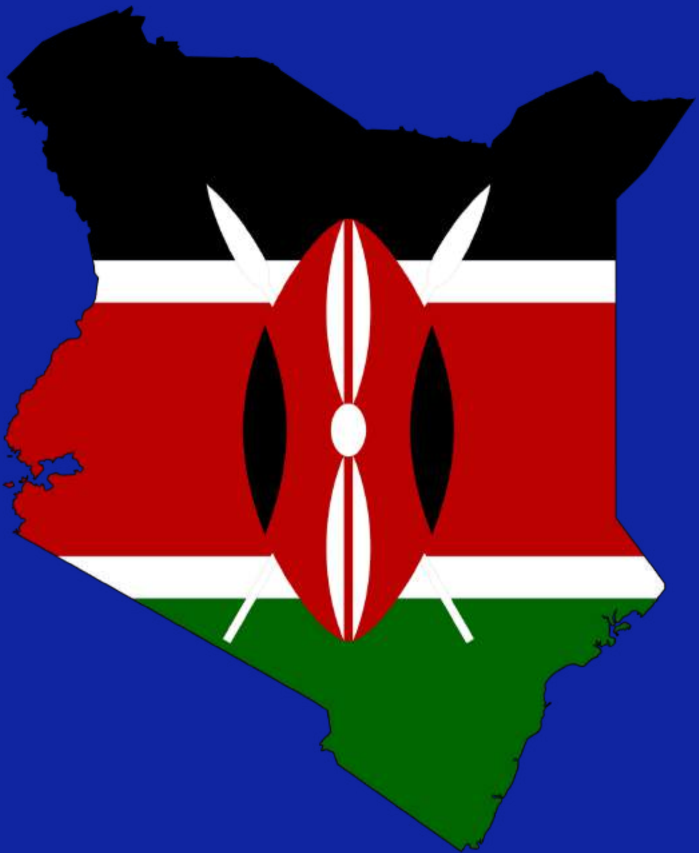
ANANT BHATT LLP
CERTIFIED PUBLIC ACCOUNTANTS
AUDIT I TAX I ADVISORY

ANALYSIS OF THE KENYAN TAX LAWS (AMENDMENT) ACT, 2020



TAX LAWS (AMENDMENTS) ACT, 2020 UPDATE:

Anant Bhatt LLP has prepared a brief analysis for clients and external parties on the now enacted Tax Laws (Amendments) Act, 2020 by the Government of Kenya.

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1 INTRODUCTION TO THE TAX (AMENDMENTS) ACT, 2020

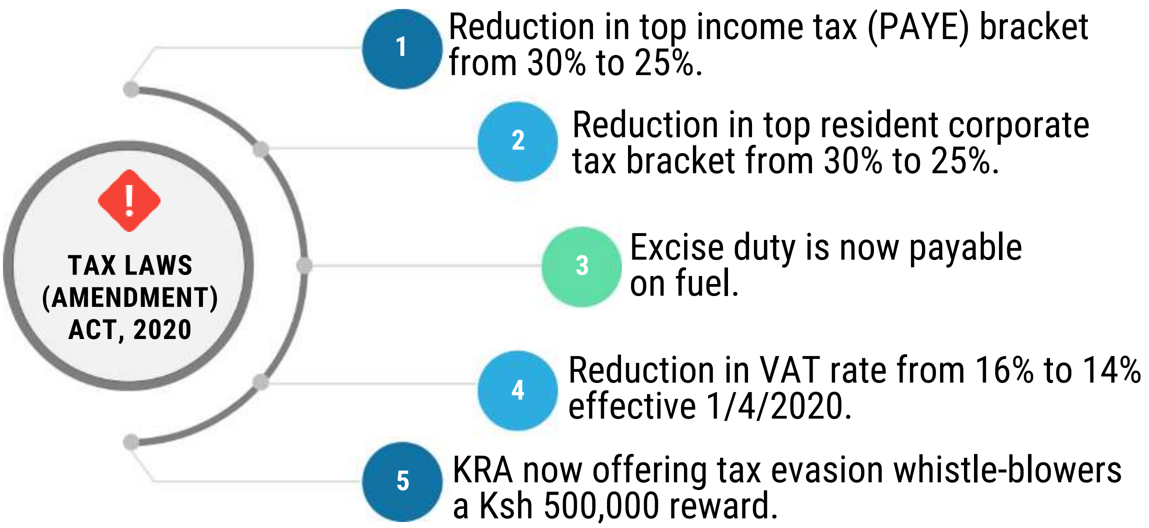
INTRODUCING THE TAX LAWS (AMENDMENTS) ACT, 2020

On Saturday 25th April 2020, the President of Kenya H.E. Uhuru Kenyatta was presented with 'The Tax Laws (Amendment) Bill, 2019', by the Speaker of the National Assembly: Justin Muturi, and Speaker of the Kenyan Senate: Ken Lusaka. The Bill was subsequently signed and assented into law.
The now 'Tax Laws (Amendments) Act, 2020' aims to boost the Kenyan economy through various tax collections for the treasury. The Act within all clauses, has amended 6 previously existing laws. These are namely:

