THE TAX LAWS (AMENDMENT) BILL, 2020

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INCOME TAX ACT

A raft of changes have been proposed by The Tax Laws (Amendment) Bill, 2020. The changes will become effective once the Bill has been signed into law by the President.

QUALIFYING INTEREST

The definition of qualifying interest has been amended to make any interest earned by a resident individual that is subject to 15% withholding tax, to be final tax. Previously, only interest earned from a licenced bank, financial institution or building society, Central Bank of Kenya and on a bond approved by the CS Finance that was subject to 15% withholding tax was treated as final tax, and any other interest that was not specifically exempt was subject to 30% tax. This change will make it attractive for individuals to invest in other instruments like commercial paper or personal loans.

PERSONAL TAX

TAX RATE AND RELIEFS

Individual Tax and Tax on Wife's Employment, Professional and Self-Employment Income – KShs	Rate – %	Cumulative Tax – KShs PM. Less Relief
First 288,000 pa. (24,000 pm.)	10%	Nil
Next 200,000 pa. (16,666 pm.)	15%	2,500
Next 200,000 pa. (16,666 pm.)	20%	5,833
Over 688,000 pa. (57,333 pm.)	25%	

The personal tax relief has been increased from KShs 16,896 pa. (KShs 1,408 pm.) to KShs 28,800 pa (KShs 2,400 pm.). The income subject to the highest tax bracket has also been increased from KShs 47,059 to KShs 57,333.

The tax rates for withdrawal before the expiry of 15 years from the date of joining a registered pension/provident scheme or the NSSF, for withdrawals in excess of the tax free limits, has been aligned to the individual tax rates above.

Moreover, the rate of tax for withdrawal from a registered pension/provident scheme or NSSF after the expiry of 15 years from the date of joining, for amounts over KShs 1.2 million, has been reduced from 30% to 25%.

CAPITAL GAINS TAX – EXEMPTIONS REVOKED

- Capital gains tax to be levied on the:
  - Sale of a private residence. Previously, where the owner had lived in the property for three years prior to its disposal, the gain was exempt.
  - Transfer of a property below KShs 3 million.
  - Sale of all agricultural properties. Previously, properties situated outside a municipality and less than fifty acres was exempt.
  - Land adjudicated under the Land Consolidation Act or the Land Adjudication Act registered under the Registered Land Act and transferred for the first time.
- Gains from transfer of property which is sold or transferred for the purpose of administering the estate of a deceased which is completed within two years of death or such longer period as the Commissioner may approve in writing, is still exempt from capital gains tax. Where there is a court case regarding the estate, the period of transfer shall be two years from the date of finalisation of the court case.

CORPORATION TAX

TAX RATE

Corporation tax rate reduced from 30% to 25% effective 1st January 2020. However, the withholding tax rate on dividend payments to non-residents has been increased from 10% to 15%.

The various tax incentives for new listings or introductions on an approved securities exchange have been eliminated. The 15% tax rate for companies operating a plastic recycling plant which was introduced last year has also been removed.

In respect to special operating frameworks, the provision to negotiate lower rates has been removed and for the current frameworks, the rate negotiated in the agreement shall continue to apply for the unexpired period of the agreement.

Lastly, any withdrawal of a surplus from a registered scheme by an employer will be taxed at 35%, up from 30%.

ALLOWABLE EXPENSES

The following expenses which were specifically allowed as deductible expenses will now not be allowed as deductible expenses against taxable profit:

- 30% electricity rebate.
- An entrance fee or annual subscription paid to a trade association which has elected to pay tax, meaning that all subscriptions to trade associations are now disallowed.
- Legal and other costs, including expenditure on rating, incurred on the issue of shares or debentures to the public and listing on a securities exchange in Kenya without raising capital.
- Club subscriptions paid by an employer on behalf of an employee.
- Expenditure on the construction of a public school, hospital, road or any other similar social infrastructure with the approval of CS Finance.

INVESTMENT ALLOWANCE

All the capital deductions including investment allowances that were provided under the Second Schedule of the Income Tax Act have been deleted and superseded with a simplified investment deduction regime. The provision allows the tax payer to decide whether they want to claim the allowance or not.

