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RSMEA Newsletter

Overview of the Kenya Finance Bill, 2025

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INTRODUCTION

The Finance Bill, 2025, was released on 30th April 2025. **These are proposal at this stage and will only become effective once passed into an Act, which is expected on or before 30th June 2025.** This newsletter provides an overview of the proposed amendments across several tax laws, including proposals to:

- Tax losses to expire if not utilised within 5 years
- Introduction of Advance Pricing Agreements (APA)
- Reclassify certain items from a VAT zero-rated status to exempt. These items include, but are not limited to, inputs and raw materials for the manufacture of animal feeds; the supply of solar and lithium-ion batteries; the supply of electric buses; and locally assembled mobile phones
- Align the timelines for VAT refund applications under the VAT Act and the Tax Procedures Act, reducing the period to within 12 months from the date on which such refunds become due and payable
- Change the taxable value of coal from its customs value to its excisable value
- Extend the period within which the Commissioner must ascertain refunds
- Waive interest and penalties incurred as a result of malfunctions in the Electronic Tax Invoice Management System (eTIMS) and the iTax system
- Empower the Commissioner to request trade secrets and personal client data from taxpayers
- Revert the calculation of time for objections and appeals from working days to calendar days

INCOME TAX ACT

EMPLOYMENT INCOME – EFFECTIVE 1ST JULY 2025

PER DIEMS

Increase in the tax-free per diem allowance for employees from KShs. 2,000 per day to KShs. 10,000 per day. This is a welcome move as it aligns with inflationary adjustments and further allows employers to treat this amount as an allowable emolument without needing an eTIMS compliant invoice to support the expense, especially where expenses are incurred by employees traveling outside their usual place of work for official duties. Currently, businesses face challenges in accounting for amounts exceeding the KShs. 2,000 per day limit.

EMOLUMENTS

The Bill proposes an amendment requiring employers to apply all applicable deductions, reliefs, and exemptions before computing the tax deductible from an employee's emoluments. This change aligns with amendments introduced through the Tax Laws (Amendment) Act, 2024, ensuring that employees receive the full benefit of tax reliefs upfront rather than having to claim refunds later. The adjustment aims to streamline tax compliance and improve efficiency in payroll tax calculation.

The Bill further proposes to delete the requirement to supply the Commissioner with a certificate provided by rules prescribing the certificate. Before the introduction of iTax, P10 forms were manually filled, but with automation, this requirement has become redundant. The proposed deletion serves as a clean-up to align the law with current tax administration practices, ensuring efficiency and consistency in compliance.

There is a further proposal to impose a penalty on a person who fails to supply prescribed certificates as required under Section 37 of the Income Tax Act. However, this seems to contradict the above provision.

RELATED PERSONS – EFFECTIVE 1ST JULY 2025

Expanding the current definition of "related person" with a broader definition of "related persons." This new proposal seeks to include third parties who control multiple entities. It will cover cases where individuals or entities participate directly or indirectly in the management, control, or capital of two or more businesses. Additionally, it will include individuals associated with the businesses by marriage, consanguinity, or affinity, and situations where the businesses participate in the management, control, or capital of the individual. This proposed change aims to capture complex relationships and ensure comprehensive coverage of interconnected entities under tax regulations.

This will now impact shareholders of related persons, where companies make payments (cash or assets) to or on behalf of such related persons, who will be deemed to have received a distribution, and a tax obligation would crystallise.

The definition under the Capital Gains Tax (CGT) provisions (Eighth Schedule) and transfer pricing provisions are also proposed to be deleted, to prevent ambiguity. Therefore, any transfers between related persons for CGT purposes (under the expanded definition) would need to take place at market value.

INCOME FROM PENSIONS – EFFECTIVE 1ST JULY 2025

The Act currently provides that exemption on payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund, public pension scheme or National Social Security Fund shall apply on payment of gratuity or other allowances paid under a public pension scheme. The Bill proposes to The Bill proposes to split this into two distinct provisions:

i. Payment of gratuity;
ii. Other allowances paid under a public pension scheme;

The existing exemptions under this paragraph (payment of retirement annuity and withdrawals from a pension scheme prior to earning retirement age due to ill health or withdrawal after 20 years) are maintained as exempt income.

This amendment aims to provide greater clarity in distinguishing gratuity payments from other allowances within public pension schemes. By separating these provisions, the Bill ensures more precise tax treatment and regulatory application for different types of pension-related payments.

Additionally, the Bill also seeks to align the taxation of pension income, by cleaning up the contradictory provisions, as the exemptions were recently introduced under the First Schedule, clarifying pension income is exempt from income tax.

WITHHOLDING TAXES – EFFECTIVE 1ST JULY 2025

The Bill proposes to amend Section 10 of the Income Tax Act by including the following;

1. supply of goods to a public entity; and
2. the sale of scrap.

This proposed amendment aligns with the changes introduced by the Tax Laws (Amendment) Act 2024 under Section 35. Section 35 of the Income Tax Act deals with the deduction of tax at source from certain types of income, such as management or professional fees, royalties, interest, and rents. This proposal aims to clear the legal ambiguity where the provision to enforce did not include the two supplies in the charging section.

PAYMENTS MADE TO NON-RESIDENT SHIP OWNERS

The income of a non-resident ship owner accrued or derived from Kenya is subject to income tax at 2.5% of the gross amounts received. The obligation to account for and remit such tax lies with the ship owner.

The Bill seeks to shift this burden of deduction of tax to the resident person procuring the service from the non-resident ship-owner, in the form of withholding tax at 2.5% of the gross amount received, which shall be deemed to be a final tax.

QUALIFYING DIVIDEND AND INTEREST– EFFECTIVE 1ST JULY 2025

The Finance Act 2023 had created an ambiguity by deleting Section 34 of the Act which provided that withholding tax on qualifying interest and dividend are final taxes.

This proposal will now clarify the lacuna in the legislation by stating that withholding tax on both is now final tax.

EXPANSION OF SCOPE OF ROYALTIES – EFFECTIVE 1ST JULY 2025

The Bill proposes to expand the definition of "royalty" by including the distribution of software where regular payments are made for its use through a distributor. This change broadens the scope of transactions considered as royalties, potentially subjecting businesses involved in software distribution, licensing, and related services to additional tax obligations.

Should this change be enacted, some resident distributors will be in perpetual income tax credit positions, since the margins on the distribution of software are usually very small, often less than the resident withholding tax of 5% on royalties.

Non-resident distributors may be unable to claim the withholding tax credits in their respective countries and may opt to revise their pricing to ensure that their margins would not be affected. This would have the effect of increasing the cost to the Kenyan customer.

ALLOWABLE EXPENSES – EFFECTIVE 1ST JULY 2025

TAX LOSSES CARRIED FORWARD

The Income Tax Act currently allows tax payers to carry forward tax losses indefinitely. The Bill proposes to amend the provision regarding carried-forward losses by limiting the offset period to a maximum of 5 years from the time the losses were incurred. This change could negatively impact entities with significant tax losses, particularly those in capital-intensive sectors and agricultural sector that require extended periods to generate taxable profits. However, there is still ambiguity here whereby the Bill does not specify if this provision applies to the tax losses going forward of those already incurred.

