

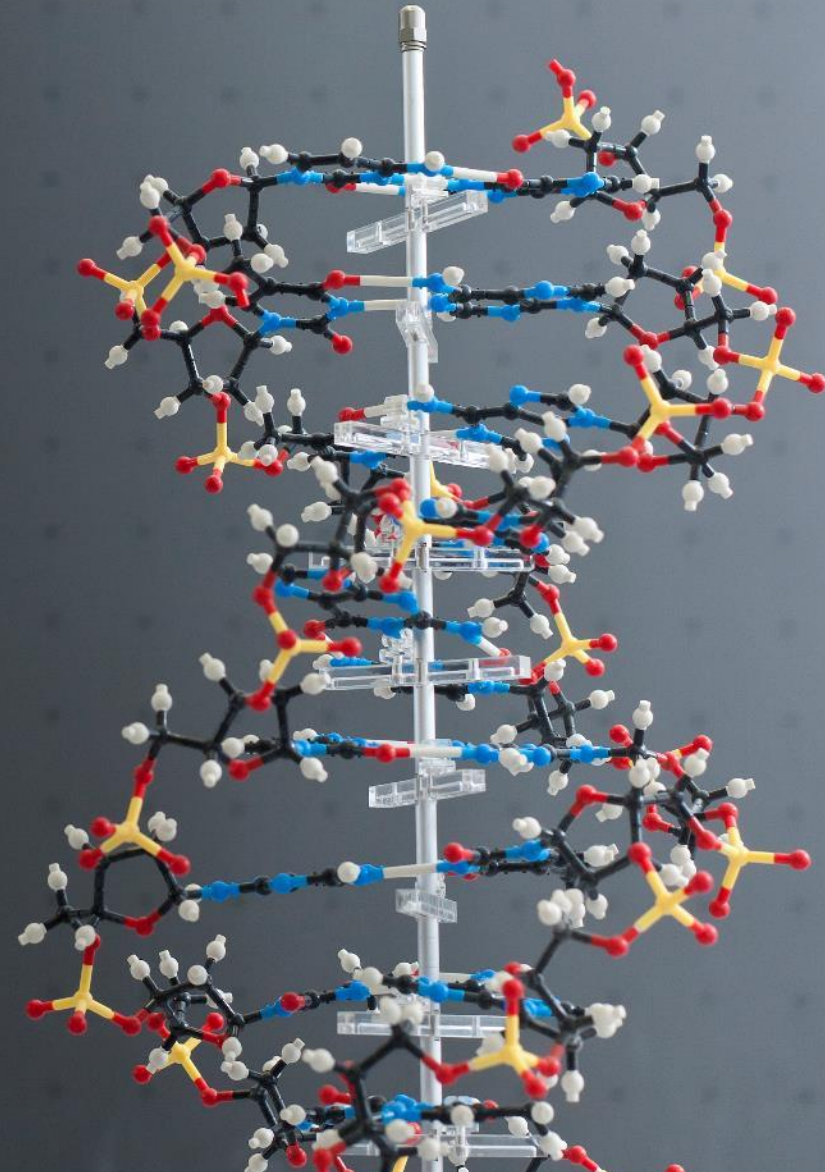


The Tax Laws (Amendment) Bill, 2020

A KPMG analysis

April 2020

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Preamble

The Coronavirus (COVID-19) has had a devastating impact on people's health. The virus which has now been declared a global pandemic presents an alarming social and economic crisis for Kenya and the world at large.

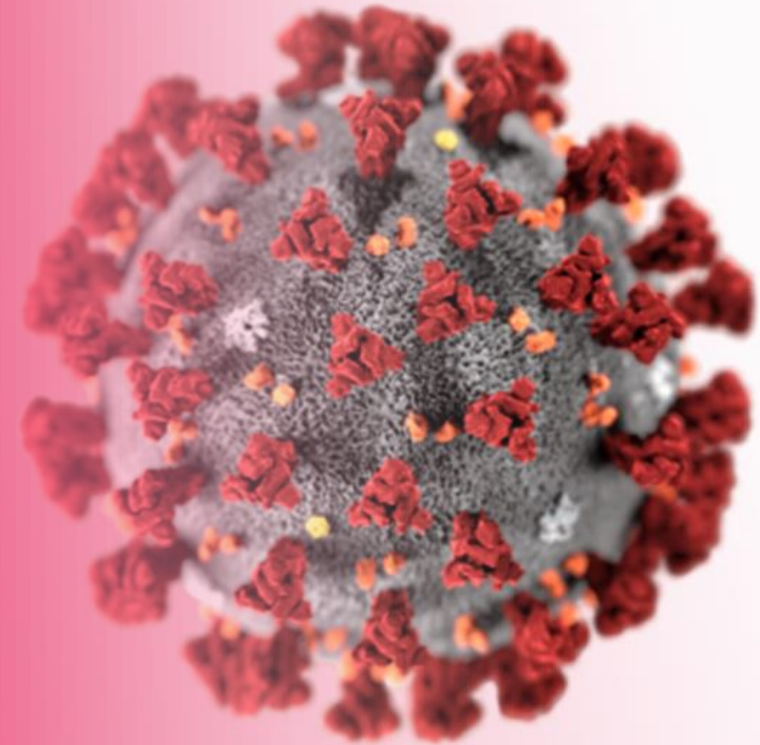
Businesses and people are grappling with uncertainties brought about by COVID-19. The uncertainties revolve around individuals' ability to meet their day to day needs over the coming months and the sustainability of businesses due to supply chain disruptions, social distancing and reduced consumer spending.

