shareholder or related person that results to additional taxable income or reduction of assessed loss.	The Bill expands the current definition of dividends to include a wide range of transactions between a company and its shareholders. This includes instances where a company settles debts on behalf the shareholders. Interestingly, the definition includes transfer pricing adjustments that result in additional taxable income, including instances where the related party transactions in question do not involve the shareholder. Effectively, transfer pricing adjustments will be subject to corporation tax at 30% and withholding tax on deemed dividends at 10%.	1 July 2018
Compensating tax	The Bill replaces the current compensating tax provisions with a straight 30% tax on dividends paid out of untaxed profits.	While the proposed tax rate of 30% appears to be an improvement on the current compensating tax rate of 42.86%, it is more punitive because: a) Exempt dividends will be exposed to 30% tax, effectively subjecting holding company groups to a combined 60% corporation tax; and b) Tax exempt income will automatically be subjected to tax on distribution, negating the spirit of the exemption.	1 January 2019

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Proposed Amendments to the Income Tax Act, Cap 470 (ITA)

Subject	Changes to the ITA	KPMG Comments	Effective Date
Withholding tax on demurrage and insurance premium payments to non-resident persons	The Bill proposes to amend Section 10 of the ITA by deeming payments made to non-resident persons on account of demurrage charges and insurance premiums to be income derived from Kenya. Further, the Bill proposes to include the above under Section 35 (1) of the ITA for purposes of withholding tax upon payment on the demurrage charges and insurance premium. The proposed tax rates are as follows: ▪ Demurrage charges: 20% of the gross amount; and ▪ Insurance premium (excluding aircraft insurance): 5% of the gross amount.	The introduction of taxes on demurrage charges and insurance premiums will impact the shipping and insurance companies as it is likely that the recipients will insist on receiving payments net of tax, effectively pushing the costs to exporters and importers for demurrage and the insurance companies for premiums. The increase in demurrage charges will affect the competitiveness of the Port of Mombasa while the tax on insurance premiums will impact the reinsurance business especially where risks cannot be fully reinsured locally.	1 July 2018
Use of tax from winnings	The Bill proposes to amend Section 35 of the ITA by introducing a provision that requires the Commissioner to pay the taxes collected from winnings into Sports, Arts and Social Development Fund established under Public Finance Management Act, 2012.	The proposed taxes on winnings are provided for under the Tax Laws (Amendment) Bill, 2018 which is currently before the National Assembly for consideration. Effectively, the proposal refers to a non-existent provision, calling into question its implementation especially if the relevant provisions in the Tax Laws (Amendment) Bill, 2018 are not passed by 30 June 2018.	1 July 2018
Taxation of the Informal Sector	The Bill proposes to repeal Section 12C of the ITA which provides for a turnover tax of 3% on the gross receipts for persons with a turnover of less than ***KES 5,000,000*** and replace it with a presumptive tax. Presumptive tax will be applicable to a resident person whose turnover from business does not exceed ***KES 5,000,000*** per annum. The tax will be 15% of the single business permit fee issued by County Governments. This is a final tax.	This proposal seeks to expand the tax base by tapping into the informal sector as well as leverage on the County Government machinery to enforce collection. At 15% of the business permit fee, the tax collections will likely be minimal unless the government is using the current mechanism to enrol taxpayers before increasing the tax rates in future. The proposal may pose administrative challenges as it is not clear whether the taxes will be collected by the County Government or the KRA will update the *i*Tax platform to facilitate payment of the tax.	1 January 2019
Deduction of electricity costs	The Bill proposes to introduce an additional tax deduction of 30% of electricity cost incurred by manufacturers in addition to the normal electricity expense subject to conditions set by the Ministry of Energy. This effectively allows manufacturer a deduction of 130% of their electricity costs (equivalent to a tax credit of 9% of the electricity costs).	This proposal supports the Big Four Agenda of increasing the contribution of manufacturing to GDP to 15% by 2022. While this proposal is welcome, it may also be useful to consider initiatives to reduce the cost of electricity which is one of the biggest contributors to the high cost of manufacturing locally.	1 January 2019

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Proposed Amendments to the Income Tax Act, Cap 470 (ITA)

