



# KENYA THE FINANCE ACT, 2023

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## Publication Summary

The Finance Act ("the Act"), 2023 received Presidential assent on 26th June 2023. Most of the changes will be effective from 1st July 2023, unless specified otherwise. The Act proposes to amend the following Laws: Income Tax Act (ITA), Value Added Tax (VAT) Act, Excise Duty Act, Tax Procedures Act (TPA), Tax Appeals Tax Act (TAT), Employment Act, 2007, the Miscellaneous Fees and Levies Act, 2016, the Betting, Gaming and Lotteries Act, Kenya Roads Board Act, the Kenya Revenue Authority Act, amongst others.

More information on [www.anantbhattllp.com](http://www.anantbhattllp.com).

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# TABLE OF CONTENTS

Introduction	3
Direct Taxes	6
Value Added Tax (VAT)	18
Excise Duty Act	24
Tax Procedures Act	31
Tax Appeals Tribunal Act	37
Miscellaneous Fees & Levies Act	38
Employment Taxes	41
Kenya Road Boards Act	42
Kenya Revenue Authority Act	42
Retirement Benefits Act	42
Alcoholic Drinks Act	43
The Special Economic Zones Act	43

# PART 1: INTRODUCTION

The Finance Act ("the Act"), 2023 has now received the required Presidential assent on the 26th of June 2023. Most of the changes will be effective from 1st July 2023, with the remaining on 1st January 2024. Most of the proposed changes in the Finance Bill, 2023 have been maintained in the Act, with a few additions. This publication will cover the changes that were maintained in the Finance Act and any new additions that were not previously included in the Finance Bill.

The breakdown of the changes can be found below:

## **Direct Taxes:**

- Definition of "winnings"
- Definition of "immovable property"
- Definition of "related person"
- Taxation of payments made to digital content creators
- Interest restrictions/ Foreign exchange losses and restricted interest deferral
- Taxation of repatriated income
- Non refund of excess withholding tax paid arising from an audit adjustment
- Threshold for Turnover Tax
- Introduction of Digital Assets Tax ("DAT")
- Non-deductibility of business expenses where the invoices are not generated from an electronic tax invoice management system
- Introduction of qualifying intellectual property income
- Definition of the ultimate parent entity (UPE)
- Determination of CbCR threshold
- Filing of CbCR
- Introduction of withholding tax on payments to resident persons in respect of sales promotions, marketing and advertising services
- Introduction of withholding tax rental income collected by agents who have been appointed by the Commissioner
- Removal of the blanket income tax exemption applicable to companies undertaking the manufacture of human vaccines
- Exemption of tax on certain income derived by Special Economic Zones.
- Introduction of capital allowances for industrial building and docks
- Exemption from tax on income earned by persons involved in projects financed through 100% grant under an agreement between the Government and the development partner
- Deductibility of capital allowances on civil works and other structures related to telecommunication equipment
- Reduction of withholding tax rate on lease premium on immovable property and residential rental income
- Tax applicable to vans, pick-ups, trucks, prime movers, trailers, lorries, saloons, station-wagons, mini-buses, buses and coaches
- Capital Gains Tax (CGT) - Taxation of gains from alienation of shares or comparable interest
- CGT-Adjusted Costs
- CGT-Due Date for payment





# PART 1:

# INTRODUCTION

## Value Added Tax (VAT)

- Increased rate of VAT on petroleum products
- Exemption of Liquified Petroleum Gas (LPG) from VAT
- Expansion of VAT obligations for suppliers of services without a fixed place of business in Kenya
- Zero rating of exported taxable services
- Transfer of business as a going concern (TOGC)
- Additional restriction on deductibility of input tax
- Introduction of VAT on compensation for the loss of taxable supplies
- Clarification that VAT registration threshold does not apply to persons supplying imported digital services
- Refund of Tax on Bad Debt
- Introduction of VAT exemptions
- Expansion of scope for taxable services, exempted from VAT under special operating framework with the Government
- Introduction of VAT at the zero rate on inbound international sea freight
- Change of status from standard rated to zero rated
- Record keeping of transactions not limited to Kenya

## Excise Duty Act

- Deletion of Inflation Adjustment
- Minimum time to remedy deficiencies that led to suspension of an excise license
- Daily remittance of excise duty on manufacturers of alcoholic beverages
- Daily remittances of excise duty on betting and gaming
- Change to amount "Wagered or Staked"
- Change of Excise Duty Rates
- Offences relating to Excise Stamps
- Definition of term "Excise Control"

## Tax Procedures Act

- Definition of a Tax decision
- Enforcement of International Tax Agreements
- Requirement for Trustees to maintain and avail records to the Commissioner
- Requirement to maintain records through an electronic system
- Abandonment of Taxes and removal of application of waiver of penalty and interest
- Tax Amnesty
- Commissioners increased scope for issuance of Agency Notices
- Appointment of Withholding VAT agents
- Increase in ADR period
- Appointment of Rental Income Tax agents
- Refund of overpaid tax



# PART 1:

## INTRODUCTION

- Objection to Tax Decision
- Establishment of Data Management and reporting system for production of records
- Penalty for failing to comply with Electronic Tax System

### **TAT Act**

- Form of the Appeal to the TAT
- Payment of 20% of the disputed taxes or security equivalent to 20% of the disputed tax before appeal to the High Court

### **Miscellaneous Fees and Levies Act**

- Import Declaration Fees Rates
- Introduction of Export and Investment Promotion Levy
- Changes in the 1st Schedule of MFLA (Goods subject to Export Levy)
- Changes in part A of the 2nd Schedule to the MFLA (Goods exempt from IDF)
- Changes in part B of the 2nd Schedule to the MFLA (Goods exempt from RDL)

### **Employment Taxes**

- Introduction of additional tax bands and increase in marginal tax rate for individuals
- Introduction of the Affordable Housing Levy

### **Kenya Road Boards Act**

- Collation and Submission of annual roads program

### **Kenya Revenue Authority Act**

- Expansion of mandate of capacity building and training

### **Retirement Benefits Act**

### **Alcoholic Drinks Act**

- Introduction of Minimum Input Cost

### **The Special Economic Zone Act**





# PART 1: DIRECT TAXES

## **DEFINITION OF "WINNINGS"**

The Finance Bill 2023 had proposed the definition of the term winnings as the pay-out from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered.

The Act has retained the provision but has excluded the amount staked or wagered in a betting or gaming activity from the definition of winnings.

The new definition clarifies the tax base that should be subjected to withholding tax to be the payout to the punter excluding the amount staked or wagered. There had been disputes between the Kenya Revenue Authority ("KRA") and the betting industry on the matter as the term winning.

The revised definition provides clarity to the matter.

.....Effective date will be 1st July 2023.



## **DEFINITION OF "IMMOVABLE PROPERTY"**

The Bill had proposed to define immovable property as below;

1. Land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property.
2. A mining right, an interest in a petroleum agreement, mining information or petroleum information.

The new provision expands the definition of the term immovable property to include land. Further, the Act has expanded the scope of capital gain tax to include companies whose shares are transferred indirectly and the companies are asset rich particularly in relation to immovable property. With the above amendments, companies that are land rich will be caught by capital gains tax when they undertake an indirect disposal of shares. This is in line with the Government intention of increasing the tax base by including transactions that might have previously not been caught by the ITA.