As businesses and individuals continue adapting to the new operating environment, governments have been forced to take unprecedented measures to protect their citizens, businesses and economies. The measures which are in form of stimulus packages and social safety net programs are designed to provide relief during the current COVID-19 shutdowns and to facilitate quick recovery once the pandemic is brought under control.

On 25 March 2020, the President of the Republic of Kenya outlined the measures the government intends to make to cushion the country against the economic effects of COVID-19. These measures have now been submitted to the National Assembly under the Tax Laws (Amendment) Bill, 2020 (the Bill) for consideration and approval.

While the President in his speech outlined specific interventions aimed at increasing the spending power of individuals and cash flows for businesses, the Bill implementing the changes goes beyond the COVID-19 interventions to introduce drastic changes to the tax incentives and exemption regime which potentially water down the tax reductions.

We provide in the ensuing pages our analysis of the proposed changes, together with the impact they will have on the economy.





Income Tax Act



Income Tax

All commencement upon assent

Final tax on all interest income

Proposed provision: The Tax Laws (Amendment Bill) 2020 proposes to revise the definition of qualifying interest.

Previously, qualifying interest only referred to interest received by a resident individual from a bank, building society, central bank and from housing bonds. The Bill now seeks to classify any interest received by a resident individual as qualifying. As such, the withholding tax on such interest shall be final tax.

Implication: This amendment aims at encouraging individuals to save and invest in various debt instruments issued by other non-financial institutions.

Relieve for small businesses

Proposed provision: The Bill seeks to extend the turnover tax provisions to persons with annual turnover between KES 500,000 and KES 50 million (from the current upper limit of KES 5million). It has also proposed to remove the limitations that meant that companies and earners of rental and professional income could not be taxed under turnover tax. Lastly, the Bill has proposed to reduce the turnover tax from 3% to 1%.

The Bill also seeks to do away with the presumptive tax that was paid by small businesses at the time of applying for business permits and treated as an advance turnover tax

Implication: This is a welcome move which reduced the tax burden for small businesses. The proposal will also significantly simplify the tax compliance requirements for such businesses following the tenfold increase in the upper revenue limit.

However, it will be important to consider the following:

- a) Clarify the status of businesses with turnover below KES 500,000;
- b) Consider raising the VAT registration threshold to KES 50million;

- c) Exclude the businesses registered for turnover tax from withholding tax on their income which is deducted at a higher rate of 5% and will lead to perpetual tax credits.

Short lived electricity rebate?

Proposed provision: The Bill is proposing to do away with the 30% electricity rebate awarded to manufacturers to cushion them against the high cost of electricity. This rebate was introduced by the Finance Act, 2018 and only came in force starting January 2019.

Implication: Introduction of the rebate in 2018 was a welcome move for manufacturers as it would reduce their electricity cost which is one their significant direct expense especially with the rising power costs. The introduction was seen as the government's incentive to promote manufacturing in line with its Big Four Agenda.

This will be a big blow for the manufacturing sector after effectively only enjoying the rebate for one financial year.

Blow for listed entities

Proposed provision: The Bill is proposing to disallow for tax purposes some expenses incurred by listed entities and companies looking to list at the Nairobi Securities Exchange (NSE). These expenses include:

- Legal and other incidental costs relating to authorization and issue of shares for purchase by the general public;
- Legal and other incidental costs relating to listing of existing shares at the NSE; and
- Rating expenses incurred for the purpose of listing at the NSE.

In addition to the above, the Bill is proposing to remove the preferential tax rates for newly listed companies which ranged between 27.5% and 20%. This is possibly because the corporate tax rate is to be reduced to 25%.

Income Tax

All commencement upon assent

Blow for listed entities - cont'd

Implication: Ordinarily, legal and incidental costs incurred during a listing process or where a company is looking to raise additional capital at the NSE can be significant. Disallowing the expenses for corporation tax will increase the tax bill of companies looking to list or float shares at the NSE. This will diminish the attractiveness of the NSE for companies wishing to list their shares.