Subject	Changes to the ITA	KPMG Comments	Effective Date
Capital gains on transfer of property by general insurance companies	Section 19 of the ITA will be amended by introducing a new subsection (6B) which effectively brings to tax capital gains arising from the transfer of property by general insurance companies.	This provision provides clarity on the taxation of transfers of property by insurance companies, bringing out the difference in tax treatment for general and life insurance companies. Consequently, capital gains arising from transfer of life insurance companies is not subject to capital gains tax.	1 July 2018
Taxation of companies engaged in business under a special operating framework arrangement with the Government	The Bill introduces a new provision under the Third Schedule of the ITA for the taxation of persons engaged in business under framework agreements with the government. The businesses will be subject to tax based on the rates provided for under the agreement.	The proposal allows the government to negotiate and agree on incentives for investors in priority sectors (Big Four) without making changes to the tax legislation.	1 January 2019

Proposed Amendments to the VAT Act, 2013

Subject	Changes to the VAT Act	KPMG Comments	Effective Date
Taxable value of mobile cellular services	The Bill deletes Section 13 (2) of the VAT Act. This Section defines the taxable value for mobile cellular services to exclude excise duty. Following the deletion, excise duty will now apply on the value of the service together with the applicable taxes, duties and levies, effectively increasing the tax base by 10% or 12% for money transfer services.	The cost of mobile cellular services will increase following the implementation of this provision.	1 July 2018
Tax Rate changes	See table below		1 July 2018

Details	New Rate	Old Rate
Seeds of wheat, meslin and barley	Exempt	16%
Raw materials used for manufacture of animal feed (Tariff codes 1213.00.00, 1214.10.00 and 2303.20.00)	Exempt	16%
Garments and leather footwear, manufactured in an Export Processing Zones at the point of importation.	16%	Exempt
Equipment used for the construction of grain storage facilities	Exempt	16%
Transportation of cargo to destinations outside Kenya	Zero-rated	Exempt/ Zero-rated
Alcoholic and non-alcoholic beverages supplied to Kenya Defence Forces Canteen Organization	Exempt	16%
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	Exempt	N/A
Postal services provided through the supply of postage stamps, including rental of post boxes/mailbags	Exempt	16%
Parts for assembly of computers (current exemption is restricted to laptops for primary schools)	Exempt	16%

KPMG comments

- The existing VAT exemption for plant and machinery of tariff code 84 and 85 has now been restricted to plant and machinery used for manufacture. The current provision does not specify the purpose of the equipment.
- The exemption for specialised solar equipment and accessories has been modified to limit the exemption to equipment for the development and generation of solar and wind energy.

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Proposed Amendments to the VAT Act, 2013

<table>
<tr><th>Subject</th><th>Changes to the VAT Act</th><th>Effective Date</th></tr>
<tr><td>VAT on petroleum products</td><td>
<table>
<tr><th>Details</th><th>New Rate</th><th>Old Rate</th></tr>
<tr><td>Petrol</td><td>16%</td><td>Exempt</td></tr>
<tr><td>Diesel</td><td>16%</td><td>Exempt</td></tr>
<tr><td>Kerosene</td><td>16%</td><td>Exempt</td></tr>
<tr><td>Aviation spirit</td><td>16%</td><td>Exempt</td></tr>
</table>
KPMG comments
VAT on petroleum products was introduced in the VAT Act, 2013 but deferred for a period of three years. The deferral was extended for a further period of 2 years which will expire on 1 September 2018. The Finance Bill, 2018 has not proposed a further extension and VAT will automatically apply to the petroleum products when the current deferral expires.
</td><td>2 September 2018</td></tr>
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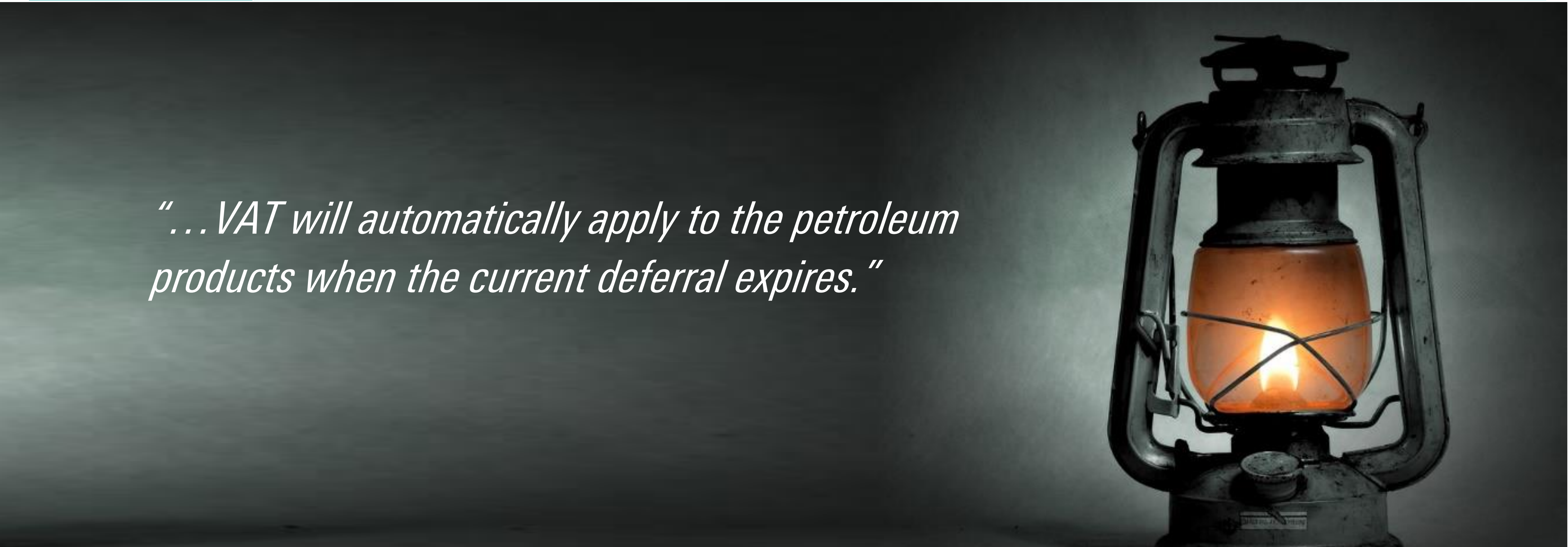

