Tax Laws (Amendment) and Tax Procedures (Amendment) Bills, 2024

Kenya

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Foreword

The new **Tax Laws (Amendment) Bill, 2024 and Tax Procedures (Amendment) Bill, 2024**, follow the rejection of the Finance Bill, 2024 and present 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 new proposals refine those proposals and introduce new measures which are expected to align with Kenya's broader economic priorities, including expanding the tax base, promoting business investment, and addressing the challenges posed by the evolving global economic landscape.

Among the proposed changes is the introduction of 30% Significant Economic Presence (SEP) Tax to replace the Digital Service Tax. SEP tax is set to change the business landscape for non-residents who carry on businesses over digital marketplaces.

The Bill also proposes the introduction of a 5% withholding tax on interest earned from infrastructure and social bonds.

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

For personal income taxes, the government appears to be opting for tax deductions rather than tax reliefs. An example of this is the proposal to remove affordable housing levy and post-retirement medical fund relief but allow for the deduction of the payments when computing taxable income.

On employment benefits, the Bill proposes to expand the tax exempt non-cash employment benefits from KES 36,000 per year to KES 60,000 and increase of the value of tax free meals provided by employers from KES 48,000 to KES 60,000.

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

The Tax Procedures (Amendment) Bill, 2024 has introduced amendments relating to tax processes, compliance, and general tax administration.

Key provisions of the Bill include the proposed extension of the amnesty on interest, penalties and fines to 30 June 2025. The qualifying tax period for the amnesty will remains the period up to 31 December 2022.

It remains to be seen how the government will address the concerns raised by the public

Income Tax - Corporation Tax

Income Tax

Donations now defined

Proposed provision: The Bill proposes to define ‘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 as to what constitutes a donation for purposes of qualifying for exemption under the First Schedule to the ITA.

Income Tax - Corporation Tax

Definition of “Royalty” broadened

Proposed amendment: The Bill proposes expanding 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 bill 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 - Corporation Tax

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

Proposed amendment: The Bill proposes the abolition of the digital service tax and its replacement with a significant economic presence (SEP) tax, that will apply to non-resident person 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 Bill proposes 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.

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.

He 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 proposed 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 Bill proposes to introduce 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%. 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 shall be 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 recognised 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 public entity not engaged in business;
- A person whose income is exempt from tax under paragraph 10 of the First Schedule;
- A pension fund and the assets of that pension fund;
- A real estate investment vehicle that is an ultimate parent entity;
- A non-operating investment holding company;
- An investment fund that is an ultimate parent entity;
- A sovereign wealth fund; or
- An intergovernmental or supranational organization including a wholly owned agency or organ of the intergovernmental or supranational organization.

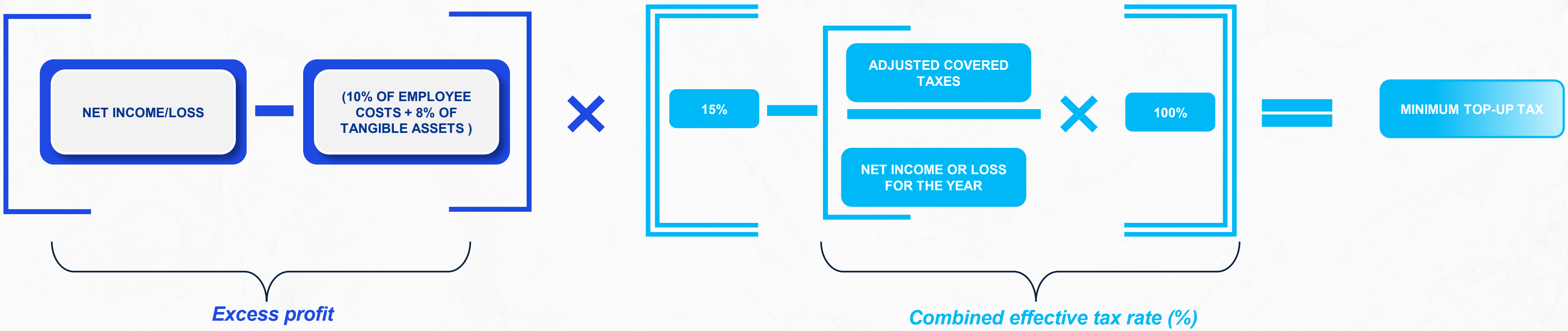
Income Tax - Corporation Tax

Minimum Top Up Tax Calculation

Implication: The proposal, 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 which seeks 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.

