Tax Alert

Highlights of the Kenya Finance Bill, 2023

May 2023

The Finance Bill 2023(“The Bill”), was tabled to the National Assembly on 04 May 2023 for the first reading.

The proposals in the Bill are likely to have a significant impact on stakeholders if implemented as it is. In this Tax Alert, we analyse changes proposed by the Bill and the potential implications.

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Corporation Tax

Corporation Tax

Issue	Current Provision	Proposed Provision	Impact/ Observation
Definition "winning" **Proposed effective date; 1 July 2023**	The ITA defines "winnings" as winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly.	Winnings are proposed to mean, the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered.	The government is attempting to regulate various social activities, through taxation, with betting considered as a social activity The proposal clarifies that the taxable value of a winning shall be the amount won without deducting the amount staked or wagered. This effectively affects the Punter as it lowers the take-home. .
Definition of "digital content monetisation" **Proposed effective date; 1 July 2023**	N/A	Digital content monetisation is defined to mean offering for payment entertainment, social, literal, artistic, educational or any other material electronically by; a. advertisement on websites, social media platforms b. Brand sponsorship c. affiliate marketing d. Content creators with subscription based services e. Content creators with membership programme f. licensing the content including photographs g. Crowdfunding for content creators	The proposed definition clarifies the scope of services. Businesses making payments to providers of the said services will need to deduct WHT of 15% and remit to the Kenya Revenue Authority. While this goes to improving cash-flows to the Treasury, the taxpayers who are already subject to other in-country tax obligations will need to enhance their planning around operational cash-flows.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Definition of “immovable property” **Proposed effective date: 1 July 2023**	No general definition	Immovable property is defined to include: a. land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; b. a mining right, an interest in a petroleum agreement, mining or Petroleum information;	The proposal seeks to expand the scope of immovable property. Tax payers will need to assess whether capital gains tax will be occasioned in the event of transfers for such immovable property.
Definition of “person” **Proposed effective date: 1 July 2023**	No general definition	The Finance Bill proposes the general definition of a person to include; a. a relative of that person, in the case of an individual; and b. a company	The Eighth Schule to the ITA provides a Schedule specific interpretation of the term ‘person”. The proposal for a general definition will provide clarity that a person by definition includes both an individual and a company
Definition of “related person” **Proposed effective date: 1 July 2023**	No general definition	The Finance Bill proposes that two persons are related where a person participates directly or indirectly in the management, control or capital of the business of another person	A general definition is a welcome proposal as currently the definition is specific to Eighth Schedule, Section 18 of the ITA. This gives clarity on the definition of related party

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Introduction of a claim period for deferred realized foreign exchange loss **Proposed effective date: 1 July 2023**	The ITA provides that companies shall defer realised foreign exchange loss where their gross interest paid or payable to related persons and third parties exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any financial year, with no specified duration within which deferred realized foreign exchange loss shall be utilized.	The Finance Bill proposes to amend the ITA to provide that the foreign exchange loss shall be deferred and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any year of income.	The proposal aligns the deferral of realized foreign exchange to the proposed amendments on interest restriction rules. However, the introduction of 3 year period from the date the loss was realized, being the duration a person is eligible to claim realized foreign exchange loss will result in taxpayers forfeiting it where the interest restriction rules still apply. This will put pressure on Taxpayer to clear off debts within 3 years.
Tax on repatriation of income **Proposed effective date: 1 January 2024**	N/A.	The Finance Bill proposes to reduce the corporate tax rate from 37.5% to 30% and introduce tax on repatriated income for branches/permanent establishments (PE). Both corporate tax and tax on repatriated income shall be payable by the PE. A formulae on ascertaining the repatriated income has also been detailed.	Where the proposal is amended and succeeds, the choice to operate a branch/PE or a subsidiary will be influenced by the effective tax rate on the incomes sourced from Kenya. The Bill however has not proposed the applicable tax rate on the repatriated income.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Shares in lieu of cash emoluments by an eligible start-up company **Proposed effective date: 1 July 2023**	No specific legislation	The Finance Bill proposes that the taxable benefit from shares in lieu of cash emoluments by an eligible start-up shall accrue on the earlier of; a. 5 years from year of award ; b. disposal of the shares by the employee; c. date employment ceases with the eligible start-up Value of benefit shall be the fair market value of the share on the earlier of the above events. In its absence,, the Commissioner shall determine the value from the last issued financial statement. Definition of an “eligible start-up” is also given in detail.	Start-ups will often offer shares in lieu of cash emoluments to attract skilled personnel intended to steer the entity during the launch and growth phases. This proposal will enable start-ups offer competitive compensation packages to attract and retain skilled personnel.
Overpaid tax on non-residents payments limited from refund or tax credit, in case of an audit **Proposed effective date: 1 July 2023**	N/A	The Finance Bill proposes to restrict utilizing overpaid withholding tax incurred on non-resident payments, where an audit would result to an adjustment for lower tax being paid.	This proposal will largely affect taxpayers with non-resident-related party payments which rely on transfer pricing principles for their value to be determined. The proposal goes against principles of tax where a taxpayer shall not pay more or less than they ought to.

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Taxation of income from registered trust for beneficiaries **Proposed effective date; 1 July 2023**	The ITA provides relief from tax for the following payments to beneficiaries of a registered trust; a. any amount used exclusively for the purpose of education, medical treatment or early adulthood housing; b. income paid to any beneficiary which is collectively below ten million shillings in the year of income; and c. such other amount the Commissioner may prescribe from time to time.	Proposed for deletion	Beneficiaries of the incomes from registered trusts will be subject to tax, if the proposal succeeds. Same proposal had been made in 2022
Tightened revenue band and increased Turnover Tax (ToT) rate **Proposed effective date: 1 July 2023**	The ITA provides that ToT at 1% shall be payable by any resident person whose turnover from business is between KES 1,000,000 and KES 50,000,000 during any year of income.	The Finance Bill proposes ToT at 3% shall be payable by any resident person whose turnover from business is between KES 500,000 and KES 15,000,000 during any year of income.	ToT is a tax on gross receipts. And it has not been very successful in the past. The reduction of Threshold will bring more Husltler businesses into the TOT Bracket and at a higher rate without providing an avenue to deduct business costs goes against a equitable tax system. Most taxpayers affected by ToT are within the Micro, Small and Medium Enterprises that require sufficient support including legislatively, to enable them plough back profits and expand.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Owner occupier interest paid to co-operative societies, an allowable deduction **Proposed effective date: 1 July 2023**	Owner occupier interest of KES 300,000 p.a. paid to; a. bank or financial institution or mortgage finance company; b. An insurance company; c. The Kenya Reinsurance Corporation; d. A building society; e. The National Housing Corporation shall be deducted when ascertaining taxable income of an individual.	The Finance Bill proposes to expand the list of institutions to include; a. A co-operative society registered under the Co-operative Societies Act (Cap. 490).	This proposal will likely encourage depositors and new membership into co-operative societies, so as to utilize savings towards home ownership.
Limitation of tax allowable expenditure if not compliant with electronic tax invoice management system **Proposed effective date: 1 January 2024**	Subject to the provisions of the ITA, expenditure wholly and exclusively incurred in the production of income is allowable when ascertaining taxable income.	The Finance Bill proposes that expenditure or loss where the invoices of the transactions are not generated from TIMS, except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015, shall not be allowed when ascertaining taxable incomes.	This is intended to compel businesses to engage in business with other compliant businesses. This will certainly enhance monitoring and compliance enforcement, for the Commissioner of Taxes. However its success is dependent on a seamless operational TIMS.

