

# Tax Alert

## Highlights of the Finance Bill, 2023

The Finance Bill, 2023 ("Finance Bill", "The Bill") was tabled to the National Assembly on 04 May 2023 for the first reading. The proposals in the Bill are significant and may have an impact on the businesses of several taxpayers. It appears that the National Treasury is continuing to pursue a policy of revenue mobilisation by increasing tax rates, expansion of tax base and real time collections of taxes.

The Bill proposes to amend the following Laws: Income Tax Act ("ITA"), Value Added Tax Act, 2013 ("VAT Act"), Excise Duty Act, 2015, Tax Appeals Tribunal Act ("TAT Act"), Tax Procedures Act ("TPA"), the Miscellaneous Fees and Levies Act, 2016 ("MFLA"), Betting, Gaming and Lotteries Act, Kenya Road Board Act, 1999, Kenya Revenue Act, 1995, Employment Act, 2007, Retirement Benefits Act, Unclaimed Financial Assets Act, 2011 and the Statutory Instruments Act, 2013.

In this Alert, we provide an analysis of the changes proposed by the Bill. The effective date for these changes is 01 July 2023, unless specified otherwise in the sections herein.



# Income Tax Act amendments



Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Definition of "winnings"</b>	The term "winnings" is defined as winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly.	The term winnings has now been defined as the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered.	<p>The new definition clarifies the tax base that should be subjected to withholding tax to be the payout to the punter without taking any deduction. There had been disputes between the Kenya Revenue Authority ("KRA") and the betting industry on the matter as the law was not clear.</p> <p>According to the KRA, the withholding tax ought to have applied on the full payout while the betting industry was of the view that withholding tax was applicable on the difference between the payout and the amount staked.</p> <p>The revised definition provides clarity to the matter.</p>
<b>Taxation of payments made to digital content creators</b>	Currently, under the ITA some of these payments would have been subject to withholding tax while others may not have been captured by the provisions in the ITA.	<p>Taxpayers making payments to digital content creators will be required to withhold against such payments at the rate of 15%.</p> <p>The Bill has also introduced an expansive definition of the term digital content monetisation which covers the services/forms of contents to be taxed.</p> <p>Taxation of the income will be made through the withholding tax mechanism where the payer to the digital content creators would be required to withhold tax on payments to the creators.</p>	<p>Currently, the definition of professional and management fees in the ITA is not explicit on whether digital content creation is a professional service. Due to this lack of clarity, some taxpayers may not have withheld payments made to digital content creators. It is important to note that digital content creation is now one of the fastest categories of growth in the advertising industry.</p> <p>Notably, the withholding tax rate proposed of 15% is considerably higher than the usual withholding tax rate applicable to professional services of 5%. This may result in an effective tax rate higher than 30% for digital content creators resulting in the generation of continuous income tax credits for the creators as the withholding tax of 15% assumes a profit margin of 50%.</p> <p>It is also noted that this provision has imposed withholding tax not only on services but also on goods. The provisions may capture minors as some of the content creators are still minors. It is unclear whether the minors or their guardians will be required to register for taxes.</p> <p>This is effective date is 1 September 2023</p>

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Definition of “immovable property”</b>	The term “immovable property” is defined as a mining right, an interest in a petroleum agreement, mining information or petroleum information	The meaning of the term immovable property has been expanded to include - a) land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and b) 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 and thus brings into the capital gains tax ambit the indirect disposals of property that are subject to capital gains tax. 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.
<b>Capital Gains Tax (CGT) - Taxation of gains from alienation of shares or comparable interest where the shares derive more than 20% of their value from immovable property situated in Kenya</b>	Indirect disposals were not captured under the capital gains tax.	The Bill proposals 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.	This proposed change is trying to bring indirect disposals to capital gains tax.  The proposed change seeks to expand the scope of capital gain tax to include companies which are land rich and are transferred indirectly.  From an extractive sector perspective, the change seeks to subject the gains accrued from the indirect disposal to capital gains tax at the rate of 15%.  From the amendment, it is unclear how a taxpayer will derive the value of the Kenyan entity. Further, it is also unclear who will be responsible for the payment of tax on gain computed where a non-resident person is involved in the disposal.
<b>CGT - Adjusted costs</b>	In calculating the gains subject to CGT, the transferor of a property is allowed to deduct the cost incurred in acquiring the property together with additional amount spent on maintaining the title to property (adjusted cost).  Essentially, this means that the amount of the consideration in the transfer of a chargeable property in one transaction, will be used as the cost in the subsequent transfer.	The Bill proposes 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 is an anti-avoidance provision meant to prevent the manipulation of consideration for the purpose of stepping up the base cost of the property, thus reducing the gains in the subsequent transfer as the consideration in one transaction will be the cost of the property in the next transfer.

# Income Tax Act amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>CGT - Due date for the payment of CGT</b>	Currently the ITA provides that the due date for tax payable in respect of property transferred is on or before the date of application for transfer of the property is made at the relevant Lands Office.	The Bill proposes to change current provisions 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.	Disputes have arisen in the past where KRA demands CGT immediately the purchase price is received by the transferor but delays are experienced in the registration of property especially at the lands office. This amendment will go some way in preventing such disputes.
<b>Definition of a "person"</b>	Currently not in the ITA	"person" includes— (a) in the case of an individual, a reference to a relative, as defined in section 26(5), of that person; and, (b) a company.	<p>This new definition of a person broadens the scope of who can be considered an individual to include their relatives. The term relative under Section 26 (5) of the ITA has been defined to include spouses, ancestors, uncles, aunts, step parents, nieces, nephews etc</p> <p>The net effect of this proposal is that where there is reference to a "person" in the ITA it will include the individual and his/her relatives. From a literal translation this would mean that the tax liabilities of an individual will also include the tax liabilities of the individual's relatives and tax obligations imposed on an individual would simultaneously be imposed on the individual's relatives.</p> <p>This appears to be an error in the drafting of the proposal as tax liabilities of an individual cannot be extended to persons other than the individual. It would be prudent to ensure that the provisions are redrafted prior to the Finance Bill being passed into law to avoid the confusion this provision will generate.</p>
<b>Taxation of repatriated income</b>	Currently, Kenya only taxes profits attributable to a Permanent Establishment (PE). The ITA does not have provisions for the taxation of repatriated income. However, the effective tax rate assumes that all profits made a PE are repatriated and hence reflects that in a higher rate (37.5%)	<p>The Bill proposes to introduce a tax on repatriated income where a non-resident person is 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.</p> <p>The proposal has defined the repatriated income as movement in net assets plus the net profit calculated in accordance with generally accepted accounting principles after deducting the tax payable on the chargeable income. For the purposes of the repatriated income, net assets shall not include revaluation of assets.</p> <p>Further, the Bill proposes to reduce the corporate income tax rate of the PE from 37.5% to 30%.</p>	<p>The proposal has been lifted from the Income Tax Bill (ITB) 2018. Under the ITB, the aim was to equalise the effective tax rate of a branch and a subsidiary. However, under the Finance Bill they have not prescribed the rate of tax that will be applicable for repatriated income.</p> <p>Additionally, 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.</p> <p>In the event the Finance Bill to be enacted as is, the effective tax rate for permanent establishments will be 30% while that of an incorporated Kenyan company with non resident shareholders remains at 40.5%.</p> <p>From a tax treaty perspective, questions may be raised on whether this contravenes the non-discrimination article of the treaties that Kenya entered into with other jurisdictions.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b>.</p>



Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Non refund of excess withholding tax paid arising from an audit adjustment</b>	Not applicable	Where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment.	<p>Transfer pricing audit adjustments relating to management fees, professional fees and royalties result in an overpayment of withholding tax previously paid on such fees.</p> <p>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 net effect is that the same income is taxed twice (double taxation) by the KRA. The total tax paid on such adjustments are likely to add up to 50%.</p>
<b>Reduction of turnover tax threshold</b>	The ITA currently allows resident persons whose turnover from business is more than KES 1M but does not exceed or is not expected to exceed KES 50M during any year of income to elect to a turnover tax regime where they pay tax at the rate of 1% of the of the gross receipts of the business.	<p>The Finance Bill proposes to reduce the threshold for resident persons to qualify for turnover tax to those whose turnover from business is more than KES 0.5M but does not exceed or is not expected to exceed KES 15M.</p> <p>Further the Finance Bill proposes to increase the Turnover Tax from 1% to 3%.</p>	<p>This proposal will capture more micro enterprises under the tax net which had been excluded by the higher threshold of KES 1M.</p> <p>This is in line with the Government's attempt to tax the informal sector.</p> <p>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.</p>
<b>Introduction of the digital asset tax ("DAT")</b>	Currently, the ITA does not explicitly tax cryptocurrencies, non-fungible tokens and other digital assets.	<p>The Finance Bill proposes to introduce a tax called DAT.</p> <p>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.</p> <p>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.</p> <p>Non-resident persons who own platforms on which digital assets are exchanged or transferred will be allowed to register under the simplified tax regime.</p> <p>The bill provides an extensive definition of digital assets.</p>	<p>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. This may be viewed as inequitable particularly at a time where most cryptocurrencies are losing their value as the KRA will in effect be taxing losses.</p> <p>Further, the requirement to deduct and remit DAT together with returns within twenty-four hours after making the deduction will be quite onerous on the part of the operators of digital assets exchange platforms. This is particularly so given that many of the platform operators are non resident. This can heighten the risk of non-compliance.</p> <p>Finally, it appears that this tax applies only to Kenyan residents trading on any platform. This would be a departure from the ITA that taxes on the basis of whether income is "accrued or derived from Kenya" rather than on residency. It may also be highly impractical for non resident operators of platforms to distinguish between Kenya residents and other traders.</p>

# Income Tax Act amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Non-deductibility of business expenses where the invoices are not generated from an electronic tax invoice management system</b>	<p>Currently, business expenses are deductible as long as they are incurred wholly and exclusively in the generation of the income and they are not of capital nature.</p> <p>Expenses are deductible as long as valid documentation can be presented to support such deductions.</p>	<p>The Bill proposes 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.</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>Further, the taxpayer is added additional administration burden of ascertaining whether their suppliers are exempt from electronic tax invoice management system regulations.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b></p>
<b>Interest restrictions / Foreign exchange losses deferral</b>	<p>Interest can only be deducted to a maximum of 30% of EBITDA. In the current ITA, this includes all the interest including that incurred in respect of loans received from resident and non-resident persons.</p> <p>In addition, non-deductible interest cannot be carried forward to be deducted in future years.</p> <p>Furthermore, the following two categories of manufacturing companies are exempted from interest restrictions:</p> <ol style="list-style-type: none"> <li>Companies engaged in manufacturing whose cumulative investment in the preceding five years from 1 January 2023 was at least KES 5 bn; and</li> <li>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.</li> </ol>	<p>Interest incurred from loans from residents will no longer be subject to interest restrictions.</p> <p>Additionally, the Finance Bill now proposes that non-deductible foreign exchange losses can only be carried forward for a maximum of three years. Within those three years, foreign exchange losses would only be deductible in the financial year where the company's interest does not exceed the restriction threshold of 30% of EBITDA.</p> <p>The interest restriction exemption for companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings and companies engaged in manufacturing whose cumulative investment is at least five billion shillings has been removed.</p>	<p>The restriction of interest expense to 30% of EBITDA arose from the recommendations from Action 4 of the OECD BEPS report.</p> <p>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.</p> <p>It is noted that the interest restrictions are still applicable to third party loans from non residents. it would 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.</p> <p>The proposal now limits the deductibility of foreign exchange losses to three years. This proposal is unfair to taxpayers as foreign exchange losses are caused by macroeconomic factors which are beyond the taxpayers' control.</p> <p>Additionally, this proposal will impose a huge administrative burden on the part of taxpayers as companies will need to track foreign exchange losses per year of income as they get realised.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b>.</p>

