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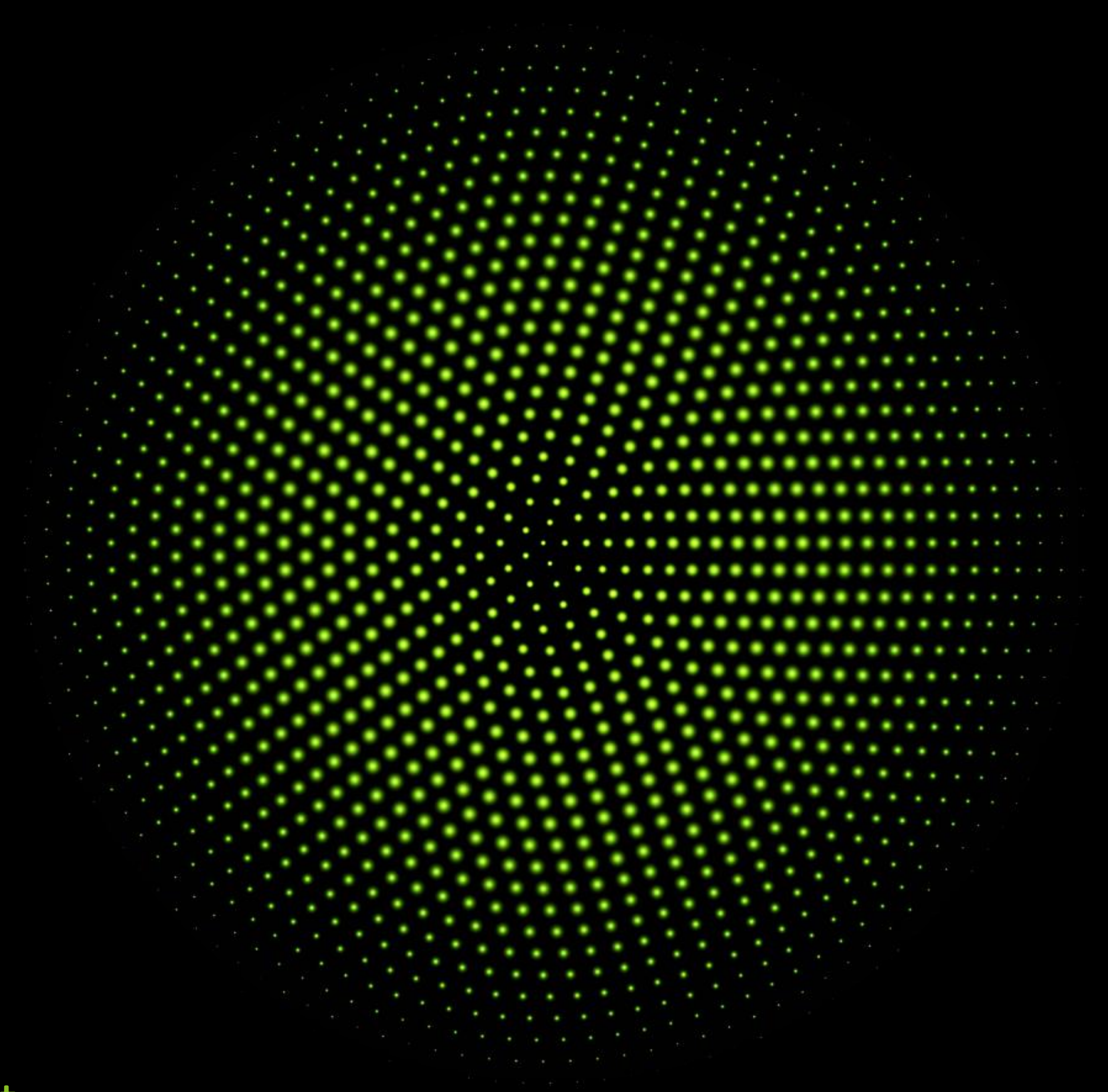
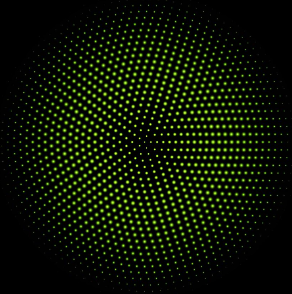


# Kenya Tax Alert

## Tax Laws (Amendment) Bill, 2020

April 2020



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The Tax Laws (Amendment) Bill, 2020 was published on 30 March 2020. The Bill has proposed amendments to the Income Tax Act, Value Added Tax Act, 2013, Excise Duty Act, 2015, Tax Procedures Act, 2015, Miscellaneous Fees and Levies Act, 2016 and the Kenya Revenue Authority Act, 1995. Although it was expected that this Bill would contain the provisions giving effect to the tax relief measures announced by the President, when he outlined the Government's initiatives aimed at addressing the economic impact of the COVID-19 pandemic, it is rather surprising that the Bill contains a raft of changes to the tax laws that will have a significant impact on taxpayers. Perhaps the National Treasury has seized the opportunity to push through changes that would have been under consideration as part of the proposed Income Tax Bill and subsequent reviews to other tax laws. It would appear that the National Treasury is seeking to enhance revenue collection and help bridge the budget deficit by radically reducing tax incentives and benefits. One would wonder whether this is the right moment given the economic distress that is facing most taxpayers as a result of the COVID-19 pandemic.

Key changes contained in the Bill include:

- Reduction of income tax rates for both individuals and corporate entities;
- Reduction and/or elimination of tax incentives such as investment allowances and exemptions;
- Withholding tax measures aimed at taxing income of non-residents and income accrued from digital platforms;
- Reduction of VAT zero rated products, including some basic necessities that moved from zero rate to exempt; and
- Significant reduction in the number of VAT exempt items.

The Bill is currently before Parliament and, subject to any changes that may be passed at this stage, will take effect after assent by the President. It is expected that Parliament will fast-track the Bill as some of the measures were intended to take effect immediately. However, it is not clear if Parliament will proceed with all the changes as contained in the Bill or consider the representations made by various parties to limit the Bill to the specific tax measures proposed by the President to mitigate the impact of COVID-19. This publication summarizes our analysis of the proposed amendments and their impact.

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## Proposal to change the resident corporate tax rate

### The measure

The Bill proposes to amend Paragraph 2 (a) Head B of the Third Schedule to the Income Tax Act to introduce a new corporate tax for the year of income 2020 and subsequent years of income. We understand that it is the intention of the Government to reduce the rate from 30% to 25%. However, the new rate has inadvertently been left out due to a drafting error.

### Who will be affected

All resident corporates

### When

Upon assent of the Bill

### Our view

The reduction of the resident corporate tax rate would be a welcome move for resident corporates, as it will reduce their corporate tax and consequently increase the distributable profits to shareholders or retained earnings available for re-investment.

