



# Budget brief

**Kenya 2020**

June 2020

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# Kenya highlights

The recurrent expenditures in the financial year FY 2020/21 will amount to KES 1.82 trillion or 16.2% of GDP.



Kenya's economy is projected to grow at 2.5% in 2020 down from the 5.4% growth in 2019. The government intends to implement a rapid Economic Stimulus Programme and a "Post Covid-19 Economic Recovery Strategy" to stimulate economic activities and grow the economy by 5.8% in 2021 and 6.5% by 2024.

For the year 2019/20 the government expects a fiscal deficit of 8.3% of GDP, which is higher than the budgeted 6.3% deficit. However, the fiscal deficit is expected to reduce to 7.5% of GDP for the financial year 2020/21 and further improve to 6.1% of GDP in the financial year 2021/22 as the economy recovers.

## Budget Overview

The Cabinet Secretary for the National Treasury (CS) presented his maiden budget for the Financial year 2020/2021 under the theme: "Stimulating the Economy to Safeguard Livelihoods, Jobs, Businesses and Industrial Recovery." It is no wonder then that the budget aims at addressing the effects of the COVID-19 pandemic, locusts invasion and floods that led to loss of lives and livelihoods, displacement of people and destruction of infrastructure.

The budget was prepared against a backdrop of a contracting global economy occasioned by the outbreak of the COVID-19 Pandemic which has disrupted most aspects of human life.

Consequently, the fiscal framework for 2020/21 budget and the medium term plan have taken into account the adverse impact of the Pandemic on revenue performance. Thus, the 2020/21 budget targets revenue collection including Appropriations-in-Aid (AIA) of KES 1.89 trillion,

equivalent to 16.8% of GDP, a stagnation from the estimated revenues of KES 1.89 trillion, equivalent to 18.6% of GDP in the financial year 2019/20. Of this, ordinary revenues in the financial year 2020/21 are projected at KES 1.63 trillion, equivalent to 14.5% of GDP.

Total expenditures in the financial year 2020/21 are projected at KES 2.79 trillion or 24.7% of GDP from the estimated level of KES 2.77 trillion or 27.2% of GDP in 2019/20. The recurrent expenditures in the financial year FY 2020/21 will amount to KES 1.82 trillion or 16.2% of GDP.

Due to contracting revenues, the government will once again tap into the credit markets to finance the budget deficit which now accounts to nearly one-third of the budget. The cost of financing the national debt consumes a significant portion of tax revenues, leaving the government with limited options for financing development projects.

# Enhanced Credit Access

These interventions have released KES 35 billion to commercial banks thus infused liquidity into the market.



The Government has instituted various monetary policy measures to enhance private sector credit access and reduce the cost of borrowing. This has been done through the reduction of the Central Bank Rate (CBR) from 8.25% to 7.0% and lowering of the Cash Reserve Ratio (CRR) requirement from 5.25% to 4.25%. These interventions have released KES 35 billion to commercial banks thus infused liquidity into the market.





# Is it twice the charm for pending bills and VAT refunds?

The government has for the second year running allocated KES 13.1 billion to settle verified pending bills...



The government has for the second year running allocated KES 13.1 billion to settle verified pending bills owed by Ministries and Departments and promised a further KES 10.0 billion for payment of verified VAT refund claims.

In the financial year ending 30 June 2020, government pledged to settle the backlog of VAT refunds and pending bills to provide the much needed cashflow for businesses.



# Resource mobilisation and the COVID-19 pandemic.

The Government reached out to multilateral and bilateral development partners for additional financing to address the targeted interventions.



The Government reached out to multilateral and bilateral development partners for additional financing to address the targeted interventions. This resulted in the significant financial assistance from multi-lateral partners such as the Rapid Credit Facility of the International Monetary Fund, the World Bank under the second Development Policy Operation and the Contingency Emergency Response to the Ministry of Health, as both budgetary support and extra resources to help fight the COVID-19 Pandemic and a concessional loan from the African Development Bank.





# The Economic recovery programmes

The ERS will focus on macroeconomic stability, resource mobilization, partnership with the private sector, supporting small businesses, and promotion of local production.



The Government intends to roll out an 8-Point Economic Stimulus Programme (ESP) that is expected to catalyse economic activity in order to safeguard livelihoods of Kenyans and enable businesses to recover from the current shocks. The specific focus areas of this stimulus are: infrastructure; improving education; enhancing liquidity to businesses; improving health; focus on agriculture and food security; promotion of tourism; improving environment; water and sanitation facilities and manufacturing.

In addition to implementing the ESP, the government is formulating a Post-COVID-19 Economic Recovery Strategy (ERS) to mitigate the adverse impacts on the economy and further re-position the economy on a steady and sustainable growth trajectory. The ERS will focus on macroeconomic stability, resource mobilization, partnership with the private sector, supporting small businesses, and promotion of local production.



# Structural reforms

The government has finalized the e-Government Procurement Strategy...



The Government has also proposed several structural reforms aimed at improving the business environment, increasing efficiency in public service delivery and enhancing accountability and transparency in the conduct of business. These include:

## a. Procurement reforms



The Public Procurement and Asset Disposal Regulations, 2020 have been published in line with the provisions of the

Public Procurement and Asset Disposal Act, 2015 and are awaiting Parliamentary approval. These Regulations seek to enhance uniformity of operations across Procuring Entities and promote the local economy through affirmative interventions on preferences and reservations.

The government has finalized the e-Government Procurement Strategy which is intended to optimise procurement and facilitate the roll-out of an end to end e-procurement system by December 2020. It has also re-engineered the Access to Government Procurement Opportunities (AGPO) portal to enable real-time registration and transparent monitoring of the implementation of the scheme. The system has also been linked to other government institutions including Kenya Revenue Authority, National Council for Persons with Disability, Registrar of Companies and IFMIS to facilitate faster verification and reporting.

