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THE TAX LAWS (AMENDMENT) ACT, 2020
KEY HIGHLIGHTS

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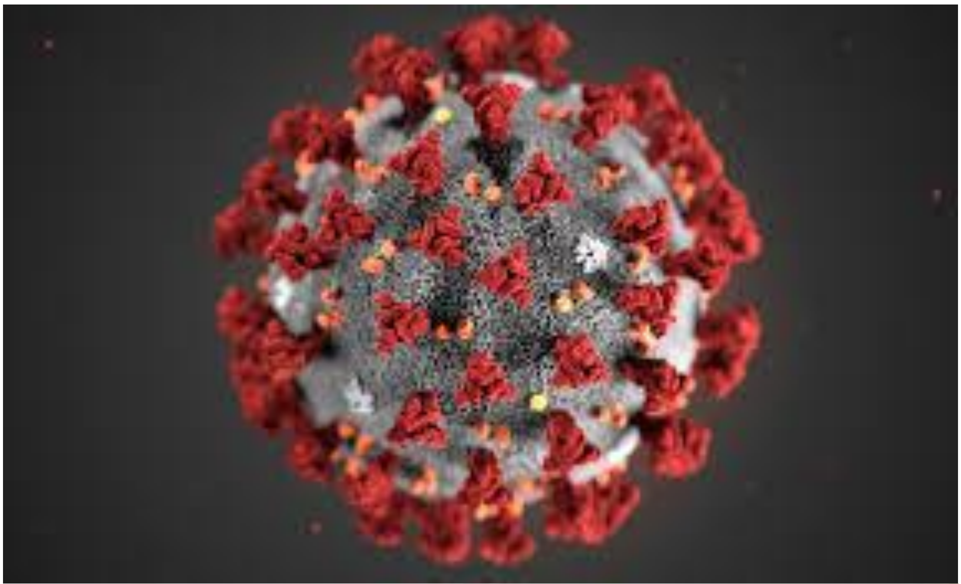
INTRODUCTION

The Tax Laws (Amendment) Act of 2020 was passed by parliament on 22nd April 2020 and assented to in to law by the President on 25th April, 2020. These amendments are on the backdrop of the current COVID-19 that has been declared as a pandemic by the World Health Organisation (WHO).

We have put together an analysis of the key highlights of The Tax Laws (Amendment) Act, 2020.



INCOME TAX ACT (ITA)

Below are the key changes to the Income Tax Act (All Effective 25th April, 2020)

- The Tax Laws (Amendment) Act, 2020 has amended the definition of qualifying interest. The change means that any interest received by a resident individual will be classified as qualifying and as such, the withholding tax on such interest shall be final tax.

- The Act has extended the turnover tax provisions to persons with annual turnover between Kshs. 1 million and Kshs. 50 million, from the current limit of Kshs. 5 million. It has also removed the limitations that meant that incorporated companies could not be taxed under turnover tax.

- The Act has reduced the turnover tax from 3% to 1% and deleted the presumptive tax that was paid by small businesses at the time of applying for business permits and treated as an advance turnover tax.

- The Act has done away with the 30% electricity rebate awarded to manufacturer. This rebate was introduced by the Finance Act of 2018 and became applicable from 1st January 2019.

- The Act has reduced the rate of corporate tax from 30% to 25% in order to cushion companies from adverse economic conditions resulting from Covid-19 pandemic.

- The Act has introduced withholding tax at the rate of 20% on services provided by non-resident persons on sales promotion, marketing, advertising services and transportation of goods (excluding air and shipping transport services). However, this will not apply to East African Community citizens with regard to the transportation of goods.

- The Act has increased the WHT rate on dividends paid to non-residents persons from 10% to 15%.

- The Act has made changes to the PAYE tax bands as highlighted below:

New PAYE Tax Bands	New rate		Old PAYE Tax Bands	Old rate
First Kshs. 288,000	10%		First KES 147, 580	10%
Next Kshs. 200,000	15%		Next KES 139,043	15%
Next Kshs. 200,000	20%		Next KES 139,043	20%
Above Kshs. 688,000	25%		Next KES 139,043	25%
			Above 564,709	30%

The Act has further increased the personal relief from the current Kshs. 16,896 to Kshs. 28,800. This effectively means that any person with a taxable income of Kshs. 24,000 per month will not pay any tax; however, they will still have to be declared on the monthly PAYE return.

The above PAYE tax bands are effective from the payroll month of April 2020.

