Finance Bill, 2020

A KPMG analysis

May 2020

kpmg.com/ke

Preamble

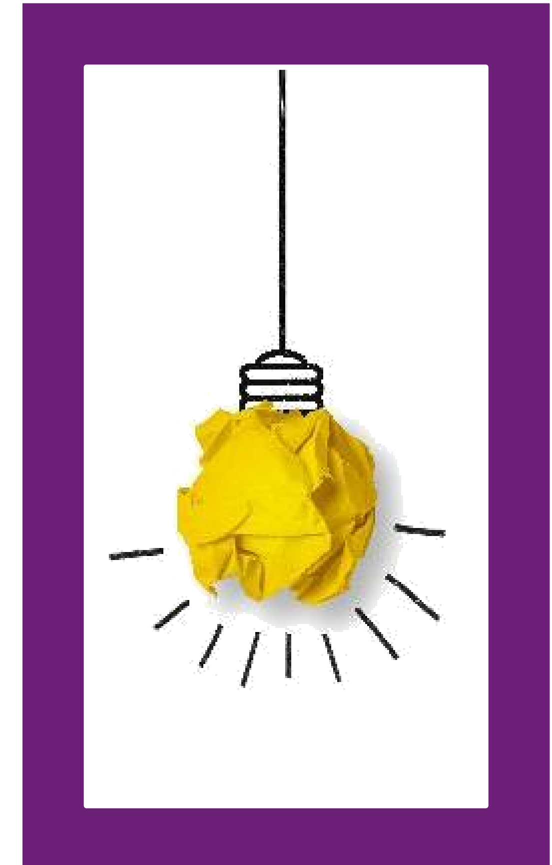
The Finance Bill, 2020 (the Bill) was tabled in the National Assembly for debate and approval on 6 May 2020. This is a departure from previous years where Finance Bills would be introduced to the National Assembly after the reading of the national budget in June. This change was necessitated by recent constitutional interpretations issued by the court which barred the government from collecting taxes before the relevant tax provisions are approved by the National Assembly.

This will give the National Assembly time to approve the Bill in time for implementation of the tax measures when the government calendar start on 1 July, effectively allowing the government to match revenue collection and expenditure for the year.

The publication of the Bill comes barely ten days after the President assented to the Tax Laws (Amendment) Act, 2020 which introduced far reaching changes to the tax legislation. The Bill builds on these changes through the proposed introduction of a minimum tax to be paid by taxpayers whether there are loss making or not, increase in the residential rental income subject to the 10% tax from KES 10million to KES 15million and the creation of a mechanism for the implementation of transit toll roads which is a critical cog in getting the private sector to invest in the construction of roads.

A number of tax proposals that had been proposed in the Tax Laws (Amendment) Bill, 2020 but were rejected by the National Assembly have been reintroduced for debate the Bill even before the dust settles. Though not legally prohibited, this appears to be a contravention of the spirit of Standing Order 141(1) of the National Assembly which provides that a Bill can only be reintroduced in the next session or after the lapse of six months in the same session. It will be interesting to see how the National Assembly will treat the proposals this time round.

We provide in the ensuing pages our analysis of the proposed changes.



KPMG

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

KPMG

Section 1

- Income Tax
- Pay As You Earn (PAYE)
- Value Added Tax Act
- Excise Duty
- Tax Procedures Act
- Miscellaneous Fees and Levies Act

Income Tax

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 10million to 15million 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 50million.

