

HIGHLIGHTS OF AMENDMENTS UNDER THE FINANCE ACT, 2020





Residential Rental Income Tax

15 million

The Act increases the upper threshold of Residential Rental Income from Kshs 10 million to Kshs. 15 million per annum. In addition, it aligns the lower threshold from Kshs 144,000 to current lower individual tax band of Kshs 288,000 per annum.



Digital Service Tax (DST)

1.5%

The Act has introduced a Digital Service Tax at a rate of 1.5% of the gross transaction value and shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place.

Introduction

The Finance Act, 2020 was assented into law by the President on 30th June, 2020. The amendments under the Act are outlined below: -

A. AMENDMENTS TO THE INCOME TAX ACT (CAP 470)

1. Residential Rental Income Tax

The Act increases the upper threshold of Residential Rental Income from Kshs 10 million to Kshs. 15 million per annum. In addition, it aligns the lower threshold from Kshs 144,000 to current lower individual tax band of Kshs 288,000 per annum. This provides an opportunity for more landlords to comply with the simplified regime which has minimal compliance costs.

Effective from 1st January 2021.

2. Introduction of Minimum Tax

The Act has introduced a Minimum Tax which is a base income tax, payable by all companies regardless of whether or not they make a profit. The rate of the tax is 1% of the gross turnover of the company. The key elements of the tax are as follows:

- The tax shall be paid in instalments and shall be due on the 20th day of each period ending on the 4th, 6th, 9th and 12th month of the year of income;
- Where the instalment tax payable by a person is higher than the minimum tax, then a person shall pay the instalment tax; however, where the minimum tax is higher than the instalment tax, then the minimum tax shall be payable
- Minimum tax shall not apply to: income that is exempt under the Act; employment income; income subject to residential rental income tax; income that is subject to Turnover Tax; income subject to Capital Gains Tax and income of entities operating in the extractive sectors.

Effective from 1st January 2021.

3. Introduction Digital Service Tax (DST)

The Act has introduced a Digital Service Tax at a rate of 1.5% of the gross transaction value and shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place. The tax shall be due at the time of the transfer of the payment for the service to the service provider.

Residents and non-residents with a permanent establishment will be entitled to offset the digital tax paid against their income tax payable for that year of income.

Effective from 1st January 2021.

4. Deletion of the following allowable expenses: -

The following items have deleted from the list of allowable deductions: -

- any entrance fee or annual subscription paid during that year of income to a trade association;
- capital expenditure on legal costs and other incidental expenses relating to the authorization and issue of shares, debentures or similar securities offered for purchase by the general public;
- capital expenditure on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
- capital expenditure incurred on rating for the purposes of listing on any securities exchange;
- club subscriptions paid by an employer on behalf of an employee;

Effective from 1st January 2021.

5. Home Ownership Savings Plan Provisions

The Act has deleted the provisions on Home Ownership Savings Plan (HOSP).

Effective from 1st January 2021.

6. Income Tax Exemptions

The following income tax exemptions have been deleted: -

- The income of a registered home ownership savings plan;
- Income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band.

Effective from 1st January 2021.

B. AMENDMENTS TO THE VALUE ADDED TAX ACT, 2013

1. Claim of input tax

The Act introduces a requirement that a person claiming input tax will only be able to do so, if the registered supplier has made a corresponding declaration of the output tax in their return. This is meant to facilitate the verification that a claim for input tax is genuine.

Effective from 30th June 2020.

2. Transitional provision for companies under special operating framework arrangement (SOFA)

The Act provides transitional provisions to allow companies/projects currently under SOFA to continue enjoying the VAT exemptions on goods imported or purchased locally for the remaining period of the agreement.

Effective from 30th June 2020.

3. Exemptions from VAT

a) The Act exempts the following items, effective from 30th June, 2020: -

- Maize (corn seeds) seeds of tariff no. 1005.10.00
- Ambulance services

b) The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour is suspended from exemption for a period of 6 months effective from 30th June, 2020. The exemption status will recommence from 1st January 2021.



6 months

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Income Tax Exemptions

Income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band.



Definition of "license"

The Act has amended the definition of the term "license" to include a license issued for any activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a licence.

c) The Act deletes the following items from the exemption schedule to make them taxable at the standard rate of 16%:

| No. | Item/Description | Effective dates |
|-----|---|----------------------------|
| 1 | Alluminium pilfer proof caps with EPE liner. | 30 th June 2020 |
| 2 | Helicopters of an unladen weight not exceeding 2,000 kg | 1 st July, 2021 |
| 3 | Helicopters of an unladen weight exceeding 2,000 kg. | |
| 4 | Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg. | |
| 5 | Other parts of aeroplanes helicopters | |
| 6 | Aircraft launching gear and parts thereof; deck- arrestor or similar gear and parts thereof. | |
| 7 | Air combat simulators and parts thereof | |
| 8 | Other ground flying trainers and parts thereof | |
| 9 | Specialized equipment for the development and generation of solar and wind energy | 30 th June 2020 |
| 10 | Tractors other than road tractors for semi-trailers. | 1 st July, 2021 |
| 11 | Goods of tariff of no. 4011.30.00 (Pneumatic Tyres) | 30 th June 2020 |
| 12 | Taxable goods purchased by manufacturers or importers of clean cooking stoves | 30 th June 2020 |
| 13 | Stoves, ranges, grates, cookers, barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances. | 30 th June 2020 |
| 14 | 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 under the First Schedule. | 30 th June 2020 |
| 15 | Hiring, leasing and chartering of helicopters | 1 st July, 2021 |

4. Amendments to the Second Schedule – Zero-rated Supplies

- The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour will be zero rated for a period of 6 months from **30th June 2020**.
- The Act has deleted the following items from the zero-rating schedule-

| No. | Item/description | Effective date |
|-----|---|----------------------------|
| 1 | The supply of liquefied petroleum gas including propane | 1 st July 2021 |
| 2 | Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya | 30 th June 2020 |

C. AMENDMENTS TO THE EXCISE DUTY ACT, 2015

1. Definition of "license"

The Act has amended the definition of the term "license" to include a license issued for any activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a licence.

