



Kenya Tax Alert

Government response to COVID-19

March 2020



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Following the declaration of COVID -19 as a global pandemic and the intensification of measures intended to contain the spread of the infection, the adverse impact on the economy is already being felt. It is expected that the economic downturn will be worse than anything witnessed in recent times, including the global financial crisis in 2008.

With this in mind, governments across the globe have come up with various fiscal and monetary measures to mitigate the impact on households and businesses. The President of the Republic of Kenya delivered a speech on 25 March 2020 outlining a number of measures aimed at cushioning Kenyans against the economic effects of COVID-19 pandemic.

This publication summarizes the tax and related measures. In line with legal requirements, it is expected that the tax measures will be tabled in Parliament through a Bill to amend the respective tax law. The reduction of the VAT rate has already been given legal force through Legal Notice No 35 published in the Kenya Gazette supplement no 30 of 26 March 2020.

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Income Tax

Reduction of the resident corporate tax rate from 30% to 25%

The measure

The President has directed that the resident corporation tax rate be reduced from 30% to 25%.

We expect Paragraph 2 (a) Head B of the Third Schedule to the Income Tax Act to be amended in order to capture this reduced rate.

Who will be affected

All resident body corporates

When

Immediate, subject to passing of enabling legislation

Our view

This will be a welcome move for resident corporates that will be in a profitable position as it will reduce their corporate tax and will increase the distributable profits to shareholders or retained earnings available for re-investment.

Clarity is needed on whether the rate will be applicable on the entire income accrued in the year of income 2020 or only on income accrued from 26 March 2020.

Given the significant economic downturn expected from the aftermath of the COVID-19, many entities will end up in a loss position in the short to medium term and may not benefit from this measure. These entities will need other measures to help them stay afloat before returning to profitability.



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Income Tax

Reduction of the maximum individual tax rate from 30% to 25%

The measure

The President has issued a directive for the maximum individual tax rate to be reduced from 30% to 25%.

Who will be affected

All employees and individuals earning income in excess of KES 47,059 per month.

When

Immediate, subject to passing of enabling legislation

Our view

The income of an individual is currently taxable at graduated rates that range from 10% to 30%. The 30% applies to any income above KES 564,709 per annum or KES 47,059 per month.

The scrapping of the 30% rate will mean that the maximum individual rate of tax will be 25%. The rate will now apply on any income in excess of KES 425,666 or KES 35,472 per month (assuming the taxable bands remain the same).

This change is welcome and will increase the disposable income of many Kenyans; hence, cushioning them against the impact of the pandemic.

However, other measures would be required to provide relief to those who lose their jobs/ income as a result of this pandemic. From a tax perspective such measures could include exemption of compensation for loss of employment during this period.



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Income Tax

Individuals earning up to KES 24,000 per month relieved from paying tax

The measure

The President has directed that individuals whose gross monthly income does not exceed KES 24,000 will be granted 100% tax relief.

We expect the Income Tax Act to be amended by either:

- a. Increasing the personal relief to equal the tax payable on income of KES 24,000 per month; or
- b. Including an exemption provision for income of individual persons not exceeding KES 24,000 per month (KES 288,000 per annum).

Who will be affected

Individuals who earn a gross monthly income of up to KES 24,000.

When

Immediate, subject to passing of enabling legislation

Our view

A significant number of Kenyans will benefit from this measure. A monthly income of KES 24,000 currently attracts PAYE of KES 1,583. This directive will increase the disposable income Kenyans in this income band.

Other measures will be needed to cushion those who lose their jobs/income during this period.



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Income Tax

Reduction of the turnover tax rate to 1%

The measure

The President has directed that the turnover tax rate be reduced from 3% to 1%.

We therefore expect Paragraph 9 of the Third Schedule to the Income Tax Act to be amended in order to capture the reduced rate

Who will be affected

Sole proprietors whose annual turnover does not exceed KES 5 million per annum

When

Immediate, subject to passing of enabling legislation

Our view

Owing to the fact that turnover tax is payable on a monthly basis, we believe the rate will likely apply on the gross receipts for periods starting March 2020 until such time that the reduced rate will be de-gazetted.

The reduction of the turnover tax rate will assist traders whose businesses will be hard hit by the measures taken to curtail the spread of the virus.



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Value Added Tax

Reduction of the standard rate from 16% to 14%

The measure

The Value Added Tax Act, 2013 has been amended by reducing the standard rate from 16% to 14%.

