
ANALYSIS OF THE CHANGES UNDER THE FINANCE ACT, 2023

The Finance Act 2023 was assented to on 26th June 2023. On the same day Okiya Omtata and six other petitioners filed a petition at the High Court challenging the Finance Act on the grounds that the Act was unconstitutional since it was enacted in violation of the Constitution and the Public Finance Management Act, 2012. The High Court rendered its ruling on the petition on 10th July 2023 and among other orders the court issued a conservatory order which suspended the implementation of the Finance Act.

The High Court Conservatory orders certified the petition filed as raising a substantial question of the law and transmitted the file to the Chief Justice for assignment of a bench of not less than 3 Judges to hear and determine the Petition. The Chief Justice appointed High Court Judges David Mayanja, Christine Meoli, and Lawrence Mugambi to determine the Petition.

While the substantive dispute was still pending before the High Court. the Cabinet Secretary for National Treasury and Planning and Attorney General moved to the Court of Appeal and filed an application seeking to have the High Court orders suspending the implementation of the Finance Act lifted pending the hearing and determination of the application.

On 28th July, the Court of Appeal lifted the High Court orders suspending the Finance Act 2023, and the order prohibiting the implementation of the Finance Act 2023, pending the hearing and determination of the substantive appeal by the three-judge bench. Okiya Omtata and others have subsequently filed an appeal at the Supreme Court challenging the lift of the conservatory orders.

Currently then;

- ✓ There are no orders that have been issued by the Supreme Court;
- ✓ The substantive case challenging the Finance Act 2023 Constitutionality will continue and ruling issued thereafter. This may take between one to six months; and
- ✓ The Finance Act is therefore deemed to have been effective from 1 July 2023.

Based on this there are various tax measures that are effective from 1st July 2023, 1st September 2023, and 1st January 2024.

This alert analyses the amendments made to various tax laws, their effective date and the effect of these changes as follows:

A. INCOME TAX ACT, CAP 470 LAWS OF KENYA

The Finance Act, 2023 (“the Act”) introduces definitions of various terms to clarify the interpretation of various provisions of the Income Tax Act. These definitions are set out below: -

Definition of “Winnings”

The Act amends the definition of “*winnings*” to mean “*the payout from betting, gambling, lottery, prize competition, gambling or similar transaction under Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that transaction.*”

This amendment gives clarity on what constitutes winnings for purposes of taxation by clearly stating that amounts staked do not form part of the taxable amount.

Effective date: 1st July 2023

Definition of “Digital Content Monetisation”

The Finance Act introduces the definition of the term “*digital content monetisation*” to mean offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel;

The provision further provides a list of forms of digital content monetization including social media advertisements, brand partnerships/ sponsorships, affiliate marketing, subscription services, merchandise sales, eBooks, courses, content licensing, membership programs, and crowdfunding.

The Act further brings to tax income in respect of payments for digital content to Withholding Tax

(WHT) at a resident withholding tax rate of **five (5) percent** and a non-resident withholding tax rate of **twenty (20) percent**. The measure is aimed at increasing compliance by earners in digital content monetization industry.

Effective date: 1st July 2023

Definition of “Immovable Property”

The Act introduces the definition of the term “*immovable property*” as follows: -

The Act broadens the definition of “immovable property” to include *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 and mining rights, an interest in a petroleum agreement, mining information or petroleum information;*

This provides a comprehensive interpretation of immovable property for tax purposes regarding rights and interest transferred or granted in relation to immovable property, including mining rights.

Effective date: 1st July 2023

Definition of “Related Person”

The Act introduces the definition of “*related person*” under Section 2 of the ITA to mean, *in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.*

Contrary to the definition in the Eighth Schedule of the ITA, this definition fails to consider instances where a third person participates directly or indirectly in the management, control or capital of the business of both.

Effective date: 1st July 2023

Interest Restriction on Excess Interest Payments to Non-Resident Persons

This amendment limits the application of interest restriction provisions to interest payments made to non-resident persons only and excludes interest on local borrowing from the interest restriction provisions. This provision is a welcome relief for businesses that rely on local debt financing as the EBITDA-based interest restriction will no longer apply to local loans.

The interest expenses on foreign loans in excess of 30% of the EBITDA shall be an allowable deduction in the subsequent three years provided that the interest expense claimed in each year shall not exceed 30% threshold.

Effective date: 1st January 2024

Removal of Exemption of Qualifying Investors from the application of Interest Restriction Provisions

Companies engaged in manufacturing with a cumulative investment of five billion shillings will no longer be exempt from the EBITDA-based interest restriction.

Effective date: 1st January 2024

Limit on Deferring Foreign Exchange Loss

The Act provides for the deferral of realized foreign exchange loss deferred on account of restricted interest where the gross interest paid or payable to a non-resident person exceeds thirty percent of the company's earnings before interest, taxes, depreciation and amortization (EBITDA) in any financial year. This foreign exchange loss may be claimed over a period not exceeding five years, from the date the loss is realized by a company.

Effective Date: 1st July 2023

Taxation of Repatriated Income

The Act introduces a tax at 15% on income repatriated by a non-resident carrying on business through a permanent establishment (PE).

The formula for the calculation of repatriated income is as follows:

$$R = A_1 + (P - T) - A_2$$

Where –

R: Repatriated profit

A₁: Net assets at the start of the year

P: Net profit for the year of income

T: tax payable on the chargeable income; and

A₂: Net assets at the end of the year

The tax on repatriated profit shall be in addition to tax chargeable on the income of the PE and will be applicable at a rate of 15%.

Effective date: 1st January 2024

Reduced Corporation Tax Rate for PEs

The Finance Act provides for a reduction in the rate of corporate income tax for non-resident persons having a permanent establishment in Kenya from 37.5% to 30% from the year 2024.

Effective Date: 1st January 2024

Non-refundable Withholding Tax on payments to non-residents in cases of audit adjustments

Withholding tax deducted with respect to payments made to non-resident persons will not be refundable or available for offset where an audit adjustment has been made in respect of such payment.

Effective date: 1st July 2023

Reduction of Monthly Rental Income rate (MRI)

The Act revises the rate of residential income tax which is currently ten percent (10%) to **seven-point five percent (7.5%)**

This amendment is likely intended to incentivize registration for MRI obligation to ensure compliance by relevant taxpayers and increase the revenue generated.

Effective date: 1st January 2024

Reduction of Turnover Tax Bracket

The Act reduces the tax bracket of resident persons eligible to pay turnover tax on turnover from their business from a turnover of Kshs. 1,000,000 – Kshs. 50,000,000 to a turnover bracket of Kshs. 1,000,000 – Kshs. 25,000,000.

Additionally, the turnover tax rate has been increased from 1% to 3%.

Effective date: 1st July 2023

Deduction of Expenditure Incurred Outside Kenya in Ascertainment of Taxable Income of a PE

The following expenses will be allowable deductions for purposes of ascertaining taxable income of a permanent establishment in Kenya;

- Expenditure incurred by a non-resident person outside Kenya;
- Remuneration for services rendered by non-resident directors of a non-resident company with controlling interest of the business carried on in Kenya; and
- Executive and general administrative expenses

Effective date: 1st July 2023

Ascertainment of Intellectual Property Income Subject to Preferential Tax Rate

The Act provides for intellectual property income to be subject to a preferential tax rate through the formula below;

$$I = \left(\frac{Q}{T}\right) \times P$$

Where—

I is income receiving tax benefits;

Q is the research and development expenditures

made by the taxpayer, excluding acquisition costs and related party outsourcing costs;

T is the research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and

P is intellectual property income including royalties, capital gains and any other income from the sale of an intellectual property asset

including embedded intellectual property income calculated under transfer pricing principles

The provision further provides that intellectual property losses can only be offset against intellectual property income.

