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THE TAX LAWS (AMENDMENT) (No.2) BILL, 2020

EFFECTIVE DATE

On 28th September 2020, during the COVID –19 conference, the President engaged the National Treasury to review the tax rates that were enacted in April 2020, whose principle objective was to act as a relief to the public in response to the negative effects caused by the COVID–19 crisis.

Subsequently, arising from this conference, on the 27th November 2020, there was a special issue via a Kenya Gazette Supplement No. 216 regarding proposed amendments to tax laws. This was backed with a Press Statement issued by the Cabinet Secretary to the National Treasury and Planning on the 4th December 2020.

The Bill focuses on returning the tax rates in relation to personal income and corporation tax to pre–April 2020 rates. The Bill also proposes to make amendments to the VAT Act. **The proposed amendments, if passed by the Parliament, will come into effect on the later of the date that the Bill is assented into an Act or 1st January 2021.**

CORPORATION TAX

The proposed amendment intends to restate the corporation tax rate to 30% from 25% on income earned from 1st January 2021.

The Bill also seeks to clarify that the 25% reduced rate that was introduced by the Tax Laws (Amendment) Act 2020, would apply to income earned *from* 25th April 2020. Effectively this means that for 2020, 30% tax rate would apply for profits earned to 24th April 2020 and the 25% would apply to profits earned between 25th April 2020 and 31st December 2020.

The Income Tax Act (“ITA”) defines a year of income as *“the period of twelve months commencing on 1st January in any year and ending on 31st December in that year”*.

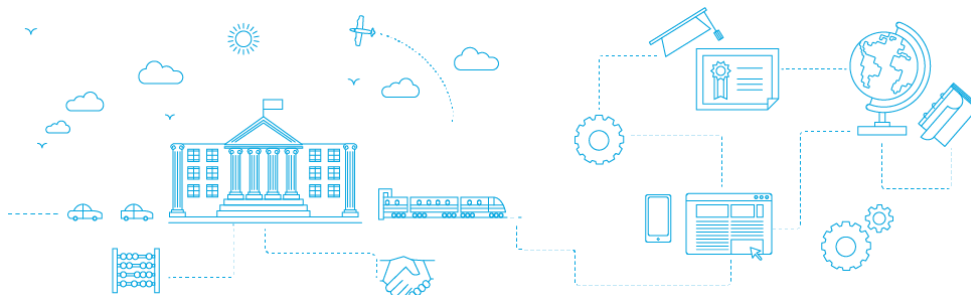
Section 27 (1) of the ITA provides that *“where a person usually makes up the accounts of his business for a period of twelve months ending on a day other than 31st December, then, for the purpose of ascertaining his total income for a year of income, the income of an accounting period ending on that other date shall, subject to such adjustment as the Commissioner may consider appropriate, be taken to be income of the year of income in which the accounting period ends.”*

This effectively means that if a person had a year of income that ended on 30th April 2020 to 31st December 2020, the applicable tax rate applicable to the 12–month ended to that date would be 25%.

The change proposed in the Bill creates further uncertainty:

- How is the profit to be apportioned, as the above change means that one needs to calculate the taxable profit to 24th April 2020 and the profit after that? How does one claim investment allowances? Does it mean that additions prior to 24th April 2020 are subject to the rate in the repealed Second Schedule and the additions after that are subject to the rates in the current Second Schedule.
- The proposed change is retroactive and therefore is void in law.

As a tax protection measure, while reducing the income tax rates to 25%, a corresponding change was made to increase the withholding tax rate on dividends paid to non–residents to 15% from 10%. With no reversal being proposed on this, the effective tax rate for non–resident shareholders which at 24th April 2020 was 37%, reduced to 36.25% on 25th April 2020 and will increase to 40.5% from 1st January 2021.



PERSONAL TAX

With the proposed bill, the tax rates that were effected on 25th April 2020 have now been revised as outlined in the table below:

NEW TAX BAND RATES			TAX BAND RATES POST COVID		
Individual Tax and Tax on Wife's Employment, Professional and Self-Employment Income – KShs	Rate - %	Cummulative tax - KShs PM. Less relief	Individual Tax and Tax on Wife's Employment, Professional and Self-Employment Income – KShs	Rate - %	Cummulative tax - KShs PM. Less relief
On the first KSh 288,000	10%	NIL	On the first KSh 288,000	10%	NIL
On the next KSh 200,000	15%	2,500	On the next KSh 200,000	15%	2,500
On the next KSh 200,000	20%	5,833	On the next KSh 200,000	20%	5,833
On the next KSh 200,000	25%	10,000	On the next KSh 200,000	25%	
On all income above KSh 888,000	30%		On all income above KSh 688,000	25%	

The tax relief granted under the Tax Laws (Amendment) Act, 2020 increased from Kshs 16,896 pa. (Kshs 1,408 pm.) to Kshs 28,800 pa. (Kshs 2,400pm.). The Bill does not propose any change to the tax bands or relief effectively meaning that those earning Kshs. 24,000 pm and below will continue to be exempt from personal tax.

