

Kenya Tax Alert

The Tax Laws (Amendment) Act, 2020

Prepare, Respond & Recover

Since the beginning of 2020, the Coronavirus (COVID-19) has infected more than three million people in more than 190 countries and resulted in over 212,000 deaths – a scourge confronting all of humanity, impacting lifestyles, businesses, economies, and the assumptions of common well-being that all of us have largely taken for granted.

As the economic and business impact of the COVID-19 crisis mounts, leaders in every industry are moving urgently to protect their employees' health and build their companies' resilience, while governments are mobilizing resources to safeguard citizens and manage the social and economic structures. Immediate action is critical, but leaders must also embrace a new agenda—one aimed squarely at what comes next, for business and all of society.

The economic impact of the coronavirus calls on leaders to step up on multiple fronts: attending to people's immediate needs, ensuring the health of the business, scanning the continually changing business and societal landscape, and positioning the enterprise to thrive in the new normal.

In cushioning of this crisis, governments over the world are preparing to pass or have already passed massive stimulus packages aimed at providing support for the most economically vulnerable in their countries, and have also assigned emergency funding for businesses to weather the current lockdowns.

The Tax Laws (Amendment) Bill 2020 was assented by the President on 25 April 2020. The following pages summarise the amendments made in various Laws of Kenya.

Major Highlights

INCOME TAX	<ul style="list-style-type: none"> • Reduction of Corporate tax from 30% to 25% • Reduction of personal tax - highest slab from 30% to 25%. • Salary up to Ksh 24,000/- is tax free. • Capital allowances - all restricted to 100% of cost. • Reduction in wear & tear rates • Turnover tax - limits increased from Ksh 5 million to Ksh 50 million turnover. Tax rate reduced from 3% to 1%. • Withholding tax on dividends to foreign shareholders - increased from 10% to 15%. • Introduction of 20% withholding tax on payment to non-resident for services - sales promotion, marketing, advertisement, and transportation of goods by road. • Removal of reduced corporate tax rate for plastic recycling companies
VAT	<p>Number of items are transferred from exempt to 14% VAT, example</p> <ul style="list-style-type: none"> • LPG Gas, plant & machinery, leasing of biogas, transfer of business on a going concern, tractor etc. • Number of services transferred from exempt to 14% VAT, example: • Insurance agency & brokerage, stock exchange brokerage, asset transfers under REITs.
EXCISE DUTY	<p>Clarification on applicability on other fees.</p>
IDF/RDL	<p>Exemption of IDF/RDL removed from certain items, use of RDL funds is expanded.</p>



INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations
1	Corporate Tax Effective date: Financial year ending after 25 April 2020	Resident Corporate Tax rate is 30%.	Resident corporate tax is reduced from 30% to 25% for the year of income 2020.	The corporate tax rate for foreign branches / non-resident companies remains unchanged at 37.5%. However, the difference in effective tax rate on dividend distribution between resident and non-resident companies is 1.25%.
2	Electricity rebate: 30% rebate on Electricity expenses Effective date: 25 April 2020	30% of electricity cost incurred by manufacturers in addition to normal electricity expenses was allowed under Section 15(2) (ab) as allowable expenditure.	This clause is deleted.	The Finance Act 2018 provided for an additional corporate tax deduction of 30% of the total electricity bill by manufacturers in addition to the normal deduction. The rebate came into force for the financial year starting 1 st January 2019 and has been rendered claimable for one year only. Removal of incentive is a blow to manufacturing industry; 30% rebate was a differentiating point and incentive for foreign investors to set up their manufacturing plants in Kenya.
3	Withholding tax Expansion of scope Effective date: 25 April 2020	Payments to non-resident persons for sales promotion and marketing services are subject to withholding tax.	Section 10 of the Act is amended and the payment for the following services to non-resident persons will be considered as accrued from Kenya and will be subject to 20% withholding tax: <ul style="list-style-type: none"> • sales promotion, • marketing, • advertising services, • transportation of goods (excludes air and shipping transport). 	Sales promotion and marketing services were already subject to withholding tax. Now advertisement services and transportation services (excluding air and shipping transport) is brought under withholding tax regime. This is applicable for payments made to non-resident persons. Transport services provided by East African Citizens are exempted from this provision; meaning these will not be subject to withholding tax.

