



**PROPOSED LEGISLATIVE AMENDMENTS UNDER THE FINANCE BILL, 2020**



The Finance Bill, 2020 has proposed 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](#)
- vi. [Tax Appeals Tribunal](#)
- vii. [Public Roads Toll Act](#)
- viii. [Capital Markets Act](#)
- ix. [Insurance Act](#)
- x. [Road Maintenance Levy Fund Act](#)
- xi. [Kenya Revenue Authority Act](#)
- xii. [Retirement Benefits Act](#)
- xiii. [Insolvency Act](#)

#### **Important Dates to Note**

- The amendments proposed by the Finance Bill, 2020 to the Income Tax Act will come into effect on 1 January 2021.
- The amendments proposed by the Finance Bill, 2020 to the other statutes listed above will come into effect upon presidential assent.

- We note that the National Assembly's standing orders provide for certain motions that are not to be moved under Standing Order 49, which states as follows: -

*49. (1) No Motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or in the negative) during the preceding six months in the same Session.*

*(2) Despite paragraph (1)-*

*(a) a Motion to rescind the decision on such a question may be moved with the permission of the Speaker;*

*(b) a Motion to rescind the decision on a question on a Special Motion shall not be allowed.*

- Several proposed amendments to the taxing statutes captured under The Finance Bill, 2020 had been proposed by The Tax Laws (Amendment) Bill, 2020 and were rejected by the National Assembly. Based on the provision above, any proposed amendment reintroduced by The Finance Bill, 2020 that meets this criteria should be struck off prior to debate save for where the Speaker grants permission for the motion to proceed.

# INCOME TAX ACT

Provision in the Legislation	Amendment	Comments
<p>Income Tax Act, Section 6A</p>	<p>Deletion of the word “ten” and substitution with the word “fifteen” in subsection 1.</p> <p>Currently, the subsection reads as follows:</p> <p><b>6A.</b> (1) Notwithstanding any other provision of this Act, a tax to be known as residential rental income tax shall be payable with effect from the 1st January 2016 by any resident person from income which is accrued in or derived from Kenya for the use or occupation of residential property, and which is in excess of one hundred and forty four thousand shillings but does not exceed ten million shillings during any year of income</p> <p>Provided that this section shall not apply where a person who would otherwise pay tax under this section, by notice in writing addressed to the Commissioner, elects not to be subject to residential rental income tax, in which case the other provisions of this Act shall apply to such a person.</p>	<p>Residential rental income tax, which applies at the rate of 10% of gross rent, will apply to rental income of up to KShs.15 Million annual income (KShs.1.25 Million per month) if this proposal passes into law. Currently, the regime does not apply to annual rental income exceeding KShs.10 Million (about KShs.833,000 per month).</p> <p>The effect of this proposal is that landlords earning rental income of up 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>It is noteworthy that the Bill has omitted to correct the lower threshold. With the minimum taxable annual income being KShs.288,000, the lower threshold for residential rental income tax should be at least KShs.288,000 and not KShs.144,000. Raising the lower threshold would be consistent with the initial intention, which was to have the lower threshold being the same as the maximum income on which no tax is payable.</p>

Provision in the Legislation	Amendment	Comments
<p>Income Tax Act, Section 12(1)</p>	<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>Currently, subsection 1, which creates an obligation to pay instalment tax, reads as follows –</p> <p><b>12.</b> (1) Notwithstanding any other provisions of this Act, a tax to be known as instalment tax shall be payable for the year of income commencing on or after the 1st January, 1990 by every person chargeable to tax or any person who has paid provisional tax in any year of income in accordance with the provisions of this section, but a taxpayer shall not be required to pay the instalment tax-</p> <p>(a) if to the best of his judgement and belief he will have no income chargeable to tax for that year of income other than emoluments; and</p> <p>(b) if he has reasonable ground to believe that the whole of the tax payable by him in respect of those emoluments will be recovered under section 37.</p>	<p>The proposed amendment 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> <ol style="list-style-type: none"> <li>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,</li> <li>ii. It is not clear which turnover the 1% will be based on – previous year or estimated current year,</li> <li>iii. The crediting of advance taxes has not been provided for.</li> </ol> <p>In addition, as currently worded, the provision is quite difficult to interpret. Should it be retained, we would propose that it be amended by being inserted as paragraph (c) with the word “or” appearing after paragraph (b).</p>

