The Finance Bill, 2020

May, 2020

Income Tax

The Finance Bill, 2020 came in a week after the passing of The Tax Laws (Amendment) Act, 2020 on 25th April 2020. The Bill contains a few proposals similar to those introduced to the Tax Amendment Bill, 2020 and were rejected - which contravenes standing order 141(1) of the National assembly.

This alert contains a summary of key provisions made in the Finance Bill, 2020 and their potential effect on taxpayers.

The Bill seeks to introduce various amendments to the Income Tax Act. Some of the key proposals introduced under the Act include imposition of a minimum tax and tax on digital services.

Item	Comment
Residential rental Income tax **(w.e.f 1st January, 2020)**	Currently, a resident person with rental income of KES 144,000 to KES 10 million is required to account for monthly rental income applicable at 10%. The bill proposes to increase threshold from 10 million to 15 million. This is a welcome move as all other taxpayers have gotten tax breaks by widened tax brackets and reduced tax rates. This will provide reprieve for landlords whose only income is rental income for equity.
Minimum tax **(w.e.f 1st January, 2020)**	Proposal to impose a minimal tax. The tax shall be payable if; • that person's income is not exempt under the first schedule of the Act; • that person's income is not chargeable to employment income, rental income, turnover tax or capital gains tax or subject to tax under the extractive sector. • the instalment tax payable by that person under section 12 is higher than the minimum tax. Proposed tax rate is 1% of the gross turnover. The government is proposing to widen the tax base by introducing a minimal tax under which persons not covered in the tax subjects mentioned above will be required to account a minimal tax rate of 1% of the gross turnover.
Imposition of installment taxes **(w.e.f 1st January, 2020)**	Under the current provision, a taxpayer shall not be required to pay the instalment tax; *if to the best of his judgement and belief he will have no income chargeable to tax for that year of income other than emoluments.* The Bill proposes to amend this provision by replacing it with; "a taxpayer shall not be required to pay the instalment tax *if the minimum tax payable under section 12D is higher than the instalment tax under this section 12.* *The tax payable shall be paid in installment which shall be due on the 20th day of each period ending on the 4th, 6th, 9th and 12th month of the year of income.*

Income Tax

Item	Comment
Digital service tax	Imposition of digital tax service by a person whose income from services is derived from or accrues in Kenya through a digital market place. Proposed tax rate – 1.5% of the gross transaction value The tax shall be offset against the tax payable for that year of income. The government has been trying to tap into the digital space. Through the Finance Act 2019, the government introduced taxation of digital services with the intention of publishing further guidelines. The Finance Bill, 2020 proposes to introduce tax of 1.5% of the gross transaction value. The tax is not a final tax however, taxpayers will be allowed to offset the tax deducted with corporation tax payable for that year .
Home ownership savings plan	Currently, HOSP relief is available to taxpayers at KES 8,000 p.m or KES 96,000 p.a. The Bill proposed to repeal Section 22C which provides for the tax relief that is currently availed to individuals who are saving to own a house under a House Ownership Saving Scheme. In addition, removal of the HOSP leaves contributors stranded. The Government should Include a transitional clause to enable current contributors and contributions to withdraw or transfer their contributions to another tax exempt fund. It is worthy to note that, the Tax Amendment Bill had proposed to delete the Section. However, this proposal was rejected as it goes against the Governments Big-4 agenda.

Income Tax

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Proposal to disallow certain expenses	The Bill proposes to repeal certain the below allowable expenses and subject them to tax • Legal costs and any capital expenditure incurred for purposes of listing on the NSE; for issue of shares, listing without raising additional capital; • Club subscriptions paid by an employer on behalf of an employee and entrance fee or annual subscription paid during that year of income to a trade association; • Expenditure of a capital nature incurred with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure.
Proposal to nullify certain exempt income	The Bill proposes to repeal the following exemptions • The income of a registered home ownership savings plan. • Income of the National Social Security Fund provided that the fund complies with such conditions as may be prescribed. • Taxation of monthly pension for people aged 65years or more • Income from employment paid in the form of bonuses, overtime and retirement benefits for employees whose taxable income does not.
Comment	The proposals above made by the Finance Bill, 2020 had earlier been made by the Tax Amendment Bill, 2020 but were however rejected by the Tax Amendment Act. In rejecting the proposal, the National Assembly considered that disallowing the above expenses and removing the above tax exemptions would discourage professionalism, investment, saving culture and reduce disposable income of low income earners. As such, reintroducing these amendments creates an uncertain and unstable environment for taxpayers which is provides instability for businesses.

Value Added Tax

The Bill seeks to introduce various amendments to the Value Added Tax Act, by proposing to exempt numerous items that are currently standard rated, while imposing VAT on few items. It is worthwhile to note that most of the proposals are not new and had been proposed under the Tax Amendment Bill but did not pass through in the Act. It is expected that these provisions will be aligned to the Tax Amendment Act.

