# Tax Laws (Amendment) Act, 2024

**Kenya**

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# Foreword

The **Tax Laws (Amendment) Act , 2024 (the Act)** follows the rejection of the Finance Bill, 2024 and presents another opportunity for the Government to revisit some of the provisions that it had proposed in the Finance Bill, 2024 that the public rejected.

While the Finance Bill, 2024, sought to introduce significant changes, the lack of assent underscored the need for further review and dialogue. In response, the Act has dropped some of the earlier provisions, reinstated some of the provisions contained in the Finance Bill, 2024 and introduced new provisions. With these provisions, the government is aiming at expanding the tax base and addressing tax challenges posed by the evolving global economic landscape.

Among the changes contained in the Act is the introduction of Significant Economic Presence (SEP) Tax which replaces the Digital Service Tax (DST). SEP tax is set to change the business landscape for non-residents who carry on businesses over digital marketplaces and is aligned to the globally driven Two Pillar Approach to the taxation of the digital economy.

On VAT, the Act has introduced several changes to the First Schedule of the VAT Act. Notable is the exemption of agricultural pest control products and fertilizers which are currently zero rated.

For personal income taxes, the government has sought to replace some tax reliefs with tax deductions. An example is the amendment removing affordable housing levy and post-retirement medical fund relief but allowing for the deduction of these payments, together with Social Health Insurance Fund (SHIF) deductions when determining taxable income.

On employment benefits, the Act has expanded the tax-exempt non-cash employment benefits from KES 36,000 per year to KES 60,000 and increased the value of tax-free meals provided by employers from KES 48,000 to KES 60,000. In addition, the tax-exempt pension limit has been increased from KES 240,000 per annum to KES 360,000 per annum.

The Act also introduces tax exemptions on pension benefits upon retirement and further extends the proposed exemption to withdrawal after 20 years up from the current 15 years.

Under Excise Duty, an interesting change is the introduction of different excise duty rates for established alcoholic beverage manufacturers and small independent brewers at the rate of KES 22.50 and KES 10 per centilliter of pure alcohol respectively.

The Act introduces new provisions not previously in the bill, including the imposition of Withholding Tax (WHT) on the sale of scrap at the rate of 1.5%. Additionally, the Act allows taxpayers with a permanent VAT credit position resulting from the reclassification of taxable supplies from zero-rated or exempt (effective 1 July 2022) to apply for VAT relief within 6 months of this provision's commencement.

Additionally, some key provisions from the Bill were not included in the Act. These include the VAT exemption for goods under Chapter 88, which covers aircraft, spacecraft, and their parts (excluding helicopters), as well as the proposed excise duty rate increase on telephone and internet data services.

The Act was assented to on **11 December 2024** and will take effect from **27 December 2024**.

# Income Tax-Corporation Tax

# Income Tax- Corporation Tax

## Definition of “Royalty” broadened

**Amendment:** The Act has expanded the definition of 'royalty' to include a payment made as a consideration for the use or right to use any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance or support fees; and information concerning industrial, commercial or scientific equipment or experience and any gains derived from the sale or exchange of any right or property giving rise to that royalty.

**Implication:** The Act expands the definition of software in response to various court rulings such as ***Seven Seas Technologies Limited v the Commissioner of Domestic Taxes***, which excluded most software related payments from the Income Tax Act definition of royalty for purposes of assessing withholding tax.

This change increases tax obligations for businesses using or trading in intellectual property and software.

# Income Tax

## Donations now defined

**Amendment**: The Act defines 'donation" to mean a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration and includes grants.

**Implication:** The definition provides clarity on what constitutes a donation for purposes of qualifying for exemption under the First Schedule to the ITA.

# Income Tax- Corporation Tax

## Repeal of Digital Service Tax and Replacement with Significant Economic Presence Tax

**Amendment:** The Act abolishes the digital service tax and replaces it with a significant economic presence (SEP) tax, that will apply to non-resident persons whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace. A non-resident person shall be considered to have significant economic presence where the user of the service is located in Kenya.

Additionally, the Act provides that the tax shall not apply to:

- A non-resident person who offers the services through a permanent establishment.
- Business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication
- A non-resident person providing digital services to an airline in which the government of Kenya has at least forty-five percent shareholding.
- To a non-resident person with an annual turnover of less than five million shillings.

