PKF

Tax Alert

TAX ALERT ON TAX LAWS (AMENDMENT) ACT, 2024 & TAX PROCEDURES (AMENDMENT) ACT, 2024

The President assented the Tax Laws (Amendment) Act, 2024 and the Tax Procedures (Amendment) Act, 2024 on 11th December 2024. The tax amendments through the aforementioned Acts are effective from 27th December 2024 and are as a result of withdrawal of the Finance Bill, 2024 after public outcry on the punitive tax proposals that were to be introduced effective 1st July 2024. These Acts have amended various provisions in the Income Tax Act, Value Added Tax Act, Excise Duty Act, Miscellaneous Fees and Levies Act and the Tax Procedures Act.

Overall, the positive amendments touching on employees include increase in thresholds for non-taxable benefits like meal benefit and non-cash benefits; increase in mortgage interest relief; increase in contributions to pension schemes that are not subject to tax; deductibility of Affordable Housing Levy, Social Health Insurance Fund and post-retirement medical fund contributions before arriving at employees' taxable pay and tax free amounts for individuals upon withdrawal from pension schemes and provident funds.

Additionally, the tax amnesty on accrued penalties, interest and fines relating to principal taxes that were due by 31st December 2023 has been extended to 30th June 2025 subject to payment of all the outstanding principal taxes.

From a corporate income tax perspective, the notable changes are the replacement of Digital Service Tax with Significant Economic Presence Tax and the introduction of Minimum top up tax for Multinational Enterprises.

Further, there are various reclassifications in the Value Added Tax status of various items and increases in excise duty rates of various items. The Railway Development Levy has been increased from the rate of 1.5% to 2%, which will result in an increase in the cost of imported items.

More details on amendments to the various tax statutes are contained in this tax alert.

INCOME TAX ACT CHANGES

1. Registration of retirement funds to be with Retirement Benefits Authority

Retirement Funds will need to be registered with the Retirement Benefits Authority to accord members various tax benefits that are stipulated in the Income Tax Act (ITA). This is a clean-up provision that vests registration requirements for Retirement Funds with the main regulatory body and not the Commissioner appointed under the Kenya Revenue Authority Act.

2. Expanded definition of royalty

The definition of royalty will also include a payment made as a consideration for the use or right to use any software, proprietary or off the shelf, whether in the form of licence, development, training, maintenance or support fees.

This means taxpayers will be required to deduct withholding tax on payments related to any dealings with software at the prescribed rates. For royalties in particular, payments related to the purchase of software, which is in direct conflict with the High Court decision in Income Tax Appeal no. 8 of 2017 Seven Seas Technologies Limited vs the Commissioner of Domestic Taxes where the High Court ruled that the purchase of software for resale does give rise to a royalty to the extent that a software reseller does not acquire the rights to enable them to commercially exploit the software.

3. Donation defined

The definition of a donation has been introduced in the ITA to mean a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration and includes grants. This provides clarity that grant income is not considered income chargeable to tax. The ITA provides that any donations to charitable organizations registered under the Public Benefit Act, 2015 are allowable for tax purposes where such a donation is made to an entity exempted from Income Tax or to a project approved by the Cabinet Secretary, National Treasury.

4. Increased thresholds for various non-taxable benefits to employees

The threshold for various non-taxable benefits have been increased as follows:

i) Non-cash benefit

The non-taxable aggregate value of benefits in kind has been increased from KShs 36,000 per annum to KShs 60,000 per annum.

ii) Meal benefit

Meals provided to employees by the employer amounting to KShs 60,000 per annum are now non-taxable on the employees. Previously, the non-taxable value of the meals provided to employees by the employer was KShs 48,000 per annum.

iii) Contributions to a registered scheme

The limit of tax deductible contributions by employees to registered pension schemes and provident funds has increased from an annual amount of KShs 240,000 to KShs 360,000.

iv) Mortgage interest

The allowable interest on borrowings with respect to mortgages from financial institutions licensed under the Banking Act is increased from KShs 300,000 to KShs 360,000 per annum.

5. Reimbursements made to public officers in respect of performing official duties

Reimbursements made to public officers pursuant to any written law or statutory instrument, with effect from 27th July 2022 in respect of expenditure they incur while performing official duties will be excluded from taxation regardless of the amount they have expended, notwithstanding the ownership or control of any assets purchased.