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations
4	Withholding tax insurance premium Effective date: 25 April 2020	Insurance premium paid to non-resident person is subject to withholding tax.	This clause is amended to incorporate premium paid to insurance or reinsurance companies (except premium paid for aircraft) will be subject to 5% withholding tax.	The Finance Act 2018 introduced withholding tax of 5% on gross premiums paid to non-resident insurance companies (except insurance premium paid for insurance of aircraft); now the scope is expanded to include re-insurance business.
5	Withholding tax dividend income Effective date: 25 April 2020	Withholding tax on non-resident shareholder's dividend is 10%.	Withholding tax rate on dividends paid to non-resident persons has been increased from 10% to 15%.	This is a major change since dividend is paid from the profits that are already taxed. It will act as dis-incentive for foreign shareholders. Countries with whom Kenya has signed double tax agreement will enjoy the rate prescribed in their respective DTAs.
6	Turnover Tax (Effective date: 5 April 2020)	Turnover tax was applicable to annual turnover of between Kshs 500,000 and Ksh 5 (five) million.	Now Turnover tax will be applicable for annual turnover of between Kshs one million and Ksh 50 (fifty) million.	Expansion of turnover band will give opportunity to many businesses to register under this regime.
(a)	Limits			
(b)	Rate of Turnover tax	3% of monthly turnover.	Reduced from 3% to 1%.	It will significantly reduce the tax burden for small businesses.
(c)	Scope of Turnover tax	Incomes of incorporated companies were excluded from registering under Turnover tax.	Incorporated companies can now register and operate under Turnover tax regime.	Income from rent and professional fees still remained out of the scope of Turnover tax regime.
(d)	Presumptive tax	a) Tax payer was required to pay 15% of business permit as presumptive tax	This clause is deleted.	This was more of an administrative hassle; now deleted.
(e)	Penalty for late filing	Penalty for late filing was Ksh 5,000/ per return.	Penalty is reduced to Ksh 1,000/-.	

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations
7	Exemption of income First Schedule of the Income Tax Act Effective date: 25 April 2020	The following institutions or incomes were exempt from paying corporate tax: <ol style="list-style-type: none"> Tea Board Pyrethrum Board Sisal Board Kenya Dairy Board Canning Crops Board Central Agricultural Board Pig Industry Board Pineapple Development Authority Horticulture Crops Development Authority Kenya Tea Development Authority National Irrigation Board Mombasa Pipeline Board Settlement Fund Trustees Kenya Post Office Savings Bank Cotton Board of Kenya Dividend paid to non-resident persons by Special Economic Zone enterprise, developers or operators. Dividend received by Special Economic Zones (SEZ) enterprises Dividend received by venture capital companies Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act 	The Act has deleted various institutions / incomes that were previously exempt from tax.	Effectively, deleted institutions/persons will pay corporate tax on their taxable profits. This is a major change introduced by the Cabinet Secretary to meet the shortfall of revenue collection.

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations
		t) Interest paid on loans granted by the Local Government Loans Authority established under the Local Government Loans Act. u) Income from East African Power & Lighting Company. v) Interest on any tax reserve certificates which may be issued by authority of the Government. w) Compensating tax accruing to a Power Producer under a Power Purchasing Agreement (PPA).		
8	Investment by Venture Companies Effective date: 25 April 2020	Gains arising from trade in shares of unlisted venture companies, earned by a registered venture capital company within the first 10 years from the date of first investment was tax exempt.	Gains arising from trade in shares of unlisted venture companies earned by a registered venture capital company will be subject to tax.	The exemption is removed.