There is a further proposal to delete the provision that allows the Cabinet Secretary, on the recommendation of the Commissioner, to extend the period for utilizing tax losses beyond 10 years. This amendment effectively limits the ability to extend the period for offsetting tax losses, aligning it with the proposed 5-year cap.

LOSSES FROM DISPOSAL OF PROPERTY

A taxpayer who incurs a capital loss on the disposal of property is allowed to offset that loss against a capital gain enjoyed on the disposal of another asset in the same year or carry forward the loss to subsequent years. The Bill seeks to delete this provision. Therefore, a taxpayer would not be able to offset a capital loss against a capital gain on the disposal of property.

DIMINUTION OF LOOSE TOOLS

The provision regarding deductions for diminution in value of implements, utensils, or similar articles (excluding machinery or plant covered under the Second Schedule) has been reinstated. The current provision allows for deductions based on the Commissioner's determination of what is just and reasonable but does not specify a rate. The proposed amendment sets a clear rate of 100% for these deductions in the year of income, which are aligned to the nature of the implements as they have a short life cycle.

TAXATION OF MORTGAGES

The Income Tax Act currently allows for the deduction of interest, up to Kshs. 360,000 per year, on money borrowed from specified financial institutions for the purchase or improvement of owner-occupied residential premises. The Bill proposes to expand the allowability of interest to include the construction of owner-occupied residential premises. This addition is a welcome move as it provides clarity and expands the scope of allowable deductions, encouraging investment in residential property development and improvement. It also ensures that taxpayers can benefit from relief on interest payments for their primary residence.

TAXATION OF NON-CITIZENS' EMPLOYMENT INCOME

The Income Tax Act currently provides that income from one-third of the total gains and profits from employment of a non-citizen individual to be exempt from taxation under specific conditions. These conditions include;

i. the employer being a non-resident company or partnership;
ii. the individual working in Kenya for an approved regional office, being absent from Kenya for at least 120 days in the year; and
iii. the gains not being deductible for the employer's taxable income.

The Bill proposes to delete the above provision therefore, all gains and profits from employment of non-citizens will be taxed in full, regardless of the number of days the individual was present in Kenya.

EXPENSES INCURRED IN PRODUCTION OF STANDING TIMBER

The Income Tax Act requires the Commissioner to provide a person selling standing timber with the deductible cost attributable to the cost of such standing timber. This may be bureaucratic and impractical as timber salespersons have to await the Commissioner's feedback to enable them prepare their tax computations and income tax returns. The Bill proposes to delete this provision thereby revoking the Commissioner's power to determine the cost. This will enable timber salespersons to claim their standing timber cost on a self-assessment basis.

TAXATION OF SPORTS INITIATIVES

The Bill seeks to include any donations made towards the construction of a public sports facility as an allowable deduction.

The Bill further proposes to delete the provision allowing expenditure incurred on sports sponsorship, with prior approval from the Cabinet Secretary responsible for sports, as an allowable deduction. This proposed amendment will limit the tax deductibility of such expenditures, potentially discouraging sponsorships in the sports sector and impacting funding for sports initiatives.

INVESTMENT DEDUCTION – EFFECTIVE 1ST JULY 2025

The Bill proposes to remove the special investment deduction rate of 100% for entities investing outside Nairobi City County and Mombasa County, as well as for those investing in Special Economic Zones (SEZs). Previously, businesses meeting specific investment thresholds in these areas could claim 100% deduction, significantly reducing taxable income. The Bill eliminates this preferential rate, standardizing tax treatment across all locations and industries. These provisions apply to manufacturers and hotel building owners.

This proposed amendment aims to streamline tax policy, ensuring a consistent approach for all investors while possibly increasing taxable revenue. However, affected sectors will no longer be able to enjoy the incentive in line with the Government's agenda on the reduction of tax expenditure.

DIGITAL ASSET TAX – EFFECTIVE 1ST JULY 2025

The Bill proposes to reduce the Digital Asset Tax rate from 3% to 1.5%, making it more favourable for digital market players. This proposal is part of broader efforts to boost the digital economy and attract more investment in financial technology (fintech) within Kenya.

SIGNIFICANT ECONOMIC TAX PRESENCE ("SEPT") – EFFECTIVE 1ST JULY 2025

The Bill proposes two key changes to the Significant Economic Presence Tax (SEPT):

1. The Bill proposes to expand the scope of the SEPT by explicitly including income derived from or accruing in Kenya through businesses conducted over the internet or an electronic network. Currently, the provision only provides for supplies made over a digital market place (where buyers and sellers trade over a digital platform). This proposed addition will broaden the tax base to capture a wider range of digital and online activities, ensuring that non-resident entities conducting such businesses contribute to Kenya's tax revenue base.
2. There is also a proposal to remove the exemption for non-resident persons with an annual turnover of less than Kshs. 5 million. This means there will no longer be a minimum threshold for SEPT applicability. Non-residents who qualify for SEPT will be required to register and comply, making it mandatory if enacted.

MINIMUM TOP-UP TAX – EFFECTIVE 1ST JULY 2025

The Bill seeks to introduce the due date for the settlement of the minimum top-up tax (MTT). This tax will be payable by the end of the fourth month following the end of the year of income should this proposed change be enacted.

MTT was introduced by the Tax Laws (Amendment) Act, 2024 with effect from 27th December, 2024. The tax is applicable to a taxpayer in Kenya who:

- Is part of a multinational group with a consolidated annual turnover of EUR 750 million (c. KShs 110 Billion at the current exchange rate) or more in at least two of the previous four financial years immediately preceding the first year of income; and
- Has a combined effective tax rate of less than 15% in a year of income.

Please use [this link] to access our analysis of the Tax Laws (Amendment) Act, 2024 and read our detailed analysis of the Minimum Top-up Tax and its implications for businesses.

ADVANCE PRICING AGREEMENTS – EFFECTIVE 1ST JANUARY 2026

The Bill seeks to introduce a provision for Advance Pricing Agreements (APAs) under Section 18F of the Income Tax Act by providing that a taxpayer with transactions that falls under the ambit of transfer pricing regulations in Kenya can enter into an APA with the Commissioner (KRA) in respect to the pricing of such transactions.

Objective & Approach to the APA	An APA will constitute an agreement between the Commissioner and a taxpayer whose transactions fall within the ambit of Kenya's transfer pricing regulations. The purpose of the agreement is to determine, in advance, the arm's length price of the transaction the taxpayer intends to undertake. The pricing of such transaction(s) will be determined in accordance with the arm's length principle (that provides that pricing of transactions between related entities should be determined in reference to the price that would have been applicable between independent persons having similar transaction(s))
Validity & Nullification of the APA	The APA will be valid for a period not exceeding five consecutive years. The Commissioner may declare an APA null and void from the date of its inception if it is determined that the taxpayer obtained the agreement through misrepresentation of material facts. Such a determination would be communicated to the taxpayer through a written notice.
Further Regulations or Guidelines	The Cabinet Secretary – National Treasury will be allowed to issue further guidelines for the implementation of the APAs if the Bill is enacted

The introduction of APAs is intended to offer taxpayers greater certainty in the pricing of controlled transactions and to proactively address potential transfer pricing risks and disputes. By agreeing in advance on the transfer pricing methodology to be applied, both the taxpayer and the Commissioner can avoid protracted audits and litigation, thus fostering voluntary compliance and administrative efficiency. APAs are particularly useful in the context of complex or high-risk intercompany arrangements where the application of transfer pricing principles may otherwise be subject to interpretation or challenge.

