KPMG

Finance Act, 2023 Analysis

Kenya

July 2023

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Preamble

The President signed into law the Finance Act, 2023 (Act) on 26 June 2023. The Act was subsequently gazetted on 27 June 2023. While a majority of the changes will take effect from 1 July 2023, a few others will take effect on 1 September 2023 and 1 January 2024.

The Act, which the President has described as a strategic answer to the difficulties the country faces, aims to generate additional revenue to meet the government's KES 3.6 trillion budget. This amount excludes about KES 800Billion in principal debt repayments that will come due during the year.

The Act introduces fundamental changes to Kenya's tax and social contributions regime. One such change is the introduction of a Housing Levy, which requires both employers and employees to contribute to the National Housing Development Fund. While the Finance Bill, 2023 had proposed that the contributions be refundable or be used to finance purchase of houses under affordable housing, the legislated change is a non-refundable levy of 1.5% payable by both the employer and employee.

Another significant change is the introduction of new PAYE tax bands. The Act has adopted a new tax band of 32.5% for income between KES 500,000 and KES 800,000 and 35% for income exceeding KES 800,000. Few people earn income in this range and it will be interesting to see the impact the change will have on tax collections.

The increase in VAT on petroleum products (excluding LPG gas) from 8% to 16% is expected to impact the cost of living due to its use in many sectors of the economy.

Exportation of services will now be taxed at 0%, this is a welcome move as it aligns the VAT treatment on export of services with international norms and standards.

Another change that has sparked significant debate is the requirement to remit withholding tax to the Kenya Revenue Authority within a 5-day period. While the government is under pressure to enhance tax collection, the increased administrative burden associated with this provision was not adequately considered.

While the government is facing fiscal constraints and requires revenue to meet it expenditure objectives and settle debts that are coming due, it remains to be seen whether the government interventions will create employment opportunities and spur growth in the manufacturing and agricultural sectors which have lagged over the last few years.

We provide in the ensuing pages our in-depth analysis of the Finance Act, 2023

Income Tax- Corporation Tax

Income Tax- Corporation Tax

Definition of "winnings"

Enacted provision: The Act defines the term "winning" to mean: *the pay-out from betting, gaming, lottery, prize competition, gambling, or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or waged*.

Implication: The definition removes ambiguity and provides clarity that the amounts staked or waged are to be excluded when computing tax on winnings.

Effective date: 1 July 2023

"Immovable property" definition broadened

Enacted provisions: The Act has broadened the definition of "immovable property" to include land, whether covered by water or not, any estate, right, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and include a debt secured by mortgage or charge on immoveable property; and a mining right, an interest in a petroleum agreement, mining information or petroleum information

The Act also moves the definition to the interpretation section of the Income Tax Act (ITA).

Implication: The definition broadens the meaning of "immovable property thus increasing the tax base. There is however ambiguity arising from the use of the conjunction '*and* ' in the definition which could create interpretation challenges.

Effective date: 1 July 2023

Definition of " digital content monetisation"

Enacted provision: The Act has introduced the term "digital content monetisation" which it defines to include offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in the following forms:

a) *Advertisement on website and social media platforms by partnering with brands, including endorsements;*

b) *Payment to content creator for promoting brands;*

c) *Affiliate marketing where an influencer is paid every time their fans click on a product they are promoting*

d) *Subscription payments to access the content of the content creator, including exclusive membership programs;*

e) *Licensing of content including photographs, music;*

f) *Fees earned from crowd funding*

The income on digital content monetization will now be subject to withholding tax at 5% for residents and 20% for non-residents.

Implication: The Act brings into the tax net, digital content business which is a growing business niche

Effective date: 1 July 2023

Income Tax- Corporation Tax

Deferment of foreign exchange loss now limited to 5 years

Enacted provision: The Act provides that the realized foreign exchange loss for a company, whose gross interest paid or payable to non-resident persons exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization (EBITDA) in any financial year, is to be deferred and claimed over a period not exceeding five years from the date the loss is realized.

Implication: Foreign exchange losses realized by persons subject to interest restriction, will be deductible within a period of 5 years from the date the loss is realized. The change provides clarity on the treatment of realized foreign exchange losses following the change in thin capitalization provisions.

Effective date: 1 July 2023

Income Tax – Corporation tax

Income from registered trusts

Enacted provision: The Act has deleted sub-section 11(3A) of the ITA which provides for taxation of income paid out of a registered Trust in respect of:

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;

b) income paid to any beneficiary which is collectively below ten million shillings in the year of income;

c) such other amount as the Commissioner may prescribe from time to time.

Implication:
The amendment provides clarity on the taxation of payments out of a registered trust to beneficiaries.
Effective date: 1 July 2023

Increase in Turnover Tax (ToT) rate from 1% to 3% and reduction of bands

Enacted provision: The Act has amended the upper band for ToT from KES 50 million to KES 25 million and increased the turnover tax rate from 1% to 3%.

Implication:
The reduction in the turnover of person falling under ToT from KES 50 million to 25 Million, reduces the number of persons paying ToT and subjects the persons with income above KES 25m to tax under the normal income tax provisions. These businesses will now compute their tax liability taking into account their expenses and pay income tax at the rate of 30%.

Effective date: 1 July 2023

Taxation of other manufacturing activities including refining

Enacted provision: The Act has included a provision for the taxation of manufacturing activities including refining under rates to be negotiated with Government where a business is established under a special framework arrangement with the government.

Implication:
Under the new provision, investors in government priority sectors will have the opportunity to negotiate favorable tax rates with the government, provided the investment is more than KES 10billion.

Effective date: 1 July 2023

Income Tax- Corporation Tax

Introduction of Digital Asset Tax at 3%

Enacted provision: The Act has introduced Digital Asset Tax (DAT) of 3% to be paid on income derived from the transfer or exchange of digital assets.

The Act defines a digital asset as:

- *anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and*
- *a non-fungible token or any other token of similar nature, by whatever name called.*

The income derived from transfer or exchange of a digital asset that is subject to tax is the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.

The owners of the platform are to deduct and remit the DAT to the KRA within 5 working days after making the deduction. The payment is to include a return with details of the amount paid, the tax deducted and any other information that the KRA will prescribe.

Non-resident owners of the platforms through which digital assets are exchanged or transferred are required to register under the simplified tax regime, similar to the existing regime under Digital Services Tax.

Implication:

The requirement to remit the tax within 5 working days after making the deduction is administratively onerous. In addition, by taxing the turnover rather than the gains, the tax is likely to be a disincentive for persons seeking to engage in digital asset trading.

Effective date: 1 September 2023

Income Tax – Corporation tax

Loose tools/implements (Section 15(2)(g)) disallowable expense?

Enacted provision: The Act has deleted Section 15(2)(g) to the ITA which allowed for tax deduction on diminution in value of loose tools and utensils.

Implication: The deletion removes a provision that allowed the deduction of expenditure on loose tools and utensils. However, the deletion appears to be a drafting error as the Act makes reference to substitution of the same with another paragraph that is not provided. The Finance Bill, 2023 had proposed that the loose tools and utensils be accorded 100% deduction. This is the provision that has been erroneously omitted in the Act.

Effective date: 1 July 2023

Enhancement of the Electronic Tax Invoice Management Systems (eTIMS) compliance

Enacted provision: The Act seeks to enhance tax compliance with the newly rolled out eTIMS by disallowing expenses that are not supported with eTIMS-compliant invoices, except where an exemption has been granted under the TPA.

Implication: The change will promote the adoption of eTIMS by ensuring that taxpayers only conduct business with suppliers who are VAT compliant. However, this is likely to disenfranchise small traders who may not qualify for VAT registration and are therefore not required to have eTIMS.

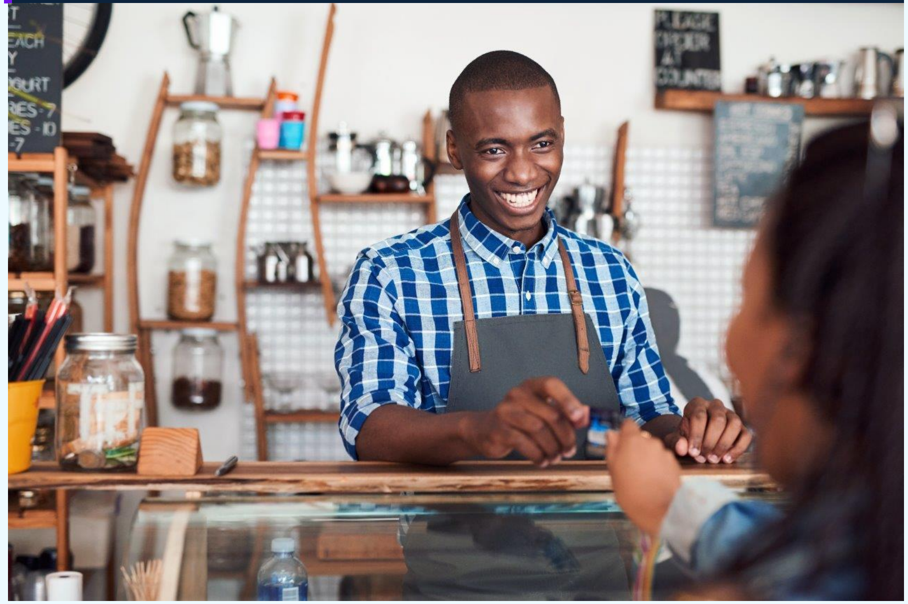
Effective date: 1 January 2024

Club fees and subscription now allowable

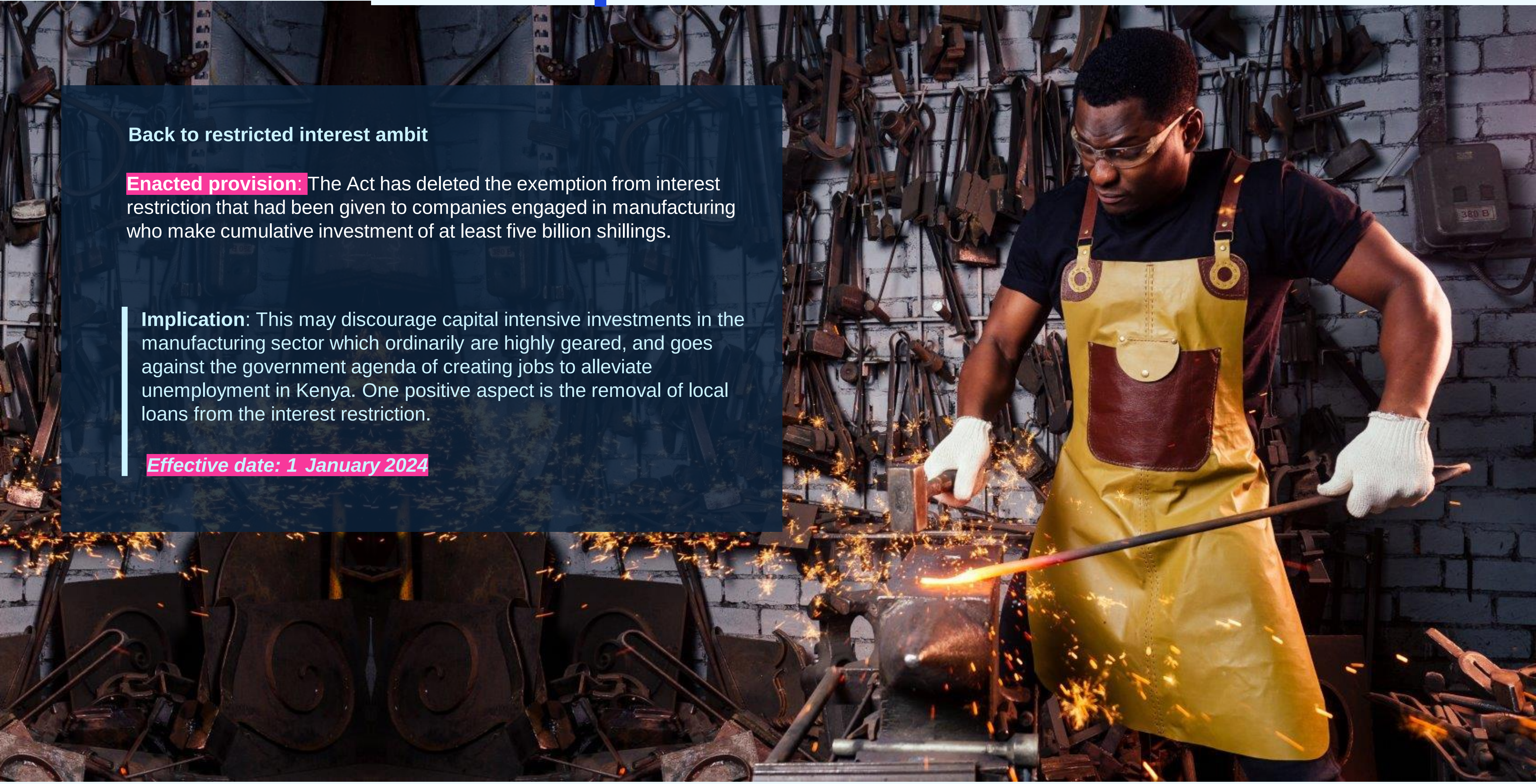
Enacted provision: The Act now allows the deduction of club subscriptions and entrance fees for corporation tax purposes.

