Executive summary


Proposed amendments to the VAT Act focus on the exemption of various supplies which were previously zero rated or standard rated. Exempt supplies are not subject to tax whereas zero-rated and standard-rated supplies are taxable at a rate of 0% and 16% respectively.

Exemption of previously taxable supplies has the following general implications:

- Any VAT incurred by the affected suppliers will not be claimable as input tax.
- This input VAT cost will be expensed by the taxpayer and borne by the final consumers.
- Where the taxpayer makes mixed supplies, the exemption results in non-deductible input VAT with a similar impact as above.

Other changes made include the zero rating of specific items previously taxable at 16% and converse imposition of a standard rate (16%) on agricultural pesticide products which were previously zero rated.
The amendments to the ITA redefine “winnings” and reintroduce a withholding tax of 20% on winnings. It also seeks to increase the tax incentive on persons who are saving in registered Home Ownership Savings Plans (HOSP) towards home ownership while exempting the purchase of a house by a first time home owner from stamp duty. To encourage home ownership, it introduces affordable housing relief for individuals who have made an application under an affordable housing scheme. Additionally, the ITA proposes to exempt from compensating tax the power producers operating under a power purchase agreement.

This Alert summarizes the proposed changes in the VAT Act, the ITA and the Stamp Duty Act.

### Detailed Discussion

#### Value Added Tax Act Amendments

The following table summarizes the VAT status changes under the Act:

**Rates moved from zero rated to VAT exempt status**

<table>
<thead>
<tr>
<th>No.</th>
<th>Goods description</th>
<th>Implications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The transfer of a business as a going concern by a registered person to another registered person.</td>
<td>VAT incurred by parties to the transfer will not be claimable as input tax.</td>
</tr>
<tr>
<td>2</td>
<td>The supply of natural water, excluding bottled water by a National Government, County Government, any political sub-division thereof or approved persons.</td>
<td>Any VAT incurred by the affected suppliers of water will not be claimable as input tax. This cost will be borne by the final consumers.</td>
</tr>
<tr>
<td>3</td>
<td>Safety or protective articles of apparel, clothing accessories and equipment for use in registered hospitals and clinics or by county government or local authorities in firefighting.</td>
<td>Suppliers of the affected supplies will not be able to claim any input tax incurred in making of such supplies. This cost will be borne by the final consumers.</td>
</tr>
<tr>
<td>4</td>
<td>Approved taxable goods supplied to marine fisheries and fish processors.</td>
<td>Suppliers of the affected supplies will not be able to claim any input tax incurred in making of such supplies. This cost will be borne by the final consumers.</td>
</tr>
<tr>
<td>5</td>
<td>The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% in weight.</td>
<td>Suppliers of the affected supplies will not be able to claim any input tax incurred in making of such supplies. This cost will be borne by the final consumers.</td>
</tr>
<tr>
<td>6</td>
<td>Qualifying imported passenger baggage including unaccompanied baggage on such terms and conditions that the Commissioner allows.</td>
<td>The change is unlikely to have any adverse impact on this category of persons.</td>
</tr>
<tr>
<td>7</td>
<td>Taxable goods for emergency relief purposes for use in specific areas and within a specified period supplied to or imported by the Government or its approved agent, a non-governmental organization or an authorized relief agency.</td>
<td>Suppliers of the affected supplies will not be able to claim any input tax incurred in making of such supplies. This cost will be borne by the final consumers.</td>
</tr>
</tbody>
</table>

**Rates moved from zero rate to the standard rate**

Agricultural pest control products will move from a zero rate to the standard rate of 16%. Previously, both inputs supplied to manufacturers of agricultural pest control products were zero rated. Application of the standard rate of 16% on the final product will ensure that manufacturers are not in refund position.
Rates moved from the standard rate to a zero rate
Inputs or raw materials for electric accumulators and separators supplied to manufacturers of automotive and solar batteries in Kenya will now be zero rated (moved from the standard 16% rate). The zero rating of the inputs will provide automotive and solar battery manufacturers affordable inputs to improve the competitiveness of their final products in terms of pricing.

Other proposed changes
The following changes proposed in the Tax Laws (Amendment) Bill were dropped in the Act indicating no changes in tax treatment were adopted by Parliament.

- Certain medicament and approved inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments. Proposed change from 0% to exempt. Rate remains 0%.
- Supply of liquefied petroleum gas. Proposed change from 0% to exempt. Rate remains 0%.
- Milk and cream, not concentrated nor containing added sugar or other sweetening matter. Proposed change from 0% to exempt. Rate remains 0%.
- Taxable supplies imported or purchased for exclusive use in the construction of a hotel or conference facility. Proposed change from 16% to exempt. Rate remains 16%.
- Taxable supplies imported or purchased for exclusive use in the construction of a minimum of five thousand housing units by a licensed SEZ entity. Proposed change from 16% to exempt. Rate remains 16%.

Income Tax Act Amendments

Tax on winnings
The Act reintroduces withholding tax of 20% on winnings under the Betting, Lotteries and Gaming Act that are paid to both resident and nonresident persons.

 Winnings have been defined as the positive difference between payouts made and stakes placed in a given month, for each player, payable to punters by bookmakers licensed under the Betting, Lotteries and Gaming Act.

Tax incentives on home ownership
The Act doubles the tax deduction for depositors investing in Home Ownership Savings Plan (HOSP) schemes from KES 48,000 per annum to KES 96,000 per annum or KES 4,000 per month to KES 8,000 per month.

It also introduces affordable housing relief to qualifying resident individual’s equivalent to 15% of the gross emoluments to a maximum of KES 108,000 per annum.

This is in line with the Government’s Big 4 agenda that aims at providing decent and affordable housing to Kenyans. The deduction, however, still falls short of the rise in house prices over the years.

Exemption of power producers operating under a power purchase agreement from compensating tax
The Act exempts power producers operating under a power purchase agreement from compensating tax.

This move seeks to ensure that the impact of the tax incentives granted to them is not lost at the point of dividend distribution or sale of a stake to other potential investors.

Stamp Duty Act Amendments

The Act amends the Stamp Duty Act by exempting first time home owners under the affordable housing scheme. Stamp duty ranges between 2% to 4% on the value of the property depending on the location. The incentive will be a welcome saving to first time home owners.

Next Steps

The changes under the ITA and the VAT Act are already effective. Affected taxpayers should adjust their operations accordingly.
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