

Exemptions on taxes on Development Income



The Cabinet Secretary for the National Treasury has in the recent past passed several amendments to the tax regime in a bid to increase investor appetite on development and infrastructure projects in Kenya.

Please see a summary as outlined below.

Withholding tax on interest paid on foreign sourced loans

The Cabinet Secretary has directed via Legal Notice 91 that the interests to be paid on loan from foreign sources for investing in the energy or water sectors, or in roads, ports, railways or aerodromes shall be exempt from tax.

This means loans sourced from out of the country for the purposes of funding infrastructure projects as outlined above shall not attract withholding tax which is currently applicable at the rate of 20%.

Stamp Duty

The Cabinet Secretary then directed via Legal Notice 106 instruments executed in regard to loans from foreign sources for investing in the

energy or water sectors, or in roads, ports, railways or aerodromes shall be exempt from stamp duty.


Withholding tax on professional services rendered to power purchase projects

Most recently, the Cabinet Secretary has issued Legal Notice 165 which provides that *in order to attract more investments in the energy sector for the purpose of lowering the cost of energy, as may be provided for under any Power Purchase Agreement, the Cabinet Secretary for the National Treasury directs that the payment that shall be made to a non-resident for services rendered under a Power Purchase Agreement shall be exempt from tax.*

This means when a person under a Power Purchase Agreement makes payment to a non-resident who provided professional services is not required to withhold tax. The current applicable rate for this is 20%.

Conclusion

These new provisions will be generally welcomed by investors in these areas of business. However, we foresee fewer people opting to set up companies that supply services to such projects here in Kenya as it is more favorable to do so from overseas.



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