CHANGES TO THE TAX PROCEDURES ACT, INCOME TAX ACT, VAT ACT, EXCISE DUTY ACT, AND MISCELLANEOUS FEES AND LEVIES ACT; AS INTRODUCED BY THE TAX PROCEDURES (AMENDMENT) ACT, 2024 & THE TAX LAWS (AMENDMENT) ACT, 2024

A. BACKGROUND

Having been assented by the President on 11th December 2024, the Tax Procedures (Amendment) Bill, 2024 and the Tax Laws (Amendment) Bill, 2024 became law. Below, we analyze changes introduced under the Tax Laws Amendment Act, 2024, and the Tax Procedures Amendment Act, 2024 which amend the Income Tax Act, the Value Added Tax Act, the Tax Procedures Act, the Excise Duty Act, and the Miscellaneous Fees and Levies Act in an effort to ensure a number of proposals contained in the rejected Finance Bill 2024 are utilized to refine and enhance the existing tax framework, addressing both procedural and substantive aspects of tax law.

B. CHANGES TO THE TAX PROCEDURES ACT (TPA)

i. Temporary Exemption of Import Duty on Steel Billets and Wire Rods Under International Tax Agreements

The Act introduces a new subsection to the provisions of Section 6A dealing with International Tax Agreements. The new subsection provisions temporarily suspend the imposition of import duty on specific items, specifically (steel billets of tariff heading 7207.11.00 and on wire rods of tariff heading 7213.91.00 and 7213.91.90) for two years from the commencement of the subsection, with a possibility of extension as prescribed by the Cabinet Secretary.

Therefore, any provision in any multilateral agreement or treaty to which Kenya is a Party and which imposes a duty on the above materials ceases to apply for two years as from 27th December 2024.

The temporary exemption will significantly reduce costs for industries dependent on these materials, such as construction and manufacturing. Further, by allowing the Cabinet Secretary to extend the exemption, the Act provides flexibility to adapt to economic conditions and industry needs.

ii. Electronic Tax Invoicing Requirements

The Act introduces significant changes to the electronic tax invoicing system. These changes are as follows:

- ***Electronic Tax Invoice Details***: The Act introduces a new subsection 2A which mandates that electronic tax invoices must include specific details such as the *words "TAX INVOICE," supplier and purchaser information, serial number, date and time of issuance, description of the supply, discounts, consideration, tax rate, and total tax amount*. This change will standardize the information required on tax invoices, ensuring consistency and clarity. It will also facilitate easier verification and auditing by the Kenya Revenue Authority (KRA), potentially reducing tax evasion and fraud.

- ***Electronic Tax Invoice Requirement for Small Businesses and Farmers***: The Act introduces a requirement for purchasers to issue tax invoices when receiving supplies from small businesses or small-scale farmers whose annual turnover does not exceed *five million Kenyan Shillings*.
  This aims to bring small businesses and farmers into the formal tax system, promoting inclusivity and broadening the tax base. However, it may impose additional administrative burdens on the purchasers.
- **Exclusion of requirement for an electronic tax invoice –** The Act excludes *payment of withholding tax* from the electronic invoicing requirement.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

iii. Tax Amnesty

The Act extends the deadline for tax amnesty on interest and penalties from 30th June 2024 to 30th June 2025. The amnesty shall be on interest or penalties on the unpaid tax that have accrued up to the 31st December, 2023 provided the principal tax is paid before 30th June 2025.

This is a positive change that grants taxpayers additional time to address their outstanding tax obligations without incurring further penalties and interest.

iv. Relief Due to Difficulty in Tax Recovery

The Act re-introduces provisions allowing the Commissioner to refrain from assessing or recovering unpaid taxes in situations where it is deemed difficult, impossible, or inequitable to do so. This decision will require approval of the Cabinet Secretary (CS).

The CS is required to publish details of such reliefs, including the taxpayer names and reasons, in the Gazette every four months. Additionally, the National Assembly can review and either approve or annul the published notices within 21 days of laying them before the Assembly.

This change offers relief to taxpayers who are struggling to pay their taxes due to hardship or inequity. Further, the requirement for the Commissioner to publish details of waived taxes in the Gazette ensures transparency. Taxpayers and the public will be informed about who is receiving tax waivers and the reasons behind these decisions. The involvement of the National Assembly in reviewing and potentially annulling the waivers adds a layer of accountability. This oversight ensures that the power to waive taxes is not misused and that decisions are made in the public interest.

v. Lowering the Investment Threshold for Exemption of Registered Manufactures Withholding VAT

The Act amends the exemption granted to registered manufacturers by changing the threshold from *'value of investment in the preceding three years from the 1st July 2022 is at least three billion'* to *'value of investment on the 31st December 2024 is at least two billion shillings*.