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations
9	<p>Capital Allowances</p> <p>Investment Deduction & Wear & Tear Allowance</p> <p>Effective date: 25 April 2020</p>	<p>Investment deduction of 100% on industrial building and Plant & Machinery installed therein. These deductions can be claimed up to 150% if the investments are over Ksh 200 million outside the municipalities of Nairobi, Mombasa and Kisumu.</p>	<p>The entire Second Schedule is replaced.</p> <p>Tax payer is allowed to claim investment deduction up to 50% of investments in the first year of use, and the residual value at 25% per annum on a reducing balance basis.</p> <p>The investment incentive is replaced by 'accelerated depreciation'.</p> <p><u>Transition clause:</u> Capital work in progress under para 24E is given timeline of up to 31 December 2021 to complete the development.</p> <p>Except above, no other incomplete projects will get transition time to claim capital allowances as per the old rates.</p> <p><i>Detailed schedule is attached herewith.</i></p>	<p>The concept of Investment deduction (both 100% and 150%) is replaced with investment allowance.</p> <p>Taxpayers can choose whether to claim the new Investment Allowance or not. If the taxpayer chooses to claim Investment Allowance on the Building specified under the Second Schedule, then on disposal of that Building, the gains will be subject to Income Tax and not Capital Gains Tax.</p> <p>Saloon car wear & tear restriction is increased from Ksh two million to Ksh three million.</p> <p><u>The transition clause for incomplete projects till 31 December 2021.</u></p> <p>Paragraph 24E, which was introduced through the Business Laws Amendment Act 2020 in March 2020, provides for investment deduction of 150% where a person incurs capital expenditure of at least KES 5 Billion on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway (SGR) operations. The said facilities must have a minimum storage capacity of one hundred thousand metric tons of supplies.</p> <p>The Act repealed Para 13 of the Second Schedule that allowed related companies to elect to transfer assets at written down value. Clarification is required for Industrial & Commercial building allowances claimed prior to 2020 and the claims are not fully utilized.</p>

INCOME TAX ACT
**The Tax Laws (Amendment) Act, 2020
 CAPITAL ALLOWANCES FROM 25 APRIL 2020**

		OLD RATES	NEW RATES	REMARKS
A	INVESTMENT ALLOWANCE ON BUILDINGS			
1	Building used for manufacture	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
2	Hotel buildings	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
3	Hostel, educational and training building	50%	10% per year on reducing balance	
4	Rental residential buildings constructed in a planned developed area approved by Cabinet Secretary	5%	NIL	Low cost housing
5	Commercial buildings	25%	10% per year on reducing balance	
6	Building in use for training of film producers, actors or crew	100%	10% per year on reducing balance	Need clarification
7	Hospital building	Nil	50% in first year 25% on reducing balance basis on residual value from Year-2	
B	WEAR & TEAR ALLOWANCE (DEPRECIATION)			
1	Heavy self-propelling machinery such as tractors and combine harveters	37.50%	25% per year on reducing balance	
2	Computers and peripheral computer hardware, calculators, copiersand duplicating machines	30%	25% per year on reducing balance	
3	Motor Vehicles	25%	25% per year on reducing balance	Qualifying cost for saloon car is increased from Ksh 2 million to Ksh 3 million.
4	Aircrafts	25%	50% in first year 25% on reducing balance basis on residual value from Year-2	
5	Ships	12.50%	50% in first year 25% on reducing balance basis on residual value from Year-2	
6	All other machinery	12.50%	10% per year on reducing balance	

INCOME TAX ACT

7	Machinery first used to undertake exploration or prospecting operations by petroleum or mining companies	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
8	Furniture & fixture	12.5%	10% per year on reducing balance	
9	Hospital equipment	12.5%	50% in first year 25% on reducing balance basis on residual value from Year-2	
10	Computer software	20%	25% per year on reducing balance	Previously, it was on a straight line basis.
11	Telecommunication equipment	20%	10% per year on reducing balance	
12	Irrevocable right to use fibre optic cable by a telecom operator	5%	10% per year on reducing balance	

C Capital expenditure on Agriculture

1	Farm works allowance	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
---	----------------------	------	--	--

D Investment Deduction / Allowances

1	Building used for manufacturing	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
2	Machinery used for manufacturing	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
3	Petroleum & Gas storage facilities	100%	50% in first year 25% on reducing balance basis on residual value from Year-2	
4	Constuction of a building or purchase and installation of machinery for manufacturing purposes outside of Nairobi, Mombasa or Kisumu where of the investment is Ksh 200 million or more	150%	Same as D1 & D2	150% allowance is reduced to 100%
5	Filiming equipment by a local film producer	100%	25% per year on reducing balance	