The taxable profit of a person liable to pay the tax shall be deemed to be 10% of the gross turnover, and the rate of tax shall be 30% of the deemed taxable profit subject to Regulations that the CS National Treasury may issue.

The tax and the corresponding tax return are due on or before the 20th day of the month following the month in which the service is offered.

**Implication:**

The 3% effective tax rate (being 10% of the gross turnover multiplied by 30% of the deemed profit) would increase the tax burden on income generated through digital marketplaces, which is currently taxed at a rate of 1.5% of gross turnover under the Digital Services Tax (DST) regime.

The SEP model offers an alternative approach by establishing new nexus rules that tax profits, rather than taxing gross turnover, as is currently the case under the DST framework.

# Income Tax- Corporation Tax

## Minimum Top-up Tax

The Act introduces a minimum top-up tax (MTT) applicable to a "*covered person*" where the combined effective tax rate in respect of that person for a year of income is less than 15%. A covered person means a resident person or person with a permanent establishment in Kenya who is part of a multinational group with a consolidated annual turnover of **EUR 750 million** (*Approximately KES 104 billion*) or more in the consolidated financial statements of the ultimate parent entity in at least two of the previous four years of income immediately preceding the first year of income.

The minimum top up tax is the difference between fifteen percent of the net income or loss for the year of income for a covered person, and the combined effective tax rate for the year of income, multiplied by the excess profit of the covered person.

**Definitions**:

- The **combined effective tax rate** for a covered person shall be the sum of all adjusted covered taxes, divided by the sum of all net income or loss for the year income, multiplied by a hundred.
- The **adjusted covered taxes** are defined as taxes recorded in the financial accounts of a covered person for the income, profits or share of the income or profits of a covered person where the covered person owns an interests, and includes taxes on distributed profits, deemed profit distributions under this Act subject to such adjustments as may be prescribed.
- **Net income or loss** means the sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognized accounting standards in Kenya.
- **Excess profit** means the net income or loss of a covered person for the year of income less:
  - 10% for the employee costs; and
  - 8% for the net book value of tangible assets: Provided that the employee cost and book value of tangible assets may be adjusted as prescribed in regulations

The provisions shall not apply to;

a. A public entity not engaged in business;
b. A person whose income is exempt from tax under paragraph 10 of the First Schedule;
c. A pension fund and the assets of that pension fund;
d. A real estate investment vehicle that is an ultimate parent entity;
e. A non-operating investment holding company;
f. An investment fund that is an ultimate parent entity;
g. A sovereign wealth fund; or
h. An intergovernmental or supranational organization including a wholly owned agency or organ of the intergovernmental or supranational organization.

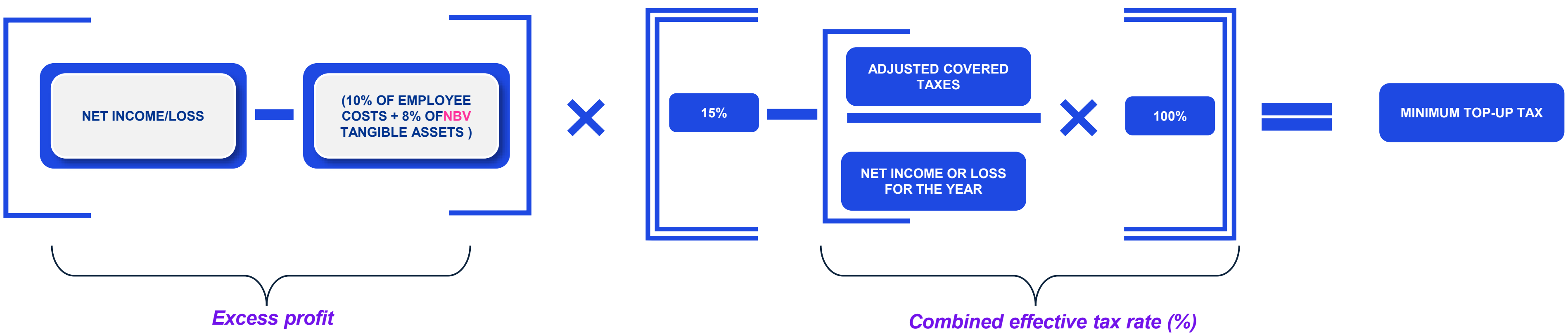
# Income Tax- Corporation Tax

## Minimum Top Up Tax Calculation

**Implication:** The amendment, which provides for the introduction of a MTT on covered persons in Kenya, seeks to align with the Global Anti-Base Erosion (GloBE) Model Rules under Pillar Two of the Organization for Economic Cooperation and Development (OECD) Inclusive Framework. These rules seek to address the challenges arising from digitalization of the economy. The GloBE Rules allow source countries to introduce a miminum tax to be included in the domestic law of a jurisidiction, which gives taxing right to either the source or parent entity jurisdiction to ensure that multinational entities are subject to a minimum tax rate of 15%.

