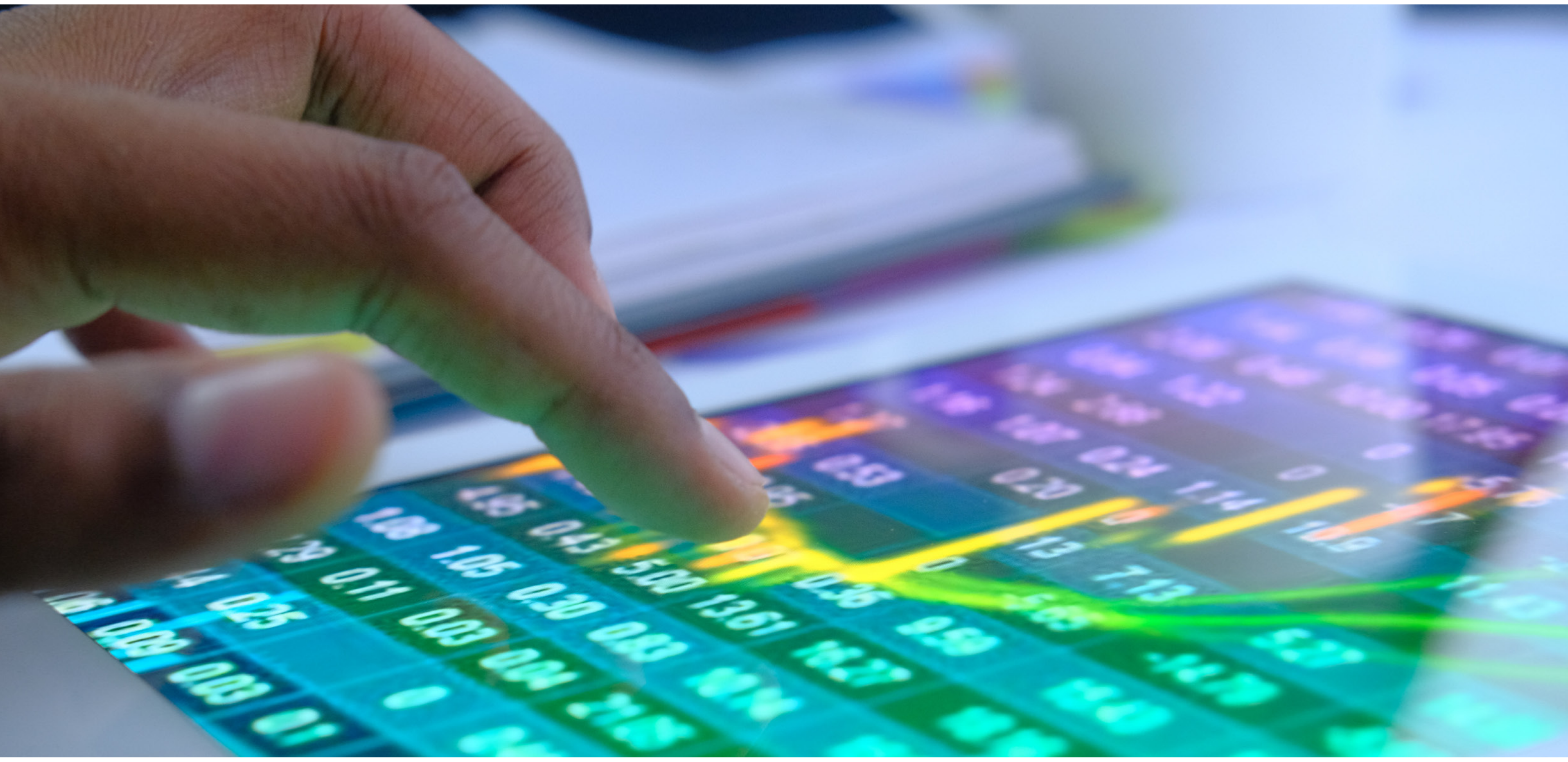
Tax Alert

Highlights of the Tax Amendment Bill, 2020



Further to the Presidential Directive dated 25th March 2020, National Treasury of the Republic of Kenya released the Tax Amendment Bill, 2020 for comments by stakeholders. The Bill includes additional proposals that were in the Income Tax Bill that was released in 2018 but were not announced by the President.

The proposed amendments will become law once assented by the President. The Parliament resumes sittings on Tuesday, 7th April 2020 and this Bill is expected to be among the priority items that will be tabled for discussion and approval before being forwarded to the President for assent.

In this Alert we provide an analysis of the proposals introduced by the Tax Amendment Bill 2020 ("Bill").