## b. Contracting framework



Noting that local contractors, in general, have had challenges in undertaking infrastructure construction projects due to limited technical, financial and managerial capacity, which has seen the sector dominated by foreign contractors, the government has proposed to review the contracting framework for infrastructure projects in the country with a view of ensuring greater participation of local contractors. This is intended to retain domestic revenues within the country and create jobs for the youth.

## c. Push to settle pending bills



State Corporations and Semi-Autonomous Government Agencies (SAGAs) hold significant amounts of pending bills that are owed to contractors, suppliers, SACCO remittances, and other statutory deductions. The government has therefore constituted a Pending Bills Multi-Agency Team (PB-MAT) to deal with existing historical and contested pending bills. Going forward, the National Treasury may withhold exchequer releases to the Ministries, Departments and Agencies or SAGAs with pending bills, until an approved payment plan for all pending bills is agreed upon.

# Financial sector stability and development

The National Treasury is in the process of fully operationalising the Nairobi International Financial Centre.



The National Treasury is in the process of fully operationalising the Nairobi International Financial Centre. The Centre is expected to play an important role in attracting investments and private capital to support economic growth as well as mobilising additional financing for the “Big Four” flagship projects and further providing new financing options for Kenyan businesses. This is expected to strengthen Kenya’s position as a regional financial hub.

In addition, to enhance the safety and integrity of the Kenyan financial system, the National Treasury is expecting to conduct Kenya’s first National Risk Assessment on Money Laundering and Terrorism Financing. This will assist the country’s competent authorities to assign responsibilities for combating money laundering and terrorism financing to the relevant government agencies on the basis of identified risks and vulnerabilities.





# Affordable housing

KMRC will offer fixed rate long term loans at concessional rates to mortgage providers...

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The high cost of housing and limited access to affordable long-term finance remain a leading housing market constraint. To address this challenge, the government established and has now funded the Kenya Mortgage Refinance Company (KMRC) to provide long term funds to primary housing mortgage providers in the housing sector. KMRC will offer fixed rate long term loans at concessional rates to mortgage providers who are expected to pass the benefit to citizens at lower than market rates.



# Capital Markets

Government has proposed amendments to the Capital Market Act...



In 2015, the Investment Guidelines under the Retirement Benefits Regulations were amended to allow pension schemes to invest up to 10% of their assets in private equity funds and venture capital funds licensed by the Capital Markets Authority (CMA). However, the Capital Markets Act was not amended to oversight these private equity and the venture capital transactions.

Government has proposed amendments to the Capital Market Act, to provide for the regulation of private equity and venture capital companies by the CMA.



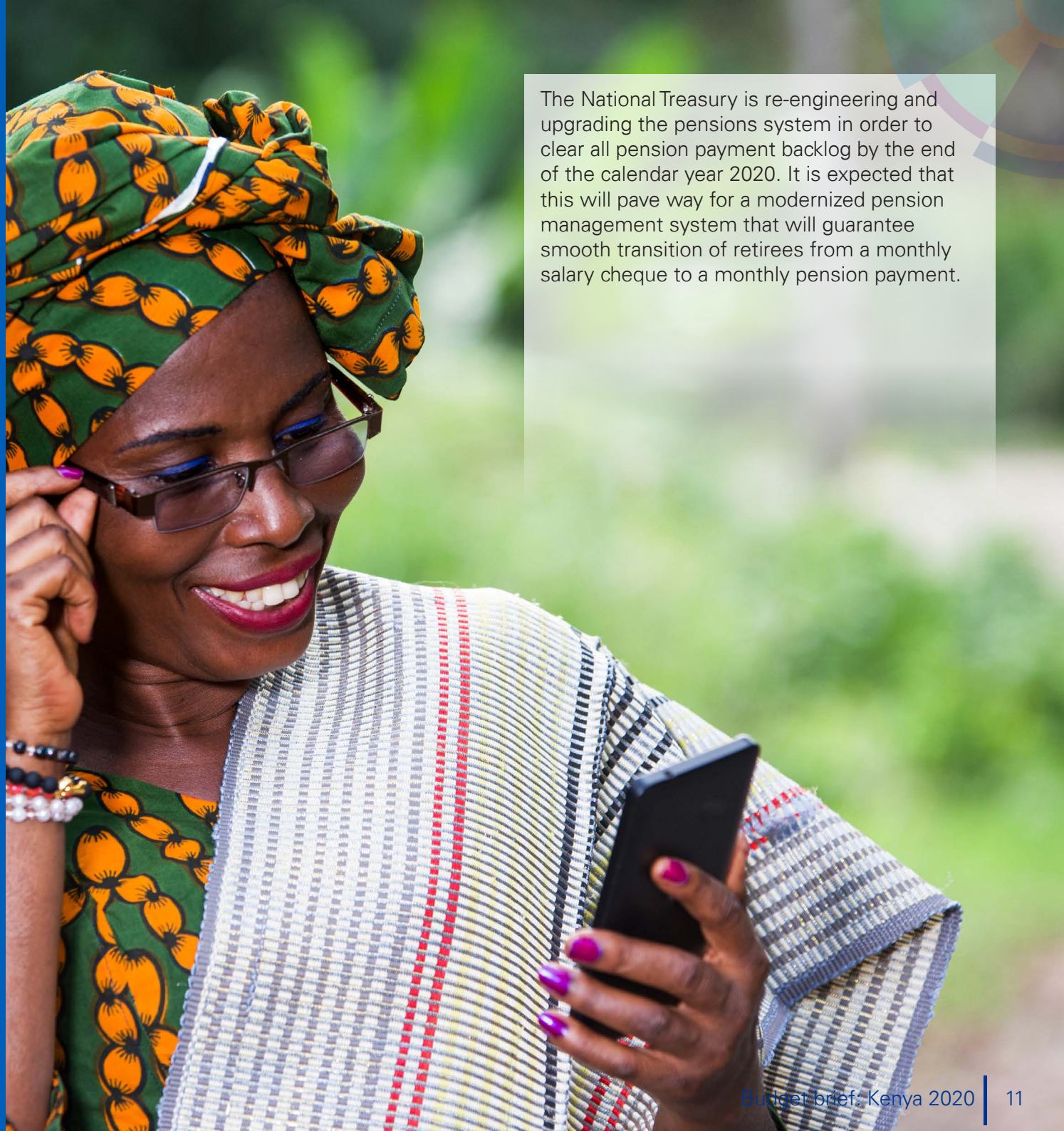


# Pension reforms

It is expected that this will pave way for a modernized pension management system



The National Treasury is re-engineering and upgrading the pensions system in order to clear all pension payment backlog by the end of the calendar year 2020. It is expected that this will pave way for a modernized pension management system that will guarantee smooth transition of retirees from a monthly salary cheque to a monthly pension payment.





