

RSM EA Newsletter

Overview of the Tax Laws and
Tax Procedures Amendment Acts, 2024

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INTRODUCTION

The Tax Laws (Amendment) Bill, 2024, the Tax Procedures (Amendment) (Number 2) Bill, 2024 and the Business Laws (Amendment) Bill, 2024 were presented to the National Assembly in November 2024. The same were assented to by the President on 11th December 2024. Whilst the Bills did not specify the effective date, the Acts commence on 27th December 2024 (14 days after 13th December 2024 which was the date of gazettment). All the provisions of these Acts are effective from 27th December, 2024.

The Acts seek to bring about changes to the Income Tax Act, Value Added Tax Act, Excise Duty Act, Miscellaneous Fees and Levies Act and Tax Procedures Act.

Some of the key changes include:

- Extension of the amnesty to 30th June 2025 and the applicable period to 31st December 2023
- Contributions paid for Affordable Housing Levy and SHIF to be an allowable deduction and not treated as a relief
- Introduction of minimum top up tax
- Repealing of DST and introduction of significant economic presence tax at an effective tax rate of 3%
- Non-taxable benefits threshold now increased to KShs. 60,000 per year from KShs. 36,000 and meal allowance limit now increased to KShs. 60,000 per year from KShs. 48,000 per year
- Pension contribution limit has been increased to KShs. 30,000 per month (KShs. 360,000 per year) from KShs. 20,000 (KShs. 240,000 per year)
- Removal of exemption from income tax on income earned by a registered family trust
- Transfer of business as a going concern would also be made exempt from VAT
- Reintroduction of the Commissioner's powers to abandon the collection of taxes
- Increase of RDL to 2.0%

INCOME TAX ACT

INTRODUCTION OF MINIMUM TOP-UP TAX

The Act introduced 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:

$$\text{MTT} = (15\% \text{ of net income/loss}^2 - \text{combined ETR}) \times \text{excess profit}^3$$

$$\text{Combined ETR} = (\text{Sum of all adjusted covered taxes}^4) \times 100$$

$$\text{Sum of all net income/loss}$$

Exemptions

The Act exempts the following from MTT:

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

Definitions

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

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

Implications

Pillar Two Model Rules also known as Global Anti-Base Erosion (GloBE) Rules were 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 introduction aligns the international tax regime in Kenya with international best practice such as the one proposed by OECD/G20.

INTRODUCTION OF SIGNIFICANT ECONOMIC PRESENCE TAX

The Act has repealed Digital Services Tax (DST) and replaced it with a new type of tax to be known as Significant Economic Presence Tax (SEPT).

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

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

Exemptions

The Act has exempted the following from SEPT:

- A non-resident person who offer the services through a permanent establishment; or
- Income subject to WHT (under Section 10 of the ITA);
- Income of a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication; or

- A non-resident providing digital services to an airline in which the Government of Kenya has at least 45% shareholding;
- A non-resident person whose annual turnover is less than five million shillings.

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

Implications

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

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

WITHHOLDING TAX (WHT) ON INCOME FROM A DIGITAL MARKETPLACE

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

A platform is defined as digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer.

The rate of WHT applicable is 20% where the services are provided by a non-resident, and 5% where provided by a resident.

Implication

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

WITHHOLDING TAXES

The Act has repealed Section 34 of the ITA which listed the items subject to WHT and specified rates applicable on qualifying dividends and qualifying interest. With this repeal, the Act has replaced the same with a new provision that refers a taxpayer to the Third Schedule for the applicable rates.

Whilst the initial provision expressly stated that the rate of WHT on qualifying dividends and interest would be a final tax, the same has not been replicated under the Third Schedule.

Impact

It now becomes uncertain whether the WHT deducted when paying out qualifying interest and qualifying dividends will be subjected to further taxation.



TAXATION OF EMPLOYMENT INCOME

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

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

Item	Amendment	Implication
Reimbursement of expenses incurred by public officials	The Act has exempted reimbursements made to public officials who have incurred expenses in carrying out their official duties, notwithstanding the control or ownership of the assets	This would mean that public officials are able to purchase assets that they may require in carrying out their official duties in their own name, without the reimbursement of the cost being taxed on the official. While this provision was not included in the Tax Laws Amendment Bill, it has been previously proposed under the Finance Bill 2024 and Finance Bill 2023

CHANGES TO CAPITAL ALLOWANCES

The Act has reduced the minimum investment requirement to qualify for a 100% investment deduction in the first year of use from the previous KShs. 2 Billion in the preceding 3 years outside Nairobi and Mombasa counties to KShs. 1 Billion.

