Tax Alert

Issue No. 3 of 2020

The Tax Laws (Amendment) Act, 2020

The Tax Laws (Amendment) Act, 2020 (Act) was assented by the President on 25 April 2020 and published on 27 April 2020. Most of the provisions in this Act became effective on the date of assent save for the amendments to Section 5(2) of the Value Added Tax (VAT) Act, 2013 which becomes effective on 15 May 2020. This Tax Alert supersedes our Tax Alert Issue number 2 of 2020 which analysed the provisions of the Bill which has now become law.

PKF comments on COVID-19 economic impact and the nexus with new tax laws

This note is informed by what we consider to be the likely impact of the COVID-19 pandemic - both locally and internationally. There is no doubt that COVID-19 will leave the global economy in a depressed state. The Kenyan economy will not be spared. Already the negative effects of this pandemic are being experienced by every Kenyan in one way or the other.

Whereas it is not possible to accurately measure the extent of economic damage likely to arise from this pandemic, we remain alive to the reality that this damage will be extensive and will have far reaching consequences not only to businesses but to the daily lives of billions of people across the world. From an economic standpoint, these are uncertain and unusual times that require well thought measures and innovations to navigate. It is however clear that post COVID-19 era will be characterised by reconstruction of economies and industries in a big way and most likely for a prolonged duration of time.

On the geo-political space, it is expected that major realignments in global politics will ensue as economies seek to rebuild their social systems, industries, wealth and influence. Equally, this will have major impact on how countries shape their fiscal and tax policies.

The tax changes introduced by the Act are aimed at alleviating difficulties occasioned by the pandemic to average Kenyans such as the reduction of value added tax to 14% (gazetted earlier), reduction of corporation tax to 25% and the restructuring of Pay As You Earn (PAYE) bands to enhance purchasing power of employees.

However, the Act has also introduced some changes which in our view do not seem to be specific to dealing with the COVID-19 pandemic. Some of these changes are likely to be counter-productive at this point in time, and in our view they should have been deferred to a later date once it is clear how recovery economics should be taxed.

For example the complete overhaul of the investment allowance provisions does not seem to support the business community in the sense that the 25% corporate tax will likely be negated by the removal of 100-150% investment allowance for manufacturers who had already committed to investments. More so, the impact of the reduced and phased investment allowance will put these companies in a tax paying position at a time when the effects of the pandemic are yet to be fully felt and will discourage the much needed investment in the recovery period.

Having said so, we remain alive to the fact that the government relies heavily on taxes to finance its activities, including the fight against COVID-19, hence the need for a balancing act. The conversation around fixing the economy will be a continuous engagement and we expect additional changes from time to time with a view to get the best out of this situation.

In the succeeding parts of this Alert we analyse the specific changes introduced by the Act. As usual, you may reach out to your usual contact at PKF for any additional information or clarification.

Income Tax changes

Base for qualifying interest expanded

The Act has amended the definition of qualifying interest to include all interest, discount or original issue discount receivable by a resident individual in any year of income irrespective of the payer. Prior to this amendment, qualifying interest meant interest earned from a bank or financial institution licensed under the Banking Act, or a building society registered under the Building Societies Act or the Central Bank of Kenya. The amendment allows resident individuals to invest their money in various investment vehicles without paying additional taxes on the interest earned. The applicable tax rate for qualifying interest earned by an individual is 15% and is final tax.

Broadening the tax net

The Act has introduced withholding tax at the rate of 20% on sales promotion, marketing, advertising services and transportation of goods (excluding air and shipping transport services) paid to non-resident persons not having a permanent establishment in Kenya. However, this will not be applicable for transportation of goods by East African Community citizens.

This amendment is aimed at widening the tax net in order to collect more taxes from non-resident persons who offer the above-mentioned services in Kenya. For instance, payments made to online social media and advertising platforms and other e-commerce platforms for online advertising will now attract withholding tax at 20%. Whereas this is a welcome move to ensure the tax territoriality i.e. income derived from or accrued in Kenya is taxed in Kenya, it remains a challenge to administer such a tax due to the intangible and fluid nature of such transactions.

