

# Tax Alert Analysis of the Finance Act, 2023

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# Tax Alert

## Analysis of the Finance Act, 2023

The Finance Act, 2023 (FA) was enacted on June 26, 2023, and is considered unique legislation with uncertain long-term implications for the economy. Our objective is to provide clarification on the proposed amendments by the FA.

The FA introduces amendments to several laws, including the Income Tax Act (ITA), Value Added Tax (VAT) Act, Excise Duty Act, Tax Procedures Act (TPA), Miscellaneous Fees and Levies Act, 2016, Tax Appeals Tax Act (TAT), Employment Act, 2007, Betting, Gaming and Lotteries Act, Kenya Roads Board Act, Kenya Revenue Authority Act, Alcoholic Drinks Control Act, Unclaimed Financial Assets Act, Statutory Instruments Act 2013, Special Economic Zones Act, Export Processing Zones Act, and Retirement Benefits (Deputy President and Designated State Officers) Act.

In a recent development on July 10, the High Court denied a request to lift the conservatory orders on the implementation of the FA. This decision was made in response to a case filed by, Busia Senator, Okiya Omtatah, against the Treasury Cabinet Secretary. As a result, the implementation has been put in abeyance until the petition is fully determined by the Court.

Notwithstanding the above, we provide below detailed highlights of the changes introduced by the FA.

## INCOME TAX ACT- CORPORATION TAX

### Definition of terms

The FA has amended the Income Tax Act “ITA” introducing a new definition of the following terms.

**Effective date: 1<sup>st</sup> July 2023**

Item	Proposed Bill	Finance Act	Comments
Definition of the ultimate parent entity (UPE)	UPE was defined as an entity that is not controlled by another entity and owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.	Section 18F was amended to adopt this <i>provision as follows</i> .  <i>“Ultimate parent entity” means an entity that is not controlled by another entity; and owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.</i>	This definition provides clarity and guidance for determining the responsibilities, obligations, and reporting requirements of UPEs under the FA within the context of multinational enterprise groups thus it is aligned to the OECD definition.
Definition of “immovable property”	The meaning of the term immovable property was broadened to include –  a) Land, whether covered by water or not, any estate, rights, interest, or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth and includes a debt secured by mortgage or	The FA retained this provision as follows, immovable property” includes.  (a) Land, whether covered by water or not, any estate, rights, interest, or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the	The amendment aims at capturing taxable events related to the disposal of property, ensuring that these transactions are subject to capital gains tax.  Consequently, the revised provision aligns with the government’s intention to increase revenue by bringing previously exempt

Item	Proposed Bill	Finance Act	Comments
	<p>charge on immovable property; and</p> <p>b) A mining right, an interest in a petroleum agreement, mining information, or petroleum information.</p>	<p>earth, and includes a debt secured by mortgage or charge on immovable property; and</p> <p>(b) A mining right, an interest in a petroleum agreement, mining information, or petroleum information.</p>	<p>transactions within the tax framework.</p>
<p>Definition of "all loans"</p>	<p>The Bill also proposed to amend the definition of the term "all loans" to exclude loans secured from local sources.</p>	<p>This was maintained by amending section 16(3), by inserting the words "but shall not include local loans" immediately after the word "premium".</p>	<p>This would incentivize companies to seek local borrowing, potentially leading to loan restructuring in favor of the domestic financial sector.</p>
<p>Definition of "related person"</p>	<p>The Bill introduced another definition of 'related persons' in the general definition section (Section 2).</p> <p>It defined a 'related person' to mean, in the case of two persons, where a person participates directly or indirectly in the management, control, or capital of the business of another person.</p>	<p>This was ratified by amending Section 2 as follows, "Related person" means, 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.</p>	<p>The existing definition of "related person" in the Eighth Schedule on Capital Gains and the Income Tax (Transfer Pricing) Rules, 2006 did not consider scenarios where a third party is directly or indirectly involved in the management, control, or capital of both entities, therefore this has been addressed by the new definition.</p>
<p>Definition of a "dock"</p>	<p>The proposed definitions for an industrial building and a dock were as follows:</p> <p>Industrial building: includes a building in use for transport, bridge, tunnel, inland navigation water, and electricity or hydraulic power undertaking.</p> <ul style="list-style-type: none"> <li>• Dock: Includes 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.</li> </ul>	<p>This was retained by amending the Second Schedule to the ITA paragraph 1 by inserting the following new paragraphs immediately after paragraph (h)</p> <p>"Dock" includes 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.</p> <p>"Industrial building" includes a building in use for transport, bridge, tunnel, inland navigation water and electricity or</p>	<p>It would enhance clarity on capital deduction.</p>

Item	Proposed Bill	Finance Act	Comments
		hydraulic power undertaking.	
Definition of a “machinery used for agriculture”	The Bill proposed definition for machinery used for agriculture to mean machinery used directly in agricultural activities including tilling, planting, irrigation, weeding, and harvesting.	This was adopted in the FA by amending the Second Schedule to the ITA paragraph 1 by inserting the following new paragraphs immediately after paragraph (h) to mean machinery used directly in activities including tilling, planting, irrigation, weeding, and harvesting.	The provisions would provide clarity on the classification of capital expenditure to enable companies to use the correct investment allowance rates.
Definition of a Telecommunications equipment	The Bill proposed definitions for 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.	This was retained by amending the Second Schedule to the ITA paragraph 1 by inserting the following new paragraphs immediately after paragraph (h) includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.	The provisions would provide clarity on the classification of capital expenditure to enable companies to use the correct investment allowance rates.
Definition of “civil works”	The Bill proposed to introduce the following definitions under the Second Schedule of the ITA as follows to expand the definition of civil works to mean.  Earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.	The Second Schedule to the ITA is amended in the provisions to paragraph 1 –  “Civil work” to mean earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.	The provision is meant to provide clarity on the classification of capital expenditure to enable companies to use the correct investment allowance rates.
Definition of “institution, body of persons or	The Bill proposed to introduce the definition of the body of persons eligible for exemption under Paragraph 10 of the	This was confirmed in the FA as an entity established to benefit the public in a transparent and accountable manner	The definition would bring about clarity and eliminate any ambiguity regarding the eligibility criteria for income tax exemption. Individuals or

Item	Proposed Bill	Finance Act	Comments
irrevocable trust, of a public character”	First Schedule to the ITA to mean an entity established to benefit the public in a transparent and accountable manner without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilizes its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.	without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilizes its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.	organizations seeking tax exemptions based on poverty relief, advancement of religion, or advancement of education will be subjected to more rigorous requirements to qualify for and maintain the income tax exemption.
Definition of "digital content monetization	The Bill introduced an expansive definition of the term digital content monetization to cover the services/ forms of contents to be taxed.	<p>This has been maintained to align with the Bill by amending Section 2 of the ITA, where "digital content monetization" means offering for payment entertainment, social, literal, artistic, educational, or any other material electronically through any medium or channel, in any of the following forms:</p> <p><i>(a) Advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands.</i></p> <p><i>(b) Sponsorship where a brand owner pays a content creator for content creation and promotion.</i></p> <p><i>(c) Affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed.</i></p> <p><i>(d) Subscription services where the audience pays a periodic fee to access the content and support the content creator.</i></p>	<p>The popularity of digital content creation in Kenya can be attributed to increased internet access, digital marketing, a youthful population, the availability of internet devices, and the use of social media.</p> <p>This demonstrates the government's intention to expand the tax base while considering new business models and emerging sectors.</p>

Item	Proposed Bill	Finance Act	Comments
		<p><i>(e) Offering for use a logo, brand or catchphrase associated with the content creator merchandise sales eBooks, course or software.</i></p> <p><i>(f) Membership programmes for exclusive content including early access.</i></p> <p><i>(g) Licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or</i></p> <p><i>(h) A content creator earns a commission or fees from crowd funding.</i></p>	

**a) Limiting deferment of foreign exchange losses to 3 years.**

**Effective date: 1<sup>st</sup> January 2024**

Proposed Bill	Finance Act	Comments
<p>The Bill introduced the elimination of interest restrictions for loans from residents, established a maximum three-year carry-forward period for non-deductible foreign exchange losses, removed the interest restriction exemption for certain manufacturing companies, and aligned the deferral and claiming period for foreign exchange losses with the EBITDA test.</p>	<p>This was maintained through an amendment of Section 16 (2)(J) to the ITA as follows.</p> <p><i>Any interest in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization shall be an allowable deduction in ascertaining the total income of a person in the subsequent three years of income to the extent that the deduction of interest on loans from non-resident persons does not exceed the thirty percent threshold provided under this section; and this provision shall not apply where the interest is exempt from tax under this Act.</i></p>	<p>The imposition of the 30% EBITDA restriction on interest expense originated from the recommendations put forth in Action 4 of the OECD BEPS report. This amendment aligns closely with the BEPS project's suggestions, as it aims to prevent the erosion of the tax base through the utilization of interest incurred from loans obtained from residents.</p> <p>While the amendment addresses the potential misuse of related party interest, it is worth noting that the interest restrictions still apply to loans obtained from non-resident third parties. It would have been more suitable to limit the restrictions to related party interest, as loans from third parties may not necessarily be obtained with the intention of eroding the tax base.</p> <p>This will allow the deduction of residual interest after restriction in the subsequent 3 years aligns with international best practice, However, it is ambiguous as it is not outrightly clear if the losses are to be spread equally in the three years.</p>



**b) Taxation of trusts**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
The Bill proposed to repeal the exemption of any payments from a registered trust to the beneficiaries. The Finance Act, 2021 introduced tax exemptions on amounts paid by a registered trust to a beneficiary, where the amount is less than Kshs 10 million and is used exclusively for the purpose of education, medical treatment or early adulthood housing or any amount as the Commissioner may prescribe.	<p>This was maintained by amending Section 11 of the ITA by deleting subsection (3A) which provides for taxation of income paid out of a registered Trust in respect of:</p> <p>a) Any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment, or early adulthood housing.</p> <p>b) Income paid to any beneficiary which is collectively below ten million shillings in the year of income.</p> <p>c) Such other amount as the Commissioner may prescribe from time to time.</p>	The proposed change provides clarity on the taxation of payments out of a registered trust thus payments from a registered trust to the beneficiaries will be taxable.

**c) Increase in Turnover Tax (ToT) rate from 1% to 3% and reduction of the upper limit.**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
The Bill proposed to change the bands for ToT from the current KES 1 million to KES 50 million to KES 500,000 to KES 15 million and increase the turnover tax rate from 1% to 3%.	<p>This differs with the Bill as per the revision of, Section 12C of the ITA is amended in subsection (1) by deleting the words "but does not exceed or is not expected to exceed fifty million shillings" and substituting therefor the following words "but does not exceed or is not expected to exceed twenty-five million shillings".</p> <p>As per the provisions of the FA, a resident person will qualify for Turnover Tax if the turnover from their business is more than KES 1M but does not exceed or is not expected to exceed KES 25M. The amendment in the Bill to increase the rate of Turnover Tax from 1% to 3% has been retained.</p>	This change has significant implications for SMEs, as it increases their tax liability and subjects them to the standard corporate tax rate. Previously, these businesses benefited from a lower tax rate under the TOT regime, which was designed to provide a simplified tax framework for smaller enterprises. The decision to align their tax treatment with larger corporations may impact their profitability and financial sustainability.

**d) Digital Asset Tax**

**Effective date: 1<sup>st</sup> September 2023**

Proposed Bill	Finance Act	Comments
The Bill proposed to introduce Digital Asset Tax (DAT) to be paid on income derived from the	This was adopted through the addition of Section 12F.	These provisions aim to regulate and tax the growing digital asset industry, ensuring that income generated from digital asset transactions is captured and subject to tax

Proposed Bill	Finance Act	Comments
<p>transfer or exchange of digital assets.</p> <p>The income derived from transfer or exchange of a digital asset shall be the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset. Non-resident owners of the platform through which digital assets are exchanged or transferred will be required to register under the simplified tax regime, under Digital Services Tax. Under the proposed provisions, the owner of the platform will be required to deduct the DAT at a proposed rate of 3% of the transfer or exchange value of the digital asset. Nonresident owners of the platform will be required to remit the above tax within 24 hours after making the deduction together with a return of the amount of payment and any other information that the Commissioner may require.</p>	<p>(1) Stating that digital asset tax shall be payable by a person on income derived from the transfer or exchange of digital assets.</p> <p>(2) The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax and remit it to the Commissioner.</p> <p>(3) A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.</p> <p>(4) A person who is required to deduct the digital asset tax shall, within five working days after making the deduction, remit the amount so deducted to the Commissioner together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.</p> <p>(5) For the purposes of this section</p> <p>(a) "Digital asset" includes –</p> <p>(i) Anything of value that is not tangible and cryptocurrencies, 85 2023 Finance No. 4 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,</p> <p>(ii) a non-fungible token or any other token of similar nature, by whatever name called; and,</p> <p>(b) "income derived from transfer or exchange of a digital asset" means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.</p> <p>This tax will be payable within 5 working days from the earlier date of accrual or receipt of payment and will be payable irrespective of the profitability of the same.</p>	<p>obligations. The inclusion of non-resident platform owners under the tax regime helps prevent tax avoidance and promotes a fair taxation system in the digital asset space.</p> <p>cash flow challenges, increased compliance burden, and a potential dampening effect on digital asset activities due to the five-day tax payment requirement, irrespective of profitability.</p>



**e) Deduction for Diminution of Value of Loose Tools**

Effective date 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
The Bill proposed to allow a 100% tax deduction on the cost of loose tools and utensils.	This was not maintained as Section 15(2)(g) of ITA was deleted but there was no replacing paragraph.	As a result of this omission in the Act, taxpayers will be unable to avail themselves of a deduction for the reduction in value of the mentioned tools. Consequently, taxpayers might choose to treat the entire value of the tools as an expense rather than capitalizing them.