.....Effective date will be 1st July 2023



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**Page Number:**  
6 of 43

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# PART 1: DIRECT TAXES

## **DEFINITION OF "RELATED PERSON"**

The Bill had proposed the definition of a related person to include; In the case of two persons, where a person participates directly or indirectly in the management, control or capital of the business of another person.

This change effectively introduces two different definitions in the ITA of the same phrase. which could potentially lead to confusion.

.....Effective date will be 1st July 2023



## **TAXATION OF PAYMENTS MADE TO DIGITAL CONTENT CREATORS**

The proposal in the Bill required taxpayers making payments to digital content creators to withhold tax against such payments at the rate of 15%. The Act has retained the provisions. However, the act has lowered the rate at which taxpayers will be required to withhold tax in respect of payments made to digital content creators from the initially proposed 15% to 5%

Previously, the definition of professional and management fees in the ITA was not explicit on whether digital content creation is a professional service. Due to this lack of clarity, some taxpayers were not withholding payments made to digital content creators.

The scope of digital content monetisation has been widened to include income earned from brand promotions, advertisements on social media platforms and websites as well as sale of goods. The Parliament reduced the withholding tax rate applicable to 5% aligning it with the withholding rate tax applicable to payments to professional and management fees payable to resident persons which is a welcomed move.

.....Effective date will be 1st July 2023





# PART 1:

# DIRECT TAXES

## **INTEREST RESTRICTIONS/ FOREIGN EXCHANGE LOSSES AND RESTRICTED INTEREST DEFERRAL**

The Bill proposed the restriction of interest only in cases where the loan is sourced from non-resident persons. Interest in respect of loans obtained from resident persons were to be exempt from the interest restriction provisions.

Furthermore, the following two categories of manufacturing companies are exempted from interest restrictions:

- i) Companies engaged in manufacturing whose cumulative investment in the preceding five years from 1 January 2023 was at least KES 5 bn; and,
- ii) Companies engaged in manufacturing whose cumulative investment was at least KES 5 bn provided that the investment shall have been made outside Nairobi City County and Mombasa County.

The Act has retained this provision. Additionally, the Finance Act has introduced a provision allowing taxpayers to defer and carry forward restricted interest for a maximum of three years. Within those three years, interest that had previously been restricted will be deductible in the financial year where the company's interest incurred in respect of loans from non-resident persons does not exceed the restriction threshold of 30% of EBITDA. Further it has increased the number of years deferred foreign exchange losses can be claimed from three years to five years.

This amendment largely aligns with the recommendations of the BEPS project as interest incurred from loans from residents are less likely to be used to erode the tax base. it would however have been more appropriate to limit the restrictions to related party interest as loans from third parties would not necessarily be obtained with the objective to erode the tax base.

The provision to allow the carry forward of restricted interest for a maximum of three years is a welcome move. Previously, the ITA did not allow the deferral of restricted interest at all.

Further, the Parliament increased the number of years the provision limited the deductibility of foreign exchange losses from three to five years. This amendment is still unfair to taxpayers as foreign exchange losses are caused by macroeconomic factors which are beyond the taxpayers' control.

.....Effective date will be 1st January 2024







# PART 1: DIRECT TAXES

## **TAXATION OF REPATRIATED INCOME**

The Bill had proposed to introduce a tax on repatriated income in the case of a non-resident person carrying on business in Kenya through a PE. The tax charged on repatriated income will be additional to the tax chargeable on the profits attributable to a PE. Further, the Bill proposed to reduce the corporate income tax rate of the PEs from 37.5% to 30%.

The Act has retained this provision. In addition, the Finance Act has clarified that the repatriated income will be taxed at 15%.

The formula for calculating repatriated income may claw back some tax incentives the Government would have granted the branch such as accelerated capital allowances resulting in the taxpayer not enjoying the tax incentives fully. The effective tax rate for permanent establishments will now be 40.5% which is the same as that of an incorporated Kenyan company with non resident shareholders.

.....Effective date will be 1st January 2024



## **NON REFUND OF EXCESS WITHHOLDING TAX PAID ARISING FROM AN AUDIT ADJUSTMENT**

The Bill had proposed that where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment. This has been retained in the Act.

Transfer pricing audit adjustments relating to management fees, professional fees and royalties result in an overpayment of withholding tax previously paid on such fees. This new provision attempts to curtail the refund or offset of such overpayments. The provision is unfair to taxpayers as they are forced to forfeit withholding tax that they have paid to the KRA despite the KRA having disallowed the same expense and demanded for additional corporate income tax.

This provision will make it more difficult for settlement agreements to be entered into with the KRA on transfer pricing adjustments as taxpayers will not be able to take into account tax already paid by the taxpayer.

.....Effective date will be 1st July 2023



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**Page Number:**  
9 of 43

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# PART 1: DIRECT TAXES

## **THRESHOLD FOR TURNOVER TAX**

The Bill had proposals to amend the ITA by reducing the threshold for resident persons to qualify for turnover tax. According to the initial proposal, those whose turnover from business is more than KES 0.5M but does not exceed or is not expected to exceed KES 15M would be eligible to elect to account and pay taxes under the Turnover Tax regime as opposed to the CIT regime. Further, the Finance Bill proposed to increase the Turnover Tax rate from 1% to 3%.

The Act has amended the proposal in the Finance Bill, 2023 and now as per the provisions of the act, a resident person will qualify for Turnover Tax if the turnover from their business is more than KES 1M but does not exceed or is not expected to exceed KES 25M. The proposal in the Bill to increase the rate of Turnover Tax from 1% to 3% has been retained.

It is noted that increasing the Turnover Tax from 1% to 3% may discourage the informal sector from embracing the Turnover Tax as the increase in rates may be viewed as punitive.

.....Effective date will be 1st July 2023



## **INTRODUCTION OF DIGITAL ASSETS TAX ("DAT")**

As per the initial proposals in the Bill, the owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall be required to deduct DAT at the rate of 3% of the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset and remit within twenty four hours after making the deduction.

The transferor will also be required to submit a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require. Non-resident persons who own platforms on which digital assets are exchanged or transferred will be allowed to register under the simplified tax regime.

The Act has retained this provision. However, the proposal to file a return and remit DAT on exchange or transfer of a digital asset within twenty-four hours has been revised and now the Act provides for filing a return and paying within five days after making the deduction.





# PART 1: DIRECT TAXES

The rapid growth in the adoption and trading of the cryptocurrencies in Kenya has resulted in the Government seeking to collect taxes in this area. Unlike other assets where it is the gain that is subject to tax, the Government has opted to tax the gross fair market value in the case of digital assets. The requirement to file a return and remit the payment within 5 days is still short and may heighten the risk of noncompliance.

.....Effective date will be 1st September 2023



## **NON-DEDUCTIBILITY OF BUSINESS EXPENSES WHERE THE INVOICES ARE NOT GENERATED FROM AN ELECTRONIC TAX INVOICE MANAGEMENT SYSTEM**

The Bill had proposed to introduce a condition that for a business expenses to qualify for tax deduction, the invoices received in respect of such expenses must be generated from an electronic tax invoice management system unless the transaction under which the expense was incurred has been exempted from electronic tax invoice management system regulations.

While this may provide further rigour to supporting documentation to evidence the validity of the expenses, there are several categories of expenses that are deductible under the ITA and are not exempt under the TPA. These would include accruals of expenses for which an expense has been incurred but the invoice not necessarily received and expenses from non resident suppliers.