6. Affordable housing relief scrapped but reprieve on deductibility of affordable housing contributions

Individuals contributing Affordable Housing Levy (AHL) will no longer enjoy the affordable housing relief of 15% of contributions which was limited to KShs 108,000 per annum. However, AHL contributions by individuals will be a deductible allowance from the individuals' gross salary in arriving at their taxable incomes.

Previously, where resident individuals were eligible to make an application under an affordable housing scheme or where they had applied and were awaiting the allocation of houses under the scheme or where they were actively saving towards the purchase of a home under an approved affordable housing scheme by the Cabinet Secretary responsible for housing would enjoy the relief.

7. Clarity on applicability of insurance relief on Social Health Insurance Fund (SHIF) and deductibility of SHIF contributions

Insurance relief of 15% of premiums paid, which should not exceed KShs 60,000 per annum is applicable to premiums paid in respect of life, education and health policies to approved insurance companies operating in Kenya.

Previously, insurance relief was also applicable to contributions made by individuals to the National Health Insurance Fund (NHIF), which was replaced by SHIF. Insurance relief is not applicable to SHIF contributions. However, the SHIF contribution of 2.75% of individuals' gross salary has been made a deductible allowance in arriving at their taxable income.

8. Repeal of post-retirement medical fund relief but reprieve on the deductibility of post-retirement medical fund contributions

Contributions to a post-retirement medical fund subject to a limit of KShs 15,000 per month is now an allowable deduction. Previously, individuals making these contributions were eligible receive 15% relief on the amount of contribution paid or KShs 60,000 per annum, whichever is lower.

9. Replacement of Digital Service Tax with Significant Economic Presence Tax

Digital Service Tax (DST) has been replaced with Significant Economic Presence (SEP) Tax. SEP Tax will impose a 30% tax on deemed taxable profits payable by certain non-resident persons without a permanent establishment in Kenya who are involved in the provision of services over a digital marketplace to users in Kenya. The taxable profit will be deemed to be 10% of the gross turnover.

SEP Tax will not be applicable to non-residents providing services through a digital marketplace to users in Kenya in the following circumstances:

i) A non-resident offering the services through a permanent establishment;

ii) A non-resident person transmitting messages via cable, radio, optical fiber, broadcasting, internet, satellite, or similar methods;

iii) A non-resident earning management or professional fees, royalties, interest and rent subject to withholding tax;

iv) A non-resident providing digital services to an airline in which the Government of Kenya has at least 45% shareholding; or

v) A non-resident with an annual turnover below KShs 5 million.

Non-residents subject to SEP Tax must submit a return and pay the tax by the 20th day of the month following the month in which the service was provided.

The Cabinet Secretary may issue regulations to facilitate the implementation of SEP Tax.

10. Introduction of minimum top-up tax

Minimum top-up tax has been introduced and is payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than 15%.

The combined effective tax rate (CETR) for a covered person will be determined as follows:

CERT= (Sum of all adjusted covered taxes / Sum of all net income or loss for the year of income) *100%

The amount of minimum top-up tax payable will be determined as follows:

Minimum top-up tax = (15% of net income or loss for the year of income of a covered person minus CETR) * excess profit of the covered persons

The following persons are exempted from the provisions of minimum top-up tax:

a) A public entity (ministry, state department, state corporation, county department or agency of the national or county Government) that is not engaged in business;

b) A person whose income is exempt from tax under paragraph 10 of the First Schedule to the ITA i.e. not for profit persons;

c) A pension fund and the assets of that pension fund;

d) A real estate investment vehicle that is an ultimate parent entity;

e) A non-operating investment holding company;

f) An investment fund that is an ultimate parent entity;

g) A sovereign wealth fund; or

h) An inter-governmental or supranational organisation including a wholly owned agency or organ of the inter-governmental or supranational organization.

