
A NEW DAWN – ANALYSIS OF THE PROPOSED CHANGES UNDER THE FINANCE BILL, 2023

The Finance Bill 2023 was tabled before parliament on 4th May 2023. This alert analyses various proposed amendments outlined in the Finance Bill, 2023, their effective date and the impact of these provisions as follows:

A. INCOME TAX ACT, CAP 470 LAWS OF KENYA

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

Definition of “Winnings”

The Bill proposes to amend the definition of “**winnings**” to mean *“the payout from betting, gambling, prize competition or similar transaction under Betting, Lotteries and Gaming Act without deducting the amount staked or wagered.”*

This amendment gives clarity as to what constitutes winnings for purposes of taxation by clearly stating that amounts staked form part of the taxable amount.

Definition of “Digital Content Monetization”

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

The proposed clause 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 Bill further proposes to subject these incomes to Withholding Tax (WHT) at a rate of **15%**.

The proposed measure is aimed at income earned from digital platforms as digital content monetization is a fast-growing albeit informal industry.

Definition of “Immovable Property”

The Bill seeks to introduce the definition of the term “**immovable property**” as follows: -

The Bill proposes to broaden 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 seeks to provide a comprehensive interpretation of immovable property for tax purposes in respect of rights and interest transferred or granted in relation to immovable property which includes mining rights.

Definition of “Person” And “Related Person”

The Finance Bill seeks to introduce a definition of the term “**person**” as including a company or in the case of an individual, a reference to a relative of that person as provided for in Section 26(5) of ITA.

The Bill also seeks to introduce 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.

3-Year Limit on Deferring Foreign Exchange Loss

The Bill proposes that 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, be claimed over a period not exceeding three years, from the date the loss is realized by a company.

Effective Date: 1st July 2023

Repatriation of income

The Bill proposes to amend the ITA to bring repatriated income to tax where a non-resident carrying on business through a permanent establishment receives repatriated income. It is worth noting that the chargeable tax will be paid **in addition to** tax charged on the permanent establishment.

The proposed clause provides a formula for the calculation of repatriated income 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

A noteworthy point is that this proposal seeks to revive the proposal for taxation of repatriated income as was put forward in the Finance Bill 2018.

Effective date: 1st January 2024

Restriction on deduction of Withholding Tax payments to non-residents in cases of audit adjustments

The Bill proposes to restrict the refund or deduction WHT paid against payments to non-resident persons where an audit adjustment has been made in respect to such payment.

Effective date: 1st July 2023

Removal of exemptions enjoyed by beneficiaries on trust income

The Bill seeks to remove the exemptions from income tax on income paid to beneficiaries out of registered trusts with respect to: -

- ✓ Education, medical treatment, or early adulthood housing;
- ✓ Income below ten million shillings annually
- ✓ Other amounts as prescribed by the Commissioner from time to time.

A similar proposition was made in the Finance Bill 2022, seeking to remove these exemptions and bring the income payable to the beneficiary back to the charge of income tax. The proposed amendment seeks to remove these exemptions

on trust income which were only recently introduced by the Finance Act 2021.

Effective date: 1st July 2023

Reduction of Monthly Rental Income rate (MRI)

The Bill proposes to revise the rate of residential income tax which is currently ten percent (10%) to Seven-point five percent (7.5%)

Effective date: 1st January 2024

Reduction of Turnover Tax Bracket

The Bill seeks to reduce the tax bracket of resident persons eligible to pay turnover tax on turnover from their business from a turnover of 1,000,000 – 50,000,000 to a turnover bracket of 500,000 – 15,000,000.

The Bill further proposes to increase the rate of turnover tax from one per cent (1%) to three per cent (3%) of gross receipts of the business.

Effective date: 1st July 2023

Taxation of Digital Assets

The Bill seeks to bring 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”.

The Bill defines a digital asset 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 bitcoins or non-fungible token (NFTs) will be subject to tax at a 3% rate.

