

SAGAMORE HILL TAX ALERT

TAX LAW AMENDMENT ACT 2024



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INCOME TAX ACT

Area	Current Provision	Change	Comment
<p>Definition of the term royalty</p>	<p>"royalty" means a payment made as a consideration for the use of or the right to use—</p> <p>(a) any copyright of a literary, artistic or scientific work; or</p> <p>(b) any cinematograph film, including film or tape for radio or television broadcasting; or</p> <p>(c) any patent, trade mark, design or model, plan, formula or process; or</p> <p>(d) any industrial, commercial or scientific equipment,</p>	<p>"royalty" means a payment made as a consideration for the use of or the right to use—</p> <p>(a) any copyright of a literary, artistic or scientific work; or</p> <p>(b) any cinematograph film, including film or tape for radio or television broadcasting; or</p> <p>(c) any patent, trade mark, design or model, plan, formula or process; or</p> <p>(d) any industrial, commercial or scientific equipment,</p> <p>(e) Any industrial or scientific equipment or</p> <p>(f) Information concerning industrial, commercial or scientific equipment or experience and any gains delivered from the sale or exchange of any right or property giving rise to that royalty.</p>	<p>The definition of the term royalty is now expanded to mean payments towards use of specific equipments.</p>
<p>Definition of the term donation</p>	<p>Absent</p>	<p>Donation means a benefit in money in any form, promissory note or benefit in kind conferred on a person without any consideration and included grant;</p>	<p>This goes on to reinforce the effort the government is putting in place in giving more clarity on the implantation of Paragraph 10 of the First Schedule of the Income Tax Act. This definition clarifies on what qualifies to be regarded as a donation.</p> <p>Early this year, the government published the exemption rules that further give guidance to the long-standing confusion on the implementation of the P10 that deals with charitable organisations.</p> <p>Exemption regulation give much needed clarity on what qualify as a donation and further provide guidelines of what qualifies as a charitable organisation and further guidelines on qualification for the exemption certificate.</p>

Definition of public entity	Absent	Public entity means a ministry, state department, state corporation, county department or agency of the national or county government.	This definition gives clarity on the entities that will fall within the ambit of the new provision introduced on the withholding tax on the supply to public entities via insertion of new amendments, in section 35.
Increase in the value of benefits to employees	save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than thirty six thousand shillings granted in respect of employment or services rendered;	save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than Sixty thousand shillings granted in respect of employment or services rendered;	There is an upward increase in the value of benefits provided to employees by employers in respect of services rendered or employment. This effectively adds more disposable income to the pockets of employees whose value of these benefits was more than Ksh 36,000.
Value of the meals	The value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of forty-eight thousand shillings per year per employee subject to such conditions as the Commissioner may specify;	The first sixty thousands shillings on the value of meals are supplied by the employer or not, within his premises to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer, whether the meals are supplied in the premises of the employer or the premises of the third party, shall be excluded in the calculation of his gains or profits subject to such conditions as the commissioner may specify.	The implication of this provision is that there is an upward review of this value of the benefit from Ksh 48,000 to Ksh 60,000. Further salient distinction in this amendment is that the meals benefit will now only be taxed on the value that exceeds Ksh 60,000 P.A unlike previously when the entire amount became taxable if the value of the meal exceeded Ksh 48,000.
Reimbursement of public officer	Absent	Any amount paid or granted to a public officer pursuant to any written law or statutory instrument, with effect from 27 th July 2022, to reimburse an expenditure incurred for purpose of performing official duties, notwithstanding the ownership or control of any assets purchased.	This has been a contentious issue and has been on and off various bills for the last three years. A recent court judgement made a ruling reinforced this stand. Care has to be exercised to avoid it's exploitation

