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RSMEA Newsletter

Highlights of the Kenya Finance Act, 2025

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INTRODUCTION

The Finance Act ("the Act"), 2025 received Presidential assent on **26th June 2025**. Most of the changes will be effective from 1st July 2025, which is the Government's fiscal year, while two will be effective from 1st January 2026.

Most of the proposed changes in the Finance Bill, 2025 have been maintained in the Act with a few additions. This newsletter covers changes that were maintained in the Finance Act (maintained in colour grey), new additions that were not previously included in the Finance Bill (highlighted in colour blue) and proposals in the Finance Bill that were not passed as law by the Finance Act (highlighted in colour green).

This newsletter provides an overview of the amendments across several tax laws, including amendments relating to:

- Tax losses to expire if not utilised within 5 years with an option of being extended by the Cabinet Secretary of finance
- Introduction of Advance Pricing Agreements (APA)
- The per diem limit increased from KShs. 2,000 to KShs. 10,000 per day
- The definition of royalty will not include distribution of software as was proposed in the bill
- The sale of scrap that had earlier been included as a transaction subject to WHT has been removed
- 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) retained.
- The special tax rate of 15% for companies constructing at least 100 residential units annually has been retained
- Local assemblers of motor vehicle will still enjoy a preferential tax rate of 15% rate for the first 5 years of operations
- The tax base for betting and gaming will no longer be winnings but amounts withdrawn which will be taxed at 5%
- Making or facilitating payments through a digital marketplace has been added to the charging Section for Income Tax
- Provision for minimum tax which was declared unconstitutional has been repealed
- The Act has included as an allowable deduction any expenditure incurred in the construction of a public sports facility.
- Digital Asset tax (DAT) has been repealed
- Refund of VAT on bad debt timeline reduced from 3 years to 2 years
- Many items which were previously proposed to be moved to exempt from zero rated have been dropped and new items introduced
- New definition of a micro distiller under Excise Duty Act which now exempts a licenced micro distillers from requirement of automation, continuous piping and use of mass flow meters
- Introduction of additional good subject to excise duty especially for imported paper, imported kraft paper, imported glass and imported teas whether or not flavoured
- Excise duty for betting and gaming industry lowered to 5% on the amount deposited into a customer's wallet
- Excise duty introduced on fees charged by virtual assets transactions by virtual asset providers at 10% of the excisable value. This tax covers for the repealed digital asset tax
- No importation of goods into Kenya without presenting a valid Certificate of Origin
- Refund of taxes determination by Commissioner timeline increased from 90 days to 120 days (without a refund audit exercise) and from 120 days to 180 days (with a refund audit exercise)
- A taxpayer shall not be required to pay principal tax not deducted, withheld or remitted where the recipient of the payment has paid and accounted for the full principal tax
- Exemption from stamp duty on transfer of property to a company to its shareholders as part of an internal organization where property is transferred in proportion to their shareholding and if the property consists of shares, these shares should be in a subsidiary of the company undertaking the transfer
- Introduction of exemption from RDL and IDF for inputs, raw materials and machinery used in the manufacturing of mosquito repellents upon recommendation by the CS responsible for Health

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 Act has introduced a provision 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 Act has also deleted 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 deletion serves as a clean-up to align the law with current tax administration practices, ensuring efficiency and consistency in compliance.

There Act has also imposed 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 amendment has included 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 change has captured complex relationships and ensures 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 have also been 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 Finance Act, 2025 has split this into two distinct provisions:

i. Payment of gratuity; and
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 has provided greater clarity in distinguishing gratuity payments from other allowances within public pension schemes. By separating these provisions, the Act has ensured more precise tax treatment and regulatory application for different types of pension-related payments.

Additionally, the Act has also aligned 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 Act has amended Section 10 of the Income Tax Act by including the following:

1. supply of goods to a public entity;
2. making or facilitating payment over a marketplace; and
3. withdrawals.

This 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 amendment clears the legal ambiguity where the provision to enforce did not include the supply of goods to a public entity and the making or facilitating payment over a digital market place in the charging section.

Withdrawals means amounts withdrawn by a customer from their betting or gaming wallet maintained by a person licenced under the Betting, Lotteries and Gaming Act and these withdrawals made by punters will now be subject to withholding tax at 5%.