- Income Tax Act (CAP 470)
- Value Added Tax Act of 2013
- Excise Duty Act (2015)
- Tax Procedures Act (2015)
- Miscellaneous Levies and Fees Act (2016)
- Retirement Benefits Act, 1997

A large number of proposed laws in the Bill have not been implemented into the Act. This guide aims to show where the clear differences lay, when reasonably applicable. In the High Court ruling made on 19th September 2018 within the case of Okiya Omtatah vs CS National Treasury, Commissioner General KRA, National Assembly and the Attorney General, it was ruled that any tax measures cannot be implemented before a Tax Bill becomes an Act (after going through the legislative process as presented within the Constitution of Kenya and the assent by the President). Thus, all effective dates are post 25/4/2020, unless otherwise specified.

BREIF HIIGHLIGHTS OF THE ACT



2 PAYE, INCOME AND CORPORATE TAX IMPACTS

AMENDMENTS TO PAYE AND PERSONAL RELIEF

The new Act has been amended to mean that the following changes will apply to the PAYE, and Personal Allowance rates in Kenya:

NEW RATES	
FIRST KSH 288,000	10%
NEXT KSH 200,000	15%
NEXT KSH 200,000	20%
ABOVE KSH 688,000	25%

OLD RATES	
FIRST KSH 147,580	10%
NEXT KSH 139,043	15%
NEXT KSH 139,043	20%
NEXT KSH 139,043	25%
ABOVE KSH 564,709	30%

The Act has amended the level of individuals personal relief from the previously enacted Ksh 16,896 to Ksh 28,800.

This is a welcome move. The impact of this is that all Kenyan taxpayers will get an additional level of support from the effects of inflation. The Act now increases the tax free base rate from Ksh 13,486 to Ksh 24,000.

AMENDMENTS TO PAYMENTS IN, AND WITHDRAWALS FROM PENSIONS

The Act has amended the rate of tax payable upon withdrawal from a registered pension/provident scheme or NSSF.

- For withdrawals after the expiry of fifteen years from the date of joining the fund or on attainment of 50 years, or upon early retirement due to illness.

NEW RATES	
FIRST KSH 400,000	10%
NEXT KSH 400,000	15%
NEXT KSH 400,000	20%
ABOVE KSH 1,200,000	25%

OLD RATES	
FIRST KSH 400,000	10%
NEXT KSH 400,000	15%
NEXT KSH 400,000	20%
NEXT KSH 400,000	25%
ABOVE KSH 1,600,000	30%

- For withdrawals before the expiry of fifteen years from the date of joining the fund or on attainment of 50 years, or upon early retirement due to illness

NEW RATES	
FIRST KSH 288,000	10%
NEXT KSH 200,000	15%
NEXT KSH 200,000	20%
ABOVE KSH 688,000	25%

OLD RATES	
FIRST KSH 147,580	10%
NEXT KSH 139,043	15%
NEXT KSH 139,043	20%
NEXT KSH 139,043	25%
ABOVE KSH 564,709	30%

The new Act has additionally reduced the tax rates on any surplus funds that have been withdrawn by, or refunded to an employer from a registered pension or provident fund to 25%. Previously the rate stood at 30%.

This is also a welcome move. The impact of this is that all Kenyan taxpayers will get a higher incentive to save more money for retirement.

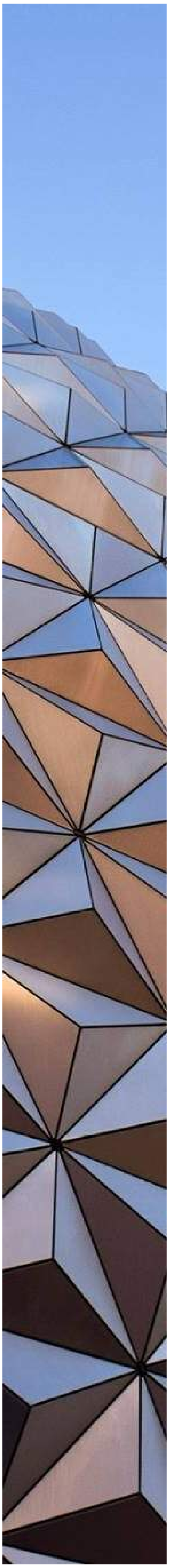
TAXATION OF PREVIOUSLY EXEMPT INCOMES & PERSONS

The new Act has been amended to mean that the exemption provisions provided under the First Schedule to the Income Tax Act for the following incomes and persons have been deleted.

Income of the:

- Tea Board of Kenya;
- Pyrethrum Board of Kenya;
- Sisal Board of Kenya;
- Kenya Dairy Board;
- Canning Crops Board;
- Central Agricultural Board;
- Pig Industry Board;
- Pineapple Development Authority;
- Horticultural Crop Development Authority;
- National Irrigation Board;
- Mombasa Pipeline Board;
- Settlement Fund Trustees;
- Kenya Post Office Savings Bank; and
- Cotton Board of Kenya

- Interest income earned from the contributions paid into the Deposit Protection Fund.
- Interest income passed through to an investor in the form of asset-based securities.
- Dividends earned by any registered venture capital company and a registered special economic zone enterprise, developer and operator.