Effective date: 1st January 2024

Country-By-Country Reporting Requirements

Following the amendments to the filing requirements for MNEs in recent years, the Act imposes a filing requirement for all ultimate parent entities resident in Kenya to file the country-by-country report (CbC report) where the consolidated group turnover of the MNE group is at least ninety-five billion shillings.

The amendment further imposes the requirement on constituent entities resident in Kenya to file the CbC report with the KRA where:

- ✓ the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;
- ✓ the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or
- ✓ there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner to the constituent entity resident in Kenya

The Act also provides a comprehensive definition of “**ultimate parent entities**” as follows:

“ultimate parent entity” means an entity which—
 (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.

Effective date: 1st July 2023

Taxation of Digital Assets

The Act brings income derived from the transfer or exchange of digital assets to tax at a rate of 3% of the transfer value, through a tax to be known as “digital asset tax”.

Digital assets are defined as follows: -

“digital asset” includes—

(i) anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and

(ii) a non-fungible token or any other token of similar nature, by whatever name called;

The taxable value of income earned from the transfer or exchange of digital assets shall be the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset. Any transfer of digital assets including bitcoins or non-fungible token (NFTs) will be subject to tax at a rate of **three percent (3%)**.

Deduction of Digital Asset Tax

This tax is to be deducted and remitted to KRA by the owner of the platform or the person who facilitates the exchange or transfer of a digital asset within **five (5) working days** after making the deduction.

The provision also imposes a mandatory requirement that non-resident persons who own a platform on which digital assets are exchanged or transferred should register under the simplified tax regime.

Effective date: 1st September 2023

Allowable Deductions for Diminution

The Finance Act provided for 100% deduction on the diminution in value of implements, loose tools and utensils used in the production of income. However, the Act deletes the provision but fails to provide an alternative provision.

Effective date: 1st July 2023

Expenditure not supported by way of TIMS Generated Invoices to be disallowed

With the advent of the electronic Tax Invoice Management System (TIMS), the Act put in place measures to curb claiming of unsupported expenditure through requiring any loss or expenditure claimed to be supported by invoices generated through the TIMS system except where the transactions are so exempted by law.

Effective date: 1st January 2024

Club Fees as Allowable Deduction

The Act deletes the provision disallowing the claiming of expenditure incurred in the way of payment of club fees including entrance and subscription fees. This measure follows the measure bringing club fees paid by employers on behalf of employees to charge under PAYE where they are deductible against the employer’s income.

Effective date: 1st July 2023

Income from members' clubs and trade associations

Members' clubs and trade associations shall be deemed to be carrying on a business and the gross receipts excluding joining fees, welfare contributions and subscriptions shall be deemed to be income from a business and thus subject to tax.

Previously, where at least three-quarters of the gross receipts excluding gross investment receipts was received from members, the members' club or trade association was not deemed to be carrying on a business and no part of such gross receipts, other than gross investment receipt was subject to tax.

Effective date: 1st July 2023

Income of a married woman not to be considered as income of the husband

The Finance Act amends the Income Tax Act by repealing the provision in the ITA which provided that the income of a married woman living with her husband is deemed to be the income of the husband for purposes of ascertaining his total income.

In addition to introducing gender-neutral phrases to the ITA, the Finance Act does away with outdated provisions in the Income Act.

Effective date: 1st July 2023

Exemptions granted to entities of public character

The Act redefines institutions of public character which enjoy an exemption from corporate income tax to capture the nature of public benefit and requiring that such institutions need to have been

established to benefit the public in a transparent and accountable manner without restriction or discrimination and 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.

Effective date: 1st January 2024

Companies manufacturing human vaccines subject to Income Tax at a rate of 10%

The Act subjects Companies dealing in manufacture of human vaccines to tax on their income at a rate of **10%**. This was previously exempt effective 1st January 2024.

Additionally, the Act exempts royalties and interest paid to a non-resident person by a company manufacturing human vaccines.

Effective Date: 1st July 2023

Definition of local content for companies dealing in the assembly of motor vehicles

The Act provides that companies engaged in local motor vehicle assembly seeking five years further extension of the **15%** tax rate are required to achieve a local content equivalent to **50%** of the ex-factory value of the motor vehicles.

In this regard the Act defines "**local content**" to mean parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Effective Date: 1st July 2023

Industrial Building and Dock Allowance

The Act introduces a provision for capital allowances on account of;

- ✓ Industrial building: rate of **10%** per year; and
- ✓ Dock: rate of **10%** per year.

Effective Date 1st January 2024

Investment Allowance

The Act additionally provides clarity by introducing the definition of the following terms under the Second Schedule of the ITA:

- “Dock” to include a 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.
- “Industrial building” to include a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking.
- “Machinery used for agriculture to mean machinery used directly in agricultural activities including tiling, planting, irrigation, weeding and harvesting
- “Telecommunications equipment” to include civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.
- “Civil Works” to include: earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structure

Effective date: 1st January 2024

Mortgage refinance companies added to the list of financial institutions

The Act introduces a provision to include Mortgage refinance companies licensed under the Central Bank of Kenya Act to the list of financial institutions in the Fourth Schedule of the ITA in line with the powers granted to the Cabinet Secretary in Section 35(8) of the ITA.

This provision aligns with the measure to allow deductions in respect of interest not exceeding three hundred thousand shillings per year paid on loans borrowed from financial institutions which loan is borrowed for the purpose of purchasing or improving a person’s residential premises. This provision will now include interest deductions as being allowed in respect of loans from mortgage refinance companies.

Effective date: 1st January 2024

Increase in Advance Tax

The Act revises the rate of advance tax for vans, pick-ups, trucks, prime movers, trailers and lorries to Two Thousand Five Hundred Shillings (Kshs 2,500) per tonne of load capacity per year or Five Thousand Shillings (Kshs 5000) per year, whichever is higher.

The Act also revises the rate of advance tax for saloons, station wagons, mini-buses, buses and coaches to one Hundred Shillings (Kshs 100) per passenger capacity per month or Five Thousand Shillings (Kshs 5,000) per year.

Effective Date 1st January 2024

Capital Gains Tax - Computation of Adjusted Cost in Subsequent Transfer

The Finance Act introduces the provision that where property is transferred in a transaction that is not subject to 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.

Effective Date 1st July 2023

Capital Gains Tax - Taxation of underlying immovable property in disposal of shares

The Finance Act brings to tax, gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust or companies in Kenya if, at any time during the preceding three hundred and sixty-five days, derived more than twenty (20%) per cent of their value from immovable property situated in Kenya shall be subject to capital gains tax.

The Act introduces a requirement that where persons directly or indirectly holding twenty per cent of the capital of a company, dispose of their shares, they must inform the Commissioner where there is a change in at least twenty per cent of ownership of the underlying property.

Effective 1st July 2023

Tax Point of Capital Gains Tax

The Act amends the due date for payment of capital gains tax to be the earlier of receipt of the full purchase price by the vendor; or the registration of the transfer. This provides clarity on the timeline for payment of Capital Gains Tax on transfer of property.