Implication: The enacted provision will incentivize companies to invest in the welfare of their human capital with the hope of carrying out business development through networking.

Effective date: 1 January 2024



Income Tax – Corporation tax



Back to restricted interest ambit

Enacted provision: The Act has deleted the exemption from interest restriction that had been given to companies engaged in manufacturing who make cumulative investment of at least five billion shillings.

Implication: This may discourage capital intensive investments in the manufacturing sector which ordinarily are highly geared, and goes against the government agenda of creating jobs to alleviate unemployment in Kenya. One positive aspect is the removal of local loans from the interest restriction.

Effective date: 1 January 2024

Income Tax- Corporation Tax

Restricted interest – Applicable on non-resident persons

Enacted provision: The Act has ring fenced the interest accrued from local borrowing from the interest restrictions rules.

The Act further provides that where interest has been restricted, the taxpayer can claim a deduction of the restricted interest in the subsequent three years, provided that the deduction does not exceed 30% of EBITDA.

Implication: The change will encourage companies to borrow locally and could lead companies to restructure their loans in favor of the local financial sector. It also allows companies an opportunity to deduct restricted interest where a restriction arises from fluctuations in profitability in the short-term.

Effective date: 1 January 2024

Members' clubs and trade associations to pay tax

Enacted provision: The Act has brought to tax the income of members clubs and trade associations. Joining fees, welfare contributions and subscriptions are excluded from taxable income.

Implication: Under the repealed provision, the income of clubs and trade associations was not taxed as long as 75% or more of the income was from members. In light of the change, the members clubs and associations are now expected to account for tax irrespective of the source of their income.

Effective date: 1 July 2023

Income exempt from corporation tax

Enacted provision: The Act now exempts the following incomes from corporation tax:

i. Investment income of a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme

ii. Income earned by a non-resident person implementing a project that is 100% financed through a grant under an agreement with the government and a development partner, provided that the person is in Kenya solely for the implementation of the project

iii. Gain on the transfer of property within a special economic zone by a licensed enterprise, developer and operator

iv. Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fee paid by a special economic zone developer, operator or enterprise, in the first 10 years of its establishment, to a non-resident person

v. Royalties paid to a non-resident person by a human vaccine manufacturing company and interest paid to a resident and non-resident person by a company manufacturing human vaccines.

Implication: The above exemptions will encourage investment by individuals in their post-retirement health, spur interest in the Special Economic Zones and promote local manufacture of human vaccines.

Effective date: 1 July 2023

Income Tax- Corporation Tax

Persons eligible for exemption under the First Schedule - Defined

Enacted provision: The Act has defined a "body of persons" for purposes of tax exemption under Paragraph 10 of the First Schedule to the ITA as follows:

"**An institution, body of persons or irrevocable trust, of a public character**" means 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.

Implication: The definition enhances clarity, and removes ambiguity on who qualifies for exemption from income tax.

Effective date: 1 July 2023

Revocation of exemption for human vaccine manufacturers

Enacted provision: The Act has revoked the income tax exemption granted to companies undertaking the manufacture of human vaccines, and introduced corporate tax at a preferential rate to be set out in the respective Special Operating Framework Agreement.

Implication: This provision removes the contradiction that may arise from the exemption of human vaccines in the First Schedule to the ITA and the 10% tax rate provided under the Special Operating Framework Agreement.

Effective date: 1 July 2023

Income Tax- Corporation Tax

Introduction of industrial building and dock allowances

Enacted provisions: The Act has introduced industrial building and dock allowances at a rate of 10% on straight-line basis.

The Act defines an industrial building and a dock as follows:

- **Industrial building**: includes a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking;
- **Dock**: Includes a container terminal berth, harbour, 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.

Implication: The above provisions remove ambiguity on the capital allowances for docks and industrial buildings which had been left out when government overhauled the capital allowances regime.

Effective date: 1 January 2024

Expanded and new definitions under the Second Schedule of the ITA

Enacted provisions: The Act introduces the following definitions under the Second Schedule to the ITA as follows:

- **In the definition of "civil works",** by inserting the following new item immediately after item (v):

  "earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures".

- **Machinery used for agriculture -** means machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting;;
- **Telecommunications equipment -** includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment**.**

Implication: The change provides clarity on the classification of capital expenditure for capital allowances computations.

Effective date: 1 January 2024

Income Tax- Corporation Tax

Investment allowance

Enacted provisions: The Act extends the claim of investment allowance at a rate of 100% to hotel buildings, buildings and machinery used for manufacture.

Implication: The enacted provision will encourage investment in the hotel and manufacturing industry and in turn create employment.

Effective date: 1 January 2024

Definition of local content in reference to motor vehicle assembly companies

Enacted provision: The Third Schedule to the ITA provides a reduced rate of corporation tax of 15% for 5 years from the commencement of motor vehicle assembly operations. The reduced rate is extended for a further period of five years if the company achieves local content of 50% of the ex-factory price value.

The Act has now defined local content to mean parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Implication: This enacted provision provides clarity on what qualifies as local content. This will encourage the local assembly of motor vehicles while spurring local manufacture of parts due to the expected increase in demand.

Effective date: 1 July 2023

Investment Deduction on bulk storage and handling facilities supporting SGR operations

Enacted provision: Investments made before 31 December 2024 on the construction of bulk storage (100,000 metric tonnes and above) and handling facilities to support the Standard Gauge Railway operations will qualify for Investment Deduction of 150%.

Implications: This provision allows more time for the investors to enjoy higher capital allowances on the heavy investment made towards the construction of the storage facilities.

Effective date: 1 July 2023

Income Tax- Corporation Tax

Advance tax for motor vehicles – Increased

Enacted provisions: The Act has increased the advance tax payable on commercial vehicles, excluding tractors / trailers used for agricultural purposes, as follows:

Item	New rates	Old rates
Passenger vehicles	Higher of; KES 100 per passenger per month or KES 5,000 per year	Higher of KES 60 per person per month; or KES 2,400 per year
Cargo vehicles	Higher of; KES 2,500 per ton per year or KES 5,000 per year	Higher of; KES 1,500 per ton per year or KES 2,400 per year

Implication: The advance tax is claimable against the final tax liability. However, the change in rate is likely to increase tax revenues by capturing taxpayers who are not fully compliant.

Effective date: 1 January 2024

Inclusion of Mortgage refinance companies licensed under the Central Bank of Kenya Act as a financial institutions

Enacted provision: The Act has included mortgage refinance companies licensed under the Central Bank of Kenya Act as part of financial institutions under the Fourth Schedule.

Implications: Mortgage refinance companies licensed under the Central Bank of Kenya Act are now considered as financial institutions for taxation purposes. Thus, interest payments to such institutions will be exempted from withholding tax. In return, this is expected to increase liquidity of such companies. It is expected that they will have adequate funds to lend, boosting the realization of the affording housing agenda.

Effective date: 1 January 2024

Monthly Rental Income rate (MRI)

Enacted provision: The Act has reduced the rate of MRI tax from 10% to 7.5%.

Implication: This rate has been reduced to encourage tax compliance by property owners.

Effective date: 1 January 2024

Income Tax- Taxation of Branch

Reduction in Branch corporate tax from 37.5% to 30% and introduction of tax on deemed profit repatriation at 15%

Enacted provision: The Act has reduced the corporate tax rate applicable to branches from 37.5% to 30%

The Act has further introduced a provision to tax the after-tax profits on profits deemed to be repatriated by a permanent establishment.

The Act introduces a formula to determine the repatriated income as follows;

R= A1 + (P - T) – A2
R - the repatriated profit;
A1 - net assets at the beginning of the year;
P - net profit for the year of income calculated in accordance with generally accepted accounting principles;
T -the tax payable on the chargeable income; and
A2 - the net assets at the end of the year.

The net assets has been defined as the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.

Implication: The change aligns the corporation tax rate for branches to that of companies. The tax on repatriated profits is the equivalent of tax on dividend payments.

The difference between branches and companies is that while companies are taxed when they pay the dividends, branches will automatically be taxed based on increases in their asset values without considering their cashflow requirements.

Further, to achieve full equity with companies there is need for further amendments to make the various payments made to the head office or related entities of the branch tax deductible.

Effective date: 1 January 2024

Income Tax- Corporation Tax

Gains made by Partnerships now subject to Capital Gains Tax (CGT)

Enacted provision: The Act brings to the ambit of CGT, gains on transfer of-property situated in Kenya that is owned by partnerships.

Implication: Partnerships were previously exempt from CGT. The enacted provision seeks to tax any gains made on transfers of qualifying properties by partnership under the CGT regime.

Effective date: 1 July 2023

Gains derived from immovable property

Enacted provision: The Act brings to tax, capital gains derived from the sales 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 20% of their value directly or indirectly from immovable property situated in Kenya.

Implications: The provision seeks to extend the tax to gain on transfers of interests in partnerships and trusts that derive over 20% of value from immovable property situated in Kenya. The provisions also brings into the tax ambit indirect transfers of property.

Effective date: 1 July 2023

Gains from alienation of shares where alienator held directly or indirectly 20% of the capital of the company

Enacted provision: The Act brings to tax gains derived from the alienation of shares of a company resident in Kenya if the alienator, at any time during the three hundred and sixty-five days preceding such alienation, held directly or indirectly at least twenty per cent of the capital of that company

Implication: Where a person holds directly or indirectly 20% of the underlying ownership of a Kenyan resident company, any gains derived from alienation of shares of the company will now be subject to CGT. There is however, need to review the wording to clear ambiguity on the taxation of indirect transfers of shares.

Effective date: 1 July 2023

Notification to Commissioner now required where there is direct or indirect change of 20% ownership in a company

Enacted provision: The person alienating shares should notify the Commissioner in writing where there is a change of at least twenty per cent in the underlying ownership of the property.

Implication: A notification to the Commissioner will assist in tracing and collecting the CGT on the transfer.

Effective date: 1 July 2023

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Income Tax- Corporation Tax

Computation of gains where property not subject to capital gains tax is subsequently transferred in a taxable transaction

Enacted provision: The Act introduces capital gains tax where a property is transferred in a transaction that is not subject to CGT, and the property is subsequently transferred in a taxable transaction within a period of less than 5 years. The adjusted cost in the subsequent transfer will be based on the adjusted cost in the first transfer.

Implication: This closes the loopholes where persons could take advantage of CGT exemptions to manipulate the cost of the asset before subsequently selling to third parties.

Effective date: 1 July 2023

Due date for CGT

Enacted provision: The due date for CGT payment will be the earlier of receipt of full purchase price by the vendor or registration of the transfer.

Implications: The High Court had invalidated paragraph 11A of the eighth schedule which required a person to pay CGT on or before the date of application for transfer of the property is made at the relevant Lands Office. The new amendment is a reprieve to taxpayers as a transferor will now be required to pay CGT on the earlier of when they receive the full purchase price or when the transfer is registered.

Effective date: 1 July 2023

CGT exemption limit on reorganization of groups

Enacted provision: The Act limits the exemption from CGT on internal reorganizations to groups which have existed for at least 24 months where there is no transfer to a third party.

Implications: This provision seeks to close loopholes that lead to loss of CGT.

Effective date: 1 July 2023

Indirect transfer of interests of licensee or a contractor notification threshold now 20%

Enacted provision: The Act has increased the threshold for reporting a change in the underlying ownership of a licensee or a contractor from 10% - 20%.

Implication: This reduces the administrative burden of making such disclosures to the Commissioner.

Effective date: 1 July 2023

Income Tax- Corporation Tax

Investment allowance - Dropped

Proposed provisions: The Bill proposed investment allowance at a rate of 100% for hotel buildings, buildings and machinery used for manufacture which are located outside Nairobi and Mombasa.

Notably, the investment allowance would not apply to investments which, due to the nature are required to be located outside Nairobi City and Mombasa.

Implication: The proposal would mean that companies in sectors such as agricultural or mining would not enjoy the accelerated investment allowance, which would disincentivize investors, especially in the infrastructure space, where projects, due to their nature, can only be located outside the counties of Nairobi and Mombasa.

Income Tax - Withholding Tax

WHT on sales promotion, marketing and advertising services

Enacted provision: Introduction of withholding tax on sales promotion and advertisement fees paid to resident persons in excess of ***KES 24,000*** per month at the rate of 5% of the gross amount.

Implication: Marketing and advertisement services have remained out of the ambit of withholding tax due to lack of clarity in the law. The change brings these payments under the WHT ambit.

