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RSM EA Newsletter

Overview of The Kenya Finance Bill, 2024

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INTRODUCTION

The Finance Bill, 2024 was presented in Parliament on Thursday 9th May 2024. This newsletter covers the economic highlights of the proposed budget and tax changes as follows:

- Introduction of taxation on motor vehicles at 2.5% on insured value, subject to a minimum of KShs. 5,000, and a maximum of KShs. 100,000
- Introduction of minimum top-up tax
- Repealing of DST and introduction of significant economic presence tax at an effective tax rate of 6%
- Per diem to be revised on approved employer policy up to a maximum of 5% per day of the employee's gross monthly salary
- Non-taxable benefits threshold now increased to KShs. 48,000 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
- Introduction of Advance Pricing Agreements (APA)
- 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
- VAT registration threshold increased to KShs. 8,000,000 from KShs. 5,000,000
- Time of supply for export of goods is when the exporter is in possession of all required export confirmation documents
- Transfer of business as a going concern would also be made exempt from VAT
- Supply of ordinary bread now proposed to be 16% from current zero rate
- VAT proposal on financial services
- Proposal for extension of time for the Commissioner to give an objection decision from 60 days to 90 days
- Introduction of an Eco Levy to ensure manufacturers and importers pay for the negative environmental impacts of the goods
- IDF to increase from 2.5% to 3% of customs value

ECONOMIC OUTLOOK

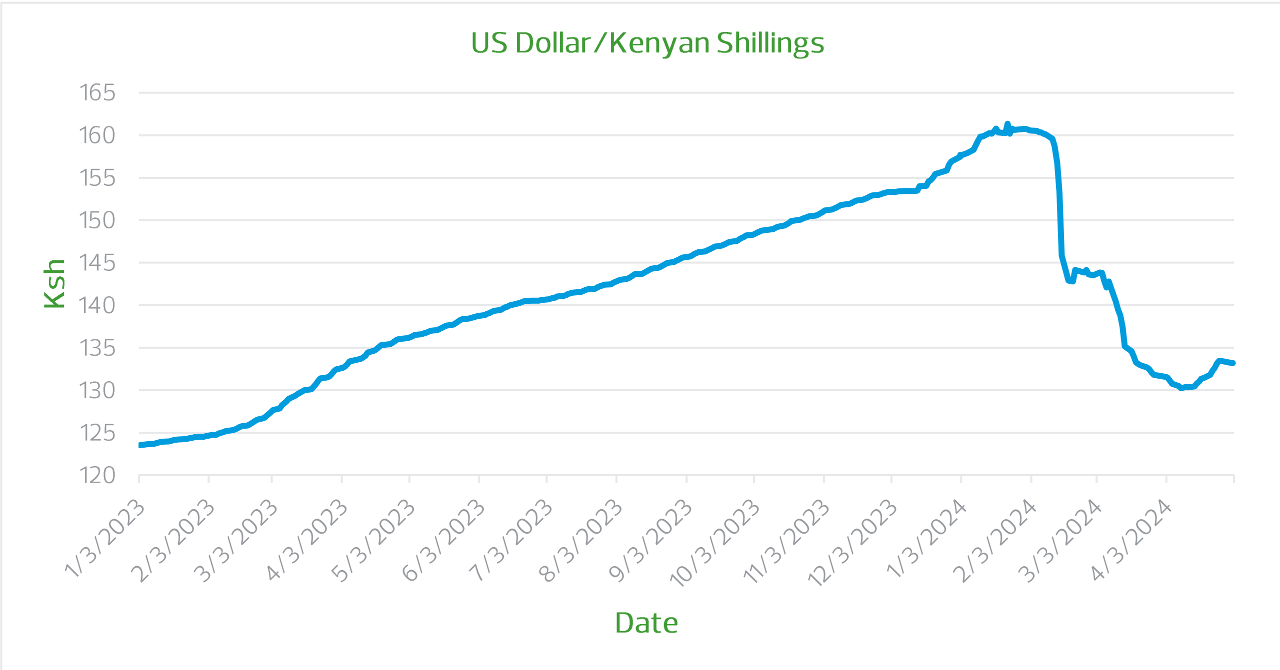
GLOBAL OUTLOOK

- The global inflation rate is expected to decline to 5.8% by end of 2024. By 2025, the inflation rate is expected to further decline to 4.4%. However, this optimism remains measured with divergent growth across key economies that is; the service, transport and tourism industries, stability of Middle East and Europe and high financing costs impacting businesses and households.
- Advanced economies are anticipated to experience faster disinflation. In 2024, their inflation rate was projected to fall by 2.0%, reaching 2.6%. This decline reflects effective monetary policies by various central banks and economic recovery.
- The United States has a staggering GDP of $25 trillion, constituting to nearly a quarter of the global economy. The upcoming 2024 US election is poised to have a profound impact on global markets, surpassing previous elections. Key factors include the US's economic positioning, trade policies, international relations and environmental commitment. Notably, the US has the ability to influence international trade, as demonstrated by the 2018 tariffs imposed by the previous administration on Chinese imports, which caused a 0.3% dip in global GDP. Expect the election to shape global economic landscapes, market volatility, trade dynamics, and ecological investments.
- The Russia-Ukraine conflict and escalating tensions in the Middle East region are causing several economic challenges globally. These include higher fuel prices, supply-demand imbalances, and disruptions in global supply chains due to re-routed shipping lines in the Red Sea. Additionally, the war is expected to slow economic growth and contribute to elevated inflation.
- Inflation for Emerging Market and Developing Economies is expected to decrease by 0.3%, reaching 8.1% in 2024. These economies face unique challenges, including structural issues and policy constraints.
- Sub-Saharan Africa growth outlook is positive. After an estimated 3.3% growth in 2023, it is projected to rise to 3.8% in 2024 and 4.1% in 2025.

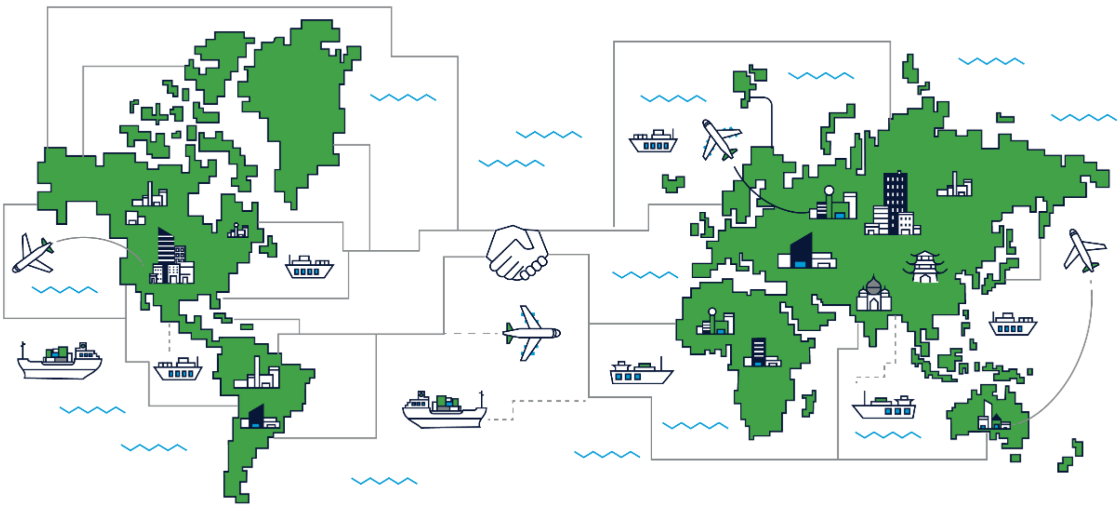
DOMESTIC OUTLOOK

- The World Bank forecasts Kenya's economy to grow between 5% and 5.4% in 2024, driven by the Agricultural and Service sector growth. However, debt concerns remain, with the debt-to-GDP ratio at 72.6%. This implies that less revenue is available for development spending due to significant funds going toward servicing existing debt. Although the outlook remains upbeat, weak global trade demand and low government, spending could slow the momentum.
- Kenya's inflation rate dipped slightly in April 2024, according to the Central Bank of Kenya (CBK). The monthly rate reached 5%, reflecting a welcome decline in food and energy prices. Year-on-year consumer prices rose by 5%, compared to 5.7% in March. So far this year, the average annual inflation rate sits at 6.73%.

- The depreciation of the Kenyan Shilling against the US Dollar in 2023 significantly impacted debt repayment. This is because a substantial portion (54%) of the country's debt is denominated in foreign currency. However, there have been positive developments in 2024. The Kenyan Shilling has strengthened, currently trading at KShs. 135 to the US Dollar as of 2nd May. This improvement is attributed to a combination of factors: the issuance of a new Eurobond and a series of monetary policy measures implemented by the Central Bank of Kenya to stabilize the currency.



- In February 2024, the Central Bank of Kenya (CBK) raised its benchmark interest rate, known as the Central Bank Rate (CBR), from 12.5% to 13%. This successive increase aimed to bring inflation under control and alleviate pressure on the exchange rate.



BUDGET POLICY STATEMENT OVERVIEW

GOVERNMENT MANIFESTOS

Building on the achievements of its Bottom-up Economic Transformation strategy, the government's 2024 Budget Policy Statement outlines key areas for continued economic revitalization. Informed by past experiences, the policy focuses on propelling growth in these vital sectors: Agriculture, Micro, Small and Medium Enterprises (MSMEs), Housing and Settlement, Healthcare, and the Digital and Creative Economy.

AGRICULTURAL TRANSFORMATION AND INCLUSIVE GROWTH

The agriculture sector continues to play a critical role in Kenya's economy accounting for about 20% of Gross Domestic Product (GDP). The sector also employs over 40% of the total population and more than 70% of the rural population.