Corporate Tax

Description	Comments
Reduction of corporate income tax from 30% to 25%	• Suprisingly,the Bill that was circulated for comment did not provide for a reduction in corporate tax for companies from 30% to 25% in line with the Presidential Directive. • Further, the preferential corporate tax rates that range from 20% to 27% provided to newly listed companies have been repealed. In the absence of a provision lowering the general corporate tax rate to 25%, such corporates will now be taxed at 30%. This would appear to be contrary to the Presidential directive. • We recommend that consideration is given to including a provision in the Bill to effect the Presidential directive and to actually expand it to also reduce the rate of taxation of non-residents companies with the same margin of 5% to 32.5% from 37.5%.
Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises	• The Bill reduces the turnover tax rate from 3% to 1% for Micro, Small and Medium Enterprises (MSMEs). • Further, the Bill proposes to increase the threshold for MSMEs qualifying for turnover tax from KES 5 million to 50million. Incorporated companies meeting the threshold will now be entitled to declare their taxes on a turnover basis. • The Bill has further scrapped the presumptive tax which was payable by MSME's when they were obtaining/ renewing their business permits with county governments and which was creditable to the turnover tax paid. This was an administratively cumbersome process which made the implementation of the turnover tax unduly complex. • The turnover tax is still not applicable to rental income, management, professional or training fees and interest income. • The Government is demonstrating clear commitment to shield the MSMEs from economic shocks. The highest tax payable under the turnover tax will now be KShs 500,000 which represents a significant tax reduction for medium enterprises whose turnover is close to the maximum threshold of KShs 50 million. It will also significantly streamline the administrative complexity for such businesses. • Consideration should be given to applying the turnover tax to income relating to management, professional or training that is below the KShs 50 million threshold to cushion small professional businesses such as law firms whose business has significantly reduced during this period. Notably firms operating in these currently restricted sectors and that are below the stated turnover threshold are still MSMEs by definition.

Corporate Tax

Description	Comments
Reduction of the corporate tax deductions available to corporate bodies	• The Bill proposes to remove the 30% additional tax deductions on electricity costs available to manufacturers which was introduced recently. • Also, it disallows the deduction of subscriptions payable to trade associations when companies are computing their corporate tax liabilities and club subscriptions paid by an employer on behalf of an employee. • Any expenditure of a capital nature incurred by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure shall also not be tax deductible. • The Bill has reduced tax incentives available to companies listing their shares at the Nairobi Securities Exchange: i) Any expenditure of a capital nature incurred by a person on legal costs and other incidental expenses relating to the authorisation and issue of shares, debentures or similar securities offered for purchase by the general public or for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital shall not be tax deductible. ii) any expenditure of a capital nature incurred by a person on rating for the purposes of listing on any securities exchange operating in Kenya • The wide-ranging restriction of the deductibility of these expenditure reflects a clear change in mood at the National Treasury's intention to notch up tax revenues that have not achieved expected levels in recent times.
Income tax exemptions reduced	• The Bill proposes to reduce the current income tax exemptions listed in Part I of the First Schedule to the Income Tax Act ("ITA"). • Notable tax exemptions that have been removed in the Bill include: i) Capital gains tax exemptions on disposal of private residence, transfer of private land by an individual which is not more than three million Kenyan shillings, and agricultural property less than fifty acres; ii) Income of a registered home ownership savings plan. iii) Income of the National Social Security Fund; iv) Dividends received by a registered venture capital company, SEZ enterprises, developers and operators licensed under the SEZ Act; v) 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; vi) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner; vii) Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years; viii) Interest income generated from cash flows passed to the investor in the form of asset-backed securities; ix) Monthly or lumpsum pension granted to a person who is sixty-five years of age or more; x) Income from employment paid in the form of bonuses, overtime and retirement benefits payable to the employees in the lowest tax band; xi) Dividends paid by a Special Economic Zone Enterprise, developers or operators to any non-resident person;

Corporate Tax

Description	Comments
Income tax exemptions reduced (cont'd)	xii) Compensating tax accruing to a power producer under a power purchase agreement; xiii) Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services; and, xiv) The income of Export-Import Bank of the United States of America. • The removal of the above exemptions represents a significant overhaul of the tax exemptions in the legislation and can only be attributed to the National Treasury's intent to increase tax revenues that have not achieved expected levels in recent times.
Overhaul of the Second Schedule to the ITA	• The highest capital allowance in the Bill has been reduced to 50% as compared to the current ITA which provides for 150% investment allowance for investment of more than KES 200 million outside the cities of Nairobi, Kisumu and Mombasa. The other changes proposed in the Bill in respect of capital allowances are as shown in the table below.

