

# KENYA TAX UPDATES

JULY 2020

## The Finance Act, 2020









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## Overview

*The Finance Act, 2020 (the ACT) was assented into law by His Excellency The President Uhuru Kenyatta on 30<sup>th</sup> June 2020, giving life to a raft of taxation measures proposed by the Government to cushion Kenyans against the impact of Covid 19.*

The Finance Act, 2020 amends the Income Tax Act (Cap 470), the Value Added Tax Act, 2013, the Excise Duty Act, the Miscellaneous Fees and Levies Act; the Tax Procedures Act 2015; and the Kenya Revenue Act.

THE FINANCE ACT, 2020	
	<a href="#">Income Tax Act</a>
	<a href="#">Value Added Tax</a>
	<a href="#">Excise Duty</a>
	<a href="#">Tax Procedures Act</a>
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The provisions of the Act are effective as of Tuesday, 30<sup>th</sup> June 2020, which is the date of assent of the Act, other than the changes in respect of the amendments of the Income Tax Act and amendments of the Tax Procedures Act which will be effective from 1<sup>st</sup> January 2021.

## Highlights

The Act can be seen to target an increased Tax base with the introduction of minimum tax and the digital service tax as well as disallowing certain categories of expenses in the computation of Taxable income. The Act contains the following measures among others interpreted in this report;

- An increase in the upper threshold of residential rental income from KES. 10 Million to KES. 15 Million per annum.
- An introduction of Digital Service Tax at a rate of 1.5% of the gross transaction value, payable by a person whose income from services is derived from or accrues in Kenya through a digital market place.
- 6 Months Zero rate maize flour, wheat or meslin flour and maize flour containing cassava flour, for a period of 6 months effective from 30<sup>th</sup> June 2020.
- An introduction of a Voluntary Disclosure Programme (VDP) where a Tax payer discloses tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest of the tax disclosed.

## Income Tax Act

### i) Introduction of Minimum Tax

The Act has introduced a Minimum Tax which is a base income tax, payable by all persons regardless of whether or not they make a profit. The rate of the tax is 1% of the gross turnover of the taxpayer. The key elements of the tax are as follows:

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

This introduction is effective from 1<sup>st</sup> January 2021.

### ii) Residential Rental Income (RRI) Tax

	Previous Position	Changes in Finance Act, 2020
The upper threshold of Residential Rental income	KES 10 Million, Per annum	KES 15 Million, Per annum
The lower threshold of Residential Rental income	KES 144,000.00 Per annum	KES 288,000.00 Per annum

Effective 1<sup>st</sup> January 2021, the Act increases the upper threshold of Residential Rental Income from Kshs 10 million to Kshs. 15 million per annum. In addition, it aligns the lower threshold from Kshs 144,000 to current lower individual tax band of Kshs 288,000 per annum.

The increased limit from KES 10 million to 15 million allows landlords earning higher rents of up to KES 15 million to qualify for RRI which is a simpler mode of compliance. Landlords whose residential rental income does not qualify for RRI are required to maintain books of account and compute the profit which will then be subjected to income tax. This is therefore a welcome move as it allows more landlords to qualify for RRI tax even as they grapple with the challenges brought about by the Covid-19 pandemic.

### iii) Introduction of Digital Service Tax (DST)

Effective 1<sup>st</sup> January 2021, The Act has introduced a Digital Service Tax at a rate of 1.5% of the gross transaction value and shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place. The Finance Act, 2019 amended the Income Tax Act to include the definition of a “digital marketplace” which means “a platform that enables direct interaction between buyers and sellers of goods and services through electronic means.”

Residents and non-residents with a permanent establishment will be entitled to offset the digital tax paid against their income tax payable for that year of income. To ease in collection of the tax, the Act has also amended the Tax Procedures Act, 2015 to give powers to the KRA Commissioner to appoint agents for

purposes of collection and remittance of DST. Such agents could be payment service providers and banks. The tax will be due at the time of the transfer of the payment for the service to the service provider.

#### iv) **Changes in the allowable deductions in the computation of taxable income**

	Previous Position	Change in Finance Act, 2020
<b>Deductibility of Certain Expenses</b>		
Entrance fees or annual subscriptions paid to a trade association (in that year of income) which has made an election to be deemed to carry on a business charged to tax;	Allowable expense deduction	Deleted from the list of allowable deductions
Legal costs and other expenses incurred on issue of shares for purchase by the general public;	Allowable expense deduction	
Expenses incurred on legal costs and other expenses in listing on the Nairobi Stock Exchange;	Allowable expense deduction	
Club subscriptions paid by an employer on behalf of an employee	Allowable expense deduction	
Expenses incurred on the construction of a public school, hospital, road or a similar kind of social structure.	Allowable expense deduction	
<b>Home Ownership and Savings Plan (HOSP)</b>		
Contributions made to a registered HOSP.	Allowable deduction in Income Tax provision related to HOSP applicable	The Act has deleted the provisions on Home Ownership Savings Plan (HOSP).
<b>Deletion of Tax Exemption on Certain Class of Income</b>		
The income of a registered home ownership savings plan;	Income Tax exemption applicable	Deleted from Income 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	Income Tax exemption applicable	
<b>Income Tax Exemption</b>		
Monthly or lump sum pension payments to persons above 65 years of age.	Income Tax exemption not applicable	Exempt from Income Tax