# Climate change

The National Treasury  
proposes to tap into the  
Green Climate Financing...



The National Treasury proposes to tap into the Green Climate Financing by issuing the first “Sovereign Green Bond” to finance major infrastructure projects in the coming financial year. The proceeds of this bond will be directed towards green projects at both the National and County level.





# Fulfilling the “Big Four” agenda

Other beneficiaries include the SGR  
Phase II (Nairobi- Naivasha)...



The implementation of the “Big Four” Agenda is expected to remain a central focus in the near term. Thus, the targeted expenditures prioritize employment creation, youth empowerment, supporting manufacturing activities, enhancing health coverage, improving food security and living conditions through affordable housing through the allocations to the “Big Four Agenda” as highlighted below:

- a. Universal Health Coverage - **KES 111.7 billion** for various drivers and enablers;
- b. Affordable Housing - **KES 15.5 billion** to the housing, urban development and public works sector;
- c. Increasing Manufacturing contribution to GDP – **KES 18.3 billion** to scale up reforms to promote investments in the manufacturing sector to support and protect local industries; and
- d. Improving Food and Nutrition Security – **KES 52.8 billion** towards expanding irrigation schemes, support large-scale production of staples, increase access to agricultural inputs, implement programmes to support smallholder farmers and promote the use of appropriate farming techniques.

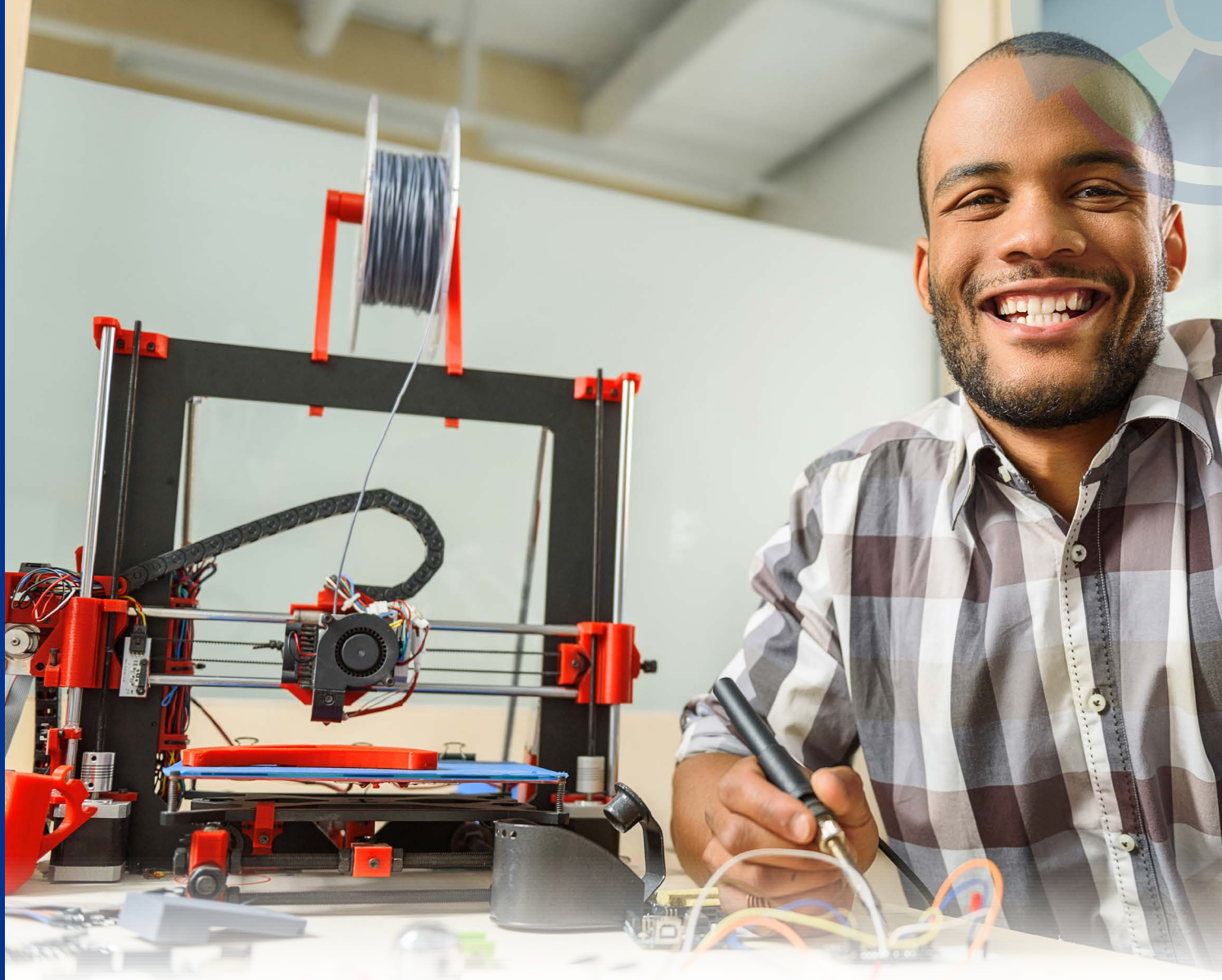
Other beneficiaries include the SGR Phase II (Nairobi- Naivasha), the LAPSSSET Project; Mombasa Port Development Project, rehabilitation of National Optic Fibre Backbone Phase II and fast tracking the establishment of the Konza Technopolis City



# Proposed tax changes

## Customs

The government in consultation with sister EAC government has proposed changes to the customs duty regime...