The OECD guidelines includes APAs as one of the key administrative approaches in solving transfer pricing disputes particularly for complex or high-risk transactions. While the current Income Tax (Transfer Pricing) Rules, 2006 do not provide for APAs, the Finance Bill, 2024 and the draft Income Tax (Transfer Pricing) Rules, 2023 had proposed their introduction. The formal anchoring of APAs into the Income Tax Act through this amendment will provide the necessary legal framework for taxpayers to engage with the Commissioner on pricing approaches prior to undertaking the relevant transactions. This will enable taxpayers plan their pricing strategies and operations with confidence.

COUNTRY BY COUNTRY REPORTING – EFFECTIVE 1ST JULY 2025

The Income Tax (Country-by-Country Reporting) Regulations, 2021, issued pursuant to the Income Tax Act (Cap 470), establish the regulatory framework for Country-by-Country (CBC) Reporting in Kenya. These regulations are aligned with the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action 13 Standards and are enforced by the Kenya Revenue Authority (KRA).

Pursuant to amendments introduced by the Finance Act, 2023, an Ultimate Parent Entity (UPE) or a constituent entity of a multinational enterprise (MNE) group with a consolidated annual turnover exceeding Kshs. 95 billion in the preceding year of income is required to submit a CBC report to the Commissioner. In instances where multiple constituent entities are resident in Kenya, one of them may be designated as a Surrogate Parent Entity (SPE) for purposes of fulfilling the CBC reporting obligation.

Under the current framework, an SPE is exempt from filing a CBC report in Kenya if the following conditions are met:

- The UPE is required to file a CBC report in its jurisdiction of tax residence;
- The jurisdiction of tax residence of the UPE has both an international agreement and a competent authority agreement in force with Kenya; and
- The Commissioner has not issued a notification of a systemic failure with respect to the exchange of such reports.

The Bill proposes to repeal this exemption. If enacted, all MNE groups with a consolidated group turnover exceeding Kshs. 95 billion will be required to file a CBC report in Kenya, irrespective of any parallel reporting obligations or exemptions in other jurisdictions.

CAPITAL GAINS TAX – EFFECTIVE 1ST JULY 2025

DEFINITION OF COMPANY

The Bill proposes to expand the definition of "company" to explicitly include members' clubs and trade associations that are deemed to be carrying on business under Section 21. This amendment ensures that such entities fall within the scope of Capital Gains Tax, reinforcing their tax obligations.

EXEMPTION ON TRANSFER OF PROPERTY

The Bill proposes to add the word "individual" in the provision regarding transfer of property involving asset transfers between spouses and immediate family. If enacted, this proposal will allow an individual to transfer property to a company held 100% either between them and their spouse, spouse and children or former spouse.

APPLICATION FOR CHANGE OF ACCOUNTING PERIOD END – EFFECTIVE 1ST JULY 2025

Where a taxpayer wishes to change their accounting year-end, they are required to make an application to the Commissioner at least 6 months prior to the year end.

The Bill proposes to automatically allow such applications where the Commissioner has failed to make a determination within 6 months from the date the application was lodged.

COMPENSATING TAX – EFFECTIVE 1ST JULY 2025

The Bill seeks to delete references to compensating tax in various sections of the Income Tax Act, which was repealed through the Finance Act 2018, effective from January 1, 2019, and introduced Section 7A to the Act, which required dividends distributed out of untaxed profits or gains to be taxed at the resident corporate income tax rate.

LIFE ASSURANCE BUSINESSES – EFFECTIVE 1ST JULY 2025

The Bill proposes to amend the terminology in provisions related to long-term insurance business by replacing the term "life fund" with "life insurance fund." The Income Tax Act presently does not define "life fund" but does have a definition for "life insurance fund" *to mean not including the annuity fund, if any, nor such part of the life insurance fund as represents the liability of the company under any registered annuity contract, registered trust scheme, registered pension scheme or registered pension fund.*

TRADE ASSOCIATIONS AND CLUBS – EFFECTIVE 1ST JULY 2025

The Bill proposes to delete the definition of "gross investment receipts," which includes various types of income such as interest, dividends, royalties, rents, and gains from rights granted for use or occupation of property. The Finance Act 2023 redefined how the income of members' clubs and trade associations is treated by deeming their gross receipts (excluding joining fees, welfare contributions, and subscriptions) as business income. This change rendered the concept of "gross investment receipts" unnecessary in this context.

SUPPLY OF INFORMATION UPON CHANGE IN PARTICULARS – EFFECTIVE 1ST JULY 2025

The Bill proposes to repeal Section 54B, which requires businesses to notify the Commissioner of changes in key particulars within 30 days. This amendment serves as a clean-up, as the same requirements are already covered under the Tax Procedures Act, 2015, ensuring consistency and eliminating redundancy in tax compliance regulations.

FAILURE TO COMPLY WITH NOTICE – EFFECTIVE 1ST JULY 2025

The Bill proposes several clean-up amendments to Section 109, removing outdated provisions and ensuring alignment with current tax procedures. The deletions primarily target requirements related to furnishing returns, documents, and attending examinations, as these processes have been streamlined under the Tax Procedures Act, 2015.

Additionally, the Bill substitutes the provision on tax deduction and accounting, refining the language to focus solely on the requirement to supply prescribed certificates under Section 37. This adjustment eliminates redundancy while maintaining compliance obligations.

EXEMPTION FROM INCOME TAX – EFFECTIVE 1ST JULY 2025

The Bill proposes to extend the period for determination of an income tax exemption application from 60 days to 90 days, provided the taxpayer has met all the conditions set by the Commissioner. This amendment aims to offer a more structured timeline for processing exemptions while ensuring transparency and accountability in the approval process.

SPECIAL ECONOMIC ZONES – EFFECTIVE 1ST JULY 2025

The Bill proposes to amend the provision on gains from the transfer of property within a special economic zone, specifying that the exemption will only apply to **licensed** special economic zone developers, enterprises, or operators.

TRANSFER OF SECURITIES – EFFECTIVE 1ST JULY 2025

The Bill proposes to move the provision on gains from the transfer of securities traded on a securities exchange licensed by the Capital Markets Authority from the Third Schedule to the First Schedule. This is a clean-up exercise to bring all exemptions under the First Schedule. Therefore, both the trading gains and capital gains arising on the disposal of securities are exempt from income tax.

ENTITIES CERTIFIED BY NAIROBI INTERNATIONAL FINANCIAL CENTRE AUTHORITY – EFFECTIVE 1ST JULY 2025

The Bill proposes to introduce preferential tax rates for companies certified by the Nairobi International Financial Centre Authority (NIFC) to spur investment in Kenya. Under this amendment, certified companies will benefit from a 15% corporate tax rate for the first 10 years, followed by 20% for the subsequent 10 years, provided they meet specific investment and employment criteria. These include investing at least Kshs. 3 billion in Kenya within the first three years, maintaining a majority of Kenyan citizens in senior management, and establishing their regional headquarters in Kenya.

