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RSM EA Newsletter

Overview of The Kenya Tax & Business Laws Amendment Bills, 2024

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INTRODUCTION

The Tax Laws (Amendment) Bill, 2024, the Tax Procedures (Amendment) (No. 2) Bill, 2024 and the Business Laws (Amendment) Bill, 2024 were presented to the National Assembly in November 2024.

The Bills seek to bring about changes to the Income Tax Act, Value Added Tax Act, Excise Duty Act, Miscellaneous Fees and Levies Act and Tax Procedures Act among other Acts, following the withdrawal of the Finance Bill, 2024, in addition to proposing changes to the Special Economic Zones ("SEZ") Act, Employment Act and Standards Act, which have tax implications.

Some of the key changes include:

- Introduction of minimum top up tax
- Repealing of DST and introduction of significant economic presence tax at an effective tax rate of 3%
- Non-taxable benefits threshold now increased to KShs. 60,000 per year from KShs. 36,000 and meal allowance limit now increased to KShs. 60,000 per year from KShs. 48,000 per year
- Pension contribution limit has been increased to KShs. 30,000 per month (KShs. 360,000 per year) from KShs. 20,000 (KShs. 240,000 per year)
- Contributions paid for Affordable Housing Levy and SHIF to be an allowable deduction and not treated as a relief
- Removal of exemption from income tax on income earned by a registered family trust and CGT on transfer of property to a registered family trust
- Transfer of business as a going concern would also be made exempt from VAT
- Extension of the amnesty period to 30th June 2025
- Reintroduction of the Commissioner's powers to abandon the collection of taxes
- Increase of RDL to 2.5%

INCOME TAX ACT

INTRODUCTION OF MINIMUM TOP-UP TAX

Proposal for an introduction of Minimum Top-up Tax (MTT) to be payable by **a covered person**[1] whose combined effective tax rate (ETR) for a year of income is less than 15%. MTT and the Combined ETR of a covered person will be calculated as follows:

MTT = (15% of **net income/loss**[2] – combined ETR) x **excess profit**[3]

Combined ETR = (Sum of all **adjusted covered taxes**[4]) x 100

Sum of all net income/loss

<u>Exemptions</u>

The Bill proposes that the following will be exempt from MTT:

- Public entity that is not engaged in business;
- Institution, body of persons or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education;
- Pension funds and assets of a pension fund;
- Non-Operating Investment Holding Company;
- Real Estate investment vehicle that is an ultimate parent entity;
- Investment Fund that is an ultimate parent entity;
- Sovereign wealth fund; and
- Intergovernmental or supranational organisation including wholly owned agency or organ or the inter-governmental or supranational organisation.

<u>Definitions</u>

For purposes of the MTT, the following definitions will apply:

	Item	Definition
1	A Covered Person	a resident person or person with a permanent establishment in Kenya who is a member of a MNE and the group has a consolidated annual turnover of *750 million Euros or more* in at least 2 of the 4 years of income preceding the tested year of income
2	Net Income or Loss	the sum of 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 standard in Kenya
3	Excess Profit	the net income/loss of a covered person for the year of income less (10% of employee cost + 8% of net book value of tangible assets)
4	Adjusted Covered Taxes	taxes recorded in the financial statement of a constituent entity for the income, profits, share of the income or profits of a constituent entity where the constituent entity own an interest, and includes taxes on distributed profits, deemed profit distribution under the Act subject to such adjustments as maybe prescribed

<u>Implications</u>

Pillar Two Model Rules also known as Global Anti-Base Erosion (GloBE) Rules was designed and agreed by members of the OECD/G20Inclusive Framework on BEPS. The Rules were designed to ensure large MNEs pay a minimum level of tax on the income arising from each jurisdiction where they operate. They are drafted as model rules in a template that jurisdictions can translate into domestic law.

Taxpayers in scope of the rules calculate their effective tax rate for each jurisdiction where they operate, and pay top-up tax for the difference between their effective tax rate per jurisdiction and the 15% minimum rate. Any resulting top-up tax is generally charged in the jurisdiction of the ultimate parent of the MNE.

This proposal seeks to align the international tax regime in Kenya with international best practice such as the one proposed by OECD/G20.

INTRODUCTION OF SIGNIFICANT ECONOMIC PRESENCE TAX

There is a proposal to repeal Digital Services Tax (DST) and replace it with a new type of tax to be known as Significant Economic Presence Tax (SEPT).

SEPT shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried over a digital marketplace. The taxable profit of a person liable to pay SEPT shall be deemed to be 10% of the gross turnover. This taxable profit will then be subjected to tax at the rate of 30%.

The due date for paying SEPT and filing the corresponding tax return will be on or before the twentieth day of the month following the end of the month in which the service was provided.

Exemptions

The Bill proposes that the following will be exempt from SEPT:

- A non-resident person who offer the services through a permanent establishment; or
- Income subject to WHT (under Section 10 of the ITA);
- Income of a non-resident person carries on, in Kenya, the 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; or
- A non-resident providing digital services to an airline in which the Government of Kenya has at least 45% shareholding.

The Cabinet Secretary of the National Treasury may make Regulations in respect to implementation of SEPT.

Implications

The OECD proposed that the Minimum Tax under Pillar Two should replace DST. Therefore, countries were advised to shift from DST in light of the implementation of Pillar Two. It is against this backdrop that the Bill has proposed the introduction of Minimum Top-up Tax (MTT), which is akin to the Minimum Tax under OECD's Pillar Two. In doing so, DST will be phased out.