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Issue	Introduction of the Digital Asset Tax (DAT) Proposed effective date; 1 September 2023
Current Provision	N/A
Proposed Provision	The Finance Bill proposes to introduce DAT at 3% of the transfer or exchange value of the digital asset. Income from a digital asset is gross fair market value received or receivable at the point of exchange or transfer of a digital asset. A digital asset shall include cryptocurrencies, token code and non-fungible token. The owner of a platform (including non-resident) or the person who facilitates the exchange or transfer of a digital asset shall deduct and remit DAT within 24 hours. The non-resident owner shall register under the simplified tax regime.
Impact/ Observation	In an ever changing digital age which presents “new” revenue streams, the proposed change will empower the Commissioner of Taxes to collect tax on incomes derived in Kenya. The proposal can consider a lower tax rate since the tax base is the fair market value. Persons responsible for remitting the DAT will face administrative challenges to comply with the 24-hour timeline. The Bill however, has not clarified whether the proposed tax will be a final tax or, the beneficiary will be expected to account for additional corporation tax currently at 30% or potentially capital gains tax at 15%. In addition, any losses made should also be considered in arriving at the taxable income The proposal should also consider revising the effective date since the 1 September 2023 date, will be on short notice for persons such as non-residents who would have to operationalize systems to facilitate remitting the tax due.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Interest restriction limited to loans from non-residents **Proposed effective date: 1 January 2024**	The ITA provides that gross interest paid or payable to related persons and third parties to a maximum of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower, shall be allowable for tax.	The Finance Bill proposes that such restriction shall only apply to gross interest paid or payable to non-resident persons. Residual interest after restriction in a given year of income shall be allowable in the subsequent three years of income, subject to the thirty percent threshold provided. Interest restriction shall not apply to exempt interest. The definition to "all loans" is also proposed to exclude local loans.	The proposal is a welcome relief for businesses that often rely on debt from resident financial institutions to boost financing of capital and operations expenditure. Express exclusion from interest restriction rules for exempt interest, allows for certainty in comprehending the ITA. For example interest on infrastructure loans from non-residents, shall not be considered for interest restriction. The proposal to allow deduction of residual interest after restriction in subsequent 3 years aligns to international best practice.
Interest restriction rules to apply on companies with investment of at least five billion shillings **Proposed effective date: 1 January 2024**	The ITA excludes; a. Manufacturing companies whose cumulative investment 5 years prior to 1 July 2022 is at least five billion shillings; and b. Manufacturing companies whose cumulative investment is at least five billion shillings: from application of interest restriction rules provided the investment shall have been made outside Nairobi City County and Mombasa County.	The provision is proposed for deletion.	Not many entities had this kind of investments and this proposal is viewed as the government's attempt to accelerate the time within which the manufacturing companies will utilise any tax losses they would have from large investment deductions.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Preferential tax rate on qualifying intellectual property income **Proposed effective date: 1 January 2024**	N/A	The Finance Bill proposes to introduce a formulae on ascertaining a reduced tax base for qualifying intellectual property income which shall then be subject to a preferential tax rate. Intellectual property losses shall only be deducted against intellectual property income.	The proposal points towards Kenya's intention to introduce an intellectual property regime to encourage research and development. As currently drafted, there is no preferential rate or definition of qualifying intellectual property income provide in the ITA. Additional guidance that is aligned with OECD Action 5 minimum standard, is required to facilitate compliance.
Revised definition of an Ultimate Parent Entity (UPE) **Proposed effective date: 1 July 2023**	A UPE; (a) is resident in Kenya for tax purposes; (b) is not controlled by another entity; and (c) owns or controls a multinational enterprise group	Definition of a UPE is proposed for revision as follows; (a) is not controlled by another entity; and (b) owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group	The proposal provides clarification that a UPE is not necessarily an entity resident in Kenya.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Amendments to country-by-country report (CbCR), master file and local file, filing requirements **Proposed effective date: 1 July 2023**	An Ultimate Parent Entity (UPE) shall file a CbCR within twelve months after financial year end of the group. A UPE or a constituent entity (CE) of an multinational enterprise group (MNE) that has attained KES 95 Billion in gross turnover, shall file a master file and a local file within six months after financial year end.	The proposed amendments clarify that both a UPE and CE shall file a CbCR within twelve months after financial year end of the group. The amendments further clarify that the requirement to file the master and local file for a UPE and CE, shall be read independently from subsection 1 which is tied to turnover thresholds. Proposed amendment to Section 18D(1) reads "Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with **subsection (3**)"	The amendments largely provide clarification in determining entities required to comply with CbCR, master and local file preparation requirements. To enhance the certainty, amendment to Section 18D(1) shall be revised to "Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with **subsection (2)**", being the subsection on CbCR filing.
Exempt income for members' clubs and trade associations **Proposed effective date: 1 July 2023**	The taxable business income of a members' club or trade association is the gross receipts on revenue account (including entrance fees and subscriptions) provided that such receipts, excluding, gross investment income, shall constitute less than 75% of fees received from members. Where such receipts exceed 75%, then only gross investments shall be taxable income.	The taxable business income of a members' club or trade association is proposed to be the gross receipts on revenue account, excluding joining fees, welfare contributions and subscriptions. Section 21(2) which provides definitions such as "gross investment" is proposed for deletion.	The proposal is a welcome relief for member clubs and trade associations as the contributions from joining fees, welfare contributions and subscriptions shall be excluded from taxable income. This will relieve cashflows that will be used to advance the members' common interests.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Reduced tax rate and expanded scope on rental income subject to rental withholding tax **Proposed effective date: 1 January 2024**	Rental withholding tax applies at 10% on rent, premium or similar consideration for the use or occupation of immovable property owned by residents or persons with a permanent establishment in Kenya. Only persons appointed by the Commissioner shall deduct such withholding.	Persons who receive rental income on behalf of premise owners (resident or persons with a permanent establishment in Kenya) are proposed to withhold 7.5% on the gross amount and remit to the Commissioner of Taxes within 24 hours. Such persons should have been appointed by the Commissioner in writing.	This proposal is targeted to boost the recent campaign initiated by the KRA to map property owners in Kenya. More tenants and rent collection agencies will find themselves appointed to boost the process. It is also commendable that the withholding tax rate has been reduced to relieve cashflow constraints for the property owners.
Reduced monthly rental income (MRI) tax rate **Proposed effective date: 1 January 2024**	Currently, residential property owners remit MRI at 10% p.m. being a final tax, on gross receipts.	The Finance Bill proposes to reduce the MRI rate to 7.5% p.m.	The proposal is a welcome relief for residential property owners as they are taxed on gross receipts.
Revision of withholding tax remittance due date **Proposed effective date: 1 July 2023**	Withholding tax shall be made on or before the twentieth day of the month following the month in which the deduction was made	The Finance Bill proposes that withholding tax shall be made within 24 hours of deduction.	This proposal will pose increased administrative steps and cashflow management challenges for taxpayers. For the benefit of the government to meet daily running costs.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Clean up of non-functional legislations and refining terms applied in the ITA **Proposed effective date: 1 July 2023**	Section 18(4) of the ITA provides for restriction of expenditure such as renumeration of services to directors, incurred outside Kenya by a non-resident person. Section 31 of the ITA applies terms that are not gender inclusive such as “his” and “his employer”. Section 15(7)(e)(iii), Section 45 and Third Schedule, Head B Paragraph 1A to the ITA discuss taxation of income of a married woman.	Proposed for deletion The terms are proposed to be amended to “the individual” and “the individual's employer” Proposed for deletion or repeal from the ITA	The proposed changes are intended to harmonise terminology across the ITA as well as having operational legislation in place.
Clarification of entities eligible for income tax exemption **Proposed effective date: 1 July 2023**	No definition for an ‘institution, body of persons or irrevocable trust, of a public character’ is included.	The Finance Bill proposes additional clarification on an “institution, body of persons or irrevocable trust, of a public character” as an entity established to benefit the public in a transparent and accountable manner without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilizes its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.	Entities seeking income tax exemption will need to evaluate whether they meet the additional criteria.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Expanded list of exempt incomes **Proposed effective date: 1 July 2023**	N/A	Following incomes are proposed to be exempt from tax: a. Royalties to a non-resident person and interest to a resident or non-resident person by a company manufacturing human vaccines. b. Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme. c. Payment in the form of funds transfer from a post-retirement medical fund to a medical insurance cover provider.	Persons receiving the listed incomes will not be subject to income tax in Kenya.
Clarification of "local content" for motor vehicle assembly plants **Proposed effective date: 1 July 2023**	Local motor vehicle assembly plants are eligible for an extension of 5 years to apply a reduced corporate tax rate of 15% where they achieve a local content equivalent to 50% of the ex-factory value of the motor vehicles. "Local content" is not defined.	"Local content" is proposed to mean parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.	This will encourage local motor vehicle assemblers to use more locally manufactured parts to be eligible for the reduced corporate income Tax rate of 15%.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Expanded scope of financial institutions **Proposed effective date; 1 January 2024**	N/A	Fourth Schedule of the ITA is amended to include a tenth institution: Mortgage refinance companies licensed under the Central Bank of Kenya Act	The proposal will improve cashflow to mortgage refinance institutions that are resident in Kenya, as interest income from mortgage refinancing activities will not be subject to withholding tax provisions which would otherwise have been remitted to the Commissioner of Taxes.
Revised notification threshold for licensee contractors **Proposed effective date: 1 July 2023**	Whenever there is a 10% change or more in the underlying ownership of a licensee contractor, immediate notifications shall be made to the Commissioner.	Immediate notification shall be made to the Commissioner whenever there is a minimum change of 20%.	There is reduced administrative compliance requirements for licensee contractors.

