KPMG

Finance Bill, 2024 Analysis

Kenya

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Foreword

The theme of the 2024 Budget Policy Statement (BPS) is "Sustaining Bottom-Up Economic Transformation Agenda for Economic Recovery and Improved Livelihoods." The BPS, which is the second under the Kenya Kwanza Administration, focuses on supporting the Bottom-Up Economic Transformation Agenda (BETA) and aligns with Kenya's Vision 2030's Fourth Medium-Term Plan.

At a macro-economic level, Kenya's economy has demonstrated resilience, growing by 5.6% in the first three quarters of 2023, exceeding global and regional averages. The projected growth for 2023 and 2024 is 5.5%, driven by private sector growth, service sectors, agriculture, and policy measures supporting BETA.

Following the review of the 2024/25 BPS, the Budget and Appropriations Committee approved expenditure of **KES 3.914 trillion**. The estimated revenues from taxes is expected to be **KES 3.354 trillion**, made up of ordinary revenues of **KES 2.913 trillion** and appropriations-in-aid of **KES 441 billion**.

Further, the projected fiscal deficit will be **KES 703.9 billion** which is the difference between total revenues and grants and total expenditure and net lending. This fiscal deficit represents 3.9% of Gross Domestic Product (GDP).

A key facet in mobilizing revenue was the formulation and publication of the Medium-Term Revenue Strategy (MTRS). The primary aim of the MTRS was to provide a framework for tax systems reforms aimed at boosting domestic revenue, which had been declining over time.

The current MTRS, which runs for a period of three fiscal years i.e., FY 2024/25 to FY 2026/27 aims to grow the tax to GDP ratio from 14.1% to 20% within this time frame.

The MTRS provides a raft of proposed tax changes that are aimed at achieving the target set in the MTRS. Given this context, the government introduced the Finance Bill, 2024 (the Bill), which proposes significant changes to the tax framework. Some of these changes are in line with the tax reforms proposed in the MTRS.

Notable among these proposals is the introduction of a contentious motor vehicle tax set at a rate of 2.5% of the value of the vehicle, with a floor of **KES 5,000** and ceiling of **KES 100,000**.

Another key change entails extending the time frame for the Kenya Revenue Authority to issue decisions from 60 to 90 days.

Further, there is a proposal to increase the VAT registration threshold for taxpayers making taxable supplies from **KES 5 million** to **KES 8 million**.

On the international tax front, the Bill suggests implementing a minimum top-up tax of 15%, mirroring the Inclusive Framework Pillar Two proposal. This provision applies to resident persons or entities with a permanent establishment in Kenya that are part of a multinational group with a consolidated annual turnover of **EUR 750 million** (approximately **KES 108 billion**) in at least two of the previous four years preceding the first year of income.

In the following sections, we present our detailed analysis of the proposed changes.

Income Tax- Corporation Tax

Income Tax- Corporation Tax

"Digital content monetization" definition broadened

Proposed amendment: The Bill proposes to broaden the definition of "digital content monetization" to include creative works, creating or sharing of material and any other material that is not exempt from tax under the Income Tax Act (ITA).

Implication: The proposed definition broadens the meaning of "digital content monetization" thus broadening the tax base. This change is primarily informed by Kenya's rapidly growing digital content creation industry.

Proposed effective date: 1 July 2024

KRA registration requirement removed for retirement, pension and provident funds

Proposed provision: The proposed amendment seeks to remove the requirement for retirement, pension and provident funds (the funds) to be registered with both the Commissioner for Domestic Taxes and the Retirement Benefits Authority (RBA). The proposal is to restrict registration of these funds to the RBA.

Implication: The funds are already exempt from income tax under the Frist Schedule to the ITA. Thus, the proposal alleviates the administrative burden associated with dual registration by eliminating the requirement to register with Kenya Revenue Authority (KRA).

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

Definition of "Royalty" broadened

Proposed amendment: The Bill proposes expanding the definition of 'royalty' to include a payment made as a consideration for the use or right to use any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance or support fees and includes the distribution of software.

Implication: The proposed provision seeks to include payments for the use or transfer of the right to use software, further exacerbated by the digitalization of the economy which has led to an increase in the number of cross-border transactions related to software products. This follows various cases ruled in favour of the taxpayer, such as ***Seven Seas Technologies Limited v the Commissioner of Domestic Taxes***, on the grounds that the distribution of software is not subject to withholding tax where the distributor does not exploit any right in the software.

This provision does not however address the different circumstances under which a software payment would be classified as a royalty or as business profits, thus lending itself to misinterpretation. It would be paramount for the Commissioner to issue guidance for the application of the law to different types of transactions, such as those involving the distribution of software by intermediaries that does not involve the transfer of rights to (reproduce) the software itself, but rather the right to distribute the software (as provided for under Article 12 of both the OECD and UN Model Tax Convention). Such a transaction would ordinarily be treated with as business profits, and not a royalty.

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

Who is a related person?

Proposed provision:

The Bill proposes to delete the current definition of a related person under Section 18(6) of the Income Tax Act and Paragraph 3 of Part I of the Eighth Schedule, and substitute the same with an updated definition of a related person under Section 2 as follows:

"in the case of two persons, either person who participates directly or indirectly in the management, control or capital of the business of the other person, and in the case of more than two persons,-

a. *Any other person who participates directly or indirectly in the management, control or capital of the business of the two persons; or*
b. *An individual who-*
   i. *participates directly or indirectly in the management, control or capital of the business of the two persons; and*
   ii. *is associated to the two persons by marriage, consanguinity or affinity and the two persons participate in the management, control or capital of business of the individual*

Implication; Currently, the term "related person" under Section 2 of the ITA only includes situations where two people participate directly or indirectly in each other's business management control or capital. This proposed provision introduces one definition of a related person, which avoids having multiple definitions as under Section 2, 18(6) and paragraph 3, part I of the Eighth Schedule of the Income Tax Act, which may lead to different interpretations.

Proposed effective date: 1 July 2024

Income Tax

Donations now defined

Proposed provision: The Bill proposes to define ‘donation” to mean a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration.

Implication: The definition provides clarity as to what constitutes a donation for purposes of qualifying for exemption under the First Schedule to the ITA.

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

A reprieve for telecommunication industry

Proposed provision: The Bill proposes to extend the capital allowance of 10% per year, to include a spectrum licence by a telecommunication operator. This investment allowance will apply on the remaining useful life of the license where the licence is acquired before 1 July 2024.

Implication: The proposal now clarifies that spectrum licences will be eligible for investment allowance at the rate of 10%. Telecommunication companies incur significant costs in purchasing indefeasible rights to use fibre optic cable and spectrum licenses.

However, only IRUs are eligible for investment allowances, meaning that telecommunication companies miss out on investment allowances on spectrum licenses, which may result in a higher tax payable.

With this proposal, investment in spectrum licenses will be treated as capital expenditure and become eligible for investment allowance from the date when this provision will come into force.

Proposed effective date: 1 July 2024

3 years cap for deferment of foreign realized exchange

Proposed amendment: The Bill proposes to reduce the period for deferment of realized exchange loss from 5 to 3 years.

Implication:

Companies subject to interest restriction with respect to non-resident loans will be able to deduct foreign exchange losses within three years from the date of realization. Accordingly, companies will have to restructure their debt within the same three-year period to reverse their interest restriction position to avoid forfeiting the realized foreign exchange loss deduction.

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

Repeal of Digital Service Tax and Replacement with Significant Economic Presence Tax

Proposed amendment: The Bill proposes the abolition of the digital service tax and its replacement with a significant economic presence (SEP) tax, that will apply to non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace.

Additionally, the Bill proposes to include the following incomes as exempt from SEP tax:

— Payments made by a resident person or person with a permanent establishment with respect to management or professional fees, royalties, interest etc.

— business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication

The proposed chargeable tax is 30% of the taxable profit, which will be 20% of the gross turnover, subject to Regulations that the CS National Treasury may issue.

Moreover, the Bill proposes that both the tax and the corresponding tax return are due on or before the 20th day of the month following the month in which the service was offered.

Implication:

The proposed effective tax rate of 6%, will substantially increase the tax on from income generated through digital marketplaces, currently subject to tax at 1.5% under the Digital Services Tax (DST) regime.

SEP offers alternative nexus rules to tax the profits rather than tax the gross turnover as currently determined under Digital Services Tax (DST).

Kenya is a member of the Organization for Economic Cooperation and Development's (OECD) Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which introduced the Two Pillar Solution to address tax challenges arising from the digitalization of the economy.

Alternative nexus measures may fall within the scope of unilateral tax measures under Pillar One. A jurisdiction implementing such a measure will be required to disapply (switch off) that measure in respect of Amount A companies if it joins the Multilateral Tax Convention (MLC).

Proposed effective date: 1 January 2025

Income Tax- Corporation Tax

Minimum Top-up Tax

The Bill proposes to introduce a minimum top-up tax (MTT) applicable to a "*covered person*" meaning a resident person or person with a permanent establishment in Kenya who are part of a multinational group with a consolidated annual turnover of **EUR 750 million**. (*Approximately KES 106 billion*) in at least two of the previous four years of income immediately preceding the first year of income.

The minimum top up tax shall be the difference between fifteen percent of the net income or loss for the year of income for a covered person, and the combined effective tax rate for the year of income, multiplied by the excess profit of the covered person.

Definitions:

- The **combined effective tax rate** for a covered person shall be the sum of all adjusted covered taxes, divided by the sum of all net income or loss for the year income, multiplied by a hundred.
- The **adjusted covered taxes** are defined as taxes recorded in the financial accounts of a constituent entity for the income, profits or share of the income or profits of a constituent entity where the constituent entity owns an interests, and includes taxes on distributed profits, deemed profit distributions under this Act subject to such adjustments as may be prescribed.
- **Net income or loss** means the sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognised accounting standards in Kenya.
- **Excess profit** means the net income or loss of a covered person for the year of income less:
  - 10% for the employee costs; and
  - 8% for the net book value of tangible assets: Provided that the employee cost and book value of tangible assets may be adjusted as prescribed in regulations

The provisions shall not apply to;

a. A public entity not engaged in business;
b. A person whose income is exempt from tax under paragraph 10 of the First Schedule;
c. A pension fund and the assets of that pension fund;
d. A real estate investment vehicle that is an ultimate parent entity;
e. A non-operating investment holding company;
f. An investment fund that is an ultimate parent entity;
g. A sovereign wealth fund; or
h. An intergovernmental or supranational organization including a wholly owned agency or organ of the intergovernmental or supranational organization.

