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THE TAX LAWS (AMENDMENT) ACT, 2024: A BRIEF ANALYSIS OF THE RATIONALE & KEY AMENDMENTS THERETO

Kenya, like many other jurisdictions across the world, make amendments and or necessary deletions to their existing tax laws through the Tax Laws (Amendment) Acts. The most recent amendment to the Kenyan Tax Laws is The Tax Laws (Amendment) Act, No. 12 of 2024, which was assented to on 11th December, 2024 and came into effect on 27th December 2024. The Preamble to the Act states that the Act was enacted to make amendments to tax-related laws and for connected purposes. A thorough reading of the Act clearly indicates that the Amendments thereto are with regards to the Income Tax Act, the Value Added Tax Act, the Excise Duty Act, and the Miscellaneous Fees and Levies Act.

The notable amendments to the Income Tax Act are as follows: first, reviewing the definition of the word royalty; second, incorporation and definition of new terms such as donation, public entity, registered individual retirement fund, registered pension fund, and registered provident fund; third, the inclusion of the payment generated from monetization of content creation where a resident or non-resident person is the owner or operator of a digital marketplace or platform that makes or facilitates payment in respect of digital content monetization, property or services, as income derived from Kenya; fourth, the incorporation of a new Tax known as the **Significant Economic Presence Act** which is defined as a tax 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, and the **Minimum top-up tax**, defined as tax payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than 15%; fifth, a review of the deductible incomes to include the Affordable House fund, contribution to post-retirement medical fund and SHIF contribution. Eighth, the Affordable Housing Reliefs under Section 30A have been repealed.

The Key amendments to the Value Added Tax include: First, a review the circumstances under which excess input tax in respect of a tax period may be paid to the registered person by the Commissioner; Second, providing an express definition of the phrase "time of supply of exported goods". The key amendments to the Excise Duty Act include: First, providing an express definition of the term "digital lender"; Second, a review of the circumstances under which excise duty shall be charged according to the Act; Third, a review of the circumstances under which the relevant Cabinet Secretary may grant a whole or partial remission of excise duty in respect of beer, spirit and wines; and fourth, describing and prescribing the rate of excise duty chargeable over items such as imported sugar. Cigarette with filters, cigarettes without filters and liquid nicotine for electronic cigarettes inter-alia.

The primary implication of the aforementioned amendments is that individuals, companies and or and businesses operating in Kenya need to constantly review their policies and transactions in respect of the changes to avoid being implicated in tax evasions schemes. We shall continue monitoring the changes in the tax laws and advise our Clients accordingly on a transaction basis.

Keen on finding how the Tax Laws Amendment Act affects your business? Reach out to us on email@ndwiga.law and **0704529937** for more details.

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