The Tax Laws (Amendment) Act, 2020

A KPMG analysis

April 2020

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Preamble

The Coronavirus disease (COVID-19) has had a devastating impact on people's health and livelihoods. The virus which was recently 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. The collapse of airline and tourism industries, together with the rapidly falling global petroleum prices are just but a few examples of the devastation caused by the pandemic which is likely to have long term implications on social and economic trends for many years to come.

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 were submitted to the National Assembly under the Tax Laws (Amendment) Bill, 2020 (the Bill) for consideration and approval. A month since he outlined his proposals, he assented to the Tax Laws (Amendment) Act, 2020 (the Act) on **25 April 2020**. While the Act provides specific interventions to aid the fight against COVID-19, the changes go beyond COVID-19 interventions include radical overhauls to the tax incentives and exemption regime.

We provide in the ensuing pages our analysis of the enacted changes which take effect from **25 April 2020**, other than the changes to the taxation of fuel which the government has deferred to **15 May 2020.**

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Income Tax Act

Income Tax

Effective from 25 April 2020

Final tax on all interest income

Enacted Provision: The Tax Laws (Amendment Act) 2020, has revised 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 Act now classifies any interest received by a resident individual as qualifying. As such, the withholding tax of 15% on such interest shall be final tax.

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

Reprieve for small businesses

Enacted Provision: The Act has extended the turnover tax provisions to persons with annual turnover between KES 1 million and KES 50 million (from the current upper limit of KES 5 million). It has also extended turnover tax to include the income of incorporated companies which were previously excluded. Lastly, the Act has reduced the turnover tax rate from 3% to 1%.

The Act has done away with the presumptive tax that was paid by small businesses at the time of applying for business permits. However, professional and management fees and rental incomes are still excluded from turnover tax.

Implication: This is a welcome move that significantly reduces the tax liability and compliance obligations for businesses with turnover below KES50m.

However, there is need to address the following:

a) Clarify the status of businesses with turnover below KES 1 million. Are these exempt from tax?;

b) Treatment of incorporated companies earning professional fees and rental income; and

c) Clarify whether taxpayers can switch between income tax and turnover tax depending on their turnover.

Away with the electricity rebate

Enacted Provision: The Act has done away with the 30% electricity rebate awarded to manufacturers. This rebate was introduced by the Finance Act, 2018 and only came in force starting January 2019.

Implication: The rebate which was introduced in 2018 was designed to cushion manufacturers against the high cost of electricity, which is one of the reasons why the sector is not regionally and globally competitive.

The rebate has been in place for less than one year since the criteria for its computation was only published in July 2019. This time is not sufficient to assess the effectiveness of the incentive.

The removal of the incentive is a blow to the manufacturing sector which is a critical part of the Big Four Agenda. The sector is expected to play an even bigger role as Kenya and other countries in the region look to enhance manufacturing capacity to mitigate supply constraints for essential goods witnessed during the pandemic.

Aligning the tax rates

Enacted Provision: The Act has removed the preferential tax rates for newly listed companies which ranged between 27.5% and 20%. This is possibly because the corporate tax rate has now been reduced to 25%, currently the lowest in East Africa.

Implication: This was one of the key incentives for attracting businesses to list on the NSE and the removal of the 20% tax rate will be a significant disincentive.

Income Tax

Effective from 25 April 2020

Relief for resident companies

Enacted Provision: The Act has reduced the corporation tax rate for resident companies from 30% to 25% for the year of income 2020 and subsequent years

Implication: The rate reduction is a good move to cushion companies from adverse economic implications of Covid-19. This will also be useful in making Kenya competitive during the post Covid-19 recovery period.

The proposed reduction of the corporation tax rate is a welcome move for resident companies, even though it has been watered down by the increase in withholding tax on dividend payments to non-residents.

The corporate tax rate for non-resident companies remains at 37.5%.

Negative strides on war against plastics

Enacted Provision: The Act has deleted sub paragraph 2(l) of 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 the company started operating.

Consequently, such companies shall be subject to the corporation tax rate of 25% applicable to resident companies.

