

# Tax Alert

## Highlights of the Finance Act, 2020



The Finance Act, 2020 (the Act) was assented to on 30 June 2020. The Act introduces tax amendments additional to those contained in the recently assented Tax Laws Amendment Act, 2020. The Act proposes to amend the following Laws: IncomeTax Act (ITA), Value Added Tax (VAT) Act, Excise Duty Act, Tax Procedures Act (TPA), Tax Appeals Tribunal Act (TAT), the Miscellaneous Fees and Levies Act, 2016, Public Road Tolls Act, Capital Markets Act, Standards Act, Retirement Benefits Act and Insurance Act.

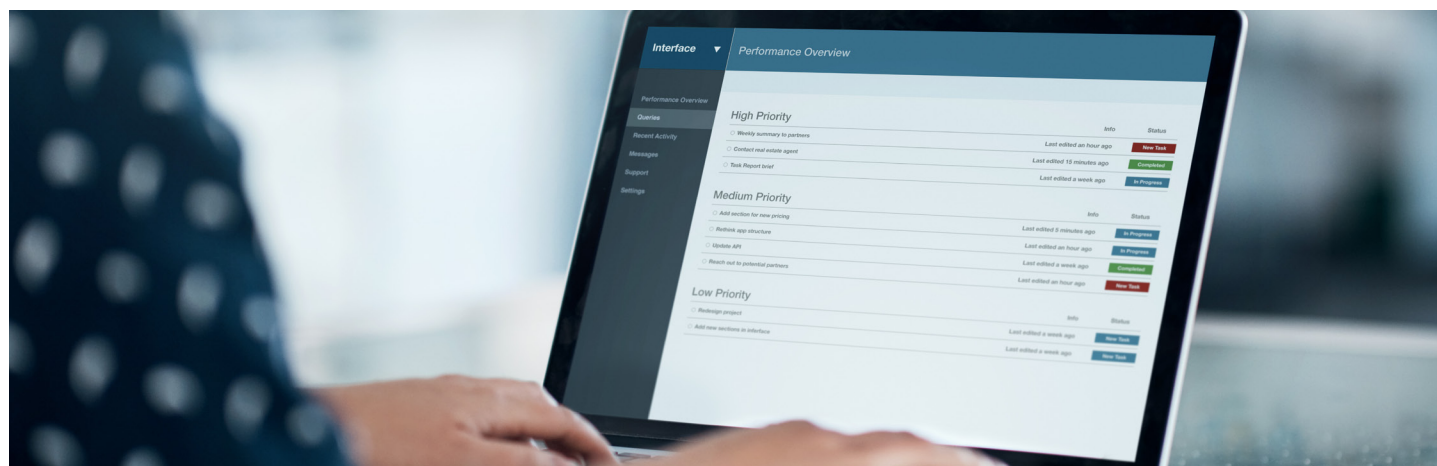
In this Alert, we provide an analysis of the changes proposed by the Act. The effective date for these changes is 01 January 2021, unless specified otherwise in the sections herein.

# Corporate taxes

The main changes in respect of corporate taxes is the introduction of two new taxes - the minimum tax and the digital service taxes. Given the recent changes to the Income Tax Act in respect of the turnover tax, it means that the number of taxation regimes for companies under the Income Tax Act has now significantly increased. There is now a minimum tax, a digital services tax, withholding taxes, corporate income tax, capital gains tax,

residential rental income tax, turnover tax etc. The common thread in respect of the different bases of taxation that have been introduced in the recent past is that they are in the form of a transaction tax or a turnover tax which represents a shift from a tax based on income earned as was envisaged in the original Income Tax Act.

