Tax Alert

Highlights of the Tax Laws Amendment Act, 2020

Further to the Presidential Directive dated 25th March 2020, the National Assembly debated the Tax Laws Amendment, Bill, 2020 (“the Bill) and passed it with several amendments.

The Bill was assented into law by the President on 25 April 2020 and is now in force.

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In this Alert we provide an analysis of the changes contained in the Tax Laws (Amendment) Act, 2020 (“the Act”). The effective date of the changes is 25 April 2020, unless specified otherwise in the sections below.

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Resident corporate tax rate	30%	25%	Previously, the National Treasury had omitted this change which was contained in the Presidential Directive. The National Assembly included this change in the Act. The new corporate tax rate will be applicable to year of income 2020 and subsequent year. This is a welcome relief which will cushion resident companies from the effects of Covid -19. In addition, the reduction in tax rate will make Kenya more competitive. Kenya now has the lowest corporate tax rate in the East Africa Community. The 25% corporate tax rate is also lower than the African average corporate tax rate of 28.8% but slightly higher than the global average corporate tax rate of 23.03%. The corporate tax rate for permanent establishments remains at 37.5%. However, with the increase in the withholding tax payable in respect of dividends to nonresidents (see below), the difference in the effective rate of taxation between resident companies and permanent establishments will now be 1.25%. Kenya has now adopted a tax policy of having a lower tax rate while reducing the number of exemptions and incentives in the Income Tax Act. This is expected to simplify the tax compliance process, increase compliance and increase the number of taxpayers.
Turnover tax rate	3%	1%	The Act has lowered the rate of turnover tax (applicable to Micro, Small and Medium Enterprises (MSMEs)) from 3% to 1% and further scrapped the confusing presumptive tax. The Act also now requires incorporated companies meeting the threshold to declare their taxes on a turnover basis. Where such companies are profitable, this will represent a significant reduction in the effective income tax rate for such companies.

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Lower threshold for Turnover tax	KES 500,000	KES 1 Million	The Act has exempted MSMEs earning below KES 1 million from turnover tax to cushion them against the negative impact of the COVID-19 pandemic. However, MSMEs exempted from turnover tax will still be required to declare and file their corporate tax returns.
Upper threshold for Turnover tax	KES 5 Million	KES 50 Million	The upper threshold in respect of the turnover tax has increased from KES 5 million to KES 50 million. The increased threshold for turnover tax is a welcomed move as it will simplify tax compliance in relation to MSMEs.
Penalty for failure to file turnover tax return	KES 5,000	KES 1,000	The Act reduces the penalty for late filing of turnover tax returns to one thousand shillings from five thousand shillings.
Electricity tax rebate	30% additional tax deduction on electricity cost	No longer applicable	The Act has scrapped the barely one year old 30% additional tax deduction on electricity costs available to manufacturers. Manufacturers will therefore lose the tax benefit that was introduced in the Finance Act 2018 after numerous consultations between manufacturers and the Government.
Capital/ investment allowance applicable on capital expenditure incurred on: ***i) buildings used for manufacture***	100%	50% in the first year of use and 25% of the residual value per year on reducing balance.	The Second Schedule of the Income Tax Act ("ITA") has been overhauled and new capital/ investment allowances rates have been provided as shown below. The new Second Schedule grants capital/ investment allowances to hospital buildings which previously were not granted any capital allowances. Businesses that used to claim investment deductions such as hotels and manufacturers will be impacted negatively by reduction of the investment deduction allowances from 100% to 50% in the first year of use. Further, the Act has removed the 150% investment deduction allowance that was granted to businesses to encourage them to invest outside Nairobi, Mombasa and Kisumu. This has been a significant incentive for the power generation sector, and it is to be seen whether it will have an impact on their costs of production. No transition provisions have been included in the new Second Schedule. Such transition provisions would provide guidance on the treatment of the tax written down balances that will be carried forward from previous years. Thus, it is unclear whether
ii) Hotels	100%	Same as for buildings used for manufacture.	
iii) Hospital building	-	Same as for buildings used for manufacture.	
iv) Petroleum or gas storage facilities	150%	Same as for buildings used for manufacture.	
v) Educational buildings including student Hostels	50% per annum in equal instalments.	10% per year on reducing balance.	

