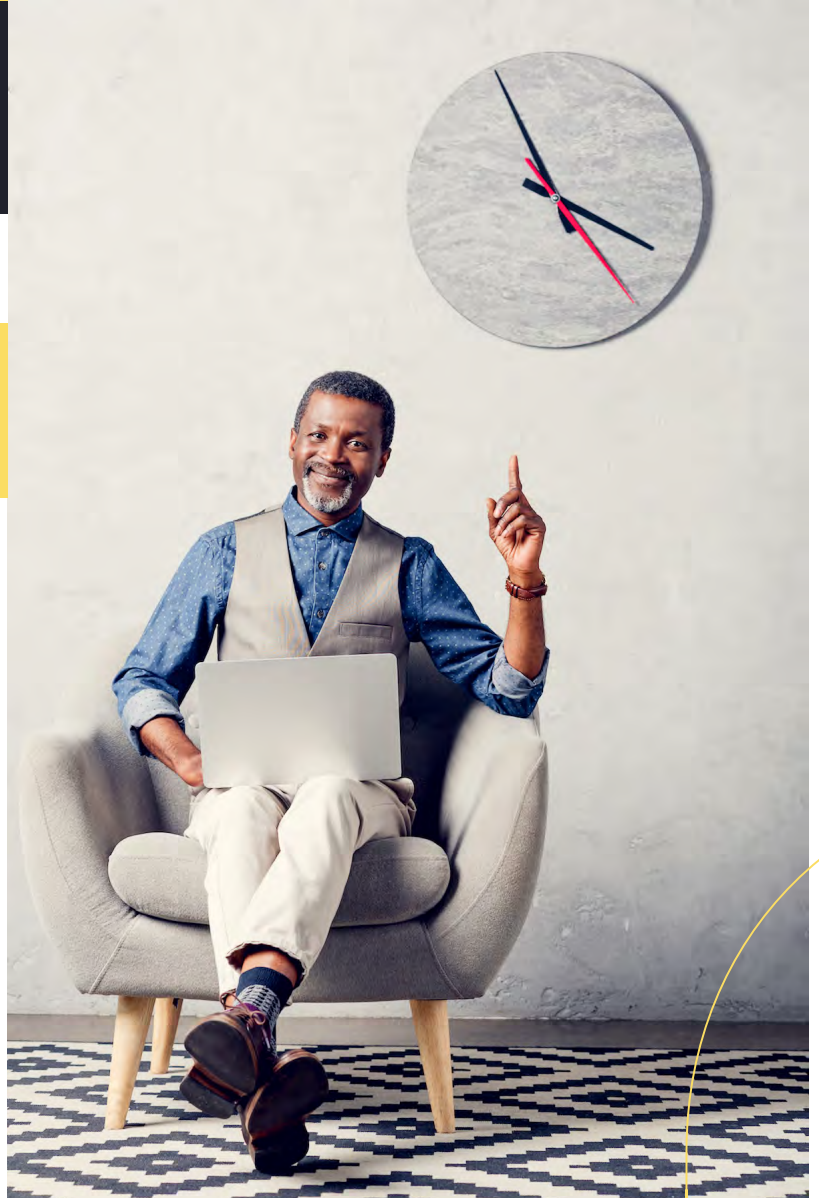




Resolute
BUSINESS ADVISORY

Tax Alert

Tax Changes as per
the Finance Act, 2020.



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Income Tax

Corporate Income Tax

Effective Date: **1 January 2021**

Introduction of Minimum Tax

1%

The applicable rate is 1% of the gross turnover. The tax is payable by a person if:

- i. That person's income is not exempt under the Income Tax Act;
- ii. The person's income is not chargeable to tax under employment income, Rental income from residential property, turnover tax, capital gains and income from the extractive industry; and
- iii. The instalment tax payable by that person is higher than the minimum tax

The minimum tax shall be payable in instalments which shall be due on the twentieth day of each period ending on the 4th, 6th, 9th and 12th months of the year of income.



We are of the opinion that the word 'higher' used in the Act should read 'lower' in order to achieve the intended objective. Without this amendment persons whose minimum tax is higher than instalment tax are left out, they are neither under the ambit of instalment tax nor minimum tax.

Residential Rental Income

Increased the rental income threshold subject to rental income tax from 10 million to 15 million. Also, the tax-free amounts has been increased from KShs 144,000 p.a to KShs 288,000 p.a. This is now consistent with the PAYE bands.

Income Tax

» Corporate Income Tax

Effective Date: 1 January 2021

Digital Service Tax (DST)

Introduction of digital service tax at the rate of 1.5% of the gross transaction value as follows:

DST shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place.

For a resident person or non-resident person with a permanent establishment in Kenya, DST is an advance tax and tax thereon shall be offset against the tax payable for that year of income.

The tax shall be due at the time of the transfer of the payment for the service to the service provider.