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.

The person required to deduct the digital asset tax is required to remit the deducted amount to KRA within **twenty-four (24) hours**.

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

This proposal shows a change of tune from the Government’s previous stance on leaving cryptocurrency unregulated in Kenya. This is likely due to the need to widen Kenya’s tax base and the growth of cryptocurrency trade in Kenya.

Effective date: 1st September 2023

Allowable Deductions for Diminution

The Bill proposes to allow a 100% tax deduction on the cost of loose tools and utensils being the diminution in value of implements used in the production of income.

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 Bill seeks to 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 Bill seeks to delete the provision disallowing the claiming of expenditure incurred in the way of payment of club fees including entrance and subscription fees.

This proposed measure follows the proposal in the Bill to bring club fees paid by employers on behalf of employees to charge under PAYE.

Effective date: 1st July 2023

Interest Restriction on Excess Interest Payments

The proposal in the Bill seeks to limit the application of interest restriction provisions to interest payments made to non-resident persons only and exclude interest on local borrowing from the interest restriction provisions.

If passed, this provision will be a welcome relief for businesses from the EBITDA-based interest restriction on local loans.

Effective date: 1st January 2024

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

This proposal seeks to subject companies engaged in manufacturing with a cumulative investment of five billion shillings which enjoyed relief from EBITDA-based interest deduction restrictions to the EBITDA provisions in the Income Tax Act.

Deduction for Expenditure incurred outside Kenya

The Bill seeks to delete the provision that disallows the deduction of expenses in the ascertainment of profits of a business carried on in Kenya as follows:

- 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 Bill proposes that intellectual property income subject to a preferential tax rate be determined 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 proposed provision further provides that intellectual property losses are only deductible from 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 Bill seeks to impose 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 proposal further seeks to impose 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 Bill 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

Income from members’ clubs and trade associations

The Bill seeks to amend the provisions on income from a business in respect of members’ clubs and trade associations. Currently the ITA provides

that this income includes entrance fees and subscriptions.

The proposed provision excludes joining fees, welfare contributions and subscriptions from constituting income from members’ clubs and trade associations.

The Bill also proposes to do away with the requirement that unless three-quarters of the gross receipts of such clubs and associations are received from members of the club, the same will be treated as carrying on a business.

If approved, all the income of member clubs and trade associations will be deemed as business income and subject to income tax.

Effective date: 1st July 2023

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

The Bill proposes to repeal the provision in the ITA which provides that the income of a married woman living with her husband shall be 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, this proposal by the Bill seeks to clean up outdated provisions in the Act.

Effective date: 1st July 2023

Exemptions granted to entities of public character

The Bill attempts to redefine the institutions of public character which enjoy an exemption from corporate income tax to capture the nature of public benefit without conferring a private benefit to an individual.

Effective date: 1st July 2023

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

The Bill seeks to subject tax on the income of companies dealing in the manufacture of human vaccines at a rate of **10%**. This proposed measure is accompanied by the removal of the

exemption granted to manufacturers of human vaccines under the Finance Act 2022.

Effective Date 1st January 2024

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

The Bill seeks to provide 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, “**local content**” means 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 Bill seeks to introduce capital allowances on account of;

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

Effective Date 1st January 2024

Limitation of investment allowance claimed at 100%

The Bill proposes to extend the investment allowance of 100% claimed to capital expenditure incurred in respect of hotel buildings, buildings used for manufacture and machinery used for manufacture to investments located in places outside Nairobi and Mombasa counties necessitated by the nature of their business.

Effective date: 1st January 2024

Mortgage refinance companies added to the list of financial institutions

The Bill seeks 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 will consequently exempt interest paid to mortgage refinancing companies from WHT.

Effective date: 1st January 2024

Increase in Advance Tax

The Bill seeks to revise the rate of advance tax for vans, pick-ups, trucks, prime movers, trailers, and lorries to Three Thousand Shillings (Kshs 3,000) per tonne of load capacity per year or Five Thousand Shillings (Kshs 5000) per year, whichever is higher.

