INCOME TAX AMENDMENTS – THE TAX LAWS (AMENDMENT) ACT, 2020

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EFFECTIVE DATE

The Tax Laws (Amendment) Act, 2020 was assented to on 25th April 2020. All the changes below become effective on 25th April 2020. For ease of reference, additional changes in the Act, which were not proposed in the Bill have been bolded for ease of reference.

In the High Court ruling delivered on 19th September 2018 in the case of Okiya Omtatah vs CS National Treasury, Commissioner General KRA, National Assembly and the Attorney General, it was held that tax measures cannot be implemented before a Tax Bill becomes an Act (after going through the legislative process as laid down in the Constitution and the assent by the President). The ruling further provided that the Provisional Collection of Taxes and Duties Act No. 44 of 1959 was unconstitutional, and therefore invalid, null and void. This ruling therefore makes the effective date of all tax measure the later of the date that an Act relating to taxes was assented to (25th April 2020 in this case) or the effective date as provided in that Act. Our dedicated tax team is at hand to assist you with any implementation challenges.

QUALIFYING INTEREST

The definition of qualifying interest has been amended to make any interest earned by a resident individual that is subject to 15% withholding tax, to be final tax. Previously, only interest earned from a licenced bank, financial institution or building society, Central Bank of Kenya and on a bond approved by the CS Finance that was subject to 15% withholding tax was treated as final tax, and any other interest that was not specifically exempt was subject to 30% tax. This change will make it attractive for individuals to invest in other instruments like commercial paper or personal loans.

PERSONAL TAX

TAX RATE AND RELIEFS

Individual Tax and Tax on Wife's Employment, Professional and Self-Employment Income – KShs	Rate – %	Cumulative Tax – KShs PM. Less Relief
First 288,000 pa. (24,000 pm.)	10%	Nil
Next 200,000 pa. (16,666 pm.)	15%	2,500
Next 200,000 pa. (16,666 pm.)	20%	5,833
Over 688,000 pa. (57,333 pm.)	25%	

The personal tax relief has been increased from KShs 16,896 pa. (KShs 1,408 pm.) to KShs 28,800 pa (KShs 2,400 pm.). The income subject to the highest tax bracket has also been increased from KShs 47,059 to KShs 57,333.

The tax rates for withdrawal before the expiry of 15 years from the date of joining a registered pension/provident scheme or the NSSF, for withdrawals in excess of the tax free limits, has been aligned to the individual tax rates above.

Moreover, the rate of tax for withdrawal from a registered pension/provident scheme or NSSF after the expiry of 15 years from the date of joining, for amounts over KShs 1.2 million, has been reduced from 30% to 25%.

CAPITAL GAINS TAX – EXEMPTIONS REVOKED

Capital gains tax to be levied on:

- Land adjudicated under the Land Consolidation Act or the Land Adjudication Act registered under the Registered Land Act and transferred for the first time.
- Shares of a local authority.

CORPORATION TAX

TAX RATE

Corporation tax rate reduced from 30% to 25% effective 1st January 2020. However, the withholding tax rate on dividend payments to non-residents has been increased from 10% to 15%.

The various tax incentives for new listings or introductions on an approved securities exchange have been eliminated. The 15% tax rate for companies operating a plastic recycling plant which was introduced last year has also been removed.

In respect to special operating frameworks, the provision to negotiate lower rates has been removed and for the current frameworks, the rate negotiated in the agreement shall continue to apply for the unexpired period of the agreement.

Lastly, any withdrawal of a surplus from a registered scheme by an employer will be taxed at 35%, up from 30%.

ALLOWABLE EXPENSES

The 30% electricity rebate introduced in 2019 and which was specifically allowed as deductible expenses will now not be allowed as deductible expenses against taxable profit.

INVESTMENT ALLOWANCE

All the capital deductions including investment allowances that were provided under the Second Schedule of the Income Tax Act have been deleted and superseded with a simplified investment deduction regime. The provision allows the tax payer to decide whether they want to claim the allowance or not. Moreover, expenditure incurred by a person on behalf of another person shall not quality.

In the case of the 150% investment deduction on KShs 5 billion and over incurred in the construction of bulk storage and handling facilities supporting the SGR with a minimum storage capacity of 100,000 metric tonnes of supply, the proposed deduction shall remain in force till 31st December 2021.