Income Tax- Corporation Tax

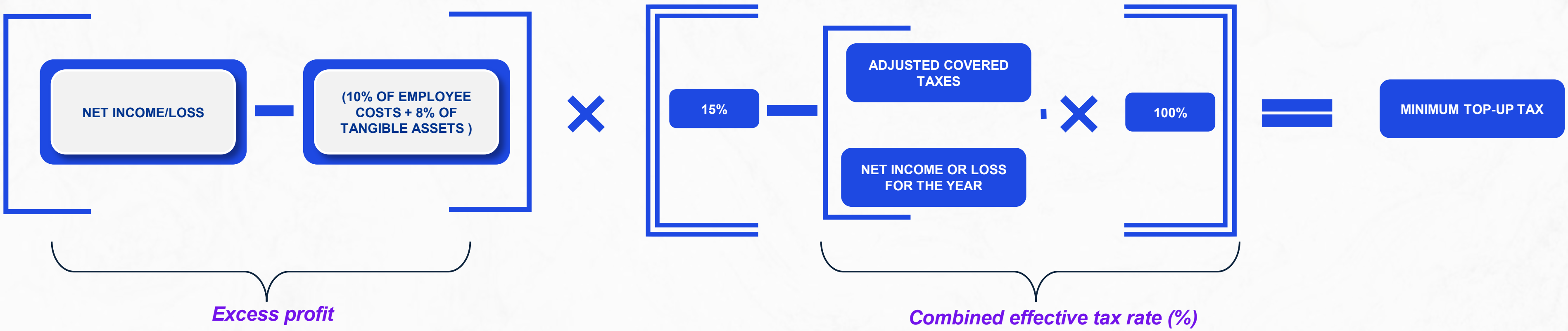
Minimum Top Up Tax Calculation

Implication: This proposal, which provides for the introduction of a MTT on covered persons in Kenya, seems to be aligned to the Global Anti-Base Erosion (GloBE) Model Rules under Pillar Two of the Organization for Economic Cooperation and Development (OECD) Inclusive Framework two-pillar proposal to address the tax challenges arising from digitalization of the economy. The GloBE Rules provide for source countries to introduce a miminum tax to be included in the domestic law of a jurisidiction, which gives taxing right to either the source or parent entity jurisdiction to ensure that multinational entities are subject to a minimum tax rate of 15%.

We expect that Cabinet Secretary shall introduce detailed regulations to provide guidance on the application and interpretation of proposed provisions.

Kenya offers a variety of incentives through the Special Economic Zone (SEZ) and Export Processing Zone (EPZ), and capital allowances. This proposal will roll back tax incentives for in-scope multinational entities. Kenya joins other Organization for Economic Cooperation and Development (OECD) Inclusive Framework African countries such as South Africa that have introduced minimum top up tax legislative proposals.

Proposed effective date: 1 January 2025



Proposed effective date: 1 January 2025

Income Tax- Corporation Tax

Advance Pricing Agreement

Proposed provision: The Bill proposes to introduce a provision allowing non-resident persons who carry out business with related resident persons or through a permanent establishment in Kenya, or resident persons who carry on business with related persons operating in a preferential regime, to enter into Advance Pricing Agreements (APA). The APA shall be valid for a period not exceeding five consecutive years.

Implication:

The OECD Transfer Pricing Guidelines for Multinational Entities and Tax Administration defines an advance pricing arrangement as "*An arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time. An advance pricing arrangement may be unilateral involving one tax administration and a taxpayer or multilateral involving the agreement of two or more tax administrations*."

The proposed APA legislation will allow multinational entities to reach agreements with the Commissioner regarding the pricing of related party transactions, especially for complex transactions where traditional methods might pose challenges and have a high risk of transfer pricing disputes arising in future.

While the proposed provision is commendable and offers tax certainty, we note that it only covers unilateral APAs (i.e. entered between the Kenya Revenue Authority and a taxpayer). This may lead to double taxation where another jurisdiction affected by the controlled transactions covered by the APA rejects the results of the APA concluded in Kenya.

The proposed legislation allows the Commissioner to issue a notice declaring an APA to be null and void in circumstances where the person entered an APA through a misrepresentation of facts.

Kenya joins other countries in East Africa such as Tanzania, Uganda and Rwanda whose tax legislation provides for APAs. We expect the Commissioner to operationalize the proposed provision through introduction of regulations.

Proposed effective date: 1 January 2025

Income Tax- Corporation Tax

Motor Vehicle Tax at 2.5%

Proposed amendment: The Bill proposes to introduce a motor vehicle tax of 2.5% of the value of the motor vehicle to be collected by insurer at the point of issuing motor vehicle insurance.

The proposed tax amount shall be a minimum of **KES 5,000** and a maximum of **KES 100,000**.

The value will be determined based on factors such as make, model, engine capacity (in cubic centimeters), and year of manufacture, subject the Commissioner's prescribed guidelines on the valuation of the motor vehicle.

This tax should be remitted to KRA within five working days. The applicable penalty for failure to account for motor vehicle tax due will give rise to a penalty of 50% of the tax due.

However, the following vehicles have been exempted from this tax —- ambulances, vehicles owned by the national government, county government, Kenya Defence Forces, National Police Service, National Intelligence Service, or those exempt from tax under the Privileges and Immunities Act.

Implication:

The proposal seeks to widen the tax base by bringing into tax, motor vehicle owners, given the surge in motor vehicles on Kenyan roads. In our view, the motor vehicle tax will be applicable on the insurable amount which is largely based on the value of the motor vehicle as determined by a third-party qualified valuer. It will be interesting to see the Commissioner's guidelines on the valuation of motor vehicles, especially for third-party insurance policy covers.

However, this comes against the backdrop of revised insurance premium rates and high fuel prices, inevitably shoring up the cost of operating motor vehicles in Kenya.

This will have a negative impact on the transport and logistics industry who may opt to pass through the additional cost to their customers thus escalating cost of living through multiplier effect.

It is also important to note that the motor vehicle tax, unlike advance tax on commercial vehicles, cannot be offset against income tax payable.

Proposed effective date: 1 January 2025

Income Tax- Corporation Tax

Aligning late income tax filing penalties for EPZ enterprise to the TPA

Proposed provision: The Bill proposes to remove the daily penalty of **KES 2,000** on failure to submit a return or late submission of a return by an EPZ.

Implication: This proposal seeks to move the penalty regime for filing income tax returns by EPZ enterprises to the Tax Procedures Act. The Bill now proposes to charge a penalty of **KES 20,000** per month for each month the EPZ enterprise's income tax return remains outstanding.

Proposed effective date: 1 July 2024

Reduced CGT – 15% to 5%

Proposed provision: The Bill proposes to reduce the CGT rate from 15% to 5% for the transfer of investments, provided that the Nairobi International Financial Centre Authority certifies the investment to be at least three billion shillings in at least one entity incorporated or registered in Kenya within a two-year period. Additionally, the transfer of investment must occur after five years from the date of the initial investment.

Implication: This is a welcome proposal which is geared toward incentivizing foreign investors to set up their business or acquire existing businesses which are registered or incorporated in Kenya. The upshot of this is to attract the significant foreign direct investments in Kenya.

Proposed effective date: 1 January 2025

WHT on interest on infrastructure and social bonds

Proposed provision: The Bill proposes to introduce withholding tax of 5% and 15% on interest paid to resident and non-resident persons respectively on:

- Bonds, notes or other similar securities with a maturity of at least three years used to raise funds for infrastructure and other social services issued after 1 July 2024; and
- Bonds, notes or other similar securities with a maturity of at least three years used to raise funds for infrastructure and other social services, projects and asset defined under the Green bond standard and guidelines issued after 1 July 2024.

Implications: The proposal seeks to bring into the tax net, taxpayers that have been levering on tax exemptions of these bond to reduce their effective tax rates.

However, the proposed tax rate of 5% for resident persons is lower than most of the resident tax rates and will therefore continue to be an incentive for investment in such securities.

For non-residents, the higher tax could be a disincentive to investing in Kenyan bonds although the government could be seeking to claw back some benefit from the high interest rates on government bonds.

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

Non-resident air transport operator and ship-owner with no reciprocal treaty subject to tax at 3%

Proposed provision: The Bill proposes to increase the tax rate from 2.5% to 3% on non-resident air transport operators and ship owners where Kenya has no reciprocal arrangement or treaty with the other country.

Implication: Should this proposal pass, non-resident air transport operators or ship owners from countries without a reciprocal arrangement or treaty will be subjected to a higher tax rate of 3%. This proposal may disincentivize such operators from coming to Kenya due to the increased cost of operation.

Proposed effective date: 1 July 2024

Automatic approval of accounting year end

Proposed provision: The Bill proposes to automatically allow change of accounting year end applications made to the Commissioner where a decision is not made in writing within 6 months from the date of application.

Implication: This proposal provides legal certainty to applicants by setting clear expectations regarding decision-making timelines in line with the principal of legitimate expectation.

Proposed effective date: 1 July 2024

Broadening the tax net

Proposed provision: The Bill proposes to bring the following incomes within the tax net :

- investments of an amateur sporting association;
- any registered trust scheme;
- Income or principal sum of a registered family trust;
- Income of the National Housing Development Fund;
- Capital gains relating to the transfer of title of immovable property to family trust; and
- Amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.

Implication: The above provision seeks to broaden the tax base and in turn shore up tax revenues.

