

Business impact of the Tax and Business Laws Amendment Acts and Finance Bill, 2020 Proposals

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Agenda



Introduction



Amendments to Various Acts



The Business Laws Amendment Act



Finance Bill, 2020 Matters



Q&A



Tax Laws (Amendment) Act, 2020

Uphold public interest

Changes to the Income Tax Act - WHT

Increase of WHT on dividends paid to non-resident from **10% to 15%**

Introduction of WHT on marketing, sales promotion and advertising services provided by non-resident persons at the rate of 20%



Inclusion of WHT on reinsurance premiums paid to non-residents at the rate of 5% (Aviation insurance premiums exempted)

Introduction of WHT on transportation of goods provided by non-residents at the rate of 20% (EAC Citizens are exempted)

Changes to the Income Tax Act



Final tax on all interest income

- The definition of qualifying interest will now refer to **any interest received by a resident individual**
- Encourages individuals invest in debt instruments issued by other non-financial institutions



Turnover Tax

- Rate reduced from **3% to 1%**
- **Includes:**
 - a. persons with annual turnover between KES 1M and 50M
 - b. income of incorporated companies
- Professional and management fees and rental incomes are still **excluded** from TOT



Aligning tax rates

- **Removal** of the preferential tax rates for newly listed companies which ranged between 27.5% and 20%



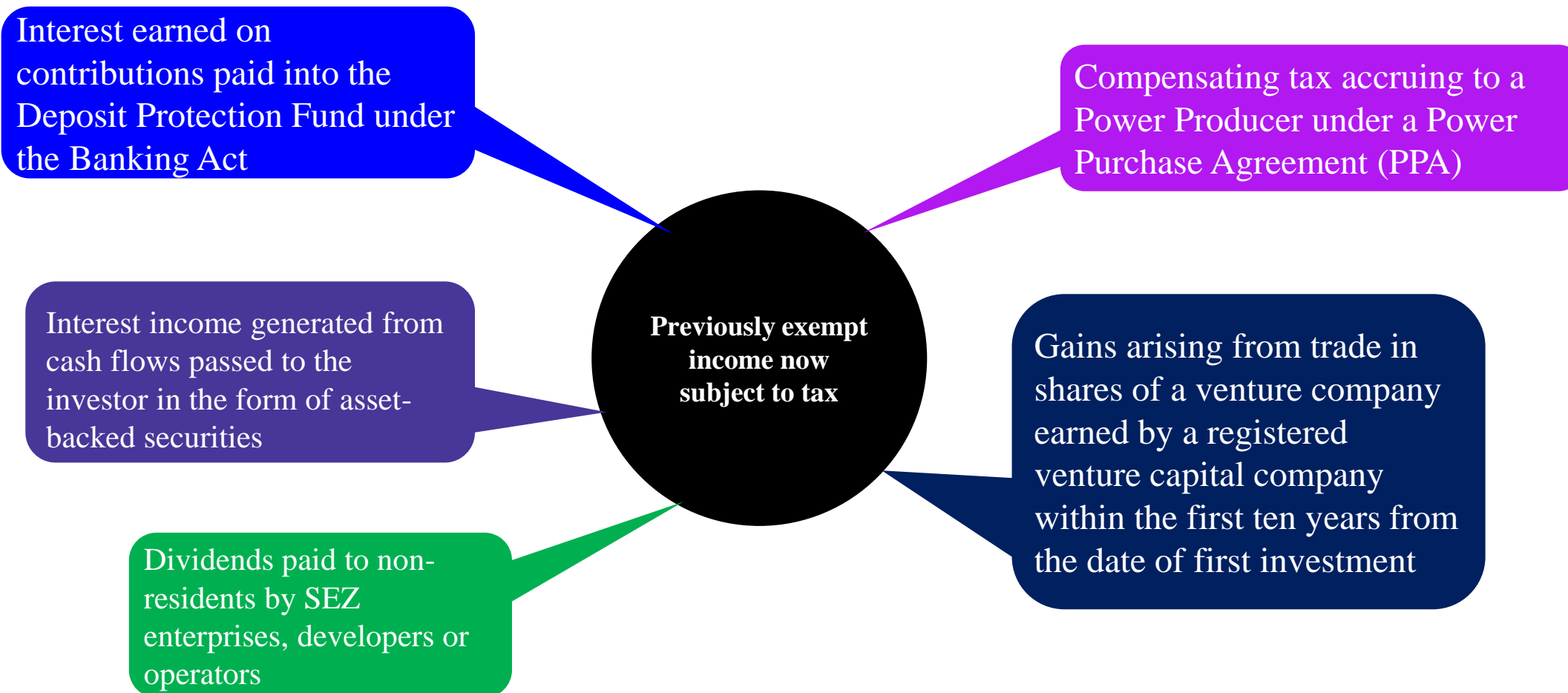
Reduction in corporation rate for resident companies

- From **30% to 25%** from the year of income 2020



What about branch entities?