However, SEPT has been now introduced in the place of DST at a proposed effective rate of 3% of the gross turnover. This rate is notably higher compared to the current rate for DST of 1.5%. While the OECD recommends the phasing out of DST in light of Minimum Tax, Kenya seems to still retain the DST under a different name and while at the same time increasing the rate by four times of the current rate for DST.

To ensure that Kenya remains a competitive business and investment destination, the government should consider fully phasing out DST without replacing it with another similar tax in light of the proposed MTT.

The proposed new definition of a digital marketplace will provide the scope of services that will be subject to the proposed SEPT.

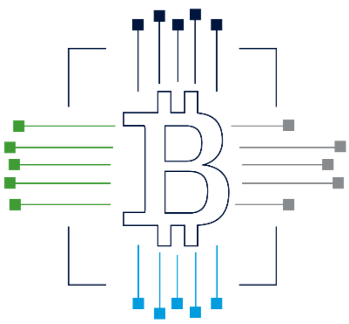
WITHHOLDING TAX (WHT) ON INCOME FROM A DIGITAL MARKETPLACE

Where an owner or operator (resident or non-resident) of digital market place or platform makes or facilitates payment in respect of digital content monetization, goods, property or services, the amount thereof shall be deemed to be income which is accrued in or was derived from Kenya.

A platform is defined as 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

This proposal seeks to expand the scope of income derived from Kenya by including the income of owners/operators of digital marketplace/platforms that facilitate payment for goods, services, property & digital content monetisation irrespective of the tax residence of the owner/operator.



TAXATION OF EMPLOYMENT INCOME

The Bill proposes the following changes in respect to taxation of employment income:

Item	Proposed change	Implication
Non-Taxable Benefits	The allowable limit of non-taxable benefits to be increased from KShs. 36,000 to KShs. 60,000 per year	By increasing the limit of non-taxable benefits and meals provided by employers, the Bill seeks to enhance the employees' welfare in the context of the current economic conditions Some of the amounts in the ITA have remained unrevised for a long time despite the changing economic conditions such as inflation
Meal Allowances	The allowable limit for meals provided by employers to employees to be increased from KShs. 48,000 to KShs. 60,000 per year	
Gratuity and Similar Payments	Gratuity and similar payments in respect of employment or services rendered, which is paid to a registered pension scheme for each year of service that is exempt from tax to be increased to KShs. 360,000 from KShs. 240,000	This will encourage more savings through pension contribution
Contribution to a registered pension fund, provident fund and registered individual retirement schemes	The limit on the deduction in respect of contributions of an employee to registered pension or provident fund to be increased from ***KShs. 20,000 per month*** (KShs. 240,000 per year) to ***KShs. 30,000 per month*** (KShs. 360,000 per year). The rates above shall also apply to an employer contribution to registered fund as long as both contributions do not exceed the maximum allowable limit of KShs. 30,000 per month	
Interest on Loans in respect of Owner Occupied Premises	The limit on deductible interest in respect of loans borrowed from the six specified financial institutions and applied to purchase or improve premises occupied by a person during a year of income for residential purposes to be increased to a maximum of ***KShs. 360,000*** from a maximum of ***KShs. 300,000***	This revised rate will offer greater relief to persons with mortgages and encourage the uptake of mortgages
Affordable Housing Levy	The current Affordable Housing Relief (AHR) of 15% on the amount contributed to affordable housing scheme to be scrapped off by deleting the current provision on AHR under Section 30A The amount of affordable housing levy that an employee contributes will be a deductible expense for purposes of computing the employee's taxable income	Whilst these reliefs will be deleted, corresponding amendments will be introduced to allow such contributions as deductions on the computation of taxable income This will provide a better relief against the numerous statutory deductions hitting the employees' payslip
Contribution to SHIF (Previously NHIF)	The current NHIF relief to be scrapped off by deleting the current provisions under Section 31(1)(c)(v) of the ITA In the place of NHIF relief, the contribution of SHIF will be an allowable deduction	
Contribution to a Post-Retirement Medical Fund (PRMF)	The current post-retirement medical relief (PRMR) of 15% of the amount of contribution to be scrapped off by deleting the current provisions under Paragraph 4 of Part A of the Third Schedule to the ITA Contribution to a post-retirement medical fund subject to a limit of KShs. 15,000 per month	

CHANGES TO CAPITAL GAINS TAX

The Bill proposes to introduce revised conditions for an entity to qualify for reduced CGT rate of 5% by providing that:

Provided that where the Nairobi International Financial Centre Authority (NIFC) certifies that:

- A firm has invested at least KShs. 3 billion in at least one entity incorporated in Kenya within a period of two years; and;
- The transfer of the investment is to be made after five years of the date of investment.

<u>Implications</u>

Under the current ITA, an entity certified by NIFC and invests KShs. 5 billion in Kenya and the transfer of such investment is made after five years, the applicable rate of CGT shall be the rate that was prevailing at the time the investment was made.

The above change seeks to:

- Reduce the amount a firm needs to invest to qualify for this rate from 5 billion to KShs. 3 billion; and
- Introduce an additional condition/clarification that in one or more entities in Kenya the firm has invested in, the investment should be at least KShs. 3 billion within two years.

CGT came into force on 1 January, 2016. Therefore, under the current ITA, firms, which meet the existing conditions and had made the investment before 2016 are exempted from paying CGT since the rate of CGT before 2016 was ideally 0%. This proposal seeks to seal this loophole by providing that CGT will be payable at a minimum rate of 5% even for the entities that meet the above conditions and had made investment before 2016.

