2021 TAX LAWS CHANGES

December 2020

Sections of the Relevant Acts and Descriptions	Proposed Changes	Our Comments/Remarks	Effective Dates
INCOME TAX CHANGES			
Section 6A- Residential Rental Income Tax (MRI)	Increase in the upper income threshold from KES 10 million to KES 15 million and increase (by double) the lower threshold from KES 144,000 to KES 288,000	More landlords will fall under this simplified 10% tax regime and those earning less than KES 288,000 per annum (KES 24,000 per month) will be exempt. This is to align the exempt threshold of KES 24,000 per month granted to employees In formal employment.	01 January 2021
Section 12(D) – Minimum Tax	This tax will be payable at 1% on gross revenue on the 20th of the fourth, sixth, ninth and twelfth months by all persons regardless of whether they make profits or not. However, this tax will not apply to employment income, any exempt income, 10% residential rent income, turnover tax income, capital gains tax income and income of extractive sectors taxable under the 9th schedule.	This goes against the basic tenet of levying tax on profits rather than on revenue. Government projects reduced taxes owing to COVID-19 pandemic and thus has cast its net wider to loss making businesses to shore up its revenues. Their main justification and argument by KRA is that ALL must contribute to taxes for reason that they enjoy public services that are paid from taxes. However, for profit making companies, where the instalment tax payable is higher than the minimum tax, the later shall not apply.	01 January 2021
Section 12(E) – Digital Service Tax (DST)	Persons whose income from services is derived from Kenya through a digital marketplace will pay DST at rate of 1.5% of the gross transaction value due at the time of transfer of payment to the service provider.	This is a newly introduced tax intended to address the changing business models specifically the growing transactions carried over digital platforms as opposed to traditional methods. It will be an advance tax available for offset against the final tax.	01 January 2021
Section 15 – allowability/ deductibility of expenses	The following expenses are no longer tax deductible: ▪ Entrance and subscription fees to trade associations. ▪ Capital and incidental expenses relating to issuance of shares, debentures and similar securities to the public.	This action seems to be informed by the maxim of expenses allow ability only when wholly and exclusively incurred to generate revenue.	01 January 2021

	expenses for listing and rating on securities exchange without raising additional capital. ▪ Club subscriptions paid by employer on behalf of employee.		
Section 22(C) – Home Ownership Savings Plan (HOSP)	A person who deposits funds in approved institutions for the purpose of purchasing a residential house is eligible for a deduction (from income) benefit of KES 9,000 per month. This incentive stands revoked from 1 January 2021.	The scheme experienced low uptake with little public knowledge and high interest rates that discouraged prospective homeowners. In addition, the Agenda Four affordable housing scheme which comes with mortgage relief is seen as a better alternative.	01 January 2021
First Schedule – Incomes Exempt from Tax	The following incomes that currently enjoy tax exemptions will become taxable: •The income of a registered home ownership savings Plan (HOSP) operated by approved financial institutions.	In the eyes of law drafters, the scheme has not lived to its intended usefulness of incentivizing residential home buyers as explained above.	01 January 2021
VAT CHANGES			
First Schedule – VAT Exemptions	The following goods which currently enjoy VAT exemption status will become vatable: ▪ Helicopters of an unladen weight not exceeding 2000 KGs. ▪ Hiring, leasing and chartering of helicopters. ▪ Tractors other than road tractors for semi-trailers.	The amendment is in cognizance of the changing use of helicopters as a means of luxury and convenient transportation and therefore not an essential service warranting tax exemption. The reason to tax agricultural tractors that greatly contributes to food security as one of the agenda four pillars In our view is ill informed.	01 July 2021