Recognizing the disruptions caused by climate change, particularly the erratic rainfall patterns impacting food production and livestock due to droughts and floods, the government remains committed to bolstering the agricultural sector. To achieve this, the government continues to enact policy, legal, and institutional reforms that create an environment fostering agricultural productivity, specifically:

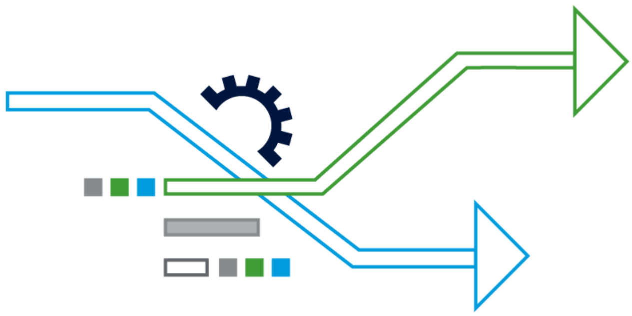
- Provide adequate affordable working capital to farmers through well managed farmer organisations;
- Deploy modern agricultural risk management instruments that ensure farming is profitable and income is predictable;
- Transform poor farmers from food deficit to surplus producers through input finance and intensive agricultural extension support; and
- Raise productivity of key value food chains and support dairy farmers by supplying feeds to lower cost of milk production.

TRANSFORMING THE MICRO, SMALL AND MEDIUM ENTERPRISE (MSME) ECONOMY

The Micro, Small and Medium Enterprises plays an important role in the economy especially in providing job and income generating opportunities both in the formal and informal sector.

To optimize on the potential of the MSMEs, the Government in its Budget Policy Statement (BPS) proposes to improve business environment for MSMEs by:

- Establishment of industrial parks and business incubation centre in every TVET;
- Promoting access to affordable finance;
- Rationalize business licensing processes; and
- Establishment of business development centres in every Ward and Industrial Aggregation Centres in all counties over the medium term.



HOUSING AND SETTLEMENT

Achieving the housing deficit remains one of the primary government's priority under the BETA. This is informed by the current imbalance between the demand and supply of affordable houses in Kenya as well as the potential role that the construction Industry can play towards job creation and economic growth.

To address the deficit, the government is expected to implement the following BETA interventions:

- Increasing the supply of new housing to 250,000 per annum and the percentage of affordable housing supply from 2 percent to 50 percent. This is to be achieved by structuring affordable long-term housing finance schemes, including a National Housing Fund and Cooperative Social Housing;
- Schemes, that will guarantee the offtake of houses from developers;
- Growing the number of mortgages from 30,000 to 1,000,000 by enabling low-cost mortgages of KShs. 10,000 and below; and
- Giving developers incentives to build more affordable housing.

HEALTHCARE

The choice of the Universal Health Coverage as a key pillar of the Bottom up Economic Transformation Agenda was informed by Article 43 of the Constitution that guarantees Kenyans the right to the highest standards of healthcare.

To ensure realization of this, the government has put in place a number of measures including enactment of the relevant laws to anchor healthcare reforms. The efforts are geared to implementation of the Social Health Insurance Fund, Primary Health Fund, Chronic, Emergency and Critical Illness Fund. To ensure realization of this, the government has put in place a number of measures including:

- Enactment of the relevant laws to anchor healthcare reforms;
- To deliver universal health coverage, the government is committed to institute a paradigm shift from curative to preventive and promotive healthcare. The shift will be supported by the promotive services provided by Community Health Promoters (CHPs) at the household level;
- The recruitment of 90,000 Community Health Volunteers to help revitalize primary health care by the National and County governments. The national government has allocated KShs. 1 billion to the programme;
- The implementation of the Human Vaccine project which is a BETA project. KShs. 500 million has been allocated to the project. The project enhances local manufacturing of vaccines and helps reduce spending on health and pharmaceutical products; and
- The planned support for 2 million indigents through payment of contributions to the NHIF for the financial year 2023/24. The fast-tracking of the recruitment process of the 2 million indigents will help in the progress towards universal access to healthcare services in the country.

DIGITAL SUPERHIGHWAY AND CREATIVE ECONOMY

The Government is cognizant of the increasing role of the digital economy as an avenue for opportunity, productivity and competitiveness. The Bottom up Economic Transformation Agenda therefore commits to promoting investments in the digital superhighway, supporting extension of the fibre optic backbone infrastructure and digitization and automation of government services.

Through its Policy statement, the government further indicated that they are pursuing the implementation of Maisha Namba and National Population Master Register to ease delivery of government services.

DIGITAL SUPERHIGHWAY AND CREATIVE ECONOMY (CONTINUED)

To achieve the envisaged objectives of the Digital Superhighway and Creative Economy pillar, some progress has been made including:

- Digitization of over 16,000 government services from an initial 250 to enhance efficiency in service delivery and revenue collection;
- Expansion of the ICT capacity in TVETs; and
- Continued expansion of the ICT infrastructure including setting up several Wi-Fi hotspots in market centres and public spaces in some parts of the country.

However, the policy statement has remained silent on key areas regarding technology such as:

- Measures to manage and mitigate growing risks like data privacy and cybersecurity. This is particularly concerning given the planned integration of e-payments for all government services on the e-citizen platform; and
- Secondly, the statement fails to clarify the differences or connections between the previously introduced Maisha number and the Huduma number.

PUBLIC DEBT HIGHLIGHTS – DOMESTIC AND FOREIGN

- Domestic debt redemption is projected to decrease by 19% in the coming fiscal year. However, external debt redemption is expected to surge significantly. This significant rise is due to a maturing Eurobond in June 2024.
- Repaying foreign debt can be risky, as it often requires issuing new loans, which can be more expensive if interest rates rise or the Kenyan currency weakens. The government's debt management plan aims to address this upcoming external debt redemption in a way that minimizes the impact on the budget and the overall economy.

FINANCING THE FISCAL DEFICIT

The fiscal deficit is projected to be KShs. 704 billion for the 2024/25 fiscal year. To bridge this gap, the government plans to borrow KShs. 326 billion from external markets and KShs. 377.7 billion from domestic sources. Notably, the projected domestic borrowing is significantly lower compared to the previous fiscal year. This reduction in domestic borrowing in the coming years could potentially free up resources for private sector investments, stimulating economic growth driven by the private sector.

INCOME TAX ACT

INTRODUCTION OF MOTOR VEHICLE TAX (MVT) – EFFECTIVE 1ST JULY 2024

The Bill proposes the introduction of MVT payable to the Commissioner on each motor vehicle at the time of issuance of insurance cover. MVT will be paid at the rate of 2.5% of the value of the motor vehicle, subject to a minimum of KShs. 5,000, and a maximum of KShs. 100,000.

The value of the motor vehicle is determined based on make, model, engine capacity and year of manufacture of the vehicle. The insurer of the motor vehicle will be required to collect and remit MVT within 5 working days after issuing an insurance cover. The Bill also proposes to empower the Commissioner to issue guidelines as may be appropriate in the determination of the value of the motor vehicles for tax purposes.

<u>Penalties</u>

An insurer who fails to collect and remit MVT will be liable to pay the actual amount MVT and a penalty of 50% of the uncollected tax.

<u>Exemptions</u>

The Bill proposes that MVT will not be payable in respect of ambulances, vehicles owned by the National Government, County Government, Kenya Defence Forces, National Police Service, National Intelligence Service or person exempt from tax under the Privileges and Immunities Act.

<u>Implications</u>

For the first time, the government is proposing to introduce tax on ownership of property by introducing the MVT. Taxation should be based on income and transfer of property but not on stock of property that taxpayers hold. In any way, by the time the taxpayer has acquired the motor vehicle(s), they have already paid significant taxes and should not be punished further by demanding an annual tax from them for holding the asset.

The tax should be only on appreciation of the asset (which is unlikely in the case of motor vehicle) or on the transfer of the property. If this proposal is anything to go by, we may see introduction of other types of wealth and property taxes in the future. This move may discourage investments particularly at an individual level.

SOURCES OF INCOMES – EFFECTIVE 1ST JULY 2024

The Bill proposes that the specified sources of income that are subject to separate sources for tax computation purposes will not be limited to a specific number.

<u>Implications</u>

The ITA currently specifies "seven" sources of income that are subject to tax under the separate sourcing approach. By deleting the word "seven", this removes the restriction on the categories of income that should be subject to tax under the separate sourcing approach. It gives the Commissioner greater leeway to adjust the categories of income whose tax should be computed separately from the other sources without attracting much attention.

APPLICATION FOR CHANGE IN ACCOUNTING PERIOD – EFFECTIVE 1ST JULY 2024

Where a taxpayer applies for a change in accounting period under the relevant regulations and the Commissioner fails to make a decision within a six-month period after the receipt of such an application, the application shall be deemed approved.

<u>Implications</u>

The current provision states that the Commissioner shall approve a written application for change of accounting period within six months from the date of receipt of the application. Where the Commissioner failed to make a decision within six months, taxpayers could have been left confused and therefore by introducing this change, taxpayers will now have a way forward where the Commissioner fails to respond within six months.

APPLICATION FOR CHANGE IN ACCOUNTING PERIOD – EFFECTIVE 1ST JULY 2024 (CONTINUED)

Nonetheless, even if the change is deemed approved, the change needs to be effected on iTax by the Commissioner. Since this is not an automatic task, there may be instances in which the Commissioner fails to respond within six months and the change is deemed approved, yet the same has not been effected on iTax. This means the taxpayers will be unable to file their taxes under the approved year-end.

INTRODUCTION OF MINIMUM TOP-UP TAX – EFFECTIVE 1ST JULY 2024

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
- Inter-governmental or supranational organisation including wholly owned agency, 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 owns an interest, and includes taxes on distributed profits, deemed profit distribution under the Act subject to such adjustments as maybe prescribed

INTRODUCTION OF MINIMUM TOP-UP TAX – EFFECTIVE 1ST JULY 2024 (CONTINUED)

Implications

Pillar Two Model Rules also known as Global Anti-Base Erosion (GloBE) Rules was designed and agreed by members of the OECD/G20 Inclusive 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 – EFFECTIVE 1ST JANUARY 2025

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 20% 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); or
- Income of a non-resident person who 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.