This provision may result in disputes between the tax authority and taxpayers. We also expect an increase in the differences between accounting profit and taxable profit.

.....Effective date will be 1st January 2024



## **INTRODUCTION OF QUALIFYING INTELLECTUAL PROPERTY INCOME**

The Bill had proposed to introduce a preferential tax rate to qualifying intellectual property income, this was retained in the Act.

This is a welcomed provision as it positions Kenya as a technology and research hub. However, there is no rate of tax provided. Intellectual property is also not defined.

.....Effective date will be 1st January 2024





# PART 1: DIRECT TAXES

## **DEFINITION OF THE ULTIMATE PARENT ENTITY (UPE)**

The Bill proposed to define a UPE as an entity that is not controlled by another entity and owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.

This definition has been aligned to the OECD definition and is welcome. The previous definition was unduly restrictive as it only identified a resident entity as being a UPE.

.....Effective date will be 1st July 2023



## **DETERMINATION OF CBCR THRESHOLD**

The Bill had proposed an obligation on taxpayers to establish whether they have a Country-by-Country Reporting obligation by looking at their consolidated group turnover during the financial year immediately preceding the reporting financial year.

The Act retained this provision. This provision is aligned to the filing due date for CbCR and the OECD approach.

.....Effective date will be 1st July 2023



## **FILING OF CBCR**

The Bill proposed to amend Section 18D(1) to read as "Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (3)". However the Bill also amended Section 18D(3) to read as "An ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file to the Commissioner in such manner as the Commissioner may specify"

The amended Section 18D(1) relates to filing of CbCR and the Section should therefore be read in isolation without making reference to Section 18D(3) which deals with the obligation to file a local and master file.

.....Effective date will be 1st July 2023







# PART 1: DIRECT TAXES

## **INTRODUCTION OF WITHHOLDING TAX ON PAYMENTS TO RESIDENT PERSONS IN RESPECT OF SALES PROMOTIONS, MARKETING AND ADVERTISING SERVICES**

The Bill proposed to amend the ITA by introducing a 5% withholding tax on payments to resident persons in respect of sales promotions, marketing and advertising services. The Act retained the provision.

The reintroduction of withholding tax on sales promotions, marketing and advertising services may be indicative of KRA's sentiments that there is tax leakage in the marketing and promotions industry.

.....Effective date will be 1st July 2023



## **INTRODUCTION OF WITHHOLDING TAX RENTAL INCOME COLLECTED BY AGENTS WHO HAVE BEEN APPOINTED BY THE COMMISSIONER**

The Bill proposed an amendment of the ITA such that a person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom at the rate of 7.5% of the gross amount payable. According to the initial proposal, the appointed person would be required to remit the deducted tax within twenty-four hours after the deduction.

The Act has retained this provision. However, the proposal to remit WHT on rental income collected by agents who have been appointed by the Commissioner within twenty-four hours has been revised and now the Act provides for remitting within five days after making the deduction.

The requirement to remit deducted withholding tax within might be onerous on the appointed agents and could heighten the risk of non-compliance. The increase in the period to account for withholding tax from 24 hours to 5 days however is a welcome move.

.....Effective date will be 1st July 2023





# PART 1: DIRECT TAXES

## **REMOVAL OF THE BLANKET INCOME TAX EXEMPTION APPLICABLE TO COMPANIES UNDERTAKING THE MANUFACTURE OF HUMAN VACCINES**

The Bill proposed to remove the income tax exemption for companies undertaking the manufacture of human vaccines and replace it with a corporate tax rate of 10%. Further, the Bill had introduced the withholding tax exemption which will only be applicable to royalties paid to a non resident person and to interest paid to a resident and a non resident person.

The tax exemptions relating to vaccine manufacturers are geared towards attracting vaccine manufacturing in Kenya given the dearth of such ventures in Africa and the risks that such absence portends to public health. The deletion of the blanket income tax exemption may arise from the current Kenyan tax policy which is to reduce blanket tax exemptions in the ITA.

.....Effective date will be 1st January 2024



## **EXEMPTION OF TAX ON CERTAIN INCOME DERIVED BY SPECIAL ECONOMIC ZONES**

The Act has exempted gains on transfer of property within a special economic zone enterprise, developer and operator from taxation. Further, the Act now grants a withholding tax exemption to royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person.

The Government is keen to attract investment in the Special Economic Zones thus granting tax incentives in a bid to spur investments into the sector.

.....Effective date will be 1st July 2023



## **INTRODUCTION OF CAPITAL ALLOWANCES FOR INDUSTRIAL BUILDING AND DOCKS**

The Bill proposed to amend the ITA by introducing capital allowances at a rate of 10% for industrial building and docks. The Bill had further defined Industrial buildings to include a building in use for the purpose of transport, bridge, tunnel, inland navigation, water and electricity or hydraulic power undertaking.



# PART 1:

## DIRECT TAXES

This provision is welcome as it will encourage the growth of the blue economy in Kenya and spur growth in the coastal region.

.....Effective date will be 1st January 2024



### **EXEMPTION FROM TAX ON INCOME EARNED BY PERSONS INVOLVED IN PROJECTS FINANCED THROUGH 100% GRANT UNDER AN AGREEMENT BETWEEN THE GOVERNMENT AND THE DEVELOPMENT PARTNER.**

The Act seeks to exempt from tax income earned by a non resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a one hundred percent grant under an agreement between the Government and the development partner.

In a bid to formalise the tax exemptions granted to development partners under the agreements signed between the Government and the development partners, the Government has included this provision in the Income Tax Act to assure the development partners that the grant income advanced will not suffer taxation in Kenya.

.....Effective date will be 1st July 2023



### **DEDUCTIBILITY OF CAPITAL ALLOWANCES ON CIVIL WORKS AND OTHER STRUCTURES RELATED TO TELECOMMUNICATION EQUIPMENT**

The Bill proposed to amend the ITA to expand the definition of the term civil works to include earthworks for telecommunication and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures. The capital allowance tax rate for telecommunication equipment is 10% per year in equal instalments.

In the past, there have been disputes between KRA and taxpayers in the telecommunication sector on whether civil works related to telecommunication equipment qualify for capital allowances. This provision clarifies the civil works that qualify for capital allowances in the telecommunications sector thus reducing disputes

.....Effective date will be 1st January 2024



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**Page Number:**  
15 of 43  
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# PART 1: DIRECT TAXES

## **REDUCTION OF WITHHOLDING TAX RATE ON LEASE PREMIUM ON IMMOVABLE PROPERTY AND RESIDENTIAL RENTAL INCOME**

The provisions in the Bill sought to amend the ITA such that the WHT rate on lease premium on immovable property and residential rental income is reduced to 7.5% from the initial 10%.

This is a welcome move as it helps landlords to manage their cash flow and enhance compliance. KRA has been facing challenges in collecting the residential rental income and this change may enhance compliance amongst the taxpayers.

.....Effective date will be 1st January 2024



## **TAX APPLICABLE TO VANS, PICK-UPS, TRUCKS, PRIME MOVERS, TRAILERS, LORRIES, SALOONS, STATION-WAGONS, MINI-BUSES, BUSES AND COACHES**

The Bill proposed to increase the advance tax to three thousand shillings per tonne of load capacity per year or five thousand shillings per year, whichever is higher.

The Finance Act has amended the Finance Bill by lowering the advance tax for certain categories of vehicles from three thousand shillings per tonne of load capacity per year as proposed in the Bill to two thousand five hundred shillings per tonne of load capacity per year or five thousand shillings per year, whichever is higher.