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

Licensed SEZ's off the hook of CGT

Proposed provision: The Bill proposes to exempt from tax gains derived from transfer of property within a SEZ, by a licensed developer, enterprise or operator.

Implications: The proposed provision brings clarity to investors who are considering setting up shop within the SEZ framework. For such investors, the exemption from CGT on transfer of property within a SEZ may act as an incentive to invest in SEZs.

Proposed effective date: 1 July 2024

Clarity on taxation of income from government and development partner grant financed projects

Proposed provision: The Bill proposes to bring to tax any other income that is not directly related to a grant financed project under an agreement between the government and a development partner.

Implications: Income earned by non-resident contractors, subcontractors, consultants or employee that is not directly related to these projects shall be subject to tax.

Proposed effective date: 1 July 2024

One focal point for tax rates

Proposed provision: The Bill proposes to revoke Section 34 of the ITA and substitute it with a revised Section 34 providing that the rates of tax for various items is as provided under the Third Schedule and Ninth Schedule to the ITA where applicable.

Implication: This proposal seeks to simplify reading and interpretation of the ITA by ensuring that there is one reference point for the rates of tax.

Proposed effective date: 1 July 2024

100% Allowance on diminution - Clarification at last!

Proposed amendment: The Bill proposes to introduce 100% allowance on diminution in value of any implement, utensil or similar article employed in the production of gains or profits, not being machinery or plant in respect of which a deduction may be made as an investment allowance.

Implication:

The above proposal means that expenses incurred on implements, utensils or other similar articles will be allowable for tax purposes.

Proposed effective date: 1 July 2024

Income Tax- Corporation Tax

Investment allowance on bulk storage – end of the road!

Proposed amendment: The Bill proposes an end to the investment allowance of 150% on investments made before 31 December 2024 on the construction of bulk storage (100,000 metric tonnes and above) and handling facilities to support the Standard Gauge Railway operations.

Implication:

Currently, entities investing in bulk storage facilities are entitled to an investment deduction at the rate of 150% up to 31 December 2024. Effectively, under the current legislation, investments made with respect to these facilities would be entitled to investment allowances in line with the Second Schedule to the Income Tax Act, with effect from 1 January 2025.

Under the proposed amendment such facilities will enjoy reduced investment allowance at 10% per annum.

Proposed effective date: 1 July 2024

Income Tax

Clarity on penalty on underpayment of instalment tax

Proposed provision: The Bill proposes to repeal section 72C of the ITA which provides for penalty of 20% on underpayment of instalment taxes.

Implication: This is a welcome move as it aligns the penalty of underpayment or non-payment of instalment tax with the Tax Procedures Act. Therefore, the confusion encountered by taxpayers and tax practitioners when computing penalties for underpayment or non-payment of instalment taxes will be addressed should this proposal be enacted.

Proposed effective date: 1 July 2024

Income Tax Act – Withholding Tax

WHT on payment on digital marketplace

Proposed provisions: The Bill proposes to redefine a digital marketplace to mean an online or electronic platform which enables a person to sell or provide goods, property or services and includes services such as ride-hailing, food delivery, freelance, professional, rental, task-based and any other service that is not exempt from tax under the Income Tax Act.

Additionally, the Bill proposes to include the definition of "platform" to mean a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer.

Further, the Bill proposes the introduction of withholding tax on income deemed to have accrued in or derived from a digital marketplace from the making or facilitation of payments by the digital marketplace or platform. The proposed withholding tax rates are 20% and 5%, for resident and non-resident persons, respectively.

Implication: Within a digital marketplace or platform, the key players involved are the buyer, seller and the provider of a digital marketplace. Currently, the income earned by an owner of a digital marketplace is subject to DST at 1.5%.

However, the income earned by a seller selling goods or services through this digital marketplace or platform is not subject to tax, despite the income being earned or accrued from Kenya.

With this proposal, the sellers or persons offering goods or services through a digital marketplace or platform will now be brought within the tax ambit. This proposal will be effected by the owners of the digital marketplace or platform being required to withhold tax at the rate of 20% or 5% for non-residents and residents, respectively.

This proposal will result in increased tax revenue while at the same time placing an additional compliance burden on operators of digital marketplaces or platforms.

Proposed effective date: 1 July 2024

Income Tax- Withholding Tax

WHT on digital content monetisation to be a final tax for non-residents

Proposed provision: The Bill proposes to make withholding tax on digital content monetisation a final tax rate for non-residents.

Implication: This is a welcome move as it seeks to clarify that income on digital content monetization earned by non-residents is not subject to additional tax in Kenya.

Proposed effective date: 1 July 2024

Income from supply of goods to public entity to be subjected to WHT

Proposed amendment: The Bill proposes the deferment of recognition of income on the supply of goods to the year of income in which payment for the supply of the goods is received.

A public entity is defined as a ministry, state department, state corporation, county department or agency of the national or county government.

Under the proposal, payment by a public entity for the supply of goods will be subject to withholding tax at 3% and 5% for resident and non-resident suppliers, respectively .

Implication:

Supply of goods has remained out of the ambit of withholding tax and the proposed amendment seeks to bring the income from the supply of goods to a public entity under the WHT ambit.

The government entities are significant consumers of goods and the tax will seek address claims that many briefcase suppliers to government do not pay tax.

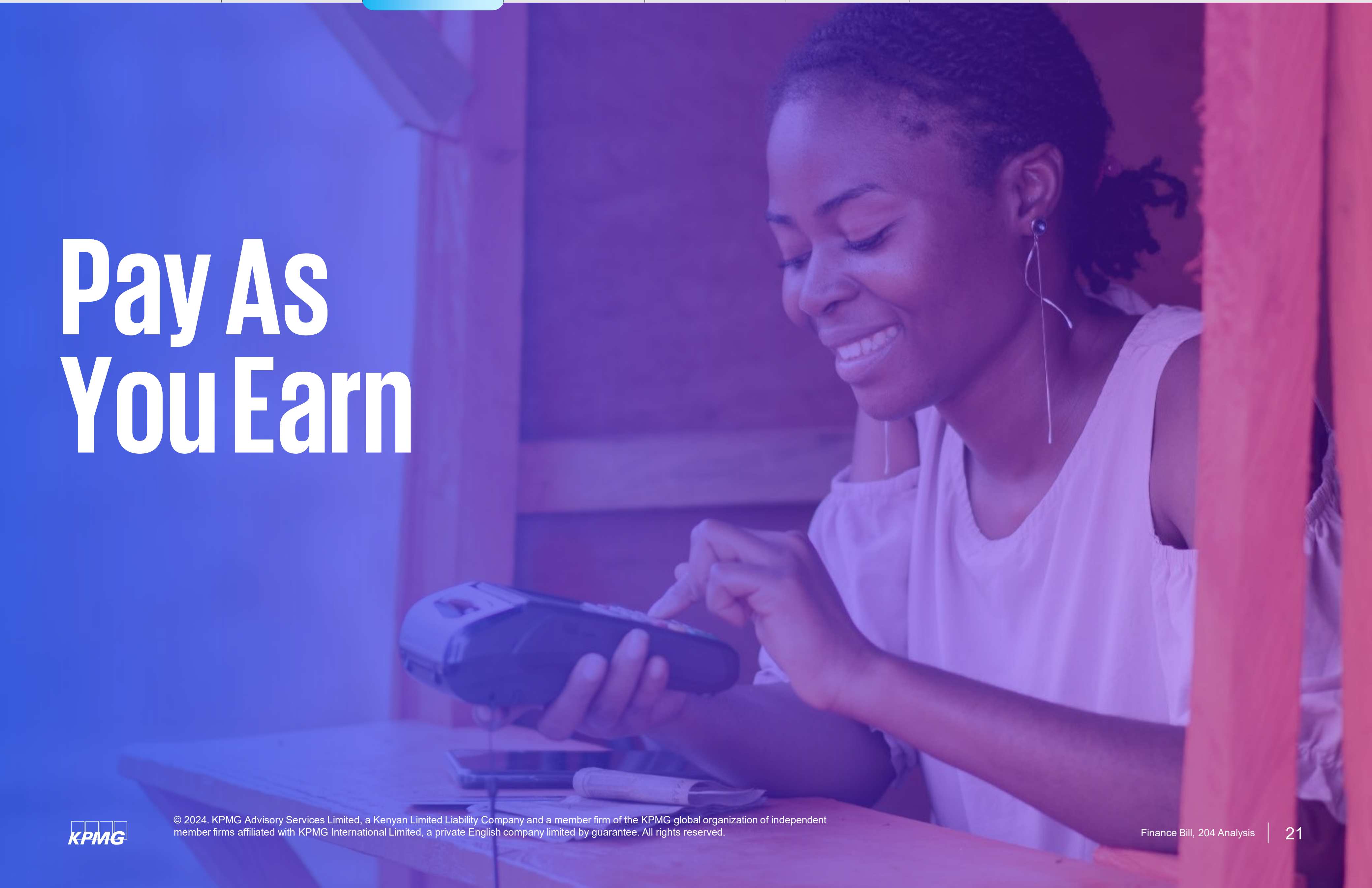
Proposed effective date: 1 July 2024

Removal of minimum threshold for withholding tax on residents

Proposed provision: The Bill proposes to delete the minimum amount of **KES 24,000** per month, in respect of management or professional fee or training fee.

Implications: This means that any payments for management, professional, or training fees to resident entities will be subject to a 5% withholding tax, regardless of the amounts paid. This will increase the cost of compliance since it will be administratively onerous to implement. Additionally, this proposal will have a negative cash flow impact especially for small traders.

Proposed effective date: 1 July 2024



Pay As You Earn

Pay As You Earn

Expansion of per-diem rates

Proposed provision: The Bill proposes to amend the tax free per diem rate from a daily maximum of **KES 2,000** to an amount not exceeding 5% of the monthly gross earning of an employee where the employer has a policy on the payment and accounting for the per diem.

Implication: The proposal seeks to encourage employers to have proper policies that guide employees on the accounting of per diem. The proposal also aligns the per diem rate to accommodate the high cost of living and common practice in the industry.