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vi) Commercial buildings	25% per annum	10% per year on reducing balance.	taxpayers are required to compute the residual capital/ investment allowances using the previous capital allowances rates or the new rates provided. Under the new Second Schedule, taxpayers will be required to track and compute capital/ investment allowance for each asset unlike in the previous schedules where various machinery, equipment, furniture and fittings that were subject to wear and tear allowances were pooled together. This may prove to be administratively cumbersome particularly when tracking assets such as machinery, equipment, furniture and fitting which tend to be of relatively low value but of significant quantity. Under the new Second Schedule, gains accruing from disposal of buildings eligible for capital/ investment allowances will no longer be subjected to capital gains tax at 5%. Instead, they will now be subjected to tax a trading receipt or trading loss at the corporate tax rate of 25%. It is however expected that the disposal of commercial buildings by MSMEs would be subjected to capital gains tax at 5%. Lastly, the new Second Schedule lacks the provisions in the previous schedule that allowed for the transfer of depreciable assets at the tax written down value between related companies.
vii) Machinery used for manufacture	100%	50% in the first year of use and 25% of the residual value per year on reducing balance.	
viii) Hospital Equipment	-	Same as for machinery used for manufacture.	
ix) Ships or aircrafts	Purchase of new ship of 125 tons gross- 100% in the first year of use. Other ships- 12.5% per annum reducing balance Aircraft-25% per annum reducing balance	50% in the first year of use and 25% of the residual value per year on reducing balance.	
x) Motor vehicles and heavy earth moving Equipment	Heavy earth moving equipment- 37.5% on reducing balance Other motor vehicles- 25% on reducing balance.	25% per year on reducing balance.	
xi) Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	30% per annum on reducing balance. Software allowance 20% on a straight-line basis.	25% per year on reducing balance.	
xii) Furniture and fittings	12.5% per annum on reducing balance.	10% per year on reducing balance.	
xiii) Telecommunica-tions Equipment	20% on a straight-line basis.	10% per year on reducing balance.	
xiv) Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming	100% in the first year of use.	25% per year on reducing balance.	

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
xv) Machinery used to undertake operations under a prospecting Right	-	50% in the first year of use and 25% per year on reducing balance.	
xvi) Machinery used to undertake exploration operations under a mining right.	-	50% in the first year of use and 25% per year on reducing balance.	
xvii) Other machinery	12.5% per annum on reducing balance.	10% per year on reducing balance.	
xviii) Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication Operator	5% on a straight-line basis	10% per year on reducing balance.	
xix) Farmworks	100% in the first year of use	50% in the first year of use and 25% per year on reducing balance.	

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Reduction of income tax exemptions	Tax exempt	Subject to Income Tax	Income tax exemptions granted under the First Schedule to the Income Tax Act have been significantly reduced under the Act. Notable exemptions that have been repealed include: • Income of various government parastatals and boards such as Tea Board of Kenya, Kenya Dairy Board, Horticultural Crops Development Authority amongst others; • Dividends received by a registered venture capital company, SEZ enterprises, developers and operators licensed under the SEZ Act; • Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company; • Interest income generated from cash flows passed to the investor in the form of asset-backed securities; • Interest earned on contributions paid into the deposit protection fund established under the Banking Act; • Income from employment paid in the form of bonuses, overtime and retirement benefits payable to the employees in the lowest tax band; • Dividends paid by an SEZ enterprise, developers or operators to any non-resident person; • Compensating tax accruing to a power producer under a power purchase agreement; and, • Income of the Export-Import Bank of the United States of America.
Increase in withholding tax rate on dividend payable to non-residents	10%	15%	Taxpayers will now be required to withhold tax on dividends payable to non-residents at the rate of 15% up from 10%. This will materially increase the effective tax rate for foreign owned companies and hence discourage foreigners from investing in Kenya. However, where a double tax treaty is applicable, the rate specified as the limit in the double tax treaty would take precedence.