Non-deductible expenses

Proposed provision: In addition to the non-deductible expenses aimed at listed entities, the Bill is proposing to disallow the deduction of the following expenses:

- Subscription and entrance fees to trade unions that have elected their income to be treated as taxable income;
- Club subscription fees; and
- Approved expenses on construction of public schools, hospitals, roads and similar social infrastructure.

Implication: The trade association subscriptions and club subscriptions are likely to affect several companies although the impact may not be as significant. The disallowing of expenses relating to social infrastructure projects will be a big blow to communities that benefit from such social infrastructures. This is because potential donors will be discouraged from investing in social welfare projects if the expenses will not be allowable against their income for tax purposes. This is also not consistent with provisions in the ITA allowing deduction of charitable contributions made in cash.

Relief for resident companies

Implication: The government intends to cushion companies from Covid-19 related adverse economic implications through a reduction in corporation tax rate from 30% to 25%. This is intended to ensure companies remains afloat during and after the Covid-19 pandemic.

However, the bill as currently drafted does not include a provision introducing the new corporation tax rate and therefore the directive from the President will not have legal backing should the Bill be passed in its current form.

Despite the above, the intended reduction of the corporation tax rate is a welcome move for resident companies. Unfortunately, the corporate tax rate for non-resident companies operating branches in Kenya remains at 37.5% even though they are also affected by the pandemic.

Negative strides on plastics war

Proposed provision: The Bill is proposing to delete Head B of the Third Schedule to the ITA that introduced a reduced corporation tax rate on companies operating a plastics recycling plant. The reduced rate was 15% for the first five years from the time they started operating. As a result, they shall be subject to the corporation tax rate of 25% applicable to resident companies.

Implication: This move erodes the efforts that the government has made in the recent past to protect the environment through deliberate measures such as banning the use of plastic bags, promoting the setting up of recycling plants among others.

Income Tax

All commencement upon assent

Capital allowances amendments

The following are some of the proposed changes regarding capital deductions applicable in Kenya:

Description	New rate (%) – Reducing balance	Old rate (%) – Reducing balance
Investment Deduction		
Buildings used for manufacture*	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	100
Machinery used for manufacture	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	100
Industrial Building Allowance (IBA)		
Hotel buildings*	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	10
Hospital buildings*	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	-
Petroleum or gas storage facilities	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	-
Educational building*	10	50
Commercial building*	10	25

* Cost of land excluded from the qualifying cost.

Description	New rate (%) – Reducing balance	Old rate* (%) – Reducing balance
Wear and Tear (WTA)		
Hospital equipment	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	12.5
Ships	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	100
Aircrafts	<ul style="list-style-type: none"> 50 - first year 25 - per year on balance 	25
Heavy earth moving	25	37.5
Motor vehicle*	25	25

* Qualifying cost for saloon cars is KES 3,000,000

Capital allowances amendments

The following are some of the proposed changes regarding capital deductions applicable in Kenya:

Description	New rate (%) – All on reducing balance (RB)	Old rate* (%)
Wear and Tear (WTA)		
Computer & computer peripheral hardware Calculators, copiers and duplicating machines	25	30
Furniture & fittings	10	12.5
Telecommunications equipment	10	20
Filming equipment by a local film producer	25	100
Machinery used to undertake operations under a prospecting Right	<ul style="list-style-type: none"> • 50 - first year • 25 - per year on balance 	37.5 or 12.5
Machinery used to undertake Exploration operations under a mining right	<ul style="list-style-type: none"> • 50 - first year • 25 - per year on balance 	37.5 or 12.5
Other machinery	10	12.5
Other Allowances		
Software	25	20
Purchase or an acquisition of an indefeasible right to use fiber optic cable by a telecommunication operator	10	20
Farm works	<ul style="list-style-type: none"> • 50 - first year • 25 - per year on balance 	100

- Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.

Our comments

While the proposed Bill has introduced some new capital allowances, it has decelerated the rate at which the previous capital allowance were claimable, reducing their impact on businesses in the short run. This change will greatly erode the effectiveness of the proposed reduction in corporation tax from 30% to 25% for resident companies.

If the government is keen on cushioning businesses against the economic shocks arising from the COVID-19 pandemic, it should consider retaining the previous capital allowances and provide additional incentives for businesses significantly impacted by COVID-19.