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 person's:

a) income is not exempt under the ITA;

b) income is not from employment, residential rent, capital gains, mining or oil exploration, capital gains or subject to turnover tax; or

c) 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:

a) 25% of the estimated "current" year tax; or

b) 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 is to 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.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Income 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:

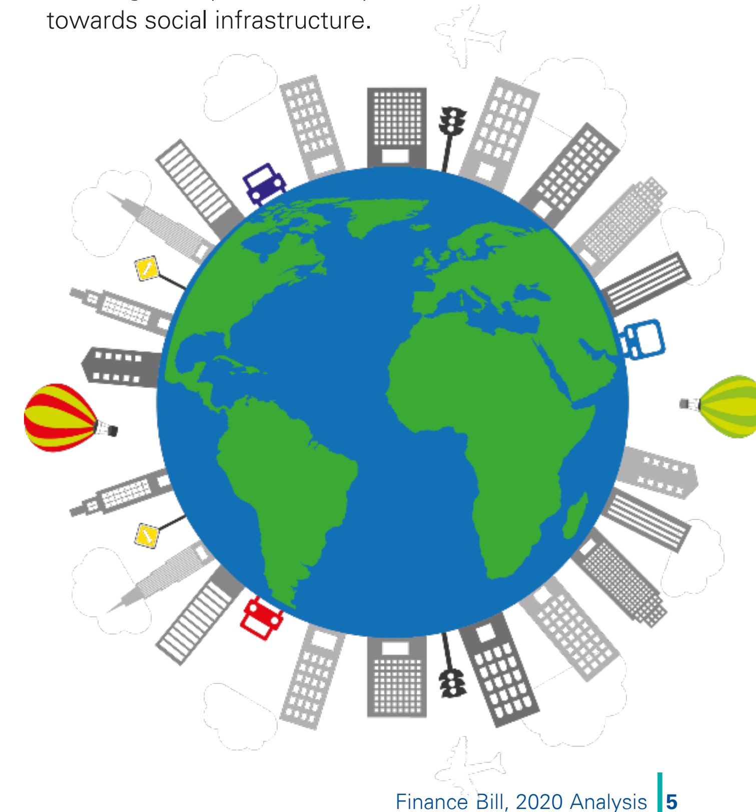
- membership subscriptions and fees on members' clubs and trade associations
- legal and other incident capital expenditure relating to the authorization and issue of shares, debentures or similar securities offered for purchase by the general public;
- legal and other incident capital expenditure relating 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.



© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Pay As You Earn

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) were 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 it may be useful to retain the incentive 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 from tax pensions paid to persons who are sixty five years of age and above.

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 proposal pass, retirees, many of whom fall within the category of vulnerable members of society will receive lower pensions, reducing their disposable income.

This amendment had been proposed in the Tax Laws (Amendment) Bill, 2020 but was 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: **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, 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 but was 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.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Value Added Tax Act

"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 *i*Tax Platform for the past two years. The VAA is based on a compliance check by the *i*Tax 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) 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.

This amendment therefore aims at "sanitizing" KRA's action by making it legal for the KRA to issue VAA, denying taxpayers input VAT where the seller has not declared output VAT on the supplies.

Implementing the proposed amendments will have the following challenges:

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 *i*Tax 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 enforce compliance, they are proposing to shift 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 VAT charge on LPG will also increase the price of cooking gas which contradicts government efforts to shift consumers from use of wood fuel to LPG to conserve our forests. It is also interesting that the government has proposed to tax LPG at 14% while other petroleum products are taxed at the lower rate of 8%.

This amendment had been proposed in the Tax Laws (Amendment) Bill, 2020 but was rejected by the National Assembly on the basis that it will increase the cost of gas which is critical in the government efforts to shift consumer demands from use of wood fuel.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Value Added Tax Act

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

Details	New rate	Old rate
• 8802.11.00 & 8802.12.00: Helicopters • 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 New pneumatic tyres of rubber used on aircraft	14%	Exempt
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 their affordability to 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.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Excise Duty

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 change the excise duty coverage for alcoholic beverages as follows:

- Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 8% (previously this was 10%)
- Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 8% (previously this was 10%).

Implication: On one hand, the proposal reduces the beers which are subject to excise duty while increasing the spirits subject to excise duty. Given that the excise duty on spirits is higher, the changes will increase the excise duty collections.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Tax Procedures Act

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.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Miscellaneous Fees and Levies Acts

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 from 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.