2. Annual inflation adjustment

The Act has amended the provisions relating to annual inflation adjustment by requiring that the Commissioner should seek an approval from the Cabinet Secretary for the National Treasury and Planning in order to adjust the specific rate of excise duty.

Effective from 1st January, 2021.

3. Alignment of alcoholic strength of spirituous beverages

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

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

Effective from 30th June 2020

4. Removal of excise duty on betting

The Act has removed excise duty on betting. The Finance Act, 2019 had introduced excise duty on betting at a rate of 20%.

Effective from 30th June 2020

D. AMENDMENTS TO THE TAX PROCEDURES ACT, 2015

1. Introduction Voluntary Disclosure Programme (VDP)

The Act has introduced a Voluntary Disclosure Programme (VDP) where a taxpayer discloses tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest of the tax disclosed. The programme is confidential and will operate as follows: -

- The VDP shall be open for a period of 3 years **effective 1st January 2021**;
- The disclosures eligible under the programme will be for tax periods of up to 5 years prior to 1st July 2020;
- Where the application is accepted, the applicant shall be granted a remission of the interest and penalty due on the tax liability as follows:
 - where the disclosure is made and tax liability paid in the first year of the programme, a 100% remission of the interest and penalty;
 - where the disclosure is made and tax liability paid in the second year of the programme, remission of 50% of the interest and penalty; and
 - where the disclosure is made and tax liability paid final year of the programme, remission of 25% of the interest and penalty.
- A taxpayer will not be eligible for VDP where the taxpayer: -
 - is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
 - has been notified of a pending audit or investigation by the Commissioner.

2. Appointment of Digital Service Tax (DST) Agent.

The Act has empowered the Commissioner to appoint an agent for the purposes of collection and remittance of the Digital Service Tax (DST).

Effective from 1st January 2021



6%

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



Introduction Voluntary Disclosure Programme (VDP)

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Additional duty on goods entered for home use from an Export Processing Zone enterprise

2.5%

The Act anchors the additional duty of 2.5% of customs value in respect of goods entered for home use from an Export Processing Zone enterprise over and above the import duties under the Miscellaneous Fees & Levies Act.



Railway Development Levy (RDL) Exemptions

200 million

The Act has deleted the RDL exemptions on any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs. 200 Million.

E. AMENDMENTS TO THE MISCELLANEOUS FEES AND LEVIES ACT

1. Import Declaration Fee (IDF) on goods imported under the East African Community Duty Remission Scheme

The Act has amended the IDF chargeable on goods imported under the East African Community Duty Remission Scheme from a specific rate of Kshs. 10,000 to an *ad-valorem* rate of 1.5% of the Customs value so as to align the IDF applicable to manufacturers.

Effective from 30th June 2020

2. Additional duty on goods entered for home use from an Export Processing Zone enterprise

The Act anchors the additional duty of 2.5% of customs value in respect of goods entered for home use from an Export Processing Zone enterprise over and above the import duties under the Miscellaneous Fees & Levies Act. This was previously provided for under the repealed Customs and Excise Act Cap. 472.

Effective from 30th June 2020

3. Import Declaration Fee (IDF) Exemptions

a) The Act has deleted the following items from IDF Exemptions: -

- Aircrafts of un-laden weight not exceeding 2,000kg and Helicopters (Tariff Heading 8802.11.00 and 8802.12.00);
- Goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs. 200 Million;
- Goods imported for implementation of projects under special operating framework arrangement with the Government.

b) The Act has exempted Equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.

Effective from 30th June 2020

4. Railway Development Levy (RDL) Exemptions

a) The Act has deleted the RDL exemptions on any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs. 200 Million.

b) The Act exempts the following from RDL:-

- Currency notes and coins imported by the Central Bank of Kenya.
- Equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.

Effective from 30th June 2020

F. AMENDMENTS TO THE TAX APPEALS TRIBUNAL ACT

Procedure of Appeal:- The Act amends the Tax Appeals Tribunal Act to restrict documents presented by an appellant to the Tax Appeals Tribunal to those which had been provided to the Commissioner during the objection process.

Effective from 30th June 2020

G. AMENDMENTS TO THE KENYA REVENUE ACT

1. **Additional Function of Capacity Building and Training:** The Act amends the KRA Act to provide for an additional function of the Authority as capacity building and training. To give effect to this, the KRA Board has been empowered to make regulations with respect to capacity building and training.

Effective from 30th June 2020

2. Limitation of Actions

To enable effective resolution of suits against the Authority, the Act has provided that a legal action against the Authority suits shall not be instituted unless -

- it is commenced within 36 months after the act, neglect or default complained of; and
- in the case of continuing injury or damage, within six months after the cessation of the act; and
- at least one month written notice specifying the particulars of the claim, intention to commence the action or legal proceeding has been served upon the Commissioner General.

Effective from 30th June 2020

H. AMENDMENTS TO INSOLVENCY ACT, 2015

The Acts amends the Insolvency Act to provide that all amounts held on behalf of Kenya Revenue Authority by banks appointed as agents for revenue banking services, shall, at the point of receivership or liquidation of the bank, rank among the preferential claims just like other statutory obligations owed to the government.

Effective from 30th June 2020



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