Changes to the Income Tax Act



Changes to the Income Tax Act



Overhaul of Capital allowances

The Act has repealed the Second Schedule and replaced it with a new schedule which drastically scales back the capital allowances as follows:

Description	New rate (%) – Reducing balance	Old rate (%)
Investment Allowance (Buildings):		
Buildings used for manufacture	50 for first year and 25 per year on residual	100
Hotel buildings*	50 for first year and 25 per year on residual	100
Hospital buildings*	50 for first year and 25 per year on residual	-
Petroleum or gas storage facilities	50 for first year and 25 per year on residual	-
Educational buildings*	10	50
Commercial building*	10	25

* Cost of land excluded from the qualifying cost.

Changes to the Income Tax Act



Capital allowances amendments

Description	New rate (%) – Reducing balance	Old rate (%) – Reducing balance
Investment allowance (machinery):		
Machinery used for manufacture	50 for first year and 25 per year on residual	100
Hospital equipment	50 for first year and 25 per year on residual	12.5
Ships	50 for first year and 25 per year on residual	100
Aircrafts	50 for first year and 25 per year on residual	25
Heavy earth moving equipment	25	37.5
Motor vehicle*	25	25
Computer & computer peripheral hardware, calculators, copiers,	25	30
Software	25	20**

* Qualifying cost for saloon cars is KES 3,000,000 up from KES 2,000,000

** previously on a straight line basis

Changes to the Income Tax Act



Capital allowances amendments - Cont'd

Description	New rate (%) – Reducing balance	Old rate (%) – Reducing balance
Furniture & Fittings	10	12.5
Telecommunications equipment	10	20
Filming equipment purchased by a local producer	25	100
Machinery used to undertake operations under an exploration or mineral prospecting right	50 for first year and 25 per year on residual	37.5 or 12.5
Other machinery	10	12.5
Indefeasible right to use fiber optic cable by a telecommunication operator	10	20
Farm works	50 for first year and 25 per year thereafter	100

- Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule

Changes to the Income Tax Act



What is the impact of scaled down incentives vis-à-vis the 25% corporation tax rate?



Changes to the Income Tax Act - PAYE



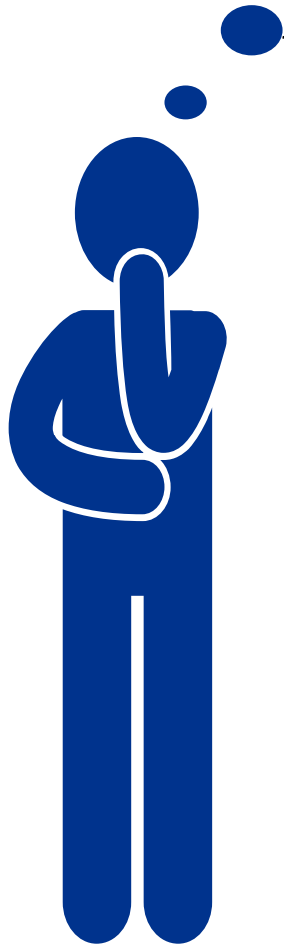
Revised PAYE tax bands and personal relief

The Tax Laws (Amendment) Act, 2020, has expanded the Individual PAYE bands as follows:

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

- Personal relief increased from **KES 16,896** to **KES 28,800**.
- Income below **KES 24,000** per month is now exempt from tax
- The new rates were effected from April 2020, however, the PAYE bands are annual rates since individuals are assessed based on a calendar year? **Will the change result in tax refunds for taxpayer in respect of January to March 2020 income?**

Changes to the Income Tax Act - PAYE



Will the benefit of the revised PAYE tax bands be felt in this period of massive job losses and pay cuts?



