





Approved for tabling. Bat SNA
22/12/2020

REPUBLIC OF KENYA

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 22 DEC 2020	DAY: TUESDAY
TABLED BY: CHAIRPERSON COMMITTEE ON DELEGATED LEGISLATION	
CLERK-AT THE TABLE: R. K. TIANGATI	

TWELFTH PARLIAMENT- FOURTH SESSION (2020)

COMMITTEE ON DELEGATED LEGISLATION

**REPORT ON
THE CONSIDERATION OF THE VALUE ADDED
TAX (AMENDMENT OF THE RATE OF TAX)
ORDER, 2020
(Legal Notice No. 206 of 2020)**

DECEMBER, 2020

*The Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI.*

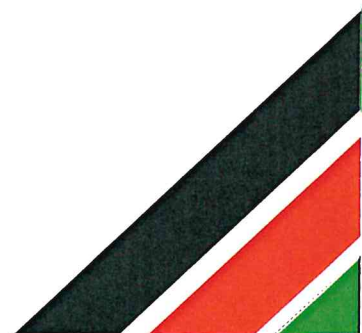


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ABBREVIATIONS

COVID	Corona Virus Disease
LN	Legal Notice
SI	Statutory Instruments
SO	Standing Order
VAT	Value Added Tax

CHAIRPERSON'S FOREWORD

In exercise of the powers conferred by section 6(1) of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning, Hon. (Amb.) Ukur Yatani, EGH published the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 vide Legal Notice No. 206 of 2020 on 2nd December, 2020. The Order was subsequently submitted to the Clerk on 3rd December 2020 for tabling and tabled on 22nd December, 2020 during the Special Sitting of the Assembly.

The Order seeks to increase the Value Added Tax from fourteen per cent (14%) to sixteen per cent (16%) and is expected to be effective from 2nd January, 2021 by amending section 6(2)(b) of the Act by deleting the word 'fourteen' and substituting therefor the word 'sixteen'.

The key objective of the Order as indicated by Treasury, is to fill the revenue shortfalls occasioned by the COVID-19 pandemic on the country's economy. The regulation making authority expects to generate approximately Kshs. 25 billion in revenues, from the increase in VAT in the next half of the FY 2020/21. According to Treasury, the increased revenue will finance the 'Big 4' Agenda and other government priorities in subsequent financial years.

Having been seized of the instrument, the Committee examined it against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act, 2013 and made various observations contained in section 3.0 of this Report. The following is a summary of the observations –

- i) **Statutory Timelines:** The Order was published in the Gazette *vide* Legal Notice No. 206 of 2020 on 2nd of December, 2020 and was submitted to the Clerk on 3rd December 2020 for tabling and tabled on 22nd of December, 2020 during the Special sitting of the Assembly, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act** and was submitted without unreasonable delay in accordance to section 6 (2) of the Value Added Tax Act.
- ii) **Commencement of the Order:** The Order provides 2nd January, 2021 as the commencement date of coming into force in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of the statutory timeline stipulated in section 6(2) of the Value Added Tax Act.
- iii) **Consultation / Public participation:** Pursuant to section 16 of the Statutory Instruments Act which requires the Committee where it is practically possible to confer with with the regulation-making authority, the Committee conferred with the Cabinet Secretary responsible for the National Treasury on 21st December, 2020. The Cabinet Secretary responded to the Committee's concerns including issues of public participation.

The Committee satisfied itself that the Order is in accord with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No 23 of 2013) pursuant to which it is made and therefore

recommends that the House approves the said statutory instrument in accordance with section 6(2) of the Value Added Tax Act, 2013.

Section 6(2) of the Value Added Tax Act, 2013 contemplates and expressly provides that a resolution approving the Order shall be by the House (and not just by a Committee of the House).

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate. I also want to express my heartfelt gratitude to the Members and staff of the Committee on Delegated Legislation for their commitment to duty especially during this difficult period of the COVID-19 pandemic.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 199 and Section 6(2) of the Value Added Tax Act, 2013; it is my pleasure and duty to present to the House the **Committee's Report on the Consideration of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 (Legal Notice No. 206 of 2020).**

HON. MURIUKI NJAGAGUA, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)
Tiaty Constituency
KANU

The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)
Mbeere North Constituency
Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.
Roysambu Constituency
Jubilee Party

The Hon. Ronald Tonui, M.P.
Bomet Central Constituency
Jubilee Party

The Hon. William Cheptumo, M.P.
Baringo North Constituency
Jubilee Party

The Hon. William Kamoti, M.P.
Rabai Constituency
Orange Democratic Movement

The Hon. Cecily Mbarire, MGH, M.P.
Nominated
Jubilee Party

The Hon. Martha Wangari, M.P.
Gilgil Constituency
Jubilee Party

The Hon. Alice Wahome, M.P.
Kandara Constituency
Jubilee Party

The Hon. Gideon Mulyungi, M.P.
Mwingi Constituency
Wiper Democratic Movement – Kenya

The Hon. Robert Mbui, M.P.
Kathiani Constituency
Wiper Democratic Movement -Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.
Funyula Constituency
Orange Democratic Movement

The Hon. Daniel Maanzo, M.P.
Makueni Constituency
Wiper Democratic Movement -Kenya

The Hon. George G. Murugara, M.P.
Tharaka Constituency
Democratic Party

The Hon. Timothy Wanyonyi, M.P.
Westlands Constituency
Orange Democratic Movement

The Hon. Jennifer Shamalla, M.P.
Nominated
Jubilee Party

The Hon. Munene Wambugu, M.P.
Kirinyaga Central Constituency
Jubilee Party

The Hon. Patrick Mariru, M.P.
Laikipia West Constituency
Jubilee Party

The Hon. Sammy Seroney, M.P.
Nominated
Wiper Democratic Movement – Kenya

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party

The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Wilson Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE VALUE ADDED TAX (AMENDMENT OF THE RATE OF TAX) ORDER, 2020

2.1 Introduction and Background Information

5. In exercise of the powers conferred by section 6 (1) of the Value Added Tax Act, 2013, Hon. (Amb.) Ukur Yatani, the Cabinet Secretary for the National Treasury and Planning published the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 on 2nd December, 2020 vide Legal Notice No. 206 of 2020.
6. The Order was submitted to the Clerk of the National Assembly on 3rd December, 2020 and tabled before the House on Tuesday, 22nd December, 2020.

2.2 Overview and Purpose of the Order

7. The Order seeks to amend paragraph (b) of section 5 (2) of the Value Added Tax, 2013 by deleting the words “fourteen per cent” and substituting therefor the words “sixteen per cent”.
8. The main purpose of the Order as indicated by the National Treasury, is to fill the revenue shortfalls occasioned by the COVID-19 pandemic on the country’s economy. The regulation making authority expects to generate approximately Kshs. 25 billion in revenues, from the increase in VAT in the next half of the FY 2020/21. It is expected that the increased revenue will finance the ‘Big 4’ Agenda and other government priorities in subsequent financial years.
9. According to the Ministry, the intended benefits to the consumers were not felt fully since some manufacturers did not revise their prices downwards as expected. The reopening of the economy globally is expected to support the recovery of the business in Kenya and hence increase revenue collection.