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Issue	Current Provision	Proposed Provision	Impact/ Observation
Increased rate of advance tax **Proposed effective date: 1 January 2024**	The ITA provides that advance tax for a. vans, pick-ups, trucks, prime movers, trailers and lorries, shall be the higher of KES 1,500 per tonne or KES 2,400 p.a. advance tax shall not be imposed on tractors or trailers used for agricultural purposes. b. saloons, station-wagons, mini-buses, buses and coaches, shall be the higher of KES 60 per passenger capacity p.m. or KES 2,400 p.a.	The Finance Bill proposes to increase the rates as follows: a. vans, pick-ups, trucks, prime movers, trailers and lorries, shall be the higher of KES 3,000 per tonne or KES 5,000 p.a. advance tax shall not be imposed on tractors or trailers used for agricultural purposes. b. saloons, station-wagons, mini-buses, buses and coaches, shall be the higher of KES 100 per passenger capacity p.m. or KES 5,000 p.a.	Increased rates are aimed at increasing tax collections for the government.
Taxation of income for manufacturers of human vaccine **Proposed effective date: 1 January 2024**	Income of a company undertaking the manufacture of human vaccines is exempt from income tax.	The current provision is proposed for deletion and subsequently introduce corporate tax rate at 10%.	The proposal is likely to discourage investment in manufacturing human vaccines.

Capital Gains Tax

Capital Gains Tax

Issue	Current Provision	Proposed Provision	Impact/ Observation
Preserving of adjusted cost for subsequent transfers of property exempt from capital gains tax **Proposed effective date; 1 July 2023**	N/A	Where property is transferred in a transaction that is exempt from capital gains tax, and the property is subsequently transferred in a taxable transaction within a period of less than five years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted cost as determined in the first transfer.	The proposal is a relief for persons that acquire property that is exempt from capital gains tax e.g. transfers between spouses. Subsequent disposal of such property within 5 years of acquisition shall not require additional steps to ascertain value.
Capital Gains Tax due date **Proposed effective date; 1 July 2023**	The due date for tax payable in respect of property transferred shall be on or before the date of application for transfer of the property is made at the relevant Lands Office.	The due date for tax payable in respect of property transferred under this Part shall be the earlier of— (a) receipt of the full purchase price by the vendor; or (b) registration of the transfer	The proposal provides clarification on when capital gains tax shall be due and payable. KRA will also have an avenue to enforce collection of tax even where there would be undue delays in registering the transfer at the Lands office but funds have been disbursed.
Restriction for exemption from capital gains tax on internal restructuring **Proposed effective date; 1 July 2023**	Paragraph 13 (c) of the Eighth Schedule to the ITA provides that capital gains tax shall not apply; (c) in an internal restructuring within a group which does not involve transfer of property to a third party	Paragraph 13 (c) of the Eighth Schedule to the ITA is proposed restrict exemption from capital gains tax on; (c) an internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months	The proposal ensures that groups that intend to undergo internal restructuring have been in operation for a minimum of 2 years before they enjoy capital gains tax exemption. This will reduce abuse of the provision exempting capital gains tax during internal restructuring.