Item	Particulars
Deduction of input tax	Under the current provision under section 17(2);deduction for input tax shall not be allowed until if the tax payer does not hold the documentation required. The Bill proposes amend section 17(2) as follows; Input tax will be not be allowable if; a) the taxpayer does not hold the documentation; or b) the registered supplier has not declared the sales invoice in a return, If the bill proposal passes, suppliers will be required to provide full details of sales invoices for the buyer to be allowed to claim the input against their sale. The proposal seems to be inclined towards easing VAA variances, however, this may also offer administrative burden to taxpayers as buyers may be forced to follow up with suppliers to ensure that the invoice reflects in the iTax system before they can claim it.
Proposal to change VAT status from exempt to taxable	The Bill proposes to change the VAT status of the items below from exempt to standard rated: • Helicopters of an unladen weight not exceeding 2,000 kg. • Helicopters of an unladen weight exceeding 2,000 kg. • Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg. • Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg. • Air combat simulators and parts thereof. • Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof • Other ground flying trainers and parts thereof.

Value Added Tax

Item	Particulars
Proposals to change VAT status from exempt to taxable	• Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power • Tractors other than road tractors for semitrailers • Goods of tariff No. 4011.30.00. • 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. • 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, or iron or steel of tariff numbers. • 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 under the First Schedule. • Plant, machinery and equipment used in the construction of a plastics recycling plant
Proposal to exempt services currently taxable	The Bill proposes to change the VAT status of the items below from exempt to standard rated; • Ambulance services • Maize (corn) seeds of tariff no. 1005.10.00. – This proposal seems to have been an error since the provision already exists in the Act.
Proposals to change VAT status from zero rated to taxable	The Bill proposes to change the VAT status of the items below from zero rated to standard rated; • The supply of liquefied petroleum gas including propane. • 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.

Excise Duty

Item	Comment
Expansion to the term license	The Bill proposes to expand the definition of the term license to require any other activity not specified under section 15 for which the Commissioner may by notice in the Gazete impose a requirement for a licence. This will help to curb illegal manufacture, importation and supply of excisable goods and services.
Lowering of alcohol content	The Bill proposes to lower the alcohol content from 10% to 8% under the definitions "Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 8%."(previously 10%) "Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 8%."(previously 10%) This will mean that more drinks with spirits specified above will be brought under the tax net.

The Tax Procedures Act

Item	Comment
Voluntary Tax Disclosure Programme	The Bill proposes to introduce a provision that allows for Voluntary Tax Disclosure of tax liabilities that accrued within a period of 5 years prior to 1st July 2020 for the purpose of being granted relief or penalties and interest on the tax disclosed.. The programme shall be available to taxpayers for a period of 3 years with effect from the 1st January, 2021, with a sole intention to enhance compliance The taxpayer granted relief shall not be prosecuted with respect to the tax liability disclosed and remission shall be granted as follows; i. where the disclosure is made and tax liability paid in the first year of the programme, a full remission of the interest and penalty; ii. where the disclosure is made and tax liability paid in the second year of the programme, remission of fifty per cent of the interest and penalty; and iii. where the disclosure is made and tax liability paid final year of the programme, remission of twenty-five per cent of the interest and penalty. The relief shall be granted provided that it shall not result in the payment of a refund. The tax liability shall be payable within an agreed timeline which shall not exceed 1year from the date of the agreement. However, where a taxpayer fails to meet the terms of the agreement, he/she shall be liable to pay the full interest and penalty that had been remitted A taxpayer granted relief under this section shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner. The voluntary tax disclosure shall not apply if the taxpayer - a) is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or b) has been notified of a pending audit or investigation by the Commissioner. c) The disclosure of a tax liability under this section shall be confidential.
Appointment digital service tax agent	The Bill proposes to introduce a new provision where the Commissioner has the right to appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner. The Commissioner is also empowered to revoke an appointment under subsection (1). This provision will facilitate the collection and timely remittance of tax digital service tax.

Miscellaneous fees and levies Act

Item	Comment
Import declaration fee	The Bill proposes to charge an IDF of 1.5% goods imported under the East African Community Duty Remission Scheme as opposed to the current standard rate of KES 10,000. The current rate provides a standard amount of tax payable regardless of the value of goods. The proposal to peg tax on customs value will cause an increase in taxes payable. This may help curb cheap imports from the EAC community.
Duty on goods for home use from an export processing zone enterprise.	The Bill proposes to charge an additional duty at the rate of 2.5% of the customs value in respect of goods entered for home use from an export processing zone enterprise.
Additional items exempt from IDF	The Bill proposes to clarify exemption on aircrafts to include • Aircrafts of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 (of an unladen weight not exceeding 2,000 kg) and 8802.12.00 (of an unladen weight exceeding 2,000 kg). The Bill also proposes to include the following item under the list of exemptions • All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police.
Additional items exempt from RDL	• Currency notes and coins imported by the Central Bank of Kenya. • All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police.
Items no longer exempt from IDF	• Any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs 200 million (Two Hundred Million). • Goods imported for implementation of projects a under special operating framework arrangement with the Government.
Items no longer exempt from RDL	• Any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings.

Get in Touch

Please get in touch with us to find out more about how this affects you.

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