We expect that Cabinet Secretary shall introduce detailed regulations to provide guidance on the application and interpretation of proposed provisions.

Multinational entities operating in Kenya, particularly those benefitting from tax incentives such as Special Economic Zones (SEZs), Export Processing Zones (EPZs), and capital allowances, are likely to be affected by this legislation as the MTT could trigger a top-up tax for those MNE's whose effective tax rate falls below the 15% threshold.



# Income Tax- Corporation Tax

## Aligning late income tax filing penalties for EPZ enterprise to the TPA

**Amendment**: The Act has removed the daily penalty of **KES 2,000**.

**Implication**: This amendment seeks to move the penalty regime for filing income tax returns by EPZ enterprises to the Tax Procedures Act. The Act now charges a penalty of **KES 20,000** per month for each month the EPZ enterprise's income tax return remains outstanding.

## Reduced CGT – 15% to 5%

**Amendment**: The Act has reduced the CGT rate from 15% to 5% for the transfer of investments, provided that the Nairobi International Financial Centre Authority certifies the investment to be at least three billion shillings in at least one entity incorporated or registered in Kenya within a two-year period. Additionally, the transfer of investment must occur after five years from the date of the initial investment.

**Implication**: This is a welcome provision which is geared towards incentivizing investors to set up their business or acquire existing businesses which are registered or incorporated in Kenya. The upshot of this is to attract  significant foreign direct investments in Kenya.

# Income Tax- Corporation Tax

### One stop registration for retirement, pension and provident funds

**Amendment:** The Act has removed the requirement for retirement, pension and provident funds (the funds) to be registered with the Commissioner for Domestic Taxes. It limits registration of these funds to the Retirement Benefits Authority (RBA)

Additionally, the Act defines the funds to mean those which have been registered with the RBA.

**Implication:** The funds are already exempt from income tax under the Frist Schedule to the ITA. Thus, this amendment alleviates the administrative burden associated with dual registration by eliminating the requirement to register with Kenya Revenue Authority.

### Clarity on taxation of income from government and development partner grant financed projects

**Amendment:** The Act brings to tax any other income that is not directly related to a grant financed project under an agreement between the government and a development partner.

**Implications:** Income earned by non-resident contractors, subcontractors, consultants or employee that is not directly related to these projects shall be subject to tax. This is meant to broaden the tax base by seeking to bring to the tax net any additional income accrued by the non-resident contractors or subcontractors.

### Broadening the tax net

**Amendment**: The Act brings the following incomes within the tax net :

- Income of a registered family trust.

**Implication**: The above provision seeks to broaden the tax base and in turn increase tax revenues. Compared to the Tax Laws (Amendment) Bill, the Act has maintained key incomes as exempt such as principal sum of a registered family trust, National Housing Development Fund and transfer of title of immovable property to a family trust remains exempt.

### One focal point for tax rates

**Amendment:** The Act has substituted Section 34 of the ITA with a revised Section 34 providing that the rates of tax for various items is as provided under the Third Schedule and Ninth Schedule to the ITA where applicable.

**Implication:** This seeks to simplify reading and interpretation of the ITA by ensuring that there is one reference point for rates of tax. With this amendment, it is interesting to note that withholding tax might not necessarily be the final tax on some qualifying streams of income such as dividends and interest as was the case previously.

# Income Tax- Corporation Tax

### Reduction in cumulative investment value outside Mombasa and Nairobi from KES 2B to KES 1B.

**Amendment:** The Act amends the Second Schedule to the ITA by reducing the cumulative investment value in the preceding three years outside Mombasa and Nairobi from two billion shillings to one billion shillings for an entity to claim 100% investment allowance.

**Implication:**

The amendment seeks to attract more investment outside Nairobi and Mombasa. This has the potential of promoting economic development in other areas outside Nairobi and Mombasa in a bid to decongest these cities while at the same promote even development across the country.

