

2025 Tax Outlook

In this edition

We delve into the key tax changes taking effect in 2025 while noting the dynamic tax landscape in Kenya and the underscoring importance for businesses and individuals to ensure compliance.

Of note is the recent tax laws changes brought about by the Tax Laws Amendment Act, 2024 and the Tax Procedures Amendment Act, 2024 which took effect from the 27th December 2024.

In addition to this, we highlight other relevant expected changes within Kenya's tax framework for the year 2025 impacting taxpayers in Kenya.



Brenda Mutola
Senior Consultant
brenda@taxwiseconsulting.com

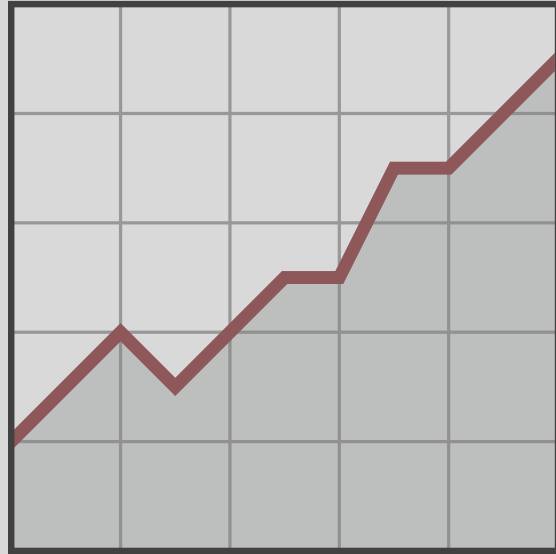


Moureen Nyatichi
Senior Associate
moureen@taxwiseconsulting.com



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2025 Tax Outlook



A. THE TAX LAWS AMENDMENT ACT, 2024

The Tax Laws Amendment Act, 2024 (“The Act”) was assented into law on 11th December 2024 and took effect from 27th December 2024.

The Act amends several laws including; the Income Tax Act, CAP 470 (ITA), Value Added Tax Act, CAP. 476 (“VAT Act”), Excise Duty Act, CAP. 472 and the Miscellaneous Fees and Levies Act CAP. 469C (“MFLA”).

The major changes introduced in the Laws by the Act are as outlined below;

1) INCOME TAX

a) Corporation Tax

i. Definition of Donations

A new definition of donation as “benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration and includes grants” has been introduced.

This clarifies what donations constitute in the application of the provisions of the Act.

ii. Taxation of a Family Trust Income

The income of registered family trusts is now subject to taxation, which means that these trusts will be required to pay taxes on their earnings.

However, the principal sum of these trusts and the transfer of title of immovable property into them remain exempt from taxation.

This change effectively broadens the scope of taxable income, thereby expanding the overall tax base.

iii. Registration of Individual Retirement Funds, Pension Funds and Provident Funds

The requirements for the funds to be registered by the Commissioner have been repealed by implying that the regulation of these funds have now been limited to the Retirement Benefits Authority.

This change aims at reducing administrative and compliance costs given that the funds are exempt under the ITA.

iv. Reference Point for Tax Rates

The repeal of Section 34 results in a centralized reference for tax rates, directing all relevant inquiries to the Third Schedule of the ITA and, where applicable, the Ninth Schedule.

This change simplifies the interpretation process by providing a single reference point for tax rates.

v. Taxation of Income from Government & Development Partner Grant Financed Projects

Non-resident contractors, subcontractors, consultants, or employees participating in projects fully funded by grants under agreements between the Kenyan Government and development partners are exempt from income tax, but only to the extent specified in the agreement.

However, any additional income earned by these individuals that is not directly tied to the project will be subject to income tax.

vi. CGT Incentives

CGT will be applicable at a rate 5% on the transfer of investments where the Nairobi International Financial Centre Authority certifies that;

- The investment is at least three billion shillings in at least incorporated or registered in Kenya one entity within a two-year period;
- The transfer of investment must occur after five years from the date of the initial investment.

vii. Reduced Cumulative Investment Value in Claiming Capital Allowance

Entities can now claim a 100% investment allowance if their cumulative investment value in the preceding three years is at least one billion shillings.

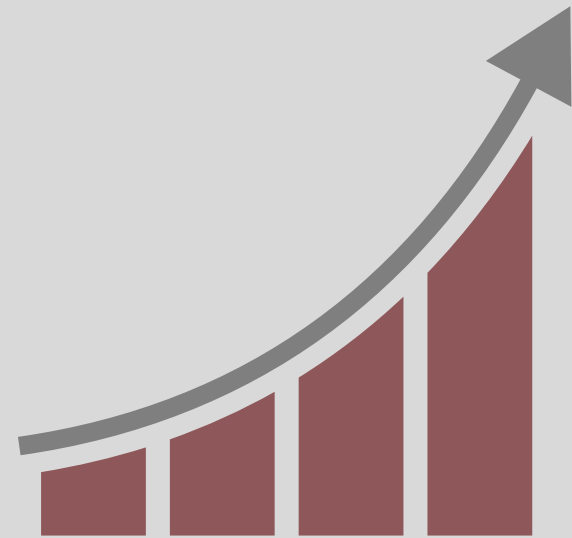
This reduced threshold aims to promote economic growth in areas outside Nairobi and Mombasa by making it more feasible for businesses to invest there.

viii. EPZ Compliance Penalty

Export Processing Zones (EPZs) are no longer subject to a daily penalty of 2,000 for non-compliance with return filings. Instead, EPZs face a monthly penalty of 20,000 for late filing, aligning with the general provisions applicable to other entities. This adjustment aims to standardize compliance penalties across different sectors.

