

# Did you know that the power to waive tax penalties and interest in Kenya no longer rests solely with the KRA?

## In this edition

Prior to July 1, 2025, the Kenya Revenue Authority (KRA) had direct administrative discretion to waive tax penalties and interest after taxpayers paid their principal tax. The Finance Act, 2025 changed this by amending Section 89 of the Tax Procedures Act, introducing Section 89(5A).

This amendment shifted the waiver system from KRA's discretionary power to a strict statutory and policy-based framework with defined rules and procedures.



Specifically, Section 89(5A) provides that the Cabinet Secretary may, upon recommendation by the Commissioner, waive the whole or part of penalties and interest where such penalties or interest arise as a result of an error generated by an electronic tax system, delays in updating an electronic tax system, a duplication of penalties or interest occasioned by a malfunction of an electronic tax system, or the incorrect registration of a taxpayer's tax obligations. The provision states:

*(5A) The Cabinet Secretary may, on the recommendation of the Commissioner, waive the whole or part of any penalty or interest imposed under this Act where the liability to pay the penalty or interest was due to—*

- (a) an error generated by an electronic tax system;*
- (b) a delay in the updating of an electronic tax system;*
- (c) a duplication of a penalty or interest due to a malfunction of an electronic tax system; or*
- (d) the incorrect registration of the tax obligations of a taxpayer.*

Consequently, common grounds previously relied upon, such as hardship or impossibility of recovery, no longer qualify for waiver under the current legal framework.

In practice, the waiver process now follows a structured approval chain. A taxpayer must first submit an application to KRA which undertakes a technical review to assess overall tax compliance, verify that the statutory grounds under Section 89(5A) are met and evaluate the supporting evidence provided. Where KRA is satisfied, it makes a formal recommendation to the Cabinet Secretary for the National Treasury. The authority to grant a full or partial waiver ultimately rests solely with the National Treasury and not with the KRA.

In light of these restrictive statutory changes and the prevailing difficult economic conditions in the country, it is increasingly important that taxpayers are provided with access to a tax amnesty program. Tax amnesty programs offer critical relief by allowing taxpayers to regularize their tax affairs without the burden of accumulated penalties and interest, while simultaneously supporting revenue mobilization by encouraging voluntary compliance during periods of economic strain.

## LET'S TALK

For more information or professional advisory on any other tax matter kindly contact your regular Taxwise Africa Analyst or the contacts below:



**(020) 2025320**



***info@taxwiseconsulting.com***



***Taxwise Africa Consulting LLP***



***LinkedIn***



***Twitter***