Finally, turnover tax grows legs!

Since the introduction of turnover tax more than ten years ago, this tax remained a paradox of sorts. It failed to achieve the intended purpose of easing administration of tax for businesses in the informal sector. The sector has largely remained untaxed due to its amorphous nature. After a retinue of amendments to turnover tax provisions, the desired results were never achieved as the tax yield in this category remained inconsequential. It now appears that the government is keen to bring this sector to the tax net in a more robust manner. The Act has thus reduced the turnover tax rate from 3% to 1% and increased its scope to include resident persons with annual turnover of between KShs 1 Million and KShs 50 Million. Previously turnover tax was applicable to resident persons whose annual turnover did not exceed KShs 5 Million. Additionally, the Act has retained the provision on non-applicability of turnover tax from rental income, professional income and any income which is subject to a final withholding tax. However, incorporated companies, which were previously excluded from the turnover tax regime, can now pay tax under this regime. Further, the Act has scrapped the requirement to pay presumptive tax at the rate of 15% of the amount payable for a business permit. As a consequence, micro-businesses that earn less than KShs 1 Million are no longer subject to corporation tax.

Higher withholding tax on dividends payments to non-residents

The Act has increased the non-resident withholding tax rate applicable on dividend payments from 10% to 15%. However, the withholding tax rate on dividend payments to citizens of the East African Community Partner States remains at 5% of the gross amount payable.

Electricity rebates for manufacturing sector scrapped!

The electricity rebate introduced with effect from January 2019 with a view to cushion manufacturers from heavy costs of production has been scrapped barely 18 months later. The rationale for scrapping this rebate is not clear since the electricity tariff for manufacturers remains unacceptably high. This amendment gives credence to the critique that the income tax laws in Kenya are unpredictable and thus unattractive to investors. One of the basic canons of a good tax system is the principle of certainty - which does not seem to matter to the Kenyan lawmakers.

Clarity on imposition of withholding tax on insurance and re-insurance premiums

The Finance Act, 2018 introduced withholding tax at the rate of 5% on insurance premiums excluding insurance premiums paid for aircrafts. Further, the Finance Act, 2019 amended Section 10 to include reinsurance premiums because there was no clarity on applicability of withholding tax on reinsurance premiums paid to non-residents. However, there was no amendment to Section 34(2) and the Third Schedule to the ITA to complete the withholding tax circuit. The Act has cured this omission. The withholding tax rate applicable to these payments to non-residents still remains 5%.

First Schedule – changes on incomes and persons exempt from tax

Part I of the First Schedule to the Act has been amended to scrap the following income tax exemptions:

Previously exempt income under the First Schedule of the ITA, now taxable
The income of: • 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
Profits or gains of an agricultural society accrued in or derived from Kenya from any exhibition or show held for the purposes of the society, which are applied solely to those purposes, and the interest on investments of that society.
Interest on any tax reserve certificates which may be issued by authority of the Government.
Any payment in respect of disturbance, not exceeding three months' salary, made in connexion with a change in the constitution of the Government of a Partner State or the Community to any person who, before such change, was employed in the public service of any of those Governments or of the Community.
The emoluments of any officer of the Desert Locust Survey who is not resident in Kenya.
Any education grant paid by the Government of the United Kingdom under any agreement between that Government and the Government of Kenya and received by any person who is employed in the public service of Kenya or by the Community.
The income received by way of remuneration under any contract which was entered into consequent upon financial assistance being received from the International Co-operation Administration for the enterprise in respect of which the contract was so entered into and which provides that the income shall be exempt from tax.
The income received by way of remuneration under any contract which was entered into consequent upon financial assistance being received from the International Co-operation Administration for the enterprise in respect of which the contract was so entered into and which provides that the income shall be exempt from tax.
The income received by virtue of their employment by citizens of the United States of America who are employed by the Department of Agriculture of the United States of America on research work in co-operation with Government.
Gains or profits resultant from any reward paid by the United Kingdom Atomic Energy Authority for the discovery of uranium ore in Kenya, except to the extent that such reward is liable to income tax in a country outside Kenya and there is, between that country and Kenya, provision for any form of double taxation relief.
All income of any non-resident person not having a permanent establishment in Kenya accrued in or derived from Kenya after 17 June, 1971, and which consists of interest or management and professional fees paid by the Tana River Development Company Limited or its successors in title.