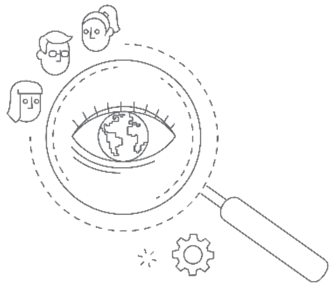
ITEM	PERMITTED DEDUCTION
BUILDINGS (excluding land)	**RATE**
Commercial building (including an office, shop, showroom, godown, storehouse or warehouse used for storage of raw materials and finished or semi-finished goods in respect to manufacture and civil works relating to water or electric power undertaking)	10% per annum on a reducing balance basis
Hotel building licensed by the relevant authority	50% in the first year of use and 25% on a reducing balance basis thereafter
Building used for manufacture including structures and civil works which relate to the use of the building (making or packaging of goods from raw or semi-finished goods and electricity generation for supply to national grid; but excluding design, storage, transport, administration and ancillary activity)	50% in the first year of use and 25% on a reducing balance basis thereafter

ITEM	PERMITTED DEDUCTION
Petroleum gas storage facilities	50% in the first year of use and 25% on a reducing balance basis thereafter
Educational buildings including student hostel licensed by the relevant authority	10% per annum on a reducing balance basis
Hospital buildings licensed by the relevant authority	50% in the first year of use and 25% on a reducing balance basis thereafter
• In case of change of a user, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate • Gains on sale of buildings or on cessation of business will now be treated as a trading receipt and taxed at 30%	
MACHINERY (including pipeline and plant & equipment)	**RATE**
Machinery used for manufacture (used directly in the process of manufacture including for ancillary purposes of electricity generation, clean-up and disposal of effluents and waste products, reduction of environmental damage, water supply or disposal, machinery maintenance and scientific research and development)	50% in year of first use and 25% on a reducing balance basis thereafter
Machinery used to undertake operations or exploration under a prospecting or mining right	50% in year of first use and 25% on a reducing balance basis thereafter
Hospital equipment	50% in year of first use and 25% on a reducing balance basis thereafter
Ships or aircrafts	50% in year of first use and 25% on a reducing balance basis thereafter
Motor vehicles and heavy earth moving equipment (restricted to KShs 3 million for non-commercial vehicles)	25% on a reducing balance basis
Computer and peripheral computer hardware, software, calculators, copiers and duplicating machines	25% on a reducing balance basis
Furniture and fittings and machinery not used in manufacturing	10% on a reducing balance basis
Diminution in value of implements, utensils and similar articles not being machinery	Amounts considered just and reasonable - 1/3 of the cost over 3 years, by practice
Telecommunications equipment	10% on a reducing balance basis
Filming equipment by a local film producer licensed by CS Communication	25% on a reducing balance basis
OTHER ITEMS	**RATE**
Purchase or acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% on a reducing balance basis
Farmworks (including farmhouses, labour quarters, immovable buildings, fences, dips, drains, windbreaks, water and electricity supply works excluding machinery and other works necessary for the proper operation of a farm)	50% in year of first use and 25% on a reducing balance basis thereafter

TURNOVER TAX

Turnover Tax (TOT) of 1% of gross receipts of the business shall apply to businesses with a turnover of between **KShs 1,000,000** and KShs 50 million and is now extended to incorporated companies. Previously, the rate was 3% and the turnover threshold was KShs 5 million, and was only applicable to sole proprietors and partnerships. The VAT registration limit still is KShs 5 million. This limit does not apply to income from rental income and management, professional or training fees.

A person who is subject to this tax, can still write to the Commissioner to be subjected to corporation tax.



The collection of presumptive tax at 15% of the Single Business Permit fee has been removed, and therefore TOT will now fully be payable to the Kenya Revenue Authority through the filing of monthly returns.

