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CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Tax Laws (Amendment) (No. 2) Bill, 2020.....	1057

THE TAX LAWS (AMENDMENT) (NO. 2) BILL, 2020**A Bill for****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) (No. 2) Act, 2020 and shall come into force on the 1st January, 2021.

Short title and commencement.

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.12D (1) (c)	Delete the word "higher" and substitute therefor the word "lower"
	Third Schedule Head B	Delete item 1 and 1A of Head B (Rates of Tax) and substitute therefor the following new items—
		1. The individual rates of tax shall be—
		Rate in each shilling
		On the first shs. 288,000 10%
		On the next shs. 200,000 15%
		On the next shs. 200,000 20%
		On the next shs. 200,000 25%
		On all income above shs. 888,000 30%
		1A. The wife's employment, wife's professional and wife's self-employment income rates of tax shall be—
		On the first shs. 288,000 10%

On the next shs. 200,000	15%
On the next shs. 200,000	20%
On the next shs. 200,000	25%
On all income above shs. 888,000	30%

Item 2 (a) Insert the following proviso to sub-paragraph (viii) —

Provided that this provision shall apply to the income earned from the 25th April, 2020.

Insert the following sub-paragraph immediately after item (viii) —

(ix) For the year of shs. 6.00 income 2021 and each subsequent year of income

Provided that this provision shall apply to the income earned from the 1st January, 2021.

Item 5 (d) (i) Delete the tabulation of rates and income bands 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 the next shs. 400,000	25%
On all income above shs. 1,600,000 of the amounts in excess of the tax-free amount	30%

Item 5. (d) (ii) Delete the tabulation of rates and income bands and substitute therefor the following new rates and income bands—

	Rate in each Shilling
On the first shs. 288,000	10%
On the next shs. 200,000	15%
On the next shs. 200,000	20%
On the next shs. 200,000	25%
On all income above shs. 888,000	30%

The Value Added Tax Act, 2013

s.17

Insert the following new subsection immediately after subsection (7) —

(No. 35 of 2013)

(8) Notwithstanding the provisions of this section, a registered person who is a manufacturer may make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule.

MEMORANDUM OF OBJECTS AND REASONS

The Tax Laws (Amendment) (No. 2) Bill, 2020 seeks to make several amendments to the following tax-related statutes –

The Income Tax Act (Cap. 470)

The Bill seeks to amend the provision on minimum tax to provide that it will apply only if it is lower than instalment tax.

The Bill also seeks to amend the Income Tax Act to amend the individual top tax rate and resident corporate tax rate. It is proposed to increase the top individual income tax rate and corporate income tax rate on resident companies from 25% to 30%.

The Value Added Tax Act, 2013 (No. 35 of 2013)

The Bill seeks to amend the Value Added Tax Act to amend the provision on Credit for input tax against output tax.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill does not concern county governments

The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill contains provisions dealing with taxes.

Dated the 27th November, 2020.

GLADYS WANGA,
*Chairperson, Departmental
Committee on Finance and National Planning.*

Section 12 D of Cap. 470 which it is intended to amend—

Minimum Tax

12D. (1) Notwithstanding any other provision of this Act, a tax to be known as minimum tax shall be payable by a person if—

- (a) that person's income is not exempt under this Act;
- (b) that person's income is not chargeable to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules; or
- (c) the instalment tax payable by that person under section 12 is higher than the minimum tax.

(2) The tax payable under this section shall be paid in instalments which shall be due on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month of the year of income.

Paragraph 1 of Head B of the Third Schedule to Cap. 470 which is intended to amend—

1. The individual rates of tax shall be —

	Rate in each shilling
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 1A of Head B of the Third Schedule to Cap. 470 which is intended to amend—

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

	Rate in each shilling
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) (viii) of Head B of the Third Schedule to Cap. 470 which is intended to amend—

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

Paragraph 5 (d) (i) of head b of the Third Schedule to Cap. 470 which is intended to amend—

	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. 1,200,000	25% of the amount in excess of the tax free amount

Paragraph 5 (d) (ii) of head b of the Third Schedule to (Cap. 470) which is intended to amend—

	Rate in each shilling
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%

Section 17 of No. 35 of 2013 which it is intended to amend—

Credit for input tax against output tax

17. (1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

(3) The documentation for the purposes of subsection (2) shall be—

- (a) an original tax invoice issued for the supply or a certified copy;
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction;
- (d) a credit note in the case of input tax deducted under section 16(2); or
- (e) a debit note in the case of input tax deducted under section 16(5).

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition of—

- (a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or
- (b) entertainment, restaurant and accommodation services unless—
 - (i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or
 - (ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.

(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

Provided that any such excess shall be paid to the registered person by the Commissioner where —

- (a) such excess arises from making zero rated supplies; or
- (b) such excess arises from tax withheld by appointed tax withholding agents; and
- (c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act, 2015; and
- (d) the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable.

Provided further that, notwithstanding section 17(5)(d), a registered person who, within a period of thirty-six months prior to the commencement of section 17(5)(b) and (c), has a credit arising from withholding tax, may make an application for a refund of the excess tax within twelve months from the commencement date.

(6) Subject to this Act, if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows—

- (a) full deduction of all the input tax attributable to taxable supplies;
- (b) no deduction of any input tax which is directly attributable to other use; and
- (c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula:

$A \times B \div C$

Where —

- A— is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use;
- B—is the value of all taxable supplies made by the registered person during the period; and
- C—is the value of all supplies made by the registered person during the period in Kenya.

(7) If the fraction of the formula in subsection (6) for a tax period—

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- (a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component A of the formula; or
 - (b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component A of the formula.