Tax & Exchange Control

ALERT | 22 February 2024

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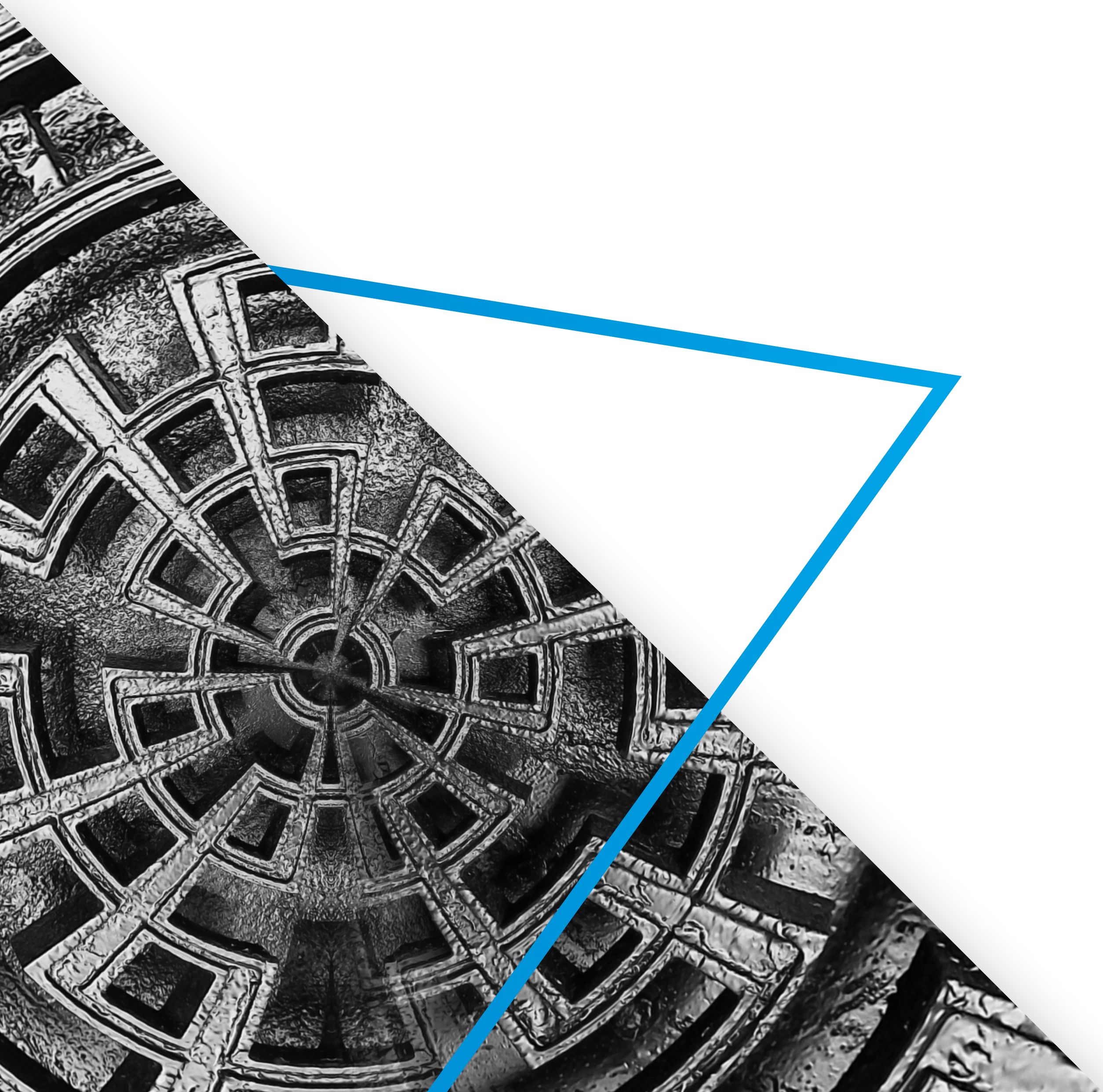

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For more insight into our expertise and services

Kenya's tax outlook for 2024

Since coming into office in September 2022, the incumbent Kenyan Government has implemented policy measures aimed at steering economic recovery. As per the 2023 Budget Policy Statement and the Fourth Medium-Term Plan, it is currently targeting five key priority sectors. These sectors include agricultural transformation; the micro-, small- and medium-size enterprise economy; housing and settlement; healthcare; digital superhighway; and the creative industry. The Government is also redesigning taxation instruments to make them supportive of economic activity while boosting revenue collection. All these interventions have yielded progress, as the economy indicated an average growth rate of 5,6% in the first three quarters of 2023, up from 4,8% in 2022.

Despite this growth, revenue as a percentage of GDP has, however, remained relatively low at 16%. Also, the Kenya Revenue Authority (KRA) has already missed its collection target for the first half of the current financial year ending June 2024 by KES 182,6 trillion. From a fiscal perspective, KRA has an enormous task ahead and will probably be more aggressive in revenue collection during this last half.