The government in consultation with sister EAC governments has proposed changes to the customs duty regime to protect local industries, encourage local production of strategic products especially those required in the fights against the COVID-19 pandemic.





## Promoting local industries

The government, in line with the manufacturing pillar under the “Big 4” Agenda, has retained certain measures expected to promote local manufacturing and expand local production. This include:

- Retaining the ad valorem rate of import duty at 35% for iron and steel ;
- Retaining the existing 25% import duty on the paper and paper board imported into the country;
- Retaining the specific rates of duty in addition to 25% on leather and footwear; and
- Zero-rating import duty on inputs used in the manufacture of baby diapers under the East Africa Community Duty Remission Scheme.

## “Dressing up” the textile industry

The government, in a bold move to promote the textile industry, has proposed to allow inputs used in textile and apparel sector be imported duty free under the East Africa Community Duty Remission

## Connecting people

The government is to spur growth of telecommunication sector and has proposed to exempt from custom duty inputs for assembly or manufacture of mobile phone through East Africa Community Duty Remission scheme. Previously inputs for assembly or manufacture of mobile phone attracted import duty of 10%.

At the same time, the CS has announced a proposal to increase the import duty on electrical parts and accessories from 25% to 35%. The move is aimed at protecting the local industries and to create employment.

## Keeping up the fight/ flattening the curve

The government continues to boost the fight against COVID-19 with the new proposal to grant import duty remission on raw materials and inputs for manufacture of masks, sanitizers, ventilators and personal protective equipment including coveralls and face shields.

There is, a positive side of the Covid 19 with the realization that Kenya has local capacity to develop and produce these essential items necessary for our health sector. This will create employment and reduce the reliance on imported products.

## Appreciating limitations

In addition to the above, noting the shortcomings within the East African Community (EAC), but in scaling up its level of preparedness for future pandemics, the EAC has agreed to exempt from import duty supplies for diagnosis, prevention, treatment, and management of epidemics, pandemics and health hazards.

The substantive customs duty proposals will be contained in the East African Community gazette which is expected to be published towards the end of the June 2020.

# Income Tax

The Bill proposes to increase the upper cap for the residential income subject to the 10% tax rate from KES 10million to KES 15million.



## Increase in residential income tax

**Proposed provision:** The Bill proposes to increase the upper cap for the residential income subject to the 10% tax rate from KES 10million to KES 15million.

The Government introduced a simplified income tax regime for persons with residential income between **KES 144,000** and **KES 10 million** per annum with effect from 1 January 2016. This was accompanied by extensive publicity to bring landlords within the tax bracket.

**Implication:** The increase in income bands for rental income that is subject to the lower tax bands will be a welcome relief for landlords who are under pressure to reduce or defer rent payments to help tenants cope with the effects of the COVID-19 pandemic.

Under the Tax Laws (Amendment) Act, 2020 the tax rates for many taxpayers were reduced. However, the tax rate for landlords did not change. The proposed change will allow landlords with income between **KES 10 million to 15 million** to access the lower tax rates. This rate remains significantly higher than that for other businesses which are eligible for a tax rate of 1% on turnover under turnover tax for income ranging from **KES1million to KES 50 million**.

Further, the proposed amendment retains the minimum rental income subject to tax at **KES 144,000** p.a which is inconsistent with the changes to the PAYE bands to increase the tax free amounts to **KES 288,000** p.a.



## Minimum tax

**Proposed provision:** The Bill proposes a new tax to be known as minimum tax which shall be payable by a person if:

- The income is not exempt under the ITA;
- Income is not from employment, residential rent, capital gains, mining or oil exploration, capital gains or subject to turnover tax; or
- The minimum tax payable is lower than the instalment tax payable.

Minimum tax is based on 1% of gross income and paid on the 20th day of the fourth, sixth, ninth and twelfth months.

**Implication:** The minimum tax is an attempt to tax businesses that are in a loss making position and borrows from provisions in other countries where businesses that make losses are subject to a minimum tax. However, in those countries the businesses must have been loss making for a number of years and the tax rate is much lower.

## Instalment tax vis-à-vis “minimum” tax

Proposed provision: Instalment tax is payable by the 20th day of the fourth, sixth, ninth and twelfth month of a particular year of income. A taxpayer can choose from two bases for computing the tax as follows:

- 25% of the estimated “current” year tax; or
- 110% of prior year self-assessed tax.

Following the introduction of minimum tax, taxpayer will now be required to pay a minimum tax if the instalment tax payable is less than 1% of the taxpayer’s turnover.



Unlike instalment tax which is an advance tax, the law has not specified whether the minimum tax is an advance tax that can be applied against future tax liability. This is important because taxpayers could be in a tax loss position because of capital allowances.

However there is a potential legislative gap since it seeks to apply the tax to persons whose instalment tax payable is higher than the minimum tax. In such cases, it makes sense to maintain the instalment tax rather than the proposed minimum tax given that the two taxes are mutually exclusive.

### Digital services tax

Proposed provision: The Bill is proposing to introduce digital service tax which shall be payable on income which is deemed to be derived or accrued in Kenya through a digital market place.

The digital services tax deducted from resident entities and branches shall be treated as an advance tax, available for set-off against the tax payable for the year of income. The digital services tax which is computed at the rate of 1.5% of the gross transaction value is payable when transferring payment to the service provider.

This follows the introduction of a provision for taxation of income from a digital market place through the Finance Act, 2019. However, the Finance Act provided that the introduction of the tax was subject to the Cabinet Secretary for the National Treasury and Planning publishing regulations for the implementation of the tax.