# Income Tax Act – Withholding Tax

## WHT on payment on digital marketplace

**Amendment:** The Act brings into the ambit of tax the income of a resident or non-resident person derived, being the owner or operator of a digital marketplace or platform, who makes or facilitates payments in respect of digital content monetization, property or services. The income of such person from dealings with persons in Kenya is deemed to be income which is accrued in or was derived from Kenya and is subject to withholding tax at the rate of 20% for non-residents and 5% for residents.

Additionally, the Act has included the definition of “platform” to mean a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer.

**Implication:** Within a digital marketplace or platform, the key players involved are the buyer, seller and the provider of a digital marketplace. The change seeks to bring into the ambit of withholding tax income earned by providers of services through this digital marketplace or platform.

This will significantly increase the cost of services provided through online platforms and may negatively impact digital trade, especially considering withholding tax rate of 20% on payments made to non-resident persons.

# Income Tax- Withholding Tax

### WHT at the rate of 0.5% and 5% for resident and non-resident on supply of goods to a public entity

**Amendment:** The Act has amended Section 35 of the ITA to subject withholding tax on the supply of goods to a public entity.

At the same time, the Act has introduced the definition of the term public entity as "a ministry, state department, state corporation ,county department or agency of the National or County Government"

**Implication:**

The amendment seeks to bring income derived from the supply of goods to public entities under the ambit of withholding tax.

Government entities are major consumers of goods, and this legal provision primary objective is to address concerns that many unscrupulous small or informal suppliers to the government are not tax compliant, hence the revenue leakage.

The definition also provides clarity on what qualifies as a public entity.

### WHT at the rate of 1.5% on sale of scrap

**Amendment:** The Act amends Section 35 of the ITA to subject sale of scrap to withholding tax at the rate of 1.5%.

**Implication:**

The amendment seeks to bring income derived from the sale of scrap within the purview of withholding tax. This amendment may discourage entities from participating in sale of scrap in Kenya largely because of the additional tax burden.

This is an additional proposal that was not in the Bill.

# Pay As You Earn

# Pay As You Earn

## Deletion of the definitions for wife's employment income

**Amendment:** The Act has deleted the definitions of wife's employment income; wife's professional income; wife's professional income rate; wife's self-employment income; and wife's self-employment income tax rate.

**Implication**: The deletion is a clean up measure to ensure that the law aligns to more gender-neutral language and to standardize the treatment of spousal income across genders including husbands.

## Increase in pension allowable deduction

**Provision:** The Act has increased the allowable pension contribution made by an individual/employer to a pension fund from **KES 20,000** per month to **KES 30,000** per month

**Implication**: This provision will encourage increased savings towards retirement and increase the employees' disposable income as the pension contribution will be deducted from the gross salary when determining tax payable.

In view of the deletion of the requirement to have retirement, pension and provident funds registered with the Commissioner, this exemption is expected to apply irrespective of registration with the Kenya Revenue Authority.

# Pay As You Earn

## Expanded tax deductible non-cash employment benefit

**Amendment:** The Act has increased the allowable aggregate value of employment non-cash benefits of whatsoever nature from the current maximum of **KES 36,000** p.a to **KES 60,000** p.a.

**Implication:**

This will benefit employees with additional perks without increasing their taxable income and potentially higher job satisfaction. Employers may also benefit by offering these perks as they can attract and retain top talent while minimizing payroll taxes.

## Enhanced meal benefits for staff

**Amendment:** The Act has increased the allowable value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer meal benefit from **KES 48,000** p.a. to **KES 60,000** p.a.

**Implication:** This amendment is significant given the high inflation and rising cost of living. This will also encourage employers to offer meals to their employees thereby saving them money on daily expenses and effectively enhancing their overall compensation package.

# Pay As You Earn

## Unfettered benefit for public officers

**Amendment:** The Act excludes from tax, amounts paid or granted to a public officer pursuant to any written law or statutory instrument, with effect from 27th July 2022, to reimburse an expenditure incurred for the purpose of performing official duties notwithstanding ownership or control of any assets purchased.

Implication: This provision creates a disparity in the treatment of reimbursements between public and private sector workers. It is also open to abuse especially where it appears to suggest that costs for purchase of assets can be reimbursed regardless of who owns the assets

It is also interesting to see how this amendment will apply retrospectively.