- The Compensating tax accruing to all power producers under a predetermined power purchase agreement.
- All interest income received on the loans granted by a Local Government Loans Authority.
- The interest earned on tax reserve certificates issued by any authority of the Government of Kenya.
- The gains received from the trade in shares of a venture company by a registered venture capital company within the first 10 years of investment.
- Any profits and gains earned of an agricultural society in respect of any exhibition or show held by the society.
- Any education grant paid by the Government of United Kingdom to any persons employed within the public service sector of Kenya.
- Gains or profits earned from any reward paid by the UK Atomic Energy Authority for discovery of Uranium ore in Kenya;
- Income earned of the General Superintendence Company Ltd, a company incorporated in Switzerland, accrued in or derived from Kenya under an agreement dated 18/101972, between the company and the CBK.
- All emoluments of an officer of the Desert Locust Survey, who is not a resident of Kenya.
- Interest income 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;

The impact of this is that more income sources of Kenyans are taxable. The aim here is for the KRA to earn more revenues, and to also better align the current Tax Laws Act to previously redundant clauses.

FINAL TAX APPLICABLE ON INTEREST EARNED

The new Act has amended the meaning of "Qualifying Interest". The law now means that ANY interest earned by a resident of Kenya is privy to 15% Withholding Tax, to be a final tax.

This is a change from the previous Act, which had a tax due only on interest earned from a qualified bank, financial institution, or housing bond. Any interest earned that was not exempt by the Government of Kenya was privy to 30% WHT, as a final tax.

The impact of this is that more Kenyans will have a greater incentive to invest money into different debt structured instruments being offered by non-financial instituitions.

ABOLISHMENT OF ELECTRICITY REBATES

The new Act has amended the 30% electricity rebates being offered to Kenyan manufacturing firms. The rebates were offered to manufacturing within the 2018 Finance Act, to be brought into effect from 1/1/2019.

This move is a large setback for the Kenyan manufacturing sector. The impacts can already be seen within the Kenyan Purchasing Manufacturers Index (PMI). The purpose of the PMI is to provide information about current business conditions to company decision makers, analysts and purchasing managers. The PMI survey for the manufacturing sector is based on questionnaire responses that examine: output, new orders, new export orders, backlogs of work, output prices, input prices, suppliers' delivery times, stocks of finished goods, quantity of purchases, stocks of purchases, employment, future output.

Trading Economics I Stanbic Bank Kenya PMI (2015-2020)

The Stanbic Bank Kenya PMI fell to 34.8 in April 2020 from 37.5 in the previous month, leading to the biggest contraction in private sector activity since October of 2017, due to the coronavirus pandemic. Output fell at a record pace as firms were challenged by falling demand, input shortages and lockdown restrictions. The PMI being less than 50 means that the industry is contracting.

The impact of this is that the industry will face greater challenges in being competitive both in the East African region, and also globally. The move to remove the rebates means that the effects of placing them into force cannot be effectively monitored within the short time span of its existence. The rebates were originally offered as part of the Government of Kenya's Big Four initiative.

REMOVAL OF PREFERENTIAL RATES FOR NEWLY LISTED COMPANIES

The new Act has removed the preferential tax rates being offered to newly listed companies, which ranged between 20% - 27.5%.

The preferential rates were a key incentive to investors looking to invest in Kenya. The increase from those eligible for 20% tax will be greatly disincentived.

SUPPORT FOR SMALL BUSINESSES

The new Act has amended the turnover tax limit for businesses in Kenya. Turnover tax provisions has been extended to persons with an annual turnover between Ksh 1 Million and Ksh 50 Million. Previously the limit stood at Ksh 5 Million. More so , the rate of Turnover Tax has reduced from 3% to 1%. However, turnover tax will now have to include income derived from incorporated companies, which was previously exempt.

In addition to changes in ToT, the new Act now exempts the presumptive tax that was previously applicable when applying for business permits.

This is a highly welcomed change. Small to medium sized enterprises will be greatly benefitted from the lowered ToT rates, and turnover thershold, and will go a long way in minimizing COVID-19 impacts.

SUPPORT FOR RESIDENT COMPANIES OF KENYA

The new Act has amended the corporation tax rate for resident companies from 30% to 25%, for the year 2020 and after. The tax rate for non-resident companies is still 37.5%.

This is also a highly welcomed change. Resident companies will be greatly supported as a direct consequence of the change, especially in helping businesses reduce costs from COVID-19 business impacts.
The lowered corporate tax rates aids Kenya in being competitive locally.

AMENDMENTS TO PLASTICS INDUSTRIES

The new Act has amended the reduced corporation tax rates being offered to businesses operating a plastics plant, where the rate was at 15%. However, the new Act deletes this law, making the tax rate 25%.