**Implication:** While the tax is a recognition of the growth of the digital market at the expense of brick and mortar establishments, it will be difficult to implement due to the amorphous nature of digital transactions.

There have also been delays in publishing the promised regulations which speaks to the difficulties of implementing the tax.

### Income of Home Ownership Savings Plans (HOSPs) to be taxed?

Proposed provision: The bill proposes to subject the income of HOSPs to tax.

**Implications:** This proposal seeks to subject to tax income earned by financial institutions, fund managers, investment banks and building societies with respect to HOSP deposits. This will reduce the income available for distribution to depositors as interest, negatively impacting their ability to purchase homes.

This proposal to subject the HOSP income to tax was first introduced through the Tax Laws (Amendment) Bill, 2020 in March 2020 but was rejected by the National Assembly on the basis that it negates the efforts by Government to promote affordable housing.

### Income earned by NSSF to be taxed

**Proposed provision:** The Finance Bill proposes to subject income earned by NSSF to tax.

**Implications:** This proposal will reduce the retirement benefits available to retirees and is also contrary to the general provisions for exemption of the income of registered retirement schemes.

This proposal was initially included in the Tax Laws (Amendment) Bill, 2020 and was subsequently rejected by the National Assembly on the basis that subjecting the income earned by NSSF will result in reduced income payable to members.

### Non-deductible expenses

**Proposed provision:** The Bill proposes to disallow several hitherto allowed business expense. These are:

- Membership subscriptions and fees on members' clubs and trade associations
- Legal and other incident capital expenditure relating to the authorization and issue of shares, debentures or similar securities offered for purchase by the general public;
- Legal and other incident capital expenditure relating to listing without raising additional capital;
- All listing expenses;
- Club subscriptions paid for employees; and
- Capital expenditure incurred on the construction of a public school, hospital, road or any similar kind of social infrastructure.





**Implication:** As noted in our earlier analyses, ordinarily, legal and incidental costs during a listing process or where a company is looking to raise additional capital at the Nairobi Security Exchange (NSE) can be significant. Disallowing the expenses for corporation tax will definitely see an increase in the tax bill of companies looking to list or float shares at the NSE. Whether this will discourage companies from raising additional capital through the NSE or listing at the NSE remains to be seen.

Additionally, the trade association subscriptions and club subscriptions are likely to affect several companies although the impact may not be as significant.

The disallowing of expenses relating to social infrastructure projects will be a big blow to communities that benefit from such social infrastructures. This is because such companies will be discouraged in investing in such social well being projects if the expenses will not be allowable against their income for tax purposes.

The above provisions were proposed for deletion in the Tax Laws (Amendment) Bill, 2020 but were rejected by the National Assembly during its deliberations in April 2020 due their adverse implications on various sectors of the economy specifically the growth of the Nairobi Securities Exchange and promotion of private sector contribution towards social infrastructure.

# Pay As You Earn

The Bill proposes to delete the Paragraph exempting monthly pension granted to a person who is sixty five years of age or more.



## Tax on Bonus for Low Income Earners

**Proposed provision:** The Bill proposes to delete the Paragraph exempting from tax 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 provided under Head B of the Third Schedule.

**Implication:** This amendment seeks to tax the bonuses, overtime and retirement benefits which had initially been exempted through the Finance Act 2016. This will result to a reduction of disposable income for low income earners.

Previously, employees whose taxable employment income before bonus and overtime allowances did not exceed the lowest tax band (below **KES 12,298** per month) would not be subject to PAYE on receipt of bonuses and overtime allowance over and above their basic pay.

Following the expansion of the PAYE bands by the Tax Laws (Amendment) Act 2020, the Bill now proposes to eliminate the tax exemption on bonuses and overtime allowances paid to low income employees. Given the current difficult economic environment, we recommend that the incentive be retained especially given that it rewards those employees in the low income category who work hard and are recognized by their employers for dedication to their jobs. Such dedication will be critical as the country seeks to recover from the effects of COVID-19.

The proposal to tax allowances and bonuses paid to low income earners was included in the Tax Laws (Amendment) Bill, 2020 but was

rejected by the National Assembly. Therefore, reintroducing the provision just one week after it was rejected by the National Assembly will raise eyebrows among the general public.

## Taxation of monthly pension for persons aged 65 or more

**Proposed provision :** The Bill proposes to delete the Paragraph exempting monthly pension granted to a person who is sixty five years of age or more.

**Implication:** The Finance Act 2007 introduced Paragraph 53 which provides that monthly or lumpsum pension granted to a person who is sixty five years of age or more is exempt from tax.

Should the amendment pass, retirees, who can be deemed as vulnerable members of society, will receive lower pension pay outs and therefore lower disposable income.

This amendment had been proposed in the Tax Laws (Amendment) Bill, 2020 and was later rejected by the National Assembly on the basis that taxing these amounts would reduce the pension amounts payable to retirees.



### Is this the end of the Home Ownership Savings Plans?

**Proposed provision:** The bill proposes to delete Section 22C which allows tax deduction of HOSP contributions up to a limit of **KES 96,000** per year. Further, this section exempts interest income earned by a depositor on such deposits up to a maximum of **KES 3,000,000**.

**Implications:** HOSPs were introduced in Kenya in 1995, and operate as tax-sheltered savings plans created to enable depositors save for home acquisition or development. Deletion of this section will discourage home ownership savings, potentially forcing potential home owners to shift to loans which are still eligible for mortgage relief

This proposal was initially included in the Tax Laws (Amendment) Bill, 2020 and was subsequently rejected by the National Assembly on the basis that it discourages savings to invest in the housing sector which contradicts the Big Four agenda on affordable housing.



# Value Added Tax Act

The Kenya Revenue Authority (KRA) has been issuing Value Added Tax Auto Assessments (VAA) through the iTax Platform for the past two years.



