

*The British Chamber of
Commerce Kenya (BCCCK)*
Changing tax landscape in Kenya

13 July 2018

ITB: Corporate income tax changes

Rate changes

- High turnover companies >KES500m impacted – higher rate of 35%.
- Permanent establishments (PEs) rate reduced to 30%.
- PEs - Tax on deemed repatriation of profits - 10% (*10% Tz and 15% Ug*).

Thin capitalization

- Ratio lowered from 3:1 to 2:1.

Deemed interest

- Applicable rate to be the difference between issuer's country market rate less the loan interest rate.

Compensating tax

- Tracking mechanism amended.

ITB: Withholding tax changes

Introduction/ increase

- ✓ 5% on insurance premium to non residents
- ✓ Service fee by O&G subcontractors: 10% (5.625%)

Reduction

- ✓ Commissions to resident insurance agents: 5% (from 10%)
- ✓ Rent and leases of property by non-residents: 20% (from 30%)

Exemption

- ✓ Interest on infrastructure loans from non-residents extended for 3 years after the commencement of the ITB (*unless renewed by the CS*)

Other

- ✓ Resident dividend exemption shareholding threshold: 25% (12.5%)

Dividends and tax losses

Finance Bill: Deemed dividends

To include transactions that are to the benefit of a shareholder or person related to him/her:

- ✓ Cash or asset distributions
- ✓ Discharge of obligation owed to the company
- ✓ Cash expenses
- ✓ Settlement of debt owed to a third party
- ✓ Transfer pricing adjustments

ITB: Non-distribution of dividends

- Per ITB Commissioner can now deem a minimum of 60% of the accounting profits.

ITB: Tax losses

- Tax loss utilization period of 10 years and extension of a further 2 years max.
- Prohibition of loss carry forward where:
 - the ownership of the company changes >50%
 - business activities of the company change subsequent to the incurring of the loss.

ITB: Income tax exemptions

Capital gains tax

- The ITB proposal to increase the rate to 20% now shelved.
- CGT exemption where transfer of property is necessitated by a restructuring transaction due to:
 - i. a legal or regulatory requirement;
 - ii. as a result of directive or compulsory acquisition by the government; or
 - iii. in public interest and approved by the CS.

Exempt interest income

- Interest income accruing from listed bonds (securities) used to raise funds for infrastructure and other social services having a maturity period of at least 3 years.

Reduced incentives to companies listing their shares at the NSE

Percentage of shares listed	Corporate tax rate under the ITA	Proposed corporate tax rate under the ITB
20%	27% for 3 years	30%
30%	25% for 5 years	30%
>=40%	20% for 5 years	25% for 5 years

Capital allowances revised

Expenditure incurred on:	ITA	ITB
Investments outside Nairobi, Mombasa and Kisumu	150%	100%.
Commercial buildings	25%**	10%**
Motor vehicle and earth moving equipment	25% - 37.5%*	25%**
Computer and peripheral computer hardware, calculators, copiers and duplicating machines	30%*	25%**
Furniture and fittings, and other machinery	12.5%*	10%**

**per annum on reducing balance basis*

*** per annum on straight line basis*

ITB: Related party transactions/ Transfer pricing (TP)

- Related party transactions expanded to include those with:
 - ✓ non-resident entities located in preferential tax regime
 - ✓ non-resident person or the transactions lacks economic substance.

Most affected will be transactions with Mauritius companies.

- Contemporaneous TP documentation for each financial year.
- 2% penalty of the transaction value for failure to have documentation
- Commissioner empowered to request for information on foreign entities (selected as “tested entity”)
- Price for commodity transactions shall be determined by reference to exchange market prices, government set prices or other indices for unrelated parties.

ITB: Double tax agreement (DTA) provisions

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- Enhancement of the ‘Limitation of Benefits’ provisions to exclude the following companies in the counterparty country:
 - ✓ a holding company,
 - ✓ an administration company, or
 - ✓ a financing company.

 - Kenya’s DTA network more inaccessible and rendered practically redundant.

Subsidiary legislation

- Such legislation under the ITA (e.g. Income Tax (Leasing) Rules and bad debts guidelines) will continue to be applicable to the ITB if not replaced by similar rules.

Taxation of employees

- a) **Top tax rate:** 30% top tax rate remains.
- b) **Permanent home:** now defined as a place available to reside in or the place where economic and personal interests are closest.
- c) **Pensions:** non-resident WHT rate from 5% to 10%.
- d) **Share options:** tax point moving from vest to exercise.
- e) **Housing development fund:** Employers and employees to each contribute 0.5% of earnings up to KES 5,000 pm (wef Oct 2018).
- f) **Leave passages:** Tax free passages for all non-citizens.
- g) **Tax free medical cover:** no requirement for approval by Commissioner of Insurance. For children up to 24 yrs.
- h) **Per diems:** KES 2,000 per day cap replaced with public service rates.