Previously exempt income under the First Schedule of the ITA, now taxable
Such part of the income of the East African Power and Lighting Company accrued in or derived from Kenya as is certified from time to time by the Minister to have been expended (whether before or after the date of commencement of this Act) at the request of the Government either - (a) in searching for a natural source in Kenya of geothermal energy; or (b) on investigations concerning the development in Kenya of electric power generation or supply, such exemption to take effect in the year in which the expenditure is incurred.
The income of the General Superintendence Company Limited, a company incorporated in Switzerland, accrued in or derived from Kenya under an agreement dated 18 October, 1972, between the said company and the Central Bank of Kenya.
Such part of the income of an individual, chargeable to tax under Section 3(2) (f) as consists of a gain derived from the transfer of - (a) shares in the stock or funds of the Government, the High Commission or the Authority established under the Organization or the Community; (b) shares of a local authority; (e) land which has been adjudicated under the Land Consolidation Act (Cap. 283) or the Land Adjudication Act (Cap. 284) when the title to such land has been registered under the Registered Land Act (Cap. 300) and transferred for the first time.
Interest earned on contributions paid into the Deposit Protection Fund established under the Banking Act (Cap. 488).
Interest paid on loans granted by the Local Government Loans Authority established by section 3 of the Local Government Loans Act.
Dividends received by a registered venture capital company special economic zone enterprises, developers and operators licensed under the Special Economic zones Act.
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: Provided that the venture company has not been listed in any securities exchange operating in Kenya for a period of more than two years.
Interest income generated from cash flows passed to the investor in the form of asset-backed securities.
Dividends paid by Special Economic Zone Enterprise, developers or operators to any non-resident person.
Compensating tax accruing to a power producer under a power purchase agreement.

Part II of the First Schedule to the ITA has been repealed in its entirety. This schedule exempted from taxes income such as interest payable to non-resident persons on securities such as Kenya Government stocks, Nairobi City Council stocks and East African High Commissions stocks. Most of the exemptions under this part were redundant anyway.

Second Schedule – changes on Capital Allowances

The Act has overhauled the Second Schedule of the ITA on deductions in respect of capital expenditure incurred by a person in the ordinary course of business. The new capital deduction rates are effective immediately except for Paragraph 24E of the repealed Schedule, which shall continue to be in force until 31 December 2021.

Paragraph 24E of the Second Schedule was introduced by the Business Laws amendment Act, 2020 assented by the President on 18 March 2020. The provision allows a person who incurs capital expenditure of at least KShs 5 Billion on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway operations of a minimum storage of one hundred thousand metric tonnes of supplies to claim investment deduction at the rate of 150% of the capital expenditure.

The new rates are tabulated below:

Capital expenditure on	New investment allowance	Previous investment allowance rates	Comments/Notes
a) Buildings			• In case of change of user of a building, investment allowance shall be restricted to unclaimed amount or residual amount • Capital expenditure on the construction of a building excludes cost of acquisition of, or of rights in or over land • Apportionment of investment allowance where the building is put into mixed use.
i. Hotel building	50% - First year of use 25% per year - reducing balance	100% or 150% (if construction cost over KShs 200 Million and constructed outside Nairobi, Mombasa and Kisumu) in the first year of use	
ii. Building used for manufacture	50% - First year of use 25% per year - reducing balance	100% or 150% (if construction cost over KShs 200 Million and constructed outside Nairobi, Mombasa and Kisumu) in the first year of use	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.
iii. Hospital buildings	50% - First year of use 25% per year - reducing balance	0% or 150% (if construction cost over KShs 200 Million and constructed outside Nairobi, Mombasa and Kisumu)	Companies that construct hospital buildings will now enjoy investments allowance at the new rates. This will encourage investment into the sector especially during the COVID pandemic.
iv. Petroleum or gas storage facilities	50% - First year of use 25% per year - reducing balance	10% p.a. on straight-line	
v. Educational buildings including student hostels	10% per year - reducing balance	50% straight line	The educational institution has to be licenced by a competent authority.
vi. Commercial building	10% per year - reducing balance	25% per annum straight line for commercial buildings with services or 150% (if construction cost over KShs 200 Million and constructed outside Nairobi, Mombasa and Kisumu)	Commercial building has been defined to include building used as an office, shop, showroom, go down, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade.

