

CLIENT ALERT:
KEY PROPOSALS IN THE 2019/20
BUDGET STATEMENT



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INTRODUCTION

Simba & Simba Advocates is one of Kenya's leading full-service law firms, with a rich professional history built over a period of over twenty-five (25) years. In this bulletin, we highlight the key proposals in the Budget Statement for the Fiscal Year 2019/20 which was tabled in the National Assembly on 13 June 2019 by the Cabinet Secretary for Treasury and National Planning (the CS).



Key Highlights

Income Tax

The CS highlighted that the Income Tax Bill (the ITB), which is intended to modernize the current Income Tax Act (the ITA), is at an advanced stage of legal drafting and will soon be submitted to the National Assembly for enactment.

The limited amendments proposed to be made to the ITA include:

Capital gains tax (CGT)

- Increase in the rate of from 5% to 12.5% to promote harmonization of the rate with other East African jurisdictions. The ITB had proposed to increase the rate to 20% last year but the CS during the 2018/19 Fiscal Budget indicated that following public participation, the rate of 5% would be maintained.
- Further, it has been proposed that transfer of property necessitated by the restructuring of corporate entities will be exempted from CGT. It will be interesting to see if the requirement to show “public interest” under the ITA will be deleted in the Finance Bill, 2019 (the Bill).
- Increase in services not within the ambit of withholding tax (WHT) has prompted the CS to subject additional services, other than management and professional fees to WHT. Such services include security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods excluding air transport services, sales promotion and marketing and advertising services.
- The CS also proposed a raft of tax measures aimed at providing a platform for taxation of income generated from the digital economy. The measures have not been specifically outlined in the Budget Statement and we hope these will be clarified in the Bill.
- Importantly, corporation tax for any investor operating a plastic recycling plant will be lowered to 15% for the first five (5) years of operation. Currently, such investors are subjected to the usual 30% corporation tax.

Excise Duty

- The CS proposed the following with respect to excise duty:
- Introduction of excise duty on betting activities at the rate of 10% of the amount staked. Currently, betting companies are subject to betting tax at a rate of 15% and corporation tax at the rate of 30%. Winnings from betting are also subject to WHT at a rate of 20%. The proposals, once enacted into law, will lead to an increased tax burden on betting companies.
- Reduction of excise duty on motor vehicles that are fully powered by electricity to 10% in a bid to encourage uptake of the said vehicles, investment in the said area of technology and promotion of green energy technology.
- Increment on the rate of excise duty on cigarettes, wines and spirits by 15%.

Value Added Tax (VAT)

- The withholding VAT (WHVAT) rate to be lowered from 6% to 2%. This is aimed at reducing the accumulation of WHVAT credits.
- The formula introduced in 2017 for the calculation of VAT refunds on standardized and zero rated goods to be revised. We expect that this formula will be set out in the Bill to enable taxpayers to determine VAT refunds due to them.
- VAT exemptions:
 - all locally manufactured motherboards and all inputs used in their manufacture will be exempt from VAT; and
 - all services offered to plastic recycling plants and the supply of machinery and equipment used in the construction of these plants will be exempt from VAT.

Custom Duties

- Import duty maintained at 25% for imported iron and steel products;
- Import duty maintained at 25% for a further one year on paper and paper board products;
- Import duty on raw timber reduced from 10% to 0%; and
- Ad valorem import duty maintained at 25% for finished timber products.

Tax Procedures Act, 2015 (the TPA)

Under the TPA, the CS submitted two proposals:

- a.** tax amnesty on penalties and interests for two (2) years for SMEs listed on the Growth Enterprise Market Segment of the Nairobi Securities Exchange; and
- b.** to empower the Kenya Revenue Authority (the KRA) to issue exemptions in certain circumstances from the requirement of having a KRA PIN prior to opening a bank account.



Miscellaneous Fees and Levies

- Imposition of an export levy on tanned and crust hide and skins at 10%;
- Import declaration fee (IDF):
- Reduction of IDF on intermediate goods and raw materials used by manufacturers from 2% to 1.5%; and
- Increase in IDF on finished products from 2% to 3.5%; and
- Increase in the railway development levy for finished products from 1.5% to 2.0%; and
- Manufacturers of paint and resin to get refund on the anti-adulteration levy paid.

Proposals for various sectors

1. Capital Markets

- Amendment to the Capital Markets Act in order to allow the Capital Markets Authority to enforce penalties and sanctions on market players who violate laid down rules and procedures.

2. Banking

- a. Proposal to repeal section 33B (on capping interest rates) of the Banking (Amendment Act), 2016. It is expected that this move will unlock credit to the private sector and in particular to the micro, small and medium sized enterprises. Banks will consequently impose different interest rates on both deposits and loans.
- b. The CS highlighted that the Government supports the merger of the

National Bank and the Kenya Commercial Bank that will result in creation of one of the strongest banks in East Africa.

- Further, the merger of the Tourism Finance Corporation, IDB Capital and the Industrial & Commercial Development Corporation (ICDC) to form the Kenya Development Bank will have the right capacity to support the industrial growth of the country by providing long-term development financing.

3. Insurance

a. Policy Holders Compensation Fund

An amendment to the Insurance Act and regulations to allow utilization of the Policy Holders Compensation Fund to compensate claimants not only in the case of insolvency of an insurer but also in the event of statutory management of insurers.

b. Motor Vehicle Third Party Risks (Certificate of Insurance) Rules

An amendment has been proposed to the above Rules to require all passenger carrying boda bodas and tuk-tuks to have a third party insurance covers for both passengers and pedestrians. This is informed by the risky nature of this mode of transport.

4. Retirement Benefits

The CS submitted the following proposals:

- a.** Withdrawal of funds by retirement benefits scheme to be reduced from three (3) years to one (1) year to allow access to better returns.
- b.** Amendment to the Occupational Benefits Regulations and Retirement Benefits Regulations to ensure that exiting members receive their fair share of the reserve funds.
- c.** An amendment to the Umbrella Retirement Schemes Regulations to allow members of the Umbrella Retirement Benefits Schemes contribute towards Post-Retirement Medical Fund. This is pegged on one of the Government's Big Four Agenda to provide access to universal healthcare.

Green Growth

- A ban on single use plastics in all protected areas including: National Parks, beaches, forests and conservation areas. The ban shall be effective from 5 June 2020.
- Kenya Sovereign Wealth Fund Bill (SWF Bill)
- Introduction of the SWF Bill, which proposes the creation of a fund and provides a legal framework to guide the investment of revenues from oil, gas, and mineral resources.

CONCLUSION

The proposals are expected to feature prominently in the Bill. We will prepare a detailed alert which shall capture all the legislative changes and their implications and share with our clients once the Bill is published.

In case of any questions in relation to this client alert,

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