Pension Contribution.	An amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme: Provided that— (a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;	An amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme: Provided that— (a) this paragraph shall only apply in respect of amounts not exceeding three hundred and sixty thousand shillings for each year of service;	This will effectively encourage pension contribution to pension schemes and will also most likely see employers review contracts to review upwards the percentage of the contribution they commit to contribute. Those already contributing more than the monthly limit of Ksh 20,000 now have an upper threshold of Ksh 30,000 P.M.
WHT by Non-residents owners of digital market place.	Absent	Where a resident or a non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetisation, goods, property or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya.	Non-resident persons who own digital market places where different provided forms of business will now be required to withhold.
Introduction of Significant Economic Presence Tax	Absent	12E. (1) Notwithstanding any other provision of this Act, a tax known as significant economic presence 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 a digital marketplace. (2) For purposes of this section, a non-resident person shall be considered to have significant economic presence where the user of the service is located in Kenya. (3) Subsection (1) shall not apply— (a) to a non-resident person who offers the services through a permanent establishment; (b) to an income chargeable under section 9(2) or section 10; or (c) a non-resident person providing digital services to an airline in which the government of Kenya has at least forty-five per cent shareholding. (4) For the purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax	The rate of tax will be computed as 30% of the deemed taxable profit. The taxable profits are deemed to be 10% of gross turnover. The SPE tax effectively replaces the Digital Service tax that was levied at 1.5%. IT would have been prudent if the government would have retained the Digital service tax given the unavailability of public information from the countries that have effected this type of tax.

		<p>shall be deemed to be ten per cent of the gross turnover.</p> <p>(5) A person subject to tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the month in which the service was offered.</p> <p>(6) The Cabinet Secretary may make Regulations for the better implementation of this section.</p>	
<p>Introduction of Minimum Top Up Tax</p>	<p>Absent</p>	<p>12G. (1) Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen per cent.</p> <p>(2) The combined effective tax rate for a covered person shall be the sum of all the adjusted covered taxes, divided by the sum of all net income or loss for the year of income, multiplied by a hundred.</p> <p>(3) The amount of tax payable shall be the difference between fifteen per cent of the net income or loss for the year of income of a covered person, and the combined effective tax rate for the year of income, multiplied by the excess profit of the covered persons.</p> <p>(4) This section shall not apply—</p> <p>(a) to a public entity that is not engaged in business;</p> <p>(b) to a person whose income is exempt from tax under paragraph 10 of the First Schedule;</p> <p>(c) to a pension fund and the assets of that pension fund;</p> <p>(d) to a real estate investment vehicle that is an ultimate parent entity;</p> <p>(e) to a non-operating investment holding company;</p> <p>(f) to an investment fund that is an ultimate parent entity</p> <p>(g) to a sovereign wealth fund; or</p> <p>(h) to an intergovernmental or supranational including a wholly owned agency or organ of the</p>	<p>This is a new development that aims to align with the OECD best practice of taxing multinational firms that have an effective rate of less than 15%.</p> <p>There has been concentrated efforts by the OECD through Pillar Two, to ensure that multinationals pay their fair share of taxes in the jurisdiction where they source funds.</p>

		<p>intergovernmental or supranational organisation.</p> <p>(5) In this section— 'adjusted covered taxes' means taxes recorded in the financial accounts of a covered person for the income, profits, or share of the income or profits of a covered person where the covered person owns an interest, and includes taxes on distributed profits, deemed profit distributions under this Act subject to such adjustments as may be prescribed;</p> <p>“covered person” means a resident person or a person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated annual turnover of seven hundred and fifty million Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income;</p> <p>“net income or loss” means the sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognised accounting standards in Kenya; and</p> <p>“excess profit” means the net income or loss of a covered person for the year of income less— (a) ten per cent for the employee costs; and (b) eight per cent for the net book value of tangible assets.</p> <p>Provided that the employee cost and book value of tangible assets may be adjusted as prescribed in regulations.</p>	
Deductibility of contributions made to Affordable housing levy,	Absent	<p>New line has been inserted on Section 15(a)(2) as follows.</p> <p>(ac) in the case of an employee, the amount deducted in accordance with</p>	The contributions made to AHL by an employee is now an allowable deduction for PAYE purposes

