

# Tax and Regulatory Alert

## Highlights of the Finance Bill, 2020



The Finance Bill, 2020 (the Bill) was published on 5 May 2020. The Bill introduces tax amendments additional to those contained in the recently assented Tax Laws Amendment Act, 2020. The Bill proposes to amend the following Laws: Income Tax 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.

There are some proposed amendments to the various tax legislation that have been proposed in the Bill that were previously rejected in the recent Parliamentary discussions of the Tax Law Amendment Act. These proposed amendments may run foul of the Parliamentary Standing Order that prohibits the introduction in Parliament of issues that have been debated in the previous six months.

In this Alert, we provide an analysis of the changes proposed by the Bill.

# 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 profit tax, capital gains tax, deemed non

resident tax, residential rental income tax, mining and petroleum tax, betting taxes 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	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
Minimum tax based on turnover		1% of gross turnover	<ul style="list-style-type: none"> <li>The Bill proposes to introduce a minimum tax of 1% on the gross turnover.</li> <li>The proposed minimum tax will not be applicable to 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 proposed 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 proposed 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> </ul> <p>There are some clarifications that Parliament may seek in respect of the drafting of the provisions relating to the minimum tax. In particular:</p> <ul style="list-style-type: none"> <li>The proposed Section 12D (1)(c) of the Bill appears to be incorrectly drafted as it implies that the minimum tax is payable where the corporate tax payable is higher than the minimum tax. It is expected that this error in drafting will be corrected by Parliament.</li> <li>The interplay between instalment taxes payable in respect of minimum tax and those payable in respect of the profit/income tax is unclear. As both instalment taxes rely on an estimate at the beginning of the year - whether estimate of the gross turnover or estimate of the profit - it is unclear as to whether there will be any penalties for a taxpayer whose estimates result in him choosing one method of paying taxes over the other.</li> </ul>

# Corporate taxes

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
Minimum tax based on turnover		1% of gross turnover	<p>From a policy perspective, the minimum tax bridges the differences in taxation that may arise between the turnover tax applicable to medium and small business and other businesses. However, 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. In particular, the following policy considerations need to be taken into account.</p> <ul style="list-style-type: none"> <li>• Low margin businesses whose profit margins can range from between 1 - 4% of gross turnover should be exempted from the minimum tax regime. This is because the minimum tax may result in a higher tax cost in comparison to their current tax payable resulting in additional costs for such businesses.</li> <li>• The minimum tax may also present cash flow problems for new businesses which would be unprofitable in the initial years of business but have a progressively significant turnover particularly capital intensive businesses.</li> <li>• Minimum tax could also lead to the taxation of capital for loss making companies where losses have reduced the retained earnings.</li> </ul> <p>It is therefore suggested that the following amendments are considered to better reflect the policy objectives of the tax and avoid any significant economic distortions:</p> <ul style="list-style-type: none"> <li>• The minimum tax should not be applicable to newly incorporated companies for a defined period of time.</li> <li>• The minimum tax should not be applicable to low profit margin businesses.</li> <li>• The minimum tax should be payable as a balance of tax rather than an instalment tax to avoid the complexities that arise from estimation of gross turnover and profits.</li> <li>• Consideration should be given to defining the term “gross turnover” to avoid the minimum tax being applied to indirect taxes where such taxes form part of the turnover of the company.</li> <li>• For loss making companies, minimum tax should be a form of advance tax which could be set off against future corporate tax liabilities.</li> </ul>

# Corporate taxes

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
Digital services tax		1.5%	<p>In attempting to tax income arising from a digital marketplace, the Bill 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.</p> <p>The definition of a digital marketplace under the Income Tax Act is restricted to businesses such as ride hailing and delivery applications that act as intermediaries.</p> <p>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.</p> <p>The provisions relating to the appointment of agents appear to be targeted to aggregators that handle cash transactions relating to such digital market places. 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.</p> <p>It is noted that Kenya is part of the OECD Mutual Inclusive Framework that is currently discussing the issue of taxation of digital services business. The introduction in Kenya of the digital services tax appears to have pre-empted the outcome of those discussions. It is also noted that the digital services tax may represent a significant obstacle to the start of any discussions between Kenya and the US in respect of the anticipated Free Trade Agreement.</p> <p>Finally, it is noted that the Cabinet Secretary has not issued guidelines as required by Finance Act 2019. As such, it is unclear whether these provisions are effective in the absence of such regulations.</p>