Implication: This move erodes the gains that the government has made in the recent past to protect the environment through deliberate measures such as banning the use of plastic bags among others.

Deleted exemption provisions

Enacted Provisions: The Act has deleted various incomes that were previously exempt from tax. Most of these incomes relate to organizations or agreements that no longer exist and hence the exemption provisions had become obsolete. Some of these entities/agreements include:

Deleted exemption provisions

- 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
- Exhibition income of agricultural societies;
- Education grant paid by Government of UK under an agreement with the Governments of Kenya.
- 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 f company and Central Bank of Kenya
- 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 Tax

Effective from 25 April 2020

Deleted exemption provisions

- 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 (predecessor of USAID); 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 some of which are now obsolete, such as income from Sceptre Trust Limited, International Bank for Reconstruction and Development and Colonial Development Corporation.

Previously exempt income now 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 generated from cash flows passed to the investor in the form of asset-backed securities.
- Dividends paid to non-residents by Special Economic Zone enterprises, developers or operators
- Compensating tax accruing to a Power Producer under a Power Purchase Agreement (PPA).

Previously exempt income now subject to tax

Implication: The scope of investment income now subject to income tax has been increased with exempt income streams now largely limited to items such as infrastructure bonds.

Compensating tax is now applicable to power producers under PPAs which will be viewed as a disincentive towards investing in the capital intensive power generation sector.

Transactions exempt from Capital Gains Tax now taxable

Enacted Provision: The Act now brings to tax the following incomes that were previously exempt from Capital Gains Tax (CGT):

a) Shares in the stock or funds of the Government, the High Commission or the Authority established under the Organization or the Community

b) Shares of a local authority

c) Land which has been adjudicated under the Land Consolidation Act or the Land Adjudication Act when the title to such land has been registered under the Registered Land Act.

Implication: Some of these provisions that the Act has deleted have over time become obsolete for various reasons and they may not be useful in the present day.

Income Tax

Effective from 25 April 2020

Overhaul of Capital allowances

The Act has repealed the Second Schedule and replaced it with a new schedule which drastically scales back the capital allowances as follows:

Description	New rate (%) – All on reducing balance (RB)	Old rate* (%)
Investment Allowance (Buildings):		
Buildings used for manufacture*	50 for first year and 25 per year on residual	100
Hotel buildings*	50 for first year and 25 per year on residual	10
Hospital buildings*	50 for first year and 25 per year on residual	-
Petroleum or gas storage facilities	50 for first year and 25 per year on residual	-
Educational buildings*	10	50
Commercial buildings*	10	25

* Cost of land excluded from the qualifying cost.

Income Tax

Effective from 25 April 2020

Capital allowances amendments

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

Description	New rate (%) – All on reducing balance (RB)	Old rate* (%)
Investment allowance (machinery):		
Machinery used for manufacture	50 for first year and 25 per year on residual	100
Hospital equipment	50 for first year and 25 per year on residual	12.5
Ships	50 for first year and 25 per year on residual	100
Aircrafts	50 for first year and 25 per year on residual	25
Heavy earth moving equipment	25	37.5
Motor vehicle*	25	25
Computer & computer peripheral hardware, calculators, copiers,	25	30
Software	25	20**
Furniture & Fittings	10	12.5
Telecommunications equipment	10	20
Filming equipment purchased by a local producer	25	100

* Qualifying cost for saloon cars is KES 3,000,000 up from KES 2,000,000
** previously on a straight line basis

Income Tax

Effective from 25 April 2020

Capital allowances amendments

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

Description	New rate (%) – All on reducing balance (RB)	Old rate* (%)
Investment Allowance (Machinery) - Cont'd		
Machinery used to undertake operations under an exploration or mineral prospecting right	50 for first year and 25 per year on residual	37.5 or 12.5
Other machinery	10	12.5
Purchase or an acquisition of an indefeasible right to use fiber optic cable by a telecommunication operator	10	20
Farm works	50 for first year and 25 per year thereafter	100

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

Our comments

Overall, the Act has decelerated the rate at which businesses deducted capital allowances effectively leading to higher taxable income in the short-run. This will erode the impact of the reduction in corporation tax rate from 30% to 25% for resident companies.

