



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

EXPLAINER OF THE PROPOSED TAX LAWS (AMENDMENT) BILL, 2024; THE TAX PROCEDURES (AMENDMENT) BILL, 2024; AND THE PUBLIC FINANCE (AMENDMENT) BILLS

PURSUANT to Article 174 and Article 232 of the Constitution, the National Treasury on 17th September 2024 invited the public to submit their views and proposals on:

1. Legislative measures to facilitate funding of County Governments in case the Division of Revenue Bill and the County Allocation of Revenue Bill are not enacted by 30th June so as to prevent cash crisis that could arise and affect delivery of services by County Governments;
2. Legislative and administrative reforms to improve social and economic well-being of all Kenyans taking into account the current debt situation and the need for a sustainable public debt position without putting more burden on Kenyans;
3. Legislation to ensure equity and fairness in taxation, provide tax amnesty where justified and rationalize tax expenditures that erode revenue that would otherwise be used for implementation of projects that improve the welfare of all Kenyans; and
4. Reforms to enhance tax administration and compliance to ensure each taxpayer pay the rightful share of tax through reducing tax evasion and avoidance.

In response to the Public Notice, 35 submissions were received from the members of the public, non-governmental organizations, civil societies, professional bodies, private sector players, religious groups and other stakeholders.

ADDITIONALLY, in order to spur economic growth and to bridge the fiscal deficit through enhanced collection of revenue, the National Treasury has considered these legislative proposals.

The review of the proposals has culminated in the development of the: Tax Laws (Amendment) Bill, 2024; Tax Procedures (Amendment) Bill, 2024; Public Finance Management (Amendment) (No.3) Bill, 2024; and Public Finance Management (Amendment) (No.4) Bill, 2024;

The National Treasury has also initiated several policy changes in response to the submission received to facilitate smooth funding of County Governments in case of delayed finalization of the Division of Revenue Bill and the County Allocation of Revenue as well as policies to improve social and economic well-being of all Kenyans considering the current debt situation and the need for a sustainable public debt position without putting more burden on Kenyans.

NOW THEREFORE, and to achieve the above objectives, the National Treasury gives notice of its intention to roll out policies outlined hereunder and to submit the Bills listed below to the National Assembly for publication and consideration:

DRAFT THE TAX LAWS (AMENDMENT) BILL, 2024

The Tax Laws (Amendment) Bill, 2024 consolidates tax proposals to amend the following laws:

The Income Tax Act (Cap.470)

Definition of digital marketplace.

The Bill seeks to amend section 3 of the Income Tax in the definition of the term “digital marketplace” by including “ride-hailing services” “food delivery services” “freelance services” “professional services” etc. This definition is relevant for taxation of income accruing from business carried out over the internet or an electronic network including through the digital marketplace. This proposal is to expand the tax base by bringing the income of the owners of the digital platforms that offer the above services into the tax net.

Definition of terms

The Bill proposes the review of the definitions of the terms; royalty, donation, public entity, registered individual retirement fund, registered pension fund, and registered provident fund.

Income from employment

The Bill seeks to amend section 5 of the Income Tax Act to enhance benefits by employers to employee not subject to tax. This proposal is intended to enhance the benefits of meals (from forty-eight thousand to sixty thousand), non-cash (from thirty-six thousand to sixty thousand) and gratuity and similar payments that are exempt from tax (from two hundred and forty thousand to three hundred and sixty thousand).

Significant Economic Presence Tax

The Bill proposes to introduce a new tax to be known as Significant Economic Presence Tax. This tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the digital marketplace. The proposed amendment is intended to replace Digital Service Tax with Significant Economic Presence to provide for taxation at the effective rate of 6% as opposed to 1.5% under Digital Service Tax. This will align the taxation of digital services with international best practice.

Minimum Top-up Tax

Additionally, the Bill seeks to introduce a tax to be known as the minimum top-up tax. The tax is to provide for the Minimum Top-Up Tax to align the Kenya taxation of multinationals with the global best practice that prevent tax base erosion by providing that these companies pay a minimum effective tax rate of 15%. This is an additional tax that will be payable in Kenya by a Multi-National Enterprise which has an effective tax rate less than 15%. The Multi-National Enterprise must have a consolidated annual turnover of 100 billion shillings.

Deduction allowed in ascertainment of income

The Bill proposes to amend the Income Tax Act to provide that the following amounts shall be allowable deductions in the computation of taxable income of individuals; contributions to the Social Health Insurance Fund; the amount deducted in accordance with affordable Housing and contributions to a post-retirement medical fund up to fifteen thousand shillings (15,000). These amendments will boost disposable income and enhance the employees’ take-home pay.

Deductions in respect of contributions to registered pension or provident funds

The Bill proposes to amend the Income Tax Act to increase the amount deductible in respect of contributions to registered pension or provident funds from taxable income of an individual and also contribution by the employer from Ksh 240,000 to Ksh 360,000 per year and Ksh 20,000 to Ksh 30,000 per month.