The increase in advance tax on commercial vehicles will increase the cost of doing business as it may have an impact on the taxpayer from a cash flow perspective.

.....Effective date will be 1st January 2024



## **CAPITAL GAINS TAX (CGT) – TAXATION OF GAINS FROM ALIENATION OF SHARES**

The Bill proposed to bring to tax gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the 365 days preceding the alienation, the shares or the comparable interest derived more than 20% of their value directly or indirectly from immovable property situated in Kenya.







# PART 1:

## DIRECT TAXES

This provision will bring indirect disposals into the ambit of capital gains tax. The provision seeks to expand the scope of capital gain tax to include companies whose shares are transferred indirectly and are asset rich particularly in relation to real estate.

.....Effective date will be 1st July 2023



### **CGT-ADJUSTED COSTS**

The Bill had proposed to amend the ITA such that where property is transferred in a transaction that is not subject to CGT, and the property is subsequently transferred in a taxable transaction within a period of less than five years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted cost as determined in the first transfer.

This provision will prevent the stepping up of the base cost of property, thus reducing the gains in the subsequent transfer.

.....Effective date will be 1st July 2023



### **CGT-DUE DATE FOR PAYMENT**

The Bill proposed to amend the ITA such that CGT is paid at the earlier of –

- I. Receipt of the full purchase price by the vendor; and
- II. Registration of the transfer

This amendment will provide clarity on the specific date for payment of CGT therefore eliminate existing disputes around the due date for payment.

.....Effective date will be 1st July 2023



# PART 2:

## VALUE ADDED TAX (VAT)

### **INCREASED RATE OF VAT ON PETROLEUM PRODUCTS**

The Bill proposed to amend section 5 of the VAT Act by deleting subsection (aa) which provides for the application of VAT at the rate of eight percent (8%) on the taxable value of the goods listed in Section B of Part I of the First Schedule to the VAT Act.

The deletion of the reduced VAT rate of 8% means that VAT will apply on petroleum products at the standard rate of 16%. This will have an adverse effect on the cost of living taking into consideration that industries such as transportation, manufacturing and agriculture are heavily reliant on fuel.

.....Effective date will be 1st July 2023



### **EXEMPTION OF LIQUIFIED PETROLEUM GAS (LPG) FROM VAT**

The Bill proposed to amend the VAT Act by deleting the provision of application of VAT at the rate of eight percent (8%) on LPG and including it under the exemption schedule – First Schedule to the VAT Act.

The Act has varied the provisions of the Bill by deleting the provision of application of VAT at the rate of eight percent (8%) on LPG and including it at paragraph 27 of the second schedule-making the supply zero rated.

The elimination of VAT on LPG will lead to a reduction in the product cost, making it affordable for more Kenyans. This is a welcome move as LPG being a cleaner source of energy, is healthy and environmentally friendly.

.....Effective date will be 1st July 2023



# PART 2:

## VALUE ADDED TAX (VAT)

### **EXPANSION OF VAT OBLIGATIONS FOR SUPPLIERS OF SERVICES WITHOUT A FIXED PLACE OF BUSINESS IN KENYA.**

The amendment expands the reach of the KRA to bring non-residents suppliers of services under the Kenyan VAT law just by dint of them trading with Kenyan customers. This is contrary to internationally accepted VAT place of supply principles. Further, there is potential for double taxation as recipients of the services are obliged to self-account for VAT on the imported services – the law currently only exempts recipients of digital market supplies from reverse VAT.

.....Effective date will be 1st July 2023



### **ZERO RATING OF EXPORTED TAXABLE SERVICES**

The Bill proposed to delete the exportation of taxable Business Process Outsourcing (“BPO”) services from the Second Schedule to the VAT Act and to introduce the exportation of taxable services in the First Schedule to the VAT Act.

The Act has varied the provisions of the Bill by deleting paragraph 23 of the Second Schedule to the VAT Act which provided for the zero-rating on exportation of taxable services in respect of BPO and substituting it with a new paragraph 23 ‘exportation of taxable services’.

This amendment provides relief to businesses which export taxable service as such taxpayers will be eligible to claim input VAT deductions.

.....Effective date will be 1st July 2023



### **TRANSFER OF BUSINESS AS A GOING CONCERN (TOGC)**

The Bill proposed to exempt the transfer of business as a going concern by introducing it under paragraph 36 of Part II of the First Schedule to the VAT Act. The Act has maintained the status quo, that is, the transfer of a business as a going concern is subject to VAT at 16%.

.....Effective date will be 1st July 2023



# PART 2:

## VALUE ADDED TAX (VAT)

### **ADDITIONAL RESTRICTION ON DEDUCTIBILITY OF INPUT TAX.**

The Bill proposed to amend Section 17 (2) of the VAT Act by deleting the word 'or' and substituting it with the word 'and', thereby requiring a person to hold both the documentation prescribed under the Act and still ensure the registered supplier has declared the sales invoice in a return for them to deduct input tax. The Act has retained this amendment.

Therefore, in addition to being in possession of valid tax invoices, taxpayers seeking input tax credits will be required to evidence that the VAT in question has been declared on a VAT return to the KRA by the supplier of the goods or services.

.....Effective date will be 1st July 2023



### **INTRODUCTION OF VAT ON COMPENSATION FOR THE LOSS OF TAXABLE SUPPLIES**

The Bill proposed to introduce a subsection 9 to section 17 of the VAT Act as follows: Where a bona fide owner of taxable supplies, who has deducted input tax is compensated for the loss of the taxable supplies, the compensation shall be treated as a taxable supply. The Act has retained this amendment.

This amendment will require taxpayers to account for VAT on compensation for loss of taxable supplies. The rationale for the change is not clear as compensation for loss of goods does not comprise "consideration" (as defined in the legislation) for a taxable supply of goods and it is unlikely underwriters will include VAT on the compensation payments.

.....Effective date will be 1st July 2023



### **CLARIFICATION THAT VAT REGISTRATION THRESHOLD DOES NOT APPLY TO PERSONS SUPPLYING IMPORTED DIGITAL SERVICES**

The Bill proposed to amend section 34 of the VAT Act by deleting the current proviso and including a new provision which provides that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings. Thus makes it unequivocal that non-residents offering supplies over the digital marketplace need not meet the threshold of KES 5 million to trigger VAT registration.





# PART 2:

## VALUE ADDED TAX (VAT)

.....Effective date will be 1st July 2023



### **REFUND OF TAX ON BAD DEBTS**

The Act has introduced an amendment to section 31(1) of the VAT Act on refund of bad debts where a registered person has accounted for and paid tax on a supply but has not recovered the payment. This amendment was not part of the proposals presented in the Finance Bill, 2023.

Act has increased the period within which a refund application can be made from four years to ten years. The taxpayer will be allowed to offset any overpaid tax against other taxes owed or the amount may be credited to the taxpayer's record for use against future VAT liabilities.

Where the bad debt is subsequently recovered, the amendment further extends the timeline within which to refund the Commissioner the tax refund paid to sixty days from the date the recovery was made. Previously the taxpayer was required to refund the tax within thirty days. In the event a taxpayer fails to pay back the refund paid, interest will accrue at two per cent per month provided that the interest shall not exceed one hundred per cent of the refunded amount.