This change lowers the investment threshold required for exemption from withholding VAT, likely aimed at providing a greater incentive for manufacturers.

vi. Penalty for Failure to Deduct or Remit Withheld VAT by Withholding VAT Agents

The Act introduces the requirement for 'reasonable cause' in failure to withhold or remit VAT as required. This introduction provides a potential defense for agents who may have a legitimate reason for non-compliance, thereby adding a layer of fairness to the enforcement of this tax obligation.

vii. Offset or Refund of Overpaid Taxes

The Act allows taxpayers to: Offset the overpaid tax against outstanding tax debts and future tax liabilities, including installment taxes and input VAT, or request a refund of the overpaid tax within five years for income tax and twelve months for any other tax.

viii. Integration to the Data Management & Reporting System

The Act empowers the Commissioner by notice to require businesses to integrate their electronic tax systems with the data management and reporting system for submitting electronic documents, including detailed transactional data.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

The notice for integration must allow a reasonable period, not exceeding one year, for compliance, depending on the nature of the business. The Commissioner's requirement is also limited and excludes integration or sharing of data related to trade secrets and private or personal data held on behalf of customers or collected in the course of business.

The integration requirement applies only to businesses with a turnover exceeding five million shillings. This threshold ensures that smaller businesses are exempt from potentially burdensome integration requirements, focusing compliance efforts on larger entities with greater data volumes.

Non-compliance with the integration notice or submission requirements results in penalties not exceeding *one hundred thousand shillings* for every month that the failure continues. Note that the rejected Finance Bill 2024 had proposed similar amendments but set the penalty up to two million shillings for every month that the failure continues.

ix. Exclusion of Weekends and Public Holidays in Computation of Time

The Act excludes Saturdays, Sundays, and public holidays from the computation of the period for lodging an objection to the Commissioner or an appeal to the Tax Appeals Tribunal, the High Court, or the Court of Appeal.

Although this is a welcomed change, the Act narrows its focus specifically to the computation of time for lodging objections and appeals. In contrast, the rejected Finance Bill 2024 proposed a broader application, excluding non-working days for all tax-related actions such as submitting or lodging a tax return, making tax payments, and taking any action under a tax law.

x. EPZs Late Submission & Failure to Submit Returns Penalty

The Act changes the marginal note from "Late submission penalty" to "Penalties for late submission and failure to submit returns." This change broadens the scope of the section to explicitly include penalties for both late submission and failure to submit returns, thereby clarifying the legislative intent and ensuring comprehensive coverage of non-compliance scenarios.

The Act also imposes a monthly penalty of *KES 20,000* on EPZ enterprises for each month, or part thereof, that they fail to submit required returns. This marks a significant change, as it establishes a fixed penalty specifically for EPZ enterprises, distinguishing it from the general penalties applied to other taxpayers.

Under the current Section 83, penalties are generally calculated as a percentage of the tax due or a fixed amount, whichever is higher. The KES 20,000 fixed penalties for EPZ enterprises deviates from this approach, reflecting the unique regulatory environment and the importance of timely compliance in the EPZ sector. From an administrative perspective, the fixed penalty for EPZ enterprises simplifies the calculation and enforcement of penalties.

xi. KRA PIN Requirement for Remote Employees

This Act introduces a requirement for employees working remotely outside Kenya for an employer based in Kenya to obtain a KRA Personal Identification Number (PIN). Employees working for the national carrier are exempt from this provision.

This aims to ensure that remote employees are included in the tax system, for compliance and tax collection purposes.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

C. CHANGES TO THE INCOME TAX ACT

i. Definitions

The Act introduces several amendments to Section 2 of the Income Tax Act as follows:

a.) Registration with the Commissioner requirement removed for retirement, pension, and provident funds

The Act amendments the definitions of "individual retirement fund," "pension fund," and "provident fund" by removal of the requirement for these funds to be registered with the Commissioner. Instead, the focus shifts to registration with the Retirement Benefits Authority.

This change simplifies the regulatory framework and aligns the registration process with the Retirement Benefits Authority, which is the primary regulator for retirement benefits schemes. For taxpayers, this means a more streamlined and potentially less cumbersome process for managing retirement funds, enhancing compliance and administrative efficiency.

b.) Broadened scope of "Royalty"

The Act expands the definition of "royalty" to include payments for the use of software, whether proprietary or off-the-shelf, and various forms of intellectual property and industrial equipment. This broader definition will ensure that all relevant payments are captured under the tax net, reflecting the evolving nature of intellectual property and technology transactions.

