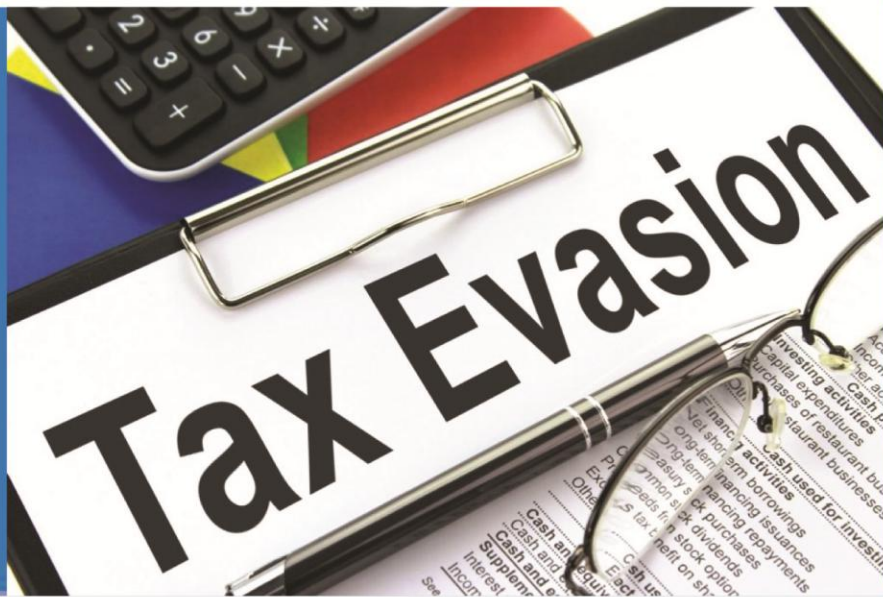




OVER 40 YEARS OF ACCOUNTING EXCELLENCE



VAT FRAUD

Tax Laws (Ammendment) Act 2020 .3

Income Tax .3

Value Added Tax .5

Tax Due Dates .7



Newsletter

MBAYA AND ASSOCIATES

May 2020 | Issue 059 | Volume 6

Introduction

Warm greetings from all us at M&A!

We are pleased to release our fifth edition of the year 2020 tax newsletter. The newsletter covers recent changes in the **tax** regime in Kenya which aims to keep you current and updated on tax matters.

In this issue we discuss the VAT fraud and the Tax Laws Amendment Act 2020 which were recently assented to by His Excellency the president on 25th April 2020.

On the right column of the newsletter you will find contact details for the senior members of our team who can help answer any questions you may have about the issues highlighted in this newsletter or any other matter.

We are interested in your feedback on the items covered and what topics you would like covered in the future.

Please provide any feedback at tax@mbaya.co.ke

In this issue



From the Tax Desk

- VAT Fraud » 1
- Tax Laws (Amendment) Act 2020 » 3
- Income Tax » 3
- Value Added Tax (VAT) » 5
- Tax Due Dates » 7

Contacts

Head Office
3rd Floor, Western Heights
Karuna Road, Westlands
P. O. Box 45390 – 00100
Nairobi, Kenya
Tel. +254(20)4443868
254 20 4448938
254 20 4446466
Fax: 254 20 4449819

Mike Mbaya | Managing Partner

Email: mike@mbaya.co.ke

Muhungi Kanyoro | Partner

Email: mkanyoro@mbaya.co.ke

Andrew Bulemi | Partner

Email: abulemi@mbaya.co.ke

Leah Nganga | Partner

Email: lwambui@mbaya.co.ke

Christine Yego | Outsourcing Dept. Manager

Email: christine@mbaya.co.ke

Kevin Njenga | Tax Manager

Email: knjenga@mbaya.co.ke

Darlyn Mbaya | Manager and Partner

Savanna Associates

Email: darlyn@mbaya.co.ke

» From the **TaxDesk** »

VAT FRAUD

Value Added Tax (VAT) is a tax charged on the supply of taxable goods and services made or provided in Kenya and on importation of taxable goods and services into Kenya. VAT is levied if annual turnover is above Kshs 5 million, where a taxpayer is required to register for VAT with the Kenya Revenue Authority (KRA).