## Higher interest deduction for mortgage holders

Amendment: The Act has increased the deductible interest payments on loans borrowed from approved and registered financial institutions for the purposes of improvement or construction of a first residential premise and occupied by the individual during the year from KES 300,000 p.a to KES 360,000 p.a.

**Implication:**

This proposal may incentivize homeownership by reducing the financial burden associated with purchasing a home, thus facilitating access to housing for more individuals and families. This proposal may also promote stability in the housing market and stimulates economic growth by encouraging investment in real estate and related industries.

## Tax deductions on AHL, SHIF and post retirement medical contributions

**Amendment:** The Act has introduced tax deductions on contributions made by an employee to the Social Health Insurance Fund (SHIF) and any deduction made under the Affordable Housing Act, 2023.

The Act also introduces a tax deduction limited to **KES 15,000** per month for contributions made by an individual to a post-retirement medical fund.

**Implication:** These provisions will provide the much-needed reprieve for taxpayers by lowering their taxable income and reducing their overall tax burden.

## AHL and Post-retirement medical fund relief removed

**Amendment:** The Act removes affordable housing contribution and Post-retirement medical fund relief reliefs.

**Implication**:

This provision goes hand in hand with the introduction of tax deduction on the Post - retirement medical fund and AHL deductions, the government appears to be opting for tax deductions rather than tax reliefs for most of these deductions.

# Pay As You Earn

## Exemption of pension benefits

**Amendment:** The Act exempts from tax, payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund or National Social Security Fund (NSSF) to individuals upon attainment of the retirement age as provided by the rules of the specific fund.

Additionally, the Act adjusts the period upon which one can withdraw funds without being taxed from fifteen years to twenty years.

The Act also provides for exemption where:

- Payment of gratuity or other allowances is made under a public pension scheme;
- Payment of a retirement annuity is made; and
- An individual withdraws from the fund prior to attaining the retirement age due to ill health; or withdraws from the fund after twenty years from the date of registration as a member of the fund.

**Implication**:

The amendment is a reprieve to people contributing to the pension scheme as they will not be taxed upon withdrawal of the funds after 20 years of being a member of the fund.

now seeks to exempt from tax, withdrawals made by a member who has been a member of a retirement for more than 20 years.

e provision will delay individuals' ability to access their retirement funds without incurring taxes by extending the minimum tax-free withdrawal period from 15 years to 20 years. This means individuals must wait longer before they can access their retirement savings tax-free, unless they meet specific exemption criteria such as ill health or withdrawal at the official retirement age.

This will be a reprieve for retirees who retire at 60 years who would only enjoy the exemption after attaining 65 years.

Further, the exemption for individuals who retire early due to ill health may cushion such persons from their sudden and unplanned loss on income.

# Value Added Tax

# Value Added Tax

## Time of supply for exported goods

**Amendment**: The Act defines the time of supply for exported goods by indicating that the time of supply for exported goods shall be the time when the certificate of export or such other equivalent export document has been issued by the Customs.

**Implication** : The objective of the definition is to ensure that the exported goods have exited the country. As guided by the East Africa Customs Management Act (EACCMA), goods are considered to have exited the country upon the issuance of Certificate of Export (COEs).

From experience, there are often delays in issuance of COEs. This provision may be challenging to implement from a timing perspective given that information relating to tax invoices generated by E-TIMS is transmitted in near real time for declaration in the VAT returns.

This timing difference will be in contradiction with the legal provisions on the time of supply of exported services.

## Application of East African Community Customs Management Act

**Amendment** : The Act has amended the VAT Act to ensure rules under EACCMA cover exported goods.

**Implication:** This will align the VAT Act with the practice as per EACCMA.

# Value Added Tax

## Change in input VAT apportioning rule

**Amendment**: The Act abolishes the thresholds used in determining whether to claim the full input VAT credit in the case of companies making both taxable and exempt supplies.

**Implication:** Currently, entities making exempt supplies of more than 90% of total sales are not entitled to an input VAT deduction. Conversely, entities making exempt supplies of less than 10% are entitled to a full input VAT deduction.

As per the Medium-Term Revenue Strategy (MTRS) issued by the National Treasury, the apportioning threshold has been subject to abuse which has led to loss of government revenue.

Through this proposal, entities making both exempt and taxable sales will be required to claim input VAT in proportion to its taxable supplies in instances where they cannot directly attribute input VAT to a taxable or exempt supply.