Income Tax

All commencement upon assent

Income Tax

All commencement upon assent

Deleted exemption provisions

Proposed provisions: The Bill proposes to delete tax exemptions on some incomes and organizations. Most of these incomes relate to organizations or agreements that no longer exist or agreement that have lapsed, making the exemptions obsolete. Some of these entities/agreements include:

- Tea Board of Kenya,
- The Pyrethrum Board of Kenya,
- The Sisal Board of Kenya,
- The Kenya Dairy Board,
- The Canning Crops Board,
- The Central Agricultural Board,
- The Pig Industry Board,
- The Pineapple Development Authority,
- The Horticultural Crops Development Authority,
- The Kenya Tea Development Authority,
- The National Irrigation Board,
- The Mombasa Pipeline Board,
- The Settlement Fund Trustees,
- The Kenya Post Office Savings Bank,
- The Cotton Board of Kenya
- Education grant paid by Government of UK under an agreement between the Governments of Kenya and UK.
- Interest, management and professional fees derived in Kenya by a Non-resident entity without permanent establishment paid by Tana River Development Authority
- The income derived in Kenya by the General Superintendence Company Limited, a company incorporated in Switzerland, under the agreement of company and Central Bank of Kenya

Deleted exemption provisions

- Interest on a savings account held with the Kenya Post Office Savings Bank
- Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act (Cap. 488).
- Interest paid on loans granted by the Local Government Loans Authority established under the Local Government Loans Act .
- Income from the East African Power and Lighting Company;
- The income received by way of remuneration under any contract which was entered into consequent upon financial assistance from International Co-operation Administration; and
- Interest on any tax reserve certificates which may be issued by authority of the Government.

Part II of to the First Schedule has been repealed in its entirety.

Implication: This section constituted income of securities and interest from institutions which no longer exist such as income from Sceptre Trust Limited and Colonial Development Corporation.

Income Tax

All commencement upon assent

Previously exempt income subject to tax

Other income that will now be subject to tax include:

- Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company;
- Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, as well similar income under Green bonds standards and guidelines that has maturity of at least three years;
- Interest income generated from cash flows passed to the investor in the form of asset-backed securities.
- Income of the National Social Security Fund (NSSF)

Implication: the removal of the tax exemption on infrastructure bonds will make government debt less attractive to investors making it harder for the government to meet its debt funding requirements.

Implication: While the proposals are reasonable on the basis that most of these entities no longer exist, the NSSF fund will be specifically affected by this proposal since taxing its income will result in reduced amounts available for payout to our ageing members of the society.

Expanding Capital Gains Tax net

Proposed Bill: The bill proposes to only exempt gains derived from the transfer of property done for the purpose of administering the estate of a deceased person provided the transfer is completed within two years of the death of the deceased.

However, where there is an ongoing court case regarding such estates, the exemption period shall be a maximum of two years after the finalization of such court cases.

Other repealed exemptions include gains from:

- a) the transfer of a private residence which the owner has occupied continuously for three years;
- b) the transfer of land with a value of less than KES 3million;
- c) the transfer of agricultural land of less than 50acres

Implication: The proposals are part of government measures to bring to the tax base property disposals by individuals. The measure targets small value disposals which were previously exempted from tax.



Pay As You Earn



Pay As You Earn

All commencement upon assent

Enhancement of PAYE tax bands and personal relief

Proposed provision : The Tax Laws (Amendment) Bill 2020 proposes to expand the Individual PAYE bands as follows:

New Tax Bands		Old Tax Bands	
First KES 288,000	10%	First KES 147, 580	10%
Next KES 200,000	15%	Next KES 139,043	15%
Next KES 200,000	20%	Next KES 139,043	20%
Above KES 688,000	25%	Next KES 139,043	25%
		Above 564,709	30%

Further the bill proposes to increase the personal relief from **KES 16,896 to KES 28,800**. Effectively all income below KES 28,800 per month will be exempt from tax.

Implication: The above changes will increase the taxpayer's disposable income. Previously only income below KES 13,486 was exempt from tax, with the changes effectively doubling the tax exempt income. For a person earning a monthly income of KES 40,000, the change will result in additional take home of approximately KES 2,600.

Being annual rates, the above change will impact 2020 income once it is approved. It is will be important to clarify the implications of the change on persons who have paid tax on the first three months under the old rates.

Enhancement of tax rates in respect of payments or withdrawals from pensions

Proposed provision : In line with the changes to the PAYE bands, the Bill also proposes to enhance the tax bands for taxation of withdrawals from NSSF, registered pension funds and provident funds where the withdrawals are in excess of the tax-free amounts specified under Section 8(4) and 8(5) of the Income Tax Act, in any one year.

