Value Added Tax

The Tax Law (Amendment)(No.2) Bill, 2020

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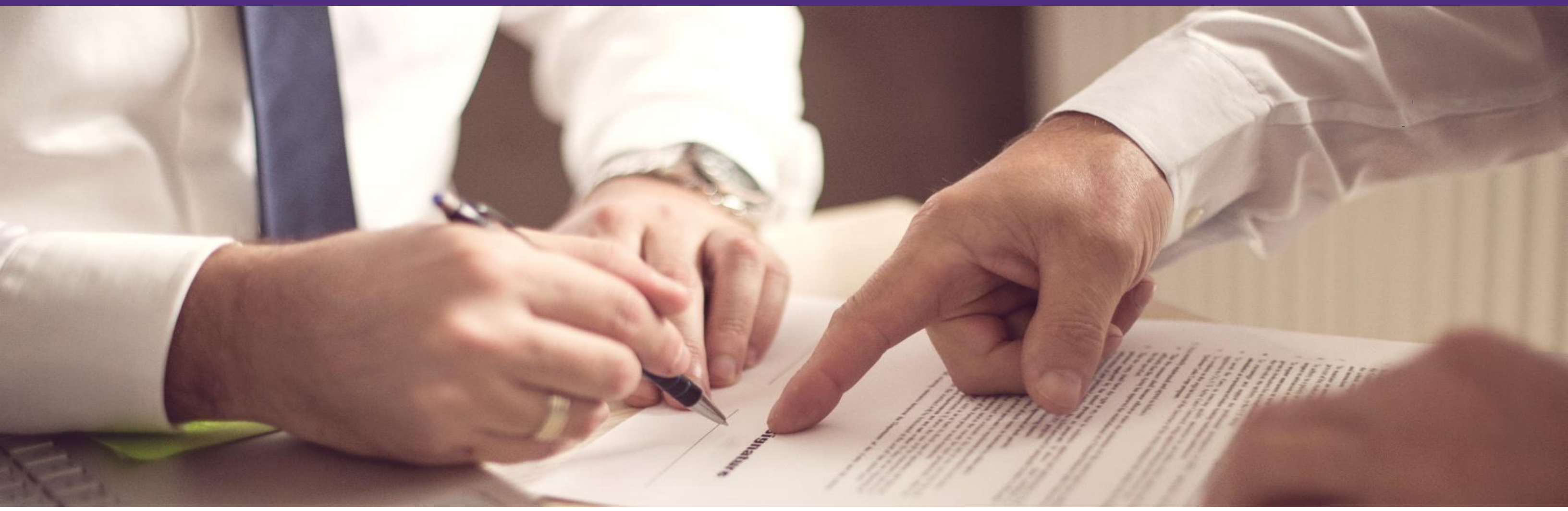

TAX ALERT

Introduction

On 25th April 2020, the President of the Republic of Kenya assented into Law the Tax Laws (Amendment) Act, 2020 (herein referred to as "Tax (Amendment) Act") which contained a number of tax law changes geared to cushion the citizens from the adverse economic effects of Covid-19 pandemic. You can access our tax alert via this link.

The tax reliefs were projected to reduce revenues collected by the Kenya Revenue Authority to the tune of KES 65 billion by 31st December 2020, as reported by the Cabinet Secretary of National Treasury and Planning ("CS"), Hon. Ukur Yatani.

However, on September 28, 2020, while addressing the Nation in the Covid-19 Conference, the President directed the National Treasury to relook at the tax reliefs enacted earlier this year in a bid to cushion the public from the adverse effects of COVID-19.

The National Treasury and Planning issued a Press Statement on Wednesday, 18th November 2020, indicating that effective 1 January 2021:

a) the Value Added Tax rate will revert to 16% from 14%;

b) the top band rate Pay-As-You-Earn will revert to 30% from 25%; and

c) the corporation tax for resident companies will revert to 30% from 25%.

As highlighted in the press statement, the above re-instatement is to enable the government implement its budget.

The CS, in exercise of the powers conferred to him by Section 6 (1) of the VAT, 2013, vide Legal Notice No. 206 published on 02 December 2020, amended the VAT rate to 16% effective 01 January, 2021.

However, to effect the other changes contained in the Bill, The National Assembly must pass a Bill that would be assented to by the President. As a result, the Government published The Tax Law (Amendment) (No. 2) Bill, 2020, (herein referred to as "Bill") through the Kenya Gazette for introduction in the National Assembly.

This alert contains a summary of key provisions made in the Bill and their potential effect to taxpayers.