Effective date: 1 July 2023

WHT on digital content monetisation

Enacted provision: Payments for digital content monetisation are now subject to withholding tax at 5% for residents and 20% for non-residents.

Implication: The Act brings into the tax net, digital content creators or influencers in the wake of the growth of this sector. It is important to note that the Act does not provide a threshold for the taxable amount implying that any income will be taxable regardless of the value earned.

Effective date: 1 July 2023

Property management companies to be appointed as withholding tax agents

Enacted provision: The Commissioner can now appoint property managers as withholding tax agents. The appointed tax agents will be required to deduct rental income tax at a rate of 7.5% and remit the same together with a return within 5 working days following the date of deduction.

Implication: The move will bolster KRA's efforts to encourage compliance by rental property owners within the tax net and enhance the tax base. However, the 5 days timeline for remittance of the tax will be administratively onerous.

Effective date: 1 July 2023

Due date for withholding tax

Enacted provision: The Act has amended the current WHT due date from the 20th day of the month following the payment date to within five working days after the deduction.

Implication: While the new timelines are likely to bolster the government's cash flows, it will increase the compliance burden.

Effective date: 1 July 2023

Income Tax- Transfer Pricing

Income Tax – Transfer Pricing

Restriction on deduction of WHT paid against income adjusted by an audit

The Act restricts taxpayers from getting a deduction for WHT paid on payments to non-resident persons where an audit adjustment has been made in respect to such payments.

Implication:

This provision will predominantly affect taxpayers who may be subject to transfer pricing adjustments arising from related party transactions, which may lead to part of the expense being disallowed. Such taxpayers will not be allowed a credit for the overpaid WHT against the transfer pricing audit adjustment.

The provision could lead to double taxation where the tax credit is not allowed in Kenya and the income is taxed in Kenya and in the recipient's jurisdiction.

Effective date: 1 July 2023

Income Tax – Transfer Pricing

Definition of related person

The Act has included under Section 2 of the ITA the definition of a related person to mean:

"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"

Implication; This was previously defined under the Eighth Schedule on Capital Gains and the Income Tax (Transfer Pricing) Rules, 2006. The added definition does not take into account situations where a third party participates directly or indirectly in the management, control or capital of both entities.

Effective date: 1 July 2023

Qualifying intellectual property income

New provision:

The Act has introduced a restriction under section 18A subsection 4 on intellectual property income which is chargeable to tax under a preferential tax regime.

The Act provides a formula to determine the qualifying intellectual property income that is subject to tax at a preferential tax rate as follows:

$$I = \frac{Q}{T} \times P$$

Where:
I - income receiving tax benefits;
Q - research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs;
T - research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and
P - intellectual property income including royalties, capital gains and any other income from the sale of an intellectual property asset including embedded intellectual property income calculated under transfer pricing principles.

The qualifying intellectual property is determined by apportioning the research and development (R&D) activities made by the taxpayer excluding acquisition costs of the IP and related party outsourcing costs.

Losses arising from the IP are be deductible only against IP income.

Implication: The provision aligns Kenya's preferential tax regimes with the "nexus approach" under OECD BEPS Action 5 on harmful tax practices. This approach was developed in the context of IP regimes, and it allows a taxpayer to benefit from an IP regime only to the extent that the taxpayer incurred qualifying R&D expenditures giving rise to the IP income.

This provision creates a nexus between benefiting from the preferential tax regime and the extent to which the taxpayer has undertaken the underlying R&D that generated IP income. It is implied that the non qualifying IP shall be taxed at the resident rates.

Effective date: 1st January 2024

Income Tax – Transfer Pricing

Mutual Administrative Assistance in Tax Matters

New Provision. The Act has included mutual administrative assistance in the ambit of multilateral agreements relating to international tax compliance that shall have effect in Kenya as stipulated in said agreements.

Implication: The provision will empower the Commissioner to enforce the assessment and collection of taxes under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCAA).

The provision has set the stage for international cooperation in the assessment and collection of taxes from taxpayers.

Effective date: 1 July 2023

New Provision. The Act has also introduced a **mechanism for recovery and collection of tax** claims by the Commissioner.

The Commissioner shall recover the tax claim subject to a request by the competent authority of a party to the international tax agreement.

Where a tax claim is made against a person who is not a resident of the requesting state, the Commissioner may recover the tax where the claim is not contested. The tax claim shall be made under a prescribed form. The proposal further outlines the prescribed format. Additionally, the proposal empowers the Commissioner to commence proceedings for the recovery of the tax claim in the event a person fails settle the tax due.

Implication: The provision provide for administrative co-operation between Kenya and other states in the assessment and collection of taxes.

This co-operation ranges from exchange of information, (spontaneous, on request or automatic), tax examinations abroad, simultaneous tax examinations and assistance in collection of taxes.

The Commissioner's ability to collect taxes on behalf of other states will also improve Kenya's capacity to request and obtain assistance in collection of taxes from other states. The enforcement of the MCAA will increase the ever-growing scrutiny on multinational enterprises as conventions are broader in scope than most bilateral treaties in that they cover consumption taxes such as value-added tax and excise tax, in addition to income tax and capital gains tax.

Effective date: 1 July 2023

Income Tax – Transfer Pricing

Country-by-Country reporting notification requirements for Multinational Enterprises Section 18D (1,2,3)

The Act requires each ultimate parent entity (UPE) resident in Kenya to file a Country By Country (CbC) report with the Commissioner. All UPEs resident in Kenya will be required to file a CbC report.

The Act has imposed an obligation on a constituent entity (CE) of an MNE that is resident in Kenya to file a CbC report. The following conditions have to be fulfilled for a CE to file a CbC report in Kenya:

a) If the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence
b) The jurisdiction in which the ultimate parent entity is resident has signed 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; and
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.

Implication: These conditions aim at ensuring that the CE resident in Kenya can be held responsible for submitting the CBC report.

Effective date: 1 July 2023

CBC Notification – Clarification on period of income

The Act has clarified the period of income for which the threshold applies for the purposes of CBC notification. The period to be considered is the preceding year of income as presented in the group consolidated financial statements. The Act also clarifies that the threshold applies to total consolidated group turnover.

Implication: This has eliminated the ambiguity around the year of income for which the KES 95billion turnover threshold applies and provides clarity on the turnover to be considered in the determination of the threshold.

CbC Reporting - Clarification on UPE

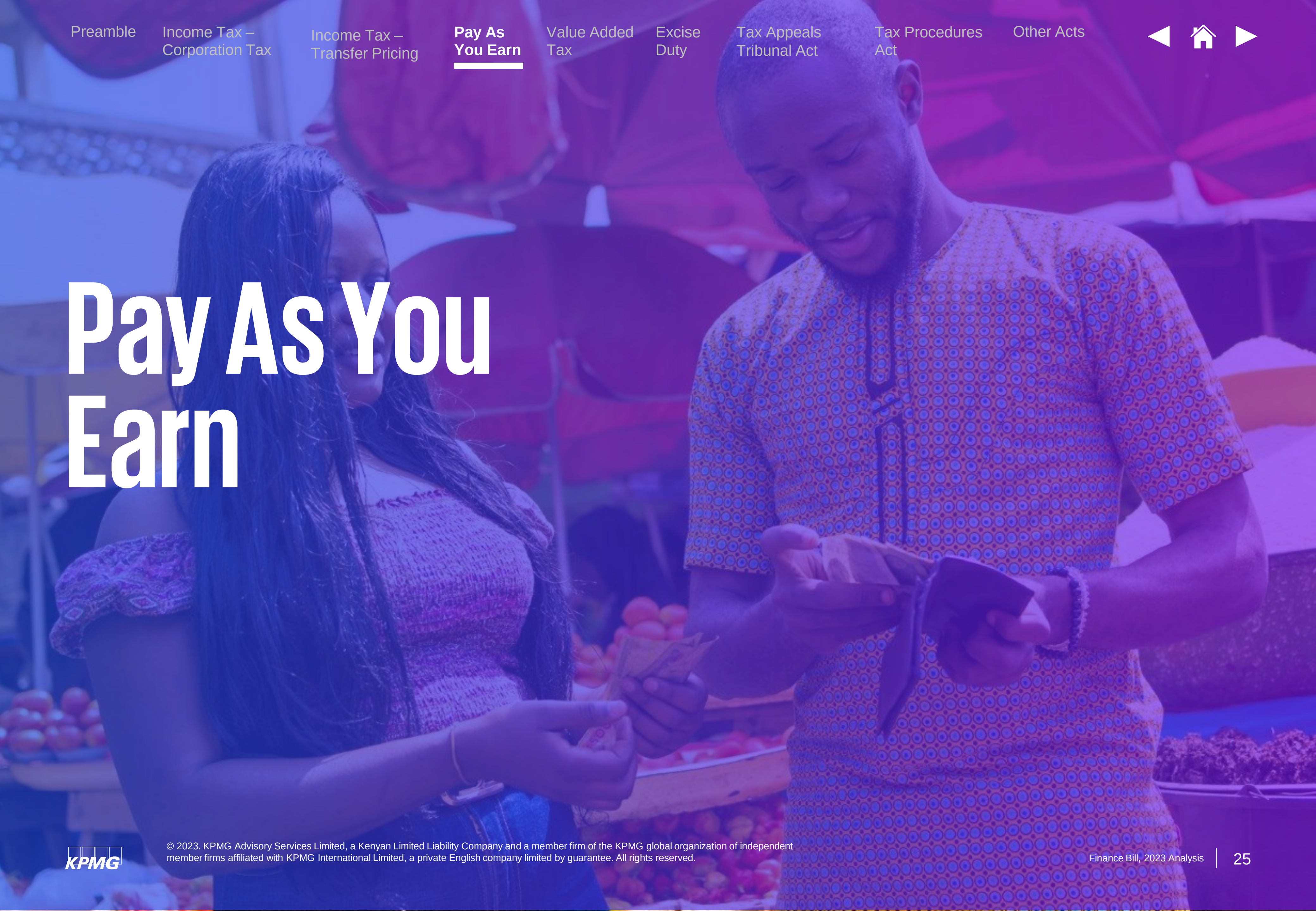
The Act has redefined the term ultimate parent entity as:

- an entity which is not controlled by another entity and
- owns or controls, directly or indirectly one or more constituent entities of a multinational enterprise group.

Implication: This has provided clarity from the previous definition which brought confusion since it required a UPE to be resident in Kenya for tax purposes, which would have restricted the applicability of Section 18D to MNEs headquartered in Kenya

The definition is now aligned to the definition of a UPE under OECD BEPS Action 13.

Effective date: 1 July 2023



Pay As You Earn

Pay As You Earn

Shares given to employees in lieu of cash emoluments by start-ups

The taxable benefit on the shares received by employees in lieu of cash emoluments from an eligible start-up shall be deferred and taxed within thirty days of the earlier of:

a) the expiry of five years from the end of the year of the award of the shares;

b) the disposal of the shares by the employee; or

c) the date the employee ceases to be an employee of the eligible start-up.

Further, the Act defines an eligible start-up as a business incorporated in Kenya that:

a) has an annual turnover of not more than one hundred million Kenyan Shillings;

b) does not carry on management, professional or training business;

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.

Market value:

The taxable benefit shall be the fair market value of the shares at the tax due date. Where the fair market value is not available the Commissioner shall assess the value based on the last issued financial statements.

Implication: The amendment seeks to encourage start-ups to allow employees to benefit from the growth of the company by issuing employees with shares. This is crucial as it eliminates the immediate need to finance salaries and allows employees to benefit from the growth of the company. Unlike normal shares, the tax point is deferred even though the benefit may accrue immediately.

Effective Date: 1 January 2024

Pay As You Earn

Market value for ESOPS – clarified!

The Act has amended the definition of market value for shares provided under an Employee Share Ownership Plan (ESOP) by amending the definition from 'the market value when the shares were granted by employer' to 'the market value when the option is exercised by the employee' where shares are fully listed on any security exchange in Kenya.

The Act has also amended the definition of the market value where the shares are not listed to the price which the shares are expected to fetch at the point of exercising the option.

Implication:

The amendment provides clarity on the market value of the shares granted under an ESOP for purposes of computing the benefit accruing to an employee. In both instances, the market value of the share is determined at the point of exercising the option.

Additionally, this amendment removes the administrative responsibility that the Commissioner would have undertaken to determine the value of shares where the shares were not listed.

Effective Date: 01 July 2023

Taxation of club entrance and subscription fees

Club entrance and subscription fees will now be taxed on the employee where the same has not been taxed on the employer.

Implication: The employer can elect who bears the tax burden on club entrance and subscription fees. This also removes the current ambiguity on double taxation of club entrance and subscription fees on both the employee an employer.

Effective Date: 01 July 2023

Pay As You Earn

Relief for contributions to a post-retirement medical fund

The Act has introduced relief on contributions made by a resident person towards a post-retirement medical fund. The value of the relief is 15% of contributions capped at ***KES 60,000*** p.a.