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Introduction of withholding tax on sales promotion, marketing, advertising services and transportation of goods by non-residents	Nil	20%	The Act widens the scope of non-resident services liable to withholding tax to include sales promotion, marketing, advertising services and transportation of goods (excluding air and shipping transport). The applicable withholding tax rate is 20%. However, this will not apply to East African Community citizens with regard to the transportation of goods. The application of withholding tax to such services may be complicated where such payments are made to non-residents in a country with a double tax treaty with Kenya.
Expansion of the definition of qualifying interest	15%	15%	The definition of qualifying interest has been expanded by the Act to include the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income. Withholding tax deducted on qualifying interest is the final tax. The qualifying interest is not subject to further taxation. Previously, this was restricted under the ITA to only interest receivable by an individual from a bank or financial institution licensed under the Banking Act, or a building society registered under the Building Societies Act or the Central Bank of Kenya. This is a welcome move as it will encourage individuals to save and invest in debt instruments.

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Withholding tax on non-resident reinsurance premiums	5%	5%	Section 34 and the Third Schedule to the ITA have been amended by the Act to clarify that both insurance and reinsurance premiums paid to a non-resident excluding premiums in respect of aviation insurance are subject to withholding tax at the rate of 5%. While the Finance Act 2019 amended Section 35 of the ITA to introduce a withholding tax obligation on the payment of reinsurance premiums to non-residents, Section 34 of the ITA was not amended. This amendment now provides clarity to this omission.
The timeline stipulated for the Commissioner of Taxes to issue a private ruling	45 days	60 days	Under the previous provisions of the Tax Procedures Act ("TPA"), the Commissioner of Taxes was required to reply to an application of private ruling within 45 days. The Act has extended the period the Commissioner is required to issue private ruling from 45 days to 60 days. There however remain no consequences for the Commissioner if the Commissioner does not respond to the application within the stipulated time frame of 60 days. The Act further removes the obligation to publish a private ruling after issuing or withdrawing the private ruling to a taxpayer in at least two daily newspapers with a national circulation.

Employment taxes

Below are the proposals passed by the Parliament relating to employment taxes.

