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NEWSFLASH KENYA

FINANCE BILL, 2020

Issue:
19 May 2020

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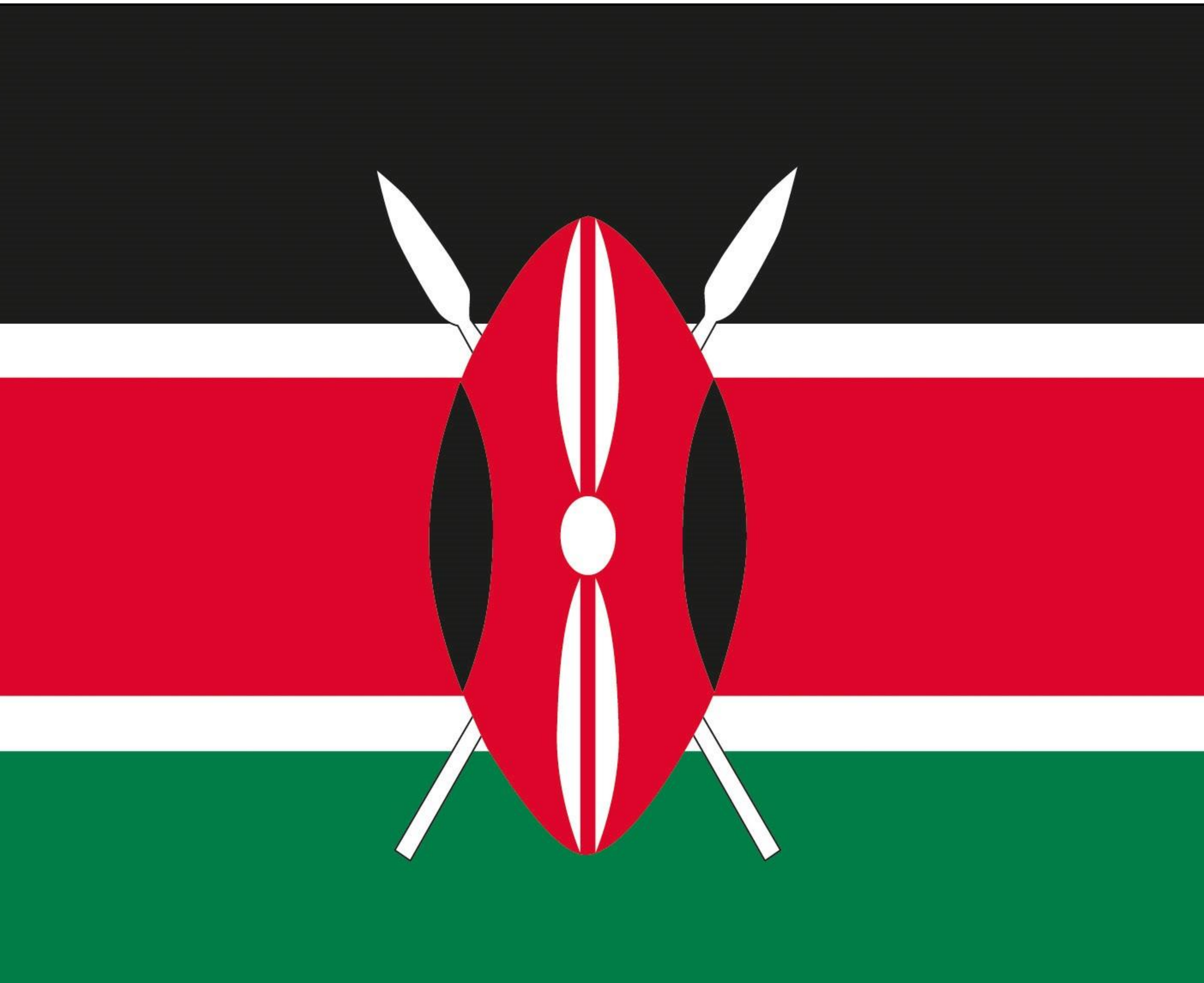

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→ Background

The Finance Bill, 2020 was tabled in the National Assembly on 6 May 2020. Usually, the Finance Bill is introduced to Parliament after reading of the Budget. However, the courts previously rendered a subsidiary law used to collect taxes prior to assent of Finance Bill as unconstitutional. This seems to be the motivation for an early tabling of the Finance Bill to ensure proposals are passed into law before commencement of the Government's next fiscal year on 1 July 2020.