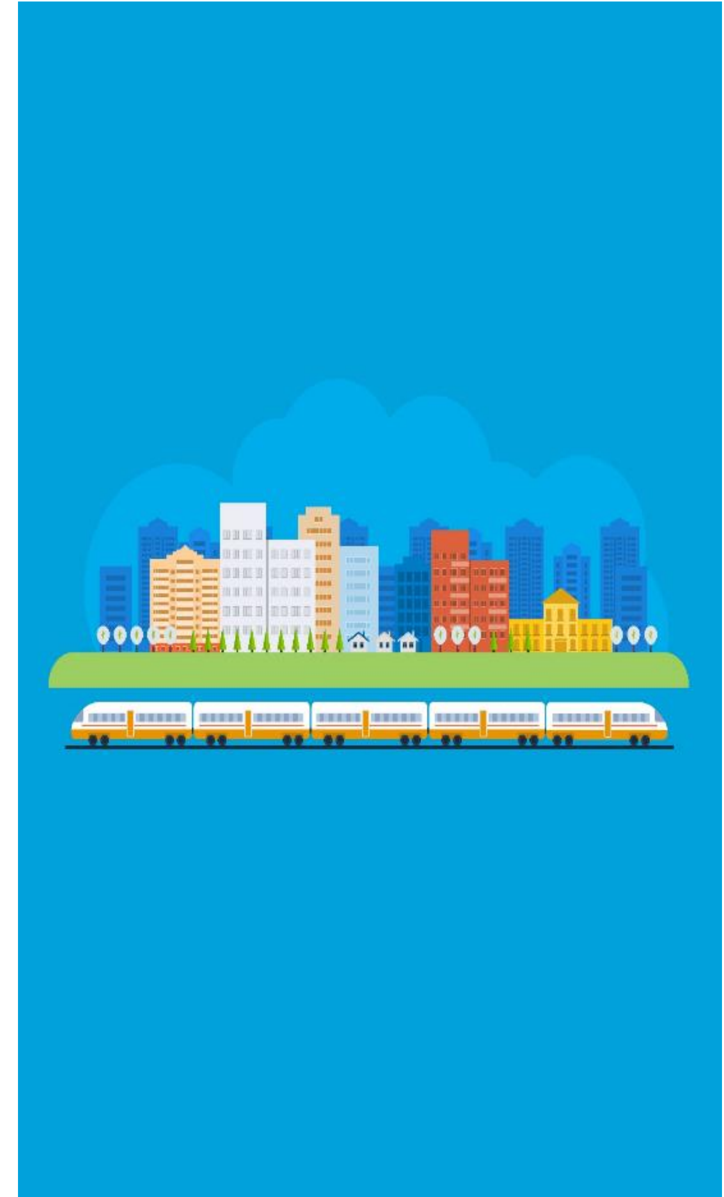
Implication: The proposed changes will result to an increase on IDF collections on aircraft that are now not exempted. However, the proposed change will hit operators of passenger and cargo aircraft who have been the most affected by the COVID-19 pandemic.

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 worth 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.



© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

KPMG

Section 2

- Public Roads Toll Act
- Tax Appeals Tribunal Act
- Kenya Revenue Act
- Other Acts

Public Roads Toll Act

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 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 based on a pre-agreed mechanism.

The Bill also removes the requirement for the CS to publish details of tolls in the gazette and 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 appeals 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.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Kenya Revenue Act

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.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Other Acts

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 prescribing the manner in which they declare the goods they import the 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 not 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 motorist.

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 is paid to KRA as a priority over other debts that the agent may have on liquidation or receivership.

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Contact

Benson Ndung'u
Chief Executive Officer, Senior Partner and Head of Tax and Regulatory Services
T: +254 709 576 905
E: bndungu@kpmg.com

Peter Kinuthia
Partner, Tax and Regulatory Services
T: +254 709 576 215
E: pkinuthia@kpmg.co.ke

Clive Akora
Partner, Tax and Regulatory Services
T: +254 709 576 245
E: cakora@kpmg.co.ke

© 2020. KPMG Kenya, a registered partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Disclaimer
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

All rights reserved.