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Introduction of qualifying intellectual property income</b>	Income from intellectual property is subject to tax at the rate of 30% (or 37.5% for branches)	The Bill proposes to introduce a preferential tax rate to qualifying intellectual property income. No definition of the qualifying intellectual property has been provided and neither has the preferential rate of tax been provided.	<p>Countries looking to attract Research &amp; Development (R&amp;D) have preferential taxation regimes for intellectual property incomes and R&amp;D expenses. This provision is extremely forward looking as it positions Kenya as a technology and research hub.</p> <p>However, the introduction of the qualifying intellectual property income under Section 18(A) of the ITA without any reference of the same under section 3 appears to be a glaring omission. Further there is no rate of tax provided.</p> <p>Additional clarity would be required before the passing of the Finance Bill.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b>.</p>
<b>Introduction of withholding tax on payments to resident persons in respect of sales promotions, marketing and advertising services</b>	Currently withholding tax is not applicable in respect of payments to resident persons in respect of sales, promotions, marketing and advertising services.	The Bill proposes to introduce 5% withholding tax on payments to resident persons in respect of sales promotions, marketing and advertising services	<p>This provision was included in a previous Finance Bill but was rejected by Parliament presumably due to the impact on small and medium scale businesses in the marketing and promotions industry.</p> <p>The reintroduction of the same proposals may be indicative of KRA's sentiments that there is significant tax leakage in the marketing and promotions industry.</p>
<b>Introduction of withholding tax rental income collected by agents who have been appointed by the Commissioner</b>	Not applicable	<p>The Bill proposes that a person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom.</p> <p>Provided that only a person appointed by the Commissioner in writing for that purpose may deduct tax under this section.</p> <p>They would be required to remit the tax within twenty-four hours after the deduction.</p>	<p>In a move to increase compliance in the rental industry, the Government is imposing tax compliance burdens on agents who collect rental income on behalf of landlords.</p> <p>This ensures that tax is paid at the earliest of receipt of the cash rentals, that is, at the point of receipt by the agent rather than at the point of receipt by the landlord.</p> <p>This compliance burden is further enhanced by the requirement to deduct and remit the tax within twenty-four hours after making the deduction.</p> <p>This places an impractical compliance burden on the taxpayer which is contrary to the design of a fair tax code which should not impose punitive compliance burdens on taxpayers. Real time payment of taxes should be applied only to automated transactions where the payments /income are received on a regular basis on an automated platform thus allowing for real time remittance of the taxes.</p>

# Income Tax Act amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Definition of “related person”</b>	Currently, section 18 (6) of the ITA has an expansive definition of related persons for the purposes of section 18 (3) that relates to transfer pricing. Section 18 (6) defines a person to be related to another if either person participates directly or indirectly in the management, control or capital of the business of the other; a third person participates directly or indirectly in the management, control or capital of both; or an individual, who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the business of the other.	The Finance Bill introduces another definition of ‘related persons’ in the general definition section (Section 2). It defines a ‘related person’ to mean, in the case of two persons, where a person participates directly or indirectly in the management, control or capital of the business of another person.	It is unclear why the KRA has introduced two different definitions in the ITA of the same phrase. This will lead to some confusion and it would be preferable that there be only one definition of the same term in the ITA.
<b>Definition of the ultimate parent entity (UPE)</b>	Currently, the ITA defines a UPE as an entity that is resident in Kenya for tax purposes; not controlled by another entity; and, owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.	UPE has now been defined as an entity that is not controlled by another entity and owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.	This definition has been aligned to the OECD definition. The previous definition was unduly restrictive as it only identified a resident entity as being a UPE. The new definition considers that a UPE may be a non resident.
<b>Determination of CbCR threshold</b>	Currently, the ITA is silent on whether for purposes of determining whether a person is within the CbCR threshold, they should consider the consolidated group turnover for the reporting financial year or for the preceding year.	The proposal is for a person to establish whether they have a CbCR obligation by looking at their consolidated group turnover during the financial year immediately preceding the reporting financial year.	This proposal is aligned to the filing due date for CbCR and the OECD approach.
<b>Section 18D(1) - Filing of CbCR</b>	Currently, Section 18D(1) of the ITA provides that “an ultimate parent entity or a constituent entity of a multinational enterprise group with a gross turnover of ninety-five billion shillings (including extraordinary or investment income) that is resident in Kenya shall file a country-by-country report with the Commissioner of its financial activities in Kenya and for all other jurisdiction where the group has taxable presence”.	The Bill proposes 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 has 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.  We do propose for the Section 18D(1) to be amended to read as “Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner”.





Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Removal of the blanket income tax exemption applicable to companies undertaking the manufacture of human vaccines</b>	Companies undertaking the manufacture of human vaccines are exempt from corporate income tax.	The Bill proposes 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 has introduced withholding tax exemption which will only be applicable to royalties paid to a non resident person and interest paid to a resident and a non resident person.	<p>The tax exemptions relating to vaccine manufacturers are geared towards attracting vaccine manufacturing in Kenya given the death of such ventures in Africa and the risks that such absence portends to public health.</p> <p>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. It may also be driven by global tax policy, particularly the Pillar 2 efforts of the OECD, to ensure that any income taxed below the effective tax rate of 15% is subject to tax in the parent company jurisdiction.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b></p>
<b>Introduction of capital allowances for industrial building and docks</b>	Not applicable	The Bill proposes to introduce capital allowances at a rate of 10% for industrial building and docks. Industrial buildings have been defined to include a building in use for the purpose of transport, bridge, tunnel, inland navigation, water and electricity or hydraulic power undertaking.	<p>In a move to develop the blue economy in Kenya and spur growth in the coastal region, the Government has embarked on attracting investment by offering tax incentives which equally brings opportunities for job creation and spurring the economy in the region.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b></p>

# Income Tax Act amendments



Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Deductibility of capital allowances on civil works and other structures related to telecommunication equipment</b>	Currently, the only investment where a taxpayer enjoys capital allowance on civil works is under a “building used for manufacture” where the civil works contribute to the use of the building.	<p>The Bill proposes 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%.</p> <p>In addition, the Bill introduces the meaning of the term telecommunication equipment which includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.</p> <p>Effectively, players in the telecommunication sector will be able to claim capital allowances on the civil works related to telecommunication tax at the rate of 10% p.a on a straight line basis.</p>	<p>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.</p> <p>The amendment clarifies the civil works that qualify for capital allowances in the telecommunications sector thus reducing disputes.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b></p>
<b>Reduction of withholding tax rate on lease premium on immovable property and residential rental income</b>	The withholding tax rate is 10%	The Bill proposes to reduce the withholding tax rate to 7.5%	<p>This is a welcomed 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.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b>.</p>
<b>Increase of advance tax applicable to vans, pick-ups, trucks, prime movers, trailers, lorries, saloons, station-wagons, mini-buses, buses and coaches</b>	<p>The advance tax is currently one thousand five hundred shillings per ton of load capacity per year or two thousand four hundred shillings per year, whichever is the higher:</p> <p>For saloons, station-wagons, mini-buses, buses and coaches, the advance tax is sixty shillings per passenger capacity per month or two thousand four hundred shillings per year, whichever is the higher.</p>	<p>The Bill proposes 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:</p> <p>For saloons, station-wagons, minibuses, buses and coaches, the new advance tax rate is one hundred shillings per passenger capacity per month or five thousand shillings per year, whichever is higher.</p>	<p>The increase in advance tax to commercial vehicles compounds the misery of businesses as this increases their cost of doing business. As much as the advance tax is treated as a tax credit and it may have impact to the taxpayer as from a cash flow perspective.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b></p>