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 Act has shifted 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.

EXEMPTION ON PAYMENTS MADE BY NATIONAL CARRIER

The Act has exempt from withholding tax payments made by the national carrier to a non-resident person not having a permanent establishment in Kenya in respect of management and professional fees for specialized technical, maintenance, compliance, training, or digital systems support services, where such services are not available in Kenya or the service provider is certified or accredited by an international regulatory, standard-setting, or licensing body.

WITHHOLDING TAX ON SALE OF SCRAP

The Tax Laws Amendment Act of 2024 effective 27th December 2024 introduced sale of scrap within the ambit of withholding taxes. The Act has now deleted this provision meaning that sale of scrap will not be subject to withholding 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 Act has clarified the lacuna in the legislation by stating that withholding tax on both is now final tax.

MINIMUM TAX– EFFECTIVE 1ST JULY 2025

The Finance Act 2020, which was assented to on 30th June 2020, amended the Income Tax Act by introducing Section 12D. This provision imposed a 1% minimum tax on gross turnover for businesses with annual earnings between KShs. 1 million and KShs. 50 million, effective 1st January 2021. However, on 20th September 2021, the High Court declared Section 12D unconstitutional, citing that it resulted in double taxation and unfairly targeted loss-making businesses by eroding their capital—thus breaching principles of fairness and equity. Consequently, the provision has since been removed from the law as part of a clean-up exercise, having become defunct following the court ruling.

ALLOWABLE EXPENSES – EFFECTIVE 1ST JULY 2025

TAX LOSSES CARRIED FORWARD

Previously, the Income Tax Act allowed taxpayers to carry forward tax losses indefinitely. The Act has amended 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 will negatively impact entities with significant tax losses, particularly those in capital-intensive sectors and agricultural sector that require extended periods to generate taxable profits.

The Minister, upon recommendation by the Commissioner still reserves the power to extend the expiration of the losses beyond the five years where the person provides the evidence of the inability to extinguish the losses within that period.

LOSSES FROM DISPOSAL OF PROPERTY

Previously, a taxpayer who incurred a capital loss on the disposal of property was 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 Act has deleted 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 Act has reinstated the deductions for diminution in value of implements, utensils, or similar articles (excluding machinery or plant covered under the Second Schedule). Previously, the Act allowed for deductions based on the Commissioner's determination of what is just and reasonable but did not specify a rate. The Act has now set 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 Act has expanded 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

Previously, the Income Tax Act provided 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 Act has deleted 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

Previously, the Income Tax Act required 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 to prepare their tax computations and income tax returns. The Act has deleted 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.

INVESTMENT ALLOWANCES – EFFECTIVE 1ST JULY 2025

The Finance Act, 2025 has introduced an investment allowance claim of 10% per year in equal instalments on spectrum licenses by a telecommunications operator provided that if such a license was acquired before 1st July 2025, the deduction shall be restricted to the remaining residue value (unamortised value).

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

The Act has made two key changes to the Significant Economic Presence Tax (SEPT):

1. The Act has expanded 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. Previously, the Income Tax Act only provided for supplies made over a digital marketplace (where buyers and sellers trade over a digital platform). This addition broadens 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 an amendment 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.

For the operation of SEPT, the Act has provided that the Commissioner may issue guidelines by 27th June 2025 (6 months after 27th December 2024)

REPEAL OF DIGITAL ASSET TAX – EFFECTIVE 1ST JULY 2025

The Finance Act 2023 introduced a 3% Digital Asset Tax (DAT) on the gross value of all digital asset transfers, including cryptocurrencies, NFTs, data, and e-tickets, effective 1st September 2023. The Blockchain Association of Kenya challenged the tax in court, citing constitutional and innovation concerns.

The Finance Bill 2025 initially proposed reducing the DAT to 1.5%, but stakeholder consultations recommended its full repeal, reclassification of digital assets under capital gains or business income, and recognition of VASPs as financial institutions for VAT and excise duty purposes.

The Act has since repealed the DAT, and the possibility of Kenya's adoption of the OECD's Crypto-Asset Reporting Framework (CARF) framework would position the country to align with international standards and develop a more coherent crypto tax regime.

