

# TAX LAW (AMENDMENT) BILL 2020

## ANALYSIS OF PROPOSED CHANGES



The President of the Republic of Kenya issued directives on various proposed tax and fiscal measures to help cushion taxpayers against the economic impact of the effects of the COVID-19 Outbreak. Following this the Tax Law Amendment Bill 2020 was drafted and is set to be tabled in Parliament before it is assented into law. As outlined on the TLA Bill 2020 the provisions shall be effective on the date of assent of the bill. These alert analyses various measures outlined in the bill, their effective date and the impact of these provisions

## A. Proposed Changes Under Income Tax Act CAP 470

Item	Change	Impact
<b>Withholding Tax (WHT)</b>		
Qualifying Interest	The Bill proposes to change the definition to include interest from all sources received by a resident individual. This is by deleting the provision limiting qualifying interest to interest earned from banks and financial institutions licensed under Banking Act, the Central Bank of Kenya and Building Society under the Building Society Act.	<b>Who-</b> Residents earning interest income. <b>Impact-</b> This means that all interest, discount or original issue discount receivable by a resident individual will be qualifying interest and withholding tax charged will be final tax.
Inclusion of various services under WHT scope	The Bill proposes to Introduce WHT on payments made to non-residents on various services namely sales promotion, marketing, advertising, services, and transportation of goods (excluding air and shipping transport services).	<b>Who-</b> Persons paying non-residents for these services. <b>Impact-</b> These services shall be subject to WHT a move likely to increase Government revenue.
Reinsurance premiums	Reinsurance premiums excluding reinsurance premiums paid in respect of aircrafts have been added to the scope of with.	<b>Who-</b> Persons paying reinsurance premiums excluding re-insurance premiums in respect of aircraft. <b>Impact-</b> This will increase the scope of WHT and increases tax revenues.
Dividends	Resident withholding tax rate has increased from 10% to 15%	<b>Who-</b> Recipients of Dividend income <b>Impact –</b> This will increase the WHT liability for residents and increase tax revenues.
Pension payment or Withdrawals	Proposals to amend as follows-Pension payment or Withdrawals in excess of the tax-free amounts paid before the expiry of 15 years after joining fund shall be taxed as follows; ➤ 10% on the first Kes 400,000; ➤ 15% on the next Kes 400,000; ➤ 20% on the next Kes 400,000; and ➤ 25% on any amount exceeding Kes 1,200,000.	<b>Who-</b> Persons receiving pension payments. <b>Impact-</b> These are adjustments to ensure taxation is in line with the proposed PAYE tax bands.

	<p>Proposals to amend as follows -Pension payment or Withdrawals in excess of the tax-free amounts paid before expiry of 15 years after joining fund shall be taxed as follows;</p> <ul style="list-style-type: none"> <li>➤ 10% on the first Kes 288,000;</li> <li>➤ 15% on the next Kes 200,000;</li> <li>➤ 20% on the next Kes 200,000; and</li> <li>➤ 25% on any amount exceeding Kes 688,000.</li> </ul>	
<b>Turnover Tax</b>		
Turnover Tax (TOT)	<p>The Bill proposes to amend TOT provisions as follows;</p> <ul style="list-style-type: none"> <li>➤ Proposal to change income threshold from income above and not more than Kes 5M to income between Kes 500,000 to Kes 50M;</li> <li>➤ Include income from incorporated companies under ambit of TOT;</li> <li>➤ Reduction of TOT rate from 3% to 1% of gross revenues per month; and</li> <li>➤ Elimination of presumptive tax obligations,</li> </ul>	<p><b>Who-</b> Persons earning income except rental income or income from management and professional fees from Kes 500,000 to Kes 50M.</p> <p><b>Impact-</b> Widens the scope of TOT by adding income from incorporated companies and increasing tax threshold to Kes 50M. Although TOT is final tax at a lower rate than the corporation tax rate, this may not be beneficial for taxpayers who will end up in loss positions or with prior tax losses given that TOT is based on the gross income.</p> <p>However, such taxpayers can review their tax position and if TOT is not favorable can opt for corporation tax regime. Excluding persons earning such income less than Kes 500,000 from the scope of TOT. Reducing the rate to cushion tax payers by reducing their tax liability.</p>
<b>PAYE</b>		
Registered Home Ownership	<ul style="list-style-type: none"> <li>➤ Deletion of provisions on Registered Home Ownership Savings Plan (HOSP)</li> </ul>	<b>Who-</b> Persons contributing to registered HOSP.