This is a welcome move as it will encourage investments in locations outside Nairobi and Mombasa.

CHANGES TO CAPITAL GAINS TAX

The Act has introduced 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.

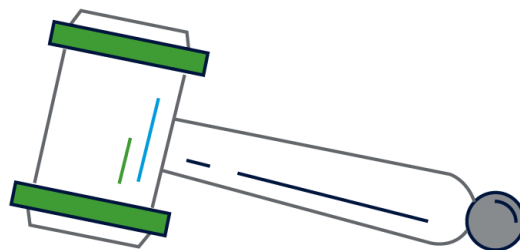
Implications

Under the previous provisions of the 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 will:

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

CGT came into force on 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%. This amendment will seal this loophole by providing that CGT will be payable at a minimum rate of 5% even for the entities that meet the above conditions and had made investment before 2016.



TAXATION OF REGISTERED TRUSTS

Whilst the Bill had proposed to remove the exemption from tax on the following incomes of a trust:

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

The Act has, however, only brought to tax the income of a registered family trust, and retained the exemptions on the principal sum of the trust and the CGT relating to the transfer of immovable property to the trust.

Implications

The Finance Act, 2021 introduced tax exemption on the above sources of income to encourage taxpayers to transfer properties to the registered family trusts as part of their estate planning. By now seeking to tax the income of a registered family trust, the Act has brought in the risk of double taxation as not only the income paid to the beneficiaries of the trust would be subjected to tax, but also the income of the trust itself. Furthermore, deleting the exemption on income of registered family trusts may discourage estate planning, contrary to the intention of the provision.

TAXATION OF PENSION INCOME

The following pension income will not be subject to tax:

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

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

Implications

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

TAXATION OF INCOME FROM GOODS SUPPLIED TO PUBLIC ENTITIES

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

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

Implications

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

OTHER KEY CHANGES

The Act has also introduced the following additional changes:

Category	Amendment	Implications
Taxation of Projects Financed by the Government and a Development Partner	The Act seeks to tax indirect income earned by a non-resident contractor, sub-contractor, consultant or an employee involved in the implementation of a project financed 100% grant under an agreement between the Government and a development partner to the extent provided by the agreement	This amendment will deter non-resident contractors, subcontractors, consultants and employees from extending the exemption to income they earn from sources not related to government projects and only limiting the exemption where the non-resident contractor maintains this status for the tenure of the agreement
Rearrangements or clean-ups	Penalty on failure by an EPZ Enterprises to submit a tax return The Acts seek to move the provision of penalty on failure of an EPZ enterprise to submit a tax return from the ITA to the TPA	Previously, 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 Act has reduced this to KShs. 20,000 per month
Sale of scrap	The Act has imposed WHT at 1.5% of the gross amount on the sale of scrap to both residents and non-residents	This amendment will expand the tax base to include scrap sellers, who generally fall under the informal sector, which has been considered as a hard to tax sector. There is no definition of scrap and in our view this will include all types of scrap The amendment aligns with the National Tax Policy and the Medium-Term Revenue Strategy which both call for bringing in measure to capture the hard to tax sector into the tax net

DEFINITIONS UNDER SECTION 2 OF THE ITA

Definition of "Royalty"

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

Implications

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

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

The Act has also introduced the following New Definitions:

Term	Definition	Implications
"donation"	means a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration, including grants	This definition will create certainty on donations to charitable organisations that are allowable as deductions in the computation of taxable income
"registered individual retirement fund"	means an individual retirement fund where the trust deed for such a fund has been registered with the Retirement Benefits Authority	Currently, individual retirement funds, pension funds and provident funds are not only required to be registered by the Retirement Benefits Authority but also to register with the Commissioner taxes in line with the Income Tax (Retirement benefit) rules, 1994 Whilst, these rules might be outdated, the proposed amendment will provide clarity on registration of the retirement fund for tax purposes. Further, this amendment will reduce regulatory overlaps and reduce unnecessary administrative burdens on retirement and pension funds
"registered pension fund"	means a pension fund which has been registered with the Retirement Benefits Authority	
"registered provident fund"	means a provident fund which has been registered with the Retirement Benefits Authority	
Wife's employment income	<ul style="list-style-type: none"> 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"; e) deleting the definition of "wife's self-employment income rate"; and f) deleting the definition of "wife's employment income rate" 	The Act has deleted 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