Capital Allowances

Issue	Current Provision	Proposed Provision	Impact/ Observation
Enhanced scope on capital gains tax to cover indirect transfers and Kenya- property rich entities **Proposed effective date; 1 July 2023**	Subject to provisions of the Eighth Schedule to the ITA, capital gains shall apply to the whole of a gain which accrues to a company or an individual on or after 1st January, 2015 on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015	The Eighth Schedule is proposed to have the following amendments; a. Inclusion of partnerships to persons that transfer property; b. gains from disposal/transfer of interest including interests in a partnership or trust, if, at any time during the year preceding the disposal/transfer such interests derived more than twenty per cent of their value directly or indirectly from immovable property situated in Kenya, or c. Gains from disposal/transfer of shares of a company resident in Kenya, if the alienator, at any time during the year preceding such disposal, held directly or indirectly at least twenty per cent of the capital of that company	Currently, capital gains tax is chargeable to indirect transfers on mining rights granted in Kenya. The proposed introduction seeks to broaden that scope and include indirect transfers in any other person. Persons disposing off their interest shall also be required to determine whether such interest has derived more than 20% value whether directly or indirectly, from a Kenya- property rich entity. To this end, it will be important for there to be further guidance on how to ascertain the 20% value derived from immovable property in Kenya. The above proposals are geared toward boosting revenue collection in Kenya.

Capital Allowances

Issue	Current Provision	Proposed Provision	Impact/ Observation
Expanded scope for “civil works” **Proposed effective date: 1 January 2024**	Civil works includes: a. roads and parking areas; b. railway lines and related structures; c. water, industrial effluent and sewerage works; d. communications and electrical posts and pylons and other electrical supply works; and e. security walls and fencing	The Finance Bill proposes to expand the definition of “civil works” to include; a. earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.	The proposal provides clarification on treatment of certain expenditure incurred by telecommunication operators and ascertains that the expenditure is eligible for capital allowance at 10% p.a. on a straight line basis.
Additional definitions in the Second Schedule to the ITA **Proposed effective date: 1 January 2024**	N/A	The Finance Bill proposes to introduce definitions as follows: a. “dock” - container terminal berth, harbor, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation; b. “industrial building” - a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking;	The proposed additional definitions will gives an expanded scope to aid in applying the capital allowances appropriately.
Introduction of industrial building and dock allowance **Proposed effective date: 1 January 2024**	N/A	Industrial building and dock allowance are proposed at 10% p.a. in equal instalments.	This proposal allows for certainty on the rate of capital allowance for certain structures.

Capital Allowances

Issue	Current Provision	Proposed Provision	Impact/ Observation
Additional definitions in the Second Schedule to the ITA…..cnt'd **Proposed effective date: 1 January 2024**	N/A	c. "machinery used for agriculture" - machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting; d. "telecommunications equipment" - civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.	
100% allowance for Hotel, Building and Machinery for manufacture **Proposed effective date: 1 January 2024**	N/A	The Finance Bill proposes that capital allowance shall be at 100% for hotel, buildings and machinery for manufacture when done outside of Nairobi and Mombasa counties, This shall not apply where due to the nature of the business, the investments have to be located outside the counties.	This will encourage deliberate investment in hotels and manufacturing outside of Nairobi and Mombasa counties.

Employment Taxes

Employment Taxes

Issue	Current Provision	Proposed Provision	Impact/ Observation
Club entrance and subscription fees, taxable benefit on employee **Proposed effective date: 1 July 2023**	The ITA provides that club entrance and subscription fees are non-deductible for tax purposes. Employers who incur the cost for their employees disallow the expense, effectively incurring the tax.	The Finance Bill proposes deleting the provision expressly disallowing club entrance and subscription fees on employer's income. At the same time, it proposes to have the fees as a taxable benefit to an employee.	The change is pushing the burden of Tax from the employer to the employee.
Reimbursement for asset purchase excluded from gains from employment income for public officers **Proposed effective date: 1 July 2023**	N/A	The Finance Bill proposes to introduce a specific provision excluding any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased, from being considered gains from employment income.	This proposal will shield public officers from wastage and excessive per diems and allowances which are not as per the PAYE guide.
Definition of market value for purposes of employee share ownership plan (ESOP) taxation **Proposed effective date: 1 January 2024**	The ITA provides that market value of an ESOP shall be a. the mid-market value on the date the shares were granted by the employee, for fully listed shares; or b. the open market price, which shall be agreed upon with the Commissioner before the grant of the options, for unquoted shares.	The market value for listed and unlisted shares is proposed to be mid-market value and open market value, respectively, on the day the option is exercised by the employee.	The proposed amendment aligns the definition of the term market value to the revision made through Finance Act 2022 that a taxable benefit on ESOPS shall accrue on the date the ESOP is exercised by the employee.

Employment Taxes

Issue	Current Provision	Proposed Provision	Impact/ Observation
Introduction of the post-retirement medical fund relief **Proposed effective date; 1 January 2024**	N/A	The Finance Bill proposes to introduce a Post-retirement medical fund relief for a resident individual who proves that in a year of income the person has contributed to a post-retirement medical fund. The relief shall be the lower of; i. 15% of the amount of contribution paid, or ii. Kshs 60,000 per annum.	The proposal will encourage resident individuals to contribute towards post-retirement medical funds. Post-retirement is considered as attainment of 60 years or upon earlier retirement on the grounds of ill-health or infirmity of body and mind.
Reimbursement for mileage **Proposed effective date: 1 July 2023**	No specific provision, however in practice reimbursement for mileage is not taxed where the same is incurred while on official duty.	The Finance Bill proposes to introduce an express provision excluding mileage/transport reimbursed while on official duty from being taxed. The reimbursement shall be computed using the standard mileage rate approved by the Automobile Association of Kenya (AA).	The proposal affirms the long-standing industry practice where reimbursement of mileage is done using the AA rates and is not subject to tax.
Revised individual rates of tax **Proposed effective rate: 1 July 2023**	Currently the highest PAYE band, that is amounts exceeding KES 388,000 p.a. is taxed at 30%	The Finance Bill proposes that incomes exceeding KES 6,000,000 p.a. to an individual shall be taxed at 35%	The discussion to increase the highest individual rate of tax has been there for a while. The Income Tax Bill, 2018 has a similar proposal for incomes exceeding KES 9,000,000 p.a. This will also affect Sole proprietors making a profit of above Kshs 6M P.A