Proposed Effective Date: 1 July 2024

Increase in pension allowable deduction

Proposed provision: The Bill proposes to increase the allowable pension contribution made by an individual to a registered pension fund from **KES 20,000** per month to **KES 30,000** per month

Implication: This proposal will encourage increased savings towards retirement and increase the employees' disposable income as the pension contribution will be deducted from the gross salary when determining tax payable.

Proposed Effective Date: 1 July 2024

Pay As You Earn

Expanded tax deductible non-cash employment benefit

Proposed provision: The Bill proposes to increase the allowable aggregate value of employment non-cash benefits of whatsoever nature from the current maximum of **KES 36,000** p.a to **KES 48,000** p.a.

Implication:

This proposal will benefit employees with additional perks without increasing their taxable income and potentially higher job satisfaction. Employers may also benefit by offering these perks as they can attract and retain top talent while minimizing payroll taxes.

Proposed Effective Date: 1 July 2024

Unfettered benefit for public officers

Proposed provision: The Bill proposes to exempt from tax any amount paid or granted to a public officer as reimbursement of 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: 1 July 2024.

Better and higher quality meals for staff

Proposed provision: The Bill proposes to increase the allowable value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer meal benefit from **KES 48,000** p.a. to **KES 60,000** p.a.

Implication: This proposal is significant given the high inflation and rising cost of living. This proposal will also encourage employers to offer meals to their employees thereby saving them money on daily expenses and effectively enhancing their overall compensation package.

Proposed Effective Date: 1 July 2024.

Pay As You Earn

Higher interest deduction for mortgage holders

Proposed provision: The Bill proposes to increase the deductible interest payments on loans borrowed from approved and registered financial institutions for the purposes of improvement or construction of a first residential premise and occupied by the individual during the year from **KES 300,000** p.a to **KES 360,000** p.a.

Implication:

This proposal may incentivize homeownership by reducing the financial burden associated with purchasing a home, thus facilitating access to housing for more individuals and families. This proposal may also promote stability in the housing market and stimulates economic growth by encouraging investment in real estate and related industries.

Proposed Effective Date: 1 July 2024

Tax deductions on AHL, SHIF and post retirement medical contributions

Proposed provision: The Bill proposes to introduce tax deductions on contributions made by an employee to the Social Health Insurance Fund (SHIF) and any deduction made under the Affordable Housing Act, 2023.

The Bill also proposes to introduce a tax deduction limited to **KES 10,000** per month for contributions made by an individual to a post-retirement medical fund.

Implication: These proposals will provide the much-needed reprieve for taxpayers by lowering their taxable income and reducing their overall tax burden.

Proposed Effective Date: 1 July 2024

NHIF, AHL and Post- retirement medical fund reliefs removed

Proposed provision: The Bill proposes to remove the National Hospital Insurance Fund (NHIF), post retirement medical fund, and affordable housing contribution reliefs.

Implication:

This proposal goes hand in hand with the introduction of tax deduction on the SHIF and AHL deductions, the government appears to be opting for tax deductions rather than tax reliefs for most of these deductions.

Proposed Effective Date: 01 July 2024

Pay As You Earn

Taxation of individuals under Ajira Digital Program

Proposed provision: The Bill proposes to tax the income of individuals under the Ajira Digital Program which had been given a three years exemption beginning the 1st January, 2020 by Finance Act, 2019.

Implication:

The proposed deletion will clean up the Act by removing this exemption which has run its three years course as had initially been envisioned.

Proposed Effective Date: 01 July 2024

Exemption of pension benefits

Proposed provision: The Bill proposes to exempt from tax payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund or National Social Security Fund (NSSF) to individuals upon attainment of the retirement age as provided by the rules of the specific fund.

The Bill also provides for exemption where a person:

- retires prior to attaining the retirement age due to ill health; or
- withdraws from the fund after the twenty years from the date of registration as a member of the fund.

Implication:

The proposed provision will allow individuals to access their retirement money earlier without incurring taxes. The proposal will also be a reprieve for retirees who retire at 60 years who would only enjoy the exemption after attaining 65 years.

Further, the exemption for individuals who retire early due to ill health may cushion such persons from their sudden and unplanned loss on income

Proposed Effective Date: 01 July 2024

Value Added Tax

Value Added Tax

What is a "Tax Invoice"?

Proposed provision : The Bill proposes to introduce a definition of the term "Tax Invoice" to include an electronic tax invoice issued in accordance with the Tax Procedures Act (TPA).

Implication : The proposed definition is in line with the implementation of the Electronic Tax Invoice Management System (ETIMS), where the expectation is that a tax invoice for VAT purposes should be transmitted electronically through TIMS except for the expressly exempted items such as emoluments.

Proposed Effective Date: 01 July 2024

VAT Refund amendment

Proposed provision: The Bill proposes to bar taxpayers from applying for refund of VAT credits arising from supplies made by a manufacturer to an official aid funded projects approved by the Cabinet Secretary in accordance with the First Schedule of the VAT Act.

Implication:Without the ability to reclaim VAT, the cost burden for businesses engaging in government-approved aid projects will effectively increase. This may lead to higher overall project costs, which could either be passed on to the end consumers or absorbed by the businesses, potentially impacting profitability.

Proposed Effective Date: 01 July 2024

Place of supply of services.

Proposed provision : The Bill proposes to amend Section 8 of the VAT Act through the inclusion of the word "and" at the end of the opening sentence under Section 8(2) of the Act. For clarity purposes, Section 8 of the VAT Act provides the conditions for the place of supply of services.

Implication : The proposed introduction of the word "and" clarifies the specific conditions that qualify for the deeming of a supply of services made in Kenya, provided the recipient is in Kenya, irrespective of their registration status. This ensures the rule is not overly broad or vague, thereby helping to enforce the application and collection of VAT on supplies made in Kenya.

Proposed Effective Date: 01 July 2024

Time of supply for exported goods.

Proposed Provision : The Bill proposes to define the time of supply for exported goods by indicating that the time of supply for exported goods shall be the time when the registered person is in possession of the required export confirmation documents.

Implication : The objective of the proposed definition is to ensure that the exported goods have exited the country. As guided by the East Africa Customs Management Act (EACCMA), goods are considered to have exited the country upon the issuance of Certificate of Export (COEs).

From experience, there are often delays in issuance of COEs. This proposal may be challenging to implement from a timing perspective given that information relating to tax invoices generated by E-TIMS is transmitted in near real time for declaration in the VAT returns.

This timing difference will be in contradiction with the legal provisions on the time of supply of exported services.

Proposed Effective Date: 01 July 2024

Value Added Tax

Change in input VAT apportioning rule

Proposed provision : The Bill proposes to abolish the thresholds used in determining whether to claim the full input VAT credit in the case of companies making both taxable and exempt supplies.

Implication: Currently, entities making exempt supplies of more than 90% of total sales are not entitled to an input VAT deduction. Conversely, entities making exempt supplies of less than 10% are entitled to a full input VAT deduction.

As per the Medium-Term Revenue Strategy (MTRS) issued by the National Treasury, the apportioning threshold has been subject to abuse which has led to loss of government revenue.

Through this proposal, entities making both exempt and taxable sales will be required to claim input VAT in proportion to its taxable supplies in instances where they cannot directly attribute input VAT to a taxable or exempt supply.

This also means that entities making both exempt and taxable sales will be required to account for reverse VAT on imported services in proportion to their exempt supplies. This will be a departure from the current regime where entities with exempt sales of less than 10% are not required to account for reverse VAT on imported services.

Proposed Effective Date: 01 July 2024

Claim of excess input VAT reduced to 6 months

Proposed provision : The Bill proposes to delete the provision in the VAT Act allowing the taxpayers to lodge a claim for refund of excess tax within 24 months from the date the tax become due and payable.

Implication: The objective of the proposed amendment is to align the VAT provision relating to applying for refunds with the provision of the TPA.

Currently, the VAT Act provides that an entity with excess input VAT from supplying zero-rated supplies may apply for a refund within 24 months. This provision is not consistent with the provisions of the TPA which provides that a taxpayer may apply for a refund of overpaid VAT refund with 6 months.

If this proposal is adopted, the administration of VAT refunds will be aligned. More importantly, taxpayers qualifying for a VAT refund claim resulting from zero-rated supplies will be required to lodge the claims in a timely manner to avoid losing out on the pay-out of VAT refund claims.

Proposed Effective Date: 01 July 2024

Value Added Tax

Refund of tax on bad debts

Proposed provision : The Bill proposes to amend the VAT Act by deleting the requirement for the taxpayer to refund the Commissioner any tax refunded by the Commissioner in cases of recovery of bad debts by the taxpayer within 60 days of the recovery.

Implication: This proposal is a clean-up of the VAT Act since there is another section of VAT Act which provides that the refund is due to the Commissioner within 30 days. Further the VAT Act also provides that where the payment is not made within the 30 days, an interest of 2% per month will be payable to the Commissioner.

Proposed Effective Date:01 July 2024

VAT registration threshold: From KES 5 million to KES 8 million!

Proposed provision : The Bill proposes to change the requirement for registering for VAT from making taxable supplies worth five million shillings to eight million shillings.

Impact: This proposal is in line with the Government's campaign strategy to create a favourable environment for small and medium enterprises by removing the administrative burden of compliance with the VAT requirement.

This may be viewed as an incentive for small businesses to grow their businesses and be registered for VAT in the longer term.

Proposed ***Effective Date: 01 July 2024***

Clarification on exemption status on goods and services for companies operating under special framework arrangement

Proposed provision : The Bill proposes to introduce a provision that excludes goods and services imported or locally purchased by companies operating under special framework arrangement entered by the Government on or after 1 July 2017.

Implication: Exemption of goods and services imported or locally purchased by companies operating under special framework arrangement was introduced through the Finance Act, 2022. Initially, the intention was to curb the upsurge of Covid -19 variants and escalating cost of treating ailments such as cancer by encouraging local manufacturing of the vaccines. The proposal was further amended by the Finance Act 2023 to include other manufacturing activities including refining.