The VAT Act, 2013 and the Tax Procedures Act require one to make full and accurate disclosures of all taxable transactions. Falsification of VAT return declarations in a bid to reduce one's tax liability is a criminal offence.

Any person who, in relation to a tax period, knowingly:

- a. Omits from his or her return any amount which should have been included; or
- b. Claims any relief or refund to which he or she is not entitled; or
- c. Makes any incorrect statement which affects his or her liability to tax; commits fraud.

Below are some instances which count as Value Added Tax fraud:

1. Utilization of fictitious invoices.
2. Claiming of input taxes from taxpayers not registered for VAT.
3. Claiming of input taxes from taxpayers whose PINs are not migrated to the KRA iTax system.
4. Claiming of input taxes by one or more taxpayers using the same invoice details.
5. PIN theft and subsequent claiming of input taxes from taxpayers one has not traded with.
6. Claiming of input taxes for amounts exceeding those transacted.
7. Utilization of purchase invoices more than once.
8. Failure to observe the tax-point (post-dating of sales invoices).
9. Under declaration of outputs and/or overstatement of inputs.
10. Falsified credit notes.
11. Claiming of withholding VAT credits without declaration of corresponding sales.

In view of this, KRA has been undertaking a review of input tax claims for various months. All VAT credit claims are being subjected to a validation process and any inconsistencies are being disallowed.

Where fraud has been detected, offenders shall be recommended for prosecution in accordance with the Tax Law.

We at Mbaya & Associates, therefore urge all our clients to be keen and accurate when filing VAT returns to avoid unwanted scrutiny from the KRA. In case you would like assistance with filing your monthly VAT returns or need any other clarifications, we are happy to help.

TAX LAWS (AMMENDMENT) ACT 2020

On 25 March 2020, the President of the Republic of Kenya outlined the measures the government intends to make to cushion the country against the economic effects of COVID-19. These measures were submitted to the National Assembly under the Tax Laws (Amendment) Bill, 2020, debated and was approved with minor changes. The bill was then assented to by the president on Saturday 25th April 2020 after the parliament approval to become law.

The amendment of the laws has been necessitated by the impact of the Covid-19 global pandemic which has seen businesses and people are grappling with uncertainties. The uncertainties revolve around individuals' ability to meet their day to day needs over the coming months and the sustainability of businesses due to supply chain disruptions, social distancing and reduced consumer spending.

While the bill is appreciated that the introduction of tax reliefs to the Kenyan taxpayers would have resulted in a decreased burden on the tax payers, it has a far-reaching tax measures introducing a large number of tax changes.

Below, we put together a comprehensive overview of the key changes of the act. The effective date is 25th April 2020 unless specified otherwise by the sections that follow.

INCOME TAX

Tax	Previous Rate	Current Rate	Explanations and Comments
Turnover Tax	3%	1%	Turnover tax has been expanded to persons with annual turnover between KES 500,000 and KES 50 million from the previous maximum turnover of Kshs. 5 million. Increasing the upper limit means many more SME's will be able to join the TOT.
Resident Company Tax Rate	30%	25%	This means companies would be able to retain more of their profits and help companies remain afloat during and after this pandemic.
Taxation of Previously Exempted Incomes	Tax Exempt	Taxable	This will affect ...Income of the National Social Security Fund (NSSF) ...Interest income accruing from all listed bonds ... Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years. Interest income generated from cash flows passed to the investor in the form of asset-backed securities.
WHT on Dividends Payable to	10%	15%	This will materially increase the effective tax rate for foreign owned companies and hence discourage foreigners from investing in Kenya.

Tax	Previous Rate	Current Rate	Explanations and Comments
Non-Residents			However, where a double tax treaty is applicable, the rate specified as the limit in the double tax treaty would take precedence.
Widening the WHT Services	NIL	5%	Services such as marketing, sales promotion, advertising and transportation of goods by non-residents excluding EAC citizens.
Qualifying Interest	15%	15%	The definition has been expanded to include the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income. This is a welcome move as it will encourage individuals to save and invest in debt instruments.
WHT on Non-Resident Reinsurance Premiums	5%	5%	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%.
Time to Issue Tax Ruling	45 days	60 days	The Act has extended the period the Commissioner is required to issue private ruling from 45 days to 60 days.