TAXATION OF REGISTERED TRUSTS

The following incomes of a trust, which are currently exempt, will now be subject to tax:

a) The income or principal sum of a registered family trust; and
b) Any capital gains relating to the transfer of title of immovable property to a family trust.

<u>Implications</u>

The Finance Act, 2021 introduced tax exemption on the above sources of income to encourage taxpayers to transfer properties to the registered family trusts as part of their estate planning. By reversing the exemptions, the Bill now proposes to revoke the exemptions making these vehicles unattractive for future tax planning.

TAXATION OF PENSION INCOME

The following pension income will not be subject to tax:

Payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund, public pension scheme or National Social Security Fund, upon attainment of the retirement age determined in accordance with the rules of the fund: Provided that this exemption shall also apply to-

a) Payments of gratuities or other allowances paid under a public pension scheme;
b) Payment of a retirement annuity;
c) Members who retire prior to attaining the retirement age due to ill health; or
d) Withdrawals from the fund after the twenty years from the date of registration as a member of the fund.

<u>Implications</u>

This provides an additional benefit to persons who are forced to retire before attaining the retirement age due to illness. It will encourage savings by making withdrawal of pension funds without taxation more flexible. However, it is important to note that in the event one wishes to withdraw funds from the retirement benefit scheme prior to attaining the retirement age for any other reason, they would need to have been a member of the scheme for at least 20 years in order to enjoy the tax exemption. This is an increase from the 15-year minimum under the current provisions.

TAXATION OF INCOME FROM GOODS SUPPLIED TO PUBLIC ENTITIES

Payment received by a person from a public entity for the supply of goods shall be deemed to be the income of the person for the year of income in which the payment is received. Public entity means a ministry, state department, state corporation, county department or agency of the national or county Government.

WHT will be applicable on payment for good supplied to public entities at 5% for non-residents and 0.5% for residents.

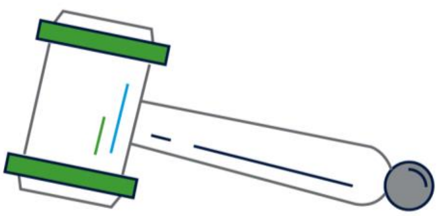
Implications

In principle, WHT is applicable on services whereas this proposal is applying WHT on goods supplied. WHT will be payable by the public entity at the time of making the payment for the goods and this is the same time the supplier can account for the sale of goods to these public entities as income in that year when payment is received. Hopefully, this will also cater for transparency in declaration of incomes of suppliers to public entities, as WHT applicable on the payment of goods will assist in revenue collections where some taxpayers may be escaping the net.

OTHER KEY CHANGES

The Bill also proposes to introduce the following additional changes:

Category	Proposed Change	Implications
Taxation of Projects Financed by the Government and a Development Partner	The Bill proposes to tax indirect income earned by a non-resident contractor, sub-contractor, consultant or an employee involved in the implementation of a project financed 100% grant under an agreement between the Government and a development partner to the extent provided by the agreement	This proposal seeks to deter non-resident contractors, subcontractors, consultants and employees from extending the exemption to income they earn from sources not related to government projects and only limiting the exemption where the non-resident contractor maintains this status for the tenure of the agreement
Taxation of Bonds	The Bill seeks to tax introduce WHT on interest earned from bonds, notes or other similar security that has a maturity of at least 3 years and whose purpose is to raise funds for infrastructure and other social services The rate of WHT will be 5% for residents and 5% for non-residents	The proposal seeks to raise additional revenue from investments held in long-term government securities but it is not clear whether the rate applicable to residents is a final tax
Re-arrangements or Clean-ups	**Provisions for Rates of Tax** The Bill proposes to replace Section 34 which currently sets out the rates of tax with the proposed Section 34 that makes reference to the Third Schedule that provides for the rates of personal relief and tax	The proposal seeks to do away with the repetition as the Third Schedule provides for the same provisions
	Penalty on failure by an EPZ Enterprises to submit a tax return The Bill proposes to move the provision of penalty on failure of an EPZ enterprise to submit a tax return from the ITA to the TPA	Currently, EPZs are subject to a late return filing penalty of KShs. 2,000 per day for each day that their income tax return is late. The Bill proposes to reduce this to KShs. 20,000 per month



DEFINITIONS UNDER SECTION 2 OF THE ITA

Definition of "Royalty"

Expansion to the definition of royalty to include any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance or support fees and. If passed, this proposal will result in trainers, software support service providers being subjected to WHT despite not having any ownership rights to the underlying intellectual property.

Implications

The OECD Model Tax Convention provides that payments for the use of or right to use, industrial, commercial, or scientific equipment should be taxed under business profits and not as royalties.

In this regard, it is unclear whether the elements related to the software (training, development, maintenance, and support fees) fall under "management fees" or "royalties" for tax purposes. This may result in cross-border conflicts as other countries generally have a definition of the term that is tied to ownership of the intellectual property.