Issue	Previous Position	Change as per the Finance Act, 2020	Comments/impact
<b>Minimum tax based on turnover</b>	N/A	1% of gross turnover	<ul style="list-style-type: none"> <li>The Act has introduced a minimum tax of 1% on the gross turnover.</li> <li>The minimum tax will not be applicable to exempt income, employment income, residential rental income, capital gains, persons undertaking mining or upstream oil and gas activities and persons subject to turnover tax.</li> <li>The minimum tax is intended for taxpayers who are carrying out business and thus earning revenue but their tax payable is lower than 1% of their gross turnover.</li> <li>The minimum tax will be a final tax and is payable in instalments that are due on the same date as the current instalment tax obligations i.e on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month.</li> <li>The introduction of the minimum tax may result in unintended economic effects in respect of businesses especially where it represents an additional cost to the business rather than a tax on actual income earned by the business especially in low margin business and new businesses which would be unprofitable in the initial years of business.</li> </ul>



# Corporate taxes

Issue	Previous Position	Change as per the Finance Act, 2020	Comments/impact
Digital services tax	N/A	1.5%	<ul style="list-style-type: none"> <li>• In attempting to tax income arising from a digital marketplace, the Act has introduced a 1.5% tax on income from services accrued or derived in Kenya through a digital marketplace. The tax is applicable on the gross transaction value of the service provided and is due at the time of payment. The responsibility to account for the tax is on the owner of the digital marketplace or an agent appointed by the Commissioner.</li> <li>• The definition of a digital marketplace under the Income Tax Act it is anticipated that the digital service tax will only apply to those providing intermediary services such as ride hailing and delivery applications.</li> <li>• A resident person or a non-resident person with a permanent establishment in Kenya can offset the digital service tax paid against the corporate tax liability for that year of income.</li> <li>• While the intention of the provision appears to be to bring into the Kenya tax net non-residents that operate digital marketplaces, the provision is restricted to apps that 'derive and accrue' such income from Kenya. Given that most non residents arguably do not derive nor accrue their income from Kenya (as contrasted to sourcing their income from Kenya), the drafting may potentially result in legal disputes as to its applicability to non-resident digital marketplaces.</li> <li>• The provisions relating to the appointment of agents appear to be targeted to aggregators that handle cash transactions relating to such digital marketplaces. For persons selling goods through a digital marketplace it may be difficult for such agents to determine the component of the transaction that represents the service fee in contrast to the product cost. It is likely that a blanket approach may be adopted that will result in the taxation of transactions (and values) that are not subject to the digital services tax.</li> <li>• Further, it is practically impossible for any tax to be paid at the time of the provision of the service. How this would work practically is unclear especially where the services being provided are in the hundreds per hour e.g. ride hailing service, it is impractical for the tax to be due for remission to the KRA after every ride.</li> </ul>

# Corporate taxes

Issue	Previous Position	Change as per the Finance Act, 2020	Comments/impact
<b>Reduction of the corporate tax deductions available to corporate bodies</b>	Tax deductible	No longer tax deductible	<p>The ITA has been amended by the Act to disallow the following expenditure when computing the corporate tax liability of an entity</p> <ul style="list-style-type: none"> <li>• Subscriptions payable to trade associations and club subscriptions paid by an employer on behalf of an employee.</li> <li>• Expenditure of a capital nature incurred by a corporate body on legal costs and other incidental expenses relating to authorization and issue of shares, debentures and similar securities offered for purchase by general public or for the purchases of listing on any securities exchange operating in Kenya, without raising additional capital.</li> <li>• Expenditure of a capital nature incurred by a corporate body on rating for the purposes of listing on any security exchange operating in Kenya.</li> </ul>
<b>Income tax exemptions reduced.</b>	Tax exempt	Subject to income tax	<p>The Act has reduced the current income tax exemptions listed in Part I of the First Schedule to the Income Tax Act ("ITA").</p> <p>Notable tax exemptions that have been removed include:</p> <ol style="list-style-type: none"> <li>i) Income of a registered home ownership savings plan. This move is contrary to the Big 4 agenda on affordable housing; and,</li> <li>ii) Income from employment paid in the form of bonuses, overtime and retirement benefits payable to the employees in the lowest tax band.</li> </ol>
<b>Tax depreciable machinery and equipment exempted from capital gains tax</b>	Ambiguous	Clarified that tax depreciable machinery and equipment exempt from capital gains tax	<p>The new provisions of the Second Schedule to the ITA, which were introduced by the Tax Laws Amendment Act 2020, were unclear whether tax depreciable machinery and equipment were subjected to capital gains tax if disposed thus created confusion. This amendment clears the ambiguity.</p> <p>The provision is effective on 30 June 2020.</p>