2.3 Enabling Provisions

10. Section 5(2) (b) of the Value Added Tax Act (No. 25. of 2013) deals with charge to tax and provides that –

“The rate of tax ...in any other case shall be fourteen per cent [14%] of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services”.

2.4 Legal Basis for Scrutiny

11. The Committee examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act, 2013.
12. **Section 6(1) of the Value Added Tax Act, 2013** allows the Cabinet Secretary to amend the rate of tax from 14% which is the rate specified in section 5(2)(b). If he so amends it –
 - i) *the amendment of the rate must be done through an Order published in the Gazette;*

- ii) *the amended rate of tax can only increase or decrease by an amount not exceeding twenty-five per cent (25%) of the rate specified in section 5(2)(b);*
 - iii) *the Order varying the rate must be laid before the National Assembly without unreasonable delay; and*
 - iv) *the National Assembly has a maximum of twenty (calendar) days within which to make a resolution approving or not approving the Order.*
13. Where the National Assembly passes a resolution disapproving the Order within the stipulated time (*twenty days of the day on which the National Assembly next sits after the order is laid*), the Order ceases to have effect but without prejudice to anything previously done thereunder (*i.e., any taxes charged at 16% will not be prejudiced and are presumed to be legitimate hence no refunds or claims may be made therefrom*);
14. Where the Order is laid in the National Assembly (*when the House is in session*) and the stipulated time lapses without any resolution from the National Assembly, it ceases to have effect, implying that the rate of value added tax is retained at sixteen percent (16%) as published in the Order.
15. With the instrument having been published in the Gazette vide Legal Notice No. 206 of 2020 on 2nd December, 2020; submitted to the Clerk of the National Assembly on 10th December, 2020 referred to the Committee on Delegated Legislation in accordance with the Resolution of the House regarding consideration of certain business received during the December – February, 2021 recess period. The Committee considered the Order on 18th and 21st December, 2020, having sought the Speaker's approval to consider the said business.

3.0 COMMITTEE OBSERVATIONS

16. Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No. 23 of 2013), the Committee made the following observations –
- (i) **Statutory Timelines:** The Order was published in the Gazette vide Legal Notice No. 206 of 2020 on 2nd December, 2020 and was submitted to the Clerk on 3rd December, 2020 and tabled on 22nd December, 2020 hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act** and was submitted without unreasonable delay in accordance to section 6 (2) of the Value Added Tax Act.
 - (ii) **Commencement of the Order:** The Order is to come into force on the 2nd January, 2020 in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of time stipulated therein.
 - (iii) **Approval by the National Assembly:** Sections 17, 18 and 19 of the Statutory Instruments Act and Standing Order 210(4)(b) requires the Committee to table a resolution recommending an annulment to the House which the House may or

may not adopt. Hence, contrary to SIs which are dealt with in accordance Standing Order 210(4) (a), the Value Added Tax Order has to be tabled and the resolution to approve or not approve the variation of the rates has to be arrived at by the House in accordance with Section 6(2) of the Value Added Tax Act, 2013 which contemplates and expressly provides that a **resolution approving the Order shall be by the House** (and not only by a Committee of the House).

(iv) Consultation / Public participation:

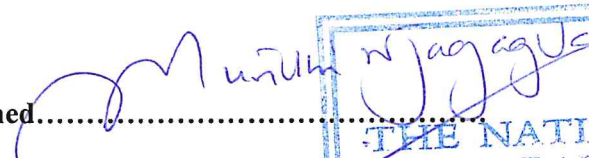
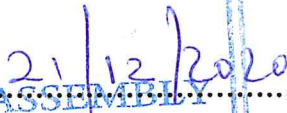
Pursuant to section 16 of the Statutory Instruments Act which requires the committee where it is practically possible to confer with the regulation-making authority, the Committee conferred with the Cabinet Secretary, National Treasury on 21st December, 2020 in Parliament Buildings where he responded to the Committee's concerns including the matter of public participation. He informed the Committee that the increase was necessitated by the shrinking revenues since the government reduced various taxes in April 2020 to cushion businesses and consumers from the adverse effects of the pandemic. Approval of the Order will result in increased revenue for the country in order to finance the 'Big 4' Agenda and other government priorities in the current and subsequent financial years.

The Cabinet Secretary submitted to the Committee a copy of the Presidential Address of 28th September, 2020 and the Press Statement issued by the National Treasury dated 4th December, 2020 informing the general public about the intention to return to pre-COVID-19 tax regime.

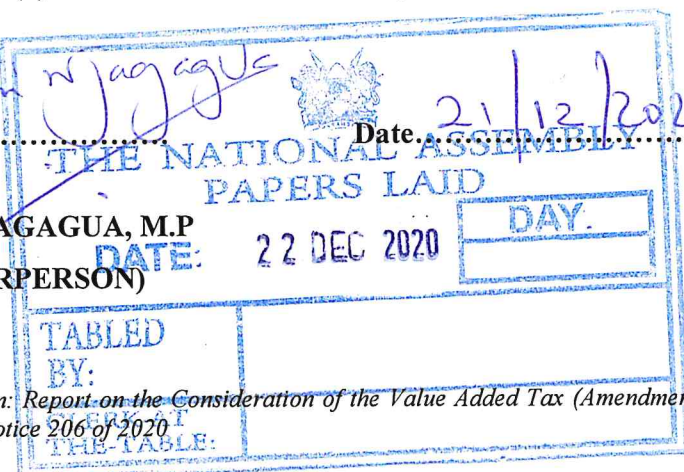
Further, the Committee took cognisance of section 5A (2) of the SI Act contemplates a situation when the regulation-making authority is not able to conduct public participation due to any other reason, in which case the regulation-making authority is required to explain, in their Explanatory Memorandum, their reasons for not conducting public participation.

4.0 COMMITTEE RECOMMENDATION

17. Having examined the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 (*Legal Notice No. 206 of 2020*), in line with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No 23 of 2013), the Committee recommends that the House **approves** the Value Added Tax (Amendment of the Rate of Tax) Order, (*L.N. No. 206 of 2020*) in accordance with section 6(2) of the Value Added Tax Act, 2013.

Signed.......... Date..........

HON. MURIUKI NJAGAGUA, M.P.
(VICE CHAIRPERSON)



Committee on Delegated Legislation: Report on the Consideration of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 – Legal Notice 206 of 2020

ANNEXURES

- 1. Adoption List**
- 2. Paper Laid: Legal Notice No. 206 of 2020 and Explanatory Memorandum**
- 3. Committee Minutes**

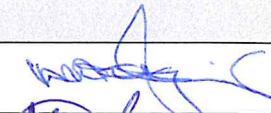

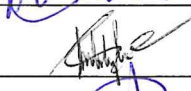
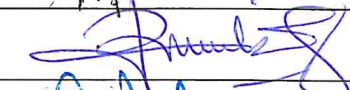


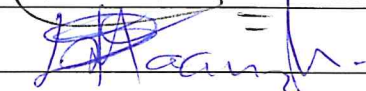
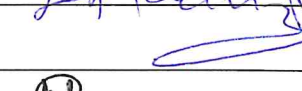