## “Sanitizing” Value Added Tax Auto Assessments

Proposed provision: The Bill has proposed to amend the procedure of claiming input VAT by introducing a new provision which provides that a taxpayer will not be allowed input VAT deduction where the registered supplier has not declared the respective sales in their VAT return.

Implication: The Kenya Revenue Authority (KRA) has been issuing Value Added Tax Auto Assessments (VAA) through the iTax Platform for the past two years. The VAA is based on a compliance check by the iTax system which identifies inconsistency between the input tax claimed by a taxpayer and the output tax declared by the seller. Inconsistencies are referred to the buyer and supplier for reconciliation and in some cases, the KRA issues an assessment to the buyer disallowing the input VAT claim.

The VAA has been marred with controversy specifically on its legality given that the KRA is shifting the mandate of enforcing compliance to the taxpayer.

The Tax Appeals Tribunal (TAT) has recently ruled in the case of Shreeji Enterprises (K) Limited (Appellant) v Commissioner of Investigations & Enforcement) that the KRA erred in disallowing input VAT claimed by the Appellant for purchases from registered VAT suppliers given that the Appellant did not have the capacity, duty or knowledge to enforce remittance of output tax by its suppliers.

- a. Taxpayers have no way of confirming that the supplier has declared the sales as this information is only available to the supplier and the KRA;

- b. The KRA has implemented a number of compliance measures including the electronic tax registers and the iTax Platform which allow it to ensure that suppliers have correctly declared their sales. It is interesting that even with the investments that the KRA has made to enhance compliance, there is proposal to shift of the compliance responsibility to taxpayers.

Definition: Tax rate changes (Goods – Vatable to Exempt)

Details	New rate	Old rate
Ambulance services	Exempt	14%
Maize (corn) seed of tariff no. 1005.10.00	Exempt	14%

## Definition: Tax rate changes (Goods - Zero-rated to VATable)

Details	New rate	Old rate
Liquefied petroleum gas	14%	0%
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.	14%	0%

The proposed charge on LPG will also increase the price of this commodity and contradicts government efforts to shift consumers from use of wood fuel to LPG to conserve our forests. It is also interesting given that all other petroleum products are taxed at the lower rate of 8%. This amendment had been proposed in the Tax Laws (Amendment) Bill, 2020 however was rejected by the National Assembly on the basis that the provision was introduced in the Finance Act 2019 and therefore adequate time should be provided for its implementation.

This is not a welcome move in this COVID-19 pandemic where there is reduced income due to restrictions and measures introduced globally in-order to fight the pandemic.


#### Definition: Tax rate changes (Goods – Exempt to Standard Rated)

Details	New rate	Old rate
8802.11.00 & 8802.12.00: Helicopters	14%	Exempt
8802.20.00 Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg.		
8803.30.00 Other parts of aeroplanes and helicopters		
8805.21.00. Air combat simulators and parts thereof.		
8805.10.00 Aircraft launching gear or similar gear and parts thereof.		
8805.29.00 Other ground flying trainers and parts thereof.		
4011.30.00		
Specialized 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.	14%	Exempt
Tractors other than other than road tractors for semitrailers	14%	Exempt

The proposal to subject helicopters and the aircraft parts to VAT at 14% will negatively impact the aviation industry which is underperforming during this COVID-19 pandemic. Further the taxation of aircraft parts, defeats the aspirations of establishing Kenya as an aeronautical hub in East Africa.

The bill has proposed to introduce VAT on previous exempted concessions accorded by the Cabinet Secretary on specialized equipment for the development and generation of solar and wind energy, and inputs or raw materials supplied to solar equipment manufacturers. This is likely to increase the cost of producing power in the country and also deter future investments in these sectors.





The introduction of VAT on tractors will increase the cost of agricultural production, significantly impacting farmers who are already battling the effects of unpredictable rainfall, locusts and low prices for their produce.

The above amendments had been proposed in the Tax Laws (Amendment) Bill, 2020 but were rejected by the National Assembly on the basis that they would have negative implications on sectors of the economy already burdened by the impact of COVID-19.

**Definition: Tax rate changes (Goods – Exempt to Standard Rated)**

Details	New rate	Old rate
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.	14%	Exempt
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar nonelectric 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.	14%	Exempt
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.	14%	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant	14%	Exempt
Hiring, leasing and chartering of helicopters	14%	Exempt

The Bill has proposed to introduce VAT on items previously exempted from VAT under concessions accorded by the Cabinet Secretary. These items include taxable supplies incurred on construction of the assembly, manufacture or repair of clean cook stoves. The clean cook stoves are environment friendly as they produce fewer emissions compared to open fires. The introduction of VAT on these stoves will reduce the affordability of the stoves to the ordinary Kenyans who cannot afford other forms of energy for cooking.

It is interesting to observe that these amendments on clean cooking stoves had been proposed in the Tax Laws (Amendment) Bill, 2020 however was rejected by the National Assembly on the basis that they encouraged the use of clean energy in cooking hence conserve the environment and reduce the contraction of respiratory diseases as a result of inhaling smoke.

The introduction of VAT on plant, machinery and equipment used in the construction of a plastics recycling plant will be contrary to government efforts of environmental conservation as this will deter investments in this sector. The above amendment had been proposed in the Tax Laws (Amendment) Bill, 2020 but was rejected by the National Assembly on the basis that the law was introduced in the Finance Act 2019 and therefore should be given an opportunity to be fully operationalised and the impact assessed before it can be amended.



# Excise Duty

The Bill seeks to excise duty coverage to include beer and mixtures of fermented beverages with non-alcoholic beverages, spirituous beverages, spirits and liqueurs of alcoholic strength exceeding 8%.



## Expanded definition of “Licence”

**Proposed provision:** The Bill seeks to expand the definition of licence for excise duty purposes to include the operating licences for activities that have been gazetted by the Commissioner as activities for which an excise licence is required.

**Implication:** This provision provides clarity on licensing and reduces bureaucracy since such activities do not require an additional licence from the Commissioner.

