

SPECIAL ISSUE

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MOMBASA COUNTY ACTS, 2017

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**THE MOMBASA COUNTY TAX WAIVER AND VARIATION
ACT, 2017**

No. 2 of 2017

Date of Assent: 16th June, 2017

Date of Commencement: 23rd June, 2017

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**THE MOMBASA COUNTY TAX WAIVER AND VARIATION
ACT, 2017**

AN ACT of the County Assembly of Mombasa to regulate the waiver and variation of taxes Pursuant to Article 210 of the Constitution of Kenya, 2010 and Section 159 of the Public Finance Management Act, 2012; and for connected purposes;

ENACTED by the County Assembly of Mombasa as follows —

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Mombasa County Tax Waiver and Variation Act, 2017

Commencement

2. This Act shall come into operation upon publication in the *gazette*.

Interpretation

3. In this Act—

“assembly” means the County Assembly of Mombasa;

“executive committee member” means the County Executive Committee Member responsible for Finance;

“Tax” includes any revenue or licensing fee payable by any person to the County Government whether it has become due or not.

“Tax waiver” includes the forbearance of tax collection, partial or full remission, spreading out a payment in respect of tax already accrued and any variation of the amount due or interest or penalty due on any amount owing to the County Government.

Object of the Act

4. The object of this Act is to—

- (a) give further effect to Article 210 of the constitution as regards tax waivers and administration thereof;
- (b) to ensure transparency in the administration of taxes and other revenue in particular in the waivers thereof;
- (c) to provide for the procedure applicable to and requirements for tax waivers.

PART II—ADMINISTRATION OF TAX WAIVERS AND VARIATION

Tax waiver and variation to be in accordance with the law

5. No tax maybe waived or varied except in the manner provided for in this Act, any applicable national legislation or any other Act of the Assembly.

Authority of the Executive Committee Member to waive or vary

6. (1) The executive committee member may, where he or she deems it appropriate, and with concurrence in writing, of the Governor, waive or vary the payment of any tax, fees or other payment due to the county government.

(2) The power of the executive committee member to waive or vary tax shall be exercisable, in respect of every transaction, with the written approval of the Governor, but in any case, in the following circumstances—

- (a) where the waiver or variation is for purpose of encouraging defaulting tax payers to pay such amount as may enable the county government recover part of the amount owing from the defaulting payer;
- (b) where, in the opinion of the county executive committee member, there exist such compelling circumstances that make it equitable, expedient and in the interest of the financial advantage to the county that the waiver or variation be made;
- (c) for any other public interest reason, in consultation with the Governor.

Publication of intention to waive or vary

7. (1) Where the executive committee member intends to waive or vary any tax, he or she shall publish such intention in the gazette not less than fourteen days before the intended date of the waiver or variation.

(2). The notice referred to in sub-section (1) shall indicate the reason for the intended waiver or variation and shall invite comments from the public on the intended waiver or variation.

Report of waivers and variations

8. Every waiver and variation shall be reported to the Assembly and published in the Gazette not more than fourteen days after it is granted.

Records of tax waiver and variations

9. Pursuant to Article 210 of the Constitution, the executive committee member shall in respect of every waiver or variation of tax—

- (a) maintain a public record of each waiver or variation together with the reason for it;
- (b) report to the Auditor-General and the Assembly, each waiver or variation, and the reason for it.

No waivers for public officers

10. The Executive Committee Member shall not waive or vary tax or fees or authorise the exclusion of a State Officer or Public Officer from payment of tax or fees by reason of the office held by the State Officer or public officer or the nature of the work of the State Officer or Public Officer.

PART III — MISCELLANEOUS**Regulations**

11. (1) The Executive Committee Member may, with the approval of the Governor, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to provide for the procedure in accordance with subsection (1), the regulations may provide for—

- (a) the procedure of application for tax waivers and variations;
- (b) where any payment of tax is due, the time within which waivers may be applied for;
- (c) the requirement with respect to documentation that may be required with the application for tax waivers or variations.