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

Definition of digital marketplace

The Bill proposes to define the term "digital marketplace" to include any online or electronic platform, which enables a person to sell or provide goods, property or services including:

- Ride-hailing services;
- Food delivery services;
- Freelance services;
- Professional services;
- Rental services;
- Task-based services; and
- Any other services not exempt under the Act.

INTRODUCTION OF SIGNIFICANT ECONOMIC PRESENCE TAX – EFFECTIVE 1ST JANUARY 2025 (CONTINUED)

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 now been introduced in the place of DST at a proposed effective rate of 6% 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 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.

CHANGES RELATING TO WITHHOLDING TAX (WHT)

Item	Proposed change	Implication
Threshold for WHT (Effective 1st July 2024)	WHT will be applicable on all payments in respect of management or professional fee or training fee or contractual fee regardless of the amount (by deleting the current threshold of KShs. 24,000).	Under the current ITA, WHT is not applicable to payments in respect of management or professional fee or training fee or contractual fee that is less than KShs. 24,000 per month. The Bill seeks to remove this threshold and have WHT deducted on the relevant payment regardless of the amount paid. In light of this, the exemptions from turnover tax should be amended to include contractual fees to avoid subjecting low-income providers of contractual services to both turnover tax and withholding tax, which cannot be offset against the turnover tax.
Digital Marketplace (Effective 1st January 2025)	Where an owner or operator of a digital marketplace or platform makes or facilitates payments 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. WHT will be applicable on income deemed to have accrued in or been derived from a digital marketplace at 20% for non-residents and 5% for residents. A platform is defined as 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.	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.

Item	Proposed change	Implication
Digital Content Monetisation (Effective 1st July 2024)	WHT paid in respect to digital content monetisation shall be a final tax.	Currently, WHT on payment in respect to digital content monetization is not a final tax. This proposal will majorly benefit resident persons earning income from digital content since it will not be subjected to further tax after WHT is deducted.

TAXATION OF EMPLOYMENT INCOME – EFFECTIVE 1ST JULY 2024

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

Item	Proposed change	Implication
Per Diem	Per Diem will be based on the **employer's policy on subsistence, travelling, entertainment or other allowance** subject to a maximum of five per cent per day of the monthly gross earnings of the employee. Furthermore, amounts paid to a public officer as a reimbursement of expenses that were incurred for the purpose of performing official duties, notwithstanding the ownership or control of the assets purchased shall also be excluded from the taxable income of the public officer.	Currently, the ITA provides that the allowable limit for Per Diem is limited to KShs. 2,000 per day, which has remained unchanged for a number of years despite significant economic changes such as inflation. This approach introduces a more flexible formula to calculate the rate for Per Diem that is linked to the employee's gross monthly salary. However, Per Diem of employees whose gross earnings is less than KShs. 40,000 a month will be less than the current rate of KShs. 2,000. Further, this proposal does not appropriately factor in the need for higher per diems in high-risk areas and areas with a significantly higher cost of living. The proposed exemption of public officers poses a significant risk of misappropriation of public funds, as these officers would be able to purchase assets in their own name, rather than in the name of the public entity, for assets that are needed for the performance of their official duties.
Non-Taxable Benefits	The allowable limit of non-taxable benefits to be increased from KShs. 36,000 to KShs. 48,000 per year.	By increasing the limit on 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 non-table meals provided by employers to employees to be increased from KShs. 48,000 to KShs. 60,000 per year.	

Item	Proposed change	Implication
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 contributions.
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's contribution to a 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.
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. 10,000 per month.	
Income from Ajira Digital Program	The income earned by an individual from the Ajira Digital Programme will be subject to tax.	This amendment corresponds to other proposed amendments on taxation of the digital economy.

ALLOWABLE DEDUCTIONS – EFFECTIVE 1ST JULY 2024

The following expenses will be allowable deductions for tax purposes:

- 100% of the diminution in value of any implement, utensil or similar article employed in the production of gains or profits;
- Contributions made to Social Health Insurance Fund and Post-retirement Medical Funds; and
- Investment allowance of 10% in equal instalments in respect to purchase or acquisition of indefensible right to use fibre optics cable or spectrum license by a telecommunication operator: provided that in the case of spectrum license purchased or acquired before 1st July 2024, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license.

Implications

The provision on the investment allowance in respect to dimunition in value of loose tools was proposed under the Finance Bill, 2023 but was omitted in the Finance Act, 2023. To provide clarity to taxpayers, the Finance Act, 2024 should adopt this proposal.

The allowability of deductions made to SHIF and post-retirement medical funds is a welcome move, as it will cushion individuals from the increased deductions on their income.

DEFERRAL OF FOREIGN EXCHANGE LOSS – EFFECTIVE 1ST JULY 2024

The Bill proposes to limit the period in which companies with foreign loans can defer realised exchange losses where the interest expense is in excess of thirty percent of the company's earnings before interest, taxes, depreciation and amortisation (EBITDA). Particularly, the Bill proposes to amend the maximum deferral period from the current 5 years to 3 years. This is now aligned to the provision under interest restriction, which also provides deferment up to 3 years on interest on foreign loans.

Implication

If passed:

- this will negatively affect companies that took out foreign currency loans with the knowledge that they had five years to defer their foreign exchange losses; and
- will grant companies a much shorter time to claim deferred foreign exchange losses and may require them to increase their tax asset write-offs.

INTRODUCTION OF ADVANCE PRICING AGREEMENT – EFFECTIVE 1ST JANUARY 2025

Introduction of a provision on Advance Pricing Agreement (APA) by introducing Section 18G under the ITA where the APA will be an agreement between the Commissioner and a person (taxpayer) who has transactions that fall within the ambit of transfer pricing regulations in Kenya.

The APA will establish the arm's length price for the transaction that the person (taxpayer) contemplates to undertake and will be valid for a period not exceeding five consecutive years.

Nullification of the APA

The Bill proposes that the Commissioner may issue a notice in writing to the person (taxpayer) declaring the APA null and void from the date the APA was entered into, if the Commissioner determines that the person (taxpayer) entered into the APA through misrepresentation of facts.

INTRODUCTION OF ADVANCE PRICING AGREEMENT – EFFECTIVE 1ST JANUARY 2025 (CONTINUED)

Implications

APA is an important tool when determining the arm's length price for controlled transactions given the fact that, under the APA, the taxpayer and the revenue authority agree in advance how the price of the intercompany transaction should be done. It assists the taxpayer to voluntarily resolve actual or contemplated transfer pricing disputes in a proactive and cooperative manner with the KRA as an alternative to the normal transfer pricing audit. This creates tax certainty on the taxpayer and reduces the chance of transfer pricing disputes in respect to the transaction.

Currently, the Income Tax (Transfer Pricing) Rules, 2006 do not have a provision on APAs although the draft Income Tax (Transfer Pricing) Rules, 2023 proposed the introduction of the APA. By anchoring APAs into the law under the ITA, taxpayers in Kenya who have controlled transactions will have a chance of agreeing with the KRA on the pricing approach particularly for complex intercompany transactions in advance (before the transactions happen).

CHANGES TO CAPITAL GAINS TAX

The Bill seeks to introduce the following changes in respect to Capital Gains Tax:

Item	Proposed Change	Implications
Exemption from CGT (effective 1st July 2024)	The Bill proposes an expansion of the scope of exemptions from CGT to include cases where an asset is transferred to a company where an individual holds 100% of the shareholding. An individual is defined in the Income Tax Act to mean more than one individual or an unincorporated association or body of individuals including trustees and partners.	This means that where an individual, trustees and partners transfer assets where they own 100% of the shareholding, CGT will not apply. The logic behind this is based on the fact that, under these circumstances, there is no new beneficial owner of the asset being transferred.
Conditions for Reduced CGT Rate (effective 1st January 2025)	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.	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 KShs. 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 1st 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%.

Item	Proposed Change	Implications
		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 investments before 2016.
Application of CGT on transfer of property by Member's Club and Trade Association (MC & TA)	The Bill proposes to include the transfer of property by an ***entity that carries on the activities of a MC&TA that is deemed to be carrying on a business under Section 21*** within the ambit of CGT by including them under the definition of a company.	Under the Eighth Schedule of the current ITA, MC&TC can elect to be subject to be tax; therefore, this implies that a MC&TA can elect not to be subject to tax therefore not subject to pay CGT. However, this contradicts the amendment that was introduced by the Finance Act, 2023 removing the option of MC&TA to choose whether to be subject to tax under Section 21. Therefore, this proposal seeks to clean up the Eighth Schedule and align it with the Provision of Section 21 on application of CGT in respect to MC&TA.
Re-arrangements	The Bill proposes to move the provision for the CGT rate of 15% and the provision that CGT is a final tax from Section 34(1) (j) to the Third Schedule.	This is a clean-up exercise to ensure that the rate for CGT is captured in the Third Schedule similar to other types of taxes.

TAXATION OF INCOMES OF SHIP OWNERS AND AIR OPERATORS - EFFECTIVE 1ST JULY 2024

There is a proposal to amend Paragraph 3(k) of Head B of the Third Schedule by broadening the gains or profits, which are chargeable to tax under Section 9(1) to include incomes of air transport operators where there is no reciprocal arrangement or treaty. The amendment also provides for the increase in tax rate from the current rate of 2.5% to 3%.

Implications

This proposal seeks to clean up an incongruence between the charging section (which provided for taxation of air transport operators) and the section providing the tax rate (which fails to provide for the tax rate on the gains earned by air transport operators) and proposes to increase the tax rate by 0.5%.

TAXATION OF REGISTERED TRUST – EFFECTIVE 1ST JULY 2024

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

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

Implications

The Finance Act, 2021 introduced tax exemption on the above sources of income to encourage taxpayers to transfer properties to the registered 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.