This also means that entities making both exempt and taxable sales will be required to account for reverse VAT on imported services in proportion to their exempt supplies. This will be a departure from the current regime where entities with exempt sales of less than 10% are not required to account for reverse VAT on imported services.

## Transfer of a business as a going concern

**Amendment** : The Act has reclassified transfer of business on a going concern (TOGC) from standard rated to exempt.

**Impact :** This is a significant change as firms investing in new businesses or firms consolidating their businesses will have a significant upfront cash flow saving.

While this can be beneficial to the buyer, any input VAT directly attributable to the TOGC will not be claimable in the VAT return.

## Repeal of exemption in the manufacturing sector

**Amendment:** The Act has revoked the exemption provided to investors in the manufacturing sector on capital goods where the Cabinet Secretary could determine that such goods were used to promote investment in the manufacturing sector and the value of such investment was not less than two billion shillings.

**Implication: Any exemption granted after 1st January 2024 will be deemed invalid and KRA may seek to recover the VAT not paid. In addition, effective 1st January 2025, the investments in manufacturing sector will attract VAT which could discourage investment in the sector,**

# Value Added Tax

## VAT relief arising from a permanent credit position from 1 July 2022

**Amendment**: The Act introduces a new provision allowing a person with a permanent credit position caused by the changes in classification of their taxable supply from standard rated to either zero rated or exempt from 1 July 2022 to apply for VAT relief within 6 months after the commencement of this provision.

> Implication : This provision seeks to provide relief for taxpayers in a permanent credit position which arose from changes introduced by the Finance Act, 2022 by allowing them to be able to apply for refund of the excess input tax which existed on 1st July 2022 . However, the registered persons have an open window of only 6 months to be able to apply for refund for the excess credit that the persons incurred due to the changes in the law on 1 July 2022.

# Zero-rated - Exempt

The Act amends the following items by moving them from zero-rated to exempt:

| Item | Tax Laws (Amendment) Bill proposed amendment | Current rate |
|---|---|---|
| All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products on recommendation of the Cabinet secretary of agriculture.* | Exempt | Zero rated |
| Agricultural pest control products* | Exempt | Zero rated |
| Fertilizers of chapter 31 | Exempt | Zero rated |
| Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the cabinet secretary responsible for agriculture. | Exempt | Zero rated |

**Implication:** Agricultural pest control products, fertilizers, and related inputs and raw materials are currently zero-rated for VAT purposes. The exemption of these products could lead to higher costs for manufacturers, which may, in turn, result in increased prices for farmers.

This could negatively impact agricultural productivity and potentially discourage investment in local agricultural manufacturing. Such changes may also undermine the country's food security by making essential agricultural inputs more expensive and less accessible.

# Exempt – Standard rated

| Item | Tax Laws (Amendment) Act provision | Current Provision |
|---|---|---|
| IP super soft fluff pulp - for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00 | Standard | Exempt |

# Exempt – Standard Rated

| Item | Tax Laws (Amendment) Act provisions | Current Provision |
|---|---|---|
| Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax: Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy | Standard rated | Exempt |
| Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00 except those used in the manufacture of baby diapers sanitary towels (pads) and tampons | Standard rated | Exempt |

# Standard rated-Exempt

| Item | Tax Laws (Amendment) Act provisions | Current Provision |
|---|---|---|
| All goods including material supplies, equipment, machinery and motor vehicle for use by The Defence Forces Welfare Services and The National Intelligence Service | Exempt | Standard rated |
| Taxable goods of Chapter 5407 and 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for investments, trade and industry. | Exempt | standard rated |

# Excise Duty

# Excise Duty

### Introduction of Excise Duty for services offered by non-residents through digital platforms

**Amendment:** The Act has introduced Excise Duty on non- residents providing excisable services through digital platforms. It provides that Excise duty shall be payable by the non-resident person offering the service.

**Implication:** The taxes on digital services aim to capture revenue from online activities by persons who earn income through digital platforms in Kenya. Apart from the proposed excise duty, there are proposals to introduce withholding tax on income from digital marketplaces, and a new significant economic presence (SEP) tax.

The change will increase operational costs for digital service providers and this additional cost will most likely be passed on to consumers.

As a result, the cost of certain critical digital services such as e-learning, remote jobs for Kenyans and other online businesses in the growing digital economy will be negatively impacted.