- i. The new tax rates are as follows:
- ii. For withdrawals after the expiry of fifteen years from the date of joining the fund:

New Tax Rate		Old Tax Rates	
First KES 400,000	10%	First KES 400,000	10%
Next KES 400,000	15%	Next KES 400,000	15%
Next KES 400,000	20%	Next KES 400,000	20%
Above KES 1,200,000	25%	Next KES 400,000	25%
		Above 1,600,000	30%

- iii. For withdrawals before the expiry of fifteen years from the date of joining the fund:

New Tax Rate		Old Tax Rates	
First KES 288,000	10%	First KES 147, 580	10%
Next KES 200,000	15%	Next KES 139,043	15%
Next KES 200,000	20%	Next KES 139,043	20%
Above KES 688,000	25%	Next KES 139,043	25%
		Above 564,709	30%

In addition to the above, the Bill also proposes to reduce the tax rate on surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds from 30% to 25%.

Implication: As is the case with the enhancement of the PAYE bands, this change will result in an increase in the disposable income for tax payers. It will also act as an incentive to save for retirement due to the enhanced post-retirement take-home.



Pay As You Earn

All commencement upon assent

Tax on Bonus for Low Income Earners

Proposed provision : The bill proposes to delete the section exempting from tax, income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band provided under Head B of the Third Schedule.

Implication: This amendment seeks to tax the bonuses, overtime and retirement benefits which had initially been exempted through the Finance Act 2016. This will result in a reduction of disposable income for low income earners.

Previously, employees whose taxable employment income before bonus and overtime allowances did not exceed the lowest tax band (below KES 12,298 per month) would not be subject to PAYE on receipt of bonuses and overtime allowance over and above their basic pay.

Following the expansion of the PAYE bands, the Bill now proposes to eliminate the tax exemption on bonuses and overtime allowances paid to low income employees. Given the current difficult economic environment , we recommend that the incentive be retained especially given that it rewards those employees in the low income category who work hard and are recognized by their employers for dedication to their jobs. Such dedication will be critical as the country seeks to recover from the effects of COVID-19.

Taxation of previously Exempt Income & Persons

Proposed provision : The bill proposes to delete the following exemptions:

- i. The emoluments of any officer of the Desert Locust Survey who is not resident in Kenya;
- ii. Employment Income of US Citizens who are employed by the Department of Agriculture of the US on research work in co-operation with Government;
- iii. Foreign allowances for any officer of the Government or of the Community paid from public funds in respect of his office;
- iv. Payment to a person employed in the public service in respect of disturbance made in connection with a change in the constitution of the Government of a Partner State.; and
- v. An individual's income relating to sale of shares in the stock or funds of the Government, the High Commission or the Authority established under the Organization or the Community, shares of a local authority, private residence and property (being land) transferred.

Implication: This amendment seeks to broaden the tax base since individuals and income that were previously exempt are now subjected to tax. However, the move will also eliminate exemptions which are no longer applicable especially those that relate to former employees of defunct East Africa Community which was dissolved in 1977.



Withholding Tax





Withholding Tax

All commencement upon assent

Withholding Tax on Dividends

Proposed provision : The Bill proposes to increase the WHT rate on dividends paid to non-residents persons from 10% to 15%.

Implication: The proposed increase claws away the benefit from the proposed reduction of the corporation tax rate, with foreign persons operating in Kenya through subsidiaries or branches now subject to higher tax rates compared to local companies.

The proposed change will now favour companies from countries with whom Kenya has signed Double Tax Agreements as they will continue to enjoy lower WHT rates.

The higher dividend withholding tax rates will make it harder for Kenya to attract foreign direct investments especially in the era of the Africa Continental Free Trade area where companies can set base in countries with advantageous corporation tax regime but still have access to the wider Africa market, including Kenya.

WHT on re-insurance premiums

Proposed provision : The Bill proposes a change to the charging section to provide for the imposition of tax at the rate of 5% on reinsurance premiums paid to non-residents.

Implication: Taxation of reinsurance premiums paid to non-resident persons was introduced through the Finance Act 2019 but the changes were not made to the charging section with the implication that the charge could not be implemented. The current change seeks to address this omission.

WHT on marketing, sales promotion & advertising

Proposed provision : The Bill proposes to amend the ITA by expanding the services subject to WHT to include marketing, sales promotion and advertising services provided by non-resident persons at the rate of 20%.

Implication: While the marketing and sales promotion services were already subject to tax under payments for professional and management fees, the change brings clarity on the taxation of advertising services and it is now clear that all payments to non-resident persons for advertising services attract withholding tax.

WHT on transportation of goods

Proposed provision : The Bill proposes to expand the WHT base by including transportation of goods by non-residents among the services which are subject to WHT at the rate of 20%. However, air and shipping transport services will be excluded from the change.

Implication:

The change will increase cost of transportation by non-residents persons reducing the attractiveness of Kenyan ports especially for transshipment cargo.

The amendment is also untimely as transportation services are critical especially during the current economic downturn. It would be prudent if the government considers deferring its implementation.