Provision in the Legislation	Amendment	Comments
<p data-bbox="43 239 292 315">Income Tax Act, Section 12D</p> <p data-bbox="43 372 250 404">Minimum tax</p>	<p data-bbox="333 239 1168 315">Insertion of a new section, Section 12D, which reads as follows –</p> <p data-bbox="333 372 1193 496"><b>12D.</b> (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="430 548 1203 624">(a) That person’s income is not exempt under this Act;</li> <li data-bbox="430 636 1162 761">(b) That person’s income is not subject to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules; or</li> <li data-bbox="430 773 1189 898">(c) The instalment tax payable by that person under section 12 is higher than the minimum tax.</li> </ul> <p data-bbox="333 949 1210 1115">(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="1247 239 2018 405">The proposed 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="1247 418 2018 494">i. The income is not exempt from tax under the ITA,</li> <li data-bbox="1247 506 2018 672">ii. The income is not subject to employment taxes, residential rental income tax, turnover tax, capital gains tax and taxes due from mining and petroleum activities,</li> <li data-bbox="1247 685 2018 809">iii. The instalment tax that would be payable by the person under the ITA is higher than the minimum tax.</li> </ul> <p data-bbox="1247 861 2005 1205">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). This paragraph should therefore be amended in order to correct this inconsistency (amend higher to lower).</p> <p data-bbox="1247 1256 2018 1380">The tax will be due by the same dates as instalment tax, that is, the 20<sup>th</sup> day of the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> month during the year.</p>

Provision in the Legislation	Amendment	Comments
<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><b>12E.</b> (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 proposes to introduce digital service tax 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>The digital service tax 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>



Provision in the Legislation	Proposed Amendment	Comments
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>If the Finance Bill passes with these proposals, these items will no longer be tax deductible in computing the taxable income.</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>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>	

Provision in the Legislation	Proposed Amendment	Comments
Income Tax Act, Section 15(2)	Deletion of paragraph (v) – club subscriptions paid by an employer on behalf of an employee.	These paragraphs were proposed for deletion in the Tax Laws (Amendment) Bill, 2020 but were excluded from the Tax Laws (Amendment) Act, 2020.  If the Finance Bill passes with these proposals, these items will no longer be tax deductible in computing the taxable income.
	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.	

Provision in the Legislation	Proposed Amendment	Comments
<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>Under the current provision, savings with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month are tax deductible in the computation of taxable income for individuals.</p> <p>The proposed deletion will mean that these savings will no longer be tax deductible.</p>

Provision in the Legislation	Proposed Amendment	Comments
<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>Under the current provision, savings with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month are tax deductible in the computation of taxable income for individuals.</p> <p>The proposed deletion will mean that these savings will no longer be tax deductible.</p>

Provision in the Legislation	Proposed Amendment	Comments
<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>Under the current provision, savings with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month are tax deductible in the computation of taxable income for individuals.</p> <p>The proposed deletion will mean that these savings will no longer be tax deductible.</p>

Provision in the Legislation	Amendment	Comments
Income Tax Act, Section 34(1)	<p>Insertion of the following new paragraphs in section 34(1), which reads –</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>The proposed amendment under paragraph (n) will subject persons whose income falls under the threshold provided in the new Section 12D to the minimum tax. This will be a final tax.</p> <p>The proposed paragraph (o) will subject the gross transaction value of services in relation to the digital platform of resident persons and non-resident persons with a permanent establishment to the digital service tax . Noting that Section 34(2) was not amended, there is no tax rate for non-residents. This will be an advance tax.</p>

Provision in the Legislation	Proposed Amendment	Comments
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.  If the Finance Bill passes with these proposals, these items will no longer be tax deductible in computing the taxable income.
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.	
Income Tax Act, First Schedule, Part I, Paragraph 53	Deletion of paragraph 53 – Monthly or lumpsum pension granted to a person who is sixty-five years of age or more.	
Income Tax Act, Third Schedule, Head B	Insertion of the following new paragraphs immediately after paragraph 10 –  11. The rate of tax in respect of minimum tax under section 12D shall be one percent of the gross turnover.  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.	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.

---

# VALUE ADDED TAX ACT (VAT ACT)



Provision in the Legislation	Amendment	Comments
<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 person has not declared the sales invoices 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>Currently, the provision provides 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 proposed amendment introduces an additional condition for the claim of input VAT by a taxpayer. 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 where 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 Revenue Authority.</p>

Provision in the Legislation	Amendment	Comments
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"> <li>• 8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.</li> <li>• 8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg.</li> <li>• 8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2000kgs. 8802.30.00 Aeroplanes and other Aircrafts on unladen weight exceeding 2,000kgs but not exceeding 15,000kgs.</li> <li>• 8805.10.00 Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof.</li> <li>• 8805.21.00 Air combat simulators and parts thereof.</li> <li>• 8805.29.00 Other ground flying trainers and parts thereof.</li> </ul>	The supply of the items listed are currently exempt from VAT but will be standard rated at 14% for VAT purposes.