The following terms are defined in the ITA in respect of minimum top-up tax:

i) **Adjusted covered taxes**

Taxes recorded in the financial accounts of a covered person for the income, profits, or share of the income or profits of a covered person where the covered person owns an interest, and includes taxes on distributed profits, deemed profit distributions under the ITA subject to such adjustments as maybe prescribed.

ii) **Covered person**

A resident person or a person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated annual turnover of 750 million Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income.

iii) **Net income or loss**

The sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognized accounting standards in Kenya.

iv) **Excess profit**

The net income or loss of a covered person for the year of income less -

a) 10% for employees costs; and

b) 8% for the net book value of tangible assets.

Subject to adjustments on the employees costs and book value of tangible assets as prescribed in the regulations.

The introduction of minimum top up tax is in line with the global minimum tax treaty proposed by the Organisation for Economic Co-operation and Development (OECD). This is aimed at ending the benefit of shielding multi-billion-dollar profits in tax havens and removing the incentive for nations that operate as tax havens for the corporate giants.

11. Withholding Tax changes

i) **Goods supplied to a public entity**

Resident and non-resident suppliers of goods to a public entity will now receive their payments less 0.5% and 5% withholding tax respectively. A public entity means a ministry, state department, state corporation, county department or agency of the national or county Government.

ii) **Payment or facilitation of payment on a digital marketplace**

Withholding tax has been introduced at the rate of 5% and 20% for residents and non-residents respectively, while making or facilitating payments on a digital market place, an online or electronic platform which enables users to sell or provide services, goods or other property to other users.

iii) **Scrap supplied**

Withholding tax is now applicable on payments made to both resident and non-resident scrap suppliers at the rate of 1.5%.

iv) **Abolishment of withholding tax on pension payments or withdrawals made after the expiry period of 15 years**

Withholding tax will not be applicable to any pension payments or withdrawals made after the expiry of 15 years from the date of joining the fund, or on the attainment of the age of 50 years, or upon early retirement on the grounds of ill health or infirmity of body and mind, from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund, in excess of the lumpsum tax free amount of KShs 600,000 or the first KShs 300,000 in a year in case of annuity.

v) **Pension withdrawal made before expiry period increased from 15 years to 20 years**

Withholding tax at the tabulated rates are now applicable to individuals making pension withdrawals before the expiry of 20 years from the date of joining the fund and not 15 years as it was the case before;

Amount	Rate
On the first KShs 288,000	10%
On the next KShs 100,000	25%
Above KShs 388,000	30%

12. Income tax exemption on pension and retirement benefits

The ITA has been amended to exempt the income received from registered pension funds, registered provident funds, registered individual retirement fund, public pension schemes or National Social Security Fund (NSSF) by individuals who have attained the retirement age determined by the rules of the fund or the scheme.

The following have also been exempted from income tax:

- Gratuity or other allowances paid under a public pension scheme.
- Payments in the form of a retirement annuity.
- Withdrawals from the fund made before retirement age due to medical conditions or from the fund after 20 years of membership in the fund regardless of age.

13. Income from a registered family trust now taxable

The Finance Act, 2021 introduced an income tax exemption on the income or principal sum of a registered family trust. However, the income received from a registered family trust is now subject to income tax.

14. Conditions for income tax exemption under a project financed by grants

Earnings of a non-resident contractor, sub-contractor, consultant or an employee who is involved in the implementation of a project fully financed by grants under an agreement between the Government and a development partner, to the extent provided for in the Agreement are now exempt from income tax. The non-resident's tax-exempt status is only valid for the duration of the agreement. Any income received by the non-resident not directly connected to the project shall be taxed based on the individual income tax bands and applicable rates.

15. Reduced investment value eligible for investment deduction

Any person who has made a cumulative investment of at least KShs 1 billion in the preceding three years outside Nairobi City County and Mombasa County on a hotel building, building used for manufacture or machinery used for manufacture, is eligible to enjoy investment deduction (ID) at the rate of 100%. Previously, the cumulative investment value was required to be at least KShs 2 billion in order to enjoy ID at the rate of 100%.

Further, where a person had made cumulative investments outside Nairobi City County and Mombasa County in the preceding three years on or before 25th April 2020 amounting to KShs 1 billion, and would have qualified for ID at the rate of 150% is eligible for ID at the rate of 150% for the investment made on or before 25th April 2020. The cumulative investment value was previously KShs 2 billion in order to enjoy ID at the rate of 150%.