# Tax Procedures Act

Issue	Previous Position	Change as per the Finance Act, 2020	Comments/impact
<b>Voluntary Tax Disclosure Programme</b>	-	100% waiver in first year 50% waiver in second year 25% waiver in third year	<p>The Act has introduced an amnesty programme in the form of a Voluntary Tax Disclosure Programme ("VTDP") for a period of three years with effect from 1 January 2021.</p> <p>The amnesty is applicable to tax liabilities accruing within the period of five years prior to 1 July 2020. This is in line with the statute of limitation applicable to taxes.</p> <p>The benefits of the VTDP programme include:</p> <ol style="list-style-type: none"> <li>(1) Exemption from prosecution in relation to the taxes declared;</li> <li>(2) Flexible payment plans not exceeding 1 year;</li> <li>(3) Waiver of penalties and interest               <ol style="list-style-type: none"> <li>(a) 100% if disclosed in the first year of the programme (from January 2021);</li> <li>(b) 50% if disclosed in the second year of programme; and,</li> <li>(c) 25% if disclosed in the third year of programme.</li> </ol> </li> </ol> <p>The Act has included the following provisions that should be reconsidered to enhance the VTDP program:</p> <ol style="list-style-type: none"> <li>(1) The relief is not automatic and is subject to approval by the Commissioner;</li> <li>(2) A taxpayer cannot seek any other remedy including the right to appeal; and,</li> <li>(3) VTDP does not apply to taxpayers currently under audit by the Commissioner or taxpayers who have been notified of a pending audit.</li> </ol> <p>If properly implemented, the VTDP can be a powerful tool for the KRA to enhance its revenue collection at a lower cost as it avoids costly audits and legal disputes.</p>
<b>Appointment of tax agent</b>	N/A	The commissioner may appoint a person as a digital service tax agent	<p>The Act grants the Commissioner of Taxes the power to appoint a person as a tax agent for collecting and remitting of digital service tax.</p> <p>This will facilitate the collection of digital service tax especially since most digital platforms are operated from offshore by non-residents hence may be difficult to enforce the collection of digital service tax from such persons.</p>



# Tax Appeal Tribunal Act

Issue	Previous Position	Change as per the Finance Act, 2020	Comments/impact
<b>Expansion of scope of admissible records that can form grounds of appeal</b>	Limited to what was contained in the appeal	Expanded to include also documents that accompany the appeal	<p>The Act appears to have expanded the scope of grounds that can be used in the appeal by admitting grounds that have been previously stated in documents that were submitted prior to the appeal.</p> <p>However, in the KRA's bulletin special of June 2020, KRA appears to have interpreted this amendment as limiting the documents that are admissible on appeal to the Tribunal.</p> <p>It however appears that the drafting of this amendment does not appear to achieve this intended objective and instead expands the scope of grounds that are admissible on appeal.</p> <p>The provision is effective on 30 June 2020.</p>



# Employment and personal taxes

The following are the changes that have been introduced by the Finance Act in relation to employment and personal taxes.

