

The Value Added Tax Bill 2011

The Herald of a New Dawn

The Value Added Tax Bill 2011 (The Bill) has been published. The Bill does not have a commencement date and as promised by the Minister for Finance in his June 2011 Ministerial statement, should be open to stakeholders and the public for their review and comments. We have prepared our analysis on the implications of the proposed amendments, and invite you all to acquaint yourselves with the provisions so as to enable active participation at the stake holder level.

As a starting point, we note that the Bill is definitely much simpler to read than the present VAT Act and thus easier to understand. This notwithstanding, there are stark differences between the Bill and current VAT law regarding the VAT status of different supplies. One that immediately springs to mind is the significantly reduced listing of zero rated supplies. The proposed listing will almost exclusively consist of medicaments and exports – a throw back to the original VAT Act.

A vast number of products that are currently zero rated will be standard rated (16%). These include common commodities such as processed milk, rice, bread, wheat flour, maize flour, fertilizers, LPG gas, and computers. This will indeed increase the cost of these supplies. Zero rating makes the supplies cheaper as dealers in these goods and services can claim back input tax incurred in the course of their businesses. As VAT is not charged on the supplies by these dealers, more people are able to afford the commodities. Zero rating is

the only true way of ensuring that goods are provided free of VAT.

The listing of exempt goods is also vastly different but more in form rather than substance. Included in the listing are kerosene and kerosene jet type which are currently zero rated. The impact of this will be to make these products more costly – which seems to negate the various announcements made earlier this year. Mobile telephones, newspapers and books will also become standard rated.

Notable inclusions to the exempt schedule are items listed under chapters 84 and 85 of the East African Community Common External Tariff classification. These chapters broadly deal with machinery, mechanical and electrical appliances and parts thereof. Many of these items are currently standard rated.

The Bill proposes some drastic changes, but the immediate sense one gets is that the cost of living will definitely go up. Fortunately, the constitution has made it possible for the public to be involved in the process of law making directly, as opposed to previously where this could only be done through their Members of Parliament.

This analysis will we hope enable you understand the various changes proposed, as well as the impact of those changes to business in general. We have also provided our views on the impact to assist you in analysing the pros and cons of the proposed amendments.

It is unclear at this point as to when the Bill will become law. There will, we believe be an opportunity for stakeholder input and we intend to be involved in this process. We will be happy to collate your thoughts and comments into our submission. If you would like to do this please email your comments to one of the contacts as per the last page of this document.

Draft Bill	Existing VAT Act	The Change	Impact	Our View
S. 5	First Schedule	The only tax rates proposed are 16% and the zero rate.	The 12% rate currently applicable to electricity and industrial oils is to be removed. These will be taxed at the higher rate of 16%.	<p><i>This increase in VAT rate will inevitably lead to increased cost of electricity and industrial production costs.</i></p> <p><i>The implication of this is likely to be an increase in the costs for all consumer commodities, not to mention higher electricity prices.</i></p>
PART IV		Part IV of the new Bill is entirely devoted to Place and Time of Supply rules. Under the current legislation there was considerable confusion as to where a supply took place.	A number of supplies have now been implicitly defined in the legislation which should reduce areas of uncertainty and dispute.	<i>The introduction of these provisions will give greater clarity to what have always been complex rules.</i>
S.8	Section 6 (6),Section 2 and Regulation 20	<p>Where the place of business of a supplier of services is in Kenya, then the supply will be deemed to be made in Kenya.</p> <p>Where the place of business of the supply is not in Kenya, then they will be deemed to be made in Kenya if the recipient is not a registered person and:</p> <ul style="list-style-type: none"> • The services are physically performed in Kenya by a person who is in Kenya at the time of the supply; • The services are directly related to immovable property; • The services are radio or television broadcasting received at an address in Kenya; 	The proposed legislation explicitly defines where a supply of service takes place and guidelines on the application of VAT on imported services.	<p><i>This seems to deal with imported services by non-registered person. The criteria given would appear to limit the number of instances where a non-registered person would be required to account for reverse charge VAT.</i></p> <p><i>Our view is that this will be an extremely difficult provision to enforce as most non-registered persons are individuals who would receive and pay for these services from the privacy of their homes.</i></p>

