

The Industrial Training (Amendment) Act Levy now payable monthly and KRA responsible for collecting the training levy

The Industrial Training (Amendment) Act, 2022 was assented to on **4 April 2022** and became effective on **22 April 2022**. It made some crucial amendments to the Industrial Training Act (CAP 237) relating to responsibility for collection and remission of the training levy to the National Industrial Training Authority (NITA).

This publication summarizes our analysis of the key issues resulting from these amendments and the consequent implications to employers.

Introduction

The Industrial Training Act (CAP 237) (“The Principal Act”) regulates the training of employees engaged in certain industries. Employers are required to register with the National Industrial Training Authority (NITA) and pay an Industrial Training Levy (“Levy”) to the Training Levy Fund.

The Industrial Training (Amendment) Act, 2022 (“The Act”) was assented on 4th April 2022 with an effective date of 22nd April 2022.

The Act introduces a raft of changes to the Principal Act, aimed at transferring some of the key roles of National Industrial Training Authority (NITA) to the Kenya Revenue Authority (KRA).

1. Removal of the role of collection of levies from NITA

The Act has deleted section 3A (b) of the Principal Act which conferred the responsibility for assessment and collection of industrial training levies and fees on NITA. This effectively removes the role of assessment and collection of levies from NITA.

2. Changes affecting operation of the Levy

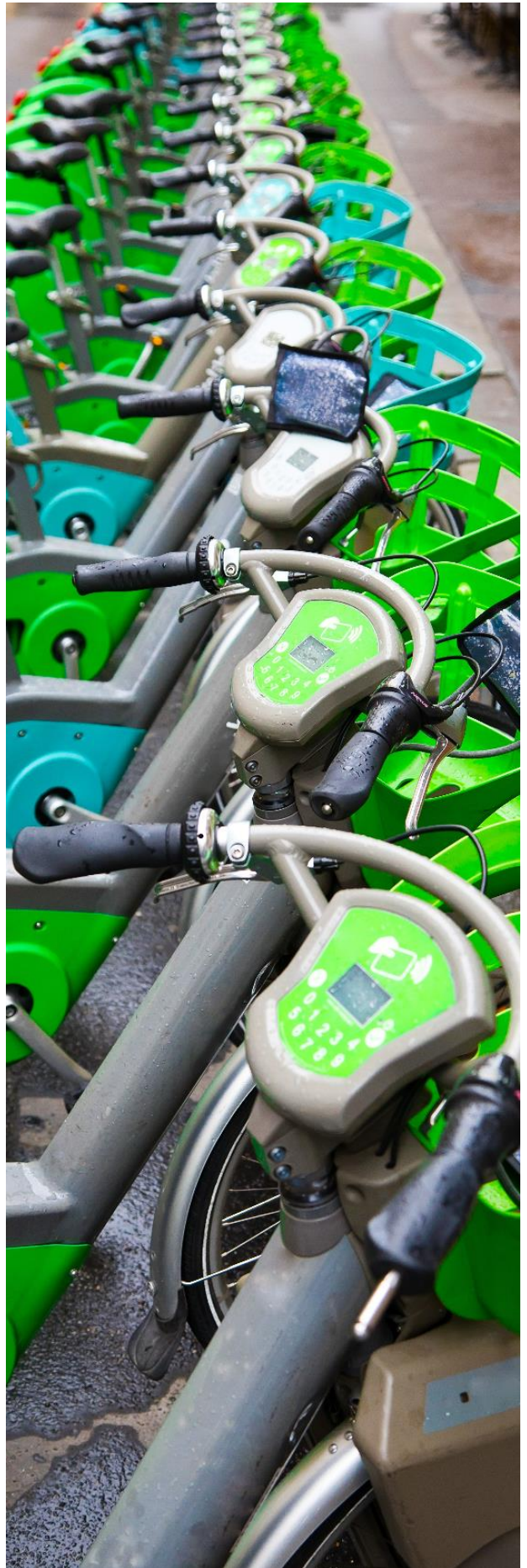
The Act has replaced the existing section 5B of the Principal Act with the following provisions.

