

WELCOME
FINANCE BILL 2024.
LOOKING FORWARD.



MTRS AND NATIONAL TAX POLICY.

The MTRS will be developed two times to cover vision 2030, these being 2023-2027 and 2027-2030

IMF estimates potential of tax revenue o GDP to be 25% as of 22/23 it was 11.5%.

Gov't seeks to increase the current Tax to GDP from the current 13.5% to 20%

Raise compliance from 70% to 90%

Align tax policy with Gov't policies.

MRTS	Recommendations already worked on FIN Bill 2024	What to expect
Income Tax	Re-introduction of minimum Tax (Minimum Top Up Tax)	Reduction of CIT to 25%
	Review of exemptions; (To expand the tax base) a. Trust, Charitable organisation.	Alignment of tax bands, so that the highest rate is equivalent to the CIT rate of 25%
	Repeal of preferential tax rates. Removal of reduced income tax rate of 15% to developer constructing more than 100 units per year as effected 1 st July 2017 and aimed to align it's self with the government big 4 agenda	Alignment of Non-residents WHT rate with the CIT rate.
	Withdrawals from pension schemes now available before retirement due to a. Ill health b. After the lapse of 20 yrs from the date of registration into the scheme	Review the residential rental income tax
	Review of tax reliefs, a. Shift from reliefs to deductions on employment income	
	Personal income review. Translates to higher bands for sole traders and businesses registered in one's name.	

MRTS	Recommendations already worked on FIN Bill 2024	What to expect
VAT	<p>Review of VAT threshold, we've already seen this. 5M – 8M.</p> <p>Increased from 3M to 5M in 2007</p>	<p>Review of VAT Rate (tax Policy and VAT act state CS can amend this at the rage of 25%, prior with the approval of the parliament, same thing with the revocation).</p> <p>The National Tax policy advices of this too.</p>
	<p>Introduction of VAT on some certain sectors of the economy, these being.</p> <ul style="list-style-type: none"> a. VAT on insurance services b. WHTVAT – Compulsory including the zero supplies. 	<p>Introduction of VAT on education services.</p>
	<p>Removal of input VAT apportionment formula.</p>	
	<p>Introduction of VAT on insurance services. This is now the case.</p>	

MRTS	Recommendations already worked on FIN Bill 2024	What to expect
Excise Duty	Introduction of excise on coal being 5% of the value or KES. 27,000/MT, whichever is higher.	
	Standardise the rates – Doesn't necessarily mean increasing the rates – Can be 15% and not uniformly at 20%.	Review of Excise on petroleum Products.
	Review excise tax for alcoholic beverages to base tax on alcohol content alcoholic content	Review excise tax for non-alcoholic beverages to base tax on sugar content alcoholic content. Currently base on sugar content

MRTS	Recommendations already worked on FIN Bill 2024	What to expect
Custom Duty	Taking cognizance that EAC Common External Tariff that provides common duty rates across the region.	Harmonisation of the custom rates from the current 0,10,25 and 30 to be two common duty one at 0% on raw materials and others to be within the rage of 15-20%
	Review excise duty on betting and gaming- Offered by non-residents through a digital platform. Increase in the betting excise from 12.5 to 20%. Moved from exempt to standard Rated.	Review of excise on motor vehicle powered by fossil fuel

MRTS	Recommendations already worked on FIN Bill 2024	What to expect
Other Tax Measures	Carbon Tax a. Review of tax rates on electric vehicles – There seems to be an error on this with the current reviews as the excise duty on e-mobility space has been reviewed upwards – Electric Motor cycles	Increase in excise tax on MV that use fossil fuel.
	a. Tax incentives – World Bank 2015 conducted a research that concluded that these incentives did not achieve their objectives.	
	a. Introduction of eco – levy	

