



The Tax Laws (Amendment) Act, 2020

28 April, 2020





Introduction

The Tax Laws (Amendment) Act, 2020 (herein referred to as “Tax (Amendment) Act”) was assented into law by the president on 25th April 2020. Before being passed into law, the Bill was committed to the Departmental Committee on Finance and National Planning and submitted for public participation. Various stakeholders presented their concerns on some of the provisions from Bill.

It can be appreciated that Parliament considered some of the views presented by various stakeholders, and introducing some provisions proposed by the President that had been left out of The Tax (Amendment) Bill, 2020. This alert contains in summary the provisions of the Tax (Amendment) Act and the potential impact of these provisions to your business.

All provisions of the Act came into effect on the date of assent except Section 5 (2) (aa) of the VAT Act which provides for inclusion of duty and other fees in computing the taxable value for fuel. The latter shall come into effect on the 15th day of the following month from the date of assent.

CORPORATE TAX

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Corporate tax rates	The Bill did not offer a reduction in corporation tax rates despite the directive by the president in his speech proposing measures to provide relief to companies in these ailing times.	Resident corporate tax rate – 25% Non resident corporate tax rate – maintained at 37.5%.	The Act has put into consideration the reduced corporate tax rate as had been suggested by the president as part of his relief measures during the COVID-19 pandemic. However it was hoped that the relief would have been extended to non-resident companies who will also be hit hard by the pandemic considering that parent companies which support these entities have also been affected negatively.
Repeal of preferential tax rates	The bill also proposed to repeal preferential tax rates offered to newly listed companies on the NSE which were previously enjoying rates of between 20% to 27%. Additionally, companies operating recycling plants and those operating under the special operating framework will no longer receive preferential tax treatment	Proposal retained Proposal retained	The Act has retained the Bills proposal to do away with preferential tax rates on newly listed companies. As such these companies will be taxed at 25%. The provision was introduced by Finance Act 2019 to encourage investment in recycling industry. Repeal of this provision serves as a big blow to investors and taxpayers at large as plastic pollution continues to rise.
Turnover Tax	<ul style="list-style-type: none"> Proposal to reduce TOT from 3% to 1% Income Threshold – KES 500,000 to KES 50M <p>Incorporated companies meeting this threshold will also be eligible to declare their taxes under TOT;</p> <ul style="list-style-type: none"> Income not applicable to TOT includes, rental income, management, professional or training fees and any income subject to a final withholding tax. 	<ul style="list-style-type: none"> TOT rate maintained at 1% Income threshold - KES 1M to KES 50M <p>Proposal to include incorporated companies has been maintained.</p>	<p>Any person with revenues below 1M threshold will be exempt from paying TOT tax except professional and rental income.</p> <p>The move demonstrates the Governments commitment in supporting Small and Medium Enterprises against the adverse effects of COVID-19. Taxpayers qualifying under this bracket will pay 1% tax on their gross revenue and will be required to file monthly returns by 20th day of the following month</p>

CORPORATE TAX

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Presumptive tax	<ul style="list-style-type: none">Presumptive tax is also applicable at 15% of the amount payable for a business permit or trading license. The Bill has now scrapped presumptive tax.	Presumptive tax previously chargeable at 15% on the business permit has been scrapped	Repealing of presumptive tax is a welcome move as it was proving to be administratively cumbersome. Additionally, small business will now enjoy lower taxes.





Non-Deductible business expenditure

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
30% of electricity costs incurred by manufacturers, subject to conditions set by the Ministry of Energy	The Bill proposed to delete the provision that allowed manufacturers to claim an extra 30% deduction of their electricity cost under specified conditions set by the CS Ministry of Energy	Proposal retained	This is a hit to the manufacturing sector which will continue grappling with high energy costs in addition to reduced business caused by the COVID-19 pandemic.
Legal costs and any capital expenditure incurred for purposes of listing on the NSE; for issue of shares, listing without raising additional capital	Expenses proposed to be to be non-deductible	Reinstated back to the current status	This is a welcome move as disallowing these expenses will discourage foreign direct investment through the Nairobi Securities Exchange.
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	Expenses proposed to be to be non-deductible	Reinstated back to the current status	The proposal was rejected on grounds that, disallowing such expenses would discourage professionalism
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	Expenses proposed to be to be non-deductible	Reinstated back to the current status	Schools and hospitals are basic social amenities hence disallowing expenditure incurred in construction of these facilities will discourage development of social infrastructure like hospitals and schools by the private sector which boosts public resources.