This proposal creates ambiguity as it cancels any agreements signed by the government and taxpayers who are incurring/incurred significant capital investments in manufacture of human vaccines or other manufacturing activities. If passed into law, this is likely to curb development in the healthcare and manufacturing industries.

Proposed Effective Date:01 July 2024

Value Added Tax

Transfer of a business as a going concern

Proposed provision : The Bill proposes to reclassify transfer of business on 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 upfront cash flow saving.

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 2024

Update on the exemption of solar and wind energy generating equipment

Proposed provision : The Bill proposes to introduce a new provision which provides that the exempt status of the specialized equipment used for the development and generation of solar and wind energy will only be applicable until the completion of the current projects under development.

Impact : The above proposal implies that VAT exemptions will only be availed to solar and wind projects that have already commenced and are about to be completed. It will be important for any new projects to be fast-tracked and obtain the approval for exemption from the CS, Energy.

Proposed Effective Date: 01 July 2024

Value Added Tax

VAT on financial and insurance services

Proposed provision : The Bill has proposed to move various financial services and insurance services from exempt to standard rated. The services are:

- Issuance of credit and debit cards;
- Telegraphic money transfer services;
- Foreign exchange transactions, including the supply of foreign drafts and international money orders;
- Cheque handling, processing, clearing and settlement, including special clearance or cancellation or cancellation of cheques;
- Issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- The assignment of a debt for consideration;
- The provision of financial services on behalf of another on a commission basis;
- Management and related insurance consultancy services;
- Actuarial services; and
- Services of insurance assessors and loss adjusters.

Impact : The above proposals are intended to expand the tax base. If the proposals are adopted, it is expected that they will increase the cost of the various financial and insurance services which might limit the access of these services to ordinary Kenyans.

Proposed Effective Date: 01 July 2024

Value Added Tax

VAT on bread

Proposed provision : The Bill has proposed to reclassify supply of ordinary bread from zero-rated to standard rated.

Impact : The proposed change of VAT rate on the supply of bread from zero rate to VATable will increase the price of this product which is a staple food for the ordinary Kenyans, and it is expected that there will be a lot of push back from the public.

The proposal to change the VAT status of ordinary bread has on several occasions found its way into the previous Finance Bills and subsequently dropped once the respective Finance Acts are enacted. We hope that the proposal this year will also be dropped once the Finance Act, 2024 is enacted.

Proposed Effective Date: 01 July 2024

Standard rated- Exempt

The Bill has proposed move the following items from standard rated to exempt:

Item	Current provision	Finance Bill 2024 proposed amendment
Supplies made to National Intelligence Service	Standard rated	Exempt
Input and raw materials used in the manufacture of mosquito repellent on recommendation by the cabinet Secretary responsible for matters relating to health	Standard rated	Exempt
Mosquito repellent*	Standard rated	Exempt
Tea packaging materials	Standard rated	Exempt
Micronutrients foliar feeds and bio-stimulants of chapter 38	Standard rated	Exempt

*Exemption of the mosquito repellant and input and raw materials used in the manufacturers of mosquito repellant is intended to make the products affordable to the public. It is expected that due to the floods, there may be high incidence of mosquitos which might translate to increased malaria cases. The impact of the exemption might not translate to reduced costs as the entities manufacturing mosquito repellents will not be able to claim input VAT on any inputs and therefore the input VAT expenses will be passed down as a cost to the final consumer.

Proposed Effective Date: 01 July 2024

Exempt – Standard rated

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

Items	Current provision	Finance Bill 2024 proposed amendment
Aeroplanes and other aircrafts on unladen weight exceeding 2,000 kg but not exceeding 15,000 kg.	Exempt	Standard rated
Spacecraft (including satellites) and suborbital and spacecraft launch vehicles	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
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.	Exempt	Standard rated
Direction finding compasses, instruments and appliances for aircrafts	Exempt	Standard rated

Exempt – Standard rated

Item	Current provision	Finance Bill 2024 proposed amendment
Pressure sensitive adhesive of tariff number 3506.91.00	Exempt	Standard rated
Plain polythene film/LPDE of tariff number 3921.19.10.	Exempt	Standard rated
Plain polythene film/PE of tariff number 3921.19.10	Exempt	Standard rated
PE white 25-40gsm/release paper of tariff number 4811.49.00	Exempt	Standard rated
ADL 25-40gsm of tariff number 5603.11.00	Exempt	Standard rated
Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion.	Exempt	Standard rated
Plant, machinery and equipment used in the construction of a plastics recycling plant.	Exempt	Standard rated
Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.	Exempt	Standard rated

Exempt – Standard rated

Item	Current provision	Finance Bill 2024 proposed amendment
Betting, gaming and lotteries services	Exempt	Standard rated
Hiring, leasing and chartering of aircrafts, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00	Exempt	Standard rated
Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax: Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy	Exempt	Standard rated
Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector which value of such investment is not less than two billion shillings	Exempt	Standard rated

Exempt – Standard rated

Item	Current provision	Finance Bill 2024 proposed amendment
Goods and services imported or procured locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury	Exempt	Standard rated
Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convection and conference facilities	Exempt	Standard rated
Taxable services for direct and exclusive use for the construction of specialized hospital with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health	Exempt	Standard rated
All goods excluding parts of Chapter 88* (It is important to note that certain goods (aircrafts) under Chapter 88 have been retained under exemption).	Exempt	Standard rated

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 2024 proposed amendment
All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products on recommendation of the Cabinet secretary of agriculture.*	Zero rated	Exempt
Agricultural pest control products*	Zero rated	Exempt
Bioethanol vapour (BEV) stoves classified under HS code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)	Zero rated	Exempt
The supply of motorcycles of tariff heading 8711.60.00.	Zero rated	Exempt

*The proposed reclassification of agricultural pest control products and inputs/raw materials for fertilizer manufacturing from zero rated to exempt is likely to have significant impact 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.

Zero-rated - Standard

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

Item	Current provision	Finance Bill 2024 proposed amendment
Transportation of sugarcane from farms to milling factories.	Zero rated	Standard rated
The supply of locally assembled and manufactured mobile phones.	Zero rated	Standard rated
The supply of electric bicycles.***	Zero rated	Standard rated
The supply of solar and lithium-ion batteries	Zero rated	Standard rated
The supply of electric buses of tariff heading 87.02.***	Zero rated	Standard rated
Inbound international sea freight offered by a registered person.	Zero rated	Standard rated

***The Government's agenda is to encourage use of clean and environmental energy sources. The proposed reclassification of the supply of electric bicycles and supply of buses of tariff heading 87.02 from zero rated to standard rated will lead to increase in prices which might hinder the operationalization of this green economy agenda.

Clean – up of the VAT Act

The Bill proposes that the following goods which were in transition will now be standard rated

Item	Current provision	Finance Bill 2024 proposed amendment
Partly refined (included topped crudes) - 2710.19.10	Standard rated	Standard rated
Kerosene type jet fuel - 2710.19.21	Standard rated	Standard rated
Illuminating kerosene (IK) - 2710.19.22	Standard rated	Standard rated
Other medium petroleum oils and preparations - 2710.19.29	Standard rated	Standard rated
Gas oil (automotive, light, amber, for high-speed engines) - 2710.19.29	Standard rated	Standard rated
Other gas oils - 2710.19.39	Standard rated	Standard rated
Natural gas in gaseous state - 2711.21.00	Standard rated	Standard rated
Other natural gas in gaseous state – 2711.29.00	Standard rated	Standard rated

Implication: This is a clean up of the VAT Act since the goods were subject to a VAT exemption transition period of 3 years from enactment of the VAT Act in 2013. In 2016, the Finance Act, 2016 extended the transition status for a further two years to 2018. This implies that the goods have been standard rated from September 2018.

Tax Procedures Act

Tax Procedures Act

Tax Agents Committee Regulations

Proposed provision: The Bill seeks to amend Section 19 of the Tax Procedures Act by insertion of the words “established by Regulations prescribed under this Act” immediately after the words “Tax Agents Committee”.

Implication: The proposed change is a clean up that seeks to bring the Tax Agent Committee within the ambit of the Tax Procedures Act. Currently, the Kenya Revenue Authority Act is the enabling provision for the Tax Agent Committee Regulations 2012. We expect that once passed into law, the Cabinet Secretary shall issue new Tax Agent Committee regulations in line with their authority to do so under Section 112 of the TPA.

Proposed effective date: 1 July 2024

Cancellation of Tax Agent Licence

Proposed provision: The Bill seeks to amend Section 22 of the Tax Procedures Act by insertion of the words “on the recommendation of the Tax Agents Committee” immediately after the words “Commissioner shall”.

Implication: This amendment seeks to fortify the regulatory framework by ensuring that tax agent license cancellations are not only at the discretion of the Commissioner but also vetted through a committee. This proposed change will create an oversight mechanism in the tax agent licence cancellation process and safeguard against unilateral license cancellation.

Proposed effective date: 1 July 2024

Tax Relief In Cases of Recovery Difficulties

Proposed provision: The Bill proposes to introduce a new section, Section 37E to allow the Commissioner to refrain from assessing or collecting unpaid taxes under certain conditions such as impossibility of recovery, undue difficulty, hardship, or other similar reasons, with the approval of the Cabinet Secretary.

Implication: The proposed amendment, if enacted, shall allow for relief/abandonment of taxes by the Commissioner because of doubt or difficulty in recovery of tax.

Further, the Bill also proposes that the Cabinet Secretary submits a report on the amounts of taxes abandoned to the National Assembly before 30 March of the succeeding year.

The proposal would provide scope for relief to taxpayers who are unable to settle tax liabilities upon concurrence with the Commissioner.

Proposed effective date: 1 July 2024

Tax Procedures Act

Requirements of a valid electronic tax invoice

Proposed provision: The Bill proposes to introduce a new subsection in Section 23 A to prescribe the information that must be captured in an electronic tax invoice to be valid.