There is an introduction of excise duty to be charged on fees charged by virtual assets transactions by virtual asset providers at 10% of the excisable value which replaces the repealed DAT.

MINIMUM TOP-UP TAX – EFFECTIVE 1ST JULY 2025

The Act has introduced 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.

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 Act has introduced 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 now be allowed to issue further guidelines for the implementation of the APAs. Guidelines need to be issued within 6 months from 1st January 2026

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 has provided 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 Act has repealed this exemption. This means that 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 Act has expanded 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 Act has added the word "individual" in the provision regarding transfer of property involving asset transfers between spouses and immediate family. This amendment 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 Act has reduced the timeline for communication of the decision from the Commissioner to 3 months failure to which such applications where the Commissioner has failed to make a determination shall be deemed to be allowed.

COMPENSATING TAX – EFFECTIVE 1ST JULY 2025

The Act has deleted references to compensating tax in various sections of the Income Tax Act, which was repealed through the Finance Act 2018, effective from 1st January 2019, and introduced Section 7A to the Act, which require 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 Act has amended 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 Act has deleted 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 Act has repealed 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 Act has implemented 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 Act has substituted the provision on tax deduction and accounting, refining the language to focus solely on the requirement to supply prescribed certificates under Section 37.

EXEMPTION FROM INCOME TAX – EFFECTIVE 1ST JULY 2025

The Act has extended 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 Act has amended 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 Act has moved 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 Act has introduced a preferential tax rate 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 Act has exempted from tax 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 amendment 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 Act has clarified 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.

This amendment has clarified that the tax rate on fringe benefits provided by an employer shall be chargeable at the resident corporate tax rate for that year of income.

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

The Act has deleted references to the **National Hospital Insurance Fund (NHIF)** and replaced 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 1^{ST} JULY 2025

The Act has amended various definitions. This is as tabulated below:

Definition	Changes and impact
Debenture	The Act has cleaned 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 amendment aligns the definition with the current provisions of the Act
Individual retirement fund	The Act has amended 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 amendment will align the treatment of all retirement benefit schemes
Venture company	The Act has deleted the definition of "venture company," which was previously 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 amendment is a clean-up, as venture capital provisions were repealed by the Tax Laws (Amendment) Act, 2020, effective 25^{th} 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
Withdrawals	The Act has deleted all references with regards to winnings and replaced these with "withdrawals". For this purpose, the Act has introduced the definition of withdrawals under Section 2 of the Income Tax Act to mean the amount of money withdrawn by a customer from their betting or gaming wallet maintained by a person licensed under the Betting, Lotteries and Gaming Act. The Act has provided a rate of 5% as the tax on withdrawals for both residents and non-residents

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

GENERAL PROVISIONS

TAX INVOICE

<u>Definition</u>

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 Act has incorporated a definition of a tax invoice directly into the VAT Act. This definition explicitly includes invoices generated through eTIMS, in accordance with the Tax Procedures Act.

This amendment has harmonized the definition of a tax invoice under the VAT Act with that provided in the Tax Procedures Act.

Requirement of a tax invoice

Prior to the Act, the obligation to issue tax invoices under the VAT Act applied 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 amendment by the Act has removed this distinction in the VAT Act by extending the requirement to issue tax invoices to all supplies, irrespective of their tax status. This amendment 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 Act has clarified 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 previous definition of the place of supply of services under the VAT Act provided that a supply was 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 Act has reclassified radio and television broadcasting services under the definition of electronic services.

This 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 VAT on electronic services. Consequently, any supplier offering such services is now required to register for VAT under the simplified VAT registration system and charge VAT but 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.

Whereas the Bill proposed to remove the provision that allows the utilization of excess withholding VAT credits to offset other tax obligations; while retaining the taxpayer's right to apply for a refund of the excess credits, this did not make it to the Act.

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 Act has harmonized 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 ensures consistency between the VAT Act and the Tax Procedures Act regarding refund application timelines.

Refund of excess credits arising from the zero-rating of supplies on 1st July 2023

The Finance Act 2023 reclassified a number of products to zero-rated status including. This left the suppliers of such products with input credits which they could not offset. The Act has now given persons affected by that zero-rating a 6-month window (from 1st July 2025) to apply for a refund of the excess credits.