PROPOSAL	IMPLICATION
BUILDINGS (excluding land)	**RATE**
Commercial building (including an office, shop, showroom, godown, storehouse or warehouse used for storage of raw materials and finished or semi-finished goods in respect to manufacture and civil works relating to water or electric power undertaking)	10% per annum on a reducing balance basis
Hotel building licensed by the relevant authority	50% in the first year of use and 25% on a reducing balance basis thereafter
Building used for manufacture including structures and civil works which relate to the use of the building (making or packaging of goods from raw or semi-finished goods and electricity generation for supply to national grid; but excluding design, storage, transport, administration and ancillary activity)	50% in the first year of use and 25% on a reducing balance basis thereafter
Petroleum gas storage facilities	50% in the first year of use and 25% on a reducing balance basis thereafter

PROPOSAL	IMPLICATION
Educational buildings including student hostel licensed by the relevant authority	10% per annum on a reducing balance basis
Hospital buildings licensed by the relevant authority	50% in the first year of use and 25% on a reducing balance basis thereafter
• In case of change of a user, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate • Gains on sale of buildings or on cessation of business will now be treated as a trading receipt and taxed at 30%	
MACHINERY (including pipeline and plant & equipment)	**RATE**
Machinery used for manufacture (used directly in the process of manufacture including for ancillary purposes of electricity generation, clean-up and disposal of effluents and waste products, reduction of environmental damage, water supply or disposal, machinery maintenance and scientific research and development)	50% in year of first use and 25% on a reducing balance basis thereafter
Machinery used to undertake operations or exploration under a prospecting or mining right	50% in year of first use and 25% on a reducing balance basis thereafter
Hospital equipment	50% in year of first use and 25% on a reducing balance basis thereafter
Ships or aircrafts	50% in year of first use and 25% on a reducing balance basis thereafter
Motor vehicles and heavy earth moving equipment (restricted to KShs 3 million for non-commercial vehicles)	25% on a reducing balance basis
Computer and peripheral computer hardware, software, calculators, copiers and duplicating machines	25% on a reducing balance basis
Furniture and fittings and machinery not used in manufacturing	10% on a reducing balance basis
Diminution in value of implements, utensils and similar articles not being machinery	Amounts considered just and reasonable - 1/3 of the cost over 3 years, by practice
Telecommunications equipment	10% on a reducing balance basis
Filming equipment by a local film producer licensed by CS Communication	25% on a reducing balance basis
OTHER ITEMS	**RATE**
Purchase or acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% on a reducing balance basis
Farmworks (including farmhouses, labour quarters, immovable buildings, fences, dips, drains, windbreaks, water and electricity supply works excluding machinery and other works necessary for the proper operation of a farm)	50% in year of first use and 25% on a reducing balance basis thereafter

TURNOVER TAX

Turnover Tax (TOT) of 1% of gross receipts from the business shall apply to businesses with a turnover of between KShs 500,000 and KShs 50 million and is now extended to incorporated companies. Previously, the rate was 3% and the turnover threshold was KShs 5 million, and was only applicable to sole proprietors and partnerships. The VAT registration limit still is KShs 5 million. This limit does not apply to income from rental income and management, professional or training fees. This is a great move as it will simplify income tax obligations of small businesses.

A person who is subject to this tax, can still write to the Commissioner to be subjected to corporation tax.

The collection of presumptive tax at 15% of the Single Business Permit fee has been removed, and therefore TOT will now fully be payable to the Kenya Revenue Authority through the filing of monthly returns.

WITHHOLDING TAX

TRANSPORT, MARKETING AND ADVERTISING SERVICES

Withholding tax at the rate of 20% on payments made to a non-resident entity in respect of sales promotion, marketing, advertising services and transportation of goods (excluding air transport services) has been introduced. This is to ensure that non-residents who provide such services to a Kenyan resident are subject to tax in respect to income earned in or derived from Kenya. The rate is very high, as in the case of transport services, the net profit margin is not more that 10%. Moreover, if the aim is to tax international advertising, the overall cost will increase by 25%, as the withholding tax will have to be grossed up, which is not ideal for a country that wants to increase its global competitiveness.

INSURANCE PREMIUM

Various changes have been proposed to clarify that both insurance and reinsurance premiums, except for insurance or reinsurance premiums paid in respect to aircrafts, payable to non-residents are subject to 20% withholding tax.