MRTS	Recommendations already worked on FIN Bill 2024	What to expect
Hard to tax sectors	<p>To address the hard to tax sector, the government intends to .</p> <ol style="list-style-type: none"> 1. Amend data protection to give KRA access to information. 	<p>To address the hard to tax sector, the government will.</p> <ol style="list-style-type: none"> 1. Exploring the possibility of taxing the players through their co-operative societies and associations
	<ol style="list-style-type: none"> 1. Leverage use of mobile application or USSD codes to simplify tax payment and filling returns 	<ol style="list-style-type: none"> 1. Introduction of presumptive tax/location tax
	<ol style="list-style-type: none"> 1. Use of custom data to trace micro and SMEs who deal with imported merchandise through breaking of bulk of consolidated consignments 	<ol style="list-style-type: none"> 1. Introduce a creditable WHT VAT on imports



REMOVAL OF MINIMUM THRESHOLD FOR WITHHOLDING TAX ON RESIDENTS

Note that the definition of M&P fee include any payment made to any person, other than a payment made to an employee by his employer, as **consideration for any**

1. **managerial,**
2. **technical,**
3. **agency,**
4. **contractual,**
5. **professional or consultancy services** however calculated.



REVIEW UPWARDS OF THRESHOLDS ALLOWABLE FOR DEDUCTION

- Per diem from 2K to 5% of employee salary or the policy of employer
- Pension contribution from 20K pm – 30k pm
- Non cash benefits 36k p.a – 48K p.a
- Meals provided by employer 48K – 60K p.a (KRA Notice)
- Interest from approved financial institutions from 300k pa – 360K p.a
- Contributions to post retirement schemes from the 15% or 60K pa to 10K pm. Now a deduction and not a relief
- Withdrawal from pension scheme upon retirement as per the scheme rules or
- Retires due to ill health
- Withdrawals after 20 years of being in the pension scheme.



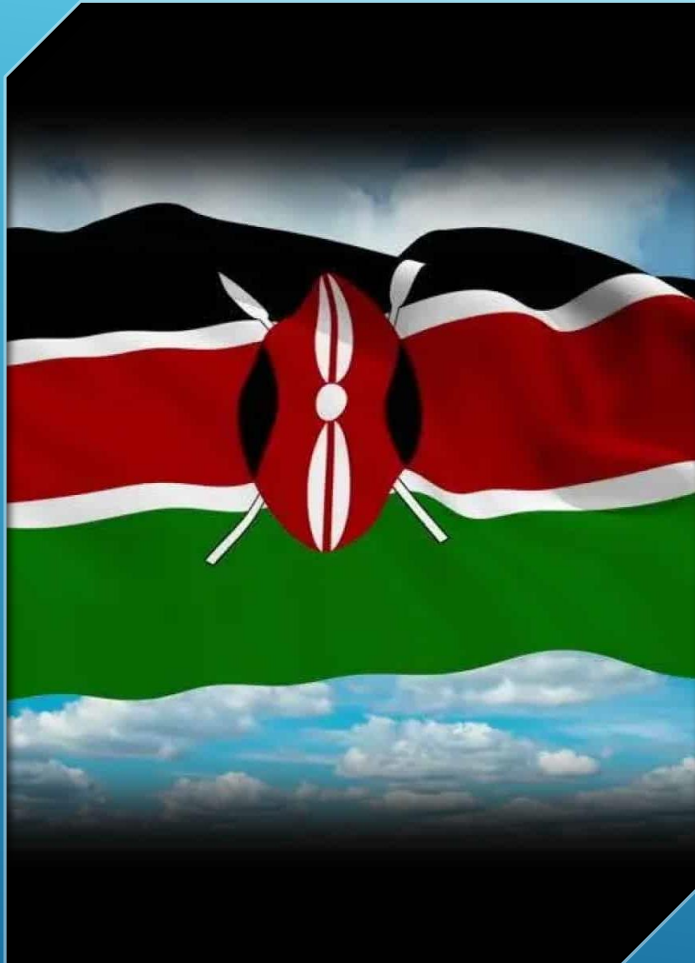
CLAIM OF INPUT VAT

To be done in 6 months, reduced from the current 24 Mnths

The bill has also limited as to claiming input vat arising from Withholding VAT and supplies to official aid funded projects as approved by the respective CS.