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		<ul style="list-style-type: none"> The services are electronic services delivered to a person in Kenya at the time of supply; The supply is a transfer or assignment of, or grant of a right to use, a copyright, patent, trademark or similar right in Kenya. <p>The definition of exported services has been modified Under S. 2 of the Draft Bill to stress use and consumption rule. This was previously attempted under the infamous Regulations S.20.</p>		
S.9 & S.2	S.6 & S.7	Tax representative has now been defined in the proposed Bill and will replace tax agents referred to in the current Act and accorded greater responsibilities and powers.	<p>The Draft Bill provides a that non-resident taxpayer that is required to be registered will appoint a tax representative who shall be a person resident in Kenya, have the responsibility for doing all things required of the non-resident and be jointly and severally liable for the payment of all taxes, fines penalties and interest imposed under the Bill.</p> <p>The Bill proposes that the tax representative shall register in the name of the non-resident person.</p> <p>The tax representatives will represent the non-resident with respect to all transactions unlike the current case where the tax agent only represents the non-resident in respect of imported services.</p>	<p><i>This measure will give the government a greater element of control with regard to non-resident activities in Kenya. It is very likely that these registrations will result in KRA deeming that a Permanent Establishment (taxable presence) has been created for the non-resident in Kenya and subject them to income tax and associated transfer pricing implications where there are related parties.</i></p> <p><i>This will also place a huge burden on the tax representative who will assume all the responsibilities of the non-resident person.</i></p>

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S.10(1) & (2)		The Bill introduces a variation to the treatment of VAT on imported services by taxable and partially exempt persons.	<p>Reverse VAT will no longer be payable on imported services where the recipient of the service is entitled to a full tax credit.</p> <p>Partially exempt persons will now only account for VAT on the portion of the VAT that they would not have recovered due to their partial exemption status.</p>	<p><i>This is a significantly positive move as the current provisions require registered taxpayers to account for and pay VAT on imported services even when they are entitled to a full credit of the same amount in the next return. This provision proved a nuisance as it did not increase the government revenue and impacted negatively on the taxpayer's cash flow.</i></p> <p><i>Partially exempt entities will also benefit as they will only account for VAT on the portion that they would not have been entitled to claim as a credit.</i></p>
S.10(4)		If a registered person carries on an enterprise both in and outside Kenya, that part of the enterprise carried on outside Kenya shall be treated as if it were carried out by a person separate from the registered person.	A registered person who has an office outside Kenya will now have to account for VAT on taxable services received from their non-resident offices.	<p><i>This is an issue that has been unclear as the current VAT Act only provides that VAT is applicable only where there is a supply by one person to another. There has always been an issue on whether services received from either a non-resident head office or branch is subject to VAT. This provision would appear to clarify this.</i></p>
S. 16	VAT Regulations Para 6(1)	The draft bill proposes that VAT due can only be reduced by credit notes that have been issued within 6 months of the date of issue of the relevant tax invoice.	This reduces the period within which output VAT may be adjusted by issuance of a credit note from the 12 month period currently in force to 6 months.	<p><i>This appears somewhat punitive as it does not take into consideration business realities such as credit periods, disputes over invoices and bad debts. Businesses will now be placed under undue pressure to issue credit notes in spite of the business realities mentioned above being in play.</i></p>