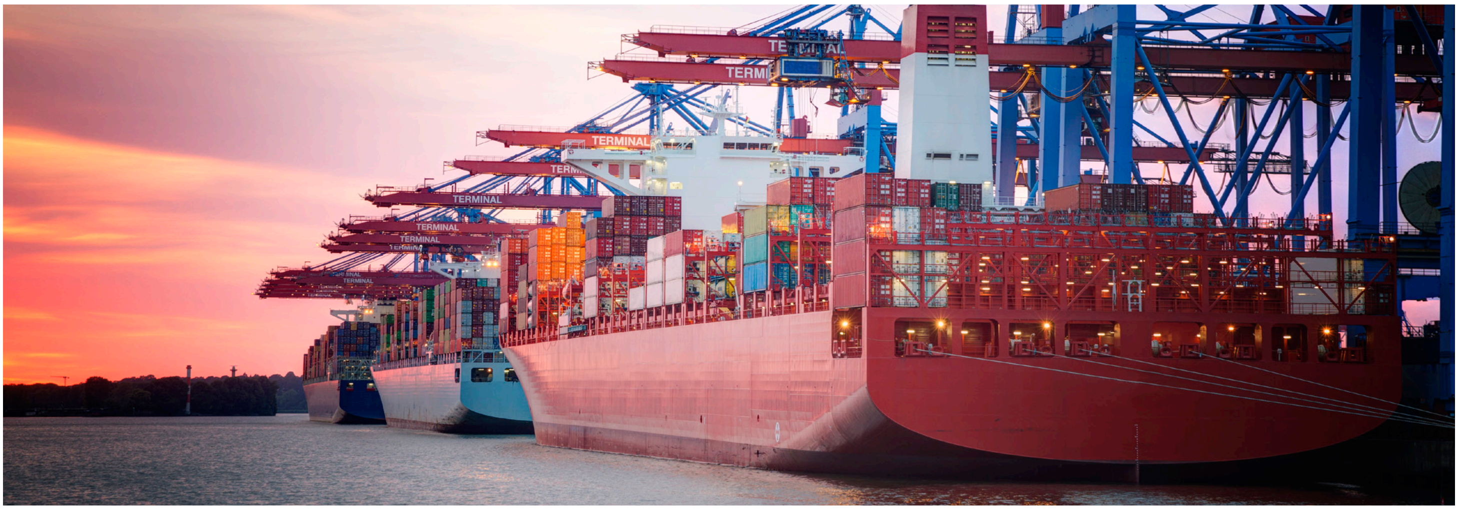
Capital expenditure incurred on	Capital allowance under the current ITA	Capital allowances under the Bill
Hotel building	100%	50% in the first year of use. Residual value is 25% per year, on reducing balance.
Building used for manufacture	100%	
Hospital buildings	-	
Petroleum or gas storage facilities	150% in the first year of use	
Educational buildings including student hostels	50% per annum in equal instalments.	10% per year on reducing balance
Commercial building	25% per annum	
Machinery used for manufacture	100% in the first year of use	50% in the first year of use. Residual value is 25% per year, on reducing balance.
Hospital equipment	-	
Ships or aircrafts	Purchase of new ship of 125 tons gross- 100% in the first year of use. Other ships- 12.5% per annum reducing balance Aircraft-25% per annum reducing balance	
Motor vehicles and heavy earth moving equipment	Heavy earth moving equipment- 37.5% on reducing balance Other motor vehicles- 25% on reducing balance.	25% per year, on reducing balance.
Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines	30% per annum on reducing balance. Software allowance 20% on a straight-line basis.	
Furniture and fittings	12.5% per annum on reducing balance	10% per year, on reducing balance
Telecommunications Equipment	20% on a straight-line basis	

Corporate Tax

Description	Comments		
Overhaul of the Second Schedule to the ITA (cont'd)	**Capital expenditure incurred on**	**Capital allowance under the current ITA**	**Capital allowances under the Bill**
	Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming	100% in the first year of use	25% per year, on reducing balance
	Machinery used to undertake operations under a prospecting Right	-	50% in the first year of use and 25% per year, on reducing balance
	Machinery used to undertake Exploration operations under a mining right	-	50% in the first year of use and 25 per year, on reducing balance
	Other machinery	12.5% per annum on reducing balance	10% per year, on reducing Balance
	Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	5% on a straight-line basis	10% per year, on reducing balance
	Farmworks	100% in the first year of use	50% in the first year of use and 25% per year, on reducing balance

- The Bill proposes to extend the Investment Deduction of 150% available to bulk storage and handling facilities supporting the Standard Gauge Railway operations of a minimum storage of one hundred thousand metric tonnes of supplies up to 30 August 2020.
- The reduction of the capital allowances represents a significant overhaul of the allowances schedule in the country. The general thrust of the changes is to reduce the quantum of the allowances that can be claimed immediately and that which is being deferred. The impact of the change would be that investors would probably be paying higher taxes or having lower levels of tax losses.
- All sectors of the economy will be impacted by the proposed changes to the capital allowances regime and that could create a "drag effect" and delay a quick pick up of economic activity once the ongoing challenges relating to Covid- 19 are dealt with.

