



# TAX UPDATES: KENYA: 7 JULY 2020

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# Tax Policy Certainty ?

- IMF urges reversal of Tax Cuts after Pandemic is over
- Allowance @ 150% for investment in non-urban areas (removed)
- VAT on Plant and Machinery for Manufacturing
- VAT on Solar and Wind energy equipments
- Policy inconsistency on Duty Remission Schemes (Quality, Quantity, Pricing)
- Reversal of Tax Rebates on Electricity consumption in less than 6 months
- Homeownership plan cancelled
- TOT regime implementation challenges
- Introduction of MAT for Loss making companies



# RELEVANT UPDATES FROM FINANCE ACT 2020

# FINANCE ACT 2020 ASSENTED ON 30 JUNE 2020



1 JULY 2020

INDIRECT TAXES  
(VAT, EXCISE,  
IDF,RDL)



1 JANUARY 2021

DIRECT TAXES  
(INCOME TAX)



1 JULY 2021

EXCEPTIONAL  
(VAT, IDF,RDL)

# MAT (Minimum Tax)

Question	Answer
Purpose	Loss making companies or businesses with Low margin brought under <b>Higher Tax Collection Net</b>
How is this calculated	1% of Gross Turnover <b>This is against the Principles of Taxation</b> <b>Tax is payable on Gain or Profit (not turnover)</b>
Payable	Same dates as per Installment tax dates
Excluded from MAT provisions	Employment income, residential rental income, Businesses under TOT regime, Capital gain
<p data-bbox="84 753 1230 939">Issues</p> <div data-bbox="84 939 1230 1178" style="background-color: #4CAF50; color: white; border-radius: 50%; padding: 20px; text-align: center;"> <p>Global precedence: MAT is calculated on Book Profit and MAT Credit allowed to be c/f</p> </div>	<ul style="list-style-type: none"> <li>❖ Companies who have tax losses or accumulated tax losses <b>due to capital/investment allowances</b> will have to pay MAT in spite of being in losses</li> <li>❖ Unfair that excess tax paid will NOT be transferred to <b>Advance Tax account</b> to be utilised in future</li> <li>❖ Whether KRA will <b>refund</b> the excess payment</li> <li>❖ The calculations have been based on Turnover which is difficult to estimate especially in Post Pandemic recovery phase</li> </ul>

W.E.F  
1 JANUARY 2021

# MAT RULES

SL No	RULES	KRA INTERPRETATION	FINANCE ACT 2020
1	MAT > INSTALLMENT TAX	PAY MAT	PAY MAT
2	INSTALLMENT TAX > MAT	PAY INSTALLMENT TAX	<b>PAY MAT</b>

# SCENARIO 1

**Scenario 1**     ***MAT IS LOWER THAN INSTALLMENT TAX - PROFIT MAKING COMPANIES (NO ACCUMULATED TAX LOSSES)***

Scenario 1		MAT					INSTALLMENT TAX				
Particulars	2021	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Turnover	500,000,000										
Taxable Profit	50,000,000										
Tax Installments		1,250,000	1,250,000	1,250,000	1,250,000	5,000,000	3,125,000	3,125,000	3,125,000	3,125,000	12,500,000

# SCENARIO 2

**Scenario 2**    ***MAT IS HIGHER THAN INSTALLMENT TAX - PROFIT MAKING COMPANIES (NO ACCUMULATED TAX LOSSES)***

Scenario 2		MAT					INSTALLMENT TAX				
Particulars	2021	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Turnover	500,000,000										
Taxable Profit	15,000,000										
Tax Installments		1,250,000	1,250,000	1,250,000	1,250,000	<b>5,000,000</b>	937,500	937,500	937,500	937,500	<b>3,750,000</b>



# SCENARIO 3

**Scenario 3**    *MAT IS HIGHER THAN INSTALLMENT TAX - LOSS MAKING COMPANIES OR WITH ACCUMULATED TAX LOSSES*

Scenario 3		MAT					INSTALLMENT TAX				
Particulars	2021	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
Turnover	500,000,000										
Loss	(15,000,000)										
Tax Installments		1,250,000	1,250,000	1,250,000	1,250,000	5,000,000					

# Digital Service Tax

Question	Answer
Target	E-commerce and Online businesses (Digital marketplace for Goods and Services)
Rate of tax	1.5% of gross transaction value
When Payable	At the time of payment for purchase (Withholding tax Model)
Is this the final tax	No. To be claimed against final tax payable towards at year end
Who will deduct	KRA will appoint Digital Service Tax Agents
Miss outs	Needs a specific provision exempting Online companies from TOT provisions. Seems Online companies will not benefit from TOT provisions