Notes

1. Cost of land is excluded for al capital allowances.

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations
10	Capital Gains Tax Effective date: 25 April 2020	The First Schedule, part I of exempt items is amended.	Following three items that fell under CGT exemption list are now removed and made taxable: <ul style="list-style-type: none"> • Shares in the stock or funds of the Government, the High Commission or the Authority established under the Organisation or the Community. • Shares of a local authority. • Land which has been adjudicated under the Land Consolidation Act or the Land Adjudication Act when the title to such land has been registered under the Registered Land Act. 	These items were old and not relevant with the current times. The amendment will not make any major issue to the operations of CGT.
11	Newly listed companies Corporate tax rate Effective date: 25 April 2020	Newly listed companies were enjoying following tax rates on their taxable income: <ul style="list-style-type: none"> • 30% shares issued to public – 25% tax • 40% shares issued to public – 20% tax 	These Clauses are deleted.	Effectively, incentive offered to newly listed companies on the NSE is removed and they will also pay corporate tax at 25%. Clarification is required for companies who participated under this incentive and five years are not completed.
12	Reduced tax rate Plastic recycling plant Effective date: 25 April 2020	Plastic re-cycling plants were incentivised to pay corporate tax at 15% for the first five years from the time the company started operating.	This Clause is deleted.	The special incentive introduced in Finance Act 2019 is now removed and these companies will pay corporate tax at normal rate of 25%.

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations																																																
13	Personal Tax rates Effective date: April 2020 salary	Monthly gross emoluments up to Ksh 13,480/- was tax free. Personal relief: Ksh 1,408/- per month. Maximum tax rate: 30%	Monthly gross emoluments up to Ksh 24,000/- is tax free. Personal relief: increased to Ksh 2,400/- per month. Maximum Tax Rate (Pay-As-You-Earn) is reduced from 30 per cent to 25 per cent.	Annual Tax Table <table border="1"> <thead> <tr> <th colspan="2">New Rate</th> <th colspan="2">Old Rates</th> </tr> </thead> <tbody> <tr> <td>First 288,000</td> <td>10%</td> <td>First 147,580</td> <td>10%</td> </tr> <tr> <td>Next 200,000</td> <td>15%</td> <td>Next 139,043</td> <td>15%</td> </tr> <tr> <td>Next 200,000</td> <td>20%</td> <td>Next 139,043</td> <td>20%</td> </tr> <tr> <td>Above 688,000</td> <td>25%</td> <td>Next 139,043</td> <td>25%</td> </tr> <tr> <td></td> <td></td> <td>Above 564,709</td> <td>30%</td> </tr> </tbody> </table> Monthly Tax Table <table border="1"> <thead> <tr> <th colspan="2">New Rate</th> <th colspan="2">Old Rates</th> </tr> </thead> <tbody> <tr> <td>First 24,000</td> <td>10%</td> <td>First 12,298</td> <td>10%</td> </tr> <tr> <td>Next 16,667</td> <td>15%</td> <td>Next 11,587</td> <td>15%</td> </tr> <tr> <td>Next 16,667</td> <td>20%</td> <td>Next 11,587</td> <td>20%</td> </tr> <tr> <td>Above 57,333</td> <td>25%</td> <td>Next 11,587</td> <td>25%</td> </tr> <tr> <td></td> <td></td> <td>Above 47,059</td> <td>30%</td> </tr> </tbody> </table>	New Rate		Old Rates		First 288,000	10%	First 147,580	10%	Next 200,000	15%	Next 139,043	15%	Next 200,000	20%	Next 139,043	20%	Above 688,000	25%	Next 139,043	25%			Above 564,709	30%	New Rate		Old Rates		First 24,000	10%	First 12,298	10%	Next 16,667	15%	Next 11,587	15%	Next 16,667	20%	Next 11,587	20%	Above 57,333	25%	Next 11,587	25%			Above 47,059	30%
New Rate		Old Rates																																																		
First 288,000	10%	First 147,580	10%																																																	
Next 200,000	15%	Next 139,043	15%																																																	
Next 200,000	20%	Next 139,043	20%																																																	
Above 688,000	25%	Next 139,043	25%																																																	
		Above 564,709	30%																																																	
New Rate		Old Rates																																																		
First 24,000	10%	First 12,298	10%																																																	
Next 16,667	15%	Next 11,587	15%																																																	
Next 16,667	20%	Next 11,587	20%																																																	
Above 57,333	25%	Next 11,587	25%																																																	
		Above 47,059	30%																																																	