Given that the drafting error will likely be corrected, it would be advisable for companies to review their basis for computation of the instalment tax for this year to ensure they do not end up in significant tax overpayments due to the rate adjustment and the current trading conditions.

The corporate tax rate for non-resident companies (37.5%) has not been changed, hence, the significant difference in rates may impact decisions of foreign investors on whether to operate as a branch or subsidiary while taking into account the revised rate of tax on dividends paid to non-resident shareholders.

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## Repeal of tax incentives for listed entities

### The measure

The Bill proposes to delete the following listing incentives:

a) Provisions that entitled listed entities to claim deductions in respect of:

- Legal costs and other incidental expenses relating to authorisation and issue of securities for purchase by the public;
- Legal costs and other incidental expenses incurred to list on any securities exchange operating in Kenya, without raising additional capital; and
- Expenditure incurred on rating for the purposes of listing on any securities exchange operating in Kenya.

b) Reduced tax rates to newly listed entities:

- 27% for 3 years where at least 20% of the issued share capital is listed;
- 25% for 5 years where at least 30% of the issued share capital is listed;
- 20% for 5 years where at least 40% of the issued share capital is listed; and
- 25% for 5 years in the case of a company introducing its shares through listing or any securities exchange via introduction.

### Who will be affected

Recently listed entities and companies wishing to issue their securities to the public

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*Repeal of tax incentives for listed entities...cont.*

**When**

Upon assent of the Bill

**Our view**

The repeal of the preferential tax rates for listed entities may be informed by the reduction of the normal corporate tax rate from 30% to 25%.

Whereas it could be argued that the removal of preferential rates and the deductions for listed entities could discourage listing of securities, it is worth noting that the number of new listings at the stock exchange has dried up in recent times and therefore the National Treasury may have concluded that the tax incentives have not been a game changer in driving new listings.

Overall, the measure is in line with recent moves towards fiscal consolidation with some quarters being of the view that tax incentives are costing the Government much needed revenue. This is a subject that remains open to debate.

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## Repeal of the reduced corporate tax rate for companies operating recycling plants

### The measure

The Bill proposes to delete Paragraph 2(l) of the Third Schedule to the Income Tax Act, which prescribes a reduced corporate tax rate of 15% for the first 5 years for any company operating a plastics recycling plant. The reduced rate was introduced through the Finance Act 2019 and has been effective since 7 November 2019.

If passed in its current state, entities operating plastics recycling plants will be taxable at the normal corporate tax rate.

### Who will be affected

All companies operating a plastics recycling plant

### When

Upon assent of the Bill

### Our view

The reduced corporate tax rate was aimed at reducing the negative impacts of plastic on the environment by encouraging the recycling of plastics.

The repeal of the reduced rate, barely a year after its introduction, calls into question whether the objective has been achieved. But as indicated elsewhere, this is in line with the move to reduce tax incentives in order to shore up Government revenue.

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## Repeal of special corporate tax rate for companies operating under a special operating framework

### The measure

The Bill proposes to delete Paragraph 2(k) of the Third Schedule to the Income Tax Act, which restricts the corporate tax rate for a company engaged in business under a special operating framework arrangement with the Government to the rate specified under the specific agreement.

The rate under already executed agreements shall however continue to apply for the unexpired period.

### Who will be affected

Companies operating under a special operating framework with the Government such as projects being executed under Public-Private Partnership (PPP) agreements

### When

Upon assent of the Bill

### Our view

As with other similar measures, this is a move to reduce tax incentives extended to various entities. It is positive that the already existing arrangements have been protected as any changes post-execution would adversely impact project economics.

It is expected that this change may reduce the attractiveness of some PPP projects that are in the pipeline.

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## Repeal of the electricity rebate

### The measure

The Bill proposes to delete Section 15(2)(ab) of the Income Tax Act, which entitles manufacturers to an extra deduction of up to 30% of their electricity cost under specified conditions.

### Who will be affected

All manufacturers.

### When

Upon assent of the Bill

### Our view

The electricity rebate was introduced through the Finance Act 2018 and only became operational upon gazettement of the guidelines on 31 July 2019.

The introduction of the rebate was a welcome move, as it was expected to enhance competitiveness of local manufacturing in line with the Government's Big 4 Agenda of increasing contribution of the manufacturing sector to GDP to 15% by 2022.

The impact of the rebate has not yet been tested and it is therefore surprising that the Government would seek to repeal it barely a year after its introduction.

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## Employee club subscriptions and fees paid to trade associations no longer allowable

### The measure

The Bill proposes to delete Section 15(2)(h) and Section 15(2)(v) of the Income Tax Act, which provides for a deduction in respect of:

a) S. 15(2)(h) - entrance fees or annual subscriptions paid to a trade association, which had elected to be taxed

b) S. 15(2)(v) - Club subscriptions paid by an employer on behalf of an employee

### Who will be affected

Trade associations, clubs and their members as well as employers and employees

### When

Upon assent of the Bill

### Our view

Treatment of employee club subscriptions and fees paid to trade associations as non-deductible will likely affect membership to clubs and trade associations. There will be an extra cost to employers who meet the costs of club subscriptions for their employees and subscriptions to trade associations.

It would also be recommended that the Income Tax Act is amended in order to exempt from tax the entire income of members' clubs and trade associations that may have elected to be taxed.

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## Capital expenditure on social infrastructure no longer deductible

### The measure

The Bill proposes to delete Section 15(2)(x) of the Income Tax Act, which entitles taxpayers to a deduction in respect of expenditure incurred on the construction of a public school, hospital, road or any similar kind of social infrastructure subject to approval by the Minister.

### Who will be affected

All taxpayers and the public

### When

Upon assent of the Bill

### Our view

This deduction provided an incentive for taxpayers especially corporates to invest in improving infrastructure in their vicinity and in the society at large.

While businesses should not be primarily motivated by tax benefits when deciding to invest in social infrastructure, it is recognised that in certain cases, businesses and the community take up responsibility that would otherwise lie with the Government and therefore the need for such incentives.

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## Overhaul of the capital allowances schedule

### The measure

The Bill proposes to overhaul the Second Schedule to the Income Tax Act, which spells out various forms of capital deductions/ allowances. The Second Schedule contains some of the most significant tax incentives available to investors such as Investment Deduction, Wear and Tear Allowances, Farm Works Deduction, and Industrial and Commercial Building Allowances.