Additionally, start-ups certified by NIFC will enjoy a 15% tax rate for the first three years, followed by 20% for the next four years. This incentive aims to attract global financial players, strengthen Kenya's position as a regional financial hub, and encourage long-term investment in the country.

DIVIDENDS – EFFECTIVE 1ST JULY 2025

The Bill proposes to exempt dividends paid by companies certified by the Nairobi International Financial Centre Authority from tax, provided the company reinvests at least 250 million shillings in Kenya within the year of income. This proposal aims to incentivize investment and economic growth, encouraging certified entities to reinvest substantial amounts into the local economy.

CHARGEABILITY OF FRINGE BENEFIT TAX AND QUALIFYING INTEREST – EFFECTIVE 1ST JULY 2025

The Bill proposes to clarify the chargeability of Fringe Benefit Tax (FBT) and qualifying interest on individual taxes shall not be subject to the personal income tax bands as FBT is taxable on the employer and the withholding tax on qualifying interest is final.

The Bill proposes to clarify that the tax rate on fringe benefits provided by an employer shall be equal to the resident corporate tax rate for that year of income.

CONSTRUCTION OF RESIDENTIAL UNITS – EFFECTIVE 1ST JULY 2025

The Bill proposes to remove the special tax rate of 15% for companies constructing at least 100 residential units annually. Previously, this lower tax rate was intended to incentivize large-scale housing development, supporting the government's agenda of affordable housing.

LOCAL ASSEMBLY OF MOTOR VEHICLES – EFFECTIVE 1ST JULY 2025

The local assembly of motor vehicle industry enjoyed a 15% rate of tax in the first 5 years of operations which has now been proposed to be deleted.

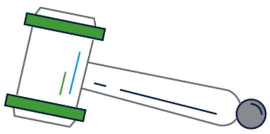
AMENDMENTS TO SOCIAL HEALTH INSURANCE FUND – EFFECTIVE 1ST JULY 2025

The Bill proposes to delete references to the **National Hospital Insurance Fund (NHIF)** and replace them with the **Social Health Insurance Fund (SHIF)** established under the **Social Health Insurance Act, 2023**. This amendment serves as a **clean-up**, aligning the law with the transition from NHIF to SHIF, as NHIF is no longer applicable.

DEFINTIONS OF THE INCOME TAX ACT – EFFECTIVE 1ST JULY 2025

The Bill proposes to amend various definitions. This is as tabulated below:

Definition	Proposed change and impact
Debenture	The Bill proposes to clean up the definition of "debenture" in the Income Tax Act by deleting the clause referring to paragraphs (d) and (e) of Section 7(1), which includes loans or loan stock, whether secured or unsecured. Since paragraphs (d) and (e) of Section 7(1) were already deleted, this proposed amendment aligns the definition with the current provisions of the Act
Individual retirement fund	The Bill proposes to amend the definition of "individual retirement fund" by removing the condition "subject to the Income Tax (Retirement Benefit) Rules" The requirement to register various retirement benefit schemes with the Commissioner was removed by the Tax Law (Amendment) Act, 2024. However, this did not include individual retirement funds. The proposal seeks to align the treatment of all retirement benefit schemes
Venture company	The Bill proposes to delete the definition of "venture company," which is currently defined as a company incorporated in Kenya with venture capital investment and assets or turnover below Kshs. 500 million at the time of first investment. This proposed amendment is a clean-up, as venture capital provisions were repealed by the Tax Laws (Amendment) Act, 2020, effective 25th April 2020, which provided the deletion of the exemption from income tax on gains arising from trade in shares of venture companies The definition of "registered venture capital company" remains in place and should also be deleted to fully align with the changes introduced by the 2020 amendment



INDIRECT TAX – VALUE ADDED TAX ACT, 2013 (EFFECTIVE 1ST JULY 2025)

GENERAL PROVISIONS

TAX INVOICE

Definition

Originally, the definition of a tax invoice was provided under the Value Added Tax (Electronic Tax Invoices) Regulations, 2020. However, with the rollout of the Electronic Tax Invoice Management System (eTIMS) in 2023, the Bill now proposes to incorporate a definition of a tax invoice directly into the VAT Act. This definition would explicitly include invoices generated through eTIMS, in accordance with the Tax Procedures Act.

If enacted, this amendment would harmonize the definition of a tax invoice under the VAT Act with that provided in the Tax Procedures Act.

Requirement of a tax invoice

Currently, the obligation to issue tax invoices under the VAT Act applies exclusively to taxable supplies, with exempt supplies not subject to this mandatory requirement. As a result, exempt transactions have traditionally fallen outside the scope of the invoicing regime. The proposed amendment by the Bill seeks to remove this distinction in the VAT Act by extending the requirement to issue tax invoices to all supplies, irrespective of their tax status. This proposal is consistent with the provisions of the Tax Procedures Act (TPA), which mandate the issuance of tax invoices for all transactions, except those specifically exempted from the Electronic Tax Invoice Management System (eTIMS) requirements.

The TPA exempts emoluments, imports, investment allowances, interest, airline passenger ticketing, payment of withholding tax and similar payments from the requirement to be supported by eTIMS invoices. The Tax Procedures (Amendment) Act, 2024 introduced an eTIMS invoice exemption on payments subject to withholding tax.

The Bill proposes to clarify that only payments subject to withholding tax as a final tax shall be exempt from eTIMS invoicing requirement.

DEFINITION OF PLACE OF SUPPLY OF SERVICES

The current definition of the place of supply of services under the VAT Act provides that a supply is deemed to be made in Kenya by any person—whether registered for VAT or not—where, among other circumstances, the services are either (i) radio or television broadcasting services received at a Kenyan address, or (ii) electronic services delivered to a recipient in Kenya at the time of supply.

As part of efforts to streamline and clarify the VAT framework, the Bill proposes to reclassify radio and television broadcasting services under the definition of electronic services.

The proposed amendment is administrative in nature and is not expected to affect the VAT treatment of these services in relation to the place of supply. As such, radio and television broadcasting services received at a Kenyan address will continue to be treated as supplies made in Kenya, even when provided by non-resident suppliers without a business presence in the country. The reclassification of these services as electronic services implies that they would fall within the ambit of the Digital Services Tax (DST). Consequently, any supplier offering such services would be required to register for VAT under the simplified VAT registration system, charge VAT on DST, and would not be eligible to claim input VAT incurred in the course of providing these services.

VAT REFUNDS

Refund of withholding VAT credits

The current provisions of the VAT Act permit taxpayers to apply for refunds arising from excess withholding VAT credits and further allow such credits to be offset against other tax liabilities owed by the taxpayer.

The Bill proposes to amend the VAT Act by removing the provision that allows the utilization of excess withholding VAT credits to be offset other tax obligations, while retaining the taxpayer's right to apply for a refund of the excess credits. This means that taxpayers who do not apply for a refund of these credits would only be able to utilise the credits against future VAT liabilities, and therefore risk being in a perpetual credit position with no recourse.

Timelines for application of VAT refunds

The current provisions of the VAT Act are inconsistent with those of the Tax Procedures Act (TPA) regarding the application for VAT refunds. While the VAT Act allows for VAT refund applications to be made within 24 months from the date the tax became due and payable, the TPA stipulates a 12-month period for such applications following the amendment of the TPA by the Tax Laws Amendment Act, 2024.