W.E.F  
 1 JANUARY 2021

# Income Tax/PAYE related

Key areas	Changes	EFFECTIVE DATE
Residential rental income	WT model of final tax @10% of rental income widened to Annual Income upto Kshs 15 Million (Approx. Kshs 1.25 million p.m.)	1 JAN 2021
Gain on sale of Plant & Machinery	The Gain will <b>NOT</b> benefit from Capital Gain Tax Rate. It has to pass through normal corporation tax rate	<b>30 JUNE 2020</b>
Club subscriptions paid by employer on behalf of employees	Will not be allowed as a Tax-deductible expense for the employer	1 JAN 2021
Bonus, overtime and retirement benefits paid to employees who are below the lowest tax band (before bonus and overtime allowances)	To be taxed	<b>30 JUNE 2020</b>
Contribution to Registered Home Ownership Saving Plan	Deductions allowed for contributions made – HAS BEEN REPEALED  Does not seem Aligned to BIG 4 Agenda – that includes Housing	1 JAN 2021

# VAT

Key areas	Changes brought in	Effective date
Claim of Input VAT allowance	Input Claim will be allowed only if supplier has declared the Output VAT	<b>30 JUNE 2020</b>
<b>Aviation Sector</b> <ul style="list-style-type: none"> <li>- Helicopters</li> <li>- Aircrafts and Aeroplanes with Unladen weight upto 2,000 Kgs</li> </ul>	<ul style="list-style-type: none"> <li>- Helicopter purchase moved to VATABLE <b>PLUS</b> Hiring, leasing or Chartering of Helicopters</li> <li>- Purchase is now VATABLE <b>THOUGH</b> Hiring, leasing and chartering services remains exempt. So this will push up the cost of service</li> </ul>	<b>1 JULY 2021</b>
Specialized equipments for Solar and Wind Energy	Moved to VATABLE category from Exempt category	<b>30 JUNE 2020</b>
Tractors	Moved to VATABLE category from Exempt category currently <b>(Impact Agriculture and Horticulture sector)</b>	<b>1 JULY 2021</b>
LPG	Moved to VATABLE category from Zero rated category <b>(Will push the cost up for end consumers)</b>	<b>1 JULY 2021</b>

# Voluntary Tax Disclosure Scheme

Question	Answer
When does this start	From 1 Jan 2021 and will be open for 3 years (31 December 2023)
How far can we go back for disclosure	Upto 5 years back (1 July 2015 to 30 June 2020)
What is waived	ONLY Interest and Penalty will be waived. <b><u>Principal tax will be payable.</u></b> It should be paid within One year of repayment Plan agreement with KRA
Is the relief provided Automatic	<b>No.</b> KRA will review and has to grant relief. Its not clear in the Bill what happens if KRA decides not to Grant relief and what are the conditions to grants relief
Waiver of Interest Penalty	For disclosures done in Year 1 – 100% Year 2 – 50% Year 3 – 25%
What about Protection from Prosecution and matters relating to data confidentiality	No Prosecution. Data confidentiality to be maintained. However, more specific details are missing  If Investigation or audit is in progress, then VDS cannot be availed

# CUSTOMS – EAC GAZETTE DATED 30 JUNE 2020

INDUSTRY	PRODUCT CATEGORY	CHANGE
HYGIENE	<b>Manufacture</b> BABY DIAPERS (EAC WIDE)	Remission of duty to apply a rate of 0% on inputs used for manufacture <b>for ONE Year</b>
PHARMACEUTICAL/HEALTHCARE	<b>Manufacture</b> of essential medical products and supplies including masks, sanitizers, coveralls, face shields and ventilators for one year	Remission of duty to apply a rate of 0% on inputs used for manufacture <b>for ONE Year</b>
TEXTILE AND FOOTWEAR	<b>Raw materials and equipment</b> to be used in the manufacturing of textiles and footwear	Remission of duty to apply a rate of 0% on inputs used for manufacture <b>for ONE Year</b>
GREEN ENERGY	<b>Manufacture</b> of Energy Savings Stoves	Remission of duty to apply a rate of 0% on inputs used for manufacture <b>for ONE Year</b>
MOBILE PHONES	Unassembled mobile phones. Inputs for the <b>assembly / manufacture</b> of mobile phones	Remission of duty to apply a rate of 0% on inputs used for manufacture <b>for ONE Year</b>
MATTRESS	Fabrics	Remission of duty to apply a duty rate of 10% <b>for ONE Year</b>



# TOP 10: TAX AUDIT RISK

# 1. LEGACY TAX LEDGER NOTICES



PRE-ITAX RECONCILIATION OF  
TAX BALANCES



UNDERTAKE A HEALTH CHECK



DOCUMENT RETENTION PERIOD  
(5 YEARS) BUT MAINTAIN  
COPIES OF RETURNS AND TAX  
COMPUTATIONS



## 2. OBJECTION TO ASSESSMENTS

DIVERSIFY BANK  
OPERATIONS

**FILE ON**

I-TAX (ONLY) WITHIN 30 DAYS

**FOLLOW  
UP**

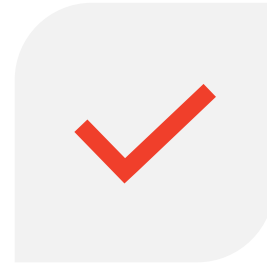
WITH LETTER TO IRO AND SUPPORTING  
DOCUMENTS

