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THE TAX LAWS (AMENDMENT) ACT, 2020

No. 2 of 2020

Date of Assent: 25th April, 2020

Date of Commencement: See Section 1

AN ACT of Parliament to make amendments to tax related laws

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Tax Laws (Amendment) Act, 2020 and shall come into operation—

Short title and commencement.

- (a) in the case of the amendment to section 5(2) of the Value Added Tax Act, 2013, on the 15th day of the next month following assent; and
- (b) for all other provisions of the Act, on the date of assent.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner specified in the third column.

SCHEDULE

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Income Tax Act (Cap. 470)	s.2	Delete the definition of “qualifying interest” and substitute therefor the following new definition— “qualifying interest” means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income: Provided that— (a) interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and (b) in the case of housing bonds, the aggregate amount of interest shall not exceed three hundred thousand shillings.
	s.10(1)	Insert the following new paragraph immediately after paragraph (j)—

(k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

s.12C (1) Delete subsection (1) and substitute therefor the following new subsection—

(1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business is more than one million shillings but does not exceed or is not expected to exceed fifty million shillings during any year of income.

(3) Delete paragraph (c)

(5) Delete

(6) Delete

15(2) (ab) Delete

34(2) Delete paragraph (o) and substitute therefor the following paragraphs—

(o) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aviation insurance; or

(p) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

35(1) Insert the following new paragraph immediately after paragraph (n)—

(o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

s.133. Insert the following new sub-section immediately after sub-section (5)—

(6) Notwithstanding the repeal of the Second Schedule, the provisions of paragraph 24 E of the repealed Schedule shall continue to be in force until 31st December, 2021.

First
Schedule,
Part A,
paragraph 4

Delete

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Paragraph 7	Delete
Paragraph 9	Delete
Paragraph 18	Delete
Paragraph 25	Delete
Paragraph 28	Delete
Paragraph 29	Delete
Paragraph 30	Delete
Paragraph 31	Delete
Paragraph 32	Delete
Paragraph 33	Delete
Paragraph 34	Delete
Paragraph 36	Delete sub-paragraphs (a), (b) and (e).
Paragraph 40	Delete
Paragraph 41	Delete
Paragraph 46	Delete
Paragraph 47	Delete
Paragraph 52	Delete
Paragraph 55	Delete
Paragraph 56	Delete
Part II	Repeal
Second Schedule	Repeal the Second Schedule and replace therefor the following new paragraph—

SECOND SCHEDULE**(Sections 4, 5 and 15)****INVESTMENT ALLOWANCE**

Deduction of investment allowance.

1. Where a person incurs capital expenditure in respect of an item listed in the first column of the table, an investment allowance may be deducted in computing the gains or profits of that person at the corresponding rate specified in the second column, for each year of income—

Capital expenditure incurred on: *Rate of Investment Allowance*

(a) Buildings–

- | | |
|--|-----------------------------------|
| (i) Hotel building | 50% in the first year of use |
| (ii) Building used for manufacture | 50% in the first year of use |
| (iii) Hospital buildings | 50% in the first year of use |
| (iv) Petroleum or gas storage facilities | 50% in the first year of use |
| (v) Residual value to item (a) (i) to (a)(iv) | 25% per year, on reducing balance |
| (vi) Educational buildings including student hostels | 10% per year, on reducing balance |
| (vii) Commercial building | 10% per year, on reducing balance |

(b) Machinery –

- | | |
|---|-----------------------------------|
| (i) Machinery used for manufacture | 50% in the first year of use |
| (ii) Hospital equipment | 50% in the first year of use |
| (iii) Ships or aircrafts | 50% in the first year of use |
| (iv) Residual value items (b) (i) to (b)(iii) | 25% per year, on reducing balance |
| (v) Motor vehicles and heavy earth moving equipment | 25% per year, on reducing balance |
| (vi) Computer and peripheral computer hardware and | 25% per year, on reducing balance |

