Finance Bill, 2023 Analysis

Kenya

May 2023

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Foreword

The Bottom-up Economic Transformation Agenda for inclusive growth (BETA) is at the core of the government's agenda to spur growth in an economy that is grappling with a tight fiscal space, a rapidly depreciating shilling, deteriorating balance of payments position, inflationary pressure and a long running draught that has wrecked the agricultural sector.

The Government has set a budget of **KES 3.6 trillion** to meet the demands of the BETA priorities. According to the Budget Policy Statement (BPS), the Government intends to mobilize domestic revenues of **KES 2.9 trillion.** Taking into account the budgeted expenditure, the Government will have an estimated deficit of **KES 768.2 billion,** which goes down to **KES 720.1 billion** after adjusting for grants of **KES 48.1 billion.** The financing gap is expected to be plugged through net external financing of **KES 198.6 billion** and net domestic financing of **KES 521.5 billion**.

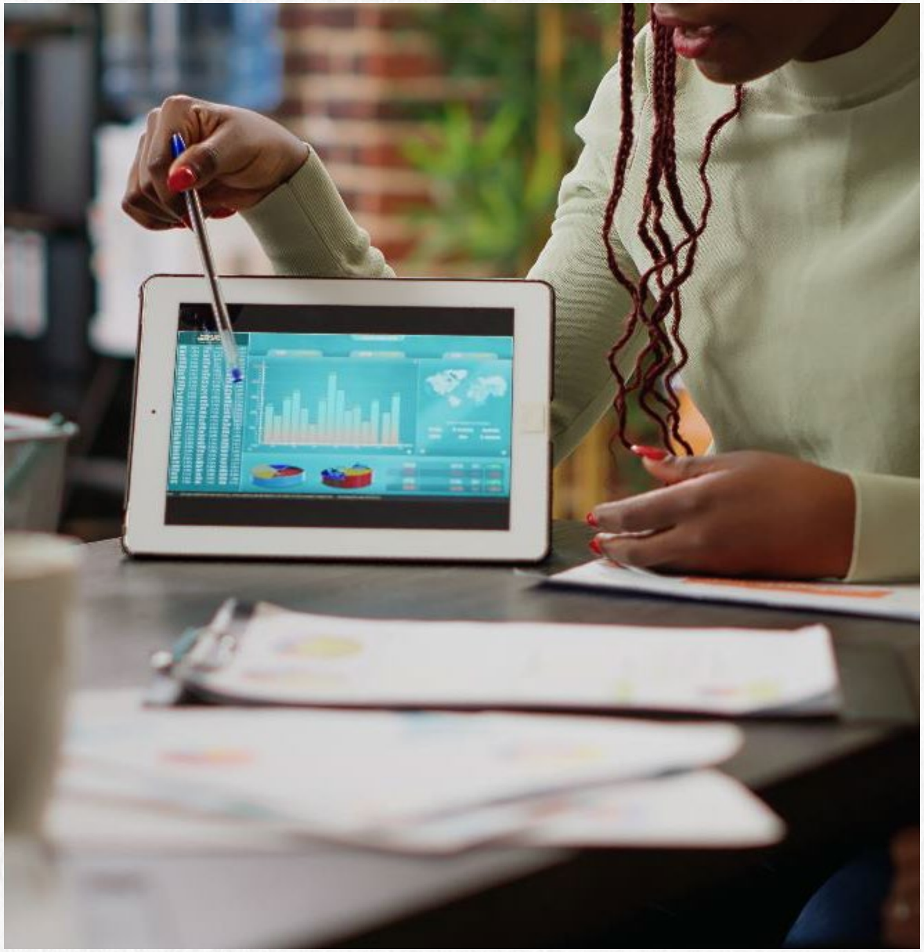
Given the tight fiscal space, the government has to source for additional resources to meet its requirements. It is against this backdrop that the government tabled the Finance Bill, 2023 (the Bill) before the National Assembly on Thursday, 04 May 2023. The Bill proposes radical changes to the tax regime. Many of these aim to promote the government priorities while at the same time collecting additional revenues.

The tax measures proposed in the Bill are expected to generate additional revenue of **KES 289.3 billion** and stimulate the country's economic growth by an estimated 6.1%. Some of the notable changes include the introduction of a new 35% tax rate for income above **KES 500,000** per month, taxation of content creation and trade in digital assets such as cryptocurrency.

Another proposal is the introduction of a 3% deduction from employees towards the affordable housing program. Employers are expected to match the employee contributions. When combined with the proposed changes in NHIF and the recent changes in national pension contributions, the impact on employees will be severe especially at a time when many are grappling with the high cost of living.

Other proposals that will generate debate include the requirement to deposit 20% of tax disputed before appealing a decision of the Tax Appeals Tribunal (TAT) at the High Court. While the Government proposes a penalties and interest amnesty on taxes paid up to the period 31 December 2022, there is a proposal to delete the legislation governing the processing of waivers of penalties and interest.

We provide in the ensuing pages our analysis of the proposed changes.



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Income Tax- Corporation Tax

Income Tax- Corporation Tax

Definition of “winnings”

Proposed amendment: The Bill proposes to introduce a new definition of 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 without deducting the amount staked or waged

Implication: The proposed definition seeks to remove ambiguity and expounds on what the term winnings means, wherever used in the Income Tax Act (ITA). This clears the ambiguity on the treatment of the amounts staked or waged, for purposes of computing the tax.

Proposed effective date: 1 July 2023

“Immovable property” definition broadened

Proposed provisions: The Bill proposes to broaden the definition of “immovable property” to include land, 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 Bill also proposes to move the definition to the interpretation section of the 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.

Proposed effective date: 1 July 2023

Definition of “ digital content monetisation”

Proposed amendment: The Bill proposes to introduce a definition of the term “digital content monetisation” to mean offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in the following forms:

Website advertisement, social media platform, brand sponsorship, affiliate marketing, subscription services, merchandise sales, exclusive content membership programmes, licensing content including photograph, music, or user own projects and crowd funding for specific goals for content creators.

The Bill further proposes to subject such income to Withholding Tax (WHT) at a rate of 15%.

Implication: The proposal intends to bring into the tax net, digital content business which has experienced growth in the recent past.

Proposed effective date: 1 July 2023

Income Tax- Corporation Tax

Deferment of foreign exchange loss now limited to 3 years

Proposed amendment: The Bill proposes that the realized foreign exchange loss for a company, whose gross interest paid or payable to non-resident person exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization (EBITA) in any financial year, be claimed over a period not exceeding three years, from the date the loss is realized by a company.

Implication: Under the proposal, foreign exchange losses realized by persons subject to interest restriction, will be deductible within a period of 3 years from the date the loss is realized.

Proposed effective date: 1 July 2023

Income Tax – Corporation tax

Income from registered trusts

Proposed provision: The Bill proposes to delete 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 proposed change provides clarity on the taxation of payments out of a registered trusts.

Proposed effective date: 1st July 2023

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

Proposed amendment: The Bill seeks to change the bands for ToT from the current KES 1 million to KES 50 million to KES 500,000 to KES 15 million.

In addition, the Bill proposes to increase the turnover tax rate from 1% to 3%.

Implication:
The proposals seeks to expand the turnover tax base by targeting persons with turnover between KES 500,000 and KES 1 million who were previously exempt. Further, the Bill caps ToT to persons with turnover of KES 15 million down from the previous KES 50 million.

The change aims to bring to tax informal businesses while pushing larger businesses to the mainstream tax regime.

Proposed effective date: 1 July 2023

Income Tax- Corporation Tax

Introduction of Digital asset tax

Proposed amendment: The Bill proposes to introduce Digital Asset Tax (DAT) to be paid on income derived from the transfer or exchange of digital assets.

The Bill 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 shall be the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.

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

Under the proposed provisions, the owner of the platform will be required to deduct the DAT at a proposed rate of 3% of the transfer or exchange value of the digital asset.

Non resident owners of the platform will be required to remit the above tax within 24 hours after making the deduction together with a return of the amount of payment and any other information that the Commissioner may require.

implication:

The requirement to remit the tax within 24 hours after making the deduction is administratively onerous. 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.

Proposed effective date: 1 September 2023

Income Tax – Corporation tax

Loose tools/implements (Section 15(2)(g)) at 100% tax allowance

Proposed provision: The Bill proposes to allow a 100% tax deduction on the cost of loose tools and utensils.

Implication: This is a welcome move as it provides clarity on the deduction to be accorded to implements and similar articles.

Proposed effective date: 1 July 2023

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

Proposed amendment: The Bill proposes to enhance tax compliance with the new rolled out eTIMS by disallowing expenses that are not supported by eTIMS compliant invoices.

Implication: The proposal 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

Proposed amendment: The Bill proposes to allow the deduction of club subscription and entrance fee for corporation tax purposes.