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S. 17(1)		Where goods are acquired under a hire purchase or lease finance agreement, input tax deduction may be made in the tax period of the instalment payments.	The intention is unclear. ItThe new provision appears intended to permit purchasers of goods under hire purchase or lease finance terms to gradually claim the input tax with each instalment payment made.	<i>The intention is unclear. The use of the word “may” would seem to suggest that the taxpayer can elect to claim the input tax over the period of the financing arrangement or on receipt of the invoice. This seems illogical as taxpayers will always elect to claim the input tax on receipt of the invoice there is no benefit to deferring the claim.</i>
S. 17(4)	Legal Notice No. 95	The Draft bill has reduced the items on which input tax is restricted to passenger cars and minibuses except where they are used as stock-in trade or for leasing purposes. A, and, accommodation, restaurant and entertainment services that are also restricted when provided to employees and associates in specified circumstances.	Taxpayers will obtain credit on input tax on items that are currently restricted such as furniture, fittings, household domestic appliances and taxable supplies in relation to staff welfare.	<i>This is a welcome move that recognizes that these items are necessary for business and VAT thereon should be available for deduction.</i>
S. 17(5)	Regulations Para 13A	The Bill proposes to remove the requirement that an auditor must certify a VAT refund claim to be eligible for refund.	Refund audits will no longer be required.	<i>This is a positive move provided the KRA are able to make refunds on a timely basis. It is important to appreciate that the law has not been modified with regard to the VAT status of supplies and the time limits for submission of refund applications. As it has not been determined when the new bill will be enacted, we recommend that those taxpayers who are in refund continue to have them audited and submitted within the time limits and before the VAT status, where applicable, changes.</i>

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<p>S. 17(6)</p>	<p>Regulations S.17(1), S.17(3)</p>	<p>The Bill proposes only one formula for computing deductible input tax by partially exempt persons.</p> <p>In addition, it proposes to do away with the requirement for making annual adjustments in respect of mixed supplies.</p>	<p>The direct attribution method currently provided for in the VAT Act for calculating claimable input tax is proposed to be removed.</p> <p>Annual adjustments need not be prepared at the end of each year.</p>	<p><i>The removal of the direct attribution method is in our opinion a step in the wrong direction. This method was important as it recognized that input tax incurred is not always proportionately attributable to the exempt and taxable supplies proportionately. In this way, taxpayers could allocate the input tax that could be directly attributed to a specific supply and therefore obtain the appropriate credit. We would have actually liked to have seen the partial exemption methods increased from the two that are currently in use to take into account complex and evolving business scenarios.</i></p> <p><i>The formula method the Bill proposes to retain makes unrealistic assumptions that input tax incurred is always in proportion to the ratio of exempt and taxable supplies.</i></p> <p><i>It is also unclear whether the removal of the annual adjustment was a deliberate move or simply a drafting error. In our view, it is essential to retain the annual adjustment as it is the only means by which to confirm whether a taxpayer is actually partially exempt or not on an annual basis.</i></p>

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S. 17(7)	Regulations S.17(2)	<p>The <i>de minimis</i> limit on claiming of input VAT by registered persons with mixed supplies has been increased from 5% to 10%.</p> <p>The Bill proposes to vary the rules governing input tax recovery by partially exempt entities.</p>	<p>Registered persons with mixed supplies will claim full input tax where exempt supplies constitute less than 10% of total supplies. Currently input tax can only be claimed in full where exempt supplies constitute less than 5% to total supplies.</p> <p>Similarly, registered persons whose exempt supplies constitute more than 90% of total supplies will no longer be entitled to claim any input tax. Currently no such restriction exists.</p>	<p><i>The de minimis limit will impact tax payers differently. Those whose products are almost exclusively taxable could be entitled to recover all the input tax where they fall within the widened bands.</i></p> <p><i>Those whose supplies are mostly exempt could end up losing the input tax they are currently entitled to.</i></p> <p><i>The removal of the direct attribution method will result in more partially exempt taxpayers not being able to claim any input tax.</i></p>
S. 30	S. 23	Specific circumstances under which VAT remission may be granted to be removed.	Remissions will only be granted by the Cabinet Secretary where he is satisfied that it is in the public interest to do so.	<p><i>On the one hand, this provision in the hands of a Cabinet Secretary with robust views on what constitutes public interest could open up the opportunity for many projects that are currently excluded from benefitting from VAT remission to granted it. On the flip side, it gives the Cabinet Secretary broad powers to determine the meaning of 'public interest', thereby creating uncertainty within special interest groups currently catered for in the present VAT Act.</i></p> <p><i>However it is important to note that most capital equipment has now been classified as exempt under the First Schedule of the Bill. This perhaps reduces the need for VAT remissions but it does not specifically cater for remission for services.</i></p>