Additionally, an investment deduction at the rate of 150% on such investments made outside Nairobi City County or Mombasa County is applicable if they meet the following conditions;

- That the cumulative investment value for the four years preceding 1st July 2022 is at least KShs 1 billion; or
- The cumulative investment for the three years succeeding 1st July 2022 at least KShs 1 billion.

The cumulative investment value to enjoy ID at the rate of 150% was previously KShs 2 billion.

16. Preferential Capital Gains Tax Rate

There is a preferential Capital Gains Tax rate of 5%, which is final tax on gains from transfer of investment provided that the Nairobi International Financial Centre Authority certifies that:

- A firm has invested at least KShs 3 billion in at least one entity incorporated or registered in Kenya within a period of 2 years; and
- The transfer of the investment is to be made after five years of the date of the investment.

17. Repeal of penalties on late filing of Self-assessment return by Export Processing Zone

The penalty of KShs 2,000 per day for failure to submit a self-assessment return or late submission by an Export Processing Zone enterprise has been repealed.

VALUE ADDED TAX ACT, 2013 CHANGES

1. Clarification on the tax point for exportation of goods

The Value Added Tax Act, 2023 (VAT Act, 2013) has been amended to provide a clarification on the time of supply for exported goods to be the time when the registered person is in possession of the required export confirmation documents.

2. New Relief for Zero-Rated and VAT Exempt Supplies

There is a significant change to Section 17(5) of the VAT Act, 2013. This amendment provides relief for registered persons who have incurred excess input tax credit due to the difference between the VAT rate applicable on July 1, 2022, and a subsequent lower rate.

This relief is specifically applicable to zero-rated or exempted supplies. The credit position must have existed on the date the supply became zero-rated or VAT exempt.

Registered persons with such excess credits must apply to the Commissioner for relief within six months after commencement of this provision.

3. Removal of the fraction formula on deductible input VAT by taxpayers with mixed supplies

The 90% and 10% fraction formula applied to the apportionment of deductible input VAT on common expenses by taxpayers who deal with both taxable and VAT exempt supplies (mixed supplies) has been repealed.

Currently, a VAT registered person who deals with taxable and exempt supplies and cannot directly attribute the input VAT to either taxable or VAT exempt supplies must apportion the deductible input VAT. Where VAT exempt supplies in a tax period is less than 10% of the monthly supplies (i.e. taxable supplies exceed 90% of the tax period's supplies), the taxpayer is allowed to deduct input VAT in full. Where VAT exempt supplies exceed 90% of the total supplies in that tax period (i.e. taxable sales is less than 10% of that tax period's supplies), the taxpayer is restricted from deducting any input VAT relating to common expenses.

The removal of the fraction formula for persons with mixed supplies effectively means that taxpayers who deal with mixed supplies will deduct input VAT, which is proportionate to the value of their taxable supplies.

4. Abolishment of input VAT claims on taxable supplies to an official aid funded project

All input VAT claims in respect of taxable supplies made by manufacturers who supply to official aid funded projects and all VAT refund claims arising from excess input VAT on the supply of goods and services to an official aid funded project have been abolished.

This deletion reverses the existing provision, which allows manufacturers who make taxable supplies (goods and services) for the direct and exclusive use in the implementation of official aid funded projects to deduct input VAT with respect to taxable supplies to the project. Consequently, the current law enables manufacturers to lodge VAT refund claims to the Commissioner for any excess input VAT arising from the same. It is noteworthy that taxable goods, imported or purchased locally for direct and exclusive use in the implementation of official aid funded projects remain VAT exempt.

5. Application of East African Community Customs Management Act, 2004 to VAT

Section 65 of the VAT Act, 2013 has been amended to extend the application of the East African Customs Management Act, 2004 to include exported goods for VAT purpose.

6. Reclassification of VAT status on certain goods and services

Previously, all inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products were zero-rated upon recommendation by the CS responsible for Agriculture. However, the VAT Act, 2013 has been amended to exempt only imported inputs and impose VAT at the standard rate of 16% on all locally produced inputs and raw materials.