Withholding Tax



Description	Comments
Dividends payable to non-residents increased to 15%	• Taxpayers will be required to withhold tax on dividends payable to non-residents at a rate of 15% up from 10%. The new rate will materially increase the effective tax rates for foreign owned companies to circa 40.5% (as compared to the current 37%) which could discourage foreigners from investing in Kenya. • Had the Presidential directive to reduce the corporate tax rate to 25% been adhered to, the effective tax rates for foreign owned companies would be marginally lower at 35.5% (as compared to the current 37%). Accordingly, even where the Presidential directive to lower the corporate tax rate to 25% is heeded, the effective tax rate for foreign owned companies will only be lowered by 1.5%. The effective tax rate is a key measure that foreign investors consider as they make their choice of an investment destination. With the proposed changes to the rate of taxation of dividends for non-shareholders Kenya will be less attractive to such investors.
Withholding tax on sales promotion, marketing, advertising services, and transportation of goods	• The Bill introduces withholding tax on services relating to sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport). • A 5% rate of WHT is applicable in respect of payments to a resident and a 20% rate on payments to a non-resident (in the absence of a double tax treaty). • Whereas the proposal may be driven by the need to increase tax collections, it may be complicated where payments are made to non-residents in a double tax treaty jurisdiction as conflicts or differences in interpretation of articles of the treaty with regard to the applicability of the treaty will most likely arise.
Definition of qualifying interest has been expanded	• The Bill proposes to expand the definition of qualifying interest to include the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income. • Previously, the ITA restricted qualifying interest to only interest receivable by individual 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. With this expanded definition of qualifying interest any payments made by a taxpayer in the nature of interest to an individual would qualify e.g those made by digital lenders on credit balances etc

Employment taxes

<table>
<tr><th>Description</th><th>Comments</th></tr>
<tr><td>Increase in the resident personal relief</td><td>• The Bill proposes to increase the personal relief available to resident individuals from the current KES 16,896 per year (or KES 1,408 per month) to KES 28,800 per year (or KES 2,400 per month). This adjustment will increase the net take home of resident persons by KES 11,904 per year (or KES 992 per month).</td></tr>
<tr><td>Expansion of tax bands and a reduction of the marginal rate of tax from 30% to 25%</td><td>• In keeping with the recent Presidential directive to the National Treasury aimed at providing Kenyan residents additional disposable income to cushion them from the economic shocks the Bill proposes to revise the PAYE tax bands as follows:

Current tax bands
<table>
<tr><th>Annual Taxable Income (KES)</th><th>Monthly Taxable Income (KES)</th><th>Tax rate</th></tr>
<tr><td>On the first 147,580</td><td>On the first 12,298</td><td>10%</td></tr>
<tr><td>On the next 139,043</td><td>On the next 11,587</td><td>15%</td></tr>
<tr><td>On the next 139,043</td><td>On the next 11,587</td><td>20%</td></tr>
<tr><td>On the next 139,043</td><td>On the next 11,587</td><td>25%</td></tr>
<tr><td>On all income over 564,709</td><td>On all income over 47,059</td><td>30%</td></tr>
</table>
Proposed tax bands
<table>
<tr><th>Annual Taxable Income (KES)</th><th>Monthly Taxable Income (KES)</th><th>Tax rate</th></tr>
<tr><td>On the first 288,000</td><td>On the first 24,000</td><td>10%</td></tr>
<tr><td>On the next 200,000</td><td>On the next 16,667</td><td>15%</td></tr>
<tr><td>On the next 200,000</td><td>On the next 16,667</td><td>20%</td></tr>
<tr><td>On all income over 688,000</td><td>On all income over 57,334</td><td>25%</td></tr>
</table>
• Once this change is implemented, for example employees earning a monthly gross income of KES 35,000 and are currently paying PAYE of approximately KES 3,743 will now pay KES 1,650 which is a reduction of about KES 2,093 per month. Likewise, employees earning a monthly gross income of KES 100,000 and are currently paying PAYE of approximately KES 22,596 will now pay KES 16,450 which is a reduction of about KES 6,146 per month. Additionally, employees earning a monthly gross income of up to KES 24,000 will pay zero tax as the PAYE calculated at the top of this tax band i.e. KES 2,400 will be offset by personal relief of a similar amount.</td></tr>
</table>

Employment taxes

Description	Comments
Reduction of the marginal rate of tax from 30% to 25% on taxation of pension payments and withdrawals	• The Bill proposes to reduce the marginal rate of tax from 30% to 25% in respect of pension payments and withdrawals from a registered pension fund, registered provident fund, the NSSF or a registered individual retirement fund. Thus, payments or withdrawals in excess of KES 60,000 per pensionable year of service (limited to 10 years) made after the expiry of 15 years from the date of joining the fund, or on the attainment of the age of 50 years, or upon earlier retirement on grounds of ill health will be taxed as follows;

Current tax rates	Proposed tax rates
0% on the first KES. 400,000	0% on the first KES. 400,000
15% on the next KES. 400,000	15% on the next KES. 400,000
20% on the next KES. 400,000	20% on the next KES. 400,000
25% on the next KES. 400,000	25% on any amount over KES. 1,200,000 These rates apply after the initial tax -free amount have been utilized.
30% on any amount over KES. 1,600,000 These rates apply after the initial tax -free amount have been utilized.	