# Corporate taxes

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Reduction of the corporate tax deductions available to corporate bodies</b>	Tax deductible	No longer tax deductible	<p>The Bill proposes to disallow the following expenditure for corporate tax purposes:</p> <ul style="list-style-type: none"> <li>The Bill proposes to disallow subscriptions payable to trade associations and club subscriptions paid by an employer on behalf of an employee.</li> <li>The Bill proposes to disallow any expenditure of a capital nature incurred by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure shall not be tax deductible.</li> <li>The Bill has reduced tax incentives available to companies listing their shares at the Nairobi Securities Exchange:</li> </ul> <p>It is noted that Parliament rejected the above changes a month ago during the vetting of the Tax Laws (Amendment) Bill 2020.</p>
<b>Income tax exemptions reduced</b>	Tax exempt	Subject to income tax	<p>The Bill proposes to reduce 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 in the Bill include:</p> <ul style="list-style-type: none"> <li>Income of a registered home ownership savings plan. This move is contrary to the Big 4 agenda on affordable housing;</li> <li>Income of the National Social Security Fund;</li> <li>Monthly or lump sum pension granted to a person who is sixty-five years of age or more; and</li> <li>Income from employment paid in the form of bonuses, overtime and retirement benefits payable to the employees in the lowest tax band.</li> </ul> <p>It is noted that Parliament rejected the above changes a month ago during the vetting of the Tax Laws (Amendment) Bill 2020.</p>



# Tax administrative changes

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Voluntary Tax Disclosure Programme</b>	Application of waiver of penalties and interest	100% waiver in first year 50% waiver in second year 25% waiver in third year	<p>The Bill proposes to introduce an amnesty 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> <ul style="list-style-type: none"> <li>• Exemption from prosecution in relation to the taxes declared;</li> <li>• Flexible payment plans not exceeding 1 year;</li> <li>• Waiver of penalties and interest <ul style="list-style-type: none"> <li>– 100% if disclosed in the first year of the programme (from January 2021)</li> <li>– 50% if disclosed in the second year of programme</li> <li>– 25% if disclosed in the third year of programme</li> </ul> </li> </ul> <p>The Bill has included the following provisions that should be reconsidered to enhance the VTDP program:</p> <ul style="list-style-type: none"> <li>• The relief is not automatic and is subject to approval by the Commissioner;</li> <li>• A taxpayer cannot seek any other remedy including the right to appeal;</li> <li>• VTDP does not apply to taxpayers currently under audit by the Commissioner or taxpayers who have been notified of a pending audit; and</li> </ul> <p>Where 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>



# Employment taxes

The following are the proposals in the Bill relating to employment taxes.

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Expansion of the residential rental income tax bracket from KES 10M to 15M</b>	KES 144,000 to 10M per annum	KES 144,000 to 15M per annum	<p>Finance Bill 2020 seeks to expand the residential rental income tax upper limit for income, which is accrued or derived from Kenya for use or occupation of residential property in excess of KES 144,000, from KES 10M to 15M.</p> <p>This proposal will enable more people to utilise the simplified tax regime who were otherwise locked-out due to the 10M limit. However, we would suggest that the minimum rental income subject to tax at KES 144,000 is increased to KES 288,000, so that it is in line with the lowest income tax threshold which was recently expanded under the Tax Laws (Amendment) Act.</p>
<b>Removal of the House Ownership Saving Plan ("HOSP") tax relief</b>	KES 96,000 per annum	Repeal this relief	<p>The Bill proposes to remove the tax relief available to individuals who are saving to own a house under HOSP.</p> <p>It is noted that Parliament rejected the above change less than a month ago during the vetting of the Tax Laws (Amendment) Bill 2020.</p>
<b>Taxation of monthly or lump sum pension to a person who is 65 years of age or more</b>	Exempt from tax	Taxable	<p>The Bill proposes to start taxing monthly or lump sum pension paid to a person aged 65 years of age or more. This move will result in lower disposal income to the senior citizens who should be cushioned by the government as they have limited sources of income since they have retired from gainful employment.</p> <p>We would recommend that these individuals are cushioned from taxes as they are a vulnerable group within the society.</p> <p>It is noted that Parliament rejected the above change less than a month ago during the vetting of the Tax Laws (Amendment) Bill 2020.</p>
<b>Proposal to tax income from employment paid in the form of bonuses, overtime and retirement benefits to low income earners</b>	Exempt	Taxable	<p>The Bill seeks to tax income from employment paid in the form of bonuses, overtime and retirement benefits to employees whose taxable employment income before bonuses, overtime allowances does not exceed the lowest tax bands.</p> <p>Currently, such benefits are exempt. It is noted that Parliament rejected the above change less than a month ago during the vetting of the Tax Laws (Amendment) Bill 2020.</p>

# Value Added Tax (VAT)

The Bill proposes to amend the Value Added Tax Act, no. 35 of 2013 ("VAT Act") by standard rating a number of goods that were previously exempt. We observe that some of the proposals were initially included in the Tax Laws Amendment Bill, 2020 however the National Assembly did not approve the proposals.