Provision in the Legislation	Amendment	Comments
<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"> <li>• <b>Paragraph 45</b> - 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.</li> <li>• <b>Paragraph 47</b> - Tractors other than road tractors for semitrailers.</li> <li>• <b>Paragraph 50</b> - Good of tariff No. 4011.30.00. (New pneumatic tyres, of rubber of a kind used on aircraft)</li> <li>• <b>Paragraph 65</b> -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.</li> <li>• <b>Paragraph 67</b> - 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).</li> </ul>	<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 proposed amendments reflected under this section will impact the lives of the ordinary citizen and increase the cost of living.</p>

Provision in the Legislation	Amendment	Comments
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"> <li>• <b>Paragraph 104</b> -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"> <li>a. unless the officer is returning to Kenya from a posting in a Kenyan mission abroad upon recall;</li> <li>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;</li> <li>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;</li> <li>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</li> <li>e. to a State officer.</li> </ol> </li> <li>• <b>Paragraph 107</b> -Plant, machinery and equipment used in the construction of a plastics recycling plant.</li> </ul>	<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>

# VALUE ADDED TAX ACT

Provision in the Legislation	Amendment	Comments
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"> <li>• <b>Paragraph 111</b> – Maize (corn) seeds of tariff no. 1005.10.00</li> </ul>	Under the proposed amendment, the supply of maize (corn) seeds of tariff 1005.10.10.00 will be exempt for VAT purposes.
Value Added Tax Act, First Schedule Section A Part II, Paragraph 4	Insertion of the word “ambulance” immediately after the word “dental” appearing in paragraph 4.	Currently, paragraph 4 provides that the supply of medical, veterinary, dental and nursing services is exempt from VAT. Under the proposed amendment, ambulance services will also be exempt for VAT purposes.
Value Added Tax Act 2013, First Schedule Section A Part II, Paragraph 18	Insertion of the words “excluding helicopters of tariff number 8802.11.00 and 8802.12.00 at the end of paragraph 18.	<p>At present the hiring, leasing and chartering of all aircrafts is an exempt supply for VAT purposes.</p> <p>The proposed amendment will exclude helicopters of the listed tariff numbers in that, the hiring, leasing and chartering of these aircrafts will be standard rated at the rate of 14%.</p>

Provision in the Legislation	Amendment	Comments
Value Added Tax Act, Second Schedule	<p>Deletion of the following items from the Second Schedule–</p> <ul style="list-style-type: none"><li>• <b>Paragraph 13</b> – The supply of liquefied petroleum gas including propane.</li><li>• <b>Paragraph 18</b> – Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya.</li></ul>	<p>At present the supply of these items is zero rated for VAT purposes. Under the proposed amendment their supply will be standard rated at 14%.</p>

# EXCISE DUTY ACT

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Comments
Excise Duty Act, Section 2	<p>Deletion of the definition of “licence” and substituting therefor a new definition:</p> <p>“licence” –</p> <p>(a) In the case of excisable services, means the certificate of registration;</p> <p>(b) In the case of excisable goods, means the license issued under section 17;</p> <p>(c) in the case of any activity under section 15 (1) (e), the licence required thereunder.</p>	<p>Currently, “license” means (a) in case of excisable services, the certificate of registration or (b) in case of excisable goods, the license, issued under Section 17.</p> <p>The proposed amendment will expand the definition of licence to include the license issued to undertake activities under Section 15(1) of the Excise Duty Act. This will provide clarity.</p>
Excise Duty Act, First Schedule, Paragraph I Part I - Excisable Goods	<p>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 “8%”.</p>	<p>Under the proposed amendment, items of this description will be subject to excise duty of KShs.105.20 per litre provided the alcoholic strength does not exceed 8%. Items whose alcoholic strength exceeds this percentage will be exempt from excise duty.</p>
	<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 “8%”.</p>	<p>Under the proposed amendment, items of this description whose alcoholic strength exceeds 8% will be subject to excise duty of KShs.253 per litre.</p>