Deductions in respect of registered individual retirement funds

The Bill intends to amend the Income Tax Act to increase the amount deductible in respect of contributions to registered individual retirement funds or public pension schemes from taxable income of an individual and also contribution by the employer from Ksh 240,000 to Ksh 360,000 per year and Ksh 20,000 to Ksh 30,000 per month.

Repeal of Affordable housing relief

The Bill proposes to repeal the Affordable Housing Relief in view of the same being made an allowable deduction in section 15.

Insurance relief: harmonization with the Social Health Insurance Act

The Bill proposes to amend section 31 of the Income Tax Act to harmonize the Act with the enactment of the Social Health Insurance Act, 2023 by deleting any reference to the National Hospital Insurance Fund.

Deduction of tax from certain income

The Bill seeks to amend section 35 to require withholding of income tax during the payments for the supply of goods to a public entity by a non-resident person at 5% and by a resident person at 0.5%; and with regards to making or facilitating payment on a digital marketplace by a non-resident person at 20% and by a resident person at 5%. Notably, the rates of withholding tax payable by residents is minimal enough to ensure effective tax administration.

Income which is exempt from tax

The Bill if enacted will amend the First Schedule to the Income Tax to exempt pension payments including gratuity and other payments from a registered pension fund, registered provident fund, public pension scheme or National Social Security Fund from income tax and further remove the exemption of the income of the National Housing Development Fund. The exemption from tax is intended to also apply to withdrawals from the funds prior to attaining retirement age due to ill health or after attaining twenty years from the date of registration as a member of the fund.

It also proposes to review paragraph 60 so as to introduce taxation of interest income from infrastructure bonds at the rate of 5%. This will apply to the bonds that will be issued from the date this provision become operational.

Additionally, paragraph 71 is also proposed to be reviewed to exempt non-resident contractors, sub-contractors, consultants or employees involved in the implementation of a project financed through a one hundred per cent grant from income tax.

Taxation of Export Processing Zone Enterprises

The Bill amends the Eleventh Schedule to the Income Tax Act to remove the penalty for failure by EPZ enterprises to submit a return since the penalty is being provided for under the Tax Procedures Act.

Time of supply of goods and services

The Bill amends section 12 of the Value Added Tax Act to provide that the time of supply in the case of exported goods shall be at the time when the certificate of export or such other equivalent export document is issued by customs. This is to ensure that only valid exports benefit from VAT refunds.

Credit for input tax against output tax

The Bill proposes to amend section 17 of the Value Added Tax Act to remove the threshold for applying VAT apportionment formula which allows taxpayer who make 90% of zero-rated supply to claim 100% input VAT. This amendment is to prevent abuse of the formula.

Application of East African Community Customs Management Act, 2004 to VAT

The Bill proposes that section 65 of the Value Added Tax Act be amended to expand the application of the East African Customs and Management Act for VAT purpose to exported goods.

Tax Expenditure

To mitigate the loss of revenue through unnecessary tax expenditure the Bill proposes to reclassify some goods and services as either taxable, exempt or zero rated.

The Bill proposes to reclassify from exempt status to taxable: Direction-finding compasses, instruments and appliances for aircraft; Helicopters; Specially designed locally assembled motor vehicles for transportation of tourists; 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; Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector(Para Supply of gas meters; Betting gaming and lottery services; Hiring leasing and chattering of aircraft excluding Helicopters. Air ticketing services supplied by travel agents; entry fees into the National Parks and services of tour operators

Further, the Bill has also proposed to reclassify the following items from zero rated to exempt: All inputs and raw materials for manufacturers of agricultural pest control products; Agricultural pest control products; Fertilizers of chapter 31 and Inputs or raw materials for manufacturers of fertilizer. The reclassification is meant to ensure that manufacturers and farmers get affordable raw materials and inputs while at the same time safeguarding revenue erosion through abuse of tax refund processes.

Imposition of excise duty

The Bill amends section 5 of the Excise Duty Act to provide those excisable services offered in Kenya by a non-resident through a digital platform shall be subject to excise duty and that it shall be paid by the non-resident person offering the service.

Goods and services not liable to excise duty

The Bill amends section 7 of the Excise Duty Act to provide for remission of excise duty on spirits made from sorghum, millet or cassava or any other agricultural products (excluding barley) grown in Kenya to support our farmers that grow this produce.

Payment of excise duty

The Bill amends section 36 with regards to payment of excise duty. It is proposed to increase the period for payment of excise duty relating to alcoholic beverages from 24 hours to the fifth day of the following month. This is to ensure ease in administration of the tax for alcoholic beverages and minimize cash flow challenges.