Kenya offers a variety of incentives through the Special Economic Zone (SEZ) and Export Processing Zone (EPZ), and capital allowances. This proposal will roll back tax incentives for in-scope multinational entities.



Income Tax- Corporation Tax

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

Proposed provision: The Bill proposes to remove the daily penalty of **KES 2,000**.

Implication: This proposal seeks to move the penalty regime for filing income tax returns by EPZ enterprises to the Tax Procedures Act. The Bill now proposes to charge 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%

Proposed provision: The Bill proposes to reduce 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 proposal which is geared toward 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 the significant foreign direct investments in Kenya.

WHT on interest on infrastructure and social bonds

Proposed provision: The Bill proposes to introduce withholding tax of 5% on interest paid to resident and non-resident persons respectively on Bonds, notes or other similar securities used to raise funds for infrastructure and other social services that are listed after commencement of the new proviso under the proposed amendment;

For existing Bonds, notes or other similar securities that are listed prior to commencement of the proposed change, the Bill imposes a condition that exemption from WHT shall only apply on bonds, notes or similar securities with a maturity of at least three years and to the extent that such instruments are used to raise funds for infrastructure and other social services, projects and asset defined under the Green bond standard and guidelines.

Implications: The proposal seeks to bring into the tax net, taxpayers that have been levering on tax exemptions of infrastructure and other social services bonds, notes and similar securities.

The interest paid would be a final tax for individuals but an advance tax for corporate taxpayers. Effectively, corporate taxpayers, would be subject to the corporate rate of tax on gains from infrastructure bonds under Paragraph 60.

It is important to note that while the change is introduced under Paragraph 60 of the First Schedule, Paragraph 51 which also deals with tax exemption of infrastructure bonds has not been impacted resulting in potential interpretation challenges.

Income Tax- Corporation Tax

KRA registration requirement removed for retirement, pension and provident funds

Proposed provision: The proposed amendment seeks to remove the requirement for retirement, pension and provident funds (the funds) to be registered with both the Commissioner for Domestic Taxes and the Retirement Benefits Authority (RBA). The proposal is to restrict registration of these funds to the RBA.

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

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

Proposed provision: The Bill proposes to bring 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.

Broadening the tax net

Proposed provision: The Bill proposes to bring the following incomes within the tax net :

- Income or principal sum of a registered family trust;
- Income of the National Housing Development Fund; and
- Capital gains relating to the transfer of title of immovable property to family trust.

Implication: The above provision seeks to broaden the tax base and in turn increase tax revenues. Compared to the Finance Bill,2024 this Bill has maintained key incomes as exempt such as income from amateur sports investments, registered trust schemes, and funds withdrawn by first-time homebuyers from the National Housing Development Fund

One focal point for tax rates

Proposed provision: The Bill proposes to substitute 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 proposal seeks to simplify reading and interpretation of the ITA by ensuring that there is one reference point for the rates of tax.

Income Tax Act – Withholding Tax

WHT on payment on digital marketplace

Proposed provisions: The Bill proposes to bring 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, goods, 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 Bill proposes to include 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 the income earned by a seller selling goods or services through this digital marketplace or platform.

The proposal will significantly increase the cost of goods purchased through online platforms and will negatively impact digital trade, especially taking into account the withholding tax rate of 20% on payments to external persons.

Income Tax- Withholding Tax

Incomes from supply of goods to public entity to be subjected to WHT

Proposed amendment: The Bill proposes to amend Section 35 of the ITA to subject withholding tax on the supply of goods to a public entity.

At the same time, the Bill 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"

The withholding tax rate on supplies to public entities shall be 5% for non-residents and 0.5% for residents.

Implication:

The proposed amendment seeks to bring income derived from the supply of goods to public entities, as well as from the facilitation of payments on digital marketplaces, under the scope of Withholding Tax (WHT).

Government entities are major consumers of goods, and this tax aims to address concerns that many small or informal suppliers to the government fail to meet their tax obligations.