<p>Post-retirement medical fund and social health insurance fund.</p>		<p>section 5(1)(a) of the Affordable Housing Act, 2024;</p> <p>(ad) a contribution to a post-retirement medical fund subject to a limit of fifteen thousand shillings per month;</p> <p>(ae) contributions made to the Social Health Insurance Fund in accordance with section 27(a) and (b) of the Social Health Insurance Act, 2023;</p>	<p>Additionally, contribution made to post-retirement medical schemes will also be an allowable deduction but this is limited to a maximum of Ksh 15,000 PM. This is a positive introduction aimed at safeguarding the life of the citizens when they become senior citizens.</p> <p>Contributions made to SHIF will now be an allowable deduction. This follows the earlier clarification from the revenue authority that the with the transition from NHIF to SHIF, the contributions made to SHIF would only be deductible if this was expressly provided for, like it NHIF was, in the ITA.</p>
<p>Increase in deductibility of payment in interest for first time home owners</p>	<p>The amount of interest not exceeding three hundred thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first five financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:</p>	<p>The amount of interest not exceeding three hundred and sixty thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first five financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:</p>	<p>There is an upward review in the amount of interest to be deductible paid to home owners, up an equivalent to Ksh 30,000 PM from Ksh 25,000.</p> <p>This is capped at Ksh 360,000 P.A.</p> <p>This is aimed at cautioning the Kenyan residents from the increasing interest rates witnessed in the recent past.</p>
<p>Contribution to pension scheme and provident funds</p>	<p>Section 22A (1)(c), 2(c) and 3(c)</p> <p>Two hundred and forty thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, twenty thousand shillings per month of service).</p>	<p>Section 22A (1)(c), 2(c) and 3(c)</p> <p>Three hundred and sixty thousand shillings (or, where contributions are made to registered funds of the employer in respect of a part year of service of the member, thirty thousand shillings per month of service).</p>	<p>This is a welcome move as employees can now contribute more towards pension and provident funds.</p> <p>The maximum limit is not the lesser of 1/3 of employee pensionable pay, actual contribution or Ksh30,000 PM capped at Ksh 360,000 PA. This will also be the maximum allowable deduction for the case of the employer who contributes to the same funds on behalf of the employee.</p>

<p>Contribution towards individual retirement funds</p>	<p>Section 22B (2)(c)</p> <p>Two hundred and forty thousand shillings (or, where the contributions are made on behalf of the individual by his employer in respect of a part year of service of the individual, twenty thousand shillings per month of service) reduced by the amount of the contributions made by the individual or by an employer on behalf of the individual to the National Social Security Fund in that year.</p>	<p>Section 22B (2)(c)</p> <p>Three hundred and sixty thousand shillings (or, where the contributions are made on behalf of the individual by his employer in respect of a part year of service of the individual, thirty thousand shillings reduced by the amount of the contributions made by the individual or by an employer on behalf of the individual to the National Social Security Fund in that year.</p>	<p>For individuals who are not a members of a registered fund or a public pension, but have individual retirement schemes will enjoy the same benefits.</p> <p>Notable the amount of contribution is reduced by the amount of contribution made to NSSF.</p>								
<p>Withholding Tax on specific supplies</p>	<p>Absent</p>	<p>Sections 35 (1) and (3) are now amended to subject the following supplies to withholding tax.</p> <table border="1" data-bbox="647 946 1110 1275"> <thead> <tr> <th data-bbox="647 946 1002 1054">Description</th> <th data-bbox="1010 946 1110 1054">Rate of WHT</th> </tr> </thead> <tbody> <tr> <td data-bbox="647 1064 1002 1128">Supply of goods to a public entity</td> <td data-bbox="1010 1064 1110 1128">5%</td> </tr> <tr> <td data-bbox="647 1138 1002 1236">Making or facilitating payment on a digital marketplace</td> <td data-bbox="1010 1138 1110 1236">20%</td> </tr> <tr> <td data-bbox="647 1246 1002 1275">Sale of scrap</td> <td data-bbox="1010 1246 1110 1275">1.5%</td> </tr> </tbody> </table>	Description	Rate of WHT	Supply of goods to a public entity	5%	Making or facilitating payment on a digital marketplace	20%	Sale of scrap	1.5%	<p>Supplies to public entities, with the Act now specifies to be; (a ministry, state department, state corporation, county department or agency of the national or county Government) shall now be subjected to withholding tax. Notably, we now have a supply of goods subjected to withholding tax.</p> <p>Additionally, platforms that facilitate or make payment on digital market place will now be required to withhold tax.</p> <p>A further amendment in the Third schedule provides the rates these new provisions as follows</p>
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<p>Withdrawals from pension schemes</p>	<p>Section 53.</p> <p>Monthly pension granted to a person who is sixty-five years of age or more.</p>	<p>Section 53 is now amended by deleting the prior provisions and substituting this with the following.</p> <p>Payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund, public pension scheme or National Social Security Fund, upon attainment of the retirement age determined in accordance with the rules of the fund or the scheme: Provided that this exemption shall also apply to—</p>	<p>Pension benefits received after the attainment of the retirement age as per the regulation of the specific funds and not the blanket sixty-five year will not be exempted from tax.</p> <p>Additionally, if the withdrawal in necessitated by ill health and after being in the fund for 20 years after the registration as a member are now exempted from tax.</p>								

