

## **TAXWISE TAX AND LEGAL DIGEST- JANUARY 2020**

### ***Recap of 2019, local updates and expected changes.***

Dear Subscriber,

This month we recap on 2019 by highlighting key changes and provisions set to take effect by January 2020. We also highlight various Act and changes in 2019 that will affect your business.

Finally, we share expected draft regulations and bills that we expect to take effect this year. We highlight what to look out for and share alerts that you may have missed out on in January 2020.

#### **I. Recap of Finance 2019**

The Finance Act 2019 was assented into law on 7<sup>TH</sup> November 2019. We recap on key highlights introduced through the Act as well as key provisions taking effect as at 1<sup>st</sup> January 2020.

Key Highlights include;

- Digital Taxation provisions introduced pending CS regulations- We highlight our take on this tax, how the tax is being implemented in other parts of the world and what Kenya needs to do to

- implement the tax effectively in our [Alert](#);
- Taxation of Withholding Tax (WHT) on payments by branches to Head Office where Double Taxation Agreements provisions allow for deduction of these expenses;
- Capital Gains Tax (CGT) exemption on transfer of property in the case of group restructuring;
- Reduction of the Withholding VAT(WHVAT) rate from 6% to 2%.
- Excise Duty on betting transactions specifically on amounts wagered.
- Exemptions under Stamp Duty Act- Read more on the exemption for first time house owners and the stamp duty exemption regime in our alert to be released later this week.

Provisions taking effect as at 1<sup>st</sup> January 2020;

- Re-introduction of Turn over tax. - Detailed analysis provided [here](#).
- Exemption of companies implementing projects under approved housing schemes from thin capitalisation provisions.
- Tax exemption on income of National Housing Development Fund.

- Tax exemption on income of individuals under Ajira Digital Program.
- Tax exemption on income from listed bonds, notes and securities under Green Bond Scheme.

For a more detailed analysis of these and other changes as well as how these changes affect your business click link [Finance Act 2019 analysis](#).

#### **II. Recap of Other Key 2019 Changes**

##### ***Amendments to Company Act***

Perhaps one of the key highlights under the Company Act is the introduction of Beneficial Ownership Regulations 2019. A beneficial owner is described as the “natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement”. The regulations require companies to disclose beneficial owners and maintain a register of

beneficial owners with the Registrar of Companies.

The Register will be accessible to third parties who can easily carry out a search to obtain a beneficial ownership search certificate. Companies and officers that fail to comply with the above will be subject to a penalty of Kshs 500,000 and penalty of up to Kshs 50,000 per day if convicted of such an offense.

This will enable full disclosure in terms of ownership for both private and publicly limited companies. This will enhance transparency in terms of ownership but pose a challenge for companies with complex ownership structures. We outline this and other changes on takeover bids and trademark infringement in our [Alert](#).

### **CGT exemptions**

KRA has implemented measures on Itax to ensure that CGT exempt transactions are subject to approval before being processed on Itax. Initially, taxpayers were only expected to declare such transactions on Itax without further review. In order to ensure accountability and prevent fraudulent declarations, KRA introduced measures that prompt taxpayers to undergo verification and further approval by KRA

officials before proceeding on Itax. The verification will entail a review of key documentation belonging to the seller, sale agreement and supporting documentation. The transactions will not be approved if there are cases of non-compliance and will be subject to tax if found not to qualify for CGT exemption in line with provisions in the Income Tax Act CAP 470.

### **III. What to expect in 2020**

As we kick of the year, we expect various amendments, regulations and Acts to be enacted. Below we touch on some key changes expected to be implemented this year;

#### **SEZ Regulations**

The Ministry of Industrialization has shared Special Economic Zones (SEZ) regulations for public participation and review. The SEZ regulations were drafted to provide clarity and guidance on various areas not covered in the SEZ Act such as;

- Operationalization of Service Level Agreements (SLA) between the SEZ Authority (SEZA) and other Government authorities and bodies. SEZA will enter into SLAs with these entities in order to ease,

consolidate and fast track procedures associated with registration, licensing, authorizations and requirements related to Special Economic Zones. This is aimed at ensuring that all these procedures are under SEZA and that entities or individual operating under SEZ are able to undertake these procedures through a One Stop Shop (OSS) under SEZA.

- Regulations on movement of people and goods in and out of the SEZ Zones- The SEZ Zones are separate Customs Territories for tax purposes as such movement in and out of these zones are subject to Customs Control. The regulations attempt to highlight rules relating to the movement of goods in and out of the SEZ. Although these rules require to be primarily captured under the East African Community Customs Management Act which provides for Customs Management within the EAC region.
- Regulations relating to rights of SEZ zone developers, operators, enterprises and SEZ business

permit holders. These highlight the rights these entities have to operate within SEZ areas.

- Highlight minimum land and capital investment thresholds for investing and setting up an SEZ.
- Regulations on implementation of OSS and the services to be provided by the OSS.
- Sanctions and penalties for various violations as well as labor rules associated with SEZs.

We shall review and analyze the draft regulations and their implications for SEZ stakeholders as well as potential investors.

### **Regulations on taxation of digital economy**

The Finance Act 2019 introduces provisions relating to the digital economy under the Income Tax Act and VAT. The provisions are aimed at indicating that income generated from interaction of buyers and sellers through a digital platform are subject to both Income Tax and VAT in Kenya. There are various loopholes highlighted in our [Alert](#) on the same.

### **Let's Talk**

The National Treasury Cabinet Secretary is set to issue regulations pertaining to digital tax. The regulations are aimed at expounding on how the tax will be implemented and how taxpayers are required to account for the tax. We look forward to seeing how Kenya will implement the tax given the various challenges faced by other countries globally in introducing digital taxation.

### **Income Tax Bill**

The Income Tax Act CAP 470 is set for an overhaul to update the Income Tax Laws to meet current business models, practices and international tax trends. The Income Tax Bill draft was released for public participation in 2018 and to date the bill is yet to be enacted into law. The proposed changes are set to affect provisions relating to withholding tax, transfer pricing, thin capitalization and deemed interest provisions.

The bill is set to provide clarity by providing broader definitions for certain concepts such as control and permanent establishments as well revised rates such as tax rates, employment tax bands and capital allowances. We look forward to

seeing if the proposed amendments set out in the bill will be actualized through the enactment of the new Income Tax Law.

### **Other Draft regulations**

There are various draft regulations that have been issued and shared for public consultation and participation namely;

- Tax procedures (Tax Agent) Draft Regulations 2019;
- Income Tax (Turnover and Presumptive Tax) Draft Regulations 2019;
- Tax Procedures (Alternative Dispute Resolution) Draft Regulations 2019;
- Excise Duty Draft Regulations 2019;
- The Value Added Tax Electronic Invoice Draft Regulations 2019; and
- Business Amendment Law Bill.

We will provide a more detailed analysis of the legislation once it is published in the Gazette.

January 2020

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We look forward to keeping you updated on any tax and legal matters that may affect your business. For further information on any of the areas highlighted above, or assistance on any other matter kindly contact your regular Taxwise Africa Analyst or the contacts below.



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