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

Proposed effective date: 1 January 2024

Income Tax – Corporation tax

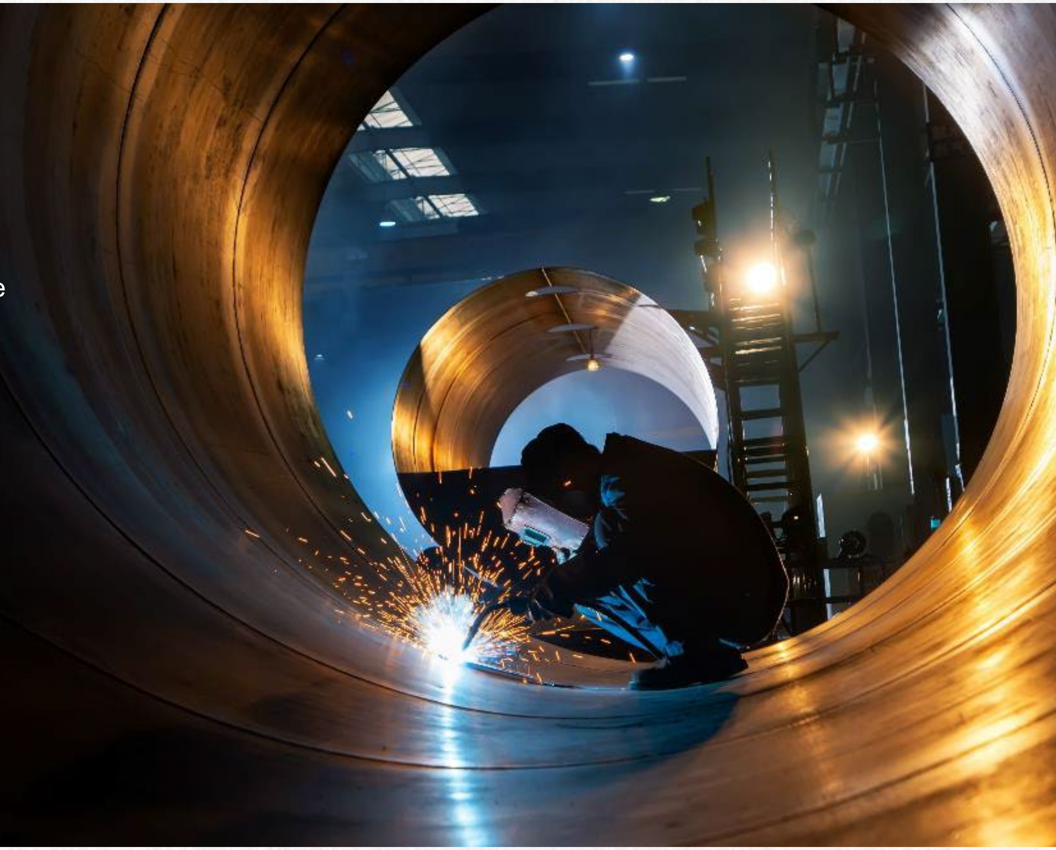
Back to restricted interest ambit

Proposed provision: The Bill proposes to bring back to the interest restriction ambit:

- companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings;
- companies engaged in manufacturing whose cumulative investment is at least five billion shillings:

Implication: This may discourage capital intensive investments in the above sectors which ordinarily are highly geared. This may go against the government agenda of creating more jobs to alleviate the level of unemployment in Kenya.

Proposed effective date: 1 July 2023



Income Tax- Corporation Tax

Restricted interest – Applicable on non-resident persons

Proposed amendment: The Bill proposes to ring fence the interest accrued from local borrowing from the interest restrictions rules.

Specifically, when computing the restricted interest a person will only consider interest paid to non-resident persons in excess of 30% of EBITDA.

Implication: The proposal will encourage companies to borrow locally and may result in companies restructuring their loans in favor of the local financial sector.

Proposed effective date: 1 January 2024

Members' clubs and trade associations

Proposed provision: The Bill proposes to tax the entire business income of a member's club and a trade association, excluding joining fees, welfare contributions and subscriptions.

Implication: Under the current law, the income of clubs and trade associations is not taxed as long as 75% or more of the income for such organization is from the members. In light of the proposal, all income made by a member's club and a trade association will be deemed as business income and subject to income tax.

In addition, a trade association under the current legislation may elect by notice in writing to the Commissioner, in respect of any year of income to be deemed to carry on a business charged to tax, whereupon its gross receipts on revenue account from transactions with its members (including entrance fees and annual subscriptions) and with other persons shall be deemed to be income from business for that and succeeding years of income.

The Bill deletes subsection 2 of Section 21 which provides for the option of a trade association to elect to be taxed. The Bill, if assented into law, will see trade associations taxed on their business income as provided under subsection 1.

Proposed effective date: 1 July 2023

Income Tax- Corporation Tax

Persons eligible for exemption under the First Schedule - Defined

Proposed amendment: The Bill proposes to introduce the definition of the body of persons eligible for exemption under Paragraph 10 of the First Schedule to the ITA.

"**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 proposed definition will enhance clarity, and remove any ambiguity on who qualifies for exemption from income tax.

Proposed effective date: 1 July 2023

Revocation of exemption for human vaccine manufacturers

Proposed provisions: The Bill proposes to revoke the tax exemption granted to income of companies undertaking the manufacture of human vaccines, and introduce corporate tax at a preferential rate of 10%.

Implication: This proposal could be as a result of wind-down of the COVID19 pandemic. However, the proposal does not appear to be in line with the universal healthcare agenda as human vaccine plays a pivotal role in realization of this agenda.

Proposed effective date: 1 July 2023

Income Tax- Corporation Tax

Introduction of industrial building and dock allowances

Proposed provisions: The Bill proposes to introduce industrial building and dock allowances at a rate of 10% in equal instalments.

Proposed definitions for an industrial building and a dock are 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 will remove ambiguity and encourage resident shipping businesses given the significant capital expenditure involved in the operation of such businesses.

Proposed effective date: 1 January 2024

Expanded and new definitions under the Second Schedule of the ITA

Proposed provisions: The Bill proposes to introduce the following definitions under the Second Schedule of 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 above provisions will provide clarity on the classification of capital expenditure to enable companies use the correct investment allowance rates.

Proposed effective date: 1 January 2024

Income Tax- Corporation Tax

Investment allowance

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

Notably, the provision shall not apply to investments which, due to the nature of their business are required to be located outside Nairobi City County and Mombasa County.

Implication: Companies in sectors such as agricultural or mining may no longer be in a position to access the accelerated Investment allowance should this proposal be enacted.

Furthermore, the proposal may disincentivize investors, especially in the infrastructure space, where projects, due to their nature, can only be located outside the counties of Nairobi and Mombasa.

Proposed effective date: 1 January 2024

Definition of local content in reference to motor vehicle assembly companies

Proposed amendment: The Third Schedule of the ITA provides a reduced rate of corporation tax of 15% for 5 years from the commencement of motor vehicle assembly operations, and a further extension of the reduced rate is available to a company which achieves a local content of 50% of the ex-factory price value.

The Bill now proposes to define the local content to mean parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Implication: This is meant to provide clarity on the companies that qualify for a further extension of the reduced corporation tax rate of 15%. This may incentivize the motor vehicle assemblers to utilize the local content and benefit from the preferential corporate tax rate.

Proposed effective date: 1 July 2023

Income Tax- Corporation Tax

Advance tax for motor vehicles – Increased

Proposed provisions: The Bill proposes to amend the advance tax payable on passenger and commercial vehicles, excluding tractors / trailers used for agricultural purposes, as follows:

Item	Proposed rates	Current 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 3,000 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: This proposal is aimed at increasing the tax revenues derived from advance tax levied on commercial vehicles.

Proposed effective date: 1 January 2024

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

Proposed provision: The Bill proposes to include Mortgage refinance companies licensed under the Central Bank of Kenya Act as part of financial institutions, thus increasing the number of financial institutions under the Fourth Schedule from the first five financial institutions to the first six financial institutions.

Implications: Mortgage refinance companies licensed under the Central Bank of Kenya Act will be considered as financial institutions and will be considered as such 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.

Proposed effective date: 1 January 2024

Monthly Rental Income rate (MRI)

Proposed amendment: The Bill proposes reduce the rate of MRI tax from 10% to 7.5%.

Implication: This rate has been reduced to encourage tax compliance of property owners and boost the government's revenue collection.

Proposed effective date: 1 January 2024

Income Tax- Taxation of Branch

Reduction in Branch corporate tax from 37.5% to 30%

Proposed provisions: The Bill proposes to reduce the corporate tax rate applicable to branches from 37.5% to 30%:

Implication: This proposal is aimed at promoting equality among resident and resident companies. However, to achieve this objective there might be a need for further amendment to make the various payments made to the head office or related entities of the branch allowable as deductions for corporate tax purposes.

Proposed effective date: 1 January 2024

Tax on repatriated profits for branches

Proposed provision: The Bill proposes to introduce additional tax on profits repatriated by a permanent establishment for the year income.

The Bill proposes 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: This provision is a branch profits tax, which shall be chargeable in addition to the tax chargeable on the income of the Permanent Establishment. However, the Bill does not prescribe the tax rate for the repatriated income.

This provision is likely to be a disincentive for setting up as a branch because unlike subsidiaries which pay WHT on dividends upon distribution, branches will be taxed without consideration of their cashflow position. The impact is however, mitigated by the reduction in the corporation tax rate.

Proposed effective date: 1 January 2024

Income Tax- Corporation Tax

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

Proposed provision: The Bill proposes to bring 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 proposal seeks to tax any gains made on transfers of qualifying properties by partnership under the CGT regime.

Proposed effective date: 1 July 2023

Gains derived from immovable property

Proposed provision: The Bill proposes to bring 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 proposal seeks to tax the gain on transfers within partnerships (revalued proprietors capital) or sale of immovable property from a Trust. The complication arises where the transfers from a trust are currently tax exempt from tax. There will be a need to align the provisions should this proposal be enacted.

Proposed effective date: 1 July 2023

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

Proposed provision: The Bill proposes to bring 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.

Proposed effective date: 1 July 2023

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

Proposed provision: The Bill proposes that 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: Currently there is no requirement to notify the Commissioner on indirect share transfers. However, if the Bill passes, a notification to the Commissioner will be required on indirect share transfers where there is a change of at least 20% in the underlying ownership.

Proposed 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

Proposed provision: The Bill proposes to introduce 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 original adjusted cost in the first transfer.

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

Proposed effective date: 1 July 2023

Due date for CGT

Proposed provision: The Bill proposes to have the due date for CGT payment to be earlier of receipt of full purchase price by the vendor or registration of the transfer

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.