For businesses involved in technology and intellectual property, this means a clearer understanding of their tax obligations concerning royalty payments, reducing ambiguities and potential disputes with tax authorities. This comes in the wake of KRA's loss in disputes regarding the applicability of withholding tax on software for resale. However, this is likely to adversely affect software resellers' operations considering the industry's low margins.

c.) Definition of Donation

The definition of "donation" now explicitly includes grants, which is crucial for entities involved in charitable activities and public benefit organizations. This ensures that all forms of donations are appropriately recognized and treated under the tax laws, providing certainty for donors and recipients alike.

Overall, these amendments including the deletion of the phrase *'wife's self-employment income rate, wife's employment income, wife's professional income'* are designed to modernize the Income Tax Act, making it more relevant to current economic realities and administrative practices by aligning definitions with contemporary standards and regulatory frameworks.

ii. Deductible Employment Benefits

a.) Increased limit of non-cash benefit

The Act has adjusted the threshold for the value of allowable non-cash benefits from KES 36,000 to KES 60,000.

b.) Increased limit of meal benefit

The Act has increased the threshold for the value of meals served to employees from KES 48,000 to KES 60,000 per year.

c.) Increased limit of deductible pension contribution

The Act has increased the threshold for pension contributions into a registered pension scheme

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

from KES 240,000 to KES 360,000 shillings per year of service.

The increase in the thresholds of the above deductible employee benefits reflects an adjustment for inflation and the rising cost of living.

d.) Reimbursement to Public Officers not a taxable income

The Act introduces a provision that excludes any amount paid or granted to a public officer, pursuant to any written law or statutory instrument with effect from 27th July 2022, from being included in taxable income.

iii. Taxation of Income from the Digital Economy – Withholding Tax

The Act has expanded the taxable income from digital economy to include payments made or facilitated through digital platforms. This targets both residents and non-residents who, being the owners or operators of digital marketplace or platforms, facilitate payment in respect of digital content monetization, goods, property, or services. The amounts will be deemed as income accrued or derived from Kenya.

Furthermore, the Act provides a clear definition of a “platform,” to mean digital platforms or websites that facilitate short-term engagements, freelance work, or service provision between independent contractors or freelancers and clients. These changes will impact businesses, by requiring resident to account for digital transactions, while non-resident businesses without a physical presence in Kenya will face increased tax obligations and administrative complexities.

iv. Significant Economic Presence (SEP) Tax

The Act replaces the Digital Service Tax with the Significant Economic Presence (SEP) Tax payable by non-residents whose income from the provision of services is derived from or accrued in Kenya through a business carried out over a digital marketplace, and the user of the service is based in Kenya.

The Act introduces specific exemptions on the applicability of SEP, such as for non-resident persons with a permanent establishment in Kenya, income of a non-resident person who operates a business in Kenya that transmits messages via cable, radio, satellite, internet, or other similar methods, income subject to withholding tax and digital services provided to airlines with significant government shareholding (45% shareholding.), non-residents with an annual turnover of less than 5 Million shillings.

The taxable profit shall be deemed as 10% of gross turnover and its return is to be submitted and payment of the tax due made on or before the 20th day of the month following the end of the month in which the service was offered.

Although SEP Tax broadens the tax base aligns with OECD standards and reflects Kenya's efforts to modernize its tax system in response to the growing digital economy while balancing revenue generation and compliance issues. Its implementation should have awaited the regulations which the CS is mandated to issue.

v. Introduction of Minimum Top-Up Tax

The Act introduces a Minimum Top-Up Tax aimed at ensuring that multinational enterprises (MNEs) with significant economic activities in Kenya pay a minimum tax of 15%. This tax applies when the combined effective tax rate of a covered person falls below this threshold, calculated by dividing all adjusted covered taxes by net income or loss. Certain entities, such as public entities not engaged in business, pension funds, real estate investment vehicles, and sovereign wealth funds, will be exempt from the minimum tax.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

The Act also defines a "covered person" to include residents or those with a permanent establishment in Kenya who are part of multinational groups with substantial global turnover.

The tax payable will be determined by calculating the difference between 15% of net income or loss and the combined effective tax rate, multiplied by excess profit, with specific adjustments for employee costs and tangible assets. This comprehensive approach aims to ensure fair taxation for MNEs while providing necessary exemptions and adjustments for various operational factors.

The Act further defines *'Excess profit'* as the net income or loss of a covered person for the year of income less 10% for employee costs and 8% for the net book value of tangible assets. *'Net income or loss'* is also defined by the Act to mean the sum of net income or loss for the year of income after deducting the sum of the losses of a covered person as determined by the accounting standards in Kenya.

vi. Addition to Allowable Deductions on AHL, SHIF, and post-retirement medical contributions

The Act repeals the existing relief provisions related to affordable housing, the post-retirement medical fund which is now capped at KES 15,000 per month, and the Social Hospital Insurance Fund, replacing them with allowable deductions.

vii. Increase of the limit for deduction in respect of pension contributions for employees and employers

The Act has increased the deductible limit for contributions made by both employers and employees to a registered pension fund from two KES 240,000 to KES 360,000 per year of service and from KES 20,000 to KES 30,000 per month of service.