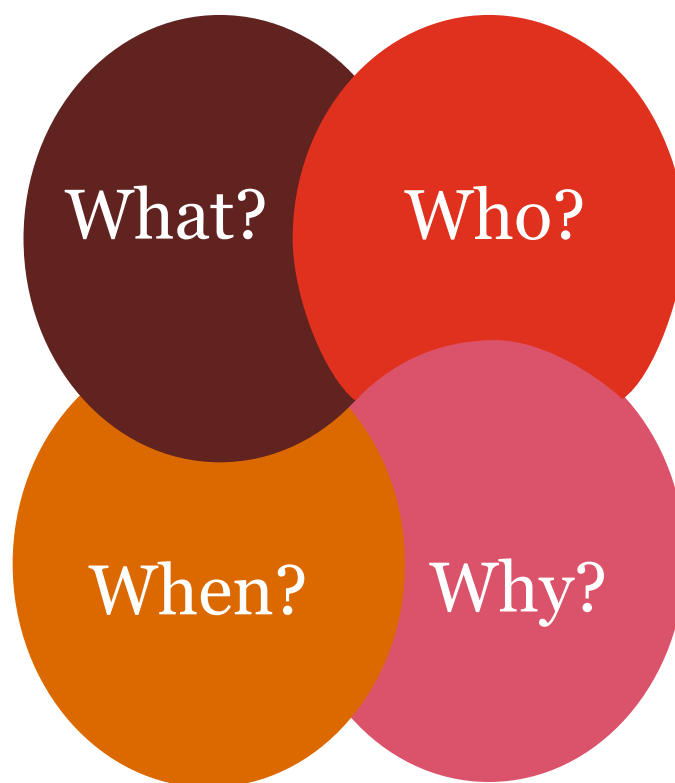
Tax Amnesty – some quick highlights

Foreign income that was/ is taxable in Kenya e.g.:

- Foreign branch income, mis-priced intercompany charges.
- Individual earnings held abroad.

Timelines

- File by 30 Jun 19.
- Income up to 31 Dec 17.
- Repatriation of funds by 30 Jun 19 (or 31 Dec 22 with 10% penalty?).



Taxpayer/ income earner:

- Person who generated the income (company or individual).
- Trustee or beneficiary.
- Tax agent/ representative.

Protection from:

- Tax, penalties and interest (or investigation on source of funds).
- Proceeds of Crime AML Act (except terrorism, poaching and drugs).

Excise duty... 1/2

Change in excise duty rates

- **Private passenger cars** – MV >2,500cc for diesel and 3,000cc for petrol powered vehicles from 20% to 30%.
- **Mobile money transfer** – 10% to 12%.
- **Illuminating kerosene** - KES 7,205 per litre to 10,305 per litre.

Rates introduced

- cash transfers of more than KES 500,000 -0.05%
- Sugar confectionery and chocolate- KES 20/KG

Exemptions

- Goods for direct and exclusive use in implementation of projects under special operating framework arrangements .
- Supply of beverages (alcoholic or non-alcoholic) to KDF Canteen.

Excise duty... 2/2

Clarifications

- Clarity on excise duty on bottled or similarly packaged water.
- No excise duty on locally assembled vehicles.
- Annual inflationary adjustment for the specific rates of excise duty.

Penalties introduced

- Operating without a license imposes a penalty of KES 5M or double the excise duty payable, whichever is higher. The excisable goods could be forfeited by the state too.

Value Added Tax (VAT)... 1/2

VAT exemptions introduced

- Machinery under chapters 84 & 85 limited to those used to manufacture goods.
- Solar water heaters limited to specialized equipment for the development and generation of solar and wind energy only.
- Computer parts both purchased locally or imported.
- Goods and services provided to special operating framework arrangements by government.
- Postal services like postage stamps, rental of post boxes/mail bags.
- Asset transfer into real estates investment trusts and asset backed securities.

Value Added Tax (VAT)... 2/2

Deletions from the exemption schedule

- Provision of maize seed.
- Transportation of cargo to destinations outside Kenya

Introductions

- Increase in tax base for mobile cellular services.
- Petroleum products will be charged VAT at the rate of 16% from 2 September, after the expiry of the transitional grace period given in the finance Act 2016.

Changes from the EAC Gazette Notice

Decrease in duty rates

- Second hand clothing and other worn articles - ‘Mtumba’
- Rice in the husk, husked brown rice, semi milled or wholly milled rice and broken rice.
- Copolymers (a form of plastic).
- Motor boat ambulances.

Increase in duty rates for a period of one year (amongst others);

- Footwear products–25% to 35%.
- Liquid Petroleum Gas (LPG) cylinders – 0% to 25%.
- Refined Corn Oil - 25% to 35%.
- Iron and Steel products, road tractors/semi trailers– 25% to 35%

Duty remission approvals

The Council has approved duty remission measures in accordance with Section 140 of EACCMA and the EAC Duty Remission Regulations of 2008.

Sectors in which duty remission is granted for one year

- Motor cycles assemblers .
- Pesticides, fungicides, insecticides and acaricides manufacturers.
- Manufacturers of chewing gum .
- Manufacturers of energy saving Stoves.
- Manufacturers of toothbrushes.
- Roofing tiles coated with acrylic paint and the weather side coated with natural sand granules manufacturers.

The Miscellaneous Fees and Levies Act, 2016

The Bill has amended various provisions of the Miscellaneous Fees and Levies Act, 2016 as follows:

- Introduction of an export levy on copper waste and scrap.
- Special Economic Zone meaning defined as a zone declared as such under the Act by the Cabinet Secretary for industrialization.
- Goods imported for implementation of projects under special operating framework with the Government from both Import Declaration Fee (IDF) and Railway Development Levy (RDL) exempted.

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