This amendment follows a similar refund window (addressing persons stuck with excess input VAT credits as a result of the zero-rating or exemption of their products after 1st July 2022) that was set to expire on 30th June 2024.

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.

Considering this, the Act has now removed the corresponding 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

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

The Act has amended this provision by reducing the minimum waiting period from 3 years to 2 years, thus enabling taxpayers to apply for a refund of VAT on bad debts after 2 years of non-payment.

Furthermore, the Act has broadened 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 upon approval by the Commissioner.

Previously, the VAT Act contained 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 Act now 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 Act resolves 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

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 Act introduces more stringent measures for the recovery of tax in such instances.

Specifically, the Act 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 amendment aligns with a similar protectionary clause in the East African Community Customs and Management Act and aims to prevent potential tax losses arising from change of use by taxpayers.

VAT RATE CHANGES

OTHER CHANGES IN RATES

Supplies	New Rate	Previous Rate
Health sector		
Tariff 3006.93.00 – Placebos and blinded (or double blinded) clinical trial kits for a recognised clinical trial, put up in measured doses	Exempt	16%
Mosquito repellent	Exempt	16%
Inputs, machinery and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health	Exempt	16%
Taxable services supplied to manufacturers of mosquito repellents upon recommendation by the Cabinet Secretary responsible for matters relating to health	Exempt	16%
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 the 30th June, 2026	Exempt / 16%	Exempt
Manufacturing sector		
Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than two billion shillings, and ~~the exemption was granted before 1st January 2024 and shall continue to apply for twelve months after this date~~ the exemption was granted before 27th December 2024, and the exemption shall only continue to apply until 27th December 2025	Exempt	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	16%	Exempt
Aviation sector		
All goods and parts thereof of chapter 88;	~~16%~~ Exempt	Exempt
Direction-finding compasses, instruments and appliances for aircraft	~~16%~~ Exempt	Exempt
Agricultural sector		
The supply of locally consumed teas	Exempt	16%
Packaging materials for tea and coffee upon recommendation by the Cabinet Secretary for matters relating to agriculture	~~Exempt~~0%	16%
Mining and energy sector		
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	Exempt / 16%	Exempt

Supplies	New Rate	Previous Rate
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
~~Alcoholic or non-alcoholic beverages supplied to the Defence Forces Welfare Services~~ All goods imported or purchased locally by the Defence Forces Welfare Services	Exempt	Exempt
Accommodation, restaurant, beauty salon and laundry services provided by the Defence Forces Welfare Services.	Exempt	16%
Taxable services for direct and exclusive use of the Defence Forces Welfare Services	Exempt	16%

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

DEFINITIONS

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

While the previous 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 includes digital credit providers who may not be licensed by the CBK. This has the effect of expanding the tax base since fees charged by entities offering credit digitally are subject to excise duty at 20%, whether or not licensed by CBK.

This amendment reduces the risk of double taxation of digital credit providers as they were previously classifiable as financial institutions and digital lenders under the Excise Duty Act thus their fees could be taxes under either category.

The amendment aligns the Excise Duty Act definition of a digital lender with the definition provided under the Central Bank of Kenya Act.

The Act has deleted the definition of "amount wagered or staked" as the Act has changed the tax base from amount wagered or staked to amount deposited in a customer wallet. Accordingly, the Act has introduced a new definition for the term "amount deposited into a customer's betting wallet" to mean the amount of money transferred by a customer into the customer wallet maintained by a licensed betting and gaming operator for betting and gaming purposes.

REFERENCE TO CUSTOMS DEFINITIONS FOR EXCISE PURPOSES

The Act has amended the Excise Duty Act to the effect 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, VAT and excise duty purposes.

EXCISABLE SERVICES OFFERED DIGITALLY BY NON-RESIDENTS

The Act requires 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. To ensure clarity, the Act defines a non-resident as a person outside of Kenya.

The Act has introduced a definition of a digital marketplace to mean an online or electronic platform which enables users to sell goods or provide services to other users. This definition is similar to the 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. 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 by a person in Kenya.