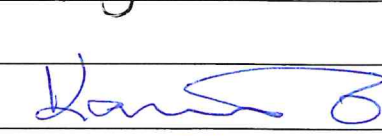
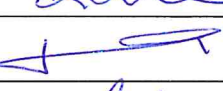
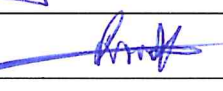
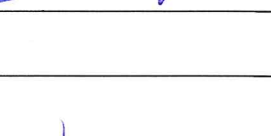
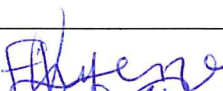
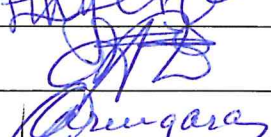

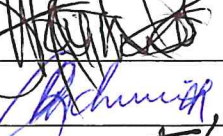
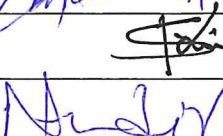


COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on the consideration of the Value Added Tax (Amendment of the Rate of Tax) Order, 2020 - Legal Notice No. 206 of 2020

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 21ST DECEMBER, 2020

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Waihenya Ndirangu, MP	
4.	Hon. Robert Mbui, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Cecily Mbarire, MGH, MP	
7.	Hon. Daniel Maanzo, MP	
8.	Hon. William Cheptumo, MP	
9.	Hon. Martha Wangari, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. William Kamoti, MP	
12.	Hon. Patrick Kariuki Mariru, MP	
13.	Hon. Ronald Tonui, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. Gideon Mulyungi, MP	
16.	Hon. Edith Nyenze, MP	
17.	Hon. Abdi Tepo, MP	
18.	Hon. George Murugara, MP	
19.	Hon. Jennifer Shamalla, MP	
20.	Hon. (Dr.) Wilberforce Oundo, MP	
21.	Hon. Robert Gichimu, MP	
22.	Hon. Sammy Seroney, MP	
23.	Hon. Tindi Mwale, MP	

please deal
for
08/12/20

Director
7/12/20



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P O BOX 30007 – 00100
NAIROBI
KENYA

When Replying Please Quote

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please note
for
08/12/20

Ref. ZZ/TS/GP/30

3rd December, 2020

Michael Sialai, EBS
Clerk of the National Assembly
Parliament Building
NAIROBI

Dear Sialai,

**RE: LEGAL NOTICE ON THE VALUE ADDED TAX (AMENDMENT OF
THE RATE OF TAX) ORDER, 2020 – LEGAL NOTICE NO. 206 OF 2020**

The above-mentioned Legal Notice was Gazetted on 2nd December, 2020.

In compliance with section 11 of the Statutory Instruments Act, I hereby submit the Value Added Tax (Amendment of Rate of Tax) Order, 2020 and the Explanatory Memorandum on the same for tabling in the National Assembly.

Yours *Sincerely,*

HON. (AMB.) UKUR YATANI, EGH

CABINET SECRETARY/THE NATIONAL TREASURY AND PLANNING

Encl.

Copy to: Justice (Rtd) P. Kihara Kariuki, EGH
The Attorney General
State Law Office
NAIROBI

3/12/20

SPECIAL ISSUE

2249

Kenya Gazette Supplement No. 214

2nd December, 2020

(Legislative Supplement No. 118)

LEGAL NOTICE No. 206

THE VALUE ADDED TAX ACT

(No. 35 of 2013)

IN EXERCISE of the powers conferred by section 6 (1) of the Value Added Tax Act, 2013, the cabinet Secretary for the National Treasury and Planning makes the following Order—

THE VALUE ADDED TAX (AMENDMENT OF THE RATE OF TAX) ORDER, 2020

1. This Order may be cited as the Value Added Tax (Amendment of The Rate of Tax) Order, 2020, and shall come into force on the 1st January, 2021. Citation.

2. Section 5 of the Value Added Tax Act, 2013 is amended in paragraph (b) of subsection (2) by deleting the word “fourteen” and substituting therefor the word “sixteen”. Amendment of the rate of tax.

Made on the 25th November, 2020.

UKUR YATANI,
Cabinet Secretary for the National Treasury and Planning.

LEGAL NOTICE No. 207

THE INCOME TAX ACT

(Cap. 470)

**THE INCOME TAX (DIGITAL SERVICE TAX) REGULATIONS,
2020**

ARRANGEMENT OF REGULATIONS

Regulation

- 1—Citation and commencement
- 2—Interpretation
- 3—Digital services
- 4—Application of digital service tax
- 5—User location
- 6—Gross transaction value

**LEGAL NOTICE ON THE VALUE ADDED TAX
(AMENDMENT OF THE RATE OF TAX) ORDER, 2020**

LEGAL NOTICE NO. 206 OF 2020

PART I

Name of Statutory Instrument	: The Value Added Tax (Amendment of rate of Tax) Order, 2020
Name of Parent Act	: The Value Added Tax Act (No. 35 of 2013)
Enacted Pursuant to	: Section 6 (1) of the Value Added Tax Act, No. 35 of 2013
Name of the Ministry	: The National Treasury and Planning
Gazetted on	: 2 nd December, 2020

PART II

1.0 Purpose of the Statutory Instrument

The objective of the Legal Notice No.206 of 2020 is to increase the rate of the valued added tax from 14% to 16%

2.0 Legislative Context

The Legal Notice on the Value Added Tax (Amendment of rate of Tax) Order, 2020, is made pursuant to Section 6(1) of the Value Added Tax Act, 2013 which empowers the Cabinet Secretary through an order published in the *Gazette*, to amend the rate of tax by increasing or decreasing by an amount not exceeding twenty-five per cent. The increase of the rate of tax from 14% to 16% is a 14.28 % increase which is within the limit specified in Section 6 of the of the VAT Act, 2013.

The increase of the rate of the value added tax from 14% to 16% shall be effective from 2nd January, 2021.

3.0 Policy Background

In order to cushion Kenyans against the effects of Covid-19, the Government reduced the rate of value added tax from 16% to 14% with

effect from 1st April, 2020. The reduction has been estimated to result in a revenue shortfall of about Ksh. 49 billion in the FY 2020/21.

Considering the needs for raising more revenue to finance the government projects under the Big 4 Plan, there is need to increase the VAT rate from 14% to 16%. Further, the intended benefits to the consumers were not felt fully since some manufacturers never revised their prices downwards as expected.

The reopening of the economy globally is expected to support the recovery of the business in Kenya and hence increase in revenue collection.

Impact

Increasing the VAT rate from 14% to 16 % with effect from 1st January 2021 is therefore expected to raise additional revenue for the Government. The revenue is estimated to be Kshs. 25 billion shillings.

4.0 Monitoring and review

The Legal Notice will be implemented by the Kenya Revenue Authority. The effect of the increase of the rate of the value added tax will be monitored by the National Treasury.