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

Pay As You Earn

Pay As You Earn

Deletion of the definitions for wife's employment income

Proposed amendment: The Bill proposes to delete 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 proposed 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

Proposed provision: The Bill proposes to increase the allowable pension contribution made by an individual to a pension fund from **KES 20,000** per month to **KES 30,000** per month

Implication: This proposal 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 proposed 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

Proposed provision: The Bill proposes to increase 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 proposal 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

Proposed provision: The Bill proposes to increase 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 proposal is significant given the high inflation and rising cost of living. This proposal 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

Higher interest deduction for mortgage holders

Proposed provision: The Bill proposes to increase 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

Proposed provision: The Bill proposes to introduce 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 Bill also proposes to introduce a tax deduction limited to **KES 15,000**

Implication: These proposals 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

Proposed provision: The Bill proposes to remove affordable housing contribution and Post-retirement medical fund relief

Implication:

This proposal 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

Proposed provision: The Bill proposes to exempt 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 Bill proposes to adjust the period upon which one can withdraw funds without being taxed from fifteen years to twenty years.

The Bill 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 proposed 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.

If passed into law, this proposal 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

Proposed Provision : The Bill proposes to define 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 proposed 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 proposal 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

Proposed provision : The amendment proposes to expand the scope of EACCMA to also include exported goods.

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

Value Added Tax

Change in input VAT apportioning rule

Proposed provision : The Bill proposes to abolish 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

Proposed provision : The Bill proposes to reclassify 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.

Substituted Provisions

Proposed provision: The Bill proposes to delete paragraph 69 of the First Schedule of the VAT Act “Carrier tissue white of tariff number 4703.21.00” and substitute it with “goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, sanitary towels (pads) and tampons”.

Zero-rated - Exempt

The Bill has proposed to amend 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 proposed 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) Bill proposed amendment	Current Provision
IP super soft fluff pulp - for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00	Standard	Exempt
Entry fees into the national parks and national reserves.	Standard	Exempt
The services of tour operators	Standard	Exempt
Spacecraft (including satellites) and suborbital and spacecraft launch vehicles	Standard	Exempt

Exempt – Standard rated

Item	Tax Laws (Amendment) Bill proposed amendment	Current Provision
Betting, gaming and lotteries services	Standard rated	Exempt
Hiring, leasing and chartering of aircrafts, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00	Standard rated	Exempt
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
Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector which value of such investment is not less than two billion shillings	Standard rated	Exempt
Direction finding compasses, instruments and appliances for aircrafts	Standard rated	Exempt
Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion.	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) Bill proposed amendment	Current Provision
All goods of Chapter 88 that includes Aircraft, spacecraft, and parts thereof but excludes helicopters*	All Exempt	Previously the various items were categorised under both Exempt and Standard

*Helicopters shall remain as standard rated under the proposed amendments.

Excise Duty

Excise Duty

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

Proposed provision: The Bill seeks to introduce 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 proposed 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 proposed change if passed into law 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

Proposed provision: The Bill 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 proposal 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 Bill proposes to increase the period licensed manufacturers of alcoholic beverages are required to account for the Excise Duty from 24 hours to 5 working days.

Implication: This proposal 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.

Excise Duty

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

Description	Proposed excise rate	Current 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	Proposed excise rate	Current excise rate
Proposal	"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
Proposal	"Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%" 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 KES 10 per centilliter of pure alcohol.	KES 142.44 per mille KES 0
Proposal	"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
Deleting Substituting with	"Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90" 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*	Proposed rate of Excise Duty
Imported Electric transformers and parts of tariff codes 8504.10.00,8504.21.00,8504.22.00,8504.23.00,8504,31.00,8504.32.00,8504.34.00,8504.90.00	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	35% of customs Value or KES 100 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 7005	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	35% of Customs value or KES 300 per KG
Coal	5% of the value or KES. 27,000/MT whichever is higher

*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	Proposed 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 proposed 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 proposed 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.

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.

Lastly, the proposal to align 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, potentially increasing government revenue.

Excise Duty

Changes in rates for excisable services

Item	Current rate	Proposed rate
Telephone and internet data services	15%	20%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	15%	20%
Fees charged for money transfer services by cellular phone service providers	15%	20%
Betting	12.5%	15%
Gaming	12.5%	15%
Prize competition	12.5%	15%
Lottery (excluding charitable lotteries)	12.5%	15%
Fees charged on advertisement via the internet and social media	0%	20%

Implication

The proposed increase in Excise Duty on telephone and internet data services, as well as on fees charged for money transfer services by banks, money transfer agencies, and cellular providers, may lead to a reduction in the number of transactions. As a result, this could potentially lower Excise Duty collections. 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.