Savings Plan (HOSP)		<b>Impact-</b> Contributions to HOSP shall no longer be an allowable deduction.
PAYE Tax Brackets	The bill proposes to amend the current tax brackets to read as follows; The individual tax rates per month shall be; <ul style="list-style-type: none"> <li>➤ On the first 24,000- 10%;</li> <li>➤ Ksh24,001 to Kshs 40,666-15%;</li> <li>➤ Kshs 40,667 to Kshs 57,333- 20%; and</li> <li>➤ On all income above 57,333- 25%.</li> </ul>	<b>Who-</b> Persons earning employment income.  <b>Impact-</b> Change in tax bands for the highest tax bracket offers a 5% tax savings for income earners.
Personal Relief	The bill proposes to increase personal relief from Kes 1,408 to Kes 2,400 per month or Kes 16,896 to Kes 28,800.	<b>Who –</b> Persons earning employment income. <b>Impact-</b> The relief will increase by Kes 992 which will be beneficial for employment income earners.
<b>Corporation Tax</b>		
Allowable expenses in computing taxable profits	The bill aims proposes to minimize the expenses that are allowable in computing the taxable profit. This will include the following expenses namely; <ul style="list-style-type: none"> <li>➤ 30% additional deduction of electricity costs to manufacturers;</li> <li>➤ Entrance fees and annual subscription to a trade association;</li> <li>➤ Incidental costs and capital expenditure incurred on legal costs to issue shares, debentures and securities to the general public;</li> <li>➤ Incidental costs and capital expenditure incurred on legal costs to list securities without raising additional capital;</li> <li>➤ Capital expenditure incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya;</li> <li>➤ Club subscriptions paid by an employer on behalf of an employee; and</li> <li>➤ Capital expenditure incurred in by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure.</li> </ul>	<b>Who-</b> All Taxpayers  <b>Impact-</b> This will reduce the allowable expenses in computing taxable profit. Some proposals go against tax incentives previously issued to boost various sectors such as allowability of additional electricity costs for manufacturers.
Changes in corporation tax rate	The Bill proposes to delete provisions allowing for a reduced corporation tax rate, essentially removing these incentives for the following entities; Life insurance business owned by resident insurance business; Newly listed companies with at least 30 or 40% of shares listed; and Company introducing shares through listing.  Notably one of the proposed directives has been included of reducing the corporation tax rate for resident businesses from 30% to 25%.	<b>Who-</b> resident insurance businesses, companies listed or intending to list in the Nairobi Securities Exchange.. <b>Impact-</b> The introduction of a reduced corporation tax rate will be beneficial to companies who are yet to pay their final installments (December year end) or balance of tax as they will receive a reduction of 5% on their taxable income. For

		<p>companies that were enjoying the reduced rate the new applicable corporation tax rate will be 25%.</p>
<p>Changes under the First Schedule- Exempt Income</p>	<p>Proposal to tax various income previously exempt namely;</p> <ul style="list-style-type: none"> <li>➤ Income earned by various agricultural boards and various institutions namely Kenya Post Office Savings Bank and, the Settlement Fund Trustees.</li> <li>➤ Profits of an agricultural society from any exhibition or show held for the purposes of the society which are applied solely to such purposes, and the interest on investments of such society.</li> <li>➤ Interest on tax reserve certificates issued by Government;</li> <li>➤ Payments of not more than 3 months salary paid to employees of the Government as a result of a disturbance due to a change in the Constitution of the Government;</li> <li>➤ Foreign allowances paid to officers of the Government in respect of his office;</li> <li>➤ Emoluments of officers of the Desert Locust Survey payable from public funds;</li> <li>➤ Education grants received by public servants payable by the Government of the United Kingdom under an arrangement with the Kenyan Government;</li> <li>➤ Remuneration received under a contract based on financial assistance received from International Co-operation Administration;</li> <li>➤ Remuneration paid to US citizens employed by the US Department of Agriculture working in cooperation with the Kenyan Government;</li> <li>➤ Rewards payable by the UK Atomic Energy Authority for the discovery of Uranium Ore in Kenya;</li> <li>➤ Interest income, management and professional fees accrued in Kenya and paid to non-residents with no Permanent Establishments by the Tana River Development Company Limited or its successors in title;</li> <li>➤ Income earned by the East African Power and Lighting Company;</li> <li>➤ The income of the General Superintendence Company Limited accrued in Kenya;</li> <li>➤ Interest income on savings account held with the Kenya Post Office Savings Bank paid into Deposit Protection Fund , cashflows to investors on asset backed securities, on loans granted by the Local Government ,/on listed bonds/securities to raise funds for social services or infrastructure projects and from the East African Development Bank.</li> <li>➤ Income of registered HOSP and individual retirement fund and NSSF Fund;</li> </ul>	<p><b>Who-</b> All Taxpayers</p> <p><b>Impact-</b> These amendments are set to clean up the First Schedule items removing exempt items that may not be applicable to date as well as limiting the exempt income. This will also increase tax revenue as taxable income have increased.</p> <p>However, given the current economic situation as a result of COVID-19 Outbreak, the limitation of exempt incomes would not be a beneficial proposal.</p>



