

# Tax Alert

*Good news on the immigration front - we are one step closer to the Pan-African dream*

**On 28 November 2017 Kenya's president, H.E. Uhuru Kenyatta was sworn in for a second five year term. A number of his fellow African Heads of State attended the ceremony and perhaps they inspired a recommitment to a more united Africa.**

**During his inauguration speech, the president pledged government support for the Pan-African dream. To this end, the president gave directives that will affect immigration law and practice in Kenya. Paragraphs 90-94 of the inauguration speech spoke to this issue, stating:**

- Kenya remains committed to the Pan-African dream which is exemplified by free movement of people. Immigration and emigration are thus at the heart of the Pan-African brotherhood and fraternity;
- Citizens of the African continent will get visas on arrival and Kenya will not demand reciprocal treatment from other African nations; and
- Citizens of the East African Community (EAC citizens) will not be required to secure work permits or passes to be lawfully present in Kenya. With a national ID, such citizens will secure employment opportunities; conduct business; own property, farm, marry and settle in Kenya. Once again, Kenya will not demand reciprocal treatment from the other Partner States.

These are progressive ideas which needs to be formalized through changes in law. The government philosophy of Pan-Africanism gives a policy that will need to be anchored in law.

We also trust that the government will put in place adequate controls to prevent abuse of the goodwill that is intended by such a generous directive.

Governments often have to balance between lowering barriers to entry and protectionism (from a security and labour market perspective).



## **The next possible steps include:**

- Amendment of subsidiary legislation to align the regulations to the directive. This is non-parliamentary role as the Cabinet Secretary in charge of immigration matters will only need to gazette the changes. For instance, Schedule 5 of the regulations will have to be amended. The schedule speaks to securing visa before arrival for a number of countries. Initially, the list contained Cameroon, Mali, Senegal and Somalia. Since 2012, the list was expanded to include Eritrea while Cameroon, Senegal and Mali were dropped from the list early this year.
- Amendments to some provisions in the principal immigration law. This is a parliamentary procedure and it is likely to take a while. Some of the areas to be

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amended may touch on citizenship by marriage to an EAC citizen; lawful residence for EAC citizens (especially where they want to become Kenya citizens); entry and removal of immigrants (currently, entry of foreign nationals into Kenya is provided for on account of pass or permit); foreign nationals management; and amendment on issuance of passes. The other major segment will be an amendment to the offenses section which have uniformly applied to any foreign national violating the provisions. The general provisions that criminalizes the violation of immigration law should exempt or exclude the EAC nationals;

- EAC partner States without national IDs will have to accelerate the issuance of such documents as they will guarantee entry into Kenya and offer an opportunity for employment and residence;
- The directive does not exclude vetting and background security checks for all foreign nationals seeking to enter Kenya. Immigration and other security procedures will be handled at the ports of entry.

We remain hopeful that a detailed path will be provided by department of immigration on the next steps.

In case you require further assistance, please do not hesitate to contact any member of our immigration services team at PwC.

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