



KENYAN FISCAL LEGISLATIVE CHANGES AS INTRODUCED BY THE FINANCE ACT, 2020



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The Finance Act, 2020 has made changes to the statutes listed below. We have provided links to the various segments of this document for your ease of navigation as follows: -

- i. [Income Tax Act](#)
- ii. [Value Added Tax Act](#)
- iii. [Excise Duty Act](#)
- iv. [Tax Procedures Act](#)
- v. [Miscellaneous Fees and Levies Act](#)
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- viii. [Capital Markets Act](#)
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- x. [Kenya Revenue Authority Act](#)
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Important Dates to Note

- The Finance Act came into force on 30th June 2020.
- Some of the provisions will however become effective on later dates. We have highlighted the specific dates within our points to note.

INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 6A (1)	<p>Deletion of</p> <p>a) the words "one hundred and forty-four thousand shillings" and substitution with the words "two hundred and eighty-eight thousand shillings"; and</p> <p>b) the word "ten" and substitution with the word "fifteen".</p>	<p>Previously, residential rental income tax, which applies at the rate of 10% of the gross rent, applied to rental income that is above KShs.144,000 but does not exceed KShs.10 Million in a year of income (about KShs.833,000 per month).</p> <p>Going forward and in accordance with the amendment, this tax will apply to residential rental income that is in excess of KShs.288,000 but which does not exceed KShs.15 Million in any year of income (KShs.1.25 Million per month).</p> <p>The effect of this change is that landlords earning rental income of between KShs.288,000 to KShs.15 Million from residential property will benefit from this regime which is generally less costly (in terms of the tax paid and accounting work).</p> <p>The Finance Bill, 2020, had omitted to correct the lower threshold of KShs.144,000. This has now been increased to KShs.288,000 which is consistent with the minimum taxable annual income.</p> <p>This amendment to Section 6A will become effective from 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 12(1)	<p>Deletion of paragraph (a) in subsection (1) and substitution with the following paragraph –</p> <p>(a) If the minimum tax payable under section 12D is higher than the instalment tax under this section; and</p>	<p>Section 12(1) creates an obligation to pay instalment tax. The amendment to paragraph (a) refers to minimum tax which will be payable by persons where the instalment tax that would be payable is lower than the minimum tax which is computed as 1% of the turnover.</p> <p>The implications of the proposed amendments to Section 12(1) and the introduction of Section 12D (discussed below) are as follows: -</p> <ul style="list-style-type: none">i. Minimum tax will have far reaching consequences on taxpayers across the board including low income taxpayers intended to be exempted from turnover tax and taxpayers currently in loss making positions,ii. It is not clear which turnover the 1% will be based on – previous year or estimated current year,iii. The crediting of advance taxes has not been provided for. <p>This amendment will become effective from 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
<p data-bbox="43 247 292 322">Income Tax Act, Section 12D</p> <p data-bbox="43 382 250 411">Minimum tax</p>	<p data-bbox="333 247 1125 322">Insertion of a new section, Section 12D, which reads as follows –</p> <p data-bbox="333 382 1125 504">12D. (1) Notwithstanding any other provision of this Act, a tax to be known as minimum tax shall be payable by a person if –</p> <ul style="list-style-type: none"> <li data-bbox="430 558 1042 634">(a) That person’s income is not exempt under this Act; <li data-bbox="430 646 1131 768">(b) That person’s income is not subject to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules; or <li data-bbox="430 781 1085 902">(c) The instalment tax payable by that person under section 12 is higher than the minimum tax. <p data-bbox="333 958 1125 1125">(2) The tax payable under this section shall be paid in instalments, which shall be due on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month of the year of income.</p>	<p data-bbox="1170 247 2005 368">The amendment introduces a new tax under the Income Tax Act (ITA), that is, minimum tax. Minimum tax will be chargeable on a person’s income provided: -</p> <ul style="list-style-type: none"> <li data-bbox="1170 382 2005 418">i. The income is not exempt from tax under the ITA, <li data-bbox="1170 432 2005 596">ii. The income is not subject to employment tax, residential rental income tax, turnover tax, capital gains tax and taxes due from mining and petroleum activities, <li data-bbox="1170 611 2005 725">iii. The instalment tax that would be payable by the person under the ITA is higher than the minimum tax. <p data-bbox="1170 782 2022 1082">There seems to be an error in paragraph (c). It provides that a person is liable to pay tax equal to 1% of turnover if the person’s instalment tax is higher than 1% of turnover. This is inconsistent with the amendment to Section 12(1). We hope that this will be amended in order to correct the inconsistency (amend higher to lower).</p> <p data-bbox="1170 1139 2018 1260">The tax will be due by the same dates as instalment tax, that is, the 20th day of the 4th, 6th, 9th and 12th month during the year.</p> <p data-bbox="1170 1318 1976 1389">This amendment will become effective on 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
<p>Income Tax Act, Section 12E</p> <p>Digital service tax</p>	<p>Insertion of a new section, Section 12E, which reads as follows –</p> <p>12E. (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from the provision of services is derived from or accrues in Kenya through a digital market place:</p> <p>Provided that a resident person or a non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income.</p> <p>(2) The tax payable under subsection 1 shall be due at the time of the transfer of the payment for the service to the service provider.</p>	<p>This new provision introduces digital service tax (DST) which targets persons who provide services through digital platforms. This is effectively an administrative measure targeted at increasing compliance, noting that the income generated would have otherwise been taxable as business income.</p> <p>The obligation to make payment will be on the provider of the digital platform and the tax will be due and payable at the time when payment for the service is made.</p> <p>DST will be an advance tax for resident persons or non-resident persons with a permanent establishment (PE) in Kenya in that year of income.</p> <p>This tax will pose a compliance challenge for persons operating digital platforms because in many cases, payments are made every day and it would be too costly to require payment of tax every day and in some cases several times a day depending on the frequency of payment to the services provider.</p> <p>This amendment will become effective on 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, section 15(2)	<p>Deletion of paragraph (h) – an entrance fee or annual subscription paid during that year of income to a trade association which has made an election under section 21(2).</p>	<p>These paragraphs were proposed for deletion in the Tax Laws (Amendment) Bill, 2020 but were excluded from the Tax Laws (Amendment) Act, 2020.</p>
	<p>Deletion of paragraph (s) – expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to the authorisation and issue of shares, debentures or similar securities offered for purchase by the general public.</p>	
	<p>Deletion of paragraph (ss) – expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital.</p>	<p>These amendments will become effective on 1st January 2021.</p>
	<p>Deletion of paragraph (u) – expenditure of a capital nature incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya.</p>	
	<p>Deletion of paragraph (v) – club subscriptions paid by an employer on behalf of an employee.</p>	