The Bill also proposes to introduce the following New Definitions:

Term	Definition	Implications
"donation"	means a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration, including grants	This definition will create certainty on donations to charitable organisations that are allowable as deductions in the computation of taxable income
"registered individual retirement fund"	means an individual retirement fund where the trust deed for such a fund has been registered with the Retirement Benefits Authority	Currently, individual retirement funds, pension funds and provident funds are not only required to be registered by the Retirement Benefits Authority but also to register with the Commissioner taxes in line with the Income Tax (Retirement benefit) rules, 1994 Whilst, these rules might be outdated, the proposed amendment will provide clarity on registration of the retirement fund for tax purposes. Further, this amendment seeks to reduce regulatory overlaps and reduce unnecessary administrative burdens on retirement and pension funds
"registered pension fund"	means a pension fund which has been registered with the Retirement Benefits Authority	
"registered provident fund"	means a provident fund which has been registered with the Retirement Benefits Authority	
Wife's employment income	a) deleting the definition of "wife's employment income"; b) deleting the definition of "wife's professional income"; c) deleting the definition of "wife's professional income rate"; d) deleting the definition of "wife's self-employment income"; and e) deleting the definition of "wife's self-employment income rate".	The Bill proposes to delete the definition of the wife's income in The Income Tax Act. This is a clean-up exercise as the income of a married woman currently is not deemed to be income of her husband However, the Bill has not proposed the deletion of the definition of "wife's employment income rate"

INDIRECT TAX – VALUE ADDED TAX ACT, 2013

GENERAL PROVISIONS

CLARITY ON THE TIME OF SUPPLY IN RESPECT TO EXPORT OF GOODS

Whilst an export was defined as taking or causing to be taken from Kenya to a foreign country, the Bill proposes that for the purposes of export of goods, the time of supply shall be when the registered person is in possession of the certificate of export or such other equivalent documents issued by Customs, incl.

- A valid Commercial Invoice;
- Certificate of origin;
- Permit/License for restricted goods;
- Personal or Taxpayer Identification Number (PIN certificate);
- Purchase Orders/Contracts; and
- Packing List.

The impact of this proposal is that whilst the goods might have left the country, the tax payer might not be able to claim a refund of the input VAT on that export without the pre-requisite documents to confirm the export. Furthermore, the input VAT relating to the export shall not be claimable as the supply shall be deemed not to have taken place.

If enacted, this proposal will contradict Section 12(1) of the VAT Act, which provides that the time of supply is deemed to be the earlier of delivery of goods, invoicing, or receipt of payment for the goods.

MINIMUM REQUIREMENTS FOR ALL INVOICES

The Bill proposes to introduce the following minimum requirements for a tax invoice under the Tax Procedures Act, 2015:

- the words "TAX INVOICE";
- the name, address and PIN of the supplier;
- the name, address and PIN, if any, of the purchaser;
- the serial number of the tax invoice;
- the date and time which the tax invoice was issued and the date and time which the supply was made, if it is different from the date the tax invoice was issued;
- the description of the supply including quantity of the goods or the type of services;
- the details of any discount allowed at the time of supply;
- the consideration for the supply;
- the tax rate charged and total tax amount of tax charged;
- any other prescribed information; and
- the amount of tax due.

This proposal will, if enacted, set the minimum standards for invoices irrespective of the VAT treatment of the same.

This will add to the supplier's administrative tasks but will provide the Commissioner with data (e.g. discount information and the timing difference between the supply and invoicing) which may make it easier for them to assess additional taxes and late payment interest and penalties.

Further, the proposed amendment may conflict with the VAT provisions on simplified tax invoices. A similar description to align with this proposal has been made under the TPA which currently provides for an eTIMs invoice as a valid invoice.

APPORTIONMENT OF INPUT VAT FOR MIXED SUPPLIES (TAXABLE AND EXEMPT SUPPLIES)

The Act currently states that a person who deals in mixed supplies and makes at least 90 percent taxable supplies shall be eligible to claim 100 percent (100%) of the input VAT whereas if a person who makes less that 10 percent (10%) taxable supplies is not eligible to claim any input VAT.

The proposed amendment seeks to revoke the above provision which means the apportionment of input VAT shall be done based on the actual percentages regardless of the percentage of taxable to the exempt supplies.

The proposed restriction will only be based on direct attribution of such input VAT incurred in generation of taxable supplies.

APPLICATION OF EACCMA

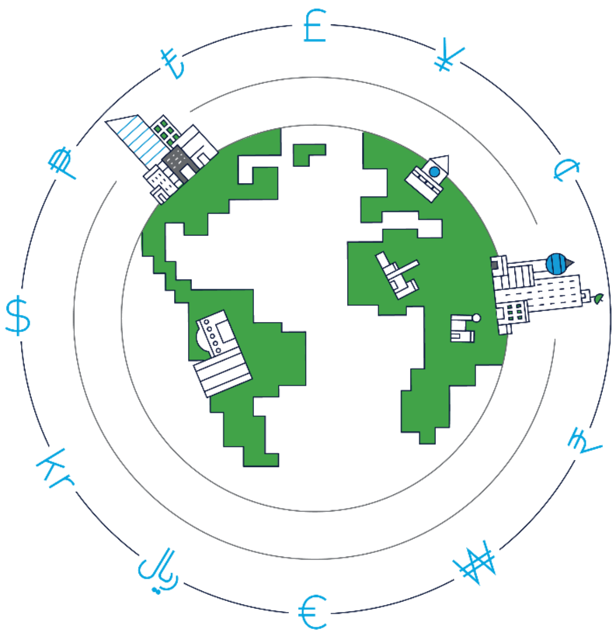
The VAT Act provides that the East African Community Customs Management Act, 2004 ("EACCMA") and any rules made thereunder would apply to imported taxable goods, whether or not there is a customs liability.

The Bill seeks to expand the application of the EACCMA to exported goods as well. This is merely an administrative amendment.

