

SPECIAL ISSUE

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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2024

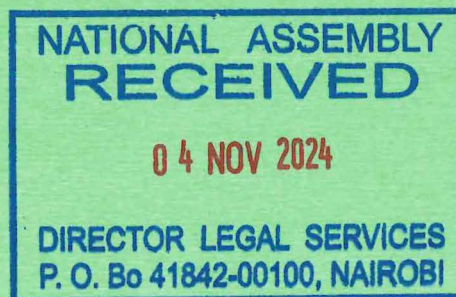
NAIROBI, 1st November, 2024

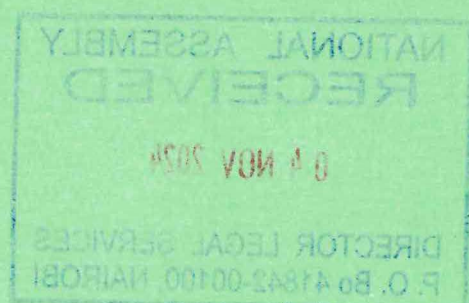
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**THE TAX PROCEDURES (AMENDMENT) (NO. 2)
BILL, 2024**

A Bill for

**AN ACT of Parliament to amend the Tax Procedures
Act; and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Tax Procedures (Amendment) (No. 2) Act, 2024. Short title.

2. Section 23A of the Tax Procedures Act, hereafter referred to as the “principal Act”, is amended by — Amendment of
section 23A of
Cap. 469B.

(a) inserting the following new subsection immediately after subsection (2)—

(2A) An electronic tax invoice issued under subsection (2) shall contain the following information—

- (a) the words “TAX INVOICE”;
- (b) the name, address and Personal Identification Number of the supplier;
- (c) the name, address and Personal Identification Number, if any, of the purchaser;
- (d) the serial number of the tax invoice;
- (e) the date and time which the tax invoice was issued and the date and time which the supply was made, if it is different from the date the tax invoice was issued;
- (f) the description of the supply including quantity of the goods or the type of services;
- (g) the details of any discount allowed at the time of supply;
- (h) the consideration for the supply;

- (i) the tax rate charged and total tax amount of tax charged; and
- (j) any other prescribed information.

(b) inserting the following new subsection immediately after subsection 3-

(3A) Without prejudice to subsection (3), where a supply is received from a small business or a small scale farmer, whose turnover does not exceed one million the purchaser shall issue a tax invoice for the purpose of ascertaining tax liability.

3. The principal Act is amended by deleting section 37E and substituting therefor the following new section—

Amendment of
section 37E of
Cap. 469B.

Commissioner
to refrain
from
recovering
interest,
penalties or
fines.

37E. (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest or fines on tax debt where a person shall have paid all the principal tax due before the 31st December, 2022.

(2) Where all the principal tax due shall not have been paid before the 31st December, 2022, the person from whom the tax is due shall apply to the Commissioner for an amnesty of interest, penalties or fines on the unpaid tax, and propose a payment plan for the outstanding amount.

(3) For the purposes of subsection (2)—

- (a) the amnesty shall be on interest, penalties or fines on the unpaid tax that have accrued up to the 31st December, 2022;
- (b) the amnesty shall only be granted once if the person—
 - (i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th June, 2025;

- (ii) does not incur a further tax debt; and
- (iii) gives a written undertaking for the settlement of all outstanding taxes that the person may owe.

(4) Despite subsection (2), where a person has paid part of the principal tax due as on the 31st December, 2022, and has been granted amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June, 2025, shall attract interest and penalties for which no amnesty shall be granted.

4. The principal Act is amended by inserting the following new section immediately after section 37E—

Relief because of doubt or difficulty in recovery of tax.

37F. (1) This section applies where the Commissioner determines that—

- (a) it may be impossible to recover an unpaid tax;
- (b) there is undue difficulty or expense in the recovery of an unpaid tax;
- (c) there is hardship or inequity in relation to the recovery of an unpaid tax; or
- (d) there is any other reason occasioning inability to recover an unpaid tax.