5.0 Request to the National Assembly

The National Assembly is requested to:

- a) Note the contents of this memorandum.
- b) Approve Legal Notice No 206 of 2020

6.0 Contact

Cabinet Secretary,
National Treasury & Planning,
NAIROBI

**MINUTES OF THE 62ND SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON SATURDAY, 19TH DECEMBER, 2020 AT 2.30 P.M. IN THE
TSAVO CONFERENCE ROOM, SIMBA LODGE, NAIVASHA, NAKURU COUNTY**

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. The Hon. Muriuki Njagagua, M.P. | - | Vice Chairperson |
| 2. The Hon. Alice Wahome, M.P. | | |
| 3. The Hon. Waihenya Ndirangu, M.P. | | |
| 4. The Hon. Kamoti Mwamkale, M.P. | | |
| 5. The Hon. Robert Mbui, M.P. | | |
| 6. The Hon. Daniel Maanzo, M.P. | | |
| 7. The Hon. Ronald Tonui, M.P. | | |
| 8. The Hon. Martha Wangari, M.P. | | |
| 9. The Hon. Patrick Mariru, M.P. | | |
| 10. The Hon. George Murugara, M.P. | | |
| 11. The Hon. Abdi Tepo, M.P. | | |
| 12. The Hon. Munene Wambugu, M.P. | | |
| 13. The Hon. Edith Nyenze, M.P. | | |
| 14. The Hon. Sammy Seroney, M.P. | | |
| 15. The Hon. Robert Gichimu, M.P. | | |
| 16. The Hon. Tindi Mwale, M.P. | | |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------------|---|-------------|
| 1. The Hon. Kassait Kamket, M.P. | - | Chairperson |
| 2. The Hon. Cecily Mbarire, MGH, M.P. | | |
| 3. Hon. (Dr.) Wilberforce Oundo, M.P. | | |
| 4. The Hon. Timothy Wanyonyi, M.P. | | |
| 5. The Hon. Jennifer Shamalla, M.P. | | |
| 6. The Hon. William Cheptumo, M.P. | | |
| 7. The Hon. Gideon Mulyungi, M.P. | | |

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-------------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Jimale | - | Clerk Assistant II |
| 3. Mr. Wilson Dima Dima | - | Principal Clerk Assistant |
| 4. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |
| 5. Mr. Eric Kanyi | - | Fiscal Analyst III |
| 6. Ms. Manzura Ahmed | - | Secretary |
| 7. Mr. Anthony Wamae | - | Assistant Serjeant at Arms |

MIN.NO. /NA/CDL/2020/395 PRAYER AND RELIMINARIES

The session resumed with the Prayers at 2.05 p.m.

**MIN.NO. /NA/CDL/2020/396 CONSIDERATION OF THE REPORT ON THE
VALUE ADDED TAX (AMENDMENT OF TAX)
ORDER, 2020 (LEGAL NOTICE NO. 206 OF 2020)**

The Committee deferred consideration and adoption of the Report on the Value Added Tax (Amendment of Tax) Order, 2020 to the next sitting on 21st December, 2020.

The Committee was informed that the said is listed for consideration during the Special Sitting of the House on 22nd December, 2020.

MIN.NO. /NA/CDL/2020/397 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 3.20 p.m. until Monday, 21st December, 2020 at 2.30 p.m.

Signed.....*Hon. Kassait Kamket*..... Date.....*21/12/2020*.....
HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)

**MINUTES OF THE 61ST SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON SATURDAY, 19TH DECEMBER, 2020 AT 10.00 A.M. IN THE
TSAVO CONFERENCE ROOM, SIMBA LODGE, NAIVASHA, NAKURU COUNTY**

PRESENT

- | | | |
|-------------------------------------|---|------------------|
| 1. The Hon. Muriuki Njagagua, M.P. | - | Vice Chairperson |
| 2. The Hon. Alice Wahome, M.P. | | |
| 3. The Hon. Waihenya Ndirangu, M.P. | | |
| 4. The Hon. Kamoti Mwamkale, M.P. | | |
| 5. The Hon. Robert Mbui, M.P. | | |
| 6. The Hon. Daniel Maanzo, M.P. | | |
| 7. The Hon. Ronald Tonui, M.P. | | |
| 8. The Hon. George Murugara, M.P. | | |
| 9. The Hon. Martha Wangari, M.P. | | |
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| 13. The Hon. Munene Wambugu, M.P. | | |
| 14. The Hon. Edith Nyenze, M.P. | | |
| 15. The Hon. Sammy Seroney, M.P. | | |
| 16. The Hon. Robert Gichimu, M.P. | | |
| 17. The Hon. Tindi Mwale, M.P. | | |

ABSENT WITH APOLOGY

- | | | |
|---|---|-------------|
| 1. The Hon. Kassait Kamket, M.P. | - | Chairperson |
| 2. The Hon. Cecily Mbarire, MGH, M.P. | | |
| 3. The Hon. William Cheptumo, M.P. | | |
| 4. The Hon. Timothy Wanyonyi, M.P. | | |
| 5. The Hon. (Dr.) Wilberforce Oundo, M.P. | | |
| 6. The Hon. Jennifer Shamalla, M.P. | | |
| 7. The Hon. Gideon Mulyungi, M.P. | | |

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-------------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Jimale | - | Clerk Assistant II |
| 3. Mr. Wilson Dima Dima | - | Principal Clerk Assistant |
| 4. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |
| 5. Mr. Eric Kanyi | - | Fiscal Analyst III |
| 6. Ms. Manzura Ahmed | - | Secretary |
| 7. Mr. Anthony Wamae | - | Serjeant at Arm |

MIN.NO. /NA/CDL/2020/392

PRAYER AND RELIMINARIES

Hon. Muriuki Njagagua, MP, the Vice Chairperson called the meeting to order at 9.30 a.m. and commenced the meeting with the Prayer.

MIN.NO. /NA/CDL/2020/393

**CONSIDERATION OF THE VALUE ADDED TAX
(AMENDMENT OF THE RATE OF TAX) ORDER,
2020 (L.N. 206 OF 2020)**

The Committee was informed that Section 5(2) of the Value Added Tax Act (No. 35 of 2013) places the rate of tax at 14% (fourteen per cent) of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services.

Section 6(1) of the Act allows the Cabinet Secretary by Order in the Gazette to amend the rate of tax by either increasing or decreasing any of the rates of tax by an amount not exceeding twenty-five per cent of the existing rate.

Effective 1st April, 2020, the rate of Value Added Tax was lowered from 16% to 14% following the adverse effects of the COVID-19 pandemic, through an Order made by the Cabinet Secretary and published on 26th March, 2020 as L.N. No. 35 of 2020 and approved by the National Assembly on 14th April, 2020 on the recommendation of the Committee on Delegated Legislation.

The Value Added Tax (Amendment of Tax) Order, 2020 made vide Legal Notice No. 206 of 2020, is made by the Cabinet Secretary for National Treasury and Planning pursuant to section 6(1) of the Value Added Tax Act, 2013 which empowers the Cabinet Secretary to amend the rate of tax by increasing or decreasing the tax rate by an amount not exceeding twenty five percent.

Summary of the provisions of the Order

The Legal Notice seeks to increase the Value Added Tax (VAT) from 14% to 16% and is expected to be effective from 2nd January, 2021. It seeks to amend section 6(2) (b) of the Act by deleting the word 'fourteen' and substituting therefor the word 'sixteen'.

Brief by the Parliamentary Budget Office

The Committee was informed that the proposed Regulations provide for amendment of the VAT rate from 14% to 16% which represents a 14.3% change. It is noted that the amendment of the VAT rate to 16% takes back the rate to the pre-COVID 19 period.