**f) Capital allowance.**

Effective date 1<sup>st</sup> January 2024

Proposed Bill	Finance Act	Comments
The Bill proposed to introduce industrial building and dock allowances at a rate of 10% in equal installments.	This was retained as follows. Dock 10% in equal installments Industrial Building 10%.	The provision will remove ambiguity and encourage resident shipping businesses given the significant capital expenditure involved in the operation of such businesses.
The Bill proposed to extend the claim of investment allowance at a rate of 100% to hotel buildings, buildings, and machinery used for manufacture which are located outside Nairobi and Mombasa. Notably, the provision shall not apply to investments which, due to the nature of their business are required to be located outside Nairobi City County and Mombasa County.	This was retained in the FA.	This may disincentivize investors, especially in the infrastructure space, where projects, due to their nature, can only be located outside the counties of Nairobi and Mombasa.

**g) Advance tax for motor vehicles**

Effective date: 1<sup>st</sup> January 2024

Proposed Bill	Finance Act	Comments
The Bill proposed Advance tax with respect to  Commercial vehicles (vans, pickups, trucks, prime movers, trailers, lorries excluding tractors or trailers used for agricultural purposes from the higher of KShs.1,500 per ton of load capacity per year or Kshs. 2,400 per year to the higher of Kshs.	This was confirmed through an amendment to the third schedule in paragraph 8, by deleting subparagraph (a) and (b) and substituting it with a new subparagraph.  (a) For vans, pick-ups, trucks, prime movers, trailers, and lorries, two thousand five hundred shillings per tonne of load capacity per year or five thousand shillings per year, whichever is higher: Provided that advance tax shall	This is aimed at increasing the tax revenues derived from the advance tax levied on commercial vehicles.

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Proposed Bill	Finance Act	Comments
<p>3,000 per ton of load capacity per year or Kshs. 5,000 per year.</p> <p>saloons, station wagons, minibuses, buses, and coaches from the higher of Kshs. 60 per passenger capacity per month or Kshs. 2,400 per year to the higher of KShs.100 per passenger capacity per month or Kshs. 5,000 per year.</p>	<p>not be imposed on the tractors or trailers used for agricultural purposes.</p> <p>(b) For saloons, station wagons, minibuses, buses and coaches, one hundred shillings per passenger capacity per month or five thousand shillings per year, whichever is higher.</p>	

**h) Monthly rental income (MRI)**

**Effective date: 1<sup>st</sup> January 2024**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed reduction of the Monthly Rental Income (MRI) tax rate from 10% to 7.5%.</p>	<p>This was retained through the Third Schedule to the Income Tax Act of paragraph 5(ja), by deleting the word "ten" and substituting therefore the word "seven point five"; thus, reducing MRI.</p>	<p>This rate has been reduced to encourage tax compliance of property owners and boost the government's revenue collection.</p>

**i) Taxation of non-resident persons**

**Effective date :1<sup>st</sup> January 2024**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to reduce the corporate tax rate applicable to branches from 37.5% to 30%.</p>	<p>This was retained by amending the Third Schedule to the ITA section 2 (b) where Non-resident companies having a PE in Kenya will pay income tax at a reduced rate of 30% from the current 37.5%.</p>	<p>This will encourage non-residents to conduct business in Kenya and boost foreign direct investment.</p>
<p>The Bill proposed to reduce Income of a PE being repatriated by a non-resident person shall be subject to tax in Kenya. The following formula shall be used to compute the repatriated income:</p> <p>Repatriated Profit = Net Assets* at Beginning of the Year + (Net Profit for the Year of Income – Tax Payable on the Chargeable Income) – Net Assets* at Year End</p>	<p>This was retained by amending the Income Tax Act inserting the following new section immediately after section 7A–</p> <p>7B. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income.</p> <p>(2) The repatriated income under subsection (1) shall be computed using the following formula –</p> $R=A1 + (P - T) - A2$ <p>Where:</p> <p><i>R is the repatriated profit;</i></p>	<p>This amendment seeks to encourage non-residents to conduct business in Kenya and boost foreign direct investment.</p>

Proposed Bill	Finance Act	Comments
	<p><i>A1 is the net assets at the beginning of the year;</i></p> <p><i>P is the net profit for the year of income calculated in accordance with generally accepted accounting principles.</i></p> <p><i>T is the tax payable on the chargeable income; and,</i></p> <p><i>A2 is the net asset at the end of the year.</i></p> <p>(3) The tax imposed under this section shall be in addition to tax chargeable on the income of the permanent establishment under section 4.</p> <p>(4) For the purposes of this section, "net assets" means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.</p>	

**j) Expansion of the scope of CGT to include indirect transfers.**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to amend the Eighth Schedule to the Income Tax Act to include the following gains in the CGT scope:</p> <p>a) The gain arising from the transfer of shares or comparable interests inclusive of interests in a partnership or trust where at any time during the year preceding the transfer, the shares/comparable interests derived more than 20% of their value directly or indirectly from immovable property situated in Kenya, and,</p> <p>b) The gain arising from the transfer of shares of a company resident in Kenya where the transferor, at any time during the year preceding the transfer, held directly or indirectly at least 20% of the capital of that company.</p>	<p>This was maintained by amending the Eighth Schedule to the ITA.</p> <p>(a) By deleting paragraph 2 and substituting therefore with the following new paragraph</p> <p>"Income in respect of which tax is chargeable under section 3(2)(f) is-</p> <p>(a) The whole of the gains which accrued to a company, an individual, or a partnership on or after the 1<sup>st</sup> January 2015, on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January 2015, or (b) gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the three hundred and sixty-five days preceding the alienation, the shares or comparable interests derived more than twenty per cent of their value directly or indirectly from immovable property situated in Kenya.</p>	<p>This is aimed at widening the scope of transactions falling within the ambit of CGT and consequently boost revenue collection against the backdrop of an increase in the CGT rate from 5% to 15%, on 1 January 2023.</p> <p>Where a person holds directly or indirectly 20% of the underlying ownership of a Kenyan resident company, any gains derived from the alienation of shares of the company will now be subject to CGT. There is, however, a need to review the wording to clear ambiguity on the taxation of indirect transfers of shares.</p> <p>The amendment seeks to tax the gain on transfers within partnerships (revalued proprietors' capital) or sale of immovable property from a Trust. The complication arises when the transfers from a trust are currently tax exempt from tax.</p>

Proposed Bill	Finance Act	Comments
The Bill proposed to introduce a provision that requires the person transferring shares to notify the Commissioner in writing where there is a change of at least 20% in the underlying ownership of the property.	<p>The Eighth Schedule to the ITA is amended.</p> <p>(a) By deleting paragraph 2 and substituting therefor the following new paragraph;</p> <p>Provided that for the purposes of this paragraph, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least twenty per cent in the underlying ownership of the property.</p>	Reporting requirements and costs will increase as a notification to the Commissioner will be required on indirect share transfers where there is a change of at least 20% in the underlying ownership.

**k) Due date for CGT**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
The Bill proposed to have the due date for CGT payment to be earlier of receipt of full purchase price by the vendor or registration of the transfer.	<p>This was retained by deleting paragraph 11A and substituting it with the new paragraph.</p> <p>11A. The due date for tax payable in respect of property transferred under this Part shall be the earlier of;</p> <p>(a) Receipt of the full purchase price by the vendor; or,</p> <p>(b) Registration of the transfer.</p>	The new amendment is a reprieve for taxpayers as a transferor will now be required to pay CGT earlier of when they receive the full purchase price or when the transfer is registered.

**l) Higher threshold for commissioner notification on indirect transfer of interest**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
The Bill proposed to amend the Ninth Schedule to the ITA by increasing the threshold required by a contractor to notify the Commissioner if there is a change in the underlying ownership of a licensee or contractor from ten percent to twenty percent.	<p>This was retained by amending the Ninth Schedule to the ITA paragraph 14, by deleting the words "ten percent" appearing in subparagraph (1) and substituting them with the words "twenty per cent.</p> <p>Therefore, a contractor is to notify the Commissioner if there is a change in the underlying ownership of a licensee or contractor from ten percent to twenty percent.</p>	<p>This is a welcome move as it serves to curb unnecessary administrative procedures that occur upon change in such ownerships, especially if they are regular.</p> <ul style="list-style-type: none"> <li>• This amendment coincides with the proposed introduction of CGT on indirect transfers of shares or comparable interest in a Kenyan company, with 20% being the threshold for determining the applicability of the CGT.</li> </ul>

## INCOME TAX ACT- WITHHOLDING TAX

### a) Withholding tax (WHT) on payments made in respect of digital content monetization.

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
The Bill proposed to introduce various amendments to the ITA in order to subject payments made in respect of digital content monetization to withholding tax at a rate of 15%.	This was retained by amending Section 35 of the ITA;  (a) in subsection (1) by inserting Section (l) To include digital contents in the WHT armpit but at the rate of 5%.	The digital content creation continues to be popular in Kenya due to increased access to internet, digital marketing, youthful population, availability of gadgets and use of social media.  • The move to introduce withholding tax on payments made in respect of digital content monetization can be viewed as efforts by the government to tap into this area as it widens the tax net. The proposed tax may also streamline tax compliance within this sector.

### b) Withholding tax on payments made to resident persons or permanent establishments in respect to sales promotions, marketing and advertising services.

Effective date: 1<sup>st</sup> January 2024

Proposed Bill	Finance Act	Comments
The Bill proposed to amend various sections of the ITA to introduce withholding tax at 5% on payments made to persons resident or having a permanent establishment in Kenya in respect of sales promotions, marketing and advertising services.	This was retained under section 35 of the ITA in subsection (3), by inserting the following paragraphs immediately after paragraph (j)  (k) Sales promotion, marketing, and advertising services.	The imposition of withholding tax on payments made to residents in relation to sales promotion, marketing, and advertising services will enable the Government to enhance compliance in this industry by tracking the revenues earned by the respective service providers and enforcing compliance. • Key to note, however, is that the imposition of WHT on such services from residents would not amount to the imposition of additional tax burdens but rather, would be a mechanism to collect tax in advance from transactions that constitute payments for sales promotion, marketing, and advertising services – tax of which shall be considered a credit in computing an impacted taxpayer's annual taxable income. Nonetheless, the amendment will impact service providers in this industry from a cashflow perspective.

c) Timeframe for remittance of Withholding tax

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to amend Section 35 (5) of the ITA by requiring taxpayers to remit WHT to the Commissioner within twenty-four hours where the tax has been deducted on qualifying payments.</p>	<p>This differs with the Bill as per the amendments of Section 35 of the ITA subsection (5), where the words "on or before the twentieth day of the month following the month in which" were deleted and substituted with the words "within five working days after".</p>	<p>The introduction of a five-day deadline to remit withholding tax will exert strenuous pressure on taxpayers to meet the expected obligation. Taxpayers will be forced to monitor their transactions on a daily basis, and remit WHT on qualifying transactions.</p> <ul style="list-style-type: none"> <li>• The compliance cost and administrative burden will increase for both taxpayers and the Kenya Revenue Authority, which contradicts the canon of convenience and economy. Despite the pressing need to urgently collect revenue, the Government's amendment to collect WHT within five-days is an extreme approach which may be difficult to implement effectively without substantial investment by taxpayers.</li> </ul>
<p>The Bill proposed to compel property agents who receive and collect rental income on behalf of property owners to remit WHT to the Commissioner within twenty-four hours if they have been appointed to be withholding tax agents. The rental agents will also be expected to file with the Commissioner a return in writing of the tax deducted and any other information required by the Commissioner.</p> <ul style="list-style-type: none"> <li>• Upon receiving payment, the Commissioner will, in turn, furnish the person from whom the rental income tax was withheld with a certificate stating the amount of the rent and tax deducted therefrom.</li> </ul>	<p>This differs with the Bill through the amendments of Section 35 of the Income Tax Act by inserting the following new subsections immediately after subsection (3A)–</p> <p>(3AA) A person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom: Provided that only a person appointed by the Commissioner in writing for that purpose may deduct tax under this section.</p> <p>(3AB) A person who deducts rental income tax under this section shall, within five working days after the deduction was made, remit the amount so deducted to the Commissioner together with a return in writing of the tax deducted and such other information as the Commissioner may require.</p> <p>(3AC) The Commissioner shall, upon receipt of the amount remitted under subsection (3AB), furnish the person from whom the rental income tax was withheld with a certificate stating the amount of the rent and tax deducted therefrom.</p>	<p>The tax measure may improve revenue collection due to rental agents being empowered to help landlords comply. However, the amendment to remit taxes within five days may be a huge burden on rental agents due to the increased administrative burden.</p>