# Tax Appeals Tribunal Act

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Form of the appeal to the TAT</b>	Section 13 currently provides that after filing the Notice of Appeal at the Tax Appeals Tribunal ("Tribunal"), an appellant is required to file: a memorandum of appeal; statements of facts; and the tax decision.	The Bill proposes to require appellants to the Tax Appeals Tribunal to submit the "appealable decision" instead of the "tax decision" and other documents as may be necessary to enable the Tribunal to make a decision on the appeal in addition to the memorandum of appeals and statement of facts.	<p>This is a welcome proposal 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.</p> <p>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. This is especially welcome considering the appellant has the burden before the Tribunal to prove that the Commissioners assessment is erroneous.</p>
<b>Payment of 20% of the disputed taxes or security equivalent to 20% of the disputed tax before appeal to the High Court</b>	The proposed amendment is a new provision.	<p>The Bill proposes 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").</p> <p>The requirement to pay 20% of the disputed tax would not apply where the Commissioner is the one appealing to the High Court.</p> <p>Once the High Court has ruled in favour of the taxpayer, the Commissioner is required to refund the monies deposited within 30 days after the determination of the court.</p>	<p>The proposed provision is a limitation of taxpayers' access to justice and their right of appeal as a party unable to make the payment within the tight appeal timelines would be forced to forgo their right to appeal.</p> <p>The proposed provision provides that the Commissioner shall "credit" that amount or security to that party within thirty days after the determination of the appeal. This term credit is unclear whether it implies that the amount shall be refunded or it shall be considered advance tax credited to the taxpayer's account.</p> <p>Unlike the proposed introduction via the FA 2022, the proposed amendment does not provide for a creation of a special account at the CBK. This means that the appeal security is likely to be commingled with other funds and delay the refund of the security.</p> <p>The term "security" has not been defined. It is not clear whether this could include property or bonds issued by financial institutions.</p> <p>Given that tax disputes can take several years to be resolved even before the High Court, the provision is likely to significantly affect the cash flows of taxpayers.</p> <p>We note that the proposed provision exempts the KRA from having to provide any security. This is especially relevant where a taxpayer wins a case requiring KRA to refund or pay amounts to a taxpayer.</p> <p>It is noted that the provision may create certain disincentives in the dispute resolution process. It may incentivise KRA to raise exaggerated assessments with the view of collecting 20% of such assessments where it wins such a case at the TAT. It also provides the KRA with a powerful bargaining position in an alternative dispute resolution process as taxpayers may be intimidated to settle cases rather than pursue the litigation process.</p> <p>Finally, the provision also raises issues of fairness as it does not provide for interest at market rates that will be payable to the taxpayer in the event of a successful appeal.</p>

# Tax Procedures Act amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Appeal of refund decisions</b>	The TPA in section 3 defines a tax decision to include a refund decision. A Tax decision means a decision by the Commissioner that a taxpayer can object to if they are dissatisfied. One cannot appeal a tax decision to the TAT.	A refund decision has been deleted from the definition of tax decision.	This amendment is a welcome move as it provides clarity that refund decisions are to be appealed at the TAT. There had been a conflict in the provisions of the TPA since section 3 had provided that it was a tax decision that was to be objected to while section 47(13) provided that it was appealable at the TAT.
<b>Any multilateral agreement relating to mutual administrative assistance</b>	N/A	<p>Section 6A is proposed to be amended to include a provision that any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.</p> <p>The Bill further proposes to introduce section 32A to empower the Commissioner to provide mutual administrative assistance in the recovery or collection tax claims upon request by a competent authority of a party to the international tax agreement</p>	<p>In line with international tax practice, the proposed amendments seek to provide a mechanism to allow the Commissioner to assist other tax authorities in collecting taxes due to them from persons resident in Kenya under various Bilateral Double Tax Agreements and the Convention on Mutual Administrative Assistance in Tax Matters.</p> <p>Various Bilateral Double Tax Agreements and the Convention on Mutual Administrative Assistance in Tax Matters to which Kenya is a party, provide for the assistance in the collections of taxes. Under the agreements, the Contracting states can assist each other with the execution of tax claims in accordance with the law applicable to the enforcement and collection of its own taxes as if the claims were claims of the other contracting states. This would empower Kenya to enforce payment of taxes owed to other contracting states pursuant to a request from the other Contracting party.</p> <p>The proposed amendment requires the KRA to issue a notice to the person requiring them to state whether they admit to the liability subject to the request. The KRA may apply to the High Court for an order to preserve the taxpayer's funds.</p> <p>The proposed provision does provide that the steps taken by the KRA to enforce the other Contracting party's tax claim does not affect the right of the taxpayer to have the liability for the tax determined in accordance with the Laws of Kenya.</p> <p>The proposed provision seeks to domesticate provisions for the cross border assistance in the collection of taxes. While Kenya is required to fulfil its obligations under international agreements, the provision should not impose on the KRA obligations to carry out administrative measures at variance with the provisions of the Constitution, the Fair Administrative Action Act and the Tax Procedures Act. In addition, the provision should explicitly ensure that the administrative measures undertaken by the KRA are a measure of last resort and that the taxpayer's avenues of disputing the claims in the other Contracting state are exhausted otherwise, the KRA may find itself undertaking enforcement measures for claims still under dispute in the other contracting state.</p>





Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Tax records for trusts administered by a trustee resident in Kenya</b>	N/A	Section 23 is proposed to be amended to introduce section (3A) which requires a trustee resident in Kenya to maintain and avail tax records for trusts that are registered in Kenya or outside Kenya whether the trust income is generated in Kenya or not	The proposed amendment requires resident administrators of trusts to maintain and avail records required under a tax law to the KRA.
<b>Electronic tax records</b>	N/A	The Bill proposes to introduce section 23A to empower the Commissioner to establish an electronic tax system for issuing tax invoices and keeping records of stocks. Where so established, business people including resident persons and PEs must issue invoices or maintain stock records on the electronic system.	The proposed amendment is intended to align the TPA with the adoption of the electronic tax collection systems that the KRA has adopted in order to boost revenue collection such as the adoption eTims under the VAT Act.  The proposed effective date for this proposal is <b>1 September 2023</b>
<b>Relief because of doubt or difficulty in recovery of tax</b>	The TPA in section 37 for the abandonment of taxes where its recovery is deemed to be impossible or at a great expense to the Commissioner upon approval by the CS. Currently, the Commissioner can recommend abandonment of taxes where it is impossible to recover the unpaid tax; there is undue difficulty or expense in recovery of unpaid tax, or hardship or inequity in relation to recovery of unpaid tax.	The provision is proposed to be deleted.	The proposed amendment seeks to reduce tax expenditures relating to abandonment of taxes.  The deletion of this provision will leave KRA and taxpayers with no avenue for relief where there is great difficulty in recovery of taxes.  The deletion of this provision will force KRA to undertake burdensome enforcement measures that may be disproportionate to tax that they are seeking to recover.
<b>Tax amnesty on interest and penalties</b>	N/A	The Bill proposes to introduce section 37E which empowers the Commissioner to issue a waiver on interest and penalties for principal taxes that were due and had been paid before 31 December, 2022.  Where the principal tax had not been paid by 31 December 2022, a taxpayer can apply for amnesty on interest and penalties on the unpaid tax that have accrued up to the 3 December, 2022. The taxpayer must propose a payment plan for the outstanding amount and committing to pay all the outstanding principal taxes not later than 30 June 2024.	This proposal is a welcome relief for taxpayers who had "tax debt" payable prior to 31 December 2022.  Post 31 December 2022, the amendment is an incentive to entice taxpayers to clear all principal taxes due in order to benefit from the amnesty on interest and penalties.  The term "tax debt" is not defined, which may cause uncertainty as to eligibility for the amnesty.  The proposed effective date for this proposal is <b>1 September 2023</b>

# Tax Procedures Act amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Security on property for unpaid tax</b>	The TPA in section 40 provides that the Commissioner may notify the Registrar of Lands of unpaid taxes by a taxpayer owning a property for the purposes of registering a security against the property for the unpaid taxes. The Commissioner is to notify the taxpayer within 7 days of the notification to the Registrar.	The Bill proposes to amend section 40 to delete the commissioner's obligation to notify a taxpayer of the notification to the Registrar to register a security for unpaid taxes. It amends the section to provide that the Registrar of Lands shall notify the taxpayer within 14 days after the registration of the security of unpaid taxes.	The amendment poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register a security against their property. As a result, taxpayers would not be able to challenge the decision of the Commissioner before the security is registered.
<b>Power to collect taxes from a person owing money to a taxpayer</b>	The TPA in section 42 provides that the Commissioner has the power to collect taxes from a person owing money to a taxpayer. However, this power is only to be exercised where the Commissioner has confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.	The Bill proposes to expand the circumstance under which the Commissioner can exercise the power provided in section 42 to include where: the taxpayer has defaulted in paying an instalment under section 33(2) of 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 made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed and the taxpayer has not appealed against an assessment specified in a decision of the TAT or court	The proposed amendment seeks to expand the circumstances in which the KRA may issue agency notices.  Taxpayers will be required to be extremely vigilant as to the prescribed timelines under the TPA and their right to challenge decisions of the KRA. Lapses in challenging assessment within the requisite timelines may expose taxpayers to agency notices.
<b>Withholding VAT</b>	The TPA in section 42A provides that the Commissioner may appoint a person to withhold two percent of the taxable value on purchasing taxable supplies at the time of paying for the supplies. The amounts withheld are paid within on or before the twentieth day of the month following the month in which the deduction is made.  However, 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 commencement of this Act is at least three billion.	The proposed amendments to section 42A now require the amounts withheld by purchasers to be made within three days after the deduction is made.  Furthermore, registered manufacturers whose value of investment in the preceding three years from the commencement of this Act is at least three billion are no longer excluded and the taxable value of their supply can now be withheld.	The proposed amendment will now require taxpayers to pay withholding VAT within 3 days. This will pose a challenge in terms of VAT compliance as taxpayers will now be subject to a timeline different from the monthly reporting that is normally done.  The decision to subject large scale manufactures to withholding VAT poses a risk to the Government's intention to grow the manufacturing sector.  Overall, the proposed amendment seeks to disproportionately increase taxpayers' compliance burden.
<b>Appointment of rental income tax agents</b>	N/A	There is a proposed section 42C to empower the Commissioner to appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.	The proposed provision seeks to supplement the Commissioner's powers to appoint rental income tax agents provided for under section 35(3)(j) of the ITA.

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Offset of overpaid taxes against existing liability</b>	Section 47 of the TPA allows taxpayers to apply for a refund of overpaid tax within 5 years of the date which the tax was overpaid. The section provides that the overpaid tax can be offset only against future taxes.	<p>Section 47 is proposed to be amended to provide for the offsetting of overpaid taxes against outstanding tax debts and future tax liability.</p> <p>Where a taxpayer opts to apply for a refund of taxes, the Bill proposes to reduce the time period within which the Commissioner must refund the taxes from two (2) years to six (6) months. If the commissioner fails to refund the overpaid tax within 6 months, the amount would be applied to offset the taxpayers outstanding or future liabilities.</p> <p>The Bill also proposes to provide that where an application for refund has been subjected to an audit, the Commissioner shall ascertain and determine the application within 120 days failure to which, the application shall be deemed to have been ascertained and approved.</p>	<p>The proposed provision proposes to enable taxpayers to offset the overpaid taxes against outstanding liabilities and not only future liabilities as previously provided.</p> <p>The proposed provision will have negative cash flow implications for taxpayers, as the KRA will have no incentive to pay the refund within the six months as the same will be automatically applied to outstanding and future liabilities rather than be paid to taxpayers.</p> <p>The proposed provision further renders the provision requiring accrual of interest under section 47(6) of the TPA where refunds are not paid within two (2) years unnecessary.</p>
<b>Validity of Notices of Objection</b>	Section 51 provides that where a Notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall inform the taxpayer within 14 days.	<p>The Bill proposes to empower KRA to request the taxpayer to submit information specified in a notice of objection within seven (7) days after a notice of invalidity of a notice of objection.</p> <p>Also, if the taxpayer fails to provide the documents or delays providing the documents, the Commissioner may make an Objection Decision within 60 days.</p>	<p>The proposed provision is not aligned to section 51(11) of the TPA which provides in mandatory terms that the KRA is required to make an objection decision within sixty (60) days the taxpayer's objection decision is deemed allowed.</p> <p>The proposed provision is couched in discretionary terms by using the word "may" which may introduce inefficiency on the part of the KRA if the taxpayer fails to provide the documents.</p>
<b>Settlement of dispute out of Court or Tribunal</b>	Section 55 of the TPA provides that any disputes to be settled out of court must be settled within 90 days.	The proposed bill proposes to extend the timeline for the settlement of disputes out of court/TAT to 120 days.	<p>The longer timeline is a welcome relief to taxpayers to comprehensively resolve technical matters which requires time.</p> <p>As is, once the 90 days lapse taxpayers have to comply with the TAT/court directions as they undergo the ADR process. The longer timeline will enable the conclusion of ADR without being caught up by the tight timelines.</p>
<b>Amendment of pleadings to include new grounds at the TAT or superior courts</b>	Section 56 of the TPA provides that a taxpayer must rely on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds.	The Bill proposes to delete the discretion of the TAT and the superior courts to add new grounds so that parties can now only rely on the grounds in the objection without exception.	The opportunity to amend pleading to add more grounds of appeal is essential for taxpayers as it enables them to ask the TAT/court for leave to include grounds responding to issues that that may have arisen in the objection decision or canvass further documentary evidence that may be submitted to the Tribunal to enable them to make a decision.