Implication:

This provision will encourage individuals to take up post-retirement medical scheme to cater for medical costs in their post employment years.

Effective Date: 01 January 2024

Unfettered benefit for public officers: Dropped

The Bill had proposed to exempt from tax any amount paid or granted to a public officer to reimburse expenditure incurred in the performance of official duties regardless of the ownership or control of the assets purchased.

Implication: This provision would have created a disparity in the treatment of reimbursements between public and private sector workers. It was also open to abuse especially where it appeared to suggest that costs for purchase of assets could be reimbursed regardless of who owns the assets.

Mileage - Exclusion from tax

The Act has excluded from taxation, travel and mileage claims that are incurred during the performance of official duties, where the mileage claims are based on the standard rates approved by the Automobile Associate of Kenya.

Implication: This change reaffirms the practice of excluding mileage and travel reimbursements from employment tax, and also reinforces the limits within which such benefits may be extended to.

Effective Date: 01 July 2023

Pay As You Earn

New PAYE bands!

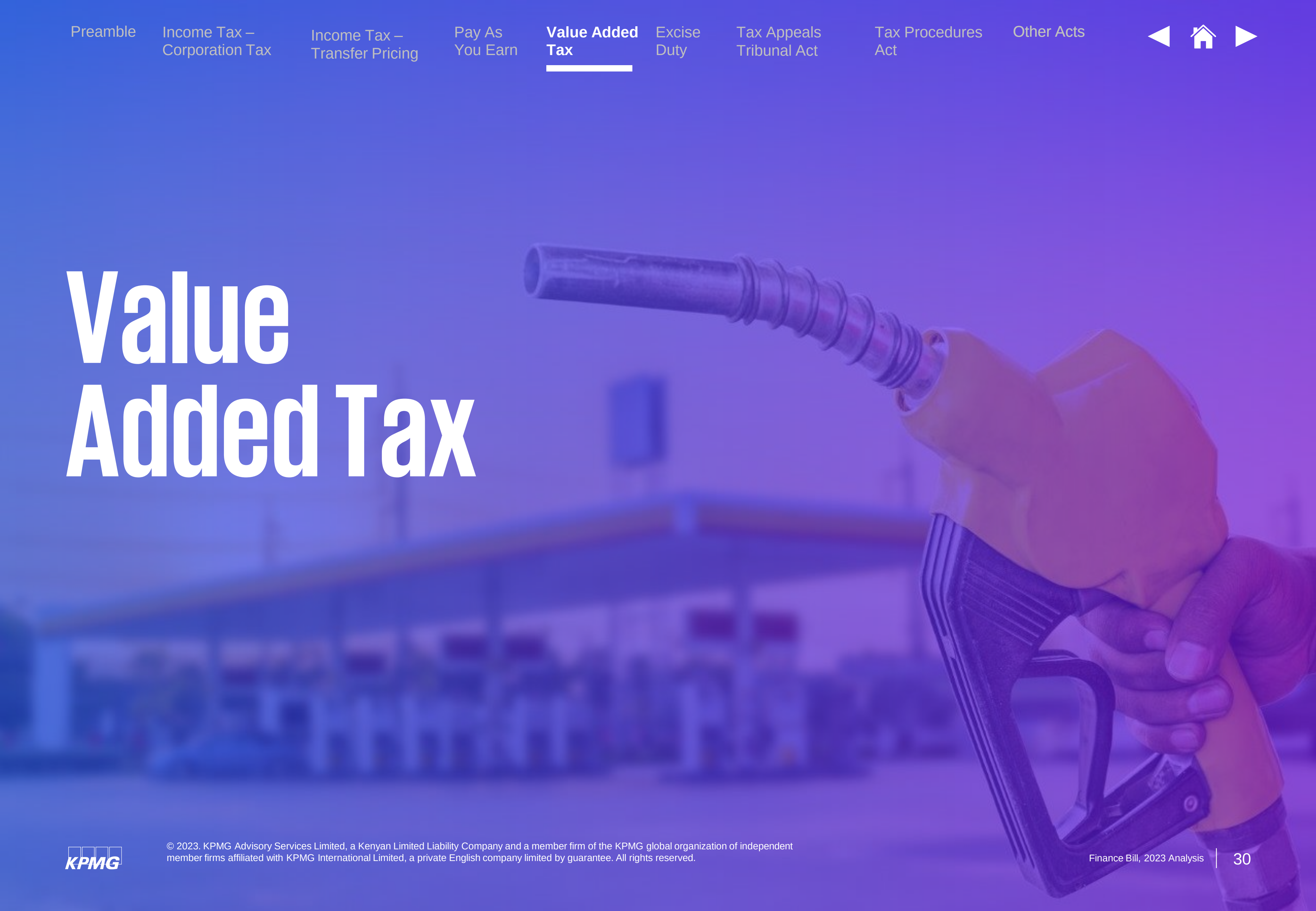
The Act has introduced two new PAYE tax bands with a tax rate of 32.5% and **35%** on employment income above ***KES 6,000,000*** and ***KES 9,600,00*** per annum respectively.

The updated tax bands are as tabled below:

Amount (Per annum)	PAYE Rate
On the first KES 288,000	10%
On the next KES 100,000	25%
On the next KES 5,612,000	30%
On the next KES 3,600,000	32.5%
On all income over KES 9,600,000	35%

Implication: The objective of the change is to shore up the tax revenue by increasing tax on employees earning more than ***KES 500,000 per month***. However, the anticipated increase in revenue may be negligible given that majority of employees in Kenya earn below ***KES 100,000 per month***.

Effective Date: 01 July 2023



Value Added Tax

Value Added Tax

High pump prices

Enacted amendment The Act has deleted section 5(2)(aa) of the VAT Act effectively moving petroleum products (excluding Liquid Petroleum Gas) to VAT at the standard rate of 16%.

Implication : The VAT rate of 8% on petroleum products was introduced in the year 2018. This was after the transition clause which provided for an exemption of the VAT on such products for a period of two years expired.

This will impact the prices of transport and production of goods, increasing the inflationary pressure in the economy.

Effective Date: 01 July 2023

LPG relief

Enacted amendment : The Act has amended the Second Schedule to the VAT Act to zero-rate Liquefied Petroleum Gas (LPG). VAT of 16 % on LPG was introduced through the Finance Act of 2020 but the implementation was suspended to July 2021 amid concerns over high living costs. Subsequently through the Finance Act 2022, VAT was imposed on LPG at the rate of 8%.

Implication: By zero-rating VAT on LPG, it is expected that this will reduce the cost of LPG and positively impact the climate through use of clean energy. Input VAT incurred by the suppliers of LPG will now be claimable.

Effective Date: 01 July 2023

Sealing loopholes in claiming of input VAT

Enacted amendment : The Act has amended 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.

Implication : With the full implementation of the Tax Invoice Management System (TIMS), the expectation is that an invoice declared by the seller will be reflected on the purchasers input ledger. This amendment aligns with the implementation of TIMs where the purchaser will be able to confirm that the supplier has declared the supplies before the purchaser claims input.

As the TIMS functionality is yet to be fully realised, it remains a hurdle for taxpayers claiming input VAT as they do not have visibility of the supplier's return.

Effective Date: 01 July 2023

VAT on compensation of loss of supplies

Enacted amendment : The act has amended Section 17 of the VAT Act by providing that a *bona fide* owner of taxable supplies, who has deducted input tax, and is compensated for the loss of the taxable supplies, shall account for VAT on the compensation received irrespective of whether the compensation includes VAT.

Implication : The amendment will impact compensation from insurance following the loss of taxable supplies where input VAT had already been claimed. In cases where the compensation includes VAT, the owner will be required to declare the compensation and remit the VAT. If the compensation does not include VAT, the owner would have to deem the compensation to be inclusive of VAT. If not compensated, they would be out of pocket.

Effective Date: 01 July 2023

Value Added Tax

Clarification on VAT registration requirements for digital service providers

Enacted amendment : The Act has amended Section 34 of the VAT Act to explicitly require persons supplying imported digital services over the internet or an electronic network or though a digital marketplace to register for VAT, whether or not they have met the KES 5 million threshold.

Impact : The Finance Act 2022 introduced the requirement to have non-resident suppliers of digital services register for VAT. However, based on the wording of the law, it was not clear if suppliers of digital services were subject to the registration threshold.

The change makes it clear that all suppliers of imported digital services will be required to register for VAT irrespective of their turnover.

Effective Date: 01 July 2023

Record keeping

Enacted amendment - The Act has amended Section 43 of the VAT Act to provide that tax records can be kept in any other place.

Implication: The removal of this requirement will make it easier for businesses to keep records anywhere in the world, in response to the continued digitalization of operations and migration to cloud-based services This may also reduce the costs and administrative burden associated with investing to ensure that these records are kept in Kenya.

Effective Date: 01 July 2023

Exportation of taxable services

Enacted amendment: The Act has reclassified the exportation of services from standard rated to zero-rated status

Impact: . 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 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 leading to confusion on what qualified for zero-rating and VAT at the standard rate.

The change provides clarity on the VAT treatment for exported services, including BPOs. Input VAT cost incurred by exporters of will be claimable, reducing the expense of providing the services.

Effective Date: 01 July 2023

Value Added Tax

Place of supply for suppliers outside Kenya

Enacted amendment : The Act has amended section 8 of the VAT Act to expand the definition of a supply made in Kenya by persons outside Kenya to include a supply made to registered persons.

Impact : This aligns the determination of place of supply of services to cover both registered and unregistered persons

Effective Date: 01 July 2023.

Time of supply for national carriers

Enacted amendment : The Act has amended section 12 of the VAT Act to exclude national carriers from the provisions of sub section 1 which provides time of supply to be the earlier of invoice date, date of payment, date of certificate or date on which goods are delivered or services performed.

National carriers will now declare supplies when the goods are delivered or services performed.

Impact : This is a relief to the national carrier which has experienced cashflow issues in the recent times.

Effective Date: 01 July 2023

Refund of tax on bad debts

Enacted amendment : The Act has amended section 31 of the VAT Act to extend the time period within which a taxpayer may apply for refund of tax on bad debts from 3-4 years to 3-10 years.

The Act also clarifies that the approved refund will be applied to outstanding liabilities and the excess credited to the taxpayer's ledger for use against future VAT liabilities.

Impact : This change will allow taxpayers time to apply for refund of tax on bad debts.

Effective Date: 01 July 2023

Value Added Tax

Clean-up of the VAT Act

The Act has changed tariff numbers in the VAT Act to align with the recent changes in tariff classifications in the CET 2022. Below are the changes:

Enacted Change	Old Tariff Numbers	New Tariff numbers
Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale	3003.40.00	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 informs or packings for retail sale	3003.90.10 3004.90.90	3003.90.00
White absorbent cotton wadding impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes	3005.90.10	3005.90.11 3005.90.12 3005.90.19
Malaria Diagnostic Kits	3002.11.00	3822.11.00
Vaccines for human medicine	3002.20.00	3002.41.00
Vaccines for veterinary medicine	3002.30.00	3002.42.00
Blood-grouping reagents	3006.20.00	3822.13.00
Printed and unprinted Perforated PE film of other plastics 15-22 gsm	3921.90.00	3921.90.10 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.	3822.00.00	3822

Value Added Tax

Clean-up of the VAT Act

The Act has amended the tariff numbers in the VAT Act to align with the recent changes in tariff classifications in the CET 2022. The changes included revision of tariff codes and tariff codes under description of items. We discuss these below:

Tariff description	Old Tariff number	New Tariff number
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	8523.80.10	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	8423.31.00	8423.10.00

The Act has sanitized various tariff codes as the items are already covered under another HS code, including:

3002.19.00 - Other - Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes

Effective Date: 01 July 2023

Change in Tariff Description

As part of the sanitization process, the Act cleaned up the tariff description while retaining the items still under exempt status:

Current Description	New Description	VAT Status
Fish and crustaceans, mulluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307	Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307	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	Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale	Exempt
Medicaments containing other antibiotics put up in measured doses or in forms or packings for retail sale	Other Medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale	Exempt
Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.	Other, medicaments containing hormones or other products of heading 29.37 Containing corticosteroid hormones, their derivatives or structural analogue of tariff	Exempt
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.	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
Medicaments containing other antibiotics put up in measured doses or in forms or packings for retail sale.	Other Medicaments containing antibiotics put up in measured doses or in forms or packings for retail sale.	Exempt

Change in Tariff Description

Current Description	New Description	VAT Status
Chemical contraceptive preparations based on hormones or spermicides	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	Other instruments and appliances, used in dental sciences of tariff 9018.49.00, Other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health	Exempt
Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	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, 9018.19.00,9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	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
Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories	Parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories	Exempt

Standard rated to Exempt

The Act has amended the following items by moving them from standard rated to Exempt:

Item	Old rate	New rate
Aircraft parts of heading 8801* *The proposal is to extend the exemption to all Aircraft, spacecraft and parts thereof under Chapter 88 of the Common External Tariff.	Standard rated	Exempt
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of one hundred beds, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.	Standard rated	Exempt
Plant and machinery of chapter 84 and 85 acquired locally by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health	Standard rated	Exempt
Taxable goods, inputs and raw materials imported or locally purchased by a company engaged in special operating framework arrangement with the government and is incorporated for purposes of undertaking manufacturing activities including refining	Standard rated	Exempt

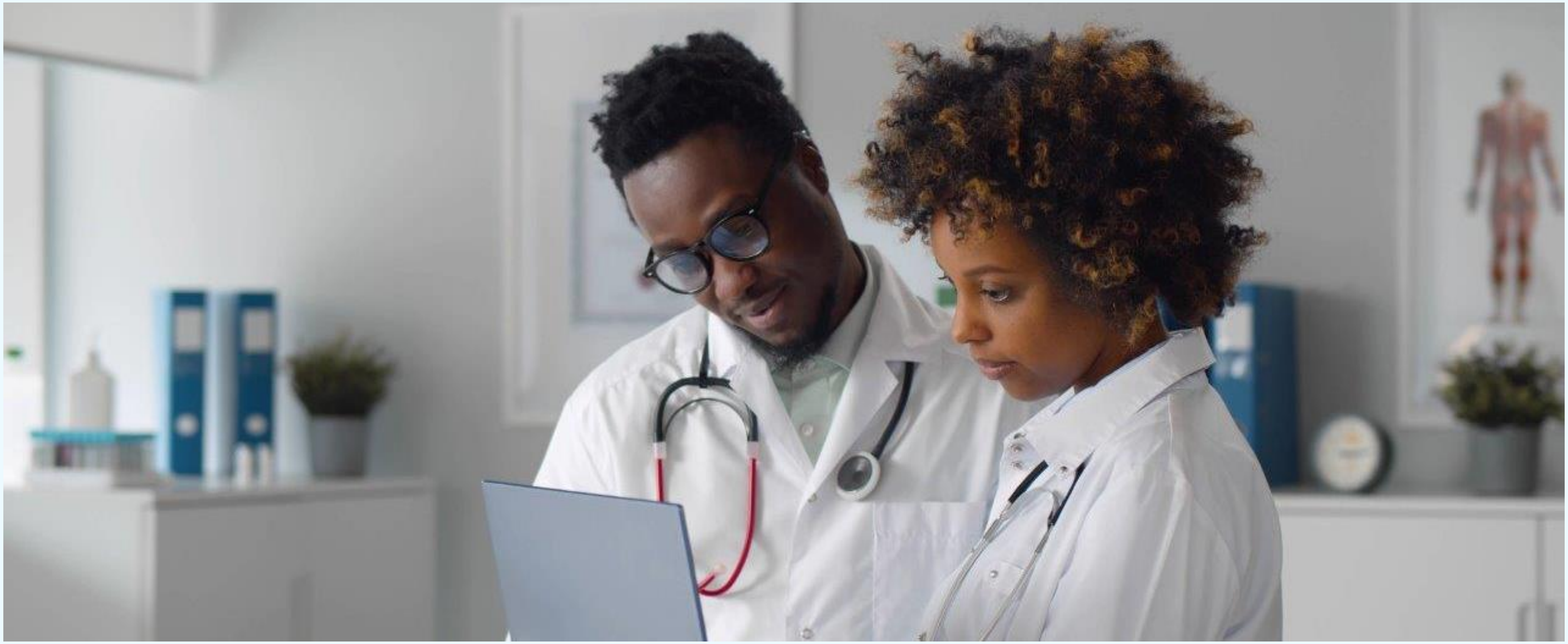
Standard rated to Exempt

The Act has amended the following items by moving them from standard rated to exempt:

Item	Old Rate	New rate
Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education.	Standard rated	Exempt
Taxable services imported or locally purchased by a company which— a) is engaged in business under a special operating framework arrangement with the Government; and b) is incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings	Standard rated	Exempt

Exempt – Standard rated

Item	Old Rate	New rate
Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health	Exempt	Standard rated



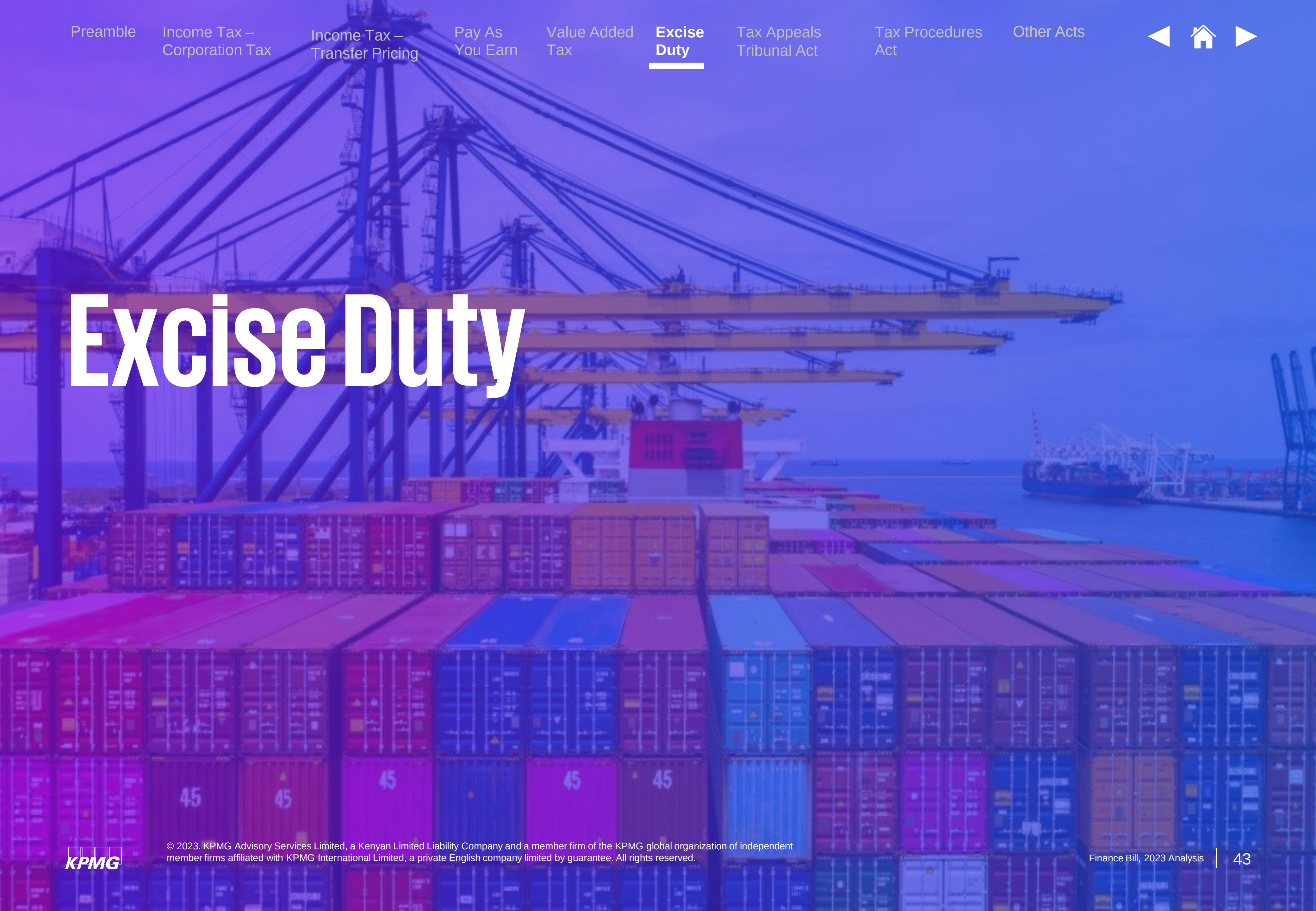
Standard rated to Zero-rated

Item	Old Rate	New rate
Inbound international sea freight offered by a registered person	Standard rated	Zero rated
All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs.	Standard rated	Zero rated
Supply of locally assembled and manufactured mobile phones	Standard rated	Zero rated
Supply of motorcycles of tariff heading 8711.60.00	Standard rated	Zero rated
Supply of electric bicycles	Standard rated	Zero rated
supply of solar and lithium ion batteries.	Standard rated	Zero rated
supply of electric buses of tariff heading 87.02.	Standard rated	Zero rated
Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.	Standard rated	Zero rate
Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)	Standard rated	Zero rated

Retention of Zero rate on wheat/maize flour

Item	Old rate	New rate
The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight .	Zero rated	Zero rated

The amendment is meant to clarify that the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight will be zero-rated, should the law be passed. Currently as worded, there are two conflicting provisions in the First and Second Schedule of the VAT Act.



Excise Duty

Excise Duty

Aligning of definition of excise control

The Excise Duty Act, 2015 makes reference to definition of excise control to Section 23. However, the correct reference is Section 24, that defines excise control. The Act has rectified this error by making reference to Section 24.

Implication: The intention of the Act is to align the reference to the definition of excise control to the correct Section of the Act. Section 23 deals with the commissioners notifying the licensee prior to suspension of the license while section 24 covers excisable goods under excise control.

Effective date: 1 July 2023

Revocation of annual inflation adjustment

The Act has repealed annual inflation adjustment. Currently, the Commissioner General has powers to adjust the specific rate of excise duty once a year to take into account inflation.

Implication: This will cushion taxpayers against the high cost of living. The previous provision imposed additional taxes as a result of inflationary changes to prices which had the impact of making the effect of inflation worse.

Effective Date: 01 July 2023

Excise Duty

Introduction of Offences.

The Act has repealed the general offences section and introduced specific offences with a fine of KES 5,000,000 or a term not exceeding three years or both upon conviction. These offences include:

1. Defacing or printing over an excise stamp affixed on any excisable goods or package;
2. Being in possession of excisable goods on which stamps have not been affixed and which have not been exempted from this requirements under law;
3. Acquire or attempt to acquire an excise stamp without authority;
4. Prints, counterfeit, makes or in any way creates an excise stamps without authority;
5. Being in possession of an excise stamp which has been printed, made or in any way acquired without authority;
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
7. Being in possession of, conveying, selling, distributing, or trading in excisable goods which have be affixed with counterfeit excise stamps.

Implication: This will assist in getting rid of illicit/counterfeit products in the market thus protecting the society. Revenue leakage for both the government and manufacturers will also be sealed.

Effective Date: 01 July 2023

Excise Duty

Payment of Excise Duty by manufacturers of alcoholic beverages

The Act has introduced a change requiring all manufacturers of alcoholic beverages to pay excise duty to the Commissioner within twenty-four hours upon removal of the goods from the stockroom.

> **Implication:** This will increase the cost of doing business as extra manpower or efficient systems will be needed to ensure remittance of the taxes within the twenty-four hour. This will also contribute to increased liquidity of the government.
>
> ***Effective Date: 01 July 2023***

A 24-hour betting economy!

The Act has provided for the remittance of excise duty on betting and gaming through a platform or other medium within 24 hours from the closure of transactions of that day.

Further, the Commissioner has been empowered to require any other taxpayer providing excisable services to remit excise duty within 24 hours through a gazette notice.

> **Implication:** While this will enhance cashflow for the government, it will be cumbersome for taxpayers with significant number of transactions, to comply as it will lead to additional administrative costs and will require deployment of additional resources to meet the tight deadlines.
>
> ***Effective Date: 01 July 2023***

Excise Duty Changes

Change in scope

Old Scope	New scope	Rate
White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Imported white chocolate of heading 1704	Kes 40.37 per kg
	Imported chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00;	Kes 242.29 per kg
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90.	Imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90.	10%
Motorcycles of tariff 87.11 other than motorcycle ambulances and locally assembled motorcycles.	Motorcycles of tariff 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles	Kes 12,185.16 per unit

Implication: The exclusion of locally manufactured plastic articles will protect the local industries thus encouraging more investments. Electric motor cycles are also exempted from excise duty encouraging use of clean fuel sources.

Effective date: 1 July 2023

Excise Duty Changes

Change in excise duty rates on goods

Item	Old rate	New rate
Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)	25%	35%
Imported Alkyd	10%	20%
Imported Unsaturated polyester	10%	20%
Imported Emulsion VAM	10%	20%
Imported Emulsion - styrene Acrylic	10%	20%
Imported Homopolymers	10%	20%
Imported Emulsion B.A.M.	10%	20%

Implication: The increase in the excise duty rate on the imported products is to protect local manufacturers while increasing tax revenues.