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S.39-42	S. 28A	<p>The Bill proposes to introduce rules on application of Information technology requiring that all the following formalities and procedures be carried out using information technology:</p> <ul style="list-style-type: none"> • Application for registration; • Filing of any returns or statements; • Any payments or repayments; • Any notice or other document required to be issued by the Commissioner; or • Any act or thing which requires to be done under the Act. 	Registered persons will be required to register and account for tax electronically.	<p><i>This move is meant to phase out the manual system of accounting for VAT, and is also expected to improve the administration and collection of tax.</i></p> <p><i>This proposal presumes that KRA will adopt modern systems that are user friendly, and build sufficient capacity to thus capable of identifying and accommodateing the different needs of the tax payers.</i></p>
S. 45	None	The Draft bill introduces an option for taxable persons to apply for extension of time within which to submit a return, provided such application is made before the due date for the submission of that return.	Taxable persons will be in a position to avoid late penalties in instances where, due to unavoidable circumstances, the returns cannot be submitted by the due date.	<i>With the removal of filing of amended returns, our view is that this is a welcome amendment to the legislation as taxpayers can be granted more time to file their returns.</i>
S.46 & S.47	None	<p>The Bill introduces a time limit of five years for the Commissioner to issue an assessment or an amended assessment.</p> <p>This time limit will not however apply in cases of gross or willful neglect, evasion or fraud.</p>	Currently no time limit is provided within which the Commissioner can issue an amended assessment. which has been, and it has been left entirely to his discretion. The Commissioner has, to date, had considerable discretion in the matter of assessments. to determine the time period within which to issue an assessment.	<i>As the time limit provided is in line with the time period within which a taxpayer is expected to maintain their records, this move will benefit taxpayers as it has been a nightmare for many taxpayers in instances where the Commissioner issues assessments in relation to periods for which the records cannot be traced.</i>

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S.49(2)	S.30(2)	The penalty for non-production of records has been increased to Kshs. 100,000 or imprisonment of up to 3 years or both.	The cost of nNon-compliance can be expensivewill go up.	<i>This is all in keeping with KRA's bid to enforce compliance.</i>
S.51(6)		If the Commissioner amends an assessment, any objection to that assessment is to be limited to the alterations and additions made in it.	This will formally grant the taxpayer a right of reply to an amended assessment. This is not currently provided for under the VAT Act.	<i>This is in line with the judicial procedure whereby an appellant would be prohibited from raising new issues in subsequent appeals.</i>
S. 52(1) &(5)	S. 33(1)	50% of tax in dispute to be paid to the Commissioner before filing an appeal to the Tribunal.	Currently there is no requirement to make a payment for any tax in dispute when appealing to the VAT tribunal.	<p><i>This proposed amendment should be vigorously contested and lobbied outremoved.</i></p> <p><i>This law is inequitable and punitive on the taxpayers as they will be required to make a payment for tax in dispute before the hearing of the case. In our view, tax in dispute should only be payable as and when a ruling has been made.</i></p> <p><i>It also seems to give undue license to the KRA to raise and confirm frivolous assessments as they are now guaranteed 50% of the assessed tax regardless of the merits of the assessment.</i></p> <p><i>A time limit should be set within which the refund must be made following a successful appeal.</i></p>
S.52(2)	S.33(1)	The Tribunal to be granted formal powers to extend the time within which an objection must be lodged.	This gives the taxpayer an opportunity to file a late appeal.	<i>While this is a welcome measure, it seems rather open-ended in that we believe it should specify circumstances under which such an application will be considered.</i>