Further, the Act has revised the deduction limit in respect of employers' contribution from KES 240,000 to KES 360,000.

Overall, these amendments are indicative of a progressive tax policy that seeks to balance revenue generation with socio-economic welfare.

viii. Deductions in respect to individual retirement funds

The Act has revised the limit for the deduction in respect of contributions of an individual to a registered individual retirement fund in a year from two hundred and forty thousand (KES 240,000) to three hundred and sixty thousand shillings (KES 360,000) per year of service of the individual and from twenty thousand shillings (KES 20,000) to thirty thousand shillings (KES 30,000) per month of service.

ix. Withholding Tax on Supply of Goods to Public Entities

The Act introduces WHT on payments made for the supply of goods to public entities at a tax rate of 5% for non-residents and 0.5% for residents on these payments.

This change is likely to enhance tax compliance and revenue collection from transactions involving government procurement as public entities often engage in substantial procurement activities.

x. Withholding Tax on payments made or facilitated through digital marketplaces

The Act extends withholding tax obligations to payments made or facilitated through digital marketplaces at a tax rate of 20% for non-residents and 5% for residents on income derived from digital marketplaces.

This change aims to ensure that income generated from these transactions is properly taxed, aligning with global trends where tax authorities focus on the digital economy to

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

prevent revenue loss and promote fairness among businesses.

xi. WHT on interest arising from bonds, notes, or similar securities

The Act sets the withholding tax rate at 5% on interest arising from bonds, notes, or similar securities with a maturity of at least three years, used to raise funds for infrastructure and other social services.

xii. Income Tax Exemptions

a) Pension Benefits

The Act amends paragraph 53 of the First Schedule of the Income Tax Act which signifies a comprehensive expansion of the tax exemptions available for pension benefits. By replacing the current provision, which only exempts monthly pensions for individuals aged 65 or more. The Act introduces a broader framework that encompasses various types of pension benefits from registered funds.

Under the new provision, pension benefits from registered pension funds, provident funds, individual retirement funds, and the National Social Security Fund (NSSF) will be exempt from tax upon reaching the retirement age as defined by the respective fund or scheme rules. This change acknowledges the diverse nature of retirement savings vehicles and ensures that all forms of registered retirement benefits receive equitable tax treatment.

Additionally, the amendment extends the exemption to include payments of gratuity or other allowances under public pension schemes, retirement annuities, and withdrawals from the fund prior to retirement age due to ill health or after twenty years of membership. These provisions are particularly significant as they provide the much-needed flexibility and support for individuals facing unforeseen circumstances or those who have made long-term contributions to their retirement savings.

b) Family Trust Income

The Act limits the exemption granted to family trust solely on the *'principal sum'* of the trust rather than both the income and the principal sum. This change will subject the exemption to only the principal sum i.e., the original amount of money or assets placed into the trust. Any income generated by the trust such as interest, dividends, or capital gains will potentially be subject to tax.

Family trusts have traditionally been used as vehicles for estate planning, wealth management, and intergenerational wealth transfer. Individuals and families using family trusts will face a higher tax burden on trust income, potentially reducing the financial benefits of these structures. Families will need to reevaluate their estate planning strategies and consider alternative tax-efficient methods of wealth management.

c) Interest earned by Non-resident contractors, consultants, or employees under grant projects

The Act amends paragraph 71 of the First Schedule of the Income Tax Act and introduces a more stringent framework for the tax exemption of income earned by non-resident contractors, sub-contractors, consultants, or employees involved in projects financed through a one hundred percent grant. By refining the conditions under which this income is exempt from tax, the amendment will ensure greater compliance and clarity in the application of tax laws.

Previously, income earned by non-resident individuals involved in such projects was exempt from tax, provided they are in Kenya solely for the implementation of the project. The amendment by the Act retains the core exemption but introduces two critical conditions.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

- Firstly, it requires that the non-resident contractor, sub-contractor, consultant, or employee maintain their non-resident status for the entire duration of the agreement. This condition ensures that the tax exemption is strictly applied to individuals who are genuinely non-resident and are in Kenya exclusively for the project.
- Secondly, the amendment specifies that any income not directly related to the project earned by these non-resident individuals will be subject to tax. This provision aims to prevent potential abuse of the tax exemption by ensuring that only income directly attributable to the project financed by the grant is exempt. Any other income earned by the non-resident individuals, that is not related to the project, will be taxed according to the applicable tax laws.