Other items that have been reclassified are as tabulated below:

Item	Previous VAT Status	Current VAT Status
IP super soft fluff pulp- for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00	Exempt	Taxable @ 16%
Taxable goods supplied to persons who had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from VAT	Exempt	Taxable @ 16%
Agricultural pest control products	Zero rated	Exempt
Fertilizers of Chapter 31	Zero rated	Exempt
Inputs or raw materials locally purchased or imported by manufacturers of fertilizers as approved from time to time by the Cabinet Secretary responsible for Agriculture	Zero rated	Exempt
Taxable 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 investments, trade and industry	Taxable @ 16%	Exempt
Transfer of a business as a going concern	Taxable @ 16%	Exempt

Supplies which remain VAT exempt with proposed adjustments to their descriptions

Previous description in the VAT Act, 2013	Current description after amendment
Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00	Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, adult diapers, sanitary towels (pads) and tampons
Such capital goods the exemption of which the CS may determine to promote investment in the manufacturing sector where the value of such investment is not less than two billion shillings.	Such capital goods the exemption of which the CS may determine to promote investment in the manufacturing sector where the value of such investment is not less than two billion shillings, and the exemption was granted before 1st January 2024 and shall continue to apply for 12 months after this date.
The current provision exempts all goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service.	There is an extension to the VAT exemption to include all goods supplied to the Defence Forces Welfare Services and the National Intelligence Service.
Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization	Alcoholic or non-alcoholic beverages supplied to the Defence Forces Welfare Services.

EXCISE DUTY ACT CHANGES

1. Definitions

The following definitions have been introduced in the Excise Duty Act, 2015:

- "Digital lender" means a person holding a valid digital credit providers license issued by the Central Bank of Kenya (CBK). Previously, there was no definition of who qualifies as a digital lender, which created ambiguity. This definition is aligned to the Digital Credit Providers Regulations, 2021 that require any person who provides credit through a digital channel prescribed by CBK should be licensed to carry on digital credit business.

- "Fees charged by digital lenders" includes any fees, charges or commissions charged by digital lenders relating to their licensed activities but does not include interest, pre-loan interest, post-loan interest, return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the insurance act or regulations made thereunder. Similarly, this definition was not in place. The only definition that was contained in the Excise Duty Act, 2015 was "other fees" charged by financial institutions, where financial institutions are those licensed under the Banking Act; Insurance Act; Central Bank of Kenya Act; Micro Finance Act, 2006; Sacco Society registered under the Sacco Societies Act, 2008 or Kenya Post Office Savings Bank established under the Kenya Post Office Savings Bank Act. This definition makes it clear on the fees charged by digital lenders that are subject to excise duty, which aligns to the "other fees" charged by financial institutions.

- "Small Independent Brewer" means manufactures 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.

2. Excisable services offered through a digital platform by a non-resident

A non-resident person offering exercisable services through a digital platform will now be required to be licensed for the excise duty obligation in Kenya and accordingly charge excise to Kenyan customers. Previously, only resident persons offering excisable services offered through a digital platform were liable for excise duty. The excise duty shall be paid by the non-resident person offering the services. Examples of excisable services in Kenya are:

- telephone and internet data services;
- money transfer services by banks, money transfer agencies and other financial service providers; and
- money transfer services by cellular phone service providers, etc.

3. Remission of excise duty on spirits

The Cabinet Secretary may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya. Besides the remission of excise duty on beers, Spirits have also been included for excise duty remission if made from the agricultural products listed above, with an exception of barley if grown in Kenya.

4. Extension of timelines for payment of excise duty for alcoholic beverage manufacturers

Currently, a licensed manufacturer of alcoholic beverages is required to pay excise duty to the Commissioner within twenty-four hours upon removal of goods from the stockroom. The timeline for payment of excise duty for alcoholic beverage manufacturers has been extended from twenty-four hours to the fifth day of the following month. This will ease the cash flow constraints that alcoholic beverage manufacturers experienced by having to pay excise duty in advance before receiving payments from their customers.

5. Excise duty on articles of plastic

The Excise Duty Act, 2015 provides that excise duty is applicable on imported plastics of tariff heading 3923.30.00 and 3923.90.90. Excise duty will now be applicable on all plastics of tariff heading 3923.30.00 and 3923.90.90, whether imported or locally produced at the rate of 10%.