INCOME NO LONGER EXEMPT FROM TAX

The following income will no longer be exempt from tax as the exemption provisions provided under the First Schedule to the Income Tax Act have been deleted.

- Interest earned on contributions paid into the Deposit Protection Fund.
- Interest of a registered home ownership savings plan.
- Income of the National Social Security Fund.
- Dividends received by a registered venture capital company and a registered special economic zone enterprise, developer and operator.
- Gains arising from trade in shares of a venture company by a registered venture capital company within the first ten years of investment.
- Investment income of pooled funds of a registered retirement benefits scheme.
- Interest income from listed infrastructure bonds including green bonds with a maturity of three years or more.
- Interest income passed through to an investor in the form of asset-based securities.
- Monthly or lump-sum pension payment to a person who is sixty-five years of age or more.
- Dividends paid by registered special economic zone enterprises, developers and operators to non-resident persons.
- Compensating tax accruing to a power producer under a power purchase agreement.
- 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.
- An entrance fee or annual subscription paid to a trade association which has elected to pay tax, meaning that all subscriptions to trade associations are now disallowed.
- Profits and gains, including interest income of an agricultural society in respect of any exhibition or show held by the society.
- Interest on tax reserve certificates issued by an authority of the Government.
- Income of an officer of the Government or Community, accrued in or derived from Kenya which consists of foreign allowances paid from the public funds.
- Emoluments of an officer of the Desert Locust Survey who is not resident in Kenya.
- Education grant paid by the Government of United Kingdom to a person employed in the public service of Kenya.

INDIRECT TAXES

VALUE ADDED TAX

RATE OF VAT – REVISION TO 14% LEGAL BASIS

The rate of VAT was reduced from 16% to 14% effective 1st April 2020, vide a Gazette Notice. The VAT Act empowers the CS Finance, vide a Gazette notice to increase or reduce the rate by 25%, and every such order made shall be laid before the National Assembly without undue delay, and shall cease to have effect if not approved within 21 days of the day on which the National Assembly next sits after the order is laid, but without prejudice to anything previously done thereunder. This, we hope clarifies the confusion in the market as to the legal standing of the said Notice.

DEFINITION OF ORDINARY BREAD

Ordinary bread has been defined to mean "bread containing only the flowing ingredients; wheat flour, sugar, salt, yeast, fat or oil, bread improvers, preservatives and water. Bread made out of any other ingredients will therefore be vatable at 14% unless specifically included in the exempt schedule. While ordinary bread has been removed from the exempt item list, it has not been included in the exempt list, technically making it vatable at 14%, while gluten bread and unleavened bread remains exempt.

CREDIT NOTES

The current provision is that credit notes can only be issued after six months from the invoice date. This provision has now been extended in respect of commercial disputes, where a credit note can now be issued within 30 days after determination of the matter.

REFUND OF TAX ON BAD DEBTS

The period to claim refund of VAT on bad debts has been reduced from 5 years to 4 years from the supply.

RECORDS

Previously, the Act only required every registered person to keep specified records for a period of five years. A change is proposed to require all persons, whether registered or not, to maintain the records for a period of five years.

REVISION IN VAT RATES

The following items will now be taxed at 14% subject to the deletion of the provision taxing them at 8%:

- Petroleum oils and oils obtained from bituminous mineral, crude
- Motor spirit (gasoline) regular
- Motor spirit (gasoline) premium
- Aviation spirit
- Spirit type jet fuel
- Special boiling point spirit and white spirit
- Other light oils and preparations
- Partly refined (including topped crudes)
- Kerosene type jet fuel
- Illuminating kerosene (IK)
- Other medium petroleum oils and preparations
- Gas oil (automotive, light, amber, for high speed engines)
- Other gas oils
- Natural gas in gaseous state
- Other natural gas in gaseous state
- Supply of liquefied petroleum gas including propane (now vatable from being exempt)

The following items now become vatable at 14%, being deleted from the exempt list:

- Fertilisers of Chapter 31
- Plant and machinery of Chapter 84 and 85 used for manufacture of goods
- Taxable supplies including motor vehicles imported or purchased locally for use in construction of power generating plants, by oil exploration and mineral prospecting companies, geothermal exploring companies and construction of LPG gas storage facilities
- All helicopters, aeroplanes of unladen weight not exceeding 15,000 kgs, other parts of aircrafts (excluding engine parts), air combat stimulators, aircraft launching gears, deck arrestors and similar gear and other ground flying trainers and parts
- Fishing nets of man-made textile materials
- Mosquito nets
- Materials, waste, residues and by-products whether or not in the form of pellets, used in preparation of animal feeds
- Specialised equipment for the development and generation of solar and wind energy including deep cycle batteries used to store solar power
- Aircraft tyres
- Plastic bag biogas digesters
- Biogas
- Leasing of biogas producing equipment
- Parts imported or purchased locally for the assembly of computers
- Taxable goods purchased or imported for use in the development of industrial parks of one hundred acres or more
- Inputs and raw materials, imported or locally purchased, by manufacturers of agricultural machinery and implements
- Museum and natural history exhibits and specimens and scientific equipment for public museums
- Chemicals, reagents, films, film strips and visual aid equipment imported by the National Museums of Kenya
- Taxable goods for use in the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities
- Taxable goods purchased locally or imported by manufacturers of clean cooking stoves
- Stoves, ranges, grates, cookers, barbeques, braziers, gas rings, plate warmers and similar non-electric domestic appliances
- Inputs for manufacture of pesticides
- Materials and equipment for construction of grain storage facilities
- Transfer of business as a going concern by a registered person to another registered person
- Goods imported or purchased locally for use in projects under a special operating framework
- One personal motor vehicle imported by a returning officer from a posting in a Kenyan mission abroad
- Plant, machinery and equipment used in the construction of plastic recycling plants
- Insurance agency and brokerage services and security brokerage services
- Hiring, leasing and chartering of helicopters
- Entry fees into national parks and national reserves
- Services of tour operators including in-house supplies
- Asset transfer and other transactions related to the transfer of assets into a REIT and other asset based securities

The following items are now exempt from being zero-rated:

- Milk and cream, not concentrated nor containing added sugar or other sweetening matters of tariff codes 0401.10.00, 0401.20.00, 0401.40.00 and 0401.50.00
- Various vaccines for human and veterinary medicine, medicaments and infusion solutions

The following zero-rated items are now vatable:

- All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation of CS Agriculture
- Agricultural pest control products
- Inputs or raw materials for electric accumulators and separators including lead battery separator rolls supplied to manufacturers of automotive and solar batteries in Kenya

EXCISE DUTY MEASURES

PROPOSED EXCISE DUTY ON SUGAR CONFECTIONERY MANUFACTURED LOCALLY

Sugar confectionery not containing cocoa – KShs 20/kg

White chocolate (blocks, slabs or bars) containing cocoa – KShs 200/kg

FINANCIAL INSTITUTIONS

The Bill proposes to correct a drafting error by clarifying that excise duty is only applicable on the licenced activities of a financial institution

SPECIAL OPERATING FRAMEWORK ARRANGEMENTS

Excise duty exemption on goods imported or purchased locally by projects under special operating framework arrangements is now removed.

TAX PROCEDURES ACT

APPOINTMENT OF BANKS AS AN AGENT

The proposed change allows the KRA to appoint a bank as an agent for revenue banking services, requiring the banks to remit any demand on a taxpayer within two days, failure to which the banks will be required to pay a penalty of 2% each day the amount remains unpaid.

This provision is totally in breach of the Constitution as it does not give the taxpayer the time to object.

PRIVATE RULINGS

The provision requiring the Commissioner to issue a private ruling within 45 days has been deleted.

Moreover, the provision requiring the Commissioner to publish a private ruling in two daily newspapers has been deleted, and a private ruling can now only be relied upon a person who has applied for it.

TURNOVER TAX PENATLY

The penalty has been reduced from KShs 5,000 to KShs 1,000.

MISCELLANEOUS FEES AND LEVIES ACT

The following changes have been proposed:

- Removal of exemption on IDF on raw materials for direct and exclusive use in the construction of industrial parks, LPG gas storage facilities and projects operating under a special operating framework arrangement.
- The proposal provides the CS Treasury powers to waive IDF on projects that are in the public interest.
- Levying of a KShs 10,000 processing fee on motor vehicles which are imported duty free by persons listed in the Fifth Schedule to the EACCMA.

KENYA REVENUE ACT

- The Bill proposes a KShs 500,000 reward to anyone who provides information to KRA leading to enforcement of tax laws.

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