These changes reflect a strategic effort to tighten the tax exemption criteria and enhance the integrity of the tax system. By introducing clear conditions for maintaining non-resident status and delineating the scope of exempt income, the amendment will prevent tax avoidance and ensure that the tax benefits are appropriately targeted.

xiii. Investment Allowance

The Act has reduced the threshold for investment deduction from two billion shillings to one billion shillings. Therefore, to qualify for a 100% investment deduction, the cumulative investment value in the preceding three years outside Nairobi City Council and Mombasa County must now be at least one billion shillings instead of two billion shillings.

xiv. Reduced Capital Gains Tax Rate

The Act reduces the CGT rate of 5% applicable if the Nairobi International Financial Centre Authority certifies that a firm has invested at least three billion shillings in a Kenyan entity within two years and the investment is transferred after five years. This provision aims to attract substantial long-term investments into the country, promoting economic growth and development.

xv. EPZs Late Submission or Failure to Submit Return

The Act deletes the penalty provision for late submission or failure to submit returns by export processing zone (EPZ) enterprises from the ITA and introduces the penalty vide the TPA.

D. CHANGES TO THE VAT ACT

i. Time of Supply for exported goods

The Act has clarified that the time of supply for exported goods shall be the time when a certificate of export or equivalent export documentation has been issued by customs.

This aims to eliminate ambiguity in the VAT framework regarding the timing of VAT obligations for exporters, which has led to disputes and compliance issues. By explicitly linking the time of supply to export documentation, the Act aims to standardize when VAT becomes applicable, aligning with international best practices that use such documentation as a definitive trigger for tax purposes.

ii. Apportionment of Input VAT Claimable

The Act deletes Section 17(7), which provides a mechanism for determining the eligibility of input tax credits based on a specific formula. If the fraction derived from this formula exceeds 0.90, the registered person is allowed to claim the full input tax credit. Conversely, if the fraction is less than 0.10, no input tax credit is allowed.

The deletion of this subsection removes this conditional framework, which could simplify the process for taxpayers. Conversely, it eliminates the structured approach that may have helped

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

ensure that input tax credits were claimed in a manner proportional to taxable supplies.

The Act has also deleted subsection (8) which allows manufacturers to deduct input tax for supplies made to official aid-funded projects, subject to approval by the Cabinet Secretary. This provision has been beneficial for manufacturers involved in such projects, providing them with a tax advantage that supports their participation in aid-funded initiatives. The removal of this subsection will increase the tax burden on manufacturers and a reduction in the incentives to engage in official aid funded projects.

The Act's rationale behind the deletion of these deletions may be to streamline the VAT system and reduce the administrative burden associated with managing multiple provisions and approvals.

iii. Relief for excess input tax credits when taxable supply becomes zero-rated or exempt

The Act has introduced a new provision under Subsection 5(e) which addresses taxable supplies that became zero-rated or exempted after 1st July 2022. Where if a permanent credit position arose due to a change in the applicable rate of tax or lower rate and the credit existed when the supply became zero-rated or exempted, the registered person can apply for relief within six months after the commencement of this provision. This provision provides clear guidance on handling excess credits due to changes in law and reduces uncertainty for taxpayers.

iv. Application of ECCMA to Exported Goods

The Act amends Section 65 of the VAT Act, by inserting the words "and exported goods" immediately after "imported taxable goods," which represents a significant extension of the application of the East African Community Customs Management Act, 2004 (EACCMA) to exported goods. This change aims to harmonize the treatment of both imported and exported goods under the VAT framework, ensuring consistency and comprehensive coverage.

Previously, the EACCMA and its associated rules applied to imported taxable goods, treating them as if they were liable to customs duties, including VAT. By extending this application to exported goods, the amendment has brought exported goods under the same regulatory framework, hence a coherent and unified approach to the taxation and management of goods moving across borders within the East African Community (EAC).

v. Exempt Supplies

a.) Exempt Goods

- The Act amends paragraph 57 by introducing a new provision that extends the VAT exemption on all goods for official use by the Defence Forces Welfare Services and the National Intelligence Service. The deleted provision only extended the exemption on these goods used by Kenya Defence Forces and the National Police Service.

- The Act replaces paragraph 69 of the First Schedule of the VAT Act with a new paragraph. The previous provision exempted carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00 from VAT. The Act has extended this exemption to goods of the same tariff number when used in the manufacture of baby diapers, sanitary towels (pads), and tampons. This change is significant for several reasons. Firstly, it broadens the scope of the VAT exemption to include not just the raw material (carrier tissue) but also its specific use in the production of critical hygiene products

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

Secondly, it supports the local manufacturing industry by providing a tax incentive that encourages the production of hygiene products within Kenya.