Issue	Previous Position	Amendments introduced by the Finance Act, 2020	Comments/impact
<b>Increasing the lower and the upper income thresholds for residential rental income tax</b>	KES 144,000 to KES 10 million per annum	KES 288,000 to KES 15 million per annum	<p>The Finance Act, 2020 has increased the residential rental income tax lower income threshold from KES 144,000 per annum to KES 288,000 per annum thereby aligning the lower limit with the lowest income tax bracket for individuals.</p> <p>The Act has also increased the upper threshold for residential rental income from KES 10 million per annum to KES 15 million per annum. This change will enable more landlords to participate in the simplified tax regime for compliance with the residential rental income tax requirements in Kenya.</p>
<b>Taxation of club fees paid by an employer on behalf of employees</b>	Taxable on the employee	Taxable on the employer	<p>The Finance Act, 2020 seeks to disallow the deduction of club fees including entrance fees and annual subscriptions paid by an employer on behalf of an employee when computing the employer's taxable income.</p> <p>This means that club fees will be taxed in the hands of the employer going forward.</p>
<b>Removal of the House Ownership Saving Plan ("HOSP") tax relief</b>	KES 8,000 per month (or KES 96,000 per annum)	The relief has been repealed effective 1st January 2021	<p>The Finance Act, 2020 has removed the tax relief available to individuals who are saving to own a home under a HOSP.</p> <p>This move has been largely informed by the low uptake and lack of popularity of HOSPs among employees as well as the Government's efforts to promote home ownership under the proposed Affordable Housing Program.</p>
<b>Taxation of lumpsum pension to persons who are 65 years of age or more</b>	Exempt from tax	Taxable effective 30 June 2020	<p>The Finance Act, 2020 has amended Paragraph 53 to the First Schedule of the Income Tax Act thereby making lumpsum pension paid to persons aged 65 years of age or more taxable. Previously, lumpsum payments were exempt from tax alongside monthly pensions.</p> <p>This means that going forward, only monthly pensions/annuities granted to persons aged 65 years of age or more will be exempt from tax.</p>
<b>Taxation of income from employment paid in the form of bonuses, overtime and retirement benefits to low income earners</b>	Exempt	Taxable effective 30 June 2020	<p>The Finance Act, 2020 has removed the exemption on income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonuses, overtime allowances do not exceed the lowest individual tax bands.</p> <p>It is worth noting that the tax relief introduced by the Government effective April 2020 for persons earning a gross monthly income of up to KES 24,000 per month (currently the lowest tax band for individuals), as a means of cushioning the low income earners from the impact of the Covid-19 crisis continues to apply.</p>

# Value Added Tax (VAT)

The Finance Act, 2020 ("The Act") has amended the Value Added Tax Act, 2013 ("VAT Act") by standard rating several goods that were previously exempt, standard rating previously zero-rated goods and exempting previously standard rated goods and

services. The Act has also introduced additional conditions for deduction of input tax by taxpayers.

We provide below details of the changes.

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
<b>Introduction of additional criteria for deduction of input tax</b>	<p>According to Section 17 of the VAT Act, input tax is deductible if:</p> <ol style="list-style-type: none"> <li>1. It is incurred to make taxable supplies;</li> <li>2. The taxpayer possesses the requisite documentation supporting the input tax deduction; and</li> <li>3. The deduction is taken within 6 months after the end of the tax period in which the supply/importation occurred.</li> </ol>	<p>With effect from 30 June 2020, the Act has included an additional condition on deductibility of input tax, under Section 17 of the VAT Act. A person claiming input tax is required to hold the documentation provided for under Section 17 (3) or the registered supplier to have declared the output tax in their VAT return.</p>	<p>In our view this will pose challenges to businesses since they may not have the capacity to establish whether their suppliers have declared sales in the VAT returns.</p> <p>For this requirement to be efficiently enforced, it is our view that the KRA's iTax system would need to be reconfigured to allow automatic input tax credits for the purchasers of goods or services upon declaration of the output tax by the suppliers i.e. similar to withholding tax or withholding VAT. Otherwise, it is onerous and unduly punitive to require taxpayers to keep requesting their suppliers to verify their VAT filing.</p>
<b>Introduction of a transitional clause for change of VAT status of projects under a special operating framework arrangement (SOFA) with the Government</b>	<p>The Tax Laws Amendment Act ("TLAA"), 2020 changed the VAT status of projects under a SOFA with the Government from exempt to VATable at 14%.</p> <p>The TLAA, 2020 however did not provide a transition clause to allow for completion of ongoing projects VAT free.</p>	<p>The Act has introduced a transition clause under Section 68 of the VAT Act. This is to allow existing projects to procure goods under exemption for the remaining period of the agreement with the Government of Kenya. This is effective 30 June 2020</p>	<p>This will allow the projects to continue enjoying the benefits of exemption thereby making their implementation less costly.</p>