Description	Comments
Revision of tax bands for taxation of pension withdrawals made before the expiry of 15 years from the date of joining the fund	• The Bill also proposes to revise the tax bands for taxation of pension withdrawals made before the expiry of 15 years from the date of joining the fund from a registered pension fund, registered provident fund, the NSSF or a registered individual retirement fund. Thus the excess of KES 60,000 per year of pensionable service (limited to 10 years) will be taxed as follows:

Current tax bands

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

Proposed tax bands

Annual Taxable Income (KES)	Monthly Taxable Income (KES)	Tax rate
On the first 288,000	On the first 24,000	10%
On the next 200,000	On the next 16,667	15%
On the next 200,000	On the next 16,667	20%
On all income over 688,000	On all income over 57,334	25%

Employment taxes

Description	Comments
Reduction of 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 Bill proposes to revise the rate for taxation of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds from 30% to 25% of the gross sum payable.
Removal of the House Ownership Saving Plan (HOSP) tax relief	• The Bill proposes to remove the tax relief available to individual who are saving to own a house under a House Ownership Saving Scheme. This goes against the Big Four Agenda, where the Government is encouraging home ownership in Kenya.

Tax Procedures Act

Description	Comments
Appointment of Agents	• The Commissioner has been granted powers to appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement. • Once a person is appointed as an agent, they will be required to transfer the funds to the designated Central Bank accounts within a maximum of two days following the date of collection. • Failure to remit the funds will result to a penalty equivalent to two per cent of the revenue collections delayed and shall be compounded for every other day that the transfer is delayed by the agent.
The requirement for the Commissioner to issue a private ruling within 45 days has been scrapped	• Under the current ITA, the Commissioner of Taxes is required to reply to an application for a private ruling within 45 days. However, there are no consequences if the Commissioner does not respond to the application within the stipulated time frame. The Bill has removed the obligation for the Commissioner to issue a private ruling within 45 days. • The Bill further removes the obligation 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. These proposed changes are retrogressive and will not be conducive to creating certainty and clarity in our tax laws and potentially result in tax disputes between taxpayers and the revenue authority that could have been largely avoided.
Penalty for failure to file turnover tax return reduced	• The Bill reduces the penalty for late filing of turnover tax return to one thousand shillings from five thousand in the current ITA.

Overriding comments on proposed changes to indirect taxes and miscellaneous levies:

In the section below we have highlighted the changes proposed in the Bill that impact Value Added Tax (VAT), Excise Duty and Miscellaneous levies. As has been the case for corporate income tax the National Treasury is seeking to effect changes that will lead to greater revenue generation.

The VAT changes are seeking to expand the VAT revenue base by moving goods from exempt or zero-rated status to standard rated status and notably moving some aspects of financial services from exempt status to standard rates status as is the case for insurance agency, insurance brokerage and stock brokerage services.

Changes to the Excise Duty regime is geared towards creating clarity and reducing disputes and those Miscellaneous Levies are proposed actions to empower the Cabinet Secretary of the National Treasury to make decisions on the applicability of various levies on a diverser range of transactions that could result in better control of revenue generation in this area.

Value Added Tax

The Bill seeks to amend the Value Added Tax Act, no. 35 of 2013 by standard rating numerous goods and services that are currently either zero-rated or exempt. The Bill also proposes to move a number of items from being taxable at the zero rate to being exempt.

The difference between exemption and zero-rating

Value Added Tax ("VAT") is a consumption tax borne by final consumers of taxable goods and taxable services. The VAT rate applicable on taxable supplies is either the standard rate, fourteen percent (14%) or zero percent (0%).

Zero-rating of goods or services means that such supplies are taxable but at the rate of 0%, while exemption means that such supplies are not taxable.

While it may appear as if zero-rating and exemption have the same final impact on the price of any commodity or service, this is not the case.

Where supplies are zero -rated, the supplier of such supplies is eligible to claim input tax credits in relation to VAT incurred in making such supplies. This essentially means that VAT does not result in additional cost, arising from unclaimed input tax, to be passed on to the final consumer.

On the contrary, for exempt supplies, the supplier is not eligible to claim any input tax credits in relation to the VAT incurred to make such supplies. Accordingly, all the unclaimable input tax is factored in the price charged to the final consumer thus making such supplies more costly.