# Tax Procedures Act amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Data management and reporting system</b>	N/A	<p>The Bill proposes to introduce section 59A which provides for the establishment of a data management and reporting system for the submission of electronic documents.</p> <p>The system allows for the submission of electronic documents relating to transactional data from persons selected and notified by the Commissioner.</p> <p>The data include payments made by a person in the ordinary course of business, lump sum payments in respect of a royalty or such other commercial or financial transaction as may be designated by the Commissioner.</p>	<p>The proposed amendment provides for a framework for the Commissioner to collect transaction data for the purpose of determining the taxes payable.</p> <p>The system would especially be useful for the Commissioner to monitor transactions in industries viewed by the Commissioner to be at high risk of tax leakage.</p> <p>The proposed effective date for this proposal is <b>1 September 2023</b></p>
<b>Tax shortfall penalty</b>	The TPA provides that the tax shortfall penalty is 75% of the tax shortfall.	The Bill proposes to amend section 84 to have the tax shortfall penalty as double the amount of the tax shortfall.	The seeks to further penalise false taxpayers for misleading declarations.
<b>Penalty for failing to comply with electronic tax system</b>	Section 86 of the TPA provides that where a taxpayer fails to submit a tax return in electronic form or to pay a tax electronically as required by a tax law, they are liable to a penalty of KES 100,000.	The Bill proposes to repeal the section and replace it with a provision providing that where a taxpayer fails to issue an electronic tax invoice, submit a tax return in electronic form or to pay a tax electronically as required by a tax law, they are liable to a penalty of KES 1,000,000 or ten times the amount of the tax due, whichever is the higher.	<p>The increased penalties in the proposal is to ensure that taxpayers fully comply with the various electronic tax systems that the KRA has rolled out.</p> <p>The proposed effective date for this proposal is <b>1 September 2023</b></p>
<b>Remission of penalty and interest</b>	Section 89 (6)(7)(8) provides that the Commissioner may remit penalty or interest payable upon application by a taxpayer.	The Bill proposes to delete the sections.	The proposed amendment seeks to reduce tax expenditures relating to abandonment of taxes. Further, the provision seeks to ensure clarity on remission of penalties and interest with the proposed introduction of an amnesty under section 37E of the TPA.





# Value Added Tax amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Increased rate of VAT on petroleum products</b>	Section 5 of the VAT Act 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 Bill proposes to amend section 5 of the VAT Act by deleting this provision.	<p>VAT on petroleum products was introduced by the Finance Act, 2018 at a reduced VAT rate of 8%. The reduced rate was aimed at cushioning the economy from the adverse effect of the Government's decision to levy VAT on petroleum products.</p> <p>The proposal to delete the reduced VAT rate implies VAT at 16% will apply on petroleum products, which we expect to have a significant adverse effect on the cost of living taking into consideration Kenya's dependency on fossil fuel and the already high global oil prices.</p>
<b>Exemption of Liquified Petroleum Gas (LPG) from VAT</b>	The Act provides for the application of VAT at the rate of eight percent (8%) on LPG.	The Bill proposes to amend the VAT Act by deleting this provision and including LPG under the exemption schedule - First Schedule to the VAT Act.	<p>Prior to July 2021, the supply of LPG was zero-rated for VAT purposes. The Finance Act, 2021 introduced VAT on LPG at the standard rate of 16%.</p> <p>The VAT rate applicable on the supply of LPG was subsequently amended by the Finance Act, 2022 to a reduced rate of 8% with effect from 1 July 2022.</p> <p>We expect the elimination of VAT on LPG will lead to a reduction in the product cost, making it more affordable for Kenyans. This is a welcome amendment as LPG is used as a source of energy in many households in Kenya.</p> <p>Additionally, LPG being a cleaner source of energy is health and environmentally friendly.</p>
<b>Expansion of VAT obligations for suppliers of services without a fixed place of business in Kenya</b>	Section 8 (2) of the Act <i>inter alia</i> provides that the supply of services shall be deemed to be made in Kenya if the supplier is a person without a fixed place of business in Kenya and the recipient of the supply is <b>not a registered person</b> .	The Bill proposes to amend section 8 (2) of the VAT Act by deleting the words 'not a registered person' and replacing them with the words a ' <b>registered or unregistered person</b> '.	<p>The amendment is meant to widen the scope of the deeming provision under section 8(2) by requiring all non-resident suppliers without a place of business in Kenya to register for VAT without taking into consideration the VAT registration status of their customers.</p> <p>The proposed amendment gives boundless reach to the KRA to bring non-residents suppliers of services under the Kenyan VAT law just by dint of them trading with Kenyan customers. This runs parallel to internationally accepted VAT place of supply principles.</p> <p>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.</p>