The Bill proposes to harmonize these timelines by aligning the VAT refund application period with the 12-month timeframe set out in the TPA. This change is primarily administrative and aims to ensure consistency between the VAT Act and the Tax Procedures Act regarding refund application timelines.

Refund of excess credits arising from supplies made to official aid funded projects

Prior to 27th December 2024, the VAT Act allowed for VAT refunds on any excess input tax incurred by a manufacturer in relation to taxable supplies made to an official aid-funded project, subject to the approval of the Cabinet Secretary. However, with the enactment of the Tax Laws Amendment Act, 2024, the provision permitting the deduction of such input tax was deleted. Consequently, the provision allowing for a refund of any excess input tax arising from taxable supplies made to official aid-funded projects became defunct.

In light of this, the Bill proposes to formally remove the provision concerning VAT refunds, as it is no longer applicable following the amendments introduced by the Tax Laws Amendment Act, 2024.

Refund of tax on bad debts

The provisions of the VAT Act permit taxpayers to apply for a refund of VAT on bad debts where the debt has remained unpaid for a period of 3 years from the date of supply, provided the application is submitted within a 10-year window.

The Bill proposes to amend this provision by reducing the minimum waiting period from 3 years to 2 years. If enacted, this would enable taxpayers to apply for a refund of VAT on bad debts after 2 years of non-payment.

Furthermore, the Bill seeks to broaden the application of approved VAT refunds on bad debts by allowing taxpayers to offset such amounts not only against future tax liabilities, but also against any outstanding VAT obligations—whether arising in the past, currently due, or payable in the future.

At present, the VAT Act contains two contradictory provisions—one requiring recovery of VAT on bad debts which had been refunded to the taxpayer to be remitted to the Commissioner within 30 days, and another prescribing a 60-day period. The Bill seeks to provide clarity by eliminating conflicting provisions within the VAT Act regarding the timeline for remitting recoveries of previously refunded VAT on bad debts to the Commissioner.

The proposed amendment aims to resolve this inconsistency by clearly stipulating that all such recoveries must be remitted within 30 days. Any amounts not remitted within this timeframe will continue to attract interest at a rate of 2% per month.

TAX AVOIDANCE SCHEMES

In order to prevent tax avoidance in cases where goods or services are purchased with an exemption or zero-rating based on their intended use, but are subsequently not utilized for the specific purpose that justified the VAT preferential treatment, the Bill proposes to introduce more stringent measures for the recovery of tax in such instances.

Specifically, the Bill stipulates that if a person imports or purchases goods or services that are exempt or zero-rated, and later disposes of or utilizes these goods or services in a manner inconsistent with the purpose for which the exemption or zero-rating was granted, the individual will be liable to pay tax on the goods or services at the applicable rate at the time of disposal or inconsistent use.

This proposal seeks to align with a similar protectionary clause in the East African Community Customs and Management Act.

If enacted in its current form, this provision aims to prevent potential tax losses arising from change of use by taxpayers.

VAT RATE CHANGES

REMOVAL OF EXEMPTION ON TAXABLE GOODS INTENDED FOR THE DIRECT AND EXCLUSIVE USE IN THE CONSTRUCTION AND EQUIPPING OF SPECIALIZED HOSPITALS

Paragraph 63 of the First Schedule to the Kenyan Value Added Tax (VAT) Act was introduced by the Finance Act, 2016, which came into effect on 9th June 2016. The provision granted VAT exemptions on taxable goods intended for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, subject to approval by the Cabinet Secretary, upon recommendation by the Cabinet Secretary responsible for health.

Since its enactment, Paragraph 63 has undergone several amendments aimed at aligning the VAT framework with shifting tax policy priorities and economic considerations. Notably, the provision was repealed by the Finance Act, 2022, with effect from 1st July 2022, thereby eliminating the VAT exemption it previously afforded. However, approvals granted by the Cabinet Secretary prior to its deletion remained valid until the exempted supplies were fully delivered.

Subsequently, the Finance Act, 2023 reinstated Paragraph 63, effective 1st July 2023, restoring the VAT exemption under terms that closely mirrored those of the original provision, including the same conditions for Cabinet Secretary approval.

Despite these reversals, the current Bill proposes once again to repeal the exemption. However, it includes a transitional provision stipulating that any exemption approved under Paragraph 63 prior to its deletion shall remain in force until 30th June 2026.

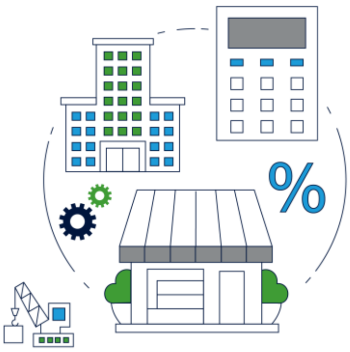
This legislative back-and-forth reflects a broader issue of unpredictability in Kenya's tax framework, which may pose challenges for long-term investment planning and compliance certainty.

OTHER CHANGES IN RATES

Supplies	Proposed Rate	Current Rate
HEALTH SECTOR		
Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale	16%	Exempt
Weighing machinery (excluding balances of a sensitivity of 5cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health Provided that an exemption that had been approved pursuant to paragraph 129 before the deletion of paragraph 129 came into effect shall continue to apply until 30th June 2026	16%	Exempt
MANUFACTURING SECTOR		
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary for the time being responsible for matters relating to health	Exempt	0%
Inputs or raw materials locally purchased or imported for the manufacture of animal feeds upon recommendation by the Cabinet Secretary for the time being responsible for agriculture	Exempt	0%

Supplies	Proposed Rate	Current Rate
Inputs and raw materials used in the manufacture of passenger motor vehicles	16%	Exempt
TOURISM SECTOR		
Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions— (i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime; (ii) the vehicles shall be used exclusively for the transportation of tourists; (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and (iv) any other condition the Commissioner may impose: Provided that tax shall become payable upon change of use or disposal of the vehicle for other use	16%	Exempt
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills Provided that an exemption that had been approved pursuant to paragraph 62 before the deletion of paragraph 62 came into effect shall continue to apply until 30th June 2026	16%	Exempt
AVIATION SECTOR		
All goods and parts thereof of chapter 88;	16%	Exempt
Any ~~other aircraft spare~~ aircraft parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation	Exempt	Exempt
Direction-finding compasses, instruments and appliances for aircraft	16%	Exempt
TRANSPORT SECTOR		
Locally manufactured passenger motor vehicles: Provided that in this paragraph—"locally manufactured passenger motor vehicle" means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya	16%	Exempt
The supply of motorcycles of tariff heading 8711.60.00	Exempt	0%
The supply of electric bicycles	Exempt	0%
The supply of electric buses of tariff heading 87.02	Exempt	0%
AGRICULTURAL SECTOR		
Transportation of sugarcane from farms to milling factories	Exempt	0%
Packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture	Exempt	16%
MINING AND ENERGY SECTOR		
Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation	16%	Exempt