In this issue we will analyze the key changes proposed in the Finance Bill, 2020.

→ Corporate tax change

INTRODUCTION OF DIGITAL SERVICE TAX

The Bill is proposing to introduce digital service tax (DST) which shall be payable on income which is deemed to be derived or accrued in Kenya through a digital market place. Income from services provided through a digital market place in Kenya will be taxed at the rate of 1.5 per cent on the gross transactional value.

The DST deducted from payments to resident entities and foreign branches (PEs) will be treated as an advance payment of tax to be set-off against the final tax liability for a year of income. The Finance Act, 2019 provided for publishing of regulations for the implementation of this tax by the Cabinet Secretary for the National Treasury and Planning.

This tax is recommended in the final report for Action 1 interventions under the global BEPS framework. Kenya is a member of the Inclusive Framework of the global BEPS implementation forum and is routinely monitored on adoption of passed guidelines.

MINIMUM TAX

The Bill proposes a new tax to be known as minimum tax that shall be payable by a person if the person's:

- income is not exempt under the ITA;
- income is not from employment, residential rent, capital gains, mining or oil exploration or subject to turnover tax; or
- minimum tax payable is lower than the instalment tax payable.

Minimum tax is based on 1 per cent of gross turnover and paid on the 20th day of the fourth, sixth, ninth and twelfth months.

The proposed introduction of minimum tax is an attempt to tax businesses that report taxable losses. This proposed tax seems to have ignored the status of service businesses who rarely qualify for instalment taxes because their income is subject to withholding tax. Similarly, the tax will unfairly increase the tax burden of profitable businesses whose taxable profits are lower than the tax base for the proposed minimum tax. This is because minimum tax will not be a final tax or an advance payment of tax.

EXPANSION OF THE THRESHOLD FOR RESIDENTIAL RENTAL INCOME TAX

The Bill proposes to increase the upper cap for the residential income subject to the 10 per cent tax rate from KES 10 million to KES 15million.

This is an indication of the good performance and reliability of this tax to the Exchequer.

REPEAL OF EXEMPTIONS ON CERTAIN INCOME

The Bill seeks to repeal exemptions previously granted on incomes accruing to a registered Home Ownership Savings Plan (HOSP) as well as the National Social Security Fund (NSSF). For HOSPs, this proposal seeks to subject to tax income earned by financial institutions, fund managers, investment banks and building societies with respect to HOSP deposits. These proposals were first floated with the Tax Amendments Bill published last month but were rejected in the final Act that was enacted.

NON-DEDUCTIBLE EXPENSES

The Bill seeks to treat the following expenses as non-deductible:

- Entrance fees or annual subscriptions to eligible trade associations and club subscriptions paid by an employer on behalf of an employee;
- Capital expenditure incurred on legal costs and other incidental expenses relating to rating, authorisation and issue of shares, debentures or similar securities offered for purchase by general public, as well as listing on the Nairobi Securities Exchange; and

Capital expenditure incurred on the construction of a public school, hospital, road or any similar kind of social infrastructure.

→ Changes in Employment taxes

TAXATION OF MONTHLY PENSION INCOME FOR PERSONS AGED 65 AND ABOVE

The Bill proposes to repeal the exemption on pensions paid to persons who are 65 years of age and above.

REPEAL OF EXEMPTION ON BONUS FOR LOW INCOME EARNERS

The Bill proposes to delete the Paragraph exempting from tax income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band. This amendment seeks to tax the bonuses, overtime and retirement benefits which had initially been exempted through the Finance Act 2016.

REPEAL OF TAX DEDUCTIONS AND EXEMPTIONS FOR HOME OWNERSHIP SAVINGS PLAN

The Bill seeks to repeal the tax deduction available to employees and individuals who make contributions to a registered HOSP. Currently, the deduction is KES 96,000 per annum (KES 8,000 p.m.).

The Bill also seeks to remove the tax exemption on interest income earned from the deposits made to a HOSP. The current exemption is up to a maximum of KES 3million.

The Bill further seeks to tax transfers between HOSPs.

→ VAT Changes

VAT AUTO ASSESSMENTS.

The Bill has proposed to add another condition for claiming of input VAT. The condition prohibits a taxpayer from claiming input VAT where the registered supplier has not declared the respective sale in their monthly VAT return. This provision was earlier included in the Tax Amendments Bill, 2020 but omitted in the final Act.