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- software,
calculators,
copiers and
duplicating
machines
- (vii) Furniture and fittings 10% per year, on reducing balance
- (viii) Telecommunications equipment 10% per year, on reducing balance
- (ix) Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming 25% per year, on reducing balance
- (x) Machinery used to undertake operations under a prospecting right 50% in the first year of use and 25% per year, on reducing balance
- (xi) Machinery used to undertake exploration operations under a mining right 50% in the first year of use and 25 per year, on reducing balance
- (xii) Other machinery 10% per year, on reducing balance
- (c) Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator 10% per year, on reducing balance

- | | |
|---------------|--|
| (d) Farmworks | 50% in the first year of use and 25% per year, on reducing balance |
|---------------|--|

Provided that—

- (a) in the case of change of user of a building, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate;
- (b) in respect of a hotel, educational or hospital building, the building shall be licensed by the competent authority; and
- (c) “building used for manufacture” includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;
- (d) “commercial building” includes—
 - (i) a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or
 - (ii) civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;
- (e) “machinery used for manufacture” means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes—
 - (i) generation, transformation and distribution of electricity;

- (ii) clean-up and disposal of effluents and other waste products;
- (iii) reduction of environmental damage;
- (iv) water supply or disposal;
- (v) maintenance of the machinery; or
- (vi) scientific research and development;

(f) “manufacture” means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity;

Calculation of written down or residual value.

2. The written down or residual value of each item referred to in paragraph 1 shall be calculated separately, and shall be the balance of capital expenditure taking into account the sale of the item after deducting investment allowance.

Treatment of excess or deficit of realised amounts.

3. Where the amount realised from the sale of an item referred to in paragraph 1 exceeds the written down or residual value, the excess shall be treated as a trading receipt or, conversely, a trading loss for the year of income.

Balancing charge or deduction on cessation of business.

4. (1) Where an investment allowance has been deducted under paragraph 1 in computing the gains or profits of a person and that person ceases to carry on business for the purposes of which the item was used and the item ceases to be owned by him, a balancing charge or balancing deduction shall be made or allowed for the year of income in which he ceased to carry on business.

(2) Where the person referred to in subparagraph (1) is a partnership, the person shall be deemed to have ceased to carry on business only when all the partners cease to carry on that business.

(3) Where the items are sold by a liquidator of a company, the balancing charge or balancing deduction shall be made or allowed in the year of income in which the winding up commenced.

(4) Where on cessation of a business, a balancing charge or balancing deduction is to be made or allowed under this paragraph and—

(a) the consideration received exceeds the residual value at the time of cessation, the balancing charge shall be the excess amount or, where the residual value is nil, the consideration received; or

(b) a consideration is not received by the person who owns the items, or the residual value at the time of the cessation exceeds the consideration received, the balancing deduction shall be the residual value at the time of cessation, or the excess thereof over the consideration received.

Determination of market value of items used in a business.

5. Where an item is brought into use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or amount realized shall be deemed to be the market value.

Restriction On capital expenditure on motor vehicles.

6. (1) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle, other than a commercial vehicle, that capital expenditure shall be restricted to three million shillings.

(2) Where the motor vehicle referred to in subparagraph (1) is sold, the sale price shall be deemed to be the proportion of the proceeds of

sale, having regard to the original purchase price and three million shillings.

Limitation on capital expenditure on buildings. **7.** Capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, land.

Ascertainment of capital expenditure on buildings. **8.** (1) Where a building is used partly for purposes other than the purposes specified in paragraph 1, the capital expenditure on which the deduction in respect of the building is calculated shall be the expenditure attributable to that portion of the building which is used for those purposes, but where the expenditure attributable exceeds ninety per cent of the total expenditure incurred on the construction of the building the whole building shall be treated as used for the specified purposes.

(2) Where an existing building is extended by further construction, the extension shall be treated as a separate building.

(3) Where capital expenditure is incurred on the construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.

(4) Where a person purchases the building referred to in subparagraph (3), that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the amount paid by him, whichever is lesser.