.....Effective date will be 1st July 2023



### **INTRODUCTION OF VAT EXEMPTIONS**

The Bill proposed to exempt various goods, majorly medical related products from VAT. Some of these goods include: Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale;

Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale; Other, medicaments containing hormones or other products of heading 29.37 Containing corticosteroid hormones, their derivatives or structural analogue of tariff; and

Taxable goods for the direct and exclusive use in the construction and equipping of specialised hospitals with a minimum bed capacity of one hundred, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.



# PART 2:

## VALUE ADDED TAX (VAT)

Some of the changes are aimed at cushioning Kenyans against the effects of rising cost of living and its ensuing social economic hardship. While others are aimed at boosting local manufacturing and attracting additional investments e.g. to the aviation and healthcare sectors.

.....Effective date will be 1st July 2023



### **EXPANSION OF SCOPE FOR TAXABLE SERVICES, EXEMPTED FROM VAT UNDER SPECIAL OPERATING FRAMEWORK WITH THE GOVERNMENT**

The Act provided for the exemption of taxable goods, inputs and raw materials imported or locally purchased by a company which is engaged in business under a special operating framework arrangement with the Government; and is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.

The amendment clarifies that the taxable services supplied to companies engaged under a special operating framework and incorporated to make human vaccines are exempt from VAT.

.....Effective date will be 1st July 2023



### **INTRODUCTION OF VAT AT THE ZERO RATE ON INBOUND INTERNATIONAL SEA FREIGHT**

This amendment is aimed at making it clear that supplies of inbound sea freight services by shipping lines that are VAT registered in Kenya are subject to VAT albeit at the zero rate - such supplies have on occasion been treated as falling outside the scope of Kenya VAT.

.....Effective date will be 1st July 2023



# PART 2:

## VALUE ADDED TAX (VAT)

### **CHANGE OF STATUS FROM STANDARD RATED TO ZERO RATED**

The Act amends the Second Schedule ( zero rating schedule) of the VAT Act by including the following supplies to the schedule;

- The supply of locally assembled and manufactured mobile phones.
- The supply of motorcycles of tariff heading 8711.60.00.
- The supply of electric bicycles
- The supply of solar and lithium ion batteries.
- The supply of electric buses of tariff heading 87.02
- Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.

This amendment is consistent with the government's agenda to promote manufacturing and local production. This is a welcome move and will help the sector unlock various opportunities while managing the cost of doing business.

.....Effective date will be 1st July 2023



### **RECORD KEEPING OF TRANSACTIONS NOT LIMITED TO KENYA**

The Bill proposed to amend section 43 of the VAT Act which provides that taxpayers are required to keep a record of every transaction in Kenya for a period of five years, by deleting the words "in Kenya". This amendment has been retained.

This is a welcome change that acknowledges advancements in technology, which allow for digital/ electronic and remote storage of records in diverse locations globally.

.....Effective date will be 1st July 2023



# PART 3:

## EXCISE DUTY

### **DELETION OF INFLATION ADJUSTMENT**

The Finance Act, 2023 has repealed Section 10 of the Excise Duty Act which empowers the Commissioner to adjust the excise duty rate on excisable goods. Prior to the amendment, the Commissioner was empowered by Section 10 of the Excise Duty Act to adjust the specific excise duty rates on excisable goods on 1st October of every year to account for inflation.

Following this change, the Commissioner will no longer be able to adjust the excise duty rates on excisable goods. This is a welcome move as it creates stability in the excise duty rates on goods listed in Part I of the First Schedule to the Act

.....Effective date will be 1st July 2023



### **MINIMUM TIME TO REMEDY DEFICIENCIES THAT LED TO SUSPENSION OF AN EXCISE LICENCE**

The Finance Act, 2023 has amended Section 20(5) of the Excise Duty Act to require the Commissioner (in instances where it issues a notice of rectification) to grant a taxpayer (whose excise licence has been suspended) at least 14 days from the date it receives the notice to complete the rectification of the deficiencies that resulted in the suspension of the licence.

Prior to this change, the Excise Duty Act, 2015 lacked a minimum period within which a taxpayer could be granted to rectify a defect that led to a suspension of their excise licence. As a result, the Commissioner had absolute discretion on the amount of time they would give a taxpayer to rectify the deficiency.

To put the above in context, a person whose excise licence is suspended may appeal against the notice of suspension under Section 20(4) of the Excise Duty Act. The Commissioner has the powers to revoke the suspension, cancel the licence or issue the taxpayer with a written notice specifying:

- i. the actions required to remedy the deficiencies that led to the suspension; and
- ii. the time within which these actions need to be completed (a minimum period of 14 days).

This amendment is a welcome move as it will ensure that all taxpayers issued with a notice of rectification have at least 14 days to remedy deficiencies.

.....Effective date will be 1st July 2023



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**Page Number:**  
24 of 43

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# PART 3:

## EXCISE DUTY

### **DAILY REMITTANCE OF EXCISE DUTY ON MANUFACTURERS OF ALCOHOLIC BEVERAGES**

The Finance Act 2023 now requires manufacturers of alcoholic beverages to remit excise duty within 24 hours upon removal of the goods from the stockroom. This may pose administrative and cash flow challenges to the manufactures of alcohol beverages.

.....Effective date will be 1st July 2023



### **DAILY REMITTANCE OF EXCISE DUTY ON BETTING AND GAMING**

The Finance Act 2023 now requires betting and gaming service providers to remit excise duty before the end of the following day. Moreover, the Act now empowers the Commissioner to place taxpayers in other sectors under this daily remittance regime.

Prior to this amendment, all licensed persons were required under Section 36(1) and (2) to remit excise duty by the twentieth day of the following month. This is amendment is concerning as the Commissioner may now require other industries to remit excise duty on a daily basis which may present administrative and challenges.

.....Effective date will be 1st July 2023



### **CHANGE TO DEFINITION OF "AMOUNT WAGERED OR STAKED"**

The Finance Act, 2023 has amended the definition of the phrase "amount wagered or staked" to include gaming transactions. Prior to the amendment, Part III of the First Schedule to the Excise Duty Act defined the phrase "amount wagered or staked" as "the amount of money placed by a person for an outcome in a betting transaction" thus did not currently cover gaming transactions. As a result of this amendment, amounts staked on gaming will be subject to excise duty at 20%

.....Effective date will be 1st July 2023



# PART 3:

## EXCISE DUTY

### CHANGE OF EXCISE DUTY RATES

Goods	New Rate	Old Rate
Imported fish	10%	N/A
Powdered juice	KShs. 25 per kg	N/A
Imported sugar excluding imported sugar by a registered pharmaceutical manufacturer	KShs. 5 per kg	N/A
Imported cement	10% of the value or KShs. 1.50 per kg, whichever is higher	N/A
Imported furniture of Tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	Ksh 13.30/ml	N/A
Imported cellular phones * Reclassified from excisable services to excisable goods	10%	10%
Disassembled or unassembled kits for local assembly or manufacture mobile phones	0%	10%
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	15%	0%



# PART 3:

## EXCISE DUTY

Goods	New Rate	Old Rate
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90	25%	N/A
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90	25%	N/A
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00	25%	10%
Condensates per 1000l@ 20degC	N/A	Ksh 6225
Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)	35%	25%
Imported Alkyd	20%	10%
Imported Unsaturated polyester	20%	10%
Imported Emulsion VAM	20%	10%
Imported Emulsion - styrene acrylic	20%	10%
Imported Homopolymers	20%	10%
Imported Emulsion B.A.M	20%	10%



