



Tax Alert

Proposed Tax changes arising from the Presidential Directive of 25 March 2020

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Introduction

On 25 March 2020, the President outlined additional tax and fiscal measures to support the economy.

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

Proposed income tax amendments

Corporate tax rate reduced from 30% to 25%

The President announced a reduction in corporate tax for companies from 30% to 25%. It is expected that this rate will be effective 1st April 2020 and applicable to any financial year ending after 1 April 2020.

Corporate income tax is payable in instalments during a financial year and the law allows a person to compute and pay their instalment tax based on the lower of one hundred and ten percent of the preceding year's tax assessed or the current year's estimated tax liability.

In view of the proposed reduced corporate income tax rate of 25%, it may be preferable for businesses to compute their estimated tax liability using the current year's estimated tax liability which would be based on the new rate. It is noted however that the reduction in the corporate tax rate would however not be beneficial to businesses which expect to be in a tax loss position in FY 2020.

We recommend that consideration is also given to an equivalent reduction in the corporate tax rate for Kenyan permanent establishments from 37.5% to 32.5%.

Reduction of the turnover tax rate from the current 3% to 1% for all Micro, Small and Medium Enterprises

The turnover tax rate will be reduced from 3% to 1% for Micro, Small and Medium Enterprises (MSMEs). The Government is demonstrating clear commitment to shield the Micro, Small and Medium Enterprises (MSMEs) from economic shocks.

Proposed employment tax amendments

100% tax relief for persons earning gross monthly income of up to KES 24,000

Workers earning a monthly gross income of up to KES 24,000 per month will not be subject to Pay As You Earn ("PAYE"). As a result, the disposal income of a worker earning at this limit will be increased by up to KES 1,547 on a monthly basis.

It is expected that from 1 April 2020, the 20% tax rate will become the lower tax bracket while the 25% will become the marginal top tax bracket.

Reduction of the marginal tax rate for PAYE from 30% to 25%

The President further directed that the marginal rate of PAYE shall be reduced from 30% to 25%. As a result of this measure, a worker whose monthly gross income is KES 100,000 will pay PAYE of KES 19,959, a reduction of KES 2,637.

It is noted that the reduction in the upper limit of 30% will not only benefit lower income



employees but will also benefit higher income employees.

Proposed Value Added Tax amendments

The reduction of the VAT rate from 16% to 14%

The President directed the National Treasury (“NT”) to effect the reduction of the standard VAT rate from the current 16% to 14% with effect from 1 April 2020.

The Cabinet Secretary in charge of NT (“CS”) has gazetted on 26 March 2020 the decrease of the VAT rate to 14%. The CS is now obliged to table his orders before the National Assembly, which has power to revoke any such orders within 21 days.

The President’s directive presents a welcome reprieve for all as it will lower the cost of production for businesses and reduce the cost of goods and services for end consumers.

However, the rate change will present practical considerations including but not limited to the need to reconfigure both the KRA’s iTax portal as well as taxpayers’ accounting systems to ensure continued compliance.

Expedited payment of VAT refund claims

The President directed the KRA to pay all verified VAT refund claims to the tune of KES 10 billion within three (3) weeks. This is welcome reprieve for businesses involved in cross-border trade such as those involved in the horticulture and floriculture value chain whose operations have been adversely affected by the slowdown of the global economy.

The above said, significant VAT refund claims remain unverified for payment owing to ongoing disputes between the KRA and taxpayers. We recommend the Government consider the expedited resolution of disputes, especially those relating to export of services, to free up working capital for affected businesses.

Offset of Withholding VAT (“WH VAT”) credits

The President ordered the KRA to allow for the offset of WH VAT against other tax obligations as an alternative to payment of refund claims. The Statute Law (Miscellaneous Amendments) Act, 2019 introduced an amendment to the VAT Act allowing for the refund of excess input tax arising from WH VAT effective from 23 July 2019.

The amended law also provides for the offset of WH VAT credits against any tax payable under the VAT Act or any other written tax law.

Unfortunately, whilst taxpayers have put in applications for the verification of their WH VAT credits, to our knowledge, none of these applications have been processed by the KRA just yet.

We hope with the President’s directive taxpayers will start to see their credits verified and where appropriate set off against their other obligations such as employee taxes and withholding tax. This should free up cash for the affected businesses to ensure continued operation and investment, which by extension will guarantee the government future tax income.

Conclusion

It is expected that the Income Tax measures will take effect from 1st April 2020. This will require a Bill amending the Kenya Income Tax Act to be passed by Parliament. It is expected that the VAT rate changes will be through a gazette notice published by the National Treasury.