The Bill also intends to align the rates of tax bands for withdrawal of funds from a registered pension/provident scheme or the NSSF as illustrated in the tables below:

NEW TAX BAND RATES		TAX BAND RATES POST COVID	
On payment of pension or any withdrawal made after expiry of 15 years	Rate - %	On payment of pension or any withdrawal made after expiry of 15 years	Rate - %
On the first KSh 400,000	10%	On the first KSh 400,000	10%
On the next KSh 400,000	15%	On the next KSh 400,000	15%
On the next KSh 400,000	20%	On the next KSh 400,000	20%
On the next KSh 400,000	25%	On all income above KSh 1,200,000 of the amounts in excess of tax - free amount	25%
On all income above KSh 1,600,000 of the amounts in excess of tax - free amount	30%		

NEW TAX BAND RATES		TAX BAND RATES POST COVID	
Withdrawal made before expiry of 15 years	Rate - %	Withdrawal made before expiry of 15 years	Rate - %
On the first KSh 288,000	10%	On the first KSh 288,000	10%
On the next KSh 200,000	15%	On the next KSh 200,000	15%
On the next KSh 200,000	20%	On the next KSh 200,000	20%
On the next KSh 200,000	25%	On the next KSh 200,000	25%
On all income above KSh 888,000	30%	On all income above KSh 688,000	25%

MINIMUM TAX

The Finance Act 2020 introduced a tax to be known as minimum tax under the ITA, effective 1st January 2021 which will be payable at a rate of 1% of the gross turnover. Minimum tax would then be applicable to all persons except in the following scenarios:

- Where income that is exempt from tax under the ITA;
- Where income is subject to employment taxes;
- Persons paying residential rental income tax;
- Persons paying turnover tax;
- Where capital gains tax has been paid; and
- Where taxes are due and payable from mining and petroleum activities.

The Finance Act 2020 did however err in stating that a person is liable to pay tax equal to 1% of gross turnover if the person's installment tax is higher than 1% of gross turnover which was inconsistent to the sentiments of the tax collector.

The Tax Law (Amendment) (No. 2) Bill seeks to correct this by amending the second provision as follows: Section 12 D (1) (c) *the installment tax payable by that person under section 12 is lower than the minimum tax.*

Thus where the installment tax liability is lower than 1% of the gross turnover of a company, a tax of 1% of the gross turnover shall be paid as minimum tax. The tax is payable quarterly on 20th of the fourth, sixth, ninth and twelfth month.

VALUE ADDED TAX (VAT)

Section 17 under the VAT Act focuses on the deduction of input tax. The Bill introduces a new provision as outlined below;

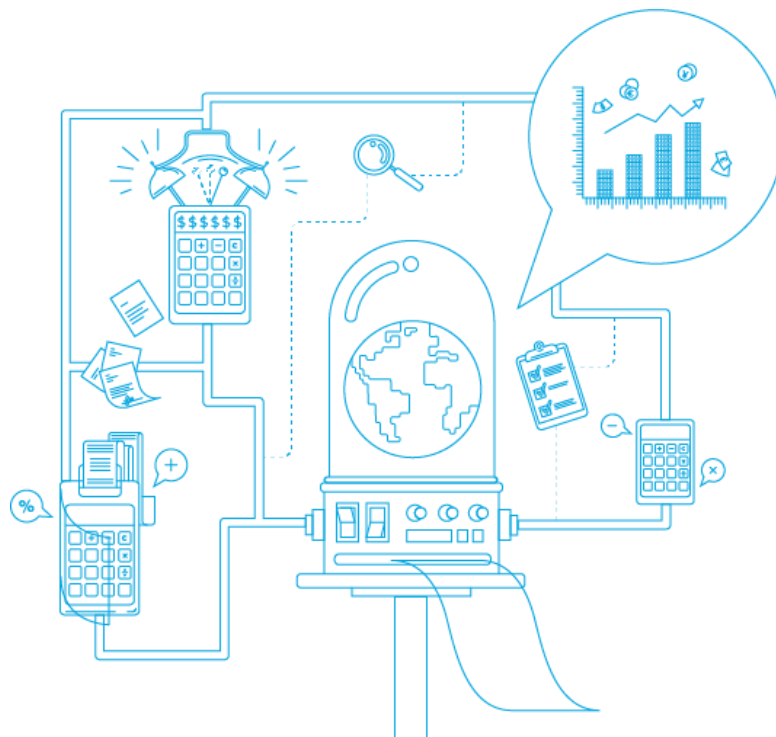
(8) Notwithstanding the provisions of this section, a registered person who is a manufacturer may make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule.

This provision is specifically targeting local registered manufacturers. Currently, official aid funded projects are specified to have an exempt VAT status as provided for under Paragraph 51 of section A of Part 1 of the First Schedule to the Act. With the new provision, a registered manufacture can now claim the input VAT on supplies to official aid funded projects, allowing our local manufacturers to have competitive pricing as currently the high cost to making such supplies encourages importation of cheaper products.

In our view, this is a welcome provision in line with the President's Big Four Agenda to stimulate the nation's manufacturing sector.

Reinstatement of the VAT rate

During the Covid period, we saw the VAT rate amended to cushion the economy during the pandemic. The Cabinet Secretary has now through Legal Notice 206 (The Value Added Tax Amendment of Rate order 2020) published in the Kenya Gazette, amended the standard rate of VAT from 14% to 16%. The new rate shall take effect from 1st January 2021.



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