KNCCI Submissions on the Tax Laws Amendment Bill 2024

KNCCI is the longest serving independent voice of the private sector. We are a membership-based organization with over 2 million members, majority of who are micro small and medium enterprises (MSMEs), and with representation in all the 47 counties through our County Chapters. We advocate for the creation of a favorable trade and investment environment that supports enterprise expansion.

We have reviewed the Tax Laws Amendment Bill 2024 and highlighted the key proposed changes below:

No	Section of Bill	Recommendation	Justification
1	Section 5 **12E (4) on tax payable for Significant Economic Presence Tax** For purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be ***ten percent*** of the gross turnover. (Pg. 1016)	Replace ***'ten percent'*** with ***'five percent'*** For purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be ***five percent*** of the gross turnover.	• **Steep tax rate hike:** In as much as the significant economic tax aligns with Pillar 2 of the OECD requirements, the proposed effective rate of 3% represents a 100% hike which does not seem to align with the financial realities of businesses in the digital sector, as many of these platforms are still in the investment phase of their growth. • **Unpredictable tax regime:** The Digital Service Tax was introduced only three years ago (Jan 2021) therefore a change in the tax rate signifies a haphazard tax policy which deters investors.
2	Section 15 **15 (b) (i) (u) and 15 (b) (ii) (B) (III) (n)** Introduction of 5% and 0.5% withholding tax for supply to public entities by non-residents and residents respectively. (Pg. 1022/23)	Delete proposals	• **Overlooks the government's fiscal position:** The government's stock of pending bills sits at over KES 700 billion and is a key contributor to working capital constraints in Kenya's private sector. It is therefore exploitative to introduce a withholding tax when there is a history of delayed payments which eats into the margins of suppliers, to the extent that at the point of payment, the margins are eroded by inflation and interest rates. • **Increased cost of supplies to government:** Suppliers, particularly non-residents may opt to incorporate the withholding tax into their cost structure in order to accommodate the cost and protect their margins further raising the cost of supplies to government.

3	Section 26 **Amendment of section 8 of Cap, 469C to increase Railway Development Levy (RDL) from 1.5% to 2.5%** (Pg. 1022/23)	Delete proposal	• **Unpredictable tax regime:** The current 1.5% was introduced by Finance Act 2023 which was a drop from the initial 2% with an aim of boosting trade. The proposed 1% change strengthens the haphazardness of RDL further adding to the uncertainty of taxation and difficulty in planning which deters investors both locally and internationally. • **Unaffordable cost for the end consumer:** The proposed increase will lead to higher costs for imported goods in Kenya. This will negatively affect end consumers, as traders and manufacturers are likely to transfer these additional expenses to local product prices.
4	Section 25 (a) (E) and (F) Amendment of the First Schedule to Cap 472 • **(E) Increase in Excise Duty on Liquid nicotine for electronic cigarettes from KES 70 to KES 100 per milliliter** • **(F) Increase in Excise Duty on products containing nicotine, nicotine substitutes intended for inhalation without combustion or oral application and liquid nicotine for electronic cigarettes from KES 1595 to KES 2,000 per KG** (Pg. 1027/28)	Delete proposals	• **Inconsistent with push for a smokeless nation:** Given that excise duty on cigarettes with and without filters has been equalized and raised to KES 4,100 per milliliter in this Bill, excise on non-combustive nicotine should not be increased so as to **provide an alternative to smokers and enable the transition to a smoke free nation**. Raising taxes on both combustive and non-combustive nicotine products **creates an opportunity for illicit and counterfeit products** which already account for about 40% of the nicotine products in Kenya.

5	Section 25 (b) (i) **Increase excise duty on Telephone and internet data services from 15% to 20%** (Pg. 1031)	Delete proposal	• **Contradicts government's commitment on digital inclusion:** Government has been at the forefront of promoting digital inclusion with provision of public services through platforms such as e-Citizen therefore increasing the cost of internet will limit access to internet, eroding the gains made in digital inclusion. • **Increase the cost of doing business:** The internet is a horizontal infrastructure that is utilized by all businesses from production to customer acquisition. Critically, in the last decade, the internet and particularly social media has been a key enabler to the success of small businesses mostly run by young people, providing the much needed employment. Therefore raising the cost of access to telephone and internet services not only increases the cost of doing business but also threatens the employment of many Kenyans.
6	Section 25 (a) (i) (A) **"Imported sugar excluding sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery KES. 7.5 per kg"** (Pg. 1027)	• Define registered manufacturers • Retain the excise duty at KES per 5kg	• **Lack of clarity on who a 'registered manufacturer' is:** Clearly defining registered manufacturers will provide clarity on who qualifies for tax exemption benefits. Similar incentives, such as import duty exemptions on industrial spare parts, faced delays in implementation due to administrative challenges. Providing this clarification would help avoid similar issues. • **No industrial sugar production in Kenya:** The increase of KES 5 per kilogram has already driven up the cost of locally manufactured products, especially given that Kenya lacks industrial sugar production. This significantly undermines the competitiveness of local manufacturers, favoring imports and illicit goods instead. The government should consider implementing any tax increases only after establishing local industrial sugar production capacity.
7	Section 25 (a) (i) (K) (K) For Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non- alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% by deleting "at KES. 142.44 per litre "and substituting it with "**KES. 22.50**	• Change the excise rate on Beer from KES 22.50 per centilitres to KES 20 per centilitre of pure alcohol • Clearly define 'small	• **Reduce market distortion:** The rate of KES 22.50 per centilitre for other beers is 125% higher than the rate for small independent brewers. We proposed to reduce the percent difference to 100% i.e. KES 20 per centilitre. This will reduce the impact of the market distortion that will be created with the lower rate for beer. • **"Small Independent Brewers" has not been defined in the Bill.** The definition that was contained in the National Assembly Order Paper date 25th June 2024 was fouled in that it did not clearly define the period set as the cap/ceiling

	per centilitre of pure alcohol": Provided that, Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages manufactured by licensed **small independent brewers** shall be subject to the rate of KES. 10 per centilitre of pure alcohol.	independent brewer'	for the volume of alcohol produced for a manufacturer to be called a small independent brewer i.e. it was not clear whether it was 150,000 litres of alcohol per year or per month.
8	Section 25 (a) (i) (L) For Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% by deleting "at KES 356.42 per litre" and substituting it with "KES 10 per centilitre of pure alcohol". (Pg 1030)	Lower the tax rate from KES 10 per centilitre to KES 8.9 per centilitre	• **Surge in illicit and counterfeit products:** With the change of excise tax to ABV based regime, the proposed rate of KES 10/cl translates to a 12% increase from the current tax rate. The increase will most definitely distort the market and increase levels of illicit. 90% of the spirits consumption happens at 40% ABV, 250ml stock keeping unit (SKU) at average retail price of KES 300/=. An excise rate of KES 10/cl would change the new retail price of spirit to KES 350 per 250 ml bottle for local spirits which would prompt shifts to cheaper and most likely harmful alternative, hence growth of illicit alcohol beyond the current levels of 59% (loss of KES 71bn in tax revenue annually).

KNCCI stresses the need for predictability and certainty in Kenya's tax regime in a bid to boost investor confidence and unlock foreign direct investments as well as domestic investments.

We urge the National Assembly to adopt these recommendations and reach out to the KNCCI for any support required in this endeavor.

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