- In line with the changes to PAYE tax bands, the Act has enhanced the tax bands for taxation of withdrawals from NSSF, registered pension funds and provident funds where the withdrawals are in excess of the tax-free amounts specified under Section 8(4) and 8(5) of the Income Tax Act, in any one year:
  a. For withdrawals after the expiry of fifteen years from the date of joining the fund:

Tax Bands	Rate
First Kshs. 400,000	10%
Next Kshs. 400,000	15%
Next Kshs. 400,000	20%
Above Kshs. 1,200,000	25%

  b. For withdrawals before the expiry of fifteen years from the date of joining the fund:

Tax Bands	Rate
First Kshs. 288,000	10%
Next Kshs. 200,000	15%
Next Kshs. 200,000	20%
Above Kshs. 688,000	25%

- The Act has reduced the tax rate from 30% to 25% for surplus funds withdrawn or refunded to an employer in respect of registered pension or provident fund.
- The Act has deleted the below exempt income and persons, this means that where applicable, they will be subject to income tax:
  a. Income of various government bodies i.e. The Tea Board of Kenya, The Pyrethrum Board of Kenya, The Sisal Board of Kenya, The Kenya Dairy Board, The Canning Crops Board, The Central Agricultural Board, The Pig Industry Board, The Pineapple Development Authority, The Horticultural Crops Development Authority, The Kenya Tea Development Authority, The National Irrigation Board, The Mombasa Pipeline Board, The Settlement Fund Trustees, The Kenya Post Office Savings Bank, The Cotton Board of Kenya.
  b. Dividends received by a registered venture capital company special economic zone enterprises, developers and operators licensed under the Special Economic zones Act.
  c. Gains arising from trade in shares of a venture company earned by a registered venture capital company within the first ten years from the date of first investment in that venture company by the venture capital company;
  d. Interest income generated from cash flows passed to the investor in the form of asset-backed securities;
  e. Interest earned on contributions paid into the deposit protection fund established under the Banking Act;
  f. Income from employment paid in the form of bonuses, overtime and retirement benefits payable to the employees in the lowest tax band;
  a. Dividends paid by Special Economic Zone Enterprise, developers or operators to any non-resident person; and
  b. Compensating tax accruing to a power producer under a power purchase agreement.

- The Act has repealed the current Second Schedule of the Income Tax Act and replaced it with a new one and below are the new rates:

Capital Expenditure on Buildings	**New Rate (%)**
Building used for manufacture	50% for first year
	25% per year on the balance on reducing balance basis
Machinery used for manufacture	50% for first year
	25% per year on the balance on reducing balance basis
Hotel buildings	50% for first year
	25% per year on the balance on reducing balance basis
Hospital buildings	50% for first year
	25% per year on the balance on reducing balance basis
Petroleum or gas storage facilities	50% for first year
	25% per year on the balance on reducing balance basis
Educational buildings including student hostels	10% per year on reducing balance basis
Commercial building	10% per year on reducing balance basis

Capital Expenditure on Machinery & other assets	**New Rate (%)**
Machinery used for manufacture	50% for first year
	25% per year on the balance on reducing balance basis
Hospital equipment	50% for first year
	25% per year on the balance on reducing balance basis
Ships or aircrafts	50% for first year
	25% per year on the balance on reducing balance basis
Motor vehicles and heavy earth moving equipment	25% per year on reducing balance basis
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	25% per year on reducing balance basis
Furniture and fittings	10% per year on reducing balance basis
Telecommunications equipment	10% per year on reducing balance basis
Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming	25% per year on reducing balance basis
Machinery used to undertake operations under a prospecting right	50% for first year
	25% per year on the balance on reducing balance basis
Machinery used to undertake exploration operations under a mining right	50% for first year
	25% per year on the balance on reducing balance basis
Other machinery	10% per year on reducing balance basis

Other Capital Expenditures	New Rate (%)
Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% per year on reducing balance basis
Farmworks	50% for first year
	25% per year on the balance on reducing balance basis

- Additional comments on the above capital allowances:
  "building used for manufacture" includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;

  "commercial building" includes-
  a. a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or
  b. civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;

  "machinery used for manufacture" means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes-
  a. generation, transformation and distribution of electricity;
  b. clean-up and disposal of effluents and other waste products;
  c. reduction of environmental damage;
  d. water supply or disposal;
  e. maintenance of the machinery; or
  f. scientific research and development;

  "manufacture" means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity;

  Capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, land.

- The Act has also effectively removed the **150% investment deduction** that was enjoyed by those who invested outside the cities of Nairobi, Mombasa and Kisumu.

VALUE ADDED TAX (VAT)

Below are the key changes to the Value Added Tax Act (All Effective 25th April, 2020) except for the changes to Section 5(2) which shall be effective on 15th May, 2020.

- The Act has now include excise duty, fees and other charges in computing the taxable value for petroleum products and other items listed in Section B of Part I of the First Schedule. The inclusion of excise duty and other charges in the computation of the VAT on fuel will significantly increase the VAT cost of fuel.

- The Act has also made an additional amendment that allows for issuance of credit notes within 30 days after the determination of a commercial dispute in a court of law in regards to the price payable on the tax invoice. This is in addition to the current requirement that allows a credit note to be issued within six months of the relevant tax invoice.

- The Act has reduced the time limit of applying for a tax refund on bad debts from five years to four years from the date of supply.

- The Act now requires that all persons maintain records of transactions for a period of five years. This now extends the scope of maintaining of records to capture all persons, whether registered for VAT or not.

- The Act has now exempted from Vat personal protective equipment (PPEs), including facemasks, for use by medical personnel in registered hospitals and clinics, or by members of the public in the case of a pandemic or a notifiable infectious disease.

