KENYAN FISCAL LEGISLATIVE CHANGES AS INTRODUCED BY THE TAX LAWS (AMENDMENT) ACT, 2020

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

Important Dates to Note

- **The amendments introduced by the Tax Laws (Amendment) Act, 2020, with an exception to the amendment to Section 5(2) of the Value Added Tax Act, came into force on 25th April 2020 upon presidential assent.**
- **The amendment to Section 5(2) of the Value Added Tax Act will come into effect on 15th May 2020.**
- **Pursuant to the publication of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 on 26th March 2020, the rate of Value Added Tax in Kenya was reduced from 16% to 14% with effect from 1st April 2020.**

INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 2	Deletion of the definition of qualifying interest and substitution with the following: "qualifying interest" means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income: Provided that— *(*a) interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and (b) in the case of housing bonds, the aggregate amount of interest shall not exceed three hundred thousand shillings.	• Previously a resident person was deemed to earn "qualifying interest" where the interest was paid by: i. a bank or financial institution licensed under the Banking Act, ii. the Central Bank of Kenya, or iii. a building society licensed under the Building Societies Act. • The amendment makes all interest earned by a resident individual qualifying interest taxable at 15% (withholding tax (WHT) being final tax) and not 30% as was previously the case.
Income Tax Act, Section 10(1)	Insertion of paragraph (k) immediately after paragraph (j) (k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).	Payment by a resident person or a person having a permanent establishment (PE) in Kenya to any other person with respect to sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services) will be deemed to be income which is accrued in or derived from Kenya.

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Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 12C(1)	Deletion of subsection (1) and substitution with the following – Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business is more than one million shillings but does not exceed or is not expected to exceed fifty million shillings during any year of income. Subsection (1) previously provided that - Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business does not exceed or is not expected to exceed five million shillings during any year of income.	Turnover tax was previously applicable to resident persons whose annual turnover from business did not exceed KShs.5,000,000. The proposed amendment under the Tax Laws (Amendment) Bill, 2020 (the Bill) sought to introduce a threshold of KShs.500,000 with a maximum limit of KShs.50,000,000 for the application of turnover tax. Pursuant to the amendment under the Tax Laws (Amendment) Act, 2020 (the Act) turnover tax will apply to resident persons whose turnover from business is more than KShs.1,000,000 but does not exceed KShs.50,000,000.

INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 12C(3)	Deletion of paragraph (c)- the income of incorporated companies; or	Previously, turnover tax did not apply to the turnover of companies. Kenyan incorporated companies whose turnover will fall within the newly introduced turnover threshold captured in Section 12C(1) will be subject to turnover tax.
Income Tax Act, Section 12C(5)	Deletion of paragraph (5) – A person required to pay turnover tax under this section, shall be liable to pay presumptive tax equal to fifteen percent of the amount payable for a business permit or trading license issued by a county government which shall be offset against the tax payable under subsection (1).	Presumptive tax was introduced at a rate of 15% of the amount payable for a business permit or trading licence issued by a county government to a resident person required to pay turnover tax. Going forward, presumptive tax will no longer be payable.
Income Tax Act, Section 12C(6)	Deletion of paragraph (6) – The presumptive tax under subsection (5) shall be payable at the time of payment for the business permit or trade license or renewal of the licences.	

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 15(2)(ab)	Deletion of paragraph (ab) - thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy.	Deduction of 30% of the electricity cost incurred by manufacturers in addition to their normal electricity expense, is no longer allowable in the computation of taxable profits.
Income Tax Act, Section 34(2)	Deletion of paragraph (o) and substitution with the following – (o) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aviation insurance; or (p) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).	Previously, paragraph (o) provided for insurance premiums except insurance premiums paid for insurance of aircraft. This has been expanded to include reinsurance premiums. The wording of the paragraph has also been amended as a form of clean up. WHT of 5% will therefore be chargeable on both insurance and reinsurance premiums paid to non-resident persons without a PE in Kenya except insurance or reinsurance premiums paid in respect of aviation insurance. In addition, payments made to a non-resident person without a PE in Kenya with respect to sales promotion, marketing, advertising services and transportation of goods (except air and shipping transport services) will be subject to WHT at the rate of 20%.

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 35(1)	Insertion of new paragraph (o) after paragraph (n) – (o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).	A person who makes a payment to a non-resident person without a PE in Kenya with respect to sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services) is required to deduct and remit the 20% WHT chargeable on these payments.

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 133	Insertion of sub-section (6) immediately after sub-section (5): (6) Notwithstanding the repeal of the Second Schedule, the provisions of paragraph 24 E of the repealed Schedule shall continue to be in force until 31st December 2021.	Paragraph 24 E is an amendment introduced by the Business Laws (Amendment) Act, 2020 which introduced a 150% investment deduction on capital expenditure of at least KShs.5 Billion incurred in the construction of facilities supporting the Standard Gauge Railway. The proposed repeal and replacement of the Second Schedule to the Income Tax Act (ITA) will result in various changes as further discussed below. This provision enables the continued enjoyment of accelerated capital allowances for taxpayers qualifying for this particular allowance under the current law until 31st December 2021. It should be noted that the Bill proposed that the provision be in force until 30th August 2020. This timeline was however extended to 31st December 2021 under the Act.

First Schedule to the Income Tax Act – Part I

Part I of the First Schedule provides for income accrued in, derived from or received from Kenya which is exempt from tax.

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 4	Deletion of paragraph 4 – The income of - 1. The Tea Board of Kenya, 2. The Pyrethrum Board of Kenya, 3. The Sisal Board of Kenya, 4. The Kenya Dairy Board 5. The Canning Crops Board, 6. The Central Agricultural Board, 7. The Pig Industry Board, 8. The Pineapple Development Authority, 9. The Horticultural Crops Development Authority, 10. The National Irrigation Board, 11. The Mombasa Pipeline Board, 12. The Settlement Fund Trustees, 13. The Kenya Post Office Savings Bank, 14. The Cotton Board of Kenya.	The income of the bodies listed will be subject to tax in Kenya.

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First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 7	Deletion of paragraph 7 – Profits or gains of an agricultural society from any exhibition or show held for the purposes of the society which are applied solely to those purposes, and the interest on investments of that society will no longer be exempt income.	The profits or gains of an agricultural society from such exhibitions or shows and the interest on investments of an agricultural society will going forward be subject to tax.
Income Tax Act, First Schedule, Part I, Paragraph 9	Deletion of paragraph 9 – Interest on tax reserve certificates which may be issued by authority of the Government.	Interest income on tax reserve certificates issued by authority of the Government will be subject to tax going forward.
Income Tax Act, First Schedule, Part I, Paragraph 18	Deletion of paragraph 18 – A payment in respect of disturbance, not exceeding three months' salary, made in connection with a change in the constitution of the government of a Partner State or the Community to a person who, before the change, was employed in the public service of any of those governments or of the Community.	Payments made in respect of disturbance not exceeding 3 months' salary and made in connection with the stated changes will no longer be exempt from tax under the ITA . Such income will be subject to tax going forward.

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First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 25	Deletion of paragraph 25 – The emoluments of an officer of the Desert Locust Survey who is not resident in Kenya.	Employment income earned by an officer of the Desert Locust Survey who is non-resident in Kenya will be subject to tax.
Income Tax Act, First Schedule, Part I, Paragraph 28	Deletion of paragraph 28 – An education grant paid by the Government of the United Kingdom under an agreement between that government and the Government of Kenya received by a person who is employed in the public service of Kenya.	Education grants paid by the Government of the United Kingdom under an agreement with the Kenyan Government and received by a person employed in the public service of Kenya will no longer be exempt from tax.

First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 29	Deletion of paragraph 29 – The income received by way of remuneration under a contract which was entered into consequent upon financial assistance being received from the International Co-operation Administration for the enterprise in respect of which the contract was entered into and which provides that the income shall be exempt from tax.	This income received under contracts meeting the said parameters with respect to financial assistance received from the International Co-operation Administration will no longer be exempt from tax.
Income Tax Act, First Schedule, Part I, Paragraph 30	Deletion of paragraph 30 – The income received by virtue of their employment by citizens of the United States of America who are employed by the Department of Agriculture of the United States of America on research work in co-operation with the Government.	Income received by persons employed by citizens of the United States of America (USA) who are employed by the Department of Agriculture of the USA will no longer be exempt from income tax.

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First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act First Schedule, Part I, Paragraph 31	Deletion of paragraph 31 – Gains or profits resultant from a reward paid by the United Kingdom Atomic Energy Authority for the discovery of uranium ore in Kenya, except to the extent that the reward is liable to income tax in a country outside Kenya and there is, between that country and Kenya, provision for any form of double taxation relief.	This income will no longer be exempt from income tax.
Income Tax Act First Schedule, Part I, Paragraph 32	Deletion of paragraph 32 – All income of a non-resident person not having a permanent establishment in Kenya accrued in or derived from Kenya after 17th June 1971, and which consists of interest or management and professional fees paid by the Tana River Development Company Limited or its successors in title.	This income will no longer be exempt from income tax.