This will will serve as a disincentive to the manufacturing sector, which is a Kenyan sector that is already amidst a crisis as fewer firms are likely to open processing plants.

CGT INCOMES NOW TAXABLE

The new Act has amended the sources of income that were exempt from paying Capital Gains Tax (CGT). These are:

- Shares of any local authority within Kenya.
- Shares held in the stocks or funds of the Government of Kenya.
- Land held within Kenya which has been adjudicated under the Land Consolidation Act, or the Land Adjudication Act in a situation where the title deed to such land has been registered under the Registered Land Act.

This will will serve as a disincentive to investors, as the increased CGT rates make Kenya a less attractive investment destination.

NEW SCHEDULE OF CAPITAL ALLOWANCES

We can assess the new capital allowances schedule under:

- Buildings
- Machinery
- Other Expenditure

BUILDING SECOND SCHEDULE CHANGES	REPEALED RATE	ACTUAL RATE	RELEVANT COMMENTS
Hotel Buildings	100%. Or, 150% in the first year of use.	50% in the first year of use, with 25% per annum reducing balance thereafter.	Capital allowance restricted to residual balance if there is a change in user. In general, license from authorities apply.

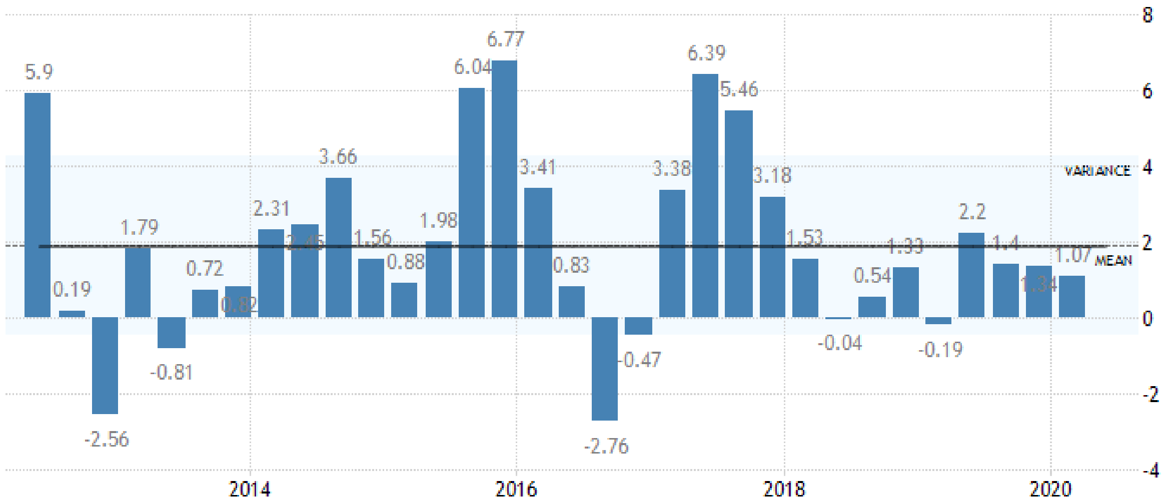
BUILDING SECOND SCHEDULE CHANGES	REPEALED RATE	ACTUAL RATE	RELEVANT COMMENTS
Petroleum, and gas storage facilities	10%/annum, on a straight line basis.	50% in the first year of use, with 25% per annum reducing balance thereafter.	Capital allowance restricted to residual balance if there is a change in user.
Buildings used for manufacture	100%. Or, 150% in the first year of use.	50% in the first year of use, with 25% per annum reducing balance thereafter.	Capital allowance restricted to residual balance if there is a change in user. Buildings for manufacture include civil works that add to the overall use of the building.
Commercial buildings (CB's)	25%/annum, on a straight line basis.	10%/annum, on a reducing balance basis.	Capital allowance restricted to residual balance if there is a change in user. Defintion of CB include an office, shop, showroom, godown, storehouse or warehouse (For raw materials storage, civil works relating to water or electricity power.)
Educational buildings	50%/annum on a straight line basis.	10%/annum, on a reducing balance basis.	Capital allowance restricted to residual balance if there is a change in user. In general, license from authorities apply.

MACHINERY SECOND SCHEDULE CHANGES	REPEALED RATE	ACTUAL RATE	RELEVANT COMMENTS
Machinery used in manufacturing	100%, or 150% in the first year of machinery use.	50% in the first year of use, with 25% per annum reducing balance thereafter.	This is a step by the Government in response to COVID-19, and will only impact businesses in the short-term, as the rates are constantly revised.
Aircrafts	30% on a reducing balance basis.	50% in the first year of use, with 25% per annum reducing balance thereafter.	This is a step by the Government in response to COVID-19, and will only impact businesses in the short-term, as the rates are constantly revised.
Hospital equipment	12.5% per annum, on a reducing balance basis.	50% in the first year of use, with 25% per annum reducing balance thereafter.	This is a step by the Government in response to COVID-19, and will only impact businesses in the short-term, as the rates are constantly revised.
Computing based items	30% p.a. on reducing balance and 25% for software	25% on a reducing balance basis.	This is a step by the Government in response to COVID-19, and will not have a material effect on most businesses.
Ships	Less than 125 tonnes = 12.5% per annum on reducing balance. More than = 100% in the first year of use.	50% in the first year of use, with 25% per annum reducing balance thereafter.	This is a step by the Government in response to COVID-19, and will only impact businesses in the short-term, as the rates are constantly revised. The rates being split by tonnage would have better helped firms.