- The Act has further deleted paragraphs 70 and 114 of the First Schedule to the VAT Act. The deletion of paragraph 70, which previously exempted IP super soft fluff pulp used in the manufacture of hygiene products, will increase the cost of production for manufacturers of such products.

- The Act deletes the paragraph 101 and replaces it with a new provision which exempts from VAT alcoholic or non-alcoholic beverages supplied to Defence Forces Welfare Services.

- The deletion of paragraph 114, which exempted capital goods to promote investment in the manufacturing sector, could deter large-scale investments. The exemption has been a critical incentive for attracting substantial investments in manufacturing.

- The Act has amended paragraph 146 which set the exemption for capital goods determined by the CS to promote investment in the manufacturing sector, to investments not less than two billion shillings provided the exemption was granted before 1st January 2024 and shall only apply for twelve months after this date. This new provision introduces a time limit for the exemption.

- The Act introduces paragraphs 149, 150, 151, and 152 which exempts from VAT imported inputs and raw materials for the manufacture of agricultural pest control products, fertilizers, and related inputs and inputs or raw materials locally purchased or imported by manufacturers of fertilizers. This move is expected to enhance the competitiveness of local agricultural producers, promote food security, and support the overall growth of the agricultural sector.

- The Act also introduces paragraph 153 which exempts from VAT the supply of denatured ethanol of tariff number 2207.20.00.

- Further, the Act introduces paragraph 154 which exempts from VAT taxable goods of Chapter 5407 and 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation by the Investments and Trade CS.

Overall, these amendments reflect a strategic reallocation of tax incentives to align with national development priorities. While the removal of certain exemptions may pose challenges for affected sectors, the new exemptions for agricultural inputs and products underscore the government's commitment to supporting agriculture as a cornerstone of economic development.

b.) Exempt Services

The Act amends Part II of the First Schedule of the Value Added Tax (VAT) Act, by inserting a new paragraph 35.

- ***transfer of a business as a going concern***

This insertion exempts the transfer of a business as a going concern and introduces a strategic exemption aimed at facilitating business continuity and growth. This exemption is designed to support the seamless transfer of businesses, encouraging investment and reducing the tax burden associated with business acquisitions.

vi. Zero-Rated Supplies

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

The Act amends Part A of the Second Schedule of the VAT Act, by deleting paragraphs 16, 19, 24, and 25, representing a significant policy shift aimed at broadening the tax base by removing zero-rated status from key agricultural inputs and products. These changes are likely to have far-reaching implications for the agricultural sector and related industries.

Previously, paragraph 16 exempted all inputs and raw materials supplied to manufacturers of agricultural pest control products from VAT, after recommendation by the CS for Agriculture. Paragraph 19 extended exemption to agricultural pest control products themselves. Paragraph 24 exempted fertilizers classified under Chapter 31, and paragraph 25 exempted inputs or raw materials used by manufacturers of fertilizers.

Deletion of these paragraphs will subject the previously zero-rated supplies to exempt status, effectively increasing the cost of agricultural inputs and products. While these changes may pose challenges for the agricultural sector, they underscore the government's commitment to creating a more comprehensive and equitable tax system.

E. CHANGES TO THE EXCISE DUTY ACT

i. Introduction of the definition of 'Digital Lender'

The Act introduces the definition of a *'digital lender'* to mean a person holding a valid digital credit providers license issued by the Central Bank of Kenya. This aims to regulate the digital lending sector and ensure only licensed entities can operate as digital lenders as a result protecting consumers of the services.

ii. Introduction of the definition of 'fees charged by digital lenders'

The Act introduces the definition of *fees charged by digital lenders* to include any fees, charged or commissions charged by digital lenders relating to their licensed activities but does not include interest, pre-loan interest, post-loan interest, return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder. This definition clarifies what constitutes fees charged by digital lenders, and provides a crucial distinction for the application of excise duty by ensuring digital lenders are taxed appropriately on the fees.

iii. Introduction of the definition of 'Small Independent Brewer'

The Act introduces the definition of *small independent brewer* to mean manufacturers of beer, cider, perry, mead, opaque beer, wine, and fortified wines, and mixtures of fermented beverages with non-alcoholic beverages manufacturers whose production volume does not exceed 150,000 litres per month. This definition provides a clear distinction between small-scale brewers and large-scale brewers likely with an aim of helping in offering tax incentives.

iv. Introduction of Excise Duty on Services Offered in Kenya by Non-Residents Through Digital Platforms

The Act introduces a provision that extends the scope of excise duty to include excisable services offered in Kenya by non-residents through digital platforms. This move is a strategic response to the growing digitalization of services and aims to ensure that non-resident service providers contribute to the Kenyan tax base. The inclusion of digital services under the excise duty regime aligns with global trends where jurisdictions are increasingly taxing digital transactions to capture revenue from the burgeoning digital economy.