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First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 33	Deletion of paragraph 33 – Such part of the income of the East Africa Power and Lighting Company accrued in or derived from Kenya as is certified from time to time by the Minister to have been expended (whether before or after the date of commencement of this Act) at the request of the Government either - (a) in searching for a natural source in Kenya of geothermal energy; or (b) on investigations concerning the development in Kenya of electric power generation or supply, and this exemption shall take effect in the year in which the expenditure is incurred.	This income will no longer be exempt from income tax.
Income Tax Act, First Schedule, Part I, Paragraph 34	Deletion of paragraph 34 – The income of the General Superintendence Company Limited, a company incorporated in Switzerland, accrued in or derived from Kenya under an agreement dated 18th October 1972, between that company and the Central Bank of Kenya.	This income will no longer be exempt from income tax.

First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 36	Deletion of sub paragraphs (a), (b) and (e). These provisions exempted from tax any income that would have otherwise been subject to capital gains tax. Specifically, income including a gain derived from the transfer of – (a) Gains from the transfer of shares in the stock or funds of the Government, the High Commission or the Authority established under the Organisation or the Community; (b) Gains from the transfer of shares of a local authority; (e) Gains from the transfer of land which has been adjudicated under the Land Consolidation Act or the Land Adjudication Act when the title to that land has been registered under the Registered Land Act and transferred for the first time;	Accordingly, a gain from the transfer of the stated shares and land will be subject to capital gains tax under the ITA. It should be noted that the proposed amendment under the Bill had provided for the deletion of paragraph 36 in its entirety. This would have been detrimental given that gains from the transfer of a private residence regardless of the period for which it was held prior to transfer would have been subject to capital gains tax. In addition, gains from the transfer of land whose value is less than KShs.3,000,000 would also have been subject to capital gains tax. This will however not be the case seeing that these exemptions have been retained in the ITA.

First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 40	Deletion of paragraph 40 – Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act.	Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act, will no longer be exempt from tax.
Income Tax Act, First Schedule, Part I, Paragraph 41	Deletion of paragraph 41 – Interest paid on loans granted by the Local Government Loans Authority established by section 3 of the Local Government Loans Act.	Interest paid on loans granted by the Local Government Loans Authority established by section 3 of the Local Government Loans Act will no longer be exempt from tax.

First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 46	Deletion of paragraph 46 – Dividends received by a registered venture capital company, special economic zone enterprises, developers and operators licensed under the Special Economic Zone Act.	Dividends distributed to registered venture capital companies, special economic zone (SEZ) enterprises, developers and operators will no longer be tax exempt. This means that the dividends will be subject to withholding tax.
Income Tax Act, First Schedule, Part I, Paragraph 47	Deletion of paragraph 47 – Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company Provided that the venture company has not been listed in any securities exchange operating in Kenya for a period of more than two years.	Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company, are no longer exempt from tax.
Income Tax Act, First Schedule, Part I, Paragraph 52	Deletion of paragraph 52 – Interest income generated from cashflows passed to the investor in the form of asset-backed securities.	The payers of interest income from asset backed securities will have to withhold tax against the recipients of such interest income going forward.

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First Schedule to the Income Tax Act – Part I

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 55	Deletion of paragraph 55 – Dividends paid by Special Economic Zone enterprise, developers or operators to any non-resident person.	Going forward, SEZ enterprises, developers or operators will have to withhold tax against dividend distributions made to their non-resident shareholders at the revised new rate of 15%.
Income Tax Act, First Schedule, Part I, Paragraph 56	Deletion of paragraph 56 – Compensating tax accruing to a power producer under a power purchase agreement.	Power producers under a power purchase agreement will going forward be subject to the provisions of Section 7A on payment of dividends out of untaxed profits. Compensating tax applies where dividends are distributed out of gains or profits on which no tax has been paid. Where such dividends are distributed, the company distributing them is subjected to tax at the corporate resident rate of tax in the year of income in which the dividends are distributed. Dividend distributions from income that is exempt under the ITA are not subject to compensating tax.

First Schedule to the Income Tax Act – Part II

Part II of the First Schedule provides for securities, the interest on which is exempt from tax. The Tax Laws (Amendment) Act, 2020 has repealed the entire part.

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part II, Paragraph 1	Interest payable to non-resident persons on the following securities – Kenya Government 23/4 per cent Stock 1977/83, Kenya Government 31/2 per cent Stock 1973/78, Kenya Government 41/2 per cent Stock 1971/78, Kenya Government 5 per cent Stock 1978/82, Kenya Government 51/2 per cent Stock 1976/80, Kenya Government 61/2 per cent Stock 1972/74, Kenya Government 6 per cent Loan to finance Development Programme 1957/60, 1960/63, 1980/93, Nairobi City Council 31/4 per cent Stock 1970/74, East African High Commission 4 per cent Stock 1972/74, East African High Commission 4 per cent Stock 1973/76, East African High Commission 5 1/2 per cent Stock 1980/84, East African High Commission 5 per cent International Co-operation Administration Loan 1978, East African High Commission 43/4 per cent International Bank for Reconstruction and Development Loans 1974 (two issues), East African High Commission 53/4 per cent Stock 1977/83.	Interest paid to non-resident persons on the securities listed will be subject to tax going forward.

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First Schedule to the Income Tax Act – Part II

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part II, Paragraph 2	The income of Sceptre Trust Limited accrued in or derived from Kenya from interest payable by the Government at the rate of 61/2 per cent on two loans each of £250,000 made by Sceptre Trust Limited to the Government in 1959 and 1960.	This income will be subject to tax going forward.
Income Tax Act, First Schedule, Part II, Paragraph 3	The income of the International Bank for Reconstruction and Development accrued in or derived from Kenya from interest payable by the Government on a loan to be made in various currencies equivalent to $8,400,000 (eight million four hundred thousand dollars) by the International Bank for Reconstruction and Development to the Government under the terms of loan Agreement No.303 KE dated 29th November 1961, for the purpose of Land Settlement and Development Projects.	
Income Tax Act, First Schedule, Part II, Paragraph 4	The income of the Colonial Development Corporation accrued in or derived from Kenya from interest payable by the Government on a loan of £1,500,000 to be made by the Colonial Development Corporation to the Government under an agreement dated 18th December 1961, for the purpose of Land Settlement and Development Projects.	

First Schedule to the Income Tax Act – Part II

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part II, Paragraph 5	The income of the Life and Casualty Insurance Company of Tennessee, a company incorporated in the United States of America, in so far as that income represents interest accrued in respect of or is derived from a loan of an amount not to exceed an aggregate of US$ 2,100,000 charged on the revenues of the City Council of Nairobi and secured by a document described as a Loan Agreement, dated 1st July, 1969, made between the City Council of Nairobi of the one part and the Loan and Casualty Insurance Company of Tennessee of the other part relating to a project for housing development situated at Kimathi Estate, Nairobi.	This income will be subject to tax going forward.
Income Tax Act, First Schedule, Part II, Paragraph 6	The income of Kreditanstalt fur Wiederaufbau a statutory corporation incorporated in the Federal Republic of Germany in so far as that income represents interest accrued in respect of or derived from a loan of Deutsch Mark 27,257,515 made by that corporation to the Chemelil Sugar Company Limited under the provisions of a document described as a Loan Agreement dated 5th May, 1967, made between Chemelil Sugar Company Limited of the one part and Kreditanstalt fur Wiederaufbau of the other part relating to a loan for the supply of factory equipment for a sugar factory situated at Chemelil.	

First Schedule to the Income Tax Act – Part II

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, First Schedule, Part II, Paragraph 7	The income of SIFIDA INVESTMENT COMPANY S.A., a company incorporated in Luxembourg, in so far as it consists of interest accrued in or derived from Kenya, whether before or after the date of commencement of this Act.	This income will be subject to tax going forward.
Income Tax Act, First Schedule, Part II, Paragraph 8	The income of the Export Development Corporation of Canada in so far as that income represents interest accrued in respect of or derived from a loan of Canadian $3,900,000 under a loan agreement dated 22nd March 1972, between Pan African Paper Mills (East Africa) Limited of the one part and Export Development Corporation of the other part.	This income will be subject to tax going forward.
Income Tax Act, First Schedule, Part II, Paragraph 9	The income of Export-Import Bank of the United States, an agency of the United States of America, in so far as it consists of interest accrued in or derived from Kenya.	This income will be subject to tax going forward.

Amendments to Second Schedule of the Income Tax Act

The most significant change is that the capital allowance classes as previously provided for under the Income Tax Act (ITA) are reclassified into one category, **Investment Allowance**. The Amendments to a very large extent simplify the Second Schedule and we are generally in support of its implementation.