	<ul style="list-style-type: none"> <li>➤ Dividends received by a registered venture capital company and SEZ developer, enterprise and operators;</li> <li>➤ Gains from trade in shares in a venture capital company;</li> <li>➤ Income paid as bonus, overtime and retirement benefits to persons;</li> <li>➤ Compensating tax payable by a power producer under a power purchase agreement;</li> <li>➤ Dividends paid by SEZ developers or operators to any non-resident persons; and</li> <li>➤ Interest on securities that are exempt to tax.</li> </ul>																																								
<p>Overhaul of Second Schedule-Capital deductions</p>	<p>The Bill proposes to overhaul the Second schedule of the Income Tax Act which provides for capital deductions and introduce the following amendments;</p> <table border="1" data-bbox="359 532 1335 1149"> <thead> <tr> <th style="text-align: left;">Investment Allowance on</th> <th style="text-align: left;">Current Rate</th> <th style="text-align: left;">Proposed Rate</th> </tr> </thead> <tbody> <tr> <td>➤ Hotel Building</td> <td>100-150%</td> <td>50% in 1<sup>st</sup> year</td> </tr> <tr> <td>➤ Building used for manufacture</td> <td>100-150%</td> <td>50% in 1<sup>st</sup> year</td> </tr> <tr> <td>➤ Hospital Building</td> <td>-</td> <td>50% in 1<sup>st</sup> year</td> </tr> <tr> <td>➤ Petroleum/gas storage facilities</td> <td>-</td> <td>50% in 1<sup>st</sup> year</td> </tr> <tr> <td>➤ Residual value of the above items</td> <td>50% per annum</td> <td>25% per year on a reducing balance basis</td> </tr> <tr> <td>➤ Educational building including hostels</td> <td>50% per annum</td> <td>10% p.a. on reducing balance</td> </tr> <tr> <td>➤ Commercial building</td> <td>25% per annum</td> <td>10% p.a. on reducing balance.</td> </tr> <tr> <td>➤ Machinery used for manufacture</td> <td>100-150%</td> <td>50% in 1<sup>st</sup> year</td> </tr> <tr> <td>➤ Hospital equipment</td> <td>-</td> <td>25% per year on a reducing balance basis</td> </tr> <tr> <td>➤ Ships</td> <td>12.5% to 100%</td> <td></td> </tr> <tr> <td>➤ Aircraft</td> <td>25%</td> <td></td> </tr> <tr> <td>➤ Residual value of items above</td> <td>-</td> <td></td> </tr> </tbody> </table>	Investment Allowance on	Current Rate	Proposed Rate	➤ Hotel Building	100-150%	50% in 1 <sup>st</sup> year	➤ Building used for manufacture	100-150%	50% in 1 <sup>st</sup> year	➤ Hospital Building	-	50% in 1 <sup>st</sup> year	➤ Petroleum/gas storage facilities	-	50% in 1 <sup>st</sup> year	➤ Residual value of the above items	50% per annum	25% per year on a reducing balance basis	➤ Educational building including hostels	50% per annum	10% p.a. on reducing balance	➤ Commercial building	25% per annum	10% p.a. on reducing balance.	➤ Machinery used for manufacture	100-150%	50% in 1 <sup>st</sup> year	➤ Hospital equipment	-	25% per year on a reducing balance basis	➤ Ships	12.5% to 100%		➤ Aircraft	25%		➤ Residual value of items above	-		<p><b>Who-</b> Taxpayers that incur capital expenditure</p> <p><b>Impact-</b> These changes may be in line with the aim to overhaul the Income Tax Act and update income tax laws.</p> <p>The reduction of capital allowance rates will reduce tax incentives to investors. However investors who have already claimed capital deductions prior to the introduction of these changes will still claim the same deductions at the current rates.</p> <p>The reduction of capital allowance incentives will not be beneficial as they will not encourage investment which is something that would be beneficial in encouraging investment and economic growth.</p>
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	<ul style="list-style-type: none"> <li>➤ Motor vehicle restriction</li> <li>➤ Motor vehicles</li> <li>➤ Heavy Earth Moving equipment</li> </ul>	<p>2M restriction 25% per year reducing balance</p> <p>3M restriction 50% in 1<sup>st</sup> year</p> <p>37.5% per year reducing balance</p>																																							