INDIRECT TAX – VALUE ADDED TAX ACT, 2013

GENERAL PROVISIONS

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

- Whilst an export was defined as taking or causing to be taken from Kenya to a foreign country, the Act has introduced a provision that for the purposes of export of goods, the time of supply shall be when the registered person is in possession of the certificate of export or such other equivalent documents issued by Customs. Initially, documents used as proof of export included but not limited 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 amendment 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.

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

Prior to the amendment by the Tax Laws Amendment Act, 2024, the VAT Act provided that a person who deals in mixed supplies and makes at least 90 percent taxable supplies would be eligible to claim 100 percent (100%) of the input VAT whereas if a person who makes less than 10 percent (10%) taxable supplies would not be eligible to claim any input VAT.

The amendment has revoked 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.

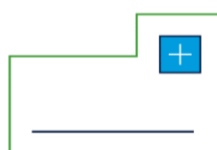
With this amendment, going forward the restriction will only be based on direct attribution of such input VAT incurred in generation of taxable supplies.

CLAIM OF EXCESS INPUT VAT

In addition to the current provisions of the VAT Act which provide that any excess arising from zero rated supplies or tax withheld by appointed tax withholding agents, a refund application can be made within 24 months from the date the tax becomes due and payable.

The Tax Laws Amendment Act, 2024 has introduced a significant amendment in this regard where a taxable supply that is zero rated or exempted, such excess arose on account of permanent credit position in favour of the registered person due to the difference between the rate applicable on the 1st July 2022 and a lower rate of tax and that such credit position existed on the date that the taxable supply became zero-rated or exempted, provided that notwithstanding the provisions of subsection (5), a registered person who incurred such a credit shall apply to the Commissioner for relief within 6 months after the commencement of this provision.

This effectively means taxpayers have a window of 6 months from 27th December 2024 to apply for a refund of any excess credits which arose due to changes brought in by Finance Act 2022 and they have been in a permanent credit position.



MINIMUM REQUIREMENTS FOR ALL INVOICES

The Tax Procedures (Amendment) Act 2024, introduced 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 amendment has 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 removal of input vat claim on supplies to official aid funded project.

Previously, the VAT Act allowed registered manufacturers, upon approval by the Cabinet Secretary to make a deduction for input VAT on supplies made to official aid funded project (these are exempt supplies).

The new law has deleted this provision thus removing the relief on manufacturers making such supplies.

INVOICES FOR SMALL SCALE BUSINESS

The Tax Procedures (Amendment) Act 2024, introduced that a purchaser of goods and services from a small business or a small scale farmer whose annual turnover is less than Kshs 5M will be required to issue an electronic tax invoice for purposes of ascertaining any tax liability. This move is to assist small businesses with their compliance requirements as they may not have resources to do so.

EXPENSES SUBJECT TO WITHHOLDING TAX EXCLUDED FROM ETIMS REQUIREMENT

There are several transactions which are exempt from ETIMs requirement such as emoluments, interest, fees charged by financial institutions, imports, investment allowances, airline passenger ticketing and services provided by a non-resident person without a permanent establishment in Kenya. The Tax Procedures (Amendment) Act 2024 has added expenses which have been subjected to withholding tax to the list of transactions excluded from ETIMs requirements, This is because these have been subjected to withholding tax and therefore are already within the tax net visibility for KRA.