Further, despite the repeal of the Second Schedule, investments made before 31 December 2021 on the construction of bulk storage (100,000 metric tonnes and above) and handling facilities to support the Standard Gauge Railway operations will qualify for Investment Deduction of 150%.

The repeal of the entire Second Schedule, including the definition of control will have an impact on thin capitalization assessments since the thin capitalization provisions makes reference to the definition of control under the second schedule and yet this is not included in the new schedule.

Pay As You Earn

Pay As You Earn

Effective from 25 April 2020

Enhancement of PAYE tax bands and personal relief

Enacted provision : The Tax Laws (Amendment) Act 2020 has expanded 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 Act has increased the personal relief from ***KES 16,896*** to ***KES 28,800***. Effectively all income below ***KES 24,000*** per month is now exempt from tax.

Implication: The above changes will increase the taxpayer's disposable income as well as cushion taxpayers whose income has been eroded by inflation. Previously only income below ***KES 13,486*** was exempt from tax.

Effective date: The enacted rates will be applicable from 25 April 2020. This will have implications on the April payroll since PAYE is deducted upon payment and where payment is made after the effective date, the new rates should apply.

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

Enacted provision: In line with the changes to the PAYE bands, the Act has enhanced 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 Sections 8(4) and 8(5) of the Income Tax Act.

The new tax rates are as follows:

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

i. 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%

ii. 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 Act has reduced 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

Effective from 25 April 2020

Taxation of previously Exempt Income & Persons

Enacted provision : The Act has deleted the following income tax 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. 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 (Defunct East African Community); and

iv. 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 and land which has been adjudicated when the title has been registered and transferred for the first time.

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

Withholding Tax

Withholding Tax

Effective from 25 April 2020

Withholding Tax on Dividends

Enacted provision : The WHT rate on dividends paid to non-residents persons has been increased from 10% to 15%.

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

The enacted change will favour companies from countries with whom Kenya has signed favorable Double Tax Agreements as they will continue to enjoy lower WHT rates. However, for some such as the UK, the local rate now aligns to that provided for in the Kenya-UK DTA.

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 an advantageous corporation tax regime but still have access to the wider Africa market, including Kenya.

WHT on re-insurance premiums

Enacted provision : The charging section has introduced tax at the rate of 5% on reinsurance premiums paid to non-residents. Aviation insurance premiums are exempted from the tax.

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 Act has now addressed this omission.

Previously aircraft insurance was excluded but this has now been extended to aviation insurance which will be of significant help to the industry that has borne the brunt of the Covid-19 pandemic.

WHT on marketing, sales promotion & advertising

Enacted provision : The ITA has been amended 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, this 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

Enacted provision : The WHT base has been expanded 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 are excluded from the change.

The enacted provision clarifies that East African Community citizens are exempted from the tax. The wording of the exemption potentially leaves out EAC citizens conducting transportation through companies.

Implication:

This change will increase cost of transportation by non-resident persons reducing the attractiveness of Kenyan ports especially for transshipment of cargo outside the EAC.

The amendment is also untimely as transportation services are critical especially during the current economic downturn.

Value Added Tax Act

Value Added Tax Act

Effective from 25 April 2020

VAT on Fuel

Enacted provision : The Act has included excise duty, fees and other charges in computing the taxable value for fuel.

Implication: The international prices of crude oil have been on a decline due reduced demand as a result of the Covid-19 pandemic and expectations has been high that pump prices would come down. However, the inclusion of excise duty and other charges as a basis of computing VAT will lead to higher pump prices.

Also, it would be important to note that this increase negates the earlier decision to charge a lower VAT rate of 8%. This provision will trigger a multiplier effect over and above fuel prices as most consumer product industry use fuel oil in the manufacturing process.

This provision takes effect from 15 May 2020 when new pump prices are announced.

Issuance of credit notes

Enacted provision : The amendment allows for issuance of credit notes within 30 days after the determination of a commercial dispute in a court of law, where the dispute has implications on the price payable and of which, a tax invoice had been issued.