Provision in the Legislation	Amendment	Points to Note
<p>Income Tax Act, Section 22C</p>	<p>Delete the entire section –</p> <p>(1) A depositor shall in any year of income commencing on or after 1st January 1996 be eligible to deposit funds with a registered home ownership savings plan up to the amount deductible under subsection (2).</p> <p>(2) Notwithstanding the provisions of section 16(2)(d), deduction shall be allowed in respect of the funds of a depositor under a registered home ownership savings plan in the qualifying year and the subsequent nine years of income, subject to a maximum of ninety-six thousand shillings per year of income or eight thousand shillings in respect of each month;</p> <p>Provided that for any year of income commencing on or after the 1st January 2007, any interest income earned by a depositor on deposits of up to a maximum of three million shillings shall be exempt from tax.</p> <p>(3) All deposits made under a registered home ownership savings plan shall be held in an account with an approved institution.</p>	<p>The Tax Laws (Amendment) Bill, 2020 proposed the deletion of this provision but the same was excluded from the Tax Laws (Amendment) Act, 2020.</p> <p>Prior to the amendment, savings with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month were tax deductible in the computation of taxable income for individuals.</p> <p>Going forward, these savings will no longer be tax deductible.</p> <p>This amendment will become effective on 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
<p>Income Tax Act, Section 22C</p>	<p>Delete the entire section (continuation) -</p> <p>(4) Deposits in a registered home ownership savings plan shall be invested in accordance with the prudential guidelines issued by the Central Bank or investment guidelines or regulations issued by the Capital Markets Authority;</p> <p>(5) A depositor may with the prior written approval of the Commissioner transfer his deposits from one approved institution to another which operates a registered home ownership savings plan.</p> <p>(6) A transfer made under subsection (5) shall not be considered as a withdrawal under section 3(2)(c).</p> <p>(7) A registered home ownership savings plan shall be operated in such manner as may be prescribed.</p> <p>(8) For the purposes of this section and section 8 –</p> <p>“approved institution” means a bank or financial institution registered under the Banking Act (Cap. 488), an insurance company licensed under the Insurance Act (Cap. 487), a building society registered under the Building Societies Act (Cap. 489), or a fund manager or investment bank registered under the Capital Markets Act (Cap. 485A).</p>	<p>The Tax Laws (Amendment) Bill, 2020 proposed the deletion of this provision but the same was excluded from the Tax Laws (Amendment) Act, 2020.</p> <p>Prior to the amendment, savings with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month were tax deductible in the computation of taxable income for individuals.</p> <p>Going forward, these savings will no longer be tax deductible.</p> <p>This amendment will become effective on 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
<p>Income Tax Act, Section 22C</p>	<p>Delete the entire section (continuation) -</p> <p>“depositor” means an individual who has attained the age of eighteen years and does not directly or indirectly or through his spouse, child, corporation, registered business name, or any other way own an interest in a permanent house, and is not and has not previously been a depositor under a registered home ownership savings plan;</p> <p>“permanent house” means a residential house that a financial institution would accept as collateral for a mortgage, and includes any part or portion of a building, used or constructed, adapted or designed to be used for human habitation as a separate tenancy for one family only, whether detached, semi-detached or separated by party walls or floors from adjoining buildings or part or portion of such building, together with such outbuildings as are reasonably required to be used or enjoyed therewith;</p> <p>“qualifying year” means the year in which the depositor first makes deposits under a registered home ownership savings plan.</p>	<p>The Tax Laws (Amendment) Bill, 2020 proposed the deletion of this provision but the same was excluded from the Tax Laws (Amendment) Act, 2020.</p> <p>Prior to the amendment, savings with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month were tax deductible in the computation of taxable income for individuals.</p> <p>Going forward, these savings will no longer be tax deductible.</p> <p>This amendment will become effective on 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 34(1)	<p>Insertion of the following new paragraphs in section 34(1) –</p> <p>(n) tax upon the gross turnover of a person whose gross income is chargeable to tax under section 12D shall be charged at the rate specified in the Third Schedule.</p> <p>(o) tax upon the gross transaction value of services, chargeable to tax under Section 12E shall be charged at the rate specified in the Third Schedule.</p>	<p>Under the new paragraph (n), persons whose income falls under the threshold provided in the Section 12D will be subject to minimum tax. This will be a final tax.</p> <p>Under the new paragraph (o), the gross transaction value of services under Section 12E will be subject to DST. For resident persons and non-resident persons with a PE, this will be an advance tax.</p> <p>These amendments will become effective on 1st January 2021.</p>

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 44	Deletion of paragraph 44 – The income of a registered home ownership savings plan.	These paragraphs were proposed for deletion in the Tax Laws (Amendment) Bill, 2020 but were excluded from the Tax Laws (Amendment) Act, 2020.
Income Tax Act, First Schedule, Part I, Paragraph 53	Deletion of both paragraphs 53 – Monthly or lumpsum pension granted to a person who is sixty-five years of age or more.	Going forward, this income will no longer be tax exempt. The Finance Act, 2020 also provides for the deletion of both paragraphs 53 which may be erroneous given that the next amendment (discussed below) involves inserting a new paragraph 53 immediately after paragraph 52. The deletion of paragraph 44 will become effective on 1 st January 2021 whereas the deletion of paragraph 53 became effective on 30 th June 2020.
Income Tax Act, First Schedule, Part I, Paragraph 53	Insertion of the following new paragraph immediately after paragraph 52 – 53. Monthly pension granted to a person who is sixty- five years of age or more.	This new paragraph replaces the previous paragraph 53. Accordingly, only the monthly pension granted to a person who is 65 years of age or more will be tax exempt. This amendment became effective on 30 th June 2020.

