# TAX HIGHLIGHTS

CREATING JOBS, TRANSFORMING LIVES AND SHARING PROSPERITY

## 2018/ 2019 NATIONAL BUDGET

HH&M

Hamilton Harrison & Mathews

hhm.co.ke

# CONTENTS


**A. DIRECT TAXES**
1. Corporate Income Tax 3

**B. TAX PROCEDURES**
1. Tax Procedures Act 4

**C. INDIRECT TAXES**
1. Value Added Tax ('VAT') 5
2. Excise Duty 5
3. Import Duty 6-7

**D. OTHER MEASURES** 8

**E. LEGAL AND REGULATORY REFORMS** 9


HH&M
Hamilton Harrison & Mathews
hhm.co.ke

# A. Direct Taxes

## *1. Corporate Income Tax*

### a) Draft Income Tax Bill 2018

The Cabinet Secretary has indicated his intention to submit the Draft Income Tax Bill, 2018 ('Draft ITB, 2018') before the National Assembly before the end of July 2018.

The Cabinet Secretary has indicated that the following changes have been made following public participation:

- The proposed top rate of 35% on income over KShs 750,000 has been scrapped; and
- Capital Gains Tax will continue to apply at the current rate of 5% and not the proposed 20% under the Draft ITB, 2018.

### b) More incentives for housing developers

In a move geared towards incentivizing the private sector's involvement in the provision of low cost housing, the Cabinet Secretary has proposed to subject private developers who construct at least 100 units in a year to Corporate Income Tax at the reduced rate of 15%.

### c) Out with Turnover Tax, In with Presumptive Tax

The Cabinet Secretary has proposed to scrap the Turnover Tax which was a not-so-successful attempt to tax the country's informal sector. In its place, he has proposed to introduce a Presumptive Tax based on business permit and trade license fees.

This move appears to be predicated on the assumption that a significant number of players in the informal sector actually obtain the requisite business permits and licenses.

### d) Taxing demurrage

The Cabinet Secretary has introduced a 20% Withholding Tax on demurrage payments made to non-resident persons.

This cost is likely to be passed on to consignees leading to increased costs of imported goods. These taxes are also likely to reduce Kenya's position as the port of entry for goods destined for the East African region and beyond.

### e) Increased taxes for insurance companies

Insurance premiums paid to non-residents are now subject to Withholding tax at the rate of 5% although premiums paid for the insurance of aircraft have been exempted.

This will raise the costs of obtaining insurance cover from non-Kenyan residents. Whilst this favours local insurance companies, their ability to cover high value risks is still limited.

The Cabinet Secretary also indicated that the transfer of property by general insurance companies will be subject to Capital Gains Tax. This proposal is unclear given that Capital Gains Tax already applies to such transfers.

### f) It pays to keep the lights on

In order to address the high costs of electricity, the Cabinet Secretary has proposed to allow manufacturers a deduction of 30% of their total electricity bills from their corporate profits. This is in addition to the normal deduction and will be subject to the conditions to be provided by the Ministry of Energy.

Whilst this may cause some relief, allowing a single sector of the economy to take a double deduction of electricity hardly seems like a sustainable way of addressing the high cost of power. The Government ought to address the underlying issues causing the high costs of electricity.

"Developers of at least 100 houses in a year will pay corporate income tax at a reduced rate of 15%"

# B. Tax Procedures

## *1. Tax Procedures Act*

### a) Last call for the Tax Amnesty?

In a quest to encourage uptake of the tax amnesty on repatriation of taxable income outside Kenya, an extension of the amnesty from 30th June 2018 to 30th June 2019 is proposed. Further, the year of income declaration has been changed from 2016 to 2017.

To allay the concerns that any doubting Thomas may have regarding the Government's intentions, the Cabinet Secretary has further proposed that funds transferred back to the country under the amnesty will be exempt from investigation under the Proceeds of Crime and Anti-Money Laundering Act or any other laws. This exemption will not apply to proceeds of terrorism, poaching and drug trafficking.

### b) Render unto Caesar on time...or else!!

Late payments of taxes will now be subject to interest at the rate of 2% up from the current 1%. A late payment penalty of 20% has also been introduced.

These moves are intended to promote timely payment of taxes. Taxpayers still have the option of seeking the waiver of any applicable penalties and interest.

### c) Time limits for filing amended returns

The Cabinet Secretary has proposed to introduce amendments to provide for time limits in the application and extension of time to file a return and also the time within which Taxpayers may file amended Returns.