The Bill has also proposed an additional condition for taxpayers to fulfil in order to claim input tax.

We provide below details of the changes.

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Proposed additional criteria for deduction of input tax</b>	According to the VAT Act, Section 17, input tax is deductible if: <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>	Inclusion of an additional provision to Section 17 that provides input tax will not be deductible if the registered supplier has not declared the sales invoice in a VAT return.	<p>This proposal could be viewed as Kenya Revenue Authority ("KRA") trying to place the role of VAT compliance enforcement to businesses/buyers. This will pose challenges to business since they may not have the capacity to know when and whether suppliers will declare/have declared their sales invoices in the VAT returns.</p> <p>Additionally, the proposed change could pose constitutionality concerns as to whether the responsibility of enforcing VAT compliance and administration can be delegated to taxpayers.</p> <p>Perhaps it is time that KRA's iTax system is enhanced to have real-time updates as and when registered businesses issue sales invoices.</p>
<b>Proposed change in VAT status of goods from standard rated to exempt</b>	VATable at 14%	Exempt	<p>The Bill has proposed to exempt from VAT, maize (corn) seeds of tariff number 1005.10.00.</p> <p>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.</p>
<b>Proposed change in VAT status of services from standard rated to exempt</b>	VATable at 14%	Exempt	<p>The Bill has proposed to exempt ambulance services from VAT.</p> <p>The proposal is welcome and will help reduce the cost of seeking medical services especially during these unprecedented times when the country is battling COVID-19.</p>
<b>Proposed change of VAT status of services from exempt to standard rated</b>	Exempt	VATable at 14%	<p>The Bill has proposed to levy VAT at 14% on the hiring, leasing and chartering of helicopters of tariff numbers 8802.11.00 and 8802.12.00.</p> <p>The proposed change will raise additional tax revenue for the Government that will help finance its public expenditure needs.</p>



# Value Added Tax (VAT)

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Proposed change of VAT status of goods from exempt to standard rated</b>	Exempt	VATable at 14%	<p>In a bid to boost tax revenue, the Bill proposes to levy VAT at 14% on the following goods which are currently exempt:</p> <ul style="list-style-type: none"> <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>• 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> <li>• Tractors other than road tractors for semi trailers;</li> <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>• 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; and</li> <li>• Plant, machinery and equipment used in the construction of a plastics recycling plant.</li> </ul> <p>The proposed changes with respect to renewable energy may negatively impact the drive towards using 'clean fuel' and a greener ecosystem.</p>

# Value Added Tax (VAT)

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
Proposed change in VAT status of goods from zero-rated to standard rated	VATable at 0%	VATable at 14%	<p>The Bill has proposed to change the VAT status of the following items from zero-rated to standard rated:</p> <ul style="list-style-type: none"> <li>• The supply of liquefied petroleum gas including propane; 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.</li> </ul> <p>The proposed change in the VAT status of these items from zero-rated to standard rated will increase the prices charged to the final consumers. This may result in some consumers resorting to 'unclean sources of energy' like charcoal and kerosene, which goes against the global trend of reducing carbon footprint.</p>



# Excise Duty

The Bill proposes to amend the Excise Duty Act, no. 23 of 2015 ("Excise Duty Act") by recategorizing certain products in order to increase Excise duty collections on alcoholic beverages.

We provide below details of the changes:

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Change in definition of 'licence' as per the Excise Duty Act</b>	<p>'Licence' is defined to mean:</p> <ol style="list-style-type: none"> <li>1. In the case of excisable services, the certificate of registration; and</li> <li>2. In the case of excisable goods, the licence issued under section 17 of the 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> </ol>	<p>'Licence' is proposed to be defined to mean:</p> <ol style="list-style-type: none"> <li>1. In the case of excisable services, 'licence' refers to the certificate of registration;</li> <li>2. 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>3. 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> </ol>	<p>The proposed clarification is welcome as it will help reduce disputes with the KRA on what type of license taxpayers carrying on excisable activities should possess for Excise duty purposes.</p>
<b>Downward review of alcoholic strength of beverages categories for Excise duty purposes</b>	<ol style="list-style-type: none"> <li>1. Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10% are subject to Excise duty at KES 105.20 per litre.</li> <li>2. Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10% subject to Excise duty at KES 253 per litre.</li> </ol>	<ol style="list-style-type: none"> <li>1. Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with nonalcoholic beverages and spirituous beverages of alcoholic strength not exceeding 8% is subject to Excise duty at KES 105.20 per litre.</li> <li>2. Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 8% subject to Excise duty at KES 253 per litre.</li> </ol>	<p>The proposed change will result in the Government collecting more Excise duty revenue.</p>