The Bill seeks to revise 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 gains in subsequent transfer

The Bill proposes that where the 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

Taxation of underlying immovable property in disposal of shares

The Bill proposes to bring 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 Bill proposes to impose 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 KRA that there is a change in at least twenty per cent of the underlying property.

Tax Point of Capital Gains Tax

The Bill proposes to amend 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.

Limit on exemption of internal restructuring from Capital Gains Tax

The Bill proposes to limit 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.

Indirect transfer of interest in the extractives industry

The Bill seeks to amend the existing 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 change of twenty per cent or more.

Effective date: 1st July 2023

Pay As You Earn (PAYE)

Exclusion of Traveling Allowance From PAYE

The Bill proposes to exclude traveling allowance reimbursed within the standard mileage rate approved by the Automobile Association of Kenya from the calculation of income earned for employment.

The proposed amendment seeks to align 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 proposal seeks to bring to charge club subscription and entrance fees paid by the employer on behalf of the employee to charge as constituting gains and profits from employment.

The proposed provision is likely aimed at increasing revenue by widening the scope of benefits from employment, including club fees.

Effective Date: 1st July 2023

Exclusion of reimbursements made to public officers

This proposal seeks to exclude payments made by way of reimbursements in respect of expenditure incurred by public officers in the performance of official duties irrespective of ownership or control of the assets purchased.

While this proposal may be aimed at providing a safeguard to government officers in respect of reimbursements and payments made in the course of official business, the provision may be construed as discriminatory where public officials are granted preferential treatment.

Effective date: 1st July 2023

Employee Share Option Plan (ESOP)

i. Determination of Market Value of Employee Share Ownership (ESOP)

The Bill proposes to revise the applicable market value of the share options as follows:

- i. Fully listed shares - the mid-market value on the date the option was exercised by the employee;
- ii. Not fully listed shares – 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 January 2024

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

This proposed amendment provides for instances where employees of start-ups receive benefits in the form of company shares by virtue of their employment.

Eligible start-ups

The proposed clause provides the interpretation of “*eligible start-up company*” as being 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

Point of taxation

In such instances, the point of taxation of the benefit shall be 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

Effective date: 1st July 2023

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

The Finance Bill seeks to remove income from 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 Bill proposes to introduce a personal relief for persons who demonstrate contribution in a given year of income to a post-retirement medical fund.

The Bill seeks to classify this fund as a resident personal relief and charged at the rate of **(15%) fifteen per cent** of the amount of contribution paid or **Sixty Thousand (60,000) shillings** per annum, whichever is lower.

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

Effective date: 1st January 2024

Change in PAYE Bands

The Finance Bill proposes to introduce a new PAYE tax band with a tax rate of 35% on employment income above KES 6,000,000 per annum. The proposed tax bands are as follows;

| 2023 (proposed in Finance Bill) | Rate |
|------------------------------------|------|
| On the first 288,000 | 10% |
| On the next Kshs. 100,000 | 25% |
| On the next Kshs. 5,612,000 | 30% |
| On all income over Kshs. 6,000,000 | 35% |

The proposal is targeted at high-income earners.

Withholding tax

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

The Bill seeks to introduce withholding tax on payments for sales promotion, marketing, advertising services, the aggregate value of which is twenty-four thousand shillings in a month or more at the rate of **(5%) five per cent** of the gross amount and on payments relating to digital content monetization at **(15%) fifteen per cent**.

Effective date: 1st January 2024

Appointment of Property Managers as Withholding Tax Agents

The Bill proposes to grant the Commissioner the power to appoint as withholding tax agents, persons who receive rental income on behalf of the owner of the property. The appointed tax agents will be obligated to deduct and remit rental income tax at a rate of **7.5%** to the Commissioner together with a return within 24 hours.