According to the 2024 Budget Policy Statement, the Government aims to boost revenue collection to over 20% of the GDP in the next fiscal year. It also targets collecting KES 2,95 trillion in taxes, up from the 2023/24 KES 2,62 trillion revenue collection target.

This ambitious plan will rely heavily on the strategic implementation of the Finance Act, 2023 (Act), together with the recently launched policy instruments, i.e. the National Tax Policy and the Medium-Term Revenue Strategy FY 2023/24-2026/27 (MTRS). The National Tax Policy articulates broad guidelines to guide tax administration while the MTRS outlines the specific reforms that will boost revenue collection during the strategy period.

Changes ushered in by the Act

One of the initial significant steps towards widening the tax net was the introduction of numerous tax changes in the Act.

These changes include the introduction of income tax on repatriated income, digital asset tax (DAT) payable by persons who derive income from the transfer or exchange of digital assets, and the revision of the value-added tax (VAT) rate on petroleum products from 8% to 16%. Our detailed analysis, which you can find here, discusses the significant provisions that were introduced through the Act.

Kenya's tax outlook for 2024

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Chambers Global 2024 Results

Tax & Exchange Control

Chambers Global 2018–2024 ranked our Tax & Exchange Control practice in: **Band 1**: Tax.

Emil Brincker ranked by Chambers Global 2003–2024 in **Band 1**: Tax.

Gerhard Badenhorst was awarded an individual spotlight table ranking in Chambers Global 2022–2024 for Tax: Indirect Tax.

Stephan Spamer ranked by Chambers Global 2019–2024 in **Band 3**: Tax.

Jerome Brink ranked by Chambers Global 2024 as an "**Up & Coming**" tax lawyer.

Chambers TOP RANKED Global 2024 Cliffe Dekker Hofmeyr

We expect that this year, the Government will continue to implement the tax measures in the Act to mobilize additional revenue. Among the measures that we expect the Government to focus on include the requirement that expenses be backed by invoices that are compliant with the electronic tax invoice management system (eTIMS). In December 2023 National Treasury released regulations that will guide the implementation of the eTIMS requirement. At the time of the writing of this Alert, the regulations have not been printed by the Government Printers and there is an ongoing debate as to whether businesses below the KES 5 million VAT threshold are subject to eTIMS.

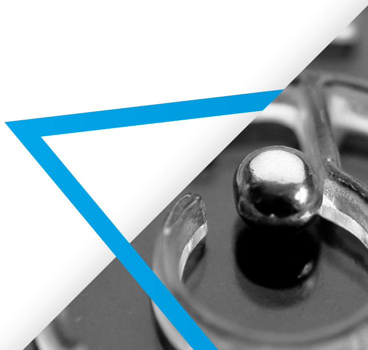
DAT, applicable on the transfer of digital assets such as cryptocurrencies, is the second significant tax measure expected to contribute to the generation of increased revenue this year. This expectation is fuelled by the growing investments made by Kenyans in cryptocurrencies and blockchain-related activities. Statistics show that about 5% to 10% of Kenyans currently own cryptocurrency. Their increased penetration will no doubt generate an increase in revenue collection through the DAT that will be payable upon any transfer or exchange of such digital assets.

The third notable tax measure expected to enhance revenue amounts is the introduction of capital gains tax (CGT) on indirect transfers. CGT is now applicable to gains derived from the sale of shares in foreign entities that derive more than 20% of their value directly or indirectly from immovable property situated in Kenya. Also, non-residents who hold 20% or more of the shareholding in a resident company in Kenya are expected to pay CGT on the disposal of their interests in the company. Kenya has consistently topped private equity and venture capital deals in East Africa in the recent past. An analysis by the East Africa Venture Capital Association (EAVCA) shows that the country accounted for 69% of the 478 private equity and development finance institutions investments between 2013 and the first half of 2023. EAVCA further projects an increase in deal activity in 2024, suggesting potential growth in financial inflows and taxable revenue into Kenya.

Possible tax changes to expect in 2024

The principal framework that will guide tax reforms in the coming financial year is the MTRS. It contains a wide range of proposals, several of which we anticipate will be introduced through Finance Act, 2024.

Categories of taxes that will possibly be reviewed upwards include excise duty on alcoholic beverages, cigarettes, tobacco and sugar-containing products. It is important to note that pursuant to an amendment introduced through the Act, excise duty on alcoholic drinks and beverages is now payable within 24 hours from the time the drinks are removed from the stockroom. This requirement has faced repeated criticism for the reason that it is counterproductive and unfair to demand tax before the manufacturers sell the product and reconcile their sales. Excise tax is also a consumption and not an advance tax, and for these reasons we expect that this year, the requirement to pay the tax within 24 hours will be reviewed.