# PART 3:

## EXCISE DUTY

GOODS	NEW RATE	OLD RATE
Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90	25%	N/A
Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90	25%	N/A
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00	25%	N/A

SERVICES	NEW RATE	OLD RATE
Telephone and internet data services	15%	N/A
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	15%	N/A
Excise duty on fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011 *fees charged by payment service providers under the NPS Act (other than cellular phone service providers) are currently not subject to excise duty	15%	12%





# PART 3:

## EXCISE DUTY

SERVICES	NEW RATE	OLD RATE
Fees charged by payment service providers licenced under the National Payment Systems Act, 2011 (other than cellular phone service providers)	15%	N/A
Excise duty on betting (on the amount wagered or staked)	12.5%	7.5%
Excise duty on gaming (on the amount wagered or staked)	12.5%	7.5%
Excise duty on the amount paid/charged to participate in a prize competition	12.5%	7.5%
Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries)	12.5%	7.5%
Fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions	15%	N/A



# PART 3:

## EXCISE DUTY

### **OFFENCES RELATING TO EXCISE STAMPS**

The Act now provides a comprehensive list of excise offences to Section 28 of the Excise Duty Act. These offences include:

- i. Defacing or printing over excise stamps;
- ii. Knowingly is in possession of unstamped excisable goods that are not exempted;
- iii. Acquisition (or attempt) of excise stamps without the Commissioner's authority;
- iv. Printing, counterfeiting or making excise stamps without the Commissioner's authority;
- v. Knowingly is in possession or acquisition of stamps printed, made or acquired without the Commissioner's authority;
- vi. Knowingly in possession, conveyance, distribution, sale (or offers for sale) or trading in excisable goods without affixing excise stamps; and
- vii. Possession, conveyance, distribution, sale (or offers for sale) or trading in excisable goods which have been affixed with counterfeit excise stamps.

A taxpayer may be punished (upon conviction) to a fine not exceeding KShs. 5 million, imprisonment for a term not exceeding three years or both a fine and imprisonment. Prior to the amendment, Section 40 of the Excise Duty Act vaguely provided that contravention of the provisions relating to excise stamps and markings constitutes an offence. However, the Act has repealed this provision thus Section 28 is now the governing provision. • This is a welcome amendment as it provides clarity as to what constitutes an excise stamp related offences

### **DEFINITION OF THE TERM "EXCISE CONTROL"**

Prior to the amendment, the definition of the term referred to the meaning set out in Section 23 of the Act (which deals with suspension of an excise licence) whereas Section 24 defines the term as goods stored in a licensed manufacturer's factory which are subject to the Commissioner's control. This is a welcome amendment as it provides certainty as to definition of the term "excise control".

.....Effective date will be 1st July 2023



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**Page Number:**  
30 of 43  
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# PART 4:

# TAX PROCEDURES ACT

## **DEFINITION OF A TAX DECISION**

The Act has excluded a refund decision from the definition of a tax decision and has expanded the definition to include a demand for late payment interest. This means that, taxpayers dissatisfied by a refund decision will lodge an appeal to the TAT without lodging an objection. This is in line with Section 47 of the TPA (which covers tax refunds). Previously, the Tax Procedures Act defined a tax decision to include a refund decision and a demand for penalty only without including interest.

.....Effective date will be 1st July 2023



## **ENFORCEMENT OF INTERNATIONAL TAX AGREEMENTS**

Multilateral agreements and treaties have been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes will take effect in the manner stipulated in such agreements or treaties.

Further, the Act has introduced a new Section 32(A), which will empower the Commissioner to recover or collect taxes on behalf of a foreign tax authority pursuant to international agreements and treaties. The Foreign Commissioner should make such a request through a prescribed form accompanied by tax claim indicating: - the amount of tax due, proof that the foreign tax authority issued the person with a tax claim, whether liability for the amount is contested under the laws of the requesting party, where liability for the amount is contested, whether the requesting party believes that the purpose of the dispute is to delay or frustrate the collection of the amount alleged to be due, and - whether there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets.

Where the person who is alleged to be liable to pay the tax due admits liability, the foreign Commissioner may issue a notice requiring that person to pay the amount for which the person has admitted liability, on a date specified in the notice.

This amendment is a good stepping-stone for Kenya entering into common reporting standard (CRS) regime pursuant to the signing and depositing the required instruments under the multilateral convention on mutual administrative assistance.

.....Effective date will be 1st July 2023





# PART 4:

# TAX PROCEDURES ACT

## **REQUIREMENT FOR TRUSTEES TO MAINTAIN AND AVAIL RECORDS TO THE COMMISSIONER**

The Act has amended Section 23 of the Tax Procedures Act to require a trustee resident in Kenya who administers a trust registered in Kenya or outside Kenya to maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not. This amendment will see more compliance checks on trustees on all incomes whether generated in Kenya or elsewhere

.....Effective date will be 1st July 2023



## **REQUIREMENT TO MAINTAIN RECORDS THROUGH AN ELECTRONIC SYSTEM**

The Act has empowered the Commissioner to establish an electronic system through which a taxpayer is required to issue tax invoices and maintain records of electronic tax invoices and information relating to stocks. However, the Act has excluded from this requirement emoluments, imports, investment allowances, airline passenger ticketing, interest and similar payments.

The Act has also empowered the Commissioner to exempt a person from the above requirement through a Gazette notice. This amendment aligns with the amendment to Section 16 of Income Tax Act, which has restricted the allowability of expenses to only invoices generated through the electronic system unless exempted by the Commissioner.

.....Effective date will be 1st September 2023



## **ABANDONMENT OF TAXES AND REMOVAL OF APPLICATION OF WAIVER OF PENALTY AND INTEREST**

The Act has deleted Section 37 of the Tax Procedures Act (TPA), which grants the Commissioner powers to abandon recovery of taxes. The Finance Act has also amended Section 89 of the Tax Procedures Act, to bar a taxpayer from making an application for remission of penalty and interest and approval of such an application by the Commissioner.

This means that going forward, taxpayers will not apply for waiver of penalties and interest arising from non-compliance and neither will the Commissioner have powers to grant such waivers.

.....Effective date will be 1st July 2023







# PART 4:

# TAX PROCEDURES ACT

## **TAX AMNESTY**

Following the Voluntary Tax Disclosure Program (VTDP) introduced by the Finance Act, 2020 covering the 5 year period prior to 1st July 2020 (i.e. 1st July 2015 to 30th June 2020), the Act has introduced a new Section 37E to the TPA which refrains the Commissioner from collecting any penalties, interest, or tax debt where a person had paid all the principal taxes by 31st December 2022.

The Act has further allowed taxpayers who were yet to settle all the principal taxes accrued on or before 31st December 2022, to apply for amnesty of penalty and interest on the outstanding amounts provided that such taxpayers enter into a payment plan with the Commissioner. The waiver will only be applicable to penalties and interest on unpaid principal tax up to 31st December 2022 with the condition that such unpaid principal tax is paid by 30th June 2024.

Following the enactment of the Act, a full waiver of penalties and interest will be granted for all principal taxes paid by 31st December 2022. However, the Act has excluded from the amnesty, any tax avoidance penalties and interest incurred by taxpayers.

.....Effective date will be 1st September 2023



## **COMMISSIONER'S INCREASED SCOPE FOR ISSUANCE OF AGENCY NOTICES**

The Act has amended the Section to bar the Commissioner from issuing agency notices unless:

- the taxpayer has defaulted in paying an instalment under Section 33(2) of the TPA;
- the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;
- the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;
- the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or
- the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.

