

JUNE 2023

DISSECTION OF THE PARLIAMENTARY COMMITTEE REPORT ON THE FINANCE BILL, 2023

In light of the notice given by Parliament inviting comments on the Finance Bill 2023, Taxwise submitted our proposals in respect of various proposed amendments. We have analyzed the recommendations given by the Committee on Finance and National Planning in its report.

We have highlighted the Committee's recommendations in respect of key proposals made for amendment of the Finance Bill.

A. INCOME TAX ACT

Change in PAYE bands

Bill Proposal

The Bill proposes to introduce a fourth tax band to PAYE chargeable at the rate of 35% on employment income in excess of Kshs. 6,000,000 annually.

The submission made by Taxwise to the committee was to reject this proposed amendment as it will reduce the disposable income of high-income earners, cause a reduction in consumer spending, and make Kenya a less attractive market for high income earners and expatriates.

Committee Amendment

The committee amended this proposal by introducing a new tax band of 32.5% for monthly incomes between Kshs. 500,000 to Kshs. 800,000 and retain the 35% rate for monthly incomes above Kshs. 800,000.

Club fees as Allowable Deductions

Bill proposal

The Bill proposes to bring to charge as constituting gains and profits from employment club subscription and entrance fees paid by the employer on behalf of the employee.

Committee Amendment

To do away with the issue of double taxation the Committee amended this proposal by replacing the word "disallowed" with the word "allowed" so that club entrance and subscription fees are allowable against an employer's income.

Taxation of Digital Assets

Bill proposal

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". Additionally, the Bill proposes to impose a timeline of twenty-four (24) hours to deduct and remit the tax.

Committee Amendment

The committee took cognizance of the fact that the timeline proposed would create an administrative hurdle and amended the timelines from 24 hours to five (5) working days.

3-Year Limit on Deferring Foreign Exchange Loss

Bill proposal

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.

Committee Amendment

The committee amended the period of claiming foreign exchange losses from 3 years to 5 years to create enough time for claiming foreign exchange losses.

Disallowed expenses for Non-Compliant TIMS Invoices

Bill proposal

The Bill proposes to align allowable expenses incurred wholly and exclusively in the production of income with the TIMS regime.

Committee amendment

The Committee rejected proposals to delete this clause of the Bill on account of disadvantaging small businesses exempted from VAT registration due to the threshold and stated that KRA would provide administrative guidelines clarifying on implementation of the new system.

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Repatriation of Income

Bill proposal

The Bill proposes to introduce a tax on income repatriated by permanent establishments in Kenya to non-resident persons. The Bill further includes a formula for calculating the repatriated profit subject to tax. The Bill however does not make any provision for the applicable tax rate to apply on repatriated income.

We submitted to the Committee proposing for an amendment to include a reasonable tax rate that will ensure equity by providing a proportionate rate ensuring a level playing field for branches and subsidiaries operating in Kenya.

Committee Amendment

In the interest of equity and fairness, the committee accepted our proposal and amended this clause by introducing the rate of 15% to align with the rate of withholding tax applicable on dividends paid by a resident.

Remittance of Rental Income Within 24 Hours

Bill proposal

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 agent will be obligated to deduct and remit rental income to the commissioner together with return within 24 hours.

Committee Amendment

The committee being aware of the fact that the timeline proposed would create an administrative hurdle and amended the timelines from 24 hours to five (5) working days.

Limitation of Investment Claimed at 100%

Bill proposal

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

Committee Rejection

Due to the preferential treatment provided for investments located outside Nairobi and Mombasa being discriminatory, the Committee rejected this proposal in order to allow individuals investing in any part of the country to benefit from the investment deductions.

Reduction of Turnover Tax Bracket & Increase of Tax Rate

Bill proposal

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.

Committee Amendment

The Committee amended the threshold to a turnover bracket of 1,000,000 but not exceeding 25,000,000 and retains the 3% rate.

Withholding tax for digital content monetization

Bill proposal

The Bill seeks to introduce withholding tax on payments relating to digital content monetization at a rate of **15%**

Committee Amendment

In an aim to eliminate discrimination, encourage innovation and creativity and harmonize the withholding tax rate with other professional sectors, the committee amended the proposed rate from 15% to 5%.

