



INDIRECT TAXES AND MISCELLANEOUS AMENDMENTS – THE TAX LAWS (AMENDMENT) ACT, 2020

EFFECTIVE DATE

The Tax Laws (Amendment) Act, 2020 was assented to on 25th April 2020. All the changes below become effective on that date, except the change in the basis of calculating VAT on petroleum products, which shall become effective on 15th May 2020. For ease of reference, additional changes in the Act, which were not proposed in the Bill have been bolded for ease of reference.

INDIRECT TAXES

VALUE ADDED TAX

VAT ON FUEL

While the VAT on the products listed below has been retained at 8%, the calculation of VAT will now include excise duty, fees and other charges in line with the East African Community Customs Management Act (EACCMA). Therefore, the basis of charging VAT at the point of entry will include the CIF value, the applicable customs duty and excise tax but excluding IDF fees and Railway Development Levy.

- Petroleum oils and oils obtained from bituminous mineral, crude
- Motor spirit (gasoline) regular
- Motor spirit (gasoline) premium
- Aviation spirit
- Spirit type jet fuel
- Special boiling point spirit and white spirit
- Other light oils and preparations
- Partly refined (including topped crudes)
- Kerosene type jet fuel
- Illuminating kerosene (IK)
- Other medium petroleum oils and preparations
- Gas oil (automotive, light, amber, for high speed engines)
- Other gas oils
- Natural gas in gaseous state
- Other natural gas in gaseous state

Supply of liquefied petroleum gas including propane (remains zero-rated)

CREDIT NOTES

The current provision is that credit notes can only be issued after six months from the invoice date. This provision has now been extended in respect of commercial disputes in relation to price payable, a credit note can now be issued within 30 days after determination of the matter.



REFUND OF TAX ON BAD DEBTS

The period to claim refund of VAT on bad debts has been reduced from 5 years to 4 years from the supply.

RECORDS

Previously, the Act only required every registered person to keep specified records for a period of five years. A change is proposed to require all persons, whether registered or not, to maintain the records for a period of five years.

REVISION IN VAT RATES

While there is a provision in the Act to delete the entire Part 1 of Section A in the First Schedule, meaning that all exempt goods listed in Part A now become vatiable at 14%, our view is that this is a typo and will be corrected in the final Gazette Notice.

The following items now become vatiable at 14%, being deleted from the exempt list:

- Plant and machinery of Chapter 84 and 85 used for manufacture of goods
- Taxable supplies including motor vehicles imported or purchased locally for use in construction of power generating plants, by oil exploration and mineral prospecting companies, geothermal exploring companies and construction of LPG gas storage facilities
- Plastic bag biogas digesters
- Biogas
- Leasing of biogas producing equipment
- Parts imported or purchased locally for the assembly of computers
- Taxable goods purchased or imported for use in the development of industrial parks of one hundred acres or more
- Museum and natural history exhibits and specimens and scientific equipment for public museums
- Chemicals, reagents, films, film strips and visual aid equipment imported by the National Museums of Kenya
- Materials and equipment for construction of grain storage facilities
- Transfer of business as a going concern by a registered person to another registered person
- Unused postage, revenue or similar stamps of current or new issue
- Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department
- Goods and services imported or purchased locally for use in projects under a special operating framework
- Insurance agency and brokerage services and security brokerage services
- Asset transfer and other transactions related to the transfer of assets into a REIT and other asset based securities



The following items are now exempt from being zero-rated:

- Various vaccines for human and veterinary medicine, medicaments and infusion solutions

The following vatiable items are now exempt:

- **Personal protective gear equipment including facemasks for use by medical personnel in hospitals or by members of the public in case of a pandemic or a notifiable infections disease (there were previously vatiable at 16%). For this, the input VAT already on the effective date on stocks held will need to be adjusted in the VAT return.**

PROPOSED AMENDMENTS IN THE BILL THAT WERE REJECTED

The following items which were proposed in the Bill to be vatable from exempt, still remain exempt:

- Fertilisers of Chapter 31
- All helicopters, aeroplanes of unladen weight not exceeding 15,000 kgs, other parts of aircrafts (excluding engine parts), air combat stimulators, aircraft launching gears, deck arrestors and similar gear and other ground flying trainers and parts
- Hiring, leasing and chartering of helicopters
- New pneumatic tiles of rubber of a kind used on an aircraft
- Fishing nets of man-made textile materials
- Mosquito nets
- Materials, waste, residues and by-products whether or not in the form of pellets, used in preparation of animal feeds
- Specialised equipment for the development and generation of solar and wind energy including deep cycle batteries used to store solar power
- Tractors other than road tractors for semitrailers
- Inputs and raw materials, imported or locally purchased, by manufacturers of agricultural machinery and implements
- Taxable goods for use in the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities
- Taxable goods purchased locally or imported by manufacturers of clean cooking stoves
- Stoves, ranges, grates, cookers, barbeques, braziers, gas rings, plate warmers and similar non-electric domestic appliances
- Inputs for manufacture of pesticides
- One personal motor vehicle imported by a returning officer from a posting in a Kenyan mission abroad
- Plant, machinery and equipment used in the construction of plastic recycling plants



The following items which were proposed in the Bill to be vatable from being zero-rated, still remain zero-rated:

- Supply of ordinary bread. In addition, the definition of ordinary bread to include only the ingredients of wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water was not adopted by the Parliament, which leaves the definition based on industry practices.
- All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation of CS Agriculture
- Agricultural pest control products

The following items which were proposed in the Bill to be exempt from being zero-rated, still remain zero-rate:

- Milk and cream, not concentrated nor containing added sugar or other sweetening matters of tariff codes 0401.10.00, 0401.20.00, 0401.40.00 and 0401.50.00

EXCISE DUTY ACT

EXCISE DUTY MEASURES

FINANCIAL INSTITUTIONS

The Act has amended the definition of other fees by deleting the word "licensed financial institutions" and substituting it with the words "licensed activities."