<table>
<tr><th>Issue</th><th>Previous Position</th><th>Change in the Tax Laws (Amendment) Act, 2020</th><th>Comments/Impact</th></tr>
<tr><td>Resident personal relief</td><td>KES 16,896 per year/ KES 1,408 per month.</td><td>KES 28,800 per year/ KES 2,400 per month.</td><td>Personal relief available to resident individuals has increased from KES 16,896 per year (or KES 1,408 per month) to KES 28,800 (or KES 2,400 per month).
This will increase the net take home of resident persons by KES 11,904 per year (or KES 992 per month).</td></tr>
<tr><td>Expansion of individual rates of tax and a reduction of the marginal rate of tax from 30% to 25%</td><td><table><tr><th>Annual Taxable Income (KES)</th><th>Tax Rate</th></tr><tr><td>On the first 147,580</td><td>10%</td></tr><tr><td>On the next 139,043</td><td>15%</td></tr><tr><td>On the next 139,043</td><td>20%</td></tr><tr><td>On the next 139,043</td><td>25%</td></tr><tr><td>On all income over 564,709</td><td>30%</td></tr></table></td><td><table><tr><th>Annual Taxable Income (KES)</th><th>Tax Rate</th></tr><tr><td>On the first 288,000</td><td>10%</td></tr><tr><td>On the next 200,000</td><td>15%</td></tr><tr><td>On the next 200,000</td><td>20%</td></tr><tr><td>On all income over 688,000</td><td>25%</td></tr></table></td><td>The Act has introduced expanded individual bands of tax (PAYE) and reduced the marginal tax rate from 30% to 25%.
This follows the recent Presidential directive aimed at providing Kenyan residents additional disposable income to cushion them from the economic shocks caused by COVID-19 pandemic.
The date of assent for the Act that provides for the expanded PAYE bands and the new rates is 25 April 2020.
The changes are effective from 25 April 2020 and the KRA will be required to roll-out a new PAYE return/P10 template to effect these changes on the KRA online portal, iTax to enable employers make the tax payments and submit the April 2020 PAYE returns by the due date of 9 May 2020.</td></tr>
<tr><td>Reduction of the marginal rate of tax from 30% to 25% on taxation of pension payments and withdrawals</td><td>Payments or withdrawals in excess of KES 60,000 per pensionable year of service (limited to 10 years) made after the expiry of 15 years from the date of joining the fund or on the attainment of the age of 50 years or upon earlier retirement on grounds of ill health were taxed using the rates below:<table><tr><th>Old tax rates</th></tr><tr><td>10% on the first KES. 400,000</td></tr><tr><td>15% on the first KES. 400,000</td></tr><tr><td>20% on the first KES. 400,000</td></tr><tr><td>25% on the first KES. 400,000</td></tr><tr><td>30% on any amount over KES. 1,600,000</td></tr></table>These rates apply after the initial tax-free amounts have been utilized.</td><td>Payments or withdrawals in excess of KES 60,000 per pensionable year of service (limited to 10 years) made after the expiry of 15 years from the date of joining the fund or on the attainment of the age of 50 years or upon earlier retirement on grounds of ill health will be taxed using the new rates:<table><tr><th>New tax rates</th></tr><tr><td>10% on the first KES. 400,000</td></tr><tr><td>15% on the first KES. 400,000</td></tr><tr><td>20% on the first KES. 400,000</td></tr><tr><td>25% on any amount over KES. 1,200,000</td></tr></table>These rates apply after the initial tax-free amounts have been utilized.</td><td>The Act provides for the taxation of pension payments and withdrawals from a registered pension fund, registered provident fund, the NSSF or a registered individual retirement fund at a lower rate of 25 percent for any amounts above KES 1,200,000. The payments and withdrawals were previously taxed at the rate of 30% for any amounts in excess of KES 1,600,000.
This will lead to an increase in the disposable income available to pensioners, cushioning them from the economic effects caused by the COVID-19 pandemic.</td></tr>
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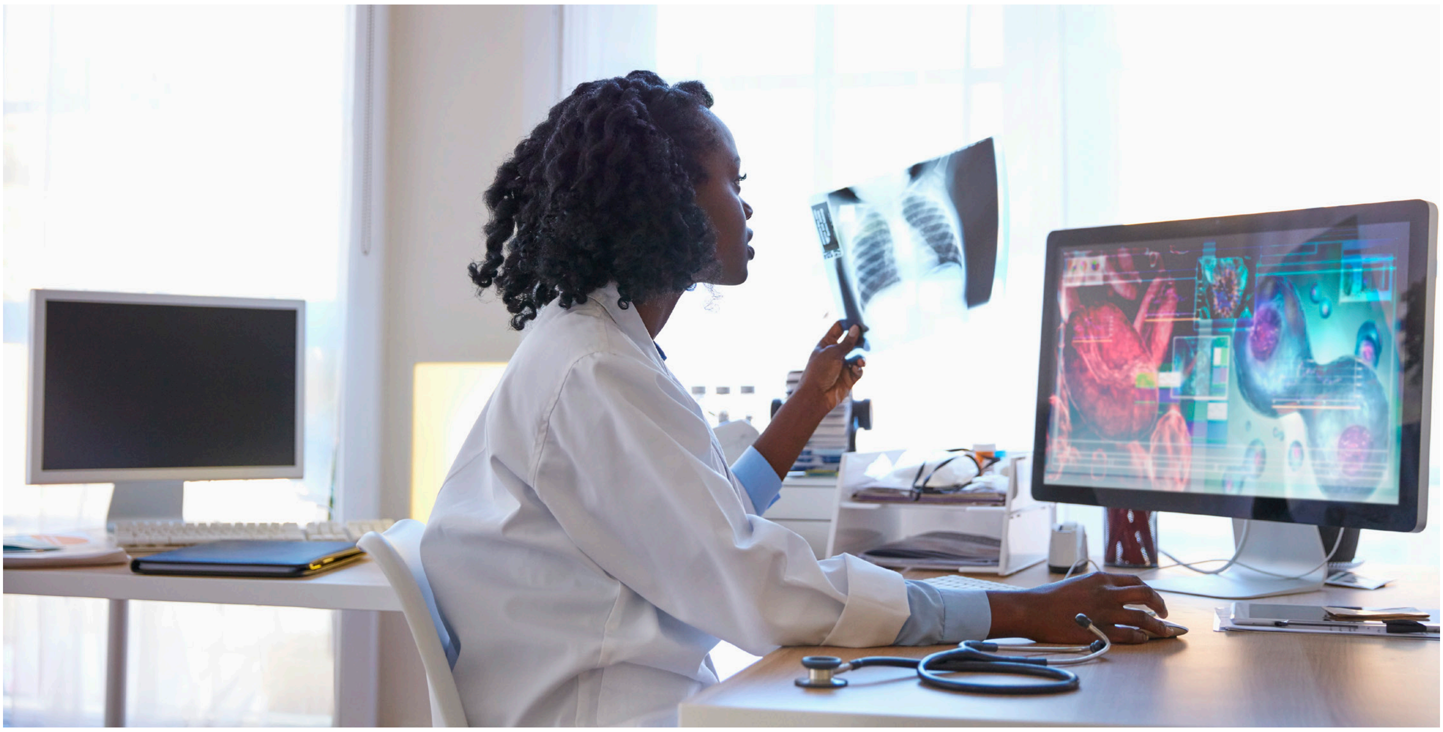
Employment taxes