Exemption from WHT for manufacturers of human vaccines

The Bill proposes to provide manufacturers of human vaccines with exemptions on;

- ✓ Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines; and
- ✓ Interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines.

B. VALUE ADDED TAX ACT

Liquefied Petroleum Products

The Bill proposes to increase the VAT rate of all petroleum products, except for liquified petroleum gas (LPG), from 8% to 16%.

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

The Bill further seeks to change the VAT status of LPG from current rate of 8% to exempt. This move will lead to reduced cost of cooking gas hence increased consumption of the product. Nonetheless, suppliers of the product will not be eligible to claim input VAT incurred in making the supply.

Effective Date: 1st July 2023

Place of Supply of Services

The Bill proposes to amend Section 8(2) on the definition of the place of supply of services for suppliers who their place of business in not Kenya to include supply made to registered persons.

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

Effective Date: 1st July 2023

Claiming of Input VAT

The Bill seeks to amend 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 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.

Effective Date: 1st July 2023

Charge to VAT on compensation for loss

The Bill proposes to amend the Act to provide 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 cost to the recipients of the insurance compensation as they will bear the VAT costs.

Effective Date: 1st July 2023

Digital Service Providers VAT registration

The Bill seeks to amend Section 34 of the Act to require 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 turnover threshold is five million shillings.

This will provide clarity that all suppliers of imported digital services will be required to register for VAT irrespective of their turnover. Currently, it is not clear whether such persons are required to register for VAT if their taxable supplies do not exceed the five million turnover threshold.

This move would reduce the cost of record keeping for foreigners through digitization of the VAT records.

Effective Date: 1st July 2023

Exemption of Exportation of Taxable Services

The Finance Bill proposes to change the VAT status of exportation of all taxable services from standard rated to exempt.

The Bill further seeks to change the VAT status of Business Process Outsourcing (BPO) services from zero rated to exempt. Currently, the Act does not provide for the definition for business process outsourcing.

This measure will provide alignment of the VAT status of all exported services to be exempt. Additionally, the move will reduce the cost of such supplies, hence increased exports in the country. The suppliers will not be allowed to claim input VAT directly incurred in the provision of the services, thus increased cost of doing business.

Effective Date: 1st July 2023

Effective Date: 1st July 2023

Record Keeping

The Bill proposes to amend the Section 43(1) of the VAT Act to provide that records can be kept anywhere in the world and not necessarily in Kenya. The proposed amendment is a welcome

Change in VAT Status of Certain Supplies

The Bill proposes to change the VAT status of the following supplies;

| Item | Current Status | VAT | Proposed VAT Status | Implication | |
|--|----------------|-----|---------------------|--|---|
| Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments | Zero rated | | Exempt | The cost of doing business will go up as suppliers will not be allowed to claim Input VAT on such supplies. This cost is likely to be passed to the buyers thus increasing the cost of the supplies. | |
| All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products | Zero rated | | Exempt | | |
| Agricultural pest control products | Zero rated | | Exempt | | |
| Transportation of sugarcane from farms to milling factories | Zero rated | | Exempt | | |
| Fertilizers of Chapter 31 | Zero rated | | Exempt | | |
| Inputs or raw materials locally purchased or imported by manufacturers of fertilizer | Zero rated | | Exempt | | |
| Liquefied petroleum gas | Taxable at 8% | | Exempt | | |
| All tea sold for the purpose of value addition before exportation | Standard rated | | Exempt | | |
| Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities. | Exempt | | Standard rated | | The supplies will become costlier. Suppliers will be eligible to input VAT deduction. |
| Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities. | Exempt | | Standard rated | | |
| Exportation of taxable services | Standard rated | | Exempt | Reduction in cost of supplies, increased exports. Input VAT incurred directly on the | |
| Transfer of business as a going concern | Standard rated | | Exempt | | |

| | | | |
|---|----------------|------------|---|
| | | | provision of the services shall not be claimable. |
| The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight. | Zero rated | Zero rated | |
| The exportation of taxable services in respect of business process outsourcing (BPO). | Zero rated | Exempt | This measure is intended to align the VAT status of all exported services to be exempt. Currently, taxable exported services are standard rated, except for BPO services. |
| Inbound international sea freight offered by a registered person. | Standard rated | Zero rated | The supplies will become more affordable as no VAT is chargeable. |