6. Excise Duty exemptions

The following items are now exempt from Excise duty:

- Fertilized eggs for incubation imported by licenced incubators.
- Locally assembled electric vehicles.
- Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastic whether or not in rolls of tariffs 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, 3921.19.90 originating from East Africa Community ("EAC") Partners States that meet the EAC rules of origin.

- Printed paper or paper board, labels of all kinds whether or not printed of tariff 4811.41.90 and 4811.49.00 originating from EAC Partners States that meet the EAC rules of origin.
- 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.

7. Changes in Excise Duty rates

The following changes to excise duty rates have been introduced:

Item	Previous	New rates
Imported sugar confectionary of tariff heading 17.04	KShs 42.91 per Kg	KShs 85.82 per kg
Imported sugar excluding sugar imported by a registered pharmaceutical manufacturers and raw sugar imported for processing by a licensed sugar refinery.	KShs 5 per kg	KShs 7.5 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits.	KShs 243.43 per litre	KShs 22.50 per centilitre of pure alcohol
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 142.44 per litre	KShs 22.50 per centilitre of pure alcohol
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufacture by licensed small independent brewers.	Excise duty was not applicable	KShs 10 per centilitre of pure alcohol
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KShs 356.42 per litre	KShs 10 per centilitre of pure alcohol
Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastic whether or not in rolls of tariffs 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, 3921.19.90 but excludes those originating from EAC Partners States that meet the EAC rules of origin.	25%	25% or KShs 75 per kilogram whichever is higher
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons , boxes and cases of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.10.00, and 4819.20.90	25%	25% or KShs 150 per kg whichever is higher
Printed paper or paper board of tariff heading 4811.41.90 or 4811.49.00	Excise duty was not applicable	25% or KShs 200 per kg whichever is higher
Imported paper or paper board, labels of all kinds whether or not printed of tariff 4821.10.00 and 4821.90.00	25%	25% or KShs 150 per Kg whichever is higher
Cigarette with filters (hinge lid and soft cap)	KShs 4,067.03 per mille	KShs 4,100 per mille
Cigarette without filters (plain cigarettes)	KShs 2,926.41 per mille	KShs 4,100 per mille

Item	Previous	New rates
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 1,595 per Kg	KShs 2,000 per Kg
Liquid nicotine for electronic cigarettes	KShs 70 per millilitre	KShs 100 per millilitre
Betting	12.5%	15%
Gaming	12.5%	15%
Prize competition	12.5%	15%
Lottery (excluding charitable lotteries)	12.5%	15%
Imported fully assembled 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	Excise duty was not applicable	25%
Imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from EAC Partner states that meets the EAC Rules of Origin	Excise duty was not applicable	15%
Imported Ceramic sinks, wash basins, wash basins pedestals, baths, bidets, water closet pans, flushing cisterns, Urinals and similar sanitary fixtures of tariff heading 6910	Excise duty was not applicable	5% of customs value or KShs 50 per kg
Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff 7007	Excise duty was not applicable	35% of customs value or KShs 200 per kg
Imported Ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics of tariff 6907	Excise duty was not applicable	5% of the customs value or KShs 200 per square meter
Coal	Excise duty was not applicable	2.5% of the custom value
3907.99.00 Imported Saturated Polyester	Excise duty was not applicable	20%
3905.21.00 Imported polymers of vinyl acetate/vinyl esters	Excise duty was not applicable	20%
3903.90.00 Imported emulsions – styrene acrylic	Excise duty was not applicable	20%
Advertisement on internet and social media on alcoholic beverages, betting, gaming, lotteries and prize competitions	Excise duty was not applicable	15%

MISCELLANEOUS FEES AND LEVIES ACT

1. Increase in the Railway Development Levy

Goods imported into Kenya for home use are subject to a Railway Development Levy (RDL) at the rate of 1.5%. The levy is payable by the importers of the goods at the time of entering the goods into the country for home use. RDL has been increased from 1.5% to 2% of the customs value.

2. Exemptions from RDL and Import Declaration Fee

The following RDL and Import Declaration Fee (IDF) exemptions have been introduced:

- All goods including material supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service (NIS) and the Defence Forces Welfare Services.
- Goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacture of textile products in Kenya. This exemption shall however only apply upon recommendation of the CS responsible for investment, trade and industry.