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Value Added Tax

Value Added Tax Act

Issue	Current Provision	Proposed Provision	Impact/ Observation
Charge to Tax **LPG and Petroleum Products** **(w.e.f 1st July 2023**)	Currently, The VAT is at the rate of 8%.	The bill proposes to delete the sections providing for charging of VAT at 8% on Liquefied Petroleum Gas (LPG) and proposes to exempt LPG from VAT	The proposal should have zero rated LPG since exempting products does not make them cheaper defeating the reasoning of making LPG affordable.
		Further, the bill proposes to delete petroleum products listed under Part I of the First Schedule to VAT Act hence deeming them vatable at the standard rate of 16%.	The Increase in Vat on Petrol will increase the Price of the product affecting the entire supply chain hence cost passed to end consumers,
Place of supply of services **(w.e.f 1st July 2023)**	Presently, the VAT Act provides that If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person.	The bill proposes to amend Section 8 (2) by deleting the words "not a registered person and" and substituting with the words "a registered or unregistered person".	The proposal intends to include unregistered persons in definition of place of supply of services if the supplier is not in Kenya.
Credit for input tax against output tax **(w.e.f 1st July 2023)**	Currently, the VAT Act denies a taxpayer from deducting input tax if at the time when a deduction for input tax, the person does not hold the documentation referred to in subsection (3), or the registered supplier has not declared the sales invoice in a return.	The bill proposes to delete the word 'or' under this provision meaning that two conditions have to be met for a taxpayer to be denied a deduction of input VAT.	This amendment will increase compliance requirements for taxpayers which will require both conditions to be met for credit of input against output tax.
VAT on compensation of loss **(w.e.f 1st July 2023)**	No provision	The bill proposes to introduce a new provision under Section 17 (9) of the VAT Act providing that VAT will be charged on compensation received by a bonafide owner of taxable supplies for the loss of the taxable supply for which VAT had earlier been claimed.	The bill seeks to ensure that taxpayers account for output VAT on the compensation of loss received for items for which they benefited from input deduction.

Value Added Tax Act

Issue	Current Provision	Proposed Provision	Impact/ Observation
Application for registration **(w.e.f 1st July 2023)**	Presently, the VAT Act excludes the registration threshold of 5m to persons supplying imported digital services.	The bill seeks to make VAT registration compulsory for persons supplying imported digital services over the internet, an electronic network or through a digital marketplace irrespective of the five million shillings threshold for registration.	This is a clean up to align the DST regulations with The VAT Act 2013t.
Keeping of records **(w.e.f 1st July 2023)**	The current provision provides that a person should keep a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record in Kenya for a period of five years from the date of the last entry made therein.	The bill proposes to amend this section by deleting the words “in Kenya” thereby allowing the keeping of records outside of Kenya as well	With Improved technology this is a welcome move to taxpayers not having a presence in Kenya or even Resident Taxpayers as the amendment will now allow records to be kept outside of Kenya.
First Schedule- Exempt supplies **(w.e.f 1st July 2023)**	Presently the VAT Act provides for exemption of Fish and crustaceans, muluscs and other ‘quaticinvetebrates’ of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307.	The bill seeks to correct the wording in this paragraph to read Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307	This amendment will correct the erroneous wording in the specified paragraph.
First Schedule- Exempt supplies **(w.e.f 1st July 2023)**	The No current provision.	The bill proposes to exempt the following supplies • supplies in the medical sector of the following tariff codes; 3003.41.00, 3003.42.00 3003.43.00, 3003.49.00 3003.90.00, 3005.90.11 3005.90.12, 3005.90.19 • taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of 100, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption. • All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs.	This amendment will enhance affordable healthcare in the country. The proposed amendment on the construction and equipping of specialized hospitals is also a welcome move for investors in the healthcare sectors.

Value Added Tax Act

Issue	Current Provision	Proposed Provision	Impact/ Observation
VAT on exported services **(w.e.f 1st July 2023)**	Currently, exportation of services is taxable with exemption of exportation of taxable services with respect to business process outsourcing.	The bill proposes to change the status of exportation of taxable services to exempt status.	This proposal will reverse the changes made in FB 2022 in line with the Internationally accepted destination principle that will make exported services competitive in the international market. We however note that the taxpayers with such services will not be able to claim input VAT on the expenses incurred in the cause of the business hence adversely affecting such businesses.
Transfer of business as a going concern (w.e.f 1st July 2023)	The transfer of business as a going concern is currently taxable at the standard rate of 16%.	The bill proposes to exempt transfer of business as a going concern.	This is a welcome for businesses as the transfer will not attract VAT.
Zero rating of inbound international Sea freight	Currently, the VAT Act provides that inbound international sea freight offered by a registered person to be taxable.	The bill seeks to change inbound international sea freight offered by a registered person to zero rated status.	This will make importation of goods and raw materials through the sea cheaper.
supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more 10%	Currently the VAT Act provided for the exemption of supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more 10%	The bill deletes the paragraph that provided for zero rating and exemption from VAT of the specified products for a transitional period of six months	The proposal provides for a clean up of the Act as the items were in both schedules of the VAT act that provided for exemption and zero rating. The item remains zero-rated as stipulated by paragraph 22 of the second schedule.
Change from Exempt to Taxable	The VAT Act provides for exemption of the following items; • Plant, machinery and equipment used in the construction of a plastics recycling plant. • Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) • Perforated PE film 15-22 gsm of tariff number 3921.90.00. • Plant, machinery and equipment used in the construction of a plastics recycling plant • Taxable goods and services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. • Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of one hundred, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption	The bill proposes to delete the provisions in the first and the second schedule that provided for the exemption and zero rating of the specified products. The deletion of the exemption for taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of one hundred will not affect any approval given by the CS Prior to this change if effected.	The taxation of goods and services of the construction of tourism facilities will affect investment of the tourism sector. This will cushion approvals given prior to this change.

Value Added Tax Act

Issue	Current Provision	Proposed Provision	Impact/ Observation
Proposed changes to Tariff numbers to align with CET classifications	• Malaria Diagnostic Kits	3002.11.00	3822.11.00
	• Vaccines for human medicine	3002.2.00	3002.41.00
	• Vaccines for veterinary medicine	3003.3.00	3002.42.00
	• White absorbent cotton wadding impregnated or coated with pharmaceutical substances	3005.90.10	3005.90.11,3005.90.12 3005.90.19
	• Blood-grouping reagents	3006.20.00	3822.13.00
	• Printed and unprinted Perforated PE film of other plastics 15-22 gsm	3921.90.00	3921.90.10, 3921.90.90
	• Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health.	8523.80.10	85.23
	• Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health.	8423.31.00	8423.10.00

Value Added Tax Act

Issue	Change from Zero Rated to Exempt Status
Current Provision	Currently, the act provides for zero rating of the following supplies: • Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing • medicaments, as approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health. • Transportation of sugarcane from farms to milling factories. • Agricultural pest control products • Fertilizers of Chapter 31.
Proposed Provision	The bill proposes to change the VAT status from zero rated to exempt supply.
Impact/ Observation	With this proposal, taxpayers will be restricted from claiming input VAT incurred on such supplies. Exempting products or services does not make them cheaper since VAT absorbed as cost is passed to end consumer.