Effective Date: 1st July 2023

Amendments to the Part I of the First Schedule of the Value Added Tax Act

The Bill proposes to make changes to the following paragraphs of the Schedule;

| Paragraph No. | Current Description | Proposed Description/Amendment |
|---------------|---|---|
| 20 | Fish and crustaceans, moluscs and other quaticinveterbrates 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 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. |
| 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. |
| 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, | Diagnostic kits or laboratory reagents and their certified reference materials of heading 3822. |

| | | |
|--------------------------|--|--|
| | other than those of heading 30.02 or 30.06, certified reference materials. | |
| 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 |
| 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 |
| 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 |
| 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 |
| 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 |
| 62, 66A, 107,108,130,146 | | Paragraphs 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 |

Effective Date: 1st July 2023

Further, the Bill proposes the following changes to the tariff numbers and tariff descriptions;

| Current Tariff No. | Proposed Tariff No. | Current Description | Proposed 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 | N/A | Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale. | Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale. |
| 3004.32.00 | N/A | 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 | N/A |
| 3006.60.00 | N/A | 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 | N/A | 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 and 3003.90.00 | Deleted | | Deleted |

Effective Date: 1st July 2023

C. TAX APPEALS TRIBUNAL ACT

Clarity on Documents at Appeal

The Bill seeks to 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.

Security on Appeal to the High

The Bill seeks to include a proviso requiring that an appellant, other than the Commissioner, deposit an amount equivalent to 20% of the disputed tax or security equivalent to 20% of the disputed tax before filing an appeal.

Where the high court rules in favour of the taxpayer, the Commissioner shall credit that amount or security to that party within 30 days after the determination of the appeal.

While this is meant to discourage frivolous appeals, it makes justice unattainable by creating a financial burden on taxpayers, especially small businesses, and could deter them from filing an appeal even if they have a strong case.

Effective Date: 1st July 2023

D. EXCISE DUTY ACT

Definition of 'Excise Control'

The Bill proposes to amend 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 Bill seeks to rescind 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 proposal will protect most of the consumers from increased product costs.

Effective date: 1st July 2023

Suspension of Licence

The Bill proposes to amend Section 20(5b) of the act to require that the commissioner provide the licensed person with written notice of the action required to be taken before the date specified in the notice being 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 Bill proposes to amend 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;
- ✓ 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;
- ✓ 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.

- ✓ prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;
- ✓ is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;

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 Bill proposes to introduce Section 36A to the 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 Bill 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 proposed introduction of subsections 6 & 7 to Section 28 of the Act, the Bill proposes to repeal 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

The Bill proposes to introduce the following changes to the Act;

| Item/Description | Current rate | Proposed 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; 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. |
| Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared. | 20% | New tariff description Pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared. | This is meant to increase the tax base of excise duty on Pasta. |
| Imported sugar confectionary of tariff heading 17.04 | Shs. 640.37 per kg | New tariff description Sugar confectionary of tariff heading 17.04 | This is meant to increase the tax base of the commodity. |
| Imported fish | N. A | Shs. 100,000 per metric tonne or 20%, whichever is higher | |
| Powdered Juice | N. A | Shs. 25 per kg | |
| Sugar excluding sugar imported or | N. A | Shs. 5 per KG | |