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S. 53(2)	S. 32(2)	Term of office for Tribunal members is set to be 3 years and is renewable for a further one term of three years. The existing VAT Act does not set the term of office.	Members serving in the Tribunal will be required to serve for a continuous maximum period of up to 6 years.	<i>This will eliminate the risk of patronage and thus introduce new and fresh thinking into the Tribunal which should benefit the taxpayer.</i>
S. 53(3) & (4)	None	<p>Qualifications for appointment as a member of the Appeals Tribunal proposed to include a person who:</p> <ul style="list-style-type: none"> • Has met his tax obligation and has not been liability to any penalties • Has high moral character and integrity • Has not been convicted of any criminal offence • Holds a degree in taxation, accounting, finance or law from a university recognized in Kenya • Is not an employee of KRA or the civil service, and in case of former employees must have completed three years since leaving such employment. <p>Circumstances under which an office of a member shall fall vacant have also been defined.</p>	The current VAT Act does not provide for the qualifications of members of the Tribunal and it has been left at the discretion of the Minister.	<i>By setting qualifications to be appointed as a member of the Tribunal, it is hoped that it will become anensures that it will in future continue to be a competitive and effective body in resolving disputes.</i>

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S. 57	None	Provisions relating to affairs of the Tribunal have also been proposed including contempt proceedings.	Currently there are no provisions relating to the affairs of the tribunal.	<i>This just serves to make the Tribunal a more effective body.</i>
S.64	S.42	The penalty for disclosure of information will be increased to Kshs. 100,000 up from Kshs. 20,000.	The cost of non-compliance will go up. Non-compliance can be expensive. This codifies the system where the Commissioner has been issuing both public notices and private rulings. Greater clarity.	<i>This is all in keeping with KRA's bid to enforce compliance.</i> <i>This is a positive move designed to give taxpayers greater certainty when planning their affairs. It is also in line with international best practise where revenue authorities will do give rulings.</i>
S.72 & 73	None	The Commissioner to be empowered to make public rulings setting out his interpretation on the application of the Act. The Commissioner is also given the right to withdraw the public ruling.		<i>We would like included under this proposed legislation rules providing for no-name rulings. There is really no good reason for the Commissioner to know who the taxpayer is before a ruling on a set of facts can be made.</i> <i>Withdrawals by the Commissioner cannot have a retrospective effect.</i>
S. 74 - 77	None	Provisions enabling the Commissioner to make private rulings introduced.	Tax planning schemes will need to be carefully considered to ensure that they are commercially justifiable.	<i>This brings VAT legislation in line with the Income Tax legislation, although the relevant section of the Income Tax Act has rarely been invoked.</i>
S.81	Value Added Tax Regulations	The Bill proposes to that the Cabinet Secretary may introduce Regulations to the Draft Bill to better carry out or give effect to the purposes and provisiond of the Bill.	The Regulations provided for in the current VAT legislation will be deleted and new regulations published before the enactment of the Draft Bill.	<i>The proposed regulations should provide guidance on the various aspects of the proposed legislation to provide clarity on the issues where reference has been made to them, and ensure taxpayer compliance.</i>