The table below provides a summary of the proposed changes:

| Building | Proposed rate | Current rate | Comments |
|---|---|---|---|
| Hotel buildings | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 100% or 150% in the first year of use | • To be eligible only when licensed by the competent authority<br>• In case of change of user, the deduction to be restricted to the residual balance |
| Buildings used for manufacture | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 100% or 150% in the first year of use | • Buildings for manufacture to include any structure or civil works deemed to be part of a building where the structure of civil works relates or contributes to the use of the building<br>• In case of change of user, the deduction to be restricted to the residual balance |

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| Building | Proposed rate | Current rate | Comments |
| --- | --- | --- | --- |
| Hospital buildings | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 0% | • To be eligible only when licensed by the competent authority<br>• In case of change of user, the deduction to be restricted to the residual balance |
| Petroleum or gas storage facilities | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 10% p.a. on straight-line | • In case of change of user, the deduction to be restricted to the residual balance |
| Educational building including students hostels | • 10% per annum on a reducing balance basis | • 50% p.a. on straight-line | • To be eligible only when licensed by a competent Authority<br>• In case of change of user, the deduction to be restricted to the residual balance |
| Commercial buildings | • 10% p.a. on reducing balance | • 25% p.a. on straight-line | • The Bill defines a commercial building to mean a building used as an office, shop, showroom, godown, storehouse or warehouse used for storage of raw materials for manufacture of goods; or civil works relating to water or electricity power undertaking carried out by way of trade<br>• In case of change of user, the deduction to be restricted to the residual balance |

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| Machinery | Proposed rate | Current rate |
|---|---|---|
| Machinery used for manufacture | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 100% or 150% in the first year of use |
| Hospital equipment | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 12.5% p.a. on reducing balance |
| Ships | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • Ships of more than 125tonnes – 100% in the first year of use<br>• Ships of less than 125tonnes - 12.5% p.a. on reducing balance; |
| Aircrafts | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 30% p.a. on reducing balance |
| Heavy earth-moving equipment | • 25% p.a. on reducing balance | • 37.5% p.a. on reducing balance |
| Other motor vehicles | • 25% p.a. on reducing balance (Qualifying cost of non-commercial vehicle restricted to KES 3m) | • 25% p.a. on reducing balance (Qualifying cost of non-commercial vehicle restricted to KES 2m) |
| Computer and peripheral computer hardware, software, calculators, copiers and duplicating machines | • 25% p.a. on reducing balance | • 30% p.a. on reducing balance and 25% for software |

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| Machinery | Proposed rate | Current rate |
|---|---|---|
| Furniture and fittings | • 10% p.a. on reducing balance | • 12.5% p.a. on reducing balance |
| Telecommunication equipment | • 10% p.a. on reducing balance | • 20% p.a. on straight-line |
| Filming equipment by a licensed local film producer | • 25% p.a. on reducing balance | • 100% in the first year of use |
| Machinery used to undertake operations under a prospecting right | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 20% p.a. on straight-line |
| Machinery used to undertake exploration operations under a mining right | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 20% p.a. on straight-line |
| Other machinery | • 10% p.a. on reducing balance | • 12.5% p.a. on reducing balance |

| Other expenditure | Proposed rate | Current rate |
|---|---|---|
| Indefeasible right to use fibre optic cable by a telecommunication operator | • 10% p.a. on reducing balance | • 5% p.a. on straight-line |
| Farm-works | • 50% in the first year of use; and<br>• 25% p.a. on reducing balance thereafter | • 100% in the first year of use (In case of a farm-house, only one-thirds of the cost is eligible) |

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*Overhaul of the capital allowances schedule ...cont.*

The Bill also introduces a transitional provision stating that Paragraph 24E of the Second Schedule shall continue to be in force until 30 August 2020.

Paragraph 24E, which was introduced through the Business Laws Amendment Act 2020 in March 2020, provides for investment deduction of 150% where a person incurs capital expenditure of at least KES 5 Billion on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway (SGR) operations. The said facilities must have a minimum storage capacity of one hundred thousand metric tonnes of supplies.

The Bill also repeals the provisions that allows related companies to elect to transfer assets at written down value.

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*Overhaul of the capital allowances schedule ...cont.*

**Who will be affected**

All taxpayers

**When**

Upon assent of the Bill

**Our view**

While the proposed Second Schedule appears to have simplified the interpretation of the qualifying capital expenditure and introduced some enhanced allowances, it has significantly reduced certain allowances, especially investment deduction.

The reduction in the rates of investment deduction, which was a key incentive for investment especially in capital intensive businesses, will negatively impact the affected sectors such as manufacturing, and utilities. Furthermore, the Bill does away with the enhanced allowances to encourage investment outside the main cities. It may be useful to assess the impact of this against the growth of other towns.

Clarity is needed on the transition from the repealed schedule to the proposed schedule especially around the residual balances.

In our view, while it is appreciated that there is a need to limit incentives not only to protect the tax base but also to enhance equity, it would be important to provide targeted enhanced incentives in areas where it is critical to attract investment. As these may change with time and to address the concern around subjectivity, a framework for determining such qualifying investments should be put in place with parameters such as value of investment, number of jobs created and alignment to priority development agenda being considered.

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## Removal of income tax exemptions

### The measure

The Bill proposes to significantly reduce the income tax exemptions as currently granted under the First Schedule to the Income Tax Act.

Below are some of the notable exemptions which the Bill proposes to remove:

a) Income of the various Boards and parastatals as listed under Paragraph 4 of the First Schedule;

b) Profits or gains of an Agricultural Society accrued in or derived from Kenya from any exhibition or show held for purposes of the Society which are solely in the interest of investments in that Society;

c) Interest on tax reserve certificates, which may be issued by authority of the Government;

d) Gains or profits resultant from a reward paid by the UK Atomic Energy Authority for discovery of Uranium ore in Kenya;

e) Interest or management or professional fee paid by Tana River Development Company Limited or its successors in title to non-residents not having a permanent establishment in Kenya;

f) Income of East African Power and Lightening Company (EAPLC) in searching for a natural resource in Kenya of geothermal energy and on investigations concerning the development in Kenya of electric power generation or supply;

g) Income of the General Superintendence Company Limited, a company incorporated in Switzerland, accrued in or derived from Kenya under an agreement dated 18th October, 1972, between that company and the Central Bank of Kenya;

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*Removal of income tax exemptions ...cont.*

h) Capital gains exemptions outlined under Paragraph 36 of the First Schedule, save for gains on administration of an estate of a deceased person subject to the conditions specified under the schedule;

i) Interest earned on contributions paid into the deposit protection Fund established under the Banking Act;

j) Interest paid on loans granted by the Local Government Loans Authority;

k) The income of a registered home ownership savings plan;

l) Income of the National Social Securities Fund (NSSF) that complies with prescribed conditions;

m) Dividends received by venture capital companies and Special Economic Zones (SEZ) enterprises;

n) Gains on trade of shares by unlisted venture capital companies for the first 10 years;

o) Investment income of a pooled fund whose constituent schemes are registered by the Commissioner;

p) Interest income accruing from all listed bonds, notes or other similar securities, with maturity of at least three years, used to raise funds for infrastructure and other social services;

q) Interest income on asset backed securities;

r) Dividends paid by an SEZ enterprise, developer or operator to any non-resident;

s) Compensating tax accruing to a power producer under a power purchase agreement;

t) Interest income on Green Bonds having maturity periods of at least 3 years; and

u) All the interest income arising from the Securities listed under Part II of the Second Schedule.