| | | | |
|--|------|---|---|
| locally purchased by a registered pharmaceutical manufacturer | | | |
| Human hair and other products of heading 6703 | N. A | 5% | |
| Wigs, false beards, eyebrows and eyelashes, switches, and the like, and other products of heading 6704 | N. A | 5% | |
| Artificial nails of tariff no. 3926.90.90 | N. A | 5% | |
| Imported cement | N. A | 10% of the value or Shs. 1.50 per kg, whichever is higher | This is meant to increase the tax base in terms of the increased excise duty. |
| Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin | N. A | 30% | This will negatively affect the consumption of the subject products. |
| Imported cellular phones | N. A | 10% | |
| Imported paints, varnishes, and lacquers of heading 3208, 3209 and 3210 | N. A | 15% | |
| Imported Test liner of heading 4805.24.00 | N. A | 25% | |
| Imported fluting medium of heading 4805.19.00 | N. A | 25% | |

Effective Date 1st July 2023

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

| Item | Current rate | Proposed 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% 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 | This is meant to increase the tax base. |
| Betting | 7.5% | 20% | This is aimed to discourage betting activities. |
| Gaming | 7.5% | 20% | This is aimed at reducing the associated negative effects of gambling. |
| Prize Competition | 7.5% | 20% | This is meant to increase the tax base |
| Lottery (excluding charitable lotteries) | 7.5% | 20% | This is aimed at reducing the associated negative effects of gambling |
| “Fees” charged by digital lenders | 20% | New Description “Any amount charged in respect of lending” charged by digital lenders | This proposal is intended to increase the tax base |
| 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 Bill proposes to amend the following definitions;

| Current Definition | Proposed 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; | |
| "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; | "other fees" includes any fees, charges or commissions charged by financial institutions 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; | This will provide more clarity on the applicability and meaning of the definitions. |

Effective Date: 1st July 2023

E. TAX PROCEDURES ACT

Definition of a Tax Decision

The Bill seeks to exclude refund decisions from the scope of a tax decision. This will limit taxpayers from objecting to the Commissioner's decision on account of a refund decision. However, aggrieved taxpayers will appeal to the Tax Appeals Tribunal in accordance with Section 47(13) of the TPA.

The Bill further seeks to include 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 Bill proposes the inclusion of mutual administrative assistance in the collection of taxes and mandates the effect of the same in the agreements made by or on behalf of 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 Bill proposes to extend 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 Bill seeks to 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 proposed 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 Bill seeks to mandate 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 is currently the case.

Effective date 1st July 2023

Mutual Administrative Assistance in the Recovery/Collection of Tax Claims

The Bill proposes to grant 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 envisaged in this proposed amendment relates to claim which are enforceable and uncontestable in the requesting state, applying to the resident of the requested state and shall commence upon the request of the competent authority of that requesting state while meeting the above standards as well as being subject to the international tax agreements in reference.

In this regard, the Commissioner as mandated may accordingly apply for an order 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 shall be 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 are to be deposited in the Central Bank of Kenya after which they shall be remitted to an account specified by the requesting state.

The implication of this proposed amendment is 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 Bill Seeks to repeal the provision on relief that may be currently obtained because of doubt or difficulty in recovery of tax.

As such, all taxes inclusive of those involving doubt or difficulty 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 Bill seeks to include a new provision barring the Commissioner from collecting penalties and interests accrued on account of principal tax paid before the 31st December 2022.

Additionally, 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.

No additional amnesty shall be granted on unpaid principal taxes stated above after the 30th June 2024 deadline for payment lapses.

Where a taxpayer fails to meet the requirements, they will be required to pay the principal taxes with the associated penalties and interests.

Effective date 1st September 2023

Security on Property for Unpaid Tax

The Bill seeks to eliminate the provision that the Commissioner notifies the taxpayer or any person in writing of the notification made to the registrar within seven days in relation to the property to be used as security for unpaid tax.

The Bill however seeks to include an additional provision that provides for the Commissioner to inform the taxpayer within fourteen days after the registration of the notification with the registrar.

This provision serves to inform the taxpayer as provided by section 74 of the TPA of the registration of their property as security.