Proposed effective date: 1 July 2023

CGT exemption limit on reorganization of groups

Proposed provision: The Bill proposes to limit 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 would lead to loss of CGT.

Proposed effective date: 1 July 2023

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

Proposed provision: The Bill proposes to increase the threshold for reporting a change in the underlying ownership of a licencee or a contractor from 10% - 20%.

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

Proposed effective date: 1 July 2023

Income Tax - Withholding Tax

WHT on sales promotion, marketing and advertising services

Proposed provision: Introduction of withholding tax on sales, promotion and advertisement paid to residents 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. This proposal clarifies that such payments will be subject to WHT.

Proposed effective date: 1 July 2023

WHT on digital content monetisation

Proposed amendment: The Bill proposes to charge WHT at 15% on "digital content monetisation". This includes offering payment for entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in the following forms:

Website advertisement, social media platform, brand sponsorship, affiliate marketing, subscription services, merchandise sales, exclusive content membership programmes, licensing content including photograph, music, or user own projects and crowd funding for specific goals for content creators.

Implication: The proposal intends to bring into the tax net, digital content creators or influencers in the wake of their mushrooming lucrative digital content business.

It is important to note that the Bill does not provide a threshold for the taxable amount implying that any income will be taxable regardless of the value earned.

Proposed effective date: 1 July 2023

Property management companies to be appointed as withholding tax agents

Proposed provision: The Bill proposes to allow the Commissioner to appoint as withholding tax agents persons who receive rental income on behalf landlords. The appointed tax agents will be required to deduct rental income tax at a rate of 7.5% and remit the same to the Commissioner together with a return within 24 hours.

Implication: The move will bolster KRA's efforts to bring the elusive rental properties owners within the tax net and enhance the tax base. However, the 24 hours timeline for remittance of the tax will be administratively onerous.

Proposed effective date: 1 July 2023

Income Tax - Withholding Tax

No WHT on payments made by human vaccine manufacturers

Proposed provisions: The Bill proposes to exempt from WHT the following payments made by human vaccine manufacturers:

i. Royalties paid to a non-resident person; and

ii. Interest paid to a resident person or non-resident person.

Implication: The proposal will make it easier to attract investments in vaccine manufacture which is heavily reliant on intellectual property which will now be exempted from payment of withholding tax on royalties.

Proposed effective date: 1 July 2023

Due date for withholding tax

Proposed provision: The Bill seeks to move the current WHT due date from the 20th day of the month following the payment date to 24 hours after payment.

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

Proposed effective date: 1 July 2023

Income Tax- Transfer Pricing

Income Tax – Transfer Pricing

Restrictions on Tax Adjustments

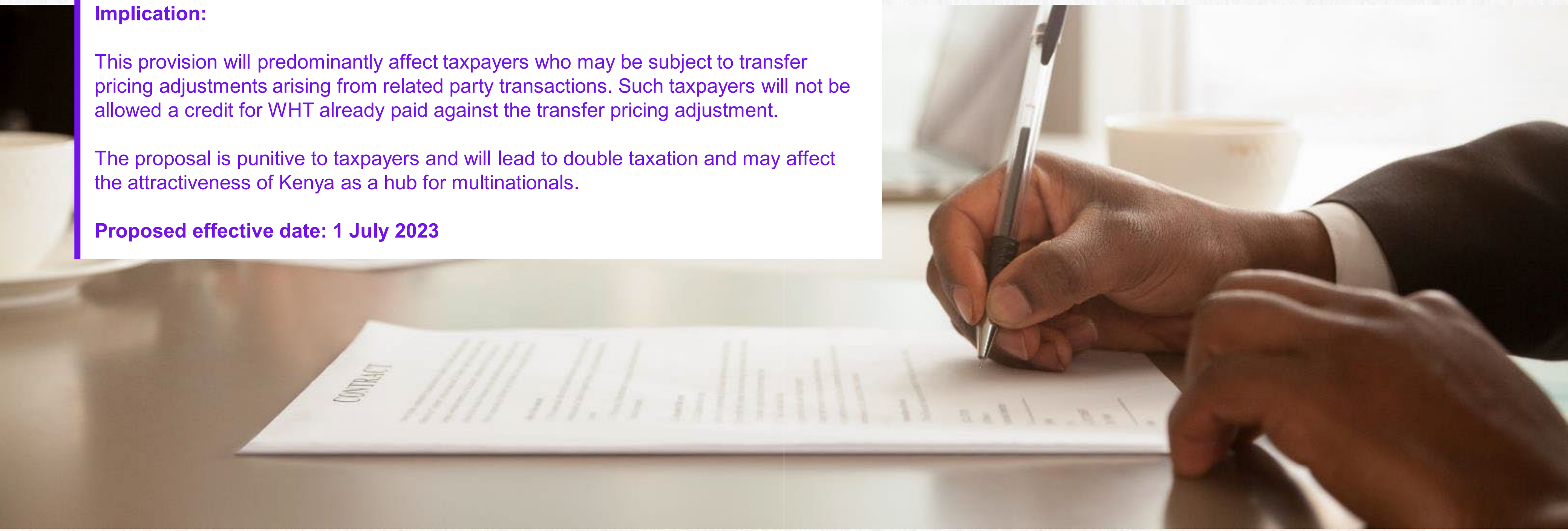
Proposed provision: The Bill proposes to restrict taxpayers from deducting withholding tax paid against payments to non-resident persons where an audit adjustment has been made in respect to such payment.

Implication:

This provision will predominantly affect taxpayers who may be subject to transfer pricing adjustments arising from related party transactions. Such taxpayers will not be allowed a credit for WHT already paid against the transfer pricing adjustment.

The proposal is punitive to taxpayers and will lead to double taxation and may affect the attractiveness of Kenya as a hub for multinationals.

Proposed effective date: 1 July 2023



Income Tax – Transfer Pricing

Definition of related person

Proposed provision:

The Bill proposes to introduce definition of a related person under Section 2 of the ITA. A related person has been defined 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; Currently the term related person is defined in the Eighth Schedule on Capital Gains and the Income Tax (Transfer Pricing) Rules, 2006. We note that 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.

Proposed effective date: 1 July 2023

Qualifying intellectual property income

Proposed provision:

The Bill has introduced restriction under section 18A subsection 4 on intellectual property income which is chargeable to tax under a preferential tax regime . The Bill proposes 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 shall be deductible only against IP income.

Implication: The proposal seeks to align 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 itself incurred qualifying R&D expenditures that gave rise to the IP income.

This proposal seeks to ensure that there is 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.

Proposed effective date: 1 July 2023

Income Tax – Transfer Pricing

Mutual Administrative Assistance in Tax Matters

Proposal. The Finance Bill proposes to include 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 proposal will introduce the legal framework for the Commissioner to enforce the assessment and collection of taxes under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCAA).

The enactment of the above proposal will set the stage for international cooperation in the assessment and collection of taxes from taxpayers.

Proposed effective date: 1 July 2023

Proposal. The Bill further proposes to introduce 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 may no longer be contested. The tax claim shall be made under a prescribed form. The proposal further outlines the prescribed format. Additionally, the proposal further 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 section empowers the Commissioner to collect taxes on behalf of another state party to a multilateral agreement or treaty with mutual administrative assistance provisions. The impact of the above proposed amendment will provide for all possible forms of 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 this proposal 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.

Proposed effective date: 1 July 2023

Income Tax – Transfer Pricing

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

Proposed provision:
The Bill requires each ultimate parent entity 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 Bill 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 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 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 are aimed at ensuring that the CE resident in Kenya can be held responsible for submitting the CBC report.

Proposed effective date: 1 July 2023

Proposed provision: The Bill proposes to clarify the period of income for which the threshold applies for the purposes of CBC notification. The period of income to be considered shall be the preceding year of income as presented in the group consolidated financial statements. The finance bill also seeks to clarify that the threshold applies to total consolidated group turnover.