Proposed Amendments to the Excise Duty Act

Subject	Changes to the Excise Duty Act	KPMG Comments	Effective Date
Inflation adjustments	The Bill proposes to revert to annual inflation adjustments of the specific excise duty rate down from the two-year reviews introduced in 2017 by amending Section 20 of the Act.	The Commissioner will now be expected to adjust the specific rates of excise annually to cater for inflation. The adjustment will likely increase the prices of products such as petroleum, alcohol, and tobacco.	1 July 2018
Conditions for suspension and cancellation of licenses	The current provisions require the Commissioner to give a 21 day notice before cancelling an excise licence. The Bill proposes to give the Commissioner power to cancel a licence without giving notice where the licensee: a) Has engaged in fraud; b) Is found to be in possession of counterfeit excise stamps; c) Has goods bearing counterfeit excise stamps; or d) Has violated any regulations relating to health and safety, standards or packaging of goods.	The proposal gives the Commissioner wide powers to fight counterfeiting of excisable goods. It is interesting that the change also proposes to give the Commissioner power to suspend a licence on account of violation of health and safety standards. Issues of health and safety standards are vested in other bodies such as KEBS and the National Council for Occupational Safety and Health and it will be interesting to see how the Commissioner interacts and aligns his actions with these bodies.	1 July 2018
Support of Sports, Arts and Social Development Fund	The Bill proposes to amend Section 36 of the Act to make it mandatory for the Commissioner to pay into Sports, Arts and Social Development Fund established under the Public Finance Management Act to support social development and universal health care, excise duty collected from the following: ▪ 16% of the funds generated from excise duty charged on money transfer by cellular phone service providers; and ▪ All the excise duty collected on money transferred by banks, money transfer agencies and other financial service providers.	The proposal provides for specific funding for government projects in the areas of social services and universal health. The "Robin Hood" tax on money transfers will go directly to provide social services and health care.	1 July 2018
Stiffer penalties imposed	The penalty for manufacturing excisable goods without a license or importing excisable goods requiring an excise stamp is double the excise duty that would be payable. The Bill proposes to set a minimum penalty of ***KES 5,000,000***.	This amendment seeks to impose stiffer penalties to discourage non-compliance and will be useful in the fight against counterfeits.	1 July 2018
Forfeiture of goods	The Bill proposes to provide for forfeiture of any plant, excisable goods, any materials or finished goods in respect of which an offence has been established in addition to any other penalties set.	This will further discourage non-compliance and strengthen the fight against counterfeit goods.	1 July 2018