In practice however, it will remain to be seen whether the practical implementation thereof will necessitate increased legislation over time. We anticipate that it will. Our Points to Note on the specific changes are as follows:

Paragraph 1(a) - Capital Expenditure incurred on Buildings

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part I Par.(5)(1)(c) - Industrial Building Allowance (IBA) – 10%. • Part V Par.24(1)(e) - Investment Deduction (ID) - 100%.	Substitution of the provisions of IBA and ID with the following:- (i). Hotel Building - Par. 1(a)(i) – 50% in the first year of use. 25% of the residual value per year on a reducing balance basis. To take advantage of the allowance, the hotel must be licensed.	This amendment will harmonize the previous rates provided for under IBA (10%) and ID (100%) as relating to hotel buildings. Going forward, investment allowance on hotel buildings will be 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

Paragraph 1 (a) - Capital Expenditure incurred on Buildings

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part I Par.5(1)(a)(iii) - 10% IBA. • Par.24(1)(c) - ID on construction of a building - 100%. • Par.24(1)(f) - ID on construction of a building of KShs.200 Million or more outside of Nairobi, Mombasa and Kisumu - 150%.	Substitution of the provisions of IBA and ID with the following:- (ii). Building used for manufacture - 50% in the first year of use. 25% of the residual value per year on a reducing balance basis.	This amendment will harmonize the previous rates provided for under IBA (10%) and ID (100%/150%) as relating to investments made in buildings used for manufacture. Going forward, investment allowance on buildings used for manufacture will be 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

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Paragraph 1 (a) - Capital Expenditure incurred on Buildings

Provision in the Legislation	Amendment	Points to Note
At present there is no capital allowance offered with respect to hospital buildings.	Introduction of investment allowance for hospital buildings:- (iii). Hospital buildings - 50% in the first year of use. 25% of the residual value per year on a reducing balance basis. To take advantage of the allowance, the hospital must be licensed.	Investment allowance on hospital buildings will be 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

Paragraph 1 (a) - Capital Expenditure incurred on Buildings

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part V Par. 24(1)(h)- ID on construction of transportation and storage facilities for petroleum products by Kenya Pipeline. • Part V Par.24C(1) - ID on Construction of LPG Storage Facilities with minimum capital investment of 4 Billion Shillings and minimum storage capacity of 15,000 metric tonnes - 150%.	Substitution of the current provisions with the following – (iv). Petroleum or gas storage facilities - 50% in the first year of use. 25% of the residual value per year on a reducing balance basis.	Previously, the ITA did not provide for capital allowances with respect to the construction of petroleum storage facilities save for where they were constructed by the Kenya Pipeline Company. Investment allowance on petroleum or gas storage facilities will be 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

Please note that subparagraph (a) (v). on the treatment of residual values cuts across the four provisions above and we have integrated it into our Points to Note above.

Paragraph 1 (a) - Capital Expenditure incurred on Buildings

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part I Par.5(1)(e) - IBA at 50% per annum.	Substitution of the provision of IBA with the following: (vi).Educational buildings including stude nt hostels - 10% per year on a reducing balance basis. To take advantage of the allowance, the educational buildings and hostels must be licensed.	Previously, the rate of IBA on educational buildings including student hostels was 50% per annum. Going forward, investment allowance on educational buildings including hostels will be 10% per year on a reducing balance basis.

Paragraph 1 (a) - Capital Expenditure incurred on Buildings

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part I Par.6A(1) - IBA at 25% where social infrastructure has been provided.	Substitution of IBA for a commercial building with the following:- (vii). Commercial Building - 10% per year on a reducing balance basis.	The amendment changes the capital allowance rate on commercial buildings from 25% to 10%. The condition of providing social infrastructure to enable taxpayers to claim CBA is no longer applicable. The definition of a commercial building has also been expanded to include certain items that were initially covered under IBA. Please see the widened definition further below.

Paragraph 1(b) – Capital Expenditure on Machinery

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part V Par.24(1)(b),(d),(dd) - ID at the rate of 100%.	Substitution of the existing provision with the following:- (i) Machinery used for manufacture - 50% in the first year of use. 25% of the residual value per year on a reducing balance basis.	Previously, ID on machinery used for manufacture was 100%. Going forward, investment allowance will apply to machinery used for manufacture at the rate of 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.
Income Tax Act, Second Schedule • Part II Par.7 - Wear and Tear Allowance at the rate of 12.5%.	Substitution of the existing provision with the following:- (ii) Hospital equipment - 50% in the first year of use. 25% of the residual value per year on a reducing balance basis.	Previously, wear and tear allowance at the rate of 12.5% was applicable to hospital equipment. Going forward, investment allowance will apply to hospital equipment at the rate of 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

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Paragraph 1(b) – Capital Expenditure on Machinery

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part II Par.7 - Wear and Tear Allowance at the rates of 12.5% and 25% for ships and aircrafts respectively. • Part IV Par.25 - Shipping Deduction at the rate of 100% for power-driven ship of more than 125 tons gross.	Substitution of the existing provisions with – (iii) Ships or aircrafts - 50% in the first year of use. 25% of the residual value per year on a reducing balance basis.	This amendment will harmonize the current rates provided for under wear and tear allowance (12.5%) and shipping deduction (100%) as relating to investments made in ships. Aircrafts previously enjoyed wear and tear allowance of 25%. Going forward, investment in ships and aircrafts will enjoy investment allowance of 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.
Income Tax Act, Second Schedule • Part II Par.7 at the rate of 25% for motor vehicles and 37.5% for heavy earth moving equipment.	Merging of classes (I) and (III) of machinery under the existing provisions and substituting with:- (v) Motor vehicles and heavy earth moving equipment - 25% per year on a reducing balance basis.	The proposed change has merged classes (I) and (III) of the wear and tear allowance disadvantaging owners of heavy earth moving equipment.

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Please note that sub paragraph (b) (iv). on the treatment of residual values cuts across the three provisions above and we have integrated it into our Points to Note above.

Paragraph 1(b) – Capital Expenditure on Machinery

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part II Par.7 at the rate of 30%.	Reduction of rate of allowance as follows:- (vi) Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines - 25% per year on a reducing balance basis.	The amendment has reduced the rate of the allowance from 30% to 25%.
Income Tax Act, Second Schedule • Part II Par.7 at the rate of 12.5%.	Reduction of rate of allowance as follows:- (vii) Furniture and fittings - 10% per year on a reducing balance basis.	The amendment has reduced the rate of the allowance from 12.5% to 10%.

Paragraph 1(b) – Capital Expenditure on Machinery

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule • Part II Par.7(4). The rate is 20%.	Reduction of rate of allowance as follows:- (viii) Telecommunications Equipment - 10% per year on a reducing balance basis.	The amendment has reduced the rate of the allowance from 20% to 10%.
Income Tax Act, Second Schedule • Part V Par.24(1)(g). The rate is 100%.	Substitution of the current provision with the following:- (ix) Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming - 25% per year on a reducing balance basis.	The amendment has reduced the rate of the allowance from 100% to 25%.
Income Tax Act, Ninth Schedule • Part II Par.(4)(3) - Machinery first used to undertake operations under a prospecting right – 100%.	Substitution with the following provision – (x) Machinery used to undertake operations under a prospecting right - 50% in the first year of use and 25% per year on a reducing balance basis.	Previously, the allowance on machinery first used to undertake operations under a prospecting right was 100%. Going forward, investment allowance will apply to machinery of this nature at the rate of 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

Paragraph 1(b) – Capital Expenditure on Machinery

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Ninth Schedule • Part III Par.(9)(3) - Machinery first used to undertake exploration operations – 100%.	(xi) Machinery used to undertake exploration operations under a mining right - 50% in the first year of use and 25% per year on a reducing balance basis.	Previously, the allowance on machinery first used to undertake exploration operations was 100%. Going forward, investment allowance will apply to machinery of this nature at the rate of 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.
Income Tax Act, Second Schedule • Part II Par.7 at the rate of 12.5%.	Reduction of rate of allowance as follows:- (xii) Other machinery - 10% per year on a reducing balance basis.	The amendment has reduced the rate of the allowance from 12.5% to 10%.

Paragraph 1(c) - Indefeasible Right of Use (IRU) and Paragraph 1 (d) - Farm works

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Section 15(2)(y) - at a rate not exceeding 5% per annum.	Introduction of subparagraph (c) – Purchase or an acquisition of an indefeasible right to use fiber optic cable by a telecommunication operator - 10% per year on a reducing balance basis.	The amendment has increased the allowance rate on the purchase of an IRU in a fiber optic cable by a telecommunication operator from 5% to 10% per year on a reducing balance basis.
Income Tax Act, Second Schedule • Part IV. Par 22(1)(c) at a rate of 100%	Introduction of subparagraph (d) whereby the rate of allowance is substituted as follows:- Farm works - 50% in the first year of use and 25% per year on a reducing balance basis.	The amendment has reduced the rate of farm works deduction from 100% to 50% in the first year of use and 25% of the residual value per year on a reducing balance basis.

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Proviso to Paragraph 1 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Proviso under Part I, Par.1 of the Second Schedule	The proviso to paragraph 1 provides – (a) In the case of change of user of a building, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate.	In the event of a change of user of a building on which an investment allowance has been claimed, the amount available for deduction by the subsequent user will be restricted to the residual value or the unclaimed amount at the applicable rate.
Income Tax Act, Second Schedule, Part IV, Par.5(1)(c) for Hotel and Par.5(1)(e) for Educational Building	The proviso to paragraph 1 provides – (b) Hotel, Educational or Hospital Building to be licensed by the competent authority.	Previously, in order to qualify as a hotel or educational building, both would require certification by the Commissioner. Certification by the KRA will no longer be required and this will be handled by the relevant government authority. In practice however, it is likely that KRA will be involved in the clearance process. The Hospital Building is a new addition introduced by the Act.