### Introduction of a new item under Motor vehicle tariff heading 87.02,87.03 and 87.04

Under description of Motor vehicles of tariff heading 87.02,87.03 and 87.04 the Bill proposes to add the following item immediately after item (I)" locally assembled electrical vehicles" .The effect of this is to exempt such motor vehicles from excise duty which is currently at the rate of 20%

**Implication:** This proposal aims to protect local industries assembling electrical vehicles .

### Introduction of Excise Duty Remission for spirits

**Amendment:** The Act seeks to allow the Cabinet Secretary National Treasury to grant Excise Duty Remission for spirits manufactured from agricultural products (except barley) manufactured in Kenya.

**Implication:** This will encourage local manufacturers of spirits in Kenya to source for the raw materials locally. This particularly may be advantageous to the local farmers as it will translate to increased demand of the agricultural products.

### Payment of Excise Duty on manufactured alcoholic beverages

The Act has increased the period licensed manufacturers of alcoholic beverages are required to account for the Excise Duty from 24 hours to 5 working days.

**Implication:** This will assist in reducing the administrative burden of accounting for Excise Duty on daily basis. It will also help in improving their cashflows of the manufacturers.

### Definition of digital lender

The Act has included the definition of ‘digital lender’ to mean ‘a person holding a valid digital credit providers license issued by the Central Bank of Kenya.’

**Implication:** This addition will provide clarity on the definition of a ‘digital lender’ for Excise Duty purposes.

# Excise Duty

## Introduction of the definition of "fees charged by digital lenders"

**Amendment:** The Act defines fees charged by digital lenders as follows: "*includes any fees, charges or commissions charged by digital lenders relating to their licensed activities but does not include interest, pre-loan interest, post-loan interest, return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the insurance Act or regulations made thereunder.* "

**Implication:** This brings clarity on the fees chargeable to excise duty in relation to digital lenders.

## Introduction of the definition of small independent brewer

**Amendment:** The Act defines a small independent brewer as "*manufacturers of beer, cider, perry, mead, opaque beer, wine and fortified wines and mixtures of fermented beverages with nonalcoholic beverages manufactured whose production volume does not exceed 150,000 litres per month.*"

**Implication:** This brings clarity on the definition of small independent brewers for purposes of excise duty.

# Excise Duty

## Revision of Excise Duty on Various products under Paragraph 1 second Table of the Excise Duty Act

| Description | New Excise rate | Old excise rate |
|---|---|---|
| Imported sugar excluding sugar imported by a registered manufacturer and raw sugar imported for processing by licensed sugar refinery | KES. 7.50 per KG | KES 5.00 per KG |
| "Cigarette with filters (hinge lid and soft cap") | KES 4100 per mille | KES 4067.03 per mille |
| "Cigarettes without filters (plain cigarettes") | KES 4100 per mille | KES 2926.41 per mille |
| "Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences" | KES 2000 per KG | KES 1594.50 per KG |
| "Liquid nicotine for electronic cigarettes" | KES 100 per milliliter | KES 70 per milliliter |
| "Imported sugar confectionary of tariff heading 17.04; | KES 85.82 per KG | KES 42.91 per KG |

# Excise Duty

## Revision of Excise Duty on Various products under Paragraph 1 second Table of the Excise Duty Act

| Comments | Description | New Excise rate | Old excise rate |
|---|---|---|---|
| Amendment | "Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits" | KES 22.50 per centiliter per pure alcohol | KES 243.43 per liter |
| Amendment | "Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%"<br><br>Provided that Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spiritious beverages manufactured by licensed small independent brewers shall be subject to the proposed rate. | KES 22.50 per centiliter per pure alcohol<br><br>KES 10 per centilliter of pure alcohol. | KES 142.44 per mille<br><br>KES 0 |
| Amendment | "Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%" | KES 10 per centiliter of pure alcohol | KES 356.42 per Liter |
| Substituted | "Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90"<br><br>Imported self-adhesive plates, sheets, films, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff number 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East Africa Community Partner states that meet the East Africa Community Rules of Origin. | 25% or KES 75 per KG whichever is higher | 25% |