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Proposed Amendments to the Excise Duty Act

Subject	Changes to the Excise Duty Act	Effective Date
Rates of Excise Duty (goods)	(see table below)	1 July 2018

Item	New Rate	Old Rate
Illuminating Kerosene (2710.19.22) per 1,000 litres	KES 10,305	KES 7,205
Motor vehicles (diesel engine capacity exceeds 2500 cc)	30%	20%
Motor vehicles (petrol engine capacity exceeds 3000 cc)	30%	20%
Bottled water	KES 5 per litre	KES 5 Per Litre
Sugar confectionary (tariff 17.04) and chocolate and food preparations containing cocoa (1806.31.00, 1806.32.00,1806.90.00)	KES 20 per kg	N/A
Alcoholic and non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organisation	Exempt	Excisable
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	Exempt	N/A

KPMG comments

- The introduction of tax on illuminating kerosene is an attempt by the government to fight the adulteration of petrol and diesel using kerosene due to the differential in the excise duty rates. This is however expected to significantly increase the cost of kerosene which is the main fuel used for cooking and lighting by a majority of Kenyans. Combined with the proposed imposition of VAT on petroleum products, the cost of kerosene is likely to fall out of the reach of a majority of Kenyans.
- The changes to excise duty on water is a clarification since the current provisions refer to water without clarifying the type of water. Excise duty will now be limited to bottled water.
- The excise duty on high engine capacity vehicles, sugar confectionaries and chocolate is a continuation of the government raid on products deemed to be luxury in nature to fund the fiscal deficit.

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Proposed Amendments to the Excise Duty Act

Subject	Changes to the Excise Duty Act
Rates of Excise Duty (services)	

Item	New Rate	Old Rate
Money transfer services by cellular phone service providers (as a percentage of the excisable value)	12%	10%
Money transfer services by banks and other financial service providers (as a percentage of the excisable value)	10%	10%
Money transferred by banks and other financial service providers, where the amount transferred exceeds ***KES 500,000***. (as a percentage of the money transferred)	0.05%	N/A

KPMG comments

- Mobile money services has grown exponentially over the last few years. The Bill increases the excise duty on transfers of cash on this increasingly important service. The Government's appetite for taxation of the mobile transfer services is likely to increase the cost of the services dampening the gains made in growing financial inclusion.
- While the excise duty on money transfer services by banks remains at 10%, the banks and cellular phone service providers have in recently partnered to provide end to end products for their customers. The differential in excise duty rates will bring administrative challenges in collecting tax on such products.
- As with all other taxes implemented without due consultations, the 0.05% tax on money transfers will pose a challenge for banks and customers as it is not clear which transactions are targeted. It is important for the government to address questions such as:

  a) What is the definition of a transfer does it include cheque transactions, cash withdrawals and deposits, loan transactions?
  b) Are payments for statutory payments such as taxes included in the definition of transfers?
  c) Does the tax apply to transfer of money from one bank to another only or does it include transfers within the same bank but to different accounts?
  d) Does the tax cover transfers between different accounts of the same person?

  In addition to the above, the time given for implementation of the changes is likely to be short due to the requirement to notify customers and reconfigure banking systems to implement the new tax.

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Proposed Amendments to the Tax Procedures Act (TPA)

Subject	Changes to the Tax Procedures Act	KPMG Comments	Effective Date
Tax representative	Section 16 of the TPA has been amended to provide that where a taxpayer has more than one tax representative, the representative shall only be responsible for the tax obligation for which he has been appointed.	The proposed amendment provides clarity as the TPA currently obligates the tax representatives to ensure compliance with all obligations of the taxpayer.	1 July 2018
Extension of time to submit a return	Section 25 of the TPA has been repealed and replaced by a new Section which provides for changes to the application for extension of time to submit a return: a) Monthly returns: 15 days before the return is due; and b) Annual returns: 30 days before the return is due. The Commissioner will now be obliged to respond to applications within reasonable time and at least 5 days before the return is due. The current provisions do not provide timelines for the application and response by the Commissioner.	The changes provide clarity on the submission of applications for extensions, of time for submitting tax returns.	1 July 2018
Amendment of returns	Section 31 (3) of the TPA has been amended to remove the requirement for the Commissioner to respond to requests for amendment of self-assessment returns within 30 days.	The removal of the timelines will delay the review of self-assessment returns, creating uncertainties for taxpayers.	1 July 2018
Tax amnesty	The Bill proposes to repeal Section 37B of the TPA thereby extending the period of filing returns under tax amnesty from 30 June 2018 to 30 June 2019. The extension also covers income received in the year 2017. The new Section 37B also proposes an amendment which provides that the Commissioner shall not question the source of the funds unless the funds are from terrorism, poaching or drug trafficking.	The change addresses concerns that some taxpayers have had while considering taking the amnesty and disclosing their foreign income would expose them to judicial action especially where the money was from illegal sources. The extension of the amnesty period on a "don't ask, don't tell" basis is likely to encourage such persons to take up the offer. It will however, be interesting to find out how the government will isolate the funds from terrorism, poaching and drug trafficking if they will not question the source.	1 July 2018