VAT RATE CHANGES

Supplies	Proposed Rate	Current Rate
MANUFACTURING SECTOR		
Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than two billion shillings	16%	Exempt
TOURISM SECTOR		
The services of tour operators, excluding in-house supplies	16%	Exempt
Entry fees into the national parks and national reserves	16%	Exempt
Air ticketing services supplied by travel agents	16%	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, provided the vehicles meet the following conditions— (i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime; (ii) the vehicles shall be used exclusively for the transportation of tourists; (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and (iv) any other condition the Commissioner may impose. Provided that tax shall become payable upon change of use or disposal of the vehicle for other use	16%	Exempt
AVIATION SECTOR		
Tariff 8802.30.00 – Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg	16%	Exempt
Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs	16%	Exempt
Tariff 8802.60.00 – Spacecraft (including satellites) and suborbital and spacecraft launch vehicles	16%	Exempt
All goods of Chapter 88 excluding helicopters	Exempt	Exempt
Direction-finding compasses, instruments and appliances for aircraft	16%	Exempt

Supplies	Proposed Rate	Current Rate
Hiring, leasing and chartering of aircrafts, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00	16%	Exempt
Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation	16%	Exempt
AGRICULTURAL SECTOR		
All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture	Exempt	0%
Agricultural pest control products	Exempt	0%
Fertilizers of chapter 31	Exempt	0%
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	0%
ENERGY SECTOR		
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	16%	Exempt
OTHER SECTORS		
Betting, gaming and lotteries services	16%	Exempt
Transfer of a business as a going concern	Exempt	16%
Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00	16%	Exempt
Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, sanitary towels (pads) and tampons	Exempt	Exempt
IP super soft fluff pulp – for-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.00	16%	Exempt



INDIRECT TAX – EXCISE DUTY ACT, 2015

EXCISABLE SERVICES OFFERED DIGITALLY BY NON-RESIDENTS

- Requirement for non-resident persons offering excisable services through a digital platform to register and charge excise duty on such services. The non-residents shall be liable for payment of excise duty.

POWER TO GRANT REMISSION ON SPIRITS

- Currently, the Cabinet Secretary responsible for Finance has the power to grant partial or whole remission of excise duty on beer, or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya. The Bill proposes to expand the Cabinet Secretary's power to granting remissions on spirits.
- This is a welcome proposal, as it will create a level playing field for producers and importers of spirits.

PAYMENT DEADLINE FOR ALCOHOLIC BEVERAGE MANUFACTURERS

- Manufacturers of alcoholic beverages are required to remit excise duty to the Commissioner within 24 hours of removal of the goods from the stockroom. This has caused cash flow constraints for the alcoholic beverage manufacturers.
- The Bill proposes to amend the payment deadline to the 5th day of the month following the removal of the goods from the stockroom. If enacted, this amendment will improve the cash flows of alcoholic beverage manufacturers.

CHANGES TO EXCISE DUTY RATES AND DESCRIPTIONS

Goods	Proposed Rate	Current Rate
~~Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer~~; imported sugar excluding sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery	KShs. 7.50 per kg	KShs. 5 per kg
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding – (i) locally assembled motor vehicles; (ia) locally assembled electric vehicles; (ii) school buses for use by public schools; (iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and (iv) imported motor vehicles of cylinder capacity exceeding 1500cc.	20%	20%
~~Imported~~ Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%	10%
Cigarette with filters (hinge lid and soft cap)	KShs. 4,100 per mille	KShs. 4,067.03 per mille
Cigarettes without filters (plain cigarettes)	KShs. 4,100 per mille	KShs. 2,926.41 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	KShs. 2,000 per kg	KShs. 1,595 per kg

Goods	Proposed Rate	Current Rate
Liquid nicotine for electronic cigarettes	KShs. 100 per millilitre	KShs. 70 per millilitre
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%	N/A
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%	N/A
Imported Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of tariff heading 6910	35% of customs value or Shs.100 per kg	N/A
Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or custom value non-reflecting layer, but not otherwise worked of tariff	Rate of excise duty 35% of customs value or Shs.200	N/A
Imported ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or custom value not on a backing; finishing ceramics of tariff 6907	Rate of excise duty – 35% of custom value or Shs.300 per kg	N/A
Coal	5% of the value or KShs. 27,000 per metric tonne	N/A
Imported sugar confectionary of tariff heading 17.04	KShs. 85.82 per kg	KShs. 42.91 per kg
3907.99.00 Imported Saturated polyester	20%	N/A
3905.21.00 Imported polymers of vinyl acetate/vinyl esters	20%	N/A
3903.90.00 Imported emulsion-styrene acrylic	20%	N/A
Wines including fortified wines, and other alcoholic beverages with alcoholic beverages obtained by fermentation of fruits	KShs. 22.50 per centilitre of pure alcohol	KShs. 243.43 per litre
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 spirituous beverages manufactured by licensed small independent brewers shall be subject to the rate of "shs 10 per centilitre of pure alcohol	KShs. 22.50 per centilitre of pure alcohol	KShs. 142.44 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KShs. 10 per centiliter of pure alcohol	KShs. 356.42 per litre
~~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, film, 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 African Community Partner States that meet the East African Community Rules of Origin	25% or KShs.75 per kilogram, whichever is higher	25%
~~Imported~~ Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%	10%

Goods	Proposed Rate	Current Rate
~~Imported~~ non- virgin test liner of heading 4805.24.00	25%	25%
~~Imported~~ non-virgin fluting medium of heading 4805.19.00	25%	25%

Services	Proposed Rate	Current Rate
Telephone and internet data services	20%	15%
Excise duty on betting (on the amount wagered or staked)	15%	12.5%
Excise duty on gaming (on the amount wagered or staked)	15%	12.5%
Excise duty on the amount paid/charged to participate in a prize competition	15%	12.5%
Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries)	15%	12.5%
Fees charged on advertisement on the **internet, social media,** television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions	15%	15%