## Lowered alcohol content

**Proposed provision:** The Bill seeks to excise duty coverage to include beer and mixtures of fermented beverages with non-alcoholic beverages, spirituous beverages, spirits and liqueurs of alcoholic strength exceeding 8%.

Previously excise duty applied on:

- Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%
- Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%.

**Implication:** This will increase the products subject to excise duty by bringing into the tax bracket products with low alcoholic content that were previously not taxed. The proposal is part of the government efforts to increase tax revenues.

# Tax Procedures Act

The Bill proposes a Voluntary Tax Disclosure Programme for a period of three years with effect from the 1 January 2021.



## Voluntary Tax Disclosure Programme

**Proposed provision:** The Bill proposes a Voluntary Tax Disclosure Programme for a period of three years with effect from the 1 January 2021.

Persons volunteering for the program are granted immunity from prosecution and granted penalty and interest waivers on tax arrears arising from inadvertent instances of non-compliance between **30 June 2015 to 1 July 2020 as follows:**

- a. Full remission for applications made in 2021;
- b. 50% for applications made in 2022; and
- c. 25% for applications made in 2023

The taxpayer and the Commissioner shall enter into an agreement setting out the terms of payment of the tax liability, including the timeframe for the settlement which shall not exceed one year from the date of the agreement.

While the proposal provides that the taxpayer cannot appeal against the relief granted, a taxpayer may appeal against the Commissioner's decision to withdraw it.

Taxpayers who are under audit or have received notification of a proposed audit will not be eligible for the programme.

**Implication:** The introduction of a penalty and interest waiver programme will help both the taxpayer and the KRA to collect outstanding tax arrears. Based on its current capacity, the KRA is not able to carry out audits on all taxpayers and the program will help to bridge this compliance gap.

## Appointment of digital service tax agent

**Proposed provision:** In line with introduction of the digital services tax, the Bill has proposed the appointment of digital service tax agents by the Commissioner, who may also revoke such an appointment.

**Implication:** The digital services tax is imposed on persons operating digital marketplaces and persons selling products on such platforms. It is likely that the KRA will target financial institutions for appointment as agents further cementing the role played by banks in the collection of taxes.

# Miscellaneous Fees and Levies Acts

The duty is in addition to custom duties applicable on the remove of products from the EPZs for home use.



## 1.5% Import declaration Fee on Duty Remission Scheme

**Proposed provision:** The Bill proposes to increase the Import Declaration Fee for goods imported under the East African Community Duty Remission Scheme from **KES 10,000** to 1.5% of the customs value.

**Implication:** The increase in the Import Declaration Fee will increase KRA's collections and assist to bridge the deficit arising in other tax incentives. However, this change increases the cost of products which are mostly provided through grants for the benefit of vulnerable persons.

## Additional duty on goods from EPZ

**Proposed provision:** The Bill introduces 2.5% additional duty in respect of goods entered for home use from export processing zones enterprises.

**Implication:** The duty is in addition to custom duties applicable on the remove of products from the EPZs for home use.

Recently the government has opened up the local market for the EPZ enterprises whose export markets have been negatively impacted by the COVID-19 pandemic.

The additional duty will make EPZ products more expensive given that Special Economic Zones have unfettered access to local markets once they account for custom duties on their products.

## Exemption from Import Declaration Fee

**Proposed provision:** The Bill restricts exemption from Import Declaration Fee for aircraft. Initially all aircraft were exempted from IDF but now this exemption does not apply to helicopters

(class 8802.11.00 and 8802.12.00) and aircraft exceeding 2000kg.

The Bill also seeks to remove IDF exemption on goods exempted for projects worth over KES 200m which are deemed to be in the public interest and goods procured under a special arrangement with the government.

The Bill further seeks to provide IDF exemption on goods, equipment, machinery and motor vehicles for official use by the Kenya Defence Forces (KDF) and the Kenya Police.

**Implication:** The proposed changes will result to an increase on IDF collections on aircraft that are now not exempted. However, the proposed change will hit operators of passenger and cargo aircraft who have been the most affected by the COVID-19 pandemic.

On the other the exemption from IDF on goods and equipment for defense forces and police removes bureaucracy since under the current regime the National Treasury is expected to provide budgetary allocations to fund the IDF payments.

## Exemption from Railway Development Levy

**Proposed provision:** The Bill removes the exemption on goods imported for public interest projects work KES 200m but extends exemption to imports by the defense forces and police and also currency notes.

**Implication:** The move reduces cash transfers between government ministries and departments to cater for tax while continuing the government policy to remove tax incentives for private sector investments.



# Public Roads Toll Act

The Bill creates the National Roads Toll Fund. Tolls that will be collected will be remitted to this Fund.



## Agreements for road management

**Proposed provision:** The Bill proposes to remove the requirement to table before and obtain approval from the National Assembly agreements to plan, design, construct and manage a public road or any portion thereof which has been declared to be a toll road.

**Implication:** It appears that the government is looking to enforce toll levies as one way of encouraging the private sector to invest in the construction of road infrastructure. The proposal will hasten the process of concluding agreements for road construction projects..

## Alternative arrangements to levy/collect toll

**Proposed provision:** The Bill provides that an agreement to levy or collect tolls and may provide alternative ways of doing so. This seems to be an introduction to the subsequent amendment which provides a base toll rate which may be adjusted as agreed by the Cabinet Secretary with the toll collector. The adjustments will be based on a pre-agreed mechanism.

The Bill also removes the requirement for the CS to publish details of tolls in the gazette and also for toll collectors to submit records of toll collections to the government.

**Implication:** This provides a leeway for toll collectors to institute other means of toll collections other than physical payment booths which are associated with traffic jams.

## National Roads Toll Fund

**Proposed provision:** The Bill creates the National Roads Toll Fund. Tolls that will be collected will be remitted to this Fund. The Fund is to be administered as provided under the Public Finance Management Act, 2012 and the Regulations thereunder.