b) Machinery	New investment allowance	Previous investment allowance rates
i. Machinery used for manufacture	50% - First year of use 25% per year - reducing balance	100% or 150% (if cost over KShs 200 Million and constructed outside Nairobi, Mombasa and Kisumu) in the first year of use
ii. Hospital Equipment	50% - First year of use 25% per year - reducing balance	12.5% per annum on reducing balance
iii. Ships or Aircrafts	50% - First year of use 25% per year - reducing balance	25% per annum for aircrafts 12.5% per annum for ships of less than 125 tonnes 100% for ships of more than 125 tonnes
iv. Motor vehicles and heavy earth moving equipment	25% per year - reducing balance Capping on value of non-commercial motor vehicles increased from KShs 2 Million to KShs 3 Million	25% for motor vehicles and 37.5% for heavy earth moving equipment
v. Computer and peripheral computer hardware and software, calculators, copiers duplicating machines	25% per year - reducing balance	30% for computer hardware on reducing balance and 20% for software on straight line basis
vi. Furniture and fittings	10% per year - reducing balance	12.5 percent per annum on reducing balance basis
vii. Telecommunications equipment	10% per year - reducing balance	20% per annum on straight-line basis
viii. Filming equipment by a local film producer licenced by the cabinet secretary responsible for filming	25% per year - reducing balance	100% allowance
ix. Machinery used to undertake operations under a prospecting right	50% - First year of use and 25% per year - reducing balance	20% p.a. on straight-line
x. Machinery used to undertake exploration operations under a mining right	50% - First year of use and 25% per year - reducing balance	20% p.a. on straight-line
xi. Other machinery	10% per year - reducing balance	12.5 % per annum
c) Purchase of an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% per year - reducing balance	5% per annum
d) Farm works	50% - First year of use 25% per year - reducing balance	100% for the first year. Only one-thirds of a farm house would qualify.

Third Schedule Head A- Revised Resident Tax Relief

Personal relief has been increased from KShs16,896 per annum (KShs. 1,408 per month) to KShs 28,800 per annum (KShs 2,400). This means that persons earning a monthly income of KShs 24,000 or less will not pay tax on their income with effect from April 2020.

Third Schedule Head B - Revised resident individual tax rates

The Act has widened the resident individual income tax bands as follows:

Monthly Taxable Pay (KShs)	Annual Taxable Pay (KShs)	Rate of Tax (%)
Up to 24,000	Up to 288,000	10
24,001 - 40,667	288,001 - 488,000	15
40,668 - 57,333	488,001 - 688,000	20
Above 57,333	Above 688,000	25

The above amendments are aimed at cushioning individuals from the economic impacts of the COVID-19 pandemic with a view to ensure that individuals have increased disposable income.

Previous resident individual tax rates are tabulated below:

	Monthly Taxable Pay (KShs)	Annual Taxable Pay (KShs)	Rate of Tax (%)
On the first	12,298	147,580	10
On the next	11,587	139,043	15
On the next	11,587	139,043	20
On the next	11,587	139,043	25
On all income over	47,059	564,709	30

Revised Withholding Tax rate on pension/ provident withdrawals

The Act has also amended the withholding tax rates for pension/provident fund withdrawals and lump sum payments beyond exempt limits as follows.

a) Withdrawal before 15 years expires:

Rate of Tax (%)		Old Tax Bands (KShs)	New Tax Bands (KShs)
10	On the first	147,580	288,000
15	On the next	139,043	200,000
20	On the next	139,043	200,000
25	On the next	139,043	688,000 and above
30	On all income over	564,709	