APPLICATION OF EACCMA

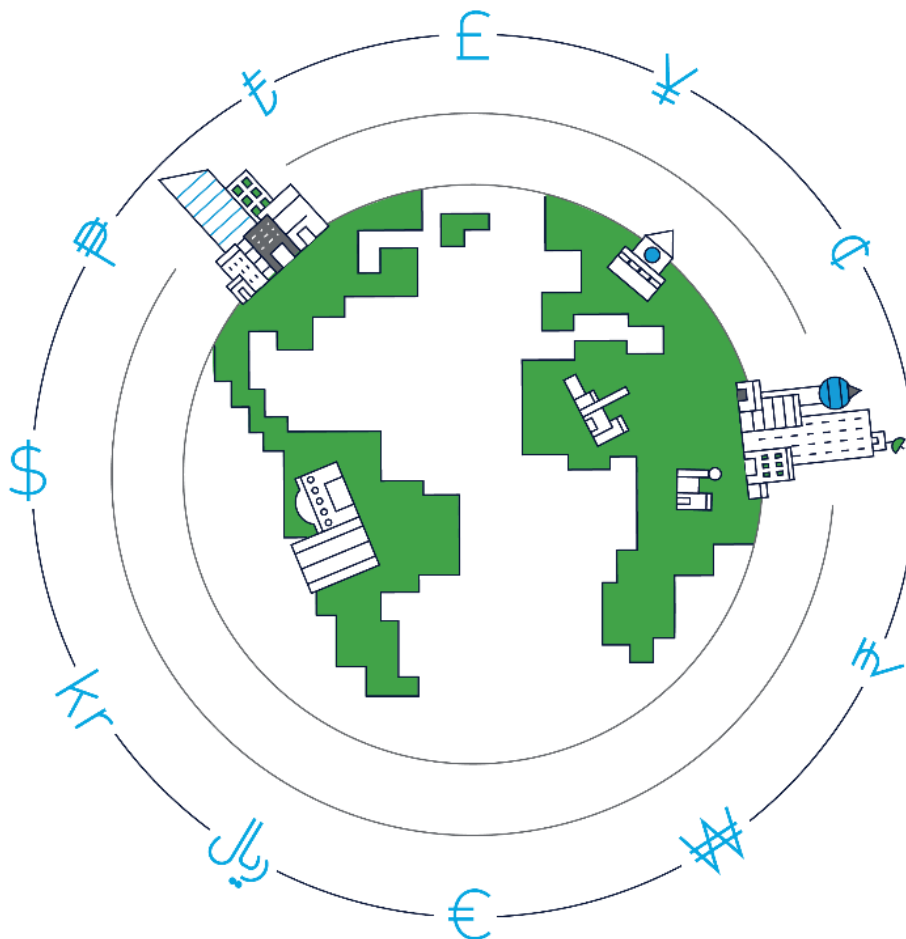
The VAT Act provides that the East African Community Customs Management Act, 2004 ("EACCMA") and any rules made thereunder would apply to imported taxable goods, whether or not there is a customs liability.

The Act has expanded the application of the EACCMA to exported goods as well. This is merely an administrative amendment.

VAT RATE CHANGES

Supplies	New Rate	Current Rate
MANUFACTURING SECTOR		
Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than two billion shillings and the exemption was granted before 1 st January 2024 and shall continue to apply for twelve months after this date (Meaning that the exemption is only applicable up to 31 st December 2024)	16%	Exempt
TEXTILE SECTOR		
Taxable goods of chapter 5407 and 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for investments, trade and industry	Exempt	16%
AGRICULTURAL SECTOR		
All imported inputs and raw materials, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture	Exempt	0%
Agricultural pest control products	Exempt	0%
Fertilizers of Chapter 31	Exempt	0%
Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.	Exempt	0%
ENERGY SECTOR		
Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25 th April 2020 and the agreement or contract provided for exemption from value added tax: Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy	16%	Exempt
OTHER SECTORS		
Transfer of a business as a going concern	Exempt	16%
Carrier tissue white, 1ply 14.5 GSM of tariff number 4703.21.00.	Exempt (the exemption extended to include all goods used in manufacture of diapers)	Exempt
Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, sanitary towels (pads) and tampons.	Exempt	Exempt

Supplies	New Rate	Current Rate
IP super soft fluff pulp – for-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.00	Exempt (the exemption extended to include all goods used in manufacture of diapers)	Exempt
All goods including material supplies, equipment, machinery and motor vehicles for official use by the Kenya Defence Forces, the Defence Forces Welfare Services, the National Intelligence Service and the National Police Service	Exempt	Exempt
Alcoholic or non-alcoholic beverages supplied to the Defence Forces Welfare Services.	Exempt	Exempt



INDIRECT TAX – EXCISE DUTY ACT, 2015

EXCISABLE SERVICES OFFERED DIGITALLY BY NON-RESIDENTS

- Requirement for non-resident persons offering excisable services through a digital platform to register and charge excise duty on such services.
- The means that non-residents offering excisable services through a digital platform, will be required to register and account for excise duty in Kenya.