Removal of Income Tax Exemptions

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020
Dividends received by a registered venture capital company, special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act	Exemption nullified	Proposal retained. Introduction of WHT will hamper the uptake of SEZ projects which are meant to promote trade and investment in Kenya.
Dividends paid by Special Economic Zone Enterprise, developers or operators to any non-resident person.	Exemption nullified	Proposal retained. For most SEZ projects, the tax-exempt dividend distribution to non-resident investors is a key incentive for attracting foreign investment. The amendment will reduce the attractiveness of SEZs by foreign investors and thus will hamper the uptake of SEZ projects.
Compensating tax accruing to a power producer under a power purchase agreement	Exemption nullified	Proposal retained - Power producers generally have significant tax loss in the initial years of operation majorly arising from the initial cost of investment and the capital allowances extended to this operation. Deletion of this provision will subject distribution of dividends on untaxed profits to compensating tax at 30%
Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.	Exemption nullified	<p>Proposal rejected. Interest income on such bonds will continue to be exempt.</p> <p>This is a welcome move as repeal of this exemption would make the bonds less attractive to investors.</p>
Income from employment paid in the form of bonuses, overtime and retirement benefits applicable to the lowest tax band.	Exemption nullified	<p>Proposal rejected as it was considered unfavorable to tax pension received by retirees who have no other source of income.</p> <p>In addition introducing tax on bonuses for low income earners would result to a reduction of disposable income for low income earners.</p>
Income of an officer of the Government or of the Community accrued in or derived from Kenya which consists of foreign allowances paid to that officer from public funds in respect of his office	Exemption nullified	<p>Proposal rejected.</p> <p>The Act has deleted this provision and extended the exemption granted to Government officers.</p>

Income Tax Exemptions

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020
<p>The income of -</p> <ul style="list-style-type: none"> • The 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 National Irrigation Board, • The Mombasa Pipeline Board, • The Settlement Fund Trustees, • The Kenya Post Office Savings Bank, • The Cotton Board of Kenya 	Exemption nullified	<p>Proposal retained.</p> <p>These bodies will now be subject to corporate tax</p>
Education grant paid by Government of UK under an agreement between the Governments of Kenya and UK.	Exemption nullified	Proposal retained
Interest, management and professional fees derived in Kenya by a Non-resident entity without permanent establishment paid by Tana River Development Authority	Exemption nullified	Proposal retained
The income derived in Kenya by the General Superintendence Company Limited, a company incorporated in Switzerland, under the agreement of a company and Central Bank of Kenya	Exemption nullified	Proposal retained

Income Tax Exemptions

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020
Profits/gains of an agricultural society or derived from exhibition or show.	Exemption nullified	Proposal retained
Interest on any tax reserve certificates which may be issued by authority of the Government.	Exemption nullified	Proposal retained
Income of the East African Power and Lighting Company	Exemption nullified	Proposal retained
Interest on a savings account held with the Kenya Post Office Savings Bank.	Exemption nullified	Proposal rejected on the basis that Post Bank caters for small income earners and does not offer credit services hence has a small profit margin
Gains arising from trade in shares of a venture company earned by a registered venture capital company.	Exemption nullified	Proposal sustained
Income of the National Social Security Fund provided that the Fund complies with such conditions as may be prescribed.	Exemption nullified	Proposal rejected with a view that members benefit from income collected from investments made by NSSF. Therefore subjecting the income to tax will reduce the income due to member.
The income of a registered home ownership savings plan;	Exemption nullified	Proposal rejected with a view that it will discourage taxpayers from investing in the housing sector.
Investment income of a pooled fund or other kind of investment consisting of retirement schemes.	Exemption nullified	Proposal rejected on the basis that it will erode the earnings to be received by retirees which could discourage the saving culture.
Gains arising from trade in shares of a venture company earned by a registered venture capital company.	Exemption nullified	Proposal retained
Interest income generated from cash flows passed to the investor in the form of asset-backed securities.	Exemption nullified	Proposal retained
Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services.	Exemption nullified	Proposal rejected on the basis that the provision came into effect on 1st January 2020 and the exemption was a critical factor to attracting investment in such bonds. As such introducing tax would be unfair as many investors have not yet ripped the benefit as intended.