Effective date: 1 July 2023

Excise Duty Changes

Introduction of excise duty on new products

Item	Old rate	New rate
Imported fish	N/A	10%
Powdered juice	N/A	Kes 25 per kg
Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer.	N/A	Kes 5 per kg
Imported cement	N/A	10% of the customs value or Kes 1.5 per kg, whichever is higher
Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	N/A	30%
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	N/A	15%
Imported non-virgin test liner of heading 4805.24.00	N/A	25%
Imported non-virgin fluting medium of heading 4805.19.00	N/A	25%
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90;	N/A	25%
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90	N/A	25%
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00	N/A	25%

Implication: The Government seeks to collect more revenue from these items as well as safeguard the local market from cheap imports thus promoting the local traders.

Effective date: 1 July 2023

Excise Duty

Changes in excise duty on services

Item	Old rate	New rate
Telephone and internet data services	20%	15%
Money transfer services by banks, money transfer agencies and other financial service providers	20%	15%
Money transfer services by cellular phone service providers or payment service providers licensed under the national payment system Act 2021	12%	15%
Betting	7.5%	12.5%
Gaming	7.5%	12.5%
Prize competition	7.5%	12.5%
Lottery (excluding charitable lotteries)	7.5%	12.5%
Fees charged on advertisement on television, print media, Act boards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions	N/A	15%

Implication

The decrease in excise duty on telephone, internet, and fees charged on money transfer services by banks, money transfer agencies and other financial services may see an increase in the number of transactions effectively increasing the revenue for the Government.

The increase in excise duty on fees charged for money transfer services by cellular phone service providers may lead to a decrease in the number of transactions thus may see a decrease in the excise duty collection. The move aligns the taxation between different money transfer platforms

The increase in excise duty on betting, gaming, prize competition and lottery is aimed at curtailing the consumption of services that are considered harmful while increasing revenues to the government. The excise duty on advertisement is likely to lead to reduction in expenditure impacting media and advertising agencies.

Effective date: 1 July 2023

Excise Duty

Inclusion of gaming

The Act has expanded the definition of amount wagered or staked to include the amount of money placed by a person for an outcome in a gaming transaction.

Implication: This widens the scope of excise duty leading to increased revenue collection.

Effective date: 1 July 2023

Exempt Excisable Goods – Kits for mobile phones

Disassembled or unassembled kits for local assembly or manufacture of mobile phones have been exempted from Excise Duty.

Implication: The exemption of these kits from excise duty may incentivise the manufacturers of mobile phones to open assembly plants in the country thus creating employment and earning foreign exchange on export of the manufactured phone.

Effective Date: 01 July 2023

Tax Appeals Tribunal Act

Tax Appeals Tribunal Act

Documents at appeal– Clean up

- **Enacted provision**: The Act has included appealable decisions as part of the bundle of documents to be filed before the Tax Appeals Tribunal.
- Further, the Act has widened the scope of documents to be filed together with the appeal to include any other document that may be necessary to enable the Tribunal decide the appeal.

Implication: The change aligns the Tax Tribunals Act to the Tax Procedures Act and clarifies that taxpayers shall be required to provide the tax objection decision together with the bundle of supporting documents which they seek to rely on.

The inclusion of such other documents as may be necessary for the Tribunal to make a decision creates an avenue for taxpayers to introduce documents considered vital to the appeal but may have not been previously considered by the revenue authority.

Effective date: 1 July 2023

Excluded Provision

Security on Appeal to the High Court - DROPPED

- **Excluded provision**: The Finance Bill, 2023 had proposed to amend the Act to introduce a requirement for tax payers to deposit 20% of the tax in dispute or a security of an equivalent amount with the Commissioner before filing appeals to the High court.

The decision to exclude this provision is welcome given the opposition it received from stakeholders on the basis that it would violate the constitutional right to access justice.

Tax Procedures Act

Tax Procedures Act

Definition of a tax decision

- **Enacted provision**: The Act has amended the definition of "tax decision" to exclude tax refund decisions by the revenue authority.
- The Act has further amended the definition of a tax decision to include both a demand for penalty or late payment interest

Implication: The amendment to the definition of a "tax decision" is a clean-up since it is currently not clear whether refund appeals should be objected to or go directly to the TAT. After the effective date, refunds will be covered under Section 47 of the Tax Procedures Act which requires that such decisions be appealed to the Tax Appeals Tribunal.

On the other hand, the fact that KRA's demand for late payment interest can now be objected to and appealed against as it will now be considered a tax decision, is good news to the taxpayer. This will be beneficial to taxpayers as there was a gap in the wording which included only a demand for penalties, and not interest, in the definition of tax decision.

Effective date: 1 July 2023

International Tax Agreements

- **Enacted provision**: The Act has amended Section 6A to include any multilateral agreement or treaty entered by the Government in relation to mutual administrative assistance in the collection of taxes as part of international tax agreements

Implication: Before the amendment, the international tax agreements outlined in the TPA only related to international tax compliance, prevention of evasion of tax or exchange of information on tax matters but not collection of taxes.

It is unclear if the current non-disclosure provisions (Sec 6A(2)) that apply to international tax agreements will apply to the multilateral agreements for assistance in collection of taxes.

Effective date: 1 July 2023

Tax Procedures Act

Record Keeping Requirements for a Trustee

- **Enacted provision**: The Act has amended Section 23 to bring resident trustees who administer trusts registered in or outside Kenya within the ambit of the record keeping provisions in the TPA. Under the new change, resident trustees will be obligated keep all documents required under a tax law and produce to the KRA on demand, whether the income is generated in Kenya or not.

Implication: 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 assessments for trusts administered from Kenya where they deem fit. 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.

Effective date: 1 July 2023

Establishment of an Electronic system

- **Enacted provision**: The Act has introduced a new Section 23A that gives the Commissioner powers to establish an electronic system through which electronic tax invoices are to be issued and records of stocks kept.
- The Act further imposes a requirement that a businesses will going forward be required to issue electronic tax invoices through the system and maintain a record of stocks in the system and that expenses without valid electronic invoices will not be deductible for CIT purposes.
- The mandatory requirement for electronic tax invoices may exclude emoluments, imports, investment allowances, interest, and similar payments.
- The Commissioner may also by way of gazette, exempt a taxpayer from requirements of the establishing an electronic system for tax invoices.

Implication: This amendment will align the TPA with the roll-out of the electronic Tax Invoice Management System (eTIMS) in 2022.

The System shall give the Commissioner visibility of transactions and possibly also assist taxpayers in dealing with potential issues of disallowed input VAT on the basis of insufficient documentation.

It is against this backdrop that the Act provides that deductions only be allowed to the extent that they are supported by valid invoices subject to the exclusions listed.

Effective date: 1 September 2023

Tax Procedures Act

Amendment of an assessment

- **Enacted provision**: The Act has widened the scope of the Commissioner's powers to further amend assessments.
- In cases where an assessment has already been amended, the TPA only allowed further amendments by the Commissioner on the original assessment.
- The Act has deleted the term "original" in reference to assessments that the Commissioner may further amend

Implication: The new amendment intends to remove the restriction on subsequent amendments on assessments that had previously amended. The new change may however lead to uncertainty on the part of taxpayers since they may be exposed to multiple amendments of assessments by KRA.

Effective date: 1 July 2023

Recovery of a tax claim in an International tax Agreement

Enacted provision: The Act has empowered the Commissioner to recover or collect taxes as part of an international tax agreement that provides for mutual administrative assistance in the recovery or collection of tax claims.

- Under the amendment, KRA will have the powers to enforce recovery of tax claims upon request by the competent authority of a party to the international tax agreement.
- Where the tax claim under this change is against a non-resident of requesting state, the enforcement and recovery provisions shall only apply where the claim is uncontested.
- The Act has introduced a process to ensure recovery of the tax claim. This will include the Commissioner obtaining a High Court order for preservation of funds.
- The Commissioner shall upon recovery deposit the taxes recovered into a dedicated account in the Central Bank of Kenya. Thereafter the recovered amounts shall be remitted to an account specified by the requesting party.

Implication: The KRA will have powers to recover taxes due in another jurisdiction from both Kenyan tax resident and non-residents. This will be applicable in instances where Kenya and the other country are parties to a multilateral agreement that provides for mutual assistance in the recovery of tax.

Effective date: 1 July 2023

Tax Procedures Act

No more relief or abandonment in the cases of unpaid tax, interests or penalties!

- **Enacted provision:** The Act has amended the TPA by deleting the provisions allowing relief from pursing unpaid tax because of doubt or difficulty in recovery of tax on the part of the Commissioner.

- The Act has also scrapped-off the Commissioner's discretion to waive penalties and interest for taxpayers or make recommendation for waiver to the Cabinet Secretary on account of hardship, equity or difficulty in recovering the tax.

- Previously, the Commissioner, with approval of the Cabinet Secretary, had powers to refrain from collecting tax in instances where:
  a) it may be impossible to recover an unpaid tax;
  b) there is undue difficulty or expense in the recovery of an unpaid tax;
  c) there is hardship or inequity in relation to the recovery of an unpaid tax; or
  d) there is any other reason occasioning inability to recover the unpaid tax.

Implication: The amendment places pressure on the Commissioner to take all necessary measures to recover taxes owed. Taxpayers should brace themselves for aggressive tax collection measures by the Revenue Authority to recover unpaid taxes without abandonment or waiver as an option even in cases where it may be administratively challenging or costly to recover the tax.

This change will create an additional burden for taxpayers who are inadvertently caught out thus calling for diligence and ongoing internal checks to ensure compliance on the part of taxpayers.

Effective date: 1 July 2023

Tax Procedures Act

Amnesty on interests, penalties or fines on taxes due

- **Enacted provision**: The Act has introduced a provision that bars the Commissioner from recovering penalties, interest and fines on a tax debt where a taxpayer had paid the full principal tax before 31 December 2022.
- Where the principal tax had not been paid before that date, a taxpayer may still 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.
- 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.
- Penalties and interest will start accruing again in instances where amnesty had been granted but the principal tax has not been fully settled by 30 June 2024.
- The amnesty shall not apply to tax payers liable for the tax avoidance penalty.

Implication: This amendment assures tax payers of 100% waiver of penalties and interests on principal taxes settled before 31 December 2022 by operation of the law.

Where tax is agreed for the period on or before 31 December 2022 but not yet paid, the amendment extends an amnesty for taxpayers to apply to the Commissioner for approval of the waiver involvement of the Cabinet Secretary as was the case.

- This amendment will incentivize out of court settlement of tax disputes where principal taxes are agreed on and settled before 30 June 2024.
- However, penalties and interests in relation to taxes due after 1 January 2023, shall not be subject to waiver of any penalties or interests and the penalties.
- Waiver of interests and penalties will not be available after 30 June 2024.
- The extinguishing of the provision for waiver of penalties and interests post June 2024 may be a draw-back to the success of the without prejudice out of court settlements often negotiated between the KRA and taxpayers on the basis that penalties and interest may be waived.
- It will also be critical for tax payers seeking to benefit from this amnesty to review their tax ledgers to confirm clearance of historical penalties and interests as contemplated by the Act

Effective date: 1 September 2023

Tax Procedures Act

Agency Notices to Taxpayers' Debtors

- **Enacted provision:** The Act has set limits within which the Commissioner can issue a notice to collect tax from taxpayers' debtors.
- From the effective date, the Commissioner shall not issue a notice unless:
  a. The taxpayer has defaulted in paying tax under an agreed payment plan;
  b. Commissioner has raised an assessment and the taxpayer has not objected;
  c. The taxpayer has not appealed against an objection decision within the stipulated timelines;
  d. The taxpayer has made a self assessment but not paid the tax due before the due date; or
  e. The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

Implication: The amendment seeks to clarify the instances where the Commissioner can issue an agency notice as opposed to the previous scenario where agency notices may be issued arbitrarily.

Effective date: 1 July 2023

Security for unpaid tax - Timeline for notification - DROPPED

- **Excluded proposal**: The Finance Bill had proposed to introduce a requirement for the Commissioner to issue a notification of registration of an interest against property as security for unpaid taxes within 14 days from the date of registration.

The committee recommended that the proposal be dropped to safeguard the taxpayers' right to fair administrative action and to prevent violation of taxpayers right to property.

Withholding VAT Agents

- **Enacted provision**: The Act has amended the provision excluding manufacturers whose value of investment in the last three exceed KES 3 Billion from commencement of the previous Finance Act from withholding VAT by amending the commencement date of exclusion to 1 July 2023.

Implication: The Finance Bill, 2023 had initially proposed to amend this provision by deleting the exemption for manufacturer falling within the above scope. The Act has however retained the exemption and clarified that it applies from 1 July 2023.

Effective date: 1 July 2023

Tax Procedures Act

Withholding VAT to be remitted within 5 working days

- **Enacted provision**: The Act has deleted the requirement to remit VAT withheld by the 20th day of the following month and now requires that the tax be paid within 5 working days after deduction.

Implication: From the KRA's perspective, this amendment is intended to ensure constant in-flow of funds collected from taxpayers. Taxpayers appointed as withholding VAT agents will suffer the administrative burden of ensuring that tax withheld is remitted in a timely manner. The 5 day timeline presents a compliance risk as it is relatively short.