The proposal is largely impractical considering the absence of law allowing taxpayers to demand for declaration (and receive proof thereof) of any VAT charged in invoices relating to taxable supplies made by registered suppliers in a particular month. The shift of this administrative burden of tax enforcement from the KRA to taxpayers will unfairly increase costs of tax compliance.

CHANGES IN VAT STATUS

Item	Previous rate	New rate
Maize (corn) seeds of tariff no. 1005.10.00	14 per cent	Exempt
Ambulance services	14 per cent	Exempt
The supply of liquefied petroleum gas including propane	0 per cent	14 per cent
Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether or not rectangular or square supplied to manufactures of automotive and solar batteries in Kenya	0 per cent	14 per cent
– 8802.11.00; Helicopters of an unladen weight not exceeding 2,000 kg – 8802.12.00; Helicopters of an unladen weight exceeding 2,000 kg – 8802.20.00; Aeroplanes and other aircraft of an unladed weight not exceeding 2,000 kg – 8803.30.00; Other parts of aeroplanes or 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, and – 8805.29.00; their ground flying trainers and parts thereof.	Exempt	14 per cent
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	Exempt	14 per cent
Tractors other than road tractors for semitrailers	Exempt	14 per cent
Goods of tariff No.4011.30.00	Exempt	14 per cent
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	Exempt	14 per cent
Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heaters) 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	Exempt	14 per cent
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	Exempt	14 per cent
Plant, machinery and equipment used in the construction of a plastics recycling plant	Exempt	14 per cent
Hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00	Exempt	14 per cent

→ Other changes in Tax Laws

TAX PROCEDURES ACT: VOLUNTARY DISCLOSURE PROGRAM

The Bill proposes a Voluntary Tax Disclosure Programme for a period of three years with effect from 1 January 2021. Persons volunteering for the program are granted immunity from prosecution and granted penalty and interest waivers on tax arrears arising from inadvertent instances of non-compliance between 30 June 2015 to 1 July 2020 as follows:

- Full remission for applications made in 2021;
- 50 per cent for applications made in 2022; and
- 25 per cent 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. While the proposal provides that the taxpayer cannot appeal against the relief granted, a taxpayer may appeal against the Commissioner's decision to withdraw it. Taxpayers who are under audit or have received notification of a proposed audit will not be eligible for the programme.

TAX PROCEDURES ACT: APPOINTMENT OF DIGITAL SERVICE TAX AGENTS

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.

EXCISE DUTY ACT

- Expanded 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.
- 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 per cent (previously this was 10 per cent)
  - Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 8 per cent (previously this was 10 per cent)

MISCELLANEOUS FEES AND LEVIES ACT

- The Bill proposes to increase the Import Declaration Fee for goods imported under the East African Community Duty Remission Scheme from KES 10,000 to 1.5 per cent of the customs value.
- The Bill introduces 2.5 per cent additional duty in respect of goods entered for home use from export processing zones enterprises.
- The Bill restricts exemption from Import Declaration Fee for aircraft. Initially all aircraft were exempted from IDF but now this exemption does not apply to helicopters (class 8802.11.00 and 8802.12.00) and aircraft exceeding 2000 kg.
- The Bill also seeks to remove IDF exemption on goods exempted for projects worth over KES 200 million which are deemed to be in the public interest and goods procured under a special arrangement with the government.
- The Bill further seeks to provide IDF exemption on goods, equipment, machinery and motor vehicles for official use by the Kenya Defence Forces (KDF) and the Kenya Police
- The Bill seeks removes the Railway Development Levy exemption on goods imported for public interest projects worth KES 200 million but extends exemption to imports by the defense forces and police and also currency note

THE KENYA REVENUE AUTHORITY (KRA) ACT

- The Bill seeks to introduce 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. The Bill further introduces a requirement to give the KRA a month's notice to sue which should be served on the Commissioner General before instituting legal proceedings against KRA
- The Bill seeks to create an avenue for the KRA Board to make regulations for capacity building and training.
- The Bill proposes to introduce 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 per cent/of the revenue collected.

THE TAX TRIBUNAL ACT

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.

CONTACT FOR MORE INFORMATION

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This is a general guideline tax and legal alert and should not be a substitute for proper advice. For queries and clarification, kindly get in touch with Rödl & Partner.

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