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

CbC Reporting - Clarification on UPE

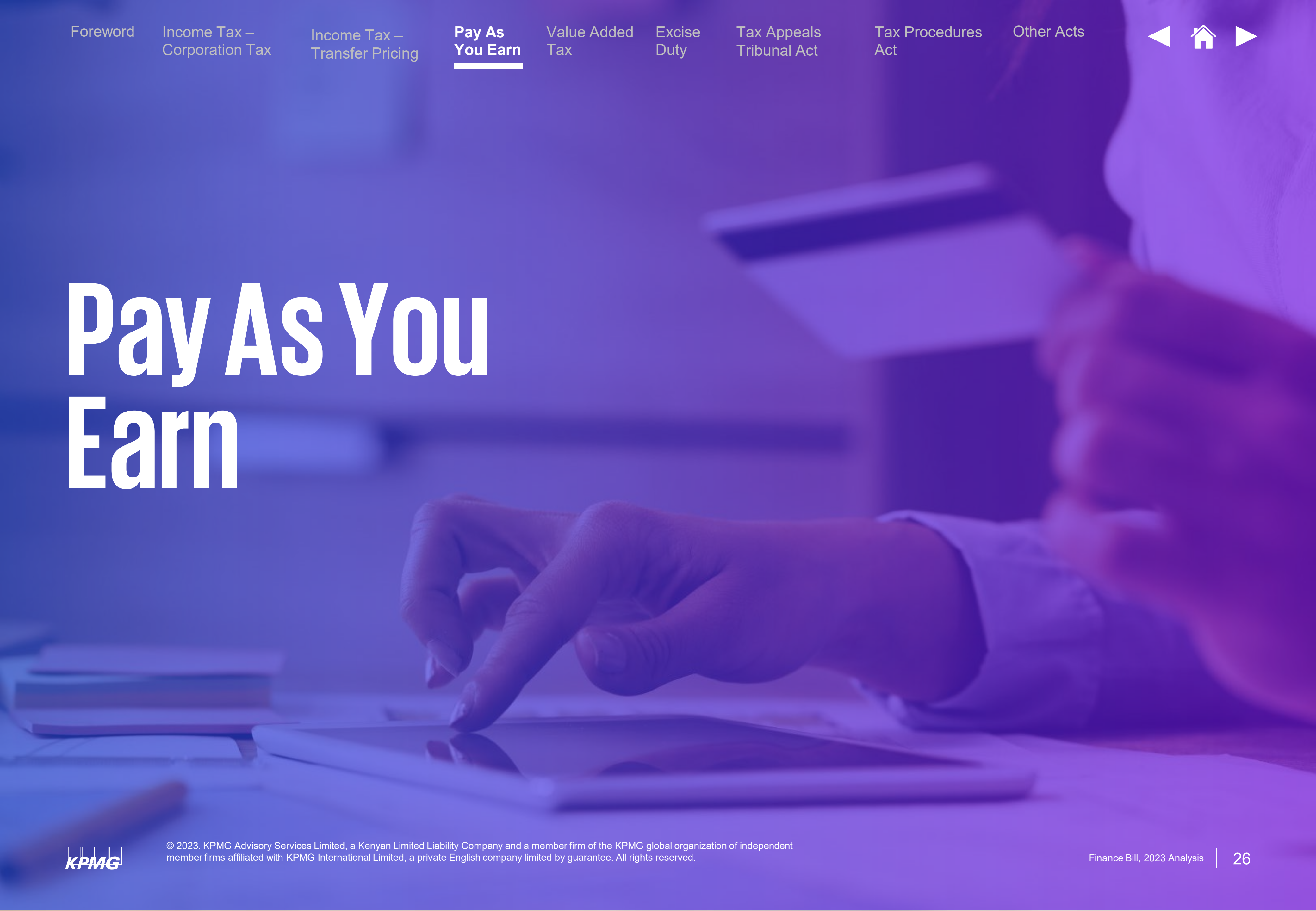
Proposed provision: The Bill, has redefined the term ultimate parent entity as

- 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 proposed definition is aligned to the definition of a UPE under OECD BEPS Action 13.

Proposed 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 Bill proposes to tax the benefit from shares received by employees in lieu of cash emoluments from an eligible start up.

The taxable benefit 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 Bill 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.

The taxable benefit shall be the fair market value of the shares at the time of taxing or the value of the shares based on the last issued financial statements where fair market value is not available.

Implication: The proposed amendment seeks to encourage start-ups to allow employees to benefit from the growth of the company by issuing employees with shares. This is a crucial proposal 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.

Proposed Effective Date: 1 July 2023

Pay As You Earn

Market value for ESOPS – clarified!

The Bill proposes to amend the definition of market value with regards to a share 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 Bill also proposes to amend the definition of a 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 proposed amendment provides the 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 proposal removes the administrative responsibility that the Commissioner would have undertaken to determine the value of shares where the shares were not listed.

Proposed Effective Date: 1 January 2024

Taxation of club entrance and subscription fees

The Finance Bill proposes to tax the club entrance and subscription fees on the employees where this is disallowed against the employer's income.

Implication: This proposal introduces a lacuna as the Bill also proposes deletion of the existing provision that disallows club entrance and subscription fees against company's income.

If enacted, neither the employee nor the employer will pay any tax on the subscription fees.

This appears to be a drafting error and the likely intention was to avoid taxing employees on club entrance and subscriptions fees that are taxed under the employer.

Proposed Effective Date: 01 July 2023.

Pay As You Earn

Relief for contributions to a post-retirement medical fund

The Bill proposes to introduce a relief on contributions made by a resident person towards a post-retirement medical fund. The value of the proposed relief is 15% of contribution capped at ***KES 60,000*** p.a.

Implication:

The proposed provision will encourage individuals to take up post-retirement medical scheme to safe guard against increasing medical costs in their post employment years.

Proposed Effective Date: 01 January 2024

Unfettered benefit for public officers

The Bill proposes 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 creates a disparity in the treatment of reimbursements between public and private sector workers. It is also open to abuse especially where it appears to suggest that costs for purchase of assets can be reimbursed regardless of who owns the assets.

Proposed Effective Date: 01 July 2023

Mileage - Exclusion from tax

The Bill proposes to exclude from taxation, travel and mileage claims that are incurred during the performance of official duties, where the mileage claims are based on approved rates cards from the Automobile Associate of Kenya.

Implication: The proposed 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.

Proposed Effective Date: 01 July 2023

Pay As You Earn

A new PAYE band in the offing!

The Finance Bill proposes to introduce a new PAYE tax band with a tax rate of **35%** on employment income above ***KES 6,000,000*** per annum.

The 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 all income over KES 6,000,000	35%

Implication: The objective of the proposed 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***.

Proposed Effective Date: 01 July 2023

Pay As You Earn

Post-retirement medical funds exempted from tax

The Bill proposes to exempt from tax any investment income from a post-retirement medical fund including where the income is not part of a retirement benefits scheme.

The Bill also proposes to exempt from tax any payment in the form of funds transferred from a post-retirement medical fund to a medical insurance cover provider

Implication: This proposal is aimed at encouraging individuals to take up post-retirement medical schemes.

Proposed Effective Date: 01 July 2023

Value Added Tax

Value Added Tax

High pump prices

Proposed provision : The Bill proposes to subject petroleum products (excluding Liquid Petroleum Gas) to VAT at a 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 proposal is likely to impact the prices of transport and production of goods increasing the inflationary pressure in the economy.

Proposed Effective Date: 01 July 2023

LPG relief

Proposed provision : The Bill proposes to exempt Liquefied Petroleum Gas (LPG) from VAT. 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, when the VAT was implemented on LPG, the rate was reduced to 8%.

Implication: By exempting VAT on LPG, it is expected that this will impact the household cost while at the same time, positively impact the climate. However, any input VAT incurred by the suppliers of LPG will become a cost and this may be passed on, to the consumers negating the much needed relief.

Sealing loopholes in claiming of input VAT

Proposed provision : The Bill proposes to amend Section 17(2) of the VAT Act to make it mandatory for a purchaser to have proper documentation, including invoices, and to also ensure that the supplier has declared the supply before claiming input VAT.

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. Therefore, 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 this 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.

Proposed Effective Date: 01 July 2023

VAT on compensation of loss of supplies

Proposed Provision : The Bill proposes to amend 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, the compensation received shall be treated as a taxable supply.

Implication : The proposed provision is likely to 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 declare the compensation and subject it to VAT, then remit the tax to the Commissioner.

Value Added Tax

Clarification on VAT registration requirements for digital service providers

Proposed provision : The Bill proposes to amend 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 required to register for VAT.

With this proposal, it has been made clear that all suppliers of imported digital services will be required to register for VAT irrespective of the turnover.

Proposed Effective Date: 01 July 2023

Record keeping

Proposed provision - The Bill proposes to amend Section 43 of the VAT Act to provide that tax records can be kept in any other place other than Kenya

Implication: The removal of this requirement would make it easier for businesses to keep records anywhere in the world, in response to the continued digitalization of operations. This may also reduce the costs and administrative burden associated with having to pull resources to ensure that these records are kept in Kenya.

With the implementation of VAT on supply of digital services by non-residents, it is important that such entities are allowed to keep records relating to these transactions in a cost effective manner.

Proposed Effective Date: 01 July 2023

Exportation of taxable services – from the frying pan into the fire?

Proposed provision : The Bill proposes to reclassify the exportation of services from standard rated to exempt 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 considered controversial because charging VAT on exported services at 16% went against international best practice. On the other hand, the VAT Act did not define a BPO therefore creating a headache for clients on determining the appropriate VAT treatment for services rendered to entities outside Kenya.

While the proposal provides clarity on the VAT treatment for exported services, including BPOs, any input VAT cost incurred by the entity exporting the services outside Kenya will become a cost. This will mean that the cost of doing business for such entities will increase, effectively making Kenya unattractive to investors in such service companies.

Proposed Effective Date: 01 July 2023

Value Added Tax

Transfer of a business as a going concern

Proposed provision : The Bill proposes to reclassify transfer of business as a going concern (TOGC) from standard rated to exempt.

Impact : This is a significant change as firms investing in new businesses or firms consolidating their businesses will have a significant saving in terms of reduced upfront cash outlays. While this can be beneficial to the buyer, any input VAT directly attributable to the TOGC will not be claimable in the VAT return.

Proposed Effective Date: 01 July 2023

Place of supply for suppliers outside Kenya

Proposed provision : The Bill proposes to expand the definition of a supply made in Kenya by persons outside Kenya to include a supply made to registered persons.

Impact : The proposal seeks to align the determination of place of supply of services to cover both registered and unregistered persons

Proposed Effective Date: 01 July 2023.

Value Added Tax

Clean-up of the VAT Act

The bill proposes the following changes in 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. We discuss these below:

Proposed Change	Tariff number in the VAT Act	Correct Tariff number
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	3005.90.10	3005.90.11 3005.90.12 3005.90.19
Malaria Diagnostic Kits	3002.11.10	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 Bill proposes the following changes in 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	Tariff number in the VAT Act	Proposed amendment of the Tariff number as per the CET
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 bill has also proposed the sanitization of the various tariff codes as the items are already exempt under different HS codes:

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

3003.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) 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.