OVERHAUL OF THE SECOND SCHEDULE

The government has been working towards plugging loopholes in the domestic tax laws and moving towards a simpler tax regime. The overhaul of the second schedule is a relief to taxpayers as it seeks to simplify interpretation of the previous schedule. It is also notable that all proposals in the Tax (Amendment) Bill relating to the second schedule have been maintained.

Some major notable changes are:

- Reduction on investment deduction. The 100% and 150% Investment deduction has been scrapped off.
- Increase in motor vehicle restriction from the current amount of 2 million to 3 million.



Capital Allowances

Item	Previous rate	Current rate
Investment Deduction Allowance		
Buildings used for manufacture	100%	50% in year of first use and 25% p.a on reducing balance for the residual balance
Machinery used for manufacture	100%	
Petroleum or gas storage facilities	100%	
Filming equipment Purchase by a local film producer licensed by the relevant Ministry	100%	25% p.a on reducing balance
Hospital equipment	12.5%	50% in year of first use and 25% p.a on reducing balance for the residual balance
Farm works Deduction		
Farm works	100%	50% in year of first use and 25% p.a on reducing balance for the residual balance
Industrial Building Allowance		
Hotel buildings – taxpayers have the option of claiming 100% ID or 10% IBA	10% IBA or 100% ID	50% in year of first use and 25% p.a on reducing balance for the residual balance
Hospital buildings	-	
Education building including student hostels	50%	10% per year on balance
Commercial building	25%	10% p.a on reducing balance
Indefeasible right to use fibre optic cable by telecommunications operator	5%	10% p.a on reducing balance
Mining Allowance		
Machinery used to undertake operations under a prospecting right	-	50% in year of first use
Machinery used to undertake exploration operations under a mining right	-	25% p.a on reducing balance
Wear & Tear Allowance		
Motor vehicles and heavy earth moving equipment	37.5%	25% on reducing balance
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	30%	
Software allowance	20% - straight line	
Motor vehicles below 3 tones	25% - 2m restricted value	Restricted value for motor vehicles increased to 3m
Aircraft	25%	50% in year of first use 25% on reducing balance
Ship allowance is classified into two		
New ship of over 125 tones	- 100% on first year of use	
New ship of less than 125 tones	- 12.5% on reducing balance	
Plant, machinery, furniture and equipment, petroleum pipeline	12.5%	10% on reducing balance
Telecommunication equipment used by telecommunication explorer	20% - straight line	
Indefeasible right to use fibre optic cable by telecommunications operator	5%	

Withholding Tax

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Qualifying Interest	<p>Under the current Act, interest is deemed qualifying when it is received from;</p> <ul style="list-style-type: none"> ✓ a bank or financial institution; ✓ A building society registered under the building society Act; and ✓ The Central bank <p>The Bill sought to classify any interest received by a resident individual as qualifying.</p>	<p>Proposal retained</p> <p>Qualifying interest will have meaning as below;</p> <p>“qualifying interest” means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income:</p>	<p>Any interest received by a resident individual will be classified as qualifying interest.</p> <p>Withholding tax on such interest shall be final tax.</p> <p>This amendment will only apply to individuals and not companies</p>
Clarification on insurance premiums paid to non-residents	<p>Replace the current provision with</p> <p>“insurance or reinsurance premium, except insurance or reinsurance premium paid in respect to aviation insurance;</p>	<p>Retained the proposal</p> <p>The Act also sought to replace the word aircraft under section 34 (o) with the term aviation insurance.</p> <p>Applicable rate on insurance and re-insurance premium paid to non-resident entities is 5%</p>	<p>The amendment harmonizes the amendment to section 10 to include the term reinsurance provision.</p> <p>Additionally, inclusion of the term “aviation insurance” provides more inclusivity as aircrafts have one insurance cover for all their aviation requirements.</p>
Additional services chargeable to Withholding tax	<p>The current Bill proposed to introduce the following under WHT bracket:</p> <ul style="list-style-type: none"> • Supply of sales promotions, marketing, advertising services and transportation of goods (excluding air and shipping transport service). <p>The rates are as follows;</p> <ul style="list-style-type: none"> • Resident – Nil • Non resident – 20%. 	<p>Proposal retained</p> <p>WHT on such services will only be applicable to non-resident persons.</p> <p>WHT on transportation of goods will not apply to East African Community citizens.</p>	<p>The amendment is intended to widen the revenue base for the government.</p> <p>The provision to exclude WHT on transportation of goods within EAC will aid in fostering trade relations within the community.</p>
Changes in tax rate	<p>Non resident dividends rates to be increased from 10% to 15%.</p>	<p>Proposal retained</p>	<p>Foreign investments will now be favourable only to countries which Kenya has DTA rates with.</p>