EXCISE LICENCE APPLICATION CONSIDERATION TIMELINES

The Commissioner was not bound by any timelines when considering an application for an excise license. The Act has now imposed a 14-day deadline for the Commissioner to consider and decide on an excise license application where all the required documents are received but has not imposed a mechanism or penalty to hold the Commissioner accountable to this timeline.

GOODS REQUIRING EXCISE LICENCE

A person shall now require an excise licence to import, distribute or handle methanol and ethanol in Kenya. However, the Excise Duty Act does not define the term "handling" thus the same may be prone to misinterpretation.

MICRODISTILLERS

Distillers are required to maintain mass flow meters, continuous piping and automation in processes that enable the Commissioner to measure the excisable goods in the factory. However, the Act now exempts licenced micro distillers from these requirements and provides the Commissioner use other mechanisms such as excise stamps to measure the quantities of excisable goods produced.

The Act has also introduced a definition of the term "micro distiller" to mean a manufacturer of a spirituous beverage through two fundamental processes of fermentation and distillation using a still (boiler) not exceeding 1,800 litres and whose annual production volume does not exceed 100,000 litres per year.

EXEMPTIONS

The Act has introduced an exemption on all goods and services imported or locally purchased by the Defence Forces Welfare Services including any excisable services supplied to or by the Kenya Defence Forces Welfare Services.

CHANGES TO EXCISE DUTY RATES AND DESCRIPTIONS

Goods	New Rate	Previous 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 imported by a registered processor upon the recommendation by the Cabinet Secretary responsible for matter relating to industry and those originating from East African Community Partner States that meet the East African Community Rules of Origin	35% of the excisable value or KShs. 5~~2~~00 per square meter, whichever is higher	35% of the customs value or KShs. 200 per kg
Coal	~~2.5% of the excisable value~~ N/A	2.5% of the customs value

The Act has amended the excise duty rates on the following goods:

Goods	New rate	Previous Rate
Imported eggs of tariff heading 04.07	N/A	25%
Imported onions of tariff heading 07.03	N/A	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	N/A	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	N/A	25% or KShs. 75 per Kilogramme, whichever is higher

Goods	New rate	Previous Rate
Imported 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	25% or KShs. 150 per Kilogramme, whichever is higher
"Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	25% or KShs. 200 per kilogramme, whichever is higher	25% or KShs. 150 per Kilogramme, whichever is higher
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90	25% or KShs. 200 per kilogramme whichever is higher	25%
Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) Provided that it shall not apply to glass bottles imported from any of the countries within the East African Community	35% or KShs.40 per kg whichever is higher	35%
Imported Articles of plastic of tariff heading 3923.30.00	10%	10%
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	5% of custom value or KShs. 300 per square meter	5% of custom value or KShs. 200 per square meter
Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307	N/A	15%

The Act has introduced excise duty on the following items:

Goods	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 whichever is higher
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

Goods	Rate
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
Imported tea – whether or not flavoured	25% of excisable value
Imported Uncoated kraft paper and paperboard, in rolls or sheets; kraftliner; unbleached of tariff number 4804.11.00 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. 50 per kilogramme, whichever is higher
Imported other kraft paper or paperboard weighing 150g/m^2 or less, in rolls or sheets; unbleached of tariff number 4804.31.00 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. 50 per kilogramme, whichever is higher
Imported other kraft paper or paperboard weighing more than 150g/m^2 but less than 225 g/m^2, in rolls or sheets; unbleached of tariff number 4804.41.00 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. 50 per kilogramme, whichever is higher
Imported other kraft paper or paperboard weighing 225 g/m^2 or more others in rolls or sheets; unbleached of tariff number 4804.51.00 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. 50 per kilogramme, whichever is higher
Imported Glass of heading 70.03, 70.04 or 70.05, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials of Tariff Heading 70.06, but excluding those from East Africa Community Partner States that meet the East Africa Community Rules of Origin	35% of excisable value or KShs. 500 per square metre, whichever is higher
Imported safety glass of tariff numbers 7007.19.00 and 7007.29.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin	35% of excisable value or KShs. 500 per square metre, whichever is higher
Imported Multiple-walled insulating units of glass of Tariff Heading 70.08, but excluding those from East Africa Community Partner States that meet the East Africa Community Rules of Origin	35% of excisable value or KShs. 500 per square metre, whichever is higher
Imported fully built and semi-built direct air capture machines	25% of excisable value
Imported aluminium profiles, fabricated doors and fabricated windows of tariff numbers 76.04, 7608.20 and 7610.10	25% of excisable value or KShs. 400 per kilogramme, whichever is higher
Non-refillable lighters of tariff number 9613.10.00	25% of excisable value or KShs. 500 per kilogramme