Scope of Withholding VAT has been increased to include supplies that are zero rated and Manufacturers with investment Value of ksh 3Billion, 3 years from 1st July 2022

Provision of ability to offset instead of claiming actual refund.



WHT TAX ON SUPPLIES TO GOV'T BODIES

3 % for locals

5% for non-residents

Hopefully, this stops the mandatory withholding of vat on invoices that do not have VAT component on them.

Income received by a person from a public entity for the supply of goods shall be deemed to be the income of the person for the year of income in which the payment is received- This moves away from the accrual concept which is the backbone of the ITA.



ADVANCE PRICING AGREEMENTS

Private Rulings – Allow for shared interpretation of a tax law.

Advance Pricing Agreement - an advanced price for goods or services. Introduced in section 18G of ITA

Validity of 5 years

Misrepresentation of facts allows the commissioner to withdraw the agreement.

Applicable to related party and a transaction with a party in a preferential tax regime



APA CONT...

PREFERENTIAL TAX REGIME

For the case of Kenya, any legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base

A foreign jurisdiction which—

- (i) Does not tax income;
- (ii) Taxes income at a rate that is less than twenty per cent;
- (iii) Does not have a framework for the exchange of information;
- (iv) Does not allow access to banking information; or
- (v) Lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory on supervision

TYPES OF APAs

Unilateral APAs

Bilateral APAs

Multilateral APAs



PROs OF APAs

1. Improved relationship between taxpayer and Revenue Authority.
2. Reduced compliance costs – Drafting of policy documents is expensive.
3. Reduce and eliminate the risk of double taxation.
4. Reduced risk of T.P audits and Disputes.
5. Tax certainty.



FACTORS THAT CAN MAKE AN APA TO BE REJECTED

1. The transactions are routine
2. The transactions to be covered by the APA represent a small portion of the countrys entity's overall cross-border transactions.
3. The transactions which are the subject of the APA appear to be part of a scheme or arrangement, the purpose of which or one of the purposes of which is the avoidance of tax.
4. The taxpayer is involved with the particular case with the courts or tribunal
5. Where the APA request is rejected by the relevant double tax treaty partner, Revenue will also reject the request as a bilateral agreement will not be possible

WHERE APA MAY BE APPROPRIATE TO REQUEST FOR.

1. Significant doubt over the transfer pricing methodology to be used in applying the arm's length principle
2. There is a high likelihood of double taxation arising if there is no APA in place, e.g. the same transaction(s) has already been subject to MAP in respect of an earlier year. (De laru
3. Taxpayer is applying a bespoke transfer pricing methodology to the transaction(s).
4. Application of transfer pricing methodology is complex and/or requires complex calculations, e.g. certain profit split calculations.
5. Reliable comparables are not readily available and/or significant and complex adjustments are required to the comparables.
6. The transactions which are to be covered by the APA have already been entered into or are about to be entered into (i.e. are not hypothetical) and are not expected to change throughout the APA period (**Roll Back provision**)



WITHHOLDING TAX ON DIGITAL MARKET PLACE PAYMENTS

Owners of these platform to withhold 5% and 15% for residents and non-residents for any payment made.

