



Keeping you in the loop

The Finance Act, 2020

The President assented the Finance Act, 2020 (“the Act”) into law on 30th June 2020. The Act seeks to amend various laws relating to taxes and duties and for matters incidental thereto. The Act, which was published in Vol. CXXII – No. 133 of the Kenya Gazette of 10th July 2020, has a number of measures whose effective date is indicated as 30th June 2020. Therefore, since the Act was published on 10th July, this may give disputes as to when these measures should be effective..

In this alert, we highlight the key amendments introduced by the Act (including their effective dates) and the proposals in the Finance Bill, 2020 that were not approved by the National Assembly. Please click [here](#) to read our analysis of the Finance Bill, 2020.

Key Income Highlights

Residential rental income tax

The Act has introduced an annual threshold of KES 288,000 below which residential rental income tax shall not apply. The annual ceiling of income liable to residential rental income tax has also been increased from KES 10m to KES 15m.

Residential rental income tax shall therefore only apply to persons with annual residential rental income between KES 288,000 and KES 15m.

Effective date: 1 January 2021.

Minimum tax

The Act has introduced a tax known as minimum tax, which shall be payable regardless of whether a taxpayer will have taxable profits or not. The tax shall be computed at the rate of 1% of the gross turnover.

Minimum tax shall not apply to: income that is exempt under the Income Tax Act; employment income; income subject to residential rental income tax; income that is subject to Turnover Tax; income subject to Capital Gains Tax and income of entities operating in the extractive sectors.

Minimum tax shall only be applicable where a person's instalment tax is lower than minimum tax. However, there seems to be a drafting error as the Act indicates that minimum tax shall apply where instalment tax is higher than minimum tax. We expect this to be corrected in future.

Minimum tax shall be payable through an instalment tax system by the 20th of the fourth, sixth, ninth and twelfth months.

Effective date: 1 January 2021.

Digital service tax

The Act has introduced a digital service tax, which shall be payable by persons whose income from provision of services is derived from or accrues in Kenya through a digital market place.

The tax shall be applicable at 1.5% of the gross transaction value of the services and shall be due at the time of transfer of the payment to the service provider. We understand that the tax may likely be accounted through a withholding tax mechanism, as the Act has also amended the Tax Procedures Act, 2015 in order to appoint digital service tax agents.

A resident person or a non-resident with a permanent establishment in Kenya will be entitled to offset the digital service tax paid against their income taxes for the year.

Effective date: 1 January 2021.

Removal of income tax exemptions

The Act has deleted the tax exemptions on the following incomes:

- The income of a registered home ownership savings plan;
- Lumpsum pension granted to a person aged 65 years or older;
- Income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band (Currently, KES 288,000); and
- Interest income earned by a depositor on deposits of up to KES 3million to a registered home ownership scheme.

Effective date: 1 January 2021.

Proposals that were not approved by the National Assembly

The following income tax measures that were contained in the Finance Bill were not approved by the National Assembly:

1. Deletion of the provision that entitles taxpayers to a deduction in respect of capital expenditure incurred on the construction of a public school, hospital, road or any similar kind of social infrastructure; and
2. Removal of tax exemptions on the following incomes:
 - a. Income of the National Social Securities Fund; and
 - b. Monthly pension granted to a person aged 65 years or older.

Key Value Added Tax Highlights

Input tax deductibility

The Act has introduced a provision under Section 17(3) of the Value Added Tax Act, 2013 ("VAT Act") that may lead to input tax being disallowed if the same has not been declared as output tax by the supplier.

As per the amendment, a person claiming input tax would be required to have the requisite documents as provided for under Section 17(3) of the VAT Act or obtain confirmation that the supplier has declared the output tax in the VAT return.

This amendment in our view aims to give legal force to VAT auto-assessments.

Effective date: 30 June 2020.



Change of VAT status from exempt to standard-rated

The Act has amended the Value Added Tax Act, 2013 (VAT Act) by deleting the supply of the following goods and services from the First Schedule. This amendment effectively changes their status from exempt to taxable at the standard rate (currently at 14%).

#	Item	Effective date
1.	Helicopters of unladen weight not exceeding 2000kg	1 July 2021
2.	Helicopters of unladen weight exceeding 2000kg	
3.	Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.	
4.	Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg	
5.	Aircraft launching gear and parts thereof; deckarrestor or similar gear and parts thereof	
6.	Air combat simulators and parts thereof	
7.	Other ground flying trainers and parts thereof	
8.	Tractors	
9.	Hiring, leasing and chartering of helicopters of tariff No. 8802.11.00 and 8802.12.00	

#	Item	Effective date
10.	Goods of tariff No. 4011.30.00	30 June 2020
11.	Aluminium pilfer proof caps with EPE liner	
12.	Specialised solar equipment and accessories, including solar water heaters and deep cycle-sealed batteries which exclusively use or store solar power	
13.	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	
14.	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel	
15.	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, which is not exempted from VAT under the First Schedule	



Amendments to the Second Schedule - Zero-rated status

With effect from **30th June 2020**, 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 shall be zero-rated for 6 months. These goods are currently listed as exempt in the VAT Act.