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Revision of the tax bands for taxation of pension withdrawals made before the expiry of 15 years from the date of joining the fund	**Annual Taxable Income (KES) — Tax Rate** On the first 147,580 — 10% On the next 139,043 — 15% On the next 139,043 — 20% On the next 139,043 — 25% On all income over 564,709 — 30%	**Annual Taxable Income (KES) — Tax Rate** On the first 288,000 — 10% On the next 200,000 — 15% On the next 200,000 — 20% On all income over 688,000 — 25%	The tax bands for taxation of pension withdrawals made from a registered pension fund, registered provident fund, the NSSF or a registered individual retirement fund before the expiry of 15 years from the date of joining the fund have been revised. This amendment is aimed at providing individuals who make pension withdrawals from before the expiry of 15 years from the date of joining the fund with more disposable income in line with the presidential directive to provide relief against the effects of COVID 19.
Reduction of the tax rate from 30% to 25% for surplus funds withdrawn or refunded to an employer in respect of registered pension or provident fund	30%	25%	The rate for taxation of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds has been reduced from 30% to 25% of the gross sum payable.



Value Added Tax VAT

The Act has amended the Value Added Tax Act, no. 35 of 2013 by standard rating a number of goods and services that were previously either zero-rated or exempt. The Act also moves a number of items from being taxable at zero-rate to being exempt.