Proposed Effective Date: 01 July 2023

Change in Tariff Description

As part of the sanitization process, the Bill has proposed to clean up the tariff description while having the items still under exempt status:

Current Description	Proposed Description	VAT Status
Fish and crustaceans, muluscs 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	Proposed 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, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health	Exempt
Artificial teeth 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

Standard rated- Exempt

The Bill has proposed to amend the following items by moving them from exempt to standard rated:

Item	Current provision	Finance Bill 2023 proposed amendment
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
All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs.	Standard rated	Exempt

Zero-rated - Exempt

The Bill has proposed to amend the following items by moving them from zero-rated to exempt:

Item	Current provision	Finance Bill 2023 proposed amendment
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the CS in consultation with the Cabinet Secretary responsible for matters relating to health	Zero rated	Exempt
All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture	Zero rated	Exempt
Agricultural pest control products	Zero rated	Exempt
Transportation of sugarcane from farms to milling factories	Zero rated	Exempt
Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture	Zero rated	Exempt
Fertilizers of chapter 31	Zero rated	Exempt

*The proposed reclassification of agricultural pest control products, transportation of sugarcane, inputs/raw materials for fertilizer manufacturing, and fertilizers from zero rated to exempt is likely to have significant impacts on the agriculture sector and the overall economy.

The reclassification is expected to increase the cost of production for the suppliers hence passing the cost to the farmers, which will ultimately lead to an increase in the cost of food.

The proposed reclassification will also have an impact on the subsidised fertiliser program as any input VAT incurred in supplying the fertiliser will become a cost to entities supplying fertiliser to the Government. This will in turn impact government's efforts to ensure that all Kenyans have access to affordable and nutritious food.

Exempt – Standard rated

The Bill has proposed to amend the following items by moving them from exempt to standard rated:

Item	Current provision	Finance Bill 2023 proposed amendment
Other artificial parts of the body	Exempt	Standard rated
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.	Exempt	Standard rated
Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)	Exempt	Standard rated
Plant, machinery and equipment used in the construction of a plastics recycling plant	Exempt	Standard rated
*Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption	Exempt	Standard rated

*It is important to note that the exemption from VAT of these taxable services extends where the approval had previously been granted by the Cabinet Secretary until the supply of the exempted taxable services is made in full.

Exempt – Standard rated

Item	Current provision	Finance Bill 2023 proposed amendment
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
Capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than two billion shillings	Exempt	Standard rated
Taxable goods, inputs and raw materials imported or locally purchased by a company which - (a) is engaged in business under a special operating framework arrangement with the Government; and (b) is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.	Exempt	Standard rated

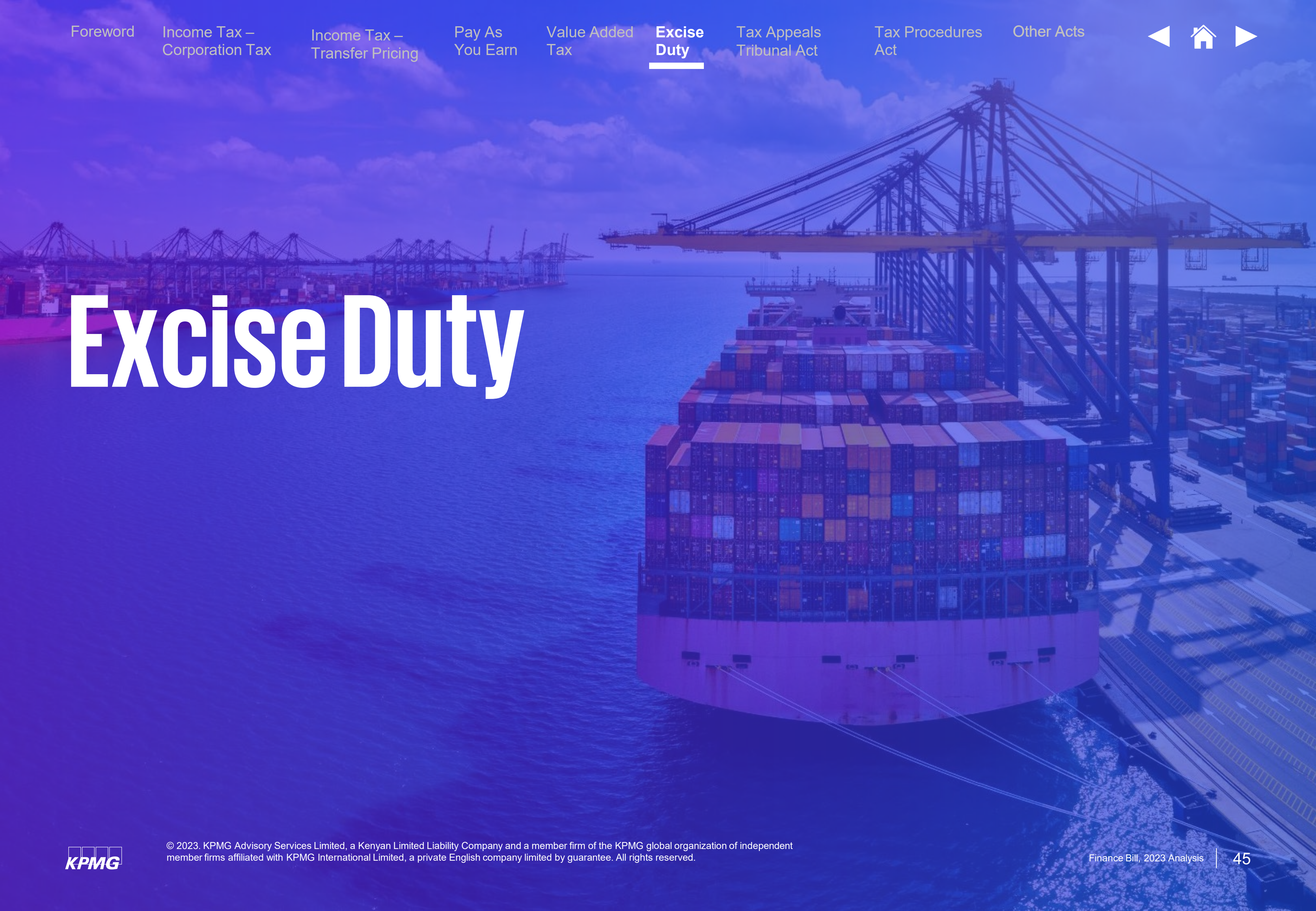
Standard rated – Zero-rated

Item	Current provision	Finance Bill 2023 proposed amendment
Inbound international sea freight offered by a registered person	Standard rated	Zero rated

Retention of Zero rate on wheat/maize flour

Item	Current provision	Finance Bill 2023 proposed amendment
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 proposed amendment in the Finance Bill 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

Revocation of annual inflation adjustment

The Bill seeks to repeal 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:** The proposal will provide the much needed certainty for business planning and is a welcome move for taxpayers.
>
> ***Proposed Effective Date: 01 July 2023***

A 24-hour betting economy!

The Bill proposes that the remittance by a bookmaker of excise duty on betting and gaming through a platform or other medium within 24 hours of the closure of transactions of the day.

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

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

Excise Duty

First Schedule Part III- Interpretation of the first schedule of Excise Duty Act, 2015.

Inclusion of gaming

The Bill proposes to expand 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 proposal will lead to the widening of scope of the amount subject to excise duty and this leading to increase to revenue collected by the government.

Expansion of definition of "Other fees"

The Bill proposes to expand the definition of other fees to any other excisable services rendered by Financial Institutions by deleting the words 'relating to their licensed activities' appearing in the definition of 'other fees'.

Implication: The proposed deletion essentially means that Financial Institutions will charge excise duty on all other fees earned except for interest income or its equivalent.

Proposed Effective Date: 01 July 2023

Expansion of definition of fees for digital lending

The Bill proposes to expand the term fees, to include any amounts charged in respect of lending by digital lenders, bringing into the excisable duty net any costs related to such transactions.

Implication: The proposal will increase the cost of borrowing through digital platforms, which has gained popularity in Kenya.

Proposed Effective Date: 01 July 2023

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.

Implication: The intention of the proposal is to align the reference to the definition of excise control to the correct Section of the Act.

Proposed Effective Date: 01 July 2023

Time to action after appeal on license suspension

The Bill proposes that a person who had appealed to the Commissioner after suspension of the license, has at least 14 days within which to comply with the requirements given by the Commissioner.

Implication: This provision will bring certainty on practical timelines within which the taxpayer can comply with the requirements given by the Commissioner.

Proposed Effective Date: 01 July 2023

Excise Duty

Introduction of Offence relating to excise stamps.

The Bill seeks to introduce a fine of **KES 5 million** or a jail term not exceeding 3 years or both upon conviction to offences relating to excise stamps. The 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 the 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: The proposal seeks to curb illicit trade in excisable goods and encourage compliance that may lead increased revenue collection by the Government.

Proposed Effective Date: 01 July 2023

Excise Duty

Changes in rates for excisable services

Item	Old rate	New rate
Excise duty on Telephone and internet data services	20%	15%
Excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service	20%	15%
Excise duty on fees charged for money transfer services by cellular phone	12%	15%
Excise duty on betting	7.5%	20%
Excise duty on gaming	7.5%	20%
Excise duty on prize competition	7.5%	20%
Excise duty on lottery (excluding charitable lotteries)	7.5%	20%
Excise duty on fees charged on advertisement on television, print media, billboards 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 base. If enacted, this proposed change will be a step in the right direction for the Government towards achieving its vision of attaining the Kenya Digital Superhighway.

The increase in excise duty on fees charged for transfer services by cellular phone may lead to a decrease in the number of transactions thus may see a decrease in the excise duty collection.

The increase in excise duty on betting, gaming, prize competition and lottery is aimed at curtailing the consumption of services that are considered detrimental to the citizens.

Proposed Effective Date: 01 July 2023

Excise Duty

Change in scope:

Item	Proposed change to the scope
Articles of plastic of tariff heading 3923.30.00	Imported articles of plastic of tariff heading 3923.30.00 and 3923.90.90”; **Implication:** The proposal aims to protect the local manufacturers of plastic conveyancing items, such as plastic bottles and flasks.
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	Pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared. **Implication:** The change brings into the tax bracket, locally produced pasta. The aim is to increase Excise duty revenue.