- The implies the following parties will be affected.
 - Ride-hailing services
 - Food delivery services
 - Freelancing services
 - Professional services
 - Rental services
 - Task based services



MOTOR VEHICLE TAX

Calculated at 2.5% value of the car

Point of tax is at the point of issuance of the cover. Aligns with the underlying principle of accrual on WHT

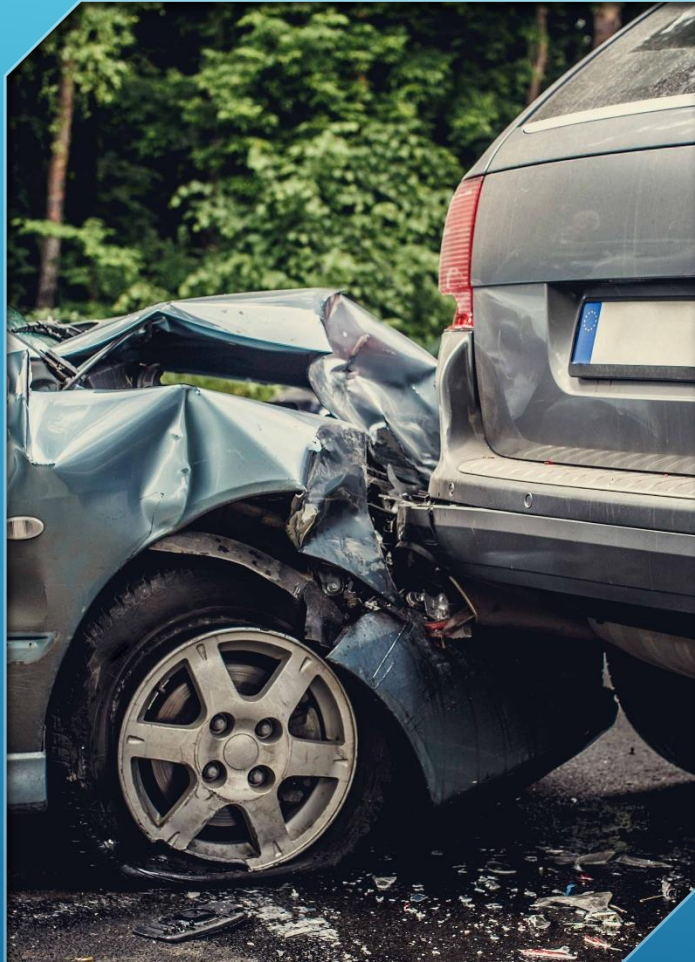
Excludes;

1. Ambulances
2. Govt owned vehicles
3. Govt security agencies

APPROVAL FOR YEAR END CHANGE

Where an application is made to change the accounting period and the commissioner fails to respond within 6 months, then the application will be deemed allowed.

Sec 27 ITA provides that application should be made least six months before the date to which the accounts are intended to be made up



VAT EXEMPTIONS ON INSURANCE SECTOR

AKI vs Commisioner on PAYEE on insurance agents

AKI Vs Commissioner on VAT on agency fees

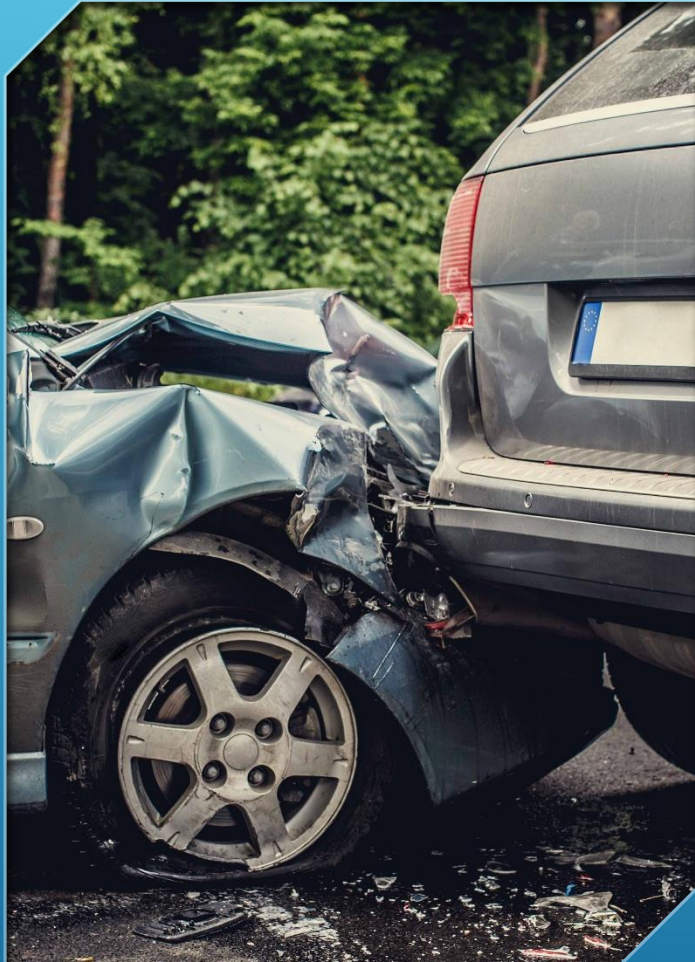
~~2. Insurance and reinsurance services excluding the following—~~