In addition to the above, the applicable tax rate for withdraw or refund of surplus funds to an employer in respect of registered pension or registered provident funds, has reduced from 30% to 25% of the gross sum payable.

b) Withdrawal after 15 years, attaining age of 50 years or retirement on health grounds:

Rate of Tax (%)		Old Tax Bands (KShs)	New Tax Bands (KShs)
10	On the first	400,000	400,000
15	On the next	400,000	400,000
20	On the next	400,000	400,000
25	On the next	400,000	1,200,000 and above
30	On all income over	1,600,000	

Third Schedule Head B - Revised corporate tax rates

- The Act has amended the corporate tax rates as follows:

Corporate entity	New corporate tax rate	Previous corporate tax rate	Impact
Resident company	25%	30%	The new income tax is applicable with effect from 25 April 2020. The amendment is aimed at cushioning taxpayers from the economic impacts of COVID-19.
Life insurance income earned by a resident insurance company	25% based on specific rule	30% based on specific rule	The effective date is 25 April 2020. Similarly, this is aimed at mitigating the impact of COVID-19.
Newly listed company with over 30% capital listed	25%	25% for the first five years	The original intention for the reduced rate of tax was to encourage listing in the NSE. This incentive should have been transient and since the NSE has become of age.
Newly listed company with over 40% capital listed	25%	20% for the first five years	The original intention for the reduced rate of tax was to encourage listing in the NSE. This incentive should have been transient and since the NSE has become of age.
Company introducing shares through listing	25%	25% for the period of five years commencing after listing	The original intention for the reduced rate of tax was to encourage listing in the NSE. This incentive should have been transient and since the NSE has become of age.
Company operating a plastics recycling plant	25%	15% for the first five years	The 15% rate was introduced in 2019 year of income. The scrapping of this rate even before it has benefitted the entities that invested in this sector with the incentive in mind is very unfortunate. It paints Kenyan tax system as being very uncertain.
Company operating under a special operating framework arrangement with the Government	The rate specified in the agreement shall continue to apply for the unexpired period as provided under the agreement.	To the extent provided in the arrangement.	This arrangement will be very useful post COVID -19 as global companies are likely to be looking for new production sites to reduce over reliance on China as a the global manufacturing hub. This framework can be used to target strategic investors to position Kenya as a manufacturing hub.

Value Added Tax changes

Expanded base for VAT on petroleum products

With effect from 15 May 2020 the base for computation of VAT on petroleum products has been changed to include excise duty, fees and other charges. These were previously excluded from the taxable value for petroleum products. The impact of this is to increase the cost of petroleum products to the end consumer.

Issue of credit notes

The Act has introduced a thirty-day window for issuance of credit notes where there is a commercial dispute in court with respect to the price payable. The credit note should be issued within thirty days after the determination of the matter.

This is a welcome provision because it will allow taxpayers to claim VAT upon determination of a dispute in court with regard to the price payable. Previously, such VAT would be lost because credit notes were limited to a period of 6 months from the date of issuance of a tax invoice.

Refund arising from bad debts

The Act has reduced the period for making an application for refund arising on bad debts from five years to four years from the date of the supply.

Reclassification of zero rated category to exempt category

The following vaccines and medicaments, which were previously zero rated, are now VAT exempt.

3002.20.00	Vaccines for human medicine
3002.30.00	Vaccines for veterinary medicine
3003.10.00	Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycin or their derivatives
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.
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
3003.90.00	Other
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.
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.
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.
3004.20.00	Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.32.00	Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.
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
3004.41.00	Containing ephedrine or its salts
3004.42.00	Containing pseudoephedrine (INN) or its salts.
3004.49.00	Other
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.
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.
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.

Additionally, personal protective equipment, 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 are now exempt from VAT. These were previously Vatable.

It should be recognised that exemption of previously zero-rated items will in fact increase their cost of manufacture as suppliers of such items will be unable to claim VAT on their inputs.

Re-classification of Exempt supplies to taxable supplies

The following supplies which were exempt from VAT under the First Schedule to the VAT Act, 2013 will now attract VAT at a rate of 14%.