Effective date 1st July 2023

Issuance of Agency Notices

The Bill seeks to clarify 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 Bill seeks to eliminate the exclusion of withholding VAT on registered manufacturers whose value of investment in the preceding three years from the commencement of this Act is at least three billion and thus include them to a deduction of this tax at source.

This implies that these manufacturers will be subject to withholding VAT.

Due Date for Payment of WHVAT

The Bill also proposes to have the tax withheld to be remitted to the Commissioner within three 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 proposed 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 Bill seeks to empower the Commissioner to collect tax from a person owing money to a taxpayer liable to pay rental income tax and the taxpayer has not paid the tax or the Commissioner has reasonable grounds to believe that the taxpayer will not pay the tax by the due date. This will be done by appointing the person as an agent for the purpose of collection and remittance of the tax.

The Commissioner may revoke at any time the appointment.

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 Bill proposes to enable taxpayers to request that the Commissioner offset outstanding liabilities and future tax liabilities against overpaid taxes.

Timeline for Processing Refunds

The Bill seeks to reduce 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 will be 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.

The purpose of this is to remove the ambiguity and increase the efficiency of the process as regards the time taken by the Commissioner in processing refunds and to reduce the time taken to disburse approved refunds to the taxpayers. This will reduce 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 Bill seeks to introduce seven-day limit for a taxpayer to issue the Commissioner with documentation upon notification that the objection was not validly lodged.

Further, 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 Bill seeks to increase the period that a tax dispute may take to be concluded using the alternative dispute resolution mechanisms upon permission of the Court or the Tribunal from 90 to 120 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

Restriction on New Grounds for Appeals

The Bill seeks to limit the grounds of appeal to grounds of objection by eliminating the possibility of taxpayers seeking for the permission of the Tribunal or the Court to rely on new grounds in an appeal.

If approved, taxpayers will have to ensure that they have a strong objection which entails all arguments as they will be deterred from introducing new grounds for determination in the courts or tribunals.

Effective date: 1st July 2023

Production of Records

The Bill seeks task 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 shall 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 is aimed at streamlining 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.

Tax Shortfall Penalty

The Bill seeks to increase the penalty for knowingly making a statement to an authorised officer that is false and which when utilised understates the tax liability of the person from 75% of the tax to double the shortfall caused by the false representation.

This stringent measure is aimed at preventing false representation that may lead to revenue loss to the taxman as a result of misleading information related to payable tax liabilities.

Effective date: 1st July 2023

General Provisions Relating to Penalty and Interest

The Bill seeks to delete 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. If approved, 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 Bill seeks to insert 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 Bill seeks to clarify 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

Tax Law and Civil & Criminal Cases

The Bill seeks to clarify that where any matter under a tax law is in issue in any ongoing criminal or civil case, the same shall not be ground for

stay, prohibition, or delay of either the criminal or the civil case.

This implies that matters under tax laws which are also in issue in any ongoing criminal or civil cases shall be concurrently undertaken without either interfering the course of action of the other.

Effective date: 1st July 2023

Penalty for Failing to Comply with Electronic Tax System

The Bill seeks to introduce 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 one million shillings or an amount equal to ten times the amount of the tax due, whichever is the higher.

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 Bill seeks to introduce the following changes to the Miscellaneous Fees and Levies Act;

Reduction of Import Declaration Fee

The Bill proposes a reduction in import declaration fees on all goods imported into the country for home use from the current rate of 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 Bill seeks to delete;

Section 7(2A), which currently imposes 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 imposes IDF on goods imported under EAC Duty Remission Scheme at 1.5%, hence a proposed levy of 2.5% on all imported goods.