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*Removal of income tax exemptions …cont.*

**Who will be affected**

All persons currently exempt under the First Schedule

**When**

Upon assent of the Bill

**Our view**

Some of the removed exemptions were already redundant given that the institutions no longer exist e.g. the Local Government Loans Authority, Colonial Development Corporation, etc. However, we note that some of the exemptions deleted will have far reaching consequences. Below are some examples:

- Removal of tax exemption on infrastructure bonds – this might make the debts floated towards funding infrastructure project less attractive to investors;
- Investment listed under the Green Bonds Standard and Guidelines – this reverses a measure that was only recently introduced to encourage the green economy for environmental purposes;
- Income of the NSSF fund – this will result in reduction of amounts payable to pensioners thus negatively impacting social security and may be counterproductive to the measure introduced to enhance disposable income of pensioners;
- Removal of some CGT exemptions – while this move may have been driven by the Government's agenda to increase the tax base, the move may appear to be punitive on small value transactions whose main motivation is not to generate profits e.g. the transfer of a private residence that an owner has occupied continuously for three years

It may be advisable for the Government to give a transitional period (say, 3 years) for the applicability of the current exemptions except for the redundant ones.

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## Scope of qualifying interest expanded

### The measure

The Bill proposes to delete the current definition of "qualifying interest" and introduce the following definition in its place:

"qualifying interest" means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income:

Provided that—

a) interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and

b) in the case of housing bonds, the aggregate amount of interest shall not exceed KES 300,000.

### Who will be affected

All resident individuals with interest income

### When

Upon assent of the Bill

### Our view

The proposed amendment is aimed at classifying any interest income received by a resident individual as qualifying interest. The current definition of qualifying interest only covers interest income receivable by a resident individual from a bank or financial institution licensed under the Banking Act, a Building Society or the Central Bank of Kenya. The expanded scope therefore means that any interest income receivable by a resident individual shall be taxable only through a withholding tax mechanism. The tax deducted shall be the final tax.

This is a welcome move and simplifies the taxation of interest earned by individuals. We believe the proposed amendment will encourage savings and lending by individuals.

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## Deposits to registered home ownership savings plans no-longer deductible

### The measure

The Bill proposes to delete Section 22C of the Income Tax Act.

The section entitles any person who deposits funds to a registered home ownership savings plan (HOSP) to a deduction of up to KES 48,000 per year or KES 4,000 per month. The section also exempts from tax any interest income earned by a depositor on deposits of up to KES 3million.

### Who will be affected

Persons who contribute to registered HOSP

### When

Upon assent of the Bill

### Our view

Home ownership saving plans have not been widely implemented in the country despite being in existence for about 25 years. We understand that this was mainly because of restrictions in legislation, which only allowed banks and financial institutions to manage the product. However, the Finance Act 2019 expanded the scope of approved institutions that can hold savings towards HOSP to include Fund Managers and Investment Banks registered under the Capital Markets Act. The amendment was aimed at accelerating the achievement of Kenya's Affordable Housing Program and the State's Big 4 Agenda.

The repeal of the tax incentives for HOSP calls into question whether the objective has been achieved. At a time when housing is a priority agenda for the Government, this move may be uncalled for.

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## Changes to the individual rates of tax

### The measure

The Bill proposes to amend the individual rates of tax under Paragraph 1 Head B of the Third Schedule to the Income Tax Act as follows:

| Current tax bands | Tax rate | Proposed tax bands | Proposed rates |
|---|---|---|---|
| First KES 147,580 | 10% | First KES 288,000 | 10% |
| Next KES 139,043 | 15% | Next KES 200,000 | 15% |
| Next KES 139,043 | 20% | Next KES 200,000 | 20% |
| Next KES 139,043 | 25% | Any income above KES 688,000 | 25% |
| Any income above KES 564,709 | 30% | | |

These rates will also apply to pension withdrawals (in excess of the tax free amounts) made before expiry of 15 years from joining the fund.

With the revised individual rates of tax, the monthly Pay As You Earn (PAYE) rates shall change as follows:

| Current tax bands | Tax rate | Proposed tax bands | Proposed rates |
|---|---|---|---|
| First KES 12,298 | 10% | First KES 24,000 | 10% |
| Next KES 11,587 | 15% | Next KES 16,667 | 15% |
| Next KES 11,587 | 20% | Next KES 16,667 | 20% |
| Next KES 11,587 | 25% | Any income above KES 57,333 | 25% |
| Any income above KES 47,059 | 30% | | |

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*Changes to the individual rates of tax ...cont.*

**The measure**

The Bill also proposes the following tax rate changes on pension withdrawals (in excess of the tax free amounts) made after expiry of 15 years from joining the fund, or on attainment of 50 years, or upon early retirement on grounds of ill health or infirmity of body and mind.

| Current tax bands | Tax rate | Proposed tax bands | Proposed rates |
|---|---|---|---|
| First KES 400,000 | 10% | First KES 400,000 | 10% |
| Next KES 400,000 | 15% | Next KES 400,000 | 15% |
| Next KES 400,000 | 20% | Next KES 400,000 | 20% |
| Next KES 400,000 | 25% | Any amount above KES 1,200,000 | 25% |
| Any amount above KES 1,600,000 | 30% | | |

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*Changes to the individual rates of tax …cont.*

**Who will be affected**

All individuals liable to tax in Kenya

**When**

Upon assent of the Bill

**Our view**

All individuals will enjoy reduced tax liability on their income, hence, this change will increase their disposable income. High income earners will enjoy greater tax savings since the top tax rate has been revised from 30% to 25%.

The move is a welcome relief for individual taxpayers, especially taking into account that recent proposals under the Income Tax Bill indicated that there were plans to increase the top tax rate to 35%. However, from an equity perspective, the changes may be viewed as skewed in favour of high income earners beyond a particular threshold.

Another consideration is the fact that the tax bands are not frequently reviewed to keep pace with economic realities such as inflation and cost of living. The proposed measure will therefore go a long way in shielding the low income earners by significantly raising the lower threshold to KES 24,000 per month which is about double the current threshold.

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# Personal Income Tax

## Personal relief increased from KES 16,896 to KES 28,800

### The measure

The Bill proposes to increase the personal relief from the current KES 16,896 to KES 28,800.