We detail below changes the Act has introduced:

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Taxable value of petroleum products listed in Section B of the First Schedule	Taxable value excluded Excise duty, fees and other charges.	Taxable value is the consideration for the supply and includes any taxes, duties, levies, fees, and charges paid or payable on, or by reason of the supply	Petroleum products will no longer be accorded preferential treatment when determining their taxable value. The determination of taxable value of these products will be similar to the determination of taxable value of other supplies as provided under Section 13 and 14 of the VAT Act. The change will increase the taxable value of petroleum products which will result in an increase to the final price charged to consumers. The VAT rate on these products remains at 8%. This change will take effect from 15 May 2020.
Criteria for issuing credit notes	Credit notes could only be issued within 6 months after the relevant tax invoice was issued.	Credit notes can be issued within 6 months after the relevant tax invoice was issued; or Where there is a commercial dispute in court with regard to the price payable, credit notes can be issued within 30 days after the determination of the matter.	The change is welcome since it will allow businesses to issue credit notes even after the lapse of the 6 months provided that the reduction in price emanates from a commercial dispute in court. With many businesses embracing Alternative Dispute Resolution (ADR) mechanism as a way of resolving commercial disputes, it would have been appropriate if businesses are also allowed to issue credit notes for price reductions resulting from ADR outcomes. Additionally, one would have hoped the Government would have extended the period to issue credit notes from the current 6 months to at least 12 months to reflect the commercial realities of trade and commerce.
Period within which to apply for VAT refunds arising from bad debts	5 years	4 years	The change will require businesses to be prompt in seeking refunds, relating to bad debts, from the KRA as the window has been reduced by 1 year.
Requirement to maintain records of transactions	Imposed only on registered persons.	Expanded to cover all persons doing business in Kenya.	The change will help the Government in curbing tax avoidance and fraud which may result in increased tax revenue collection.

Value Added Tax VAT

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Change in VAT status from standard rate to exempt	VATable at 16%.	Exempt.	The Government has exempted from VAT, Personal Protective Equipment (PPE), including facemasks, for use by medical personnel in registered hospitals and clinics, or by members of the public in the case of a pandemic or a notifiable infectious disease. This is a welcome relief and will support containment measures to avert the spread of COVID-19. It would have been a better approach if such critical medical supplies were zero-rated for VAT purposes to allow suppliers qualify for deduction of input tax incurred to supply the PPEs. This would effectively lower the cost of PPEs and masks, especially locally manufactured.
Change of VAT status of goods from exempt to standard rate	Exempt.	VATable at 14%.	The change is intended to boost government revenue by charging VAT on: • Plants and machinery of chapter 84 and 85 used for manufacture of goods; • Taxable supplies imported or purchased locally for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid. ***However, we note that exemption relating to specialized equipment for the development and generation of wind and solar energy remains;*** • Taxable supplies 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 (No. 12 of 1982), 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); • 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; • Biogas; plastic bag biogas digesters; leasing of biogas producing equipment; • Parts imported or purchased locally for the assembly of computers;

Value Added Tax VAT

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
			• 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; • Museum and natural history exhibits and specimens and scientific equipment for public museums; • Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya; • Goods falling under tariff number 4907.00.90; • Materials and equipment for the construction of grain storage; • Transfer of business as a going concern by a registered person to another registered person; • Taxable goods supplied to marine fisheries and fish processors; and • Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.

Value Added Tax VAT

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Change of VAT status of services from exempt to standard rate	Exempt.	VATable at 14%.	The services affected by the change are: • Insurance agency, insurance brokerage and securities brokerage services; • 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; • Taxable services procured locally or imported for the construction of liquefied petroleum gas storage facilities with minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes; • Asset transfers and other transactions related to the transfer of assets into real estate's investment trusts and asset backed securities; and • Services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.
Change of VAT status of vaccines and medicaments from zero-rate to exempt	VATable at 0%.	Exempt.	The vaccines and medicaments affected are: • Vaccines for human and veterinary medicine, and various medicaments of specified tariff codes as previously listed under Part C of the Second Schedule to the VAT Act. The change in the VAT status from zero-rating to exempt will result into the inability of pharmaceutical manufacturers to claim input VAT incurred in their operations, with the potential of forcing them to pass the additional costs to consumers through price increases. The potential increase in price of medicaments will be an unnecessary additional burden to households who are already economically strained due to COVID-19 pandemic, and difficult economic situations that existed before the pandemic.