Furthermore, the Act stipulates that excise duty on the digital services will be payable by the non-resident person offering the service. This

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

provides clarity on the responsibility for tax liability.

v. Introduction of Excise Duty Remission on Spirits

The Act amends Section 7(2) of the Excise Duty Act, to include "spirit" alongside "beer" in the list of alcoholic beverages eligible for excise duty remission, which represents a strategic enhancement to the current tax policy.

By extending the excise duty remission to spirits made from locally grown agricultural products such as sorghum, millet, and cassava, the Act aims to bolster the domestic production of spirits, thereby supporting local agriculture and the broader economy.

From an industrial perspective, this is likely to stimulate growth and innovation within the local spirits industry. It will encourage manufacturers to source raw materials locally, which will reduce production costs and foster a more sustainable supply chain.

vi. Extension of Timeline for Payment of Excise Duty

The Act amends Section 36(1A), by changing the excise duty payment timeline for licensed manufacturers of alcoholic beverages from "within twenty-four hours upon removal of the goods from the stockroom" to "by the fifth day of the following month," represents a pragmatic adjustment to the existing tax framework.

This provision will alleviate the immediate financial and administrative pressures on manufacturers, providing them with a more reasonable timeframe to fulfill their tax obligations.

vii. Exemption of Locally Assembled Electric Vehicles from Excise Duty

The Act exempts locally assembled electric vehicles from excise duty. This amendment aims to promote the local assembly and adoption of electric vehicles, which aligns with Kenya's broader environmental and economic goals. The exemption is expected to stimulate the electric vehicle market, reduce carbon emissions, and foster technological advancements within the local automotive industry.

viii. Introduction of Excise Duty on Other Goods

The Act expands the scope of excise duty to include several imported goods:

- **Electric transformers** at 25%
- **Printing ink** at 15%
- **Ceramic sinks and similar sanitary items** at 5% of customs value or KES 50 per kg
- **Float glass and surface ground or polished glass** at 35% of customs value or KES 200 per kg
- **Ceramic flags, hearth, or wall tiles** at 5% of 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%
- **Emulsion-styrene acrylic** at 20%

These changes are intended to protect local industries from foreign competition and generate additional revenue for the government. However, they may lead to increased costs for businesses that rely on these imported goods, potentially resulting in higher prices for consumers.

ix. Revised Rates for Excisable Goods

The Act revises the excise duty rates for several goods:

- **Imported sugar** (excluding sugar imported by registered manufacturers and raw sugar for processing) from KES 5 per kg to KES 7.5 per kg

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

- **Imported sugar confectionery** from KES 40.37 per kg to KES 85.82 per kg
- **Cigarettes with filters** from KES 3,825.99 per mille to KES 4,100 per mille
- **Cigarettes without filters** from KES 2,752.97 per mille to KES 4,100 per mille
- **Liquid nicotine for electronic cigarettes** from KES 70 per millilitre to KES 100 per millilitre
- **Products containing nicotine or nicotine substitutes** from KES 1,500 per kg to KES 2,000 per kg
- **Wines including fortified wines, and other alcoholic beverages obtained from fruit fermentation** from 243.43 per liter to KES 22.50 per centiliter of pure alcohol.
- **Beer, Cider, Perry, Mead, Opaque beer, and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%** from Kshs.142.44 per litre to KES 22.50 per centilitre of pure alcohol. *Provided that, those manufactured by licensed small independent brewers shall be subject to the rate of **KES 10 per centilitre of pure alcohol.***
- **Spirits of undenatured ethyl alcohol, spirits liqueurs, and other spiritous beverages of alcoholic strength exceeding 6%** from KES 356.42 per litre to KES10 per centilitre of pure alcohol.
- **Replacing the description of Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 charged at excise duty rate of 25%** with **Imported 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, 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** to be charged an excise duty rate of 25% or KES 75 per Kg. whichever is higher.
- Addition to the description of **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** which is charged excise duty of 25% the following description and corresponding rate **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** charged duty at the rate of **25% or KES 150 per Kg whichever is higher.**
- Deleting the item of description **Imported plates of plastic of tariff heading 3919.90.90, 3920.43.90, 3920.62.90 and 3921.19.90" and the corresponding rate of 25%** substituting therefor the following new description **Imported plates of plastic of tariff heading 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** with a duty rate of **25% or KES 200 per kg, whichever is higher.**
- Deleting the item of description **Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00" corresponding rate of 25%** and substituting therefor the following new item **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**

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

Community Partner States that meet the East African Community Rules of Origin at the duty rate of 25% or KES 150 per kg, whichever is higher.