		<p>(a) payment of gratuity or other allowances paid under a public pension scheme;</p> <p>(b) payment of a retirement annuity; or</p> <p>(c) withdrawals from the fund prior to attaining the retirement age due to ill health; or withdraws from the fund after the twenty years from the date of registration as a member of the fund</p>	<p>This is a great move that allows flexibility in assessing of pension funds by the specified individuals.</p> <p>The Act further provides much more clarity on the pension funds that qualify for this exemptions.</p>
Income of non-resident contractors	<p>Section 71 of First Schedule.</p> <p>Income earned by a non-resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a one hundred percent grant under an agreement between the Government and the development partner, to the extent provided for in the Agreement: Provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant</p>	<p>Income earned by a non-resident contractor, sub-contractor, consultant or an employee involved in the implementation of a project financed through a one hundred per cent grant under an agreement between the Government and a development partner, to the extent provided for in the Agreement: Provided that—</p> <p>(a) the non-resident contractor, subcontractor, contractor or employee shall maintain this status for the tenure of the agreement;</p> <p>(b) any other income not directly related to the project earned by that non-resident contractor, sub-contractor, consultant or employee shall be subject to tax.</p>	<p>The income of non-residents who make money from other sources other than those related from the projected will now be taxed.</p> <p>The non-resident will also be expected to retain his status for the tenure of the agreement.</p>
Capital Gain Tax	Absent	<p>The rate of tax in respect of capital gains charged under section 3(2)(f) shall be fifteen per cent which shall be a final tax: Provided that where the Nairobi International Financial Centre Authority certifies that—</p> <p>(a) a firm has invested at least three billion shillings in at least one entity incorporated or registered in Kenya within a period of two years; and</p> <p>(b) the transfer of the investment is to be made after five years of the date of the investment, the applicable rate shall be five per cent.</p>	<p>For transfer of investment by firms regulated by the Nairobi International Financial Centre Authority, they will enjoy a reduced capital gain tax rate of 5% if the transfer is done after five years and the firm has invested at least 3Billion within a period of two years.</p>

<p>Penalty on EPZ registered firms</p>	<p>Paragraph 4 is deleted “and in the event of failure to submit a return or late submission of a return, the enterprise will be liable to a penalty of two thousand shillings per day for each day that the failure continues”</p>	<p>Deleted.</p>	<p>This is a measure to harmonise the penalties as provided for in the Tax Procedures Act of 2015.</p>
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VAT ACT.