The Act has introduced the following changes to excisable services:

Service	New rate	Previous Rate
Betting Provided that this paragraph shall not apply to horse racing	5% on the amount deposited into a customer's betting wallet	15% of the amount wagered or staked
Gaming	5% on the amount deposited into a customer's gaming wallet	15% of the amount wagered or staked
Prize competition	**5% of** amount paid or charged to participate in a prize competition	15% of amount paid or charged to participate in a prize competition

Service	New rate	Previous Rate
Lottery (excluding charitable lotteries)	5% of amount paid or charged to buy the lottery ticket	15% of amount paid or charged to buy the lottery ticket
Fees charged on virtual assets transactions by virtual asset providers	10%	N/A

TAX PROCEDURES ACT, 2015

AGENCY NOTICES – EFFECTIVE 1ST JULY 2025

Prior to the amendment, the Commissioner's power to issue agency notices was restricted to taxpayers (persons liable to pay tax). The Act has increased the scope to persons that may be subjected to agency notices to include non-resident persons subject to tax in Kenya.

This will affect non-residents liable for digital service tax or VAT on supplies made over an electronic network. This may have been necessitated by the Commissioner's lack of leverage to enforce collection of taxes from non-residents. This amendment 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).

The Finance Bill 2025 proposal to empower the Commissioner to issue agency notices even when the taxpayer has appealed to the Courts was not included in the Act. Therefore, the Commissioner is still prohibited from issuing an agency notice as long as the disputed taxes are under appeal.

CERTIFICATE OF ORIGIN FOR ALL IMPORTS – EFFECTIVE 1ST JULY 2025

The Act now makes it mandatory for every import to be supported by a Certificate of Origin issued by a competent authority of the export country's government failure to which the import shall not be processed.

A certificate of origin means an official document issued by a competent authority of the Government of the source country which certifies that the goods being imported into Kenya were manufactured in that particular source country.

A valid certificate of origin shall disclose the name and address of the exporter, name and address of the importer, port of origin, accurate description of goods, quantity of the goods, country of origin and country of destination

The Act also empowers the Commissioner to seize and later auction imported goods that are not supported by a certificate of origin.

This amendment was not in the Bill and may have been enacted with the aim of reducing the risk of importers unlawfully taking advantage of preferential import duty rates attributable to certain countries.

PENALTIES & INTEREST DUE TO ETIMS & ITAX SHORTCOMINGS – EFFECTIVE 1ST JULY 2025

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 Act has now granted the Cabinet Secretary for Finance (upon the Commissioner's recommendation) the power to waive such erroneously incurred penalties and interest.

These include errors generated by an electronic tax system, a delay in the updating of an electronic tax system, a duplication of a penalty or interest due to a malfunction of an electronic tax system or the incorrect registration of the tax obligations of a taxpayer.

This is a crucial amendment as it will reduce the unfair imposition on the taxpayer. However, the Act 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. Whereas the Bill proposed to revert to the old position barely 6 months after the former amendment, this amendment was not included in the Act. Therefore, computation of time shall continue to be on the basis of working days..

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

Prior to the Act, a taxpayer who failed to subject a payment to withholding tax was 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 found this burdensome as the withholder would be unable to recover or expense the withholding tax.

The Act has amended this provision to exempt a taxpayer from paying the principal WHT if the withholdee has accounted for the tax on that payment. However, this does not absolve the withholder from the liability to pay interest and penalties resulting from the failure to withhold tax. This is a good amendment as it reduces 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

Prior to the Act, the Commissioner had to process a refund application within 90 days when they opted not to audit the refund and 120 days when the refund application was to be audited. The Act has expanded these refund processing windows to 120 days and 180 days respectively.

Whereas this increases the Commissioner's time to ascertain refunds, it will work against taxpayers' cash flow, as they may have to wait longer for refunds.