The tax shall be payable through a withholding tax system.

The Commissioner shall appoint DST Agents

1.5%

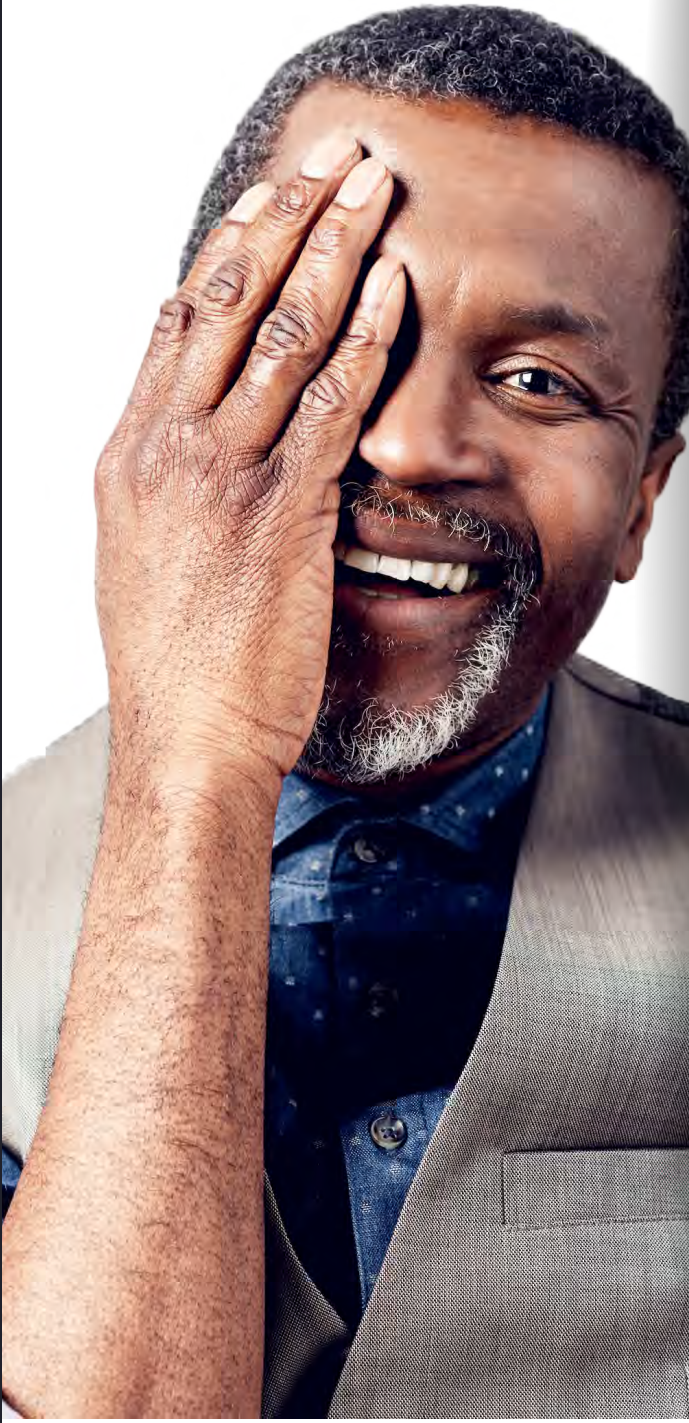
Non-Deductible Expenses

Section 15 has been amended to treat the following expenses as non-deductible:

- Expenses incurred by listed entities and companies looking to list at the Nairobi Stock Exchange:
 - i. Expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to the authorization and issue of shares, debentures or similar securities offered for purchase by the general public.
 - ii. Expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital.
 - iii. Expenditure of a capital nature incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya.
- Annual subscriptions and entrance fees made to trade associations which have made an election for their income to be treated as taxable.
- Club subscriptions paid by an employer on behalf of an employee

Income Tax

Employee Taxes (PAYE)



Previously exempt income /persons now subject to tax

The following previously exempt income/persons under the First Schedule are now liable to taxation:

- Lump sum pension granted to a person who is sixty five year of age or more.
- Income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose income is below the lowest tax bracket
- The income of a registered home ownership savings plan.

House Ownership Saving Plan (HOSP) tax incentive repealed

- HOSP is no longer a tax-deductible expense on the emoluments of an individual
- Further, interest income earned on deposits in a HOSP will also be subject to tax as opposed to previously where the initial KES 3 million were exempt from tax

- effective from 1 January 2021

Value Added Tax

(VAT)

Effective Date: 1 January 2021

Deductibility of Input Tax

It is now a condition that input tax shall not be allowed where the registered supplier has not declared the corresponding output VAT in a return. Previously the only condition was that for deduction of input tax to be allowable, the person had to have a valid tax invoice.