Limit on exemption of internal restructuring from Capital Gains Tax

The Act introduces a provision that limits the exemption of computation of gains or loss of income in case of transfer of property necessitated by the restructuring of a corporate where such a transfer is an internal restructuring that does not involve a transfer of property to a third party within a group to instances where it has existed for at least twenty-four (24) months.

Effective 1st July 2023

Capital Gains Tax - Indirect transfer of interest in the extractives industry

The Finance Act also amends the provision in the ITA which requires licensees or contractors to notify KRA of changes of underlying ownership of the licensee or contractor of ten per cent or more to a requirement for notification in respect of a change of twenty per cent or more.

Effective 1st July 2023

Exclusion of Traveling Allowance From PAYE

The Act excludes traveling allowance reimbursed within the standard mileage rate approved by the Automobile Association of Kenya from the calculation of income earned for employment.

The amendment aligns tax law to the industry practice of excluding mileage claims based on AA-approved rates.

Effective Date: 1st July 2023

Club subscription and entrance fees to be subject to PAYE

The amendment brings to charge club entrance and subscription fees allowed against the employer's income as constituting gains and profits from employment and thus subject to PAYE.

Effective Date: 1st July 2023

Determination of Market Value of Employee Share Ownership (ESOP)

The Act revises the applicable market value of the share options as follows:

- i. Fully listed shares - the fair market value on the date the option was exercised by the employee;
- ii. Shares not fully listed - the price which the shares might reasonably be expected to fetch on sale in the open market when the option is exercised.

Effective date: 1st July 2023

Payment of company shares to employees of start-ups in lieu of cash emoluments

The Act provides for the taxation of the benefit from the shares allocated to an employee by virtue of employment by an eligible start-up to be deferred and taxed within thirty days of the earlier of –

- ✓ The expiry of five years from the end of the year of the award of the shares;
- ✓ The disposal of the shares by the employee; or
- ✓ The date the employee ceases to be an employee of the eligible start-up

The value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the above events.

Where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

An “eligible start-up company” is defined as a business incorporated in Kenya that –

- ✓ has an annual turnover of not more than one hundred million shillings;
- ✓ does not carry on management, professional or training business;
- ✓ has not been formed as a result of splitting or restructuring of an existing entity; and
- ✓ has been in existence for a period of not more than five years

Effective date: 1st January 2024

Removal of Income from wife's employment from List of Specified Sources of Income to Be Computed Separately

The Finance Act removes income from a wife's employment from the list of the specified sources of income to be computed separately from gains or profits derived from any other income of that person.

Post-retirement medical fund relief

The Finance Act introduces a relief equivalent to the lower of 15% of the contribution or Kshs. 60,000 per annum for persons who demonstrate contribution in a given year of income to a post-retirement medical fund.

Additionally, under the Act investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme is exempted from tax.

A resident individual contributing to a post-retirement medical fund shall be entitled to a post-retirement medical fund relief.

Effective date: 1st January 2024

Change in PAYE Bands

The Finance Act amends the provision of the Income Tax Act by introducing new PAYE bands with tax rates ranging between 10% to 35% as follows;

KES Monthly	Rate
Up to 24,000	10%
Above 24,000 to 32,333	25%
Above 32,333 to 500,000	30%
Above 500,000 to 800,000	32.50%
Above 800,000	35%

High-income earning individuals will be taxed at a higher rate.

Effective 1st July 2023

Payment in respect of sales, marketing and advertising services and digital content monetization subject to tax

The Act introduces withholding tax on payments for sales promotion, marketing, advertising services, at the rate of (5%) five per cent of the gross amount.

The Act also introduces WHT on the gross amount of payments relating to digital content monetization at the rate of 5% for residents and 20% for non-residents.

Effective 1st July 2023

Withholding tax to be remitted within five (5) days after deduction

The Act amends section 35(5) of the Income Tax Act to the effect that Withholding Tax should be remitted within **five (5) working days** after deduction.

Effective date: 1st July 2023

Appointment of Property Managers as Withholding Tax Agents

The Act introduces a provision granting the Commissioner power to appoint withholding tax agents, with a mandate to receive rental income on behalf of the owner of a property.

The appointed tax agents are obligated to deduct and remit rental income tax to the Commissioner together with a return within **five (5) working days**.

Effective 1st July 2023

Exemptions applicable to Special Economic Zone (SEZ)

The Act exempts royalties, interest, management fees, professional fees, agency or contractual fees paid by a special economic zone developer, operator or enterprise in the first ten years of its establishment to a non-resident person from withholding tax. Additionally, gains on transfer of property within a SEZ enterprise, developer and operator are exempted from capital gains tax.

Effective Date: 1st July 2023

Exemptions on income of non-residents involved in a 100% grant funded project

The Act exempts income earned by a non-resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a 100% grant under an agreement between the Government and the development partner from income tax provided that the nonresident is in Kenya solely for the implementation of the project.

Effective Date: 1st July 2023

B. VALUE ADDED TAX ACT

Liquefied Petroleum Products

The Act has increased the VAT rate of all petroleum products, except for liquified petroleum gas, from eight percent (8%) to sixteen percent (16%).

This will have a ripple effect on the economy as the cost of transport and production will rise, leading to an increase in the cost of finished goods, including the common household products.

Effective Date: 1st July 2023

Place of Supply of Services

The Act has amended the definition of the place of supply of services for suppliers whose place of business is not Kenya to include supply made to registered persons.

Previously, the definition only applied to unregistered persons. This measure will expand the meaning of the place of supply of services.

Effective Date: 1st July 2023

National Carrier Time of Supply

The Act has introduced a new subsection 1A to Section 12 with regard to the time of supply of national carrier, which shall be the date when the goods are delivered or the services performed but it will subject to subsection 1 which states the time of supply will be the earlier of:

- ✓ the date on which the goods are delivered or services performed;
- ✓ the date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity;
- ✓ the date on which the invoice for the supply is issued; or
- ✓ the date on which payment for the supply is received, in whole or in part.

Therefore, while the new subsection specifically addresses the national carrier, it is still subject to the broader provisions outlined in the preceding subsection, which determine the time of supply based on the earliest occurrence of the aforementioned events.

Effective Date: 1st July 2023

Claiming of Input VAT

The Act has amended Section 17(2) of the VAT Act to provide that, for a person to be allowed to claim input VAT, they must hold proper documentation to support the claim, and the supplier must have declared the sales invoice in a return. The move is intended to ensure compliance with the Tax Invoice Management System (TIMS) and minimize VAT fraud.

Charge to VAT on compensation for loss

The Act has introduced a new subsection 17(9) which provides that where a bona fide owner of taxable supplies, who has deducted input tax is compensated for the loss of the taxable supplies, the compensation shall be treated as a taxable supply. This measure will imply additional costs to the recipients of the insurance compensation as they will bear the VAT costs.

Effective Date: 1st July 2023

Refund of Tax on Bad Debts

The Act provides for refund on bad debts where a registered person has made a supply, accounted for and paid tax on that supply, but has not received any payment from the person liable to pay the tax. In such cases, the registered person may apply to the Commissioner for a refund of the tax provided that; -

- ✓ No payment has been received from the person liable after a period of three years from the date of the supply; or
- ✓ The person to whom the supply was made has been placed under statutory management through the appointment of an administrator, receiver, or liquidator.