*Proposed Effective Date: **01 July 2023***

Excise Duty

Introduction of excise duty on more goods

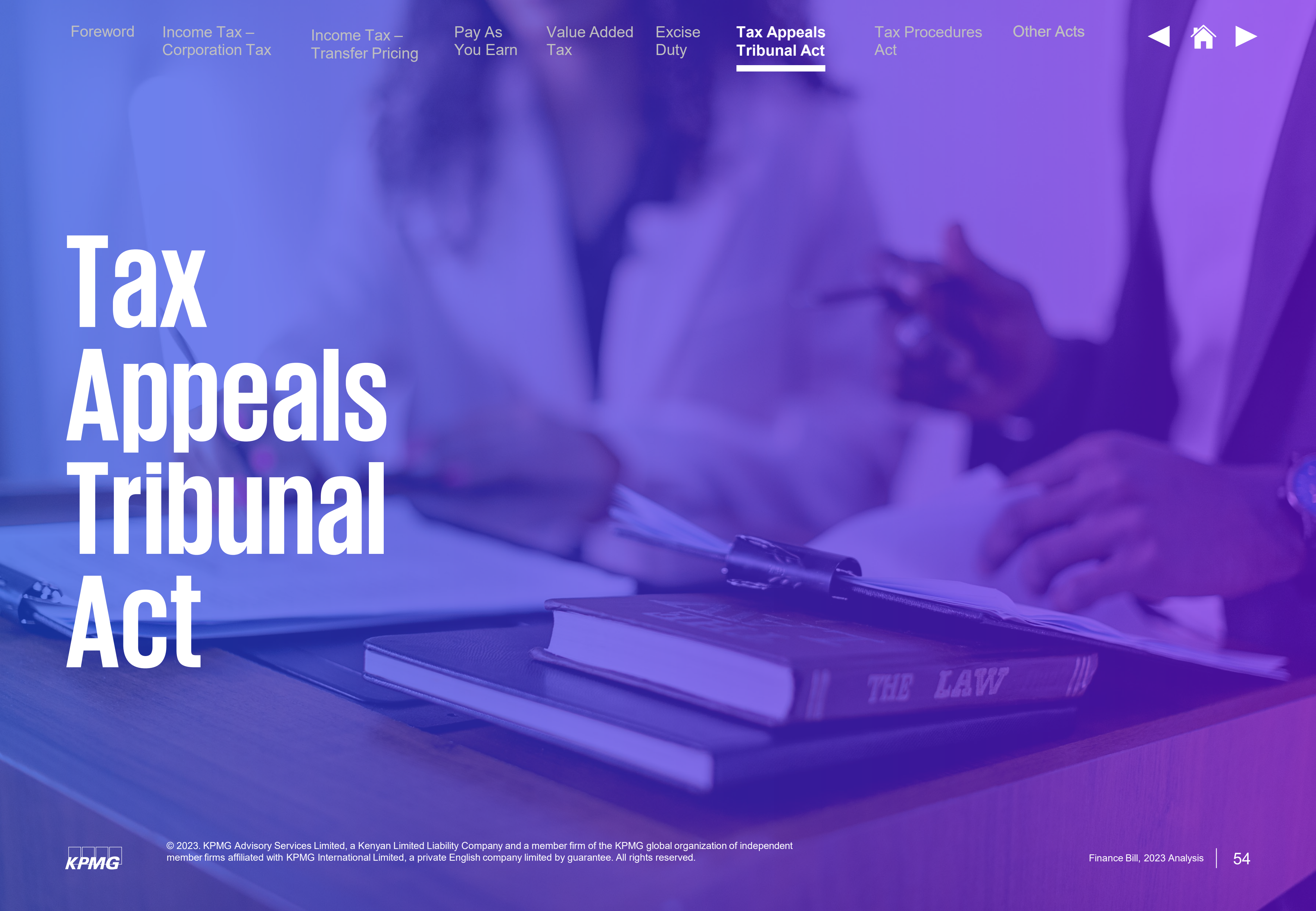
Item	Old rate	New rate
Imported fish	N/A	KShs100,000 per metric tonne or 20%,whichever is higher
Locally manufactured Sugar confectionery (including white chocolate), not containing cocoa.	N/A	Kshs 242.29 per kg
Locally produced Pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	N/A	20%
Powdered juice	N/A	Kshs 25 per kg
Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer	N/A	Kshs 5 per kg
Human hair and other products of heading 6703;	N/A	5%
Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704	N/A	5%
Artificial nails of tariff no. 3926.90.90	N/A	5%

Excise Duty

Introduction of excise duty on goods

Item	Old rate	New rate
Imported cement	N/A	10% of value or KShs 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 Test liner of heading 4805.24.00	N/A	25%
Imported fluting medium of heading 4805.19.00	N/A	25%
Condensates per 10001@ 20 deg C of Tariff 2709.00.10	KES 6,225.00 per kg	0

Proposed Effective Date: ***01 July 2023***



Tax Appeals Tribunal Act

Tax Appeals Tribunal Act

Documents at appeal– Clean up

- **Proposed Provision**: The Bill proposes to amend the Act to include appealable decisions as part of the bundle of documents to be filed before the Tax Appeals Tribunal.
- Further, the Bill proposes to widen the scope of documents to be filed together with the appeal to include any other document that may be necessary to enable the Tribunal to make a decision on the appeal.

Implication: This is intended to align the Act to the Tax Procedures Act and to clarify that taxpayers shall be required to provide an objection decision together with the bundle of appeal.

The provision to include 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.

Proposed effective date: 1 July 2023

Security on Appeal to the High

- **Proposed provision**: The Bill proposes to amend the Act to introduce a requirement to deposit 20% of the tax in dispute or a security of an equivalent amount with the Commissioner before filing an appeal to the High court.

Implication: The proposal to a require a deposit before an appeal is likely to bar some tax players from accessing justice especially where the amounts in dispute are significant. This proposal was rejected in the past as being punitive on taxpayers and it is likely to attract interest.

Proposed effective date: 1 July 2023

Refund of Security upon successful appeal

- **Proposed provision**: The Bill proposes to impose a timeline for refund of security paid where a taxpayer's appeal is successful.

- **Implication**: The 30 day timeline for refund of the deposit paid for appeal is laudable but with cautious skepticism. The Commissioner's track record of processing refunds in a timely manner is ordinarily pegged availability of funds. Establishment of an interest earning fund dedicated to hold security paid on appeal may be necessary to safeguard against redirection of the funds and to guarantee payment plus interest earned to taxpayers in instances where the High Court issues judgement in favour of the taxpayers .

Tax Procedures Act

Tax Procedures Act

Definition of a tax decision

- **Proposed provision**: The Bill seeks to amend the definition of “tax decision” to exclude tax refund decisions by the revenue authority.
- The Bill further proposes to define a tax decision to include both a demand for penalty or late payment interest

Implication: The proposed 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 . If passed into law, issues around refunds will be covered under Section 47 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 previously that included only a demand for penalties, and not interest, in the definition of tax decision.

Proposed effective date: 1 July 2023

International Tax Agreements

- **Proposed provision**: The Bill proposes 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: Previously, 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 the other international tax agreements will apply to the multilateral agreements for assistance in collection of taxes.

Proposed effective date: 1 July 2023

Tax Procedures Act

Record Keeping Requirements for a Trustee

- **Proposed provision**: The Bill proposes 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 proposal, the resident trustees will 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 any assessments for trusts administered from Kenya. This may be due to the fact that trusts are increasingly being used as a means to transfer and hold assets by wealthy individuals and corporations for tax planning purposes.

Proposed effective date: 1 July 2023

Establishment of an Electronic system

- **Proposed provision**: The Bill seeks to include an option for the Commissioner to establish an electronic system through which electronic tax invoices are issued and records of stocks kept.
- The Bill further proposes to impose a requirement that that a business person issues an electronic tax invoice through the system and maintain a record of stocks in the system.
- The Bill proposes that the electronic tax invoices may exclude emoluments, imports, investment allowances, interest, and similar payments
- The Bill also proposes that the Commissioner may by way of gazette, exempt a taxpayer from requirements of the establishing an electronic system for tax invoices.

Implication: This proposal 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 Bill also proposes that deductions only be allowed to the extent that they are supported by valid invoices.

Tax Procedures Act

Amendment of an assessment

- **Proposed provision**: The Bill proposes to widen the scope of the Commissioner's powers to further amend assessments.
- Currently, in cases where an assessment has already been amended, the TPA only allows further amendments by the Commissioner on the original assessment.
- The Bill seeks to delete the term "original" in reference to assessments that the Commissioner may further amend

Implication: The proposal intends to remove the restriction on further amendments on assessments already amended. This may however lead to uncertainty of the part of the taxpayer as they may be exposed to multiple amendments of assessments by KRA.