Thus, the Commissioner will have an expanded scope and will be empowered to issue an agency notice as early as a day after the due date has lapsed when one has filed a self-assessment.

.....Effective date will be 1st July 2023



# PART 4:

# TAX PROCEDURES ACT

## **APPOINTMENT OF WITHHOLDING VALUE ADDED TAX AGENTS**

The Act has amended Section 42(A) of the TPA, to limit the exemption from withholding VAT to only payments made for zero-rated supplies and to registered manufacturers who have invested at least three billion in the preceding three years from 1st July 2022. This specifies that the exemption for manufactures is anchored to investment of at least three billion from for three years after 1st July 2022.

The Act has also changed the remittance date of withholding VAT from the current timeline (by the 20th day of the month following the month in which the deduction is made) to within five working days after the deduction is made. The Act has also amended Section 42 (A) of the TPA to align offences related to withholding VAT to be where one fails to withhold VAT within five working days after the deduction was made. The payment deadline will create an administrative burden for taxpayers from a compliance perspective.

.....Effective date will be 1st July 2023



## **INCREASE OF THE ALTERNATIVE DISPUTE RESOLUTION PERIOD**

The Act has increased the period to pursue an out of court or tribunal settlement, from the current 90 days to 120 days. This is a welcome amendment as it will encourage taxpayers and the revenue authority to resolve tax conflicts through the Alternative Dispute Resolution.

.....Effective date will be 1st July 2023



## **APPOINTMENT OF RENTAL INCOME TAX AGENTS**

The Act has conferred power to the Commissioner to appoint and revoke appointment of rental income tax agents for the purpose of the collection and remittance of rental income tax to the Commissioner.

.....Effective date will be 1st July 2023



# PART 4:

# TAX PROCEDURES ACT

## **REFUND OF OVERPAID TAX**

The Act has amended Section 47 of the TPA to allow overpaid taxes to be utilized in offsetting both outstanding tax debts and future tax liabilities. Previously, overpaid taxes were only used to offset future tax liabilities. With this change, where a taxpayer makes an application for refund of overpaid taxes, the Commissioner will be required to refund the cash within 6 months from the date of ascertainment of the refund, failure to which the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.

Previously, the Act required the Commissioner to refund overpaid taxes within two years from the date of application failure to which the amount attracts an interest of 1% per month on the refundable amount. Further, the Act has increased the timelines for the Commissioner to ascertain a refund application from the current 90 days to 120 days for refunds undergoing audits, failure to which such an application shall be deemed to have been ascertained and approved.

.....Effective date will be 1st July 2023



## **OBJECTION TO TAX DECISION**

The Act has amended Section 51 (4) of the Tax Procedures Act to require the Commissioner to request a taxpayer to submit information within seven days after ascertaining that a notice of objection has not been validly lodged. Previously, the Tax Procedures Act only required the Commissioner to notify a taxpayer in writing on whether an objection has been validly lodged.

The enactment of the Act means that if a taxpayer fails to provide the information requested within 7 days, the Commissioner may make an objection decision within 60 days after the date the objection notice was lodged. However, the Act has not provided any clarity as to whether the Commissioner is under an obligation to notify the taxpayer if their objection has been deemed valid once the missing information is provided.

Further, the Act has also exempted invalidly lodged objections from the 60 day decision timeline and resultant consequence.

.....Effective date will be 1st July 2023



# PART 4:

# TAX PROCEDURES ACT

## **ESTABLISHMENT OF DATA MANAGEMENT AND REPORTING SYSTEM FOR PRODUCTION OF RECORDS**

The Act has introduced a new Section 59A to the TPA which empowers the Commissioner to establish a data management and reporting system (DMRS) for the submission of electronic documents including transactional data. The Commissioner will be required to notify in writing the persons required to submit electronic documents through the DMRS.

For the purposes of this Section, electronic documents include electronic invoice returns: - of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;

- for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;
- for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;
- for periodical or lump sum payments in respect of a royalty; or
- for such other commercial or financial transaction as may be designated by the Commissioner.

Further, the Act has defined transactional data to include: - the names and addresses of each person to whom a payment was made; - where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;

.....Effective date will be 1st September 2023



## **PENALTY FOR FAILING TO COMPLY WITH ELECTRONIC TAX SYSTEM**

The Act has changed the penalty for failure to comply with electronic tax system from the previous Kshs. 100 000 to two times the tax due. In case of non-compliance, comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the non-compliance before charging the penalty.

Previously, the Tax Procedures Act, provided that a tax payer should furnish the Commissioner with reasons for non-compliance within 14 days.

.....Effective date will be 1st September 2023



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**Page Number:**  
36 of 43

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# PART 5:

# TAX APPEAL TRIBUNAL ACT

## **FORM OF THE APPEAL TO THE TAT**

The Act requires appellants to the Tax Appeals Tribunal to submit the “appealable decision” instead of the “tax decision” and other documents as may be necessary to enable the Tribunal to make a decision on the appeal in addition to the memorandum of appeals and statement of facts.

This is a welcome change as it clarifies that an appellant is required to submit an appealable decision instead of a tax decision to align to section 52 Tax Procedures Act on appeal to the Tax Appeals Tribunal which provides that persons dissatisfied with appealable decisions may appeal to the Tax Appeals Tribunal Further appellant’s will be allowed to submit to the Tribunal any further documents to enable the Tribunal to make a decision. This may include documents available after the taxpayer has lodged their notice of objection to an assessment from a commissioner.

.....Effective date will be 1st July 2023



## **PAYMENT OF 20% OF THE DISPUTED TAXES OR SECURITY EQUIVALENT TO 20% OF THE DISPUTED TAX BEFORE APPEAL TO THE HIGH COURT**

The Bill proposed to amend the Tax Appeals Tribunal Act, 2013 to introduce a requirement for taxpayers to deposit with the Commissioner 20% of the tax in dispute or security equivalent to 20% of the disputed tax before they file an appeal to the High Court against a decision of the Tax Appeals Tribunal (“TAT”). The requirement to pay 20% of the disputed tax would not apply where the Commissioner is the one appealing to the High Court.

The proposed provision requiring payment of 20% of the tax in dispute before appealing to the High Court was deleted. With the deletion of this proposal, taxpayers aggrieved with the decision of the Tax Appeals Tribunal have an unhindered right of appeal to the High Court within the provided timelines.

It is hoped that this will be the last attempt to introduce a provision requiring a taxpayer to deposit a percentage of the assessed amount.

.....Effective date will be 1st July 2023



# PART 6:

## MISC FEES AND LEVIES ACT, 2016

### IMPORT DECLARATION FEES RATES

The Act has amended the rate of IDF from 3.5% to 2.5% of customs value. The Act has scrapped the preferential IDF rate of 1.5% on:

- Raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary responsible for matters relating to industry; and
- Input for construction of houses under affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.

The Act has repealed the IDF preferential rate of 1.5% of customs value of goods imported under East Africa Community Duty Remission Scheme and standardizes the rate of IDF at 2.5%. The objective of this is to have a unified rate for IDF and to boost trade.