Supplies	Proposed Rate	Current Rate
to the Commissioner by the Cabinet Secretary responsible for matters relating to energy Provided that an exemption that had been approved pursuant to paragraph 113 before the deletion of paragraph 113 came into effect shall continue to apply until 30th June 2026		
The supply of solar and lithium ion batteries	Exempt	0%
Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)	Exempt	0%
Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act (Cap. 314), production sharing contracts in accordance with the Petroleum Act (Cap. 308) or a mining license in accordance with the Mining Act (Cap. 306) upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be Provided that an exemption that had been approved pursuant to paragraph 112 before the deletion of paragraph 112 came into effect shall continue to apply until 30th June 2026	16%	Exempt
CONSTRUCTION SECTOR		
Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing Provided that an exemption that had been approved pursuant to paragraph 109 before the deletion of paragraph 109 came into effect shall continue to apply until 30th June 2026	16%	Exempt
OTHER SECTORS		
Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects excluding fuels, lubricants and tyres for vehicles upon approval by the Cabinet Secretary responsible for the National Treasury	Exempt	Exempt
Discs, tapes, solid-state non-volatile storage devices, "smartcards" and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health Provided that an exemption that had been approved pursuant to paragraph 128 before the deletion of paragraph 128 came into effect shall continue to apply until 30th June 2026	16%	Exempt
The supply of locally assembled and manufactured mobile phones	Exempt	0%
Tariff ~~2106.90.91~~; 2106.90.30 – Food supplements	Exempt	Exempt



INDIRECT TAX – EXCISE DUTY ACT, 2015 – EFFECTIVE 1ST JULY 2025

DEFINITIONS

The Bill seeks to amend the definition of a digital lender, by defining a digital lender as a person extending credit through an electronic platform. However, this specifically excludes entities that are licensed under the Banking Act, Microfinance Act and Co-operative Societies Act.

While the current definition of a digital lender was introduced under the Tax Laws (Amendment) Act 2024 and defined a digital lender as a person with a valid digital credit provider license issued by the CBK, the new definition seeks to include digital credit providers who may not be licensed by the CBK. This would therefore expand the tax base, since fees charged by entities offering credit digitally would also be taxed, whether or not licensed by CBK at 20%.

Furthermore, it prevents the double taxation of entities who are licensed under the above acts that also extend credit through an electronic platform, since the fees charged by these entities are already subject to excise duty, by virtue of being financial institutions under the Excise Duty Act.

The proposed definition further seeks to align with the definition of a digital lender under the Central Bank of Kenya Act

REFERENCE TO CUSTOMS DEFINITIONS FOR EXCISE PURPOSES

The Bill proposes to amend the Excise Duty Act to provide that goods shall be classified based on the Protocol establishing the East African Community Customs Union and the General Rules of Interpretation, similar to an existing provision in the VAT Act.

This synchronizes the definitions of terms for customs and excise duty purposes. This will enhance uniformity on the classification of goods for VAT, Customs and Excise Duty purposes.

EXCISABLE SERVICES OFFERED DIGITALLY BY NON-RESIDENTS

The Bill proposes a requirement for non-resident persons offering excisable services through the internet, an electronic network or digital marketplace to register, charge and remit excise duty on such services. The non-residents shall be liable for payment of excise duty.

The Bill also seeks to introduce a definition of a digital marketplace, to mean an online platform which enables users to sell goods or provide services to other users, similar to the existing definition under the VAT Act.

This also aligns with the requirement for non-residents offering digital services through the internet, an electronic network or digital marketplace to register and charge VAT on the same.

However, this creates ambiguity on how to calculate taxable value for excise duty purposes, where the services are subject to both excise duty and VAT, such as advertising over the internet on alcoholic beverages.

A non-resident is defined to mean a person outside of Kenya

Where the excisable service is offered by a non-resident whose place of business is outside Kenya, the place of supply of the service will be deemed to be Kenya, if the service is consumed in Kenya.

EXCISE LICENCE APPLICATION CONSIDERATION TIMELINES

The Commissioner is currently not bound by any timelines when considering an application for an excise license. The Bill proposes to impose a 14-day deadline for the Commissioner to consider and decide on an excise license application where all the required documents are received.

This provides a sense of administrative certainty. However, there is no mechanism to hold the Commissioner accountable to this timeline.

CHANGES TO EXCISE DUTY RATES AND DESCRIPTIONS

Goods	Proposed Rate	Current Rate
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~~ 7005 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	35% of the excisable value or Kshs. 200 per kg, whichever is higher	35% of the customs value or KShs. 200 per kg
Coal	2.5% of the excisable value	2.5% of the customs value

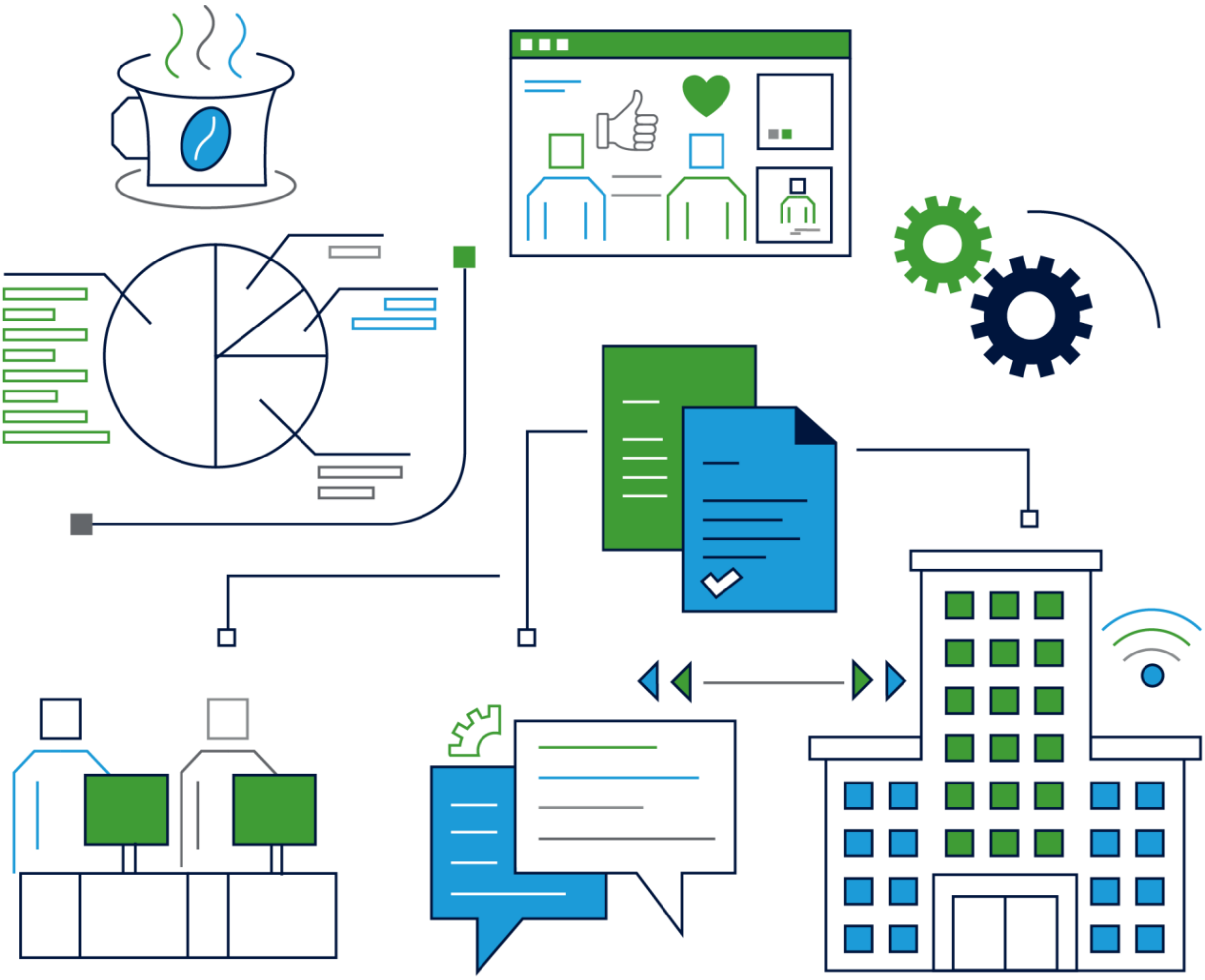
The Bill proposes to delete excise duty on the following goods:

Goods	Rate
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
Imported Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls of tariff numbers 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 Kilogramme, whichever is higher
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. 150 per Kilogramme, whichever is higher
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 Kilogramme, whichever is higher

The Bill seeks to introduce excise duty on the following items:

Goods	Proposed Rate
Imported other 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, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher
Imported printed polymers of ethylene of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.10.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher
Imported printed polymers of vinyl chloride containing by weight not less than 6% of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of tariff number 3920.43.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher
Imported printed poly (ethylene terephthalate) of polycarbonates, alkyd resins, polyallyl esters or other polyesters of other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly of tariff number 3920.62.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme

Goods	Proposed Rate
Imported printed cellular of other plastics of other plates, sheets, film, foil and strip of tariff number 3921.19.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher
Printed self-adhesive paper of tariff number 4811.41.90, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher
Gummed paper and paperboard of tariff number 4811.49.00, but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% of excisable value or Kshs. 200 per Kilogramme, whichever is higher
Spirits of undenatured extra neutral alcohol of alcoholic strength exceeding 90% purchased by licensed manufacturers of spirituous beverages	Kshs. 500 per litre



TAX PROCEDURES ACT, 2015

AGENCY NOTICES – EFFECTIVE 1ST JULY 2025

- Currently, the Commissioner's power to issue agency notices is restricted to taxpayers (persons liable to pay tax). The Bill proposes to increase the scope to persons that may be subjected to agency notices to include non-resident persons subject to tax in Kenya.
- If enacted, this will affect non-residents liable for digital service tax or VAT on supplies made over an electronic network. This may be necessitated by the Commissioner's lack of leverage to enforce collection of taxes from non-residents. This proposal may be impractical for retail suppliers of services subject to DST/SEPT or VAT on supplies over an electronic network & the proposed excise duty (e.g. online TV subscription services).
- A proposed clean-up on prohibition of issuance of agency notice when objection decisions are under appeal may result in ambiguity on the Commissioner's power to issue an agency notices when a dispute escalates to the High Court and above.

PENALTIES & INTEREST DUE TO ETIMS & ITAX SHORTCOMINGS – EFFECTIVE 1ST JANUARY 2026

- The Commissioner's implementation of eTIMS has been affected by a number of challenges including the eTIMS system failing to record some sales, populating data in the wrong taxpayer's account and failing to recognise expenses declared by the supplier resulting in undue liabilities to taxpayers. iTax hiccups have also unfairly punished taxpayers.
- The Bill proposes to grant the Cabinet Secretary for Finance (upon the Commissioner's recommendation) the power to waive such erroneously incurred penalties and interest.
- This is a crucial proposal as it will reduce the unfair imposition on the taxpayer. However, the Bill refers to whole or part whereas it should waive the whole liability as it is the result of errors attributable to the Commissioner's system.

COMPUTATION OF TIME FOR OBJECTIONS AND APPEALS – EFFECTIVE 1ST JULY 2025

- The Tax Procedures (Amendment) Act 2024 changed the computation of time from calendar days to working days in December 2024. The Bill proposes to revert to the old position barely 6 months after the former amendment. This will create uncertainty for disputes that have already been triggered and shortens the windows for lodging objections and appeals.
- The Commissioner has a 5-year window to assess taxes (which is more than sufficient) but taxpayers have a 30-day window to object against such an assessment. Therefore, the Commissioner has always had the advantage of time.

PENALTY FOR FAILURE TO WITHHOLD TAX – EFFECTIVE 1ST JULY 2025

- Currently, a taxpayer who fails to subject a payment to withholding tax is required to pay the principal withholding tax to the Commissioner whether or not the withholdee declared the sale and paid tax on the transaction. Taxpayers have found this burdensome as the withholder would be unable to recover or expense the withholding tax.
- The Bill proposes to amend this provision to exempt a taxpayer from paying the principal WHT if the withholdee has accounted for the tax on that payment. However, it will not absolve the withholder from the liability to pay interest and penalties resulting from the failure to withhold tax. This is a good proposal as it will reduce the double taxation on taxpayers.
- Proving that the supplier has subjected the income to tax may be impractical for the taxpayer. However, eTIMS improves visibility for the Commissioner to ascertain that the supplier has accounted for the tax on the supply.

TIMELINES FOR REVIEW OF REFUND APPLICATIONS - EFFECTIVE 1ST JULY 2025

- Currently, the Commissioner has to process a refund application within 90 days when they opt not to audit the refund and 120 days when the refund application is to be audited. The Bill proposes to expand these refund processing windows to 120 days and 180 days respectively.
- Whereas this would increase the Commissioner's time to ascertain refunds, it will work against taxpayers' cash flow, as they may have to wait longer for refunds.

DECISIONS ON LATE OBJECTIONS – EFFECTIVE 1ST JULY 2025

- There has been uncertainty as to the computation of time (for issuance of an objection decision) when the Commissioner accepts a taxpayer's late objection application.
- There have been disputes as to whether the timeline starts running from the date it is lodged or from the date the application is allowed. The Bill seeks to clarify that the timeline for issuance of an objection decision starts running from the date the late objection is lodged.

DMRS SENSITIVE DATA REQUIRED – EFFECTIVE 1ST JULY 2025

- Taxpayers providing information under a Data Management and Reporting System (DMRS) are not required to divulge trade secrets and personal or private data of clients. The Bill proposes to delete this provision essentially giving the Commissioner powers to demand for trade secrets, private data and personal data. This is a rather concerning proposal as:
    - the Commissioner has not demonstrated why it needs such data;
    - the Commissioner is subject to the Data Protection Act which requires minimization;
    - the Commissioner has not demonstrated IT safety measures to protect such data;
    - the Commissioner has not carried out an impact risk assessment if data is revealed to the public or its own staff; and
    - internationally, trade secrets are recognized as a crucial aspect of intellectual property. Requesting for such information may discourage innovation or transfer of innovation to Kenya.

APPOINTMENT OF DIGITAL SERVICE TAX (DST) AGENTS – EFFECTIVE 1ST JULY 2025

- The Tax Laws (Amendment) Act, 2024 repealed Digital Service Tax and introduced Significant Economic Presence Tax (SEPT).
- The Bill proposes to delete the provision which empowered the Commissioner to appoint a DST agent as DST is no longer applicable. This is a clean-up exercise.