The Bill proposes that this change will take effect from 1st July 2024 which date is mid-year for most trusts affected by this change. Consequently, the affected taxpayers may face a challenge on how to allocate income between the two periods in the FY 2024 where the income was exempt from tax (Jan – June) and the period when the income is subject to tax (July – December).

TAXATION OF INVESTMENT SECURITIES – EFFECTIVE 1ST JULY 2024

Implications (continued)

The following incomes in respect to investment securities will be taxable at 5% if such investment securities are put in place after 1st July 2024:

interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services: Provided that such bonds, notes or securities shall have a maturity of at least three years.

Incomes arising from the investment securities will only be exempt if they were in place before 1st July 2024. This change will affect interest on infrastructure bonds.

Implications

The above proposal seeks to subject to tax interest income arising from any of the above investment securities that will be put in place after the proposed change comes into effect. This may make such securities unattractive, as taxpayers were encouraged to invest in them on the basis that the return on investment from such securities would not be subject to tax.

TAXATION OF PENSION INCOME – EFFECTIVE 1ST JULY 2024

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 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 where a person-

a) retires prior to attaining the retirement age due to ill health; or
b) withdraws from the fund after the twenty years from the date of registration as a member of the fund.

Implications

This provides additional room for an individual 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 increases the number of years (from 15 to 20) an individual must be a member of the fund for them to enjoy the tax exemption upon withdrawal the funds.

TAXATION OF INCOME FROM GOODS SUPPLIED TO PUBLIC ENTITIES – EFFECTIVE 1ST JULY 2024

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 goods supplied to public entities at 5% for non-residents and 3% 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.

EXEMPT INCOMES THAT WILL NOW BE TAXABLE– EFFECTIVE 1ST JULY 2024

The Bill proposes to subject to tax the following incomes, which are currently exempt.

Income Source	Details	Impact
Income from amateur sporting association	The income of an amateur sporting association with the following characteristics: a) sole or main object is to foster and control any outdoor sport; and b) The members consist only of amateurs or affiliated associations the members of which consist only of amateurs; and c) The memorandum of association or by-laws have provisions defining an amateur or a professional and providing that no person may be or continue to be a member of that association if that person is not an amateur.	This proposal seeks to cast the tax net wider by scrapping-off tax exemption of income from amateur sporting organisation that are currently exempt.
Income from the National Housing Development Fund	The Bill proposes changes to the tax treatment of the National Housing Development Fund (Fund) by subjecting to tax the following: • Income generated by the Fund; and • Any withdrawal made by first-time home-owners from the Fund to purchase a house.	The Bill seeks to subject to tax the withdrawal made from the Fund by first-time home-owners.

OTHER KEY CHANGES – EFFECTIVE 1ST JULY 2024

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 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.
Transfer of property within SEZ by non-licensed Enterprises	The Bill proposes to amend Paragraph 72 of the First schedule by introducing taxation on gains earned on transfer of property within a special economic zone between enterprises or operators who are not licensed by the respective authority.	This proposal seeks to bring into tax the capital gain earned by SEZ enterprises and operators who are not licensed by the SEZ authority. This will ensure that only licenced SEZ enterprises and operators benefit from this exemption.
Taxation of member's club and trade associations	The Bill proposes to delete the definition of "gross investment receipt" for purposes of taxation of Member's Club and Trade Association (MC&TA).	This is a clean-up exercise, as it ought to have been deleted in the Finance Act, 2023 when the section that referred to that definition was deleted.

Category	Proposed Change	Implications
Taxation of companies constructing at least 100 residential units annually	Proposal to delete: In case of a company that constructed at least one hundred residential units annually, fifteen percent for that year of income, subject to approval by the Cabinet Secretary responsible for housing, Provided that where a company is engaged in multiple activities, which include the ones specified in subparagraph (i), the rate of fifteen per cent shall be applied proportionately to the extent of the turnover arising from the housing activity.	This means there will no longer be a favourable rate of 15% applicable for companies involved in construction of these residential units and therefore will now be subject to tax at the standard 30%.
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 Underpayment of Instalment Tax The Bill seeks to delete Section 72C of the Income Tax Act, which provides for an the accrual of the penalty and interest on underpayment of installment tax and refer this to the TPA where all penalties are charged at 5%	Currently, both the TPA and the ITA provide for a penalty on underpayment of instalment taxes (5% and 20% respectively). This proposal seeks to revoke the 20% penalty leaving only the 5% as the applicable penalty.
	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 return is late. The Bill proposes to reduce this to KShs. 20,000 per month.
Definitions	The Bill proposes to synchronise the CGT definition of a company (which includes MC&TA) to the definition of MC&TA provided under the ITA provisions dealing with taxation of such entities.	This will provide clarity on the definition.

DEFINITIONS UNDER SECTION 2 OF THE ITA – EFFECTIVE 1ST JULY 2024

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 includes the distribution of software. If passed, this proposal will result in software distributors, 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. Further, payments for exclusive distribution rights of a software product do not constitute royalties but should fall under business income. Similarly, several courts including the High Court of Kenya and Supreme Court in India have ruled that, software when put in a medium, is goods for sale and not copyright; hence should not be included in the definition of royalties.

DEFINITIONS UNDER SECTION 2 OF THE ITA – EFFECTIVE 1ST JULY 2024 (CONTINUED)

Implications (continued)

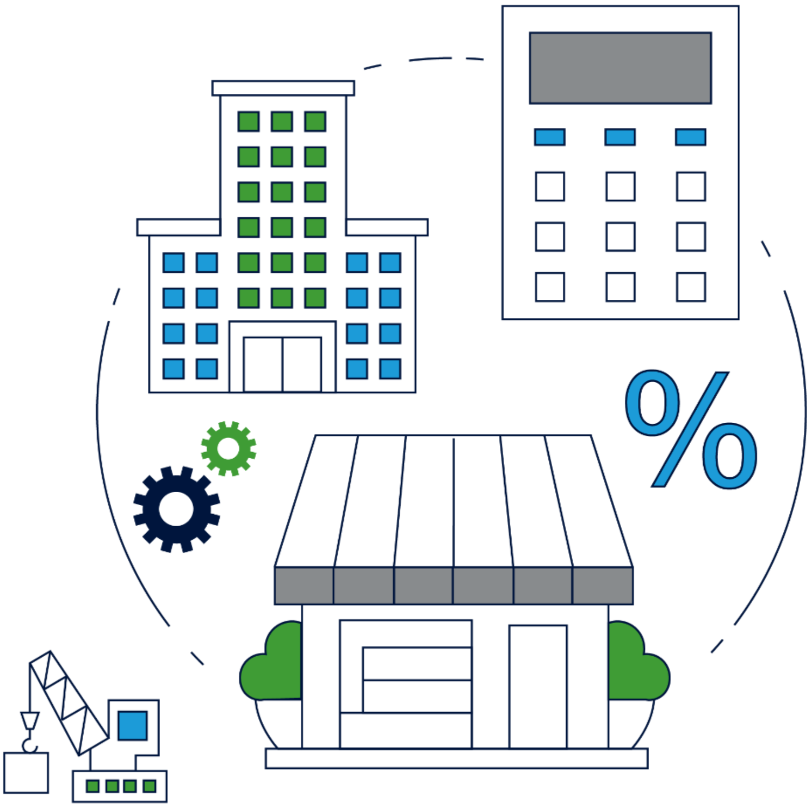
Therefore, this proposal should be revised to align with international best practice by excluding distribution of software and use or right to use industrial, commercial or scientific from the definition of royalties.

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
"Digital content monetisation"	means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms– (j) creative works; (k) creating or sharing of the material; or (l) any other material that is not exempt under this Act.	This increases the scope of taxation of digital content monetisation. Further, it creates a greater sense of ambiguity due to the addition of the phrase "any other material that is not exempt under this Act".
"donation"	means a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration.	This definition will create certainty on donations to charitable organisations that are allowable as deductions in the computation of taxable income.
"related person"	means in the case of two persons, either person who participates directly or indirectly in the management, control or capital of the business of the other person, and in the case of more than the two persons, – (a) any other person who participates directly or indirectly in the management, control or capital of the business of the two persons; or (b) an individual who– (i) participates directly or indirectly in the management, control or capital of the business of the two persons; and (ii) is associated to the two persons by marriage, consanguinity or affinity and the two persons participate in the management, control or capital of the business of the individual.	Currently, the Eighth Schedule to the Act (CGT) provides an inclusive definition of the term. The Bill proposes to delete the definition of "related persons" for CGT purposes and substitute it with a new definition that applies to the entire Act. This proposal will provide clarity on the types of transactions subject to CGT in which the market value shall be used as the adjusted cost or transfer value. This will affect the gains or profits for certain income of non-residents, Capital Gains Tax and income from dividends.
"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.
"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.	

Term	Definition	Implications
		Further, this amendment seeks to reduce regulatory overlaps and reduce unnecessary administrative burdens on retirement and pension funds.
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 (EFFECTIVE 1ST JULY 2024)

GENERAL PROVISIONS

THRESHOLD FOR VAT REGISTRATION

The Act requires a person who makes or is expected to make taxable supplies of KShs. 5,000,000 within a period of 12 months to register for VAT.

The Bill proposes to expand this minimum threshold to KShs. 8,000,000 within a period of 12 months. This is a welcome move as it will lessen the burden for low income earners.

Please note that neither this provision nor the proposed amendment apply to suppliers providing **imported** digital services over the internet, electronic network or through a digital marketplace as they are still required to register for VAT whether or not the taxable supplies meet the annual turnover threshold.

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 required export confirmation documents, which include but are not exhaustive to:

- 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.

