



ORARO & COMPANY
ADVOCATES

THE FINANCE BILL, 2018

The Cabinet Secretary for National Treasury and planning, Mr. Henry Rotich, has tabled in parliament the Finance Bill, 2018 which seeks to realize the Governments Big Four Agenda by boosting revenue collection by expanding the tax base in Kenya

Summerised below are the key changes:

INCOME TAX ACT		
Measure	Changes	Effective date
Dividend Payment	<p>Section 7(1) of the Income Tax Act has been amended by expanding circumstances taxable as dividend where a shareholder or someone related to him derives some financial benefit. These now include:</p> <ol style="list-style-type: none"> I. Any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any person related to that shareholder; II. The shareholder or any person related to that shareholder is discharged from any obligation measurable in money which is owed to that company by that shareholder or related person; III. The amount is used by that company in any other manner for the benefit of the shareholder or any related person to that shareholder; IV. Any debt owed by the shareholder or any person related to that shareholder to any third party is paid or settled by that company; V. The amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or related person to such shareholder, resulting from an adjustment. 	1 st July, 2018
Compensating Tax	<p>Section 7A of the Income Tax Act on Compensating taxes has been repealed and substituted with capital gains tax on dividends distributed out of gains or profits on which no tax is paid. The dividends will be subject to the resident corporate rate of tax on the gains or profits from which such dividends are distributed. Registered collective investment schemes are exempted</p> <p>The effective compensating tax rate of 42.8% has now been reduced to the corporate tax rate of 30%.</p>	1 st July, 2018

Presumptive Tax	In an effort to widen the tax base and to bring the informal sector into the tax net, Section 12C (on turn- over tax) of the Income Tax has been repealed and “presumptive tax”.	1 st July, 2018
	Presumptive tax is due from businesses issued with business permits or trade licences by the county governments and with a turnover of less than 5 million shillings per annum. The tax is computed at the rate 15% of the business permit or trading licence fees and is due at the time of payment for the business permit or renewal of the same. There are opt-out provisions.	
Reduction in Operating Costs	In an effort to reduce operating costs and as part of fostering the Government’s ‘big four’ agenda, a new Section 15 (ab) has been introduced to the Income Tax Act allowing manufacturers to deduct a further 30% of the electricity cost incurred when determining their taxable income on the basis of guidelines to be set by the Ministry of Energy.	1 st January 2019

EXCISE DUTY ACT		
Measure	Changes	Effective date
Exempt Goods	Section 7 of the Excise Duty Act,2015 which provides for goods that are exempt from Excise Duty, has been amended by the inclusion of a requirement that an exemption under that section will be issued where the Commissioner is satisfied that : <ul style="list-style-type: none"> I. Goods that meet the requirements set out in the Second Schedule of the Excise Duty Act,2015 were received and consumed by the exempt person, and II. Excisable goods that are meant for export are not consumed in Kenya. 	1 st July, 2018
Excise Duty License	<ul style="list-style-type: none"> I. Section 23 of the Excise Duty Act on cancellation, suspension or revocation of Excise License has been amended to allow the Commissioner to suspend a licence without Notice where the licensee: <ul style="list-style-type: none"> II. has engaged in tax fraud; III. has been found in possession of, or using, counterfeit stamps on excisable goods; IV. has been found in possession of goods bearing counterfeit stamps; or V. has violated any regulations relating to health and safety, standards or packaging of goods. 	1 st July, 2018

TAX PROCEDURES ACT		
Measure	Changes	Effective date
Tax Amnesty	<p>Section 37A of the Tax Procedures Act on Tax Amnesty has also been amended</p> <ol style="list-style-type: none"> I. While it still relates to income prior to 31st December, 2017, the returns should now be submitted by 30th June, 2019. II. It is now required by statute (not guidelines) that the funds declared voluntarily have been transferred back to Kenya for the amnesty to apply III. If the funds are repatriated within the period of the amnesty, there is a five year period within which they can be transferred into Kenya but subject to a 10% penalty. <p>Allaying concerns its extent, The amnesty has now been extended to the provisions of Proceeds of Crime and Anti-Money Laundering Act, 2009 or any other Act relating to reporting and investigation of financial transactions unless it is income derived from proceeds of terrorism, poaching and drug trafficking.</p>	1 st July, 2018

THE BANKING ACT		
Measure	Changes	Effective date
Interest Rate Cap	<p>The amendment of the Banking Act by the inclusion of Section 33B, which was assented to in August 2016, effectively capped interest rates on loans and credit from banks and financial institutions to 4% more than the CBK base rate.</p> <p>The Finance Bill, 2018 has tabled an amendment which has the effect of abolishing the interest rate cap by way of repeal of Section 33B. The provision has been effective since 14th September, 2016.</p>	

Mortgage Re-Finance	<p>The Finance Bill, 2018 seeks to foster one of the Government's big four agendas being provision of housing. The proposed amendment to Section 2 of the Central Bank of Kenya Act introduces in its definitions non deposit taking companies which will be licenced under the Companies Act, 2015 to conduct the business of mortgage refinance and a proposed Section 4A 1 (g) which provides for licencing of mortgage refinance companies. The provision seeks to provide an accessible framework for Kenyans to refinance existing mortgages on favorable terms in order to achieve the objective of better credit terms for aspiring home owners. The amendment seeks to provide access to financing for primary mortgage lenders and can be viewed as an alternative way of enhancing wider overall accessibility to credit without the use of interest rate capping.</p> <p>The introduction of mortgage refinance business has also necessitated the introduction of licensing and regulatory measures with the Finance Bill, 2018 proposing amendments by way of Section 33P and 33Q to the Central Bank of Kenya Act which effectively provide for licencing, regulation and liquidity control measures that seek to curb abuse of the business by unscrupulous players. The Bill also proposes amendment to Section 43 of the Act to ensure that mortgage refinancers comply with reporting standards applicable to financial and microfinance institutions.</p>	
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