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 will 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 provide suppliers, a relief to issue credit notes on determination of such cases.

Keeping of records

Enacted provision : The Act proposes that **all** persons maintain records of transactions for a period of five years.

Implication: The Act has now extended the scope of maintaining of records for VAT purposes. This will widens the coverage to unregistered VAT persons who, previously were not required to maintain these records.

The amendment may be informed by the tax authority adoption of data collection as a tax monitoring tool. In previous instances, only information from the registered tax payers was accessible or could legally be obtained.

VAT: Refund on bad debts

Enacted provision : The Act has reduced the time limit of applying for a VAT refund on bad debts from five years to four years from the date of supply.

Implication:

This will require suppliers to be more proactive in following up bad debts and also maintain the requisite documentation to prove that the debts are not collectible to qualify for the refund.

This provision is in line with the requirement to maintain data for five years which is a critical component in supporting claims for refund of VAT on bad debts.

Value Added Tax Act

Effective from 25 April 2020

Definition: Tax rate changes (Goods - VATable to Exempt)

Details	New rate	Old rate
Personal protective equipment, including face masks, for use by medical personnel in registered hospitals and clinics, or by members of the public in the case of a pandemic or a notifiable infectious disease.	Exempt	14%

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

Details	New rate	Old rate
Vaccines for human and veterinary medicine	Exempt	0%
Medicaments	Exempt	0%

The change of VAT rate on personal protective equipment and related items is a welcome move as we fight the Covid – 19 pandemic.

The change from zero-rated to exempt for medicaments and vaccines means that manufacturers of these products will not recover input VAT incurred on raw materials and other inputs which they will pass on to consumers though higher product prices. Coming in the middle of a Covid-19 pandemic, this will hit patients hard.

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

Details	New rate	Old rate
Biogas, plastic bag biogas digesters and 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
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

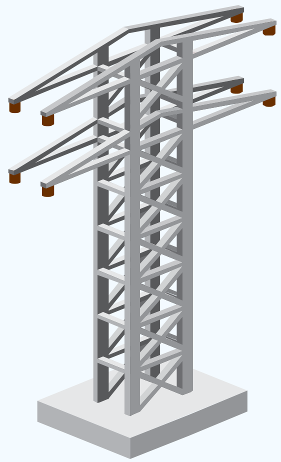
Value Added Tax Act

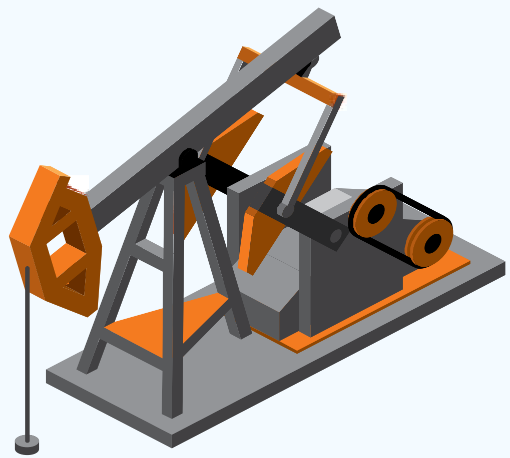
Effective from 25 April 2020

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 for 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 for use in geothermal, oil or mining prospecting or exploration upon recommendation by the Cabinet Secretary responsible for energy or mining, as the case may be.	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

These changes affect capital intensive economic sectors of **manufacturing**, **power, mining** and **oil exploration**. Investors in these sectors will now be expected to source for additional cash to pay upfront for the VAT on their purchases. For sectors like manufacturing and oil exploration which are already suffering the impact of Covid-19, this is a big blow which will negatively affect their ability to reinvest in the post recovery period.