For PAYE purposes, the monthly relief will change from KES 1,408 to KES 2,400.

### Who will be affected

All resident individuals

### When

Upon assent of the Bill

### Our view

The effect of this change is that any resident individual earning up to KES 288,000 in a year (KES 24,000 per month) will be fully relieved from paying tax. Individuals with income in excess of KES 288,000 in a year (or KES 24,000 per month) will also benefit from this measure, as their taxes will reduce by KES 11,904 (KES 992 per month).

This is a welcome move, as it is expected to increase the disposable income of most Kenyans. Since the change is likely to be effected in the course of the 2020 calendar year, taxpayers may find themselves in tax refund position if adjustments are not made to the tax workings for the year to true up the annual relief as well as to take into account the revised tax bands. The Kenya Revenue Authority (KRA) should therefore consider issuing guidelines that will avert this situation.

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# Personal Income Tax


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## Removal of tax exemptions for individuals

### The measure

The Bill proposes to remove the following incomes from the exempt list as per the First Schedule to the Income Tax Act:

a) Foreign allowances paid to a Government/community officer from public funds in respect of his office where a deduction is not allowed under Section 15 of the Income Tax Act;

b) Payment in respect of disturbance, not exceeding three months' salary, made in connection with a change in the constitution of the government of a Partner State or the Community to a person who, before the change, was employed in the public service of any of those governments or of the Community;

c) Emoluments of a non-resident officer of the Desert Locust Survey;

d) Education grants paid by the United Kingdom government to a Kenyan public officer;

e) Remuneration received from International Co-operation Administration under a contract which was entered into consequent upon financial assistance;

f) Employment income paid to citizens of the USA who are employed by the Department of Agriculture of the USA on research work in co-operation with the Kenya government;

g) Interest on a savings account held by Kenya Post Office Savings Bank;

h) Monthly or Lump sum pension granted to a person who is 65 years of age or more; and

i) Bonuses, overtime and retirement benefits paid to low-income employees.

The removal of the above incomes from the First Schedule means that they will now be taxable.

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# Personal Income Tax

*Removal of tax exemptions for individuals …cont.*

**Who will be affected**

All individuals

**When**

Upon assent of the Bill

**Our view**

This measure is aimed at broadening the tax base and eliminates some of the exemptions which are already redundant. However, one may question the reversal of the exemption granted to retirees in respect of their pension income as this would adversely affect those retirees who especially rely solely on their pension income.

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# Turnover Tax

## Overhaul of the turnover tax regime

### The measure

The Bill proposes to make the following changes to the turnover tax regime:

a. Reduction of the turnover tax rate from 3% to 1%;

b. Increasing the limit of income liable to turnover tax from KES 5 Million to KES 50 Million and introduction of a lower limit of KES 500,000;

c. Expansion of the turnover tax regime to incorporated entities;

d. Removal of the requirement to pay presumptive income tax by persons who fall within the turnover tax regime; and

e. Reduction of the penalty for late filing of a turnover tax return from KES 5,000 to KES 1,000.

### Who will be affected

Businesses (including companies) whose annual turnover is more than KES 500,000 but does not exceed KES 50 million per annum.

Turnover tax does not apply to rental income, income from management and professional fees and income subject to final withholding tax.

### When

Upon assent of the Bill

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# Turnover Tax

*Overhaul of the turnover tax regime ...cont.*

## Our view

The proposed overhaul of the turnover tax regime is aimed at expanding the tax base, as it is expected to capture most SMEs in the tax regime. Businesses still have an option to opt-out of the turnover regime through written notification to the revenue authority.

The move to include companies within the turnover tax regime is a positive one since many small businesses operate as companies due to legal and other considerations. The lower rate of turnover tax, while welcome, will result in lower tax yield.

It is hoped that the law on turnover tax, which has seen several changes in the recent past, including repeal and reintroduction, will now be maintained and implemented to drive compliance for small businesses.

The repeal of the presumptive income tax provisions soon after introduction could be as a result of implementation challenges given that it was pegged to business permits and licenses administered by the county governments.

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# Withholding Tax

## Expansion of the scope of services liable to withholding tax

### The measure

The Bill proposes to widen the scope of non-resident services liable to withholding tax to include:

a) Sales promotion, marketing and advertising services; and

b) Transportation of goods (excluding air and shipping transport services).

The services will attract withholding tax at the non-resident rate of 20%.

### Who will be affected

Suppliers and recipients of the above services

### When

Upon assent of the Bill

### Our view

This is the second attempt to include the above services in the scope of services liable to withholding tax. Similar measures had been proposed in the Finance Bill 2019. However, they were dropped in the Finance Act 2019.

We believe the proposed amendments are aimed at expanding the tax base and bringing into effect taxation of services provided through digital platforms. Persons providing sales promotion, marketing and advertising services through a digital platform are likely to be the main target of this amendment.

The proposal could potentially increase the cost of doing business in Kenya, as service providers are likely to pass the burden of this tax to their counterparties. Of particular concern is the high withholding tax on transport costs which seems targeted at road transport provided by non-residents.

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# Withholding Tax

## Tax on dividends payable to non-residents increased from 10% to 15%

### The measure

The Bill proposes to amend paragraph 3(d) of the Third Schedule to the Income Tax Act by increasing the rate of tax on dividends to non-residents from 10% to 15%.

### Who will be affected

Non-resident shareholders

### When

Upon assent of the Bill

### Our view

The increased dividend tax rate could discourage equity investments by foreign shareholders. This may also impact activity at the Nairobi Securities Exchange whose trade volumes relies significantly on foreign investors.

On the other hand, this could be seen as a move to plough back some of the taxes lost on profits, following the reduction of the corporate tax rate to 25%, by increasing the tax on distributions (dividends). However foreign investors would be disadvantaged relative to local shareholders.

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# Withholding Tax

## Tax rate on non-resident reinsurance premiums introduced

### The measure

The Bill proposes to amend Section 34 and the Third Schedule to the Income Tax Act to state that reinsurance premiums paid to non-residents would be liable to tax at 5%.

### Who will be affected

Insurance and reinsurance companies

### When

Upon assent of the Bill

### Our view

The Finance Act 2019 amended Section 10 and Section 35 of the Income Tax Act in order to introduce a withholding tax obligation on payment of re-insurance premiums to non-residents. However, no amendment was introduced to provide for the rate of tax on the re-insurance premium.

The proposed amendment in the Tax Laws (Amendment) Bill, 2020 is therefore aimed at introducing the applicable rate (of 5%).

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# Value Added Tax

## Definition of "ordinary bread" and change of VAT status

### The measure

The Bill proposes to introduce the definition of "ordinary bread" to mean bread containing the ingredients: wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water.

The Bill also proposes to move ordinary bread from the zero rating schedule to the exemption schedule.