POWER TO GRANT REMISSION ON SPIRITS

- Previously, 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 Act has expanded the Cabinet Secretary's power to granting remissions on spirits.
- This is a welcome amendment as it will create a level playing field for producers and importers of spirits.

PAYMENT DEADLINE FOR ALCOHOLIC BEVERAGE MANUFACTURERS

- Manufacturers of alcoholic beverages are required to remit excise duty to the Commissioner within 24 hours of removal of the goods from the stockroom. This has caused cash flow constraints for the alcoholic beverage manufacturers.
- The Act has amended the payment deadline to be by the 5th day of following month upon removal of the goods from the stockroom. This will improve the cash flows of alcoholic beverage manufacturers and reduce the administrative burden on the manufacturers.

CHANGES TO EXCISE DUTY RATES AND DESCRIPTIONS

Goods	New Rate	Previous Rate	Implication
Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer; Imported sugar excluding sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery	KShs. 7.50 per kg	KShs. 5 per kg	The Act has introduced Excise duty on raw sugar imported by a licensed sugar refinery while also increasing the rate of duty on that imported by a registered pharmacy manufacturer
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding – (i) locally assembled motor vehicles; (ia) locally assembled electric vehicles (ii) school buses for use by public schools; (iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and (iv) imported motor vehicles of cylinder capacity exceeding 1500cc	20%	20%	This has introduced duty on locally assembled electric vehicles This will increase the cost of local assembly of electric vehicles

Cigarette with filters (hinge lid and soft cap)	KShs. 4,100 per mille	KShs. 3,825.99 per mille	The Act has increased and aligned the rate of duty on cigarettes with filters and without filters to be similar
Cigarettes without filters (plain cigarettes)	KShs. 4,100 per mille	KShs. 2,752.97 per mille	
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	KShs. 2,000 per kg	KShs. 1,500 per kg	Duty rate for nicotine and nicotine products increased
Liquid nicotine for electronic cigarettes	KShs. 100 per millilitre	KShs. 70 per millilitre	
Imported Electric transformers and parts of tariff codes 8504.10.00, 8504.21.00, 8504.22.00, 8504.23.00, 8504.31.00, 8504.32.00, 8504.34.00, 8504.90.00	25%	N/A	Excise duty introduced at 25% on transformers
Imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	15%	N/A	Excise duty introduced on ink imported from non-EAC partner states
Imported Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures of tariff heading 6910	5% of customs value or Shs.100 per kg	N/A	Excise duty introduced on items of ceramic and sanitary fixtures
Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7007	35% of customs value or Shs.200 per kg	N/A	Excise duty introduced on glass of heading 7007
Imported ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or custom value not on a backing; finishing ceramics of tariff 6907	5% of custom value or Shs.200 per square meter	N/A	Excise duty introduced on ceramic products
Coal	2.5% of the customs value	N/A	Excise duty introduced on coal
Imported sugar confectionary of tariff heading 17.04	KShs. 85.82 per kg	KShs. 40.37 per kg	Excise duty on imported sugar confectionary increased significantly
3907.99.00 Imported Saturated polyester	20%	N/A	
3905.21.00 Imported polymers of vinyl acetate/vinyl esters	20%	N/A	
3903.90.00 Imported emulsion-styrene acrylic	20%	N/A	