Change of VAT status

This is as detailed below

Description of the supply	Current rate	Old rate
Maize (corn) seeds of tariff no. 1005.10.00 (for a period of 6 months till 31 December 2020)	Exempt	Zero Rated 0%
Ambulance		

Description of the supply	Current rate	Old rate
Agricultural pest control products	14%	Exempt
The supply of liquefied petroleum gas including propane. - (w.e.f 1 July 2021)		
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.		
Plants and machinery of Chapter 84 and 85 used for the manufacture of goods.		
Made-up fishing nets of man-made textile material of tariff No. 5608.11.00		
Goods falling under tariff number 4907.00.90		
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		

Description of the supply	Current rate	Old rate
Plants and machinery of Chapter 84 and 85 used for the manufacture of goodst		
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		
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, 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, 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.		
Biogas, plastic bag biogas digesters; leasing of biogas producing equipment;		
Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya		
Museum and natural history exhibits and specimens and scientific equipment for public museums.		
Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization		
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		
8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.	14%	Exempt
8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg.		
8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.		
8803.30.00 Other parts of aeroplanes and helicopters.		
8805.10.00 Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof		
8805.21.00 Air combat simulators and parts thereof.		
8805.29.00 Other ground flying trainers and parts thereof		
Goods of tariff No. 4011.30.00.		
Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power upon the recommendation of the Cabinet Secretary responsible for matters relating to energy.		
Materials, waste, residues and by-products, whether or not in the form of pellets, and preparations of a kind used in animal feeding of tariff numbers 1213.00.00, 1214.10.00, 2308.00.00, 2309.10.00, 2309.90.10, 2309.90.90, 2302.10.00, 2302.30.00, 2303.20.00, 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.		
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric 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.		
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.		
Plant, machinery and equipment used in the construction of a plastics recycling plant.		
Tractors other than road tractors for semitrailers		
Hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00.		
Taxable goods locally purchased or imported 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.		

Excise Tax

Effective Date: 30 June 2020

License

The Bill seeks to expand the definition of license by including a license required in the carrying out of any other activity in Kenya for which the Commissioner, by notice in the Gazette, may impose a requirement for a license

Removal of excise duty on betting

Repeal of excise tax applicable on betting at a rate of 20%.

Alcoholic strength of Beer and Spirits

Reduction of the percentage of alcoholic strength from 10% to 8% for Beers and spirits. As a result, the revised description will be as follows:



Description	Rate
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 8%	Shs. 253.00 per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 8%	Shs. 110.62 per litre

Tax Appeals Procedure

Effective Date: 1 January 2021

Amendment to the Tax Appeals Tribunal Act to allow the appellant to rely on the grounds stated in the documents to which the decision relates. Previously it only allowed the appellant to be limited to the grounds stated in the appeal to which the decision relates.

Introduction of a Voluntary Tax Disclosure Programme for a period of 3 years *effective 1st January 2021*

The programme enables a taxpayer to disclose the person's tax liability for the purposes of being granted relief on penalties and interest on the tax disclosed. The period covered by the programme is 5 years prior to 1st July 2020 (i.e. 1st July 2016 to 30th June 2020). The key features of the programme are:

- Full remission of interest and penalties if the principal tax is paid in the first year.
- 50% remission of interest and penalties if the principal tax is paid in the second year.
- 25% remission of interest and penalties if the principal tax is paid in the third year.
- The application is voluntary and all material facts are disclosed.
- The application shall be deduced into an agreement setting out the terms of the payment of the tax liability and the period within which the payment shall be made.
- Where the taxpayer fails to meet the terms of the payment, full interest and penalties remitted under the agreement shall become due.
- Where before the expiry of the agreement, it is discovered that the taxpayer has failed to disclose material facts, any relief granted shall be withdrawn and the Commissioner shall institute proceedings under the provisions of the Tax Procedures Act. However, a person who is aggrieved of the decision shall have a right of appeal.
- The programme shall not be applicable to a taxpayer who is under an audit or investigation, or is a party to any ongoing litigation with the Commissioner or had been notified of a pending audit or investigation.

Appointment of digital service tax agent

The Commissioner may appoint and revoke an agent for the purpose of collection and remittance of digital service tax.

Other Miscellaneous and levies fees

Effective Date: 30 June 2020

Changes on Import Declaration Fee (IDF)

Description	Proposed rate	Old rate
Goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defense Forces and National Police	Exempt	3.5%
Any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings)	3.5%	Exempt
Goods imported under the East African Community Duty Remission Scheme	1.5% of the customs value	Ksh. 10,000
Goods imported for implementation of projects under special operating framework arrangement with the Government	3.5%	Exempt
Additional import duty payable in respect of goods entered for home use from an export processing zones enterprises	2.5% of the customs value	N/A
Aircraft of unladen weight not exceeding 2,000 kg and Helicopters of Heading 8802.11.00 and 8802.12.00	3.5%	Exempt



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