~~(a) management and related insurance consultancy services;~~

~~(b) actuarial services; and~~

~~(c) services of insurance assessors and loss adjusters.~~

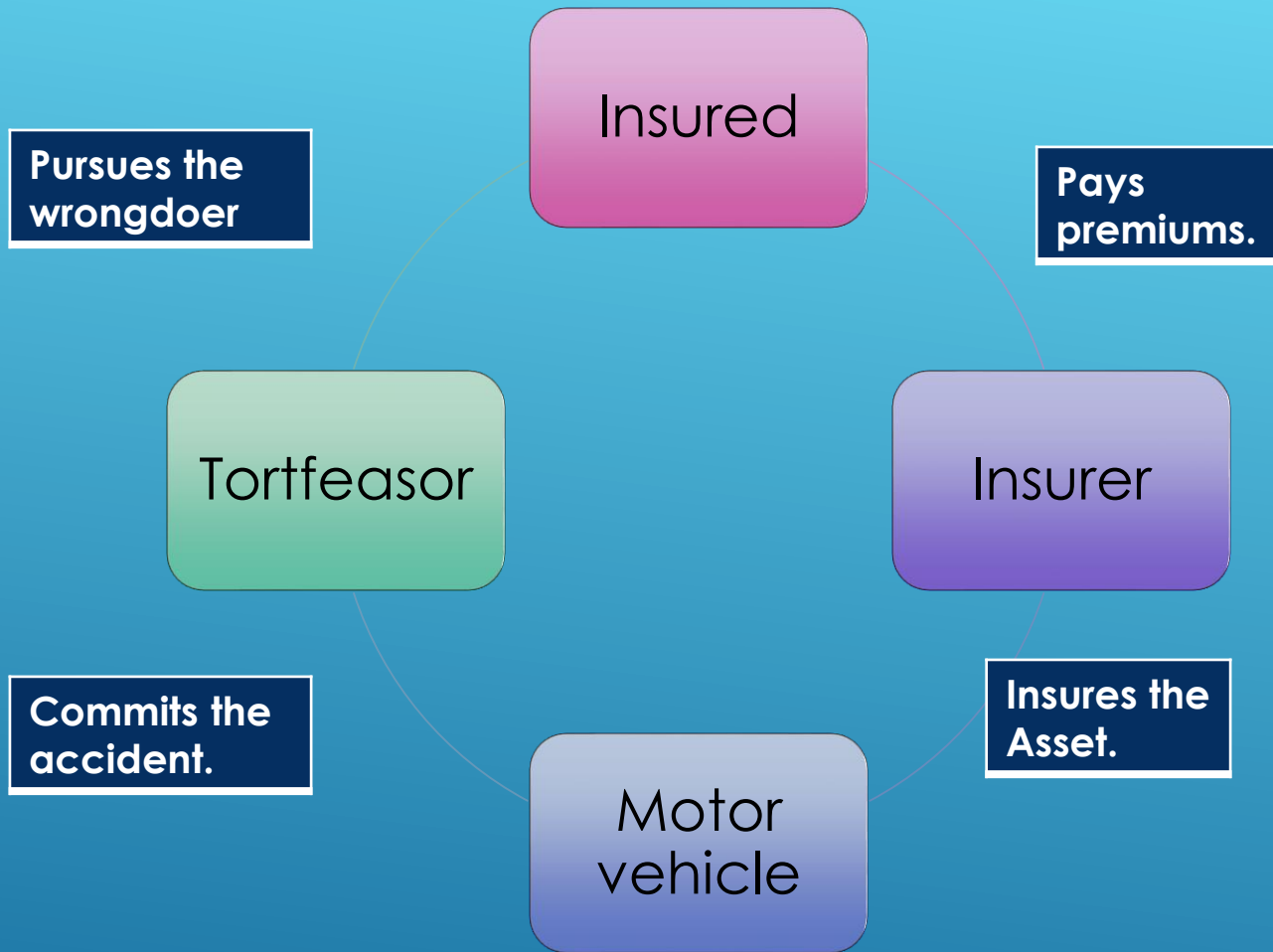
2. Insurance and reinsurance premium



VAT ON INSURANCE CONT...

Principle of indemnity ; an insurance contract compensates you for any damage, loss or injury caused only to the extent of the loss incurred. Insurance contract ensures that the insurer does not make a profit in the event of an incurred loss.

Principal of subrogation ; Enables the insurer to take over the policyholder's legal right to recover damages.



Ambiguity in tax laws

Who gets to retain the ownership

is there legal transfer

How is compensation from the tortfeasor treated



EXCISE DUTY

Introduction of excise duty payable by residents and non-residents for excisable services offered through a digital market place. (adverts of harmful products)
Previously on TV, Print Media, Billboards and Radio.

Excise duty on palm, sunflower, and other vegetable oils at the rate of 25%

Repeal of relief of provision on excise paid on purchase of raw materials and bulk data for resale

Extension of time to pay excise duty by manufacturer from the current 24hrs to Five working days (initially introduced to curb illegal businesses)



INTEGRATION OF DATA MANAGEMENT AND REPORTING SYSTEM

This upon issuance of a notice from the commissioner. This is integration of a taxpayers data management and reporting system with KRA electronic tax system. (Already implemented in the Gaming and betting industry)

A penalty of 2M per month will be applicable