TAX PROCEDURES ACT, 2015

ABANDONMENT OF TAXES

- The Bill seeks to reintroduce the powers of the Commissioner to abandon the recovery of unpaid taxes, including penalties and interest, where it is impossible or where there is undue difficulty, hardship, inequity or any other reason that would cause inability to recover the unpaid tax.
- The Commissioner may also refrain from assessing or recovering unpaid taxes where there is prior written approval from the Cabinet Secretary. In this case, the taxes would be deemed abandoned or the liability extinguished.
- Under the proposal, the Commissioner must publish a notice in the Kenya Gazette containing the names of the taxpayers, the amount of taxes abandoned and the reason for abandonment at least every 4 months.
- This notice would also be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within 21 sitting days from the next sitting date after the notice is laid.
- This resolution would either approve or annul the notice. If the notice is annulled, it shall become void from the date of annulment. However, any actions taken under the notice prior to the annulment would not affect the validity of these actions.

WITHHOLDING VAT: EXEMPTIONS AND PAYMENT

- The Bill proposes to revoke the withholding value added tax (WHVAT) exemption that applies to suppliers of zero-rated supplies and registered manufacturers whose investment in the preceding 3 years (from 1st July 2022) is at least KShs. 3 billion.
- This move may negatively impact on taxpayers who have made significant capital investments as their liquidity may further be reduced, as they will be subjected to WHVAT.
- Currently, an appointed WHVAT agent who fails to subject a payment to WHVAT is subject to a penalty of 10% of the amount involved whether or not they have good reasons. The Bill proposes to amend this provision to only impose a penalty if the WHVAT agent has no good reason. This is a welcome proposal as it is difficult for a WHVAT agent to subject certain payments (such as automatic deductions) to WHVAT thereby exposing them to unreasonable penalties.

TIMELINES FOR APPLICATIONS FOR REFUND OF OVERPAID TAXES

- Currently, a taxpayer may only apply for refunds within 6 months for overpaid VAT and 5 years for other taxes. However, the Bill proposes to retain the 5-year refund application window for overpaid income tax only and provide a 6-month refund application window for all other taxes.
- The proposed amendment seeks to streamline the refund application windows across the Tax Acts.

AMNESTY

- The Bill proposes to extend the amnesty period to 30th June 2025. However, the amnesty remains applicable to penalties and interest on tax obligations prior to 31st December 2022.
- Previously, the amnesty would not apply to penalties levied as a result of tax avoidance. However, the Bill removes this exclusion from the applicability of amnesty. Therefore, all penalties and interest accrued on liabilities prior to 31st December 2022 would be eligible for amnesty, provided that the principal tax is paid on or before 30th June 2025.

INTEGRATION OF DMRS WITH ELECTRONIC SYSTEMS

- The Finance Act, 2023 empowered the Commissioner to establish a data management and reporting system (DMRS) and further empowered the Commissioner to require certain taxpayers (through a notice) to submit electronic documents through the DMRS. The Bill proposes to grant the Commissioner power to require a person to integrate the DMRS with the taxpayer's electronic systems.
- If enacted, this proposed amendment will provide the Commissioner with more data to carry out data analytics, which may grant it an upper hand in tax audits.
- The Bill further proposes to impose a penalty not exceeding KShs. 500,000 (for every month or part thereof that the failure continues) upon conviction for a person who fails to integrate their DMRS with the taxpayer's electronic systems or submit information through the DMRS. The proposed penalties are quite steep and may be unreasonable.
- If enacted, this amendment might first impact larger taxpayers such as the betting and telecommunications as these are the sectors that the Kenya Revenue Authority piloted system integration with.

COMPUTATION OF TIME FOR SUBMISSION OF RETURNS & PAYMENT OF TAXES

- Currently, if a deadline for submission of a lodgment of an objection to the Commissioner, an appeal to the Tax Tribunal, an appeal to the High Court or an appeal to the Court of Appeal falls on a Saturday, Sunday or public holiday, the same shall be due on the previous working day unless the same is electronically submitted. However, the Bill proposes to amend the Act to the effect that time will only include working days.
- This proposal will increase the lodgment window for taxpayers.

PIN REQUIREMENT FOR REMOTE EMPLOYEES OF KENYAN EMPLOYERS

- Employees working remotely outside Kenya for an employer in Kenya are not required to register for a PIN. However, the Bill proposes to require all such persons to obtain a PIN, with the exception of persons employed by the national carrier.
- If enacted, this proposal will make it easier for employers of remote workers to deduct and remit PAYE on the income of remote workers. Further, this will bring more employees into the tax bracket. However, such non-resident employees may experience frustrations in the PIN registration process if the same is not simplified for them.

MISCELLANEOUS FEES AND LEVIES ACT, 2016

RAILWAY DEVELOPMENT LEVY

- The Bill proposes to increase the rate of the Railway Development Levy from 1.5% to 2.5%The current of 1.5% was introduced by the Finance Act, 2023 which was a reduction from the previous rate of 2% in a bid to boost trade. The proposed increase to 2.5% is thus higher than the initial rate prior to the amendment by the Finance Act, 2023. This higher rate if enacted will lead to increased cost of production especially on producers who rely more on imported raw materials and consequently the price of finished products.