## INCOME TAX ACT- TRANSFER PRICING

### a) WHT paid on payments to nonresidents to be forfeited in case of an audit adjustment.

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to introduce a provision in Section 10 of the ITA that will compel taxpayers to forfeit any WHT paid on a payment for which a subsequent audit adjustment is made.</p> <p>According to the amendment, the withholding tax paid shall not be refundable or available for deduction against income where an audit adjustment has been made in respect of such payment.</p>	<p>This was retained through amendment of Section 10 of the ITA by inserting the following new subsection immediately after subsection (2)–</p> <p>(3) Where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment.</p>	<p>This will largely affect intragroup service recharges between related parties which is usually a focus of the revenue authority during transfer pricing audits.</p> <ul style="list-style-type: none"> <li>• This has been a bone of contention during transfer pricing audits where an adjustment is made on the service fees paid to related non-resident entities for which withholding tax had already been deducted and remitted.</li> <li>• This move will lead to double taxation on the taxpayer considering that the adjusted amount/disallowed service fee is further taxed as deemed dividend under Section 7(b)(v) and thus subject to withholding tax at 15%.</li> </ul>

### b) Recovery of taxes due to other countries under international agreements for mutual administrative assistance.

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill amended Section 6A of the TPA to provide that multilateral agreements relating to mutual administrative assistance in tax matters between Kenya and other states shall take effect as stipulated in those agreements.</p> <p>The Bill further amends the TPA by introducing a new Section 32A to empower the Commissioner to recover or collect a tax claim under such agreements, in response to a request by the competent authority of another country that is party to the multilateral agreement.</p> <p>Upon receipt of a request from another country to recover taxes from a person, the Bill proposes to empower the KRA to apply to the High Court for an</p>	<p>This was retained through amendment of Section 6A of the TPA, by inserting the following new subsection immediately after subsection (2)–</p> <p>(3) Any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.</p> <p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 32-32A. (1) The Commissioner may recover or collect a tax claim pursuant to an international tax agreement contemplated in section 6A (3). (2) The recovery of the tax claim under subsection (1), shall be in response to a request by the competent authority of a party to the international tax agreement. (3) The request under subsection (2) shall be in respect of a tax claim which forms the subject of the international tax agreement permitting</p>	<p>The amendments seek to formally recognize, in domestic law, conventions signed by Kenya regarding mutual administrative assistance with other revenue authorities.</p> <p>The amendment further empowers the KRA to assist the revenue authorities of other countries to recover foreign tax claims or liabilities from persons in Kenya.</p> <p>This will be in line with the Convention on Mutual Administrative Assistance in Tax Matters, which Kenya signed in 2016. Under this Convention, revenue authorities of participating states cooperate in the recovery of foreign tax claims and the exchange of information, with the aim of ensuring compliance and minimizing tax evasion.</p> <p>The proposed amendments signal Kenya's intent to fully incorporate the Convention's measures, further supported by the recent introduction of country-by-country reporting and common reporting standards, all of which are essential components of cooperation and</p>

Proposed Bill	Finance Act	Comments
<p>order to freeze the subject person's funds, and to require the person to remit the tax demanded within a period specified via written notice. Notably, the proposed amendment retains the taxpayer's rights to dispute the liability and have the same determined in accordance with Kenyan tax legislation.</p> <p>After collection of the tax, the KRA shall then deposit the amount with the Central Bank of Kenya for remission to the requesting country.</p>	<p>its enforcement in the requesting party and, unless otherwise agreed between the parties, which is not contested: Provided that where the tax claim is against a person who is not a resident of the requesting state, this section shall only apply, unless otherwise agreed between the parties to the international tax agreement, where the claim may no longer be contested.</p>	<p>information sharing between revenue authorities under the Convention.</p> <p>it is also expected that Kenya can similarly request the revenue authorities of other countries which have signed the Convention to assist in recovering taxes due in Kenya from other jurisdictions</p>

**c) Country-by-country report (CbCR) filing changes.**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill clarified that it is mandatory for an ultimate parent entity (UPE) resident in Kenya of a qualifying Multinational Enterprise group ("MNE") to file a CbC report as per the Finance Act 2022.</p> <p>Constituent entities in Kenya qualifying as MNEs will be required to file their group CbC reports in Kenya where at least one of the following conditions applies: - The UPE is not obligated to file the CbCR in the jurisdiction of its tax residence.</p> <ul style="list-style-type: none"> <li>- The UPE's jurisdiction of tax residence has signed an international tax agreement (ITA) but does not have a competent authority agreement (CAA) with Kenya at the time of filing the CbCR for the reporting financial year.</li> <li>- There has been a systemic failure of the UPE's jurisdiction of tax residence of which the</li> </ul>	<p>This was retained through an amendment of Section 18D of the ITA -</p> <p>(a) By deleting subsection (1) and substituting it with the following new subsection –</p> <p>(1) Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (3). (b) by inserting the following new subsections immediately after subsection (1)–</p> <p>(1A) A constituent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (1B), if one of the following conditions applies –</p> <p><i>(a) The ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;</i></p> <p><i>(b) 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,</i></p>	<p>This clarity eliminates the ambiguity around the year of income for which the KES 95 Bill on turnover threshold applies and provides clarity on the turnover to be considered in the determination of the threshold.</p>

Proposed Bill	Finance Act	Comments
<p>Constituent entity in Kenya has been notified by the Commissioner.</p> <p>The ITA provides for exchange of tax information between signing jurisdictions while a CAA activates the sharing of country-by-country reports between parties to the ITA.</p> <p>The qualifying MNEs are those with consolidated group turnover for the preceding year of at least KES 95Billion (apx. EUR 750 million) including extraordinary or investment income.</p> <p>The due date for filing the CbCR is the end of 12 months after the reporting financial year end of the MNE.</p>	<p><i>(c) 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.</i></p> <p>(1B) The provisions of subsections (1) and (1A) shall apply to a multinational enterprise group whose total consolidated group turnover, including extraordinary or investment income, is at least ninety-five Billion shillings during the financial year immediately preceding the reporting financial year as reflected in its consolidated financial statements for such preceding financial year.</p> <p>(c) In subsection (2), by inserting the words "or a constituent entity" immediately after the words "parent entity"; (d) in subsection (3), by deleting the words "In addition to the provisions in subsection (1)".</p>	



## INCOME TAX ACT- PAY AS YOU EARN

### a) Taxation of the benefit from shares allocated in lieu of cash to employees of start-ups to be deferred.

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill seeks to introduce a new subsection 7 under Section 5 of the ITA covering taxation of the benefit from shares issued in lieu of cash to employees of an eligible start up.</p> <p>The proposed changes seek to defer the tax point for such a benefit to within thirty days of the earlier of;</p> <p>a) 5 years after the year in which the award is given to the employee.</p> <p>b) The date the employee disposes the shares.</p> <p>c) The date the employee ceases to be an employee of the eligible start up.</p> <p>The market value of the shares will be determined at the date of the first event outlined above and where the fair market value cannot be determined, the Commissioner will determine it using the value of shares based on the last issued Financial Statements.</p>	<p>This was retained through an amendment of Section 5 of the ITA (a) in subsection (2), –</p> <p>by inserting the following new subsections immediately after subsection (6)– (7) Where an employee is offered company shares in lieu of cash emoluments by an eligible start-up, the taxation of the benefit from the shares allocated to that person by virtue of employment shall be deferred and taxed within thirty days of the earlier of–</p> <p>(a) The expiry of five years from the end of the year of the award of the shares.</p> <p>(b) The disposal of the shares by the employee; or,</p> <p>(c) The date the employee ceases to be an employee of the eligible start-up: Provided that–</p> <p>(i) This subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment.</p> <p>(ii) The benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); (iii) the value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or (iv) where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.</p>	<p>This amendment aligns with the government's agenda on the bottom-up economic model and provision of a conducive business environment, and this is likely to facilitate the growth of Kenyan start-ups, while allowing them to remain tax compliant.</p> <ul style="list-style-type: none"> <li>• The government is also likely to reap more in future when the share price of such enterprises will be expected to have increased given at grant date, the shares may be of little value since the company is still growing and quite young. • In our view, this amendment is likely to boost the manufacturing, agriculture and tech industries which are the most prevalent as start-ups, in line with the government agenda.</li> <li>• Further, this amendment may partially help address the challenge of attracting and retaining competent staff which is prevalent among startups.</li> <li>• In addition, the restriction on turnover also places a cap on which companies can claim the benefits afforded by the proposed subsection 7 , balancing the need for companies' liquidity with employee remuneration.</li> </ul>
<p>The amendment further defined an eligible start up as a business incorporated in Kenya that.</p> <p>a) Has an annual turnover of not more than KES 100 million.</p> <p>b) Does not carry on management, professional, or training business.</p>	<p>This was retained through amendment of subsection (7), "eligible start-up company" means a business incorporated in Kenya that–</p> <p>(a) Has an annual turnover of not more than one hundred million shillings.</p> <p>(b) Does not carry on management, professional or training business.</p>	<p>It would be useful for the government to reconsider the 5-year period since most start-ups take longer to turn around and may be a challenge for employees who have been granted shares to fund the tax, yet they are not disposing off the shares</p>



**ADVISORY • ASSURANCE • TAX**

Proposed Bill	Finance Act	Comments
c) Has not been formed because of splitting or restricting of an existing entity; and d) Has been in existence for a period of not more than 5 years.	(c) Has not been formed as a result of splitting or restructuring of an existing entity; and,  (d) Has been in existence for a period of not more than five years.	especially where the enterprise is still not profitable but has a promising future.

**b) Mortgage refinance companies licensed under the Central Bank of Kenya Act as a financial institution's inclusion in the fourth schedule.**

**Effective date: 1<sup>st</sup> January 2024**

Propose Bill	Finance Act	Comments
The Bill proposed to include Mortgage refinance companies licensed under the Central Bank of Kenya Act as part of financial institutions, thus increasing the number of financial institutions under the Fourth Schedule from the first five financial institutions to the first six financial institutions.	This was retained through the amendment of the Fourth Schedule to the ITA by inserting the following paragraph at the end thereof.  Mortgage refinance companies licensed under the Central Bank of Kenya Act.  The Mortgage refinancing companies will be exempt from withholding tax on interest paid to such mortgage refinance companies.	This is expected to increase the liquidity of such companies. It is expected that they would have adequate funds to lend, boosting the realization of the affordable housing agenda.

**c) Taxation of Club entrance and subscription fees**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
The Bill proposed to expressly include club joining and subscription fees as a benefit taxable on the employee, where the same has not been taxed on the employer.  The Bill further proposes to delete Section 16(2)(a)(v) of the ITA which provided for disallowance of club entrance fees and subscription fees for corporation tax purposes.	This was retained through amendments of Section 5(a)(2) of the ITA by inserting the following new paragraph immediately after paragraph (f) –  (fa) Club entrance and subscription fees allowed against the employer's income.	Club entrance and subscription fees allowed against the employer's income will be taxable on the employee.

**d) Post – Retirement Medical fund relief**

**Effective date: 1<sup>st</sup> January 2024**

Proposed Bill	Proposed Act	Comments
The Bill proposed to introduce a relief on contributions made by a resident person towards a post-retirement medical fund. The value of the proposed relief is 15% of contribution capped at KES 60,000 p.a.	The Act introduced section 31A in the ITA which provides for a post-retirement medical fund relief to resident individuals who prove that they have contributed to a post-retirement medical fund.  • The Act amended the Third Schedule by introducing paragraph	The proposed provision will encourage individuals to take up post-retirement medical scheme to safeguard against increasing medical costs in their post-employment years.