Kenya's tax outlook for 2024

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During this period, the Government may also review the digital service tax (DST) to bring on board residents. DST is currently payable by non-residents on income derived or accrued in Kenya from services offered through a digital marketplace. The applicable rate is 1,5% of the gross transaction value. It is not clear whether the DST will be an advance tax for the affected resident or whether it will be final tax.

The Government will further be looking into untapped areas that have for a long time been difficult to tax. During the financial year 2024/25, the Government will conduct a study on the means for suitable taxation of the agricultural sector and introduce a 5% withholding tax on agricultural produce delivered to organised groups such as co-operatives. The proposed withholding tax will act as an initial step in ensuring that farmers are within the tax net. The farmers will be expected to account for tax on the income they receive from cooperatives if this proposal in the MTRS is implemented.

Additional steps that will be implemented to ensure the collection of additional revenue include the progressive phasing out of preferential corporate tax rates, and the rationalization of tax exemptions for corporate entities and individuals. The Government seems keen to ensure that any tax exemptions or reliefs that they give result to additional revenue to the country or result to positive overall impact in the economy.

The Government will further develop a legislative framework for re-introduction of minimum tax. This is in a bid to curb tax evasion perpetrated by entities that prepare their accounts to depict perpetual loss. In doing this, the Government has indicated that it will consider the issues that were raised by the Court of Appeal in *Kenya Revenue Authority v Stanley Waweru and Six Others (Civil Appeal No. E591 of 2021*) which deemed the minimum tax to be unconstitutional.

In addition to the above, the Government is considering developing a framework that will guide the introduction of carbon tax in Kenya. Over and above promoting the generation of additional revenue, this initiative will lower greenhouse gas (GHG) emissions and ensure the Government meets its environmental sustainability goals.

Another tax measure that the Government will be looking to roll out is the taxation of high-net-worth individuals. To facilitate this initiative, the Government, according to the MTRS, will establish a dedicated unit with the exclusive task of ensuring that wealthy Kenyans make substantial contributions to the tax burden. The initiative to tax high income earners began with the introduction of two additional bands for PAYE through the Act. Specifically, 32,5% and 35% PAYE rates were introduced for individuals earning between KES 500,000 and KES 800,000, and above KES 800,000, respectively. It will be interesting to see what additional measures will be introduced in a bid to tap additional revenue from high-net-worth individuals.

Kenya's tax outlook for 2024

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The LEGAL 500 EMEA

Tax 2023 Rankings

Tax & Exchange control practice is ranked in Tier 1.

Leading Individuals:
Gerhard Badenhorst | Emil Brincker

Recommended Lawyers:
Petr Erasmus | Howmera Parak
Ludwig Smith | Stephan Spamer

Next Generation Lawyers:
Jerome Brink

There are also plans to intensify taxpayer audits through staff training, recruitment of additional staff and use of technology. These efforts aim to enable the KRA to consistently monitor taxpayer compliance, serving as a deterrent against tax evasion and avoidance. We expect more impromptu visits to business premises by the KRA this year to check on their level of compliance.

There are also plans to automate Government services and integrate them with systems within the tax administration to allow the seamless exchange of information. This integration will extend to third-party data producers such as banks and telcos as well as betting and gaming systems. This will ensure that there is a complete view of the taxpayers' economic transactions through big data analytics to drive compliance. The move to require all payment for Government services through eCitizen and the single Treasury account will provide a lot of data for the Government to mine and collect additional revenue. In a bid to have free access to data, the Government, according to the MTRS, will pursue an amendment to the Data Protection Act, 2019 to exempt the processing of personal data for purposes of taxation.

Positive tax changes

Some of the positive tax changes to expect include the intended reduction of the VAT rate by 1% and adjustment of the VAT registration threshold from KES 5 million to KES 8 million. We also expect the KRA to consider a reduction on the corporate income tax rate, but this may not be implemented until 2025/26.

On the tax administration side, we foresee the scaling of the KRA's capacity through increased use of technology to seal any leakages. This will include enhancement of the iTax and the Integrated Customs Management System. A new system could also be in the offing. We hope that the new system will be simple and user -friendly to encourage mass compliance.

Conclusion

It appears that the coming fiscal year will be marked by heightened intensity given the Government's motivation to collect additional revenues through tax policies, legal reforms and administrative reforms we have highlighted. It is crucial for businesses and individuals to closely monitor these developments and develop strategies to align with the fast-evolving fiscal environment.

In the meantime, taxpayers can take advantage of the tax amnesty programme that allows them to evaluate their tax compliance and pay all their principal taxes for periods up to December 2022 in exchange for a waiver of penalties and interest. It is important to note that the deadline for applying for a waiver and settling the outstanding principal tax is 30 June 2024.

Alex Kanyi and Judith Jepkorir

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR
Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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