Excise Duty

The Act has amended the Excise Duty Act, no. 23 of 2015 by subjecting to Excise duty, some items that were previously exempt. The Act also clarified the definition of 'other fees' earned by financial institutions for Excise duty purposes.

We detail below changes the Act has introduced:

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Definition of 'other fees' as per the Excise Duty Act	Defined to include any fees, charges or commissions charged by financial institutions relating to their ***licensed financial institutions***, but does not include interest on loan or return on loan or an insurance premium or premium based or related commissions 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.	Defined to include any 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 an insurance premium or premium based or related commissions 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 change is welcomed and will help reduce disputes with the tax authority on what 'other fees' should be subject to Excise duty.
Change of Excise duty status from exempt to excisable	Exempt.	Excisable.	The goods affected by the change are: • Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government; and • 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 the spouse which is not exempted from Excise Duty under the Second Schedule. The change on special operating framework arrangements will increase the cost of undertaking private sector-government joint projects which would have otherwise been exempt from Excise duty.

Miscellaneous fees and levies

The Act has amended the Miscellaneous Fees and Levies Act, no 29 of 2016 by introducing 'processing fees' on motor vehicles imported or purchased locally duty free. Additionally, the Act has imposed Import Declaration Fee (IDF) and Railway Development Levy (RDL) on goods which were previously exempt from IDF and RDL.

We detail below changes the Act has introduced:

Issue	Previous Position	Change in the Tax Laws (Amendment) Act, 2020	Comments/Impact
Additional purpose for Railway Development Levy (RDL)	RDL was to provide funds for construction of standard gauge railway (SGR) network to facilitate transportation of goods.	RDL will now provide funds for construction and operation of the SGR network to facilitate transportation of goods.	The use of RDL for operating the standard gauge railway network will provide the SGR operators with financial relief and allow them to continue operating even if finances generated from SGR operations are insufficient to run the business.
Change of RDL status of goods from exempt to being subject to RDL	Exempt.	Chargeable to RDL.	The Act has subjected the following goods to RDL in a bid to shore up government revenue: • Raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa; • Goods imported for the construction of liquefied petroleum gas storage facilities; and • Goods imported for implementation of projects under a special operation framework arrangement with the government.
Change of Import Declaration Fee (IDF) status of goods from exempt to being subject to IDF	Exempt.	Chargeable to IDF.	The Act has subjected the following goods to IDF: • Gifts and donations by foreign residents to their relatives in Kenya for their personal use; • Samples which in the opinion of the Commissioner have no commercial value; • Raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa; and • Goods imported for the construction of liquefied petroleum gas storage facilities.
Introduction of processing fees on duty free motor vehicles	Not applicable.	KES 10,000 processing fee applicable to all motor vehicles excluding motorcycles imported or purchased duty free specified in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of Part A, and paragraph 3 and 5 of Part B under the Fifth Schedule to the East African Community Customs Management Act (EACCMA).	The change is to ensure that the government earns some revenue from motor vehicles that are not subject to any duties as per EACCMA.

Other observations on the enacted changes

We note that the Act does not provide transitional and savings provisions to guide taxpayers on exemptions that were granted prior to changes effected by the Act.

The removal of exemptions will have a significant impact to investors with ongoing projects or are about to commence projects that were already granted VAT exemptions; this includes power generation plants for supply to the national grid and oil or mining exploration or prospecting companies.

As a general observation, some of the VAT changes will result in an increase in cost to consumers, such as medicaments, the cost of acquiring insurance services through brokers and agents, amongst others.

In conclusion, we would like to highlight that the VAT rate was reduced from 16% to 14% with effect from 1 April 2020 through Legal Notice No. 35 of 26 March 2020, this was subsequently approved by parliament on 14 April 2020.

For further information on the Tax Amendment Bill 2020, please contact any of the people below or your usual PwC contact.

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