The reduction to 14% was meant to cushion consumers from the impact of the pandemic on households who are the major consumers of commodities that attract VAT tax. As a result of the reduction of VAT rate to 14% in April 2020 to cushion consumers from the effects of COVID 19 pandemic, the Government foregone revenues despite increasing expenditure pressures.

According to the National Treasury in the first quarter of the financial year (June-September 2020), the targeted revenue collection was not achieved. The realized revenue for this first quarter was below the target by Kshs 50.2 billion.

This means that the revenue collection shrunk by 10.1% compared to a growth of 15.1% during a similar period in 2019. During this period (June-Sep 2020), the VAT collected was below the target by Kshs 20 Billion (16.4%). The National Treasury intends to yield a total of Kshs 25 Billion in revenues from the revision of the VAT rate.

The expenditures pressures in terms of supporting critical government projects vi-sa-vi the dwindling revenues, is one of the reasons the government intends to revert back the VAT to the initial rate of 16%.

The following are the **key issues** arising from Order:

- i. The government intends to revise the VAT rate from the current 14% to the pre-COVID 19 rate of 16%. This is intended to support government efforts to raise more revenue to support the budget.
- ii. The VAT rate reduction was meant to cushion consumers against the adverse effects of the COVID 19 pandemic. However, the proposed revision is being proposed amidst the pandemic.
- iii. It has been noted that publications have called for the re-evaluation of incentive since there are indications that it has not been fully adhered to. It has been noted that prices of most commodities were not or have not been adjusted in response to the reduction in the VAT tax rate.

Committee Observations

The Committee made the following observations –

1. **Statutory Timelines:** The Order was published in the Gazette *vide* Legal Notice No. 206 of 2020 on 2nd December, 2020 and was submitted to the Clerk on 10th December 2020 for tabling and will be tabled on 22nd December, 2020 during the Special Sitting of the Assembly, hence **is within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act** and was submitted without unreasonable delay in accordance to section 6 (2) of the Value Added Tax Act.
2. **Commencement of the Order:** The Order provides 2nd January, 2021 as the commencement date of coming into force in accordance with paragraph 3 thereof and remains in force subject to an approval or non-approval by the National Assembly or upon lapse of the statutory timeline stipulated in section 6(2) of the Value Added Tax Act.
3. **Consultation / Public participation:** Pursuant to section 16 of the Statutory Instruments Act which requires the Committee where it is practically possible to confer with with the regulation-making authority, the Committee will confer with the Cabinet Secretary, National Treasury upon the Committee's invitation on 21st December, 2020 at 2.30 p.m. to respond to the Committee's concerns including public participation.

Committee Recommendation

The Committee satisfied itself that the Order is in accord with the Constitution, the Interpretations and General Provisions Act (Cap 2), the Value Added Tax Act, 2013 and the Statutory Instruments Act (No 23 of 2013) pursuant to which it is made and therefore **recommends that the House approves the said statutory instrument in accordance with section 6(2) of the Value Added Tax Act, 2013.** Section 6(2) of the Value Added Tax Act, 2013 contemplates and expressly provides that a resolution approving the Order shall be by the House (and not just by a Committee of the House).

MIN.NO. /NA/CDL/2020/394 ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 12.40 p.m. until 2.30 p.m., the same day in the same venue.

Signed.....
HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)

Date..... 21/12/2020



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22921
Finance – Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote
ZZ/TS/GP/30

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

21st December 2020

Mr. Michael R. Sialai, EBS
Clerk of the National Assembly
Parliament Building
NAIROBI

Dear *Sialai*

**RE: REVIEW OF THE TAX BANDS AND RATES UNDER THE TAX
LAWS (AMENDMENT) (NO. 2) BILL, 2020**

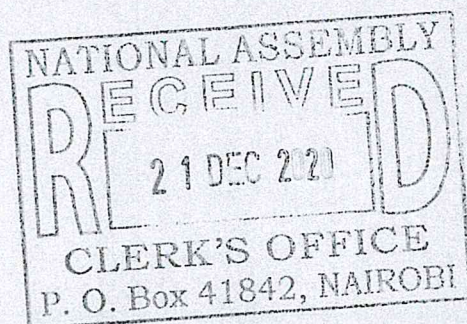
We hereby forward the attached copies of notices of public participation for
your necessary action.

Yours

Sincerely,

HON. (AMB) UKUR YATANI, EGH
CABINET SECRETARY / NATIONAL TREASURY AND PLANNING

Encl.





KENYA REVENUE AUTHORITY



In these tough times, the Government stood with the taxpayers. Through the Tax Law (Amendment) Act, 2020 President Uhuru Kenyatta announced relief measures to cushion the taxpayers from the adverse impact of the pandemic. These decisive interventions have helped businesses stay afloat, supported households, and helped preserve employment.

November 2020 representing revenue forgone by the government and hence reduced tax revenue collection.

Beyond tax reductions, the government also expedited payment of VAT refunds by allocating an additional **Ksh 10 Billion**. This fund offered financial relief to businesses worst hit by the crisis especially in the horticulture, transport, and hospitality sectors of the economy.

Today, although we have more coronavirus cases, we are in a much better place than we were in April when the temporary COVID-19 relief measures were announced. The end is finally in sight. We have hope of a return to normalcy. The reports of COVID-19 vaccine has given the global economy a shot in the arm.

As the country focuses on the economic recovery strategy designed to mitigate the adverse socio-economic effects of the pandemic and accelerate economic recovery. The focus has now moved to strengthen the healthcare systems, invest in ICT and digital infrastructure, facilitate the private sector's role in the recovery.

Post-Covid recovery measures

To accelerate economic recovery, the Government has progressively reopened the economy by extending the curfew hours from 7:00 PM to 10:00 PM; removal of the inter-county travel ban, and reopening our borders for trade. Consequently, the economy has started picking up following the relaxation of the Covid-19 containment measures by the government. This has translated to increased economic activities as recovery is gathering pace as businesses resume operations and hence the need for the reinstatement of the tax measures as follows:

30%

Reinstatement of Resident Corporate Income Tax rate to 30% up from 25%

16%

Value Added Tax (VAT) is reinstated to 16% up from 14%

30%

Pay As you Earn (PAYE) is reinstated to 30% up from 25%

Rent

Residential Tax on Residential Rental Income

3%

Reinstatement of Turnover tax rate for SMEs 3%

1%

KRA, however, will retain the reduced turnover rate of 1% to continue benefiting the micro, small and medium enterprises.

24,000

Further, the tax relief of 100% for persons earning a gross monthly income of up to Ksh 24,000 will remain to continue cushioning the low-income earners.

*The reversal of the relief measures is effective January 2021



increase the resilience of the economy to global supply chain shocks and support the MSMEs and other national aspirations. It is important that the government enhances mobilisation of the domestic resources to fund the Post-COVID Economic Recovery Strategy. This will also enable the government to pursue its fiscal consolidation measures to ensure that the public debt position remains sustainable.

On its part, KRA will continue supporting taxpayers virtually to enhance tax compliance for Kenyans who are working remotely. All the physical submissions of documents and appearances before our teams remain suspended. Taxpayers will be duly notified of when they can appear in person. In the interim, taxpayers are advised to submit evidence of transactions through callcentre@kra.go.ke.