#	Item	Effective date
1.	The supply of liquefied petroleum gas including propane	1 July 2021
2.	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.	30 June 2020

Goods for use in projects under special operating framework arrangements

The Act has introduced a transitional provision that allows companies/projects currently under special operating framework agreements (SOFA) to continue enjoying the VAT exemptions on goods imported or purchased locally for the remaining period of the agreement. The VAT exemption on goods imported or purchased locally for use or implementation of projects under SOFA was deleted by the Tax Laws (Amendment Act), 2020.

Key Excise Duty Highlights

Definition of licence

The Act has amended the definition of "licence" to read as follows:

- a) *in the case of excisable services, the certificate of registration;*
- b) *in the case of excisable goods, the licence issued under section 17; or*
- c) *in the case of any activity under section 15 (1) (e), the licence required thereunder.*

Effective date: 30 June 2020

Inflationary adjustments

Section 10 of the Excise Duty Act empowers the Commissioner to annually adjust specific excise duty rates for inflation through a notice in the gazette.

The Finance Act has now introduced a provision that requires the Cabinet Secretary for the National Treasury to approve any such inflationary adjustments before the notice is published. In addition to this approval, the Act has also introduced a requirement for the notice to be tabled before the National Assembly within 7 days of publishing the same. The National Assembly shall be required to either approve or reject the notice within 28 sitting days of receiving the notice. The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.

Effective date: 1 January 2021

Alcoholic strength of spirituous beverages

The Act has amended the alcoholic strength of spirituous beverages under the description: "*Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%*" by reducing the alcoholic strength of spirituous beverages from 10% to 6%.

A corresponding adjustment to change the alcoholic strength to 6% under the description: "*Spirits of undenatured ethyl alcohol; liqueurs and other spirituous beverages of alcoholic strength exceeding 10%.*" has also been made.

The above amendment implies that excise duty on spirituous beverages of alcoholic strength not exceeding 6% will be KES 110.62; while spirits of undenatured ethyl alcohol, spirit liqueurs and other spirituous beverages of alcoholic strength exceeding 6% will attract excise duty at KES 253 per litre. In effect, excise duty on spirituous beverages of alcoholic strength exceeding 6% but less than 10% will increase from KES 110.62 per litre to KES 253 per litre.

Effective date: 30 June 2020

Excise duty on betting activities

The Act has deleted betting activities from the list of services subject to excise duty under Part II of the First Schedule to the Excise Duty Act.

Effective date: 30 June 2020

Excise duty on imported sugar confectionery and chocolate

The proposed re-introduction of excise duty on locally manufactured sugar confectionery of tariff heading 1704 at KES 20 per Kg and white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00 at KES 200 per Kg was not approved by the National Assembly.

Amendments to the Miscellaneous Fees and Levies Act

The Act has introduced the following changes to the Miscellaneous Fees and Levies Act.

#	Change	Effective date
1	Revision of the import declaration fee (IDF) on goods imported under the East African Community (EAC) Duty Remission Scheme from a fixed fee of KES 10,000 to 1.5% of the customs value	30 June 2020
2	Introduction of an additional duty at the rate of 2.5% of the customs value on goods entered for home use from an Export Processing Zone Enterprise	
3	Introduction of IDF and RDL exemptions on goods, including materials, supplies, equipment, machinery and motor vehicles, for the official use by the Kenya Defence Forces (KDF) and the National Police	
4	Introduction of RDL exemption on currency notes and coins imported by the Central Bank of Kenya	
5	Removal of Railway Development Levy (RDL) exemption on goods determined by the Treasury CS to be in public interest, or for promotion of investments above KES 200 million	
6	Removal of IDF exemptions on the following goods: <ul style="list-style-type: none"> • Goods determined by the Treasury CS to be in public interest or for promotion of investments above KES 200 million; and • Goods for implementation of Special Operating Framework Agreement projects. 	
7	Removal of IDF exemptions on aircraft of unladen weight not exceeding 2,000kg and helicopters and helicopters of tariff No.s 8802.11.00 and 8802.12.00	1 July 2021

Amendments to the Tax Procedures Act, 2015

Introduction of a voluntary tax disclosure programme

The Act has amended the Tax Procedures Act, 2015 by introducing a voluntary tax disclosure/ amnesty programme with effect from 1 January 2021. The amnesty will run for 3 years and shall apply to tax liabilities that accrued within a period of five years prior to 1 July 2020.