A Home Ownership Savings Plan (HOSP) is a savings plan established by an approved institution and registered with the Commissioner of Domestic Taxes for receiving and holding funds in trust for depositors. A HOSP aims to benefit first time home owners by allowing the depositors to deduct the contributions made to a registered HOSP from their tax computations for a maximum of 10 years.

The repeal of the provisions in the Income Tax Act relating to HOSP effectively means that there will be no tax deduction allowed in respect to contributions made to a registered HOSP.

While Changes in deletion of Income Tax Exemption of certain classes in the Finance Act, 2020 is effective as from 30<sup>th</sup> June 2020, the other changes above are effective as from 1<sup>st</sup> January 2021.

## **Value Added Tax (VAT)**

### **i) Exemptions from VAT**

**Change in the Finance Act, 2020**

<b>Issue</b>	<b>Previous position</b>	<b>Change in Finance Act, 2020</b>
Maize (corn seeds) seeds of tariff no. 1005.10.00	Taxable at standard rate	Exempted from VAT
Ambulance services	Taxable at standard rate	Exempted from VAT

### **ii) Deletion of items from the exemption schedule to taxable at the standard rate of 14%**

The Act deletes the following items from the exemption schedule to make them taxable at the standard rate

<b>Items</b>
Alluminium pilfer proof caps with EPE liner
Helicopters of an unladen weight not exceeding 2,000 kg
Helicopters of an unladen weight exceeding 2,000 kg
Aeroplanes and other aircraft, of an unladen weight not exceeding 2,000 kg.
Other parts of aeroplanes helicopters
Aircraft launching gear and parts thereof; deck- arrestor or similar gear and parts thereof.
Air combat simulators and parts thereof
Other ground flying trainers and parts thereof
Specialized equipment for the development and generation of solar and wind energy
Tractors other than road tractors for semi-trailers.
Goods of tariff of no. 4011.30.00 (Pneumatic Tyres)
Taxable goods purchased by manufacturers or importers of clean cooking stoves
Stoves, ranges, grates, cookers, barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances

Items
One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse and which is not exempted from Value Added Tax under the First Schedule
Hiring, leasing and chartering of helicopters

### iii) Zero Rated Supplies

Change in the Finance Act, 2020- amendments to the second schedule- zero Rated Supplies

Issue	Previous position	Change in Finance Act, 2020
The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour	Exempt	Zero Rated for a period of 6 months effective from 30th June, 2020.  The exemption status will recommence from 1st January 2021.
The supply of liquefied petroleum gas including propane	Zero Rated	Taxable at standard rate Effective 1 <sup>st</sup> July 2020
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	Zero Rated	Taxable at standard rate Effective 30 <sup>st</sup> June 2020

### iv) Claim of input tax

Effective 30<sup>th</sup> June 2020, The Act introduces a requirement that a person claiming input tax will only be able to do so, if the registered supplier has made a corresponding declaration of the output tax in their return.

### v) Transitional provision for companies under special operating framework arrangement (SOFA)

Effective 30<sup>th</sup> June 2020, The Act provides transitional provisions to allow companies/projects currently under SOFA to continue enjoying the VAT exemptions on goods imported or purchased locally for the remaining period of the agreement.

## Excise Duty

### i) Amendment of the definition of “licence” as per the Excise Duty Act

Previous Definition	Change in Finance Act 2020 “license” – Definition
“licence” means (a) in case of excisable services, the certificate of registration or (b) in case of excisable goods, the licence, issued under section 17;	“licence”— (a) in the case of excisable services, means the certificate of registration (b) in the case of excisable goods, means (the licence issued under section 17; or (c) in the case of any activity under section 15(1) (e), means the licence required there under.

The Act has amended the definition of the term “license” to include a license issued for any activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a licence

### ii) Annual inflation adjustment

Effective 1<sup>st</sup> January 2021, The Act has amended the provisions relating to annual inflation adjustment by requiring that the Commissioner should seek an approval from the Cabinet Secretary for the National Treasury and Planning in order to adjust the specific rate of excise duty.

### iii) Alcoholic strength of spirituous beverages

Effective 30<sup>th</sup> June 2020, The Act has amended the alcoholic strength of spirituous beverages under the description: “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with nonalcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%” by reducing the alcoholic strength of spirituous beverages from 10% to 6%.