Wines including fortified wines, and other alcoholic beverages with alcoholic beverages obtained by fermentation of fruits	KShs. 22.50 per centilitre of pure alcohol	KShs. 229 per litre	Excise duty on alcoholic beverages to be based on the content of pure alcohol in the alcoholic beverages
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% Provided that, Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufactured by licensed small independent brewers shall be subject to the rate of "shs 10 per centilitre of pure alcohol	KShs. 22.50 per centilitre of pure alcohol	KShs. 134 per litre	
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KShs. 10 per centiliter of pure alcohol	KShs. 335.30 per litre	
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 Imported Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes. of plastics, whether or not in rolls of tariff number 3919.90.90. 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or KShs.75 per kilogram, whichever is higher	25%	This rate will only be applicable for self-adhesive plates. Other plates will be charged at the rate below
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin		25% or KSh. 200 per kilogramme, whichever is higher	
Printed paper or paperboard or tariff heading 48.11.41.90 or 4811.49.00 but excluding those originating from East Africa Community partner states that meet the East African Community Rules of Origin	25% or KShs. 150 per kilogram, whichever is higher	N/A	Excised duty introduced on imported printed paper other than those from EAC
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or KShs. 150 per kilogram, whichever is higher	25%	
Imported eggs of tariff heading 04.07 excluding fertilized eggs for incubation imported by licensed incubators	25%	25%	Excluded imported fertilized eggs for incubations imported by licensed incubators from excise duty

Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	N/A	20%	Excise duty removed on imported pasta of tariff 1902
Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%	10%	Excise duty introduced on local articles of plastic of heading 3923.30.00 and 3923.90.90 (these are mainly carboys, bottles, flasks and similar articles)
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or KShs. 200 per kilogram, whichever is higher	25%	

Services	Proposed Rate	Current Rate	Implication
Excise duty on betting (on the amount wagered or staked)	15%	12.5%	Excise duty rate increased to 15% for the services
Excise duty on gaming (on the amount wagered or staked)	15%	12.5%	
Excise duty on the amount paid/charged to participate in a prize competition	15%	12.5%	
Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries)	15%	12.5%	
Excise duty on 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 shall be at the rate of fifteen per cent.	15%	15%	Excise duty introduced on fees charged on advertisements made on the internet and social media

DEFINITIONS IN INTERPRETATION OF SCHEDULES

- The Act has introduced definitions of;
 - The Act has introduced the definition of a digital lender to mean, "person holding a valid digital credit providers licence issued by the Central Bank of Kenya." Whilst fees charged by digital lenders are subject to excise duty, this definition will offer clarity on who qualifies as a digital lender.
 - "Fees charged by digital lenders" to include any fees, charges or commissions charged by digital lenders relating to their licensed activities but does not include interest, pre-loan interest, post-loan interest, return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the insurance Act or regulations made thereunder.
 - "Small independent brewer" to mean manufacturers of beer, cider, perry, mead, opaque beer, wine and fortified wines and mixtures of fermented beverages with non-alcoholic beverages manufactured whose production volume does not exceed 150,000 litres per month.

TAX PROCEDURES ACT, 2015

AMNESTY

- The Act has extended the amnesty period to 30th June 2025 and to cover all fines, penalties and interests accrued on or before 31st December 2023 given that the principal tax is paid on or before 30th June 2025.
- The previous amnesty introduced by the Finance Act, 2023 did not apply to penalties levied as a result of tax avoidance. However, the Tax Procedures (Amendment) Act has removed this exclusion from the applicability of amnesty. Therefore, all penalties and interest accrued on liabilities prior to 31st December 2023 would be eligible for amnesty, provided that the principal tax is paid on or before 30th June 2025 regardless of whether they arose from tax avoidance.

ABANDONMENT OF TAXES

- The act has reintroduced 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, due to public interest 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 new law, the Commissioner must publish a notice in the Kenya Gazette containing the names of the taxpayers, the amount of taxes abandoned and the reason for abandonment at least every 4 months.
- This notice shall also be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within 21 sitting days from the next sitting date after the notice is laid.
- This resolution would either approve or annul the notice. If the notice is annulled, it shall become void from the date of annulment. However, any actions taken under the notice prior to the annulment would not affect the validity of these actions.

WITHHOLDING VAT: EXEMPTIONS AND PAYMENT

- The Act has extended the exemption to deduction of WHVAT on payment made to include manufacturers who have invested at least KShs. 2 billion for any period up to 31st December 2024.
- This is a welcome move as it removes the limitation of 3 years on the investment while also reducing the threshold of qualification for exemption from KShs. 3 billion to KShs. 2 billion.
- Previously, 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 Act has imposed a penalty only where there was no reasonable cause.
- This is a welcome move 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

- Previously, a taxpayer was required to apply for refunds within 6 months for overpaid VAT and within 5 years for other taxes.
- With the new amendment, the Act has retained the 5-year refund application window for overpaid income tax only and provide a 12-month refund application window for all other taxes.
- However, whilst the 12 months applies for all other taxes, it is imperative to note that Section 17(5)(d) of the VAT Act still provides for refunds to be lodged within 24 months.