Proposed Bill	Proposed Act	Comments
	<p>4 which sets the amount of relief for contributions made to a postretirement medical fund at 15% of the amount of contribution paid or KES 60,000 whichever is lower.</p> <ul style="list-style-type: none"> <li>• A Post – Retirement Medical Fund is defined in the Retirement Benefits (Post-retirement Medical Funds) Guidelines of 2018 as "a fund established within a scheme to which contributions are made and from which the costs of medical benefits can be met as shall be determined in accordance with the medical fund rules.</li> </ul>	

**e) Standard mileage rate approved by AA of Kenya to determine non-taxable travel allowances.**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
<p>The Bill proposed to amend Section 5(2) of the ITA by inserting a new subsection 2(a)(iv)</p> <p>The amendment is to limit the tax-free threshold in respect of travelling allowance for employees when out on official duties to the standard mileage rates approved by the Automobile Association of Kenya (AAK).</p>	<p>This was retained by amending Section 5(2) of the ITA by inserting a new subsection 2(a)(iv) that states.</p> <p><i>Notwithstanding the provisions of subparagraph (ii), where such an amount is received by an employee as payment of travelling allowance to perform official duties, the standard mileage rate approved by the Automobile Association of Kenya shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of the employee's gains and profits.</i></p>	<ul style="list-style-type: none"> <li>• The introduction of AAK rates is a welcome move since it provides some level of uniformity and clarity on taxation of travel allowance. In practice, KRA accepts the use of the AA rates in determining the tax free or reimbursable mileage payments to employees travelling for business purposes.</li> <li>• However, it is not clear whether this will net in public officers who are also guided by directives from the Salaries &amp; Remuneration Commission (SRC) on the limits of per diems and cash allowances.</li> </ul>

**f) Increase of the marginal tax rate**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
<p>The Bill proposed to introduce a new tax band of 35% for incomes in excess of KES 500,000 per month. Below is the proposed tax bands for individuals.</p>	<p>This was retained by amending The Third Schedule to the ITA Head B –</p> <p>(i) By deleting paragraph 1 and substituting it with the new paragraph1. The individual rates of tax shall be;</p>	<p>The amendment embraces one of the canons of taxation which is equity where the high-income earners pay their fair share of tax.</p> <ul style="list-style-type: none"> <li>• However, considering the very low numbers of individuals earning more than KES 500,000 per month in Kenya, the negative effects of this amendment such as high-earning individuals/employees considering</li> </ul>



Proposed Bill		Proposed Act		Comments
Amount (Per annum)	PAYE Rate	Amount (Per annum)	PAYE Rate	
On the first KES 288,000	10%	On the first KES 288,000	10%	opportunities in other countries with lower tax rates hence likely to lead to talent drain and thus outweigh the incremental revenue collection to be realized.  • This may also lead to undesirable tax refunds where some employees may meet the 35% tax threshold due to one-off payments in some months such as bonuses or commissions.
On the next KES 100,000	25%	On the next KES 100,000	25%	
On the next KES 5,612,000	30%	On the next KES 5,612,000	30%	
On all income over KES 6,000,000	35%	On the next KES 3,600,000	32.5%	
		On all income over Ksh. 9,600,000	35%	



## VALUE ADDED TAX

### a) VAT on petroleum products at 16% and exemption liquefied petroleum gas (LPG)

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Proposed Act	Comments
<p>The Bill proposed to subject petroleum products (excluding Liquefied Petroleum Gas) to VAT at a standard rate of 16%.</p> <p>With respect to Liquefied Petroleum Gas (LPG), the Bill proposed to exempt it from VAT.</p>	<p>This was retained by deleting Sections 5 (2)(aa) and (2)(ab) that apply VAT at 8% on goods listed in Section B of Part I of the First Schedule to the VAT Act (petroleum products) and LPG, including propane.</p> <ul style="list-style-type: none"> <li>In addition to the VAT exemption of LPG under Paragraph 153 to the First Schedule of the VAT Act.</li> </ul>	<p>The removal of the applicable rate of 8% on petroleum products that are listed under Section B of of Part I of the First Schedule of the VAT Act would render the products subject to VAT at 16%.</p> <ul style="list-style-type: none"> <li>On one hand, this amendment will significantly increase the cost of fuel which is an integral commodity in the Kenyan economy. Consequently, the higher cost will result in higher price of goods in the Kenyan market and may negatively impact the cost of living.</li> <li>On the other hand, the introduction of LPG under the exempt schedule will reduce the cost of cooking gas for Kenyan households. However, the manufacturers would not be allowed to claim input VAT incurred in manufacturing the same.</li> </ul>

### b) Zero- rating of exportation of taxable services from VAT

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to reclassify the exportation of services from standard rated to zero-rated.</p>	<p>The FA has deleted the exportation of taxable services in relation to business process outsourcing (BPO) under Paragraph 23 from the Second Schedule (zero-rating schedule) of the VAT Act and replaced it with the exportation of taxable services.</p>	<p>This change will allow for the services exported out of Kenya to be cheaper and more competitive as it aligns it with the treatment of similar services from other jurisdictions which treats the services as zero-rated.</p> <p>In 2022, the Finance Act moved the services from exempt to standard rated. Exported services were subject to VAT at 16% while exported services with respect to Business Process Outsourcing (BPO) were subject to VAT at 0%. The prevailing VAT regime was considered controversial because charging VAT on exported services at 16% went against international best practice. On the other hand, the VAT Act did not define a BPO therefore creating a headache for clients on determining the appropriate VAT treatment for services rendered to entities outside Kenya.</p>



**c) Exemption of Transfer of Business as a Going Concern (TOGC) from VAT**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
The Bill proposed to reclassify transfer of a business as a going concern (TOGC) from standard rated to exempt.	This proposal was not retained.	This implies that the TOGC will be subject to VAT at 16%.

**d) Place of supply for suppliers outside Kenya**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
The Bill proposed to expand the definition of a supply made in Kenya by persons outside Kenya to include a supply made to registered persons.	This was retained by amending Section 8 (2) to delete "not a registered person" to include the words "a registered or unregistered person".	This amendment clarifies the place of supply rules for supplies made by non-resident persons to apply to both a registered "or unregistered person" in Kenya. It ties to the recent move to place both B2B and B2C transactions under the ambit of VAT on digital marketplace supplies.

**e) Deductibility of input tax under Section 17**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
The Bill proposed to amend Section 17(2) of the VAT Act to make it mandatory for a purchaser to have proper documentation, including invoices, and to also ensure that the supplier has declared the supply before claiming input VAT.	This was retained by amending the VAT Act to make the conditions applicable for claiming input tax under Section 17(2) mutually inclusive.	The change of Section 17(2) will require a VAT-registered person to ensure that they have proper documentation and that the sales are declared in the supplier's VAT return. Initially, these two conditions may have been considered mutually exclusive.
<p>Introduction of VAT on insurance compensation.</p> <p>The Bill had proposed to amend Section 17 of the VAT Act to introduce a new subsection 9 on the taxability of compensation for the loss of taxable supplies.</p> <p>The FA proposes that where one is compensated for the loss of taxable supplies, the compensation shall be treated as a taxable supply and—</p> <p>a) If the compensation includes VAT, the compensation shall be declared</p>	The FA has retained the proposals.	<p>This amendment will require taxpayers to account for VAT with respect to compensation on the loss of taxable supplies.</p> <p>The amendment is not clear as to whether where VAT is not included in the compensation, the recipient will be required to account for VAT on the same.</p>

Proposed Bill	Proposed Act	Comments
and the VAT thereon remitted to the Commissioner; or  b) If the compensation does not include VAT, the compensation shall be declared and subjected to VAT and the tax remitted to the Commissioner		

**f) Keeping of VAT records in Kenya**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
The Bill proposed to amend Section 43(1) of the VAT Act to remove the requirement to keep VAT records in Kenya.	This was retained by amending Section 43 of the Value Added Tax Act, 2013, is subsection (1), by deleting the words "in Kenya".	This will allow taxpayers to store their VAT records, whether in electronic form or otherwise, at any place of their choice for the 5 years limit under Section 43(1).

**g) Clarification on VAT registration requirements for digital service providers**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Proposed Act	Comments
The Bill proposed to amend Section 34 of the VAT Act to explicitly require persons supplying imported digital services over the internet or an electronic network or through a digital marketplace to register for VAT, whether or not they have met the KES 5 million threshold.	This was retained by amending Section 34 of the Value Added Tax Act, 2013, is subsection (1), by deleting the provision and substituting it with the following new provision— <i>Provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings.</i>	It is clear that all suppliers of imported digital services will be required to register for VAT irrespective of the turnover.

**h) Harmonization of tariff codes/description to match those in the East African Community Common External Tariff (EAC CET)**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill
The Bill proposed a clean-up of the tariff numbers and/or the corresponding descriptions of tariff numbers 3003.41, 3003.42, 3003.43, 3003.49, 3003.90, 3005.90 3002.11.00, 3002.20.00, 3002.30.00, 3003.39.00, 3004.20.00, 3004.32.00, 3006.20.00, 3006.60.00 and 9021.50.00 in the table after paragraph 39.  The Bill proposes further clean-up of the tariff numbers and/or the corresponding descriptions of items falling under 0402.29.10, 3002.19.00, 3003.90.90, 3002.11, 3005.90.10, 3004.90.90, 3003.90.10 and 3003.90.

**Finance Act**

The First Schedule to the Value Added Tax Act, 2013, is amended in Section A of Part I by inserting the following tariff numbers and corresponding tariff descriptions, in proper sequence, into the table appearing **immediately**

Description	Tariff Number
Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale	3003.41.00,3003.42.00, 3003.43.00 and 3003.49.00
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	3003.90.00
White absorbent cotton wadding impregnated or coated with pharmaceutical substances	3005.90.11 3005.90.12 3005.90.19
Malaria Diagnostic Kits	3822.11.00
Vaccines for human medicine	3002.41.00
Vaccines for veterinary medicine	3002.42.00
Blood-grouping reagents	3822.13.00
Printed and unprinted Perforated PE film of other plastics 15-22 gsm	3921.90.10 and 3921.90.90
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 upon approval by the Cabinet Secretary responsible for matters relating to health.	38.22
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 87 discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health	85.23 (All items under this heading)
Weighing machinery (excluding balances of a sensitivity of 5 c or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health	8423.10.00

after paragraph 39 –

#### Comment

The measures aim at cleaning up the tariff numbers and corresponding descriptions to match with the current EAC CET.

#### i) Change in Tariff Description

Effective date: 1<sup>st</sup> July 2023

**Proposed Bill**

Correction of the description under Paragraph 20 of Part I of the First Schedule.

**Finance Act**

The First Schedule to the Value Added Tax Act, 2013, is amended—in Section A of Part I--by deleting paragraph 20 and substituting therefor the following new paragraph20.;

Description	Status
Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307.	Exempt
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.	Exempt
Other Medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale.	Exempt
Other, medicaments containing hormones or other products of heading 29.37 Containing corticosteroid hormones, their derivatives or structural analogue of tariff.	Exempt
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	Exempt
Other Medicaments containing antibiotics put up in measured doses or in forms or packings for retail sale.	Exempt
Chemical contraceptive preparations based on hormones, on other products of heading 29.37 or spermicides.	Exempt
Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health.	Exempt
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.	Exempt
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.	Exempt

**Comment**



**ADVISORY • ASSURANCE • TAX**

The measure is intended to provide clarity on the description with respect to exempted items.