### Who will be affected

Manufacturers, suppliers and consumers of bread

### When

Upon assent of the Bill

### Our view

The definition of ordinary bread in our view is aimed at providing clarity on the type of bread that will be exempted. This therefore implies that any other bread save for those covered under the proposed definition would be liable to VAT.

Further, should the proposal to exempt ordinary bread be passed as proposed, it would have an impact of making ordinary bread more expensive since manufacturers would not be in a position to deduct input tax incurred in the production of the bread; and such costs would ultimately be passed to the final consumers.

We are of the considered view that the proposed move to exempt ordinary bread is untimely, especially during the current COVID-19 pandemic when the Government should as much as possible cushion the Mwananchi from the tax burden.

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# Value Added Tax

## Change in the taxable value of VAT on petroleum products and VAT status of Liquefied Petroleum Gas (LPG)

### The measure

The Bill proposes the following measures with regard to Petroleum products and LPG:

a) Inclusion of excise duty, fees and other charges in computing the taxable value of petroleum products; and

b) Introduction of VAT on LPG at the standard rate. Currently, VAT on LPG is zero rated.

### Who will be affected

Manufactures, transporters and consumers

### When

Upon assent of the Bill

### Our view

The proposal to include excise duty, fees and other charges in the computation of the taxable VAT value will lead to an increase in the price of petroleum products, which will have a ripple effect in the transport and manufacturing sector, with the increased costs likely being transferred to the Mwananchi. It would therefore appear that the proposed move will have a counter effect on the reduced VAT rate of 8% leading to higher prices of fuel, which will in effect force the Mwananchi to dig deeper into their pockets particularly during the difficult times occasioned by the COVID-19 pandemic.

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# Value Added Tax

*Change in the taxable value of VAT on petroleum products and VAT status of Liquefied Petroleum Gas (LPG) …cont.*

## Our view

Further, the proposal to subject Liquid Petroleum Gas (LPG) to VAT at the standard rate is likely to increase the cost of LPG and therefore counteract the Government's efforts to encourage the uptake of clean energy. With the increase in the prices of both LPG and kerosene, we are likely to see a trend whereby some low income households will shift to alternative cheaper sources like firewood and charcoal thereby having a further negative impact on the environment negating the conservation measures that are being implemented by the Government.

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# Value Added Tax

## Credit note issuance period

### The measure

The Bill proposes to amend the proviso to Section 16(1) of the VAT Act to allow for a credit note to be issued within 30 days of a determination of a matter in court where the matter relates to a commercial dispute in court with regard to the price payable.

Currently, a credit note can only be issued within 6 months of the issuance of an original tax invoice.

### Who will be affected

VAT registered taxpayers

### When

Upon assent of the Bill

### Our view

The proposal aims to afford taxpayers an opportunity to claim relief from tax invoices that have been subject of a commercial dispute that exceeds six months from the date when the original tax invoice was issued.

Further, it appears that the proposal is also aimed at reducing instances where taxpayers claim refund of VAT on bad debts, especially where VAT was already paid on account of invoices that are subject of commercial disputes. Should this be an objective of the proposal, we are of the view that the scope of such credit notes should be expanded to cases that are resolved through arbitration since this is increasingly becoming a preferred mode of resolution of commercial disputes.

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# Value Added Tax

## Refund of VAT on bad debts and keeping of records

### The measure

The Bill proposes to reduce the time for applying for a refund of VAT on bad debts from five to four years from the date of supply. This is notwithstanding the requirement to lodge an application relating to a debt that has been outstanding for a period of more than three years.

The Bill further proposes that all persons should keep records relating to VAT, whether or not such persons are registered for VAT.

### Who will be affected

VAT registered taxpayers and consumers

### When

Upon assent of the Bill

### Our view

The proposal reduces the window within which one can lodge a refund of VAT on bad debts by one year. This move is aimed at locking out taxpayers from lodging refund applications within an extended period and thereby reducing the volumes and quantum of such refunds lodged with the KRA.

In our view, the proposal to have all businesses keep records relating to VAT for a period of five years, irrespective of their registration status is aimed at assisting the KRA to demand for provision of documents to verify VAT related transactions, more so in light of the current VAT automated assessments and VAT investigations being conducted by the KRA. While the proposal is aimed at assisting the revenue authority to seal revenue leakages, it is likely to increase the compliance burden for taxpayers who are not registered for VAT.

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# Value Added Tax

## Change of VAT status from zero-rated to exempt

### The measure

The Bill proposes to change the VAT status of the following items from zero rated to exempt:

a) Milk and cream, not concentrated nor containing added sugar or other sweetening matter;

b) Vaccines for human and veterinary medicine; and

c) Medicaments listed in Part C of the Second Schedule of the VAT Act.

### Who will be affected

Manufacturers of milk products, vaccines and other medicaments and consumers

### When

Upon assent of the Bill

### Our view

The proposal to change the VAT status of these items from zero rated to exempt means that any related input tax incurred by the manufacturers of such products would not be deducted. It is therefore likely that the cost of such non-deductible VAT will be passed on to the final consumers thus resulting into increased prices of basic and essential products.

Yet again, this move appears to be untimely, especially in the face of the COVID-19 pandemic where medication and vaccines need to be more affordable.

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# Value Added Tax

## Change of VAT status from zero-rated to standard-rated

### The measure

The Bill proposes to change the VAT rate of the following items from 0% to 14%:

1. All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the CS for the time being responsible for agriculture;
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;
3. Agricultural pest control products; and
4. The supply of LPG including propane.

### Who will be affected

Importers, manufacturers of pesticides, batteries and consumers

### When

Upon assent of the Bill

### Our view

The proposal to change the VAT rate on these items will lead to an increase in their prices. An increase in the prices of pesticides appears to be untimely, especially now that the country is battling with the desert locusts plague in addition to the imminent food shortage.

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*Change of VAT status from zero-rated to standard-rated ...cont.*

An increase in the cost of inputs for manufacture of batteries is likely to increase the prices of the batteries, which in turn will discourage the purchasing of such batteries; and adversely affect the battery manufacture industry which is already struggling and competing with cheaper battery imports.

As highlighted earlier, an increase in the price of LPG is likely to discourage the uptake of clean energy, which would in turn counter the Government's initiatives to encourage use of clean energy.