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S. 82	None	The Bill has introduced new provisions in relation to tax avoidance schemes. The Bill empowers the Commissioner to determine, within a period of 5 years, the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into.	Tax planning schemes will need to be carefully considered to ensure that they are commercially justifiable.	<i>This brings VAT legislation in line with the Income Tax legislation, although the relevant section of the Income Tax Act has rarely been invoked.</i>
S. 83		The Bill also provides that the provisions of the Value Added Tax Act shall remain in full force and effect for purposes of the assessment and collection of any taxes and penalties outstanding as at the date when the repeal becomes effective.	None.	<i>It will enable the current VAT Act to continue to have legal force when the VAT Bill is passed into law for the periods before its enactment. This is important.</i>
First Schedule	Second and Third Schedule	Exempt Supplies are to be covered under the First Schedule to the proposed Bill.		<i>Of all the changes proposed in the VAT Bill, the changes proposed to the VAT status of the items listed in the First and Second Schedule to the Bill are perhaps the most profound and far reaching. Each item proposed for change will have a varying degree of impact which may be significant.</i>
		<p>Examples of Exempt Goods which will be Standard Rated</p> <ul style="list-style-type: none"> • Non-roasted coffee • Residue and waste from the food industry • Wood charcoal • Newspapers, journals and periodicals • Telephones for cellular networks • Helicopters • Aeroplanes • Spacecraft • Artillery weapons 		<p><i>We would strongly recommend that particular focus is placed on studying these areas to assess its impact and where found to be detrimental, to be robustly lobbied against.</i></p> <p><i>Our views are that the VAT status of an item has a direct impact on the price in such a way that an item that is zero rated, exempt or standard rated, its price would be different</i></p>

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		<ul style="list-style-type: none"> • Coffins <p>Examples of Exempt Services which will be Standard rated</p> <ul style="list-style-type: none"> • Sanitary and Pest control services to domestic households • Sale of commercial buildings • Tour operation • Transportation of tourist – travel agents 		<p><i>under each scenario with the item being cheapest when zero rated and most expensive when standard rated.</i></p> <p><i>There are those items especially basic commodities such as processed milk, maize flour, wheat flour etc that should continue to enjoy zero rated status.</i></p> <p><i>With the proposed increase in electricity rate to 16% the cost of manufactured goods will likely rise. It would well be worth considering zero rating electricity to give wananchi a much needed reprieve.</i></p>
Second Schedule	Fifth Schedule	Zero Rated Supplies to be covered under the Second Schedule		
		<p>Examples of Zero rated goods which will be Standard Rated</p> <ul style="list-style-type: none"> • Milk and cream • Live trees and other plants, bulbs, tubers, roots and cut flowers • Maize flour • Glucose, glucose syrup, and pure fructose; • Baby formulas • Oil cakes and other residues of the milling industry including preparations for the manufacture of animal feeds • Some inorganic chemicals and rare metals • Vitamins • Insulin (except medicaments containing insulin) • Hormones • Fertilizers • Photographic plates, films, 		<p><i>Fertilizers should also be retained in the zero rated listing as this will increase the cost of agricultural inputs and consequently the cost of farm produce.</i></p> <p><i>Resolving the issue of VAT refunds should not come at an expense to taxpayers.</i></p>

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		<p>etc.</p> <ul style="list-style-type: none"> • Insecticides, rodenticides, disinfectants and similar products • Condoms, gloves and similar products • Wheat Flour • Napkin and napkin liners • Feeding bottles for babies • Locally assembled water pumps • Ordinary bread, gluten bread and unleavened bread • Pyrethrum extract • Locally produced and ginned cotton <p>Examples of Zero Rated Goods which will be Exempt</p> <ul style="list-style-type: none"> • Kerosene type jet fuel • Illuminating kerosene • LPG Gas <p>Examples of Zero rated services which will be Standard rated</p> <ul style="list-style-type: none"> • Electricity to domestic consumers • Foreign travel and tourism promotion services supplied by hotel establishments • Taxable service in respect of goods in transit • Taxable services to transit aircraft • Taxable goods and services to film producers • Taxable supply of water 		

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		<ul style="list-style-type: none"> drilling services • Goods and taxable services for the construction of grain silos • Goods and services for cotton ginning • Water drilling services • Transportation of unprocessed agricultural and agroforestry goods 		
Second Schedule	Eighth Schedule	<p>Public Bodies, Privileged persons and institutions to lose zero rated status</p> <ul style="list-style-type: none"> • Goods for use by the President • All goods, including materials, supplies, equipment, machinery and motor vehicles, for the official use of the Kenya Armed Forces • Disabled, blind and physically handicapped persons • NAAFI and AFCO • Safari Rally drivers • Equipment, machinery, uniforms, uniform materials and motor vehicles, including aircraft and vessels imported or purchased for the official use of the Kenya Police, National Security Intelligence • Service, Administration Police, Kenya Wildlife Service and Kenya Prisons • Registered manufacturers in customs bonded factories 		