Effective date: 1 July 2023

Real Estate Agents

- **Enacted provision**: The Act has introduced a provision that allows the Commissioner to appoint persons collecting rent on behalf of others as withholding agents.

Implication: This amendment is aimed at increasing collection avenues for the government. It allow the Commissioner to net landlords whose rents are collected by real estate agents. The change will give the Commissioner visibility of transactions concluded through the real estate agents.

The Commissioner shall have powers to revoke such agent appointments at any time.

Effective date: 1 July 2023

Refund of overpaid tax

- **Enacted povision**: The Act has amended Section 47 to allow taxpayers to offset outstanding liabilities and future tax liabilities against overpaid taxes.

The timeline for processing refund claims has been indicated as 120 days, failure to which taxpayers' application for refund shall be deemed to have been approved.

Implication: The amendment shall offer reprieve to taxpayers who shall now be able to offset past liabilities against overpaid taxes. The law only allowed taxpayers to offset future liabilities against any overpaid tax.

Effective date: 1 July 2023

Timeline for processing refunds

- **Enacted provision**: The Act has introduced an amendment reducing the time taken by the Commissioner to process tax refund claims from the previous 2 years to 6 months with a proviso that where the Commissioner fails to refund the over paid tax, the overpayment shall be used to offset outstanding and future debts.

Implication: This amendment shall ensure accountability and protect taxpayers from the undue burden occasioned by delayed in processing the refunds.

Effective date: 1 July 2023

Tax Procedures Act

Validity of objection decision

- **Enacted provision**: The Act has introduced a 7 day timeline for provision of information where a taxpayer is notified that their objection decision has not been validly lodged. The Act further empowers the Commissioner to issue an objection decision within 60 days where the taxpayer fails to provide the supporting documents within the 7 days.

Implication: This amendment 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.

With this amendment, a tax payer may still have a future opportunity to appeal against a tax decision even where their objection notice is considered not to have been validly lodged.

Effective date: 1 July 2023

Increase of ADR timelines

- **Enacted provision**: The Act has increased the time for parties to negotiate and potentially settle disputes under the Alternative Dispute Resolution (ADR) framework from 90 days to 120 days.

Implication: This amendment is aimed at allowing ample time to settle any outstanding issues before closure of the ADR process. This will ensure that matters which would otherwise be resolved out of court are not referred back to the court system for want of time.

Effective date: 1 July 2023

Tax Procedures Act

Data Management System

- **Proposed provision**: The Act has empowered the Commissioner to establish a data management system to collect transaction data including electronic invoice returns on ordinary transactions and such other commercial or financial transactions by taxpayers.

- Further, the Act has introduced a provision for the Commissioner to notify persons who will be required to submit such information.

Implication: The creation of a data management & reporting system gives the Commissioner visibility to taxpayer transactions including the name and address of persons making payment and reasons for such payment.

The intention and criteria of collecting the data is however not clear from the Act. This change imposes additional data privacy compliance burden to process and store the data within the confines of the Data Protection Act, 2019.

Effective date: 1 September 2023

Compliance with Electronic Tax System

- **Provision:** The Act has repealed the provision under Section 83 which requires taxpayers to submit a return or pay a tax electronically. In its place, the Act has replaced this provision by widening the scope to include:

  a. Issue an electronic tax invoice

  b. Submit a tax return or

  c. Pay tax electronically

Further, the Act has increased the penalty for failure to comply with the electronic Tax System from **KES 100,000** to an amount equal to two times the amount of tax due.

Implication: The change in law is aimed at widening the scope of offences in relation to the Electronic Tax System to include failure to issue an electronic tax invoice. The amendment is in line with the roll out of the Tax Invoice Management System.

The stiff penalty imposed under the Act will deter non-compliance.

Effective date: 1 September 2023

Tax Procedures Act

Impersonation

- **Enacted provision:** The Act has introduced an offence of impersonation of an authorized officer and imposed an imprisonment for a term not exceeding 3 years for the offence.

Implication: The amendment is aimed at deterring impersonation of authorized KRA officers and protecting the general public from persons who deceive taxpayers by pretending to be authorized officers.

Effective date: 1 July 2023

Sanctions for offences under the Act – Clean up

- **Enacted provision:** The Act has deleted the word “and” and inserted the word “or” to provide that a person convicted of an offence under the TPA shall be liable to a fine not exceeding KES 1,000,000 million shillings **or** to imprisonment for a term not exceeding three years, or to both

Implication: This is a clean up change.

Effective date: 1 July 2023

Tax Procedures Act – Excluded Provisions

Restriction of new grounds on appeal post-objection stage - DROPPED

- **Excluded provision:** The Finance Bill, 2023 had proposed to amend the TPA by limiting the discretion of the Tribunal and the Courts to allow taxpayers to introduce new grounds outside of those stated in the objection notices previously.

Proposal dropped

Stakeholders made submissions against the proposed amendment on the basis that the amendment would interfere with the court's inherent powers. The Committee agreed with the stakeholder submissions and recommended that the proposal be dropped.

Tax Shortfall Penalty - DROPPED

- **Excluded provision:** The Bill had proposed to increase the penalty for tax shortfall from 75% of the tax due to double the amount of tax due on tax short fall.

Proposal dropped

The proposal to introduce a penalty of double the tax due while aimed at deterring falsifying information and encourage cooperation and transparency on the taxpayers' part was excessive.

Concurrent Civil & Criminal Proceedings - DROPPED

- **Excluded provision:** The Finance Bill had proposed an amendment to the TPA to have tax criminal and civil proceedings to run concurrently.

Proposal dropped

The proposal would have placed a limit on taxpayers' ability to seek a stay of proceedings thus violating their rights under Article 50(2)(c) of the Constitution which guarantee taxpayers the right to adequate time prepare and mount a defense.

Tax Appeals Tribunal Act - Excluded Provisions

Security on Appeal to the High Court -DROPPED

- **Excluded provision**: The Finance Bill, 2023 had proposed to introduce a requirement for tax payers to deposit 20% of the tax in dispute or a security of an equivalent amount with the Commissioner before filing appeals to the High court.

This proposal has been excluded from the Act.

This proposal was strenuously opposed by different stakeholders on the basis that it would violate the constitutional right to access justice. The Parliamentary Finance Committee agreed with the submissions made by stakeholders and recommended exclusion of the proposal to have payment of security for tax appeals to the High Court.

Refund of Security upon successful appeal -DROPPED

- **Excluded provision**: The Finance Bill had proposed to impose a timeline for refund of security paid where a taxpayer's appeal is successful.

This proposal has been excluded from the Act as it would not be applicable without the requirement for a security on appeal.

Other Acts

Miscellaneous Fees & Levies Act (MFLA)

Reduction of Import Declaration Fee

- **Enacted change**: The Act revised the import declaration fee (IDF) from 3.5% to 2.5%.

Implication: While the reduction of import declaration fees levy is aimed at stimulating growth in the local manufacturing sector by reducing the cost of imported inputs, it is an increase for developers of affordable housing projects and manufacturers who previously enjoyed a preferential rate of 1.5%.

Effective date: 1 July 2023

Inputs for construction of affordable housing

- **Enacted change**: The Act has deleted Section 7(2A) which provides for a reduced rate for inputs to be used in affordable housing projects.

Implication: The deletion of Section 7(2A) means that inputs acquired for construction of houses under the affordable housing scheme shall be subject to IDF of 2.5%. This increase is at odds with the governments commitment to provide affordable housing as increase in rate from 1.5% to 2.5% will increase the housing cost.

Effective date: 1 July 2023

Miscellaneous Fees & Levies Act

Export and Investment Promotion Levy

Enacted changes:

- The Finance Act has introduced a levy on goods imported into the country for home use under the Third Schedule. The levy is payable by an importer of such goods. The Finance Act provides for a levy of 17.5% of the customs value of cement clinkers, bars, rods and semi-finished products of iron or non-alloyed steel. A rate of 10% will apply on Kraft paper, sacks and bags.

- **Exemption**: Goods imported from the East African Community shall be exempt from the export and investment promotion levy.

Introduction of a Third Schedule

Enacted changes: The Act has introduced a Third Schedule to the Act to provide for goods subject to export investment promotion levy.

Implication: The proposed introduction of the levy aims at protecting local manufacturers. While this is a commendable move, it shall be interesting to see whether the government will hold the local manufacturers accountable to ensure that local consumers are protected from low quality products and that the local industry products retain a competitive edge in the global markets.

The Finance Act provides the effective date for the levy as 1 July 2023 while the Third Schedule which provides the rates and the goods subject to the levy takes effect on 1 September 2023. This discrepancy will need to be resolved.

Effective date: 1 July 2023

Miscellaneous Fees & Levies Act

Reduction of Railway Development Levy (RDL)

Enacted change: The Act has reduced the railway development levy from 2.5% to 1.5%.

Further, the Act deleted the reduced rate of 1.5% for inputs for use in the affordable housing scheme.

Implication: 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.

Effective date: 1 July 2023

Goods for use in diplomatic missions

Enacted changes: The Act amended the Second Schedule by redefining the scope of the exemption from import declaration fees for gifts and supplies to consular missions to restrict the exemption to goods **for official use** by diplomatic and consular missions, United Nations and its agencies and institutions.

Implication: The amendment is aimed at streamlining the goods exempted from import declaration fees and restricting the exemption to goods for official use as opposed to the previous provision which allowed an exemption for gifts. This provision shall safeguard against revenue leakage arising from misuse of the exemption for personal gain.

Effective date: 1 July 2023

Reduction of Export Levy

Enacted changes: The Act has amended the MFLA 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.

Implication: 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. The move however, appears contrary to the government policy to promote local leather value addition

Effective date: 1 July 2023

Aircraft Exemption

Enacted changes: The Act has widened the scope of the exemption provided for aircraft to include all aircrafts, spacecrafts and part thereof as provided for under Chapter 88 of the Common External Tariff, 2022.

Further, under the Second Schedule, the Act has also exempted from RDL and IDF any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

Implication: The amendment widens the scope of exemption to not only aircrafts but space crafts and attendant parts. The changes will reduce the cost of these goods.

Effective date: 1 July 2023

Miscellaneous Fees & Levies Act

Goods for use by Kenya Defence Forces and National Police Service

Enacted change: The Act has widened the scope of exemption for Kenya Defence Forces and the National Police Service by including all goods, including the "all materials and supplies" to the existing exemption from IDF.

Previously, the exemption was limited to equipment, machinery and motor vehicles for official use.

Implication: The amendment is aimed at reducing the cost of acquiring goods and materials necessary for execution of the Kenya Defence Force and National Police Service mandate.

Effective date: 1 July 2023

Liquified Petroleum Gas

Enacted changes:The Act has introduced an exemption of liquified petroleum from IDF.

Implication: The exemption will reduce the cost of liquified petroleum in line with the government's commitment to bring down the cost of LPG and make it accessible to taxpayers.

Effective date: 1 July 2023

Other Acts

The Retirement Benefits (Deputy President and State Officers) Act

Enacted change: The Act has repealed provisions outlining circumstances where benefits may not be paid to the Deputy President and Other State Officers covered.

- Previously, the benefits could be discontinued in instances where the person was:

a) guilty of gross misconduct;

b) was in wilful violation of the constitution;

c) had been convicted and imprisoned for a period of more than three years; or

d) had continued to engage in activities of a political party after ceasing to hold office.

Implication: The repeal means that retired Deputy Presidents, retired Vice Presidents, retired Prime Ministers and other senior officers, including Speakers of Parliament, retired Chief Justice and Deputy Chief Justice will not be denied their retirement benefits under any of the circumstances previously outlined by the Act.

This may be viewed as a departure from the spirit of Chapter 6 of the Constitution on leadership and integrity. Government officials may not have the motivation to comply since law they would be protected from consequences of violation of the constitutional duty to uphold integrity.

Effective date: 1 July 2023

Other Acts

The Retirement Benefits (Deputy President and State Officers) Act

Enacted change: The Act states that the following benefits will be available to entitled persons upon retirement or cessation of holding office:

a) Monthly pensions at 8% of the person's last monthly salary while in office; and

b) a lumpsum payment on retirement equal to one year's salary paid for each term served in office.

- However, the entitled persons will not be entitled to any other benefits under the Act until they retire or cease to hold office.
- Further, the Act repealed the provision which states that benefits already received by persons under any other law or policy shall be set-off against the benefits due under this Act.
- Notwithstanding the above, the Act states that any entitled persons who qualify for pensions and benefits under the Act in addition to pension under the Parliamentary Pensions Act, will be eligible to receive both.

Implication: The new change will lead to an increase in the Public Wage Bill and will have a negative impact on taxpayers finances in future due to the added costs related benefits for retired senior government officials.

Effective date: 1 July 2023

The Retirement Benefits (Deputy President and State Officers) Act

Enacted change: The Act now provides that full medical cover will be provided to children of Retired Chief Justice, Deputy Chief Justice, Prime Minister, Deputy President/Vice President and those of the Speakers of both the National Assembly and Senate.