The amendment further provides the following conditions for refund application;

- ✓ Refund application is made within 10 years from the date of supply. This is an extension from the previous 4 years' time frame.
- ✓ The refund will be made in accordance with section 47(5) of the Tax Procedures Act.
- ✓ The refunded amounts may be credited to the taxpayer's record and utilized against future value-added tax liabilities.
- ✓ If the tax is refunded by the recipient of the supply, the registered person is required to refund the tax to the Commissioner within 60 days from the date of recovery. This is an extension from the previous 30 days.
- ✓ If the payment is not made within the specified timeframe after it has been recovered from the recipient, an interest of 2% per month or part of the refunded tax will be due and payable. However, the total interest payable shall not exceed one hundred per cent of the refunded amount.

Effective Date: 1st July 2023

Digital Service Providers VAT registration

Persons supplying imported digital services over the internet or an electronic network or through a digital marketplace to be liable for VAT registration whether or not their taxable supplies meet the turnover threshold of five million shillings.

Effective Date: 1st July 2023

Record Keeping

The Act provides that records can be kept anywhere in the world and not necessarily in Kenya. This move will reduce the cost of record keeping for foreigners through digitization of the VAT records.

Effective Date: 1st July 2023

Amendments to Section A Part I of the First Schedule of the VAT Act– Exempt supplies

Paragraph No.	Previous Description	Current Description
20	Fish and crustaceans, molluscs and other quaticinvertebrates of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307	Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307
49	Aircraft parts of heading 8803, excluding parts of goods of heading 8801	All goods and parts thereof of chapter 88
63	Provided that notwithstanding this subparagraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the supply of taxable goods and which is in force at such commencement shall continue to apply until the supply of the exempted taxable goods is made in full.	Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.
66A	Deleted.	
71	Perforated PE film 15-22 gsm of tariff number 3921.90.00	Printed and unprinted Perforated PE film of other plastics 15-22 gsm of tariff numbers 3921.90.10, and 3921.90.90.
108	Deleted.	
119	Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials.	Diagnostic kits or laboratory reagents and their certified reference materials of heading 38.22 upon approval by the Cabinet Secretary responsible for matters relating to health.
120	Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00.	Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, and other apparatus, Instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
122	Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences.	Other instruments and appliances, used in dental sciences of tariff 9018.49.00, Other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

125	Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00.	Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.
128	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.	Discs, tapes, solid-state non-volatile storage devices, "smartcards" and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health.
129	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.	Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.
130	Deleted.	
140	Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products.	Plant and machinery of chapter 84 and 85 imported "or locally purchased" by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products.
145	<p>Taxable goods, inputs and raw materials imported or locally purchased by a company which is-</p> <p>(a) engaged in business under a special operating framework arrangement with the Government; and</p> <p>(b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.</p>	<p>Taxable goods, inputs and raw materials imported or locally purchased by a company which is-</p> <p>(a) engaged in business under a special operating framework arrangement with the Government; and</p> <p>(b) incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.</p>

Exemption of Supplies to or by a School Feeding Programme

The Act has added to the list of exempt goods, “taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education”, by introducing a new paragraph 147 immediately after paragraph 146. Further, the Act has introduced the following changes to the Section;

Previous Tariff No.	Current Tariff No.	Previous Tariff Description	Current Tariff Description
N/A	3003.41.00,3003.42.00, 3003.43.00, and 3003.49.00	N/A	Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale.
N/A	3003.90.00	N/A	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale and other medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
N/A	3005.90.11,3005.90.12, 3005.90.19	N/A	White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3004.20.00	3004.20.00	Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.	Other medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.32.00	3004.32.00	Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.	Other, medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff.
3006.20.00	3822.13.00	Blood-grouping reagents.	Blood-grouping reagents.
3006.60.00	3006.60.00	Chemical contraceptive preparations based on hormones or spermicides	Chemical contraceptive preparations based on hormones or on other products of heading 29.37 or spermicides.

9021.50.00	9021.50.00	Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories.	Pacemakers for stimulating heart muscles, excluding parts and accessories.
3005.90.10,3 004.90.90, 3003.90.10, 3003.90.00, 0402.29.10 and 3002.19.00,	Deleted		Deleted
3002.11.00	Malaria diagnostic test kits	3822.11.00	Malaria diagnostic test kits
3002.20.00	Vaccines for human medicine	3002.41.00	Vaccines for human medicine
3002.30.00	Vaccines for veterinary medicine	3002.42.00	Vaccines for veterinary medicine
3003.39.00	Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale	3003.39.00	Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale.

Effective Date: 1st July 2023

Amendments to the Part II of the First Schedule of the VAT Act – Exempt supplies

Paragraph No.	Previous Description	Current Description
34	Taxable goods, inputs and raw materials imported or locally purchased by a company which— (a) is engaged in business under a special operating framework arrangement with the Government; and (b) is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.	Taxable services imported or locally purchased by a company which— (a) is engaged in business under a special operating framework arrangement with the Government; and (b) is incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.

Effective Date: 1st July 2023

Amendments to the Second Schedule of the VAT Act – Zero-rated supplies

Item	Previous VAT Status	Current VAT Status	Implication
Exportation of taxable services.	Standard rated, except for BPO services.	Zero-rated	This measure is intended to align the VAT status of all exported services to be zero-rated. It will lead to a reduction in the cost of supplies, increased exports. Input VAT incurred directly on the provision of the services shall be claimable.
Inbound international sea freight offered by a registered person.	Standard rated.	Zero-rated	The supplies will become more affordable as no VAT is chargeable.
Liquefied petroleum gas	Taxable at 8%	Zero-rated	Reduce cost of production lowering the prices of the supplies.
All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner-General.	Standard rated	Zero-rated	Reduce cost of production lowering the prices of the supplies.
Locally assembled and manufactured mobile phones	Standard rated	Zero-rated	Lower prices of locally manufactured phones will increase demand for the telephone and thus promote the local economy.
Supply of motorcycles of tariff heading 8711.60.00	Standard rated	Zero-rated	Reduce cost of production lowering the prices of the supplies
Supply of electric bicycles	Standard rated	Zero-rated	
Supply of solar and lithium-ion batteries	Standard rated	Zero-rated	
The supply of electric buses of tariff heading 87.02.	Standard rated	Zero-rated	The increase in fuel costs may further incentivize the adoption of electric buses as they offer long-term cost savings in terms of fuel expenses. This is expected to lead to an increased adoption of electric buses in public transportation systems.
Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.	Standard rated	Zero-rated	This will lead to reduced costs on the animal feeds thus promoting the livestock sector.

Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).	Exempt	Zero-rated	Input VAT incurred directly on the supplies that initially were not claimable shall be claimable thus reducing the cost of supplies.
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Effective Date: 1st July 2023

C. EXCISE DUTY ACT

Definition of 'Excise Control'

The Act has amended Section 2 of the Excise Duty Act to refer the definition of excise control from Section 23 to Section 24. This measure is intended to provide clarity and the correct reference to the meaning of control.

Effective Date: 1st July 2023

Repeal of Adjustment of Inflation

The Act rescinds Section 10 of the Excise Act which allows the Commissioner with the approval of the cabinet secretary to adjust specific rate of excise duty once every year. This is a welcomed move as annual increase of excise duty has a negative implication in the prevailing economic and social environment. This move will protect most of the consumers from increased product costs.