Changes to the Income Tax Act - PAYE

Revised tax rates in respect of payments or withdrawals from pensions

a. Withdrawals after the expiry of fifteen years from the date of joining the fund:

New Tax Rate		Old Tax Rates	
First KES 400,000	10%	First KES 400,000	10%
Next KES 400,000	15%	Next KES 400,000	15%
Next KES 400,000	20%	Next KES 400,000	20%
Above KES 1,200,000	25%	Next KES 400,000	25%
		Above 1,600,000	30%

- Tax on surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds down from 30% to 25%

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

New Tax Rate		Old Tax Rates	
First KES 288,000	10%	First KES 147, 580	10%
Next KES 200,000	15%	Next KES 139,043	15%
Next KES 200,000	20%	Next KES 139,043	20%
Above KES 688,000	25%	Next KES 139,043	25%
		Above KES 564,709	30%



Changes to VAT Act

VAT on Fuel

- ❖ The Act has included excise duty, fees and other charges in computing the taxable value for fuel

Issuance of credit notes

- ❖ Allows for issuance of credit notes within 30 days after the determination of a commercial dispute in a court of law, where the dispute has implications on the price payable and of which, a tax invoice had been issued

Keeping of records

- ❖ All persons to maintain records of transactions for a period of five years

Reduction of VAT rate from 16% to 14%

- ❖ Reduced the standard VAT rate from the previous rate of 16% to 14% (w.e.f. from 1 April 2020) This amendment has also seen some commodities moved from an exempt status to Vatable status at the new VAT rate

Changes to VAT Act – Tax Rate Changes

VATable to Exempt
status

- ❖ Personal protective equipment, including face masks, 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

Zero-rated to
Exempt

- ❖ Vaccines for human and veterinary medicine
- ❖ Medicaments

Exempt to Standard
Rated

- ❖ Insurance agency, insurance brokerage, securities brokerage services
- ❖ The transfer of a business as a going concern by a registered person to another registered person
- ❖ Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities

Changes to the Excise Duty Act



Definition of “Other fees”

The Act amended the definition of other fees by deleting the words “licensed financial institutions” appearing in the definition of the term “other fees” and substituting with the words “licensed activities

Impact:

The change corrects a drafting error in the previous provision but also provides an important clarification that the excise duty will only apply to licensed activities

Changes to the Tax Procedures Act



Publication of private rulings

The Act deletes the requirement for the Commissioner to publish private rulings in the newspapers

It also deletes the section that allowed taxpayers to take and use such published rulings as binding on the Commissioner with respect to the application of the relevant tax law to the facts set out in the ruling

Extension of time limit for private rulings

The Act has increased the time for the Commissioner to issue private rulings by 15 days

The Commissioner now has 60 days to issue a private ruling from receipt of the taxpayer's application

Changes to the KRA Act



Additional incentive for KRA informers

The amendment empowers KRA to reward KES 500,000 to anyone who provides information to KRA leading to enforcement of tax laws

Revenue agents

The Commissioner can now appoint persons registered under the Banking Act as agents for revenue banking services under an agreement

The institutions appointed will be required to deposit the funds with Central Bank within two days

Failure to deposit the funds will result in a penalty of 2% (**compounded every other day**) of the funds collected

Changes to the RBA Act

Access to retirement benefit funds to purchase residential house

- The Act amends the RBA Act by allowing members to use a portion of their contributions in a retirement benefit scheme to purchase a residential house
- The terms will be prescribed by regulations made by the cabinet secretary (*Lower of 40% or KES 7million – based on published draft regulations*)





The Business Laws (Amendment Act, 2020

Uphold public interest

Tax Changes



Investment deduction for SGR related investments

Capital expenditure of at least KES 5 billion in relation to construction of bulk storage and handling facilities for supporting the SGR operations of a minimum storage of 100,000 metric tons of supplies. This will be in force till Dec 2021

Implication - This will attract more investors and enhance the capacity of the SGR



Exemption from Import Declaration Fee and Railway Development Levy

In respect of goods imported or purchased for the construction of bulk storage and handling facilities for supporting SGR operations, subject to a capacity of 100,000 metric tons

Implication – This is likely to woo investors in a bid to enhance the efficiency of the SGR



Excise Duty on imported glass bottles

Introduction of a 25% Excise Duty on imported glass bottles with the exception of imported glass bottles for packaging of pharmaceutical products

Implication - This will protect and encourage local glass manufacturers. However, it is likely to increase cost of products packaged in glass bottles

Changes to the Companies Act

Restoration of the applicable threshold for compulsory buyouts to 90% from 50%, effectively safeguarding the minority shareholders