	<ul style="list-style-type: none"> <li>➤ Computer Hardware and peripheral equipment</li> <li>➤ Computer Software</li> <li>➤ Furniture and fittings</li> <li>➤ Machinery used for mining exploration</li> <li>➤ Other Machinery</li> </ul>	<p>30% per year reducing balance 20% per year straight line 12.5% per year reducing balance</p> <p>12.5% per year reducing balance 12.5% per year reducing balance</p>	<p>25% per year on a reducing balance basis</p> <p>10% per year on a reducing balance</p>	
	<ul style="list-style-type: none"> <li>➤ Purchase and acquisition of IRU for telecommunication operator</li> <li>➤ Farmworks</li> </ul>	<p>5% on straight line basis</p> <p>100%</p>	<p>10% per year on a reducing balance</p> <p>50% in 1<sup>st</sup> year and 25% per year on a reducing balance basis</p>	

**Capital Gains Tax**

<p>Changes on exemptions of CGT on transactions by individuals</p>	<p>Taxing individual's income previously exempted from Capital Gains Tax from the transfer of;</p> <ul style="list-style-type: none"> <li>➤ Shares or funds of the Kenyan Government, High Commission or Authority established under the East African Community;</li> <li>➤ Shares in the local authority;</li> <li>➤ A private residence that the individual has occupied continuously for three years before transferring;</li> <li>➤ Land whose transfer value is not worth more than 3 million;</li> <li>➤ Agricultural land with an area of less than 50 acres situated outside a municipality;</li> </ul> <p>Exemption of income from transfer of property or shares in the execution of a deceased persons estate for a period of not more than two years after the death of the deceased. In the case of a court case the two-year period shall begin after the case is settled.</p>	<p><b>Who-</b> Individuals transferring property subject to CGT.</p> <p><b>Impact-</b> The proposal to reduce CGT exemptions will increase tax revenues but will increase the CGT tax burden for individuals carrying out the transfers outlined.</p>
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## B. Proposed changes under Value Added Tax Act 2013

Item	Change	Impact
Taxable value for Petroleum products	The Bill proposes to include excise duty, levies and other charges in the computation of the taxable value subject to VAT. Currently these items are excluded in computing the taxable value of these items.	<p><b>Who-</b> Consumers of Petroleum products</p> <p><b>Impact-</b> The inclusion of excise duty, fees and other charges in the taxable value will increase the taxable value and essentially the cost of these items.</p>
Credit Notes	The Bill proposes to include proviso relating to utilization of Credit notes more so where there are court cases. The proposal will be to enable the utilization of credit notes for a period valid at least 30 days after a court decision where the price payable was in dispute. Currently the credit notes can be utilized for a period of 6 months after issued and there are no provisions for such cases.	<p><b>Who-</b> Businesses</p> <p><b>Impact-</b> This enables taxpayers to utilize credit notes to reduce effective VAT payable where there is a dispute relating to the price payable.</p>
Refund on tax on bad debts	The bill proposes to reduce the period for a refund on bad debts from 5 years to 4 years from the date of supply.	<p><b>Who-</b> Businesses</p> <p><b>Impact-</b> This reduces the period to lodge such a refund claim as such taxpayers should take notes of the timelines to ensure the period allowed does not lapse before refund is lodged.</p>
Maintaining records	The bill proposes to that all persons both registered and non-registered persons shall be required to maintain records of every transactions for a period of 5 years from the last transaction made.	<p><b>Who-</b>Registered and Non-registered persons</p> <p><b>Impact-</b> This amendment has been proposed to ensure that taxpayers regardless of their VAT registration status maintain adequate records of their transactions particularly VAT transactions.</p>