Tax point for exports	Absent	<p>VAT 12(5) now introduces.</p> <p>The time supply for exported goods shall be the time when the certificate of export or such other equivalent export document has been issued by Customs.</p>	The point of tax for exported goods is now clarified, being the date of issuance of the export certificate.																		
Apportionment Formula for VAT.	<p>Section 6 and 7, are now deleted.</p> <p>This section permitted of both taxable and exempt goods to claim 100% of the input incurred in making those supplies if the portion of the taxable input accounted for more than 90% of the taxable supplies and if the portion was less than 10% the supplier was not allowed to claim any input tax attributed to making the 10% taxable supplies.</p>	Absent	<p>The implication of this is that taxpayers who incur input tax to make both taxable and otherwise supplies, will only be allowed to claim the exact portion only attributable to taxable supplies.</p> <p>The revenue authority had concerns that this formula was being exploited and will therefore result to higher cost of making supplies to the affected suppliers given they will not be claiming the input credit.</p>																		
Selected items that have a change in the rate of tax, or change in status to, or from being taxable supplies.	<table border="1"> <thead> <tr> <th data-bbox="264 1099 884 1132">Item description</th> <th data-bbox="890 1099 995 1132">Current</th> <th data-bbox="1002 1099 1120 1132">New</th> </tr> </thead> <tbody> <tr> <td data-bbox="264 1140 884 1230">Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, adult diapers, sanitary towels (pads) and tampons</td> <td data-bbox="890 1140 995 1230">16</td> <td data-bbox="1002 1140 1120 1230">Exempt</td> </tr> <tr> <td data-bbox="264 1238 884 1297">Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00</td> <td data-bbox="890 1238 995 1297">0%</td> <td data-bbox="1002 1238 1120 1297">16%</td> </tr> <tr> <td data-bbox="264 1305 884 1426">All imported inputs and raw materials supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture;</td> <td data-bbox="890 1305 995 1426">0%</td> <td data-bbox="1002 1305 1120 1426">Exempt</td> </tr> </tbody> </table>			Item description	Current	New	Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, adult diapers, sanitary towels (pads) and tampons	16	Exempt	Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00	0%	16%	All imported inputs and raw materials supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture;	0%	Exempt						
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EXCISE DUTY ACT.

Description	Current Provision	Change	Comment.																		
Definition of digital lender	Absent	“digital lender” means person holding a valid digital credit providers licence issued by the Central Bank of Kenya	This aligns with the recent regulation in the space of digital lending to align with the regulators threshold.																		
Excise duty on excisable services by non- resident persons	Absent	Section 5 is amended by adding the following. 1(d) excisable services offered in Kenya by a non-resident person through a digital platform. 3(d) under subsection (1)(d), shall be payable by the non-resident person offering the service.	With the introduction of excise fees on various platforms such as digital lending, this amendment ensures that the non-resident persons are also brought within the ambit of taxation and aligns with non-discrimination article of the OECD, taxing both non-residents and residents persons and further ensures non-residents do not have an upper hand.																		
Deadline for remittance of excise duty for alcoholic manufacturers.	Excise duty on alcoholic beverages is to be remitted after 24hrs after removal of the stock from the store	Excise duty on alcoholic beverages is to be by the 5 th Day of the following month after removal of the stock from the store.	This is positive, aimed at giving the manufacturers of alcoholic beverages more time to account for and pay excise duty. These manufactures disadvantaged given the reconciliation work to be done every five days so as to ensure compliance. Extension of the number of days therefore favours them and gives them much more flexibility to also plan their cashflow.																		
Change in rates of excise duty.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Description</th> <th style="width: 25%;">Current rate</th> <th style="width: 25%;">New Rate</th> </tr> </thead> <tbody> <tr> <td>Excise duty on betting.</td> <td style="text-align: center;">12.5%</td> <td style="text-align: center;">15%</td> </tr> <tr> <td>Excise duty on gaming.</td> <td style="text-align: center;">12.5%</td> <td style="text-align: center;">15%</td> </tr> <tr> <td>Excise duty on prize competition</td> <td style="text-align: center;">12.5%</td> <td style="text-align: center;">15%</td> </tr> <tr> <td>Excise duty on lottery (excluding charitable lotteries)</td> <td style="text-align: center;">12.5%</td> <td style="text-align: center;">15%</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		Description	Current rate	New Rate	Excise duty on betting.	12.5%	15%	Excise duty on gaming.	12.5%	15%	Excise duty on prize competition	12.5%	15%	Excise duty on lottery (excluding charitable lotteries)	12.5%	15%				
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Introduction of excise duty on advertisement on social media and the internet	Excise duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of fifteen per cent	Excise duty on fees charged on advertisement on the internet, social media television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of fifteen per cent	The Finance Act introduced excise duty on advertisement of harmful products but the adverts placed on the internet and social media were not brought within this purview. The advertiser had shifted their adverts to social networks but now with the new provision																		

			brings such adverts within the purview excise duty.
Clarification on fees applicable to digital lenders services	Absent	“fees charged by digital lenders” includes any fees, charges 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 helps clarify the fees chargeable to excise duty.

Talk to us
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