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B	<p>Insertion of the following new paragraphs immediately after paragraph 10 –</p> <p>11. The rate of tax in respect of minimum tax under section 12D shall be one percent of the gross turnover.</p> <p>12. The rate of tax in respect of digital service tax under section 12E shall be one point five percent of the gross transaction value.</p>	<p>Income subject to minimum tax will be chargeable to tax at 1% of the gross turnover whereas income subject to digital service tax will be subject to tax at 1.5% of the gross transaction value.</p> <p>These amendments will become effective on 1st January 2021.</p>
Income Tax Act, Eighth Schedule, Paragraph 3	<p>Deletion of sub-paragraph (2) and substitution with the following sub-paragraph –</p> <p>(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1 (b) of the Second Schedule is not chargeable to tax under section 3(2) (1).</p>	<p>Paragraph 3 of the Eighth Schedule relates to income that is exempt from capital gains tax.</p> <p>Prior to the amendment, the provision provided that the gain accruing to a company on a transfer of machinery classified in paragraph 7 of the Second Schedule is not subject to capital gains tax. This amendment is therefore a clean up to ensure consistency with the provisions of the new Second Schedule.</p> <p>This amendment became effective on 30th June 2020.</p>

VALUE ADDED TAX ACT (VAT ACT)

VALUE ADDED TAX ACT

Provision in the Legislation	Amendment	Points to Note
<p>Value Added Tax Act, Section 17(2)</p>	<p>Deletion of subsection (2) and substituting therefor the following new subsection –</p> <p>(2) If at the time when a deduction for input tax would otherwise be allowable under subsection (1) –</p> <p>–</p> <p>(a) the person does not hold the documentation referred to in subsection (3), or</p> <p>(b) the registered supplier has not declared the sales invoice in a return,</p> <p>the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.</p> <p>Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.</p>	<p>Prior to the amendment, the provision provided that a claim for the deduction of input tax will not be allowable where a person does not hold the requisite documentation and will only be allowed in the first tax period in which the person holds such documentation.</p> <p>The amendment has introduced an additional condition for the claim of input VAT by a taxpayer. Accordingly, a taxpayer can only claim input VAT on an invoice if a seller has declared the same invoice in their return. This is to avoid a mismatch in VAT filings where a taxpayer claims input tax on an invoice but the seller has not declared the output tax on the same.</p> <p>The amendment appears to be confusing with the introduction of clause (b) before the phrase ‘the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.’ This phrase only makes sense when read as part of the subsection (a) which relates to the documentation.</p> <p>In substance, this amendment places the burden of tax administration on the taxpayer when this responsibility belongs to the Kenya Revenue Authority.</p> <p>This amendment became effective on 30th June 2020.</p>

Provision in the Legislation	Amendment	Points to Note
<p>Value Added Tax Act, Section 68</p>	<p>Insertion of the following new sub-section immediately after subsection (2) –</p> <p>(2A) Notwithstanding the repeal of paragraph 102 of the First Schedule, the exemption of goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government, shall continue for existing projects for the remaining period of the agreement.</p>	<p>According to paragraph 102 of the First Schedule which was deleted by the Tax Laws (Amendment) Act, 2020, goods imported or purchased for the implementation of projects under a special operating framework arrangement (SOPA) with the Government were VAT exempt. This was however deleted and going forward, such goods will be vatable.</p> <p>The new subsection (2A) makes provision for existing SOPAs in that, the purchase or importation of goods relating to implementation of already existing SOPAs will continue being VAT exempt until the expiration of the period of the agreement.</p> <p>This amendment was introduced by the Finance Act, 2020 and was not included in the Finance Bill, 2020.</p> <p>This amendment became effective on 30th June 2020.</p>

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule Section A, Part I	<p>Deletion of the following tariff numbers 8802.11.00, 8802.12.00, 8802.20.00, 8803.30.00, 8805.10.00, 8805.21.00 and 8805.29.00 and their respective descriptions appearing immediately after paragraph 39</p> <ul style="list-style-type: none"> • 8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg. • 8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg. • 8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2000kgs. • 8803.30.00 Other parts of Aeroplanes or helicopters • 8805.10.00 Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof. • 8805.21.00 Air combat simulators and parts thereof. • 8805.29.00 Other ground flying trainers and parts thereof. 	<p>The supply of the items listed are currently exempt from VAT but will be standard rated at 14% for VAT purposes.</p> <p>This amendment will become effective on 1st July 2021.</p>

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule Section A, Part I	Deletion of tariff number 8309.90.90 - Aluminium pilfer proof caps with EPE liner and its corresponding description appearing in paragraph 39(3).	<p>The supply of the items listed are currently exempt from VAT but will be standard rated at 14% for VAT purposes.</p> <p>It should be noted that the deletion of paragraph 8309.90.90 and its corresponding description appearing in paragraph 39(3) was not a proposed amendment under the Finance Bill, 2020.</p> <p>This amendment became effective on 30th June 2020.</p>

Provision in the Legislation	Amendment	Points to Note
<p>Value Added Tax Act, First Schedule Section A Part I</p>	<p>Deletion of the following items from the First Schedule–</p> <ul style="list-style-type: none"> • Paragraph 45 - Specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power upon the recommendation of the Cabinet Secretary responsible for matters relating to energy. • Paragraph 47 - Tractors other than road tractors for semitrailers. • Paragraph 50 - Good of tariff No. 4011.30.00. (New pneumatic tyres, of rubber of a kind used on aircraft) • Paragraph 65 -Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy. • Paragraph 67 - Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, or iron or steel of tariff numbers 7321.11.00 (for gas fuel of for both gas and other fuels), 7321.12.00(for liquid fuel) 7321.19.00(other, including appliances for solid fuel), 7321.81.00 (other appliances for gas fuel or both gas and other fuels), 7321.82.00(other appliances for liquid fuel), 7321.83.00 (other appliances for solid fuel) and 7321.90.00 (other, including appliances for solid fuel). 	<p>The supply of the items listed are currently exempt from VAT but are proposed to be standard rated at 14% for VAT purposes.</p> <p>Many of the amendments reflected under this section will impact the lives of the ordinary citizen and increase the cost of living.</p> <p>The deletion of paragraph 47 will become effective on 1st July 2021 whereas all other amendments became effective on 30th June 2020.</p>

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule Section A Part I	<p>Deletion of the following items from the First Schedule—</p> <ul style="list-style-type: none"> • Paragraph 104 -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: Provided that the exemption under this item shall not apply— <ol style="list-style-type: none"> a. unless the officer is returning to Kenya from a posting in a Kenyan mission abroad upon recall; b. unless, in the case of an officer’s spouse, the spouse accompanied the officer in the foreign mission and is returning with the officer; c. if the officer or the spouse has either enjoyed a similar privilege within the previous four years from the date of importation or has imported a motor vehicle free of duty under item 6 of Part A of this Schedule; d. unless the vehicle is imported within ninety days of the date of arrival of the officer or spouse or such longer period, not exceeding three hundred and sixty days from such arrival as the Commissioner may allow; and e. to a State officer. 	<p>The supply of the items listed are currently exempt from VAT but are proposed to be standard rated at 14% for VAT purposes.</p> <p>The proposed deletion of paragraph 107 relating to plant, machinery and equipment used in the construction of a plastics recycling plant was excluded from the Finance Act, 2020. These items will therefore continue to be VAT exempt.</p> <p>This amendment became effective on 30th June 2020.</p>