# Value Added Tax (VAT)

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
Change in VAT status of goods and services from standard rated to exempt	VATable at 14%	Exempt	<p>The Finance Act has changed the VAT status of the following goods and services from taxable to exempt.</p> <ul style="list-style-type: none"> <li>Maize (corn) seeds of tariff number 1005.10.00. This is a welcome relief and will support the Government's efforts of lowering the cost of inputs to farmers and boosting food production in the country.</li> <li>Ambulance services. This is a welcome move and will help reduce the cost of seeking medical services especially during these unprecedented times when the country is battling COVID-19.</li> </ul> <p>These changes are effective from 30 June 2020.</p>
Change in VAT status from exempt to standard rated	Exempt	VATable at 14%	<p>The Act has changed the VAT status of the following goods and services from exempt to taxable at 14%.</p> <ul style="list-style-type: none"> <li>Aluminum pilfer proof caps with EPE liner of tariff number 8309.90.90;</li> <li>Hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00;</li> <li>Helicopters of an unladen weight not exceeding 2,000 kg of tariff numbers 8802.11.00 and 8802.12.00;</li> <li>Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg of tariff number 8802.20.00;</li> <li>Other parts of aeroplanes or helicopters of tariff number 8803.30.00;</li> <li>Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof of tariff number 8805.10.00;</li> <li>Air combat simulators and parts thereof of tariff number 8805.21.00;</li> <li>Other ground flying trainers and parts thereof of tariff number 8805.29.00;</li> <li>Tractors other than road tractors for semi-trailers;</li> </ul> <p>The above amendments will be effective 1 July 2021.</p> <ul style="list-style-type: none"> <li>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;</li> </ul> <p>This change will result in increased prices of the goods which will consequently have a negative impact on the drive towards using 'clean fuel' and a greener ecosystem.</p>

# Value Added Tax (VAT)

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
			<ul style="list-style-type: none"> <li>• Goods of tariff number 4011.30.00, i.e., new pneumatic rubber tyres for use in aircrafts;</li> <li>• 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 cookstoves;</li> <li>• 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;</li> <li>• Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement ("SOFA") with the Government. It is however important to note that for existing SOFA projects, goods imported or purchased locally shall continue to be exempt for the remaining period of the agreement;</li> <li>• 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.</li> </ul> <p>The above amendments are effective from 30 June 2020.</p>
Change in VAT status of goods from exempt to zero-rated	Exempt	VATable at 0%	<p>The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight.</p> <p>It is important to note that this provision shall only apply for a period of six months from the date of assent (30 June 2020).</p> <p>This is a welcome move by the Government in ensuring that food is readily available to its people at affordable prices, especially during this COVID-19 pandemic.</p> <p>It is however noteworthy that the VAT status of maize flour has changed severally in the recent past. This uncertainty in law may cause planning and compliance challenges to the players in this sector, who need to keep abreast with the changes and make the necessary configuration to their systems in order to comply.</p>

# Value Added Tax (VAT)

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
Change in VAT status of goods from zero-rated to standard rated	VATable at 0%	VATable at 14%	<p>The Act has amended the Second Schedule to the VAT Act (Zero Rated supplies) by deleting the following items. These items henceforth shall be subject to VAT at the standard rate of 14%.</p> <ul style="list-style-type: none"> <li>• The supply of liquefied petroleum gas (LPG) including propane (with effect from 1 July 2021); and</li> <li>• 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 (with effect from 30 June 2020).</li> </ul> <p>The change in the VAT status of the above items from zero-rated to standard rated will lead to an increase in the prices charged to the final consumers.</p> <p>This may result in some consumers resorting to 'unclean sources of energy' like charcoal and kerosene, which goes against the Government's efforts towards protecting forests and advocating for green economy.</p>



# Excise Duty

The Finance Act has amended the Excise Duty Act, 2015 ("Excise Duty Act") by broadening application of Excise duty on alcoholic beverages and introduced conditions for implementation of annual inflation adjustments on Excise Duty rates. Additionally, the Act has removed Excise duty from betting activities.