# Miscellaneous fees and levies

The Bill proposes to amend the Miscellaneous Fees and Levies Act, no 29 of 2016 ("MFLA") by introducing 'additional duty' at 2.5% on goods entered for home use from an Export Processing Zone ("EPZ"). Additionally, the Bill has proposed to change the Import Declaration Fee ("IDF") levied on goods imported under

the East African Community ("EAC") Duty Remission Scheme from a fixed fee of KES 10,000 to an ad valorem rate of 1.5% of the Customs value.

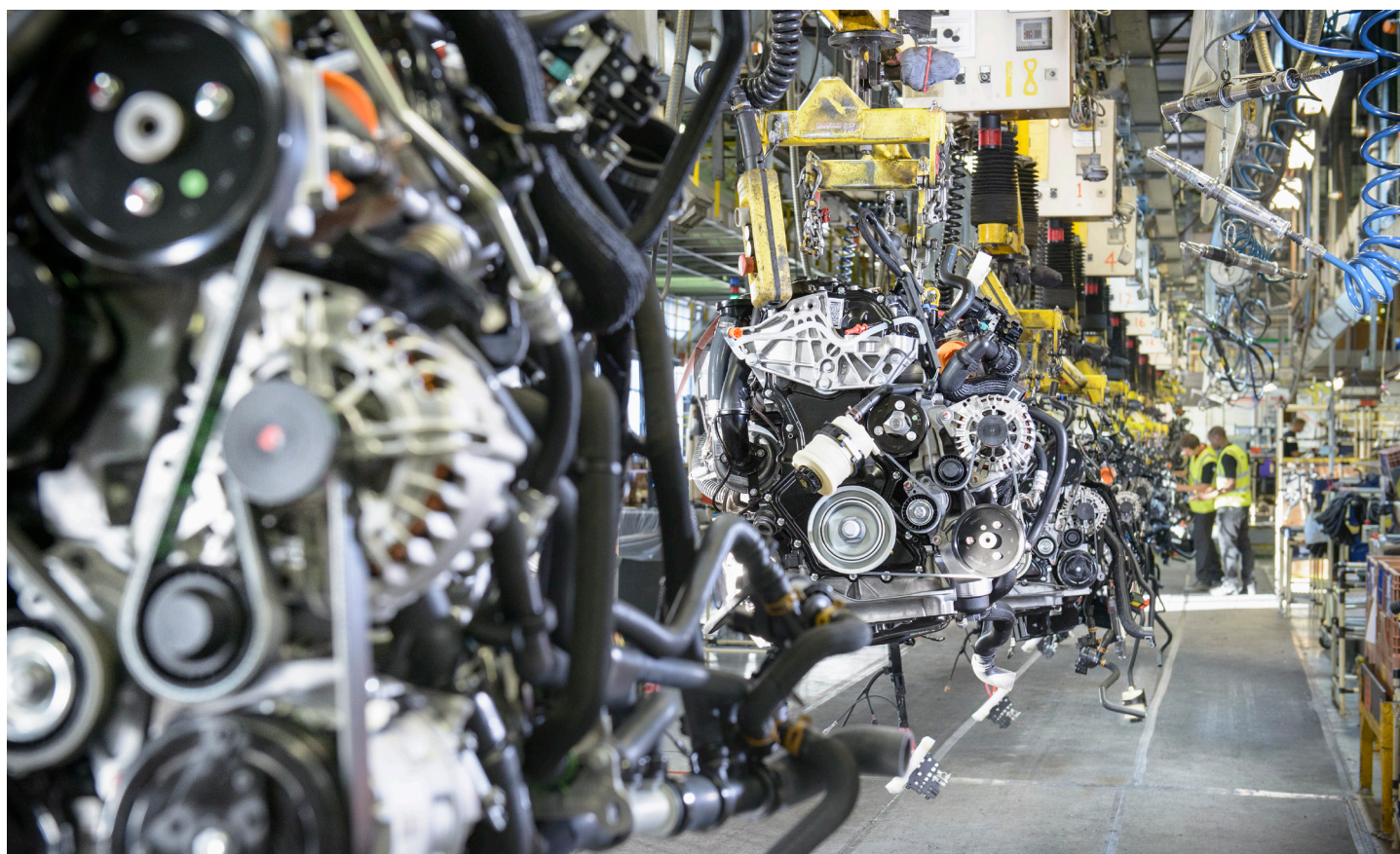
We provide below details of the changes:

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Proposed change of IDF levied on goods imported under a remission scheme</b>	Goods imported under the EAC Duty Remission Scheme are charged IDF of <b>KES 10,000</b> at the time of entering the goods for home use	Goods imported under the EAC Duty Remission Scheme shall be charged IDF at a <b>rate of 1.5% of the Customs value</b>	The proposed change is aimed at earning the Government additional revenue.
<b>Proposed exemption from IDF</b>	All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service are currently subject to IDF	Exempt	The proposed change will result in an alignment with similar exemptions provided under the VAT Act.
<b>Proposed change of status of goods from exempt to being subject to IDF</b>	Exempt	Subject to IDF	<p>The Bill has proposed to subject the following goods to 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;</li> <li>any other 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; and</li> <li>Goods imported for implementation of projects a under special operating framework arrangement with the Government</li> </ul> <p>Previously, all aircrafts were exempt from IDF and the proposed change will earn the Government additional IDF revenue from this category of aircrafts/helicopters.</p>
<b>Proposed change of status of goods from being subject to Railway Development Levy (RDL) to exempt</b>	Subject to RDL	Exempt	<p>The Bill has proposed to exempt the following goods from RDL:</p> <ul style="list-style-type: none"> <li>Currency notes and coins imported by the Central Bank of Kenya; and</li> <li>All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.</li> </ul>



## Miscellaneous fees and levies

Issue	Current Position	Proposed change in the Finance Bill, 2020	Comments/impact
<b>Change of status of goods from exempt to being subject to RDL</b>	Exempt	Subject to RDL	<p>The Bill has proposed to subject to RDL, any other 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.</p> <p>The proposed change will earn the Government additional RDL revenue from these goods.</p>
<b>Introduction of an 'additional duty' on goods entered for home use from EPZs</b>	Goods entered for home use from an EPZ are subject to import duties as specified under section 110 of the East African Community Customs Management Act (EACCMA).	<p>Goods entered for home use from an EPZ are subject to import duties as specified under section 110 of EACCMA.</p> <p>Additionally, the goods will be subject to an 'additional duty' at 2.5% of their customs value.</p>	<p>The proposed change is geared at boosting Government revenues from EPZ goods sold into the domestic market.</p> <p>It is worthy to note that the EPZ legislation also imposes a 2.5% surcharge on domestic sales from EPZs.</p>





# Non-tax legislative amendments

## 1. Road Management Agreements

The Bill now contemplates 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 under Road Management Agreements.

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

Under the Bill, 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*

Currently, Toll may only be levied in accordance with the agreement with the CS or the Road Authority, and only with the approval of the CS. The Bill proposes 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 currently provides that toll collections are to be paid into the Road Maintenance Levy Fund. The Bill proposes that the tolls be paid into the National Road Toll Fund, which is to be created under the Public Finance Management Act, 2012.

The Bill also proposes that the persons with whom the CS enters into a Road

Management Agreement be allowed to collect unpaid tolls from defaulters as a civil debt that is recoverable.

## 2. Regulation of Private Equity and Venture Capital

The Bill proposes that the Capital Markets Authority (“CMA”) be tasked with licensing, approving and regulating Private Equity (“PE”) and Venture Capital (“VC”) companies that have access to public funds. There has been a consistent push to have PE and VC regulated as there is currently no overarching regulation for such firms.

### *Distribution of Unclaimed Dividends for listed companies*

The Investor Compensation Fund is currently 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 Bill proposes that the handling of unclaimed dividends be removed from the Capital Markets Act.

## 3. Customs Declaration for Consolidators

Under the Standards Act, a consolidator is allowed to declare multiple consignments as belonging to one importer at the port of destination for purposes of customs declaration.

The definition of a consolidator has been amended to mean a firm that is licensed to consolidate goods belonging to different consignees at the country of export, which shall be under one Master Bill of Lading or Master Airway Bill, and breaks the consignment into smaller consignments at the port of destination for the different consignees for the purpose of individual customs declaration.

This is intended to allow the visibility of individual consignees for purposes of customs declaration.

## 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 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.



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