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ix. Introduction of Significance Economic Presence Tax (SEP) and Repeal of Digital Service Tax (DST)

Non-resident entities providing services to users in Kenya through digital marketplaces are subject to the SEP tax on income derived from or accrued in Kenya.

The effective tax rate under SEP is 3%, calculated as 10% of gross turnover multiplied by 30% of the deemed profit. This replaces the previous Digital Service Tax, which was levied at a rate of 1.5% of gross income.

Exemptions

- Non-residents offering services through a PE;
- Income subject to WHT (Sec 10) or Sec 9(2) that includes the business of transmitting messages by cable, radio etc subjected to WHT;
- Non-resident providing digital service to an airline in which the government of Kenya has at least 45% shareholding;
- To a non-resident person with an annual turnover of less than five million shillings.

Person subject to tax are required to submit return and pay tax due on or before the 20th of the following month when the service was offered. Regulations for implementation to be made by the CS.

Introduction of SEP is an alternative approach of taxing the profits of non-residents rather their gross income as was applicable with DST.

x. Introduction of Minimum Top-up Tax

A covered person, resident individual or entity with a permanent establishment that is part of a multinational with a consolidated annual turnover of at least EUR 750 million (approximately KES 104 billion) in at least two of the four previous years, is subject to a minimum top-up tax if their combined effective tax rate (CETR) falls below 15%.

CETR for a covered person is the sum of all the adjusted covered taxes, divided by the sum of all net income or loss for the year of income, multiplied by a hundred

Excess profit is defined as net income/loss less 10% for the employee cost and 8% of the net book value of tangible assets. (Meaningful incentives)

Minimum Top up Tax = (15% of net income/loss- CETR) * Excess profit

Exemptions

- Public entity not engaged in business
- A person exempt under paragraph 10 of the First Schedule
- Pension fund and assets of the fund
- Real Estate Investment Vehicle that is a UPE;
- Non-Operating Investment Holding Company
- Investment Fund that is a UPE
- Sovereign Wealth Fund
- An intergovernmental or supranational organization

The implementation of the minimum top-up tax is designed to address tax challenges in the digital economy by establishing a minimum corporation tax rate of 15%, thereby mitigating negative tax competition while providing meaningful incentives, in line with the OECD's Pillar 2 on Base Erosion and Profit Shifting (BEPS).

The Cabinet Secretary is expected to issue guidelines on the application of this tax. Multinational enterprises that benefit from tax incentives, such as those operating in Special Economic Zones (SEZs), Export Processing Zones (EPZs), and capital allowances, are likely to be impacted by this legislation.

b) Income Tax – Withholding

Additional items now subject to WHT.

i. Definition of Royalty

The definition of royalties subject to withholding tax (WHT) includes fees related to software, whether proprietary or off-the-shelf, including licensing, development, training, maintenance, or support fees.

As a result, businesses involved in software and intellectual property are explicitly subject to WHT, with rates of 5% for residents and 20% for non-residents.

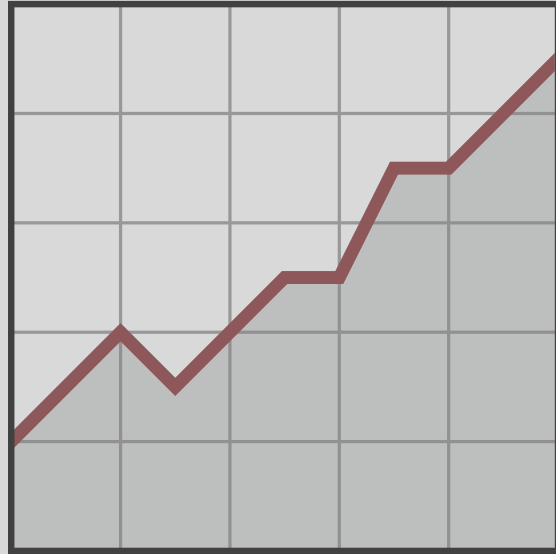
ii. Payments Made Through A Digital Market Place

Withholding tax is applicable to payments made through digital marketplaces or platforms at a rate of 5% for residents and 20% for non-residents. This includes payments for digital content monetization, property, or services provided on such platforms.

A digital platform is defined as a website that facilitates short-term engagements, freelance work, or service provision between independent contractors or freelancers and clients. This arrangement is designed to expand the tax base and enhance compliance among individuals earning income through digital marketplaces.

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i. Supply to Public Entities

Non-resident entities providing services to users in Kenya through digital marketplaces are subject to the SEP tax on income derived from or accrued in Kenya.

The effective tax rate under SEP is 3%, calculated as 10% of gross turnover multiplied by 30% of the deemed profit. This replaces the previous Digital Service Tax, which was levied at a rate of 1.5% of gross income.

iv. Sale of Scrap

Sale of scrap is subject to withholding tax at the rate of 1.5%. This amendment is intended to increase the tax base; however, it is likely to discourage sale of scrap.

c) Income Tax – PAYE

Changes relating to employment tax;

i. Change in Benefits Threshold

Increase in Tax-Free Limits (Allowable deduction)

a) Non-cash benefit: Increase in tax exempt threshold to Kshs 5,000 (60,000 p.a) from Kshs 3,000 (36,000 p.a)

b) Meals: Increase in tax exempt threshold to Kshs 5,000 (60,000 p.a) from Kshs 4,000 (48,000 p.a)

Increase in tax deductions threshold

a) Deductible Pension Contribution: Increase in the threshold of deductible pension to Kshs 30,000 p.m. (360,000 p.a) from Kshs 20,000 p.a (240,000 p.a). This might encourage savings

b) Mortgage Interest: Increase in the threshold of deductible mortgage interest to Kshs. 30,000 p.m. (360,000 p.a) from Kshs 25,000 p.m. (300,000 p.a). This is most likely to incentivize home ownership.

