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Tax Alert

Marine insurance

This alert follows our earlier alert on Marine Cargo Insurance issued on 22 December, 2016.

Our previous alert was issued prior to the Insurance Regulatory Authority (IRA) issuing a public notice on 13 January, 2017, which provided guidance on the implementation of the local marine cargo insurance directive by the Cabinet Secretary for National Treasury ("CS") in his fiscal year 2016/2017 National Budget presentation.

The Public Notice inter alia confirms the effective date of the CS's directive as 1 January, 2017. All importers are now required to insure their cargo using a local insurance entity as follows:

1. The importer or the importer's appointed clearing agent ("agent") is required to purchase a local marine cover from a registered insurance company and obtain a certificate. This can be done through an insurance agent, broker or directly through the insurance company;
2. The importer or agent should thereafter access the Kenya Trade Network Agency ("Kentrade") system using their login credentials (user name and password) and create a Unique Consignment Reference ("UCR") number;
3. The importer or agent shall access the module for Marine Cargo Insurance ("MCI") registration on Kentrade and link an application for marine cargo insurance with the UCR created above; and
4. The application for marine cargo cover is then submitted online to one of the listed insurance companies (as per the importer's choice).

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Unfortunately, these guidelines have not addressed a number of business realities. For instance, international trade is, in many instances, premised on pre-defined commercial terms.

These arrangements determine how the parties to the transaction deal with insurance, freight, customs clearance, amongst other trade considerations. These possible scenarios are captured below:

- There are instances in international trade where long term arrangements exist between trading parties with regard to cargo insurance. The notice does not clarify whether the parties need to re-negotiate those arrangements in order to comply with the requirement.

- Multinational corporations may also have globally negotiated (and discounted) cargo insurance arrangements for the movement of their goods to and from various global locations. There is need to clarify whether, besides the insurance arrangement already in place, they need to acquire an additional local insurance cover.
- Furthermore there are some overseas consignments that may have been insured and left the country of exportation overseas prior to 1 January, 2017, and will arrive in Kenya after the effective date of the requirement. The notice does not indicate whether these cases are exempted from the requirement for local insurance.

The public notice does not give guidance as to whether there will be any exceptions to this directive that would take into account the various scenarios affecting companies' implementation of the same.

While section 20 of the Insurance Act provides that the Commissioner of Insurance can allow the use of overseas insurance upon application by an importer, the procedure or the circumstances within which an importer can make such an application are not provided in these guidelines.

We hope that the IRA will issue more guidelines/clarification as these issues come up during implementation. We also anticipate that the Kenya Revenue Authority (KRA), being the implementing agency at the port of entry, will provide input for incorporation in future guidelines by IRA.

Kindly reach out to us should you require more clarification or support with regards to local marine cargo insurance. Our contacts are:

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