Excise Duty Act

Excise Duty Act

Particular	Current Provision	Proposed Provision	Impact
Interpretation (w.e.f 1st July 2023)	"Excise control" has the meaning assigned to it in section 23 "Commissioner to notify licensee prior to suspension of license".	Section 2 of the Excise Duty Act, 2015, is amended in the definition of "excise control" by deleting the expression "section 23" and substituting therefore the expression "section 24" "Excisable goods under excise control".	This provides clarity on the definition of excise control. Therefore implying that excise control is the control the Commissioner has over excisable goods stored in the factory of a licensed manufacturer.
Adjustment for inflation (w.e.f 1st July 2023)	Commissioner has power to, adjust the specific rate of excise duty once every year to take into account inflation	To repeal section 10 that provides for "Adjustment for inflation"	Previously, there were concerns over the expected methodology used in ascertaining the adjustments since different sectors are impacted in different manners making it difficult to ascertain the adjustments imposed by the Commissioner and thus this is a relief to taxpayers.
Excise stamps and other markings (w.e.f 1st July 2023)	N/A	Introduce additional offences relating to excise duty while highlighting the penalties of the offender by committing any offence	The provisions aligns with the Tax Procedures Act on penalties relating to offences committed by taxpayers and therefore leading to an increased adherence to excise duty laws. The fine and the imprisonment inclusion will serve as an enforcement measure to anyone who engages in aforementioned excise duty offences.

Excise Duty Act

Particular	Current Provision	Proposed Provision	Impact
Payment of excise duty on betting and gaming companies (w.e.f 1st July 2023)	N/A	New requirement that excise duty on betting and gaming be remitted to the Commissioner within 24 hours from the closure of transactions of the day.	Betting and gaming companies will further have more administrative burdens. This enhances steps that shall be taken to curb non compliance and maintain ethos within the industry.
Condensates per 10001@ 20degC tariff number 2709.00.10 (w.e.f 1st July 2023)	Shs. 6,868.94	Deleting the tariff number 2709.00.10 appearing in paragraph 1, and the corresponding tariff description and rate of duty;	These will now be exempt from Excise Duty.
Imported White chocolate, (w.e.f 1st July 2023)	Shs. 209.88 per kg	Expansion to include Imported white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00;	Expands reach of duties to be collected on white chocolate
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90 (w.e.f 1st July 2023)	10%	Inserting the word “Imported” immediately before the tariff description “Articles of plastic of tariff heading 3923.30.00 and 3923.90.90”;	Now locally manufactured plastic items under these tariff codes are not subject to excise duty

Excise Duty Act

Particular	Current Provision	Proposed Provision	Impact
Pasta of tariff 1902 (w.e.f 1st July 2023)	Only imported pasta is subject to excise tax	(Deleting the word "imported" appearing in the description "Imported pasta of tariff 1902	Locally manufactured pasta will now be subject to Excise duty
Sugar confectionary of tariff heading 17.04 (w.e.f 1st July 2023)	Only imported sugar is taxed at Shs.35 per kg	Deleting the word "imported" appearing in the description "Imported sugar confectionary of tariff heading 17.04" appearing in paragraph 1;	Locally manufactured sugar confectionery of tariff heading 17.04 is now subjected to Excise Duty

Excise Duty Act

Newly excisable goods (Effective date 1 July 2023)

Particular	Proposed Provision
Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	30%
	10%
Imported cellular phones	
	15%
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	
	25%
Imported Test liner of heading 4805.24.00	
	25%
Imported fluting medium of heading 4805.19.00	5%
Human hair and other products of heading 6703	5%
Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704	5%
	5%
Artificial nails of tariff no. 3926.90.90	
Imported cement	10% of the value or KES 1.50 per Kg, whichever is higher
Imported fish	KES 100,000 per metric tons or 20% whichever is higher
Powdered juice	KES 25 per Kg
Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer	KES 5 per Kg
	15%
Excise duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions	

Excise Duty Act

Particular	Current Provision	Proposed Provision	Impact
Amended Provisions (w.e.f 1st July 2023)	Part II current provisions;	Part II amendments involve;	
Telephone and internet data services	20%	15%	These will now be taxed at a lower rate and resulting to a reduction in cost of the services.
Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers	20%	15%	
Excise duty on fees charged for money transfer services by cellular phone service providers	12%	15%	
Excise duty on betting	7.5%	20%	Increased taxation on betting, gaming and lotteries is meant to discourage excessive indulgence in the same and increase revenue collection for the Government.
Excise duty on gaming	7.5%	20%	.
Excise duty on prize competition	7.5%	20%	
Excise duty on lottery (excluding charitable lotteries)	7.5%	20%	

Excise Duty Act

Particular	Current Provision	Proposed Provision	Impact
Excise duty charged by digital lenders	Duty charged only on “fees”	Expanded to “any amount charged in respect of lending”	This increases the cost base of assessing Excise Duty and inevitably the cost of borrowing
Betting and Gaming	"amount wagered or staked" means the amount of money placed by a person for an outcome in a betting transaction;	inserting the words “or gaming” immediately after the word “betting” appearing in the definition of “amount wagered or staked”; and	This serves as a clean up to the Act to ensure that gaming is included.
Fees by financial institutions	“other fees” includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder.	deleting the words “relating to their licensed activities” appearing in the definition of “other fees”.	This amendment expands the definition of other fees, commissions or charges subject to excise duty to include those not falling within the purview of licensed activities unless they fall within the exclusion. This ideally means Financial Institutions should now subject all other fees they earn other than interest to excise duty.

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Miscellaneous Fees and Levies Act

Miscellaneous Fees and Levies Act

Issue	Current Provision	Proposed Provision	Impact
Lowering of Import Declaration Fee for goods imported for home use. *(Effective date 1 July 2023)*	The IDF shall be at the rate 3.5% of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.	in subsection (2), by deleting the words “3.5%” and substituting therefor the words “2.5%”;	We anticipate this changes will lower and reduce cost of imports This new rate will also apply to inputs used in the construction of buildings under the affordable housing scheme and also raw materials imported by manufacturers
Rate charged for goods imported under the EAC Duty remission scheme. *(Effective date 1 July 2023)*	goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee at a rate of one point five per cent of the customs value.	Deleted	This provision will get rid of the import declaration fee charged for goods imported under the EAC Duty remission scheme and these will now be chargeable at the unified rate of 2.5%
Introduction of Export and Investment Promotion Levy (*Effective date 1 July 2023*)	N/A	New levy of 10% on all goods specified in the Third Schedule, imported into the country for home use	This aims to boost local manufacturing of products such as cement clinkers, rebars, uncoated kraft papers, sacks and bags.
Reduction of the Railway development levy *(Effective date 1 July 2023)*	2.5% of the customs value of goods imported at the time of entering the goods into the country for home use.	Reduced rate at 1.5%	This provision is welcome as it will see the reduction of cost of imports. With completion of SGR this levy should be abolished.