Additionally, The Act has expanded the tax bands and reduced the marginal tax rates from 30% to 25% on PAYE. The new rates are as follows:

	New Rates
On the first 288,000	10%
On the next 200,000	15%
On the next 200,000	20%
All income over 688,000	25%

The tax bands are applicable to pension withdrawals made below expiry of 15 years from date of joining the fund.

The Act has also increased the personal relief from the previous amount of Kshs. 16,896 annually to Kshs. 28,800 Annually. This is aimed at reducing the taxes payable by the employed and therefore a higher take home. This will play a role in reducing the cost of the living for citizens.

The wear and Tear allowance has also changed as follows:

Class of Assets	New Rate	Old Rate
Heavy earth moving machinery and motor vehicles	30%	37.5%
Computers and peripheral devices, Filming equipment	25%	30%
Motor Vehicles of 3,000 CC and below	25%	25%
Furniture & fittings and other equipment	10%	12.5%
Software Allowance	25%	20%

Farm work allowance has also changed from 100% to 50% in the first year of use and 25% on reducing balance thereafter.

Investment Deduction

Buildings used for manufacture » 50% first year, 25% per year on balance

Machinery used for manufacture » 50% first year, 25% per year on balance

Previously, the deduction used to be 100% during the first year or 150% in the first year if the investment is more than Kshs. 200 million outside Nairobi Mombasa and Kisumu cities.

Industrial Building Allowance

Hotel Buildings, Hospital Buildings & Petroleum and gas storage facilities » 50% first year, 25% per year on balance: Previously the rate was 100%.

Educational and Commercial Buildings » 0% per year: Previously, the rate was 50%.

VALUE ADDED TAX (VAT)

Issue	Previous Position	Current Position	Comment
Vat Refunds Application Period	5yrs	4yrs	Business to be prompt
Requirement to Maintain Records	Imposed only on registered persons	Expanded to cover all persons doing business	This will help to curb tax avoidance
Change of VAT Status of Goods	Vatable at 16%	Exempt	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 of COVID-19.
	Exempt	Vatable at 14%	...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 ...Taxable supplies imported or purchased for

Issue	Previous Position	Current Position	Comment
			direct and exclusive use in geothermal, oil or mining prospecting or exploration. ...Taxable supplies procured locally or imported for the construction of liquefied petroleum. ... Parts imported or purchased locally for the assembly of computers ... Goods falling under tariff number 4907.00.90 ... Transfer of business as a going concern by a registered person to another registered person.
Change of VAT Status of Services	Exempt	Vatable at 14%	...Asset transfers and other transactions related to the transfer of assets into reits' & asset backed securities ...Insurance agency, insurance brokerage and securities brokerage ...Taxable services procured locally or imported for the construction of liquefied petroleum.
	Zero Rated	Exempt	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

As captured above, the Act has changed a large number of VAT zero rated and essential goods and services to exempt. Such goods 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.

This will result to 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 price increase will be an unnecessary additional burden to households who are already economically strained due to the harsh economic situations that existed before the pandemic.

This will have drained all the benefits of decreasing the taxes payable by the individual taxpayers and in the light of the above, there will be a foreseen continued difficult time for most households as families grapple to meet the most basic needs.

Tax Due Dates

Withholding Tax | 20th Day of the following month
Pay as You Earn | 9th Day of the following month
VAT | 20th Day of the following month
Balance of Tax on Self-Assessment | 4th Month after year end
Monthly Rental Income | 20th Day of the following month



Instalment Tax

1st Instalment | 20th day of the 4th month after year end
2nd Instalment | 20th day of the 6th month after year end
3rd Instalment | 20th day of the 9th month after year end
4th Instalment | 20th day of the 12th month after year end
Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.

DISCLAIMER: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, Mbaya & Associates, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.