A corresponding adjustment is meant to change the alcoholic strength to 6% under the description: “Spirits of undenatured ethyl alcohol; liqueurs and other spirituous beverages of alcoholic strength exceeding 10%.”

### iv) Removal of excise duty on betting

The Act has removed excise duty on betting. The Finance Act, 2019 had introduced excise duty on betting at a rate of 20%.

## Tax Procedures Act

### i) Introduction of Voluntary Disclosure Programme (VDP)

Effective 1<sup>st</sup> January 2021, The Act has introduced a Voluntary Disclosure Programme (VDP) where a taxpayer discloses tax liabilities that were previously undisclosed to the Commissioner for the purpose of being granted relief of penalties and interest of the tax disclosed. The programme is confidential and will operate as follows;

- (a) The VDP shall be open for a period of 3 years effective 1st January 2021;
- (b) The disclosures eligible under the programme will be for tax periods of up to 5 years prior to 1st July 2020;



- (c) Where the application is accepted, the applicant shall be granted a remission of the interest and penalty due on the tax liability as follows:
- ✓ where the disclosure is made and tax liability paid in the first year of the programme, a 100% remission of the interest and penalty;
  - ✓ where the disclosure is made and tax liability paid in the second year of the programme, remission of 50% of the interest and penalty; and
  - ✓ where the disclosure is made and tax liability paid final year of the programme, remission of 25% of the interest and penalty.
- (d) A taxpayer will not be eligible for VDP where the taxpayer: -
- ✓ Is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
  - ✓ has been notified of a pending audit or investigation by the Commissioner.

## ii) Appointment of Digital Service Tax (DST) Agent

The Act has empowered the Commissioner to appoint an agent for the purposes of collection and remittance of the Digital Service Tax (DST).

## Miscellaneous Provisions

### i) Additional duty on goods entered for home use from an export processing zone enterprise.

Effective 30<sup>th</sup> June 2020, The Act anchors the additional duty of 2.5% of customs value in respect of goods entered for home use from an Export Processing Zone enterprise over and above the import duties under the Miscellaneous Fees & Levies Act.

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

Effective 30<sup>th</sup> June 2020, The Act has amended the IDF chargeable on goods imported under the East African Community Duty Remission Scheme from a specific rate of Kshs. 10,000 to an advalorem rate of 1.5% of the Customs value.

### iii) Import Declaration Fee (IDF) Exemptions

Description	Previous Position	New Tax Rate
Aircrafts of un-laden weight not exceeding 2,000kg and Helicopters (Tariff Heading 8802.11.00 and 8802.12.00);	Exempt	Deleted from the list of items exempt from Import Declaration Fees (IDF).
Goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs. 200 Million;	Exempt	
Goods imported for implementation of projects under special operating framework arrangement with the Government.	Exempt	
Equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.	2% IDF Fee	Exempt

The Changes in Import Declaration Fees (IDF) are effective from 30<sup>th</sup> June 2020.

iv) **Railway Development Levy (RDL) Exemptions**

Description	Previous Position	New Tax Rate
Currency notes and coins imported by the Central Bank of Kenya	1.5 % on Value of	Exempt from RDL
Equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.	1.5 % on Value of import	
Goods the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than Kshs. 200 Million.	Exempt	1.5 % on Value of import

The Changes in Railway Development Levy (RDL) are effective from 30<sup>th</sup> June 2020.

## **Tax Appeal Tribunal Act, 2013**

**Procedure of Appeal:** - Effective 30<sup>th</sup> June 2020, The Act amends the Tax Appeals Tribunal Act to restrict documents presented by an appellant to the Tax Appeals Tribunal to those which had been provided to the Commissioner during the objection process.

## **Kenya Revenue Authority Act,**

### **1. Additional Functions for Capacity Building and Training**

Effective 30<sup>th</sup> June 2020, The Act amends the KRA Act to provide for an additional function of the Authority as capacity building and training. To give effect to this, the KRA Board has been empowered to make regulations with respect to capacity building and training.

### **2. Limitation of Actions**

To enable effective resolution of suits against the Authority, the Act has provided that a legal action against the Authority suits shall not be instituted unless –

- (a) It is commenced within 36 months after the act, neglect or default complained of; and
- (b) In the case of continuing injury or damage, within six months after the cessation of the act; and
- (c) At least one month written notice specifying the particulars of the claim, intention to commence the action or legal proceeding has been served upon the Commissioner General.

## **Insolvency Act, 2015**

Effective 30<sup>th</sup> June 2020, The Acts amends the Insolvency Act to provide that all amounts held on behalf of Kenya Revenue Authority by banks appointed as agents for revenue banking services, shall, at the point of receivership or liquidation of the bank, rank among the preferential claims just like other statutory obligations owed to the government.

# GET IN TOUCH



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