Miscellaneous Fees & Levies Act

Miscellaneous Fees & Levies Act

Increase in Railway Development Levy (RDL)

Proposed provision: The Bill proposes to revise 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 proposal to return the RDL rate back to 2.5% is likely to reverse any economic progress made through Finance Act, 2023.

Tax Procedures (Amendment) Bill, 2024

Tax Procedures Act

Tax Relief In Cases of Recovery Difficulties

Proposed provision: The Bill proposes to introduce Section 37F, immediately after Section 37E, to allow the Commissioner to refrain from assessing or collecting unpaid taxes under certain conditions such as impossibility of recovery, undue difficulty, hardship, or other similar reasons, with the approval of the Cabinet Secretary.

Implication: The proposed amendment, if enacted, shall allow for relief/abandonment of taxes by the Commissioner because of doubt or difficulty in recovery of tax.

Further, the Bill proposes that the Commissioner shall at least every four months publish a notice in the gazette, the names of the taxpayers, the relevant reasons and the amount of taxes abandoned.

At the same time, the Bill proposes that the Cabinet Secretary shall also submit a notice on the amounts of taxes abandoned to the National Assembly and a resolution passed within twenty-one sitting days on which it next sits after the notice is laid.

The proposal would provide scope for relief to taxpayers who are unable to settle tax liabilities upon concurrence with the Commissioner.

Requirements of a valid electronic tax invoice

Proposed provision: The Bill proposes to introduce a new subsection in Section 23 A to prescribe the information that must be captured in an electronic tax invoice to be valid.

Implication: The Finance Act 2023, granted the Commissioner the authority to establish an electronic tax system for issuing tax invoices and recording stocks.

The proposed amendment is aligned with the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 and seeks to prescribe the contents of an electronic invoice to prevent disputes since tax laws are interpreted strictly and not based on intent.

Requirements of a valid electronic tax invoice

Proposed provision: The Bill proposes that where supply is received from a small business or a small-scale farmer whose turnover does not exceed one million, then the **purchaser** shall issue a tax invoice for the purpose of ascertaining tax liability.

Implication: The Finance Act 2023, imposed a requirement that a businesses will required to issue electronic tax invoices through the eTims system and expenses without valid electronic invoices will not be deductible for CIT purposes.

By proposing an alternative invoicing method for taxpayers who are supplied by small scale business owners and farmers, the Bill could potentially address the issue of small business owners and farmers going out of business for not having eTims compliant invoices.

Tax Procedures Act

Extension of Amnesty on Interest, Penalties or Fines

Proposed provision: The Bill has introduced a provision that bars the Commissioner from recovering penalties, interest and fines on a tax debt where a taxpayer had paid the full principal tax before **31 December 2022**.

Where the principal tax had not been paid before that date, a taxpayer may still apply for amnesty of interest, penalties or fines accrued up to 31 December 2022. The taxpayer will also be required to propose a payment plan for the outstanding amount.

This amnesty shall only be granted if the person pays the principal tax not later than **30 June 2025**, does not incur a further tax debt and signs a commitment letter for settlement of all outstanding taxes due.

Penalties and interest will start accruing again in instances where amnesty had been granted but the principal tax has not been fully settled by 30 June 2025. The amnesty shall not apply to taxpayers liable for the tax avoidance penalty. .

Implication:This amendment assures taxpayers of 100% waiver of penalties and interests on principal taxes settled before 31 December 2022. Where tax is agreed for the period on or before 31 December 2022 but not yet paid, the amendment extends the amnesty program to 30th June 2025.

It is critical to note that the qualifying tax period is not changing from the previous 31 December 2022.

This amendment will incentivize out of court settlement of tax disputes where principal taxes are agreed on and settled before 30 June 2025.

However, penalties and interests in relation to taxes due after 1 January 2023, shall not be subject to waiver of any penalties or interests and the penalties.