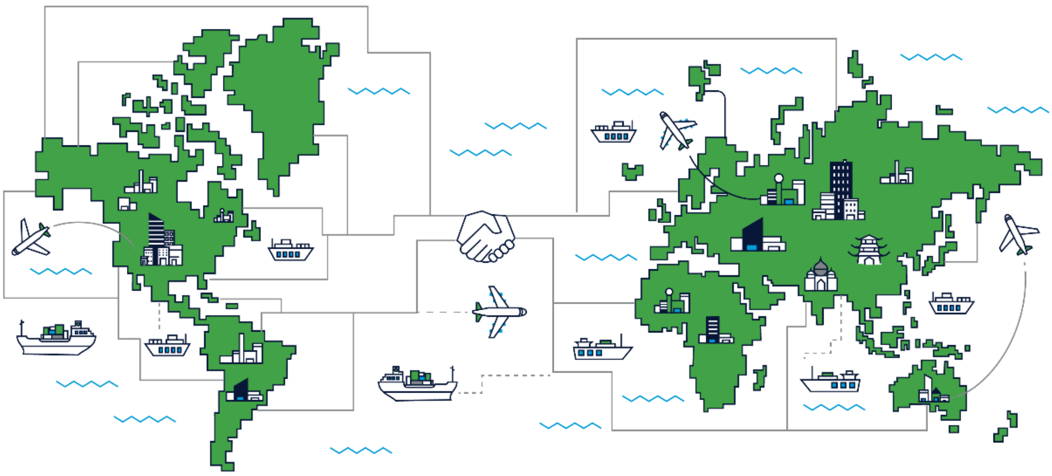
EXPORT & PROMOTION LEVY

The Bill proposes to delete the current list of item subject to the export and promotion levy and replace the same with an expanded list of goods subject to the levy.

HS Code	Description	Proposed Rate	Old rate
Chapter 42	Goods on articles of leather of Chapter 42	20%	0%
Chapter 64	Imported footwear of Chapter 64	20%	0%
2207.20.00	Denatured ethyl alcohol and other spirit	3%	0%
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3%	0%
2208.60.00	Vodka	3%	0%
2523.10.00	Cement clinker	10%	17.5%
2523.29.00	Portland cement	10%	0%
2523.30.00	Aluminous cement	10%	0%
2523.90.00	Other hydraulic cements	10%	0%
3401.30.00	Organic surface-active products and preparations for washing the skin	3%	0%
0401.20.00	Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6%	3%	0%
6910 6910.10.00	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures -of porcelain or China	3%	0%
6910.90.00	Other	3%	0%
7207.11.00	Billets	10%	17.5%
7321.12.00	Cooking stoves for liquid fuel	3%	0%
8711.10.90	Fully built Motorcycles with internal combustion engine not exceeding 50cc	3%	0%
8711.20.10	Fully built Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3%	0%
8711.20.90	Fully built Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3%	0%
8711.30.90	Fully built Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc	3%	0%
8711.40.90	Fully built Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc	3%	0%
8711.50.90	Fully built Motorcycles with internal combustion engine exceeding 800cc	3%	0%
8711.60.00	Fully built Electric motorcycles	3%	0%
9403.10.00	Metal furniture of a kind used in offices	3%	0%
9403.20.00	Other metal furniture	3%	0%
9403.30.00	Wooden furniture for office	3%	0%
9403.40.00	Wooden furniture for kitchen	3%	0%
9403.50.00	Wooden furniture for bedrooms	3%	0%
9403.60.00	Other wooden furniture	3%	0%
9403.70.00	Furniture of plastics	3%	0%

HS Code	Description	Proposed Rate	Old rate
9403.82.00	Furniture of bamboo	3%	0%
9403.83.00	Furniture of rattan	3%	0%
9403.89.00	Furniture of cane, osier or similar material	3%	0%
9403.91.00	Parts of furniture, of wood	3%	0%
9403.99.00	Parts of furniture, not of wood	3%	0%
9404.10.00	Mattress supports	3%	0%
7213.10.00	TMT/Construction steel	10%	0%
7213.91.10	Wire rods	10%	17.5%
7216.10.00	Channels	10%	0%
7216.21.00	Angles	10%	0%
7216.61.00	Flats	10%	0%
7217.10.00	Binding wire	10%	0%
7217.20.00	Galvanised wire	10%	0%
7217.30.90	Cold drawn wire	10%	0%
7217.30.90	Agriculture benches	10%	0%
7217.90.00	HT Cable wire	10%	0%
7217.90.00	Bailing Ties	10%	0%
7312.10.00	Stranded Wire	10%	0%
7312.10.00	Stay wire	10%	0%
7312.90.00	Rope Wire	10%	0%
7312.90.00	Electric cable wire	10%	0%
7313.00.00	Barbed wire	10%	0%
7314.20.00	BRC/Weld mesh	10%	0%
7314.41.00	Chain link	10%	0%
7314.42.00	PVC Coated Chain link	10%	0%
7314.49.00	Gabions	10%	0%
7317.00.00	Nails	10%	0%

- The Bill has proposed to delete the imposition of the Levy on kraft paper, while reducing the levy on clinker.
- The new items added to the list of items subject to the Levy appear to be raw materials that are frequently used in construction. It will be interesting to see how the Levy will impact the construction sector, especially given the Government's plans to construct affordable housing units.
- Other key items added to the list include milk, fully built motorcycles including electric motorcycles, alcoholic beverages and furniture. The addition of these items can be seen to be a move by the Government to protect domestic production of these items.