BUILDING SECOND SCHEDULE CHANGES	REPEALED RATE	ACTUAL RATE	RELEVANT COMMENTS
Heavy earth moving equipment	37.5% per annum, on a reducing balance basis.	25% per annum, on a reducing balance basis.	This is a step by the Government in response to COVID-19. The repealed rate would've better helped firms.
Machinery used for undertaking mining operations	20% per annum, on a straight line basis.	50% in the first year of use, with 25% per annum reducing balance thereafter.	This is a step by the Government in response to COVID-19, and would have better helped the mining sector if the repealed rates were assented.
Other motor vehicles	25% per annum, on a reducing balance basis. However, qualifying cost of non-commercial vehicle restricted to Ksh 2 Million.	25% per annum, on a reducing balance basis. However, qualifying cost of non-commercial vehicle restricted to Ksh 3 Million.	This is a step by the Government in response to COVID-19, and it is better that the assented rates with a Ksh 3 Million cost of non-commercial vehicles were kept, as the economy will be cumulatively impacted.
Telecommunication equipment	20% per annum, on a straight line basis.	10% per annum, on a reducing balance basis.	This is a step by the Government in response to COVID-19.
Furniture and fitting equipment	12.5% per annum, on a reducing balance basis.	10% per annum, on a reducing balance basis.	This is a step by the Government in response to COVID-19.

OTHER EXPENDITURE SECOND SCHEDULE CHANGES	REPEALED RATE	ACTUAL RATE	RELEVANT COMMENTS
Farm works	100% in the first year of use (In case of a farm-house, only one-thirds of the cost is eligible).	50% in the first year of use, with 25% per annum reducing balance thereafter.	This is a step by the Government in response to COVID-19. Kenyans benefit more from the repealed rates. New farm works will likely be needed to fight the locust crisis in Kenya.

Capital Allowance schedules tend to impact production based industries a lot more than non-production based industries. Thus we can examine the Kenyan Producer Price Change Index to observe the changes within Kenya. The PPI measures the gross changes in the trading price of products on the domestic and non-domestic markets, at all stages of processing.



Trading Economics I Kenya National Bureau of Statistics (2012-2020)

PPI in Kenya averaged 1.88 percent from 2012 until 2020, reaching an all time high of 6.77 percent in the fourth quarter of 2015 and a record low of -2.76 percent in the third quarter of 2016.

It is expected that the COVID-19 outbreak will bring the Kenyan PPI into a negative in 2020 Q4.

3 VALUE ADDED TAX (VAT) IMPACTS

CHANGES IN VAT RATES AND IN RECORD KEEPING PROCEDURES

The new Act has amended that there is a reduction in the VAT rate from 16% to 14% which is to be effective from 1/4/2020.

The new Act has amended that everyone must maintain records of transactions for a minimum period of five years.

The impact of this extends into unregistered VAT users, who were previously not required to maintain records, but are now required to. This in turn aids KRA to have a wider source of data.

CHANGES IN ISSUANCE OF CREDIT NOTES

The new Act has stated that; in addition to credit notes being able to be issued within 6 months post receiving a tax invoice, a credit note can be issued after a court of law gives their determination upon a commercial dispute, in the situation a dispute has an effect on the price payable, and a subsequent tax invoice has been issued. However, issuance of the credit note should be within 30 days of the court's verdict.

The main effect of the ammendement in law is to protect suppliers who are unable to take effective action in dispute cases where tax invoices are received after 6 months of supply, especially within the COVID-19 business environment.