Capital Gains Tax

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comments
CGT exemptions	<p>The bill proposed to repeal paragraph 36 of the first schedule and replace it with the following new paragraph:</p> <p><i>“Transfer of property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing”</i></p> <p>As such the Bill proposed to subject the following transactions to capital gains tax.</p> <ul style="list-style-type: none"> • Transfer of a private residence where an individual owner has occupied the residence for a 3 year period prior to transfer; • Shares of a local authority; • Property transferred by individuals of less than 3m in value and of less than fifty acres; and • Land which has been adjudicated under the Land Consolidation Act or the Land Adjudication Act . 	<p>The Act deleted the proposal by the Bill and instead amended the section to repeal the following CGT exemptions.</p> <ul style="list-style-type: none"> • Shares in the stock or funds of the Government, the High Commissioner the Authority established under the Organization or the Community • Shares of a local authority • Land which has been adjudicated under the Land Consolidation Act or • The Land Adjudication Act when the title to that land has been registered under the Registered Land Act and transferred for the first time. <p>Any transfer in relation to the items listed above will now be subject to CGT.</p>	<p>The committee observed that subjecting CGT to a private residence is unjust as private residences are not built for investment purposes.</p> <p>In addition, the committee observed that repealing the exemption on transfer of land of less than 3m and of less than fifty acres would be excessive.</p> <p>The committee also observed that most families in Kenya inherit land as opposed to purchasing the land.</p>





Employment taxes

The much awaited proposal on reduction on PAYE tax bands has finally been passed. This amendment was among relief measures offered by the president as a way of the government support to taxpayers in the face of harsh economic times.

The Act extends a reduction in the PAYE rate with the highest band being reduced from 30% to 25%. It is uncertain as to how long the reduced rates will apply. We, however, hope that this incentive will be stretched to a reasonable period of time until when the economy shows signs of stabilization.

The new rates came into effect from the date of assent (25th April, 2020) of this Act.

Pay as You Earn

Item	Comment																								
PAYE rates	The PAYE rates proposed under the Tax (Amendment) Bill have been passed into law. The rates will prevail until such a time as provided otherwise.																								
	<table><tr><th colspan="3">Proposed rates</th></tr><tr><th>Annual taxable income</th><th>Monthly taxable income</th><th>Rate</th></tr><tr><td>On the first 288,000</td><td>On the first 24,000</td><td>10%</td></tr><tr><td>On the next 200,000</td><td>On the next 16,667</td><td>15%</td></tr><tr><td>On the next 200,000</td><td>On the next 16,667</td><td>20%</td></tr><tr><td>On all income over 688,000</td><td>On all income over 57,334</td><td>25%</td></tr></table>	Proposed rates			Annual taxable income	Monthly taxable income	Rate	On the first 288,000	On the first 24,000	10%	On the next 200,000	On the next 16,667	15%	On the next 200,000	On the next 16,667	20%	On all income over 688,000	On all income over 57,334	25%						
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Personal relief	The proposal to increase the personal relief from Kes 16,896 p.a (KES 1,408 p.m) to KES 28,800 p.a to (KES 2,400 p.m has been maintained by the Tax (Amendment) Act.																								
Pension rates	Pension withdrawal tax bands have also been increased. As such tax will be applicable as follows:																								
	<table><tr><th colspan="2">Withdrawal before 15 years</th><th colspan="2">Withdrawal after 15 years</th></tr><tr><th>Income per annum</th><th>Rate (%)</th><th>Income per annum</th><th>Rate (%)</th></tr><tr><td>0 to 288,000</td><td>10</td><td>On the first 400,000</td><td>10%</td></tr><tr><td>288,000 to 488,000</td><td>15</td><td>On the next 400,000</td><td>15%</td></tr><tr><td>488,000 to 688,000</td><td>20</td><td>On the next 400,000</td><td>20%</td></tr><tr><td>Above 688,000</td><td>25</td><td>Above 1,200,000</td><td>25%</td></tr></table>	Withdrawal before 15 years		Withdrawal after 15 years		Income per annum	Rate (%)	Income per annum	Rate (%)	0 to 288,000	10	On the first 400,000	10%	288,000 to 488,000	15	On the next 400,000	15%	488,000 to 688,000	20	On the next 400,000	20%	Above 688,000	25	Above 1,200,000	25%
	Withdrawal before 15 years		Withdrawal after 15 years																						
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	488,000 to 688,000	20	On the next 400,000	20%																					
Above 688,000	25	Above 1,200,000	25%																						
Home ownership savings plan	The Bill proposed to repeal the entire 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.																								
	The amendment was overturned on the basis that it will discourage investment into the housing sector which is one of the Big 4 agendas. Hence the relief will still be available to tax payers.																								