These are welcome changes as they increase the disposable income without increasing taxes.

ii. Exclusive Benefit for Public Officers

The Act has excluded from tax, amounts paid or granted to a public officer pursuant to any written law or statutory instrument, with effect from 27th July 2022, to reimburse an expenditure incurred for the purpose of performing official duties notwithstanding ownership or control of any assets purchased.

While this change may benefit a few individuals, it is discriminatory between public and private sector workers.

iii. Pension Benefits

The Act has repealed retirement age requirement of 65 years for an individual to enjoy the exemption on monthly pension and instead provides for the retirement age to be determined in accordance with the rules of the fund/scheme.

Additional items listed to be exempted include;

- Payment of gratuity or other allowances made under a public pension scheme;
- Payment of a retirement annuity is made;
- An individual withdraws from the fund prior to attaining the retirement age due to ill health; withdraws from the fund after twenty years from the date of registration as a member of the fund

2) VALUE ADDED TAX

i. Time of Supply of Exported Goods

The time of supply of exported goods has been defined as the time when the certificate of export or such other equivalent export document has been issued by the Customs.

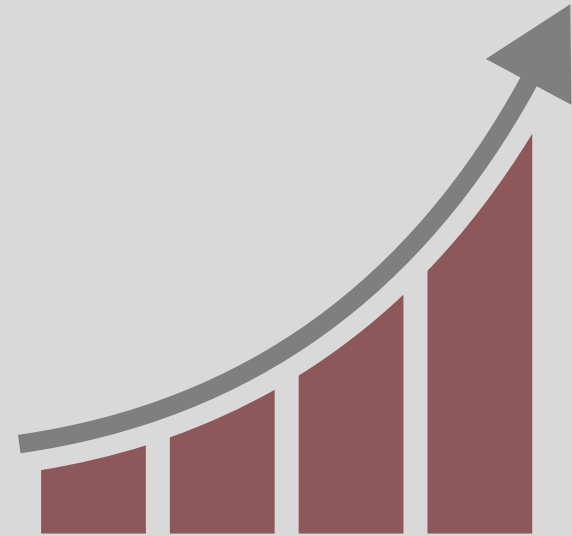
This change aligns with East Africa Customs Management Act (EACCMA) which provides that goods are considered to have exited the country upon the issuance of Certificate of Export.

ii. Application of EACCMA

The Act has amended the VAT Act to ensure rules under EACCMA cover exported goods.

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iii. VAT Relief Arising From A Permanent Credit Position From 1 July 2022

A new provision allowing a person who is in a permanent credit position that has resulted from changes in classification of their taxable supply from standard rated to either zero rated or exempt from 1 July 2022 to apply for VAT relief within 6 months after the commencement of this provision has been introduced.

This provision seeks to relieve taxpayers who have been in a permanent credit position as a result of the VAT classification changes.

iv. Repeal of VAT Apportionment

Entities making mixed supplies, which include both taxable and exempt supplies, are no longer required to follow the input apportionment provision. Instead, these entities must claim input VAT in proportion to their taxable supplies when they cannot directly attribute the input VAT to either a taxable or an exempt supply.

v. Transfer of Business as a Going Concern Exempted

The transfer of a business as a going concern is classified as an exempt supply for VAT purposes. This implies that business will have upfront cash but will not be able to claim input VAT.

vi. Repeal of Exemption in the manufacturing sector

The Act has revoked the exemption provided to investors in the manufacturing sector on capital goods where the CS could determine that such goods were used to promote investment in the manufacturing sector and the value of such investment was not less than two billion shillings.

The exemption applicable as per the Act were those granted before 1st January 2024 and have continue to apply for twelve months after this date being 31st December 2024. This means that any exemptions granted after 1st January 2024 are not applicable. Additionally, effective 1st January 2025, the investment will attract VAT. This will greatly discourage investment.

iv. Change in VAT Classification

The Act has made several changes in the VAT classification as outlined below;

a) Change from Zero-rated to Exempt

- All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products on recommendation of the Cabinet secretary of agriculture.

- Agricultural pest control products
- Fertilizers of chapter 31
- Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the cabinet secretary responsible for agriculture.

This change may lead to higher costs as the input for exempt products is not deductible for manufactures who may push the cost to the farmers and consequently impacting agricultural productivity negatively.

b) Changes from Exempt to Standard rated

- IP super soft fluff pulp - for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00
- Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax: Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy

These items will now be subjected to VAT and the buyers can claim input VAT.

c) Change from standard rated to exempt

- Taxable goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacture of textile products in Kenya recommendation of the Cabinet Secretary responsible for investments, trade and industry.
- All goods including material supplies, equipment, machinery and motor vehicle for use by The Defence Forces Welfare Services and The National Intelligence Service
- The supply of denatured ethanol of tariff number 2207.20.00.