CLARITY ON THE DEFINITION OF A TAX INVOICE

Initially, a tax invoice was defined under The Value Added Tax (Electronic Tax Invoices) Regulations, 2020. However, pursuant to the introduction of eTIMS in 2023, the Bill proposes to expand the definition of a tax invoice to include an invoice generated through a system that the Commissioner may establish (currently eTIMS).

If this proposal is enacted, invoices generated from both TIMS and eTIMS shall be accepted as tax invoices for VAT purposes.

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.

APPLICATION AND PAYMENT OF VAT REFUNDS

Excess input tax from withholding VAT credits will no longer be used by the Commissioner to offset against any tax payable thus will only be subject to a refund.

The Bill further proposes to delete the time frame for applying for a refund. The Act currently provides for a refund to be lodged within 24 months. The proposed amendment seeks to harmonize the time frame to six months as currently stipulated under Section 47 of the Tax Procedures Act.

A registered manufacturer may apply for a refund of excess input tax credits arising from making taxable supplies to official aid funded projects within twelve months from 2022. This provision is now redundant as the refund application deadline lapsed in 2023. The Bill proposes to align the refund application time frame to the 6 months window provided in the TPA.

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.

RECOVERY OF VAT ON BAD DEBTS

Currently, there are two similar provisions on the payment of VAT to the Commissioner upon recovery of VAT on a bad debt, which the Commissioner had refunded to a supplier.

The Bill seeks to provide clarity on the time in which a supplier, who has received a refund of VAT on bad debts but has thereafter recovered the tax from the debtor, to remit the recovered tax to the Commissioner within thirty days of recovery. This aligns with the older provisions under the VAT Act.

DEDUCTIBILITY OF INPUT VAT

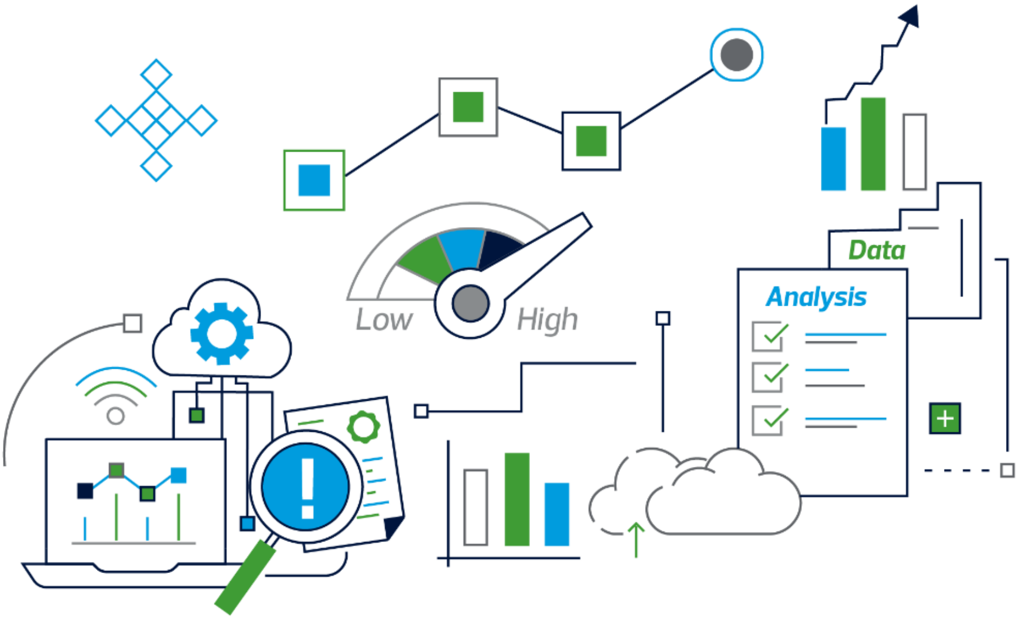
Currently, manufacturers who are registered for VAT are allowed to make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule.

The Bill seeks to delete this provision meaning that should the Bill be passed as is, manufacturers who make supplies to official aid funded projects will no longer claim input VAT incurred in making such supplies.

LIMITATION OF CERTAIN EXEMPTIONS

Currently, taxable goods and services, inputs and raw materials imported or locally purchased by a company which is engaged in business under a special operating framework arrangement with the Government; and incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, are exempt from VAT subject to the approval of the Cabinet Secretary for the National Treasury.

The Bill seeks to limit this exemption to only special arrangement frameworks entered by the Government prior to 1st July 2017. This thus means that companies entering into such arrangements after the proposed date will not enjoy the exemption.



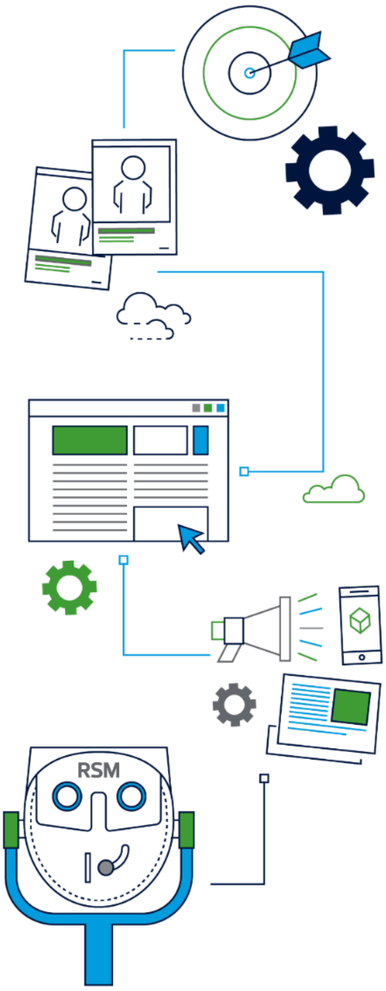
VAT RATE CHANGES

Supplies	Proposed Rate	Current Rate
FINANCIAL SECTOR		
The following financial services have been proposed to be Vatable—		
Issuing of credit and debit cards	16%	Exempt
Telegraphic money transfer services	16%	Exempt
Foreign exchange transactions, including the supply of foreign drafts and international money orders	16%	Exempt
Cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques	16%	Exempt
Issuance of securities for money, including bills of exchange, promissory notes, money and postal orders	16%	Exempt
The assignment of a debt for consideration	16%	Exempt
The provision of the above financial services on behalf of another on a commission basis	16%	Exempt
MANUFACTURING SECTOR		
Pressure sensitive adhesive of tariff number 3506.91.00	16%	Exempt
Plain polythene film/LPDE of tariff number 3921.19.10	16%	Exempt
Plain polythene film/PE of tariff number 3921.19.10	16%	Exempt
PE white 25-40gsm/release paper of tariff number 4811.49.00	16%	Exempt
ADL 25-40gsm of tariff number 5603.11.00	16%	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant	16%	Exempt
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
Inputs and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health	Exempt	16%
The supply of locally assembled and manufactured mobile phones	16%	0%
HEALTH SECTOR		
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption	16%	Exempt
Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption	16%	Exempt
The supply of denatured ethanol of tariff number 2207.20.00	16%	Exempt
Mosquito repellent	Exempt	16%
TOURISM SECTOR		
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks	16%	Exempt

Supplies	Proposed Rate	Current Rate
For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills		
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
Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks	16%	Exempt
AVIATION SECTOR		
Tariff 8802.30.00 – Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kg but not exceeding 15,000 kg	16%	Exempt
Tariff 8802.60.00 – Spacecraft (including satellites) and suborbital and spacecraft launch vehicles	16%	Exempt
Aircraft parts thereof of Chapter 88	Exempt	Exempt
Direction-finding compasses, instruments and appliances for aircraft	16%	Exempt
Hiring, leasing and chartering of aircrafts, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00	16%	Exempt
INSURANCE SECTOR		
Insurance and reinsurance premium	Exempt	Exempt
TRANSPORT SECTOR		
Locally Manufactured passenger motor vehicles: Provided that in this paragraph— "locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya; and "original equipment manufacturer" means a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies.	Exempt	Exempt
The supply of motorcycles of tariff heading 8711.60.00	Exempt	0%
The supply of electric bicycles	16%	0%
The supply of electric buses of tariff heading 87.02	16%	0%

Supplies	Proposed Rate	Current Rate
AGRICULTURAL SECTOR		
Tea packaging material	Exempt	16%
Micronutrients, foliar feeds and bio-stimulants of Chapter 38	Exempt	16%
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%
Transportation of sugarcane from farms to milling factories	16%	0%
ENERGY SECTOR		
Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy until the completion of the projects under development	Exempt	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	16%	Exempt
ARTS AND ENTERTAINMENT SECTOR		
Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury	16%	Exempt
Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education	16%	Exempt
Services imported or procured locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury	16%	Exempt
OTHER SECTORS		
The supply of ordinary bread	16%	0%
Gluten bread	16%	Exempt
Unleavened bread	16%	Exempt
Betting, gaming and lotteries services	16%	Exempt
Transfer of a business as a going concern	Exempt	16%
The supply of solar and lithium ion batteries	16%	0%
Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)	Exempt	0%
All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces, National Intelligence Service and the National Police Service	Exempt	Exempt
The following goods shall be exempt supplies for a period of three years from the commencement of this Act unless the exempt status of the supplies is earlier revoked—	16%	16%

Supplies	Proposed Rate	Current Rate
2709.00.00 – Petroleum oils and oils obtained from bituminous minerals, crude 2710.12.10 – Motor spirit (gasoline) regular 2710.12.20 – Motor spirit (gasoline), premium 2710.12.30 – Aviation spirit 2710.12.40 – Spirit type jet fuel 2710.12.50 – Special boiling point spirit and white spirit 2710.12.90 – Other light oils and preparations 2710.19.10 – Partly refined (including topped crudes) 2710.19.21 – Kerosene type jet fuel 2710.19.22 – Illuminating kerosene (IK) 2710.19.29 – Other medium petroleum oils and preparations 2710.19.31 – Gas oil (automotive, light, amber, for high speed engines) 2710.19.39 – Other gas oils 2711.21.00 – Natural gas in gaseous state 2711.29.00 – Other natural gas in gaseous state The exemption on these products expired in 2018 but they had not been deleted from the Act. This proposed amendment is to formally delete these expired exemptions (2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1st September 2016		



INDIRECT TAX - EXCISE DUTY ACT, 2015

OFFSETTING INPUT EXCISE AGAINST OUTPUT EXCISE – EFFECTIVE 1ST JULY 2024

- Currently, manufacturers of excisable goods and distributors of internet services can offset their input excise duty against the excise duty on the finished goods/retail internet. The Bill proposes to delete this provision.
- If this proposal is enacted, manufacturers of excisable goods and distributors of internet services will have to expense their input excise and remit the full amount of excise duty to the Commissioner.
- This may negatively impact on the cash flows of affected entities. Further, this proposal would effectively subject manufacturers and internet distributors to a tax that ought to hit the consumer.