KRA also remain committed to support governments' responses during this unprecedented crisis—by maintaining the operation of the revenue system, implementing governments' measures to address the crisis, supporting the economy and facilitating trade, whilst protecting the health of officials and the wider population.

We are encouraging taxpayers to access our tax services on our online platforms.

- For Domestic Taxes and all frequently requested services, log on to <https://itax.kra.go.ke/KRA-Portal/>
- For Customs related taxes, log on to iCMS (Integrated Customs Management Systems) and the Simba System
- For Supply Chain Management (SCM) or e-procurement, log on to <http://www.kra.go.ke/en/tender>
- For additional support, call our Contact Centre on Tel: 020 4 999 999, 0711 099 999 or Email: callcentre@kra.go.ke

**Commissioner General,
Kenya Revenue Authority**



Tuliye Ushuru, Tujitegemeel!

KENYA
VISION 2030



KENYA REVENUE
AUTHORITY

Road to Recovery: Enhancing Domestic Revenue Mobilization

Temporary Measures to Cushion Kenyans

Over the last nine months, the COVID-19 pandemic has constantly tested our resolve both at the personal and at a national level. We have been compelled to make adjustments, that, we previously wouldn't have thought of both socially and economically to survive.

In these tough times, the Government stood with the taxpayers. Through the Tax Law (Amendment) Act, 2020 President Uhuru Kenyatta announced relief measures to cushion the taxpayers from the adverse impact of the pandemic. These decisive interventions have helped businesses stay afloat, supported households, and helped preserve employment.

They included:

1. Reduction of Value Added Tax (VAT) rate from 16% to 14%,
2. Reduction of both corporate and personal income (PAYE) tax rates from 30% to 25%,
3. Tax relief of 100% for persons earning a gross monthly income of up to Kshs 24,000, and
4. Revision of the turnover tax rate downwards from 3.0% to 1.0% to support Micro, Small and Medium Enterprises (MSME).
5. Suspension of all listing for all persons including companies at Credit Reference Bureau (CRB)
6. Lowering of Central Bank Rate (CBR) to 7.2%
7. Lowering of Cash Reserve Ration (CRR) to 4.2%

www.kra.go.ke

COVID-19 relief

KRA appreciates the patriotic taxpayers who have diligently paid their taxes during this difficult time. Since the first case was announced in March, KRA has collected over Kshs. 1,089.9 billion against the target of Kshs. 1,276.1 billion reflecting a shortfall of Kshs. 186.3 billion. These funds have been prudently used to contain and mitigate the spread of the virus and to limit the adverse impacts on citizens and the economy as follows:



Procurement of Personal Protective Equipment

Engagement of youth across the country through the Kazi Mtaani Programme



Humanitarian relief assistance to support vulnerable families

Upgraded of health facilities across the county



Procurement of desks and masks as part of schools' resumption



Ksh 84,233mn

These measures have cumulatively transferred a net amount of Ksh 84,233 million for the period starting from April 2020 to the end of November 2020 representing revenue forgone by the government and hence reduced tax revenue collection.

Ksh 10bn

Beyond tax reductions, the government also expedited payment of VAT refunds by allocating an additional Ksh 10 Billion.

8. Central Bank of Kenya to offer flexibility to banks on loans that were active as of March 2020 to maintain liquidity levels
9. Setting up a fund to which players in the Public and Private Sector are contributing in support of Government efforts.

Notably for the tax administration, reductions were made in the income tax, corporate income tax, Value Added tax, and turnover tax. These measures have cumulatively transferred a net amount of **Ksh 84.233 billion** for the period starting from April 2020 to the end of



Tupia Ushuru, Tujitegemeel!





THE TWELFTH [12TH] PRESIDENTIAL ADDRESS ON

MONDAY, 28TH SEPTEMBER, 2020

*THE TWELFTH [12TH]
PRESIDENTIAL ADDRESS ON
THE COVID-19 PANDEMIC ON
MONDAY, 28TH SEPTEMBER,
2020 AT KENYATTA
INTERNATIONAL
CONVENTION CENTRE (KICC),
NAIROBI.*

On September 28, 2020 In Statements and Speeches



Fellow Kenyans and Conference Participants,

Let me once again say how delighted am today as we conference together, bringing teams from across the country and across the different sectors, teams that have shaped our national response to the Coronavirus Pandemic.

In your different capacities, either as leaders, clergy, technocrats, doctors, civil society different experts; private sector you have all helped the Country navigate through the turns and twists of the Corona crisis for the last six months, and brought us within sight of safe harbour.

The panel discussions held this afternoon have highlighted both the Hits and the Misses in our national endeavor to flatten the infection curve. Overall, we have demonstrated resilience in the face of tremendous challenge.

I join all speakers and participants today in celebrating our gallant health workers and all our essential services providers, for keeping the Kenyan flame burning bright. Today, we honour and salute them all, and recognise their representatives who are in our midst at this Conference.

Ladies and Gentlemen



**REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING
OFFICE OF THE CABINET SECRETARY**

PRESS STATEMENT


Friday, 4th December, 2020.

FOR IMMEDIATE RELEASE

**RETURN TO PRE-COVID-19 TAXES ON VAT AND
INCOME TAX**

In April, 2020 under the direction of His Excellency President Uhuru Kenyatta, the National Treasury & Planning lowered Corporate, Individual Income (PAYE) and Value Added Tax (VAT) rates as part of the government's efforts to cushion individuals and businesses from the adverse effects of the COVID-19 pandemic. This was clearly stated as a temporary measure with the understanding that they will be reviewed as soon as economic activities pick up.

The measures comprised of lowering of both corporate tax for resident entities and top individual income tax from 30% to 25%.

In addition, incomes of individuals earning less than KES 24, 000.00 per month were fully exempted (100%) from Pay As You Earn (PAYE) tax. This indeed, increased tax relief for individuals from KES 16, 896.00 to KES 28, 800.00. 



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING
OFFICE OF THE CABINET SECRETARY

PRESS STATEMENT

Furthermore, Value Added Tax (VAT) was reduced from 16% to 14%. It's important to note that even at the earlier rate, Kenya's VAT is considered the lowest in the region.

These temporary tax relief measures were deemed necessary to support Kenyan businesses and provide critical relief to the most vulnerable in society as they devise mechanisms of coping with the realities of the pandemic. The global and our own domestic containment measures including curfews targeted at stopping the spread of COVID-19, as well as lowering of taxes impacted negatively on the government's revenue collection.

Indeed, the government will have, as at 31st December, 2020, foregone tax revenues totalling KES 65 billion, over the course of the preceding seven months. This in due course has and will affect the implementation of the government's priority programmes under the Big Four Agenda and the recovery of the economy in general.

In respect of the foregoing, and given the easing of some of the containment measures and subsequent resumption of normalcy, it has, therefore, become necessary to return to the pre-COVID-19 tax rates,

A handwritten signature in black ink, appearing to be 'me' or a similar stylized name.



REPUBLIC OF KENYA
THE NATIONAL TREASURY & PLANNING
OFFICE OF THE CABINET SECRETARY

PRESS STATEMENT

effective 1st January, 2021, as outlined below, to enable the implementation of the government budget:

- the Corporate Tax rate *reverts* to 30% from the current 25%
- the Individual Income Tax rate *reverts* to 30% from the current 25%
- the Value Added Tax rate (VAT) *reverts* to 16% from the current 14%

It is important to note that these are not new tax rates, but just a return to the prevailing tax rate before the onset of the pandemic. This is indeed within the knowledge of all stakeholders.