These items will no longer be subjected to VAT, the buyers will not claim VAT

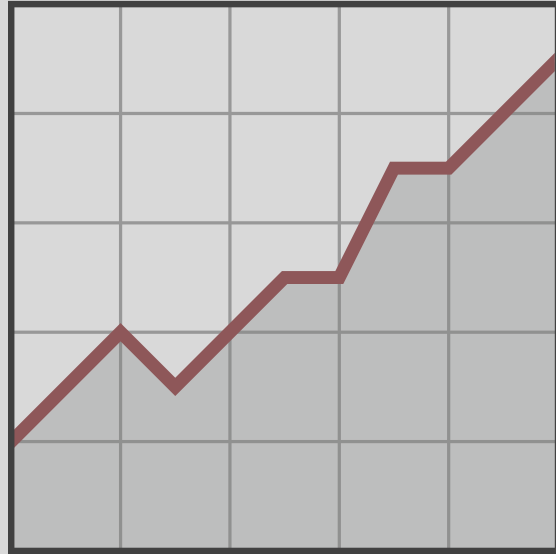
3) EXCISE DUTY

a. Regulation of Digital Lenders

A 'digital lender' is now defined as an entity holding a valid digital credit provider's license from the Central Bank of Kenya. This regulation is intended to protect consumers by ensuring that only licensed entities are authorized to operate in the digital lending sector, thereby enhancing oversight and accountability.

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b. Definition of Fees Charged by Digital Lenders

The definition of fees charged by digital lenders has been clarified to include any fees or commissions related to their licensed activities, excluding interest and insurance-related premiums. This ensures that all applicable fees are properly taxed under the excise duty framework, providing a clear distinction for the application of excise duty.

c. Definition of Small Independent Brewer

A 'small independent brewer' is now defined as a manufacturer that produces up to 150,000 litres per month of various alcoholic beverages. This distinction is designed to offer targeted tax incentives to smaller-scale brewers, supporting their growth and sustainability.

d. Excise Duty on Digital Services

Excise duty will now apply to services offered in Kenya by non-residents through digital platforms. This inclusion is part of a broader effort to ensure that non-resident digital service providers contribute to the Kenyan tax base, aligning with global trends in taxing digital transactions.

e. Remission of Excise Duty on Spirits

The excise duty remission has been extended, through gazettelement by the cabinet secretary wholly or partially, to include spirits made from locally grown agricultural products such as sorghum, millet, and cassava. This change aims to support local agriculture and stimulate growth within the domestic spirits industry by reducing production costs and encouraging the use of locally sourced raw materials.

f. Extended Payment Timeline for Excise Duty

Licensed manufacturers of alcoholic beverages now have an extended timeline for paying excise duty. They are required to pay by the fifth day of the following month rather than within twenty-four hours upon the removal of goods from the stockroom. This adjustment alleviates financial and administrative pressures on manufacturers, providing them with a more reasonable timeframe to fulfil their tax obligations.

g. Exemption from Excise Duty

- Locally assembled electric vehicles are now exempt from excise duty.
- Fertilized eggs for incubation imported by licensed incubators.

- Several items originating from East Africa Community Partner States that meet the EAC rules of origin i.e. Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastic whether or not in rolls of tariffs 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, 3921.19.90 and Printed paper or paper board, labels of all kinds whether or not printed of tariff 4811.41.90 and 4811.49.00
- Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared.

h. Expanded Scope of Excise Duty

The scope of excise duty has been expanded to include several new goods. These include electric transformers at 25%, printing ink at 15%, ceramic sinks, and similar sanitary items at 5% of the customs value or KES 50 per kg, float glass and surface ground or polished glass at 35% of the customs value or KES 200 per kg, ceramic flags, hearth, or wall tiles at 5% of the customs value or KES 200 per kg, coal at 2.5% of the customs value, saturated polyester at 20%, polymers of vinyl acetate at 20%, and emulsion-styrene acrylic at 20%. These additions are designed to protect local industries from foreign competition and generate additional revenue. However, they may also lead to increased costs for businesses that rely on these imports, potentially resulting in higher prices for consumers.

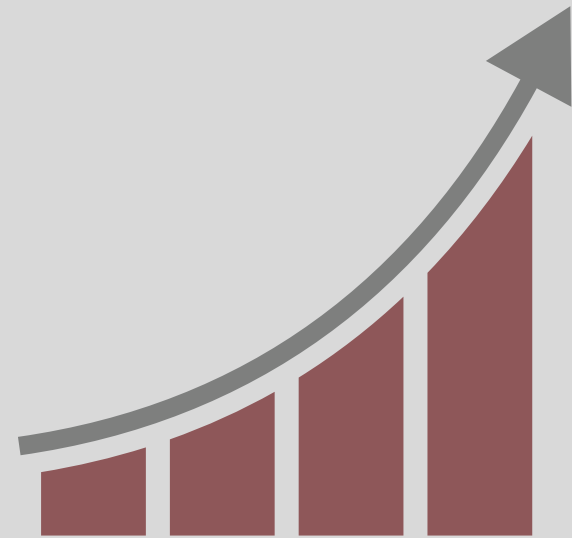
i. Revised Rates for Excisable Goods

Excise duty rates on various imported goods and products have been increased. For instance, the duty on imported sugar (except for sugar imported by registered manufacturers and raw sugar for processing) has risen from KES 5 per kilogram to KES 7.5 per kilogram. Similarly, the tax on imported sugar confectionery has jumped from KES 40.37 per kilogram to KES 85.82 per kilogram. This means that sweets and other sugary treats will now be more expensive.