Miscellaneous Fees and Levies Act

Issue	Current Provision	Proposed Provision	Impact
Goods exempt from import declaration fee *(Effective date 1 July 2023)*	gifts and supplies for diplomatic and consular missions and to the United Nations Missions;	goods for official use by diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act;	This provision specifies that it is only goods for official use that are exempt. Gifts and goods not for official use will no longer be exempt from IDF.
Goods exempt from import declaration fee the goods include aircraft,spacecraft and parts as per the EAC CET. *(Effective date 1 July 2023)*	aircraft, excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00;	All goods and parts thereof of Chapter 88.The goods refer to aircraft, spacecraft and parts thereof.	This is a welcome proposal to the air transport industry as it will see an expansion of goods expanded in the exemption thereby reducing importation costs
Goods exempt from import declaration fee *(Effective date 1 July 2023)*	equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service;	by inserting the words "All goods including material supplies" at the beginning of paragraph (ix);	All supplies imported for use by security agencies in the country will now be exempt from IDF should the proposal go through.
Goods exempt from import declaration fee. *(Effective date 1 July 2023)*	N/A	goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;	This is a new provisions that seeks to add the organizations that can enjoy benefit the exemption for goods imported for official use.

Miscellaneous Fees and Levies Act

Issue	Current Provision	Proposed Provision	Impact
Goods exempt from Import declaration fee *(Effective date 1 July 2023)*	NA	liquefied petroleum gas	This provision will lower the cost of LPG.
The Export Levy rate has been reduced on certain exports. *(Effective date 1 July 2023)*	Whole hides and skin 80% or USD 0.52 per kg. Raw skins of sheep and lambs 80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher 50% or USD 0.32 whichever is higher	The export levy rate has been reduced for whole hides and skins and raw skins of sheep.
Introduction of export levy on molasses extracted from the refining of sugar. *(Effective date 1 July 2023)*	N/A	1703 Molasses resulting from the extraction or refining of sugar 20% of the customs value	Export levy has been introduced on the exportation of molasses

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Betting, Lotteries and Gaming Act

Betting, Lotteries and Gaming Act

Issue	Current Provision	Proposed Provision	Impact
Collection of Betting taxes *(Effective date 1 July 2023)*	NA	69AA. The taxes under sections 29A, 44A, 55A and 59B shall be collected in accordance with the provisions of the Tax Procedures Act, 2015.	This provision brings all the taxes collected under the Betting act into the ambit of the TPA.

Employment Act

Issue	Current Provision	Proposed Provision	Impact
National Housing development fund *(Effective date 1 July 2023)*	NA	An employer shall pay to the National Housing Development Fund established under section 7 of the Housing Act, in respect of each employee— (a) the employer's contribution at three per centum of the employee's monthly basic salary; and (b) the employee's contribution at three per centum of the employee's monthly basic salary: Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month.	Thie Government has no capacity to provide adequet housing in the short term, amounts proposed should be on voluntary basis and this legislation if implemented will increases the amount of deductions for employees and employers to the housing development fund. The exit clause of 7 years is also punitive and yet taxable.

Statutory Instruments Act 2013

Issue	Current Provision	Proposed Provision	Impact
Automatic revocation of statutory instruments (Effective date 1 July 2023)	Provisions in Section 20 and 21 requiring mandatory review of subsidiary legislation and the expiration of statutory instruments	Deleted	The deleting of this provision effectively prevents any statutory instrument such as regulations from being repealed due to the passage of time. and align the Statutory Instruments Act, 2013 with the Revision of Laws Act

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Tax Procedures Act

Tax Procedures Act

Issue	Current Provision	Proposed Provision	Impact
Interpretation (Effective date 1st July, 2023)	The TPA defines a tax decision to include refund decision. A tax decision by the commissioner is objected to and cannot be appealed at TAT.	The proposed provision amends the section by deleting the refund decision from the definition of Tax decision.	This amendment provides clarity that refund decisions are appealable at the Tax Appeal Tribunal(TAT) without having to go through the normal objection process.
International tax agreements (Effective date 1st July, 2023)	Not applicable – Insertion of a new subsection	Section 6A of the Tax Procedures Act, 2015, is proposed to be amended by inserting the following; Any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.	This move seeks to align Kenya from an international tax perspective practice as it seeks to allow the commissioner to assist other revenue authorities in collecting taxes due to them.
Tax records for trustee (Effective date 1st September, 2023)	Not applicable – Insertion of a new subsection.	Section 23 of the Tax Procedures Act, 2015, is proposed to be amended by inserting the following; A trustee resident in Kenya who administers a trust registered in Kenya or outside Kenya shall maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not.	The bill proposes to introduce requirements for record keeping for trustees which are administered in Kenya irrespective of where the income is generated.

Tax Procedures Act

Issue	Current Provision	Proposed Provision	Impact
Amnesty on interest, penalties or fines (Effective Date 1st September, 2023)	Not applicable	The bill proposes to introduce a new section 37E which deters the commissioner from recovering penalties, interest or fines on tax debt where a person had paid all the principal tax due, before 31st December, 2022. Where all the principal tax due had not been paid before the 31st December 2022, a person shall apply to the commissioner for an amnesty of interest, penalties, or fines on the unpaid tax, and propose a payment plan for the outstanding amount. The amnesty shall be on interest, penalties or fines that have accrued up to 31st December 2022 and shall be granted on application and payment of all outstanding taxes by 30th June 2024.	This proposal is a welcome move, especially for the taxpayers who had accrued penalties and interest for the period before 31 December 2022 as KRA will not collect the same. Taxpayers with outstanding principal taxes relating to 31st December 2022 and prior will be relieved of all the accrued interest and penalties if they make payment of principal tax by 30th June 2024. Taxpayers will also be required to sign a commitment letter for the settlement of all outstanding taxes.
Security on property for unpaid tax (Effective date 1st July, 2023)	Section 40 of the TPA provides that the commissioner may notify the Registrar of Lands of unpaid taxes by a taxpayer owning property with the intention of registering the property for the unpaid taxes. The commissioner is to notify the taxpayer within 7 days of the notification to the registrar.	The Bill proposes to amend section 40 by deleting the proviso to subsection(1) which entails the commissioner's obligation to notify a taxpayer of the notification to the registrar to register a security for unpaid taxes. The section now provides that the registrar of lands shall notify the taxpayer within 14 days after the registration of the security of unpaid taxes.	The proposal seems to remove the right of notification to the taxpayers of the intent to register their property as a security for unpaid taxes. This therefore means that, a taxpayer will be unable to challenge such a move as the notification will now come from the registrar of lands 14 days after the registration of the security and at this point, the taxpayer will not have the option to do anything about it.