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Proposed Amendments to the Tax Procedures Act (TPA)

<table>
<tr><th>Subject</th><th>Changes to the Tax Procedures Act</th><th>KPMG Comments</th><th>Effective Date</th></tr>
<tr><td>Interest and penalty on late payment of tax</td><td>The Bill proposes to amend Section 83 of the TPA to increase the interest on late payment of tax from 1% to 2% per month. The Bill also proposes a 20% late payment penalty which will now include VAT and excise duty payments.</td><td rowspan="2">The proposed amendments to this section of the TPA are aimed at increasing compliance among taxpayers and reducing the tax burden for individuals.</td><td rowspan="2">1 July 2018

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<tr><td>Late Submission Penalty</td><td>Section 83 of the TPA has been amended to provide for new penalty rates on late submission of tax returns as follows:
a) VAT and Excise Duty Returns – Higher of 5% the tax due or KES 10,000
b) Non-individual returns - Higher of 5% of the tax due or KES 20,000; and
c) Individual returns – Higher of 5% of the amount due or KES 2,000.</td></tr>
<tr><td>Remission of interest and penalties</td><td>Section 89 of the TPA has been amended to provide the Commissioner with power to waive penalties and interest.

The proposed amendment however limits the waiver to amounts not exceeding KES 1,500,000. Where the application exceeds this amounts, the Commissioner requires the approval from the Cabinet Secretary for the National Treasury.</td><td>This amendment seeks to reinstate the powers of the Commissioner to give a remission of penalties and interest without consulting the Cabinet Secretary for amounts below KES 1,500,000. This will expedite the processing of smaller waiver applications.</td><td>1 July 2018</td></tr>
<tr><td>Unauthorised access or improper use of computerised tax system</td><td colspan="2">The Bill proposes to introduce two new sections to the TPA imposing penalties for interference with computerised tax systems:
<table>
<tr><th>Section</th><th>Offence</th><th>Penalty</th></tr>
<tr><td>103A</td><td>Unauthorised access or improper use of a computerised tax system.</td><td>Natural person – 2 years imprisonment or a fine of KES 400,000 or both
Body corporate - a fine of KES 1,000,000</td></tr>
<tr><td>103B</td><td>Interference with the computerised tax system</td><td>3 years imprisonment or a fine not exceeding KES 800,000 or both.</td></tr>
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</td><td>1 July 2018</td></tr>
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Proposed Amendments to Miscellaneous Fees and Levies Act

Subject	Changes to the Miscellaneous Fees and Levies Act	KPMG Comments	Effective Date
Proposed amendment to Section 2	The Bill proposes to make amendments to Section 2 to include definitions relating to Special Economic Zones: ▪ An export to include "to take or cause to be taken out of a Special Economic Zone"; and ▪ The definition of the Special Economic Zone as per the Special Economic Zones Act, 2015 to be adopted in the Act.	The proposed amendments align the Act with the understanding of the Special Economic Zones as a separate customs territory.	1 October 2018
Goods subject to export Levy	The Bill proposes to amend the First Schedule of the Act by introducing an export levy on copper waste and scrap at the rate of 20%.	This amendment is in line with the Big Four Agenda pillar of manufacturing as it seeks to protect local industries. The Scrap Metal Act, 2015 banned exportation of Scrap Metal unless the exporter has obtained the necessary authorisation. This provision may therefore be deemed to be redundant especially since exportation of the scrap metal without a licence is an offence.	1 October 2018
Goods exempt from import declaration fee	The Bill proposes to amend the Second Schedule to the Act by exempting goods imported for implementation of projects under a special operating framework arrangement with the Government from import declaration fee.	This is in line with the VAT and excise duty exemptions provided for similar goods under proposed amendments to the VAT and Excise Duty.	1 October 2018