.....Effective date will be 1st July 2023



### INTRODUCTION OF EXPORT AND INVESTMENTS PROMOTION LEVY

ITEM	TARRIF NO.	NEW RATE
Cement Clinkers	2523.10.00	17.5% of the customs value
Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) crosssection, the width measuring less than twice the thickness	7207.11.00	17.5% of the customs value
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	7213.91.10	17.5% of the customs value
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	7213.91.90	17.5% of the customs value



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# PART 6:

## MISC FEES AND LEVIES ACT, 2016

ITEM	TARRIF NO.	NEW RATE
Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	4804.11.00	10% of the customs value
Sack kraft paper; Unbleached	4804.21.00	10% of the customs value
Other kraft paper and paperboard weighing 150 g/m2 or less: Unbleached	4804.31.00	10% of the customs value
Sacks and bags, having a base of a width of 40 cm or more	4819.30.00	10% of the customs value
Other sacks and bags, including cones	4819.40.00	10% of the customs value

### **CHANGES IN THE FIRST SCHEDULE OF THE MFLA (GOODS SUBJECT TO EXPORT LEVY)**

The Act has made changes to the First Schedule to the MFLA as follows:

- Removal of the requirement to adjust specific rates of export levy to take into account annual inflation.
- Amendment of tariff numbers and/or description of various raw hides and skins and leather items. These amendments represent a general reduction in the export levy rates for such items from 80% or USD 0.52 per kg to 50% or USD 0.32 per kg whichever is higher.
- Introduction of an export levy on additional base metals of tariff number 8002.00.00, 8106.10.00, 8106.90.00, 8105, 8112.61.00, 8109.31.00, 8110.20.00 and; molasses of tariff heading 1703 at the rate of 20%.

# PART 6:

## MISC FEES AND LEVIES ACT, 2016

d) Scrapping of the application of export levy on raw hides and skin and base metals of tariff number: 8105.00.00, 8107.30.00, 8109.30.00, 8110.20.20, and 4101.40.00.

The reduced export levy rates for raw hides and skins and leather items may spur increased exportation of these products as raw materials despite the government's campaign on local value addition.

### **CHANGES IN PART A OF THE SECOND SCHEDULE TO THE MFLA ( GOODS EXEMPT FROM IDF)**

The Act has passed the proposed amendments and introduced additional items to be exempted from IDF, i.e:

- a) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;
- b) goods, inputs, and raw materials imported by a company which is engaged in business under a special operating framework arrangement ("SOFA") with the Government and incorporated for purposes of undertaking other manufacturing activities including refining; and whose capital investment is at least KES 10B;
- c) denatured ethanol of tariff number 2207.20.00; and
- d) bioethanol vapour ("BEV") stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).

### **CHANGES IN PART B OF THE SECOND SCHEDULE TO THE MFLA (GOODS EXEMPT FROM RDL)**

The Act has passed the proposed amendments and introduced additional items to be exempted from RDL, i.e:

- a) goods, inputs, and raw materials imported by a company which is engaged in business under a SOFA with the Government and incorporated for purposes of undertaking other manufacturing activities including refining; and whose capital investment is at least KES 10B;
- b) BEV stoves classified under HS code 7321.12.00 (cooking appliances and plate warmers for liquid fuel); and
- c) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

.....Effective date will be 1st July 2023



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**Page Number:**  
40 of 43  
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# PART 7:

## EMPLOYMENT TAXES

### **INTRODUCTION OF ADDITIONAL TAX BANDS AND INCREASE OF THE MARGINAL TAX RATE FOR INDIVIDUALS**

The Act has introduced two additional tax bands above the current marginal tax rate of 30% i.e., 32.5% applicable to individuals earning monthly incomes between KES 500,000 and KES 800,000, and 35% applicable to individuals earning monthly incomes of more than KES 800,000.

<b>Taxable Amount</b>	<b>NEW RATE</b>
On the first Kshs. 288,000	10%
On the next Kshs. 100,000	25%
On the next Kshs. 5,612,000	30%
On the next Kshs. 3,600,000	32.5%
On all income above Kshs. 9,600,000	35%

### **INTRODUCTION OF THE AFFORDABLE HOUSING LEVY**

The Act has amended the Employment Act, 2007 to introduce a new section 31B that provides that employers will be required to deduct and remit an Affordable Housing Levy at:

- a) 1.5% of the employee's gross monthly salary for the employee; and
- b) 1.5% of an employee's gross monthly salary for the employer.

Employers will be required to remit the levy not later than 9 working days after the end of the month in which payments are due. Late remittance of the affordable housing levy will attract a penalty of 2% of the amount due for each month the payment remains unpaid.

The change introduced by the Act is a notable departure from the initial proposal to require both employers and employees to make contributions to the fund at the rate of 3% of the employee's monthly basic salary capped to Ksh. 5,000 per month.

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**Page Number:**  
41 of 43

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# PARTS 8, 9, 10, 11, 12: OTHER ACTS

## PART 8: KENYA ROADS BOARD ACT, 1999

### **COLLATION AND SUBMISSION OF ANNUAL ROADS PROGRAM**

The Act requires the Board to collate and submit an annual roads program for each financial year together with estimates of revenue and expenditure of the Board. The Act has further removed the following organizations from the list of organizations that may nominate representatives to the Board by the Minister: The Institute of Surveyors of Kenya, The League of Kenyan Women Voters, The Kenya Association of Tour Operators.

.....Effective date will be 1st July 2023



## PART 9: KENYA REVENUE AUTHORITY ACT

### **EXPANSION OF MANDATE OF CAPACITY BUILDING AND TRAINING**

The Act has made available capacity building and training offered by the Authority to its staff, the general public and other jurisdictions. This seeks to align the Act to the training and capacity building policies of the Authority. The Act has also given the Board powers to appoint Deputy Commissioners. The Act has removed the powers of the Commissioner-General to appoint heads of departments as may be required for the efficient performance of the Authority. The Act has included the Alcoholic Drinks Act, 2010 to the list of laws relating to revenue.

.....Effective date will be 1st July 2023



## PART 10: RETIREMENT BENEFITS ACT, 1997

The Act has amended the requirements for registration of administrators by reducing the amount of paid up share capital owned by Kenyan citizens from 60% to 33%. This is a welcome move as it will allow foreign investment in local registered retirement benefit schemes. The Act has also exempted funds that are exclusively set up for the purpose of investing in sharia compliant funds from the guidelines.

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**Page Number:**  
42 of 43  
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# PARTS 8, 9, 10, 11, 12: OTHER ACTS

## PART 11: ALCOHOLIC DRINKS ACT, 2010

### INTRODUCTION OF MINIMUM INPUT COST

The Act prohibits the sale, manufacture, packing or distribution of alcoholic drinks at a price below the minimum input cost. The Act has further defined minimum input cost to be the input cost published by the KRA through excise regulations. This is a welcome move as it will help curtail the manufacture, sale and distribution of counterfeit and illicit alcoholic drinks.

.....Effective date will be 1st July 2023



## PART 12: THE SPECIAL ECONOMIC ZONES ACT, 2015

The development of zone infrastructure and goods introduced in customs-controlled area are exempted from customs duties. Specified services provided to the zone are not treated as exported services. The Act also exempts from customs duties, goods whose content originates from the customs territory. Goods whose content partially originates from the customs territory shall pay import duties on the non-originating components

.....Effective date will be 1st July 2023



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**Please note that the coming into force of the Finance Act, 2023 was temporarily suspended by way of a Conservatory Order issued by the High Court on 30th June 2023 in HCCHR Petition No. E181 of 2023 ("the Court Order").**



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