VALUE ADDED TAX ACT

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule Section A Part I	<p>Insertion of the following proviso in paragraph 108—</p> <p>"Provided that this paragraph shall, subject to paragraph 20 of the Second Schedule, be suspended for six months from the date of assent."</p>	<p>Subject to this amendment, the supply of maize(corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight, which would otherwise be VAT exempt, will be zero rated as per the new paragraph 20 of the Second Schedule, for a period of 6 months from 30th June 2020.</p> <p>This amendment became effective on 30th June 2020.</p>
Value Added Tax Act, First Schedule Section A Part I	<p>Insertion of the following paragraph immediately after paragraph 110 –</p> <ul style="list-style-type: none"> • Paragraph 111 – Maize (corn) seeds of tariff no. 1005.10.00 	<p>The supply of maize (corn) seeds of tariff 1005.10.10.00 will be exempt for VAT purposes.</p> <p>This amendment became effective on 30th June 2020.</p>
Value Added Tax Act, First Schedule Section A Part II, Paragraph 4	<p>Insertion of the word “ambulance” immediately after the word “dental” appearing in paragraph 4.</p>	<p>Going forward, the supply of ambulance services will also be exempt for VAT purposes.</p> <p>This amendment became effective on 30th June 2020.</p>
Value Added Tax Act 2013, First Schedule Section A Part II, Paragraph 18	<p>Insertion of the words “excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00 at the end of paragraph 18.</p>	<p>Previously, the hiring, leasing and chartering of all aircrafts was an exempt supply for VAT purposes.</p> <p>Going forward, the hiring, leasing and chartering of helicopters of the listed tariff numbers will be standard rated supplies therefore subject to VAT.</p> <p>This amendment will become effective on 1st July 2021.</p>

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Second Schedule, Part A	<p>Deletion of the following items from the Second Schedule–</p> <ul style="list-style-type: none"> • Paragraph 13 – The supply of liquefied petroleum gas including propane. • Paragraph 18 – 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. 	<p>Previously, the supply of these items was zero rated for VAT purposes.</p> <p>However, going forward, their supply will be standard rated at 14%.</p> <p>The amendment to paragraph 13 will become effective on 1st July 2021 whereas the amendment to paragraph 18 became effective on 30th June 2020.</p>
Value Added Tax Act, Second Schedule, Part A	<p>Insertion of the following new paragraph immediately after paragraph 19-</p> <p>20. 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:</p> <p>Provided this paragraph shall be in operation for a period of six months from the date of assent.</p>	<p>Under this amendment, the supply of the listed items will be a zero rated supply for a period of 6 months from 30th June 2020 which is the date of assent. Following the lapse of the 6 month period, the supply of the listed items will continue being VAT exempt.</p> <p>This amendment became effective on 30th June 2020.</p>

EXCISE DUTY ACT

EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Excise Duty Act, Section 2	<p>Deletion of the definition of “licence” and substituting therefor a new definition:</p> <p>“licence” –</p> <ul style="list-style-type: none">(a) In the case of excisable services, means the certificate of registration;(b) In the case of excisable goods, means the license issued under section 17;(c) in the case of any activity under section 15 (1) (e), means the licence required thereunder.	<p>Previously, “license” was defined as the certificate of registration in the case of excisable services or, the license issued under Section 17 in the case of excisable goods.</p> <p>The amendment has expanded the definition of licence to include the license issued to undertake activities under Section 15(1) of the Excise Duty Act.</p> <p>This amendment became effective on 30th June 2020.</p>

EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
<p>Excise Duty Act, Section 10</p> <p>Adjustment for inflation</p>	<p>Deletion of Section 10 and substituting therefore the following new section –</p> <p>10. (1) Despite section 8, the Commissioner may, with the approval of the Cabinet Secretary, by notice in the Gazette, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule.</p> <p>(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.</p> <p>(3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under subsection (2), consider the notice and make a resolution either to approve or reject the notice.</p> <p>(4) The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.</p>	<p>Previously, the Commissioner did not require the approval of the Cabinet Secretary for purposes of the adjustment of the specific rate of excise duty for inflation.</p> <p>Under this amendment, the Commissioner may only undertake an adjustment with the approval of the Cabinet Secretary for the National Treasury.</p> <p>This amendment will become effective on 1st January 2021.</p>

EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Excise Duty Act, First Schedule, Paragraph I Part I - Excisable Goods	Deleting the expression “10%” appearing in 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%” and substituting therefor the expression “6%”.	<p>Pursuant to the amendment, items of this description will be subject to excise duty of KShs.105.20 per litre provided the alcoholic strength does not exceed 6%. Items whose alcoholic strength exceeds this percentage will be exempt from excise duty.</p> <p>This amendment became effective on 30th June 2020.</p>
	Deleting the expression “10%” appearing in the second column against the description “Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%” and substituting therefor the expression “6%”.	<p>Pursuant to the amendment, items of this description whose alcoholic strength exceeds 6% will be subject to excise duty of KShs.253 per litre.</p> <p>This amendment became effective on 30th June 2020.</p>
Excise Duty Act, First Schedule, Paragraph I Part II- Excisable Services	Deletion of paragraph 5 which provides – 5. Excise duty on betting shall be twenty percent of the amount wagered or staked.	<p>Under paragraph 5, excise duty was chargeable on betting at the rate of 20% of the amount wagered or staked. Following the amendment, excise duty will no longer be applicable on betting services.</p> <p>This provision was introduced by the Finance Act and not included in the Finance Bill, 2020.</p> <p>This amendment became effective on 30th June 2020.</p>