Effective date: 1st July 2023

Suspension of Licence

The Finance Act introduces a requirement for Commissioner to provide the licensed person with written notice of the action required to be taken before the date specified in the notice not less than fourteen days to remedy the deficiencies that led to the suspension of the licence and revoke the suspension if the action is

taken within the specified time. This will ensure there's no ambiguity in the time required by the Commissioner in responding to notices of appeal of suspended licence.

Effective Date: 1st July 2023

Introduction of offences relating to excise stamps and other markings

The Finance Act amends Section 28 of the Act by adding subsections 6 & 7 on the offences and fines applicable to excise stamps and other markings as follows:

(6) A person commits an offence if that person—

- ✓ defaces or prints over an excise stamp affixed on any excisable goods or package;
- ✓ knowingly is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of this Act or Regulations made under this Act;
- ✓ acquires or attempts to acquire an excise stamp without the authority of the Commissioner;
- ✓ prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;

- ✓ knowingly is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;
- ✓ knowingly is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or
- ✓ is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps.

(7) A person who commits an offence under subsection (6) is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or to both.

This measure will enhance compliance with the excise stamps and other markings.

Effective date: 1st July 2023

Inclusion of payment of excise duty within 24 hours for select excisable services

The Act has been amended to introduce subsection (1A) under subsection 36(1) to include

that licensed manufacturers of alcoholic beverages must remit excise duty to the Commissioner within 24 hours upon removal of goods from stockroom.

The Finance Act has amended Section 36A to the Excise Act requiring that payment of excise duty on betting, gaming services and other excisable services in any sector offered through a platform or other medium be remitted to the Commissioner by a bookmaker within twenty-four hours from the closure of transactions of the day. Further, the Act under Section 36A (2) provides the definition of “closure of transactions of the day” to mean midnight of that day.

Effective date: 1st July 2023

Repeal on Section 40 of the Act

With the introduction of subsections 6 & 7 to Section 28 of the Act, the Act repeals Section 40 which provides for the offences relating to excise stamps. This will provide clarity on the offences relating to excise stamps and ensure the same is administered under Section 28.

Effective date: 1st July 2023

Amendments to the Part I of the First Schedule of the Excise Duty Act

Item/Description	Previous rate	New Change	Comments
Condensates per 10001 @ 20degC	Shs.6,225.00 per unit	Deleted	
White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs. 242.29 per Kg	New tariff description Imported white chocolate of heading 1704; Imported chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00	This is meant to provide clarity on the rates of tax on the excisable chocolates, and increase the tax base through introduction of white chocolate of heading 1704.
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%	New tariff description Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	Provide clarity on the specific excisable goods.
Motor cycles of tariff 87.11 other than motorcycle ambulances and locally assembled motor cycles.	Shs. 11,608.23 per unit	New tariff description Motor cycles of tariff 87.11 other than motor cycle ambulances, locally assembled motor cycles and electric motorcycles.	This is meant to increase the tax base to also cover electric motorcycles.
Imported Glass Bottles (excluding imported glass bottles for packaging of pharmaceutical products).	25%	35%	This is meant to discourage the importation of glass bottles and improve the local market consumption.
Imported Alkyd	10%	20%	This will negatively affect the consumption of the subject products due to increased cost.
Imported Unsaturated polyester	10%	20%	
Imported Emulsion VAM	10%	20%	

Imported Emulsion-Styrene acrylic	10%	20%	
Imported homopolymers	10%	20%	
Imported Emulsion B.A.M	10%	20%	
Imported fish	N. A	10%	This is meant to increase the tax base in terms of the increased excise duty.
Powdered Juice	N. A	Shs. 25 per kg	
Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer.	N. A	Shs. 5 per kg	This will negatively affect the consumption of the subject products.
Imported cement	N. A	10% of the value or Shs. 1.50 per kg, whichever is higher	
Imported furniture of tariff 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin.	N. A	30%	
Imported cellular phones	N. A	10%	
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	N. A	15%	
Imported non-virgin test liner of heading 4805.24.00.	N. A	25%	
Imported non-virgin fluting medium of heading 4805.19.00	N. A	25%	
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding carton boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading	N. A	25%	This is meant to increase the tax base.

4819.10.00 4819.20.10 and 4819.90			
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, and 3921.19.90	N. A	25%	This is meant to increase the tax base.
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00	N. A	25%	This is meant to increase the tax base.

Effective Date 1st July 2023

Amendments to the Part II of the First Schedule of the Excise Duty Act

Item	Current rate	New rate	Comment
Telephone and internet data services	20%	15%	This is aimed at reducing the cost of telephone and internet services.
Money transfer services by banks, money transfer agencies & other financial service providers.	20%	15%	This is aimed at reducing the cost of transferring money.
Money transfer services by cellular phone service providers.	12%	15%	This is meant to increase the tax base.
		New Description Excise duty on fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011	
Betting	7.5%	12.5%	This is aimed to discourage betting activities.

Gaming	7.5%	12.5%	This is aimed at reducing the associated negative effects of gambling.
Prize Competition	7.5%	12.5%	This is meant to increase the tax base
Lottery (excluding charitable lotteries)	7.5%	12.5%	This is aimed at reducing the associated negative effects of gambling
Excise duty on importation of cellular phones.	10%	Deleted	Excise duty has been shifted from the service to the product.
Fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions.	N/A	15%	This is meant to increase the tax base. Excise duty will increase the cost of the advertising for these activities

Effective Date 1st July 2023

Amendments to Part III of the First Schedule of the Excise Duty Act

The Act amends the following definitions;

Current Definition	New Definition	Remarks
"amount wagered or staked" means the amount of money placed by a person for an outcome in a betting transaction;	"amount wagered or staked" means the amount of money placed by a person for an outcome in a betting or gaming transaction;	This will provide more clarity on the applicability and meaning of the definitions.

Effective Date: 1st July 2023

Amendments to the Part A of the Second Schedule of the Excise Duty Act

The second schedule to the Excise Duty Act 2015 has been amended to add paragraph 17 to exempt “disassembled or unassembled kits for local assembly or manufacture mobile phones”, from excise duty. This will promote the local assembly business of mobile phones in Kenya.

Effective Date: 1st July 2023

D. TAX APPEALS TRIBUNAL ACT

Clarity on Documents at Appeal

The Act provide clarity and expand the scope of documentation to be included as part of a taxpayer’s appeal to the TAT. An appellant will be required to submit the "appealable decision" and any other necessary documents to the Tax Appeals Tribunal to enable it to decide on the appeal.

E. TAX PROCEDURES ACT

Definition of a Tax Decision

The Act has excluded a refund decision from the scope of a tax decision. Aggrieved taxpayers will appeal directly to the Tax Appeals Tribunal in accordance with Section 47(13) of the TPA.

The Act has further included late payment interest within the scope of a tax decision. Ultimately, this implies that a demand for late payment of interest shall be a tax decision and therefore the taxpayer shall be required to settle the amounts or object to the contested amounts.

Effective date 1st July 2023

International Tax Agreements

The Act has included mutual administrative assistance in the collection of taxes and mandates the effect of the same in the agreements made by or on behalf the Government of Kenya as stipulated therein.

This implies that the assistance in the collection of taxes will be enhanced and consequently curb tax evasion which is detrimental to cross-border transactions.