# Excise Duty

**Amendment of applicable Excise Duty rates for excisable goods of Part I to the First Schedule of the Excise Duty Act**

| Description* | New rate of Excise Duty |
|---|---|
| Imported Electric transformers and parts of tariff codes 8504.10.00,8504.21.00,8504.22.00,8504.23.00,8504.31.00,8504.32.00,8504.34.00. | 25% |
| Imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin. | 15% |
| Imported Ceramic sinks, wash basins, wash basin pedestals ,baths, bidets ,water Closet pans, flushing ,cisterns, urinals and similar and sanitary fixtures of tariff heading 6910 | 5% of customs Value or KES 50 per KG |
| Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent ,reflecting or non-reflecting layer, but not otherwise worked of tariff 7007 | 35% of customs value or KES 200 per KG |
| Imported Ceramic flags and paving, health or wall tiles :unglazed ceramic mosaic cubes and the like whether or not on a backing, finishing ceramics of tariffs 6907 | 5% of Customs value or KES 200 per KG |
| Coal | 2.5% of customs value |

*These items were previously not excisable.

# Excise Duty

**Introduction of Excise Duty rate for excisable goods of Part I to the First Schedule of the Excise Duty Act**

| Commodity Code* | Description | New rate of Excise Duty |
|---|---|---|
| 3907.99.00 | Imported Saturated Polyester | 20% |
| 3905.21.00 | Imported polymers of vinyl acetate/Vinyl esters | 20% |
| 3903.90.00 | Imported emulsion –styrene acrylic | 20% |

***These items were previously not excisable.**

# Excise Duty

**Revision and Introduction of Excise Duty on the Various products under Paragraph 1 of the Excise Duty Act**

**Implication of the excise duty updates:**

The amendments to the First Schedule of the Excise Duty Act aim to review the excise duty rates for various products, with the goal of strengthening the protection of local industries that produce similar goods.

At the same time, the reduction in excise duty on alcoholic products is part of the government's Medium-Term Revenue Strategy. This approach seeks to revise the tax structure based on the alcohol content of the products, while considering the need for harmonization within the East African Community (EAC) region. The government also plans to impose excise duty based on alcohol content to discourage excessive consumption, given the associated health risks.

The introduction of excise duty on coal is intended to reduce its use as an energy source due to its negative environmental impact.

Imported fertilized eggs for incubation imported by licensed incubators are exempt from excise duty.

Additionally, expanding the scope of excise duty to cover a wider range of plastic items aims to reduce the use of plastic packaging, whether locally manufactured or imported.

The Act has amended the duty rates for various products to exclude those originating from EAC Partner States and provide for both specific and ad valorem rates for Excise Duty.

Lastly, the alignment of the description of goods under tariff line 3903.20.00 in the Excise Duty Act with the East African Community Common External Tariff may result in certain products being subject to excise duty.

# Excise Duty

**Changes in rates for excisable services**

| Item | New rate | Old rate |
|---|---|---|
| Betting | 15% | 12.5% |
| Gaming | 15% | 12.5% |
| Prize competition | 15% | 12.5% |
| Lottery (excluding charitable lotteries) | 15% | 12.5% |
| Fees charged on advertisement via the internet and social media | 15% | 0% |

**Implication**

The increase in Excise Duty on betting, gaming, prize competitions, and lotteries is intended to reduce the consumption of services that are deemed harmful to the well-being of citizens. Imposing excise duty on internet and social media advertisements would increase costs, potentially reducing digital marketing.

# Miscellaneous Fees & Levies Act

# Miscellaneous Fees & Levies Act

### Increase in Railway Development Levy (RDL)

**Amendment**: The Act has revised the railway development levy from 1.5% to 2.5% of the customs value of imported goods.

**Implication**: As an effort to reduce the cost of imports and incentivize growth in the local manufacturing industry by reducing the cost of raw materials, The Finance Act, 2023 had reduced RDL from 2.5% to 1.5%.

This provision to return the RDL rate back to 2.5% is likely to reverse any economic progress made through Finance Act 2023.

### Inclusion of other goods in the exports and investment promotion levy rate

**Amendment**: The Act has included sack kraft bleached of tariff 4804.29.00 and 4804.39.00 at 10% of customs value in the export and investment promotion levy rate.

**Implication**: This provision intends to boost manufacturing of bleached sack kraft and increase exports.

### Exemption from IDF and RDL

**Amendment**: The Act has exempted goods imported by the National Intelligence Service and the Defence Forces Welfare Services from IDF and RDL.

The Act also exempts goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for industry.

**Implication**: This provision is aimed at reducing the cost of raw materials for the textile industry and therefore contribute to an increase in manufacture of textile products in the country. This is aimed at reducing imported finished products.

# Contacts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