We provide below details of the changes.

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
<b>Amendment in definition of 'licence'</b>	<p>Previously, the Excise Duty Act defined 'Licence' to mean:</p> <ul style="list-style-type: none"> <li>• In case of excisable services, the certificate of registration; and</li> <li>• In case of excisable goods, the licence issued under Excise Duty Act. <i>This implies the licence issued by the Commissioner General for KRA for undertaking excisable activities listed under section 15 of Excise Duty Act.</i></li> </ul>	<p>The Act has amended definition of 'Licence' to mean:</p> <ul style="list-style-type: none"> <li>• In the case of excisable services, 'licence' refers to the certificate of registration;</li> <li>• In the case of excisable goods, 'licence' refers to the licence issued under section 17 of the Excise Duty Act. <i>This implies the licence issued by the Commissioner for KRA for undertaking excisable activities listed under section 15 of Excise Duty Act; and</i></li> <li>• In the case of carrying out of any other activity in Kenya for which the Commissioner General for KRA may impose a requirement for licence as per section 15(1) (e) of Excise Duty Act, 'licence' refers to the licence required under section 15(1) (e).</li> </ul> <p>This is with effect from 30 June 2020.</p>	<p>This amendment will help reduce disputes with the KRA on the type of excisable activities requiring a license.</p> <p>We also note that this change gives the Commissioner power to direct more businesses with excisable activities to obtain licenses.</p>
<b>Annual inflationary adjustment on excise duty rates now subject to Parliamentary approval</b>	<p>The Commissioner for KRA had powers to adjust the specific rates of excise duty due to inflation at the beginning of every financial year by notice in the Kenya Gazette.</p>	<p>The Act now requires the Commissioner to seek approval from the Cabinet Secretary prior to making annual inflationary adjustments to excise duty rates.</p> <p>Additionally, any proposed inflationary adjustments will be debated and either approved or rejected by the National Assembly.</p> <p>This is with effect from 1 January 2021.</p>	<p>This change allows for public participation as envisaged by the Constitution of Kenya, 2010.</p> <p>Additionally, given the January 2021 effective date, this presents an opportunity for the Commissioner to pass an inflationary adjustment on Excise duty rates before then.</p>



# Excise Duty

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
<b>Excise duty on low alcoholic strength beverages</b>	<p>Previously, the below alcoholic beverages were subjected to Excise duty as follows;</p> <p>Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding <b>10%</b> were subject to Excise duty at KES 105.20 per litre.</p> <p>In addition, Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding <b>10%</b> were subject to Excise duty at KES 253 per litre.</p>	<p>The Act has broadened the application of Excise duty on the below alcoholic beverages as follows;</p> <p>Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding <b>6%</b> now subject to Excise duty at KES 105.20 per litre.</p> <p>Further, Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding <b>6%</b> will be subject to Excise duty at KES 253 per litre.</p> <p>Moreover, we note that despite the application of Excise duty on low strength alcoholic beverages the Excise duty rate remains unchanged</p> <p>This is with effect from 30 June 2020.</p>	<p>The introduction of excise duty on low alcoholic strength beverages is aimed at enhancing revenue collected from alcoholic beverages.</p> <p>However, this change is bound to increase the prices of alcoholic beverages targeted at the low-end market and encourage the consumption of illicit brews.</p>
<b>Removal of Excise duty on betting</b>	<p>Excise duty applicable on betting was twenty percent of the amount wagered or staked.</p>	<p>According to the Act, there will be no excise duty payable on betting activities with effect from 30 June 2020.</p>	<p>This relief from Excise duty is a welcome incentive for the betting sector.</p>



# Miscellaneous fees and levies

The Finance Act, 2020 has amended the Miscellaneous fees and levies Act by removing exemptions from Import Declaration Fee and Railway Development Levy on importation of certain goods and introduced exemptions on others.