Rates of Excise Duty

The Bill also makes the following amendments: increase in the rate of excise duty for imported sugar confectionary to Shs. 85.82 per kg; restructure in the rate of excise duty for wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits from Shs. 243.43 per litre to Shs. 22.50 per centilitre of pure alcohol; restructure taxation of alcoholic beverages by reviewing the excise duty rate from Shs. 142.44 per litre to Shs. 22.50 per centilitre of pure alcohol for Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%;

Additionally, it proposes to impose excise on: Electric transformers and parts at 25%; Imported ink at 15% imported ceramic sinks, washbasins etc. at 35%; Imported float glass and surface ground or polished glass at 35%; Imported ceramic flags and pavings at 35%.

Additionally, it is proposed to revise the excise duty on excisable services such as: telephone and internet data services at 20%; and betting, gaming, price competitions and lotteries at 15%.

Railway Development Levy

Under the Miscellaneous Fees and Levies Act, the Bill has proposed to increase the Railway Development Levy from 1.5% to 2.5%.

The Draft Tax Procedures (Amendment) Bill, 2024

Electronic tax invoices

The Bill proposes to amend section 23 A of the Tax Procedures Act to outline the information that should be included in an electronic tax invoice including the name of the supplier, the PIN, the serial number, the date and time the invoice is issued etc. This amendment is to remove ambiguity on the contents of an electronic tax invoice.

Commissioner to refrain from recovering interest, penalties or fines.

The Bill proposes to re-enact section 37E of the Tax Procedures Act relating to extension of the tax amnesty until June, 2025. This amendment will allow more taxpayers to fulfil their tax obligations without suffering interest and penalties.

Relief in the case of difficulty or doubt in recovery of tax.

The Bill proposes to re-enact section 37F of the Tax Procedures Act to restore the provisions that allowed Kenyans to get relief in the case of difficulty or doubt in recovery of tax. This amendment will assist taxpayers to get out of difficult tax compliance situations.

Appointment of Value Added Tax withholding agent

The Bill amends section 42A of the Tax Procedures Act to establish the offence where a withholding tax agent fails to withhold tax or fails to remit tax and sets a penalty of 10% of the amount not withheld or remitted.

Offset or refund of overpaid tax

The Bill amends section 47 of the Tax Procedures Act provide that the taxpayer who has overpaid a tax may apply to the Commissioner to offset the overpaid tax against the taxpayer's tax debt or for refund of the overpaid tax. This provision is beneficial to taxpayers to ensure that they can get relief where they have an overpayment of taxes.

Data management and reporting system.

The Bill amends section 59A of the Tax Procedures 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 mobilization.

Due date for submission and payment

The Bill seeks to amend section 77 of the Tax Procedures Act to provide that in computing the period for lodging of an objection or an appeal, the computation shall not include weekends and public holidays.

Late submission penalty

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

Transactions for which a PIN is Required

The Bill seeks to amend the First Schedule to the Tax Procedures Act, which provides for transactions that require a PIN to include registration of an employee working remotely outside Kenya for an employee in Kenya.

The Draft Public Finance Management (Amendment) (No.3) Bill, 2024

Funding of Transferred Functions

The Public Finance Management (Amendment) (No.3) Bill, 2024 seeks to provide for financial management in the case of transfer of functions. The Bill contains provisions relating to funding of transferred functions in accordance with section 24 to 28 of the Intergovernmental Relations Act. It provides a framework under which functions that have already been transferred shall continue to be funded from the existing budgets.

Funding of Counties in case the Division of Revenue Bill and the County Allocation of Revenue Bill are not enacted in time

The National Treasury sought legal advice from the Attorney General on measures to facilitate County Governments in case of a delay in the approval of the Division of Revenue Bill and the County Allocation of Revenue Bill are not enacted by 30th June so as to prevent cash crisis that could arise and affect the welfare of Kenyans.

The Attorney General has advised that the National Treasury can allocate County Governments up to 50% of the approved allocation in the immediately preceding financial year as the Bills await enactment. This will avert the recurrent cash crises experienced by the County Governments, hence there is no need for legislative amendment.

Social and economic well-being of all Kenyans and easing the national debt burden

The National Treasury is considering realignment of the budget with a view to eliminating non-essential spending in order to contain the accumulation of public debt so as to ensure sustainable debt position. In these regard, the following policy measures are at various stages of implementation: rolling out of unified payroll management system; rolling out of e-procurement; and alternative sources of funding for public projects to ease the pressure on the exchequer such as the Public Private Partnerships.

The Draft Public Finance Management (Amendment) (No.4) Bill, 2024

National Government guaranteeing and borrowing

The Public Finance Management (Amendment) (No.4) Bill, 2024 is intended to amend section 50 of the Act, which provides for the obligations and restrictions on national government guaranteeing and borrowing.

It is intended to clarify or specify (to remove ambiguity in the law) that the effective date for the debt threshold is five years from the date of commencement of section 50.

Implementation of accrual accounting.

Secondly, the Bill obligates the implementation of accrual accounting in Government and risk management by the Public Sector Accounting Standards Board.