Miscellaneous Provisions

Subject	Changes to the Miscellaneous Fees and Levies Act	KPMG Comments	Effective Date
Time for alternative dispute resolution **Tax Appeal Tribunal Act**	The Bill proposes to exclude the time taken to resolve disputes filed with the Tax Appeals Tribunal under the Alternative Dispute Resolution Mechanism from the deadline under the Act for disputes to be resolved within 90 days from the date of filing.	This provision will allow the KRA and the taxpayer adequate time to resolve the dispute without pressure from the 90 day deadline. It is however, important to ensure that this provision does not provide room for prolonging disputes.	1 July 2018
Fit and Proper Criteria for Casinos **Betting, Lotteries and Gaming Act**	The Bill proposes to introduce a new Section 5A which stipulates the criteria to be used by the Betting Control and Licensing Board (the Board) in determining whether an applicant is suitable to hold a license or permit under the Act. The following will be taken into consideration: ▪ The financial status or the insolvency of the applicant; ▪ The educational or other qualifications or experience of the applicant; ▪ The status of any other license or approval granted to the applicant by any financial regulator; ▪ The ability of the applicant to carry on the regulated activity, competently, fairly and honestly; and ▪ The reputation, character and financial integrity of the applicant. The proposed amendment further provides for the applicant to be heard by the Board prior to determining whether the applicant is fit and proper for the purposes of the Act. In addition, the proposed amendment aims to make it an offence to provide false statements. A person found guilty of such an offence will be liable to a fine not exceeding **five thousand shillings** or to imprisonment for a term not exceeding six months, or to both.	This provision is in line with the Government's push towards formalising the gaming industry and protecting the consumers of such services.	1 October 2018

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Miscellaneous Provisions

Subject	Changes to the Miscellaneous Fees and Levies Act	KPMG Comments	Effective Date
Taxes to be paid into a fund and the attendant late payment penalty and interest **Betting, Lotteries and Gaming Act**	The Bill proposes to introduce Section 69A and 69B to the Act requiring the Commissioner General to remit all taxes collected from betting, lotteries and gaming into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012. Additionally, the Bill proposes to impose a late payment penalty of **20%** of the tax payable and a late payment interest of **2%** per month or part of the month on the amount that remains unpaid by the due date. The interest continues to accrue until the tax is paid.	This is expected to put pressure on the gaming industry to ensure that taxes are paid on time. This is also in line with Government's move to channel proceeds from betting to social causes and universal health care.	1 July 2018
Harmonization to the Insurance Act **Marine Insurance Act**	The Bill proposes to adopt the definition of the "Commissioner" as provided for in the Insurance Act. This is the Commissioner of Insurance appointed by the Board. The Bill proposes to amend Section 16A to read that a person with insurable interest in marine cargo shall place marine cargo insurance with an insurer registered under the Insurance Act.	This is in line with the move towards the requirement to take insurance for marine cargo from local insurance companies.	1 July 2018
Imposition of passenger service charge **Air Passenger Service Charge Act**	The Bill proposes to amend Section 3 (3) of the Act to include the Tourism Promotion Fund in the apportionment of the proceeds of passenger service charge.	This provision will increase the funds available for the promotion of Kenya as a preferred tourist destination.	1 October 2018
Interest Capping **The Banking Act**	The Bill proposes to repeal section 33B of the Banking Act resulting in elimination of the Central Bank's powers to enforce an interest rate cap in banks and other financial institutions.	The repeal of the interest rate cap provisions will allow banks to price loans based on the credit rating of the customer. However, it will be interesting to watch the implications of the Financial Markets Conduct Bill which was recently published for stakeholder comments. One of the provisions under the Financial Markets Conduct Bill is that the Authority established under the proposed legislation will set ceilings on interest rates. Effectively, if the legislation is passed the interest rate caps will return with the only change being the authority that sets the rates.	1 October 2018

