



SPECIAL ISSUE

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LEGAL NOTICE NO. 132

THE INCOME TAX ACT

(Cap. 470)

CRITERIA FOR THE DETERMINATION OF REBATE

IN EXERCISE of the powers conferred by section 15 (2) (ab) of the Income Tax Act, the Cabinet Secretary for Energy issues the conditions set out in the Schedule hereto for the deduction of an additional 30% of electricity costs incurred by manufacturers.

SCHEDULE

1. This rebate program shall not apply to manufacturers involved in the generation, transmission and distribution of electrical energy and shall be subject to the Key Performance Indicators (KPIs) specified in the table below —

Table 1: Targets and Weights for the KPIs for Manufacturers

	<i>Increase in Electricity Consumption (D)</i>	<i>Increase in Capital Investment (C)</i>	<i>Increase in Sales Revenue (R)</i>
Annual Target in Percentage (%) (T)	10%	10%	10%
Weight (W)	0.30	0.30	0.40

2. The rebate entitlement shall be based on an Actual Overall Performance (AOP) in accordance with the formula below —

$$AOP = \frac{\sum(W_D * D + W_C * C + W_R * R)}{((T_D * W_D) + (T_C * W_C) + (T_R * W_R))}$$

Where; AOP is Actual Overall Performance;

W_D is Weight allocated to the Demand;

W_C is Weight allocated to increase in Capital Investment;

W_R is Weight allocated to increase in Sales Revenue;

D is actual percentage increase in Electricity Consumption;

C is actual percentage increase in Capital Investment;

R is actual percentage increase in Sales Revenue;

T_D , T_C and T_R is the target growth in Demand, Capital Investment and Sales Revenue respectively.

Note:

- (a) The manufacturer must have a valid Tax Compliance Certificate.
- (b) The rebate is based on an AOP up-to a maximum of 100% and a minimum of 0%.

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 10 SEP 2019	
TUESDAY	
TABLED BY:	MAJORITY LEADER
CLERK-AT THE TABLE:	

- (c) A manufacturer with an AOP of 100% qualifies for a maximum rebate of an extra 30% of the electricity cost incurred for purposes of computation of taxable income.
- (d) In the first year of claim, 20% of the cost of electricity from the grid will be allowed and the remaining 10% by the weighted Key Performance Indicators.
- (e) For subsequent years, the rebate claimed will be determined by the weighted Key Performance Indicator.

3. The Evaluation Mechanism is as set out in the table below —

Table 2: Evaluation Mechanism Criteria

KPI	Measure	Evidence	Weight (W)
Increase in electricity consumption by 10% for manufacturers (based on Small Commercial (SCs) and Commercial Customers (CIs) categories.	Total annual electricity consumption (Grid electricity).	Total electricity bills of the manufacturer.	0.30
Increase in Capital Investment by 10%	Additional capital investment injected by the company.	Books of accounts.	0.30
Increase in Sales Revenue by manufacturers by 10%	Turnover. It was noted that corporate tax claims are done before filing returns. One should provide for this in the books.	VAT returns Books of accounts Customs entry.	0.40

Note:

- (a) The Ministry of Energy may request the Kenya Revenue Authority to conduct an audit to evaluate the rebate.
- (b) The manufacturer must submit a baseline report certified by an external auditor to the Ministry of Energy as a self- declaration form.
- (c) The manufacturer shall submit quarterly financial reports to the Kenya Revenue Authority.

Dated the 30th July, 2019.

CHARLES KETER,
Cabinet Secretary for Energy.



REPUBLIC OF KENYA

**IMPLEMENTATION OF THE ELECTRICITY REBATE
PROGRAM**

Explanatory Memorandum

July 2019

4. Similarly, in an effort to reduce the tariff further to the level of 9 US Cents/kWh and below, the National Treasury and Planning, through the Finance Act, 2018 amended section 15 of the Income Tax Act to provide for an electricity rebate program which allows for thirty per cent of the electricity cost incurred by manufacturers as a short term measure, as stated in Section 7 of Finance Act 2018 that states: "*Section 15 of the Income Tax Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (aa) – (ab) thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy*".
5. The Income Tax Act, Cap. 470 of the Laws of Kenya, under Schedule 2 defines "manufacture" as *the making (including packaging) of goods or materials from raw or partly manufactured materials or other goods or the generation of electrical energy for supply to the national grid or the transformation and distribution of electricity through the national grid but does not extend to any activities which are ancillary to manufacture such as design, storage, transport or administration;*
6. The implication of this amendment is that 130% of electricity cost incurred by manufacturers is treated as an allowable expense for tax purposes subject to the condition set by the Ministry of Energy (MOE).
7. In view of this development, MOE, NT&P, Ministry of Industry, Trade & Cooperatives (MoITC), ERC and KPLC jointly agreed to establish a Technical Working Group to determine the criteria for the Electricity Cost Rebates Program.
8. The technical working group on the proposed rebate program made a presentation to the Cabinet Secretaries for National Treasury; Energy; Industry, Trade and Cooperatives; and KAM, in a meeting held on 18th December 2018. Following this presentation, it was agreed that the technical working group be expanded to finalize on the criteria for the electricity rebate program and determine the impact on the same.

II. MEMBERSHIP

9. The expanded technical working group comprises of representatives from the MOE, MOITC, NT&P, KAM, ERC, KPLC, Kenya Revenue Authority (KRA), Kenya National Bureau of Standards (KNBS), Kenya Institute for Public Policy Research and Analysis (KIPPRA) and Kenya Electricity Transmission Company Ltd (KETRACO).