Value Added Tax

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Definition of terms	“ordinary bread” shall mean; <i>“bread containing only the following ingredients; wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water”</i>	Proposal rejected	The proposal provided a limitation as to what encompasses ordinary bread which would have left out many producers.
VAT of petroleum products (w.e.f 15 day of the following month following the date of assent)	The bill amends this section by lifting the exemption. Excise duty and other charges will now be included to determining VAT charge.	Proposal retained Current status to remain	The cost of fuel will inherently go up which will inadvertently increase the costs of manufactured products. Since cost of fuel is key in production.
Credit and Debit note	Proposed <ul style="list-style-type: none"> • CRN issued within six months • In case of a commercial dispute in court on the price - within thirty days after the determination of the matter. 	Proposal retained	A credit note can still be raised after six months provided this is a result of a commercial dispute in court. This is welcome especially when court cases take more than six months to determine.
Application for refund on bad debts	Vat refund application to be made within <u>four</u> years.	Proposal retained	The amendment is welcome as reduction to 4 years shortens the period for which taxpayers need to seek refunds.
Keeping of records	Every registered person is required to maintain proper records	Proposal retained	This provision shall now apply to all persons, whether registered or not.



Changes in VAT rates

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
All Plants and machinery of Chapter 84 and 85	Vatable at 14%	Proposal retained VAT applicable at 14%	This will likely increase cost of production for manufacturers. This is also likely to affect cashflow for investors investing in new P&M
The supply of maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight.	Vatable at 14%	Proposal rejected Bread to be taxed at zero rate	Bread, maize and wheat flour are an essential commodity in may households and hence the imposition of VAT on the commodity would lead to an increase in the cost of bread
Taxable supplies imported or purchased for use in construction of a power generating plant, to supply electricity to the national grid	Vatable at 14%	Proposal retained Previously exempt now Vatable at 14%	The cost of generating power will rise. This will result to increased cost of doing business for manufacturing companies and households.
Taxable supplies, for direct and exclusive use in geothermal, oil or mining prospecting or exploration	Vatable at 14%	Proposal retained Previously exempt now Vatable at 14%	
Mosquito nets tariff code 6304.91.10	Vatable at 14%	Proposal rejected Exemption status maintained	Mosquito nets are key in fighting malaria. Hence imposing VAT would make them unaffordable to Kenyans and consequently led to increase of the spread of the disease.
Inputs or raw materials manufacture of solar equipment or deep cycle-sealed batteries and Specialized Equipment for development and generation of Solar and wind energy	Vatable at 14%	Proposal rejected. Exemption status maintained	Solar energy has served as a great alternative to electricity. As such, introducing VAT on these products would discourage the investment in green energy



Changes in VAT rates

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Fertilisers of Chapter 31	Vatable at 14%	Proposal rejected	The proposal was rejected on the basis that it would lead to increase of prices of fertilizers hence have a negative impact on food security.
The transfer of a business as a going concern	Vatable at 14%	Previously exempt now Vatable at 14%	Entities looking to merge or acquire new segments for their business are likely to be affected through increased cost.
Taxable goods supplied to marine fisheries and fish processors	Vatable at 14%	Proposal retained. VAT applicable at the rate of 14%.	This will have a negative impact on the blue economy.
Personal protective equipment, including facemasks, 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.	New provision.	Previously taxable now exempt	This is a welcome move as it reduces the cost of the much needed products given the current pandemic.
Entry fees into the national parks and national reserves.	Vatable at 14%	Exemption status retained	The proposal was declined on the basis that the tourism industry has been heavily hit by the COVID-19 pandemic and therefore needs to be given an opportunity to recover.
The services of tour operators, excluding in-house supplies	Vatable at 14%	Exemption status retained	
Taxable goods & services for the construction of tourism facilities, recreational parks	Vatable at 14%	Exemption status retained	