Effective date 1st July 2023

Record Keeping Requirements for Trustees

The Act has extended record-keeping requirements to resident trustees administering a trust either in Kenya or outside. The trustee will be required to maintain and avail records to the Commissioner of whether the income is subject to tax in Kenya or not. This is intended to enhance transparency in regards to trusts for tax purposes.

Effective date 1st July 2023

Commissioner’s Electronic Tax System

The Act grant the Commissioner the right to introduce an electronic system to be used in the administration of electronic tax invoices. In this regard, persons who carry out business in Kenya will be required to issue electronic tax invoices and maintain the records through an electronic system established by the Commissioner. This shall also apply to any electronic tax invoice required to ascertain tax liability and is issued by a resident person or the permanent establishment of a non-resident person.

Items such as emoluments, imports, investment allowances, interest and similar payments will be excluded from electronic tax invoices provisions. Additionally, the Commissioner may by notice of Gazette, exempt a person from the requirements of this sections.

These changes on electronic tax invoices are intended to enhance transparency and simplify the process of tax reporting.

Effective date 1st September 2023

Additional Assessments

The Act has mandated the Commissioner to further amend an amended assessment.

This implies that the Commissioner may issue additional assessments based on the amended assessment rather than basing the same on original assessments as was the case.

Effective date 1st July 2023

Mutual Administrative Assistance in the Recovery/Collection of Tax Claims

The Act has granted the Commissioner powers to recover or collect taxes in line with an international tax agreement that provides for mutual administrative assistance in the recovery or collection of tax claims.

The recovery and collection of tax claims as stipulated in the Act relates to claims which are enforceable and uncontestable in the requesting state, applying to the resident of the requested state. This process shall commence upon the request of the competent authority of that requesting state that meet the above standards

as well as being subject to the international tax agreements in reference.

In this regard, the Commissioner is mandated to apply for an order accordingly and issue the person liable to tax a notice in the prescribed form which will require them to admit their liability for those taxes or lesser amounts within specified periods as highlighted in the notice.

In a case where the taxpayer admits to liability, they will be issued with a notice requiring them to pay the taxes in a specified period of time. Conversely, where the taxpayer contents the liability, the Commissioner shall be tasked with ascertaining where the liability is actually contestable by confirming with the regulations of the requesting state and ascertaining whether there is an aim to frustrate the collection or an aspect of assets being concealed. Upon confirmation of the tax liabilities, the Commissioner may then issue a notice for payment of the taxes.

The Commissioner is mandated to commence proceedings of tax collection if the taxpayer fails to comply. These steps of tax collections shall not in any way affect the rights of the taxpayer under the Laws of Kenya. The amounts collected shall be deposited in the Central Bank of Kenya after which they shall be remitted to an account specified by the requesting state.

The change is intended to provide guidance on the collection and recovery of taxes and consequently curb tax evasion on cross-border transactions which will subsequently enhance global economic activities.

Effective date 1st July 2023

Relief as a Result of Doubt or Difficulty in Recovery of Tax

The Act has repealed the provision on relief that was obtained due to doubt or difficulty in recovery of tax.

This change implies that all taxes inclusive of those involving doubt or difficulty in recovery will be sort for payment without any relief thereof in this regard.

Effective date 1st July 2023

Refrain from the Recovery of Interests and Penalties

The Act has included a new provision barring the Commissioner from collecting penalties and interests accrued on account of principal tax paid before the 31st December 2022.

Additionally, the Act has provided that where the principal tax is not yet paid, the taxpayer may apply for an amnesty of interests, penalties or fines of the unpaid tax which have accrued up to the 31st December 2022 and propose a payment plan for the outstanding taxes. This amnesty shall be granted upon payment of all outstanding taxes not later than 30th June 2024, the individual does not incur further debt and signs a commitment plan for the settlement of all outstanding taxes.

The Act further stipulates that despite the amnesty provisions therein, any amount of principal taxes as at 31st December 2022 which remains unpaid on 30th June 2024 shall attract interest and penalties for which no amnesty shall be provided.

The Act also clarifies that the penalties and interests of which the Commissioner is barred

from collecting do not include those of tax avoidance as provided under Section 85 of the TPA.

Effective date 1st September 2023

Issuance of Agency Notices

The Act has clarified instances in which the Commissioner may issue a distress notice in addition to the case where the taxpayer has not appealed to the Tax Appeals Tribunals after the Commissioner has confirmed their decision through an objection decision.

The new instances for issuing a distress notice include; default in payment of installment taxes, a raised additional assessment not objected to, a self-assessment made and submitted by a taxpayer where the tax has not been paid and the due date lapsed and where the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.

This implies that with the increase in the scope of distress notice orders, many taxpayers may be issued with distress notices should they fall within these categories in view of the revenue collection need.

Effective date 1st July 2023

Withholding Value-Added Tax

The Act has limited manufactures who were qualifying for exemption from withholding VAT by stipulating that only those manufactures whose value of investment in the preceding three years from 1st July 2022 is at least three billion will qualify for this exemption as opposed the initial base which determined this threshold from the commencement of the Act.

This implies that only those manufacturers who have attained this threshold within the last three years will qualify for this exemption and those who had attained this threshold in the past will be subject to withholding VAT.

Due Date for Payment of WHVAT

The Act has made changes providing that the tax withheld is to be remitted to the Commissioner within five days after the deduction was made. This intends to reduce the current time of remission which is on the twentieth day of the month following the month in which the deductions were made.

This change is intended to enhance swift remission of taxes and therefore ensure the efficiency of the application of withholding VAT

Effective date 1st July 2023

Appointment of Rental Income Tax Agent

The Act has empowered the Commissioner to appoint an agent for the purpose of collecting and remitting rental income tax. The Commissioner may revoke at any time the appointment. Tax deducted ought to be remitted within 5 days.

This additional provision is intended to enhance collection of rental income and curb tax avoidance and evasion which is prevalent in regards to this type of income given the need for revenue collection across all sectors of the economy in Kenya.

Effective date: 1st July 2023.

Offset or Refund of Overpaid Tax

The Act has effected changes enabling taxpayers to request that the Commissioner offset outstanding liabilities and future tax liabilities against overpaid taxes.

Timeline for Processing Refunds

The Act has reduced the period that the Commissioner may take to refund the taxpayer from two years to six months from the date the Commissioner ascertains the validity of the overpayment of tax. In case the Commissioner fails to refund within the timelines, the taxpayer will be allowed to apply the overpaid tax in offsetting against outstanding tax debts or future liabilities.

Further, the Commissioner has been obliged to ascertain the validity of the tax overpayment within 120 days after the audit, failure to which the application will be considered to have been approved.

This change is intended to eliminate the ambiguity and increase the efficiency of the process as regards the time taken by the Commissioner in processing refunds and also to reduce the time taken to disburse approved refunds to the taxpayers. Ultimately, this will eliminate cases of delayed disbursements of approved refunds to taxpayers and also facilitate swift completion of audits in refund matters.

Effective date: 1st July 2023

Timeline for Submission of Documentation on An Invalid Notice of Objection

The Act has introduced a seven-day limit for a taxpayer to issue the Commissioner with documentation upon notification that the objection was not validly lodged.

Further, the Act stipulates that notwithstanding the failure of a taxpayer to provide information within the specified period, the Commissioner may make an objection decision within sixty days from the day the notice of objection was lodged.