INTEGRATION OF DMRS WITH ELECTRONIC SYSTEMS

- The Finance Act, 2023 empowered the Commissioner to establish a data management and reporting system (DMRS) and require certain taxpayers (through a notice) to submit electronic documents through the DMRS. With the new amendment, the Act has granted the Commissioner power to require a person to integrate the DMRS with the taxpayer's electronic systems. However, the Act seeks to exclude a person from integrating or sharing data relating to trade secrets and private or personal data held on behalf of customers or collected in the course of business.
- The change provides the Commissioner with more data to carry out data analytics which may grant it an upper hand in tax audits.
- The Act has further imposed a penalty not exceeding KShs. 100,000 (for every month or part thereof that the failure continues) upon conviction for a person who fails to integrate their DMRS with the taxpayer's electronic systems or submit information through the DMRS.
- This change 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

- The TPA has been amended to exclude Saturdays, Sundays and Public holidays in the computation of the period for lodgment of an objection to the Commissioner, an appeal to the Tax Appeals Tribunal, an appeal to the High Court or an appeal to the Court of Appeal.
- This is a welcome move as it will increase the lodgment window for taxpayers.

PIN REQUIREMENT FOR REMOTE EMPLOYEES OF KENYAN EMPLOYERS

- Previously the employees working remotely outside Kenya for an employer in Kenya were not required to register for a PIN. However, the Act seeks to mandate that all such persons to obtain a PIN, with the exception of persons employed by the national carrier.
- This change 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.

INTERNATIONAL TAX AGREEMENTS

- The Act has exempted Imported steel billets of tariff heading 7207.11.00; and Imported wire rods of tariff headings 7213.91.00 and 7213.91.90 from import duty for the next two years commencing 27th December 2024 or for such other longer period as the Cabinet Secretary may prescribe by a notice in the Gazette.
- This aligns with the EAC gazette notice issued in June 2024 where Kenya stayed the application of the EAC CET rate of 0% and chose to apply a higher rate of 10%.

MISCELLANEOUS FEES AND LEVIES ACT, 2016

RAILWAY DEVELOPMENT LEVY

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

EXEMPTION FROM RDL AND IDF

- The Act exempts from RDL and IDF;
 - All goods including material supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service and the Defence Forces Welfare Services.
 - Goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for industry.

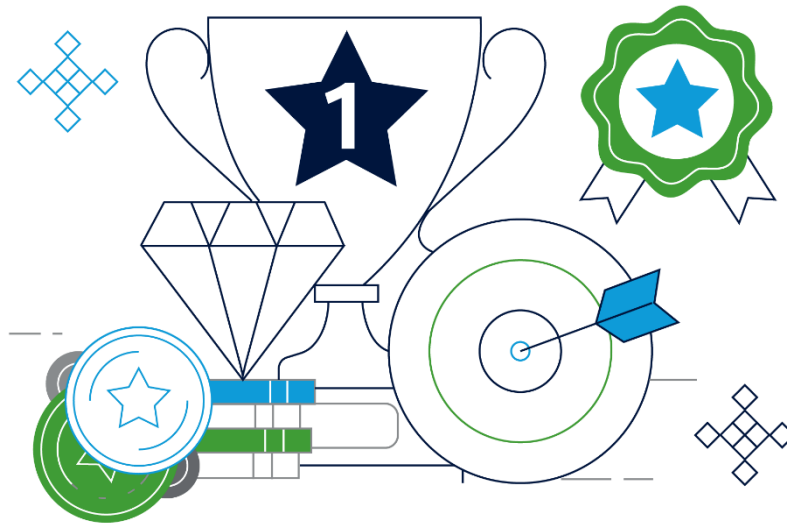
EXPORT & PROMOTION LEVY

The Act has added new items to the Third Schedule of the Act and the rate at which they export.

HS Code	Description	Proposed Rate	Old rate
4804.29.00	Sack kraft bleached	10% of customs value	0%
4804.39.00	Sack kraft bleached	10% of customs value	0%

Caveat

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