3. Export and Investment Promotion Levy

Export and Investment Promotion Levy has been introduced on the following goods:

Description	Tariff No.	Levy rate
Sack kraft bleached	4804.29.00	10% of the customs value
Sack kraft bleached	4804.39.00	10% of the customs Value

TAX PROCEDURES ACT CHANGES

1. Stay of application of import duty under mutual administrative assistance on imported steel billets and wire rods

The Commissioner is authorized to utilize international tax agreements to enforce and collect taxes owed by taxpayers involved in cross-border transactions or activities. The recovery process will be initiated by the Commissioner requesting the competent authority of a party to the international tax agreement to collect taxes owed by Kenyan taxpayers on his behalf.

However, the import duty due on the following items can only be imposed from 27th December 2026:

- Imported steel billets of tariff heading 7207.11.00; and
- Imported wire rods of tariff headings 7213.91.00 and 7213.91.90.

It is worth noting that any other taxes other than import duty (upon expiry of the 2 year period) based on the provisions contained in any multilateral agreement or treaty will be imposed on the items above.

The period may be prolonged by the CS National Treasury through a notice in the Gazette.

2. Clarity on features of an electronic tax invoice

A person carrying on a business is required to issue an electronic tax invoice. A proper electronic tax invoice should contain the following information:

i) the words "TAX INVOICE";

ii) name, address and PIN of both the supplier and purchaser;

iii) serial number of the tax invoice;

iv) date and time of the tax invoice issued;

v) date and time the supply was made if different from the date the tax invoice was issued;

vi) description of the supply in terms of quantity of goods or type of services;

vii) details of any discount allowed at the time of supply;

viii) consideration of the supply;

ix) tax rate charged and the total amount of tax charged; and

x) any other prescribed information.

3. New purchaser tax obligations in relation issuance of electronic tax invoices

A person who purchases any goods or services from a small business or a small-scale farmer whose annual revenue is less than KShs 5 million is required to issue an electronic tax invoice for the purposes of ascertaining any tax liability. This can be done through the Electronic Tax Invoice Management System (E-TIMS) simplified solution known as eTIMS Lite for non-VAT registered taxpayers. This solution is accessible through the eCitizen platform via *222# for the Unstructured Supplementary Service Data (USSD) invoicing solution or via ecitizen.kra.go.ke for the web based invoicing solution.

This is intended to ease the burden of small businesses making supplies from having to raise E-TIMS invoices by allowing purchasers to raise E-TIMS invoices on their behalf. Through this mechanism, purchasers will be in a position to support expenses from small businesses with E-TIMS invoices, which will allow for deductibility of expenses incurred from small businesses for Income Tax purpose. This shifts the obligation of raising electronic tax invoices from the seller, in this case small businesses with an annual turnover of less than KShs 5 million, to the purchaser as is the normal practice in business.

4. Expenses excluded from electronic tax invoice requirements

Expenses that are subject to Withholding Tax, which is considered to be final tax, have been included as part of transactions that are excluded from electronic tax invoicing requirements. The other excluded transactions include emoluments, interest, fees charged by financial institutions, imports, investment allowances including internal accounting adjustments, airline passenger ticketing and services provided by a non-resident person without a permanent establishment in Kenya.

5. Extension of tax amnesty provisions

The Commissioner will not collect accrued penalties, interest and fines on principal taxes settled before 31st December 2023. Previously, the amnesty on accrued penalties, interest and fines was for principal taxes that had been paid up to 31st December 2022.

For unpaid principal taxes as at 31st December 2023, taxpayers will enjoy tax amnesty on penalties, interest or fines on the unpaid principal taxes if they:

i) Apply and clear outstanding principal taxes by 30th June 2025;

ii) Maintain tax compliance status by not incurring further tax debt; and

iii) Submit a written undertaking for the settlement of all outstanding taxes due.

Where a taxpayer pays part of the principal tax that was due as at 31st December 2023 and had been granted amnesty on accrued penalties, interest and fines, fails to clear the remaining principal tax by 30th June 2025, the outstanding principal tax will attract penalties and interest.