		<p>The inclusion follows the amendments by the Finance Act 2019 which required non-registered persons to account for reverse VAT.</p>
<p>First Schedule- Exempt Items</p>	<p>The Bill proposes to reduce the items subject to VAT exemptions namely;</p> <ul style="list-style-type: none"> <li>• <b>GOODS</b></li> <li>➤ The supply of various vaccines and medicaments as outlined in the bill;</li> <li>➤ The supply of Fertilizers of Chapter 31;</li> <li>➤ Plants and Machinery under Chapter 84 and 85 used for manufacture of goods;</li> <li>➤ Taxable supplies used for direct and exclusive use in construction of power generating plant to supply electricity to the national grid approved by the CS for matters energy;</li> <li>➤ Taxable supplies used for direct and exclusive use in exploration and mining prospecting as approved by the CS for matters mining;</li> <li>➤ Taxable supplies used for construction of LPG storage facilities as approved by the CS for matters finance;</li> <li>➤ Supply of mosquito nets;</li> <li>➤ Supply of fishing nets made using man-made textile materials;</li> <li>➤ Supply of materials, waste, residue and by-products used for animal feeds;</li> <li>➤ Specialized equipment for development and generation of solar and wind energy including deep cycled batteries;</li> <li>➤ Supply of Goods of tariff No. 4011.30.00;</li> <li>➤ Supply of tractors;</li> <li>➤ Goods imported or purchased locally for use in manufacture of Industrial parks as approved by the CS for matters Finance;</li> <li>➤ Parts imported or purchased locally for the assembly of computers as approved by the CS for matters Finance;</li> <li>➤ Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements as approved by the CS for matters Industrialization;</li> <li>➤ Museum and natural history exhibits and specimens and scientific equipment for public museums;</li> <li>➤ Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks;</li> </ul>	<p><b>Who-</b> All Taxpayers</p> <p><b>Impact-</b> The proposed deletion of these items essentially means that these items shall be subject to VAT at 14%.</p> <p>This is a move to increase tax revenues perhaps to raise more funds to be used to combat COVID-19 economic impact.</p> <p>However various incentives will be withdrawn at a time when many industries need these incentives the most.</p> <p>This includes introduction of VAT on inputs to manufacture pesticides and animal feeds as well as fertilizers which are key inputs in the agriculture sector. A sector that will be highly instrumental at a period like this.</p> <p>These inputs will be more expensive and the costs will likely trickle down to the final consumers. This includes cost of materials to construct grain storage which will be beneficial to maintain food stores. Supplies associated with fishing and fish processing will impact the sector as the costs are likely to increase due to added VAT costs.</p> <p>Cost of energy and VAT on plant and machinery used for manufacturing which are key sectors of the economy will increase due to introduction of VAT on key inputs highlighted.</p>