**j) Changes in VAT rates**

Supplies	Rate proposed by the Bill	New rate in the Act
Anti-sera, other blood fractions and immunological products	Standard rated	Standard rated
Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc	Standard rated	Standard rated
Other medicaments, containing hormones or other products of heading No. 29.37 and containing antibiotics	Exempt	Exempt
Tariff code 3004.90.90 - other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale	Standard rated	Standard rated
Tariff code 3003.90.10 - infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale	Standard rated	Standard rated
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	Exempt	Exempt
Plant, machinery and equipment used in the construction of a plastics recycling plant	Standard rated	Standard rated
Taxable goods and services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills	Standard rated	Standard rated
Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)	0%	0%
Liquefied petroleum gas	0%	0%
Fuel (petrol, kerosene, and spirits)	Standard rated	Standard rated
The supply of solar and lithium ion batteries	0%	0%
All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs	0%	0%
Inputs or raw materials locally purchased or imported for manufacturer of animal feeds	0%	0%
Inbound international sea freight offered by a registered person	0%	0%

Supplies	Rate proposed by the Bill	New rate in the Act
The supply of motorcycles of tariff heading 8711.60.00	0%	0%
The supply of electric bicycles	0%	0%
The supply of electric buses of tariff heading 87.02	0%	0%
Milk, specially prepared for infants	Standard rated	Standard rated
The supply of locally assembled and manufactured mobile phones	0%	0%
Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education	Exempt	Exempt



## EXCISE DUTY

Effective date: 1 July 2023

Item	Proposed Bill	Finance Act	Comments
Definition of "winnings".	The term "winnings" was defined as the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered.	This has been maintained as per the proposed Bill by substituting section 2 of the "ITA" with the following new definition; – "winnings" means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act, excluding the Cap. 131. amount staked or wagered in that transaction.	The new definition ensures that withholding tax is applied to the payout without deductions, bringing clarity and establishing a clear framework for taxation in betting transactions thus resolving disputes between the Kenya Revenue Authority (KRA) and the betting industry.
Definition of the amount wagered or staked.	The Bill proposed to expand definition of the amount wagered or staked to include the amount of money placed by a person for an outcome in a gaming transaction.	The FA has amended the definition of the "amount wagered or staked" under Part III of the First Schedule of the EDA by inserting the words "or gaming" immediately after the word "betting" therefore the proposed definition will read as follows: "means the amount of money placed by a person for an outcome in a betting or gaming transaction".	This will lead to the widening of scope of the amount subject to excise duty and hence the increase in revenue collected by the government. However, this approach seems to tax "capital invested" by wagers.

### a) Repeal of inflationary adjustment of excise duty rates.

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
The Bill proposed to repeal annual inflation adjustment. Currently, the Commissioner General has powers to adjust the specific rate of excise duty once a year to consider inflation.	This has been maintained by repealing Section 10 of the EDA which provides for annual inflationary adjustment of specific rates of excise duty.  Section 10 of the EDA empowers the Commissioner General of the Kenya Revenue Authority (CG) upon approval by the Cabinet Secretary for the National Treasury and Planning (CS) to adjust specific rates of excise duty by taking into account the average inflation of the preceding financial year.	This will provide the much-needed certainty for business planning.  The CG has been increasing excise duty on all products attracting specific rates by the average inflation rate (ranging between 5.2% and 6.3%) annually since August 2018. In addition, the CS has increased excise duty on some excisable goods by up to 20% in accordance with Section 8 of EDA.  The annual increase of excise duty on excisable goods has resulted to an increase in the price of excisable goods which has suppressed the demand for

Proposed Bill	Finance Act	Comments
	Inflationary adjustment of excise duty was introduced on 1 December 2015 on enactment of the EDA.	<p>these products and encouraged consumption of illicit and counterfeit goods in the market.</p> <p>The amendment to remove inflationary adjustment of excise duty is therefore a welcome move that will protect affected local manufactures, importers and consumers from negative economic impacts associated with annual increase in the costs of the excisable products.</p> <p>It is however noteworthy that the CS is still empowered under Section 8 of the EDA to increase excise duty on excisable goods, and we therefore hope that this provision will not be used in an arbitrary manner that does not take into account the negative effects of imposing high excise rates that necessitated the amendment to repeal of the inflationary adjustment provision.</p>

**b) Payment of excise duty on betting and gaming within twenty-four hours**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed that the remittance by a bookmaker of excise duty on betting and gaming through a platform or other medium within 24 hours of the closure of transactions of the day.</p> <p>Further, the Commissioner may through a gazette notice require any other taxpayer providing excisable services to remit excise duty within 24 hours.</p>	<p>This has been maintained by introducing a requirement for bookmakers to remit excise duty on betting and gaming offered through a platform or other medium to the Commissioner within twenty-four hours from the closure of transactions of the day under Section 36A of EDA.</p> <p>The FA clarifies that "closure of transactions of the day" means midnight of that day.</p> <ul style="list-style-type: none"> <li>• Further, the FA proposes to empower the CG to require taxpayers in any sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day.</li> </ul>	<p>The betting industry in Kenya has grown tremendously in the recent past due to increased popularity particularly amongst the youth.</p> <p>The Government has taken various tax measures including introduction of excise duty and withholding tax on betting and gaming in a bid to discourage the vice which has had negative social impacts including amongst the youth.</p> <p>Betting and gaming activities in Kenya are largely transacted through digital platforms. Last year, the Government required betting companies to remit taxes collected on gaming activities daily perhaps in a bid to improve Government cashflow.</p> <ul style="list-style-type: none"> <li>• In our view, the proposed measure is aimed at promoting tax compliance in the betting industry and improving the Government's cashflow.</li> <li>• This amendment will impose an administrative burden on bookmakers and will potentially increase the cost of excise duty compliance for betting companies. This will also be the case for other taxpayers who provide excisable services if the to empower the CG to require them to remit excise duty within 24 hours is adopted.</li> </ul>

**c) Clarification on the definition of excise control**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to amend Section 2 of the Excise Duty Act, 2015 (EDA) to read as follows: "excise control" has the meaning assigned to it in Section 24"</p> <ul style="list-style-type: none"> <li>Section 2 of the EDA currently defines excise control as per Section 23 of EDA which provides for notification of licensees on suspension of a license by the Commissioner. Section 24 of the EDA on the other hand covers excisable goods under excise control.</li> </ul>	<p>This has been retained by amending Section 2 of the Excise Duty Act, 2015 (EDA) to read as follows: "excise control" has the meaning assigned to it in section 24".</p> <p>Section 2 of the EDA currently defines excise control as per Section 23 of EDA which provides for notification of licensees on suspension of a license by the Commissioner. Section 24 of the EDA on the other hand covers excisable goods under excise control.</p>	<p>The amendment is aimed at correcting a drafting error in the definition of excise control under Section 2 of the EDA to refer to the appropriate provision in the EDA in relation to excise control.</p>

**d) Suspension of excise duty license**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed that a person who had appealed to the Commissioner after suspension of the license, has at least 14 days within which to comply with the requirements given by the Commissioner.</p>	<p>This has been retained by amending Section 20(5b) of the EDA that requires the Commissioner to provide a licensee who has appealed suspension of a license with a minimum period of 14 days to remedy the deficiencies that led to the suspension of the license.</p>	<p>The change will require the Commissioner to allow persons who have been issued with a notice of suspension a period of at least 14 days to remedy the deficiencies that led to the suspension.</p> <ul style="list-style-type: none"> <li>This is a welcome move that will ensure certainty and fairness amongst licensees who appeal suspension of a license by the Commissioner.</li> </ul>

**e) Excise stamps offenses**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to introduce a fine of KES 5 million or a jail term not exceeding 3 years or both upon conviction to offences relating to excise stamps.</p> <p>The offenses include:</p> <ol style="list-style-type: none"> <li>Defacing or printing over an excise stamp affixed on any</li> </ol>	<p>This has been retained by repealing Section 40 of the EDA which states that contravention of Section 28 of the EDA on excise stamps is an offense.</p> <p>Section 28 of the Excise Duty Act, 2015, is amended by inserting the following new subsections immediately after subsection (5)–</p> <p>A person who –</p>	<p>The proposed amendment seeks to specify various acts or omissions that amount to an offense and will provide much-needed clarity.</p> <p>Stamps are affixed on excisable goods as an enforcement measure to enable the KRA monitor compliance of excisable goods in the market and seal revenue leakages. In our view, the proposed amendment is aimed at enforcing</p>



Proposed Bill	Finance Act	Comments
<p>excisable goods or package.</p> <p>2. Being in possession of excisable goods on which stamps have not been affixed and which have not been exempted from the requirements under law.</p> <p>3. Acquire or attempt to acquire an excise stamp without authority.</p> <p>4. Prints, counterfeit, makes or in any way creates an excise stamp without authority.</p> <p>5. Being in possession of an excise stamp which has been printed, made or in any way acquired without authority.</p> <p>6. Being in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with the Act or Regulations; or ,</p> <p>7. Being in possession of, conveying, selling, distributing, or trading in excisable goods which have be affixed with counterfeit excise stamps.</p>	<p>(a) Defaces or prints over an excise stamp affixed on any excisable goods or package.</p> <p>(b) 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.</p> <p>(c) Acquires or attempts to acquire an excise stamp without the authority of the Commissioner.</p> <p>(d) Prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner.</p> <p>(e) Knowingly is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner.</p> <p>(f) 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,</p> <p>(g) Is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps, commits an offence.</p> <p>(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.</p>	<p>compliance by local manufacturers and importers of excisable goods with the excise duty laws and regulations.</p> <p>In our view this is a welcome move as it will go a long way in curbing the sale of counterfeit excise stamps as well as excisable goods.</p>

**f) Reduction of excise duty on various services**

**Effective date: 1<sup>st</sup> July 2023**

Item	Proposed Bill	Finance Act	Comments
Excise duty on Telephone and internet data services.	15%	15%	This is aimed at reducing the cost of telephone and internet data services and money transfer services by financial institutions and money transfer agencies in a bid to increase affordability and promote accessibility to these services.
Excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service.	15%	15%	



**g) Increase of excise duty on various services**

**Effective date: 1<sup>st</sup> July 2023**

Item	Proposed Bill	Finance Act	Comments
Excise duty on fees charged for money transfer services by cellular phone	15%	15%	The increase in excise duty on betting, gaming, prize competition and lottery is aimed at curtailing the consumption of services that are considered detrimental to the citizens.
Excise duty on betting	20%	20%	
Excise duty on gaming	20%	20%	
Excise duty on prize competition	20%	20%	
Excise duty on lottery (excluding charitable lotteries)	20%	20%	

**h) Introduction of excise duty on various goods and services**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<ul style="list-style-type: none"> <li>• The Bill proposed to introduce excise duty on the following goods and services:</li> <li>a) Locally manufactured sugar confectionary of Tariff Heading 1704 at KES 42.91 per kg</li> <li>b) Locally manufactured pasta of Tariff Heading 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared at 20%.</li> <li>c) Imported fish at KES 100,000 per metric tonne or 20%, whichever is higher.</li> <li>d) Powdered juice at KES 25 per kg.</li> <li>e) Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer at KES 5 per kg.</li> <li>f) Human hair and other products of Tariff Heading 6703 at 5% .</li> <li>g) Wigs, false beards, eyebrows and eyelashes, switches, and the like, and other products of Tariff Heading 6704 at 5% .</li> <li>h) Artificial nails of Tariff Code 3926.90.90 at 5%.</li> <li>i) Imported cement at 10% of the value or KES 1.50 per kg, whichever is higher.</li> <li>j) Imported furniture excluding furniture originating from East African Community (EAC) Partner States that meet the East African Community Rules of Origin at 30% .</li> </ul>	Amendments retained.	<p>This will increase the prices of these goods in the market which may suppress demand. Ultimately, this will negatively impact the welfare of the local citizen and potentially reduce government revenue.</p> <ul style="list-style-type: none"> <li>• The introduction of excise duty on beauty products such as wigs, human hair, artificial nails, eyebrows etc. is aligned with the Government policy of imposing excise duty on luxurious products and is aimed at primarily generating additional revenue for the Government.</li> <li>• The Bill proposes to reintroduce excise duty on imported furniture, having deleted this provision on 1 July 2022. However, furniture imported from the EAC will be exempted from excise duty in line with the EAC policy on national treatment.</li> </ul>

Proposed Bill	Finance Act	Comments
<p>k) Imported paints, varnishes, and lacquers of Tariff Heading 3208, 3209 and 3210 at 15% .</p> <p>l) Imported test liner of Tariff Code 4805.24.00 at 25% .</p> <p>m) Imported fluting medium of Tariff Code 4805.19.00 at 25% .</p> <p>n) Fees charged on advertisement on television, print media, Billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions at 15%.</p>		

## TAX APPEALS TRIBUNAL

### i) Procedure for appeal before the TAT

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to require appellants to the Tax Appeals Tribunal to submit the "appealable decision" instead of the "tax decision" and other documents as may be necessary to enable the Tribunal to decide on the appeal in addition to the memorandum of appeals and statement of facts.</p>	<p>This was retained through amendment of Section 13 of the Tax Appeals Tribunal Act, 2013,</p> <p>(a) In subsection (2), by deleting paragraph (c) And substituting it with the following new paragraphs –</p> <p>(c) The appealable decision; and,</p> <p>(d) Other documents may be necessary to enable the Tribunal to decide on the appeal.</p> <p>(b) By inserting the following new subsection immediately after subsection (8)– (9) For the purposes of this section, "appealable decision" has the meaning assigned to it in section 3(1) of the Tax No. 29 of 2015. Procedures Act, 2015.</p>	<p>The proposed amendment is a clean-up exercise to harmonize the TPA and the TAT Act with respect to the jurisdiction and practice before the TAT.</p> <p>As currently drafted, the TAT Act requires the taxpayer to attach the "tax decision" in their appeal. However, the TPA is emphatic that only appealable decisions (such as objection decisions), and not tax decisions (such as assessments) can be contested before the TAT. Consequently, most taxpayers in practice attach the appealable decisions to their appeals, rather than the tax decisions. The proposed amendment will thus align the TAT Act and the TPA by clarifying that the TAT's jurisdiction is limited to purely appealable decisions.</p> <p>Further, the requirement to produce "such other documents" as necessary for the TAT to decide empowers taxpayers to adduce documentary evidence in support of their appeal. The presumed intention of this amendment is to confirm that taxpayers ought to submit the evidence they seek to rely upon in an appeal together with their appeal papers.</p>