We detail below changes the Bill proposes to introduce

Description	Supplies affected and potential impact
Clarification on what constitutes 'ordinary bread'	• The Bill proposes to define 'ordinary bread' to mean bread containing only the following ingredients; wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water. • This definition brings clarity in determining the type of bread and the VAT treatment hence minimizing disputes between businesses supplying bread and the Kenya Revenue Authority.
Change in the VAT base and VAT status of petroleum products of specific tariff codes	• The Bill proposes to abolish the exclusion of excise duty, fees and other charges from the taxable value of petroleum products of specified tariff numbers under Section B of Part 1 of the First Schedule to the VAT Act. • Currently, the petroleum products are chargeable to VAT 8%. The proposed change will increase the taxable value of petroleum products which will result into an increase to the final price charged to consumers.
Additional criteria for issuance of credit note	• The Bill proposes to allow businesses to issue credit notes where there is a commercial dispute in court with regard to the price payable, within thirty days after the determination of the matter. • Currently, the VAT Act only allows businesses to issue credit notes within 6 months from issuance of the invoice, where for good and valid business reasons, they decide to reduce the value of a supply or where goods have been returned. The change is welcome since it will allow businesses to issue credit notes even after the lapse of the 6 months provided that the reduction in price emanates from a commercial dispute in court. • That said one would have hoped the government would have extended the period to issue credit notes from the current 6 months to at least 12 months to reflect the commercial realities of trade and commerce.
Reduction in period within which to apply for VAT refunds arising from bad debts	• The Bill proposes to reduce the period within which businesses can apply for VAT refunds arising from bad debts from 5 years to 4 years if the debt remains unpaid for a period of 3 years from the date the supply was made. • The proposed change will require businesses to be prompt in seeking refunds, relating to bad debts, from the KRA as the window has been reduced by 1 year.

Value Added Tax

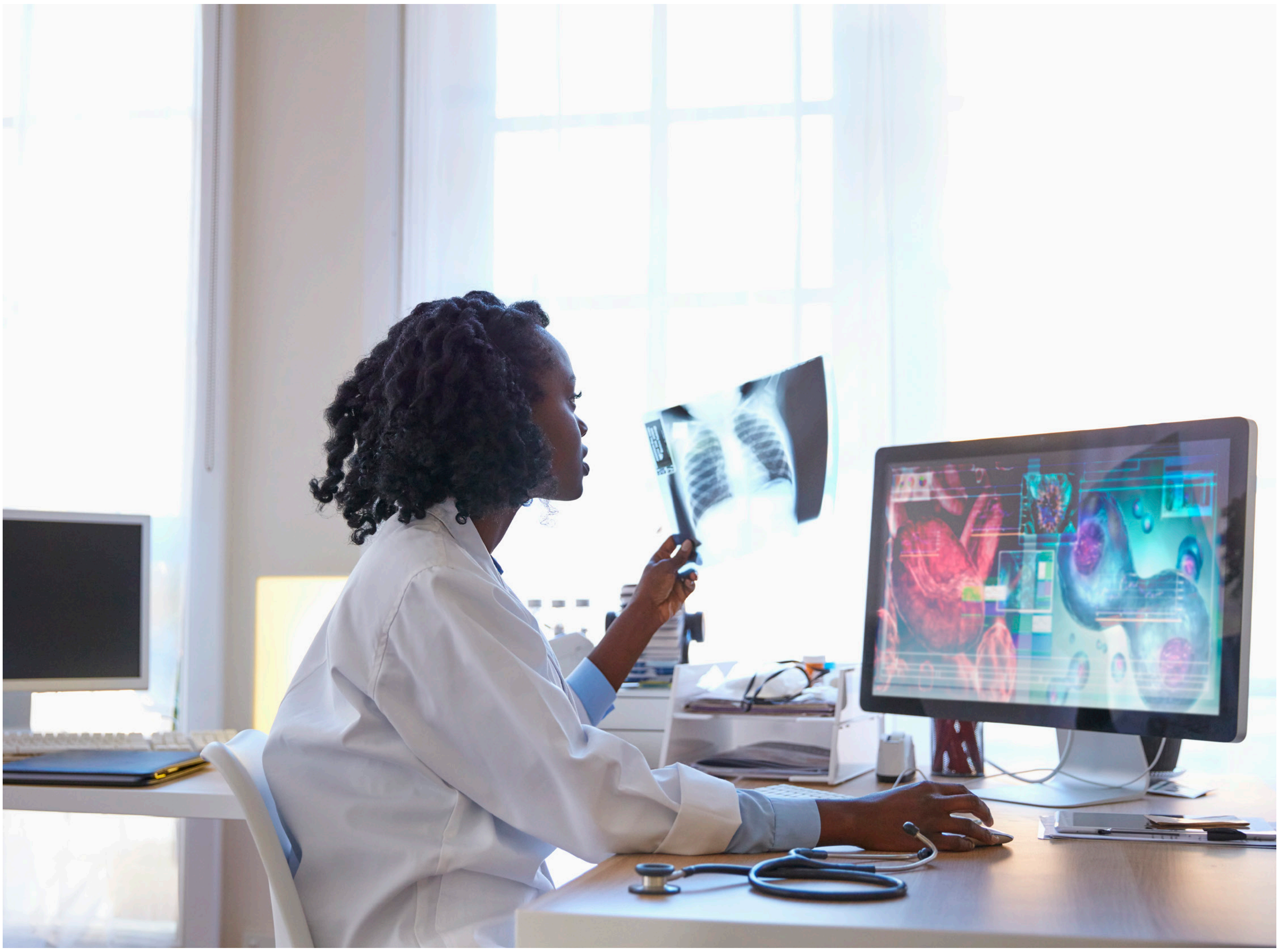
Description	Supplies affected and potential impact
Change to require all business/ persons to maintain records of their transactions	• The Bill proposes to amend the requirement to maintain full and true written records to include all persons. Currently only registered persons are required to maintain records. However, with the proposed amendment, all persons doing business in Kenya will be required to maintain records of their business transactions for a period of five years and be ready to avail such records to authorized officer at all reasonable times for inspections. • This proposed change is intended to help the government in curbing tax avoidance and fraud.
Proposal to change VAT status of goods from exempt to standard rated	The Bill proposes to change the VAT status of the items below from exempt to standard rated: • Fertilizers of chapter 31/plants and machinery of chapters 84 and 85 used for manufacture of goods. • Taxable supplies 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. • 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). • 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. • Helicopters, Aeroplanes, Aircrafts of less than 2,000 kg and their parts of HS codes 8802.11.00, 8802.12.00, 8802.20.00, 8803.30.00, 8805.21.00, 8805.10.00, 8805.29.00 • Fishing nets of tariff code 5608.11.00,mosquito nets of tariff code 6304.91.10,materials used in animal feeding of tariff numbers 1213.00.00, 1214.10.00, 2308.00 .00, 2309.10.00, 2309.90.10 and 2309.90.90 , 2302.10.00, 2303.20.00, 2302.30.00, 2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00. • Specialized equipment for the development and generation of solar and wind energy including deep cycle batteries; inputs supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries. • Goods of tariff No. 4011.30.00; biogas; plastic bag biogas digesters; Leasing of biogas producing equipment. • Parts imported or purchased locally for the assembly of computer; 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. • Tractors; inputs purchased by manufacturers of agricultural machinery and implements; inputs for the manufacture of pesticides; Materials and equipment for the construction of grain storage; Goods supplied to marine fisheries and fish processors; Plant, machinery and equipment used in the construction of a plastics recycling plant. • 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 for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more; convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