Requirement for bearer shares that had been issued before the commencement of the Companies Act, 2015 to be converted into registered shares

Companies are no longer required to affix a company seal when executing documents, contracts and deeds. Validity of such documents can be effected through signatures of two authorized signatories

Other Changes



Electronic stamping of documents

The Stamp Duty Act was amended to permit for electronic stamping of documents, extending the scope of the initial provision, which only recognized stamping by a franking machine or an adhesive stamp

Implication – This will ease administration and subsequent payment of stamp duty



The National Industrial Training Levy Penalty

The Act has also amended Section 5B(4) of the Industrial Training Act to provide for a fine not exceeding KES 100,000 where a person fails to comply with any provision of a training levy order

Implication – This will increase compliance with the provisions of the National Industrial Training Levy for companies



The National Industrial Training Levy Penalty

The Act further, has introduced an annual penalty, in a bid to harmonize the non-payment penalty in line with the Training Levy Order, 2020 that allows employers to remit to NITA one lump sum payment of KES 600 per employee per year

Implication – This will streamline the Training Levy laws

Other Key Changes



Restructuring and Insolvency

Additional factors have been established to be considered by a court or administrator when lifting a moratorium in insolvency matters

Implication - The inclusion of these factors is to take into account the different business requirements of companies under administration



Information request rights to creditors

Creditors have been granted the right to request for information from the insolvency practitioner with respect to a company under administration

Implication – This is likely to increase the transparency between creditors and the administrator



Electronic Conveyance

The Land Registration Act and the Law of Contract Act have been amended to permit the electronic signing of property conveyance documents

Implication – This will reduce the complexities surrounding the completion of land transactions especially where parties are unavailable to physically execute the documents

Other Key Changes



Occupational Safety and Health Relief

Business premises with less than 100 employees are no longer required to register and obtain a certificate of registration from the National Council for Occupational Safety and Health for the first 12 months from the date of registration of the business

Implication – Enhanced ease of starting new businesses



Reduction of documents required for land transactions

The requirement to obtain land rent and land rates clearance certificates before dealing in land such during sale of land and charging the property as security to obtain access to credit has been scrapped

Implication – This will reduce time taken in land transactions



Building code and mandatory inspections on construction sites

Cabinet Secretary for Lands, Housing and Urban Development to develop regulations setting out a building code and mandatory inspections on construction sites

Implication – This will increase regulation and supervision of construction sites and thus enhancing quality of buildings and improve safety of occupants



Finance Bill, 2020 Proposals

Uphold public interest

Changes to the Income Tax



Increase in Residential Income tax

Proposed provision -

increase the upper limit of residential income subject to the 10% tax from KES 10million to KES 15million

Implication - increases threshold for rental income tax subject to 10%



Digital services tax

Proposed provision - 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

Implication – Recognition of the growth of the digital market, however it will be difficult to implement



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

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

Implication – This will reduce the income available for distribution to depositors as interest, negatively impacting their ability to purchase homes.

Introduction of 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:

- i. income is not exempt under the ITA;
- ii. income is not from employment, residential rent, capital gains, mining or oil exploration, capital gains or subject to turnover tax; or
- iii. 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.

Impact:

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



Income Tax Act Proposals



Bonus for Low
Income Earners:

- ❖ 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

Taxation of monthly
pension for persons
aged 65 or more:

- ❖ The Bill proposes to delete the paragraph exempting from tax pensions paid to persons who are sixty five years of age and above

Is this the end of the
Home Ownership
Savings Plans?

- ❖ 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 (up to KES 3m) income earned by a depositor

Non-deductible
expenses:

- ❖ membership subscriptions
- ❖ legal and other incident capital expenditure public sale of shares;
- ❖ 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.

VAT Act Proposals

VAT rate changes (Goods: VATtable to Exempt)

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

- 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%.