VAT ON FUEL

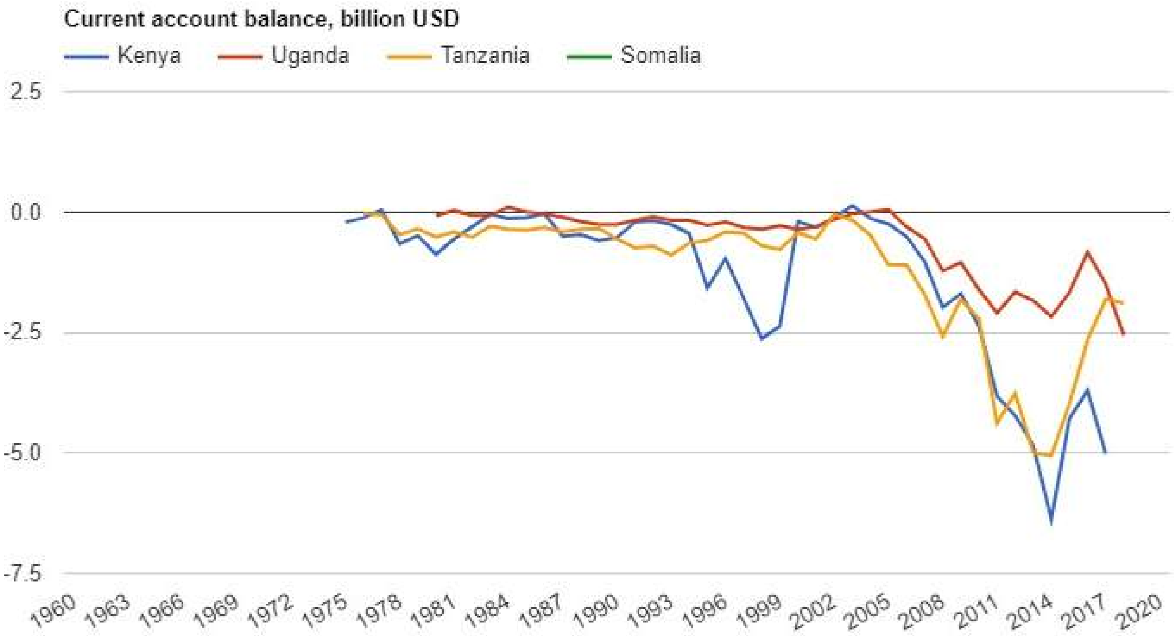
The new Act has amended the tax payable on fuel, as excise duty is now applicable. The change will be in effect from 15/5/2020.

The change is largely due to a massive decline in crude oil prices. The value of the crude oil futures market (Brent Oil mainly), has seen a exorbant fall in price. This is expected to change relatively quickly as more countires begin to open their borders, and demand rises.

VAT REFUNDS OF BAD DEBTS

VAT refunds on bad debts can now only be applied after a maximum of 4 years after supply, which is a change from the previous 5 years.

The impact of this amendment is that all suppliers of goods and services will have to be all the more cautious in giving lines of credit to their customers, and must be proactive to collecting the necessary documents in proving that the debt is indeed a bad debt.



World Bank (1960-2020)

The current account balance as a percent of GDP provides an indication on the level of international competitiveness of a country. Usually, countries recording a strong current account surplus have an economy heavily dependent on exports revenues, with high savings ratings but weak domestic demand.

On the other hand, countries recording a current account deficit have strong imports, a low saving rates and high personal consumption rates as a percentage of disposable incomes. Kenya recorded a current account deficit of 4.60 percent of the country's Gross Domestic Product in 2019, and is forecast to have a deficit throughout 2020. East African nations in general have recorded a deficit.

The impact of easing VAT rates will likely make Kenya a more lucrative destination for doing business, which is essential to minimize the impact of COVID-19.

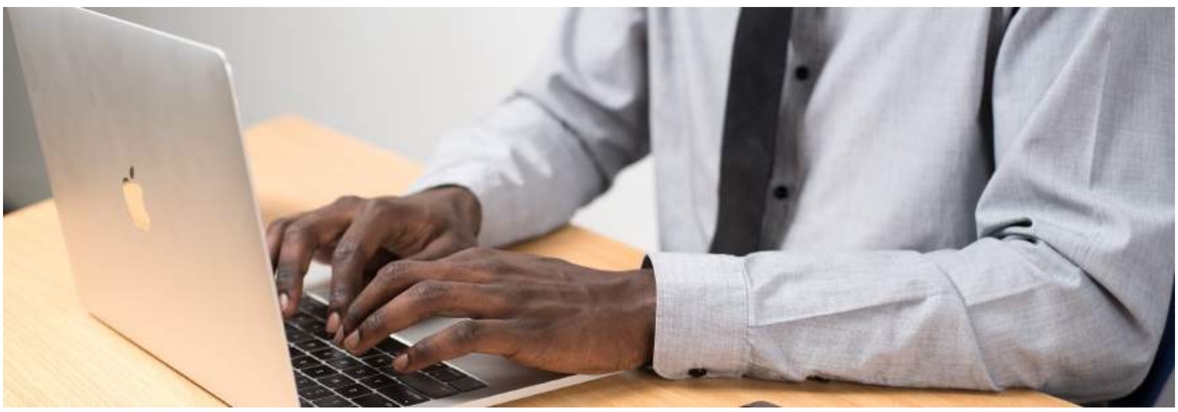
AMENDMENTS IN VAT TAX RATES

CHANGES	OLD RATE	NEW RATE
PPE (Protective Equipment) such as face masks for everyone	14%	Exempt
Medicament (a substance used for medical treatment)	0%	Exempt
Vaccines (Human & Veterinary)	0%	Exempt
Taxable goods that have been imported or purchased only for construction or infrastructural projects (only applicable for projects in industrial parks with more than 100 acres)	Exempt	14%
Taxable goods that are to be used in constructing a power generating plant, so that to supply electricity to the national grid with approval from the National Treasury CS	Exempt	14%
Taxable goods that are to be used for geothermal, oil/mining exploration	Exempt	14%
Taxable goods that have been imported or purchased only for the production of construction of computers	Exempt	14%
Taxable goods that have been imported or purchased only for construction of liquefied petroleum gas storage facilities	Exempt	14%