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

Details	New rate	Old rate
Goods falling under tariff number 4907.00.90 (postage stamps)	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
Insurance agency, insurance brokerage, securities brokerage services	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
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

Effective from 25 April 2020

Value Added Tax Act

Effective from 25 April 2020

KPMG comments

- Insurance agency, insurance brokerage, securities brokerage services will now be VATable. This is likely to increase the cost of accessing insurance facilitates for the ordinary Kenyans. Further, the introduction of VAT on securities brokerage services will reduce the net savings earned by Kenyans from the securities as the cost of acquiring the services will be higher. This move will negatively impact the insurance sector which is struggling to increase penetration rates and the Nairobi Securities Exchange which has underperformed as a result of capital flight in response to Covid-19.

- The Act has introduced VAT on previous exempted concessions accorded by the Cabinet Secretary on taxable supplies incurred on construction of power generating plants and liquefied petroleum gas storage. This is likely to increase the cost of producing power in the country and also deter future investments in these sectors.

- 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 and services 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.

- The introduction of VAT on goods and services used for the direct and exclusive use in the implementation of projects under special operating framework arrangement with the Government is likely to affect already continuing arrangements with the government, The special operating framework arrangement was introduced in the Finance Act 2018 and it was aimed at incentivizing investment in the Big Four Agenda. The introduction of VAT is likely to discourage these targeted Public Private Partnerships.

Excise Duty Act

Excise Duty

Effective from 25 April 2020

"Other fees"

Enacted provision : The Act has amended 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.

The enactment of this change effectively means that "non-licensed" activities by financial institutions will not fall in the purview of excise duty.

Who will be affected: Financial institutions

Amendment of the exemption schedule

Enacted provision : The Second Schedule to the Excise Duty Act has been amended to exclude 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.
- One personal motor vehicle imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his or her spouse.

Implication: The above is consistent with changes under the VAT Act to remove the exemptions and is part of the wider move to drastically reduce the goods and services falling under the zero-rated and exempt categories. However, we not that returning Kenyan residents still qualify for exemptions on motor vehicles and public officers can qualify under this category.

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Tax Procedures Act

Tax Procedures Act

Effective from 25 April 2020

Publication of private rulings

Enacted provision: The Act deletes 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 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.

Extension of time limit for private rulings

Enacted provision: The Act has increased the time for the Commissioner to issue private rulings by 15 days. The Commissioner now has 60 days to issue a private ruling from receipt of the taxpayer's application.

Implication: The Commissioner has more time to issue private rulings. This is a good move since the Bill had proposed to remove the time limit altogether which would have affected the responsiveness of the KRA to taxpayer requests.

Reduction of Turnover tax return penalty

Enacted provision: The Act reduces the penalty for failure to submit returns for turnover tax from KES 5,000 to KES 1,000.

Implication: This amendment will be a welcome relief to small businesses. Such businesses are required to file monthly turnover tax returns and failure to file returns would have resulted into huge penalties. This amendment aligns with the government's intention of easing the tax burden on businesses.

Miscellaneous Fees & Levies Acts

Miscellaneous Fees & Levies Acts

Effective from 25 April 2020

Import declaration fees on raw materials and intermediate products

Enacted provision: The Act removes the blanket 1.5% Import Declaration Fee charged on the customs value of raw materials and intermediate products imported by approved manufacturers. Manufacturers will still qualify for the lower IDF rate but only upon approval by the CS National Treasury on Recommendation by the CS Industry.

Implication: The amendment introduces additional bureaucracy in the application and approval of the persons who qualify for the reduced rates.

Import declaration fees: Deleted Exemptions

Enacted provision: The Act removes 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.

Implication: The amendment will result to more revenues from IDF on items that were previously exempted.

Miscellaneous Fees & Levies Acts

Effective from 25 April 2020

Railway Development Levy (RDL): Purpose

Enacted provision: The Act expands the use to which the RDL may be put from "construction" to "construction and operation".

Implication: With construction of Phases 1 and 2A of the standard gauge railway now complete, the Government can now use the RDL to finance the operation of the standard gauge railway.

Railway Development Levy: Deleted Exemptions

Enacted provision: The Act removes 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 .