INCOME TAX ACT

Sr. No	Topic	Old Law	Amendment	Observations																																																
14	Pension withdrawal Effective date: 25 April 2020	The maximum tax slab for early withdrawal of pension or retirement benefits funds is 30%.	Reduced from 30% to 25%. The tax rates are applicable for withdrawal in excess of tax free amounts.	<p>Withdrawal before expiry of 15 years</p> <table border="1"> <thead> <tr> <th colspan="2">New Rate</th> <th colspan="2">Old Rates</th> </tr> </thead> <tbody> <tr> <td>First 288,000</td> <td>10%</td> <td>First 147,580</td> <td>10%</td> </tr> <tr> <td>Next 200,000</td> <td>15%</td> <td>Next 139,043</td> <td>15%</td> </tr> <tr> <td>Next 200,000</td> <td>20%</td> <td>Next 139,043</td> <td>20%</td> </tr> <tr> <td>Above 688,000</td> <td>25%</td> <td>Next 139,043</td> <td>25%</td> </tr> <tr> <td></td> <td></td> <td>Above 564,709</td> <td>30%</td> </tr> </tbody> </table> <p>Withdrawal after expiry of 15 years</p> <table border="1"> <thead> <tr> <th colspan="2">New Rate</th> <th colspan="2">Old Rates</th> </tr> </thead> <tbody> <tr> <td>First 400,000</td> <td>10%</td> <td>First 400,000</td> <td>10%</td> </tr> <tr> <td>Next 400,000</td> <td>15%</td> <td>Next 400,000</td> <td>15%</td> </tr> <tr> <td>Next 400,000</td> <td>20%</td> <td>Next 400,000</td> <td>20%</td> </tr> <tr> <td>Above 1,200,000</td> <td>25%</td> <td>Next 400,000</td> <td>25%</td> </tr> <tr> <td></td> <td></td> <td>Above 1,600,000</td> <td>30%</td> </tr> </tbody> </table>	New Rate		Old Rates		First 288,000	10%	First 147,580	10%	Next 200,000	15%	Next 139,043	15%	Next 200,000	20%	Next 139,043	20%	Above 688,000	25%	Next 139,043	25%			Above 564,709	30%	New Rate		Old Rates		First 400,000	10%	First 400,000	10%	Next 400,000	15%	Next 400,000	15%	Next 400,000	20%	Next 400,000	20%	Above 1,200,000	25%	Next 400,000	25%			Above 1,600,000	30%
New Rate		Old Rates																																																		
First 288,000	10%	First 147,580	10%																																																	
Next 200,000	15%	Next 139,043	15%																																																	
Next 200,000	20%	Next 139,043	20%																																																	
Above 688,000	25%	Next 139,043	25%																																																	
		Above 564,709	30%																																																	
New Rate		Old Rates																																																		
First 400,000	10%	First 400,000	10%																																																	
Next 400,000	15%	Next 400,000	15%																																																	
Next 400,000	20%	Next 400,000	20%																																																	
Above 1,200,000	25%	Next 400,000	25%																																																	
		Above 1,600,000	30%																																																	
15	Qualifying interest Change of definition Effective date: 25 April 2020	Interest received by a resident individual from registered financial institutions was final tax. Such interest was subject to 15% withholding tax and there was no further tax payable on it. Financial institutions included as bank, building society, central bank of Kenya.	The definition is amended and interest from all sources now made qualifying interest for a resident individual.	<p>Interest income earned by a resident individual from any person; financial institutions or non-financial institutions – withholding tax will be a final tax.</p> <p>Loan given by director/shareholder to their own company or loan to non-financial institution has become more attractive since 15% withholding tax will be the final tax.</p> <p>Non-individual tax payers will pay 25% tax (reduced from 30%).</p>																																																



VALUE ADDED TAX (VAT)

