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Tax Alert

The Tax Procedures (Amendment) Act, 2024

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The Tax Procedures (Amendment) Act 2024

The Tax Procedures (Amendment) Act 2024 (the “Act”) was assented into law on 11th December 2024. This Act introduced several changes to the tax administration process under the Tax Procedures Act, 2015. These amendments took effect on 27th December 2024. In this alert, we analyse the salient changes introduced by this Act.

Two year-stay of duty imposition on steel billets of tariff 7207.11.00 and wire rods of tariffs 7213.91.00 and 7213.91.90

The Act has introduced a 2-year stay on imposition of import duties on imported steel billets of tariff heading 7207.11.00 and imported wire rods of tariff heading 7213.91.00 and 7213.91.90 from 27th December 2024 through any multilateral agreement or treaty concluded by Kenya or for such other longer period as the Cabinet Secretary may prescribe through a gazette notice.

This amendment is largely geared towards ensuring the affordability of these products in light of the ongoing constructions under the affordable housing programme and other government driven infrastructural projects. The amendment to the TPA is welcome as it seeks to help in making steel products, which are necessary for infrastructure development, more affordable. However, one would wonder why the amendment has been introduced through the TPA rather than through the auspices of the East African Community Customs Management Act, 2004.

Specifications on the content of an electronic tax invoice

The Act amends the TPA to specify the content that should be contained in an electronic tax invoice. It is very likely that this amendment has been necessitated following revocation of the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 by Legal Notice 225 of 2023, The Tax Procedures (Electronic Tax Invoice) Regulations, 2023 which was subsequently revoked by Legal Notice 64 of 2024, Tax Procedures (Electronic Tax Invoice) Regulations, 2024.

The Act states that, among other things, an electronic tax invoice should contain the following: the words “TAX INVOICE”; name, address, and Personal Identification Number (PIN) of the supplier; name,

address, and PIN, if applicable, of the purchaser; serial number of the tax invoice; date and time the tax invoice was issued, and the date and time the supply was made, if different; description of the supply including the quantity of goods or type of services; details of any discount allowed at the time of supply; consideration for the supply; tax rate charged and the total tax amount charged and, any other prescribed information.

Some of the specifications set out under LN 64 of 2024 transcend the specifications of the Act and interpretational disputes are likely to arise regarding the form of electronic tax invoices as specified in the primary and subsidiary legislation.

Introduction of reverse eTIMS invoicing mechanism on account of supplies by small businesses and small-scale farmers whose turnover does not exceed KES 5 million

The Act has introduced a reverse invoicing mechanism requiring persons making purchases from small businesses and small-scale farmers (whose annual turnover does not exceed KES 5million) to issue tax invoices on account of the purchases for purposes of ascertaining the tax liability of the sellers, that is, small businesses and small-scale farmers.

This amendment exemplifies the hurdles that belie the eTIMS system and its low uptake amongst the small-scale traders and farmers who forms part of the informal sector.

This requirement will relieve small businesses and small-scale farmers of the administrative burden of issuing electronic tax invoices while promoting transparency in expenses claimed by purchasers. It is yet to be seen whether the amendment will have any counterproductive effect on market dynamics and result in purchasers shifting preferences to sellers who will not trigger reverse invoicing obligations.



Extension of the tax amnesty on outstanding penalties and interest for periods before 31st December 2023

The Act has extended the period covered by the provisions of the tax amnesty on penalties and interest accruing on principal taxes from 31st December 2022 to 31st December 2023. Taxpayers with outstanding principal tax liabilities and who wish to enjoy the amnesty are required to apply to the Commissioner for the amnesty and propose a payment plan on account of the principal taxes by 30th June 2025. Any principal tax amount remaining unpaid under such a payment plan under the amnesty program as at 30th June 2025 shall attract penalties and interest for which no amnesty will be granted.

This is a welcome move that should incentivise non-compliant taxpayers who were not able to take advantage of the previous amnesty provisions covering the period up to 31st December 2022 and which had to be invoked by 30th June 2024 a second chance to regularise their affairs.