REFERENCE TO CUSTOMS DEFINITIONS FOR EXCISE PURPOSES – EFFECTIVE 1ST JULY 2024

- The Bill proposes to amend the Excise Duty Act to provide that goods shall be classified based on the Protocol establishing the East African Community Customs Union and the General Rules of Interpretation.
- This is a welcome proposal as it synchronizes the definitions of terms for customs and excise duty purposes. Further, it will provide greater certainty on the definition of excisable goods.

EXCISABLE SERVICES OFFERED DIGITALLY BY NON-RESIDENTS – EFFECTIVE 1ST JULY 2024

- 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 – EFFECTIVE 1ST JULY 2024

- 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 – EFFECTIVE 1ST JULY 2024

- Manufacturers 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 5 working days upon removal of the goods from the stockroom. If enacted, this amendment will improve the cash flows of alcoholic beverage manufacturers.

EXCISE LICENCE APPLICATION CONSIDERATION TIMELINES – EFFECTIVE 1ST JULY 2024

- The Commissioner is not bound by any timelines when considering an application for an excise license. The Bill proposes to impose a 14-day deadline for the Commissioner to consider and decide on an excise license application that is properly lodged.
- This is a welcome move as it provides a sense of administrative certainty. However, there is no mechanism to hold the Commissioner accountable to this timeline.

EXCISE DUTY ON MOTORCYCLES – EFFECTIVE 1ST SEPTEMBER 2024

- Currently, all motorcycles except motorcycle ambulances, locally assembled motorcycles and electric motorcycles at a rate of KShs. 12,185.16 per unit.
- The Bill proposes to delete this provision and instead impose excise duty on electric motorcycles (excluding locally assembled motorcycles and motorcycle ambulances at the higher of 10% of the value or KShs. 12,952.83 per unit.
- If this proposal is enacted, combustion engine motorcycles will not be subject to excise duty. This also goes against the principle of promoting electric vehicles, which are more environmentally friendly compared to combustion vehicles.

IMPORTS FROM EAST AFRICAN COMMUNITY PARTNER STATES – EFFECTIVE 1ST JULY 2024

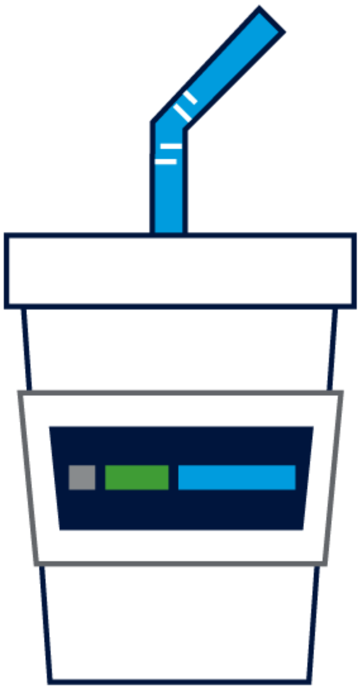
- The following goods are subject to excise duty currently at a rate of 25% upon importation:
  - Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90;
  - Imported eggs of tariff heading 04.07;
  - Imported onions of tariff heading 07.03; and
  - Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00.
- The Bill proposes to exempt the same from excise duty if they originate from East African Community partner states in accordance with the Rules of Origin.
- This is a welcome proposal, as it will encourage intra-EAC trade and food supply.

CLINKER IMPORTS – EFFECTIVE 1ST JULY 2024

- Imported cement is subject to excise duty at the higher of 10% of the value or KShs. 1.50 per kg. The Bill proposes to exclude clinker from this charge.
- If enacted, this proposal will reduce the cost of importing clinker effectively reducing the cost of local cement manufacture.

PLASTICS (CARBOYS, BOTTLES, FLASKS AND SIMILAR ARTICLES) – EFFECTIVE 1ST JULY 2024

- Imported articles of plastic of tariff heading 3923.30.00 and 3923.90.90 are subject to excise duty at a rate of 10%.
- The Bill proposes to subject locally manufactured plastics of the same tariff headings to excise duty. If enacted, this will increase the cost of such plastic articles.



CHANGES TO EXCISE DUTY RATES AND DESCRIPTIONS

Goods	Proposed Rate	Current Rate
Imported sugar confectionary of tariff heading 17.04***	KShs. 257.55 per kg	KShs. 35 per kg
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. 229 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%**	KShs. 22.50 per centilitre of pure alcohol	KShs. 134 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%**	KShs. 16 per centilitre of pure alcohol	KShs. 335.30 per litre
Cigarette with filters (hinge lid and soft cap)***	KShs. 4,100 per mille	KShs. 3,825.99 per mille
Cigarettes without filters (plain cigarettes)***	KShs. 4,100 per mille	KShs. 2,752.95
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. 1,500 per kg
Liquid nicotine for electronic cigarettes	KShs. 100 per millilitre	KShs. 70 per millilitre
Coal***	5% of the value or KShs. 27,000 per metric tonne	N/A
Vegetable oils of tariff codes 1511, 1512, 1515 and 1517 (palm oil, sunflower oil, linseed, corn oil, castor oil, sesame oil, jojoba and margarine)	25%	N/A
Styrene-acrylonitrile (SAN) copolymers***	20%	20%

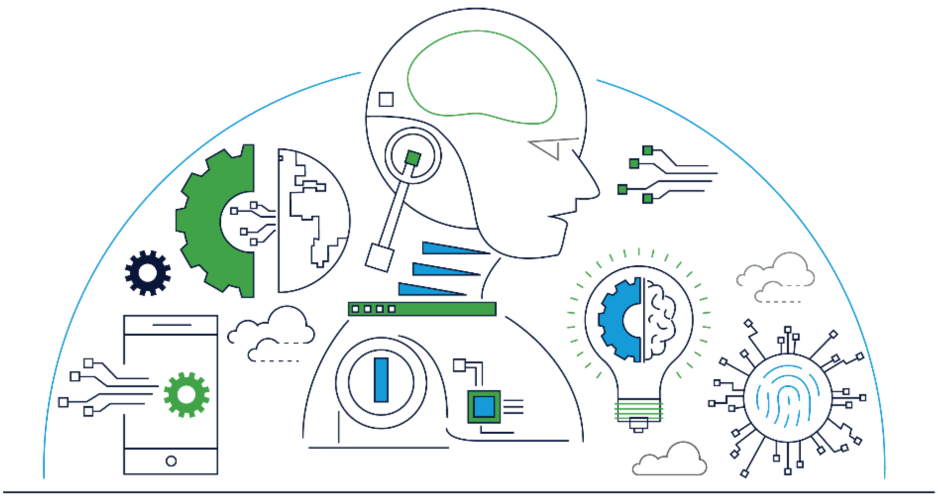
** Effective 1st September 2024

*** Effective 1st July 2024

Services	Proposed Rate	Current Rate
Telephone and internet data services	20%	15%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	20%	15%
Excise duty on fees charged for money transfer services by cellular phone service providers or payment service provides licensed under the National Payment System Act, 2011	20%	15%
Excise duty on betting (on the amount wagered or staked)	20%	12.5%
Excise duty on gaming (on the amount wagered or staked)	20%	12.5%
Excise duty on the amount paid/charged to participate in a prize competition	20%	12.5%
Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries)	20%	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%

EXEMPTIONS – EFFECTIVE 1ST JULY 2024

- The Bill proposes to exempt all goods for the official use of the National Intelligence Service from excise duty.
- Currently, locally manufactured passenger vehicles are exempt from excise duty if their ex-factory value comprises of at least 30% local content and defines the term "local content" as parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya. The Bill proposes to define the term "original equipment manufacturer" as a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies.



TAX PROCEDURES ACT, 2015

AGENCY NOTICES – EFFECTIVE 1ST JULY 2024

- Limitation to the validity period of an agency notice to one year (unless the Commissioner accepts a notice by a person that they are unable to comply with an agency notice or the agency notice is withdrawn) has been proposed under the Bill. Currently, an agency notice stands until settled by the tax defaulter or persons served with agency notices.
- This is a welcome move as, if enacted, it will create a sense of certainty to the subject of an agency notice and persons doing business with the subject of an agency notice.
- Currently, the Commissioner cannot issue an agency notice if the taxpayer still has time to appeal against the judgement of the Tax Appeals Tribunal or a Court. However, the Bill proposes to delete this provision effectively allowing the Commissioner to issue an agency notice once it receives a judgement in its favour irrespective of the taxpayer's right to appeal the judgment.
- This is a concerning proposal as taxpayers may be exposed to a higher risk of agency notices if they lose a dispute at the Tax Appeals Tribunal or Court. Further, this may increase the cost of litigation as taxpayers may have to file applications for stay immediately they receive an unfavorable judgement.

ABANDONMENT OF TAXES – EFFECTIVE 1ST JULY 2024

- 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 submit a biannual report to the Cabinet Secretary of Treasury containing the details and amounts of tax abandoned by 30th June and on or before 31st December every year. Subsequently, the Cabinet Secretary of Treasury will be required to issue a similar report to the National Assembly, before 30th March of the following year.