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# Value Added Tax

## Change of VAT status from exempt to standard-rated

### The measure

The Bill proposes to change the VAT status of the following goods and services from exempt to standard rated:

1. Plants and machinery of Chapter 84 and 85 used for the manufacture of goods;

2. Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy;

3. Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act, production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be;

4. Fertilisers of Chapter 31;

5. Taxable supplies, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas;

6. Helicopters;

7. Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg of tariff code 8802.20.00;

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*Change of VAT status from exempt to standard-rated ...cont.*

8. Other parts of aeroplanes and helicopters of tariff code 8803.30.00;
9. Air combat simulators and parts thereof of tariff code 8805.21.00;
10. Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof of tariff code 8805.10.00;
11. Other ground flying trainers and parts thereof of tariff code 8805.29.00;
12. Made-up fishing nets of man-made textile material of tariff code 5608.11.00;
13. Mosquito nets of tariff no. 6304.91.10;
14. Materials, waste, residues and by-products, whether or not in the form of pellets, and preparations of a kind used in animal feeding;
15. Tractors other than road tractors for semitrailers;
16. New pneumatic tyres of rubber of a kind used on Aircrafts of tariff code 4011.30.00;
17. Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum;
18. Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power upon the recommendation of the Cabinet Secretary responsible for matters relating to energy;

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*Change of VAT status from exempt to standard-rated ...cont.*

19. Plastic bag biogas digesters;
20. Biogas;
21. Leasing of biogas producing equipment;
22. Parts imported or purchased locally for the assembly of computers, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology;
23. Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury;
24. Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization;
25. Museum and natural history exhibits and specimens and scientific equipment for public museums;
26. Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya;
27. Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks;

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*Change of status from exempt to standard-rated …cont.*

28. Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy;

29. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy;

30. 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, or iron or steel of tariff numbers7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00;

31. Goods falling under tariff number 4907.00.90;

32. Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture;

33. Materials and equipment for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture;

34. The transfer of a business as a going concern by a registered person to another registered person;

35. Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department;

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# Value Added Tax

*Change from exempt to standard-rate …cont.*

36. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government;

37. One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse and which is not exempted from Value Added Tax;

38. Plant, machinery and equipment used in the construction of a plastics recycling plant;

39. Insurance agency, insurance brokerage, securities brokerage services;

40. Hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00;

41. Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury;

42. Entry fees into the national parks and national reserves;

43. The services of tour operators, excluding in-house supplies;

44. Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for recreational parks;

45. Taxable services, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas;

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# Value Added Tax

*Change of VAT status from exempt to standard-rated …cont.*

46. Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities; and

47. Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

### When

Upon assent of the Bill

### Our view

The proposal to charge VAT at the standard rate on these items is likely to lead to an increase in their prices, with far reaching impacts.

We discuss below, the likely impact that will significantly affect several sectors/ businesses should these proposals be passed:

a) Increase in the cost of plant and machinery is likely to discourage investments in the country due to huge capital outlay occasioned by VAT on the previously exempt machinery;

b) Taxable Supplies for use in capital projects including those to be used in key sectors including Agriculture, Tourism, Mining, Petroleum and Energy that currently enjoy VAT exemptions will be standard rated, if the bill is passed. This will have a huge impact on the cost of the projects and therefore discourage investments in key sectors of the economy; and

c) Transfer of business as a going concern, which was initially zero rated thereafter amended to VAT exempt status is now being proposed to be taxable at the standard rate. Should this proposal sail through, this is one area that most investors would take keen interest in since the VAT amounts involved in the transfer of businesses as a going concern would be significant.

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# Excise Duty

## Excise duty on imported sugar confectionary and chocolate

### The measure

The Bill proposes to re-introduce 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.

### Who will be affected

Manufacturers of confectionery and chocolate, and consumers

### When

Upon assent of the Bill

### Our view

It is worth noting that excise duty on confectionary and chocolate had been introduced in 2018. The CS National Treasury in his budget speech, indicated that the primary objective of this measure was to discourage consumption of confectionary and chocolate which are associated with negative health effects.

In 2019, the Government removed excise duty on locally manufactured sugar confectionary and chocolate with a view to cushioning local manufacturers from cheap imports.

The proposal to re-introduce excise duty on these products would seem to be geared towards generating additional revenue for the Government and promoting equity between locally manufactured and imported goods.

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# Excise Duty

## Amendment of the definition of other fees charged by financial institutions

### The measure

The Bill proposes to amend the definition of other fees charged by financial institutions to read as follows:

*"fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder"*

### Who will be affected

Financial institutions

### When

Upon assent of the Bill

### Our view

The current definition of "other fees" is not clear on whether other services provided by financial institutions but not relating to their licenced financial services fall within the purview of excise duty. The ambiguity has led to disputes between financial institutions and the KRA on whether services which are not regulated under the relevant Kenyan laws, are subject to excise duty.

This proposal, if adopted, will provide more clarity on the scope of other fees charged by financial institutions and effectively means that "non-licensed" activities will not be excisable.

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# Excise Duty

## Amendment of the excise duty exemption schedule.

### The measure

The Bill proposes a deletion of the following items from the excise duty exemption schedule:

a) Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements (SOFA) with the Government.

b) Personal motor vehicle imported by a public officer returning from a posting in a Kenyan mission abroad.

### Who will be affected

Persons implementing projects under SOFA; and public officers on missions abroad.

### When

Upon assent of the Bill

### Our view

In 2018, the CS Treasury exempted goods imported for implementation of SOFA projects to reduce the cost of implementing essential Government projects and encourage investments in Government projects by the private sector.

The Government`s proposal to remove SOFA projects from excise duty exemption seems to be geared towards generating additional revenue. This measure is also in line with what appears to be the Government`s deliberate move to reduce the number of exemptions.

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# Excise Duty

## Excise duty on imported glass introduced

### The measure

The Business Laws (Amendment) Act, 2020 has introduced excise duty on imported glass bottles (excluding bottles for packaging of medicaments). The excise duty shall be applicable at 25%.

### Who will be affected

Importers of glass bottles

### When

Effective 18 March 2020

### Our view

This amendment aims at shielding local glass manufacturers from cheap imports.

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# Miscellaneous Fees & Levies

## Introduction of processing fees on duty free motor vehicles

### The measure

The Bill proposes an introduction of a processing fee of KES 10,000 on motor vehicles imported or purchased duty free prior to clearance through Customs.

Specifically, the processing fee will apply to motor vehicles imported by the following privileged persons under import duty exemption in accordance with the Fifth Schedule of the East African Community Customs Management Act (EAC CMA):

a) Diplomatic and first arrival persons;

b) Donor agencies with bilateral or multilateral agreements with Kenya;

c) International and regional organisations;

d) The War Graves Commission;

e) Disabled, blind and physically handicapped persons;

f) Rally drivers;

g) Goods and equipment for use in aid funded projects;

h) National Red Cross Society;

i) Motor vehicle previously owned by a deceased person outside Kenya; and

j) Returning residents.

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# Miscellaneous Fees & Levies

*Introduction of processing fees on duty free motor vehicles …cont.*

**Who will be affected**

Importers of duty free motor vehicles

**When**

Upon assent of the Bill

**Our view**

This measure is aimed at compensating the Government for costs incurred in the clearance of duty free motor vehicles through customs and generating additional revenue for the Government.