Value Added Tax

Description	Supplies affected and potential impact
Proposal to change VAT status of goods from exempt to standard rated (cont'd)	• Goods purchased by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves; inputs purchased by manufacturers of clean cook stoves; Stoves and similar non-electric domestic appliances, and parts thereof, 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; goods falling under tariff number 4907.00.90. • The transfer of a business as a going concern by a registered person to another registered person. • Goods and services purchased for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government. • 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.
Proposal to change VAT status of services from exempt to standard rated	The Bill proposes to change the VAT status of the items below from exempt to standard rated: • Insurance agency, insurance brokerage and stock exchange brokerage services. • Hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00. • Entry fees into the national parks and national reserves/services of tour operators, excluding in-house supplies. • 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 for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. • 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 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 estate's investment trusts and asset backed securities.
Proposal to change VAT status from zero-rated to standard rated	• The supply of liquefied petroleum gas including propane. • Agricultural pest control products, inputs and raw materials supplied to manufacturers of agricultural pest control products. • 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.

Value Added Tax

Description	Supplies affected and potential impact
Proposal to change VAT status from zero-rated to exempt	Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of specified tariff numbers. • The supply of ordinary bread. • Vaccines for human and veterinary medicine, and various medicaments of specified tariff codes as listed under Part C of the Second Schedule to the VAT Act. It is worth noting that exempting medicaments will result into the inability of pharmaceutical manufacturers to claim input VAT incurred in their operations, with the potential of forcing them to pass the additional costs to consumers through price increases. The timing of this proposal is not ideal as Kenyans grapple with affordable healthcare and medicines, and the Covid-19 pandemic.