	<ul style="list-style-type: none"> <li>➤ Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves;</li> <li>➤ Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances</li> <li>➤ Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums;</li> <li>➤ Goods falling under tariff number 4907.00.90;</li> <li>➤ Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture;</li> <li>➤ Materials and equipment for the construction of grain storage</li> <li>➤ The transfer of a business as a going concern by a registered person to another registered person;</li> <li>➤ Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department;</li> <li>➤ Goods and services purchased for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.;</li> <li>➤ Plant, machinery and equipment used in the construction of a plastics recycling plant; and</li> <li>➤ 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.</li> </ul> <p style="text-align: center;">• <b>SERVICES</b></p> <ul style="list-style-type: none"> <li>➤ Services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities will become taxable at a rate of 14% of the taxable value;</li> <li>➤ Postal services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto;</li> <li>➤ Asset transfers and other transactions related to the transfer of assets into real estate investment trusts and asset backed securities;</li> </ul>	<p>The proposed changes to vaccines and medicaments from zero rated to exempt will essentially increase the cost of these items as the suppliers will not be able to deduct input VAT as such passing the cost to the final consumer which may defeat the intended purpose of the amendment at a time like this.</p> <p>Changes associated with exempt services will likely have a key impact. Case in point insurance brokerage services which is an essential service when procuring insurance. A service that is instrumental during a health crisis. This change will impact services as the added costs passes onto the consumers.</p> <p>The supply of essential commodities such as ordinary bread and LPG gas will likely increase a cost that will be borne by consumers.</p>
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	<ul style="list-style-type: none"> <li>➤ Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government;</li> <li>➤ Taxable services, 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 as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas;</li> <li>➤ Insurance agency, insurance brokerage, securities brokerage services;</li> <li>➤ Hiring, leasing and chartering of aircrafts;</li> <li>➤ Services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities will become taxable at a rate of 14% of the taxable value;</li> <li>➤ Entry Fees into the national parks and reserves; and</li> <li>➤ The services of tour operators, excluding in-house supplies.</li> </ul> <p>The supply of Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers outlined will move to the second schedule thus from exempt to zero-rated</p>	
<p>Second Schedule- Zero rated Items</p>	<p>The Bill proposes to amend the Second schedule which provides for zero rated items as follows;</p> <ul style="list-style-type: none"> <li>➤ The supply of ordinary bread;</li> <li>➤ The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight;</li> <li>➤ All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture;</li> <li>➤ 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;</li> <li>➤ Agricultural pest control products; and</li> <li>➤ The supply of various vaccines and medicaments.</li> </ul>	

## C. Proposed Changes under Excise Duty Act

Item	Change	Impact
Imported Sugar and White Chocolate	<p>Proposal to subject excise duty on the following items;</p> <ul style="list-style-type: none"> <li>➤ Sugar confectionery (including white chocolate) of tariff heading 17.04;</li> <li>➤ chocolate in blocks, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00.</li> </ul>	<p><b>Who-</b> Importers and manufacturers of sugar and white chocolate.</p> <p><b>Impact-</b> Importers and manufacturers of sugar and white chocolate will have to pay excise duty on these items upon importation.</p>
Special Operating Framework	<p>Proposal to subject goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government to excise duty.</p> <p>Currently these goods are exempt from excise duty.</p>	<p><b>Who-</b> Persons involved in project under special operating framework arrangement with the government of Kenya.</p> <p><b>Impact-</b> These goods will now be subject to excise duty which goes against various incentives previously implemented to encourage such investments.</p> <p>However, this will mean more tax revenues for the Government.</p>
Motor vehicles, buses and minibuses.	<p>Proposal to subject motor vehicles excluding buses and mini-buses imported by a public officer and his spouse returning from a posting in a Kenyan mission abroad currently exempted from excise duty.</p> <p>Currently this exemption applies to one motor vehicle each imported by the Public Officer and their spouse.</p>	<p><b>Who –</b> Public Officers.</p> <p><b>Impact-</b> Exemptions on importation of these motor vehicles will be subject to excise duty.</p> <p>Perhaps a move by the Government to reduce tax incentives and increase tax revenues.</p>

## D. Proposed Changes under Tax Procedures Act

Item	Change	Impact
Appointment of agents of revenue collection	<ul style="list-style-type: none"> <li>➤ Proposals to appoint persons registered under Banking Act as an agent of revenue collection.</li> <li>➤ Appointed agent will be required to transfer funds to the Central Bank of Kenya within 2 days following collection date.</li> <li>➤ Penalty will be charged for failure to transfer funds and treated as a tax debt owed by the agent. Penalty shall be 2% of tax which shall be compounded daily.</li> </ul>	<p><b>Who-</b> Persons registered under Banking Act.</p> <p><b>Impact-</b> Agents will ease tax collection for Government.</p> <p>Agents will be required to stringently observe remission timelines in order to not incur penalties which shall be treated as a tax owed by the agent to Government.</p>
Private Ruling	<ul style="list-style-type: none"> <li>➤ Proposal to remove timelines for the Commissioner to respond to a private ruling application made by a taxpayer. Currently the Commissioner is required to respond to the application within 45 days after receiving the application.</li> <li>➤ Proposal to delete requirement for the Commissioner to publish a private ruling in at least two newspapers.</li> </ul>	<p><b>Who-</b> Taxpayers applying for private rulings</p> <p><b>Impact-</b> Removing timelines will create delays for issuance of private ruling as the Commissioner will not be obliged or be accountable to issue ruling within timeline.</p> <p>Further removing requirement to publish private ruling will limit the information available to taxpayers who will not be privy to the decisions issued by the Commissioner to the taxpayer.</p>
Penalty for turnover tax	<ul style="list-style-type: none"> <li>➤ The Bill proposed to reduce the penalty for late submission of turnover tax return from Kes 5,000 to Kes 1,000.</li> </ul>	<p><b>Who-</b> Taxpayers subject to TOT</p> <p><b>Impact-</b>The reduced penalty will be beneficial for taxpayers meant to file TOT return as it eases the liability if they were to file late.</p>