**Implication:** The proposed creation of the Fund will ensure that tolls collected are accounted for and administered prudently. The government is however expected to publish specific regulations for the Fund just as we have for other funds under the Public Finance management Act, 2012.

## Failure to pay toll a civil debt

**Proposed provision:** The Bill enhances the enforcement of collection of tolls by empowering a toll collector to collect toll from defaulters as a civil debt recoverable summarily.

**Implication:** The proposed amendment provides a legal mechanism for toll collectors to institute civil action to recover tolls from defaulters.

## Tax Appeals Tribunal Act

### Limit on grounds of appeal

**Proposed provision:** The Bill proposes to limit the grounds of appeal filed at the Tax Appeals Tribunal to grounds stated in the appeal or documents to which the decision relates.

**Implication:** The amendment could bar an appellant from introducing new grounds of appeal or submitting new documents to support the appeal after lodging the appeal documentation. through documents submitted after lodging the appeal.

# Kenya Revenue Act

The Bill seeks to create an avenue for the KRA Board to make regulations for capacity building and training.



## Kenya Revenue Authority Act: Restrictions on suing KRA

**Proposed provision:** The Bill seeks to introduce a time limit for suing KRA to 12 months from the date an action arose or 6 months from the cessation of a continuing damage or injury. The Bill further introduces a requirement to give the KRA a month's notice to sue which should be served on the Commissioner General before instituting legal proceedings against KRA.

**Implication:** The proposals are structured to manage the suits that can be levelled against KRA. Suits may be dismissed if lodged out of the prescribed time. In addition, they may be dismissed if KRA was not notified a month in advance of the intention to sue. The one month's notification to sue also appears under the Government Proceedings Act (GPA). However the provision under the GPA was declared unconstitutional in 2012 (Civil Suit 504 of 2008).

## Regulations for capacity building and training

**Proposed provision:** The Bill seeks to create an avenue for the KRA Board to make regulations for capacity building and training.

**Implication:** The proposed introduction will assist the KRA to streamline the various initiatives it has on capacity building and training. This includes the running of a training institution. It is however, not clear what the place of the Kenya School of Revenue Administration (KESRA) will be under the new proposals.

## Commission on Revenue collected on behalf of County Government

**Proposed provision:** The Bill seeks to introduce a commission to be paid to KRA by a County Government where KRA has assisted it to collect revenues. The commission is capped to 2% of the revenue collected.

**Implication:** The proposed amendment will provide an additional source of revenue to the KRA where it collects revenue on behalf of a county government or government agency such as the recent deal between the National Government and Nairobi County where the KRA was appointed as an agent to collect revenue on behalf of the County.



# Other Acts

The Bill introduces a period of 30 days within which a complainant may appeal against the decision of the Insurance Regulatory Authority.



## Capital Markets Act: Clean up

**Proposed provision:** The Bill seeks to remove payment of beneficiaries of unclaimed dividends from the roles of the Investor Compensation Fund under the Capital Markets Act.

**Implication:** This is a clean up of the legislation to recognize that unclaimed dividends are paid out to the Unclaimed Assets Authority which has the responsibility of tracing beneficiaries of unclaimed assets.

## Licensing of private equity and venture capital funds with access to public funds

**Proposed provision:** The Bill seeks to empower the Capital Markets Authority (CMA) to license, approve and regulate private equity and venture capital companies that have access to public funds.

**Implication:** The proposed amendment will provide the CMA with supervisory powers over private equity and venture capital companies that have access to public funds. More clarity may be required on the definition of public funds since some of these companies get their funds from private sources.

## Insurance Act-Time limit for appeals

**Proposed provision:** The Bill introduces a period of 30 days within which a complainant may appeal against the decision of the Insurance Regulatory Authority.

**Implication:** The proposed time limit for appeals is consistent with other Acts and is to ensure that appeals are lodged in a timely manner. If the provision is passed, appellants should be mindful of this otherwise their appeals to the Tribunal may be dismissed for being out of time.

## Standards Act: License to act as consolidator

**Proposed provision:** The Bill seeks to re-define the meaning of a Consolidator by introducing a licence which consolidators must have and the manner in which they declare the goods they import in one Master Bill of Lading or Master Airway Bill to identify the owners.

**Implication:** The Act previously only mentioned registration of consolidators with the Kenya Bureau of Standards but did not refer to a licence. In addition, the consolidators will be allowed to import goods under a Master Bill of Lading or Master Airway Bill but will be expected to break the consignment into smaller units to allow individual custom declarations and payments.

## Road Maintenance Levy Fund Act: Clean up

**Proposed provision:** The Bill seeks to remove transit tolls as part of the funds that go to the Road Maintenance Levy Fund. This follows the establishment of the National Roads Toll Fund to collect transit tolls.

**Implication:** The proposed change will ensure that there is only one Fund collecting the transit tolls for efficiency. However, it is interesting to note that the Road Maintenance levy which is collected from petrol and diesel was introduced to replace the toll stations. With the introduction of tolls, there will be double taxation for motorists.





### **Retirement Benefits Act: Penalty for not submitting actuarial evaluation report**

**Proposed provision:** The Bill seeks to introduce a penalty of KES 100,000 and KES 1,000 per day of continuing default for failure by a scheme to submit an actuarial evaluation report to the Retirement Benefits Authority (RBA).

**Implication:** The proposed amendment will go a long way to ensure compliance by retirement benefit schemes. Previously, there was no penalty for failing to submit actuarial evaluation reports. The proposed change will also assist the RBA to regularly monitor schemes and safeguard members' funds.

### **Insolvency Act: Priority of KRA on liquidation of a revenue banking agent**

**Proposed provision:** The Bill seeks to rank KRA as a preferred debtor in the event of liquidation or receivership of a bank that was appointed as a revenue banking agent. The priority applies to moneys collected by the agent on behalf of KRA.

**Implication:** The proposed amendment will ensure that money collected by the revenue agent goes back to KRA as a priority over other debts that the agent may have on liquidation or receivership.



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