Sections of the Relevant Acts and Descriptions	Proposed Changes	Our Comments/Remarks	Effective Dates
Second schedule- VAT zero rating	Maize, wheat, meslin and cassava flour currently enjoy zero VAT status. Zero rating is the most advantageous because input VAT incurred is refundable in cash. These goods will move to the exempt category with effect from 1 January 2021.	The cost of these staple and widely consumed foodstuff is expected to increase because manufacturers are not allowed to claim the input VAT. The input VAT will be expensed just like any other expense, factored in the cost of production and passed on to consumers.	01 January 2021
	Liquefied petroleum gas including propane currently enjoy zero rating status for VAT. This is proposed to change to vatable from July 2021.	These products have traditionally remained outside the tax next for reason of promoting clean cooking solutions, save environment and health of citizens. The imminent taxation will push households to biomass sources like wood and charcoal thereby negating the crucial benefits above. It is worthy noting that even the Ministry of Energy and the Government's Energy and Petroleum Regulatory Authority had opposed this tax.	01 January 2021
EXCISE DUTY ACT			
SECTION 10 – Adjustment for Inflation	The Commissioner before adjusting the annual specific rate of excise duty will seek approval from the Cabinet Secretary for the National Treasury and Planning. The Gazette Notice containing the adjustment must also be presented to Parliament for either approval or rejection.	The practice currently permits the Commissioner to vary the duty rates by way of issuing a legal notice with no requirement to seek any further approval. The amendment is a positive move to provide a additional levels of scrutiny, checks and balances to avoid unilateral adjustments that may not be just, fair and reasonable.	01 January 2021

Sections of the Relevant Acts and Descriptions	Proposed Changes	Our Comments/Remarks	Effective Dates
TAX PROCEDURES ACT (TPA)			
Section 37(D)- Tax Amnesty	The Voluntary Tax Disclosure Programme (VTDP) popularly known as Amnesty allows taxpayers to voluntarily disclose any undeclared income(s) earned within the last five years up to 30 June 2020 and the applicable taxes. The five years declaration period will therefore run from July 2015 to June 2020.	Tax amnesty and voluntary disclosures is for anyone to take especially considering the benefits accruing. It is a process premised on trust and honesty devoid of the intrusive questions, lengthy and tedious processes associated with the conventional KRA audits. It comes with the benefits of approval and grant of penalties waivers in an automatic fashion without navigating through the usual complex processes. Above all it provides certainty that at the conclusion of the exercise, business owners are confident of utmost tax compliance.	01 January 2021 for three years to 31 December 2023
COVID 19 TAX INTERVENTIONS			
Third Schedule- Income Tax Act- Rates of Tax	The following changes are proposed to take effect in 2021. The 25% lower rate of tax applicable to both individuals and corporates is proposed to revert to 30%. Of importance to note is that the reduced corporate tax rate of 25% will apply to incomes earned for eight months- from 25 April to 31 December 2020 like that of PAYE. It therefore means that taxable incomes will be subject to two rates of taxes within one accounting year and we expect KRA to issue operationalization guidelines on this.	Tax Laws (Amendment) Bill (No. 2 of 2020) has just been laid before Parliament with intention to revert to the pre COVID-19 tax rates and provisions. KRA has admitted publicly that the pandemic intervention measures of reduced taxation significantly affected its revenues thereby impacting negatively on the Government's ability to deliver on its programmes. With debt levels ballooning to unsustainable levels and falling tax revenues, the only avenue available is tax increases.	01 January 2021

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	The low income earners (i.e. those earning not more than KES 24,000 per month) will continue to enjoy 100% tax relief, while personal tax relief will be retained at KES 2,400 per month.		
Section 17- Deduction of input VAT	The basic rule of deductibility of input VAT is that it must be incurred to make taxable supplies. Where a business has a mix of taxable, exempt and other supplies, input VAT should be apportioned to consider and claim only the proportion attributable To taxable supplies. Implementers of official aid-funded projects may apply to the Cabinet Secretary for National Treasury for VAT exemption. It means supplies to these projects will be VAT exempt implying input VAT will not be deductible. It is now proposed that only manufactures will be allowed to deduct input VAT on supplies made to aid projects.	Granting this tax deductibility to any business means a reduction of tax liability, and extending this favour to manufactures only can be interpreted to imply two intentions: • government's intention to promote local manufacturing by way of lessening tax burden and make their supplies cheaper. • Incentivize local manufactures to supply to local consumers and reduce on foreign suppliers.	01 January 2021
Section 5 – Rate of Tax	The 14% lower rate that took effect in April 2020 is proposed to revert to 16% from January 2021.	This is informed by reasons explained above - i.e. dwindling revenues and unsustainable debt levels.	01 January 2021

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