# C. Indirect Taxes

## *1. Value Added Tax ('VAT')*

### a) VAT Exemption of equipment used in constructing grain storage facilities

In a bid to bolster food security in the country, the Cabinet Secretary has proposed to exempt equipment used in the construction of grain storage facilities.

### b) Feed the animals

The Cabinet secretary has now exempted raw materials used in the manufacture of animal feeds from VAT.

This should reduce the cost of animal feeds and hopefully attract more manufacturers to invest in the sector.

### c) Towards Kenyan assembled laptops

To boost the primary school laptop project, the Cabinet Secretary has proposed the VAT exemption of parts imported or purchased locally for the assembly of laptops in the country.

This will boost manufacturing and innovation in the ICT market.

## *2. Excise Duty*

### a) Fuel guzzlers just got pricier

Excise Duty is currently charged at a uniform rate on private passenger motor vehicles irrespective of the engine rating.

The Cabinet Secretary has proposed an increase in the rate of Excise Duty from 20% to 30% on private passenger motor vehicles whose engine capacity exceeds 2500cc for diesel and 3000cc for petrol powered vehicles.

### b) 'Robin Hood' tax on money transfers

The Cabinet Secretary has proposed to introduce a Robin Hood Tax of 0.05% on any amounts of KShs 500,000 or more transferred through banks and other financial institutions.

### c) More expensive mobile transfers

The Cabinet Secretary has also proposed to increase Excise Duty charged on money transfer services by cellular phone service providers from 10% to 12%.

This increase is likely to be passed on to end users in form of increased transaction costs.

### d) Illuminating kerosene and gas oil

Illuminating kerosene currently attracts a duty rate of Kshs. 7,205 per 1000 litres while gas oil is subject to excise duty at the rate of Kshs. 10,305 per 1000 litres.

The Cabinet Secretary has proposed to harmonize the rate of Excise Duty on these products to KShs 10,305 per 1000 litres. The harmonization is aimed at curbing the adulteration of fuel products.

# C. Indirect Taxes

### *3. Import Duty*

The comprehensive review of the East African Community Common External Tariff ('CET') which commenced in September 2017 is still ongoing, with the previous review having been conducted in 2012. The aim of the review is to create a conducive business environment for investors and enhance protection of industries in the region.

The EAC Customs Management Act, 2004 is also under review. Whilst this process is still ongoing, new measures to the current CET will however be introduced in the East African Gazette effective 1 July 2018 as set out below.

**a) Explore Magical Kenya – Exemption of duty on tourism vehicles**

To further boost the tourism sector that has seen steady growth over the last year, the Cabinet Secretary has proposed an Import Duty exemption on sightseeing buses and overland trucks imported by licensed tour operators.

**b) Cheaper pest control products**

Kenya imports most of of its agricultural chemicals as very limited production happens locally.

To encourage local production, the Cabinet Secretary has proposed to have the importation of raw materials and inputs for the manufacture of pesticides and acaricides included in the EAC duty remission scheme.

**c) Cheaper local vegetable oil on the way**

The Cabinet Secretary has proposed to introduce import duty on imported vegetable oil at the rate of USD 500/MT or 35%, whichever is higher.

This move will make foreign imports costlier and go some way to reduce competition for local manufacturers.

# C. Indirect Taxes (continued)

### d) Clean energy cooking stoves

To encourage local production of clean cooking stoves, the inputs and raw materials for local assembly of clean energy cooking stoves will be under 100% duty remission.

Hopefully this should reduce reliance on firewood and conserve forests.

### e) Timber products

To enhance local production and protect the timber and furniture industry the Cabinet Secretary has proposed the introduction of the specific rate of duty of USD 110/MT on particle board, USD 120/MT on medium density fiber board, USD 230/M3 on plywood and USD200/MT on block boards, or an ad valorem duty of 35% whichever is higher.

Restricting imports of timber products is an interesting move when considered in light of the ongoing forestry conservation efforts.

### f) ‘Mitumba’ no longer the cheaper option

In order to boost local production and create jobs the Cabinet Secretary has introduced a specific rate of Import Duty of USD 5 per unit or a 35% whichever is higher on imported textiles, (second-hand) footwear and clothing.

### g) Paper and paper products

To support domestic paper production, the Cabinet Secretary has proposed an increase in Import Duty rates on some paper and paper board products produced within the region from 25% to 35%.

This measure should be a shot in the arm to the ongoing efforts to revive the industry.

### h) Iron and steel

In a bid to boost production in the local iron and steel industry and to reduce imports of cheap subsidized products the Cabinet Secretary has proposed an increase in Import Duties on iron and steel products that are locally available from 25% to 35%.