Effective date: 1st July 2023

Increase of ADR Timelines

The Act has increased the time period that a tax dispute may take to be concluded using the alternative dispute resolution mechanisms upon permission of the Court or the Tribunal to 120 days from the initial 90 days.

This is intended to encourage conclusive settlement of matters outside court by increasing time for the out of court engagement and therefore giving the parties involved ample time to conclude the matters involved

Effective date: 1st July 2023

Production of Records

The Act has tasked the Commissioner to establish a data management and reporting system for the submission of electronic documents such as electronic invoice returns for payments in various transactions.

Further, the Commissioner has been obliged to notify in writing the person required to submit the electronic documents through the established data management and reporting system.

The data will include names and addresses of parties involved, amounts of the payments or the particulars of the consideration in case the consideration is not money and any other particulars that the Commissioner may specify.

This change is intended to streamline the process and the requirements of production of records with regards to tax laws in order to adjust for technological advancement and to enhance efficiency. Additionally, this is intended to reduce the cumbersome nature of physical production of documents for taxpayers.

Effective date: 1st September 2023

General Provisions Relating to Penalty and Interest

The Act has repealed provisions for waiver under Section 89 of the TPA. These subsections provided for the application of remission of penalties and interests and guidance in this regard.

This implies that the Commissioner will no longer waive penalties and interest at his discretion.

Effective date: 1st July 2023

Fraud of Impersonation in Relation to Tax

The Act has inserted a new Section to the TPA which deters unauthorized persons from impersonating an authorized officer under tax laws. Upon conviction, offenders shall be liable to imprisonment for a term not exceeding three years.

This serves to deter imposters with ill motives who may pretend to be authorized officers and therefore misguide taxpayers.

Effective date: 1st July 2023

Sanctions for Offences

The Act has clarified that the sanctions that a person convicted of an offence under the TPA will be either fine or imprisonment or both.

This implies that either of the two measures or both may be imposed on the taxpayers as regards the offences committed.

Effective date: 1st July 2023

Penalty for Failing to Comply with Electronic Tax System

The Act has introduced stringent measures to counter non-compliance with the requirement to issue electronic tax invoice, submit a tax return in electronic form or pay a tax electronically.

Where the taxpayer fails to satisfy the Commissioner on the reason for non-compliance with the electronic tax system, the taxpayer shall be liable to a penalty of two times the tax due.

This is aimed at enforcing the requirement of issuance of electronic tax invoices and compliance with the electronic tax system which

is intended to facilitate and streamline the tax revenue reporting and collection process.

Effective date: 1st September 2023

F. MISCELLANEOUS FEES AND LEVIES

The Act has introduced the following changes to the Miscellaneous Fees and Levies Act;

Reduction of Import Declaration Fee

The Act has reduced import declaration fees on all goods imported into the country for home use from 3.5% down to 2.5%. This measure will increase trade, stir competition since more people will afford imported goods and compete in the local markets. This might however have a negative impact on the local producers, due to increased imports hence creating a potential trade imbalance.

The Act has deleted; Section 7(2A), which imposed IDF at 1.5% on raw materials, product and inputs imported by manufacturers and bodies under affordable housing scheme upon the recommendation to the Commissioner by the Cabinet Secretary in that industry, and

Section 7(3)(b) of the Act which imposed IDF on goods imported under EAC Duty Remission Scheme at 1.5%, hence introduction of a levy of 2.5% on all imported goods.

Section 5(4), which gave the Commissioner powers to adjust the specific rate of export levy annually to consider inflation in accordance with the formula specified in Part III of the First Schedule.

Effective Date: 1st July 2023

Export and Investment Promotion Levy

The Act has introduced a new Section 7(A) which imposes export and investment promotion levy on all goods imported into the country for home use as specified in the Third Schedule, except goods originating from the EAC Partner States that meet the EAC Rules of Origin. This measure is aimed towards generating funds in order to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.

Effective Date: 1st July 2023

Reduction of Railway Development Levy

The Act has amended Section 8 (2) by reducing the railway development levy (RDL) from 2.5% to 1.5% on all goods imported into the country for home use. This move will potentially lead to increased trade and economic growth being experienced.

The Act has further deleted subsection 2A of Section 8, implying that raw materials, intermediate products imported by manufacturers and inputs for construction of houses under an affordable housing scheme shall now be governed by subsection 2.

Effective Date: 1st July 2023

Amendments to the Part I of the First Schedule of the Miscellaneous Fees and Levies Act

Tariff No	New Tariff Description/Tariff No.	Previous rate	New rate
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry-salted, or 16 kg. when fresh, wet-salted or otherwise preserved.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4104.40.00	Deleted.		
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher.
4301.60.00	Raw furskins of fox, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher.

4301.30.00	Raw furskins of lamb, the following: Astrkhan, broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher.
4302.30.00	Whole skins and pieces or cuttings thereof, assembled.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher.
4101.90.00	Other, including butts, bends and bellies.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4301.90.00	Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
8002.00.10	8002.00.00		
8105.00.00	Deleted		
8107.30.00	8112.61.00		
8109.30.00	Deleted		
8110.20.20	8110.20.00		

Effective Date: 1st July 2023

Further, the Act has amended Part I of the First schedule by including the following new tariff and rates of export levy:

Tariff No	Tariff Description	Export levy rate
8106.10.00	Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight.	20%
8106.90.00	Other bismuth and articles thereof including waste and scrap.	20%
8105	Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap.	20%
8109.31.00	Waste and scrap of zirconium containing less than 1part hafnium to 500 parts zirconium by weight.	20%
1703	Molasses resulting from the extraction or refining of sugar.	20%

Effective Date: 1st July 2023

The Act has amended th Second Schedule of the Miscellaneous Fees & Levies Act as follows;

Paragraph	Old Narration	New Narration
(x)	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 Cap. 179. Privileges and Immunities Act;
(xv)	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.
(xxv)	equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.	All goods including material supplies equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.
(xva)	N/A	any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.
(xxvb)	goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for Health.	goods imported for use in the construction and maintenance of human vaccine or other manufacturing activities including refining manufacturing plants as approved by the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for Health.
(xxvii)	N/A	goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and
(xxviii)	N/A	liquefied petroleum gas.

(xxix)	N/A	the supply of denatured ethanol of tariff number 2207.20.00
(xxx)	N/A	bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).
Part B		
(ii)	for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act (Cap. 179);	goods imported for official use by diplomatic and consular missions, United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act;
(iii)	Deleted.	
(viii b)	goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for Health;	goods imported for use in the construction and maintenance of human vaccine or other manufacturing activities including refining manufacturing plants as approved by the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for Health;
(ix)	equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service; and	All goods including material supplies equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service; and
(xi)	N/A	goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;
(xii)	N/A	liquefied petroleum gas; and
(xiii)	N/A	all goods and parts thereof of Chapter 88.
(xiv)	N/A	the supply of denatured ethanol of tariff number 2207.20.00;
(xv)	N/A	bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel);
(xvi)	N/A	any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;

Effective Date: 1st July 2023

Insertion of a New Third Schedule to the Miscellaneous Fees and Levies Act

The Act has introduced a new Third Schedule immediately after the Second Schedule as follows;

Tariff No	Tariff Description	Export and Investment Promotion Levy Rate
2523.10.00	Cement Clinkers	17.5% of the customs value
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; rectangular (including square) cross-section, the width measuring less than twice the thickness.	17.5% of the customs value
7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm.	17.5% of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	17.5% of the customs value
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10% of the customs value.
4804.21.00	Sack kraft paper; Unbleached	10% of the customs value
4804.31.00	Other kraft paper and paperboard weighing 150 g/m ² or less: Unbleached	10% of the customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more.	10% of the customs value
4819.40.00	Other sacks and bags, including cones.	10% of the customs value

Effective Date: 1st September 2023

G. MISCELLANEOUS LAWS

The Betting, Gaming & Lotteries Act (Cap.131)

The Act has introduced new Section 69AA immediately after Section 69A, which provides that betting, lotteries, gaming and prize competition taxes are now regulated by Tax Procedures Act, 2015. This move is intended to harmonize all the taxes to be administered under the TPA.