Proposed effective date: 1 July 2023

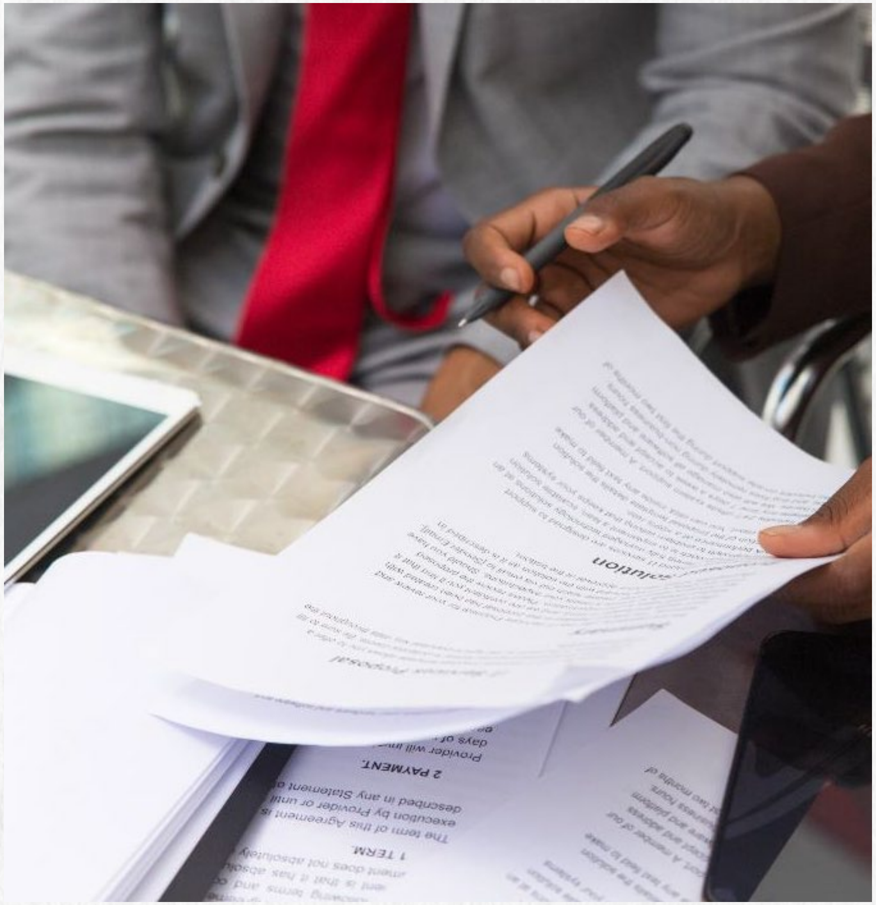
Recovery of a tax claim in an International tax Agreement

Proposed provision: The Bill seeks to empower 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.

- KRA is to enforce recovery of tax claims upon request by the competent authority of a party to the international tax agreement.
- Where the tax claim is against a non-resident, the enforcement and recovery provisions shall only apply where the claim is uncontested.
- The Bill intends to introduce 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 deposit the recovered amounts into a dedicated account in the Central Bank of Kenya and remitted to an account specified by the requesting party

Implication: This proposal, if passed, will mean that KRA will have powers to recover taxes due in another jurisdiction from both 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 recovery of tax.

Tax Procedures Act



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

- **Proposed provision:** The Bill proposes to repeal provisions allowing relief because of doubt or difficulty in recovery of tax on the part of the Commissioner
- Currently, the Commissioner, with approval of the Cabinet Secretary, has 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 proposed amendment places pressure of the Commissioner to take all necessary measure to recover taxes owed. Taxpayers should brace themselves for aggressive tax collection measure by the Revenue Authority to recover unpaid taxes without abandonment as an option even in cases where it is administratively challenging or costly to recover the tax.

Proposed effective date: 1 July 2023

Tax Procedures Act

Amnesty on interests, penalties or fines on unpaid tax

- **Proposed provision**: The Bill proposes to bar the Commissioner from recovering penalties, interest and fines on a tax debt where a taxpayer had paid the principal tax before 31st December 2022.
- Where the principal tax had not been paid before that date, a taxpayer may apply for amnesty of interest, penalties or fines accrued up to 31 December 2022. The taxpayer will also be required to propose a payment plan for the outstanding amount.
- 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 an amnesty has been granted but the principal tax has not been fully settled by 30 June 2024.

Implication: The proposed change if passed into law, will assure tax payers of 100% waiver of penalties and interests on principal taxes settled before 31 December 2022.

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

- The proposed 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 accrued after 1 January 2023 shall not be subject to waiver of any penalties or interests and the penalties and interest waiver amnesty 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.

Proposed effective date: 1 September 2023

Removal Waiver of penalties & Interest

- **Proposed provision:** The Bill proposes to scrap 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.

Implication: The removal of the option to seek a waiver of penalties and interest is going to increase collections where taxpayers are in default. However, this will at the same time create an additional burden for taxpayers who are inadvertently caught out thus calling for diligence to ensure compliance on the part of taxpayers.

Tax Procedures Act

Security for unpaid tax - Timeline for notification

- **Proposed provision**: The Bill proposes 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.

Implication: The requirement to notify the taxpayer and any interested parties of registration of an interest in favour of the Commissioner will ensure transparency and allow parties whose interests are adversely but erroneously affected takes steps to protect their interests.

Proposed effective date: 1 July 2023

Agency Notices to Taxpayers' Debtors

- **Proposed provision**: The Bill proposes to set limits within which the Commissioner can issue a notice to collect tax from taxpayers' debtors.
- If passed into law, 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 proposed amendment seeks to clarify the instances where the Commissioner can issue an agency notice as opposed to the current scenario where agency notices may be issued arbitrarily.

Proposed effective date: 1 July 2023

Withholding VAT

- **Proposed provision**: The Bill proposes to delete the provision in Section 42A that excludes manufacturers whose value of investment in the last three years from commencement of the Act and whose value exceed 3 Billion from withholding VAT.

Implication: This provision shall allow for withholding VAT on manufacturers who are currently exempted. An appointed VAT Agent shall now be required to withhold 2% VAT from manufacturers.

Proposed effective date: 1 July 2023

Tax Procedures Act

Withholding VAT to be remitted within 3 days

- **Proposed provision**: The Bill proposes to delete the current requirement to remit VAT withheld by the 20 day of the following month to within 3 days after deduction.

Implication: This proposal 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 3 day timeline presents a compliance risk as it is extraordinarily short.

Proposed effective date: 1 July 2023

Real Estate Agents

- **Proposed provision**: The Bill proposes to introduce a provision that allows the Commissioner to appoint persons collecting rent on behalf of another as withholding agents.

Implication: This proposal is aimed at increasing collection avenues for the government. It shall allow the Commissioner to net in landlords whose rent is collected by estate agents and give the Commissioner visibility of transactions concluded through the real estate agents.

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

Proposed effective date: 1 July 2023

Refund of overpaid tax

- **Proposed provision**: The Bill proposes to allow taxpayers to offset outstanding liabilities and future tax liabilities against overpaid taxes.

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

Proposed effective date: 1 July 2023

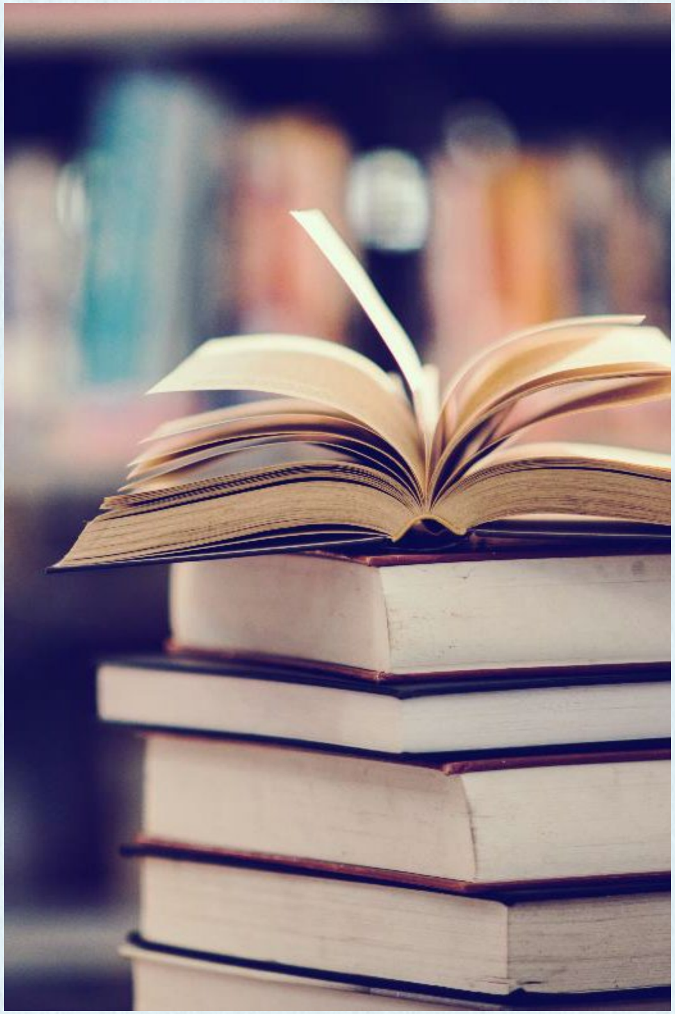
Timeline for processing refunds

- **Proposed provision**: The Bill proposes to reduce the time taken by the Commissioner to process a refund from 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. If passed into law this shall mean that interest shall begin to accrue after 6 months.

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

Proposed effective date: 1 July 2023

Tax Procedures Act



Validity of objection decision

- **Proposed provision**: The Bill proposes to introduce a 7 day timeline for provision of information where a taxpayer is notified that the objection decision has not been validly lodged. The Bill further proposes to empower the Commissioner to issue an objection decision within 60 days where the taxpayer fails to provide the supporting documents within the 7 days.

Implication: This proposal 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.

Proposed effective date: 1 July 2023

Increase of ADR timelines

- **Proposed provision**: The Bill proposes to increase the timeline allowed for parties to negotiate and potentially settle disputes under the Alternative Dispute Resolution (ADR) framework from the current 90 days to 120 days.

Implication: This proposal 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.

Proposed effective date: 1 July 2023

Tax Procedures Act

Restriction of new grounds on appeal post-objection stage

- **Proposed provision:** The Bill proposes to amend the Act 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.