## TAX PROCEDURES ACT

### a) Tax records for trusts administered by a trustee resident in Kenya.

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to bring resident trustees who administer trusts registered in or outside Kenya within the ambit of the record-keeping provisions in the TPA.</p> <p>Under the amendment, the resident trustees will keep all documents required under tax law and produce to the KRA on demand, whether the income is generated in Kenya or not.</p>	<p>This was retained by amending Section 23 to introduce section (3A) which requires a trustee resident in Kenya to maintain and avail tax records for trusts that are registered in Kenya or outside Kenya whether the trust income is generated in Kenya or not.</p>	<p>Resident trustees will now be required to keep records for a period of 5 years as stipulated in the TPA. This will assist KRA to audit or make any assessments for trusts administered from Kenya. This may be due to the fact that trusts are increasingly being used as a means to transfer and hold assets by wealthy individuals and corporations for tax planning purposes.</p>

### b) Electronic tax records

Effective date: 1<sup>st</sup> September 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to introduce section 23A to empower the Commissioner to establish an electronic tax system for issuing tax invoices and keeping records of stocks.</p>	<p>This was retained by amending the TPA, 2015, by inserting the following new section immediately after sec (1)</p> <p><i>The Commissioner may establish an electronic system through which electronic</i></p>	<p>This aligns with the TPA with the roll-out of the electronic Tax Invoice Management System (eTIMS) in 2022.</p> <p>The System shall give the Commissioner visibility of transactions and possibly also assist taxpayers in</p>

Proposed Bill	Finance Act	Comments
Where so established, business persons including resident persons and PEs must issue invoices or maintain stock records on the electronic system.	<p><i>tax invoices may be issued and records of stocks kept for the purposes of this Act.</i></p> <p>(2) A person who carries on business shall—</p> <p>(a) Issue an electronic tax invoice through the system established under subsection (1); and,</p> <p>(b) Maintain a record of stocks in the system established under subsection (1).</p> <p>(3) Where an electronic tax invoice required to ascertain tax, liability is issued by a resident person or the permanent establishment of a non-resident person, that invoice shall be generated through the system established under subsection (1).</p> <p>(4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments.</p> <p>(5) The Commissioner may, by notice in the Gazette, exempt a person from the requirements of this section.</p>	dealing with potential issues of disallowed input VAT on the basis of insufficient documentation. It is against this backdrop that the FA also proposes that deductions only be allowed to the extent that they are supported by valid invoices.

**c) Abolition of waivers of penalties and interest and abandonment of tax**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to repeal provisions allowing relief because of doubt or difficulty in recovery of tax on the part of the Commissioner.</p> <p>Currently, the Commissioner, with approval of the Cabinet Secretary, has powers to refrain from collecting tax in instances where:</p> <p>a) It may be impossible to recover an unpaid tax.</p> <p>b) There is undue difficulty or expense in the recovery of an unpaid tax.</p> <p>c) There is hardship or inequity in relation to the recovery of an unpaid tax; or ,</p> <p>d) There is any other reason occasioning inability to recover the unpaid tax.</p>	<p>This has been retained by repealing Sections 37 and 89(6) to 89(8) from the TPA.</p> <p>Currently, the provisions allow the Commissioner to abandon taxes, with the Cabinet Secretary's approval, where it is impossible to recover an unpaid tax due to undue expense, difficulty, or inequity in recovering the tax, or any other reasonable grounds.</p> <p>The provisions also empower the Commissioner to waive, in whole or in part, penalties or interest, where there is undue expense, difficulty or inequity in recovering the tax; or due to considerations of hardship or equity.</p>	The amendment places pressure of the Commissioner to take all necessary measure to recover taxes owed. Taxpayers should brace themselves for aggressive tax collection measure by the Revenue Authority to recover unpaid taxes without abandonment as an option even in cases where it is administratively challenging or costly to recover the tax.

**d) Tax amnesty on interest and penalties**

**Effective date: 1<sup>st</sup> September 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to bar the Commissioner from recovering penalties interest and fines on a tax debt where a taxpayer had paid the principal tax before 31<sup>st</sup> December 2022.</p> <p>Where the principal tax had not been paid before that date, a taxpayer may apply for amnesty of interest, penalties or fines accrued up to 31 December 2022. The taxpayer will also be required to propose a payment plan for the outstanding amount.</p> <p>This amnesty shall only be granted if the person pays the principal tax not later than 30 June 2024, does not incur a further tax debt and signs a commitment letter for settlement of all outstanding taxes due.</p> <p>Penalties and interest will start accruing again in instances where an amnesty has been granted but the principal tax has not been fully settled by 30 June 2024.</p>	<p>This was retained by introducing a new Section 37E into the TPA, to provide for an amnesty of interest, penalties or fines on unpaid tax for taxpayers.</p> <ul style="list-style-type: none"> <li>• To qualify for the amnesty, the FA proposes the following requirements:                     <ul style="list-style-type: none"> <li>- The amnesty will apply for unpaid taxes that were due before 31 December 2022, and a taxpayer does not incur further tax debt.</li> <li>- The taxpayer must apply for amnesty and pay the outstanding principal tax before 30 June 2024.</li> <li>- The taxpayer shall sign a commitment letter for the settlement of all outstanding taxes.</li> </ul> </li> <li>• The FA further proposes a general amnesty of interest, penalties or fines on unpaid tax for all taxpayers where the underlying principal tax had been paid before 31 December 2022.</li> </ul>	<p>The tax amnesty provides an avenue for taxpayers to voluntarily correct mistakes or omissions that result in tax liability without being penalized. The amnesty will improve revenue collection in the short term and tax compliance going forward.</p> <p>Further, taxpayers are advised to review their tax affairs to take early advantage of the amnesty.</p> <ul style="list-style-type: none"> <li>• The amendment to provide a general amnesty of interest and penalties for all taxpayers where the underlying principle tax had been paid before 31 December 2022 is also a welcome reprieve, one that also provides taxpayers the opportunity to review and clean up their iTax ledgers to eliminate the interest and penalties covered in the general amnesty.</li> </ul>

**e) Agency notices to be issued under additional circumstances.**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to set limits within which the Commissioner can issue a notice to collect tax from taxpayers' debtors.</p> <p>The Commissioner shall not issue a notice unless:</p> <ol style="list-style-type: none"> <li>The taxpayer has defaulted in paying tax under an agreed payment plan.</li> <li>The Commissioner has raised an assessment and the taxpayer has not objected.</li> <li>The taxpayer has not appealed against an objection decision within the stipulated timelines.</li> <li>The taxpayer has made a self-assessment but not paid the tax due before the due date; or,</li> </ol>	<p>This was retained by amending Section 42 of the Tax Procedures Act, 2015, deleting subsection (14) and substituting it with the following new subsection –</p> <p>(14) The Commissioner shall not issue a notice under this section unless—</p> <ol style="list-style-type: none"> <li>(a) The taxpayer has defaulted in paying an installment under section 33(2).</li> <li>(b) The Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period.</li> <li>(c) The taxpayer has not appealed against an assessment specified in</li> </ol>	<p>The amendment has expanded the circumstances in which the KRA may issue agency notices. Taxpayers will be required to be extremely vigilant as to the prescribed timelines under the TPA and their right to challenge decisions of the KRA. Lapses in challenging assessment within the requisite timelines may expose taxpayers to agency notices.</p>



Proposed Bill	Finance Act	Comments
e. The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.	<p>an objection decision within the prescribed timelines.</p> <p>(d) The taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or,</p> <p>(e) The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.</p>	

**f) Withholding VAT**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to amend Section 42A of the TPA to delete the exemption of registered manufacturers with an investment value exceeding KES 3 Billion from withholding VAT requirements.</p> <p>The Bill further amends the provision to require withholding VAT agents to remit withholding VAT to the KRA within 3 days after the deduction is made.</p>	<p>This was retained by amending Section 42A of the Tax Procedures Act, 2015,</p> <p>(a) In the provision to subsection (1), by deleting the words "commencement of this Act" and substituting with the expression "1<sup>st</sup> July, 2022".</p> <p>(b) By deleting subsection (4B) and substituting with the following new subsection—</p> <p>(4B) The tax withheld under this section shall be remitted to the Commissioner within five working days after the deduction was made.</p> <p>(c) In subsection 4C .</p> <p>(b) By deleting the words "twentieth day of the month following that in which" and substituting therefor the words "fifth working day after".</p>	<p>Currently, withholding VAT agents are required to remit the tax not later than the 20th day of the month following when the deduction is made. This requirement may make compliance for withholding VAT agents easier, as the deadlines are aligned to those of other taxes, including VAT, withholding tax and excise duty.</p> <p>The amendment is aimed at meeting the Government's immediate revenue or expenditure cashflow requirements. However, remitting withholding VAT within 5 days will impose an unreasonable compliance burden on the affected taxpayers.</p>

**g) Refund or offset of overpaid tax.**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>Section 47 was proposed to be amended to provide for the offsetting of overpaid taxes against outstanding tax debts and future tax liability.</p> <p>Where a taxpayer opts to apply for a refund of taxes, the Bill proposes to reduce the time period within which the Commissioner must refund the taxes from two (2) years to six (6)</p>	<p>This was retained by amending Section 47 of the TPA to allow taxpayers to apply for the offset of overpaid tax against their outstanding tax debts, which application should be determined within 90 days. Currently, the law only allows taxpayers to apply for an offset against future tax liabilities.</p>	<p>The changes are progressive and provide a welcome relief for taxpayers, as they would allow taxpayers to offset tax overpayments against past, current and future tax liabilities. Presently, a taxpayer can only apply to offset tax overpayments against future liabilities.</p>



Proposed Bill	Finance Act	Comments
<p>months. If the commissioner fails to refund the overpaid tax within 6 months, the amount would be applied to offset the taxpayers outstanding or future liabilities.</p> <p>The Bill also proposed to provide that where an application for refund has been subjected to an audit, the Commissioner shall ascertain and determine the application within 120 days failure to which, the application shall be deemed to have been ascertained and approved.</p>	<ul style="list-style-type: none"> <li>• The act has amended the provision to provide that where a taxpayer applies for a refund of overpaid tax instead, the overpaid tax shall be repaid within 6 months of the refund application upon approval. If not repaid within 6 months, the refund shall be used to offset the taxpayer's outstanding or future tax liabilities.</li> <li>• In addition, the act has introduced a requirement for the Commissioner to determine an application for refund or offset of overpaid tax within 120 days in instances where the claim has been subjected to an audit. Where the claim has not been subjected to an audit, the 90-day limit for the Commissioner to make a decision on the application remains.</li> </ul>	<ul style="list-style-type: none"> <li>• The amendment will allow taxpayers to offset overpayments against their liabilities without further reference to the KRA, where the Commissioner does not determine the offset application within the prescribed timelines (currently 90 days, or the proposed 120 days where the application is audited).</li> <li>• Further, by providing that approved refunds shall be repaid to taxpayers within 6 months, rather than the current two years, the proposed amendments will enhance efficiency in the processing of refunds and help taxpayers access the funds sooner, which funds can be channeled towards more beneficial and income-generating uses.</li> </ul>

#### h) Objection decision

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to introduce a 7-day timeline for provision of information where a taxpayer is notified that the objection decision has not been validly lodged.</p> <p>The Bill further proposed to empower the Commissioner to issue an objection decision within 60 days where the taxpayer fails to provide the supporting documents within the 7 days.</p>	<p>This was retained by amending Section 51 of the Tax Procedures Act, 2015, subsection:</p> <p>(3) Where a taxpayer fails to provide the information required under sub-section.</p> <p>(4) Or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged.</p>	<p>This is intended to allow room for a taxpayer to remedy any gaps in the objection and to ensure that an objection is not invalidated for lack of supporting documentation.</p>

#### i) Data Management System

Effective date: 1<sup>st</sup> September 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to empower the Commissioner to establish a data management system to collect transaction data and invoices on ordinary transactions and such other commercial or financial transactions by taxpayers.</p>	<p>This was retained by empowering the Commissioner to establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents.</p>	<p>The amendment signals the KRA's intent to gain enhanced visibility of taxpayers' transactions, with the aim of enhancing compliance and revenue collection.</p> <ul style="list-style-type: none"> <li>• It is likely that the DMRS will provide a database of information</li> </ul>