(5) Where the building referred to in subparagraph (3) is sold more than once before it is used, subparagraph (4) shall apply but only in relation to the last sale.

(6) Where a building referred to in subparagraph (3) is sold by a person carrying on a business of construction for sale, the qualifying

capital expenditure shall be the price paid on the sale.

Expenditure incurred for a person.

9. Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.

Third Schedule
Head A

Delete the words “sixteen thousand eight and ninety-six” appearing in paragraph 1 and substitute therefor the words “twenty-eight thousand eight hundred”.

Head B
(Rates of Tax)

Deleting item 1 and 1 A of Head B (Rates of Tax) and substituting therefor the following new items—

1. The individual rates of tax shall be—

	<i>Rate in each shilling</i>
On the first Shs. 288,000	10%
On the next Shs.200,000	15%
On the next Shs. 200,000	20%
On all income above Shs. 688,000	25%

1A. The wife’s employment, wife’s professional and wife’s self-employment income rates of tax shall be—

	<i>Rate in each shilling</i>
On the first Shs. 288,000	10%
On the next Shs. 200,000	15%
On the next Shs. 200,000	20%
On all income above Shs. 688,000	25%

Paragraph 2(a)

Insert the following new item (viii) immediately after item (vii)—

(viii) For the year of income 2020 and each subsequent year of income 5.00

Paragraph 2(c)

Delete

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- Paragraph 2(d) Delete
- Paragraph 2(e) Delete
- Paragraph 2(g)(i) Delete
- Paragraph 2(k) Delete
- Paragraph 2(l) Delete
- New Insert a new subparagraph after subparagraph (a) as follows—
- (m) in respect of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax specified in the Agreement shall continue to apply for the unexpired period as provided under the Agreement.
- Paragraph 3(d) Delete the word “ten” and substitute therefor the word “fifteen”.
- Paragraph 3(p) Insert the words “or reinsurance” immediately after the word “insurance”.
- Paragraph 3 (p)— Insert the following sub-paragraph after paragraph (p)—
- (q) in the case of sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services twenty percent of the gross amount;
Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens.
- Paragraph 5(d)(i) Delete the tabulation of rates and income bands at the end and substitute therefor the following new rates and income bands—

Rate in each shilling

On the first Shs. 400,000	10%
On the next Shs. 400,000	15%
On the next Shs. 400,000	20%
On any amount above Shs.	25%

1,200,000 of the amount in excess of the tax free amount

Paragraph 5(d)(ii) Delete the tabulation of rates and income bands at the end and substitute therefor the following new rates and income bands—

	<i>Rate in each shilling</i>
On the first Shs.288,000	10%
On the next Shs.200,000	15%
On the next Shs. 200,000	20%
On all income above Shs. 688,000	25%

Paragraph 5(d)(iii) Deleting the words “thirty percent” and substitute therefor the words “twenty five percent”.

Paragraph 9 Delete the words “three percent” and substitute therefor the words “one percent”.

The Value Added Tax, 2013 (No. 35 of 2013) s.5(2) Delete the proviso to paragraph (aa).

s.16(1) Delete proviso and substitute therefor the following new proviso—

Provided that a credit note may be issued:

- (a) only within six months after the issue of the relevant tax invoice; or
- (b) where there is a commercial dispute in court with regard to the price payable, within thirty days after the determination of the matter.

s.31(1) Delete the word “five” appearing in the proviso and substitute therefor the word “four”.

s. 43(1) Delete the words “Every registered” appearing in subsection (1) and substitute therefor the article “A”.

First Schedule Section A Part I Paragraph 27 Delete

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Paragraph 29 Delete

Paragraph 30 Delete

Paragraph 30A Delete

Paragraph 39(3) Insert the following new items in proper their proper numerical sequence—

<i>Tariff line</i>	<i>Description</i>
3002.20.00	Vaccines for human medicine.
3002.30.00	Vaccines for veterinary medicine
3003.10.00	Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycin or their derivatives.
3003.39.00	Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.90.00	Other.
3003.90.10	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
3003.90.90	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more

constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.