Tax Procedures Act

Issue	Current Provision	Proposed Provision	Impact
Issuance of Agency Notice (Effective date 1st July, 2023)	Section 42(14) states; No notice shall be issued under this section unless the Commissioner has either confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.	The bill proposes to expand the circumstances under which the commissioner can issue agency notices to include: • taxpayer has failed to pay installment taxes, • the commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of an assessment, • the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines, • the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed, or ; • the taxpayer has not appealed against an assessment.	The proposed amendment seeks to expand the circumstances in which the KRA may issue agency notices. This means that taxpayers will need to be very careful in adhering to the timelines provided for in the TPA so as to ensure they are not caught up under this section and end up being issued with agency notices.
Introduction of 2% withholding VAT on registered manufacturers' taxable supplies (Effective date 1st July, 2023)	Section 42A subsection 1 of the Tax Procedures Act currently provides that 2% Value Added Tax withholding shall not apply to the taxable value of supplies from registered manufacturers whose value of investment in the preceding three years from the commencement of the Act is at least three billion shillings.	The Finance Bill proposes to delete subsection 1 of Section 42A which exempts registered manufacturers from the provisions of withholding VAT provided their value of investments in the preceding three years from the commencement of the Act is at least three billion shillings.	With this proposal, there will no longer be exemptions from withholding VAT to registered manufacturers whose value of investments is more than three billion shillings. As such, the taxable value of supplies of such manufacturers shall be subject to withholding VAT.

Tax Procedures Act

Issue	Current Provision	Proposed Provision	Impact
Remittance of withholding VAT amounts withheld to the Commissioner (Effective date 1st July, 2023)	Section 42B provides that the tax withheld shall be remitted to the Commissioner on or before the 20th day of the month following the month in which the deduction is made.	The bill proposes to delete Subsection 4B and substitute it with a new subsection (4B) which provides that remittance of tax withheld shall be within 3 days after the deduction was made.	The proposed amendment will require taxpayers to pay withholding VAT within three days. This will result to additional compliance requirements for the taxpayers.
Appointment of rental income tax agents (Effective date 1st July, 2023)	No existing provision	The bill proposes to insert a new section 42C (1) which states that the commissioner may appoint an agent for the purpose of the collection and remittance of rental income tax to the commissioner	Going forward, we might see an increase in Agents appointed by the commissioner as rental income tax agents.
Refund of overpaid tax (Effective date 1st July, 2023)	Section 47 provides that a taxpayer can apply for a refund to the commissioner to offset tax against future liabilities or for a refund within five years or six months for VAT.	Deletion of the words "two years from the date of application" appearing in paragraph (b) and substituting therefor the words "six months from the date of ascertainment and, if the commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities" Further, where an application of refund has been subjected to an audit, the commissioner is required to ascertain and determine the application within One twenty days failure to which, the application shall be deemed to have been ascertained and approved.	The bill seeks to reduce the time period for refund of taxes to six months from two years. The amendment also affirms the option for a taxpayer to offset their outstanding current liabilities with their overpaid tax after refund approval. If it goes through we shall see a fulfilment of the President Promise.

Tax Procedures Act

Issue	Current Provision	Proposed Provision	Impact
Objection to tax decision (Effective date 1st July, 2023)	Where the commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged	Insertion of the words "and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice" immediately after the words "validly lodged";	The proposed provision imposes a timeline for the taxpayer to provide additional documents where a valid objection was not lodged.
Settlement of dispute out of court or Tribunal (Effective date 1st July, 2023)	Section 55 of the TPA provides that any disputes to be settled out of court must be settled within 90 days.	Deletion of the words 90 and substituting therefor with the words 120 days.	The bill seeks give more time for settlement since in Practice it takes almost 4 months to settle any ADR matter. Taxpayers especially those in complex industries and technical matters that require time will now be able to resolve matters without tight deadlines.
General provisions relating to objections and appeals (Effective date 1st July, 2023)	The current provision stipulates that grounds stated in the objection by a taxpayer must be relied upon unless the court allows the person to add new grounds.	Deletion of the words "unless the Tribunal or Court allows the person to add new grounds"	The proposed provision denies the appellant the opportunity to add more grounds for appeal. This violates the taxpayer's rights to fair hearing as they will only be restricted to information submitted at the objection stage and cannot respond to new item brought about by the commissioner's objection decisions
Tax shortfall penalty (Effective date 1st July, 2023)	Section 84(2) of the TPA provides a tax shortfall penalty of 75%	The bill proposes to amend section 84 and revise the penalty from 75% to double the amount of the tax shortfall.	This move will see taxpayers making false declarations penalized heftily.

Tax Procedures Act

Issue	Current Provision	Proposed Provision	Impact
General provisions relating to penalty (Effective date 1st July, 2023)	Section 89(6)(7) (8) provides that the commissioner may remit penalty or interest payable	The bill proposes to delete the sections.	The provision is in line with the proposed introduction amnesty under section 37E of the TPA and it seeks to reduce tax expenditures relating to abandonment of taxes.
Offence of impersonating an authorized officer. (Effective date 1st July, 2023)	Not applicable	The bill proposes to introduce Paragraph 97A which provides that a person who is not an authorized officer commits an offence if they assume the name or designation of an authorized officer. The person convicted of an offence shall be liable to imprisonment for a term not exceeding three years.	This bill introduces dire consequences for fraudulent people who may seek to act in a capacity for which they are not authorized to.
Sanctions for offences (Effective date 1st July, 2023)	Section 104(1) of the Tax Procedures Act provides that a person convicted of an offence under this Act shall be liable to a fine not exceeding one million shillings and to imprisonment for a term not exceeding three years,	The bill proposes to amend this section by deleting the word "and" and substituting it for "or"	The amendment is to provide clarity on the consequences one is to face which will be a fine note exceeding KES 1,000,000 or imprisonment for a term not exceeding three years.
Concurrent civil and criminal proceedings (Effective date 1st July, 2023)	Not applicable	The bill proposes to introduce a new section 108A which provides that where any matter under a tax law is in issue in any ongoing criminal case and is also directly or substantially in issue in any pending civil case, that fact shall not be ground for any stay, prohibition or delay of either the criminal or civil case.	The proposed section will ensure that there can be two concurrent civil and criminal proceedings.

Tax Appeal Tribunal Act

Issue	Current Provision	Proposed Provision	Impact
Payment of 20% taxes before appeal to the High Court (Effective date 1st July, 2023)	Not applicable	The Bill proposes to amend the Tax Appeals Tribunal Act, 2013 requiring taxpayers to deposit 20% of the tax in dispute or equivalent security before they file an appeal to the High Court against a decision of the Tax Appeals Tribunal. The provision is not applicable where the commissioner is appellant.	The provision is punitive where the assessment is exaggerative and wrong and directly denies the taxpayer the right to appeal and access justice. The proposal discriminates the taxpayer against KRA yet there should be equality in the eyes of law. This law had been proposed in FB 2022 with a rate of 50% but was not adopted.

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