## E. Proposed Changes under Miscellaneous Fees and Levies Act

Item	Change	Impact
Import Declaration Fees	<p>The Bill proposes to remove IDF exemptions on the following items;</p> <ul style="list-style-type: none"> <li>➤ Gifts or donations for personal use, excluding motor vehicles, by foreign residents to their relatives in Kenya for their personal use;</li> <li>➤ Samples which in the opinion of the Commissioner have no commercial value</li> <li>➤ Aircraft instead limiting the exemption to aircraft excluding aircraft of unladen weight not exceeding 2,000kg and Helicopters of Heading 8802.11.00 and 8802.12.00;</li> <li>➤ Raw materials for direct and exclusive use in construction of industrial parks of 100 acres or more located outside Nairobi or Mombasa; and</li> <li>➤ Goods used for implementation of projects under Special Operating Framework arrangements.</li> </ul> <p>The Bill also proposes to open up the scope of goods that the CS would deem fit for IDF exemption. Currently this is limited to goods for public interest or to promote investment of not less than Kes200M. The amendments would apply to all goods provided the CS would deem these goods fit for public use or interest.</p>	<p><b>Who-</b> Importers</p> <p><b>Impact-</b> Elimination of IDF exemptions widens the scope and increases tax revenues as IDF will be applicable on these items.</p> <p>However, if goods are not exempt and are imported taxpayers can apply to CS for IDF exemption, this is no longer limited to goods imported for investment of not less than Kes200M.</p>
Exemptions from Railway Development Levy	<p>The Bill further proposed to remove exemptions of RDL on the following items;</p> <ul style="list-style-type: none"> <li>➤ Raw materials for direct and exclusive use in construction of industrial parks of 100 acres or more located outside Nairobi or Mombasa; and</li> <li>➤ Goods used for implementation of projects under Special Operating Framework arrangements.</li> </ul> <p>The Bill also proposes to open up the scope of goods that the CS would deem fit for RDL exemption. Currently this was limited to goods for public interest or to promote investment of not less than Kes200M. The amendments would apply to all goods provided the CS would deem these goods fit for public use or interest.</p>	
Processing Fees	<p>The Bill proposes to introduce processing fees on duty free motor vehicles excluding motor cycles. The proposed fees shall be Kes 10,000.</p>	<p><b>Who-</b>Importers of duty-free motor vehicles.</p> <p><b>Impact-</b> This is a move to increase tax revenues, however this will be an added cost for the importer.</p>



## F. Proposed Changes under Kenya Revenue Authority Act

Item	Change	Impact
Reward for information to KRA leading to enforcement of tax laws	<p>The Bill proposes to add a reward for information leading to enforcement of tax laws which will amount to Kes 500,000.</p> <p>Currently the only rewards provided for are in the instance that the information leads to the following;</p> <ul style="list-style-type: none"> <li>➤ Identification of uncollected taxes and duties- a reward of Kes 100,000 or two percent of the taxes or duties whichever is less all be given; and</li> <li>➤ Recovery of uncollected taxes and duties a reward of Kes 2M or 5% of the taxes or duties whichever is less shall be given.</li> </ul>	<p><b>Who-</b> All taxpayers</p> <p><b>Impact-</b> This will encourage compliance by incentivizing taxpayers to provide information to the Kenya Revenue Authority on non-compliance matters.</p>

### Let's talk

Should you have any further queries on the Tax Laws Amendment Bill or any other matter feel free to contact us through your regular Taxwise Africa contact or the contacts below.



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