Waiver of interests and penalties will not be available after 30 June 2025

Tax Procedures Act

Penalty for failure to deduct withholding tax

Proposed provision: The Bill proposes to introduce a penalty of 10% of the amount of withholding tax not withheld or remitted within 5 working days after the deduction.

Implication: Currently, the 10% penalty may only apply if the person is convicted for not remitting withholding tax.

The proposed amendment is intended to remove the requirement of conviction for the 10% penalty to apply where the taxpayer does not remit or withhold tax.

Refund period for overpaid taxes.

Proposed provision: The Bill proposes to amend Section 47 to make a distinction between the refund period for income tax and all other taxes as follows:

> 5 years in case of income tax and within 6 months from the date on which the tax was paid in case of any other tax.

Implication: Currently, the TPA allows for application for refund for other taxes, except Value Added Tax, within a period of 5 years. The proposed amendment seeks to limit the 5-year period for refunds to income taxes only and for a 6-month limit to apply for all other taxes. At present, the 6-month limit for refunds only applies to VAT.

The six months requirement will however require taxpayers to be more vigilant to safeguard against financial loss where the overpayments are discovered after the six-month period.

Tax Procedures Act

Integration of Electronic Tax System with iTax

Proposed provision: The Bill proposes to amend section 59A of the TPA to mandate the Commissioner through a notice in writing to require a person to provide for the integration of electronic tax system with iTax for purposes of submission of electronic documents and facilitate the uptake and deployment of technology to facilitate cost effective revenue collection.

The notice shall not exceed one year and shall depend on the nature of the business.

This provision shall only apply to businesses with a turnover exceeding five million shillings. The integration of the systems will facilitate the transmission of electronic documents for tax purposes thus minimizing human interaction and enhancing revenue mobilisation.

Implication: The integration of the systems will facilitate the transmission of electronic documents for tax purposes real time. This will effectively enhance the revenue authority's visibility over taxpayers' affairs and result in more revenue.

Penalty for failure to integrate the Electronic Tax System

Proposed provision: The Bill proposes to amend Section 59A of the TPA by introducing a penalty not exceeding five hundred thousand shillings for every month or part thereof that the failure to comply with a notice by the Commissioner to integrate the Electronic Tax System continues.

Implication: The proposed introduction of penalties for failure to comply with integration and submission of documents through the system will encourage compliance and uptake of the Electronic Tax System.

The significant cost of non-compliance is geared towards enforcement of revenue collection.

Tax Procedures Act

Computation of time

Proposed provision: The Bill proposes to amend Section 77 to exclude Saturdays, Sundays and public holidays from computation of time for purposes of:

- Submission of tax return, application, notice or other documents;
- Payment of tax; or
- Any other action under a tax law.

Implication: The proposed amendment shall, if passed into law, provide clarity that computation of time shall be based on working days as opposed to the current position where if the deadline falls on a weekend or holiday the previous working day is applicable.

This will provide additional time for dispute resolution but reduce the time available for filing returns and paying tax.

Introduction of penalties for failure to submit returns for Export Processing Zone Enterprises

Proposed provision: The proposed amendment seeks to introduce a late filing penalty of KES 20,000 per month where an EPZ enterprise does not file its income tax return by the due date.

Implication: Currently, a late filing penalty of **KES 2,000** per day is applied where an EPZ enterprise files an income tax return late. This means that such enterprises may pay a penalty of **KES 60,000** per month for as long as the income tax return remains outstanding.

This proposal seeks to move the penalty regime for filing income tax returns by EPZ enterprises to the Tax Procedures Act. Further, the proposed revision of the penalty may be viewed to be less punitive as the daily penalty rate will have been reduced to **KES 20,000** per month i.e., **KES 667** per day.

PIN required for registration of employees working remotely outside Kenya for an employer in Kenya

Proposed provision: The Bill proposes to amend the First Schedule of the Tax Procedures Act to add a new requirement for obtaining a Personal Identification Number (PIN) for employees working remotely outside Kenya for an employer based in Kenya excluding an employee outside Kenya working for the national carrier.

Implication: This proposed change seeks to bring remote workers living outside Kenya into the tax compliance framework when they work for a Kenyan employer. It will ensure that the KRA can account for tax liabilities and collections from income earned through such employment arrangements, regardless of the employee's location.

The provision exempts employees working for a national airline.

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