CHANGES	OLD RATE	NEW RATE
Biogas equipment and products	Exempt	14%
Plants and machinery used in the manufacture of goods under Chapter 84 and 85	Exempt	14%
Film strips, visual aid equipment and chemicals bought/imported prior to clearance through customs, by the National Museums of Kenya	Exempt	14%
Museum and natural history exhibits and specimens for public museums within Kenya	Exempt	14%
Postage stamps (tariff number 4907.00.90)	Exempt	14%
Taxable items supplied to marine fisheries and fish processors within Kenya	Exempt	14%
Items used in the construction of grain storage facilities with direction from the CS responsible for agriculture	Exempt	14%
Services rendered either locally or imported specifically for the implementation of projects classified under special operating framework arrangements with the Government of Kenya	Exempt	14%
Insurance agency, and brokerage services	Exempt	14%

CHANGES	OLD RATE	NEW RATE
Transfers of a business deemed as a going concern from a individual to another individual	Exempt	14%
Transfers of assets in transactions relating to real estates investment and asset backed securities	Exempt	14%

- The VAT exemption on medical protective equipment is a welcome and much needed change in the time of COVID-19.
- As insurance agency, and brokerage services will now be required to pay VAT, the cost of all insurance based services will become more expensive for all businesses and individuals, as the cost will likely be transferred onto customers.
- There shall be a multiplier effect of higher insurance rates upon the Nairobi Stock Exchange, as fewer investors will find the securities attractive. This is worrying as the NSE has seen a high level of investor resistance even in pre-covid conditions.
- A large number of items in the manufacturing, mining, oil and power based industry have been brought under the purview of VAT. This is will further negatively affect the cashflow for these sectors. Many of these sectors have already been under duress since the previous year, and the added VAT will go onto intensify their woes.
- The added cost of VAT the on sale of firms will mean that most individuals will choose not to expand and invest in new business ventures.



4 WITHHOLDING TAX (WHT) IMPACTS

WITHHOLDING TAX ON DIVIDENDS

The Act states that the WHT rate levied upon the dividends payable to non-residents of Kenya will rise from the current 10% to 15%.

The impact of this amendment is that foreigners will be less inclined to invest in Kenya due to the higher tax, unless their home country has signed a double tax agreement with Kenya. This move will make it even more difficult to attract investors to the Nairobi Stock Exchange.

WITHHOLDING TAX ON TRANSPORT OF GOODS

The Act states that the WHT rate of 20% will now be levied upon non-residents of Kenya upon transportation (excluding air and shipping services). This law will not be applied to members of the East African Community (EAC).

The impact of this amendment is that foreigners will be less inclined to conduct, or prepare to conduct business in industries that are transportation dependent. The transportation sector has been struggling for a while, even in pre-covid times, and this move will worsen it more.

WITHHOLDING TAX ON RE-INSURANCE PREMIUMS

The Act states that the WHT rate of 5% will be levied on the reinsurance premiums payable to non-residents of Kenya, execpt for aviation insurance.

This is an additional cost to non-residents. The law was introduced in the 2019 Finance Act, but could not be implemented until this clarification.

WITHHOLDING TAX ON MARKETING, SALES AND ADVERTISING

The Act states that the WHT rate of 20% will be levied all marketing, sales, promotion & advertising services that are being provided by non-residents of Kenya.

This is an additional cost to non-residents. The law is extending the WHT applicable to non-residents. The move makes a lot of sense in aiding to protect Kenyan jobs and businesses amid the COVID-19 pandemic.

5 EXCISE DUTY IMPACTS

AMENDMENTS IN THE EXEMPTION SCHEDULE

The new Act has been amended such that the following items will now be taxable under the new regime:

1. A single motor vehicle being imported by any public officers (or their spouses) of Kenya that is returning to Kenya following a mission from abroad.
2. Items that have been imported, or purchased domestically for the specific use in projects classified under the special operating framework arrangement (SOFA) with discretion from the Government of Kenya.

The move is line with the Government of Kenya's goal of increasing taxation revenue from the citizenry by cutting down on the exempted and zero-rated excise duty items.

AMENDMENTS IN DEFENITION OF "OTHER FEES"

The new Act has been amended to alter the definition of "Other Fees" to:

"*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*".

The move was much needed as the business community in Kenya often had disputes with the Kenya Revenue Authority, on as to which "Financial Institutions" fell under the domain of excise duty.