III. ELECTRICITY REBATE PROGRAM

10. The Electricity Rebate Program has been introduced to further provide room towards reducing the cost of electricity to the desired single digit levels, 9 US Cents/kWh at the entry level, in accordance to the Finance Act, 2018.
11. To ensure the rebate has an effect on increasing the GDP in line with the Big Four Agenda, an incentive criterion has been developed for implementation of the program through attainment of Key Performance Indicators (KPIs) by manufacturers.
12. Table 1 provides the incentive criteria for qualifying manufacturers:

Table 2: Targets and Weights for the KPIs for Manufacturers

	Increase in Electricity Consumption (D)	Increase in Capital Investment (C)	Increase in Sales Revenue (R)
Annual Target in Percentage (%) (T)	10%	10%	10%
Weight (W)	0.30	0.30	0.40

13. The rebate entitlement is proposed to be based on an Actual Overall Performance (AOP) as per formula below:

$$AOP = \frac{\sum(W_D * D + W_C * C + W_R * R)}{((T_D * W_D) + (T_C * W_C) + (T_R * W_R))}$$

Where; AOP is Actual Overall Performance

W_D is Weight allocated to the Demand

W_C is Weight allocated to increase in Capital Investment

W_R is Weight allocated to increase in Sales Revenue
 D is actual percentage increase in Electricity Consumption
 C is actual percentage increase in Capital Investment
 R is actual percentage increase in Sales Revenue
 T_D, T_C and T_R is the target growth in Demand, Capital Investment and Sales Revenue respectively

Note:

- i. The rebate is based on an AOP up-to a maximum of 100% and a minimum of 0%.
- ii. A manufacturer with an AOP of 100% qualifies for a maximum rebate of an extra 30% of the electricity cost incurred for purposes of computation of taxable income.
- iii. Section 7 of the Finance Act, 2018 comes into effect in January 2019.

14. The evaluation mechanism criteria is as shown in Table 2.

Table 3: Evaluation Mechanism Criteria

	KPI	Measure	Evidence
1.	Increase in Electricity consumption by 10% for SCs and CIs categories. <i>Weight - 0.30</i>	<i>Total annual electricity consumption (Grid electricity)</i>	<i>Total electricity bills of the Taxpayer.</i>
2.	Increase in Capital Investment by 10% <i>Weight - 0.30</i>	<i>Additional capital investment injected by the company</i>	<i>Books of accounts</i>
3.	Increase in Sales Revenue by manufacturers by 10% <i>Weight - 0.40</i>	<i>Turnover. It was noted that corporate tax claims are done before filing returns. One should provide for this in the books.</i>	<i>VAT returns Books of accounts Customs entry</i>

IV. PROJECTED IMPACT OF REBATE PROGRAM

15. The following is the impact of the program:
- i. The various categories of industrial consumers that attain an AOP of 100% will have their current unit costs that range from Kshs/kWh 21.94 - Kshs/kWh 15.16 reduced by Kshs/kWh 12.71-Kshs. 5.93 respectively.
 - ii. Based on the projected tax payable by manufacturers in the large taxpayers office for the year 2018/19, it is estimated that the total impact on tax payable will be Ksh. 1.69 Billion when AOP is 100%, Ksh. 1.48 Billion, when the AOP is 50% and Ksh. 1.06 Billion when AOP is 0%.
 - iii. For a firm with an AOP of 100%, the effect on the profits will vary from Sector to Sector. For the Cement Industry, for instance, the savings on taxable income is between 5-8%.
 - iv. The electricity rebate will enhance competitiveness of Kenyan products in the region in various sectors. For instance, in cement sector, electricity cost averages about 20% of total cost of production and with the rebate, the cost of the same bag will reduce by around 5%. For the Steel manufacturers, the cost of electricity accounts for 20-30% of total cost of production, and translates into a cost advantage of 7.5%. For textile manufacturers, cost of electricity accounts for an average of 10% total cost of production thereby providing an average cost advantage of about 3%.
 - v. On impact to GDP, the 30% rebate will reduce the electricity expense by manufacturers and therefore lead to low cost of production of goods and services produced locally. Assuming the 30% leads to increase in output of 15% in manufacturing, the GDP contribution by the sector will increase by 1.6% in 2019.

V. RECOMMENDATIONS

16. It is recommended that the rebate program will be implemented as follows:
- i. The rebate program be effective from January 2019;
 - ii. An automatic rebate of 20% for the volunteer manufacturers in the first year subject to them having a Tax Compliance Certificate, and a 10% of the rebate be earned subject to the Rebates criteria based on the proposed AOP. This is to incentivize the manufacturers and the Small and Medium Enterprises;
 - iii. In subsequent years, the evaluation criteria in Clause 14 shall apply;
 - iv. That the overall rebate percentage be increased from 30% to 40% in the second year, and later to 50% in the third year, if it will not have

met the desired tariff of 9 US cents, and based on evaluated positive impact to the economy;

- v. A secretariat to implement this electricity rebate program be established at the State Department of Industry to oversee and monitor the impact of the program whereas KRA to do an audit of the program upon request by the Ministry;
- vi. The secretariat should comprise officers from MOE, NT&P, KPLC, ERC, KRA, MoITC, KAM, Kenya National Bureau of Statistics (KNBS) and Office of the Attorney General to oversee the implementation of the program.
- vii. That the base for the Evaluation Mechanism Criteria be the end of the financial year for respective entities and the same be converted to the end of the previous financial year for subsequent years.