Excise Duty

Description	Supplies affected and potential impact
Subjecting all sugar confectionary of tariff heading 17.04	• The Bill proposes to subject all sugar confectionery of tariff heading 17.04 to excise duty. Currently, only imported sugar confectionery of tariff heading 17.04 is subject to excise duty. • The change is aimed at bringing equity and fairness amongst businesses who import sugar and those that produce these type of confectionery locally.
Subjecting all white chocolates in blocs, slabs, or bars of tariff numbers 1806.31.00, 1806.32.00, 1806.90.00	• The Bill proposes to subject all white chocolates in blocs, slabs, or bars of tariff numbers 1806.31.00, 1806.32.00, 1806.90.00 to excise duty. Currently, only imported white chocolates in blocs, slabs, or bars of the said tariff numbers are subject to excise duty. • The change is aimed at bringing equity and fairness amongst business who import these products and those that produce them locally.
Clarification on what constitutes 'other fees' as per the Excise Duty Act	• The Bill proposes to define 'other fees' to include any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or an insurance premium or premium based or related commissions 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. • Currently 'other fees' is defined to include any fees, charges or commissions charged by financial institutions relating to their licensed financial institutions…and this has resulted into disputes since licensed financial institutions also conduct other activities which do not require licensing by the regulators envisaged in the Excise Duty Act. • Therefore, the proposed change is welcome since it will reduce disputes with the Kenya Revenue Authority and enhance compliance by the taxpayers.
Excluding goods purchased for use in government projects under special operating framework arrangements from Excise Duty	• The Bill proposes to subject to Excise Duty, goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.
Excluding motor vehicle for returning Kenyans returns from missions abroad from Excise Duty	• The Bill proposes to subject to Excise Duty, 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 the spouse and which is not exempted from Excise Duty under the Second Schedule.

Miscellaneous fees and levies

Description	Comments
Introducing IDF on goods that are currently exempt from IDF	The Bill proposes to introduce IDF on: • Gifts and donations by foreign residents to their relatives in Kenya for their personal use and samples which in the opinion of the Commissioner have no commercial value. • Aircraft of unladen weight not exceeding 2,000kg and Helicopters of Heading 8802.11.00 and 8802.12.00 • 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/goods imported for the construction of liquefied petroleum gas storage facilities/goods imported for implementation of projects a under special operating framework arrangements with Government. The proposed change will reduce the number of goods exempt from IDF will help the government raise additional revenue to undertake its responsibilities and obligations.
Granting the Cabinet Secretary responsible for Finance (CS) sole discretion in determining which goods should be exempt from IDF	• The Bill proposes to give the CS sole discretion in determining which goods should be exempt from IDF. Currently, the Miscellaneous Fees and Levies Act provides, goods determined by the CS as being in public interest, or goods that are for promotion of investments whose value are not less than two hundred million shillings are exempt from IDF. • The proposed change will help government earn additional IDF revenue on goods imported for investments that the CS determines are not in public interest. On the other hand, this will increase the costs of such investments and might deter potential future investments.
Introducing Railway Development Levy (RDL) on goods which are currently exempt	The Bill proposes to introduce RDL on: • 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 goods imported for the construction of liquefied petroleum gas storage facilities. • Goods imported for implementation of projects a under special operating framework arrangements with the Government.
Granting the CS sole discretion in determining which goods should be exempt from RDL	• The Bill proposes to give the CS sole discretion in determining which goods should be exempt RDL increased. Currently, the Miscellaneous Fees and Levies Act provides, goods determined by the CS as being in public interest, or goods that are for promotion of investments whose value are not less than two hundred million shillings are exempt from IDF. • The proposed change will help government earn additional IDF revenue on goods imported for investments that the CS determines are not in public interest. On the other hand, this will increase the costs of such investments and might deter potential future investments.
Introduction of 'processing fees on duty free motor vehicles	• The Bill propose to introduce processing fees 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 (EACCMA). • The fee shall be KES 10,000 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 EACCMA. • The proposal is to ensure that government earns some revenue from motor vehicles that are not subject to any duties as per EACCMA.

Other impact of the proposed changes

In recent years the National Treasury has indicated a clear intention to alleviate its burden of paying VAT refunds to taxpayers this Bill is a continuing testament to the concerted efforts to reduce the extent of zero-rating on goods and services.

The proposed changes are, however, bound to increase the costs of certain goods and services to taxpayers and the government should factor this as the Bill is debated by stakeholders.

As a general observation, if the Bill is enacted into law as is, the overall net implication will be an increase in the prices of basic commodities such as milk, bread and medicaments and the timing could not have come at such a worse time.

For further information on the Tax Amendment Bill 2020, please contact any of the people below or your usual PwC contact.

Steve Okello
Partner
steve.x.okello@pwc.com
+254 20 285 55000

Maurice Mwaniki
Director
maurice.mwaniki@pwc.com
+254 20 285 5334

Simeon Cheruiyot
Partner
simeon.cheruiyot@pwc.com
+254 20 285 5000

Nicholas Kahiro
Manager
nicholas.x.kahiro@pwc.com
+254 20 285 5788

Titus Mukora
Partner
titus.mukora@pwc.com
+254 20 285 5000