SIGNIFICANT ECONOMIC PRESENCE TAX (SEP TAX)

Repeals the Digital Service Tax.

SEP tax shall apply on the income derived by a non-resident from the provision of services through a digital marketplace in Kenya

The taxable profit of a person liable to pay SEP tax shall be deemed to be 20% of the gross turnover. The deemed profit shall be taxed at 30%. This effectively means that SEP tax shall apply at 6% of the gross turnover, up from the current DST rate of 1.5%

Filing to be done by 20th of the following month.



MINIMUM TOP UP TAX

Introduction of a minimum top-up tax payable by a covered person whose combined effective tax rate in the year of income is less than 15%

Definition of **covered person**: “A resident person or permanent establishment in Kenya that is part of a multinational group with a consolidated annual turnover of 750M Euros or more in at least two of the four years of income immediately preceding the tested year of income.



MINIMUM TOP UP TAX

The rate of the effective tax shall be computed as

$(a/b) \times 100$

Where;

- a. Sum of all adjusted covered taxes
- b. Sum of net income/loss

The tax payable shall be

$(a-b) \times c$

Where

- a. 15% of net income/loss
- b. Combined effective tax rate for the year of income
- c. Excess profit of the covered person.

Excess profit here means the net income or loss of a covered person, less;

- 1. 10% for the employee cost
- 2. 8% of the NBV of tangible assets



TIME OF SUPPLY FOR EXPORTED GOODS

This has been defined to be the time when the registered person is in possession of the required export confirmation documents.