Overall, excise duty is a tax chargeable on goods and services that have been manufactured locally or have been imported. In Kenya, excise duty is governed by the Excise Duty Act, 2015. A specific rate can be applied upon a 'specific amount' per unit of measure on a excisable product, and a 'Ad Valorem' rate can be applied on a specific percentage on the value of the excisable product. Specific rates are usually applied to correct for market fluctuations, and Ad Valorem to raise revenue for the KRA.

6 IMPACT ON TAX PROCEDURES ACT

AMENDMENTS TO TURNOVER TAX RETURN PENALTY

The Act states that the penalty on non-submission of turnover tax returns will reduce from Ksh 5000 to Ksh 1000.

This is a welcome move, especially to SME businesses who are struggling with the COVID-19 economy.

AMENDMENTS TO PRIVATE RULINGS TIME LIMIT

The Act states that the Commissioner of tax now has 60 days to issue a deemed private ruling from receiving an application from the taxpayer. This is a increase from 45 days from before this amendment.

The extension of 15 days is much better than the proposed removal of the time limit as was the case in the Bill. There have been complications in complying with the provision since introduction in the Tax Proceudres Act, 2016.

PRIVATE RULINGS NOT PRIVY TO NEWSPAPER PUBLICATION

The Act states that the Commissioner of tax is not legally required to publish the events of a private tax dispute ruling within 2 daily newspapers. The Act has additionally removed the clause that allowed all taxpayers to use the published tax dispute rulings to be binding when fact checking in other dispute cases.

This is a huge blow to taxpayers, who will no longer be able to use other dispute case rulings as a reference when dealing with their own.

In regards of the Tax Procedures Act, as of 27/4/2020, The Kenya Revenue Authority has regained the powers to obtain information on financial transactions from third parties such as Banks, Mobile Telephones and E-Wallets, and also schools. The Court of Appeal reinstated Section 60 that had been frozen back in 2018. As a direct consequence of this, anyone that does not comply to share information will face a fine of Ksh 1 Million, or a 3 year jail sentence or both. The KRA is effectively hoping to harmonize the flow of cash with tax remittances, thus identifying those who evade duty.

7 IMPACT ON MISCELLANEOUS FEES AND LEVIES ACT

AMENDMENTS TO IMPORT DECLARATION FEES

The new Act has been amended such that the Import Declaration Fee (IDF) of 1.5% chargeable on raw materials, and intermediate products by approved manufactures at their customs value has been removed. The lower IDF rate will be given to manufacturers only on the recommendation of the CS National Treasury, after recommendation from the CS Industry. In addition to this, the Act has deleted a number of exemptions from the scope of IDF:

- Gifts or Donations (excluding motor vehicles) given by relatives abroad to people in Kenya for their personal use.
- Raw material being used only for construction of industrial parks outside of Nairobi & Mombasa by developers or investors of the project.
- Goods that are being imported into Kenya for the specific construction of liquefied petroleum gas storage facilities.
- Goods being imported into Kenya for use in a "SOFA" project in agreement with the Government.

The move is line with the Government of Kenya's goal of increasing taxation revenue from the citizenry by cutting down on the exempted and zero-rated excise duty items, and increasing the level of bureaucracy needed to obtain an exemption.

AMENDMENTS TO FEES IN DUTY FREE VEHICLES

The new Act has been amended that a Ksh 10,000 fee will now be applicable to individuals in the Fifth Schedule to the East African Community Customs Management Act (i.e. Diplomats, Rally Drivers, Disabled Individuals).

The aim here is for the port to recover their processing fees while dealing with such duty free cars.

AMENDMENTS TO RAILWAY DEVELOPMENT LEVY

The new Act has been amended such that the same exemptions have been removed as that of IDF. Additionally, use of the RDL has been expanded from "construction" to "construction and operation".

The law means that the Government of Kenya can now use the RDL to fund the SGR now that Phase 1 and 2A is complete.

8 AMENDMENTS TO THE KRA ACT AND RETIREMENT BENEFITS ACT

EMPOWERMENT OF REVENUE AGENTS

The Act has changed the KRA Act such that the tax commissioner is now allowed to enter into an agreement with individuals registered under the Banking Act for the purposes of rendering banking services. All those who enter into an agreement shall have a maximum of 2 days to deposit money into the central bank, or pay a 2% penalty (compounding every other day) on the collected yet un-deposited monies.

KRA currently has tax collection bank accounts with a number of banks, and this agreement will mean that such funds will be transfered to the central bank without any follow up from KRA.

MONETARY SUPPORT FOR KRA INFORMERS

The Act has been changed such that, any person who gives the KRA information on anyone that has not fulfilled their tax obligation will receive a reward of Ksh 500,000. This shall only be applicable where the KRA has not monetarily rewarded the informer

An effective way for the Kenya Revenue Authority to increase its collections, as the reward for informers is quite substantial.

AMENDMENTS TO RBA TO ALLOW PURCHASE OF RESIDENTIAL HOUSE

The Act has been changed such that members of the Retirement Benefit Fund can now use a percentage of their saved monies towards the purchase of a residence.

An effective way for the Government of Kenya to further the cause of the Big Four Initative for the RBA members.

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