Section 6 (1) of the VAT Act empowers the Cabinet Secretary (CS) to alter the VAT rate upwards or downwards by an amount not exceeding 25% of the prevailing rate. To effect this, the CS is required to publish the change in the Kenya Gazette. This measure has therefore been given legal force through Legal Notice No 35 published in the Kenya Gazette supplement no 30 of 26 March 2020.

Who will be affected

All consumers (individuals and businesses) of taxable goods and services

When

Effective 1 April 2020

Our view

The reduced VAT rate will make taxable goods and services more affordable and will benefit all consumers. It is a welcome measure to reduce the cost of living, especially for the most vulnerable, and will also lower the cost of business for many entities especially those who are not able to fully recover their input VAT. It will also improve the cash flow of businesses due to reduced outflow and reduced credits/refunds.

For wider economic benefits, the savings will need to be passed on to consumers in the form of reduced prices.



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Value Added Tax

VAT refunds

The measure

The President has directed the Kenya Revenue Authority to expedite the payment of verified VAT refund claims and/or allow for offsetting of Withholding VAT.

Who will be affected

VAT registered persons with refund claims

When

Immediate

Our view

The expedited payment of VAT refunds will provide much needed cash to businesses, hence mitigating the negative impacts of the pandemic on business cash flows.

While this is a welcome directive, its impact may be limited due to the processes imposed by the revenue authority which may delay approval of refunds. Furthermore, as this is a recurring problem, one hopes that going forward, the National Treasury will either set aside sufficient funds for timely refunds or introduce measures to ease set-off against other taxes.

And while VAT refunds continue to receive much needed attention, it should not be forgotten that there are other refunds arising from other taxes such as withholding tax, which remain unattended. Therefore, much remains to be done to ensure refunds are processed promptly and payment or set off is expedited to ensure taxpayer rights are upheld with as much zeal as the enforcement of taxpayer obligations.



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Other measures

In addition to the tax measures, the President also announced the following measures:

- a. Immediate disbursement of the KES 1 Billion from the Universal Health Coverage kitty towards the recruitment of additional health workers to provide support in the management of the spread of COVID-19;
- b. State and Public Officers, excluding personnel in the security sector and other essential services, with pre-existing medical conditions and/or aged 58 years and above, serving in Job Group S and below or their equivalents, to take leave or forthwith work from home;
- c. Voluntary reduction of the salaries of the President and the Deputy President by 80% and that of his cabinet by up to 30%;
- d. Settlement of verified pending bills amounting to KES 13 Billion within the next three weeks;
- e. Flexible provisioning requirements for banks in relation to loans that were performing as at March 2020 but subsequently go into distress as a result of the pandemic;
- f. Appropriation of KES 10 Billion through cash transfers to the elderly, orphans and other vulnerable members of society; and
- g. Temporary suspension of listing with credit reference bureaus for persons who default on their loan obligations with effect from 1 April 2020.

These measures are in addition to the measures that the Central Bank of Kenya had already issued in order to increase liquidity in the banking sector.

The measures include the reduction of the Central Bank Rate from 8.25% to 7.25% and the Cash Ratio Reserve (CRR) from 5.25% to 4.25%.



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Other tax considerations

Taxpayers could, in addition, to the proposed measures also consider the following measures, already anchored in law:

- a. Application for extension of time to file returns in case they anticipate to file the returns late. The application needs to be made at least 30 days prior to the return filing due date, in the case of an annual return; and at least 15 days prior to the return filing due date in the case of a monthly return;
- b. Application for a tax payment plan, where tax may be paid by way of instalments. In case of penalties and interest for late payment, taxpayers may apply for waiver of the same. While it is becoming increasingly difficult to obtain waivers, we expect that the adverse impact of COVID-19 on many taxpayers would provide a compelling ground for waiver especially where the impact is documented and communicated to the revenue authority. For businesses that end up in extreme difficulty, there is a last resort option of applying for abandonment of tax;
- c. Applying for exemption from the withholding VAT regime in the case where the taxpayer anticipates to be in a VAT credit position for 24 months or more;
- d. Utilising credits arising from withholding VAT to offset other tax liabilities;
- e. Review of transfer pricing policy for appropriateness under the current trading/ economic conditions; and
- f. Review of income tax instalment tax payments from prior year to current year basis where appropriate.



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