Proposed Bill	Finance Act	Comments
<p>Further, the Bill proposed to introduce a provision for the Commissioner to notify persons who will be required to submit such information.</p>	<p>(2) The Commissioner shall notify in writing the persons required to submit electronic documents through the system established under subsection (1).</p> <p>(3) The electronic documents referred to in subsection (2) include electronic invoice returns –</p> <p>(a) of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business.</p> <p>(b) for payments made by a person in the ordinary course of business receipt of a written notice from the Commissioner.</p> <p>where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business.</p> <p>(c) for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business.</p> <p>(d) for periodical or lump sum payments in respect of a royalty; or,</p> <p>(e) for such other commercial or financial transactions as may be designated by the Commissioner.</p> <p>(4) For the purposes of this section –</p> <p>(a) "transactional data" includes –</p> <p>(i) the names and addresses of each person to whom a payment was made.</p> <p>(ii) Where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services.</p> <p>(iii) Where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and,</p>	<p>for use by the KRA in assessing tax risks for purposes of conducting tax audits.</p> <ul style="list-style-type: none"> <li>• Taxpayers shall have to submit any documents via the DMRS as required via a written notice from the KRA.</li> <li>• The KRA shall also have to navigate confidentiality and data privacy concerns, in view of its obligation under the TPA to maintain confidentiality, and the evolving data protection landscape in Kenya.</li> </ul>

Proposed Bill	Finance Act	Comments
	<p>(iv) Such other particulars as the Commissioner may specify.</p> <p>(b) References to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and,</p> <p>(c) References to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.</p>	

**j) Impersonation**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to introduce an offense of impersonation of an authorized officer and impose imprisonment for a term not exceeding 3 years for the offense.</p>	<p>This was retained by amending The Tax Procedures Act, 2015 by inserting the following new section immediately after section 97–97A.</p> <p>(1) A person who is not an authorized officer commits an offense if that person assumes the name or designation of an authorized officer and performs or procures the performance of any act which that person is not entitled to do.</p> <p>(2) A person convicted of an offense under subsection (1) shall be liable to imprisonment for a term not exceeding three years.</p>	<p>The is aimed at deterring impersonation of authorized KRA officers and protecting the public from persons who deceive taxpayers by pretending to be authorized officers.</p>

## MISCELLANEOUS CHANGES

### a) Reduction of Import Declaration Fee

Effective date: 1<sup>st</sup> July 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to revise the import declaration fee (IDF) from 3.5% to 2.5%.</p> <p>The Bill proposed to delete Section 2A which provides for a reduced rate for inputs to be used in affordable housing projects.</p>	<p>This was retained by deleting Section 8 of the Miscellaneous Fees and Levies Act, 2016.</p> <p>(a) In subsection (2) by deleting the words "two" and substituting therefor the words "one point-five";</p> <p>(b) By deleting subsection (2A).</p>	<p>This is as it will reduce the cost of importing goods into Kenya and partly cushion the traders from the high prices of imported goods that have soared due to the weakening of the Kenya shilling against the dollar and other externalities.</p> <ul style="list-style-type: none"> <li>• However, the proposed deletion of reduced IDF rate of 1.5% on raw materials/intermediate goods imported by manufacturers, inputs for construction of houses under the affordable housing scheme and goods imported under the Duty Remission scheme will mean that these goods will attract a higher IDF rate of 2.5%.</li> <li>• This will increase the cost of importing raw materials and intermediate goods and it is likely that the added cost will be passed on to customers.</li> </ul>

### b) Export and Investment Promotion Levy

Effective date: 1<sup>st</sup> September 2023

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to introduce a levy on goods imported into the country for home use at 10% of the customs value of the goods under the Third Schedule to be payable by an importer of such goods. Some of the goods included in the Third Schedule include bars and rods of iron, Kraft paper, sacks and bags and cement clinkers.</p> <p>Goods imported from the East African Community shall be exempt from the export and investment promotion levy.</p>	<p>This was retained by amending The Miscellaneous Fees and Levies Act, 2016, by inserting the following new section immediately after section 7 –</p> <p>The export and investment promotion levy shall not be charged on goods originating from East African Community Partner States that meet the East African Community Rules of Origin.</p> <p>(5) The funds collected from the levy shall be paid into a fund established and managed in accordance with the Finance Management Act, 2012.</p>	<p>The EIPL is geared towards discouraging importation of goods that are locally manufactured in a bid to protect local manufacturers from competition arising from cheap imports.</p> <ul style="list-style-type: none"> <li>• EIPL will be used to boost local manufacturing, encourage exports and promote investments.</li> <li>• The Kenyan Government has been promoting investment in the manufacture of iron and steel products, paper and paperboard products in the past through increasing import duty on these products. The Bill proposes to further increase the cost of importing the foregoing products to further promote local manufacturing of these products. • This amendment if not properly implemented may increase cost of procuring the affected products in the Kenyan market particularly if the local production capacity is insufficient.</li> </ul>

**c) Reduction of Railway Development Levy (RDF)**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to reduce the railway development levy from 3.5% to 2.5%.</p> <p>Further, the Bill proposes to delete the reduced rate of 1.5% for inputs for use in the affordable housing scheme.</p>	<p>This was retained by amending, Section 7 of the Miscellaneous Fees and Levies Act, 2016.</p> <p>(a) in subsection (2), by deleting the words "three point five" and substituting therefor the words "two point-five";</p> <p>(b) by deleting subsection (2A);</p>	<p>The reduction of the Railway Development Levy shall reduce the cost of imports and incentivize growth in the local manufacturing industry by reducing the cost of raw materials.</p>

**d) Reduction of Export Levy**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to amend the Act by reducing the export levy on leather and leather products classified under tariff numbers 4101.20.00 to 4302.20.00 from 80% to 50% or USD 0.52.</p>	<p>This was retained by reducing export levy on various raw hides and skins from 80% or USD 0.52 per Kg to 50% or USD 0.32 per Kg whichever is higher.</p>	<p>The amendment is aimed at stimulating growth in the leather and leather products value chain in line with the government's commitment to the bottom-up economic transformation agenda.</p>

**e) Amendment of IDF and RDL exemption schedule under the Second Schedule of the MFLA**

**Effective date: 1<sup>st</sup> July 2023**

Proposed Bill	Finance Act	Comments
<p>The Bill proposed to amend the Second Schedule of the MFLA as follows:</p> <p>a) By replacing "gifts and supplies for diplomatic and consular missions and to the United Nations" in Part A of the Second Schedule with "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".</p> <p>b) By replacing " goods for official by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act" in Part B of the Second Schedule with "goods for official use by</p>	<p>This was retained by amending The Second Schedule to the Miscellaneous Fees to No. 29 of 2016 ;</p> <p>a) By replacing "gifts and supplies for diplomatic and consular missions and to the United Nations" in Part A of the Second Schedule with "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" .</p> <p>b) By replacing " goods for official by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities</p>	<p>The exemption of LPG from IDF and RDL is geared towards reducing the cost of LPG in the market to make it affordable to majority of Kenyans.</p> <p>Most airlines especially Kenyan based airlines are grappling with high operational costs due to the global increase in the price of fuel and other externalities.</p> <p>The Act has exempted all aircrafts and spare parts in a bid to reduce operational costs of local airlines in a bid to improve profitability of the airlines.</p> <p>• The RDL and IDF exemption provisions on goods imported by diplomatic missions and international organizations is aimed at aligning the exemption with similar exemptions provided under other tax laws.</p>



Proposed Bill	Finance Act	Comments
<p>diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act".</p> <p>c) Expanding the scope of aircrafts and helicopters exempted from IDF to include all aircraft, spacecraft, and parts thereof of Chapter 88. The First Schedule of the MFLA currently provides for exemption of IDF on aircraft excluding aircraft of unladen weight not exceeding 2,000kgs and helicopters.</p> <p>d) Introduction of RDL exemption on all aircraft, spacecraft, and parts thereof of Chapter 88 .</p> <p>e) Expanding the scope of goods imported by the Kenya Defence Forces and National Police Service exempted from IDF and RDL to include all goods including material supplies for official use. Currently only equipment, machinery and motor vehicles are exempted from IDF and RDL.</p> <p>f) Introduction of IDF and RDL exemption on goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and liquefied petroleum gas.</p>	<p>Act" in Part B of the Second Schedule with "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".</p> <p>c) Expanding the scope of aircrafts and helicopters exempted from IDF to include all aircraft, spacecraft, and parts thereof of Chapter 88. The First Schedule of the MFLA currently provides for exemption of IDF on aircraft excluding aircraft of unladen weight not exceeding 2,000kgs and helicopters.</p> <p>d) Introduction of RDL exemption on all aircraft, spacecraft, and parts thereof of Chapter 88.</p> <p>e) Expanding the scope of goods imported by the Kenya Defence Forces and National Police Service exempted from IDF and RDL to include all goods including material supplies for official use. Currently only equipment, machinery and motor vehicles are exempted from IDF and RDL .</p> <p>f) Introduction of IDF and RDL exemption on goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and liquefied petroleum gas.</p>	

## OTHER ACTS

The amendments are effective from 1st July 2023, unless specified otherwise in the section herein.

Item	Proposed Bill	Finance Act	Comments
Membership of the Kenya Roads Board.	This amendment was not in the Finance Bill.	<p>The FA amended the Kenya Roads Board Act (No. 7 of 1999) ("Roads Board Act") to:</p> <p>a) reduce the membership in the Board of representatives of organizations in the First Schedule (organizations such as the Institution of Engineers of Kenya, the Kenya Association of Manufacturers and the Institute of Certified Public Accountants of Kenya, among others). Under the Roads Board Act, eight members are appointed by the Cabinet Secretary but the amendment under the Act limits the number of people to five; and,</p> <p>b) delete the requirement of membership in the Board of the Permanent Secretary in the Ministry for the time being responsible for matters relating to transport and communications.</p>	<p>The amendment seeks to impose a restriction on the membership of the Kenya Roads Board (referred to as the "Board"). Currently, the government has merged roads and transport under a single ministry known as Roads, Transport, and Public Works. Although the ministry has two distinct principal secretaries, it is deemed unnecessary for both of them to serve on the Board. This amendment is seen as a positive development.</p> <p>This may raise concerns among the organizations listed in the First Schedule to the Roads Boards Act. These organizations may perceive this amendment as unfavorable or detrimental to their interests.</p>
Organizations which may nominate representatives to be appointed members of the Board by the Minister.	This amendment was not in the Finance Bill.	The Act has amended the Roads Board Act, in the first schedule, to delete some of the organizations that may nominate members to the Board.	<p>The recent revision has resulted in the removal of The Institute of Surveyors of Kenya, The League of Kenyan Women Voters, and the Kenya Association of Tour Operators from the First Schedule. As a consequence, these organizations will no longer have the ability to nominate members to the Board.</p> <p>The criteria used in the decision-making process regarding which organizations to keep and which ones to exclude have not been disclosed, leaving uncertainty and ambiguity regarding the rationale behind these choices.</p>

Item	Proposed Bill	Finance Act	Comments
Annual Estimates of the Kenya Roads Board.	The Bill proposed that the annual estimates of the Board shall be submitted together with a collated annual roads programme as provided for in section 19.	The Act has retained the provision.	The amendment will mandate the Kenya Roads Board (the "Board") to include the annual road programmes in the submission of its annual estimates of the revenue and expenditure to Parliament through the Cabinet Secretary for Roads. Presently, section 35 requires the annual estimates of the Board to be submitted without any accompanying documents.
Functions of the Kenya Revenue Authority.	The Bill proposed that the Kenya Revenue Authority Act ("KRA Act") be amended to read "The Authority may establish an institution to provide capacity building and training the staff of the Authority, general public and other jurisdictions".	The Act has retained the provision.	The amendment will introduce a requirement for the Kenya Roads Board (referred to as the "Board") to include the annual road programmes when submitting its annual estimates of revenue and expenditure to Parliament. This submission will be made through the Cabinet Secretary for Roads. Currently, under section 35, the Board is mandated to submit its annual estimates without any accompanying documents. However, with this amendment, the Board will be obligated to provide the annual road programs along with its estimates. This change aims to enhance transparency and provide more comprehensive information to Parliament regarding the Board's plans and priorities for road development.
Appointment of Commissioners and other officers.	This was not previously included in the Finance Bill.	The Act has amended the KRA Act to: a) Include Deputy Commissioners amongst the officials to be appointed by the Kenya Revenue Authority Board; b) delete the provision allowing the Commissioner-General (with the approval of the KRA Board) to appoint such heads of departments as may be required; and, c) include the Alcoholic Drinks Act, 2010 as part of the	The amendments: a) place into mandate the appointment of Deputy Commissioners to the KRA Board. Currently, there is no provision under the KRA Act for the appointment of Deputy Commissioners; b) limits the Commissioner-General's powers to appoint heads of departments of the KRA. However, the Act does not subsequently state who will appoint such heads of department; and, c) Subjects the Alcoholic