AMENDED ASSESSMENTS TO BE SUPPORTED BY REASONS – EFFECTIVE 1ST JULY 2025

- The Commissioner (in its capacity as an administrative body) is required to provide reasons for amended assessments under the Fair Administrative Action Act. However, the Commissioner frequently issues iTax assessments that do not contain reasons. The Bill proposes to amend the TPA to require the Commissioner to include reasons **within** the amended assessment.

PENALTY FOR FAILURE TO FILE TAX RETURNS – EFFECTIVE 1ST JULY 2025

- The Commissioner has the power to issue default assessments when a taxpayer fails to file a tax return. Since there is no provision in the TPA to empower the Commissioner to charge a non-filing penalty, the Bill proposes to introduce a non-filing penalty with similar implications as a late filing penalty.

SECURITY FOR UNPAID TAXES – EFFECTIVE 1ST JULY 2025

- The Bill proposes to exempt the imposition of the restrictions or the auctioning of the property by the Commissioner from stamp duty.

MISCELLANEOUS AMENDMENTS

MISCELLANEOUS FEES AND LEVIES ACT, 2016

CHANGES TO EXPORT AND INVESTMENT PROMOTION LEVY – EFFECTIVE 1^{ST} JULY 2025

- Export and Investment Promotion Levy was introduced in the Finance Act, 2023 with the aim of providing funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments. The levy is currently chargeable on clinker, semi-finished iron or non-alloy steel, bars & rods of non-alloy steel, kraft paper, sacks and bags.
- The introduction of this levy significantly increased the prices of such materials resulting in significant increases of construction costs. Further, this created a significant price difference between locally sourced and imported products of those kinds.
- The Bill proposes to reduce the levy rates on the following items from 17.5% to 5%:

Tariff No.	Tariff Description	Proposed Rate	Current rate
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	5% of the customs value	17.5% of the customs value
7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	5% of the customs value	17.5% of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	5% of the customs value	17.5% of the customs value

- Whereas this may reduce the cost of such imports, the existence of the levy will still negatively impact on the price of the imports compared to local supplies.

CHANGES TO THE IMPOSITION OF LEVIES AND FEES – EFFECTIVE 1^{ST} JULY 2025

- The Act provides that refunds of fees and levies paid erroneously or in excess shall be governed by Section 47 of the TPA. The Bill proposes to amend this to be governed by the TPA in general. This proposal seeks to align the Miscellaneous Fees and Levies Act to the Tax Procedures Act.

IMPORT DECLARATION FEES ("IDF") AND RAILWAY DEVELOPMENT LEVY ("RDL") EXEMPTIONS – EFFECTIVE 1^{ST} JULY 2025

- Currently aircrafts, spacecrafts, and parts thereof are exempt from IDF and RDL.
- The Bill proposes to restrict the exemption from RDL and IDF to aircrafts exceeding 2 metric tonnes (unladen) and all parts under Chapter 88, when purchased or imported before clearance through customs.
- Therefore, unmanned aircrafts (drones) and light aircrafts (below 2 metric tonnes when unladen) will be subject to RDL and IDF if the Bill is enacted.

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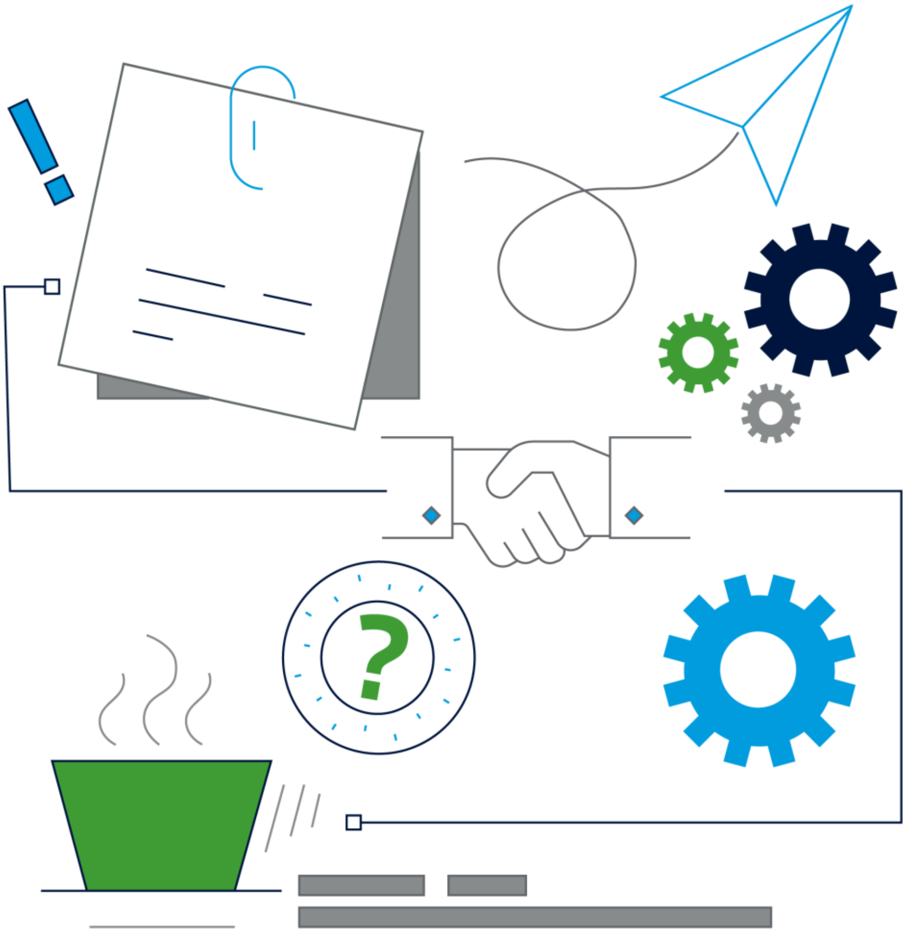

NAIROBI

1st Floor, Pacis Centre,
Slip Road, off Waiyaki Way, Westlands
P.O. Box 349, 00606
Nairobi, Kenya

Tel: +254 20 3614000/4451747/8/9
Mobile: +254 706 347950/772 786111
Email: info@ke.rsm-ea.com
Website: www.rsm.global/kenya

Contact: Elvis Ogeto (Managing Partner)

MOMBASA

Acacia Center, Mezzanine 1,
Nyerere Avenue
P.O. Box 87227, 80100
Mombasa, Kenya

Tel: +254 41 2311778/2312640/2224116
Mobile: +254 707 613329
Email: infomsa@ke.rsm-ea.com
Website: www.rsm.global/kenya

Contact: Ashif Kassam (Managing Partner)

KAMPALA

6th Floor, DTB Centre,
Plot 17/19, Kampala Road
P.O. Box 31704,
Kampala, Uganda

Tel: +256 414 342780
Email: info@ug.rsm-ea.com
Website: www.rsm.global/uganda

Contact: John Walabyeki (Managing Partner)

DAR ES SALAAM –
(ASSOCIATE OFFICE)

1st Floor, Plot No. 1040,
Haile Selassie Road, Masaki
P.O. Box 79586
Dar es Salaam, Tanzania

Tel: +255 22 2602714 / 2602774
Email: info@tz.rsm-ea.co.tz
Website: www.rsm.global/tanzania

Contact: Lina Ratansi (Managing Partner)

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