Value Added Tax Act



Value Added Tax Act

All commencement upon assent

Definition: ordinary bread

Proposed provision : The Bill has proposed an amendment to the definition of ordinary bread to mean bread containing only the following ingredients; wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water. The bill also proposes to exempt the supply of ordinary bread from VAT.

Implication:

The expanded definition implies that bread made out of any other ingredients other than those specified in the bill will now be VATable.

The supply of ordinary bread is currently zero rated and the proposal to move it to exempt status will increase the price of bread as the input VAT incurred in the manufacturing process will not be claimable. The proposed change is untimely especially when many citizens are facing economic difficulties as a result of the COVID-19 related economic down-turn.

Issuance of credit notes

Proposed provision : The amendment proposes to allow for issuance of credit notes within 30 days after the determination of a commercial dispute in a court of law in regards to the price payable on the tax invoice. This is in addition to the current legislation that allows a credit note to be issued within six months of the relevant tax invoice.

Implication:

This provision aims to provide relief to suppliers in instances where court resolution of disputes in regards to the price payable on the tax invoice takes more than six months from the date of supply. This will ensure that suppliers can get a relief on determination of such cases. This proposal should be expanded to include disputes concluded through arbitration which is now one of the preferred methods of resolving disputes.

VAT on Fuel & Liquid Petroleum Gas

Proposed provision : The bill has proposed to include excise duty, fees and other charges in computing the taxable value for fuel.

The bill has also proposed to introduce VAT on Liquid Petroleum Gas (LPG).

Implication: This proposal will increase the cost of fuel and LPG which may counteract the reduction of the VAT rate from 16% to 14%. Further, the inclusion of excise duty and other charges in the computation of the VAT on fuel will significantly increase the VAT cost of fuel negating the decision to charge a lower VAT rate of 8%.

This will trigger an increase in consumer prices of most products that use fuel in the manufacturing process as well as thousands of homesteads, hotels that rely LPG as source of cooking energy.

Keeping of records

Proposed provision : The bill proposes that all persons maintain records of transactions for a period of five years.

Implication: The bill has now extended the scope of maintaining of records to capture all persons, whether registered for VAT or not. Previously, only VAT registered persons were required to maintain records for a period of five years.

VAT: Refund on bad debts

Proposed provision : The bill has proposed to reduce the time limit of applying for a refund on bad debts from five years to four years from the date of supply.

Value Added Tax Act

All commencement upon assent

Definition: Tax rate changes (Goods - Zero-rated to Exempt)

Details	New rate	Old rate
Milk and cream, not concentrated nor containing added sugar or other sweetening matter	Exempt	0%
Vaccines for human and veterinary medicine	Exempt	0%
Medicaments	Exempt	0%

Definition: Tax rate changes (Goods - Zero rated to standard rated

Details	New rate	Old rate
All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.	14%	0%
Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya.	14%	0%
Agricultural pest control products	14%	0%
The supply of liquefied petroleum gas including propane.	14%	0%

Value Added Tax Act

All commencement upon assent

Definition: Tax rate changes (Goods - Exempt to Standard Rated)

Details	New rate	Old rate
Plants and machinery of Chapter 84 and 85 used for the manufacture of goods.	14%	Exempt
Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy.	14%	Exempt
Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act, production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be.	14%	Exempt
Fertilisers of Chapter 31	14%	Exempt
Taxable supplies, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas	14%	Exempt
Helicopters	14%	Exempt
8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.	14%	Exempt
8803.30.00 Other parts of aeroplanes and helicopters.	14%	Exempt
8805.21.00 Air combat simulators and parts thereof.	14%	Exempt
8805.10.00 Aircraft launching gear and parts thereof; deck-arrestor or similar gear and partsthereof.	14%	Exempt
8805.29.00 Other ground flying trainers and parts thereof.	14%	Exempt
Made-up fishing nets of man-made textile material of tariff No. 5608.11.00.	14%	Exempt

Value Added Tax Act

All commencement upon assent

Definition: Tax rate changes (Goods - Exempt to Standard Rated)

Details	New rate	Old rate
Mosquito nets	14%	Exempt
Materials, waste, residues and by-products, whether or not in the form of pellets, and preparations of a kind used in animal feeding	14%	Exempt
Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power upon the recommendation of the Cabinet Secretary responsible for matters relating to energy.	14%	Exempt
Tractors other than road tractors for semitrailers.	14%	Exempt
Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum.	14%	Exempt
Aircraft tyres	14%	Exempt
Plastic bag biogas digesters	14%	Exempt
Biogas	14%	Exempt
Leasing of biogas producing equipment.	14%	Exempt
Parts imported or purchased locally for the assembly of computer, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology.	14%	Exempt
Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.	14%	Exempt
Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization	14%	Exempt
Museum and natural history exhibits and specimens and scientific equipment for public museums.	14%	Exempt
Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.	14%	Exempt