6. Re-introduction of tax abandonments on unpaid taxes which were previously repealed by the Finance Act, 2023

The Commissioner may, with prior written approval of the CS National Treasury, refrain from assessing or recovering unpaid tax where the Commissioner determines that:

i) It is impossible to recover it;

ii) It is in the public interest not to recover it;

iii) There is undue difficulty or expense in its recovery;

iv) There is hardship or inequity in relation to its recovery; or

v) There is any other reason occasioning the inability to recover it.

The CS National Treasury can, in writing, either direct the Commissioner to abandon the unpaid tax in question or advise the Commissioner to obtain directions of the court in relation to the abandonment of the said taxes.

The Commissioner will be required to publish the names of the taxpayers, relevant reasons for abandonment of the unpaid taxes and amount of the taxes abandoned through a notice in the Gazette at least every four months. This notice will be presented before the National Assembly and a resolution passed within 21 sitting days thereafter, on whether it is approved or considered null and void. This ensures that taxpayers do not misuse this provision.

7. Changes to VAT Withholding

VAT Withholding will not apply to the taxable value of supplies made by a registered manufacturer whose value of investments on 31st December 2024 is at least KShs 2 billion. Previously, the VAT Withholding exemption for registered manufacturers was based on KShs 3 billion investment value. VAT Withholding exemption on zero rated supplies is still applicable.

A 10% penalty of the amount not withheld will be imposed for failure to withhold or remit VAT Withholding by appointed VAT Withholding agents without a reasonable cause.

8. Timeline for making an application for refund of overpaid tax

A taxpayer may make an application to the Commissioner in the prescribed form to either utilize any overpaid tax against future tax liabilities or apply for a refund.

A taxpayer who has overpaid VAT or excise duty shall be required to make an application to the Commissioner for a refund of the overpaid tax within 12 months after the date on which the tax was overpaid. For Income Tax, an application is required to be made within 5 years from the date of overpayment.

9. Inclusion of installment taxes and input VAT in the application for offset of overpaid tax

A taxpayer may not only make an application to the Commissioner to utilize any overpaid tax against future tax liabilities but also make an application to utilize any overpaid tax against instalment taxes and input VAT.

10. Integration of KRA data management and reporting system with taxpayers electronic tax invoice systems

The Tax Procedures Act, 2015 (TPA) mandates the Commissioner to establish a data management and reporting system to enhance capability on having visibility of trader transactions through electronic invoices. Upon successful establishment of the system, the Commissioner is required to notify the selected taxpayers in writing requiring them to submit the electronic documents through the system.

The Commissioner is now empowered to issue a written notice for a reasonable period not exceeding one year, requiring a person to integrate their electronic tax system with KRA's data management and reporting system for the purposes of submitting electronic documents. These documents include detailed transaction data such as the names and addresses of each person to whom a payment was made among other details but does not include trade secrets and private or personal data held on behalf of customers or collected in the course of business. The requirement shall only apply to entities whose annual turnover exceeds KShs 5 million.

A person who fails to comply with the notice to integrate their electronic tax invoice system with the KRA's data management and reporting system shall be liable to a penalty not exceeding KShs 100,000 for every month that the failure continues.

A person who fails to submit electronic documents through the system as per the Commissioner's notice will be liable, on conviction, to a penalty of KShs 100,000 per month.

11. Timeline for lodging objections and appeals to exclude weekends and public holidays

In computing the due dates for lodging notices of objection and appeals by taxpayers, the 30 days shall exclude Saturdays, Sundays or Public Holidays. This means that taxpayers will have additional days to submit the relevant information under the objections and/or appeals process at the Tax Appeals Tribunal, High Court and Court of Appeal.

12. Penalty on failure to submit a return by an Export Processing Zone enterprise

A penalty of KShs 20,000 per month or part thereof will be applicable to an Export Processing Zone (EPZ) enterprise until the enterprise complies where it fails to submit its annual Income Tax return.

The penalty is now stipulated under the TPA as the main statute that deals with administration of taxes. The penalty of KShs 2,000 per day that was under the ITA has been repealed through the Tax Laws (Amendment) Act, 2024.

13. More scrutiny on remote employees outside Kenya working for Kenya based employers

Employees working remotely outside Kenya for an employer based in Kenya are required to have a KRA Personal Identification Number (KRA PIN). However, an employee outside Kenya working for a national carrier is not required to register for a KRA PIN.

Be the change

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