Kenya Revenue Authority

HIGHLIGHTS OF PROPOSED AMENDMENTS UNDER THE FINANCE BILL, 2020

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INTRODUCTION

The Finance Bill, 2020 was presented to the National Assembly for deliberation on 30th April 2020 as required by the Public Finance Management Act, 2012. The proposed amendments under the Bill are outlined below: -

A. PROPOSED AMENDMENTS TO THE INCOME TAX ACT (CAP 470)

1. Residential Rental Income Tax

The Bill proposes to increase the upper threshold of Residential Rental Income from Kshs 10 million to Kshs. 15 million per annum to provide an opportunity for more landlords to comply with the simplified regime which has minimal compliance costs.

2. Introduction of Minimum Tax

The Bill proposes to introduce a Minimum Tax which is a base income tax, payable by all companies regardless of whether or not they make a profit. The elements of the tax are as follows:

- The rate of the tax is 1% of the gross turnover of the company;
- The tax shall be paid in instalments and shall be due on the 20th day of each period ending on the 4th, 6th, 9th and 12th month of the year of income;
- Where the instalment tax payable by a person is higher than the minimum tax, then a person shall pay the instalment tax; however, where the minimum tax is higher than the instalment tax, then the minimum tax shall be payable
- Minimum tax shall not apply to: income that is exempt under the Act; employment income; income subject to residential rental income tax; income that is subject to Turnover Tax; income subject to Capital Gains Tax and income of entities operating in the extractive sectors.

3. Introduction of Digital Service Tax (DST)

The Bill proposes to introduce a Digital Service Tax which shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place.
The rate of the tax is 1.5% of the gross transaction value and shall be due at the time of the transfer of the payment for the service to the service provider.
Residents and non-residents with a permanent establishment will be entitled to offset the digital tax paid against their income tax payable for that year of income.

4. Deletion of the following allowable expenses: -

The following items have been proposed for deletion from the list of allowable deductions: -

- Any entrance fee or annual subscription paid during that year of income to a trade association;
- Capital expenditure on legal costs and other incidental expenses relating to the authorization and issue of shares, debentures or similar securities offered for purchase by the general public;
- Capital expenditure on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
- Capital expenditure incurred on rating for the purposes of listing on any securities exchange;
- Club subscriptions paid by an employer on behalf of an employee;
- Expenditure of a capital nature incurred on construction of social infrastructure.

5. Home Ownership Savings Plan Provisions

The Bill proposes to delete the provisions on Home Ownership Savings Plan (HOSP).

6. Income Tax Exemptions

The Bill proposes to delete various income tax exemptions as follows: -

- The income of a registered home ownership savings plan;
- Income of the National Social Security Fund;
- Monthly or lump sum pension granted to a person who is 65 years of age or more;
- Income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band.

B. PROPOSED AMENDMENTS TO THE VALUE ADDED TAX ACT, 2013

1. Claim of input tax

The Bill proposes to introduce a requirement that a person claiming input tax will only be able to do so, if the registered supplier has made a corresponding declaration of the output tax in their return.
This is meant to facilitate the verification that a claim for input tax is genuine

2. Exemptions from VAT

a) The Bill proposes to exempt the following items: -

- Maize (corn seeds) of tariff no. 1005.10.00
- Ambulance services

b) The Bill proposes to delete the following items from the exemption schedule:

No.	Item/description
1.	Helicopters of an unladen weight not exceeding 2,000 kg
2.	Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg
3.	Other parts of aeroplanes helicopters
4.	Aircraft launching gear and parts thereof; deck- arrestor or similar gear and parts thereof
5.	Air combat simulators and parts thereof
6.	Other ground flying trainers and parts thereof
7.	Specialized equipment for the development and generation of solar and wind energy
8.	Tractors other than road tractors for semi-trailers
9.	Goods of tariff of no. 4011.30.00 (Pneumatic Tyres)
10.	Taxable goods purchased by manufacturers or importers of clean cooking stoves
11.	Stoves, ranges, grates, cookers, barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances
12.	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
13.	Plant, machinery and equipment used in the construction of a plastics recycling plant
14.	Hiring, leasing and chartering of helicopters

3. Proposed Amendments to the Second Schedule – Zero-rated Supplies

The Bill proposes to delete the following items from the zero-rating schedule: -

- The supply of liquefied petroleum gas including propane
- 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.

C. PROPOSED AMENDMENTS TO THE EXCISE DUTY ACT, 2015

1. Definition of "license"

The Bill proposes to amend the definition of the term "license" to include a license issued for any activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a licence.

2. Alignment of alcoholic strength of spirituous beverages to KEBS standards:

To harmonize the Excise Duty classification with the KEBS standards, the Bill proposes to align the 10% alcoholic strength of spirituous beverages under the description: "Beer, Cider, Perry, Mead, Opaque beer Kshs. 110.62 per litre and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%", to the KEBS standard of 8%.