Implication: Taxpayers shall be required to be vigilant and thorough when objecting against assessments. Currently, the Tribunal/courts have the discretion to allow a taxpayer to introduce new grounds which were not included in the objection.

This change appears to contradict the proposed provision under Tax Appeals Tribunal Act which if passed would allow taxpayers to produce documents and such other information as may be necessary for the Tribunal to make a decision.

Proposed effective date: 1 July 2023

Data Management System

- **Proposed provision**: The Bill proposes to empower the Commissioner to establish a data management system to collect transaction data and invoices on ordinary transactions and such other commercial or financial transactions by taxpayers.
- Further, the Bill proposes to introduce 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 shall give the Commissioner visibility to taxpayer transactions including the name and address of persons making payment and reasons for such payment. The intention of collecting the personal data is not clear. However, if passed into law, the KRA will certainly have the compliance burden to process and store the personal data as prescribed by the Data Protection Act, 2019.

Proposed effective date: 1 September 2023

Tax Procedures Act

Compliance with Electronic Tax System

- **Proposed provision:** The Bill proposes to repeal the current provision under Section 83 which requires taxpayers to submit a return or pay a tax electronically. In its place, the Bill proposes to replace 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 Bill proposes to increase the penalty for failure to comply with the electronic Tax System from the current KES 100,000 to KES 1,000,000 or an amount equal to 10 times the amount of tax due whichever is higher

Implication: This 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 proposed amendment is in line with the roll out of the Tax Invoice Management System.

The stiff penalties proposed under the Bill will deter non-compliance.

Proposed effective date: 1 September 2023

Impersonation

- **Proposed provision:** The Bill proposes to introduce an offence of impersonation of an authorized officer and impose an imprisonment for a term not exceeding 3 years for the offence.

Implication: The proposed 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.

Proposed effective date: 1 July 2023

Tax Procedures Act

Tax Shortfall Penalty

- **Proposed provision:** The Bill proposes to increase the penalty for tax shortfall from 75% of the tax due to double the amount of tax due on tax short fall

Implication: The proposed introduction of a stiff penalty for tax shortfall arising from willfully providing misleading information is meant to deter falsifying information and encourage cooperation and transparency on the taxpayers' part.

Proposed effective date: 1 July 2023

Concurrent Civil & Criminal Proceedings

- **Proposed provision:** The Bill proposes to amend the Act to allow for criminal and civil proceeding to run concurrently.

Implication: The proposal shall limit the taxpayer's ability to seek a stay of proceedings. However, the proposed change shall be subject to the supervening rights guaranteed under Article 50(2)(c) of the Constitution which guarantee taxpayers the right to adequate time prepare and mount a defence. Taxpayers may still utilize this Constitutional provision to apply for and obtain stay of proceedings where the Commissioner institutes concurrent suits against the same taxpayer over the same transaction.

Proposed effective date: 1 July 2023

Other Acts

Miscellaneous Fees & Levies Act

Reduction of Import Declaration Fee

- **Proposed provision**: The Bill proposes to revise the import declaration fee (IDF) from 3.5% to 2.5%.

Implication: The proposed reduction of import declaration fees levy is aimed at stimulating growth in the local manufacturing sector by reducing the cost of inputs imported into the country. Importers of goods for own consumption such as motor vehicles may also get reprieve from the reduced rate.

Inputs for construction of affordable housing

- **Proposed provision**: The Bill proposes to delete Section 2A which provides for a reduced rate for inputs t be used in affordable housing projects.

Implication: The proposed deletion of Section 7(2A) shall if passed mean 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 affordable housing as increase in rate from 1.5% to 2.5% shall translate into increase in pricing.

Proposed effective date: 1 July 2023

Miscellaneous Fees & Levies Act

Export and Investment Promotion Levy

Proposed provisions:

- The Bill proposes to introduce a levy on goods imported into the country for home use at 10% of the customs value of the goods under the Third Schedule to be payable by an importer of such goods. Some of the goods included in the Third Schedule include bars and rods or iron, Kraft paper, sacks and bags and cement clinkers.
- **Exemption**: Goods imported from the East African Community shall be exempt from the export and investment promotion levy.

Implication: The proposed introduction of the levy will protect the local market and stimulate growth of the local manufacturing industry. While this is a commendable move, if passed into law, 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 Bill proposes an effective date for the levy of 1 July 2023 while the Third Schedule which provides the rates and the goods subject to the levy is proposed to take effect on 1 September 2023. it shall necessary to align the effective dates for ease of implementation.

Proposed effective date: 1 July 2023

Introduction of Third Schedule

Proposed provisions: The Bill proposes to introduce a Third Schedule to the Act to provide for goods subject to export investment promotion levy.

Implication: The amendment is aimed at facilitating implementation of the export promotion levy which shall be levied at 10% for applicable goods.

Proposed effective date: 1 September 2023

Miscellaneous Fees & Levies Act

Reduction of Railway Development Levy (RDF)

Proposed provision: The Bill proposes to reduce the railway development levy from 3.5% to 2.5%.

Further, the Bill proposes to delete 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.

Proposed effective date: 1 July 2023

Reduction of Export Levy

Proposed provisions: The Bill proposes to amend the Act by reducing the export levy on leather and leather products classified under tariff numbers 4101.20.00 to 4302.20.00 from 80% to 50% or USD 0.52.

Implication: The proposed 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.

Proposed effective date: 1 July 2023

Miscellaneous Fees & Levies Act

Goods for use in diplomatic missions

Proposed provisions: The Bill proposes to amend the Second Schedule by redefining the scope of the exemption from import declaration fees from 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 proposed 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 current provision that allows an exemption for gifts. This provision shall safeguard against revenue leakage arising from misuse of the exemption for personal gain.
>
> ***Proposed effective date: 1 July 2023***

Aircraft Exemption

Proposed provisions: The Bill proposes to widen 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.

> **Implication**: The proposed amendment widens the scope of exemption of not only aircrafts but space crafts and attendant parts.
>
> ***Proposed effective date: 1 July 2023***

Miscellaneous Fees & Levies Act

Goods for use by Kenya Defence Forces and National Police Service

Proposed provision: The Bill proposes to widen 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 current exemption from IDF.

Currently, the exemption is 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.

Proposed effective date: 1 July 2023

Liquified Petroleum Gas

Proposed provisions:The Bill proposes to introduce an exemption from IDF for liquified petroleum.

Implication: The proposed exemption shall 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.

Proposed effective date: 1 July 2023

Miscellaneous provisions

The Retirement Benefits (Deputy President and State Officers) Act

Proposed provision: The Bill proposes to repeal provisions outlining circumstances where benefits may not be paid.

- 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 proposed repeal would mean 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 would not be denied their prescribed retirement benefits under any of the circumstances currently 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 will not have any motivation to comply since if the proposal is passed into law they be protected from consequences of violation of their constitutional duty.

Proposed effective date: 1 July 2023

Miscellaneous provisions

The Retirement Benefits (Deputy President and State Officers) Act

Proposed provision: The Bill proposes to provide the following benefits 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 Bill seeks to repeal 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 Bill also proposes 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 proposal if passed is likely to elicit sharp reactions from the public who are already overburdened by the Public Wage Bill and who will bear the cost of catering for benefits for retired senior government officials.

Proposed effective date: 1 July 2023

The Retirement Benefits (Deputy President and State Officers) Act

Proposed provision: The Bill proposes to include Retired speakers' children of both the National Assembly and Senate to be eligible for full medical cover

Implication: Similarly, this proposal 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.

Proposed effective date: 1 July 2023

Other Acts

The Betting gaming and Lotteries Act

Proposed amendment: The Bill proposes the collection of taxes in relation to gaming revenue, lotteries shall be in line with the Tax Procedures Act, 2015.

Implication: The proposed definition seeks to align collection of taxes under the Act to avoid ambiguity and confusion in relation to collection of taxes.

Proposed effective date: 1 July 2023

The Kenya Road Boards Act

Proposed amendment: The Bill proposes to introduce submission of annual estimates together with a collated annual roads programme.

Implication: If passed into law, this new proposal will ensure accountability and ensure efficiency in the review and approval process at both the Kenya Road Boards level and parliament level.

Proposed effective date: 1 July 2023

Kenya Revenue Authority Act

Proposed provisions: The Bill proposes to amend the Act to confer authority of the Kenya Revenue Authority to establish an institution to provide capacity building for its staff, the general public and other jurisdictions.

Implication: The proposed amendment shall provide clarity on the purpose for establishment and mandate of the institution established by the Authority for capacity building.

Proposed effective date: 1 July 2023

Other Acts

Mandatory National Housing Development Fund deductions under the Employment Act

Proposed amendment: The Bill proposes to introduce mandatory contributions by both the employer and employee to the National Housing Development Fund at a rate of 3% of the employees' basic salary provided that the sum of the employer and employee contributions do not exceed five thousand shillings a month.

The Bill further proposes that the contribution will be used to fund the purchase of a home for those who qualify for affordable housing scheme and for those not eligible may after seven years, or upon attaining retirement age whichever is earlier transfer the contributions to a pension scheme, their staff or dependent children or receive in cash. The cash will however be taxable.

Implication: This proposal 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 in the current economic environment.

Proposed effective date: 1 July 2023

Unclaimed Financial Assets Act

Proposed provisions: The Bill proposes to widen the scope of persons entitled to receive payment or delivery of an asset to include persons designated by the rightful claimant.

The current provision limits payment or delivery of assets to the person who makes the claim.

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

Proposed effective date: 1 July 2023

Statutory Instruments Act

Proposed provision: The Bill proposes to delete provisions relating to automatic revocation of statutory instruments after 10 years.

Implication: This proposal would mean that statutory instruments will stay in force until expressly repealed.

Proposed effective date: 1 July 2023

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