The Act now allows for a taxpayer to offset an approved refund against VAT on imports. This will ease the cash flow burden on importers who have approved refund credits. This amendment was not in the Bill

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 Act now clarifies that the timeline for issuance of an objection decision starts running from the date the late objection is lodged.

DMRS SENSITIVE DATA REQUIRED

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 proposed to delete this provision essentially giving the Commissioner powers to demand for trade secrets, private data and personal data. This was a rather concerning proposal which is not in the Act due to privacy and intellectual property concerns raised by the public.

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 Act has deleted 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 Act has amended the TPA to require the Commissioner to include reasons **within** the amended assessment. However, the Act does not provide a consequence for the Commissioner's failure to provide reasons for an 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 was no provision in the TPA to empower the Commissioner to charge a non-filing penalty, the Act has introduced a non-filing penalty with similar implications as a late filing penalty.

SECURITY FOR UNPAID TAXES — EFFECTIVE 1ST JULY 2025

The Act now exempts 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 1ST 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.

Whereas the Bill proposed to reduce the levy rates on some items from 17.5% to 5%, the Act has broadened the scope of iron and scope of iron/steel products subject to the levy at 17.5% and has added certain ceramic products as follows:

Tariff No.	Tariff Description	New Rate	Previous rate
69.07	Ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics	3%	N/A
69.10	Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures	3%	N/A
72.06	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 72.03)	17.5%	N/A
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%~~ 17.5% 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%~~ 17.5% 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~~

Tariff No.	Tariff Description	New Rate	Previous rate
72.14	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling	17.5%	N/A
72.24	Other alloy steel in ingots or other primary forms; semifinished products of other alloy steel	17.5%	N/A

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

The Miscellaneous Fees and Levies Act previously provided that refunds of fees and levies paid erroneously or in excess shall be governed by Section 47 of the TPA. The Act has amended this to be governed by the TPA in general. This amendment aligns the Miscellaneous Fees and Levies Act to the Tax Procedures Act.

UTILIZATION OF IMPORT DECLARATION FEES – EFFECTIVE 1ST JANUARY 2026

The Act now provides that part of IDF shall be utilized as follows:

- 20% (up from 10%) shall be paid into a fund established and managed in accordance with the Public Finance Management Act;
- 10% shall be used towards payment of Kenya's contribution to the African Union and any other international organizations to which Kenya has a financial obligation; and
- 10% shall be used for revenue enforcement initiatives.

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

The Act has revoked the exemptions on goods of chapter 5407 (Woven fabrics of synthetic filament yarn) and 6309 (worn clothing and other worn articles) imported as raw materials for manufacture of textile products in Kenya upon recommendation of the Cabinet Secretary responsible for industry.

The Act has introduced an exemption on inputs, raw materials and machinery used in the manufacture of mosquito repellents upon recommendation by the Cabinet Secretary responsible for matters relating to health.

STAMP DUTY — EFFECTIVE 1ST JULY 2025

The Act exempts from stamp duty the transfer of property by a company to its shareholders as part of an internal reorganization. This exemption will be applicable only if the following two conditions are satisfied:

a. the property is transferred to shareholders in proportion to their shareholding in the company immediately prior to the transfer; and
b. Where the property being transferred comprises of shares, such shares must be in a subsidiary of the company undertaking the transfer.

While the Stamp Duty Act does not currently define the term "subsidiary," reference may be made to the Companies Act, which defines a subsidiary as a company of which another company is its holding company. Further under the Companies Act, a holding company is defined in relation to another company as one that:

a. controls the composition of that company's board of directors;
b. controls more than half of the voting rights in that company;
c. holds more than half of the company's issued share capital; or
d. is a holding company of a company that itself qualifies as the holding company of the subject company.

Accordingly, unless the Stamp Duty Act introduces a specific definition of "subsidiary" in the context of this exemption, there remains a risk that the new exemption may not apply to transfers involving minority shareholders, or in other situations where the defined criteria of a holding-subsidiary relationship are not met. It is important to emphasise that this amendment pertains solely to stamp duty. As such, any capital gains tax (CGT) or other potential tax implications arising from the respective transfers still require careful consideration.

<u>Caveat</u>

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