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# Miscellaneous Fees & Levies

## Removal of Import Declaration Fee (IDF) and Railway Development Levy (RDL) exemption

### The measure

The Bill proposes to remove the following items from the IDF exemption schedule:

- Gifts or donations by foreign residents to their relatives in Kenya for their personal use.
- Samples of no commercial value.
- Aircraft of unladen weight not exceeding 2,000kg and Helicopters.
- Raw materials for direct and exclusive use in construction by developers or investors in industrial parks of 100 acres or more located outside municipalities of Nairobi and Mombasa.
- Goods imported for the construction of LPG storage facilities.
- Goods imported for implementation of SOFA projects.

The Bill also proposes to delete the following items from the RDL exemption schedule:

- Raw materials for direct and exclusive use in construction by developers or investors in industrial parks of 100 acres or more located outside municipalities of Nairobi and Mombasa.
- Goods imported for the construction of LPG storage facilities.

Lastly, the Bill also proposes to delete the IDF and RDL exemption provisions on goods imported to promote investments exceeding KES 200 Million and replace this with any other goods which the Cabinet Secretary may determine are for public interest.

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# Miscellaneous Fees & Levies

*Amendment of Import Declaration Fee (IDF) and Railway Development Levy (RDL) exemption schedule ...cont.*

### Who will be affected

Importers of the affected goods

### When

Upon assent of the Bill

### Our view

The reduction of the number of goods exempted from IDF and RDL is aimed at generating additional revenue for the Government and is line with similar proposed amendments to the VAT Act and Excise Duty Act. Therefore these products will be subject to IDF and RDL should the proposed changes be passed.

It will significantly increase the cost of high value items such as aircraft and high value investments. Perhaps it is worth introducing a value cap on these levies to avoid unnecessary cost pressures on certain sectors.


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# Miscellaneous Fees & Levies

## IDF and RDL exemptions on imports for use in the construction of bulk storage facilities

### The measure

The Business Laws (Amendment) Act, 2020 has introduced Railway Development Levy and Import Declaration Fee exemptions on goods imported or purchased for the construction of bulk storage facilities, for supporting the SGR operations with a minimum storage capacity of 100,000 metric tonnes (MT) of supplies as approved by the Cabinet Secretary responsible for Transport.

### Who will be affected

Importers of goods for the construction of storage facilities to support SGR operations

### When

Effective 18 March 2020

### Our view

This move is geared towards encouraging constructing of storage facilities to facilitate SGR operations

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# Tax Procedures

## Appointment of revenue banking services agents

### The measure

The Bill proposes to empower KRA to appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement. Any person appointed shall be required to transfer the funds to Central Bank of Kenya (CBK) within two days from the date of collection, failure of which a compounded penalty at the rate of 2% will apply.

The Bill further proposes to treat the penalty as a tax debt to the government in which case the enforcement measures for collection and recovery for tax shall apply.

### Who will be affected

Banks and financial institutions licensed under the Banking Act.

### When

Upon assent of the Bill

### Our view

The amendment seeks to legalise the current arrangement that the Banks already have with the KRA. The penalties are punitive and may act as a disincentive to Banks enrolling to the program. The two days window ignores weekends, public holidays and other externalities such as system challenges. Further, the proposal to treat the penalty as a tax debt may act as a major drawback to the arrangement which is expected to be mutually beneficial to the Banks.

While treating the penalties as a tax debt will be useful for KRA's enforcement purposes, we believe that the agents should be afforded a reasonable chance to seek legal redress before any enforcement action is taken.

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# Tax Procedures

## Commissioner no longer required to respond to a private ruling application within 45 days or to publish private rulings

### The measure

The Bill proposes to delete the provision that requires the Commissioner to publish a private ruling in at least two daily newspapers.

The Bill also seeks to remove the requirement for the Commissioner to respond to a private ruling application within 45 days of receiving such application.

### Who will be affected

All taxpayers

### When

Upon assent of the Bill

### Our view

While publication of the private rulings has been in the Law since enactment of the Tax Procedures Act in 2015, we note that the Commissioner has not been able to fully comply with the provision. The move appears to remove the legal requirement anchored in law. The removal of the time limit means that the Commissioner may respond within a timeframe, which he deems fit. This move is likely to result into unreasonable delays in obtaining a ruling, which would be a major setback to taxpayers.

Given the need to conclude transactions in a timely manner and/ or the need for certainty through consistent interpretation of tax law, these measures would appear retrogressive and should be reconsidered.

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# Other measures

## Tax whistle-blowers to be rewarded

### The measure

The Bill proposes an amendment to the Kenya Revenue Authority Act, 1995 to introduce a reward of KES 500,000 to any person who provides information that leads to enforcement of tax laws to the KRA.

The reward will not be applicable to persons who will have received a reward in regard to identification and recovery of unassessed duties or taxes.

### Who will be affected

Tax whistle-blowers

### When

Upon assent of the Bill

### Our view

This move is expected to act as an incentive to whistle-blowers who will provide information leading to enforcement of tax laws. While these could lead to the revenue authority receiving more reports on likely cases of tax evasion, it may result into an increase in investigation type enquiries on taxpayers that may be unwarranted.

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## Changes introduced by the Business Laws (Amendment) Act, 2020

### Changes to the Industrial Training Act

The Act has amended Section 5B(3) of the Industrial Training Act to provide for a compounded penalty of 5% per year or part thereof on any amount that remains unpaid by the due date. Previously, the penalty was applicable per month or part thereof. However, following a change of the filing and payment obligations from monthly to annual through the Industrial Training (Training Levy) (Amendment) order 2020, it was deemed necessary to also amend the penalty provisions.

The Act has also amended Section 5B(4) of the Industrial Training Act to provide for a fine not exceeding KES 100,000 where a person fails to comply with any provision of a training levy order. If such failure continues after a conviction, such a person shall be liable to a penalty not exceeding KES 50,000 for every year or part thereof during which such failure is continued. The penalty of KES 50,000 used to apply on a monthly basis or part thereof but has now been changed to annual, following a change of the payment and filing obligations to annual.

### Changes to the Stamp Duty Act

The Stamp Duty Act has been amended to provide that documents can be electronically stamped, extending the scope of the initial provision, which only recognized stamping by a franking machine or an adhesive stamp.

### When

Effective 18 March 2020

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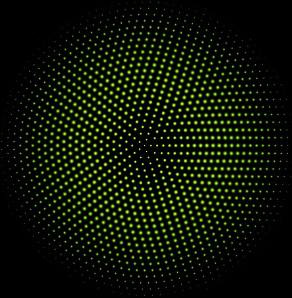


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