Item	Proposed Bill	Finance Act	Comments
		written laws that KRA will administer and enforce.	Drinks Act to KRA's mandate of assessing, collecting, and accounting for all revenues under the Act.
Requirements for registration of administrators.	This was not previously included in the Finance Bill.	The FA has amended the Retirement Benefits Act by lowering the percentage of paid-up capital required for registration as a scheme administrator.	Currently, scheme administrators are required to have a paid-up capital of sixty per cent (60%) owned by Kenyan citizens. The amendments lower this percentage to thirty three percent (33%), and thereby further opening up ownership of scheme administrators to foreigners.
Investing Sharia complaint funds.	This was not previously included in the Finance Bill.	The Act has amended the Retirement Benefits Act to introduce a new section allowing a fund set up exclusively for the purpose of investing sharia-compliant funds to be exempted from guidelines.	This amendment is welcomed as it introduces the setup of sharia-compliant funds, which will be exempted from guidelines. However, the amendment states that such funds will not be invested contrary to any guidelines prescribed for that purpose. This means that if there are guidelines for the management of a sharia-compliant fund, the fund should invest within what is prescribed in such guidelines.
Introduction of a minimum input cost to determine the selling price of alcoholic drinks.	This was not previously included in the Finance Bill.	The FA has amended the Alcoholic Drinks Control Act to introduce a new definition of minimum input cost (being input cost published by the KRA through excise regulations) and that a person shall not sell, manufacture, pack or distribute alcoholic drinks at a price below the minimum input cost. The amendment allows KRA to publish the regulations and enforce the same.	The amendment prohibits the sale of alcoholic drinks below a minimum input cost, which will be published by the KRA. This will effectively set a price floor for the affected products. The government has indicated this is aimed at fighting illicit alcohol in the country. In drafting the regulations, it will be important for the government to consider requirements of the Competition Act and agreements such as East African Community Protocol and the World Trade Organization Agreement where Kenya is a signatory.

Item	Proposed Bill	Finance Act	Comments
Claims on assets.	The Bill proposed that where a claim is allowed, the Unclaimed Financial Assets Authority (the "Authority") shall pay over or deliver to the claimant or such other person as the claimant may designate the assets or the amount the Authority actually received or the net proceeds if it has been sold by the Authority.	The amendment allows for claimants to designate beneficiaries of unclaimed assets. Currently, the Unclaimed Financial Assets Act does not provide for claimants to designate a beneficiary of their assets.	The amendment is a welcomed one as it would allow designated representatives of claimants to receive assets or amounts received following a successful claim to the asset (or amount), to the Unclaimed Financial Assets Authority.
Automatic revocation of statutory instruments.	The Bill proposed that section 21 of the Statutory Instruments Act be repealed.	The amendment deletes provisions relating to automatic revocation of statutory instruments, with the period under the Statutory Instruments Act being ten (10) years. The extension of the operation of a statutory rule should not exceed twelve months, with only one extension allowed.	The amendment means that statutory instruments will stay in force, unless expressly repealed.
Circumstances under which benefits may not be paid.	The Retirement Benefits (Deputy President and Designated State Officers) Act (the "RB Act") lists the circumstances the Deputy President, Prime Minister, Vice-President, Speaker, Chief Justice or Deputy Chief Justice (as entitled persons) may not receive benefits conferred under the RB Act, on a resolution by the National Assembly supported by the votes of not less than half of the members. The Bill proposed to delete the circumstances under which the entitled persons) may not receive benefits conferred under the RB Act.	The Act has retained this provision.	This amendment is in line with the decision of the High Court in Coalition for Reforms and Democracy (CORD) v Attorney General; International Institute for Legislative Affairs & another (Interested Parties) [2019] eKLR, in which section 4 of the Act was declared unconstitutional. The upshot of this is that entitled persons would not be denied their prescribed retirement benefits under any of the circumstances currently outlined by the Act (such as cessation of office on account of having acted in willful violation of the Constitution, gross misconduct, despite retiring, held office in, or actively engaged in the activities of, any political party).



Item	Proposed Bill	Finance Act	Comments
<p>Benefits to appointive or elective office in the Government and entitlement to parliamentary pension.</p>	<p>The Bill proposed to:</p> <p>a) Introduce section 4A to the RB Act and provide the benefits payable to entitled persons who hold appointive or elective offices in Government (and who previously received benefits under the RB Act). The benefits include a monthly pension equal to eight per cent of the entitled person's last monthly salary while in office and a lumpsum payment on retirement equal to one year's salary for each term served in office;</p> <p>b) prevent the entitled person from receiving benefits due to their current position and also receiving benefits due under the Act due to their previous position; and,</p> <p>c) provide pension benefits to an entitled person who also is entitled to pension under the Parliamentary Pensions Act.</p>	<p>The Act has retained these provisions.</p>	<p>The amendment prevents duplication of other benefits accruing to entitled persons (such as vehicle and fuel benefits) who would be holding appointive or elective positions in or under Government until they retire or cease to hold that appointive or elective office. Further, the amendment protects the constitutional right of retirement benefits accrued to an entitled person even though they have attained eligibility for a retirement benefit in their current position.</p>
<p>Benefits to a retired Speaker of the National Assembly or the Senate.</p>	<p>The Bill proposed to amend the RB Act to provide that a retired Speaker of the National Assembly or the Senate shall, during their lifetime, be entitled to full medical and hospital cover for themselves, their spouse and their child:</p> <p>a) who is below eighteen years or is</p>	<p>The FA has retained this provision.</p>	<p>The amendment may be declared unconstitutional due to discrimination against female children. The Constitution protects the right to equal protection and equal benefit of the law, whereas the amendment seeks to discriminate the female child against the male child. The aspect of cohabiting can be taken to be unnecessary as only in limited circumstances will the law and the courts infer a presumption of marriage.</p>

Item	Proposed Bill	Finance Act	Comments
	<p>under twenty-five years of age and is undergoing a course of full time education, ; and in,</p> <p>b) the case of a female child is not married or is not cohabiting with any person.</p> <p>The Bill also proposed that entitled persons who serve in office for less than a term will still enjoy full benefits listed under the RB Act. The current provision is that they would enjoy some, but not all, provisions under the RB Act (such as gratuity paid at the end of the entitled person's service at the rate of thirty-one per cent of the entitled person's salary while in office)</p>		<p>The amendment adds to an already bloated wage Bill, with further costs borne by the taxpayer.</p> <p>Further, the amendment deleting the current provisions on entitled persons who have not completed a term in office is questionable, especially with the current economic constraints on the country and to taxpayers.</p>
<p>Benefits to a retired Chief Justice, Deputy Chief Justice, Prime Minister, Deputy President and Vice- President ("entitled persons").</p>	<p>The updated benefits were not previously included in the Finance Bill.</p>	<p>The amendments are similar to the one above, with a provision included in the RB Act to provide that entitled persons shall, during their lifetime, be entitled to full medical and hospital cover for themselves, their spouse and their child:</p> <p>a) Who is below eighteen years or is under twenty-five years of age and is undergoing a course of full time education, ; and,</p> <p>b) In the case of a female child is not married or is not cohabiting with any person.</p>	<p>The amendments are a curious one taking into account the current economic situation of the country. The constitutionality of the amendments may be called into questions due to discrimination against female children. The Constitution protects the right to equal protection and equal benefit of the law, whereas the amendment seeks to discriminate the female child against the male child. The aspect of cohabiting can be taken to be unnecessary as only in limited circumstances will the law and the courts infer a presumption of marriage. The amendment adds to an already bloated wage Bill, with further costs borne by the taxpayer.</p>

Item	Proposed Bill	Finance Act	Comments
Benefits to a retired Speaker of the National Assembly or the Senate, Chief Justice and Deputy Chief Justice ("entitled persons").	This was not previously included in the Finance Bill.	The First Schedule of the RB Act is now amended to include chief liaison officer and assistant liaison officers as part of additional benefits to the entitled persons.	It is unclear why the amendment to include chief liaison officer and assistant liaison officer was included as there is no legislation or regulations (including the National Assembly Standing Orders) to provide for their appointment and role. Their inclusion means that the entitled persons can choose between the above officials, or a personal assistant and a secretary, as part of their retirement benefits.
Estimates of benefits accrued to a retired Speaker of the National Assembly or the Senate.	The Bill proposed that the Clerk of the National Assembly in the case of a retired Speaker of the National Assembly and the Clerk of the Senate in the case of a retired Speaker of the Senate, shall prepare and submit the estimates for entitled persons to the Parliamentary Service Commission.	The FA has retained this provision.	The amendment mandates the respective clerks of the National Assembly and Senate to submit estimates of the benefits granted to an entitled person, or his or her surviving spouse, as the case may be.
Computation of benefits.	The Bill proposed that in computing the benefits due to a person under the RB Act, the benefits already received by that person under any other law or policy shall be set-off against the benefits due under the RB Act.	The FA has retained this provision.	The amendment creates additional burden on taxpayers, as possibly an entitled person under the RB Act may receive benefits both under the Act and any other Act or Policy, a situation that was expressly disallowed previously.
Declarations of special economic zones.	This was not previously included in the Finance Bill.	The amendment to the Special Economic Zones Act ("SEZA") introduces a customs-controlled area and non-customs controlled area as part of a Special Economic Zone ("SEZ"). The amendment also expressly provides that where goods are introduced in a custom-controlled area, they are exempted from customs duties in accordance with customs laws.	The amendment is a welcomed one as it widens the scope of areas that would be considered as SEZs. This is bound to encourage investors to invest in SEZs, with the added benefit that goods will be exempt from customs duties in accordance with customs laws.

Item	Proposed Bill	Finance Act	Comments
Update of Goods to be considered as exported and imported into Kenya.	This was not previously included in the Finance Bill.	SEZA is now amended to provide that goods brought out of a SEZ and taken into any part of the customs territory for use or services provided from a SEZ to any part of the customs territory shall be deemed to be imported into the customs territory, provided that: a) Goods whose content originates from the customs territory shall be exempt from payment of import duties; b) Goods whose content partially originates from the customs territory shall pay import duties on the non-originating component subject to the customs procedures	The amendment provides the conditions to which goods provided from a SEZ into a customs territory are exempt from payment of import duties, with the conditions being that the goods either originate from the customs territory or those that partially originate from the customs territory, the non-originating component shall be subject to import duties.
Update of Goods deemed to be exported and imported into Kenya.	This was not previously included in the Finance Bill.	The Export Processing Zones Act ("EPZA") is now amended to provide goods which are brought out of an Export Processing Zone ("EPZ") and taken into any part of the customs territory for use or services provided from an EPZ to any part of the customs territory shall be deemed to be imported into Kenya, provided that: a) Goods whose content originates from the customs territory shall be exempt from payment of import duties; and b) Goods whose content partially originates from the customs territory shall pay import duties on the non-originating component subject to customs procedures	The amendment provides the conditions to which goods brought out of an EPZ into a customs territory are exempt from payment of import duties, with the conditions being that the goods either originate from the customs territory or those that partially originate from the customs territory, the non-originating component shall be subject to import duties

## **ADVISORY • ASSURANCE • TAX**

### **How we can assist**

Bakertilly can assist you to identify which areas of your business will be affected by the law changes provided under the Act. Furthermore, we can offer advisory services on tax planning to make the most of the tax incentives provided as well as provide awareness to avoid penalties that may arise due to omissions considering requirements by the law.

### **Get in touch.**

Should you require more information or wish to discuss this further, please do not hesitate to reach out to any of our contacts at Bakertilly or kindly contact the team below:

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## Baker Tilly International named Accounting Network of the Year

10th July 2023: Baker Tilly Kenya, a member firm of the global network Baker Tilly International, is pleased to announce that it has been named 'Network of the Year' at the recent International Accounting Forum & Awards ceremony in London.

The judges were particularly impressed by Baker Tilly International's commitment to listening, understanding, and supporting the progress of its members. The network's relentless pursuit of excellence was evident through its successful implementation of a comprehensive global strategy plan and devotion to internal education, reinforcing its standing as an employer of choice attracting top talent in the industry.

Madhav Bhandari, Managing Partner of Baker Tilly Kenya, said: "We are honored to be a part of a network whose achievements are recognized on a global level. This award reflects the contribution and commitment by every member firm to providing both exceptional client service and an environment where our employees are fully supported in their professional development."

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