We provide below details of the changes.

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
<b>Import Declaration Fee ("IDF") on goods imported under the EAC Duty Remission Scheme.</b>	Goods imported under the East African Community ("EAC") Duty Remission Scheme ("DRS") were charged IDF of KES 10,000 at the time of entering the goods for home use.	The Act has revised the IDF charge for goods imported under the EAC Duty Remission Scheme. IDF has now been set at 1.5% of the Customs value.  This is with effect from 30 June 2020.	In addition to earning the Government additional revenue, the increase in IDF payable will lead to additional costs and is likely to make the Country less attractive to manufacturers especially those who previously imported goods under the EAC DRS.  Further, this change will harmonize the IDF payable by manufactures importing under the EAC DRS with that of other approved manufactures.
<b>Introduction of additional duty on goods entered for home use from an Export Processing Zone ("EPZ").</b>	Goods entered for home use from an EPZ are subject to import duty as specified under Section 110 of the East African Community Customs Management Act ("EACCMA").	In addition to the import duty payable under Section 110 of EACCMA on goods entered for home use from an EPZ, the Act has introduced an additional duty of 2.5% duty which will be calculated based on the declared customs value.  This is with effect from 30 June 2020.	The change will earn the Government additional revenue while increasing the cost of such goods in the local market thereby discouraging offloading in the local market.
<b>Goods for use by Kenya Defence Forces ("KDF") and National Police Service ("NPS") exempted from IDF</b>	Previously, equipment, machinery and motor vehicles for the official use by the KDF and NPS were subject to IDF.	The Act has exempted these goods from payment of IDF with effect from 30 June 2020.	The change will result in an alignment with similar exemptions provided under the VAT Act. This will also reduce the cost of operations for these government entities.
<b>Withdrawal of exemption from Railway Development Levy ("RDL")</b>	Previously, the Cabinet Secretary exempted from payment of RDL goods determined to be of public interest, or to promote investments whose value was not less than two hundred million shillings (KES 200M).	The Act has imposed payment of RDL on importation of these goods (with effect from 30 June 2020).	Removal of exemption from RDL will earn the Government additional revenue. However, this will also make implementation of projects more costly and Kenya less attractive as an investment destination.

## Miscellaneous fees and levies

Issue	Previous Position	Amendment per the Finance Act, 2020	Comments/impact
<b>Withdrawal of exemption from IDF</b>	<p>Previously the following goods were exempt from payment of IDF:</p> <ul style="list-style-type: none"> <li>• Aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00 (with effect from 1 July 2021).</li> <li>• 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 (KES 200M) (with effect from 30 June 2020); and</li> <li>• Goods imported for implementation of projects under special operating framework arrangement with the Government (with effect from 30 June 2020).</li> </ul>	The Act has imposed payment of IDF on importation of these goods.	<p>The change will earn the Government additional revenue.</p> <p>This also means that additional non-recoverable costs will be incurred on implementation of projects. This will make Kenya less attractive as an investment destination due to elimination of incentives.</p>
<b>Goods imported by Central Bank of Kenya, KDF and NPS exempted from payment of RDL</b>	<p>Previously, the following goods were subject to RDL:</p> <ul style="list-style-type: none"> <li>• Equipment, machinery and motor vehicles for the official use by the KDF and NPS were subject to RDL; and</li> <li>• Currency notes and coins imported by the Central Bank of Kenya.</li> </ul>	With effect from 30 June 2020, the Act has exempted these goods from payment of IDF.	This is a welcome move that will reduce the cost of operations by the three government agencies especially in driving the economic boost needed during the COVID-19 pandemic.