(2) Despite the provision of any tax law, the Commissioner may, with the prior written approval of the Cabinet Secretary, refrain from assessing or recovering an unpaid tax and the liability in relation to the tax shall be deemed to be extinguished or the tax shall be deemed to be abandoned or remitted, as the case may be.

(3) In any case referred to the Cabinet Secretary under subsection (1) and where

Insertion of new section to Cap 469B.

appropriate, the Cabinet Secretary may direct the Commissioner in writing—

- (a) to take such action as the Cabinet Secretary may deem fit; or
- (b) to obtain the directions of the court in relation to the case.

(4) The Commissioner shall, at least every four months, publish a notice in the Gazette, the names of the taxpayers, the relevant reasons under subsection (1) and the amount of taxes abandoned.

(5) A notice under subsection (4) of this section shall be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within twenty-one sitting days on which it next sits after the notice is so laid, that the notice—

- (a) be approved; or
- (b) be annulled and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

5. Section 42A of the principal Act is amended—

Amendment of
section 42A of
Cap. 469B.

- (a) in subsection (1), by deleting the proviso;
- (b) by deleting subsection (4C) and substituting therefor the following subsection—

(4C) A person who is required under this section to withhold tax and, without reasonable cause—

- (a) fails to withhold the whole amount of the tax which should have been withheld; or
- (b) fails to remit the amount of the withheld tax to the Commissioner by the fifth working day after the deduction was made,

shall be liable to a penalty of ten per cent of the amount not withheld or remitted.

6. Section 47 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment
of section 47
of Cap.
469B.

(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form—

(a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities including instalment taxes and input value added tax; or

(b) for a refund of the overpaid tax—

(i) in the case of income tax, within five years from the date on which the tax was overpaid; or

(ii) in the case of any other tax, within six months from the date on which the tax was overpaid.

7. Section 59A of the principal Act is amended—

Amendment
of section
59A of Cap.
469B.

(a) by inserting the following new subsection immediately after subsection (1) —

(1A) The Commissioner may, by notice in writing, require a person to integrate the electronic tax system authorised under section 75 to the system referred to in subsection (1) for the purposes of submission of electronic documents including detailed transactional data in the prescribed form.

(1B) A notice under subsection (1A) shall be for a reasonable period but not exceeding one year and depending on the nature of the business of that person.

(1C) The provisions of subsection (1A) shall only apply to a business whose turnover exceeds five million shillings.

- (b) by adding the following new subsections immediately after subsection (4)—

(5) A person who fails to comply with the notice given under subsection (1A) commits an offence and shall be liable, on conviction, to a penalty not exceeding five hundred thousand shillings for every month or part thereof that the failure continues.

(6) A person who fails to comply with the notice given under subsection (2) commits an offence and shall be liable, on conviction, to a penalty not exceeding five hundred thousand shillings for every month or part thereof that the failure continues.

8. Section of 77 of the principal Act is amended by:

Amendment
to section 77
to Cap 469B.

- (a) by renumbering the current provision as subsection (1);
- (b) by adding the following new subsection immediately after subsection (1)—

(2) In computing the period for the lodgement of an objection to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under section 53 or an appeal to the Court of Appeal under section 54, the computation shall not include Saturdays, Sundays or public holidays.

9. Section 83 of principal Act is amended—

Amendment
of section 83
of Cap.
469B.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

“Penalties for late submission and failure to submit returns.”

- (b) by inserting the following new subsection immediately after subsection (1)—

(1A) An export processing zone enterprise that fails to submit a return as required under paragraph 4 of the Eleventh Schedule to the Income Tax Act shall be liable to a penalty of twenty thousand

shillings per month for each month or part thereof that the failure continues.