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Miscellaneous Provisions

Subject	Changes to the Miscellaneous Fees and Levies Act	KPMG Comments	Effective Date
Mortgage Re-financing **Central Bank of Kenya Act**	The Bill Provides for the licensing and supervision of the mortgage refinance business. The primary objective of these businesses will be to provide long term financing to primary mortgage lenders for housing finance. <u>The role of the CBK in the regulation of mortgage refinance companies will include:</u> ▪ Licensing of mortgage refinance companies; ▪ Determination of the capital adequacy standards and requirements for mortgage refinance companies; ▪ Prescribing of the minimum liquidity requirements and permissible investments for mortgage refinance companies; ▪ Supervision of mortgage refinance companies; and ▪ Revoking or suspension of a licence	The mortgage refinance companies are one of the avenues that the government is proposing to increase the uptake of mortgages. The aim is to provide funding to financial institutions that provide mortgages to enable them to reduce the interest rates on mortgages. This together with other provisions currently under consideration will allow the government to deliver on its promise to provide affordable housing.	1 October 2018
Increased scope of collection of the Kenya Revenue Authority (KRA) **Kenya Revenue Authority Act**	The Bill proposes to amend Part II of the First Schedule to the Act to include the Public Finance Management Act, 2012 (PFMA).	This change will give the KRA power to collect surplus funds from the regulatory bodies created under the PFMA and remit the funds to the National Treasury. The proposed change is attributed to failure by the statutory bodies to remit their excess funds as provided for under the legislation.	1 October 2018
Deterrence of non-compliance **Section 53B of Retirement Benefits Act**	▪ The Bill proposes to amend the Act by requiring employers who fail to remit an employee's contributions to the respective schemes to pay contributions and interest accrued to the scheme within a specified period. ▪ Non-compliant employers will be liable to a penalty equivalent to the higher of 5% of the unremitted contributions or *KES 20,000*. This amount will be payable within 7 days from the receipt of the notice. ▪ Non-compliant employers will also be required to cease deductions from employees' emoluments and notify them of the cessation which will be applicable until the RBA lifts the cessation order. ▪ The RBA also be able to take further action where an employer does not regularize non-compliance, including initiating the process of the winding up of the scheme and facilitating the members to join individual schemes where their contributions shall be remitted.	These proposed amendments are geared towards increasing compliance by employers whilst also protecting the employees' savings for their retirement. It will likely result in a reduction in instances where employers make deductions on their employees but do not remit the same to the relevant schemes.	1 October 2018

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Miscellaneous Provisions

Subject	Changes to the Miscellaneous Fees and Levies Act	KPMG Comments	Effective Date
National Housing Development Fund **The Employment Act**	Section 31 of the Employment Act has been amended by the introduction of the National Housing Development Fund (NHDF) deductions. Under the new provision, the employer and employee will each contribute 0.5% of the employee's gross monthly earnings subject to a maximum of KES 5,000 to the NHDF.	The deductions from employees and the employers will be directed to the promotion of affordable housing. It is however, not clear whether the employees will benefit from the deduction for instance through the use of the contributions as deposits for the affordable housing or to obtain mortgage facilities.	1 January 2019
Enhanced customer due diligence and inclusion of the Sacco Societies Regulation Authority **The Proceeds of Crime and Anti-Money Laundering Act**	The proposed amendment seeks to introduce the requirement for enhanced customer due diligence in respect to relationships and transactions with any natural and legal persons from countries identified as posing a higher risk or money laundering, terrorism financing or proliferation. Reporting institutions will be expected to carry out enhanced customer due diligence to apply appropriate countermeasures which include: ▪ limiting or terminating business relationships or financial transactions with natural and legal persons, legal arrangements, or financial institutions located in the concerned countries; ▪ stopping reliance on third parties located in the concerned countries for customer due diligence; ▪ applying enhanced due diligence measures on correspondent banking relationships with financial institutions located in the concerned countries; ▪ when considering the establishment of subsidiaries or branches or representative offices of financial institutions from the concerned countries, take into account whether the financial institution is based in countries identified as having higher money laundering or terrorism financing risks or inadequate money laundering or terrorism financing systems; ▪ submit a report listing customers, both natural and legal persons, and legal arrangements, originating from the higher risk countries to the Financial Reporting Centre on an annual basis; and ▪ any other measures as may be specified by the Financial Reporting Centre. Apart from the above, SASRA will now be included as a regulatory body under the Act.	The proposed amendments are meant to guard the country against possible harm from dealing with countries identified as posing a higher risk with respect to money laundering, terrorism financing and proliferation. Additionally, the growing popularity of Saccos as an alternate source of funding from Banks, requires that SASRA be now included as a supervisory body under the Act.	1 October 2018

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