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Income Tax

Item	Bill proposals	Comment
Minimum Tax ITA (Cap. 470), Section 12D	Substituting the word higher with the word lower	The Bill seeks to correct the ITA by aligning persons who will be subject to the minimum tax as provided for through the Finance Act 2020. Minimum tax will be payable at 1% of turnover for taxpayers whose instalment taxes are lower than the minimum tax. See our alert on Finance Act, 2020 via this link
Individual tax rates of employment income ITA (Cap. 470), Third Schedule, Head B	Subjecting the top band rate for Pay-As-You-Earn to 30%	This will reinstate the 30% tax rate for the top band for PAYE. It is worth noting that the Bill has not amended the lower tax bands hence persons earning below KES 24,000 per month will be exempt from tax. Additionally, employed persons will continue enjoying relief of KES 2,400 per month.
Corporate Tax Rate (CIT) ITA (Cap. 470), Third Schedule, Item 2(a)	Inserting a provision that 25% CIT rate is applicable for income earned after 25th April 2020;	The Tax Law (amendment) Act, 2020 that brought about the change of CIT rate did not clarify how the 25% rate would apply for companies whose financial year fall both on the 30% and 25% regimes. The ITA only provided for accounting for taxes on a particular year of income. Should the Bill be passed the 25% CIT rate will only apply to for income earned after 25th April 2020.
	Changing the CIT rate from 25% to 30% effective January 2021	This is meant to reinstate the CIT rate back to 30% for incomes earned from 1st January 2021

Item	Bill proposals	Comment
Individual tax rates of pension payments ITA (Cap. 470), Third Schedule, Item 5(d)(i) and (ii)	Subjecting the top band rate for pension pay-outs to 30%	Item 5(d)(i) seeks to reinstates the taxation of pension pay-outs to the initial brackets before The Tax Law (Amendment) Act, 2020. Pension payment or any withdrawal in excess of KES 1.6 million above the tax free amounts made after the expiry of fifteen years from the date of joining the fund or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill-health or infirmity of body, from a registered fund or NSSF, shall be taxed at 30%. Item 5(d)(ii) seeks to reinstates the 30% rate of pension pay-outs for pension payment or any withdrawal in excess of KES 1.6 million above the tax free amounts made before the expiry of fifteen years from the date of joining the fund from a registered fund or NSSF, shall be taxed at 30%.

The revised rates for pension payments will be;

I. Withdrawal before the expiry of 15 years

Rate	Amount	KES
10%	On the first	400,000
15%	On the next	400,000
20%	On the next	400,000
25%	On the next	400,000
30%	On the next	1,600,000

II. Withdrawal after 15 years, after 55 years of age or early retirement on grounds of ill-health

Rate	Amount	KES
10%	On the first	288,000
15%	On the next	200,000
20%	On the next	200,000
25%	On the next	200,000
30%	On the next	888,000

The revised individual rates of tax on employment will be;

Rate	Amount	KES
10%	On the first	288,000
15%	On the next	200,000
20%	On the next	200,000
25%	On the next	200,000
30%	On the next	888,000

Value Added Tax

Item	Bill proposals	Comment
Credit for input tax against output tax VAT Act, 2013; Section 17	Allowing manufacturers claim input VAT for taxable supplies made to official aid funded projects as approved by the Cabinet Secretary.	Taxable supplies made to official aid funded projects as approved by the CS are exempt from VAT as provided for in Paragraph 52 of the First schedule pf the VAT Act. Registered persons making exempt supplies are required to restrict/apportion their input VAT credit to the extent that such input is incurred in making the exempt suppliers. The Bill seeks to give a reprieve to manufacturers allowing them to claim input VAT on taxable supplies to such projects

The indication of when the tax relief measures come to an end provides certainty to taxpayers who are now able to plan accordingly as well as update their ERPs in time in preparation to this changes.

However, citizens should brace-up for an increased cost of living as the cost of commodities are set to increase as a result of increased taxes and weakening Kenyan Currency against other currencies in the world.

Additionally, some taxpayers may not have had an opportunity to enjoy the benefits from the tax incentives due to the tough economic activities in 2020.

We will continue to monitor the developments as we await the Parliament to reconvene and pass these legislative changes and be assented by the President.

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Disclaimer

“This alert contains information as published in the Press Statement issued by The National Treasury and Planning on 18th November 2020, The Legal Notice No. 206 published on 02 December 2020 and The Tax Law (Amendment) (No. 2) Bill, 2020 published on 27 November 2020. While all reasonable attempts have been made to ensure that the information contained within this document is accurate, Grant Thornton accepts no responsibility for any errors or omissions it contains whether caused by negligence or otherwise. This alert should not be relied on solely and we advise you to seek appropriate professional advice before making any decision. Information contained in this alert is meant for exclusive use by clients of Grant Thornton and no part of it may be reproduced and circulated without prior written consent.”

Get in Touch

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

Samuel Mwaura
Partner – Taxation Services
Grant Thornton Kenya
T: +254 (0) 20 375 2830
E: samuel.mwaura@ke.gt.com

Parag Shah
Partner – Advisory Services
Grant Thornton Kenya
T: +254 (0) 20 375 2830
E: parag.shah@ke.gt.com

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