Reintroduction of provisions on abandonment of taxes on account of doubt or difficulty in recovery of tax – a quick turn-about

The Act has re-introduced provisions allowing the KRA, with written approval from the CS National Treasury, to refrain from assessing or recovering an unpaid tax on account of impossibility to recover the tax, public interest, undue difficulty, or expense in recovering the tax, hardship or inequity in relation

to the recovery of the tax or any other reason occasioning inability to recover the unpaid tax. The amendment further outlines the process of having taxes abandoned which culminates with an approval by the National Assembly.

The Finance Act, 2023 had repealed the provisions allowing for abandonment of taxes.

The proposed amendment is a welcome relief since it will help address genuine cases of difficulty in tax recovery.

Changes to the process for offsetting or refunding overpaid tax

The Act has extended the timeline within which an application for refund or offsetting of overpaid VAT may be lodged from within 6 months to within 12 months. The Act has also reduced the timeline within which an application for refund or offsetting of tax overpayments on account of other taxes, excluding income tax, from within 5 years to within 12 months in alignment with the timelines applicable for VAT.

The increased timelines for lodging applications for VAT refund or offsetting will offer taxpayers more flexibility and remove any time constraints occasioned by the six months. Taxpayers should be vigilant in lodging refund or offsetting applications on account of tax overpayments on the other taxes, excluding income tax, to avoid any adverse outcomes that might be occasioned by the reduced timelines. The timelines for applications for refund or offsetting of tax overpayments on account of income tax remain five years.

KRA bestowed with unbridled discretion to fully integrate taxpayers' electronic tax systems with its systems

The Act has donated powers to KRA who may, by issuing written notice to a taxpayer, demand full integration of a taxpayer's electronic tax system with KRA's system for businesses above whose turnover exceeds KES 5million. Data relating to trade secrets and private or personal data held on behalf of customers or collected in the course of business is excluded from the scope of integration.

This amendment is aimed at according KRA real time visibility and monitoring of transactions of the concerned taxpayer. This amendment might have been informed by disputes that were triggered by requests made by KRA requiring taxpayers to integrate their systems with KRA's systems with the affected taxpayers challenging the KRA's powers to impose such requirements in the absence of enabling provisions.

Exclusion of weekends and public holidays in the computation of time for objection and lodging of appeals at the Tax Appeals Tribunal, High Court and Court of Appeal

The Act has excluded Saturdays, Sundays and public holidays in the computation of the period required to lodge objection notices and appeals at the Tax Appeals Tribunal, High Court or Court of Appeal. This amendment will most likely raise interpretational challenges seeing that there is in place a provision requiring that where the date for the submission of an application or notice or for the taking of any other action under a tax law falls on a Saturday, Sunday or a public holiday, the due date shall be the previous working day. The amendment also conflicts with the provisions of the Court of Appeal Rules, 2022 with respect to the computation of time for lodging of appeals at the Court of Appeal.

The interpretational challenges notwithstanding, this amendment will lengthen the period for the lodging of objection notices and appeals delaying the resolution of tax disputes.

Penalties for EPZ Enterprises who fail to submit their annual returns

The Act introduces a specific penalty for EPZ enterprises that fail to submit their returns, set at KES 20,000 per month (or part thereof) for each month the failure continues.

This amendment will likely result in interpretational challenges having regard to the provisions of paragraph 4 of the Eleventh Schedule to the Income Tax Act which provides for a higher penalty at KES. 2,000 a day for as long as the failure to submit returns persists.

Requirement for a PIN for registration of employees working remotely outside Kenya for Kenyan employers

The Act has introduced a requirement for a PIN for registration of employees working remotely outside Kenya for employers in Kenya. This requirement is not applicable on account of employees outside Kenya working for the national carrier.

This amendment seeks to create visibility on employees of Kenyan employers who are working remotely outside Kenya, thereby aiding the KRA in its effort to shore up tax revenues.

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