- The Act has now subjected to Vat at 14% the below listed items (goods) that were previously exempt from Vat:
  a. Plants and machinery of chapter 84 and 85 used for manufacture of goods;
  b. Taxable supplies imported or purchased locally for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy;
  c. Taxable supplies imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306);
  d. Taxable supplies procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes;
  e. Biogas; plastic bag biogas digesters; leasing of biogas producing equipment;
  f. Parts imported or purchased locally for the assembly of computers;
  g. Goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones;
  h. Museum and natural history exhibits and specimens and scientific equipment for public museums;
  i. Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya;
  j. Goods falling under tariff number 4907.00.90;
  k. Materials and equipment for the construction of grain storage;
  l. Transfer of business as a going concern by a registered person to another registered person;
  m. Taxable goods supplied to marine fisheries and fish processors; and
  n. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.

- The Act has now subjected to Vat at 14% the below listed services that were previously exempt from Vat:
  a. Insurance agency, insurance brokerage and securities brokerage services;
  b. Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones;
  c. Taxable services procured locally or imported for the construction of liquefied petroleum gas storage facilities with minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes;
  d. Asset transfers and other transactions related to the transfer of assets into real estate's investment trusts and asset backed securities; and
  e. Services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.

- The Act has now changed the status of human and veterinary vaccines and medicaments of specified tariff codes as previously listed under Part C of the Second Schedule to the VAT Act from zero rated to exempt. This will mean that those that deal in this items will be unable to unable to claim the input Vat on costs incurred in their operations. Below is a listing of the items that will now be exempt:
  a. 3002.20.00 - Vaccines for human medicine.
  b. 3002.30.00 - Vaccines for veterinary medicine
  c. 3003.10.00 - Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycin or their derivatives.
  d. 3003.39.00 - Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
  e. 3003.40.00 - Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.
  f. 3003.90.00 - Other.
  g. 3003.90.10 - Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
  h. 3003.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
  i. 3004.10.00 - Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale.
  j. 3004.20.00 - Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
  k. 3004.32.00 - Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.
  l. 3004.39.00 - Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.
  m. 3004.41.00 - Containing ephedrine or its salts.
  n. 3004.42.00 - Containing pseudoephedrine (INN) or its salts.
  o. 3004.49.00 - Other.
  p. 3004.50.00 - Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.
  q. 3004.90.00 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
  r. 3004.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

MISCELLANEOUS AMENDMENTS

Below are other key changes to other statutes, all effective 25th April, 2020

Tax Procedures Act (TPA)

- The Act has amended the time limit under which the Commissioner was required to reply to an application for private ruling from 45 days to 60 days.

- The Act has repealed Section 69 of the TPA which required the Commissioner to publish a private ruling after issuing or withdrawing the private ruling to a taxpayer in at least two daily newspapers with a national circulation.

- The Act has reduced the penalty for late filing of turnover tax returns to Kshs. 1,000 from the current Kshs. 5,000.

Excise Duty Act

- The Act has amended the definition of **"other fees"** to read as below in an attempt to address several tax disputes arising out of the current definition:
  "other fees" includes any fees, charges or commissions charged by financial institutions relating to their licensed financial institutions, but does not include interest on loan or return on loan or fees or commissions earned in respect of a loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder;

- The Act has now changed the status of the below listed items from exempt to excisable:
  a. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government;
  b. One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his or her spouse and which is not exempted from excise duty under item 6 of Part A of the Second Schedule

Miscellaneous Fees and Levies Act

- The Act has introduced a processing fee on duty free motor vehicles. There shall be a fee to be known as the processing fee on all motor vehicles excluding motorcycles imported or purchased duty free prior to clearance through customs under the Fifth Schedule to the East African Community Customs Management Act, 2004.
  The fee shall be Kenya shillings ten thousand applicable to all motor vehicles excluding motorcycles imported or purchased duty free specified in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of Part A, and paragraph 3 and 5 of Part B under the Fifth Schedule to the East African Community Customs Management Act, 2004.

- The Act has subjected the following goods which were previously exempt to Railway Development Levy (RDL):
  a. Raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa;
  b. Goods imported for the construction of liquefied petroleum gas storage facilities; and
  c. Goods imported for implementation of projects under a special operation framework arrangement with the government.

- The Act has changed the status of the following goods which were previously exempt to being subject to Import Declaration Fee (IDF):
  a. Gifts and donations by foreign residents to their relatives in Kenya for their personal use;
  b. Samples which in the opinion of the Commissioner have no commercial value;
  c. Raw materials for direct and exclusive use in construction by developers or investors in industrial parks of one hundred acres or more located outside the municipalities of Nairobi and Mombasa; and
  d. Goods imported for the construction of liquefied petroleum gas storage facilities.

Disclaimer

Our review highlights the main aspects of the Tax Laws (Amendment) Act, 2020 assented to by the President on 25th April, 2020. The information contained in this review has been compiled from the Act and while all reasonable attempts have been made to ensure that the information contained herein is accurate, Moore JVB LLP accepts no responsibility for any errors or omissions it contains whether caused by negligence or otherwise. The review contains general information only and it is neither intended to be a comprehensive publication nor provides specific advice. This review should not be relied on solely, and we advise you seek appropriate professional advice before making any decision.

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