# Non-tax legislative amendments

## 1. Road Management Agreements

The Act now provides for both private and public toll collectors. It enables persons who enter into agreements with the Cabinet Secretary for Transport and Infrastructure (“CS”) to manage roads that have been constructed under Road Management Agreements.

### *No requirement for National Assembly approval of Road Management Agreements*

National Assembly approval shall not be required by the CS or the relevant Road Authority for a Road Management Agreement to be considered valid.

### *Toll Collections*

Previously, a toll could only be levied in accordance with the agreement with the CS or the relevant Road Authority, and only with the approval of the CS. The amendment now provides that the CS prescribe a base toll rate in the agreement and permit the party responsible for the Road Management to revise the toll in accordance with an adjustment mechanism to be provided in the Agreement.

The Public Road Tolls Act previously stipulated that toll collections are to be paid into the Road Maintenance Levy Fund (the “Fund”). The amendment provides that all tolls, except transit tolls, be paid into the National Road Toll Fund, which is to be created under the Public Finance Management Act, 2012. The

Fund is intended to provide funds for the proper functioning of toll roads and toll stations and the development, repair and maintenance of roads.

The amendment has increased the maximum fine payable for offences under the Act to KES 50,000 (from KES 5,000). It has also allowed persons with whom the CS enters into a Road Management Agreement to collect unpaid tolls from defaulters as a civil debt that is recoverable summarily.

## 2. Regulation of Private Equity and Venture Capital

The Act mandates the Capital Markets Authority (“CMA”) with licensing, approving and regulating Private Equity (“PE”) and Venture Capital (“VC”) companies that have access to public funds. Following the amendment to allow Retirement Benefits Schemes to invest up to 10% of their funds in PE and VC firms, there has been a consistent push by the Government to have these firms regulated.

## 3. Distribution of Unclaimed Dividends for listed companies

The Investor Compensation Fund was previously allowed, in the event of the failure of a licensed stockbroker or dealer, to pay beneficiaries from collected unclaimed dividends when they resurface.

This, however, is a function that has since been bestowed upon the Unclaimed Financial Assets Authority, under the

Unclaimed Financial Assets Act, 2011. As such, the amendment removes the handling of unclaimed dividends from the Capital Markets Act.

## 4. Submission of Actuarial Evaluations

A penalty of KES 100,000 has been introduced for failure of a trustee to submit a copy of the actuarial report to the Chief Executive Officer of the Retirement Benefits Authority. A further penalty of KES 1,000 for each day during which the report remains unsubmitted is also imposed.

While actuarial evaluations are mandated by the Act, the lack of a penalty makes it a “soft” requirement under current Act.

## 5. Appeals against decisions of the Insurance Tribunal

The Insurance Act now sets a time limit of 30 days for appeals from the Insurance Tribunal on customer complaints. The limitation is intended to bring certainty with regard to the end of litigation at the Tribunal.

## 6. Priority of claims by the KRA against insolvent banks.

At the point of receivership or liquidation of an institution regulated under the Banking Act, all amounts held by the bank as an agent for revenue banking on behalf of the Kenya Revenue Authority shall rank as second priority claims. This is intended to reduce KRA's exposure in the event of a bank's failure.





# Contacts

For further information on the Finance Act 2020, please contact any of the people below or your usual PwC contact.

**Steve Okello**

Partner

[steve.x.okello@pwc.com](mailto:steve.x.okello@pwc.com)

+254 20 285 55000

**Job Kabochi**

Partner

[job.kabochi@pwc.com](mailto:job.kabochi@pwc.com)

+254 20 285 5000

**Titus Mukora**

Partner

[titus.mukora@pwc.com](mailto:titus.mukora@pwc.com)

+254 20 285 5000

**Simeon Cheruiyot**

Partner

[simeon.cheruiyot@pwc.com](mailto:simeon.cheruiyot@pwc.com)

+254 20 285 5000

**Nicholas Kahiro**

Manager

[nicholas.x.kahiro@pwc.com](mailto:nicholas.x.kahiro@pwc.com)

+254 20 285 5788

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