TAX PROCEDURES ACT

TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
<p>Tax Procedures Act, Section 37D</p> <p>Voluntary Tax Disclosure Programme</p>	<p>Insertion of new paragraph 37D immediately after paragraph 37C to read as follows:</p> <p>37D. (1) There is established a program to be known as the Voluntary Tax Disclosure Programme which shall be for a period of three years with effect from 1st January 2021.</p> <p>(2) For purpose of this section “voluntary tax disclosure programme” means a program where a person discloses the person’s tax liabilities to the Commissioner for the purpose of being granted relief of penalties and interest on the tax disclosed.</p> <p>(3) A person with a tax liability may apply to the Commissioner for relief in the prescribed form with respect to tax liabilities that accrued within a period of five years prior to the 1st July, 2020.</p>	<p>These provisions provide amnesty on penalties and interest to persons who voluntarily disclose their tax liabilities.</p> <p>Persons with tax arrears will benefit from this for three years commencing 1st January 2021. The relief will only extend to liabilities accrued within 5 years prior to 1st July 2020.</p> <p>This programme is a welcome incentive and subject to a few proposed adjustments, will serve taxpayers well.</p>

TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Tax Procedures Act, Section 37D	<p>(4) A person granted relief under this section:-</p> <ul style="list-style-type: none">(a) shall not be prosecuted with respect to the tax liability disclosed under this section; and<ul style="list-style-type: none">(i) where the disclosure is made and the tax liability paid in the first year of the programme, a full remission of the interest and penalty;(ii) where the disclosure is made and the tax liability paid in the second year of the programme, remission of fifty percent of the interest and penalty;(iii) where the disclosure is made and the tax liability paid in the final year of the programme, remission of twenty five percent of the interest and penalty; <p>(5) An application under subsection (3) shall be voluntary and disclose all material facts.</p> <p>(6) Where the Commissioner is satisfied with the facts disclosed in the application under subsection (3), the Commissioner shall grant the relief applied for:</p> <p>Provided that the relief shall not result in the payment of a refund to a person.</p>	<p>The programme is intended to incentivize taxpayers to make early disclosure and the incentive has been cascaded to create this effect with those that make the disclosure in the first year and make full payment of the principal benefiting from a full remission on penalties and interest, in the second year 50% of the penalties and interest will enjoy remission while in the third year only 25% remission on penalties and interest will be granted.</p>

TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Tax Procedures Act, Section 37D	<p>(7) Where the Commissioner grants relief under subsection (6), the Commissioner shall enter into an agreement with the person setting out the terms of payment of the tax liability and the period within which the payment shall be made which shall not exceed one year from the date of the agreement.</p> <p>(8) Where a person fails to meet the terms of the agreement under subsection (7), that person shall be liable to pay the full interest and penalty that had been remitted under the agreement.</p> <p>(9) A person granted relief under this section shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner.</p> <p>(10) Where before the expiry of the agreement between the Commissioner and the person, the Commissioner establishes that the person failed to disclose a material fact in respect of the relief granted under this section, the Commissioner may –</p> <ul style="list-style-type: none">(a) withdraw any relief granted;(b) assess and collect any balance of the tax liability; or(c) commence prosecution under section 80.	<p>If the Commissioner grants relief to a taxpayer under the programme, the Commissioner will enter into an agreement with the taxpayer setting out the payment terms and the period within which payment must be made.</p> <p>Accordingly, this period will not exceed one year from the date of the agreement. Failure to meet the terms of the agreement will render the penalties and interest earlier remitted under the agreement payable.</p> <p>Worthy of noting is that once this relief is sought, the taxpayer is barred from seeking any other remedy with respect to the taxes, penalties and interest remitted by the Commissioner.</p> <p>It should also be noted that the Commissioner has some recourse under the proposed arrangement where a person fails to disclose a material fact before the expiry of the agreement in respect of the relief.</p>

TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
<p>Tax Procedures Act, Section 37D</p>	<p>(11) A person aggrieved by the decision of the Commissioner under subsection (10) may appeal against the decision.</p> <p>(12) This section shall not apply to a person if the person:</p> <ul style="list-style-type: none"> (a) is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter in respect to the tax liability; or (b) has been notified of a pending audit or investigation by the Commissioner. <p>(13) The disclosure of a tax liability under this section shall be confidential.</p>	<p>The programme will not apply to persons already under audit, investigation or are undergoing litigation in respect of any matter in respect to the tax liability or persons who have been notified of a pending audit or investigation by the Commissioner.</p> <p>The wording used under subsection (12) is too broad and is thus subject to abuse by the Revenue Authority.</p> <p>This amendment will become effective on 1st January 2021.</p>
<p>Tax Procedures Act, Section 42B</p> <p>Appointment of digital service tax agent.</p>	<p>Insertion of a new section 42B immediately after section 42A –</p> <p>42B. (1) The Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner.</p> <p>(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.</p>	<p>The amendment empowers the Commissioner to appoint a digital service tax agent to aid in the collection of tax accruing to digital services platforms.</p> <p>This amendment will become effective on 1st January 2021.</p>

MISCELLANEOUS FEES AND LEVIES ACT

MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
<p>Miscellaneous Fees and Levies Act, Section 7(3)(b)</p>	<p>Deletion of paragraph 3(b) and substitution with the following new paragraph –</p> <p>(b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee at the rate of one point five per cent of the customs value.</p>	<p>Previously, goods imported under the East African Community Duty Remission Scheme were subject to import declaration fee (IDF) of KShs.10,000.</p> <p>Following the amendment, these items will be subject to IDF of 1.5% of the customs value.</p> <p>This amendment became effective on 30th June 2020.</p>
<p>Miscellaneous Fees and Levies Act, Section 9</p> <p>Duty on goods for home use from an export processing zone enterprise.</p>	<p>Insertion of section 9A immediately after section 9 -</p> <p>9A. Notwithstanding the import duties payable under section 110 of the East African Community Customs Management Act, 2004, an additional duty at a rate of two point five per cent of the customs value shall be payable in respect of goods entered for home use from an export processing zones enterprise.</p>	<p>Goods entered for home use from an export processing (EPZ) zone enterprise will be subject to an additional duty of 2.5% of the customs value.</p> <p>This amendment became effective on 30th June 2020.</p>
<p>Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (xv)</p>	<p>Deletion of paragraph (xv) and substituting with the following paragraph -</p> <p>(xv) aircraft, excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00.</p>	<p>Previously, the importation or purchase before clearance through customs of all aircraft was exempt from IDF. Going forward, only aircraft of the description will be exempt from IDF.</p> <p>This amendment will become effective on 1st July 2021.</p>

MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Miscellaneous Fees and Levies Act, Second Schedule , Part A , Paragraph (xxii)	Deletion of paragraph (xxii)	<p>Previously, the Cabinet Secretary was empowered to exempt goods from IDF where he determined that they were in public interest or would promote investments which value shall not be less than KShs.200 Million.</p> <p>Following the amendment, the Cabinet Secretary will no longer have the power to exempt such goods from IDF.</p> <p>This amendment became effective on 30th June 2020.</p>
Miscellaneous Fees and Levies Act, Second Schedule , Part A, Paragraph (xxiii)	Deletion of paragraph (xxiii)	<p>Pursuant to this amendment, goods imported for implementation of projects under the special operating framework arrangement with the Government which were previously exempt will be subject to IDF.</p> <p>This amendment became effective on 30th June 2020.</p>
Miscellaneous Fees and Levies Act, Second Schedule , Part A, Paragraph (xxv)	<p>Insertion of the new paragraph (xxv) after paragraph (xxiv) -</p> <p>(xxv) equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.</p>	<p>Going forward, the importation of these items will be exempt from IDF.</p> <p>This amendment became effective on 30th June 2020.</p>

MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Miscellaneous Fees and Levies Act, Second Schedule, Part B, Paragraph (vi)	Deletion of paragraph (vi)	<p>Previously, the Cabinet Secretary was empowered to exempt the importation of goods from Railway Development Levy (RDL), where he determines that they are in the public interest, or to promote investments which value shall not be less than KShs.200 Million. Following the amendment, the Cabinet Secretary will no longer have the power to exempt such goods from RDL.</p> <p>This amendment became effective on 30th June 2020.</p>
Miscellaneous Fees and Levies Act, Second Schedule, Part B	Insertion of the following new paragraphs after paragraph (vii) (viii) currency notes and coins imported by the Central Bank of Kenya. (ix) Equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.	<p>The amendment extends the RDL exemption to currency notes and coins imported by the Central Bank of Kenya and equipment, machinery and motor vehicles imported for the official use by the Kenya Defence Forces and National Police Service.</p> <p>This amendment became effective on 30th June 2020.</p>

TAX APPEALS TRIBUNAL ACT

TAX APPEALS TRIBUNAL ACT

Provision in the Legislation	Amendment	Points to Note
Tax Appeals Tribunal Act, Section 13 (6)	This section is amended by inserting the words “or documents ” immediately after the word “ appeal”.	<p>Previously, an appellant during an appeal before the Tax Appeals Tribunal was limited to grounds stated in the appeal. The amendment will enable an appellant to also rely on grounds stated in the documents to which the decision relates during an appeal.</p> <p>The appellant shall therefore, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal or documents to which the decision relates.</p> <p>This amendment became effective on 30th June 2020.</p>

PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Points to Note
Public Roads Toll Act, Section 2	<p>(a) Deletion of the definition of the term "toll collector" and substitution with the following new definition —</p> <p style="padding-left: 40px;">"toll collector" means a public toll collector appointed under section 4 and includes a private toll collector appointed under section 4B;</p> <p>(b) Insertion of the following new definitions in proper alphabetical sequence:</p> <p style="padding-left: 40px;">“Base toll rate means the unit rate prescribed by the Minister under section 4A for the calculation of applicable tolls.</p> <p style="padding-left: 40px;">“Fund” means the National Roads Toll Fund established under section 6A.</p> <p style="padding-left: 40px;">“Minister” means the Cabinet Secretary for the time being responsible for matters relating to roads.</p>	<p>The amendment introduces the National Roads Toll Fund where the tolls collected under the Act will be remitted and managed as per the Public Finance Management Act.</p> <p>The amendments seem to be a clean up of the statute in order to provide more clarity with respect to the further amendments to the Act such as the establishment of the National Roads Toll Fund.</p> <p>These amendments became effective on 30th June 2020.</p>

PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Points to Note
Public Roads Toll Act, Section 3	<p>Insertion of the following subsection immediately after subsection (1)—</p> <p>(1A) Notwithstanding subsection (1), a private toll collector shall only levy toll and collect monies payable on a public toll road constructed under an agreement entered into under section 4A.</p>	<p>Under the amendment, a private toll collector shall only levy toll and collect monies payable on a public toll road constructed under an agreement entered into under Section 4A of the Act.</p> <p>This amendment became effective on 30th June 2020.</p>
Public Roads Toll Act, Section 3	<p>Deletion of Sections 3(2) and 3(5) substituting them with the following new subsections-</p> <p>(2)- The stations specified in the first column of the First Schedule are declared to be transit toll stations for the public roads respectively set out in the second column.</p> <p>(5)- The toll in respect of every vehicle approaching and proceeding through a toll station shall be paid to the toll collector in such manner as may be prescribed by the Minister.</p>	<p>The amendments are a clean up to the statute in order to provide consistency within the Act.</p> <p>These amendments became effective on 30th June 2020.</p>

PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Points to Note
Public Roads Toll Act, Section 4A	Deletion of subsections (3), (4) and (5) .	<p>Section 4A relates to agreements between the Minister or a roads authority with a suitable qualified person for management of public roads.</p> <p>According to subsections (3), (4) and (5), a proposed agreement of this nature and any tolling regime within the proposed agreement must be presented before the National Assembly for approval prior to the signing of the agreement by the Minister or the designated authority. An agreement entered into without the approval of the National Assembly will otherwise be considered null.</p> <p>Upon the deletion of these subsections, an agreement of such a nature as entered into by a Minister or a roads authority need not be presented before the National Assembly for approval.</p> <p>These amendments became effective on 30th June 2020.</p>

PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Points to Note
Public Roads Toll Act, Section 4B(1)	<p>Insertion of the following proviso immediately after subsection (1) -</p> <p>Provided that the agreement may prescribe alternative arrangements for the levying, collection and administration of tolls and management of toll infrastructure.</p>	<p>Subsection (1) entitles a person who enters an agreement with the Minister or a roads agency to levy toll and collect monies payable as toll on such toll road and permits such a person to erect a toll station(s) and connected facilities for this purpose.</p> <p>The insertion of the new proviso allows persons to have alternative arrangements for the levy and collection of tolls as well as management of toll infrastructure as prescribed under the agreements.</p> <p>This amendment became effective on 30th June 2020.</p>
Public Roads Toll Act, Section 4B(2)	<p>Insertion of the following proviso immediately after subsection (2) –</p> <p>Provided that the Minister may prescribe the base toll rate in the agreement and permit the person referred to in subsection (1) to adjust, vary or otherwise revise the toll in accordance with an adjustment mechanism provided in the agreement.</p>	<p>Previously, subsection (2) prescribed that a person was only entitled to levy toll in accordance with the agreement with the minister or the roads agency and the amount of such toll was subject to approval by the Minister.</p> <p>The amendment provides flexibility in that, a base toll may be prescribed in the agreement and the same may be adjusted or varied in accordance with an adjustment mechanism.</p> <p>This amendment became effective on 30th June 2020.</p>

PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Points to Note
Public Roads Toll Act, Section 6A	<p>Insertion of the following provision immediately after Section 6 –</p> <p>6A(1) The Minister responsible for the National Treasury shall establish a fund to be known as the National Roads Toll Fund under the Public Finance Management Act, 2012.</p> <p>(2) All tolls, except transit tolls, collected by the persons appointed under section 4 shall be remitted to the Fund.</p> <p>(3) The purpose of the Fund shall be to provide funds for the –</p> <p>(a) proper functioning of toll roads and toll stations; and</p> <p>(b) development, repair or maintenance of roads as the Minister may direct, taking into account regional balancing.</p> <p>(4) The Fund shall be administered in accordance with section 24 of the Public Finance Management Act, 2012, and the regulations made thereunder.</p>	<p>Pursuant to the amendment, the Minister in charge of the National Treasury will establish the National Roads Toll Fund under the Public Finance Management Act which shall be separate from the Road Maintenance Levy Fund.</p> <p>All tolls (except transit tolls) collected by toll collectors as appointed by the Minister will be remitted to the Fund.</p> <p>This amendment became effective on 30th June 2020.</p>

PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Points to Note
Public Roads Toll Act, Section 8 (1)	Deletion of the words "shall be guilty of an offence and liable to a fine not exceeding five thousand" appearing in subsection (1) and substituting therefor the words "commits an offence and shall upon conviction, be liable to a fine not exceeding fifty thousand."	<p>This amendment increases the fine payable for the following: -</p> <ul style="list-style-type: none"> (a) drives a vehicle through a toll station except by the route designated for the passage of that vehicle; or (b) refuses to stop a vehicle at a toll station and to pay the toll; or (c) fraudulently or forcibly drives a vehicle through a toll station without paying the toll. <p>The fine has been increased from KShs.5,000 to KShs.50,000.</p> <p>This amendment became effective on 30th June 2020.</p>
Public Roads Toll Act, Section 8	<p>Insertion of the following provision immediately after subsection (2) -</p> <p>(3) Notwithstanding subsection (1) and (2), the person with whom the Minister enters into an agreement under section 4A may collect the unpaid tolls from defaulters as a civil debt recoverable summarily.</p>	<p>Section 8 of the Act imposes a fine on persons who drive through a toll station except by the route designated for the passage of that vehicle or persons who refuse to stop a vehicle at a toll station and to pay the toll or persons who fraudulently or forcible drive through a toll station without paying the toll.</p> <p>Under the amendment, a person who enters into an agreement with the Minister may as a form of recourse against the default, collect unpaid tolls from defaulters as a civil debt recoverable summarily.</p> <p>This amendment became effective on 30th June 2020.</p>

CAPITAL MARKETS ACT

CAPITAL MARKETS ACT

Provision in the Legislation	Amendment	Points to Note
Capital Markets Act, Section 11(3)	<p>Insertion of the following paragraph (ga) immediately after paragraph (g) -</p> <p>(ga) license, approve and regulate private equity and venture capital companies that have access to public funds.</p>	<p>Section 11(3) refers to the powers, duties and functions of the Capital Markets Authority (CMA). Pursuant to the amendment, the CMA's mandate will extend to the licensing, approval and regulation of private equity and venture capital companies with access to public funds.</p> <p>This amendment became effective on 30th June 2020.</p>
Capital Markets Act, Section 18(1)	<p>Deletion of the words "and paying beneficiaries from collected unclaimed dividends when they resurface".</p>	<p>Previously, the Investor Compensation Fund was established for the purposes of :-</p> <ol style="list-style-type: none">i. granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations, andii. paying beneficiaries from collected unclaimed dividends when they resurface. <p>Pursuant to the amendment, payment will no longer be extended to beneficiaries from collected unclaimed dividends when they resurface.</p> <p>This amendment became effective on 30th June 2020.</p>

INSURANCE ACT

INSURANCE ACT

Provision in the Legislation	Amendment	Points to Note
Insurance Act, Section 204A(3)	Insertion of the expression “within thirty days” after the word “may”.	<p>The amendment now specifies the time frame within which an appeal against the decision of the Commissioner of Insurance by an aggrieved party can be filed in the Tribunal.</p> <p>This amendment became effective on 30th June 2020.</p>

KENYA REVENUE AUTHORITY (KRA) ACT

Provision in the Legislation	Amendment	Points to Note
KRA Act, Section 5	<p>Insertion of subsection (2A) after subsection 2 –</p> <p>(2A) The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions.</p>	<p>The amendment gives the KRA powers to establish an institution for capacity building and training for better carrying out of its functions.</p> <p>This amendment became effective on 30th June 2020.</p>
KRA Act, Section 16(1)	<p>Insertion of paragraph (ba) after paragraph (b) -</p> <p>(ba) any commission received by the Authority for collecting any revenue on behalf of a county government or government agency :</p> <p>Provided that such commission shall not exceed two percent of the total revenue collected on behalf of the county government or government agency.</p>	<p>Under the amendment, the funds of the KRA will include any commission received on behalf of collecting revenue for a county government or government agency.</p> <p>This amendment became effective on 30th June 2020.</p>

Provision in the Legislation	Amendment	Points to Note
<p>KRA Act, Section 20</p> <p>Limitation of actions</p>	<p>Insertion of section 20A after section 20 -</p> <p>20A. Legal action against the Authority shall not be instituted unless:</p> <p>(a) it is commenced within three years after the act, neglect, or default complained of;</p> <p>(b) in the case of continuing injury or damage, within six months after the cessation of the act; and</p> <p>(c) at least one month written notice specifying the particulars of the claim and intention to commence the action or legal proceedings has been served upon the Commissioner- General.</p>	<p>The amendment provides guidelines in relation to timelines within which a legal action may be instituted against the KRA.</p> <p>Under the Finance Bill, 2020, the proposed timeline under subsection (1) was 12 months after the act, neglect, or default complained of. This has however been increased to 3 years under the Finance Act, 2020.</p> <p>This amendment became effective on 30th June 2020.</p>
<p>KRA Act, Section 21</p>	<p>Insertion of paragraph (f) immediately after paragraph (e) -</p> <p>(f) with respect to capacity building and training.</p>	<p>The amendment gives the KRA Board power to make regulations with respect to capacity building and training. This amendment goes hand in hand with the new subsection 2A under Section 5 with respect to the establishment of an institution for capacity building and training by the KRA.</p> <p>This amendment became effective on 30th June 2020.</p>