Cigarettes are also affected, with the tax on filtered cigarettes increasing from KES 3,825.99 per thousand to KES 4,100 per thousand, and unfiltered cigarettes seeing a rise from KES 2,752.97 per thousand to KES 4,100 per thousand. Additionally, the duty on liquid nicotine for electronic cigarettes has gone up from KES 70 per milliliter to KES 100 per milliliter. Products containing nicotine or nicotine substitutes now face a higher tax of KES 2,000 per kilogram, up from KES 1,500 per kilogram.

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Wines and other alcoholic beverages obtained from fruit fermentation will be taxed differently, moving from KES 243.43 per litre to KES 22.50 per centilitre of pure alcohol. The same applies to beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic drinks, as well as spirits. For small independent brewers, the rate is reduced to KES 10 per centilitre of pure alcohol.

j. **Changes in Plastic Products and Other Goods**

The description for imported plastic plates has changed, and the excise duty is now 25% or KES 75 per kilogram, whichever is higher. This change aims to discourage the use of single-use plastics and promote recycling. For imported cartons, boxes, and cases of paper products, a new description includes printed paper or paperboard, with an excise duty of 25% or KES 150 per kilogram, whichever is higher.

k. **Calculation of Alcoholic Content for imposition of Excise Duty on Alcoholic Products**

Instead of being taxed per liter, alcoholic products will now be taxed per centiliter of pure alcohol. This adjustment aims to standardize the taxation method and potentially increase revenue from alcoholic beverages by making the tax calculation more precise.

l. **Revised Rates for Excisable Services**

The excise duty rates for several services have been revised:

- **Betting and Gaming:** The tax rate has increased from 12.5% to 15% of the amount staked.
- **Prize Competition:** The rate has risen from 12.5% to 15% of the amount paid or charged to participate.
- **Lottery (excluding charitable lotteries):** The duty has increased from 12.5% to 15% of the amount charged to buy a lottery ticket.

Additionally, advertisements on the internet and social media for alcoholic beverages, betting, gaming, lotteries, and prize competitions are now subject to excise duty at a rate of 15%.

m. **Introduction of Excise Duty on Certain Plastics**

The scope of excise duty has been broadened to include both imported and locally produced plastic articles by removing the word "imported" from the tariff descriptions under headings 3923.30.00 and 3923.90.90. This change aims to create a level playing field for domestic manufacturers and importers, ensuring that all plastic articles are subject to the same tax regime. This promotes fair competition and potentially encourages local production.

4) **MISCELLANEOUS FEES & LEVY**

The Miscellaneous Fees and Levies Act has introduced several significant updates that will impact various sectors in 2025. Here is a summary of the key changes:

a. **Increased Railway Development Levy**

The Railway Development Levy (RDL) has been increased from 1.5% to 2% of the customs value of goods imported for home use.

b. **Exemption from Payment of Import Declaration Fees**

The scope of the exemption from Import Declaration Fees has been extended to include all goods, including material supplies, equipment, machinery, and motor vehicles for official use by the National Intelligence Service and the Defence Forces Welfare Services. Additionally, goods under Chapter 5407 and Chapter 6309 imported as raw materials for the manufacture of textile products in Kenya are now exempted upon the recommendation by the Cabinet Secretary for Trade and Investment.

c. **Exemption from Railway Development Levy**

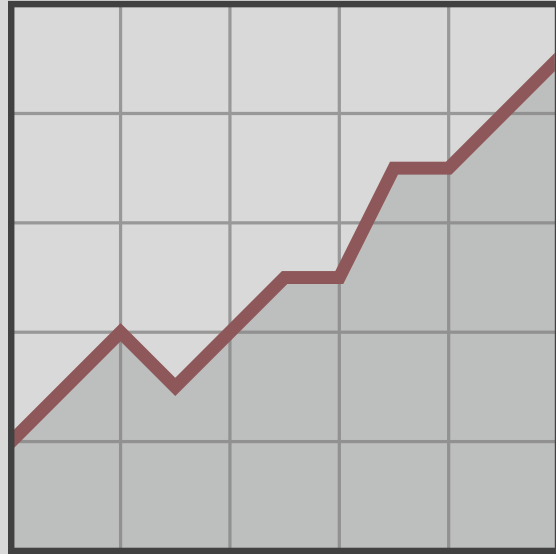
Similarly, the exemption from the Railway Development Levy now includes all goods for official use by the National Intelligence Service and the Defence Forces Welfare Services. Goods under Chapter 5407 and Chapter 6309 imported as raw materials for textile manufacturing are also exempted upon the recommendation by the Cabinet Secretary.

d. **Update of Export and Investment Promotion Levy Scope**

The Act has updated and expanded the range of goods subject to the Export and Investment Promotion Levy. It now includes goods under the tariff numbers 4804.29.00 and 4804.39.00, specifically sack kraft bleached, which will be subject to a 10% levy on the customs value.

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B. TAX PROCEDURES AMENDMENT ACT, 2024

a. Temporary Import Duty Suspension

For two years starting from December 27, 2024, import duty on steel billets and wire rods will be temporarily suspended with potential extensions to be decided by the Cabinet Secretary based on economic conditions. Therefore, any provision in any multilateral agreement to which Kenya is a party and which imposes a duty on these items ceases to apply for this period. Although temporary this exemption will significantly reduce the costs for industries dependent on these materials e.g. the construction and manufacturing industries.

b. Electronic Tax Invoicing Enhancements

New requirements for electronic tax invoices include detailed information such as supplier and purchaser details, serial numbers, and tax amounts. Introduces uniformity in the contents of an electronic tax invoice which is a positive thing as it will effectively help in determining any disputes with regards to what amounts to a tax invoice.