- By deleting the description **Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared" and the corresponding rate of excise duty of 20%** removing them from the scope of excise duty.
- By deleting the item of tariff description **Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 4821.90.00 and the corresponding rate of 25%** and substituting therefor the following new description **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** at the duty rate of 25% or KES 200, whichever is higher.
- In the description of **imported eggs of tariff heading 04.07** by including a provision that excludes fertilized eggs for incubation imported by incubators from the excise duty rate of 25%

The increase in excise duty rates for various goods, such as imported sugar, sugar confectionery, cigarettes, liquid nicotine, and alcoholic beverages, although aimed at increasing government revenue and protecting the local industry, could also limit consumption of these goods due to higher prices as suppliers will seek to have the consumers bear the tax burden.

The changes in the classification and rates for imported plastic products is likely aimed to address environmental concerns by discouraging the use of single-use plastics and promoting recycling. This is also likely intended to support local industries by making imported alternatives more expensive.

Deletion of certain items from the scope of excise duty suggests a move to reduce the tax burden on specific essential goods. While the lower excise duty rate for small independent brewers, is designed to support small-scale businesses and encourage the growth of local industries.

x. Excise Duty on Alcoholic Products

The Act changes the method of levying excise duty on certain alcoholic products from a 'per liter' basis to a 'centiliter' basis. This adjustment aims to standardize the taxation method and potentially increase revenue from alcoholic beverages.

xi. Revised Rates for Excisable Services

The Act revises the excise duty rates for several services:

- **Betting and gaming** from 12.5% to 15% of the amount staked
- **Prize competition** from 12.5% to 15% of the amount paid or charged to participate
- **Lottery (excluding charitable lotteries)** from 12.5% to 15% of the amount charged to buy a lottery ticket

Additionally, the Act includes **advertisements** on the internet and social media for **alcoholic beverages, betting, gaming, lotteries**, and **prize competitions** within the excisable scope at a rate of 15%.

These changes are expected to increase the cost of these supplies, potentially reducing their consumption.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.

xii. Introduction of Excise Duty on Certain Plastics

By deleting the word “imported” from the tariff description for articles of plastic under headings 3923.30.00 and 3923.90.90, the introduction broadens the scope of excise duty to include both imported and locally produced plastic articles.

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, thereby promoting fair competition and potentially encouraging local production.

F. CHANGES TO THE MISCELLANEOUS FEES AND LEVIES ACT

i. Increased Railway Development Levy

The Act amends to Section 8 by increasing RDL from 1.5% to 2% of the customs value of goods imported for home use. This change is significant as it directly impacts importers by increasing the cost of bringing goods into the country.

The primary objective of this levy is to generate funds for the construction and operation of a standard gauge railway network, which is crucial for enhancing the efficiency of goods transportation within Kenya.

For importers, this increase translates to higher importation costs, which may subsequently be passed on to consumers through increased prices of imported goods.

ii. Exemption from payment of Import Declaration Fees

The Act extends the scope of the exemption 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.

The Act also introduces the exemption to goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation by the CS for Trade and Investment.

iii. Exemption from Railway Development Levy

The Act extends the scope of the exemption 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.

The Act also introduces the exemption to goods of Chapter 5407 and Chapter 6309 imported as raw materials for manufacture of textile products in Kenya upon recommendation by the CS.

iv. Update of Export and Investment Promotion Levy Scope

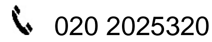
The Act updates and expands the range of goods subject to this levy, by introducing the following tariff number and description, and corresponding rates.

- Tariffs 4804.29.00 and 4804.39.00 - Sack kraft bleached at the rate of 10% customs value.

LET’S TALK

For further information on how the enacted tax provisions will affect your business or assistance on any other matter kindly contact your regular Taxwise Africa analyst or the contacts below.

Taxwise Africa Consulting LLP is an independent tax firm that offers tax advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation, or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.


020 2025320

Info@taxwiseconsulting.com

https://taxwiseconsulting.com/

Taxwise Africa Consulting LLP is an independent tax & legal firm that offers tax & legal consulting and advisory services. This publication is provided for general information and is intended to furnish users with general guidance on the tax matters discussed only. This information is therefore not intended to address the circumstances of any particular individual or entity nor is it intended to replace or serve as substitute for any advisory, tax or other professional advice, consultation or service. The authors and the publisher expressly disclaim all and any liability, responsibility to any person or entity in respect of any loss, damage or costs of any nature arising directly or indirectly from reliance placed on the material in this publication. Readers should consult professional tax advisors to determine if any information contained herein remains applicable to their facts and circumstances.