2.1 Conferment of responsibilities and powers to assess and collect the levy to the KRA

The new section 5B (1) states that the Commissioner-General of KRA shall be responsible for collecting training levies from employers.

Sub-section (2) goes further to provide that the Commissioner-General of the KRA shall have all powers conferred on him by the Income Tax Act, and the Kenya Revenue Authority Act.

These changes effectively move the responsibilities of collection and enforcement to the KRA which has better-established technological tools and reach of employers.





2.2 Employers to remit the monthly levy by the 5th

Sub-section (3) provides that an employer shall pay the training levy to the Commissioner at the time when an employee's salary is payable. Further, that the levy should be remitted to the Commissioner-General no later than the **5th day of the month after the levy is due**. This means that for example the levies for the month of June are due by the 5th of July.

This is a shift from the previous payment regime which required the payments to be done by the 9th of the month following the end of the financial year. The shift back to a monthly regime is possibly informed by a need to enhance compliance as well as align collection frequency to other payroll-related statutory obligations which are done monthly. It may also be informed by the need to ensure sufficient cash flow to process reimbursement for trainings.

Considering the effective date of 22nd April, employers should implement this immediately.

2.3 Financial burden of the training levy to fall on the employer

Subsection (5) of the new section 5B provides that "A training levy shall not be deducted from the emoluments of an employee".

The employer will bear the cost of the levy and it should not be recovered from the employee. This provides clarity on who bears the cost since the Principal Act was silent on the issue.

However, the employer may get some reprieve from the reimbursement of training costs on application and approval.

2.4 Change in documentation obligations and application of penalties

Subsection 6 of the new section 5B provides that the Income Tax Act and the KRA Act shall apply in respect of the payment and recovery of levies and penalties, the assessment of levy payable, filing of returns, furnishing of information and documents, and keeping of records.

Considering that the provisions of the Income Tax Act are broad and elaborate, the extent to which these will be applied to the levy under the Industrial Training Act is unclear. We expect that the NITA will issue further guidelines to clarify.

3. Distribution of training levies

The Act has deleted section 5C(2) of the Principal Act and replaced it with the provision that "*The Director-General, acting on the advice of the Board, shall make payments out of the Fund not later than the fifteenth day of each month...*"

A further sub-section (a) allocates 60% of the levies collected to be used for reimbursement of employers for training costs incurred. These include the costs and wages of apprentices, interns or indentured learners while attending training courses or industrial attachment.

The 60% allocation of the levies collected to reimbursement of training costs to employers is a welcome move as it guarantees some reprieve for the additional financial burden the employer will incur monthly and safeguards the levies for their intended purpose.



4. The Industrial Training Act now part of the Laws relating to Revenue and falling under the ambit of the KRA

The KRA Act has been amended in Part II of the first schedule to incorporate The Industrial Training Act (Cap 237) as one of the Laws relating to revenue.

This effectively gives the KRA the responsibilities and powers to enforce the levies provided for in the Industrial Training Act.

Conclusion and way forward

A key change in the Act is that the levy is payable to the KRA by the 5th of the month following when levies are due. Consequently, employers who are yet to implement this change must endeavor to start paying immediately.

Considering that the effective date of the amendment is 22 April 2022, our view is that the changes should have taken effect from the May 2022 payroll (payable by 9th June) onwards. For the period from January to April 2022, based on strict interpretation of the law, the levy is payable by 9th following the end of the financial year. However, employers may consider paying the Jan – April 2022 levies together with the current levies to close this out and ensure a clean transition.

We will continue monitoring any developments from NITA relating to the foregoing changes and provide updates as they become available. Should you wish to discuss this further, kindly feel free to contact any of the contacts below.

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