Additionally, Purchasers purchasing from small businesses and farmers with turnovers below five million Kenyan Shillings will now need to issue electronic tax invoices. Goes against the normal practice of trade where the seller issues an invoice as opposed to a purchaser issuing one, although limited to purchases from small-scale traders with a turnover not exceeding 5 Million still placed unnecessary administrative burdens on purchases.

c. Extended Tax Amnesty

Taxpayers now have until June 30, 2025, to take advantage of an extended amnesty on interest and penalties for unpaid taxes accrued up to December 31, 2023. KRA will now not collect any accrued penalties and interests on principal taxes settled by 30th June 2025 and in respect of principal taxes unpaid as at 31st December 2023.

d. Relief Provisions for Tax Recovery

The Commissioner is re-authorized to refrain from tax assessments or collections in cases of hardship or inequity, subject to written approval of the CS Treasury and publication of details of the taxes, the taxpayer and reasons for difficulty or abandonment in the Gazette to be presented to the National Assembly for approval within 21 sitting days. This amendment ensures transparency and offers relief to struggling taxpayers, with parliamentary oversight to prevent misuse of this provision.

e. Lower Investment Threshold for Withholding VAT Exemption

The investment threshold for withholding VAT exemption for manufacturers has been reduced from an investment value of three billion to two billion Kenyan Shillings on 31st December 2024. This change is designed to encourage more manufacturers to qualify for the exemption and stimulate investment in the sector.

f. Fairness in Penalties for not Withholding VAT

A new provision introduces the requirement of 'reasonable cause' for failure to withhold or remit VAT, offering a fair defence for agents with legitimate non-compliance reasons.

g. Refund for Overpaid Taxes

Taxpayers can now offset overpaid taxes against future tax liabilities or request refunds within specified timeframes, with the VAT timeline changing from 6 months to 12 months after the date on which tax was overpaid, which is a similar period for excise duty. The income tax application timeline is within 5 years from the date of overpayment.

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

Taxpayers can now not only make applications to utilize any overpaid tax against future tax liabilities but also make such applications to utilize the overpaid tax against installment taxes and input VAT.

i. Integration with Data Management Systems

Businesses with turnovers exceeding five million Shillings are required to integrate their electronic tax systems with the data management and reporting system within a reasonable period. This excludes trade secrets and personal data to protect sensitive information, with penalties for non-compliance capped at one hundred thousand Shillings per month that the failure continues.

j. Adjusted Time Computation for Objections and Appeals

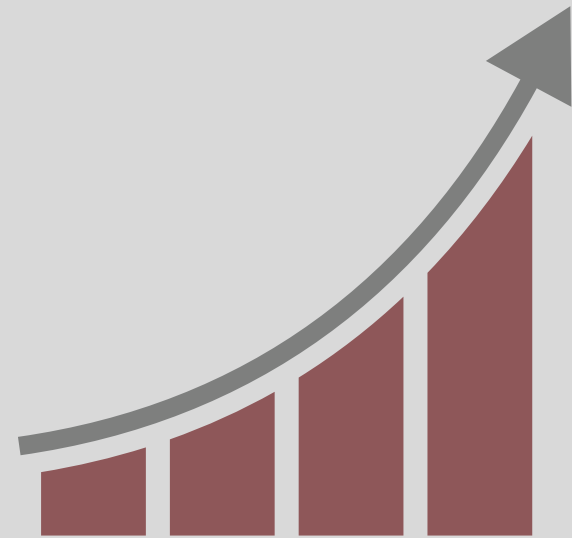
Weekends and public holidays are excluded from the timeframe for lodging objections and appeals to ensure taxpayers have adequate time for compliance.

k. EPZ Penalty Adjustments

EPZ enterprises now face a fixed monthly penalty of KES 20,000 for late submission or failure to submit returns, simplifying compliance and enforcement.

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i. KRA PIN for Remote Employees

Remote employees working outside Kenya for Kenyan employers must obtain a KRA PIN, ensuring they are included in the tax system, with an exemption for national carrier employees.

C. SPECIAL ECONOMIC ZONES ACT CHANGES

a. Redefinition of ‘Business Processing Outsourcing’

The definition of “business process outsourcing” has been updated. It now means the provision of outsourcing services for specific business functions like back-office support in human resources, finance, accounting, and procurement. This includes delegating one or more IT-intensive business processes to an external provider.

b. Minimum Investment Amount

The Cabinet Secretary has been empowered to set the minimum amount to be invested in an area declared as a special economic zone, based on the recommendation of the Special Economic Zones Authority.

c. Duration of Incentives

The benefits granted to a special economic zone developer, operator or enterprise will now be limited to a period of 10 years from the date of issuance of the license. Previously, some of the incentives did not have a time limit.

d. Special Economic Zones Business Service Permit

There’s now a Special Economic Zones service permit. This permit applies to individuals or entities providing services within the Special Economic Zone for which no incentives or benefits are conferred under the Act. The Cabinet Secretary will prescribe the rights and obligations applicable upon issuance of this permit.