A taxpayer who voluntarily discloses to the Commissioner their tax liabilities (including material facts) will be granted relief from penalties and interest on the tax disclosed as follows:

- A full remission of the interest and penalty where the disclosure is made and tax paid within the first year of the programme;
- A remission of 50% of the interest and penalty where the disclosure is made and tax paid in the second year of the programme; and
- A remission of 25% of the interest and penalty where the disclosure is made and tax paid in the final year of the programme.

The tax amnesty programme shall not apply to a taxpayer who is under audit, investigation or is party to an ongoing litigation or who has been notified of a pending audit or investigation by the Commissioner

Effective date: 1 January 2021

Appointment of digital service tax agents

The Tax Procedures Act, 2015 is amended by allowing the Commissioner to appoint persons as agents for purposes of collection and remittance of digital service tax and/ or revoke their appointment at any time.

Effective date: 1 January 2021

Amendments to the Tax Appeals Tribunal Act, 2013

The Act has amended the Tax Appeals Tribunal Act, 2013 by introducing an amendment that bars the appellant from introducing new documents to support an appeal after filing the original appeal. Previously, the law only barred an appellant from introducing new grounds of appeal after filing the original appeal.

Effective date: 30 June 2020

Other Changes

In addition to the amendments to the tax statutes, the Act has also introduced the following amendments with effect from **30th June 2020**:

- Amendment of the Kenya Revenue Authority Act, 1995 in order to :
 - Allow the Kenya Revenue Authority ("KRA") to establish an institution to provide capacity building and training for the better carrying out of its functions;
 - Allow the KRA Board to make regulations with respect to capacity building and training;
 - Entitle KRA to commissions for collecting revenue on behalf of county governments or government agencies. The commissions shall be capped at 2% of the revenue collected ; and
 - Prevent legal action against KRA unless:
 - It is commenced within 12 months after the act, neglect or default complained of;
 - In the case of continuing injury or damage, within six months after cessation of the act; or
 - At least one month written notice specifying the particulars of the claim and intention to commence the action or legal proceeding has been served upon the Commissioner General.

- Amendment of the Insolvency Act, 2015 in order to give unpaid amounts held on behalf of the KRA by an institution appointed as an agent for revenue banking services, second priority in the event of liquidation or receivership of the institution.
- Amendment of the Roads Toll Act (Cap 407) in order to:
 - Remove the provisions that require the Minister in charge of roads to seek the National Assembly's approval before signing a planning, design, construction and management agreement of a public road or any portion thereof that has been declared to be a toll road;
 - Allow the use of alternative arrangements, beyond the conventional toll stations/ facilities, for the levying, collection and administration of tolls and management of toll infrastructure;
 - Introduce a proviso that will allow toll rates to be adjusted, varied or revised;
 - Provide for the establishment of a Fund that will be known as the National Roads Toll Fund, which shall receive all tolls, except transit tolls, collected by persons appointed by the government; and
 - Allow a person with whom the Minister in charge of roads enters into a toll road management agreement to collect unpaid tolls from defaulters as a civil debt recoverable summarily.
- Amendment of the Capital Markets Act (Cap 485A) in order to allow the Capital Markets Authority to license, approve and regulate private equity and venture capital companies that have access to public funds;
- Amendment of the Insurance Act (Cap 487) in order to limit the period to 30 days, within which an appeal against the Commissioner of Insurance's decision, on a dispute between an insurance customer and regulated entity, may be lodged to the Tribunal.; and
- Amendment of the Retirement Benefits Authority Act, 1997 in order to introduce penalties where a trustee fails to submit a copy of the actuarial report to the Chief Executive Officer of the Retirement Benefits Authority. A penalty of KES 100,000 will immediately be imposed in case of delay and a further penalty of KES 1,000 shall be charged for each day or part thereof during which the report remains un-submitted.



For clarification on this alert, please contact

Maurice Lugongo

Senior Manager, Tax

mlugongo@deloitte.co.ke

Fredrick Kimotho

Manager, Tax

fkimotho@deloitte.co.ke

Doris Gichuru

Associate Director, Tax

dgichuru@deloitte.co.ke

Patrick Chege

Associate Director, Tax

pchege@deloitte.co.ke

David Mwiti

Associate Director, Tax

dmibari@deloitte.co.ke

Fredrick Omondi

Tax & Legal Leader, Deloitte East Africa

fomondi@deloitte.co.ke

Lillian Kubebea

Tax & Legal Partner

lkubebea@deloitte.co.ke

Walter Mutwiri

Tax & Legal Partner

wmutwiri@deloitte.co.ke

Doreen Mbogho

Tax & Legal Partner

dmbogho@deloitte.co.ke

James Mwendia

Tax & Legal Partner

jmwendia@deloitte.co.ke

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organization") serves four out of five Fortune Global 500® companies. Learn how Deloitte's approximately 312,000 people make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication. No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.