10. The First Schedule to the principal Act is amended by inserting the following new paragraph immediately after paragraph 15 —

Amendment
of the First
Schedule to
Cap. 469B.

- (16) Registration of an employee working remotely outside Kenya for an employer in Kenya, excluding an employee outside Kenya working for the national carrier.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to amend the Tax Procedures Act.

Clause 1 of the Bill provides for the short title of the Act.

Clause 2 of the Bill proposes to amend Section 23A of the Tax Procedures Act to prescribe information that must be contained in an electronic tax invoice to clarify the contents of an electronic invoice in order to prevent disputes since tax laws are interpreted strictly and not based on intent. The clarity will also guide the taxpayers on the contents of a valid electronic tax invoice.

Clause 3 of the Bill proposes to amend section 37E of the Tax Procedures Act to extend the tax amnesty programme from 30th June 2024 to 30th June 2025. The extension of the programme was necessitated by the Court of Appeal decision on the Finance Act, 2023.

Clause 4 of the Bill also proposes to insert a new section 37F to the principal Act to provide for relief because of doubt or difficulty in recovery of tax (tax abandonment). The clause seeks to provide a legal framework for relief where there is doubt or difficulty in recovery of tax (tax abandonment) that make it impossible to collect tax revenue.

Clause 5 of the Bill proposes to amend section 42A of the principal Act by deleting the proviso to subsection (1) and inserting a new subsection (4C) to prescribe a penalty of 10% for persons who fail to withhold and remit tax.

Clause 6 of the Bill proposes to amend section 47 of the principal Act to provide timelines for application for offset of overpaid tax. For income tax, within five years and for any other tax, within six months.

Clause 7 of the Bill proposes to amend section 59A of the principal Act to provide for integration of electronic tax system with iTax for purposes of submission of electronic documents and facilitate uptake and deployment of technology to facilitate cost effective revenue collection. The integration of the systems will also facilitate the transmission of electronic documents for tax purposes thus minimizing human interaction and enhancing revenue mobilisation.

Clause 8 of the Bill proposes to amend section 77 of the principal Act to provide that in the computation of the period for lodgement of objections to the Commissioner under section 51, appeals to Tax Appeals Tribunal under section 52, appeals to the High Court under section 53 and appeals to the Court of Appeal under section 54, the computation of time shall not include Saturday, Sunday or a public holiday.

Clause 9 of the Bill proposes to amend section 83 of the principal Act to provide for a penalty of twenty thousand shillings per month for an export processing zone enterprise that fails to submit required returns.

Clause 10 of the Bill proposes the amendment of First Schedule to the principal Act to require for registration of an employee working remotely outside Kenya for an employer in Kenya, excluding an employee outside Kenya working for the national carrier.

Dated the 23rd October, 2024.

KIMANI ICHUNG'WAH,
Leader of Majority.

*Section 23A of Cap .469B which it is proposed to amend-***23A. Electronic tax invoices**

(1) The Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept for the purposes of this Act.

(2) A person who carries on business shall —(a) issue an electronic tax invoice through the system established under subsection (1); and (b) maintain a record of stocks in the system established under subsection (1).

(3) Where an electronic tax invoice required to ascertain tax liability is issued by a resident person or the permanent establishment of a non-resident person, that invoice shall be generated through the system established under subsection (1).

(4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments. (5) The Commissioner may, by notice in the *Gazette*, exempt a person from the requirements of this section.

*Section 37E of Cap .469B which it is proposed to amend-***37E. Commissioner to refrain from recovering interest, penalties or fines.**

(1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest on tax debt where a person had paid all the principal tax due before the 31st December, 2022.

(2) Where all the principal tax due had not been paid before the 31st December, 2022, a person shall apply to the Commissioner for an amnesty of interest or penalties on the unpaid tax, and propose a payment plan for the outstanding amount.