Implication: Similarly, this will lead to increased recurrent expenditure due to the expanded coverage of persons receiving the prescribed benefits which are expected to be funded from public funds.

Effective date: 1 July 2023

Other Acts

The Betting gaming and Lotteries Act

Enacted amendment: The Act now stipulates that the collection of taxes in relation to gaming revenue, lotteries shall be in line with the Tax Procedures Act, 2015.

Implication: The amendments seeks to align collection of taxes under the Act to be enforced by KRA to avoid ambiguity.

Effective date: 1 July 2023

The Kenya Road Boards Act – Annual Roads Programme

Enacted amendment: The Act has introduced submission of annual estimates together with a collated annual roads programme.

Implication: This new provision will ensure accountability and efficiency in the review and approval process at both the Kenya Road Boards level and parliament level.

Effective date: 1 July 2023

Kenya Revenue Authority Act

Enacted changes: The Kenya Revenue Authority will now have authority to establish an institution to provide capacity building for its staff, the general public and other jurisdictions.

Implication: The amendment shall provide clarity on the purpose for establishment and mandate of the institution established by the Authority for capacity building. Previously, the wording merely stated that the capacity building was for the better carrying out of KRA's functions.

Effective date: 1 July 2023

Other Acts

Unclaimed Financial Assets Act

Enacted amendment: The Act widened the scope of persons entitled to receive payment or delivery of an asset to include persons designated by the rightful claimant.

Previously, payment or delivery of assets was limited to the person who made the claim.

Implication: This change will allow flexibility in who may receive assets approved for disbursement by the Authority.

Effective date: 1 July 2023

Statutory Instruments Act

Enacted change: The Act has deleted provisions relating to automatic revocation of statutory instruments after 10 years.

Implication: This amendment means that statutory instruments will stay in force until expressly repealed.

Effective date: 1 July 2023

Affordable Housing Levy under the Employment Act

Enacted amendment: The Act has introduced a mandatory affordable housing levy to be paid by both the employer and employee at a rate of 1.5% of the employees' gross salary. The housing levy is to be used exclusively for development of affordable housing and associated social and physical infrastructure and provision of affordable home financing.

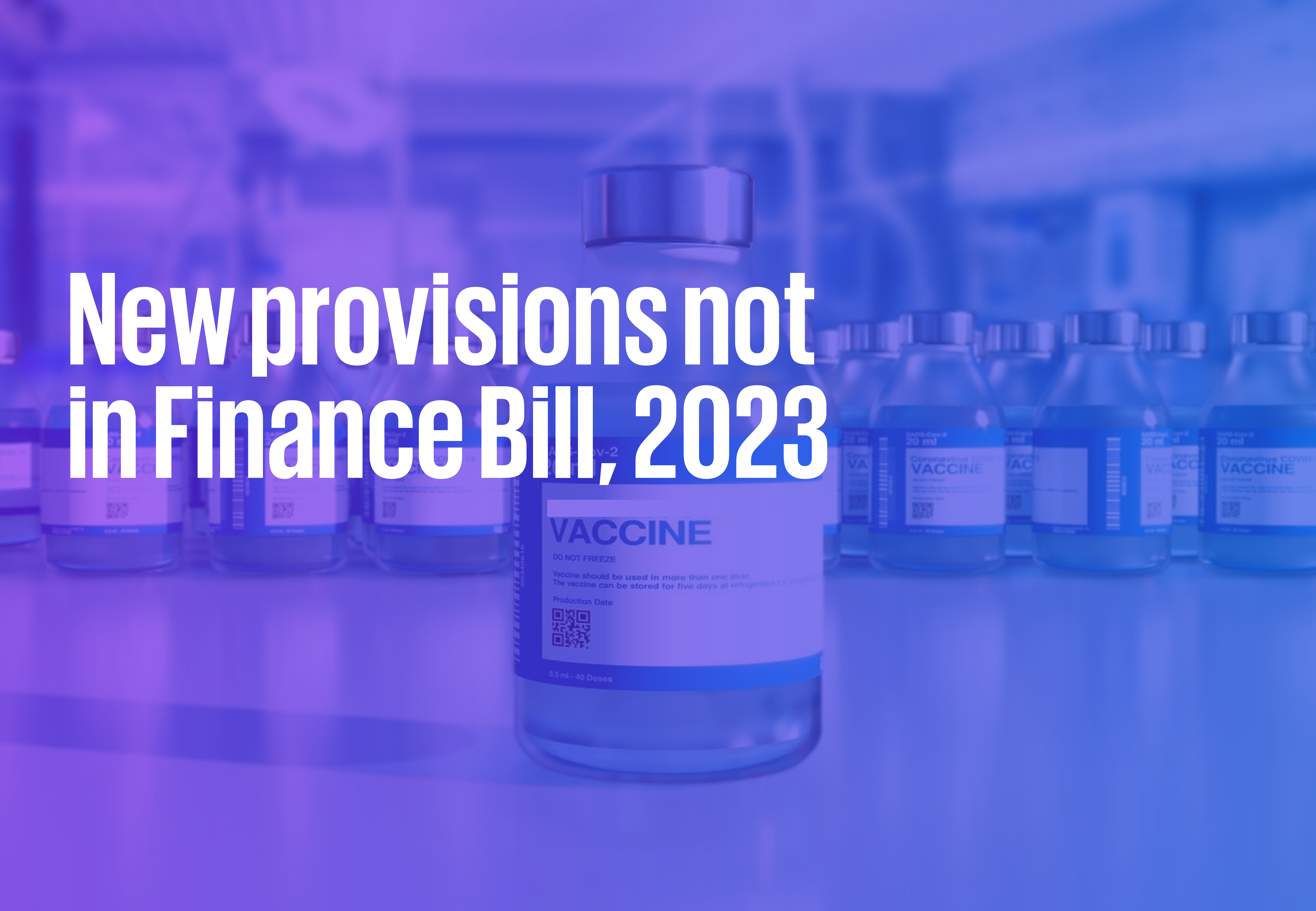
Similar to PAYE, the employer is to remit the housing levy not later than 9th of the next month. Late payment penalty of 2% will apply every month on any amount unpaid by the due date.

Implication: The new change is aimed at achieving the government's commitment to access to affordable housing under the Big Four agenda. The imposition of a mandatory contribution is unlikely to go down well for most Kenyans especially with the removal of the contribution limit of KES 5,000 as had been previously proposed by the Finance Bill, 2023.

The government is expected to publish guidelines for the deduction and remission of the levy in time for the July 2023 payment which is due by 9 August 2023.

Effective date: 1 July 2023

New provisions not in Finance Bill, 2023



Other Acts – New Provisions to the MFLA

Expanded exemption for Human Vaccine Manufacturing

Enacted provision: The Act has widened the scope of the exemption relating to human vaccines to include "*goods imported for use in the construction and maintenance of human vaccine* ***or other manufacturing activities including refining*** *manufacturing plants as approved by the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for Health.*"

Implication: The amendment expands the scope of the RDL and IDF exemption to cover additional manufacturing activities related to human vaccines. This will provide further incentives for foreign investors and potentially place Kenya as a manufacturing hub for vaccines.

Effective date: 1 July 2023

New exemptions from IDF and RDL

Enacted provision: The Act has exempted the following additional items from IDF and RDL:

- the supply of denatured ethanol of tariff number 2207.20.00;
- bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)

Implication: The amendment will encourage uptake of clean energy solutions due to the lower costs.

This is line with the governments commitment to promote climate friendly energy sources.

Effective date: 1 July 2023

No inflation adjustment on export levy

Enacted provision: The Act has repealed provisions for the annual inflation adjustment on export levy. Previously, the Commissioner was allowed to adjust the export levy as per the formula prescribed in the Act.

Implication: The amendment is aimed at improving competitiveness of Kenya's exports that are subject to the export levy. In the prevailing environment of high inflation, the annual adjustments would make Kenya's exports pricier in the international market.

Effective date: 1 July 2023

Other Acts – New Provisions

The Kenya Road Boards Act – Board membership changes

Enacted amendment: The Act has deleted the provision requiring the Permanent Secretary (PS) in the Ministry of Transport and Communications to be a member of the Kenya Road Board.

Additionally, the Act has reduced the Ministerial appointments to the Board from eight (8) people to five (5). These appointments are from specified organizations under the First Schedule.

The three organizations removed from the listed organizations under the First Schedule are the Institute of Surveyors of Kenya, The League of Kenyan Woman Voters and the Kenya Association of Tour Operators

Implication: The amendment is a clean up to ensure membership of the Roads Board reflects the current government structure and relevant stakeholders.

Effective date: 1 July 2023

The Retirement Benefits (Deputy President and State Officers) Act

Enacted change: The Act has also amended the First Schedule relating to benefits provided to Retired Chief Justice, Deputy Chief Justice and Speakers' of both the National Assembly and Senate. In lieu of a personal assistant or secretary, the retired public officers are allowed to enlist a chief liaison officer.

Implication: The new change introduces some flexibility on the profile of support staff for the retired public officers.

Effective date: 1 July 2023

Retirement Benefits Act – Islamic Banking

Enacted changes: The Act provides that pension funds set up exclusively for investing in Sharia-compliant funds will be exempt from guidelines on restrictions relating to use of the fund.

Implication: The amendment is targeted at the Islamic banking sector that has witnessed steady growth and uptake in recent years.

Effective date: 1 July 2023

Retirement Benefits Act

Enacted changes: The Act has lowered the requirement for administrators of pension schemes to have 60% Kenyan shareholding to 33%. As it was previously, the local shareholding requirement will not apply if the entity is a bank or insurance company..

Implication: The change will encourage foreign entities looking to apply to be pension scheme administrators due to the relaxation of Kenyan shareholding requirements.

Effective date: 1 July 2023

Other Acts – New Provisions

Kenya Revenue Authority Act

Enacted changes: The Act has amended the First Schedule to give KRA the powers to collect any taxes due under the Alcoholic Drinks Act, 2010.

Implication: The amendment continues the recent trends of the government designating KRA as the agency responsible for collection of various duties, levies and taxes. This will promote efficiency on the part of the government with regard to collection of revenue.

Effective date: 1 July 2023

Kenya Revenue Authority Act

Enacted changes: The Act now stipulates that the KRA Board will appoint Deputy Commissioners in addition to its prior role of appointing the Commissioners.

In line with the above, the Act has curtailed the powers of the KRA Commissioner who will now not be responsible for appointing heads of departments at KRA.

Implication: The amendment will see the KRA Board having more influence in the day-to-day operations of the revenue authority. The Board will not only now be responsible for the appointment of Commissioners but Deputy Commissioners as well.

Effective date: 1 July 2023

Alcoholic Drinks Act – Minimum input cost

Enacted changes: The new provision states that a person shall not sell, manufacture, pack or distribute alcoholic drinks at a price below the “minimum input cost.”

“Minimum input cost” is defined as the input cost published by KRA through Excise regulations. However, it should be noted that currently there are no provisions in the (Excisable Goods Management System) Regulations that provide for minimum input cost. It is also not mentioned in the proposed amendments to the Regulations that was submitted for public participation earlier this year.

Implication: The amendment is intended to prevent loss of tax revenue through adulteration of alcohol. However, KRA are yet to specify how this minimum input cost will be determined as there are currently no corresponding provisions in the Excise duty regulations.

Effective date: 1 July 2023

Other Acts – New Provisions

Special Economic Zones (SEZ) Act

Enacted amendment: The Act provides that a special economic zone will include both customs and non-customs-controlled areas.

Special Economic Zones (SEZ) Act

Enacted amendment: The Act has amended the provisions on market accessibility for SEZ goods to make reference to customs territory rather than "Kenya."

Implication: The inclusion of both customs and non-customs-controlled areas in an SEZ will transform the SEZs from restrictive demarcated zones to more robust integrated investment parks where industries correlate.

This is expected to provide for improved forward and backward linkages between the SEZs and local and regional economies to maximize the benefits of SEZs.

Effective date: 1 July 2023

Implication: The prior provision penalized SEZ enterprises that sourced inputs locally if they subsequently sold the goods to the local market.

As result, the country has had the economy flooded by goods originating from COMESA leading to investors considering relocation to the other countries so that they can access the Kenyan market.

Effective date: 1 July 2023

Export Processing Zones (EPZ) Act

Enacted amendment: The Act has included a proviso relating to treatment of goods brought out of the EPZ into the customs territory. The amendment provides that:

(i) goods whose content originates from the customs territory shall be exempt from payment of import duties; and

(ii) goods whose content partially originates from the customs territory shall pay import duties on the non-originating component subject to customs procedures.

Implication: The amendment will make EPZ products that utilize EAC inputs more competitive to the wider EAC region as they will not be subject to import duty upon removal from the EPZ.

Effective date: 1 July 2023

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