e. Sales Within Customs-Controlled Areas

Goods sold within a customs-controlled area of a special economic zone are not considered to have entered the customs territory. These goods are entitled to the benefits conferred under the Act. This provision helps to clarify the status of goods within special economic zones and ensures they receive the appropriate benefits.

f. Permits, Licences, and Administrative Updates

Several updates have been made to streamline and enhance the administration of special economic zones:

- The Authority can now review applications and grant special economic zone service permits.
- A “one-stop” shop will be established to handle all applications for permits, approvals, licences, and facilities not managed directly by the Authority. This will involve coordination with other government or private entities.
- The Authority can recommend to the Cabinet Secretary to suspend or cancel the licence of any special economic zone enterprise or developer that violates this Act, the East African Community Customs Management Act, 2004, or any other applicable law.

g. Public Entity Involvement

The scope of entities covered by the Act has been expanded to include public entities to qualify as special economic zone (SEZ) developers, enhancing the range of parties that can engage with special economic zones.

h. Improved Accountability and Penalties

The Act now mandates that special economic zone developers or operators maintain adequate and proper accounts and records. Failure to do so is an offence punishable by a fine not exceeding five million shillings, imprisonment for up to six months, or both.

D. NSSF CHANGES

The National Social Security Fund (NSSF) Act introduces new contributions limits for Year 3 (2025) which are effective February 2025.

The contribution rate remains unchanged at 6%, however, the lower and upper limit have been adjusted.

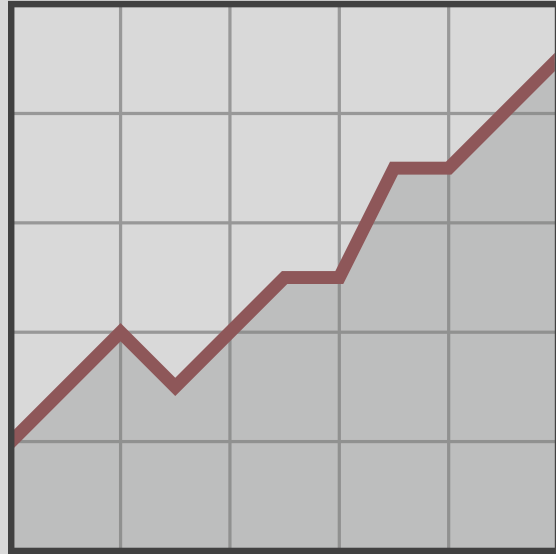
The lower income limit for contributions has been increased to Kshs 8,000 from Kshs 7,000 while the upper limit has doubled to Kshs 72,000 from Kshs 36,000.

Tier 1 contributions by employees will increase from Kshs 420 to Kshs 480, while tier 2 contributions will rise from Kshs 1,740 to Kshs. 3,840. The maximum contribution will rise from Kshs 2,160 to Kshs 4,320 for high-income earners.

Employers should take note of these changes effective February 2025 and update their payroll workings accordingly.

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It is however important to note that the implementation of the 2013 NSSF Act remains legally challenged. Despite earlier proceedings, the Supreme Court upheld that the Employment and Labour Relations Court (ELRC) has the authority to declare the Act unconstitutional.

Consequently, the ELRC's ruling from September 19, 2022, remains in effect, rendering the Act invalid. This means that the mandatory 12% contribution rate is not enforceable, and neither employers nor employees are obligated to register with or contribute to the NSSF under the terms of the 2013 Act.

Additionally, public services cannot be denied due to non-enrollment. The status quo will persist until the Court of Appeal delivers its ruling.

E. FRINGE BENEFIT TAX (FBT)

The Commissioner has issued a public notice on fringe benefit tax, deemed interest rate and Low interest benefit

a. Fringe Benefit Tax

The applicable market interest rate for the application of fringe benefit tax is 13% for the month of January, February and March 2025.

b. Deemed Interest Rate

The prescribed rate of interest is 13% and is applicable for the month of January, February and March 2025.

Withholding tax rate of 15% on the deemed interest shall be deducted and paid to the Commissioner within five working days.

c. Low Interest Benefit

The prescribed rate of interest is 14% and is applicable for the month of January to June 2024. (Application of Section 2A)

It is important to ensure compliance with the prescribed rates to avoid penalties due to non-compliance.

F. E-TIMS (ALLOWABLE EXPENSES & VAT FILINGS)

a. Allowable Expenses

The Finance Act 2023 provided that effective 1st January 2024, any person making deductions for business expenditure such as purchases and other business costs for income tax purposes is required to support such expenditure with a valid electronic tax invoice.

The specific expenses exempted from tax include emoluments, imports, investment allowances and air passenger ticketing.

Given that most tax filings for the year 2024 are due by the 30th June 2024 based on the accounting period ending 31st December, business should take this in consideration.

b. Simplified VAT Filing

Vide public notice issued on 3rd December 2024, the KRA notified all VAT registered tax payers that the return will be pre-filled with tax information available to KRA starting from the period November 2024 tax period.

Any input VAT claim that is not validated through TIMS/Etims or against existing customs import declarations for import VAT claims is not allowed for deduction in the return.

It is therefore crucial for business to ensure the above conditions is met to be able to claim input VAT.

c. Reverse Invoicing

Small-scale businesses and farmers with a turnover of less than Kshs 5 million can now have invoices issued on their behalf by purchasers, helping them comply with tax obligations.