D. PROPOSED AMENDMENTS TO THE TAX PROCEDURES ACT, 2015

1. Introduction Voluntary Disclosure Programme (VDP)

The Bill proposes to introduce a Voluntary Disclosure Programme (VDP) where a taxpayer discloses tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest of the tax disclosed. The programme will operate as follows: -

a) The VDP shall be open for a period of 3 years effective 1st January 2021;
b) The disclosures eligible under the programme will be for tax periods of up to 5 years prior to 1st July 2020;
c) Where the application is accepted, the applicant shall be granted a remission of the interest and penalty due on the tax liability as follows:

- Where the disclosure is made and tax liability paid in the first year of the programme, a full remission of the interest and penalty;
- Where the disclosure is made and tax liability paid in the second year of the programme, remission of 50% of the interest and penalty; and
- Where the disclosure is made and tax liability paid final year of the programme, remission of 25% of the interest and penalty.

d) A taxpayer will not be eligible for VDP where the taxpayer: -

- Is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
- Has been notified of a pending audit or investigation by the Commissioner.

2. Appointment of Digital Service Tax (DST) Agent.

The Bill proposes to empower the Commissioner to appoint an agent for the purposes of collection and remittance of the Digital Service Tax (DST) proposed to be introduced under the Income Tax Act.

E. PROPOSED AMENDMENTS TO THE MISCELLENEOUS FEES AND LEVIES ACT

1. Import Declaration Fee(IDF) on goods imported under the East African Community Duty Remission Scheme

The Bill proposes to amend the IDF chargeable on goods imported under the East African Community Duty Remission Scheme from a specific rate of Kshs. 10,000 to an ad-valorem rate of 1.5% of the Customs value so as to align the IDF applicable to manufacturers.

2. Additional duty on goods entered for home use from an Export Processing Zone enterprise

The Bill proposes to anchor the additional duty of 2.5% of customs value in respect of goods entered for home use from an Export Processing Zone enterprise over and above the import duties under the Miscellaneous Fees & Levies Act. This was previously provided for under the repealed Customs and Excise Act Cap. 472.

3. Import Declaration Fee (IDF) Exemptions

a) The Bill proposes to delete the following items from IDF Exemptions: -

- Aircrafts of unladen weight not exceeding 2,000kg and Helicopters of Heading 8802.11.00 and 8802.12.00;
- Goods imported for implementation of projects a under special operating

framework arrangement with the Government.

b) The Bill proposes to exempt the following from IDF: -

- All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police from payment of IDF at importation.

4. Railway Development Levy (RDL) Exemptions

a) The Bill proposes to delete the following item from RDL exemptions:

• Any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs. 200 Million.

b) The Bill proposes to exempt the following items from RDL:

• Currency notes and coins imported by the Central Bank of Kenya.
• All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police.

F. PROPOSED AMENDMENTS TO THE TAX APPEALS TRIBUNAL ACT

Procedure of Appeal

The Bill proposes to amend the Tax Appeals Tribunal Act to restrict documents presented by an appellant to the Tax Appeals Tribunal to those which had been provided to the Commissioner during the objection process.

G. PROPOSED AMENDMENTS TO THE KENYA REVENUE AUTHORITY ACT

1. Additional Function of Capacity Building and Training

The Bill proposes to amend the KRA Act to provide for an additional function of the Authority as capacity building and training.
To give effect to this, the KRA Board has been empowered to make regulations with respect to capacity building and training.

2. Commission on Agency Revenue

The Bill proposes to amend the KRA Act to recognize commissions earned in respect of Agency Revenue Collection as a source of funding for the Authority. The commission earned has been capped at a maximum of 2% of the total of the agency revenue.

3. Limitation of Actions

To enable effective resolution of suits against the Authority, the Bill proposes to amend the KRA Act to limit the period within which suits can be commenced against the Authority. It is proposed that a legal action against the Authority shall not be instituted unless -

- It is commenced within 12 months after the act, neglect or default com plained of; and
- In the case of continuing injury or damage, within six months after the ces sation of the act; and
- At least one month written notice specifying the particulars of the claim, intention to commence the action or legal proceeding has been served upon the Commissioner General.

H. PROPOSED AMENDMENTS TO INSOLVENCY ACT, 2015

Listing of tax revenues held in commercial banks as preferential claims in the event of insolvency

The Bill proposes to amend Insolvency Act to provide that all amounts held on behalf of Kenya Revenue Authority by banks appointed as agents for revenue banking services, shall, at the point of receivership or liquidation of the bank, rank among the preferential claims just like other statutory obligations owed to the government.

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