Value Added Tax Act

All commencement upon assent

Definition: Tax rate changes (Goods - Exempt to Standard rated)

Details	New rate	Old rate
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.	14%	Exempt
Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy.	14%	Exempt
Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy.	14%	Exempt
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbecues, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, or iron or steel of tariff numbers 7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00.	14%	Exempt
Goods falling under tariff number 4907.00.90.	14%	Exempt
Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.	14%	Exempt
Materials and equipment for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.	14%	Exempt
The transfer of a business as a going concern by a registered person to another registered person.	14%	Exempt
Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department.	14%	Exempt
Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.	14%	Exempt
One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse and which is not exempted from Value Added Tax	14%	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant.	14%	Exempt

Value Added Tax Act

All commencement upon assent

Definition: Tax rate changes (Exempt to Standard rated)

Details	New rate	Old rate
Insurance agency, insurance brokerage, securities brokerage services	14%	Exempt
Hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00"	14%	Exempt
Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.	14%	Exempt
Entry fees into the national parks and national reserves.	14%	Exempt
The services of tour operators, excluding in-house supplies.	14%	Exempt
Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for recreational parks.	14%	Exempt
Taxable services, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.	14%	Exempt
Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities.	14%	Exempt
Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.	14%	Exempt

Value Added Tax Act

All commencement upon assent

KPMG comments

- The reclassification of medicaments and basic foodstuffs like milk and bread from zero rated to exempt category will have an adverse effect on the pricing of these products. This is because manufacturers will be unable to claim input VAT incurred in the production process forcing them to pass on the cost through increases in prices. This will increase the cost of medicine that is urgently required to fight the Covid-19 pandemic.
- The introduction of VAT on plant and machinery used in manufacture will significantly affect the cost of production more so where the products are now exempt, for example, medicaments as the manufacturers will not be able to claim the input VAT. Due to the high value of most machinery, this change will have significant financing implications for businesses who will have to make the financial outlay and wait to recover the input VAT over an extended period.
- The Bill has proposed to introduce VAT on previous exempted concessions accorded by the Cabinet Secretary on taxable supplies incurred on construction of power generating plants, liquefied petroleum gas storage, specialized equipment for the development and generation of solar and wind energy, and inputs or raw materials supplied to solar equipment manufacturers. This is likely to increase the cost of producing power in the country and also deter future investments in these sectors.
- The introduction of VAT on tourism facilities including parks fees, services of tour operators and taxable goods used in the construction of tourism facilities is likely to adversely affect the tourism industry which has been adversely affected by the COVID-19 pandemic and requires significant help in the recovery phase once the pandemic is controlled.
- The VAT rate on agricultural pest control products has been oscillating between 0% and 16%, since 2017. As recently as the Finance Act 2019, the VAT rate for these products was revised to 0%. The Bill now proposes to subject these products to 14% VAT. The unpredictability in the VAT rate on agricultural pest control products will have a serious impact on the agricultural sector, a key component of the Big 4 main agenda. This coupled with the introduction of VAT on tractors and fertilizers will increase the cost of agricultural production, significantly impacting farmers who are already battling the effects of unpredictable rainfall, locusts, low prices for their produce and supply chain disruptions.
- The transfer of business as going concern is now VATable. This is an important consideration for firms investing in new businesses or firms consolidating their businesses as it requires significant upfront cash outlays which is subsequently recovered as input over an extended period of time.
- Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more will now be VATable. This will negatively impact investments in the industrial parks which have recently attracted significant interest from investors.



Excise Duty Act



Excise Duty

All commencement upon assent

Sugar confectionery

Proposed provision : The Bill seeks to amend the Excise Duty Act by reintroducing Excise Duty on locally manufactured sugar confectionery and white chocolate.

Through the Finance Act, 2019, locally manufactured sugar confectionery and chocolate were excluded from the purview of Excise Duty. However, the bill now seeks to reintroduce Excise Duty on locally manufactured confectionery as tabulated below:

As a result, the revised description will be as follows:

Particulars	Rate
Sugar confectionery - not containing cocoa	KES 20/kg
White chocolate (blocs, slabs or bars) – containing cocoa	KES 200/kg

Who will be affected

Local manufacturers of sugar confectionery and chocolate products.

Implication: The additional cost will negatively impact the local manufacture of these products who were previously protected through the excise duty on imported products.

"Other fees"

Proposed provision : The Bill seeks to amend the definition of other fees by deleting the words "licensed financial institutions" appearing in the definition of the term "other fees" and substituting with the words "licensed activities".

Implication: The change corrects a drafting error in the previous provision but also provides an important clarification that the excise duty will only apply to licensed activities of financial institutions. This effectively remedies instances where financial institutions were forced to charge excise duty on services which non-financial institutions could offer without charging excise duty.