# D. Other Measures

**a) More penalties for late payments**

In keeping with the theme of ensuring timely payment of taxes and levies, the Cabinet Secretary has proposed to introduce a 20% penalty and 2% interest on late payment of taxes under the Betting, Lotteries and Gaming Act.

"Late payment of taxes will attract interest at 2% and a penalty of 20%"

**b) Export Levies**

Copper waste and scrap metals will now be subject to an Export Levy of 20%. This should lead to increased raw materials for local manufacturing, and hopefully, reduced incidences of vandalism.

**c) National Housing Development Fund contributions**

Employers and employees will both have to make contributions to the National Housing Development Fund as follows:

- Employer contributions will be 0.5% of the employees gross monthly emoluments subject to a maximum of KShs 5,000; and
- Employees will have to contribute 0.5%

# E. Legal and Regulatory Reforms

### The Banking Act

Interest rate capping which is currently provided for under Section 33B of the Banking Act appears to be on the way out with the Cabinet Secretary expressing his intention to repeal the section.

### County Governments Revenue Raising Regulation Process Bill, 2018

This Bill provides for regulation of the process of introducing new taxes, fees and charges by county governments.

This Bill is meant to address the concern of double taxation on goods as they move from one county to the next.

### Financial Markets Conduct Bill, 2018

The Financial Markets Conduct Bill, 2018 has been introduced with a view to deal with the existing inadequacies in consumer protection and unregulated lending in the financial sector. It seeks to address problems of predatory lending and the exploitation of consumer by debt collectors.

The Bill is currently undergoing stakeholder consultations.

### Capital Markets Act

The Capital Markets Act will be amended to introduce enhanced financial controls and enhance investor confidence in the Capital Markets.

### SACCO Societies Act

The Cabinet Secretary has proposed to amend the SACCO Societies Act to allow the use of ICT in submission of statutory reports and other information to the Sacco Societies Regulatory Authority.

### Retirement Benefits Act

The Retirement Benefits Act will be amended to enable the Retirement Benefits Authority to intervene against any employers who fail to remit pension contributions to their respective retirement benefit schemes.

Retirement Benefits (Individual Retirement Benefit Schemes) Regulations and the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations will also be amended to allow members who are unable to accumulate medical funds during employment to utilize a portion of their retirement benefits for post-retirement medical cover. The fund will also be exempt from the retirement benefit levy in order to boost the member's contribution.

### Insurance (Amendment) Bill, 2018

The Insurance Act will be amended to introduce index-based insurance. This is meant to act as an alternative to indemnity based insurance which has had challenges due to the requirement for assessment of losses before any payments are made. This should lead to higher uptake of agricultural insurance by farmers.

Additionally, the Cabinet Secretary has proposed to amend the Insurance Act to criminalize insurance fraud and protect consumers.

It has also been proposed to amend the Insurance Act to require insureds to make payments in respect of premiums directly to insurers. This is meant to remove the need for intermediaries who delay the payment of premiums and put the insureds at risk.

# CONTACT US

## Tax Contacts

**K Kimani**
kkimani@hhm.co.ke

**A Warambo**
awarambo@hhm.co.ke

## Senior Partner

**R Omwela**
romwela@hhm.co.ke

## Partners

**K A Fraser SC**
kfoffice@hhm.co.ke

**K Kimani**
kkimani@hhm.co.ke

**A Khawaja (Managing)**
akhawaja@hhm.co.ke

**A Mugambi**
amugambi@hhm.co.ke

**M Kirimi**
mkirimi@hhm.co.ke

**D W Muriu**
dwanjau@hhm.co.ke

**L Mainnah**
lmainnah@hhm.co.ke

**S Koech**
skoech@hhm.co.ke

## Offices

**Nairobi - Head Office**
1st Floor, Delta Office
Suites, Waiyaki Way
P.O. Box 30333-00100,
Nairobi, Kenya

E: hhm@hhm.co.ke

T: +254 20 325 8000

M: +254 703 068 000
+254 720 213 400
+254 733 382 341

F: +254 20 325 8222

DROPPING ZONE NO 144

**Mombasa**
2nd Floor, Sea View Plaza,
Mama Ngina Drive,
P.O. Box 84759-80100,
Mombasa, Kenya

E: hhm@hhm.co.ke

T +254 772 446 446
+254 770 771 664

M: +254 703 068 000

F: +254 20 325 8222

www.hhm.co.ke

***Disclaimer***

This publication contains general information only. It is not a substitute for professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. **Hamilton Harrison & Mathews** shall not be responsible for any loss whatsoever sustained by any person who relies on this publication.