G. LEGACY BALANCES MIGRATION

The KRA informed taxpayers of the migration of VAT and Income Tax Ledger balances from the legacy system to the iTax system.

Taxpayers were advised that they have up to 31st December 2024 to raise any concerns that they may have on migrated debit balances for resolution.

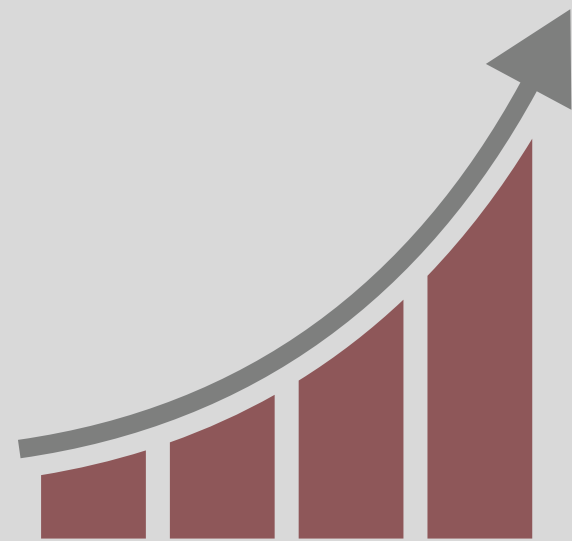
We encourage all tax payers to confirm their migrated legacy balances and follow up with their stations even upon submission of documents to ensure completion of the reconciliation.

This exercise raises a number of concerns given that most tax payers may not have documentation in place considering the statute of limitation and the fact that some migrated balances go way back.

It will be interesting to see how this issue of documentation especially concerning migrated legacy balances will be handled and may result to a number of disputes.

2025 Tax Outlook

Continued



Taxpayers should capitalize on the extended tax amnesty program, which offers a waiver on penalties and interest accrued up to 31 December 2023, provided they pay the principal tax by 30 June 2025.

H. DRAFT TAX RULES

The draft statutory income tax rules were developed by the Commissioner General on behalf of the CS, National Treasury and Economic Planning.

These rules guide the application of the provision of the Act.

Public participation was undertaken whereby the KRA invited stakeholders to submit their input and comments for consideration prior to finalizing the rules.

The final rules may be issued in the course of 2025 and it will be interesting to see the changes made to the draft rules in view of the comments submitted by the stakeholders and their implications on the application of the provisions on the Act.

I. TRANSFER PRICING UPDATES

It is worth noting that the KRA notified all taxpayers on the enhancement of the iTax platform for the declaration of related party transactions in the Income Tax Company Return.

Companies with related party transactions should ensure they have a local file in place.

An entity in Kenya that is part of an MNE group with a gross turnover of Kshs. 95 Billion (Including Investment and Extraordinary Income) in each year is required to file the following reports with KRA;

- **Country by Country Report** of its financial activities in Kenya and for all other jurisdictions where the group has a taxable presence within 12 months after the last day of MNE Group Financial reporting year;
- **Master File** comprising standardized information that is relevant for all members of the MNE group and it is to be filed within 6 months after the last day of MNE Group financial Reporting year and should contain the below; and
- **Local File** containing material transactions of the local taxpayer and it is to be filed within 6 months after the last day of MNE Group financial year and should contain the below.

J. INTERNATIONAL TAX DEVELOPMENTS

On January 8, 2025, Kenya deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention).

This convention, developed by the OECD Inclusive Framework, facilitates the modification of existing tax treaties to align with the BEPS project's objectives. The BEPS Convention aims to counteract tax planning strategies that exploit discrepancies in tax laws across jurisdictions to shift profits to low or zero-tax jurisdictions.

The BEPS Convention will come into effect on May 1, 2025, for Kenya. Upon its entry into force, it will update existing tax treaties and modify those awaiting ratification, such as the Kenya-Italy treaty, in accordance with the provisions of the Multilateral Instrument (MLI).

This move underscores Kenya's commitment to preventing tax avoidance by multinational enterprises and aligns with global efforts to strengthen tax integrity.

K. FINANCE BILL 2025, EXPECTATIONS?

On January 15, 2025, the Kenya National Treasury issued the Draft Budget Policy Statement for the financial year 2025/2026. The document highlights challenges faced during the implementation of the FY 2024/2025 budget, including the withdrawal of the Finance Bill 2024 and economic disruptions caused by protests.

The fiscal policy framework for FY 2025/2026 and the medium term is designed to support the Government's strategic priorities under the Bottom-Up Economic Transformation Agenda (BETA). To enhance revenue collection, the Government will implement a combination of tax administrative and policy reforms. These measures are expected to be formalized through the Finance Bill 2025, which will propose amendments to tax legislation aimed at broadening the tax base.

In light of these developments, all stakeholders are encouraged to participate in public consultations prior to the enactment of any legislative changes. This participatory process is crucial for ensuring that the proposed reforms align with the public's interests.

Let's talk

For further information on how the key tax changes and how they will affect your business or assistance on any other matter kindly contact your regular Taxwise Africa Analyst or the contacts below.

✉ Info@taxwiseconsulting.com

🌐 <https://taxwiseconsulting.com>

PLEASE NOTE

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NAIROBI:

The Big House, Kabarsiran Avenue, Lavington
+254 020 202 5320 E: info@taxwisecosnulting.com

MOMBASA:

Imaara, 7th Floor, Dedan Kimathi Avenue
+254 020 260 0066 E: info@taxwiseconsulting.com

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