Effective Date: 1st July 2023

Expansion of the Scope of Imposing of Levies and Fees

Export and Investment Promotion Levy

The Bill proposes a new Section 7(A) which shall introduce export and investment promotion levy, chargeable 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 proposal is likely 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 Bill proposes to amend Section 8 (2) of the Act by reducing the railway development levy (RDL) from 2.5% to 1.5% on all goods imported into the country for home use. This will potentially lead to increased trade and economic growth being experienced. Additionally, raw materials, intermediate products imported by manufacturers and inputs for construction of houses under an affordable housing scheme shall now be governed by the proposed amendment.

Effective Date: 1st July 2023

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

| Tariff No | Proposed Tariff Description/No. | Current rate | Proposed rate |
|------------|--|----------------------------|---|
| 4101.20.00 | Whole 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 |
| 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 |
| 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 | | |

The reduced export levy rates are likely to increase the quantity of exports.

Effective Date: 1st July 2023

Further, the Bill proposes amendment to Part I of the First schedule of the Act to include 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 1 part hafnium to 500 parts zirconium by weight | 20% |
| 8109.39.00 | Other waste and scrap | 20% |
| 1703 | Molasses resulting from the extraction or refining of sugar | 20% |

This move will increase the tax base for export levy.

Effective Date: 1st July 2023

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

The Bill seeks to introduce the Third Schedule to the Act as follows;

| Tariff No | Tariff Description | Export and Investment Promotion Levy Rate |
|------------|--|---|
| 2523.10.00 | Cement Clinkers | 10% 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) of cross-section, measuring the width less than twice the thickness | 10% 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 | 10% 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 | 10% 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

Amendments to the Second Schedule of the Miscellaneous Fees & Levies Act

I. Clarity on the Goods Exempted from Import Declaration Fees

The Bill seeks to broaden the scope of goods exempted from payment of IDF to include 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 and all goods

and parts thereof. The Bill seeks to introduce new provision governing good as such liquefied petroleum gas and those imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya to be exempted.

Furthermore, the Bill proposes to include all goods including material supplies, to Paragraph XXV of the Schedule as goods exempt from IDF. This measure will streamline logistics and boost

the national security through cheaper importation cost of the required supplies.

Effective Date: 1st July 2023

II. Goods Exempted from Railway Development Levy

The Bill seeks to widen the scope of goods exempted from RDL by inserting; goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya, liquefied petroleum gas and all goods and parts thereof of Chapter 88 to qualify for exemption. This measure will encourage trade and promote investment in the country.

Effective Date: 1st July 2023

G. MISCELLANEOUS LAWS

Betting, Gaming & Lotteries Act (Cap.131)

The Bill proposes to amend the Betting, Gaming and Lotteries Act by insertion of Section 69AA 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

Kenya Roads Board Act,1999

The Bill proposes to amend the Act by insertion of subsection 2A 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.

Effective date: 1st July 2023

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

The Bill seeks to amend the 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.

Effective date: 1st July 2023

Employment Act, 2007(No.11 of 2007)

The Bill seeks to amend the Act by introduction of section 31B on housing. The section seeks to provide for contribution to the National Housing Development Fund (NHDF) of 3% by both employers and employees, subject to a maximum of five thousand shillings a month.

This measure will be a benefit to the employees either through affordable housing or retirement benefits schemes. It will however lead to increased cost of doing business for employers in general as they will be forced to match the employees’ contributions.

Effective date: 1st July 2023

Unclaimed Finance Assets Act,2011

The Bill proposes to amend Section 28, 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

Statutory Instruments Act, 2013

The Bill seeks to amend Section 20 of the Act by deleting paragraph (c) and (d) which sought a mandatory requirement for review of subsidiary legislation. Section 21 of the same Act has also 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.

Effective Date: 1st July 2023

Retirement Benefits Act, Deputy President and Designated state Officers, Act, 2015

The Bill proposes to repeal Section 4 of the Act which contains list of circumstances which

Additionally, the provisions for payment of pension to persons who hold elective or appointive government offices. This measure will

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.

lead to increased government expenditure due to the additional costs to be incurred on retirees.

Effective Date: 1st July 2023

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.



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