MISCELLANEOUS AMENDMENTS – STANDARDS ACT

REGISTRATION OF MANUFACTURERS

- All manufacturers will now be required to obtain a license to operate as such under the Act.
- A manufacturer's license under the Act will help suppliers apply the correct tax treatment on treat their supplies to manufacturers, more so from a VAT perspective, where certain supplies are specifically exempted from VAT when supplied to manufacturers

APPOINTMENT OF INSPECTION BODIES

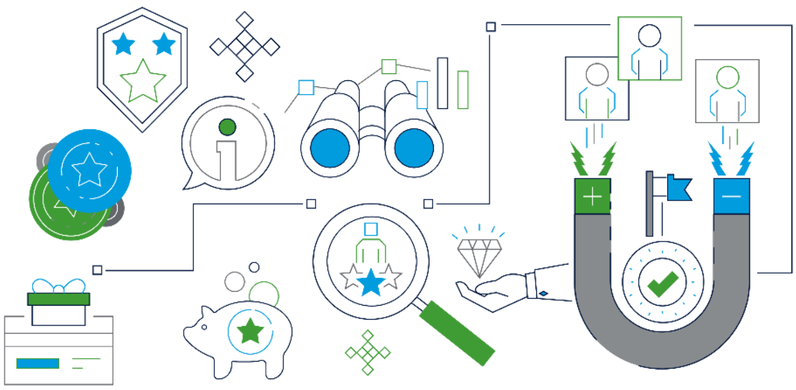
- Kenya Bureau of Standards ("KEBS") will have the powers to appoint inspection bodies outside of Kenya to undertake verification of goods being exported to Kenya to ensure that they comply with Kenyan standards or other approved specifications.
- Furthermore, these inspection bodies will be deemed to be tax resident in Kenya.
- This would mean that such bodies are required to register for various tax obligations in Kenya, declare their incomes and pay taxes on the same in Kenya.
- This may create a double taxation risk, since the bodies may be tax resident in both Kenya (due to the appointment as inspection bodies by KEBS), and the country in which they bodies are located (under the local legislation). The risk and tax burden may be even greater where such bodies are located in countries with whom Kenya does not have a double taxation agreement.
- The imposition of an additional tax burden may cause a decrease in trade by countries where such bodies are located with Kenya.
- It will be interesting to see how the appointment of inspection bodies will operate in practice, and we may see a larger number of disputes at the Standards Tribunal arising from such appointments.

ESTABLISHMENT OF LABORATORIES

- KEBS will now have the powers to establish laboratories to conduct testing and issue test certificates.
- KEBS may also appoint already existing laboratories to provide testing services.
- Should KEBS establish or appoint laboratories as testing facilities, these facilities would be able to issue test certificates, which may be used by the KRA to determine the correct classification of imported goods.

MISCELLANEOUS AMENDMENTS – EMPLOYMENT ACT

- The Bill has proposed an expanded definition of an employee to include a person who performs their duties remotely or onsite within a business processing outsourcing ("BPO") arrangement or ICT enabled service.
- This expanded definition may cause those who are specifically contracted to provide BPO services to entities to be treated as employees for tax purposes, whether or not they operate from the employer's premises or location, leading to additional tax obligations being imposed on such service providers including PAYE, AHL and SHIF.
- The Bill has also defined business process outsourcing as the act of transferring the recurring internal activities and decision rights of an organization to a third-party service provider as set out in a contract.



MISCELLANEOUS AMENDMENTS – SPECIAL ECONOMIC ZONES ACT

TAX INCENTIVES

- The Bill seeks to introduce the Third Schedule to the Act, which lists out the various tax incentives that a SEZ would enjoy. This provides a clear list of all tax benefits a SEZ would enjoy, without the need to refer to the various tax acts to determine the same.
- However, the Bill also seeks to limit the applicability of these incentives to 10 years from the date the license is issued. This may greatly affect investments in SEZ entities, given that the tax incentives are one of the key factors that investors consider, prior to investing in such entities.

SALES WITHIN A SEZ

- Where a SEZ makes a sale to any person within a SEZ would not be treated to have left the SEZ and are entitled to the benefits under the Act, provided that the goods do not leave the SEZ.

MINIMUM INVESTMENTS

- The Bill proposes to allow the SEZ Authority to determine a minimum investment value and minimum land size in order for to obtain a SEZ license.

Caveat

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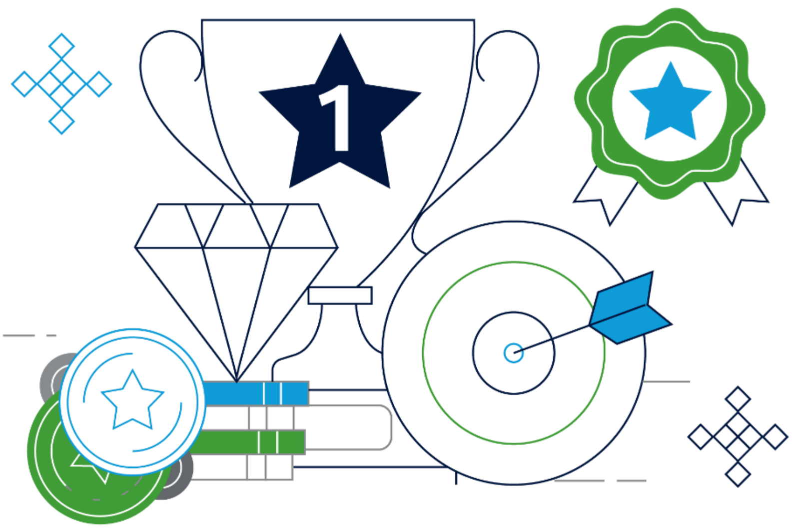

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