# Value Added Tax amendments

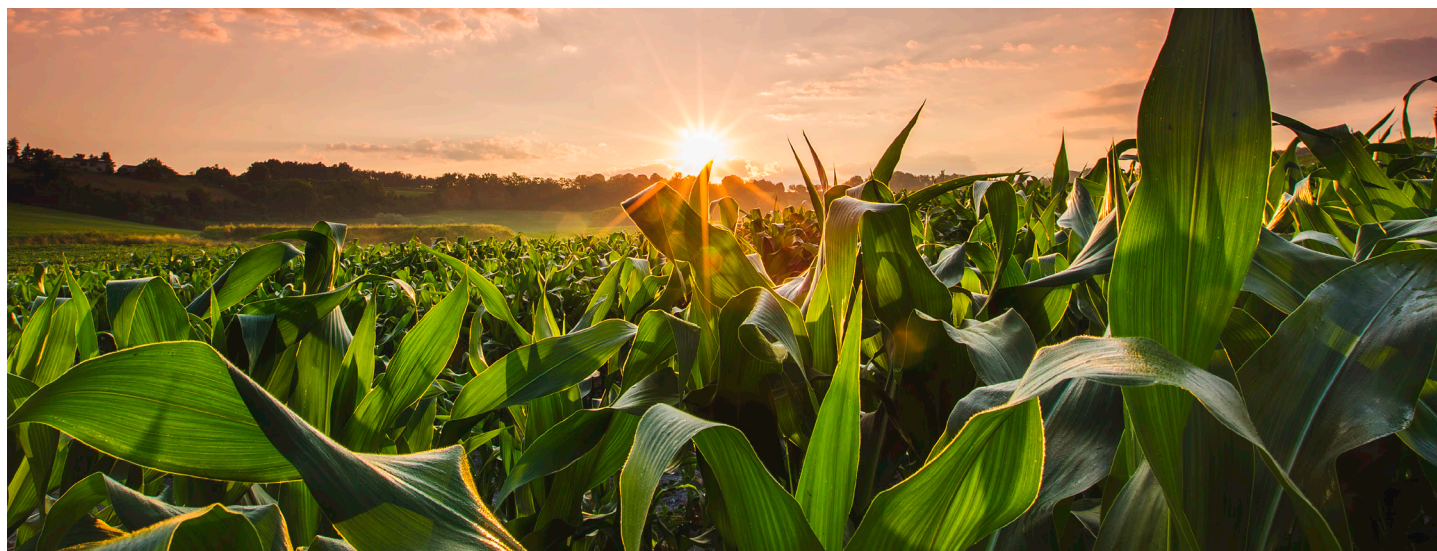
Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Restriction on deductibility of input tax</b>	Section 17 of the VAT Act provides that deduction of input tax is not allowed until the first tax period in which a person holds the documentation prescribed under the Act or the registered supplier has declared the sales invoice in a return.	The Bill proposes to amend Section 17 of the VAT Act by deleting the word 'or' and substituting it with the word 'and'.	<p>The introduction of the connector 'and' in the law implies that taxpayers must fulfil both conditions set out in the law for the deduction of input tax to be allowed.</p> <p>Accordingly, 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 (paid) to the KRA by the supplier of the goods or services.</p> <p>This is an onerous obligation imposed on taxpayers and goes against the canon of simplicity of a good tax system. It also dilutes the compliance efficiency promised by the KRA as a basis for introducing real time VAT reporting through TIMS and eTIMS.</p>
<b>Introduction of VAT on compensation for the loss of taxable supplies</b>	Not contained in the VAT Act 2013.	<p>The Bill proposes to introduce a subsection 8 to section 17 of the VAT Act as follows:</p> <p>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 and —</p> <p>(a) if the compensation includes value added tax, the compensation shall be declared and the value added tax thereon remitted to the Commissioner; or</p> <p>(b) if the compensation does not include value added tax, the compensation shall be declared and subjected to value added tax and the tax remitted to the Commissioner.</p>	<p>The proposed amendment will require taxpayers to account for VAT on compensation for loss of taxable supplies.</p> <p>The rationale for the proposed 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.</p> <p>Further, where VAT is not included in the compensation, it is also not clear whether the recipient is obliged to declare VAT over and above the compensation amount received or whether the amount received is deemed to be VAT inclusive.</p> <p>In our view this proposed change is bound to have significant impact for the general insurance sector and the ambiguity in the rationale and framing of the law should be subjected to engagement with stakeholders before being passed into law.</p>
<b>Clarification that VAT registration threshold does not apply to persons supplying imported digital services</b>	Section 34 (1) of the VAT Act contains a proviso to the effect that persons supplying imported digital services over the internet or an electronic network or through a digital marketplace are not subject to turnover threshold of five million shillings for VAT registration.	The Bill proposes to amend section 34 of the VAT Act by deleting the current proviso and including a new proviso 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.	The proposed amendment to the VAT Act doesn't not in our view introduce a fresh obligation but rather 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.

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Record keeping of transactions not limited to Kenya</b>	Section 43 of the VAT Act provides that taxpayers are required to keep a record of every transaction in Kenya for a period of five years.	The Bill proposes to amend section 43 of the VAT Act by deleting the words “in Kenya”.	This is a welcome change that acknowledges advancements in technology, which allow for digital/ electronic and remote storage of records in diverse locations globally.
<b>Introduction of VAT exemptions on certain goods</b>	Not contained in the VAT Act or VAT the Act references incorrect old HS tariff classifications.	<p>The Bill proposes to exempt various goods from VAT. Some of these include:</p> <p>Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale;</p> <p>Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, whether or not put up in the form of kits for malaria and blood grouping;</p> <p>Vaccines for human and veterinary medicine;</p> <p>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;</p> <p>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;</p> <p>Other, medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff;</p> <p>Chemical contraceptive preparations based on hormones, on other products of heading 29.37 or spermicides;</p> <p>All goods relating to chapter 88 which deals with aircraft, spacecraft, and parts thereof;</p> <p>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; and</p> <p>All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs.</p>	<p>The East African Community Common External Tariff was revised in 2022 and some classifications previously included in the VAT Act were rendered redundant and some of the changes are aimed at rationalising the VAT legislation to the CET.</p> <p>Some of the proposed changes are aimed at cushioning Kenyans against the effects of rising cost of living and its ensuing social economic hardship.</p> <p>While others are aimed at boosting local manufacturing and attracting additional investments e.g. to the aviation and healthcare sectors.</p>