---

# TAX PROCEDURES ACT

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Comments
<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><b>37D.</b> (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 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 1<sup>st</sup> January 2021. The relief will only extend to liabilities accrued within 5 years prior to 1<sup>st</sup> 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	Comments
<p>Tax Procedures Act, Section 37D</p>	<p>(4) A person granted relief under this section:-</p> <ul style="list-style-type: none"> <li>(a) shall not be prosecuted with respect to the tax liability disclosed under this section; and</li> <li>(b) shall be granted a remission of the interest and penalty due on the tax liability as follows:               <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(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;</li> </ul> </li> </ul> <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	Comments
<p>Tax Procedures Act, Section 37D</p>	<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"> <li>(a) withdraw any relief granted;</li> <li>(b) assess and collect any balance of the tax liability; or</li> <li>(c) commence prosecution under section 80.</li> </ul>	<p>In the event that the Commissioner grants relief to a taxpayer under the proposed 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. 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	Comments
<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"> <li>(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</li> <li>(b) has been notified of a pending audit or investigation by the Commissioner.</li> </ul> <p>(13) The disclosure of a tax liability under this section shall be confidential.</p>	<p>The proposed 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>Tax Procedures Act, Section 42B</p> <p>Appointment digital service tax agent.</p>	<p>Insertion of a new section 42B immediately after section 42A –</p> <p><b>42B.</b> (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 proposed amendment empowers the Commissioner to appoint a digital service tax agent to aid in the collection of tax accruing to digital services platforms.</p>

---

# MISCELLANEOUS FEES AND LEVIES ACT

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Comments
Miscellaneous Fees and Levies Act, Section 7(3)(b)	<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>At present, goods imported under the East African Community Duty Remission Scheme are subject import declaration fee (IDF) of KShs.10,000.</p> <p>Under the proposed amendment, these items will be subject to IDF of 1.5% of the customs value.</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><b>9A.</b> 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>
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (xv)	<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>Currently the importation or purchase before clearance through customs of all aircraft is exempt from IDF. Under the proposed amendment, only aircraft of the description will be exempt from IDF.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Comments
Miscellaneous Fees and Levies Act, Second Schedule , Part A , Paragraph (xxii)	Deletion of paragraph (xxii)	At present, any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than KShs.200 Million are exempt from IDF. Under the proposed amendment, the Cabinet Secretary will no longer have the power to determine the importation of goods which are in the public interest for purposes of promoting investments and the importation of these goods will be subject to IDF.
Miscellaneous Fees and Levies Act, Second Schedule , Part A, Paragraph (xxiii)	Deletion of paragraph (xxiii)	Under the proposed amendment, goods imported for implementation of projects under the special operating framework arrangement which are currently exempt from IDF will be subject to IDF.
Miscellaneous Fees and Levies Act, Second Schedule , Part A, Paragraph (xxv)	<p>Insertion of the new paragraph (xxv) after paragraph (xxiv) -</p> <p>(xxv) all goods, including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.</p>	The proposed amendment will exempt the importation of these items from IDF.



# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Comments
Miscellaneous Fees and Levies Act, Second Schedule, Part B, Paragraph (vi)	Deletion of paragraph (vi)	Railway development levy (RDL) will be chargeable on goods which are at present exempt from RDL where the Cabinet Secretary determines that they are in the public interest, or to promote investments which value shall not be less than KShs.200 Million. In this regard, the Cabinet Secretary will no longer have the power to determine the importation of goods which are in the public interest for purposes of promoting investments .
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) all goods, including materials supplies, equipment machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.	The proposed amendment extends the RDL exemption to currency notes and coins imported by the Central Bank of Kenya and all goods imported for the official use by the Kenya Defence Forces and National Police Service will be exempt from RDL.

---

# TAX APPEALS TRIBUNAL ACT

# TAX APPEALS TRIBUNAL ACT

Provision in the Legislation	Amendment	Comments
Tax Appeals Tribunal Act, Section 13 (6)	<p>This section is amended by inserting the words “or documents ” immediately after the word “ appeal”.</p> <p>The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal or documents to which the decision relates.</p>	<p>At present, an appellant during an appeal before the Tax Appeals Tribunal is limited to grounds stated in the appeal. The proposed amendment will enable an appellant to also rely on grounds stated in the documents to which the decision relates during an appeal.</p>

---

# PUBLIC ROADS TOLL ACT

# PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Comments
Public Roads Toll Act, Section 2	<p>(a) Insertion of the words “private” or “public” immediately before the word “toll”</p> <p>(b) Insertion of the following new definitions in proper alphabetical sequence:</p> <p>“Base toll rate means the unit rate prescribed by the Minister under section 4A for the calculation of applicable tolls.</p> <p>“Fund” means the National Roads Toll Fund established under section 6A.</p> <p>“Minister” means the Cabinet Secretary for the time being responsible formatters relating to roads.</p>	<p>The proposed 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 proposed amendments seem to be a clean up of the statute in order to provide more clarity with respect to the further proposed amendments to the Act such as the establishment of the National Roads Toll Fund.</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 proposed amendments are a clean up to the statute in order to provide consistency within the Act.</p>

# PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Comments
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 by 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>
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 proposed proviso will allows persons to have alternative arrangements for the levy and collection of tolls as well management of toll infrastructure as prescribed under the agreements.</p>

# PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Comments
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>Currently, subsection (2) prescribes that a person is only entitled to levy toll in accordance with the agreement with the minister or the roads agency and the amount of such toll is subject to approval by the Minister.</p> <p>The proposed amendment will provide 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>
Public Roads Toll Act, Section 6A	<p>Insertion of the following provision immediately after Section 6 –</p> <p><b>6A(1)</b> 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 collected by the persons appointed under section 4 shall be remitted to the Fund.</p> <p>(3) The Fund shall be administered in accordance with section 24 of the Public Finance Management Act, 2012, and the regulations made thereunder.</p>	<p>Under the proposed 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 collected by toll collectors as appointed by the Minister will be remitted to the Fund.</p>

# PUBLIC ROADS TOLL ACT

Provision in the Legislation	Amendment	Comments
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 proposed 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>



---

# CAPITAL MARKETS ACT

Provision in the Legislation	Amendment	Comments
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). According to the proposed 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>
Capital Markets Act, Section 18(1)	<p>Deletion of the words "and paying beneficiaries from collected unclaimed dividends when they resurface".</p>	<p>Under the current provision, the Investor Compensation Fund is established for the purposes of :-</p> <ul style="list-style-type: none"> <li>i. granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations, and</li> <li>ii. paying beneficiaries from collected unclaimed dividends when they resurface.</li> </ul> <p>Under the proposed amendment, payment will no longer be extended to beneficiaries from collected unclaimed dividends when they resurface.</p>

---

# INSURANCE ACT

# INSURANCE ACT

Provision in the Legislation	Amendment	Comments
Insurance Act, Section 204A(3)	Insertion of the expression “within thirty days” after the word “may”.	The proposed 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.

---

# STANDARDS ACT

Provision in the Legislation	Amendment	Comments
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>This seems like a clean up which provides specificity with regards to the term “consolidator”. The proposed amendment will also limit the term consolidator to persons who are licensed to consolidate the goods.</p>

---

# ROAD MAINTENANCE LEVY FUND ACT

# ROAD MAINTENANCE LEVY FUND ACT

Provision in the Legislation	Amendment	Comments
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 will no longer include the proceeds from transit tolls. These monies will 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 will no longer be managed by the Kenya Roads Board as it will be paid to the National Roads Toll Fund.</p>



---

# KENYA REVENUE AUTHORITY (KRA) ACT

Provision in the Legislation	Amendment	Comments
KRA Act, Section 5	<p>Insertion of subsection (2A) after subsection 2 –</p> <p><b>(2A)</b> The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions</p>	<p>The proposed insertion gives the KRA powers to establish an institution for capacity building and training for better carrying out of its functions.</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>According to the proposed amendment, the funds of the KRA will include any commission received on behalf of collecting revenue for a county government or government agency will be part of the funds of the KRA.</p>

Provision in the Legislation	Amendment	Comments
KRA Act, Section 20	<p>Insertion of section 20A after section 20 -</p> <p><b>20A.</b> Legal action against the Authority shall not be instituted unless:</p> <p>(a) it is commenced within twelve months 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 proposed amendment provides guidelines in relation to timelines within which a legal action may be instituted against the KRA.</p>
KRA Act, Section 21	<p>Insertion of paragraph (f) immediately after paragraph (e) -</p> <p>(f) with respect to capacity building and training.</p>	<p>The proposed insertion gives the KRA Board power to make regulations with respect to capacity building and training. This amendment goes hand in hand with the proposed insertion of subsection 2A under Section 5 with respect to the establishment of an institution for capacity building and training by the KRA.</p>

---

# RETIREMENT BENEFITS ACT

# RETIREMENT BENEFITS ACT

Provision in the Legislation	Amendment	Comments
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>Currently, the section provides 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 proposed 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>

---

# INSOLVENCY ACT

Provision in the Legislation	Amendment	Comments
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 registered 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 proposed insertion adds 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.</p> <p>The proposed insertion 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>

---

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