WITHHOLDING VAT: EXEMPTIONS AND PAYMENT – EFFECTIVE 1ST JULY 2024

- 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 – EFFECTIVE 1ST JULY 2024

- 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.

OBJECTIONS – EFFECTIVE 1ST JULY 2024

- The Commissioner is required to issue an objection decision within 60 days from the date on which an objection is validly lodged failure to which the objection shall be deemed to be allowed. The Bill proposes to increase this decision window to 90 days.
- If enacted, this amendment may afford the Commissioner more time to generate higher quality objection decisions. On the other hand, this will increase a taxpayer's waiting time.
- Currently, the Commissioner may require a person who has invalidly lodged an objection to provide additional information within 7 days failure to which the Commissioner will have 60 days to issue its objection decision. The Bill proposes to amend this provision to automatically disallow an objection if a person fails to provide the required information within the 7-day window.
- This is a concerning proposal as it will limit a taxpayer's right to fair administrative action and may negatively affect a taxpayer who was unable to comply with the seven day window with good reason.

INTEGRATION OF DMRS WITH ELECTRONIC SYSTEMS – EFFECTIVE 1ST JULY 2024

- 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. 2 million (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 – EFFECTIVE 1ST JULY 2024

- Currently, if a deadline for submission of a document, a tax return, application, notice, payment of a tax or any other action 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.
- On one hand, this proposal will increase the compliance window for taxpayers. On the other hand, it may cause confusion in the computation of time, as the persons responsible for filing would have to recheck filing deadlines on a monthly basis.

PIN REQUIREMENT FOR REMOTE EMPLOYEES OF KENYAN EMPLOYERS – EFFECTIVE 1ST JULY 2024

- 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.
- 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.

TAX AGENT LICENCE APPLICATION AND CANCELLATION – EFFECTIVE 1ST JULY 2024

- The proposal seeks to allow for the publication of regulations for a Tax Agents Committee that will deal with the issuance and cancellation of tax agent licenses. This is a welcome move, as it will reduce the current backlog of tax agent license applications.
- Currently, the Tax Procedures Act does not have regulations on the establishment of a tax agents committee and there a significant number of tax agent license applications that have been pending for over 2 years.

MISCELLANEOUS AMENDMENTS

MISCELLANEOUS FEES AND LEVIES ACT, 2016

INTRODUCTION OF ECO LEVY– EFFECTIVE 1ST JULY 2024

- The Bill proposes to introduce a levy known as Eco Levy on goods specified under Fourth Schedule of Miscellaneous Fees and Levies Act, 2016 manufactured in Kenya or imported into Kenya.
- The levy is intended to ensure that manufacturers and importers of goods pay for the negative environmental impact of the goods.
- The Cabinet Secretary will be empowered to make regulations for the better implementation of the provisions of the levy.
- The goods subject to Eco Levy are as indicated below:

Tariff No.	Tariff Description	Proposed Rate (KShs.)
8472.90.00	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other	98 per unit
8470.21.00	Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers incorporating a printing device	225 per unit
8471.30.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included - portable automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display	225 per unit
8471.41.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included - comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined	225 per unit
8471.49.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included - other, presented in the form of systems	225 per unit
8471.50.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included - processing units other than those of sub-heading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units	225 per unit
8471.60.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included - input or output units, whether or not containing storage units in the same housing	225 per unit
8471.80.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included - other units of automatic data processing machines	225 per unit

Tariff No.	Tariff Description	Proposed Rate (KShs.)
8471.90.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other	225 per unit
8472.90.00	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other	225 per unit
8473.30.00	Arts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.70 to 84.72.Parts and accessories of automatic data processing machines and units thereof – parts and accessories of the machines of heading 84.71	98 per unit
8517.11.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transm1ss1on or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – line telephone sets with cordless handsets	225 per unit
8517.13.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – smartphones	225 per unit
8417.14.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transm1ss1on or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – Other telephones for cellular networks or for other wireless networks	225 per unit
8517.18.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other	225 per unit
8517.61.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or\wide area network), other than transm1ss1on or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations	225 per unit
8517.62.00	Telephone sets, including smartphones and other telephones including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or ,vide area network): base stations: machines for the reception, conversion and	225 per unit

Tariff No.	Tariff Description	Proposed Rate (KShs.)
	transmission or regeneration of voice, images or other data, including switching and routing apparatus	
8517.69.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or ,vide area network), other than transm1ss1on or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 - other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations: other	225 per unit
8518.10.00	Microphones and stands thereof; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets - microphones and stands thereof	225 per unit
8519.81.00	Sound recording or reproducing apparatus - using magnetic, optical or semiconductor media	98 per unit
8525.50.00	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders - transmission apparatus for radio-broadcasting or television	98 per unit
8525.60.00	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders - transmission apparatus incorporating reception apparatus	98 per unit
8525.81.00	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders - high-speed goods as specified in Subheading Note 1 to this Chapter	98 per unit
8525.82.00	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders Television cameras, digital cameras and video camera recorders: Other, radiation-hardened or radiation-tolerant goods as specified in Subheading Note 2 to this Chapter	98 per unit
8525.83.00	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders television cameras, digital cameras and video camera recorders: other, night vision goods as specified in Subheading Note 3 to this Chapter	98 per unit
8525.89.00	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders television cameras, digital cameras and video camera recorders: other	98 per unit
8526.91.00	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus - other: radio navigational aid apparatus	98 per unit
8527.12.00	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - radio-broadcast receivers capable of operating without an external source of power: pocket-size radio cassette-players	225 per unit
8527.13.00	Reception apparatus for radio-per unit broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - radio-broadcast receivers capable of operating without an external source of power: other apparatus combined with sound recording or reproducing apparatus	225 per unit

Tariff No.	Tariff Description	Proposed Rate (KShs.)
8527.19.00	Reception apparatus for radio - 8527.19.00 225 per unit broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - radio-broadcast receivers capable of operating ,without an external source of power: other	225 per unit
8527.21.00	Reception apparatus for radio - 8527.21.00 broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles: combined, with sound recording or reproducing apparatus	225 per unit
8527.29.00	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles: other	225 per unit
8527.91.00	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - other: combined with sound recording or reproducing apparatus	225 per unit
8527.92.00	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - other: not combined with sound recording or reproducing apparatus but combined with a clock	225 per unit
8527.99.00	Reception apparatus for radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock - other: other	225 per unit
8528.71.00	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus - reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: not designed to incorporate a video display or screen	1,275 per unit
8528.72.10	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus - reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, colour; unassembled	1,275 per unit
8528.73.10	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus - reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, monochrome; unassembled	1,275 per unit
8528.73.90	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus - reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, monochrome; other	1,275 per unit
8540.11.00	Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode- ray tubes, television camera tubes) - cathode-ray television picture tubes, including video monitor cathode-ray tubes: colour	1,800 per unit
8540.12.00	Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode- ray tubes, television camera tubes) - cathode-ray television picture tubes, including video monitor cathode-ray tubes: monochrome	1,800 per unit
8540.20.00	Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes,	1,800 per unit

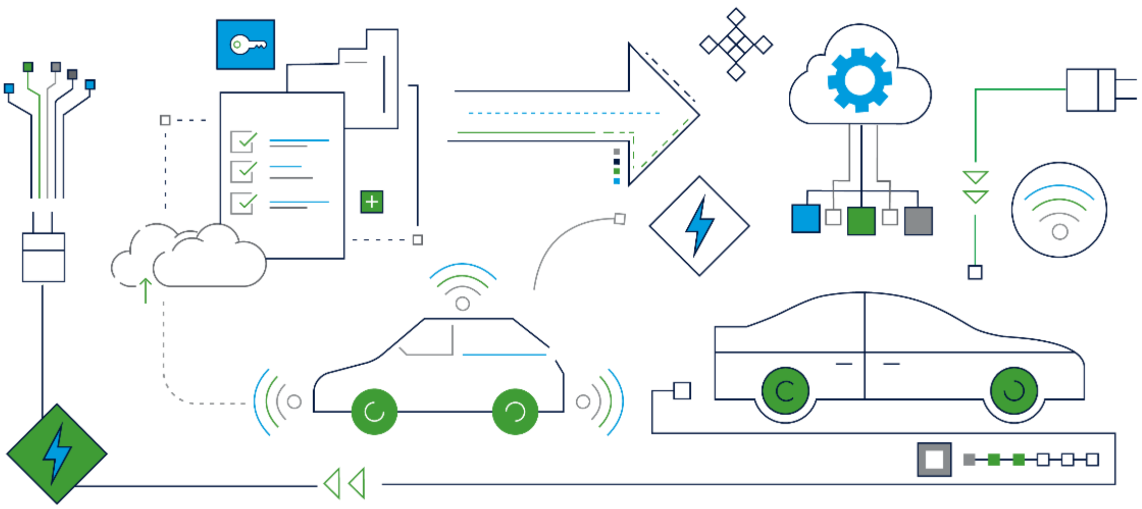
Tariff No.	Tariff Description	Proposed Rate (KShs.)
	cathode-ray tubes, television camera tubes) – television camera tubes, image converter and other photocathode tubes	
9030.40.00	Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)	98 per unit
	Rubber tyres of Chapter 40	1,000 per unit
	Diapers of Chapter 96	150 per kg
	Batteries or dry cells of Chapter 85	750 per kg
	Plastic packing material of Chapter 39	150 per kg

CHANGES TO EXPORT AND INVESTMENT PROMOTION LEVY – EFFECTIVE 1ST JULY 2024

- Export and Investment Promotion Levy aims at providing funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.
- The levy was introduced in 2023 and it is paid by importers at the time of importing goods into the country from outside East African Community (EAC).
- The Bill proposes to introduce new items subject to Export and Investment Levy by repealing the Third Schedule to the Miscellaneous Fees and Levies Act, 2016 and introducing a new Third Schedule with new proposed rates as indicated below:

Tariff No.	Tariff Description	Proposed Rate
2207.20.00	Denatured ethyl alcohol and other spirits	3% of the customs value
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3% of the customs value
2208.60.00	Vodka	3% of the customs value
2523.10.00	Cement clinker	10% of the customs value
3401.30.00	Organic surface-active products and preparations for washing the skin	3% of the customs value
4804.11.00	Kraft liner	3% of the customs value
4804.29.00	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03 — Other	3% of the customs value
0401.20.00	Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6%	3% of the customs value
69.10	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures	3% of the customs value
7207.11.00	Billets	10% of the customs value
7321.12.00	Cooking stoves for liquid fuel	3% of the customs value
8711.10.90	Motorcycles with internal combustion engine not exceeding 50cc	3% of the customs value
8711.20.10*	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc **The proper description should be Motorcycle ambulances. We hope this will be corrected before the Bill is enacted.*	3% of the customs value

Tariff No.	Tariff Description	Proposed Rate
8711.20.90	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3% of the customs value
8711.30.90	Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc	3% of the customs value
8711.40.90	Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc	3% of the customs value
8711.50.90	Motorcycles with internal combustion engine exceeding 800cc	3% of the customs value
8711.60.00	Electric motorcycles	3% of the customs value
9403.10.00	Metal furniture of a kind used in offices	3% of the customs value
9403.20.00	Other metal furniture	3% of the customs value
9403.30.00	Wooden furniture for office	3% of the customs value
9403.40.00	Wooden furniture for kitchen	3% of the customs value
9403.50.00	Wooden furniture for bedrooms	3% of the customs value
9403.60.00	Other wooden furniture	3% of the customs value
9403.70.00	Furniture of plastics	3% of the customs value
9403.82.00	Furniture of bamboo	3% of the customs value
9403.83.00	Furniture of rattan	3% of the customs value
9403.89.00	Furniture of cane, osier or similar material	3% of the customs value
9403.91.00	Parts of furniture of wood	3% of the customs value
9403.99.00	Parts of furniture, not of wood	3% of the customs value
9404.10.00	Mattress supports	3% of the customs value



CHANGES TO EXPORT AND INVESTMENT PROMOTION LEVY – EFFECTIVE 1ST JULY 2024 (CONTINUED)

The current Third Schedule (proposed to be deleted) subject to the Levy and the corresponding rates are as indicated below:

Tariff No.	Tariff Description	Current Rate
2523.10.00	Cement Clinkers	17.5% of the customs value
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	17.5% of the customs value
7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	17.5% of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	17.5% of the customs value
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10% of the customs value
4804.21.00	Sack kraft paper; Unbleached	10% of the customs value
4804.31.00	Other kraft paper and paperboard weighing 150 g/m2 or less: Unbleached	10% of the customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more	10% of the customs value
4819.40.00	Other sacks and bags, including cones	10% of the customs value

- Further, the Bill proposes to exempt from the Levy goods imported under a Special Operating Framework Agreement with the Government. Currently, only goods originating from East African Community Partner States that meets the East African Community Rules of Origin are exempt.
- The exemption would enable the Government to make trade agreements with other trade partners to achieve specific economic objectives.

IMPORT DECLARATION FEES ("IDF")

- The Bill proposes to increase the rate of IDF from the current rate of 2.5% to 3% of customs value.
- Further, the Bill proposes to allocate 20% of monies collected from the fees for revenue enforcement initiatives or programmes.
- The Bill also proposes to exempt from IDF all goods including material supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service in addition to items imported by Kenya Defence Forces and National Police Service.
- It further proposes to exempt inputs, raw materials and machinery used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health.

RAILWAY DEVELOPMENT LEVY EXEMPTIONS

- In addition to the proposed IDF exemptions above, the Bill also proposes to exempt from RDL all goods including material supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service in addition to items imported by Kenya Defence Forces and National Police Service.
- It further proposes to exempt from RDL inputs, raw materials and machinery used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health.
- The objective of the above exemptions is to enhance national security and boost fight against malaria in line with government agenda of universal health care.

AFFORDABLE HOUSING ACT, 2024

REMOVAL OF RESTRICTIONS TO OWNERS OF AFFORDABLE HOUSING UNITS – EFFECTIVE 1ST JULY 2024

- The Bill proposes to remove the restriction prohibiting owners of affordable housing units from selling their units to any other person except with prior written consent of the Affordable Housing Board.
- This will give home-owners a leeway to sell their units when need arises without restrictions.

INDUSTRIAL TRAINING ACT

COLLECTION OF TRAINING LEVY – EFFECTIVE 1ST JULY 2024

- The Bill proposes to extend the provisions of Tax procedures Act, 2015 with regard to collection of Training levy.
- The Commissioner General was mandated to collect the levy on behalf of the National Industrial Training Authority (NITA) with effect from 22nd April 2022 and the due date is 9th of the month following the month of deduction with effect from 24th April 2024.

DATA PROTECTION ACT, 2019

DISCLOSURE OF INFORMATION – EFFECTIVE 1ST JULY 2024

- The Bill proposes to exempt from requirements of Data Protection Act, 2019 disclosures relating to assessment, enforcement or collection of any tax or duty under a written tax law.
- The objective of this proposal is to protect the Commissioner from Data Protection related litigations and also ensure that taxpayers' information is transmitted and processed without data protection limitations, especially in the era of eTIMS regulations and requirements.

PUBLIC FINANCE MANAGEMENT ACT

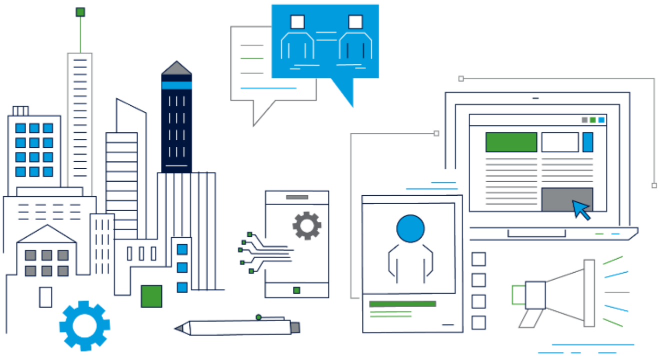
IMPLEMENTATION OF ACCRUAL ACCOUNTING CONCEPT IN GOVERMENT – EFFECTIVE 1ST JULY 2024

- The Bill proposes to empower the Public Sector Accounting Standards Board to prescribe a framework for implementation of accrual accounting and risk management framework in Government.
- The framework for implementation of accrual accounting is to provide for a three-year transition period from date of commencement of the Act.
- The shift from cash to accrual accounting is informed by the need to find a solution to the pending bills impasse affecting the Government.

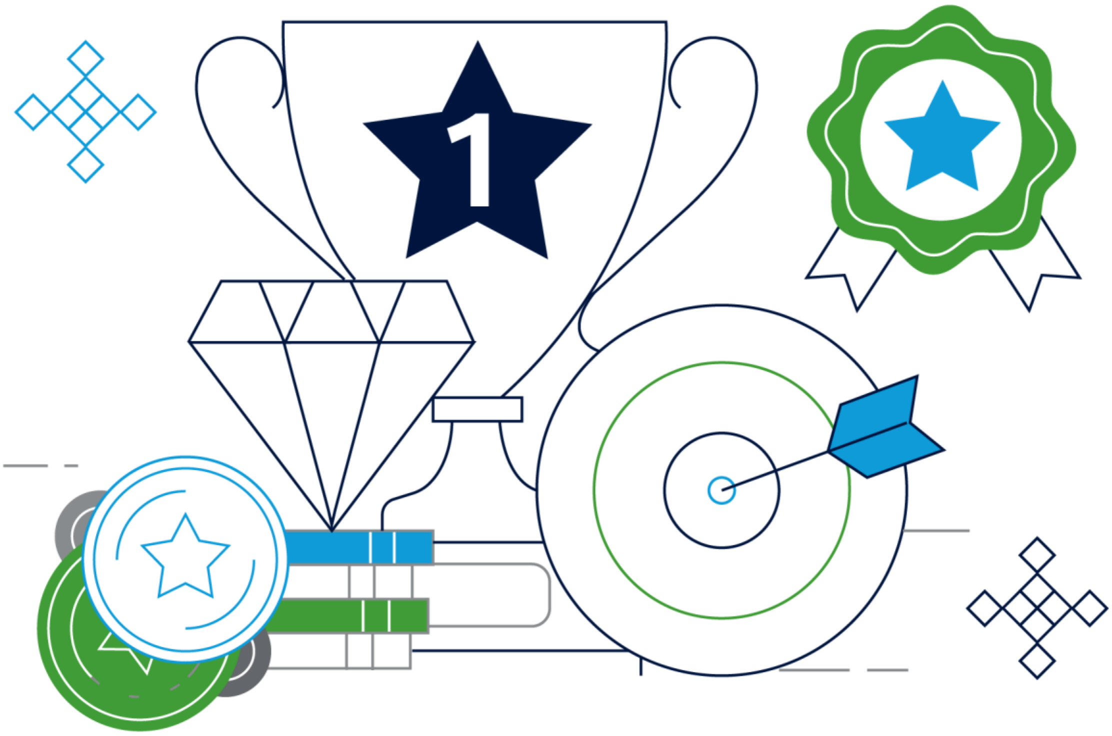
KENYA REVENUE AUTHORITY ACT

MANDATE OF COLLECTING CHARGES AND FEES UNDER CIVIL AVIATION ACT – EFFECTIVE 1ST JULY 2024

- The Bill proposes to change mandate of collecting charges and fees payable under Civil Aviation Act from Kenya Revenue Authority (KRA) to the Kenya Civil Aviation Authority.
- Once the change if effected, KRA will no longer be the collecting agent for aviation related charges and fees and this will now be managed by KCAA. This is aimed at streamlining the processes.



Caveat



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