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Materials, waste, residues and by-products used in animal feeding	Vatable at 14%	Exemption status maintained	Introducing VAT animal feeds would lead to increased prices on animal products.
Tractors	Vatable at 14%	Exemption status maintained	This is a welcome move as VAT on tractors would lead to an increase in the cost of food production.
Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements	Vatable at 14%	Exemption status retained	
Made-up fishing nets of man-made textile material of tariff No. 5608.11.00.	Vatable at 14%	Exemption status retained	Maintaining the current VAT status will continue to encourage growth in the fishing industry.
Materials for the construction of grain storage	Vatable at 14%	Vatable at 14%	This will have an adverse effect on farmers and consequently lead to loss of food due to poor storage facilities.
Parts imported or purchased locally for the assembly of primary school laptop tablets	Vatable at 14%	Previously exempt now Vatable at 14%	Introducing VAT on primary school projects will make it expensive to implement the digital learning initiatives since it would increase the cost of acquiring these essential equipment for schools
Taxable goods and services purchased or imported for construction and infrastructural works in industrial parks	Vatable at 14%	Previously exempt now Vatable at 14%	Industrial parks are places set aside to act as incentives to investors. This will increase the cost of investments.
Biogas, Plastic bag biogas digesters, Leasing of biogas producing equipment.	Vatable at 14%	Proposal retained Previously exempt now Vatable at the rate of 14%	Biogas acts as alternative energy to LPG especially to low income earners. VAT on these products will therefore have direct impact on their livelihood.
One personal motor vehicle, imported by a public officer returning from a posting in a Kenyan mission abroad	Vatable at 14%	Vatable at 14%	The amendment is aimed at increasing the tax base.

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Taxable supplies and services in construction of LPG storage facilities	Vatable at 14%	Previously exempt now Vatable at 14%	LPG is a commonly used commodity in households, therefore charging VAT will increase the cost of living.
Goods & services imported or purchased locally for use in the implementation of projects under a special operating framework arrangements with the Government.	Vatable at 14%	Previously exempt now Vatable at 14%	This provision was introduced by the Finance Act 2018. However to date, the government has never published guidelines on this framework. It's therefore meaningless to charge VAT on a matter that is very little known to the public.
Insurance agency, insurance brokerage, stock exchange brokerage services.	Vatable at 14%	Previously exempt now Vatable at 14%	Taxation of insurance agency and brokerage service fees will likely increase the cost of insurance services as the insurance firms will seek to pass on the cost to the consumers.
Plant, machinery and equipment used in the construction of a plastics recycling plant.	Vatable at 14%	Previously exempt now Vatable at 14%	This provision was introduced by Finance Act 2019 with an aim to incentivize companies to set up recycling plant to curb the environmental challenges currently facing our nation.
Asset transfers into real estates investment trusts and asset backed securities.	Vatable at 14%	Previously exempt now Vatable at 14%	
Museum and natural history exhibits, and chemicals imported by the National Museums of Kenya	Vatable at 14%	Proposal retained	Museums support cultural heritage and provide learning opportunities for historical moments to students.
Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.	Vatable at 14%	Previously exempt now Vatable at 14%	Introduction of VAT will greatly affect the operations of such institutions whose aim is preserve heritage as opposed to making a profit.

Item	Tax (Amendment) Bill, 2020	Tax (Amendment) Act, 2020	Comment
Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves.	Exempt	Exemption status maintained	This will encourage the use of clean cooking energy and consequently conserve the environment.
Stoves, ranges, grates, cookers barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances,	Exempt		
Hiring, leasing and chartering of aircrafts.	Vatable at 14%	Proposal retained Exemption status maintained	Introducing VAT in the aviation industry will only add to the challenges considering the industry has been hardest hit by pandemic.
Inputs or raw materials for electric accumulators and separators	Vatable at 14%	Proposal rejected Zero rated	This is a welcome move as electric accumulators are meant to ease the cost of production of electricity.
Agricultural pest control products	Vatable at 14%	Proposal rejected Zero rated	The amendment is aimed to boosting the food production while reducing the cost associated with production.
All inputs and raw materials supplied to manufacturers of agricultural pest control products	Vatable at 14%	Proposal rejected Zero rated	
Vaccines for human medicine; Vaccines for veterinary medicines and other Medicaments	Exempt	Proposal retained Vaccines and other medicaments which were previously Zero-rated are now exempt supplies	This is a big blow to the pharmaceutical industry who will now not be able to claim for refunds arising from supply of medicaments therefore passing in the cost to the final consumers
Supply of ordinary bread	Vatable at 14%	Zero rated	The proposal was rejected as changes would increase price of bread making it unaffordable.
Supply of liquefied petroleum gas including propane	Vatable at 14%	Zero rated	Adequate time was necessary to allow the amendments of 2019 to take course.
Milk and cream, not concentrated nor containing added sugar or other sweetening matter	Exempt	Zero rated	Milk will continue to be zero rated. This is a welcome move as exempting milk would have led to increased prices to taxpayers.