- Plant and machinery of chapter 84 and 85 used for the manufacture of goods.
- Taxable supplies, excluding motor vehicles, imported or purchased 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.
- Taxable supplies, excluding motor vehicles, 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 (Cap. 314A), 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), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be.
- 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 as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.
- Plastic bag biogas digesters.
- Biogas.
- Leasing of biogas producing equipment
- Parts imported or purchased locally for the assembly of primary school laptop tablets, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology
- Taxable 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 approved by the Cabinet Secretary for the National Treasury.
- Museum and natural history exhibits and specimens and scientific equipment for public museums.
- Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.
- Goods falling under tariff number 4907.00.90.
- Materials for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.
- The transfer of a business as a going concern by a registered person to another registered person.
- Taxable goods supplied to marine fisheries and fish processors upon recommendation by the relevant state department.
- Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.
- 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 approved by the Cabinet Secretary for the National Treasury.
- Taxable services, 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 as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.
- Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities.
- Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.
- Insurance agency, insurance brokerage and stock exchange brokerage services.

Excise Duty Act changes

Clarification on applicability of excise duty on financial services

The Act has amended the definition of 'other fees' subject to excise duty by deleting the phrase licensed financial institutions and replacing it with licensed activities. This amends a previous drafting error in the definition but also clarifies that excise duty is only applicable on fees charged by financial institutions on their licensed activities but not on all activities they undertake. This creates a level playing field some financial institutions undertake similar activities to non-financial institutions that do not charge excise duty on their activities.

Repealed excise duty exemptions

The following excise duty exemptions have been repealed:

- Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.
- One personal motor vehicle imported by a public officer returning from a mission abroad and another one by their spouse

Tax Procedures Act changes

Private rulings

The Act has extended the timeline within which the Commissioner of required to respond to private rulings from 45 days to 60 days. An extension of time is viewed as an attempt by the Commissioner to meet the deadlines. However, our recommendation is that the Commissioner needs to actually work within these timelines since delays in issuance of private rulings affect business decisions and investments.

Publication of private rulings

The Act has repealed the section requiring the Commissioner to publish private rulings in at least two daily newspapers with national circulation. This can be viewed as an attempt by the Commissioner to avoid administrative burdens and costs of having to publish private rulings despite the fact that he was required to maintain the confidentiality of the applicant.

Turnover tax late return submission penalty

The Act has reduced the late filing return filing penalty for resident persons under turnover tax from KShs 5,000 to KShs 1,000. This move is aimed at ensuring that resident persons in the informal sector are not heavily penalized for non-compliance and should encourage uptake of the turnover tax regime.

Miscellaneous Fees and Levies Act changes

No Import Declaration Fee reprieve for approved manufacturers

Under the Act, Import Declaration Fee at the blanket rate of 1.5% of the CIF value would be applicable to raw materials and intermediate products imported by approved manufacturers only upon recommendation and approval by the Cabinet Secretaries in charge of the Ministry of Industrialization and the National Treasury respectively. However, we hope that the introduction of this mandatory requirement will not introduce bottlenecks to manufacturers.

Introduction of processing fee on motor vehicle imports

The Act has introduced processing fee of KShs 10,000 on all motor vehicles excluding motorcycles imported or purchased duty free prior to clearance by certain privileged persons under the Fifth Schedule to the East African Community Customs Management Act.

Repealed Import Declaration Fee and Railway Development Levy exemptions

The following would no longer be exempt from IDF and/or RDL:

- gifts or donations, excluding motor vehicles, by foreign residents to their relatives in Kenya for their personal use;
- samples which in the opinion of the Commissioner have no commercial value;
- raw materials for direct and exclusive use in construction by developers or investors in industrial parks
- goods imported for the construction of liquefied petroleum gas storage facilities
- goods imported for implementation of projects under the special operating framework arrangement with the government

The Kenya Revenue Authority Act

Appointment of agents

The Act has given the Commissioner of KRA powers to appoint any person registered under the Banking Act to act as KRA's agent for revenue banking services through an agreement. This measure is aimed at streamlining KRA's enforcement measures.

right people
right size
right solutions

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