Proviso to Paragraph 1 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule, Part IV, Paragraph 24(3)(e) -	The proposed proviso defines a building used for manufacture- (c) Definition of “building used for manufacture” includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;	Under the repealed Schedule, a building was defined to include any building structure and where the building was used for the purposes of manufacture it included the civil works and structures deemed to be part of an industrial building. The provision offers clarity as to what expenditure will be acceptable as forming part of a building used for manufacture under the new Schedule.

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Proviso to Paragraph 1 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule, Part I, Paragraph 6A(2) -	The proviso to paragraph 1 provides – (d) “commercial building” includes— (i) a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or (ii) civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;	Under the repealed Schedule, a commercial building was defined to include a building for use as an office, shop or showroom but did not include a building which qualified for deduction under any other paragraph or a building excluded for industrial building deduction under the Schedule. In addition, the repealed Schedule distinguished between an "industrial building" and "commercial building". The amendment has combined various components of the two definitions into one definition for a commercial building and eliminates ambiguity.

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Proviso to Paragraph 1 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule, Part V, Paragraph 24(3)(e)	Substitution of the existing provision with the following:- (e) "machinery used for manufacture" means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes— (i) generation, transformation and distribution of electricity; ii) clean-up and disposal of effluents and other waste products; (iii) reduction of environmental damage; (iv) water supply or disposal; (v) maintenance of the machinery; or (vi) scientific research and development;	Under the repealed Schedule, "machinery" was defined as equipment used directly in the process of manufacture, and included machinery and equipment used for the following ancillary purposes - (i) generation, transformation and distribution of electricity; (ii) clean-up and disposal of effluents and other waste products; (iii) reduction of environmental damage; and (iv) water supply or disposal; (v) workshop machinery for the maintenance of machinery. The amendment has provided some clarity to the definition of machinery. It is worth noting that the amendment has excluded equipment from its definition.

Proviso to Paragraph 1 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Part V, Paragraph 24(3)(e) -	The proviso to paragraph 1 provides – (f)“manufacture” means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity;	Under the repealed Schedule, manufacture was defined as the making (including packaging) of goods or materials from raw or partly manufactured materials or other goods or the generation of electrical energy for supply to the national grid or the transformation and distribution of electricity through the national grid but did not extend to any activities which are ancillary to manufacture, such as design, storage, transport or administration. The definition has remained the same with a clean up on the wording of the definition.

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Paragraphs 2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule Part I, Paragraph 3 under IBA and Part II. Par 8 under W&T which deal with ascertainment of residue expenditure and ascertainment of residue written down value respectively.	**2. Calculation of written down or residual value.** The written down or residual value of each item referred to in Paragraph 1 shall be calculated separately and shall be the balance of capital expenditure taking into account the sale of the item after deducting investment allowance.	The amendment will harmonize the treatment of residue balances/values for all capital expenditure granted an Investment Allowance pursuant to the amendments introduced by the Act.
Income Tax Act, Second Schedule, Part II, Paragraph 8 which deals with ascertainment of written down value and determination of a trading receipt or loss.	**3. Treatment of excess or deficit of realised amounts.** Where the amount realised from the sale of an item referred to in Paragraph 1 exceeds the written down or residual value, the excess shall be treated as a trading receipt or, conversely, a trading loss for the year of income.	If the amount realized from the sale of an item that qualifies for investment allowance exceeds its written down/residual value, the excess amount will be treated as a trading receipt. If the sale results in a loss, the deficit will be treated as a trading loss.

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Paragraphs 2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule Part II Par.11 (1) under W&T. However, in the current schedule the balancing charges and deductions are specific to machinery.	**4. Balancing charge or deduction on cessation of business.** (1) Where an investment allowance has been deducted under paragraph 1 in computing the gains or profits of a person and that person ceases to carry on business for the purposes of which the item was used and the item ceases to be owned by him, a balancing charge or balancing deduction shall be made or allowed for the year of income in which he ceased to carry on business. (2) Where the person referred to in subparagraph (1) is a partnership, the person shall be deemed to have ceased to carry on business only when all the partners cease to carry on that business. (3) Where the items are sold by a liquidator of a company, the balancing charge or balancing deduction shall be made or allowed in the year of income in which the winding up commenced.	The amendment standardizes treatment of balancing charges and deductions to all qualifying capital expenditure. This will allow for uniform treatment of the assets upon cessation of business.

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Paragraphs 2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule Part II Par.11 (1) under W&T. However, in the current schedule the balancing charges and deductions are specific to machinery.	**4. Balancing charge or deduction on cessation of business.** (4) Where on cessation of a business, a balancing charge or balancing deduction is to be made or allowed under this paragraph and— (a) the consideration received exceeds the residual value at the time of cessation, the balancing charge shall be the excess amount or, where the residual value is nil, the consideration received; or (b) a consideration is not received by the person who owns the items, or the residual value at the time of the cessation exceeds the consideration received, the balancing deduction shall be the residual value at the time of cessation, or the excess thereof over the consideration received.	The amendment standardizes treatment of balancing charges and deductions to all qualifying capital expenditure. This will allow for uniform treatment of the assets upon cessation of business.

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Paragraphs 2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule, Part II, Paragraph 8(2) Subject to this Part, where machinery is brought into use for the purposes of a trade without being purchased or ceases permanently to be so used without being sold, it shall be deemed to have been purchased or sold as the case may be and the cost or amount realised shall be deemed to be the price which it would have fetched if sold in the open market.	**5. Determination of market value of items used in a business.** Where an item is brought into use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or amount realized shall be deemed to be the market value.	Under the repealed Schedule, this provision was specific to machinery and has been broadened to apply generally to items that meet the criteria in the provision.

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Paragraphs 2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule, Part II, Paragraph 15 deals with restriction of capital expenditure on private vehicles . It provides that capital expenditure on private motor vehicles be restricted to two million shillings.	**6. Restriction on capital expenditure on motor vehicles.** (1) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle, other than a commercial vehicle, that capital expenditure shall be restricted to three million shillings. (2) Where the motor vehicle referred to in subparagraph (1) is sold, the sale price shall be deemed to be the proportion of the proceeds of sale, having regard to the original purchase price and three million shillings.	The amendment increases the amount under the restriction on capital expenditure on motor vehicles from KShs.2 Million to KShs.3 Million.

Paragraphs 2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule , Part I Paragraph 6(2) under IBA, Part V Paragraph 24(3)(c) under ID	**7. Limitation on capital expenditure on buildings.** Capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, land.	The exclusion of expenditure on acquisition of, or of rights in or over land, for capital allowances (investment allowance) has been retained.
Income Tax Act, Second Schedule Part V, Paragraph 24(3)(a) under ID and Part I, Paragraph 5(4) under IBA	**8. Ascertainment of capital expenditure on buildings.** (1) Where a building is used partly for purposes other than the purposes specified in Paragraph 1, the capital expenditure on which the deduction in respect of the building is calculated shall be the expenditure attributable to that portion of the building which is used for those purposes, but where the expenditure attributable exceeds ninety per cent of the total expenditure incurred on the construction of the building the whole building shall be treated as used for the specified purposes.	This provision has been retained under the Schedule without any substantive amendment.

Par.2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Second Schedule Part V, Paragraph 24(3)(b) under ID	**8.Ascertainment of capital expenditure on buildings. (continuation)** (2) Where an existing building is extended by further construction, the extension shall be treated as a separate building.	This provision has been retained under the Schedule without any substantive amendment.
Income Tax Act, Second Schedule , Part V Paragraph 24(3)(d) under ID and Part I. Paragraph 4(1)(a) under IBA	(3) Where capital expenditure is incurred on the construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.	The amendment clarifies that a seller is not entitled to a deduction when a building is sold.
Income Tax Act, Second Schedule Part V Paragraph 24(3)(d)(ii) under ID and Part (1).Paragraph 4(1)(b) under IBA	(4) Where a person purchases the building referred to in subparagraph (3), that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the amount paid by him, whichever is lesser.	This provision has been retained under the Schedule without any substantive amendment.

Par.2 to 9 of the Second Schedule

Provision in the Legislation	Amendment	Points to Note
Part V Par 24(3)(d) the proviso under ID and for IBA, the proviso under Part (1).Par 4(1)(b)	**8. Ascertainment of capital expenditure on buildings. (continuation)** (5) Where the building referred to in subparagraph (3) is sold more than once before it is used, subparagraph (4) shall apply but only in relation to the last sale.	This provision has been retained under the Schedule without any substantive amendment.
Part I. Par 4(2) under IBA	(6) Where a building referred to in subparagraph (3) is sold by a person carrying on a business of construction for sale, the qualifying capital expenditure shall be the price paid on the sale.	This provision has been retained under the Schedule without any substantive amendment.
No provision under the existing Legislation	**9. Expenditure incurred for a person.** Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.	The amendment disqualifies any entity that incurs expenditure on behalf of another from claiming Investment Allowance.

Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head A, Paragraph 1 -	Delete the words "sixteen thousand eight and ninety-six" appearing in paragraph 1 and substitute therefor the words "twenty-eight thousand eight hundred".	The personal relief, aimed at providing a shield to PAYE tax, has been increased from KShs.16,896 to KShs.28,800.
Income Tax Act, Third Schedule, Head B, Paragraph 1 - 10% On the first Shs.147,580 15% On the next Shs.139,043 20% On the next Shs.139,043 25% On the next Shs.139,043 30% on all income over Shs.564,709	Deleting item 1 and 1 A of Head B (Rates of Tax) and substituting therefor the following new items — 1. The individual rates of tax shall be - 10% on the first Shs.288,000 15% on the next Shs.200,000 20% on the next Shs.200,000 25% on all income above Shs.688,000	The personal income tax brackets have been expanded and the maximum tax rate has been reduced from 30% to 25%. These measures coupled with the increase of personal relief will ease the tax burden on individual taxpayers and shield low income earners of KShs.24,000 or less who will no longer suffer PAYE tax on their income.
Income Tax Act, Third Schedule, Head B, Paragraph 1A - 10% On the first Shs.147,580 15% On the next Shs.139,043 20% On the next Shs.139,043 25% On the next Shs.139,043 30% on all income over Shs.564,709	1A. The wife's employment, wife's professional and wife's self-employment income rates of tax shall be - 10% on the first Shs.288,000 15% on the next Shs.200,000 20% on the next Shs.200,000 25% on all income above Shs.688,000	

Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 2(a)	Insertion of the following new item (viii) immediately after item (vii)– (viii) For the year of income 2020 and each subsequent year of income. 5.00	Corporation tax for the year of income 2020 and subsequent years will be chargeable at the reduced rate of 25%.
Income Tax Act, Third Schedule, Head B, Paragraph 2(c)	Deletion of Paragraph 2(c) which provides – In the case of a company newly listed on any securities exchange approved under the Capital Markets Act with at least twenty percent of its issued share capital listed, twenty seven percent for the period of three years commencing immediately after the year of income following the date of such listing.	The amendment repeals the reduced rates of corporation tax for listed companies with at least 20% of their share capital listed. The new rate of corporation tax will be more favourable for such listed companies given that they previously enjoyed a reduced corporation tax rate of 27% .

Third Schedule to the Income Tax Act

Provision of the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 2(d)	Deletion of Paragraph 2(d) which provides – In the case of a company newly listed on any securities exchange approved under the Capital Markets Act with at least thirty percent of its issued share capital listed, twenty five percent for the period of five years commencing immediately after the year of income following the date of such listing.	The amendment repeals the reduced rates of corporation tax for listed companies with at least 30% of their issued share capital listed. This standardizes the corporation tax rate and therefore renders this provision unnecessary.
Income Tax Act, Third Schedule, Head B, Paragraph 2(e)	Deletions of Paragraph 2(e) which provides – In the case of a company newly listed on any securities exchange approved under the Capital Markets Act which has at least forty percent of its issued share capital listed, twenty percent for the period of five years commencing immediately after the year of income following the date of such listing.	The amendment repeals the reduced rates of corporation tax for listed companies with at least 40% of their issued share capital listed. The new rate of corporation tax is unfavourable to such newly listed companies given that they enjoyed a reduced rate of 20% corporation under the repealed provision.

Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 2(g)(i)	Deletion of Paragraph 2(g)(i) which provides – In the case of a company introducing its shares through listing or any securities exchange via introduction, twenty-five percent for the period of five years commencing immediately after the year of income following the date of such listing.	The amendment repeals the reduced rate of corporation tax for companies introducing their shares through listing on any securities exchange via introduction and harmonizes the corporation rate of tax at 25% rendering the provision unnecessary.
Income Tax Act, Third Schedule, Head B, Paragraph 2(k)	Deletion of Paragraph 2(k) which provides - In the case of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be to the extent provided in the arrangement.	The amendment repeals this provision. This provision gives validity to tax rates agreed under special operating framework arrangements (SOFA) on the income of companies engaging in business with the Government under such contracts.

Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 2(l)	Deletion of Paragraph 2(l) which provides – In the case of a company operating a plastics recycling plant, fifteen percent for the first five years from the year of commencement of its operations.	The Act deletes this incentive for plastic recycling plants. Going forward a company operating a plastics recycling plant will be subject to the 25% corporation rate of tax.
Income Tax Act, Third Schedule, Head B, Paragraph 2	Insert a new subparagraph after subparagraph (a) as follows— (m) in respect of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax specified in the Agreement shall continue to apply for the unexpired period as provided under the Agreement.	This provision is intended to be a transition provision for projects that had already started engaging in business under SOFA. For such companies, the rate of tax specified in the agreements will continue to apply for the remaining term of the contract.

Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 3(d)	Delete the word “ten” and substitute therefor the word “fifteen”.	The withholding tax on dividend distribution to non-residents will increase from 10% to 15%.
Income Tax Act, Third Schedule, Head B, Paragraph 3(p)	Insert the words “or reinsurance” immediately after the word “insurance”.	Both insurance and reinsurance premiums payable to a non-resident will be subject to withholding tax at the rate of 5%.
Income Tax Act, Third Schedule, Head B, Paragraph 3	Insertion of a new sub-paragraph after subparagraph (p)— (q) in the case of sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services) twenty percent of the gross amount. Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens.	Payments made to non-residents without PEs in Kenya with respect to sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services) will be subject to withholding tax at 20%. The WHT rate of 20% will not apply to East African Community citizens with respect to transportation of goods.

Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 5(d)(i); 10% on the first Shs.400,000 15% on the next Shs.400,000 20% on the next Shs.400,000 25% on the next Shs.400,000 30% on any amount above Shs.1,600,000 of the amount in excess of the tax-free amount	Delete the tabulation of rates and income bands at the end and substitute therefor the following new rates and income bands– 10% on the first Shs.400,000 15% on the next Shs.400,000 20% on the next Shs.400,000 25% on any amount above Shs. 1,200,000 of the amount in excess of the tax-free amount	The widening of the tax brackets and reduction in the maximum effective tax rate will ease the tax burden on retirees. The purpose of the changes is to align the rates with the earlier amendments i.e. reduction of the upper tax rate from 30% to 25% and increase in the individual income tax thresholds.
Income Tax Act, Third Schedule, Head B, Paragraph 5(d)(ii) 10% on the first Shs.147,580 15% on the next Shs.139,043 20% on the next Shs.139,043 25% on the next Shs.139,043 30% on all income over Shs.564,709	Delete the tabulation of rates and income bands at the end and substitute therefor the following new rates and income bands- 10% on the first Shs.288,000 15% On the next Shs.200,000 20% on the next Shs.200,000 25% on all income above Shs.688,000	

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Third Schedule to the Income Tax Act

Provision in the Legislation	Amendment	Points to Note
Income Tax Act, Third Schedule, Head B, Paragraph 5(d)(iii)	Deleting the words “thirty percent” and substitute therefor the words “twenty five percent”.	Previously the rate of tax on surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds was 30% of the gross sum payable. This has been reduced to 25% to ease the tax burden on retirees.
Income Tax Act, Third Schedule, Head B, Paragraph 9	Delete the words “three percent” and substitute therefor the words “one percent”.	The turnover tax rate has been reduced from 3% to 1% on the gross receipts of the business of a taxable resident person.

VALUE ADDED TAX (VAT)

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Section 5(2)	Deletion of the proviso to paragraph (aa) – in the case of goods listed in section B of Part I of the First Schedule, eight percent of the taxable value, effective from the date of assent: Provided that— (i) the taxable value in respect of these goods shall exclude excise duty, fees and other charges; and (ii) despite section 1 of the Finance Act, 2018, this paragraph comes into effect upon enactment of the Supplementary Appropriation (No.2) Act, 2018.	Going forward, the taxable value of goods listed in Section B of Part I of the First Schedule shall not exclude excise duty, fees and other charges.
Value Added Tax Act, Section 16(1)	Delete proviso and substitute therefor the following new proviso- Provided that a credit note may be issued: (a) only within six months after the issue of the relevant tax invoice; or (b) where there is a commercial dispute in court with regard to the price payable, within thirty days after the determination of the matter.	The amendment provides for the period within which a credit note may be issued in the circumstance that there is a court matter relating to the determination of the price payable on the relevant tax invoice. Going forward, a credit note may only be issued within six months of the issuance of a tax invoice or within 30 days of a commercial dispute in court over the price payable being determined.

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Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Section 31(1)	Delete the word “five” appearing in the proviso and substitute therefor the word “four”.	Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may refund the tax. An application for a refund under this section cannot be made after the expiry of four years from the date of the supply. The amendment shortens the period to which a refund for tax on bad debts can be made from five years to four years from the date of the supply.

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Section 43(1)	Delete the words “Every registered” appearing in subsection (1) and substituting therefor the article “A”.	Prior to the amendment, the VAT Act only required persons registered for VAT to keep records of every transaction made for a period of five years from the date of the last entry made. The amendment extends this requirement to all taxpayers whether they are registered or unregistered for VAT. It should be noted that the Tax Procedures Act already requires all taxpayers to keep records.

Newly Standard Rated Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I - Exempt Goods	Deletion of the following items from the First Schedule – ▪ **Paragraph 27 -** Plant and Machinery of chapter 84 and 85 used for the manufacture of goods. ▪ **Paragraph 29 -** Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy. ▪ **Paragraph 30 -** Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be.	The items listed will now be standard rated for VAT purposes at 14%.