Sr. No	Topic	Old Law	Amendment	Observations
1	Increase in fuel charge Effective date: 15 May 2020	8% VAT is applicable on fuel products and the taxable value is derived without including excise duty, fees and other charges.	The scope is expanded and taxable value now includes excise duty, fees and other charges.	Effectively, the cost of fuel will go up by 8% of Excise duty and other fees / charges. Currently, these charges plus the road maintenance levy is Ksh 42/- per litre. This amounts to tax on tax. It will have spiral effect including increase in matatu and boda-boda fares.
2	Time period for issue of credit note Effective date: 25 April 2020	Credit Note can be issued within six months after the issue of the relevant tax invoice.	Expanded the scope to cover commercial dispute in court. The credit note can be issued within 30 days after the determination of a commercial dispute in a court of law.	The requirement is: commercial dispute in court with regard to price payable. It should have extended to all matters with commercial disputes, and not restricted to matters in court only.
3	Refund of tax on bad debt Effective date: 25 April 2020	An application for refund in respect of bad debts must be made within 5 years from the date of supply.	The time period is reduced by one year. An application for refund in respect of bad debts must be made within 4 years from the date of supply.	Where a person has supplied goods or services and has accounted for and paid tax on that supply but has not received payment from the buyer, he may apply for a refund or remission of the tax upon lapse of 3 years from the date of supply, or if the buyer has become legally insolvent.
4	Record Keeping Effective date: 25 April 2020	Persons registered for VAT were required to maintain records for five years.	All persons doing business in Kenya are required to keep records for five years whether or not such person is registered for VAT.	The Act has now extended the scope of maintaining records for VAT purpose by ALL persons, whether registered or not for VAT. This is an unnecessary compliance burden for taxpayers who are not registered for VAT e.g. people operating under Turnover Tax, Banks, Insurance, Medical professionals etc.

VALUE ADDED TAX (VAT)

Sr. No	Topic	Old Law	Amendment	Observations
5	VAT Status Exempt to standard rate Goods Effective date: 25 April 2020	Exempt	Following items are removed from the Exempt list and will attract VAT at standard rate: <ol style="list-style-type: none"> a) Plant & Machinery of Chapter 84 and 85 b) Items imported or purchased in construction of power generating plant, geothermal, oil or mining prospecting or liquefied petroleum gas storage facilities c) Plastic bag biogas digesters d) Biogas e) Leasing of biogas producing equipment f) Parts for assembly of computer g) Material for construction and infrastructural works in industrial parks of 100 acres or more. h) Exhibit for Museum i) Material for construction of grain storage j) Transfer of business as a going concern. k) Items imported or purchased locally for direct and exclusive use in implementation of projects under a special operating framework 	All these items will attract 14% VAT from the effective date. Capital intensive projects in the areas of manufacturing, power, mining and oil exploration will have to make additional provision to finance VAT at the start of the project. Restructuring of business by way of transfer of business on a going concern basis will also require additional funding to meet VAT outflow.
6	VAT Status Exempt to standard rate Services Effective date: 25 April 2020	Exempt	Following services are removed from the Exempt list and will attract VAT at standard rate <ol style="list-style-type: none"> a) Insurance agency, insurance brokerage, stock exchange brokerage services b) Services provided for construction and infrastructural works in industrial parks 	All these items will attract 14% VAT from the effective date.

VALUE ADDED TAX (VAT)

Sr. No	Topic	Old Law	Amendment	Observations
			<ul style="list-style-type: none"> c) Asset transfer and other transactions related to transfer of assets in to REITS d) Taxable services procured locally or imported for liquefied petroleum gas storage facilities e) Taxable services procured locally or imported for direct and exclusive use in implementation of projects under a special operating framework. 	
7	VAT Status Zero rated to Exempt Effective date: 25 April 2020	VATable at 0%.	Following items are removed from the zero rated list and added to Exempt category. <ul style="list-style-type: none"> a) Vaccine for human medicine b) Vaccine for veterinary medicine c) Medicaments previously listed in Part C of the Second Schedule to the VAT Act. 	The change in the VAT status will make the products more expensive since input VAT will become cost for manufacturers.
8	VAT Status Standard rate to Exempt Effective date: 25 April 2020	14%	Following items are removed from the standard rated supplies list and moved to Exempt category. <ul style="list-style-type: none"> a) Personal Protective Equipment (PPE) including face masks 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. 	PPE products should have been moved to zero rated list.

A banner with a blurred background of several yellow sticks, likely cigarettes, against a dark grey background. The text "EXCISE DUTY" is overlaid in large, bold, yellow capital letters.

EXCISE DUTY

EXCISE DUTY ACT

Sr. No	Topic	Old Law	Amendment	Observations
1	Expansion of scope Other fees Effective date: 25 April 2020	Other fees were subject to excise duty, charged by licenced financial institutions.	The Act has changed the definition of other fees charged by the financial institutions: 'Licenced financial institutions' words are substituted with 'Licensed activities'.	Effectively, 'non-licensed' activities by financial institutions will not be excisable.
2	Change of status Exemption schedule Effective date: 25 April 2020	Exempt	Following items are deleted from the excise duty exemption schedule: <ol style="list-style-type: none"> a) Goods imported or purchased locally for direct and exclusive use in implementation of projects under special operating framework arrangements with Government. b) Personal motor vehicle imported by a public officer returning home from a posting in Kenya mission abroad. 	Effectively, supplies to such projects will attract Excise duty, forcing donors to spend less for the cause, and sparing funds for government taxes.