Processing fee on duty free vehicles

Enacted provision: The Act introduces 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

Effective from 25 April 2020

Additional incentive for KRA informers

Enacted provision: The Act amends the Kenya Revenue Act to empower 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 rewarded 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 and is viewed as one of the initiatives of KRA's growing intelligence unit.

Revenue Agents

Enacted provision: The Act amends the KRA Act 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 every other 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 to the Central Bank within two days without KRA having to request or to follow up on this to be done.

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

Retirement Benefits Act

Effective from 25 April 2020

Access to retirement benefit funds to purchase residential house

Enacted provision: The Act amends the Retirement Benefits Act to allow members to use a proportion of the money saved through a retirement benefits scheme to purchase a residential home on such terms as may be prescribed in regulations made by the Cabinet Secretary

Implication: The proposed amendment will provide an additional avenue for financing the purchase of a home through use of savings in retirement benefit schemes. This will boost the uptake of houses under the affordable housing scheme.

Appendix: Dropped Proposals

Income Tax

A number of proposals that were proposed in the Tax Laws (Amendment) Bill, 2020 were dropped during the deliberations on the Bill at the National Assembly. This follows representations by a number of stakeholders and various considerations by the National Assembly on the impact of the proposals on the economy.

We have summarized the dropped changes below:

Details	**Proposal**	**Current Status**
Expenses incurred in listing Nairobi Stock Exchange (NSE)	Disallow: ▪ Legal and other incidental costs of listing new or existing shares at the NSE; ▪ Rating expenses incurred for the purpose of listing at the NSE.	Expenses are still allowable
General expenses -	Disallow: ▪ 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.	Expenses still allowable
Non-taxable income	Tax: ▪ Interest on a savings account held with the Kenya Post Office Savings Bank; ▪ Interest income accruing from all securities used to raise funds for infrastructure and other social services, as well similar income from green bonds with maturity of at least three years; ▪ Income of the National Social Security Fund (NSSF).	Income still Exempt
Income from bonuses, overtime	▪ Taxing 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.	Income still exempt
Retirement benefits	▪ Tax the retirement benefits paid to persons over 65 years	Income still exempt

Value Added Tax Act

Details	Dropped Proposal	Retained rate
Ordinary Bread	Exempt	0%
Milk	Exempt	0%
All inputs and raw materials imported or purchase for the manufacture of agricultural pest control products upon recommendation by the Cabinet Secretary for agriculture	14%	0%
Agricultural pest control products	14%	0%
Inputs for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied for manufacture of automotive and solar batteries in Kenya.	14%	0%
The supply of liquefied petroleum gas including propane.	14%	0%
Fertilisers	14%	Exempt
Helicopters	14%	Exempt
Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.	14%	Exempt
Aeroplane and helicopter parts including tyres	14%	Exempt
Air combat simulators and parts thereof.	14%	Exempt
Other ground flying trainers and parts thereof.	14%	Exempt
Fishing nets .	14%	Exempt
Mosquito nets	14%	Exempt
Inputs for the manufacture of animal feeds	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

Value Added Tax Act

Details	Proposal	Status
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
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
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances, and parts thereof	14%	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant.	14%	Exempt
Hiring, leasing and chartering of helicopters	14%	Exempt
Entry fees into the national parks and national reserves.	14%	Exempt
The services of tour operators, excluding in-house supplies.	14%	Exempt

Excise Duty

<table>
<tr><th>Details</th><th>Proposal</th><th>Status</th></tr>
<tr><td>Sugar confectionary and white chocolate.</td><td><table><tr><th>Particulars</th><th>Rate</th></tr><tr><td>Sugar confectionary - not containing cocoa</td><td>KES 20/kg</td></tr><tr><td>White chocolate (blocs, slabs or bars) – containing cocoa</td><td>KES 200/kg</td></tr></table></td><td>Exempt</td></tr>
</table>

Our Comments:

The interventions by the National Assembly provided much needed reprieve for critical industries especially agriculture and tourism which have suffered from the locust invasion and the impact of Covid-19 pandemic. Imposition of tax as proposed by the National Treasury would have made the services and goods offered by these industries expensive, impacting their ability to recover quickly after the pandemic finally subsides.

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