RETIREMENT BENEFITS ACT

RETIREMENT BENEFITS ACT

Provision in the Legislation	Amendment	Points to Note
Retirement Benefits Act, Section 35	<p>Renumbering of the existing provision as subsection (1) and inserting of the following new subsections -</p> <p>(2) A trustee who fails to submit a copy of the actuarial report to the Chief Executive Officer by the due date specified in the regulations shall pay a penalty of one hundred thousand shillings.</p> <p>(3) Where the report remains unsubmitted, the trustee in addition to the penalty specified under subsection (2), shall pay a further penalty of one thousand shillings for each day or part thereof during which the report remains unsubmitted.</p>	<p>Prior to the amendment, the section provided that the Board of the Retirement Benefits Authority (RBA) may require trustees of schemes or categories of schemes to appoint an actuary to evaluate the schemes and to present the Chief Executive Officer (CEO) of the Board with an actuarial report at such regular intervals as may be specified.</p> <p>The amendment imposes a penalty on a trustee who fails to submit a copy of the actuarial report to the CEO by the due date.</p> <p>This amendment became effective on 30th June 2020.</p>

INSOLVENCY ACT

Provision in the Legislation	Amendment	Points to Note
Insolvency Act, Second Schedule, Paragraph 3(1)	Insertion of subparagraph (h) immediately after item (g) - (h) all amounts that are held on behalf of the Kenya Revenue Authority by a person licensed under the Banking Act who has been appointed as an agent for revenue banking services by the Commissioner at the point of receivership or liquidation of the bank or institution	<p>The Second Schedule of the Insolvency Act relates to the payment of debts of a person who is adjudged bankrupt or of a company that is in liquidation.</p> <p>The amendment includes amounts held on behalf of the KRA, by a bank or institution that has been adjudged bankrupt or in liquidation, to the list of second priority claims to the extent that they remain unpaid. This will safeguard KRA against loss for any amounts that are held by persons registered under the Banking Act who have been appointed as agents by the KRA.</p> <p>This amendment became effective on 30th June 2020.</p>

PROPOSED AMENDMENTS EXCLUDED FROM THE FINANCE ACT, 2020

- A number of the amendments previously proposed by the Finance Bill, 2020 were excluded from the Finance Act, 2020 following public participation and debate by the National Assembly.
- We provide a summary of the excluded provisions across the various statutes in the following slides.

Proposed Amendments in the Finance Bill, 2020 excluded from the Finance Act, 2020

Provision in the Legislation	Proposed Amendment	Comments
Income Tax Act, Section 15(2)	Deletion of paragraph (x) – expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any other similar kind of social infrastructure.	<p>This paragraph was proposed for deletion in the Tax Laws (Amendment) Bill, 2020 but were excluded from the Tax Laws (Amendment) Act, 2020.</p> <p>The proposed deletion of this paragraph was also excluded from the Finance Act, 2020. Therefore, this expenditure remain tax deductible in the computation of taxable income.</p>
Income Tax Act, First Schedule, Part I, Paragraph 45	Deletion of paragraph 45 – Income of the National Social Security Fund provided that the fund complies with such conditions as may be prescribed.	<p>This paragraph was proposed for deletion in the Tax Laws (Amendment) Bill, 2020 but were excluded from the Tax Laws (Amendment) Act, 2020.</p> <p>The proposed deletion of this paragraph was also excluded from the Finance Act, 2020. Therefore, this income will remain tax exempt.</p>

VALUE ADDED TAX ACT

Proposed Amendments in the Finance Bill, 2020 excluded from the Finance Act, 2020

Provision in the Legislation	Proposed Amendment	Comments
Value Added Tax Act, First Schedule Section A Part I	Deletion of the following item from the First Schedule– <ul style="list-style-type: none">• Paragraph 107 -Plant, machinery and equipment used in the construction of a plastics recycling plant.	The supply of the item listed will remain exempt from VAT.

Proposed Amendments in the Finance Bill, 2020 excluded from the Finance Act, 2020

Provision in the Legislation	Proposed Amendment	Points to Note
Standards Act, Section 2	<p>Deletion of the definition of the word “consolidator ” and substituting therefor the following new definition -</p> <p>“Consolidator” means a firm that is licensed to consolidate goods belonging to different consignees at the country of export, which shall be done under one Master Bill of lading or Master Airway Bill, and breaks the consignment into smaller consignments at the port of destination for the different consignees for the purpose of individual customs declaration.</p>	<p>At present, the term “consolidator” means a person who assembles cargo belonging to various persons to form one consignment at the country of supply which may be declared as belonging to one importer at the port of destination and deconsolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at the destination port or consolidators Warehouse.</p> <p>The proposed amendment seemed like a clean up which provided specificity with regards to the term “consolidator”. It would have also limited the term consolidator to persons who are licensed to consolidate the goods.</p>

ROAD MAINTENANCE LEVY FUND ACT

Proposed Amendments in the Finance Bill, 2020 excluded from the Tax Laws (Amendment) Act, 2020

Provision in the Legislation	Proposed Amendment	Points to Note
Road Maintenance Levy Fund Act, Section 7(2)	Deletion of the words “and transit tolls levied under the Public Roads Toll Act”.	<p>Currently, the Road Maintenance Levy Fund consists of proceeds from the road maintenance levy and the transit tolls levied under the Public Roads Toll Act.</p> <p>Under the proposed amendment, the Road Maintenance Levy Fund would no longer include the proceeds from transit tolls. These monies would be collected and remitted to the National Roads Toll Fund upon its establishment.</p>
Road Maintenance Levy Fund Act, Section 7(3)	Deletion of the words “and transit tolls”	<p>Under the proposed amendment, monies collected from transit toll would no longer be managed by the Kenya Roads Board as they would be paid to the National Roads Toll Fund.</p>

Should you have any queries or require clarification on the information provided, please feel free to contact us on info@vivaafricallp.com