(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%



VAT Act Proposals



VAT rate changes (Goods: Exempt to VATable)

Details	New rate	Old rate
<ul style="list-style-type: none"> 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	14%	Exempt
Tractors other than other than road tractors for semitrailers	14%	Exempt

VAT rate changes (Goods: Exempt to VATable)

Details	New rate	Old rate
Locally purchased or imported goods 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
Plant, machinery and equipment used in the construction of a plastics recycling plant	14%	Exempt
Hiring, leasing and chartering of helicopters	14%	Exempt

VAT Act Proposals



“Sanitizing” Value Added Tax Auto Assessments (VAA)

- ❖ The Bill proposes to amend the procedure of claiming input VAT by introducing a new provision so that a taxpayer will not be allowed input VAT deduction where the registered supplier has not declared the respective sales in their VAT return
- ❖ This amendment “sanitizes” KRA’s VAA assessments denying taxpayers input VAT where the seller has not declared output VAT on the supplies.
- ❖ Implementing the proposed amendments will have the following challenges:
 - i. Taxpayers have no way of confirming suppliers declared sales made; and
 - ii. KRA shifts the compliance responsibility to the tax payer

Tax Procedures Act Proposals



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.

Key features of the VDP:

- Immunity from prosecution
- Penalty and interest waivers on tax arrears arising from inadvertent instances of non-compliance between **30 June 2015** to **1 July 2020**:
 - 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.

Implication: The introduction of a penalty and interest waiver programme will help both the taxpayer and the KRA to collect outstanding tax arrears.

Helps focus KRA's risk based audits in the future

Tax Procedures Act Proposals



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



Excise Duty Act Proposals

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%).



Miscellaneous Fees and Levies Acts



1.5% Import declaration Fee on Duty Remission Scheme

- Increase the Import Declaration Fee for goods imported under the EAC Remission Scheme from KES 10,000 to 1.5% of the customs value



Additional duty on goods from EPZ

- 2.5% additional duty in respect of goods entered for home use from export processing zones enterprises.



Exemption from Import Declaration Fee

- Restricts exemption from Import Declaration Fee for aircraft. Initially all aircraft were exempt from IDF now helicopters and aircraft exceeding 2000kg do not qualify



Exemption from Railway Development Levy

- Removal of 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.

Kenya Revenue Act

Kenya Revenue Authority Act: Restrictions on suing KRA

Introduction of 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 and giving a month's notice to sue which should be served on the CG

Regulations for capacity building and training

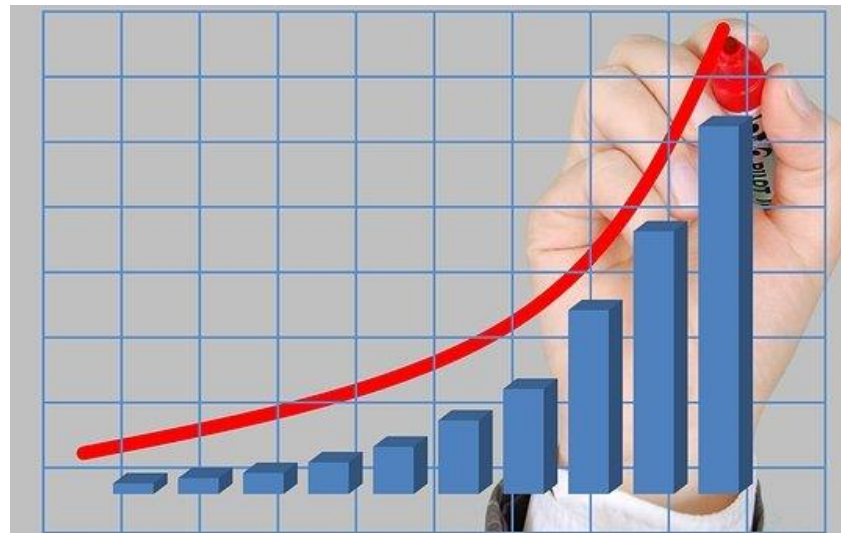
Proposed provision: The Bill seeks to create an avenue for the KRA Board to make regulations for capacity building and training.

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

Introduction of 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.



Public Roads Toll Act



Agreements for road management

Removal of 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

Alternative arrangements to levy/collect toll

Provides that an agreement to levy or collect tolls may provide alternative ways of doing so

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

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

Other Acts

Capital Markets Act: Clean up

Removal of payment of beneficiaries of unclaimed dividends from the roles of the Investor Compensation Fund under the Capital Markets Act.

Insurance Act- Time limit for appeals

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

Road Maintenance Levy Fund Act: Clean up

Removes 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.

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

Empowerment of the CMA to license, approve and regulate private equity and venture capital companies that have access to public funds.

Standards Act: License to act as consolidator

Re-defines the meaning of a consolidator by introducing a license which consolidators must have and prescribing the manner in which they declare the goods they import.



Interactive Session



Uphold public interest