Evidence for zero rating and not standard rating the goods.

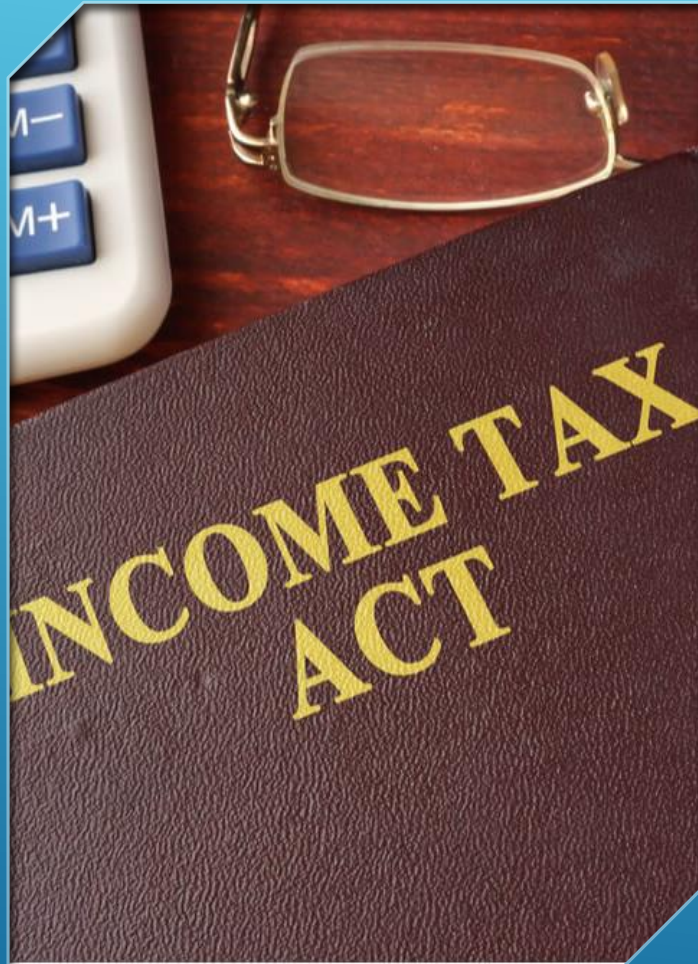


CLARIFICATION OF REFUND OF TAX ON BAD DEBTS

Deletes Section 31(1d) and (1e) of the VAT Act, which requires bad debt refunds to be paid back to the Commissioner within sixty days from the date of debt recovery, failure to which an interest of 2% per month applies.

- The deleted subsection is duplicated under Section 31(2) and 31(3)

You will now be required to refund tax on bad debt after **30 days**. Ambiguity in tax laws are always interpreted in favour of the tax payers.



EXPANDED SCOPE OF ROYALTIES

This shall include software distribution. Goes against international best practise.

KCB vs Commissioner.

Seven Sea vs Commissioner.

Considerations to be made.

Whether the purchaser obtained the right to copy, reproduce, or make use of the article in a manner other than onward sale or personal use, and received economic rights transferred by the original owner.

US courts -> software contracts requiring little to no service or special skill by the supplier in view of the user's needs would be deemed sales of goods

ECO LEVY

Introduction of a 4th Schedule in the MFLA.

The purpose of the levy shall be to ensure that the manufacturers and importers of the goods specified in the Fourth Schedule pay for the negative environmental impacts of the goods

Locally manufactured shall be due at removal from the factory

For imports, at the time of entering into the country.

- Eco Levy will be applied to office machines, smartphones, automatic data processing machines, parts and accessories, radio broadcasting or television transmission apparatus, telephone sets, rubber tyres, and diapers, among other things.
- The Levy will be imposed at rates ranging from KES 98 to KES 1,800 per unit.

THANK YOU