**WAIT**

FOR 60 DAYS FOR DISPOSAL BY KRA

# 3. REVIEW ITAX LEDGER

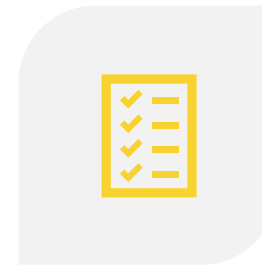
KRA REGISTERED  
EMAIL ID &  
P.O.BOX



INCLUDE IN MIS CHECKLIST



LOOK FOR CREDIT  
REVERSALS IN ITAX -  
UNEXPLAINED



LOOK FOR ADDITIONAL  
ASSESSMENTS ON ITAX BUT  
NO ASSESSMENT NOTICES

## 4. VAT INCONSISTENCY

SUPPLIER: AVOID FRUSTRATING CUSTOMERS



CUSTOMER: RE-LOOK PAYMENT TERMS



CUSTOMER: ACCOUNTING POLICY - RE-ASSESS CLAIMS BASED ON MATERIALITY E.G. CASH PURCHASE/NON-RECURRING PURCHASES

# 5. EMPLOYEE VS CONSULTANT

KAPA OIL VS KRA



DIRECTOR CANNOT BE  
CONSULTANT. 25% PAYE APPLIES  
ON DIRECTOR FEES (INCLUDING  
NON-RESIDENT)



CONSULTANT IS INDEPENDENT  
EXPERT



EMPLOYEE: WHAT TO DO + HOW  
TO DO, JD, TIME OF DUTIES, LEAVE  
ENTITLEMENTS

## 6. CASUAL BUT REGULAR STAFFS

SITE  
WAGES

Manpower  
Agencies



IF ENGAGED FOR MORE THAN ONE  
MONTH, SUBJECT TO PAYE



CONTRACT OF SERVICE WHERE CONTROL  
OVER WORK DONE IS EXERCISED BY  
EMPLOYER



Apprentices, Trainees working regularly are  
Employees for Payroll AND SUBJECTED TO PAYE



REGULAR PART-TIME EMPLOYEES ARE EMPLOYEES  
FOR PAYROLL AND SUBJECTED TO PAYE



DECLARE ALL STAFFS ON PAYE RETURN EVEN IF  
BELOW PAYE THRESHOLD

# 7. FOREX GAIN ON BANK ACCOUNT AND DEPOSITS

ASSET  
CONSTRUCTION  
WIP



REALISED GAIN



USD APPRECIATION BY  
APPROX 7%



NATURAL HEDGE, YEAR-  
END PLANNING

## 8. INTEREST INCOME AND EXPENSE

WHT ON INTEREST  
EARNED BY CORPORATES  
IS NOT FINAL TAX



CHARGED AS SEPARATE SOURCE OF  
INCOME – PAY INSTALLMENT TAX  
(IRRESPECTIVE OF LOSS IN BUSINESS  
SEGMENT)



INTEREST EXPENSE INCURRED TO  
EARN INTEREST INCOME (DIRECT  
CORRELATION)



INTEREST FREE RELATED PARTY  
LENDING + HIGH BANK LEVERAGE IN  
ASSET BACKED PROFIT ORIENTED  
COMPANIES (COLLATERAL BASE)

## 9. THIN CAP RISK

INTEREST FREE LOAN  
VS INTEREST BEARING  
LOAN



KSHS DEPRECIATION IMPACT  
ON FOREIGN CURRENCY LOANS  
ON BOOKS (UNREALISED  
EXCHANGE LOSS)



DEBT TO EQUITY RATIO (3:1)



NON-RESIDENT SHAREHOLDER  
(WT RATES: 15% FOR INTEREST  
VS 15% FOR DIVIDEND) – NON  
DTAA RATES



# 10. REVENUE RECOGNITION

REGIME CHANGING TO  
TAXATION ON TURNOVER  
BASIS (TOT,DST, MAT)



IFRS 15 – REVENUE RECOGNITION



INVOICING DOES NOT ALWAYS EQUAL TO REVENUE



RECONCILIATION – VAT DECLARATION TO AUDITED FINANCIALS

# Disclaimer

- *Information provided here is of general nature and is not intended to address the circumstances of any particular individual or entity. A misstatement or omission of any fact or a change or amendment in any of the facts and assumptions we have relied upon may require a modification of all or a part of this document. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date of it is received or that it will continue to be accurate in future. No one should action such information without appropriate professional advice and after a thorough examination of the particular situation*

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