3004.10.00 Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale.

3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.

3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.

3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.

3004.41.00 Containing ephedrine or its salts.

3004.42.00 Containing pseudoephedrine (INN) or its salts.

3004.49.00 Other.

3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.

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3004.90.00 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

Paragraph 52 Delete

Paragraph 52A Delete

Paragraph 52B Delete

Paragraph 53 Delete

Paragraph 55 Delete

Paragraph 60 Delete

Paragraph 61 Delete

Paragraph 88 Delete

Paragraph 93 Delete

Paragraph 94 Delete

New Insert the following new paragraph immediately after paragraph 96—

96A. Personal protective equipment, including facemasks, for use by medical personnel in registered hospitals and clinics, or by members of the public in the case of a pandemic or a notifiable infectious disease.

Paragraph 97 Delete

Paragraph 102 Delete

	Part II paragraph 10	Delete and substitute therefor the following new paragraph— 10. Tea and coffee brokerage services.
	Paragraph 22	Delete
	Paragraph 28	Delete
	Paragraph 30	Delete
	Paragraph 31	Delete
	Second Schedule Part C	Repeal
The Excise Duty Act, 2015 (No. 23 of 2015)	First Schedule Part III	Delete the words “licensed financial institutions” appearing in the definition of the term "other fees" and substituting therefor the words “licensed activities”.
	Second Schedule Part A Paragraph 13 Paragraph 14	Delete Delete
The Tax Procedures Act, 2015 (No. 29 of 2015)	s.65(3)	Delete the words “forty five” appearing before the word “days” and substitute therefor the word “sixty”.
	s. 69	Repeal
	s. 83(1)	Delete the words “five thousand shillings” appearing paragraph (b) and substitute therefor the words “one thousand shillings”
The Miscellaneous Fees and Levies Act, 2016 (No. 29 of 2016)	s.7(2A) (a)	Delete
	s. 8(3)	Insert the words “and operation” immediately after the word “construction”.
	New	Insert the following new section immediately after section 8A—
	Processing fees on duty free motor vehicles.	8B. (1) There shall be a fee to be known as the processing fee on all motor vehicles excluding motorcycles imported

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or purchased duty free prior to clearance through customs under the Fifth Schedule to the East African Community Customs Management Act, 2004.

(2) The fee shall be Kenya shillings ten thousand applicable to all motor vehicles excluding motorcycles imported or purchased duty free specified in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of Part A, and paragraph 3 and 5 of Part B under the Fifth Schedule to the East African Community Customs Management Act, 2004.

Second Schedule Delete

Part A

Paragraph (viii)

Paragraph (ix) Delete

Paragraph (xxi) Delete

Paragraph (xxia) Delete

Second Schedule Delete

Part B

Paragraph (v)

Paragraph (va) Delete

Paragraph (vii) Delete

The Kenya Revenue Authority Act, 1995

(No. 2 of 1995)

s. 5A (2)

Insert the following new paragraph (c) immediately after paragraph (b).

(a) in the case of information not specified in paragraph (a) and (b) leading to the enforcement of the tax laws, five hundred thousand shillings.

New

Insert the following new section immediately after section 15—

Appointment of Agents.

15A. (1) The Commissioner may appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement.

(2) Any person appointed under this section shall be required to transfer the funds to the designated Central Bank accounts within two days following the date of collection.

(3) A person who fails to transfer the funds in accordance with the provisions of sub-section (2) shall be liable to a penalty equivalent to two per cent of the revenue collections not transferred and shall be compounded for every other day on the amount of revenue that is not transferred.

(4) The penalty under sub-section (3) shall be treated as a tax debt due to the government and the enforcement measures for collection and recovery of tax shall apply.

s.38(1A)

Insert the words “or to purchase a residential house” immediately after the word “mortgage loan”.

The
Retirement
Benefits
Act, No.3 of
1997