Implication: The Finance Act 2023, granted the Commissioner the authority to establish an electronic tax system for issuing tax invoices and recording stocks.

The proposed amendment is aligned with the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 and seeks to prescribe the details that must be captured in the tax invoice for it to be valid. The proposed amendment further buttresses the eTIMS regime and would lead to higher compliance and administrative costs for businesses adapting to the new system.

Proposed effective date: 1 July 2024

Validity & Scope of Agency Notices

Proposed provision: The Bill proposes to amend Section 42(2) TPA by introducing a one-year timeline for validity of agency notices.

The Bill also proposes to delete the words "taxpayer who without reasonable cause fails to comply with a notice" in subsection (13) and substituting therefor the words "person who without reasonable cause fails to comply with a notice issued under subsection (2)“.

Implication:
The proposed amendment shall, if passed into law, bring clarity on the period of validity for agency notices. The one-year validity period will apply in instances where the agent has not notified the Commissioner that they are unable to settle the amounts due.

The proposed deletion of the term “taxpayer” and replacement with “person” shall, if passed into law widen the scope for KRA to issue agency notices to persons not necessarily registered as taxpayers.

Proposed effective date: 1July 2024

Tax Procedures Act

Expanding the scope for Withholding VAT

Proposed provision: The Bill proposes to delete the proviso to Section 42A(1) that provides:
"Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the 1st July 2022 is at least three billion"

Implication: The proposed amendment if passed into law shall mean that zero-rated supplies and supplies made to certain manufacturers will be subject to withholding VAT.

This proposal is especially punitive on those entities making zero-rated supplies as they will be in a perpetual VAT refund position, thereby hurting their cashflow position.

Proposed effective date: 1 July 2024

Penalty for failure to deduct withholding VAT

Proposed provision: The Bill proposes to introduce a penalty of 10% of the amount of withholding VAT not withheld or remitted within 5 working days after the deduction.

Implication: The proposed amendment is a cleanup of the application of penalties for not remitting withholding VAT where the penalty will apply where the appointed agent does not remit or withhold VAT.

Currently, the 10% penalty may only apply if the person is convicted for not remitting withholding VAT.

Proposed effective date: 1 July 2024

Refund period for overpaid taxes.

Proposed provision: The Bill proposes to amend Section 47 to make a distinction between the refund period for income tax and all other taxes as follows:

"5 years in case of income tax and within 6 months from the date on which the tax was paid in case of any other tax."

Implication: Currently, the TPA allows for application for refund for other taxes, except Value Added Tax, within a period of 5 years. The proposed amendment seeks to limit the 5-year period for refunds to income taxes only and for a 6-month limit to apply for all other taxes. At present, the 6-month limit for refunds only applies to VAT.

The six months requirement will however require taxpayers to be more vigilant to safeguard against financial loss where the overpayments are discovered after the six-month period.

Proposed effective date: 1 July 2024

Tax Procedures Act

Failure to provide information at objection stage

Proposed provision: The Bill proposes to amend Section 51(4A) by deleting the requirement that the Commissioner issue an objection decision where the taxpayer fails to provide information requested after being notified that their notice of objection was not validly lodged.

The proposal would see the objection disallowed rather than the Commissioner having to issue an objection decision.

Implication: The proposed amendment shall mean that where the taxpayer does not provide information to KRA in support of the objection within 7 days of being notified, the objection shall be deemed to be automatically disallowed.

This provision if passed into law calls for vigilance on the taxpayer's part to ensure that all documentation is in place before lodging objections. It will also reduce the administrative burden for KRA in issuing objection decisions where taxpayers have not validly lodged their objections.

Proposed effective date: 1 July 2024

Objection Decision to be made within 90 days

Proposed provision: The Bill proposes to increase the timeframe for the Commissioner making an objection decision from 60 days to 90 days.

Implication: The additional 30 days will provide tax officials with more time to thoroughly review and analyze the objection. This can lead to better-informed decisions, as authorities have more opportunity to consider all aspects of the case, consult relevant laws, precedents, and potentially gather additional information or clarification from the taxpayer if needed.

On the other hand, for taxpayers, the extended period means a longer wait to receive a final decision on their objections. This can delay financial planning and potentially tie up resources, especially in cases where significant amounts of tax are in dispute.

Proposed effective date: 1 July 2024

Penalty for failure to integrate the Electronic Tax System

Proposed provision: The Bill proposes to amend Section 59A of the TPA by introducing a penalty for failure to comply with a notice by the Commissioner to integrate the Electronic Tax System.

The Bill further proposes to introduce a penalty for failure to submit documents through the Electronic Tax System.

Implication: The proposed introduction of penalties not exceeding two million shillings every month for failure to comply with integration and submission of documents through the system will encourage compliance and uptake of the Electronic Tax System.

Proposed effective date: 1 July 2024

Tax Procedures Act

Computation of time

Proposed provision: The Bill proposes to amend Section 77 to exclude Saturdays, Sundays and public holidays from computation of time for purposes of:

i. Submission of tax return, application, notice or other documents;
ii. Payment of tax; or
iii. Any other action under a tax law.

Implication: The proposed amendment shall, if passed into law, provide clarity that computation of time shall be based on working days as opposed to the current position where if the deadline falls on a weekend or holiday the previous working day is applicable.

This will provide additional time for dispute resolution but reduce the time available for filing returns and paying tax.

Proposed Effective Date: 1 July 2024

Introduction of penalties for failure to submit returns for Export Processing Zone Enterprises

Proposed provision: The proposed amendment seeks to introduce a late filing penalty of KES 20,000 per month where an EPZ enterprise does not file its income tax return by the due date.

Implication: Currently, a late filing penalty of **KES 2,000** per day is applied where an EPZ enterprise files an income tax return late. This means that such enterprises may pay a penalty of **KES 60,000** per month for as long as the income tax return remains outstanding.

This proposal seeks to move the penalty regime for filing income tax returns by EPZ enterprises to the Tax Procedures Act. Further, the proposed revision of the penalty may be viewed to be less punitive as the daily penalty rate will have been reduced to **KES 20,000** per month i.e., **KES 667** per day.

Proposed Effective Date: 1 July 2024

PIN required for registration of employees working remotely outside Kenya for an employer in Kenya

Proposed provision: The Bill proposes to amend the First Schedule of the Tax Procedures Act to add a new requirement for obtaining a Personal Identification Number (PIN) for employees working remotely outside Kenya for an employer based in Kenya.

Implication: This change seeks to bring remote workers living outside Kenya into the tax compliance framework when they work for a Kenyan employer. It will ensure that the KRA can account for tax liabilities and collections from income earned through such employment arrangements, regardless of the employee's location.

Excise Duty

Excise Duty

Reference to goods classification in the East Africa Community Common External Tariff for excisable goods

The Bill seeks to have all excisable goods classified with reference to the East African Community Common External Tariff.

Implication: This proposal will ensure that there is no ambiguity in the classification of the type of goods that attracts Excise Duty.

Proposed Effective Date: 01 July 2024

Introduction of Excise Duty for services offered by non-residents through digital platforms

The Bill seeks to introduce Excise Duty on non- residents providing excisable services offered through digital platforms.

Implication: While this proposal will enhance the tax base, it is not clear as to how it is going to be implemented. There is a possibility that to ease the administration, the Kenya Revenue Authority may introduce simplified tax registration and filing for the non-residents as seen under the VAT and Income Tax Acts.

Example of such services may include betting or gaming services which may be offered through a digital platform.

Proposed Effective Date: 01 July 2024

Introduction of Excise Duty Remission for spirits

The Bill seeks to allow the Cabinet Secretary National Treasury to grant Excise Duty Remission for spirits manufactured from agricultural products (except barley) manufactured in Kenya.

Implication: This proposal will encourage local manufacturers of spirits in Kenya to source for the raw materials locally. This particularly may be advantageous to the local farmers as it will translate to increased demand of the agricultural products.

Proposed Effective Date: 01 July 2024

Removal of relief on Excise Duty paid on Excisable raw materials

The Bill seeks to remove the provision on relief received by manufacturers of Excisable goods and providers of internet data services on Excise Duty paid for raw material used in the manufacture of finished products and purchase of bulk internet data, respectively.

Implication: This may lead to increased revenue for the government while pushing up the cost of the goods and services leading to reduced consumption in the longer term.

Proposed Effective Date: 01 July 2024

Excise Duty

Introduction of timelines for issuance of license

The Bill proposes that the Commissioner, shall within 14 days of receipt of all the required valid application documents, decide in relation to the application of the license.

Implication: This proposal will bring certainty on the practical timelines within which the Commissioner can accept or deny a taxpayer the license, helping the business with their decision-making process.

Proposed Effective Date: 01 July 2024

Payment of Excise Duty on manufactured alcoholic beverages

The Bill proposes to increase the period licensed manufacturers of alcoholic beverages are required to account for the Excise Duty from 24 hours to 5 working days.

Implication: This proposal will assist in reducing the administrative burden of accounting for Excise Duty on daily basis. It will also help in improving their cashflows of the manufacturers.

Proposed Effective Date: 01 July 2024

Exemption for excisable goods imported by National Intelligence Service

The Bill proposes to exempt all goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service.

Implication: This proposal seeks to align the privileges available to all the members of the disciplined forces with respect to exemption from excise duty on imported excisable goods.

Proposed Effective Date: 01 July 2024

Introduction of definition of original equipment manufacturer

The Bill defines original equipment manufacturer as *'a manufacturer of arts and sub-assemblies who owns the intellectual property rights in the parts of sub-assemblies.'*

Implication: This proposal seeks to remove ambiguity of the actual person who will enjoy the exemption on the locally passenger manufactured vehicles. The clarity in the definition of a locally manufactured passenger vehicle is that manufactures will have to demonstrate that 30% of the ex-factory value consist of parts designed and manufactured in Kenya by a manufacturer who owns the intellectual property rights in the parts of sub-assemblies.

