



Tax Alert

Tax Procedures (Amendment)

Bill 2024 Insights

September 2024



Tax Procedures (Amendment) Bill 2024 Insights

Introduction

Following the recent withdrawal of the Finance Bill, 2024, from Parliament, the Government of Kenya has implemented austerity measures and explored alternative revenue sources to prevent economic instability and meet revenue estimates. Some of these measures include the introduction of bills and the enactment of statutes addressing the gaps including the Supplementary Appropriation Act, 2024, which authorized expenditure cuts amounting to KES. 344.3 billion, and the Tax Procedures (Amendment) Bill, 2024 (“the Bill”).

In a bid to salvage some of the proposed amendments, that were contained in the Finance Bill 2024, to the Tax Procedures Act (“TPA”), the Cabinet Secretary for the National Treasury and Economic Planning (“the CS”) proposes to re-introduce some of the key amendments vide the Bill. The Bill was gazetted on **20 August 2024** for introduction to the National Assembly.

The proposed changes include extension of the tax amnesty programme, exclusion of weekends when calculating tax deadlines in tax disputes and giving the CS power to provide relief partly or fully for unrecoverable unpaid tax. We expect Parliament to conduct public participation by inviting comments from various relevant stakeholders in accordance with Article 10 and Article 118 of the Constitution of Kenya.

This publication provides a detailed analysis of the proposed amendments to the Bill.

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Tax administration

Reprieve for taxpayers as the Government proposes to extend the Tax Amnesty

#	Proposed change	Details	Our comments
1.	Extension of the tax amnesty programme to 30 June 2025.	<ul style="list-style-type: none">The Bill proposes to amend Section 37E of the TPA, by extending the tax amnesty deadline from 30 June 2024 to 30 June 2025.	<ul style="list-style-type: none">The Tax Amnesty Programme (“the amnesty”), introduced by the Finance Act, 2023, waived penalties and interests where a taxpayer paid the outstanding principal tax due as of 31 December 2022 on or before 30 June 2024. According to the Kenya Revenue Authority (KRA), the Government collected KES 43.9 billion under the amnesty that ended on 30 June 2024.The proposal to extend that deadline from 30 June 2024 to 30 June 2025 had also been introduced after the third reading of the defunct Finance Bill, 2024.If implemented, this provision will incentivize taxpayers who missed the 30 June 2024 deadline to review their tax affairs and voluntarily disclose and settle outstanding liabilities, potentially increasing government tax revenue.While this is a welcome relief for taxpayers who were unable to take advantage of the tax amnesty program before its expiry on 30 June 2024, it may be worthwhile for the Government to consider increasing the scope of the amnesty to principal taxes accrued after 31 December 2022. This will help raise additional revenue and further encourage compliance among taxpayers.

Tax Administration

Cabinet Secretary, upon recommendation by the Commissioner, to be granted powers to abandon unrecoverable tax

#	Proposed change	Details	Our comments
2.	Discretionary tax relief mechanism arising from doubt or difficulty in recovery of taxes.	<ul style="list-style-type: none">• The Bill proposes to introduce Section 37F to the TPA, which will give the Commissioner the powers to refer cases for abandonment of taxes to the CS where the Commissioner determines that:<ul style="list-style-type: none">○ It may be impossible to recover an unpaid tax;○ There is undue difficulty or expense in the recovery of unpaid tax;○ There is hardship or inequity in relation to the recovery of an unpaid tax; or○ There is any other reason occasioning inability to recover the unpaid tax.• To enhance checks and balances in the exercise of this power, the Bill further proposes the following measures:<ul style="list-style-type: none">○ The CS must publish a notice in the gazette every four months, listing the taxpayers who have been given such relief, the amount of tax abandoned, and the reasons for the abandonment.○ The National Assembly may pass a resolution within twenty-one days of receiving the notice, where it may either approve or annul the notice published in the gazette. If the National Assembly annuls the notice, it shall consequently be void without prejudice to the validity of anything previously done.	<ul style="list-style-type: none">• The proposal addresses the apparent undue difficulty in recovering some tax liabilities. If implemented the provision will alleviate excessive tax burdens in situations that warrant abandonment of taxes.• The proposed amendment promotes accountability through gazetting the taxpayers who will have received the relief, providing the reasons for abandonment, and involving the National Assembly in overseeing the CS's use of this power.• As currently drafted, where the National Assembly annuls any of the reliefs granted, such action will only apply going forward and will not have any effect on the tax that is already abandoned. In effect, the National Assembly may appear inconsequential given that most of the taxes abandoned relate to the historical period and not going forward. To this end, we propose that approval from the National Assembly be sought before the notice is gazetted by the CS, to ensure effective oversight and give comfort to the affected taxpayers that the gazette notice is final.• Similar to the provision repealed by the Finance Act, 2023, the National Assembly may want to re-introduce the CS's power to waive penalties and interests in other cases where taxpayers have paid the outstanding principal taxes but are facing undue difficulty in paying the consequent penalties and interest.

Tax Administration

Proposed Change in Computing Deadlines for lodging objections and appeals

#	Proposed change	Details	Our comments
3.	Exclusion of weekends and public holidays for the purposes of tax deadlines in the course of tax disputes.	<ul style="list-style-type: none">The Bill proposes to amend Section 77 of the TPA to exclude Saturday, Sunday, or public holidays from computing the period for lodging objections to the Commissioner and appeals to the Tax Appeals Tribunal (“TAT”), the High Court, and the Court of Appeal under Section 51, 52 & 53 of the TPA.	<ul style="list-style-type: none">This proposal was contained in the defunct Finance Bill 2024 where the exclusion of weekends and public holidays was not limited to the submission and lodgement of objections and appeals but also extended to computing the tax deadline for performing any action under a tax law, including lodging tax returns, payment of taxes, application of tax refunds etc.The proposal under the Bill is welcome, as it mirrors typical business operations and provides a more practical timeframe for both taxpayers and the Kenya Revenue Authority (“KRA”).Taxpayers will have more time to prepare objections and appeals, while KRA will have more time to review the submitted objections, and the documents provided more extensively. Hopefully, this will result in more legally robust objection decisions.In instances where public holidays not listed under Article 9(1) of the Constitution are gazetted, reconciliation issues may arise as the KRA iTax system may not be configured timeously to include them. Such configuration issues will result in disputes that may take an inordinately long time to resolve.We propose that the exclusion of weekends and public holidays be streamlined to apply even for performing all other actions under tax law, including payment of taxes, as was proposed in the defunct Finance Bill 2024.

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