Effective date: 1st July 2023

The Kenya Roads Board Act,1999

The Act has amended the composition of the members of the board, by deleting paragraph 7(1)(g) which provided for the Permanent Secretary in the Ministry for the time being responsible for matters relating to transport and communications; and by further reducing the other members under paragraph h from eight to five.

The Act has introduced a new subsection 2A under Section 35, to require the board to submit a collated annual roads programme alongside annual estimates. This is aimed at ensuring better management of resources and minimize corruption in the road maintenance, rehabilitation and development sector.

The Act has further deleted paragraphs 4, 5 & 6 of the First Schedule.

Effective date: 1st July 2023

The Kenya Revenue Authority 1995 (No.2 of 1995)

The Act has amended the KRA Act in section 5(2A) to read “the authority may establish an institution to provide capacity building and training the staff of the authority, general public and other jurisdictions.” This has already been in place with the introduction of KESRA which offers training for KRA staffs, general public and citizens of other countries. So, this is just law playing catch up.

The Act also amended Section 13(1) by inserting the words “and Deputy Commissioners” to read “the board shall appoint, to service of Authority, such Commissioners and Deputy Commissioner as may be deemed necessary” and by deleting section 13(2). This means going forward the board will be appointing deputy Commissioners.

Effective date: 1st July 2023

The Retirement Benefits Act, 1997

The Act has been amended the requirements for registration of administrators by changing the local ownership from sixty per cent to thirty three percent, under Section 25B(1). This shows the government commitment to attract foreign investors.

The Act has also exempted the funds that are set up exclusively for the purpose of investing in sharia compliant funds from restrictions on the use of funds through introduction of a new subsection (1)(A) under Section 38.

Effective date: 1st July 2023

The Employment Act, 2007(No.11 of 2007)

The Act has amended the Employment Act by introduction of section 31B on affordable housing levy. The affordable housing levy will be imposed both on employer and employee at a rate of 1.5% of the employee’s gross salary per month. The purpose of the levy is to provide funds for the development of affordable housing and associated and physical infrastructure as well as provision of affordable home financing to Kenyans.

The employer is obligated to deduct and remit the levy within nine working days from the month which the payments are due. Failure to comply will attract a penalty equivalent to 2% of the unpaid funds for every month the same remains unpaid.

Effective date: 1st July 2023

The Alcohol Drinks, Act 2010

The Act has been amended by defining the minimum input cost to mean;

"minimum input cost" means input cost published by Kenya Revenue authority through excise regulations;

This is meant to harmonize the laws in Kenya especially now that the Alcohol Drinks Act has been included in First schedule the KRA Act.

The Act has also introduced a new paragraph c immediately after paragraph b of Section 31, to provide as follows;

(c) "a person shall not sell, manufacture, pack or distribute alcoholic drinks at a price below the minimum input cost".

The Act has further added item 13. 'The Alcoholics Drinks Act, 2010' in the First Schedule as one of the acts related to the revenue collection.

The Unclaimed Financial Assets Act, 2011

The Act has amended Section 28(5), claim on assets, of the Act to insert the words "or such other person as the claimant may designate" immediately after word "claimant". This will allow a claimant to designate another person to claim the assets on his behalf. This is a welcome move especially where a claimant is not able to claim the assets due to either incapacitation or some other reason.

Effective Date: 1st July 2023

The Statutory Instruments Act, 2013

The Act has deleted the heading to part V which read part "staged automatic expiry of statutory instruments" and substituting with "purpose for review of statutory instruments". Further, Section 21 has been repealed which sought automatic revocation and expiry after ten years of statutory instruments being in place. This is aimed at harmonizing the Act with the Revision of Laws Act.

The Retirement Benefits (Deputy President and Designated state Officers) Act, 2015

The Act has repealed Section 4 which contains list of circumstances which retirement benefits may not be paid and instead introduce section 4A which states that a person holding an appointive or elective government office shall upon retirement or ceasing to hold office be paid a monthly pension equal to eight percent of the monthly salary or lumpsum payment.

The Act has also introduced section 4(B) which reads "A person, who holds an appointive or elective position for which benefits under this Act apply and is entitled to pension under the Parliamentary Pensions Act, shall in addition to the benefits and pension payable under this Act, be paid pension under section 8 of the Parliamentary Pensions Act." This might be viewed as duplication of benefits for the politicians and top government officials.

The Act has further added the list of people who can benefit from medical cover to include children below eighteen years or is under twenty-five years and is undergoing a course of full education and in case of female child is not married or cohabiting with any person. This means more perks for top government officials.

The First schedule has been amended to include one chief liaison officer as retirement perks for retired National and Speakers, Deputy and Chief Justice.

The Act has amended section 13 by introducing subsection 13(1)(d) requiring the clerks of National assembly and senate to prepare the budget for the retirement's perks for the National and Senate Speakers and submit to the parliamentary service Commission.

The Act has further repealed section 16 which required setting off benefits received from any law to benefits provided in this act. This might be viewed as duplication of benefits for the top government officials.

The Special Economic Zones Act, 2015

The Act has amended the definition of special economic zone under Section 4 to read;

“A special economic zone shall be a designated geographical area which may include both customs controlled area and non-customs controlled area where business enabling policies, integrated land uses and sector-appropriate onsite and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where development of zone infrastructure and goods introduced in customs-controlled area are exempted from customs duties in accordance with customs laws.”

The Act has further amended section 6(b) by deleting the word “Kenya” and substituting with “the customs territory”. The section now reads; “goods which are brought out of a special economic zone and taken into any part of the customs territory for use therein or services provided from a special economic zone to any part of the customs territory shall be deemed to be imported into custom area.”

The Act has further provided the conditions for exemptions from import duties as follows;

- ✓ Goods whose content originates from the customs territory shall be exempt from payment of import duties; &
- ✓ Goods whose content partially originates from the customs territory shall pay import duties on the non-originating component subject to the customs procedures.

Effective Date: 1st July 2023

The Export Processing Zones Act, 1990

The Act has amended Section 24 by exempting the goods which originates from customs territory from import levies in the following circumstances;

- ✓ Goods whose content originates from the customs territory shall be exempt from payment of import duties; and
- Goods whose content partially originates from the customs territory shall pay import.

Let's talk

For further information on these amendments and how they will affect your business or need assistance on any other legal and tax matter kindly contact your regular Taxwise Africa Analyst or contact us through the contacts below.



020 2025320



Info@taxwiseconsulting.com



<https://taxwiseconsulting.com>