This offers clarity that excise duty is only applicable on the licenced activities of a financial institution correcting a previous drafting error.

SPECIAL OPERATING FRAMEWORK ARRANGEMENTS

Excise duty exemption on goods imported or purchased locally by projects under special operating framework arrangements is now removed.

MOTOR VEHICLE EXEMPTION ON RETURNING PUBLIC OFFICERS FROM MISSIONS ABROAD

Exemptions given to returning public officers away on missions (like diplomats) allowing them to import one personal motor vehicle, has now been removed.

PROPOSED AMENDMENTS IN THE BILL THAT WERE REJECTED

The Bill had proposed to impose excise duty on sugar confectionery that are manufactured locally by deleting the word "imported" on imported sugar confectionery not containing cocoa - KShs 20/kg and imported white chocolate (blocks, slabs or bars) containing cocoa - KShs 200/kg

TAX PROCEDURES ACT

PRIVATE RULINGS

The provision requiring the Commissioner to issue a private ruling within 45 days has been deleted and amended to 60 days.

Moreover, the provision requiring the Commissioner to publish a private ruling in two daily newspapers has been deleted, and a private ruling can now only be relied upon a person who has applied for it.

TURNOVER TAX PENALTY

The penalty has been reduced from KShs 5,000 to KShs 1,000.

PROPOSED AMENDMENTS IN THE BILL THAT HAS BEEN MOVED TO THE KRA ACT

APPOINTMENT OF BANKS AS AN AGENT

The proposed change allows the KRA to appoint a bank as an agent for revenue banking services, requiring the banks to remit any demand on a taxpayer within two days, failure to which the banks will be required to pay a penalty of 2% each day the amount remains unpaid.

This provision is totally in breach of the Constitution as it does not give the taxpayer the time to object.



MISCELLANEOUS FEES AND LEVIES ACT

IMPORT DECLARATION FEE

The provision imposing IDF at 1.5% on raw material and intermediate products imported by approved manufacturers has been removed. Therefore, only the following will qualify for IDF at 1.5%:

- Raw materials and intermediate products imported by manufacturers approved by the CS Treasury on the recommendation of CS Industrialisation
- Input for the construction of houses under an affordable housing scheme approved by CS Treasury on the recommendation of CS Housing.

Any other importation of goods will be subject to IDF at 3.5%.

RAILWAY DEVELOPMENT LEVY

The Act has permitted the use of the levy for operations of a standard gauge railway network, in addition to its use for construction

PROCESSING FEES ON DUTY FREE MOTOR VEHICLES

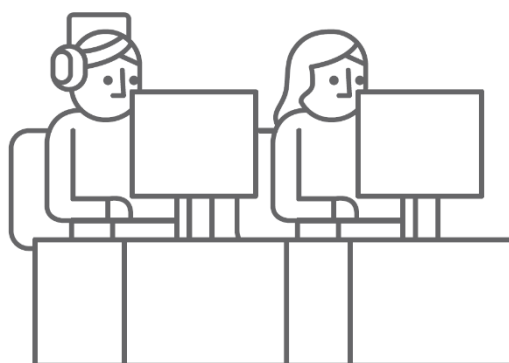
The Act has introduced a new levy of KShs 10,000 which is a processing fee on motor vehicles which are imported duty free by persons listed in the Fifth Schedule to the EACCMA

GOODS NO LONGER EXEMPTED FROM IMPORT DECLARATION FEE WHEN IMPORTED

- Gifts or donations, excluding motor vehicles, by foreign residents to their relatives in Kenya for their personal use
- Samples which in the opinion of the Commissioner have no commercial value
- 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 CS Treasury upon recommendation by CS Industrialisation
- Goods imported for the construction of liquefied petroleum gas storage facilities as approved by the CS Energy

GOODS NO LONGER EXEMPTED FROM RAILWAY DEVELOPMENT LEVY WHEN IMPORTED

- 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 CS Treasury upon recommendation by CS Industrialization
- Goods imported for the construction of liquefied petroleum gas storage facilities as approved by CS Energy
- Goods imported for implementation of projects under a special operating framework arrangement with the Government



KENYA REVENUE AUTHORITY ACT

REWARD TO INFORMERS

The Act proposes a KShs 500,000 reward to anyone who provides information to KRA leading to enforcement of tax laws

APPOINTMENT OF BANKS AS AN AGENT

The proposed change allows the KRA to appoint a bank as an agent for revenue banking services, requiring the banks to remit any demand on a taxpayer within two days, failure to which the banks will be required to pay a penalty of 2% each day the amount remains unpaid.

This proposal was originally intended to be under the Tax Procedures Act but has now been moved to the Kenya Revenue Authority Act.

This provision is totally in breach of the Constitution as it does not give the taxpayer the time to object.

RETIREMENTS BENEFITS ACT

The section of the Act has been amended to state the following "*prescribed portion accruing to a member in a scheme may be assigned and used by the member to secure a mortgage loan or to purchase a residential house from such institutions and on such terms as prescribed by the Minister*".

This aims to allow members of a scheme flexibility in their pursuit of home ownership.



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