Amendment of the exemption schedule

Proposed provision : The Bill seeks to amend the Second Schedule to the Excise Duty Act by deleting the following from the list of exempt supplies:

- Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

Implication: The above is consistent with changes under the VAT Act to remove the exemption and is part of the wider move to drastically reduce the goods and services which falling under the zero-rated and exempt categories.



Tax Procedures Act



Tax Procedures Act

All commencement upon assent

Revenue Agents

Proposed provision: The Bill proposes to amend the TPA to empower the Commissioner to appoint persons registered under the Banking Act to agents for revenue banking services under an agreement. The institutions that will be appointed for this purpose will have two days to deposit the money with Central Bank failure to which they will face a penalty of 2% of the amount collected and not deposited. The penalty will be compounded for each day that the failure continues.

Implication: The change will provide the legal basis for the current arrangement where KRA has tax collection bank accounts with different banks. The change will also mean that banks will now have an obligation to transfer funds collected in such KRA accounts within two days to the central bank without KRA having to request or to follow up on this to be done.

However, imposing of penalties for delayed remittance of funds may act as a disincentive for banks to be enrolled in such a program.

Publication of private rulings

Proposed provision: The Bill seeks to delete the requirement for the Commissioner to publish private rulings in the newspapers. It also deletes the section that allowed taxpayers to take and use such published rulings as binding on the Commissioner with respect to the application of the relevant tax law to the facts set out in the ruling.

Implication: The Commissioner has had a challenge on complying with the requirement to publish private rulings in the newspapers. While this may now help to reduce the administrative burden, it takes away the benefit that was intended for tax payers to rely on published rulings to structure their business and settle similar disputes with KRA.

Time limit for private rulings

Proposed provision: The Bill has deleted the provision in the TPA which required the Commissioner to issue private rulings within 45 days from the receipt of the application.

Implication: Effectively, the Commissioner has no time limit for issuing such rulings which defeats the purpose of such rulings. Tax certainty in a world evolving faster than the rules is important for business operations. It would be important to retain the deadline to facilitate quick responses to requests for clarifications which are important in assisting taxpayers to comply with their tax obligations.

Reduction of Turnover tax return penalty

Proposed provision: The Bill seeks to reduce the penalty for failure to submit returns for turnover tax from KES 5,000 to KES 1,000

Implication: This proposed amendment will be a welcome relief to small businesses. Such businesses were required to file monthly turnover tax returns from January 2020. The move will assist small business to comply and assist KRA to add tax payers to its data base.



Miscellaneous Fees & Levies Acts





Miscellaneous Fees & Levies Acts

All commencement upon assent

Import declaration fees

Proposed provision: The Bill seeks to remove the exemption for Import Declaration Fee (IDF) on gifts or donations (excluding motor vehicles) sent by foreign residents to their relatives in Kenya for their personal use, samples which in the opinion of the Commissioner have no commercial value, raw materials for direct and exclusive use in construction by developers or investors in industrial parks, goods imported for the construction of liquefied petroleum gas storage facilities and goods imported for implementation of projects a under special operating framework arrangement with the Government. The Bill however provides an opportunity for anyone to apply to the Cabinet Secretary for exemption from IDF irrespective of the nature or value of the goods.

Implication: The proposed amendment will result to more revenues from IDF on items that were previously exempted. Investors and other importers alike will however have a chance to apply for exemption from IDF.

Railway Development Levy

Proposed provision: The Bill seeks to remove the exemption from Railway Development Levy (RDL) on raw materials for direct and exclusive use in construction by developers or investors in industrial parks , goods imported for the construction of liquefied petroleum gas storage facilities and goods imported for implementation of projects under a special operating framework arrangement with the Government.

Implication: The proposed amendment will increase revenues to the KRA . Similar to IDF, investors and other importers will have a chance to apply to the Cabinet Secretary for exemption from RDL irrespective of the nature or value of the goods.

Processing fee on duty free vehicles

Proposed provision: The Bill seeks to introduce a processing fee of KES 10,000 on motor vehicles imported duty free by the persons or groups listed under the Fifth Schedule to the East African Community Customs Management Act for example presidents, donor agencies, disabled persons and rally drivers.

Implication: The proposed amendment help the KRA to recover the costs it incurs to clear the duty free vehicles.



Other Acts





Kenya Revenue Act

All commencement
upon assent

Kenya Revenue Act

Proposed provision: The Bill seeks to amend the Kenya Revenue Act to empower the KRA to reward KES 500,000 to anyone who provides information to KRA leading to enforcement of tax laws. This provision will only apply where KRA has not awarded the informer for identification of unassessed duties taxes or recovery of unassessed duties or taxes.

Implication: The proposed amendment will provide an additional incentive for persons to provide information to KRA on tax defaulters.



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