Payment in Respect of Sales, Marketing and Advertising

Bill proposal

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% of the gross amount.

Committee Amendment

The committee amended this proposal by removing the Kshs. 24,000 thresholds.

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B. VALUE ADDED TAX ACT

Exemption of Exportation of Taxable Services

Bill proposal

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.

We submitted to have this proposal amended to provide for zero-rating on all exported taxable services to enable taxpayers claim VAT refunds for all the VAT amounts that cannot be processed in Kenya, we further submitted that this proposal will deter investment in Kenya as a service center due to the increased cost of doing business.

Committee Amendment

The committee adopted our proposal and amended the bill's proposal to zero rating for exported services.

LPG Exemption from VAT

Bill proposal

The Bill proposes to exempt supply of LPG from VAT

Committee Amendment

Taking into consideration the effect of such exemption on deduction of input VAT and the cost association with such exemption, since suppliers will include the non-deductible costs in their pricing of LPG, the committee amended the proposal and moved LPG to the schedule (zero rating)

VAT exemption on Inputs and Raw Materials

Bill proposal

The bill seeks to exempt;

- i. Inputs or raw materials supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments;
- ii. All inputs or raw materials supplied to manufacturers of agricultural pest control products;
- iii. Agricultural pest control products;

- iv. Transportation of sugarcane from farms to milling factories; and
- v. Inputs or raw materials locally purchased or imported by manufacturers of fertilizers.

Committee Rejection

The committee rejected this proposal on the basis that the exemption will increase the prices of goods.

C. EXCISE DUTY ACT

Excise Duty on Mobile Money Transfer

Bill proposal

The bill proposes to increase the tax rate from 12% to 15%.

Committee Amendment

In an effort to harmonize with money transfer services of banks, the committee amended the rate by retaining 12%.

Excise Duty on Beauty Products

Bill proposal

The Bill seeks to impose excise duty on wigs, false beards, human hair, and other products of hair and on artificial nails.

Committee Rejection

The committee rejected this proposal in an aim to allow the beauty industry to recover from the post-COVID recession.

D. TAX APPEALS TRIBUNAL ACT

Security on Appeal

Bill proposal

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.

We opposed this proposal and submitted that it will impose an unfair burden on taxpayers and affect the business cash flows where taxpayers are compelled to provide security for their appeals to be heard.

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Committee Rejection

The committee cognizant of the fact that this proposal is highly punitive and is likely to create cash flow challenges to affected taxpayers and additionally infringe on their right to access justice adopted our recommendation by rejected the Bill's proposal.

E. TAX PROCEDURES ACT

Security on Property for Unpaid Tax

Bill proposal

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.

Committee Rejection

Cognizant of the fact that this proposal violates the right to property, right to fair administrative action and dictates of natural justice and takes away from the taxpayer the opportunity to challenge the actions of the commissioner prior to the registration of such notification, the committee rejected it.

Restriction on New Grounds for Appeal

Bill proposal

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

We submitted that this proposal should be rejected as it will be detrimental to taxpayers seeking justice because the restriction is only on the side of the Taxpayer and not the Commissioner.

Committee Rejection

In adopting our proposal, the committee observed that Bill's proposal takes away the inherent power of the courts to make orders admitting new grounds necessary for the ends of justice.

Tax Shortfall Penalty

Bill proposal

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.

Committee Amendment

This proposal creates excessive penalties disproportionate to the offense, and since there are already other penalties and sanctions that can be imposed the committee amended this by replacing the words 'double the amount' with "equivalent of the tax shortfall."

F. EMPLOYMENT ACT, 2007 (No. 11 of 2007)

National Housing Development Fund

Bill proposal

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.

We recommend rejection of this proposal in its entirety because of the ongoing inflation and changes in economic times, as people in the country are already straining to make ends meet. In addition, since the additional tax will be charged to everyone, it would not make sense to those who already own homes.

Committee Amendment

The committee considered our recommendation and amended this proposal making it a levy as opposed to a mandatory contribution and further reduced the rate from 3% to 1.5%

Let us talk.

For further information on these amendments and how they will affect your business or need assistance with 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>