However, the government will continue to cushion the low-income earners, by retaining 100% tax exemption/relief for those earning monthly incomes of KES 24, 000.00 and below.

Alongside these measures, the government will continue to roll-out interventions under the **KES 58.1 billion Economic Stimulus Programme (ESP)**, such as *Kazi Mtaani* and others, to cushion vulnerable citizens and also enhance the liquidity of businesses.

Further, the Government has rolled out a medium term **Economic Recovery Strategy** that will re-position the economy on a path to prosperity.



Seven days exactly after the first COVID case was reported, we were able to increase this bed capacity to 60.

Currently, and working in partnership with County Governments, we have over 300 ICU beds and 7,411 isolation beds nationally. And this done in six months, these achievements are, indeed, phenomenal and through you Governor Oparanya, Chairman of Council of Governors, I take this opportunity to thank you for the partnership that you and your Governors have shown during this very difficult period of time.

In fact, in this period of six months, we have actually installed more medical equipment that has ever happened since our country's independence. As an affirmation of our expanding capacity and as we continue to use this moment to Re-imagine Kenya's Healthcare, earlier this month, I presided over the official opening of our fifth National Referral Hospital – K.U. Teaching Referral and Research Hospital.

The new facility is part of our national response for specialized treatment of chronic diseases, notably: cancer and renal diseases – the twin diseases that have caused and wreaked havoc to many families across the nation.

In that regard, once the K.U - Integrated Molecular Imaging Centre (IMIC), is completed, by March of next year, there will no longer be need for any Kenyan to travel abroad in search of specialized Cancer Treatment, as our enhanced capacity will be able to handle any medical conditions that people now are currently traveling abroad for.

Indeed, the Referral facilities, coupled with the expanded county infrastructure will enhance our national possibilities and anchor our plans to position our nation as a top medical hub for our region, for the continent and indeed develop medical tourism as a new area of generating income and jobs for our people. This will also help us with our national rollout for the Universal Health Care under the Big Four Agenda.

Fellow Kenyans,

Our expanded health infrastructure, as I have just mentioned, is indeed impressive. However, it is important to question ourselves and ask ourselves is: Does it make our



as the First Line of Defence. The reason why we have managed to flatten the curve is because Kenyans have exercised an impressive civic responsibility and duty. And if danger is most present in moments of victory, this achievement is in danger if we do not watch out.

That is why I urge all Kenyans to double their efforts in observing the COVID protocols. We have got this far because we, the citizens, were the First Line of Defense against the pandemic.

And as we get into the next phase of the war against this pandemic, we must heed the teachings of Saint Francis of Assisi who said and I quote: '... start by doing what is necessary, then it will lead you to what is possible and before you know it, you will find yourself doing the impossible'.

If we do what is necessary during the next phase of the war against the pandemic, it will lead us to do what is possible. Then cumulatively, our necessary actions (like wearing masks) coupled with our possible deeds, will lead us to the impossible outcome of containing this pandemic.

Indeed, as a people we must always remember that '...impossible is nothing' if we each and every one of us applies themselves.

So therefore in the spirit of co-creating the 'new normal' between the government and its people; and on the advice of the National Security Council and in line with the recommendations of the National Emergency Committee on the Coronavirus Pandemic, I direct and announce as follows:-

- i. One, THAT the Nationwide Curfew in force throughout the territory of the Republic of Kenya is extended for a further sixty (60) days;
- ii. Two, THAT the commencement time for the Nationwide Curfew is varied from 9:00 p.m. to 11:00 p.m. Therefore, effective tomorrow, Tuesday the 29th September, 2020 the national wide dusk-to-dawn Curfew will run from 11:00 O'clock at night to 4:00 O'clock in the morning.



v. Five, THAT in line with the recommendations of the Inter-Faith Council, the permitted maximum size of religious gatherings is increased to one third (1/3) of its normal sitting capacity; but with strict adherence to all applicable guidelines and protocols issued by the Ministry of Health.

As we progressively de-escalate the containment measures and resume a sense of normalcy on education, our paramount consideration both as a Government but also as parents is the safety and well-being of our children.

So therefore, the resumption of in-person learning must be predicated on strict adherence to the health protocols and guidelines as issued by the Ministry of Health.

As I give these directives, I underscore the need to continue adhering to the health guidelines and protocols; to avoid losing the gains we have made thus far. And to also say again, that I will not hesitate to escalate containment measures in the event that any of these indicators that we know start to rise again.

11/10 - 1st time on monday 28th september 2020-at-kenvatt 6/10



THE PRESIDENT OF THE REPUBLIC OF KENYA

WILSON KIPKORIR

So with that, I want to conclude with some thoughts for all of us. As I said earlier, especially with regard to our economy, we are living in a 'Season of Paradox'. An age where our new reality is a conflict with what we 'feel reality should be'. Indeed, that is not only true of our social lives but also true of our economy.

Against all odds, as we have seen and heard today, some of our entrepreneurs have re-imagined the subsisting pandemic and created a new business reality that disorganizes the existing order at play.

This is a new business model driven by innovators and makers of things; people who did not see danger in the COVID crisis, but actually saw opportunity. Businesses that experienced shock from COVID, but bounced back better.

But the question that this development begs is the following: If positive disruptions and innovations have mushroomed during COVID-19, how do we together support them as part of our resilience-building strategy?

How do we boost a small 'samosa delivery' company known as "Wau Eats" whose recipe is 100 years old, for instance? And how do we encourage the Association of Women in Agriculture Kenya (AWAK) with their innovative work especially amongst vulnerable settlement women across the country? How do we assist this kind of people.

During the first phase of this pandemic, we rolled out a series of economic stimulus packages. Today, and in support of our small businesses and innovators, I also direct as follows:

- i. One, that the National Treasury considers retaining VAT at 14% until 1st July 2021.
- ii. Two, that the National Treasury considers retaining the Income Tax Rate (Pay-As-You-Earn) at 25 percent until 1st January 2021.
- iii. Three, that the National Treasury considers retaining the Resident Income Tax (Corporation Tax) at 25% until 1st January 2021



vi. Six, to enhance access to credit for our micro, small and medium enterprises, the National Treasury is directed to expedite the ongoing roll-out of the credit guarantee scheme in partnership with participating banks as well as our development partners. The credit guarantee scheme as approved by Cabinet is a risk-sharing partnership between the Government and banks, which will afford our enterprises across the country access to credit and increase the amount that we can lend to this sector by an additional 100 billion shillings.

Fellow Kenyans,

When COVID pandemic hit us in March this year, we did not know the extent of the crisis. In-between the crisis, I told you that we were in what I was calling the 'Fog of War'. The theatres of war were invisible and indeed foggy.

However, today I am comforted by the fact that we are not running in the dark. We might not know everything about this pandemic, but we do know a lot more than we did in March.

And although we only know in part, we are better prepared today than we were in March this year. Our level of civic consciousness and responsibility is much higher. However, to build the resilience that allows us to anticipate the second wave and respond to it, we must do even better.