(3) For the purposes of subsection (2) —

(a) the amnesty shall be on interest or penalties on the unpaid tax that have accrued up to the 31st December, 2022;

(b) the amnesty shall only be granted once if the person —

- (i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th June 2024;
- (ii) does not incur a further tax debt; and
- (iii) signs a commitment letter for the settlement of all outstanding taxes that the person may owe.

(4) Despite subsection (2), any amount of principal tax as at 31st December, 2022 that remains unpaid on the 30th June, 2024, shall attract interest and penalties for which no amnesty shall be granted under this section.

(5) Despite subsection (1) the Commissioner shall not remit, in whole or in part, any penalty or interest payable by a person, imposed under section 85

Section 42A of Cap. 469B which it is intended to amend—

42A. Appointment of Value Added Tax withholding agent

(1) The Commissioner may appoint a person to withhold two per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner:

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the 1st July, 2022 is at least three billion.

(4C) A person who is required under this section to withhold tax commits an offence if the person—

- (a) fails to withhold the whole amount of the tax which should have been withheld; or
- (b) fails to remit the amount of the withheld tax to the Commissioner by the fifth working day after the deduction was made.

Section 47 of Cap. 469B which it is intended to amend—

47. Offset or refund of overpaid tax

(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form—

- (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities; or
- (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid.

Section 59A of Cap.469B which it is intended to amend-

59A. Data management and reporting system.

(1)The Commissioner may establish a data management and reporting system for the submission of electronic documents including

detailed transactional data relating to those documents.(2)The Commissioner shall notify in writing the persons required to submit electronic documents through the system established under subsection (1).(3)The electronic documents referred to in subsection (2) include electronic invoice returns —(a)of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;(b)for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;(c)for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;(d)for periodical or lump sum payments in respect of a royalty; or(e)for such other commercial or financial transaction as may be designated by the Commissioner.(4)For the purposes of this section —(a)“transactional data” includes —(i)the names and addresses of each person to whom a payment was made;(ii)where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;(iii)where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and(iv)such other particulars as the Commissioner may specify;(b)references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and(c)references to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

Section 77 of Cap. 469B which it is proposed to amend-

77. Due date for submission and payment

If the date for —

- (a) submitting or lodging a tax return, application, notice, or other document;
- (b) the payment of a tax; or
- (c) taking any other action under a tax law,

falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day:

Provided that where a person who submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.

Section 83 of Cap.469B which it is proposed to amend—

83. Late submission penalty

(1) A person who submits a tax return after the due date shall be liable to a penalty—(a) of twenty five percent of the tax due or ten thousand shillings whichever is higher, if it is in relation to a return required to be submitted on account of employment income; (b) one thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or (c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty; (d) in any other case—(i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or (ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual: Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits. (2) A person who fails to submit a document, other than a tax return, as required under a tax law by the due date shall be liable to a penalty of one thousand shillings for each day or part day of default but the total penalty shall not exceed fifty thousand shillings. (3) For the purposes of subsection (2), a person ceases to be in default at the time the document is received by the Commissioner.

First Schedule to Cap.469B it is proposed to amend—

FIRST SCHEDULE [s. 12]

TRANSACTIONS FOR WHICH A PIN IS REQUIRED

- (1) Registration of titles and stamping of instruments.
- (2) Approval of development plans and payment of water deposits.
- (3) Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles.
- (4) Registration of business names.
- (5) Registration of companies.
- (6) Underwriting of insurance policies.

- (7) Trade licensing.
- (8) Importation of goods and customs clearing and forwarding.
- (9) Payment of deposits for power connections.
- (10) All contracts for the supply of goods and services to Government Ministries and public bodies.
- (11) Opening accounts with financial institutions and investment banks.
- (12) Registration and renewal of membership by professional bodies and other licensing agencies.
- (13) Registration of mobile cellular pay bill and till numbers by telecommunication operators.
- (14) Carrying out business over the internet or an electronic network including through a digital marketplace.
- (15) Registration of a trust.