Newly Standard Rated Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I - Exempt Goods	Deletion of the following items from the First Schedule – ▪ **Paragraph 30A -** Taxable supplies, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas. ▪ **Paragraph 52 -** Plastic bag biogas digesters. ▪ **Paragraph 52A -** Biogas. ▪ **Paragraph 52B -** Leasing of biogas producing equipment. ▪ **Paragraph 53 -** Parts imported or purchased locally for the assembly of computer, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology. ▪ **Paragraph 55 -** Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.	The items listed will now be standard rated for VAT purposes at 14%.

Newly Standard Rated Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I - Exempt Goods	Deletion of the following items from the First Schedule – ▪ **Paragraph 60 -** Museum and natural history exhibits and specimens and scientific equipment for public museums. ▪ **Paragraph 61 -** Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya. ▪ **Paragraph 88 -** Goods falling under tariff number 4907.00.90. ▪ **Paragraph 93 -** Materials and equipment for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture. ▪ **Paragraph 94 -** The transfer of business as a going concern by a registered person to another registered person ▪ **Paragraph 97 -** Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department. ▪ **Paragraph 102 -** Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government.	The items listed will now be standard rated for VAT purposes at 14%.

Newly Exempt Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I, Paragraph 39(3) - Exempt Goods	Insert the following new items in their proper numerical sequence— ▪ 3002.20.00 Vaccines for human medicine. ▪ 3002.30.00 Vaccines for veterinary medicine. ▪ 3003.10.00 Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycin or their derivatives. ▪ 3003.39.00 Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale. ▪ 3003.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale. ▪ 3003.90.00 Other. ▪ 3003.90.10 Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale. ▪ 3003.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.	Previously the supply of medicaments of various headings as well as the supply of vaccines were treated as zero rated supplies under Part C of the Second Schedule (now repealed). Going forward, these items will be exempt from VAT and suppliers of the same will no longer charge VAT. The effect is that the input VAT incurred by suppliers on purchases made for purposes of making these supplies will be a cost to them.

Newly Exempt Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I, Paragraph 39(3) - Exempt Goods	Insert the following new items in their proper numerical sequence—(continuation) ▪ 3004.10.00 Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale. ▪ 3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale. ▪ 3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale. ▪ 3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale. ▪ 3004.41.00 Containing ephedrine or its salts. ▪ 3004.42.00 Containing pseudoephedrine (INN) or its salts. ▪ 3004.49.00 Other. ▪ 3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.	Previously the supply of medicaments of various headings as well as the supply of vaccines were treated as zero rated supplies under Part C of the Second Schedule (now repealed). Going forward, these items will be exempt from VAT and suppliers of the same will no longer charge VAT. The effect is that the input VAT incurred by suppliers on purchases made for purposes of making these supplies will be a cost to them.

Newly Exempt Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I, Paragraph 39(3) - Exempt Goods	Insert the following new items in their proper numerical sequence— (continuation) ▪ 3004.90.00 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale. ▪ 3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.	Previously the supply of medicaments of various headings as well as the supply of vaccines were treated as zero rated supplies under Part C of the Second Schedule (now repealed). Going forward, these items will be exempt from VAT and suppliers of the same will no longer charge VAT. The effect is that the input VAT incurred by suppliers on purchases made for purposes of making these supplies will be a cost to them.
Value Added Tax Act, First Schedule, Section A, Part I, Paragraph 96A - Exempt Goods	Insert the following new paragraph immediately after paragraph 96— 96A. Personal protective equipment, including facemasks, for use by medical personnel in registered hospitals and clinics, or by members of the public in the case of a pandemic or notifiable infectious disease.	It should be noted that personal, protective equipment such as facemasks is an additional item that was not present in the Bill.

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Newly Exempt Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part II, Exempt Services	Delete and substitute therefor the following new paragraph — 10. Tea and coffee brokerage services.	Previously the deleted paragraph exempted the supply of the following services: insurance agency, insurance brokerage, securities brokerage services and tea and coffee brokerage services. Under the amendment, only tea and coffee brokerage services will be exempt supplies meaning that VAT will be chargeable on the supply of the other services listed above at the rate of 14%.

Newly Standard Rated Supplies

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, First Schedule, Part II - Exempt Services	Deletion of the following items in Part II of the First Schedule ▪ **Paragraph 10 -** Insurance agency, insurance brokerage, securities brokerage services. ▪ **Paragraph 22 -** Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury. ▪ **Paragraph 28 -** Taxable services procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas. ▪ **Paragraph 30 -** Asset transfers and other transactions related to the transfer of assets into real estate investment trusts and asset backed securities. ▪ **Paragraph 31 -** Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.	The items listed will now be standard rated for VAT purposes at 14%.

Repeal of Second Schedule, Part C

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Second Schedule, Part C -	Repeal of Part C which provides for the zero rating of the supply of medicaments of various HS Codes including – ▪ 3004.10.00 Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale. ▪ 3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale. ▪ 3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale. ▪ 3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale. ▪ 3004.41.00 Containing ephedrine or its salts. ▪ 3004.42.00 Containing pseudoephedrine (INN) or its salts. ▪ 3004.49.00 Other. ▪ 3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.	The supply of these medicaments is now included in Part I of the First Schedule to the VAT Act. Going forward, their supply or importation will be exempt.

Repeal of Second Schedule, Part C

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Second Schedule, Part C -	Repeal of Part C which provides for the zero rating of the supply of medicaments of various HS Codes including – ▪ 3004.10.00 Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale. ▪ 3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale. ▪ 3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale. ▪ 3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale. ▪ 3004.41.00 Containing ephedrine or its salts. ▪ 3004.42.00 Containing pseudoephedrine (INN) or its salts. ▪ 3004.49.00 Other. ▪ 3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.	The supply of these medicaments is now included in Part I of the First Schedule to the VAT Act. Going forward, their supply or importation will be exempt.

Repeal of Second Schedule, Part C

Provision in the Legislation	Amendment	Points to Note
Value Added Tax Act, Second Schedule, Part C -	Repeal of Part C which provides for the zero rating of the supply of medicaments of various HS Codes including – • 3004.90.00 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale. • 3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.	The supply of these medicaments is now included in Part I of the First Schedule to the VAT Act. Going forward, their supply or importation will be exempt.
	• 3003.20.00	This tariff number has been repealed as it does not appear as part of the newly exempted provisions.

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EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
The Excise Duty Act, First Schedule, Part III - Interpretation of Schedule	Delete the words “licensed financial institutions” appearing in the definition of the term "other fees" and substituting therefor the words “licensed activities”.	Excise duty will be applicable on fees, charges and commissions charged by financial institutions in relation to their licensed activities.
The Excise Duty Act, Second Schedule, Part A - Exempt Excisable Goods	Deletion of paragraph 13 – Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.	Going forward goods imported or locally purchased for use in the implementation of SOFA projects with the Government will be excisable.

Provision in the Legislation	Amendment	Points to Note
The Excise Duty Act, Second Schedule, Part A - Exempt Excisable Goods	Deletion of paragraph 14 – 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 or her spouse and which is not exempted from excise duty under item 6 of Part A of the Second Schedule: Provided that the exemption under this item shall not apply— (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) a state officer.	Going forward personal motor vehicles under this paragraph will be excisable.

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TAX PROCEDURES ACT

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Provision in the Legislation	Amendment	Points to Note
Tax Procedures Act, Section 65(3) -	Delete the words “forty five” appearing before the word “days” and substitute therefor the word “sixty”.	This Amendment extends the period within which the Commissioner is mandated to issue a private ruling to an applicant from forty five days to sixty days. Under the Bill, the proposed amendment sought to delete the provision in its entirety.

Provision in the Legislation	Amendment	Points to Note
Tax Procedures Act, Section 69	Repeal of section 69 which currently provides as follows: - (1) The Commissioner shall publish a ruling made under section 67 in at least two daily newspapers with a national circulation except that the identity of the applicant to whom the ruling relates shall not be published. (2) Subject to subsection (3), any person may rely upon a ruling published under subsection (1) as a statement binding on the Commissioner with respect to the application of the relevant tax law to the facts set out in the ruling and for the reporting period covered by the ruling. (3) When a ruling has been withdrawn in accordance with section 68, the Commissioner shall immediately publish a notice of withdrawal in at least two daily newspapers with a national circulation that shall state that the ruling shall cease to be binding from the date the notice is published.	The amendment eliminates the requirement for the Commissioner to publish private rulings in the local dailies.
Tax Procedures Act, Section 83(1)(b) -	Delete the words "five thousand shillings" appearing in paragraph (b) and substitute therefor the words "one thousand shillings".	The amendment reduces the late submission penalty payable with respect to a return required to be submitted under turnover tax from KShs.5,000 to KShs.1,000.

MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Miscellaneous Fees and Levies Act, Section 7(2A) - (Import Declaration Fee (IDF))	Deletion of paragraph (a) which provides – raw materials and intermediate products imported by approved manufacturers.	IDF of 3.5% shall be charged on the customs value of raw materials and intermediate products imported by approved manufacturers. These raw materials and intermediate products will no longer be eligible for the favourable rate of 1.5%.
Miscellaneous Fees and Levies Act, Section 8(3) (Railway Development Levy (RDL))	Insert the words “and operation” immediately after the word “construction”.	RDL is a source of funds for the construction of the standard gauge railway (SGR). The amendment broadens the use of the RDL to fund both the construction and operation of the SGR. It should be noted that this provision was initially not included in the Bill.

Provision in the Legislation	Amendment	Points to Note
Miscellaneous Fees and Levies Act, Section 8B - Processing fees on duty free motor vehicles	Insert the following new section immediately after section 8A – 8B.(1) There shall be a fee to be known as the processing fee on all motor vehicles excluding motorcycles imported or purchased duty free prior to clearance through customs under the Fifth Schedule to the East African Community Customs Management Act, 2004. (2) The fee shall be Kenya shillings ten thousand applicable to all motor vehicles excluding motorcycles imported or purchased duty free specified in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of Part A, and paragraph 3 and 5 of Part B under the Fifth Schedule to the East African Community Customs Management Act, 2004.	The amendment introduces a processing fee of KShs.10,000 on all motor vehicles (excluding motorcycles) imported or purchased duty free prior to clearance through customs.

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Provision in the Legislation	Amendment	Points to Note
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (viii) - (IDF Exemption)	Deletion of paragraph (viii) – gifts or donations, excluding motor vehicles, by foreign residents to their relatives in Kenya for their personal use.	This will widen the scope of IDF collection given that IDF will be chargeable on such gifts or donations.
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (ix) - (IDF Exemption)	Deletion of paragraph (ix) – samples which in the opinion of the Commissioner have no commercial value.	This will widen the scope for IDF collection.
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (xxi) - (IDF Exemption)	Deletion of paragraph (xxi) – raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa as approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for matters relating to Industrialisation.	Raw materials for direct and exclusive use in the construction of industrial parks of 100 acres or more located outside Nairobi and Mombasa will be subject to IDF.
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (xxia) - (IDF Exemption)	Deletion of paragraph (xxia) – goods imported for the construction of liquefied petroleum gas storage facilities as approved by the Cabinet Secretary responsible for liquefied petroleum gas.	Goods imported for the construction of liquefied petroleum gas storage facilities will be subject to IDF.

Provision in the Legislation	Amendment	Points to Note
Miscellaneous Fees and Levies Act – Second Schedule, Part B, Paragraph (v) - (RDL Exemption)	Deletion of paragraph (v) – raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa as approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for matters relating to Industrialisation.	Raw materials for direct and exclusive use in the construction of industrial parks of 100 acres or more located outside Nairobi and Mombasa will be subject to RDL.
Miscellaneous Fees and Levies Act – Second Schedule, Part B, Paragraph (va) - (RDL Exemption)	Deletion of paragraph (va) – goods imported for the construction of liquefied petroleum gas storage facilities as approved by the Cabinet Secretary responsible for liquefied petroleum gas.	Goods imported for the construction of liquefied petroleum gas storage facilities will be subject to RDL.
Miscellaneous Fees and Levies Act – Second Schedule, Part B, Paragraph (vii) - (RDL Exemption)	Deletion of paragraph (vii) – goods imported for implementation of projects under a special operating framework arrangement with the Government.	The amendment imposes RDL on goods imported for implementation of SOFA projects with the Government.

KENYA REVENUE AUTHORTY (KRA) ACT

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Provision in the Legislation	Amendment	Points to Note
KRA Act – Section 5A(2)	Inclusion of the following paragraph after paragraph (b) in section 5A(2) - (c) in the case of information not specified in paragraph (a) and (b) leading to the enforcement of the tax laws, five hundred thousand shillings.	The law provides incentives where information provided results in identification and recovery of duties or taxes. This amendment will reward informants who provide information that leads to the enforcement of tax laws. The reward is KShs.500,000.
KRA Act – Section 15A	Insert the following new section immediately after section 15 – 15A. (1) The Commissioner may appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement. (2) Any person appointed under this section shall be required to transfer the funds to the designated Central Bank accounts within two days following the date of collection. (3) A person who fails to transfer the funds in accordance with the provisions of sub-section (2) shall be liable to a penalty equivalent to two per cent of the revenue collections not transferred and shall be compounded for every other day on the amount of revenue that is not transferred. (4) The penalty under sub-section (3) shall be treated as a tax debt due to the government and the enforcement measures for collection and recovery of tax shall apply.	This amendment gives the Commissioner power to appoint persons registered under the Banking Act as agents for revenue banking and seeks to impose a penalty (2% of the revenue collection delayed) in the event of remittance delays to designated Central Bank accounts. The amendment under the Bill was initially provided for as an amendment to the Tax Procedures Act.

RETIREMENT BENEFITS ACT (RBA)

Provision in the Legislation	Amendment	Points to Note
Retirement Benefits Act, Section 38(1A)	Insert the words “or to purchase a residential house” immediately after the word “mortgage loan”.	At present this provision enables a member of a scheme to apportion their benefits towards securing a mortgage loan. This amendment expands the use of these benefits towards the purchase of a residential house by a member. This amendment was not included in the Bill.

PROPOSED AMENDMENTS EXCLUDED FROM THE TAX LAWS (AMENDMENT) ACT, 2020

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

- **A number of the amendments previously proposed by the Tax Laws (Amendment) Bill, 2020 were excluded from the Tax Laws (Amendment) 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.**

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, section 15(2)	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).	This expenditure will remain deductible in the computation of the taxable profits.
	Deletion of subsection (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.	This expenditure will remain deductible in the computation of the taxable profits.
	Deletion of subsection (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.	This expenditure will remain deductible in the computation of the taxable profits.
	Deletion of subsection (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.	This expenditure will remain deductible in the computation of the taxable profits.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, Section 15(2)	Deletion of paragraph (v) – club subscriptions paid by an employer on behalf of an employee.	This expenditure will remain deductible in the computation of the taxable profits.
	Deletion of subsection (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.	This expenditure will remain deductible in the computation of the taxable profits.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, Section 22C	Delete the entire section – (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). (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. 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. (3) All deposits made under a registered home ownership savings plan shall be held in an account with an approved institution. (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;	Deposit of funds with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month will be an allowable expense in the computation of taxable income. The proposed amendment would have disallowed the deduction of such amounts in the computation of taxable income.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, Section 22C	Delete the entire section (continuation) - (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. (6) A transfer made under subsection (5) shall not be considered as a withdrawal under section 3(2)(c). (7) A registered home ownership savings plan shall be operated in such manner as may be prescribed. (8) For the purposes of this section and section 8 -"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).	Deposit of funds with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month will be an allowable expense in the computation of taxable income. The proposed amendment would have disallowed the deduction of such amounts in the computation of taxable income.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, Section 22C	Delete the entire section (continuation) - "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; "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; "qualifying year" means the year in which the depositor first makes deposits under a registered home ownership savings plan.	Deposit of funds with a registered home ownership savings plan of up to KShs.96,000 per year or KShs.8,000 in each month will be an allowable expense in the computation of taxable income. The proposed amendment would have disallowed the deduction of such amounts in the computation of taxable income.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 22	Deletion of paragraph 22 – That part of the income of an officer of the Government or of the Community accrued in or derived from Kenya which consists of foreign allowances paid to that officer from public funds in respect of his office: Provided that, where a person to whom an allowance is paid is granted a deduction under section 15 in respect of expenditure incurred in relation to an activity for which the allowance is paid, then the exemption conferred by this paragraph shall not apply to so much of that allowance as is equal to the amount of that deduction.	The provision will be retained in the First Schedule. Foreign allowances payable to an officer of the Government or the East African Community earned in Kenya and payable from public funds will remain exempt from tax.
Income Tax Act, First Schedule, Part I, Paragraph 35	Deletion of paragraph 35 – Interest on a savings account held with the Kenya Post Office Savings Bank.	The provision will be retained in the First Schedule. The interest will therefore remain tax exempt.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 36	Deletion of the current provision and substitution with: Such part of the income of an individual, chargeable to tax under section 3(2)(f) as consists of a gain derived from the transfer of property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing: Provided that where there is a court case regarding such estate, the period of transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.	Under the Bill, the proposed amendment would have resulted in the following:- • (c) The private residence exemption from capital gains tax would have been deleted (an exemption is provided under this paragraph for private residencies occupied continuously for a three (3) year period). • (d) Gains from the transfer of property (being land) where the transfer value is not more than KShs.3 Million would no longer be exempted from capital gains tax. • (f) The proposed substitution would have effectively meant that only gains from the transfer of property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person would have remained exempt from CGT under this provision. Paragraph 36 (a), (b) and (e) have been deleted as discussed above. The foregoing provisions being (c), (d) and (f) have been retained and will continue to enjoy capital gains tax exemption.

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

Provision in the Legislation	Proposed 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.	This income will remain exempt from tax.
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.	This income will remain exempt from tax.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Income Tax Act, First Schedule, Part I, Paragraph 50	Deletion of paragraph 50 – (1) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner. (2) For the purposes of this paragraph, "pooled fund" has the meaning assigned to it under the Retirement Benefit Act, 1997.	Investment income of a pooled fund or other kind of investment consisting of retirement schemes will remain exempt from tax. .
Income Tax Act, First Schedule, Part I, Paragraph 51	Deletion of paragraph 51 – Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services.	Interest paid on infrastructure bonds will remain exempt from tax.