Proposed Effective Date: 01 July 2024

Excise Duty

Exemption from Excise Duty for motorcycles

Tariff Number	Tariff Description	Current excise rate	Proposed Excise rate
8711.10.90	Other motorcycles with internal combustion engine of a cylinder capacity not exceeding 50cc	KES. 12,952.83per unit	KES. 0
8711.20.90	Other motorcycles with internal combustion engine of a cylinder capacity exceeding 50cc but not exceeding 250cc	KES. 12,952.83per unit	KES. 0
8711.30.90	Other motorcycles with internal combustion engine of a cylinder capacity exceeding 250cc but not exceeding 500cc	KES. 12,952.83per unit	KES. 0
8711.40.90	Other motorcycles with internal combustion engine of a cylinder capacity exceeding 500cc but not exceeding 800cc	KES. 12,952.83per unit	KES. 0
8711.50.90	Other motorcycles with internal combustion engine of a cylinder capacity exceeding 800cc	KES. 12,952.83per unit	KES. 0
8711.90.00	Other motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars	KES. 12,952.83per unit	KES. 0

Implication:
The above motorcycles were previously excisable, and this increased the price for the end user. The exemption is a welcome move as this will ensure affordability of the same.

Proposed Effective Date: 01 September 2024

Excise Duty

Change Excise Duty rate for excisable goods of Part I to the First Schedule of the Excise Duty Act

Current description	Current rate	Proposed rate	Proposed Effective date
Motorcycles with internal combustion piston engine of a cylinder capacity exceeding 800 with electric motor for propulsion	KES. 12,952.83 per unit	10% of the value or KES.12,952.83 per unit whichever is higher	1 September 2024
Imported sugar confectionary of tariff heading 17.04	KES. 42.91/kg	KES. 257.55/kg	1 July 2024
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KES. 243.43/litre	KES. 22.50/centilitre of pure alcohol	1 September 2024
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KES. 142.44/litre	KES. 22.50/centilitre of pure alcohol	1 September 2024
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KES. 356.42/litre	KES. 16/centilitre of pure alcohol	1 September 2024
Cigarettes with filters (hinge lid and soft cap)	KES. 4,067.03/mille	KES. 4,100/mille	1 July 2024
Cigarettes without filters (plain cigarettes)	KES.2,926.41/mille	KES. 4,100/mille	1 July 2024
Cement clinker	KES. 1.5 per Kg or 10% whichever is higher	0	1 July 2024

Excise Duty

Change Excise Duty rate for excisable goods of Part I to the First Schedule of the Excise Duty Act

Current description	Current rate	Proposed rate	Proposed Effective date
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences.	KES. 1,594.50/kg	KES. 2000.00/kg	1 July 2024
Liquid Nicotine	KES. 70/millilitre	KES. 100/millilitre	1 July 2024

Implication: The proposed amendments on excise duty charged on alcoholic products is part of the government's Medium-Term Revenue Strategy where the government intends to review the basis of taxation to the alcohol content of the product taking into consideration the harmonization within EAC region. In addition, the Government intends to charge excise duty based on alcohol content of the products to discourage their consumption as they pose higher health risks.

Cement clinker is a raw material, used in the production of cement. The exemption of cement clinker from excise duty may lead to the reduction in price cement which may spur growth in the construction sector

Excise Duty

Introduction of Excise Duty

Current description	Current rate	Proposed rate	Proposed Effective date
Coal	N/A	5% of the value or KES. 27,000/MT whichever is higher	1 July 2024
Vegetable oils of tariff headings 15.11, 15.12, 15.15 and 15.17	N/A	25%	1 July 2024

Implication: The introduction of Excise Duty on coal is to deter the use of coal as a source of energy as it is detrimental to the environment.

The introduction of Excise Duty on palm oil, sunflower-seeds, safflower and cotton-seed oil, other vegetable or microbial fats and oils, margarine, edible mixtures or preparations of animal or microbial fats or oils or of fractions of different fats or oils of Chapter 15, other than edible fats and oils or their fractions of heading 15.16 may be intended to increase government revenue, however this will increase the cost of the vegetable oil products and the general population may seek an alternative source. e.g. Beef tallow.

Excise Duty

Exemption from Excise Duty for goods imported from East Africa Community

Tariff Number	Current description
4819.10.00 4819.20.10 4819.20.90	Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets.
04.07	Imported Birds' eggs in shell, fresh, preserved or cooked.
07.03	Imported Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled.
07.01 0701.10.00 2004.10.00 2005.20.00	Imported potatoes, potato crisps and potato chips

Implication: The exemption of the above products from Excise Duty encourages trade between East African Community Partner States.

Proposed Effective Date: 01 July 2024

Excise Duty

Change in Scope of excisable goods

Current description	Proposed change to the scope
Imported articles of plastic of tariff heading 3923.30.00 and 3923.90.90”;	Articles of plastic of tariff heading 3923.30.00 and 3923.90.90
Imported Emulsion-styrene Acrylic	Styrene-acrylonitrile (SAN) copolymers

Implication:

The increase of scope of the plastic items aims to discourage the usage of plastic conveyancing items whether imported or manufactured locally.

The proposal seeks to align the description of goods in tariff line 3903.20.00 in the Excise Duty Act to what is in the East African Community Common External Tariff. The proposal seeks to have the item whether imported or locally manufactured subject to Excise Duty which may in-turn increase government revenue.

Proposed Effective Date: 01 July 2024

Excise Duty

Changes in rates for excisable services

Item	Previous rate	New rate
Telephone and internet data services	15%	20%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	15%	20%
Fees charged for money transfer services by cellular phone service providers	15%	20%
Betting	12.5%	20%
Gaming	12.5%	20%
Prize competition	12.5%	20%
Lottery (excluding charitable lotteries)	12.5%	20%
Fees charged on advertisement via the internet and social media	0%	20%

Implication

The increase in Excise Duty on telephone and internet data services, fees charged for money transfer services by banks, money transfer agencies and other financial services and 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 2024

Miscellaneous Fees & Levies Act

Miscellaneous Fees & Levies Act

Increase in Import Declaration Fee

Proposed provision: The Bill proposes to revise import declaration fee (IDF) from 2.5% to 3% of the customs value of imported goods.

Implication: The proposed increase of import declaration fees is aimed at stimulating growth in local manufacturing sector by increasing the cost of importation. The increase in fee may also generate more revenue to the government.

Proposed effective date: 1 July 2024

Defined allocation of the IDF Funds

Proposed provision: The current Act provides that 10% of the Import Declaration Fee collected shall be allocated to a Fund which is established and managed under the Public Finance Management Act. The Bill proposes that the allocated funds shall be used as follows:

i. 10% of the amount in the payment of Kenya's contribution to the African Union and other international organizations and
ii. 20% of the amount to be allocated to Revenue enforcement initiatives or programmes

Implication: The government is seeking to increase its revenue mobilization initiatives which may lead to increase revenue collections. However, it is unclear how the Government proposes to use the remaining 70%.

Proposed effective date: 1 July 2024

Exemption from IDF & RDL for goods imported for the official use by the National Intelligence Service

Proposed provision: The Bill proposes to introduce exemption from IDF & RDL goods imported for the official use by the National Intelligence Service.

Implication: This proposal seeks to align all the members of the disciplined forces to the same privileges.

Proposed effective date: 1 July 2024

Exemption from IDF & RDL for goods used in the manufacture of mosquito repellents

Proposed provision: The Bill proposes to introduce exemption from IDF & RDL on inputs, raw materials and machinery used in the manufacture of mosquito repellents on recommendation by the Cabinet Secretary responsible for matters health.

Implication: This proposal seeks reduce costs associated with the manufacture of mosquito repellents to help reduce malaria prevalence in Kenya.

Proposed effective date: 1 July 2024

Miscellaneous Fees & Levies Act

Goods Previously Subjected to Export and Investment Promotion Levy Now Deleted

Tariff No	Tariff Description	Export and Investment Promotion levy rate
7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	17.5% of the Customs Value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	17.5% of the Customs Value
4804.21.00	Sack kraft paper; unbleached	10% of the Customs value
4804.31.00	Other kraft paper and paperboard weighing 150 g/m2 or less: Unbleached	10% of the Customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more	10% of the Customs value
4819.40.00	Other sacks and bags, including cones	10% of the Customs value

Implication: This proposal is meant to harmonize the practice with EAC countries as the introduction of the export and investment promotion levy increased the cost of these raw materials in Kenya making the manufactured products uncompetitive.

Proposed effective date: 1 July 2024

Miscellaneous Fees & Levies Act

Goods Previously Subjected to Export and Investment Promotion Levy Retained at New rates

Tariff No	Tariff Description	Current Export and Investment Promotion levy rate	Proposed Export and Investment Promotion levy rate
2523.10.00	Cement Clinkers	17.5 % of the Customs value	10% of the Customs value
4804.11.00	Unbleached uncoated Kraft liner	10% of the Customs value	3% of the Customs value

Implication: This proposal is a welcome move as the Export and Investment Promotion levy rate's reduction may lead to a reduction in prices of end products such as cement to the end users.

Proposed effective date: 1 July 2024

Miscellaneous Fees & Levies Act

Introduction of goods Subject to Export and Investment Promotion Levy

Tariff No	Tariff Description	Proposed Export and Investment Promotion levy rate
42.01 42.02 42.03 42.05	Articles of leather	20% of the Customs value.
64.01 64.02 64.03 64.04 64.05	Footwear	20% of the Customs value.
2207.20.00	Denatured ethyl alcohol and other spirits.	3% of the Customs value.
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3% of the Customs value.
2208.60.00	Vodka	3% of the Customs value.
3401.30.00	Organic surface-active products and preparations for washing the skin	3% of the Customs value.
4804.29.00	Bleached sack Kraft paper	3% of the Customs value.