Excise Duty

Item	Tax (Amendment) Bill	Tax (Amendment) Act	Comment
Sugar confectionary of tariff 17.04	The rate will be applicable to both imported and locally manufactured sugar confectionary of such tariff heads.	Proposal rejected	Excise duty will only be applicable on imported sugar.
White chocolate, chocolate in blocs, slabs or bars or tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	The rate will be applicable to both imported and locally manufactured white chocolate of such tariff heads.	Proposal rejected	This is a welcome move as it will protect the local industries from extra taxes during these tough economic times.
Clarification on the definition of other fees	other fees is defined to mean; any fees, charged by financial institutions relating to their <u>licensed activities</u> .	Proposal retained	“Other fees” will not only be restricted to fees relating to financial institutions but will also apply to other licensed activities carried out by such institutions
Goods imported or purchased locally for use in projects under SOF	Excisable	Proposal retained	The amendment was aimed at widening the tax base
A personal motor vehicle, imported by a public officer returning from a posting in a Kenyan mission abroad	Excisable	Proposal retained	

Tax Procedures Act

Item	Tax Amendment Bill	Tax Amendment Act	Comment
Appointment of revenue agents	The bill empowers the commissioner to appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement. Such persons appointed shall be required to transfer the funds to the designated Central Bank accounts within a maximum of two days following the date of collection.	The proposal was retained. It was however moved to the Kenya Revenue Act.	This provision will facilitate the collection and timely remittance of taxes through banks.
Private ruling	<ul style="list-style-type: none"> Currently, the TPA requires the commissioner to issue a private ruling within 45 days after receiving an application. The Bill proposes to eliminate this timeline. 	Proposal retained. However the Act has increased the timeline to issue a private ruling to 60 days	The decision to maintain timeline for issue of private ruling is a welcome move as it provides certainty to businesses.
	<ul style="list-style-type: none"> The Commissioner is required to publish all private rulings in atleast two daily newspapers as per the current TPA . The Bill proposes to withdraw this obligation from the Commissioner. 	Proposal retained	The proposal was retained on the basis that a private ruling is only meant for use by the taxpayer and revenue authority.
Late submission of penalty TOT	Reduction of penalty from KES 5,000 to KES 1,000.	Proposal retained	The reduction in penalty rates will encourage compliance among taxpayers.

Miscellaneous

Item	Tax Amendment Bill	Tax Amendment Act	Comment
Clarification RDL	No proposal	Inclusion of the word operation in the current provision under section 8 (3) of the Act.	The RDL was initially introduced for purposes of construction of SGR. The provision now clarifies that it will continue to be applicable to support operation of the SGR.
Import declaration fee	The Bill proposes to repeal IDF on raw materials and intermediate products imported by approved manufacturers which are currently charged at 1.5%.	Proposal retained	The proposal will help eliminate the ambiguity as to who are approved manufacturers.
Processing fee	In a bid to widen the tax base, the Bill proposes to introduce a processing fee of Kes 10,000 on all motor vehicles excluding motorcycles imported or purchased duty free prior to clearance through customs	Proposal retained	The amendment is seen as a measure by the government to widen the tax base.
Items no longer exempt from IDF	<ul style="list-style-type: none"> • Gifts or donations received from foreign relatives for personal use; • Goods destined for official aid-funded projects • Aircrafts 	Proposal retained	The proposed change will reduce the number of goods exempt from IDF which will help the government raise additional revenue to undertake its responsibilities and obligations.
Items no longer exempt from RDL	<ul style="list-style-type: none"> • Raw materials for use in construction by developers or investors in industrial parks • Goods imported for the construction of LPG storage facilities • Goods imported for implementation of projects under SOF 	Proposal retained	

Get in Touch

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



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