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

Provision in the Legislation	Proposed Amendment	Points to Note
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.	Pension payable to persons above 65 years of age under the proposed amendment will remain tax exempt.
Income Tax Act, First Schedule, Part I, Paragraph 60	Deletion of paragraph 60 – Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines.	Interest income from the sources listed will remain exempt.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Value Added Tax Act, Section 2	Definition of ordinary bread – "ordinary bread" means bread containing only the following ingredients; wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water.	The proposed amendment would have clarified what qualifies as ordinary bread. The amendment was however excluded from the Act. It should also be noted that the supply of ordinary bread will remain a zero rated supply under the Second Schedule to the VAT Act.
Value Added Tax Act, First Schedule, Part I -	Insertion of the following new paragraph after paragraph 21 – 21A. Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers – 0401.10.00 – of a fat content, by weight, not exceeding 1%; 0401.20.00 – of a fat content, by weight, exceeding 1% but not exceeding 6%; 0401.40.00 – of a fat content, by weight, exceeding 6% but not exceeding 10%; 0401.50.00 – of a fat content, by weight, exceeding 10%.	The supply of these items is classified as zero-rated under the Second Schedule of the VAT Act. The proposed amendment to include them in the First Schedule to the VAT Act was excluded therefore their supply will not be deemed as VAT exempt as would have been the case. They will therefore remain zero rated.

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

Provision in the Legislation	Proposed Amendment	Points to Note

Value Added Tax Act, First Schedule, Section A, Part I- Exempt Goods	Deletion of the following items to the First Schedule –
	
	▪ **Paragraph 26 -** Fertilizers of chapter 31.
	▪ **Paragraph 39(3) -** Delete the following items and their corresponding descriptions -
	    ▪ 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 2,000 kg.
	    ▪ 8803.30.00 Other parts of aeroplanes helicopters.
	    ▪ 8805.21.00 Air combat simulators and parts thereof.
	    ▪ 8805.10.00 Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof.
	    ▪ 8805.29.00 Other ground flying trainers and parts thereof.
	▪ **Paragraph 40 -** Made up fishing nets of man-made textile material of tariff No. 5608.11.00.
	▪ **Paragraph 41 -** Mosquito nets of tariff No. 6304.91.10.
	▪ **Paragraph 43 -** Materials, waste, Residues and by- products, whether or not in the form of pellets, and preparations of a kind used in animal feeding of tariff numbers 1213.00.00, 1214.10.00, 2308.00.00, 2309.10.00, 2309.90.10,2309.90.90, 2302.10.00, ,2302.30.00, 2303.20.00,2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00.
		The supply of these items will continue being exempt from VAT noting that the proposed amendments were excluded from the Act.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I- Exempt Goods	Deletion of the following items to the First Schedule – ▪ **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 48 -** Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum. ▪ **Paragraph 50 -** Good of tariff No. 4011.30.00. ▪ **Paragraph 56 -** Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization. ▪ **Paragraph 62 -** Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. For the purposes of this paragraph, “recreational parks” means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills.	The supply of these items will continue being exempt from VAT noting that the proposed amendments were excluded from the Act.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I- Exempt Goods	Deletion of the following items to the First Schedule – ▪ **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 66 -** Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy. ''Clean cook stoves'' includes clean and energy saving cook stoves with a tariff number 7321, as well as their parts and raw materials that are either imported or sourced locally, provided that the stoves meet ISO/IWA 11:2012 standards of tier 2-4 for fuel efficiency, as determined by the Kenya Bureau of Standards. ▪ **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, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00. ▪ **Paragraph 90 -** Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.	The supply of these items will continue being exempt from VAT noting that the proposed amendments were excluded from the Act.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part I- Exempt Goods	Deletion of the following items to the First Schedule – • **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— (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. • **Paragraph 107 -** Plant, machinery and equipment used in the construction of a plastics recycling plant.	The supply of these items will continue being exempt from VAT noting that the proposed amendments were excluded from the Act.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Value Added Tax Act, First Schedule, Section A, Part II, Paragraph 18 - Exempt Services	Insert the words "excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00" at the end.	The hiring, leasing and chartering of all aircrafts will continue to be exempt.
Value Added Tax Act, First Schedule, Section A, Part II – Exempt Services	Delete the following items in Part II of the First Schedule - ▪ **Paragraph 24 -** Entry fees into the national parks and national reserves. ▪ **Paragraph 25 -** The services of tour operators, excluding in-house supplies. ▪ **Paragraph 26 -** Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.	The supply of the services listed will continue being exempt.

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

Provision in the Legislation	Proposed Amendment	Points to Note

Value Added Tax Act, Second Schedule, Part A – Zero Rated Supplies	Deletion of the following items in the Second Schedule
	▪ **Paragraph 13 -** The supply of liquefied petroleum gas including propane.
	▪ **Paragraph 13A** - The supply of ordinary bread.
	▪ **Paragraph 15 -** Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers –
	  ▪ 0401.10.00 – of a fat content, by weight, not exceeding 1%;
	  ▪ 0401.20.00 – of a fat content, by weight, exceeding 1% but not exceeding 6%;
	  ▪ 0401.40.00 – of a fat content, by weight, exceeding 6% but not exceeding 10%;
	  ▪ 0401.50.00 – of a fat content, by weight, exceeding 10%.
	▪ **Paragraph 16 -** All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.
	▪ **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.
	▪ **Paragraph 19 -** Agricultural pest control products.
		The supply of these items will continue being zero rated noting that the proposed amendment was excluded from the Act.

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

Provision in the Legislation	Proposed Amendment	Points to Note
The Excise Duty Act, First Schedule, Part I Paragraph I (Rates of excise duty)	Delete the word "imported" appearing in the description relating to "sugar confectionery of tariff heading 17.04 The provision currently provides as follows - imported sugar confectionary of tariff heading 17.04	The proposed amendment would have increased the cost of sugar confectionary which is locally produced. The amendment was however excluded from the Act.
	Delete the word "imported" appearing in the description relating to "white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00" The provision currently provides as follows - Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00,1806.90.00	The proposed amendment would have increased the cost of locally made white chocolate, chocolate in blocs, slabs or bars. The amendment was however excluded from the Act.

Proposed Amendments in the Bill not included in the Tax Laws (Amendment) Act, 2020

Provision in the Legislation	Proposed Amendment	Points to Note
Tax Procedures Act, section 39B – Appointment of Agents	Inclusion of section 39B immediately after section 39A to to read as follows: 1)The Commissioner may appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement. 2)Any person appointed shall be required to transfer the funds to the designated Central Bank accounts within a maximum of two days following the date of collection. 3)A person appointed shall be liable to a penalty equivalent to two per cent of the revenue collections delayed and shall be compounded for every other day on the amount of revenue that remains un-transferred to the designated Central Banks accounts after the prescribed period. 4)The penalty imposed for failure to adhere to the terms of the agreement shall be treated as a tax debt due to the government and the enforcement measures for collection and recovery of tax shall apply.	This proposal gives the Commissioner power to appoint persons registered under the Banking Act as agents for revenue banking and seeks to impose a penalty (2% of the revenue collection delayed) in the event of remittance delays to designated Central Bank accounts. This proposed amendment although not included in the Tax Procedures Act, has been introduced as section 15B of the Kenya Revenue Authority Act.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (xv) - IDF Exemption	Deletion of the paragraph on – aircraft and substitution with the following new paragraph - aircraft excluding aircraft of unladen weight not exceeding 2,000kg and Helicopters of Heading 8802.11.00 and 8802.12.00 .	This proposal would have widened the scope for IDF collection. This exemption was however retained in the Miscellaneous Fees and Levies Act.
Miscellaneous Fees and Levies Act – Second Schedule, Part A, Paragraph (xxii) - IDF Exemption	Deletion of the following paragraph - any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings and substitution with the following paragraph - any other goods as the Cabinet Secretary may determine are in public interest.	The proposed amendment granted the Cabinet Secretary for National Treasury the power to exempt from IDF goods that are in the public interest. The provision does not define the goods that may qualify as being in the public interest. The existing provision will however remain. Goods that are determined by the Cabinet Secretary to be in public interest will remain exempt from IDF.

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

Provision in the Legislation	Proposed Amendment	Points to Note
Miscellaneous Fees and Levies Act, Second Schedule, Part A, Paragraph (xxiii) – IDF Exemption	Deletion of the following paragraph - goods imported for implementation of projects under a special operating framework arrangement with the Government.	Under the proposed amendment, IDF would be imposed on goods imported for implementation of projects under SOFA. The provision will however be retained and such goods remain exempt from IDF.
Miscellaneous Fees and Levies Act – Second Schedule, Part B, Paragraph (vi) – RDL Exemption	Deletion of the following paragraph - any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings and substitution with the following - any other goods as the Cabinet Secretary may determine are in public interest.	The amendment does not define the goods that may qualify as public interest. The eligibility to the RDL exemption will therefore be granted on a case by case basis subject to determination by the Cabinet Secretary.

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