Miscellaneous Fees & Levies Act

Introduction of goods Subject to Export and Investment Promotion Levy

Tariff No	Tariff Description	Proposed Export and Investment Promotion levy rate
0401.20.00	Milk and cream of fat content by weight exceeding 1% but not exceeding 6%	3% of the Customs value.
69.10	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar fixtures.	3% of the Customs value.
7207.11.00	Billets	10% of the Customs value.
7321.12.00	Cooking stoves for liquid fuel.	3% of the Customs value.
8711.10.90	Other motorcycles with internal combustion engine not exceeding 50cc	3% of the Customs value.
8711.20.10	Motorcycle ambulances with internal combustion engine exceeding 50cc but not exceeding 250cc	3% of the Customs value.
8711.20.90	Other motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc	3% of the Customs value.
8711.30.90	Other Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc	3% of the Customs value.
8711.40.90	Other Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc	3% of the Customs value.
8711.50.90	Other Motorcycles with internal combustion engine exceeding 800cc	3% of the Customs value.
8711.60.00	Electric motorcycles	3% of the Customs value.

Miscellaneous Fees & Levies Act

Introduction of goods Subject to Export and Investment Promotion Levy

Tariff No	Tariff Description	Proposed Export and Investment Promotion levy rate
9403.10.00	Metal furniture of a kind used in offices	3% of the Customs value.
9403.20.00	Other metal furniture	3% of the Customs value.
9403.30.00	Wooden furniture a kind used in offices	3% of the Customs value.
9403.40.00	Wooden furniture a kind used in kitchen	3% of the Customs value.
9403.50.00	Wooden furniture a kind used in bedroom	3% of the Customs value.
9403.60.00	Other wooden furniture	3% of the Customs value.
9403.70.00	Furniture of plastics	3% of the Customs value.
9403.82.00	Furniture of bamboo	3% of the Customs value.
9403.83.00	Furniture of rattan	3% of the Customs value.
9403.89.00	Furniture of cane, osier or similar material	3% of the Customs value.
9403.91.00	Parts of furniture, of wood	3% of the Customs value.
9403.99.00	Parts of furniture of other material	3% of the Customs value.
9404.10.00	Mattress supports	3% of the Customs value.

Implication: The proposed amendment will enable the government to collect more revenue that will be used to spur growth of the local manufacturing industry. This may also provide the local industries a competitive edge in the global markets.

Proposed effective date: 1 July 2024

Miscellaneous Fees & Levies Act

Introduction of Eco Levy

Proposed provision: The Bill proposes to introduce an Eco Levy on certain goods manufactured in or imported into Kenya to pay for negative environmental impact posed by such goods. The Bill introduces a Fourth Schedule were all these goods are listed.

Implication: The proposed introduction of the Eco Levy is in line with the ESG and Global Initiative on environmental protection. Given that manufacturers and importers will be paying more for their products, the prices of the goods will increase as business operators push down the additional costs to the final consumers.

Proposed effective date: 1 July 2024X

Description	Tariff number	Eco Levy rate (KES.)
Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines)	8472.90.00	***98 per unit/225 per unit**
Electronic calculating machines incorporating a printing device	8470.21.00	225 per unit
Portable automatic data processing machines, weighing not more than 10 kg,	8471.30.00	225 per unit
Automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit.	8471.41.00	225 per unit
Automatic data processing machines presented in the form of systems.	8471.49.00	225 per unit
Processing units whether or not containing in the same housing storage, input, output units.	8471.50.00	98 per unit
Automatic data processing input or output units.	8471.60.00	225 per unit
Other units of automatic data processing machines.	8471.80.00	225 per unit

*** The highlighted items with tariff number 8472.90.00 have been duplicated in the Fourth Schedule. We expect that a clean-up will be done before the bill comes into Act**

Miscellaneous Fees & Levies Act

Introduction of the Fourth Schedule: Goods Subject to Eco Levy

Description	Tariff number	Eco Levy rate (KES.)
Other automatic data processing units	8471.90.00	225 per unit
Parts and accessories of the machines of Automatic data processing machines and units	8473.30.00	98 per unit
Line telephone sets with cordless handsets	8517.11.00	225 per unit
Smartphones	8517.13.00	225 per unit
Other telephones for cellular networks or for other wireless networks	8517.14.00	225 per unit
Other Telephone sets	8517.18.00	225 per unit
Base stations	8517.61.00	225 per unit
Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus	8517.62.00	225 per unit
Other apparatus for transmission or reception of voice, images or other data	8517.69.00	225 per unit
Microphones and stands	8518.10.00	98 per unit
Sound recording or reproducing apparatus – using magnetic, optical or semiconductor media	8519.81.00	98 per unit

Miscellaneous Fees & Levies Act

Introduction of the Fourth Schedule: Goods Subject to Eco Levy

Description	Tariff number	Eco Levy rate (KES.)
Transmission apparatus for radiobroadcasting or television	8525.50.00	98 per unit
Transmission apparatus incorporating reception apparatus	8525.60.00	98 per unit
High-speed television cameras, digital cameras and video camera recorders	8525.81.00	98 per unit
Radiation hardened or radiation-tolerant television cameras, digital cameras and video camera recorders	8525.82.00	98 per unit
Night vision Television cameras, digital cameras and video camera recorders	8525.83.00	98 per unit
Other television cameras, digital cameras and video camera recorders	8525.89.00	98 per unit
Radio navigational aid apparatus	8526.91.00	98 per unit
Pocket-size radio cassette players	8527.12.00	225 per unit
Radio-broadcast receivers with sound recording or reproducing apparatus	8527.13.00	225 per unit
Other radiobroadcast receivers capable of operating without an external source of power	8527.19.00	225 per unit
Radio-broadcast receivers of a kind used in motor vehicles: combined with sound recording or reproducing apparatus	8527.21.00	225 per unit

Miscellaneous Fees & Levies Act

Introduction of the Fourth Schedule: Goods Subject to Eco Levy

Description	Tariff number	Eco Levy rate (KES.)
Other Radio-broadcast receivers of a kind used in motor vehicles: combined with sound recording or reproducing apparatus.	8527.29.00	225 per unit
Other reception apparatus for radiobroadcasting combined, in the same housing, with sound recording or reproducing apparatus or a clock	8527.91.00	225 per unit
Other reception apparatus for radiobroadcasting not combined, in the same housing, with sound recording or reproducing apparatus or a clock	8527.92.00	225 per unit
Other Reception apparatus for radiobroadcasting	8527.99.00	225 per unit
Reception apparatus for television not designed to incorporate a video display or screen	8528.71.00	1,275 per unit
Unassembled colour reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus	8528.72.10	1,275 per unit
Unassembled monochrome reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus	8528.73.10	1,275 per unit
Assembled monochrome reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus	8528.73.90	1,275 per unit

Miscellaneous Fees & Levies Act

Introduction of the Fourth Schedule: Goods Subject to Eco Levy

Description	Tariff number	Eco Levy rate (KES.)
Colour cathode-ray television picture tubes	8540.11.00	1,800 per unit
Monochrome cathode-ray television picture tubes	8540.12.00	1,800 per unit
Television camera tubes, image converter and other photocathode tubes.	8540.20.00	1,800 per unit
other instruments and apparatus, specially designed for telecommunications	9030.40.00	98 per unit
New pneumatic tyres, of rubber.	40.11	1,000 per unit
Retreaded or used pneumatic tyres, of rubber.	40.12	1,000 per unit
Diapers	9619.00.90	150 per Kg
Primary cells and primary batteries.	85.06	750 per Kg
Electric accumulators, including separators.	85.07	750 per Kg
Plastic packing materials	39.23	150 per Kg

Other Acts

Affordable Housing Act

Proposed amendment: The Bill proposes to delete Section 54 of the Affordable Housing Act that prevented owners of affordable housing units to sell their units without prior written consent of the Affordable Housing Board.

Implication:

This would be a positive development for prospective owners of affordable housing units because they would not face restrictions in onward sale of their units. It would also ensure purchasers' legal rights to use or dispose of their property as they see fit, potentially facilitating a more fluid housing market.

Proposed effective date: 1 July 2024

The Industrial Training Act

Proposed amendment: The Bill proposes to amend the Industrial Training Act to extend the Commissioner's authority of collection of the training levy to also include powers provided under the Tax Procedures Act.

Previously, it only referenced the Commissioner's powers under the KRA Act and Income Tax Act.

Implication:.

The proposed amendment will further strengthen the legal framework for enforcement and collection of the industrial training levy by the KRA, under the auspices of the Tax Procedures Act.

Proposed effective date: 1 July 2024

Data Protection Act

Proposed amendment: The Bill proposes to exempt the disclosure of personal data by data controllers/processors for tax or duty assessment, enforcement, or collection purposes under a written tax law.

Implication:.

The Data Protection Act defines personal data as "*any information relating to an identified or identifiable natural person.*"

The proposed exemption seeks to allow disclosure of personal data for assessment, enforcement, or collection of taxes. This would allow entities who hold individual's data e.g. telecommunication companies to share with KRA upon request.

In the past, some of the data controllers/processors have been subject to lawsuits from various parties who have been adversely affected by sharing of their information with KRA. The new proposal would mean such sharing of information for tax purposes would be within Kenya's data protection laws.

Proposed effective date: 1 July 2024

Public Finance Management Act

Proposed provision: The Bill proposes to introduce provisions allowing the Public Sector Accounting Standards Board to introduce a framework for implementation of accrual accounting in the government and further, to establish a risk management framework.

The Bill further proposes that the implementation of accrual accounting be implemented over a 3-year transition period.

Implication: The Public Finance Management Act empowers the Public Accounting Standards Board to provide frameworks and set generally accepted standards for the development and management of accounting and financial systems by all State organs and public entities.

The proposed amendments would ensure government accounting is in line with international accounting standards and strengthen oversight of the government's financial operations.

Proposed Effective Date: 1 July 2024

Kenya Revenue Authority Act

Proposed provision: The Bill proposes to amend the First Schedule and remove the Civil Aviation Act from the list of legislation for which KRA has collecting mandate.

Implication: The proposed amendment is a clean-up because the Civil Aviation Act empowers the Kenya Civil Aviation Authority (KCAA) as the government authority providing oversight and also responsible for imposition of fines and penalties under the Act.

Proposed Effective Date: 1 July 2024

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