WITHHOLDING TAX

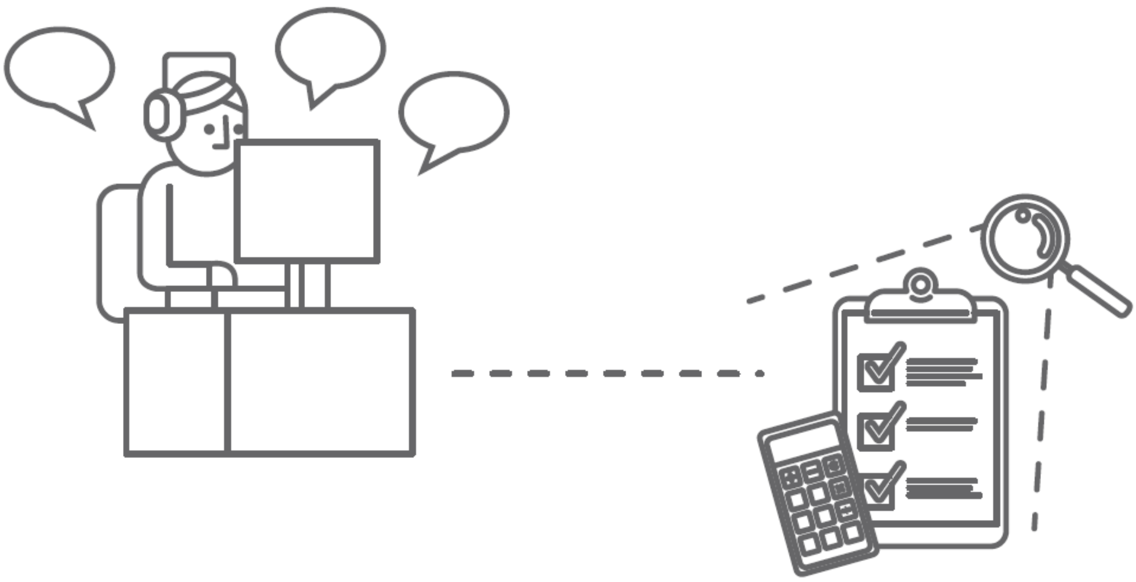
TRANSPORT, MARKETING AND ADVERTISING SERVICES

Withholding tax at the rate of 20% on payments made to a non-resident entity in respect of sales promotion, marketing, advertising services and transportation of goods (excluding air and shipping transport services) has been introduced.

However, the rate shall not be applicable to transportation of goods in respect to East African Community citizens.

INSURANCE PREMIUM

Various changes have been proposed to clarify that both insurance and reinsurance premiums, except for insurance or reinsurance premiums paid in respect to aircrafts, payable to non-residents are subject to 20% withholding tax.



INCOME NO LONGER EXEMPT FROM TAX

The following income will no longer be exempt from tax as the exemption provisions provided under the First Schedule to the Income Tax Act have been deleted.

- Interest earned on contributions paid into the Deposit Protection Fund.
- Interest earned on loans granted by the Local Government Loans Authority established under the Local Government Loans Act.
- Dividends received by a registered venture capital company and a registered special economic zone enterprise, developer and operator.
- Gains arising from trade in shares of a venture company by a registered venture capital company within the first ten years of investment.
- Interest income passed through to an investor in the form of asset-based securities.
- Dividends paid by registered special economic zone enterprises, developers and operators to non-resident persons.
- Compensating tax accruing to a power producer under a power purchase agreement.
- Income of The:
    - Tea Board of Kenya;
    - Pyrethrum Board of Kenya;
    - Sisal Board of Kenya;
    - Kenya Dairy Board;
    - Canning Crops Board;
    - Central Agricultural Board;
    - Pig Industry Board;
    - Pineapple Development Authority;
    - Horticultural Crop Development Authority;
    - National Irrigation Board;
    - Mombasa Pipeline Board;
    - Settlement Fund Trustees;
    - Kenya Post Office Savings Bank; and
    - Cotton Board of Kenya.
- Profits and gains, including interest income of an agricultural society in respect of any exhibition or show held by the society.
- Interest on tax reserve certificates issued by an authority of the Government.
- Emoluments of an officer of the Desert Locust Survey who is not resident in Kenya.
- Education grant paid by the Government of United Kingdom to a person employed in the public service of Kenya.

PROPOSED CHANGES IN THE BILL REJECTED BY THE PARLIAMENT

ALLOWABLE EXPENSES

The following expenses which the Bill had proposed to be specifically disallowed are fully deductible expenses against taxable profit:

- An entrance fee or annual subscription paid to a trade association which has elected to pay tax.
- Legal and other costs, including expenditure on rating, incurred on the issue of shares or debentures to the public and listing on a securities exchange in Kenya without raising capital.
- Club subscriptions paid by an employer on behalf of an employee.
- Expenditure on the construction of a public school, hospital, road or any other similar social infrastructure with the approval of CS Finance.

CAPITAL GAINS TAX – EXEMPTIONS NOT REVOKED

Capital gains tax exemption to continue on:

- Sale of a private residence. Previously, where the owner had lived in the property for three years prior to its disposal.
- Transfer of a property below KShs 3 million.
- Sale of all agricultural properties. Previously, properties situated outside a municipality and less than fifty acres was exempt.
- Land adjudicated under the Land Consolidation Act or the Land Adjudication Act registered under the Registered Land Act and transferred for the first time.

INCOME STILL EXEMPT FROM TAX

The following income will still be exempt from tax as provided under the First Schedule to the Income Tax Act:

- Interest of a registered home ownership savings plan.
- Income of the National Social Security Fund.
- Income of the National Hospital Insurance Fund.
- Investment income of pooled funds of a registered retirement benefits scheme.
- Interest income from listed infrastructure bonds including green bonds with a maturity of three years or more.
- Monthly or lump-sum pension payment to a person who is sixty-five years of age or more.
- **Income of an officer of the Government or Community, accrued in or derived from Kenya which consists of foreign allowances paid from the public funds.**

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