TAX PROCEDURES ACT

Sr. No	Topic	Old Law	Amendment	Observations
1	Appointment of Agent Effective date: 25 April 2020	New Section 39B is introduced.	The Commissioner is authorised to appoint a person registered under the Banking Act to act as an agent for revenue banking service.	The appointed person will be required to remit the funds within two days from the date of collection, failure of which a compounded penalty of 2% will apply. The two-days' timeline should have referred to two working-days.
2	Private Ruling Effective date: 25 April 2020	The Commissioner is required to issue a private ruling within a period of 45 days from the date of receiving an application for private ruling. The Commissioner is required to publish such private rulings in at least two daily newspapers.	The Act has extended the period the Commissioner is required to issue private ruling from 45 days to 60 days. The Act deletes the requirement for the Commissioner to publish private ruling in the newspapers. It also deletes the section that allowed the taxpayers to use such published rulings as binding on the Commissioner.	Private Tax Ruling is a practice followed by many countries in the world. It helps to reduce uncertainty for complex tax matters or areas which have ambiguity. Removal of this clause may deprive taxpayers from getting earlier decisions.



MISCELLANEOUS FEES & LEVIES ACT

Sr. No	Topic	Old Law	Amendment	Observations
1	IDF fees for approved manufacturers Effective date: 25 April 2020	Finance Act 2019 introduced new rate of 1.5% of IDF fees for raw material and intermediate products imported by approved manufacturers.	The Act has removed the blanket lower IDF of 1.5% on raw-material and intermediate products imported by manufacturers. Manufacturers will still qualify for the reduced rate of 1.5% IDF upon approval by the CS National Treasury on recommendation by the CS Industry.	In practice, the reduced rate was always subject to approval by the CS National Treasury on recommendation by the CS Industry.
2	Processing fees on Motor Vehicles Effective date: 25 April 2020	No processing fees.	New Clause proposes to charge Ksh 10,000/- as processing fee on all motor vehicles excluding motorcycles, imported or purchased duty free by the persons or groups listed under the Fifth Schedule to the East African Community Customs Management Act.	The fee itself is not significant but the concern is additional bureaucracy and formalities.
3	Removal of Exemption IDF fees Effective date: 25 April 2020	Second Schedule of the Act is amended.	IDF exemptions on the following items is deleted: a) Gift and donations by foreign residents to their relatives in Kenya for personal use b) Samples of no commercial value c) Raw material for construction of industrial parks of 100 acres or more d) Goods imported for the construction of Liquefied petroleum gas storage facilities e) Goods imported for implementation of projects under special operating framework arrangement with the Government.	Effectively, this will increase the cost of imports by 3.5% in addition to administrative hassles.

MISCELLANEOUS FEES & LEVIES ACT

Sr. No	Topic	Old Law	Amendment	Observations
5	Railway Development Levy (RDL) Effective date: 25 April 2020	Second Schedule of the Act is amended.	RDL exemptions on the following items is deleted: a) Raw material for construction of industrial parks of 100 acres or more b) Goods imported for the construction of Liquefied petroleum gas storage facilities c) Goods imported for implementation of projects under special operating framework arrangement with the Government.	
6	Expansion of Scope Construction and operation Effective date: 25 April 2020	Section 8(3) specifies use of RDL funds.	The definition is expanded from 'construction' to 'construction and operation'.	Effectively, the Government can now use the funds collected as RDL to finance the operation of standard gauge railway.

CAVEAT

The analysis/views in this booklet do not purport to be and should not be treated as legal opinion. Nothing contained herein can substitute appropriate professional opinion based on facts of specific situations that affect you or your organization.

Prepared by B. C. Patel & Co., for client service and internal use only.

This document summarizes the indirect and direct tax proposals based on The Kenya Tax Laws (Amendment) Act 2020 dated 27 April 2020. Expert guidance should be sought before acting upon the proposals.

Mihir Chalishazar

B. C. PATEL & CO.

Certified Public Accountants (K)

P. O. Box 45931—00100 GPO Nairobi |

Tel: 3748947 / 3740117 / 0737 740000 |