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		<ul style="list-style-type: none"> • Entrants in Motor Cycle Rallies • Kenya Military and Police Officers returning from United Nations peace-keeping missions outside Kenya • All materials and equipment, excluding vehicles, and goods for regular repair and maintenance, for use in the construction or refurbishment of tourist hotels • Chemical fertilizers • Gifts and rewards won by Kenyan sportsmen; • Specialized ship loading and unloading equipment • Imported electricity for distribution to the national grid • ETR machines • Taxable goods and services by persons with diplomatic privileges. 		
S.2	S.2	Assessment now defined to mean a self-assessment return submitted under section 52; a default assessment made by commissioner under section 46; an amended assessment under sec 47.	Provides clarity on what constitutes an assessment.	<i>There appears to be a bid to harmonize terms in use under revenue legislation.</i>

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S.2	S. 2	Definition of 'business' has now been expounded to include – any activity carried on by a person continuously or regularly whether or not for gain or profit, which involves, partly or wholly, the supply of goods or services for a consideration and supply of property by way of lease, license or similar arrangement.	This will provide guidance on the meaning and what constitutes business.	<i>The new definition will gives better more clarity on the transactions that would be subject to VAT.</i>
S. 2	S. 2	Definitions deleted.	The following definitions have been deleted: <ul style="list-style-type: none"> • Concessional loans • Construction • Contractor • Entertainment • Game of chance • Hotel • Owner • Manufacture • Manufacturer • Registered Manufacturer • Restaurant 	<i>This removes superfluous definitions making the Bill more user-friendly.</i>
S. 2	S. 2	Foreign aid funded investment project definition expanded and renamed official aid funded projects.	Aid funded projects now will not need require gazzettelement.	<i>The expanded definition and removal of gazzettelement should reduce bureaucratic red tape.</i>
S.2	S.2	Definition of importer has been expanded.	Clarification on who the importer is has beento beis provided.This gives greater clarity.	<i>This takes cognizance of the complex nature of importing goods where there are several interest parties.</i>
S.2		Money defined.		
S.2		Goods defined.		

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		Definition of supply of goods to be separated from supply of services.	<p>Supply of goods and services now to be separately defined.</p> <p>Supply of goods to be defined as a sale, exchange or other transfer of the right to dispose of the goods as owner or the provision of electrical or thermal energy, gas or water.</p> <p>Services are now to be defined as anything done that is not a supply of goods or money, including the performance of services for another person, the grant, assignment or surrender of any right, the making available of any facility or advantage, or the toleration of any situation or the refraining from the doing of any act.</p>	<p><i>The current definition was considered to be ambiguous and confusing. The proposed revision should go some way to alleviating this.</i></p> <p><i>As now defined, the scope of what is a supply, whether goods or service, has been expanded significantly. This does however raise the question of whether the definition is specific enough.</i></p>
		Revised definition of services exported outside Kenya.	The proposed definition excludes reference to the place where the service is performed.	<p><i>The revised definition when read with new place of supply rules appears to give what is currently Regulation 20 a statutory basis. Export of services has been an area of great opacity needing a redraft. This amendment does little in providing the much needed clarity.</i></p>
S.2 & S.35	S.2 & 6 th Schedule	Certificate of Registration to be replaced by the Tax registration certificate.	A registered person will now require a tax registration certificate in a form to be prescribed by the Commissioner.	<p><i>This new definition cannot currently work in practice because the online registration system only allows for a PIN Certificate. Indeed the requirement for a VAT registration certificate, whilst still in the current law, had been removed when the online registration system came into use.</i></p>

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