That is why I must emphasize by repeating what St Francis of Assisi taught us: If we all do the NECESSARY, it will lead us to the POSSIBLE. And indeed at this point, the IMPOSSIBLE will happen without even us REALIZING it.

Starting the next phase of this pandemic by doing the necessary, and working together in unity as we have done, this is how to defeat this COVID menace! And I do believe through that unity of purpose we will can indeed succeed.

I want to once again thank Kenyans across the country, I want to thank all leaders across the country for the manner in which we have been able to work very closely together despite the fact that we have been apart.

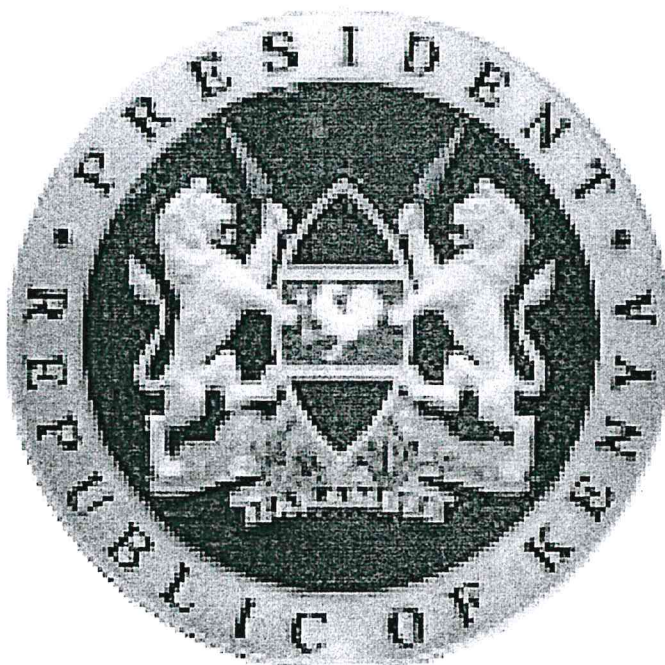


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OF THE PEOPLE

Thank you

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REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

**TALKING NOTES BY THE CABINET SECRETARY ON
THE VALUE ADDED TAX (AMENDMENT OF THE RATE
OF TAX) ORDER, 2020 DURING THE MEETING WITH
THE COMMITTEE ON DELEGATED LEGISLATION OF
THE NATIONAL ASSEMBLY**

21ST DECEMBER, 2020

TALKING NOTES BY THE CABINET SECRETARY ON THE VALUE ADDED TAX (AMENDMENT OF THE RATE OF TAX) ORDER, 2020 DURING THE MEETING WITH THE COMMITTEE ON DELEGATED LEGISLATION OF THE NATIONAL ASSEMBLY

- 1. Mr. Chairman and Members of this Committee,** I wish to express my gratitude to the Committee for inviting us for this meeting to discuss the Value Added Tax (Amendment of the rate of Tax) Order, 2020 which is before the House.
- 2. The Government** introduced several measures in April, 2020 which were meant to cushion Kenyans and the economy against the negative effects of the COVID-19 Pandemic. The measures included the following:
 - i) reduction in the rate of Value Added Tax from 16% to 14%;
 - ii) reduction of resident corporation tax rate and top individual tax rates from 30% to 25%; and
 - iii) exemption of individuals earning up to Ksh. 24000 per month from income tax.
 - iv) reduction of turnover tax rate from 3% to 1%.
- 3. Mr. Chairman,** since April 2020, the Government has implemented various policy measures to cushion Kenyans and businesses and stimulate economic recovery.

4. The measures have included also reduction of the Central Bank Rate from 8.25% to 7.0% and cash reserve ratio from 5.25% to 4.25% by the Central Bank of Kenya. The reduction of the cash ratio requirement provided an additional Ksh 35 billion in liquidity to the banking sector for lending.
5. We have also rolled out the **Ksh 58.1 billion** Economic Stimulus Programme through labor-based activities in the areas of infrastructure, education, business liquidity, health, manufacturing, tourism, sanitation, food and agriculture. This is meant to increase economic activities.
6. At the moment, **Mr. Chairman**, the Government is finalizing on the Post Covid-19 Economic Recovery Strategy that will further re-position the economy on a steady and sustainable growth trajectory.
7. **Mr. Chairman**, since April 2020, revenues of Government have shrunk affecting the implementation of Government's priority programmes under the Big Four Agenda. **The budget execution for the FY 2020/21 budget has continued to experience revenue shortfalls and rising expenditure pressures.** The shortfalls in revenues reflect the weak business environment and the impact of the tax reliefs implemented in April 2020 to support people and businesses from the adverse effect of Covid-19 Pandemic.
8. **Mr. Chairman**, total cumulative revenues, including A-I-A as at **30th November 2020** amounted to **Ksh 624.2 billion** against

a target of **Ksh 702.9 billion** resulting in a deviation from target of **Ksh 78.7 billion**. This shortfall from target was mainly attributed to deviation from targets of the ordinary revenues by **Ksh 71.7 billion** and Ministerial A-I-A by **Ksh 7.0 billion**.

9. The **Ksh 78.7 billion** shortfall from target of total revenue was mainly attributed to **Ksh 71.7 billion** shortfalls in **ordinary revenue** and **Ksh 7.0 billion** in **Ministerial A-I-A**.
10. Ordinary revenue by end **November 2020** contracted by **16.7 percent** compared to a **growth of 17.6 percent** recorded in November 2019. The shortfall in ordinary revenue components from target was as follows:
 - (i) income taxes (**Ksh 27.6 billion**);
 - (ii) **Value Added Tax (Ksh 46.3 billion)**;
 - (iii) excise tax (**Ksh 12.7 billion**), and
 - (iv) import duty (**Ksh 4.6 billion**).
11. In accordance with the Presidential Directive of 28th September, 2020 and following the easing of the containment measures and subsequent resumption to normalcy in the economy, it has become necessary to return to the pre-covid-19 rates on corporate, individual income (PAYE) taxes and VAT to bolster revenue mobilisation, beginning 1st of January 2021.
12. In view of the foregoing, the National Treasury and Planning prepared the draft Value Added Tax (Amendment of the Rate

of Tax) Order, 2020 proposing to increase the rate of the VAT from 14% to 16% with effect from 1st January 2021. As you may note from the revenue performance, **VAT is under performing by Ksh 46.3 billion in just five months of this fiscal year. It is therefore imperative that we return VAT to 16 percent in order to safeguard revenues.**

13. Mr. Chairman, I beseech Members of this Committee for an understanding given the dire need to recoup revenue losses and approve the Legal Notice No. 206 of 2020 on Value Added Tax (Amendment of the rate of Tax) Order, 2020.

14. As Honorable Members may be aware, when we lowered VAT in April 2020, prices did not decline, implying that businesses increased their profit margins instead of passing the benefit to Mwananchi. We need to go back to VAT rate of 16 percent.

15. Finally, I wish to thank the Honorable Members of this Committee for the support and commitment in securing the interest of Kenyans and the Government during these difficult times occasioned by the COVID-19 pandemic.



HON. (AMB.) UKUR YATANI, E.G.H.
CABINET SECRETARY/THE NATIONAL TREASURY & PLANNING

21ST DECEMBER 2020