# Value Added Tax amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>VAT exemption on taxable services</b>	The Act provides 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 Bill proposes to amend paragraph 34 of the Part II of the First Schedule and delete the words “goods, inputs and raw materials” and substitute these with the word “services” .	<p>This appears to be a clean up to Part II of the Schedule which deals with the exemption of services - reference to 'goods, inputs and raw materials' is therefore misplaced in this schedule.</p> <p>The proposed 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.</p>
<b>Introduction of VAT at the zero rate on inbound international sea freight</b>	Not provided in the Act.	The Bill proposes to introduce at paragraph 26 of Part A of the Second Schedule to the VAT Act, inbound international sea freight offered by a registered person as a zero rated supply.	In our view, this proposal 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.
<b>Change of status from exempt to standard rated</b>	<p>The Act lists these supplies in the First Schedule of the Act as exempt supplies.</p> <ul style="list-style-type: none"> <li>• Taxable goods &amp; services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.</li> <li>• Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)</li> <li>• Plant, machinery and equipment used in the construction of a plastics recycling plant.</li> <li>• Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector, provided that the value of such investment is not less than two billion shillings.</li> </ul>	The Bill proposes to delete all the goods and services listed alongside from the exemption schedule - First Schedule to the VAT Act.	<p>The proposed amendment will lead to an increase in the cost of these supplies.</p> <p>We note that specific exemptions have been provided in relation to certain goods and services meant for direct and exclusive use of construction of tourism facilities. In our view, this is aimed at promoting tourism.</p> <p>Further, there is also a concerted effort by the Government to promote the manufacturing sector in Kenya through the exemption of certain equipment and capital goods utilised by the sector.</p>





Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
Change of status from zero rated to exempt	<p>The Act provides for the following services in Second Schedule to the VAT Act</p> <ul style="list-style-type: none"> <li>Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.</li> <li>All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture</li> <li>Agricultural pest control products.</li> <li>Fertilisers of Chapter 31</li> <li>Transportation of sugarcane from farms to milling factories</li> </ul>	<p>The Bill proposes to change the status of these supplies from zero rated to exempt.</p>	<p>The change of status from zero-rating to exempt aligns with the government's policy direction aimed at managing the cash-flow burden associated with VAT refunds resulting from zero rated supplies.</p> <p>Unfortunately, VAT exemption results in restrictions on the deductibility of input VAT. The VAT cost associated with the VAT exempted goods/services is not entirely eliminated as the suppliers will in most instances include the non-deductible VAT component when pricing their products.</p> <p>Key to note from the list is that the supply of fertilisers was exempt from VAT prior to July 2022. The Finance Act, 2022 zero-rated the supply of fertilisers - the change of VAT status within 1 year is symptomatic of the unpredictable fiscal environment business has to grapple with.</p> <p>The proposed VAT exemption of transportation of sugarcane from farms to milling factories under paragraph 150 of Part I to the First Schedule is misplaced as this part of the exemption schedule deals with goods and not services.</p> <p>Additionally, the rationale for only exempting the transportation of sugarcane is not clear - perhaps exemption should have been extended to the transportation of other unprocessed agricultural products.</p>

# Value Added Tax amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>VAT exemption of exported taxable services</b>	The VAT Act provides for the standard rating of exported taxable services except for business process outsourcing (BPO) activities, which are listed in the Second Schedule as zero rated supplies.	The Bill proposes to delete the exportation of taxable 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.	<p>The Finance Act, 2022 restricted zero rating of exported taxable services to services qualifying as BPO services. Consequently, where the exported services do not qualify as BPO services, they are currently subject to VAT at standard rate of 16%.</p> <p>The taxation of exported services at the standard rate goes against international norm and has had adverse effects on Kenya's price competitiveness with regards to supply of cross-border services.</p> <p>The proposal to exempt exported services from VAT seeks to correct the negative effects introduced by the Finance Act, 2022. While we welcome the proposed change, VAT exemption impacts the deductibility of input VAT incurred by the suppliers and zero rating would have been preferable in addressing the price competitiveness of service exported from Kenya.</p>
<b>Transfer of business as a going concern (TOGC)</b>	VAT is applicable on the transfer of business as a going concern at the standard rate of 16%.	The Bill proposes 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.	<p>An amendment to the VAT Act by the Tax Laws Amendment Act (2020), effective 25th April 2020, deleted all reference to a TOGC in the Act which meant that such transfers became subject to VAT at the standard rate of 16%.</p> <p>As was the case previously, the proposed change in law has not defined what constitutes a TOGC nor has it provided the conditions/ requirements that ought to be met for a transaction to qualify as TOGC.</p> <p>The lack of clear definitions and guidance in the law has always been a contentious issue forcing taxpayers to rely on international best practices.</p> <p>Accordingly, as much as this proposed amendment is a welcome move, there is a need to provide clarity on the term TOGC and qualifying transactions.</p>

# Excise Duty Act proposed Amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Clarity on the definition of excise control</b>	Section 2 of the Excise Duty Act, 2013 ("EDA") states that excise control has its meaning assigned to it in section 23.	The Bill proposes to amend section 2 of the EDA by deleting the phrase "section 23" and replacing it with "section 24."	The proposed change is meant to align the definition of excise control to the correct section of the EDA.
<b>Removal of the provision for annual inflationary adjustment of specific Excise Duty rates</b>	Section 10 of the EDA provides for inflation adjustments of specific Excise Duty rates by the Commissioner with approval of the Cabinet Secretary once every year to take into account the inflation. In accordance with the formula specified in part 1 of the First Schedule.	The Bill proposes to repeal section 10 of the EDA	By repealing section 10 of the EDA, there will be no annual inflation adjustment on the specific Excise Duty rates.  This is a welcome move as it reduces the provisions in the EDA allowing for Excise Duty rates revision. Amendments to rates will only be through the Finance Act or by the Cabinet Secretary as provided for under section 8 of the EDA, both of which require ratification by the National Assembly and are not framed as annual adjustments.
<b>Suspension of a licence issued under the EDA.</b>	Section 20 (5b) of the EDA provides that the Commissioner is required to provide the licenced person with written notice of the action required to be taken before the date specified in the notice to remedy the deficiencies that led to the suspension of the licence and revoke the suspension if the action is taken within the specified time.	The Bill proposes to amend Section 20 (5b) of the EDA by inserting the words "being not less than fourteen days" immediately after the words "date specified in the notice"	The proposed amendment will require the Commissioner to provide the licenced person with written notice of the action required to be taken within a period not less than 14 days from the date specified in the notice.  In our view, this is a welcome move as it is aimed at curtailing KRA's arbitrary revocation of Excise License by allowing offending taxpayers at least 14 days to regularize aspects that may have caused the suspension of the licenses.
<b>Clarity on offences relating to excise stamps and other markings</b>	Section 28 of the EDA provides for the administration and use of Excise Duty stamps and other markings. Further, section 40 of the EDA provides that any person who contravenes section 28 commits an offence	<i>The Bill proposes to introduce subsections 6 and 7 to section 28 of the EDA as follows, as well as repeal section 40 of the EDA.</i>  <i>6) A person commits an offence if that person — (a) defaces or prints over an excise stamp affixed on any excisable goods or package; (b) is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of this Act or Regulations made under this Act; (c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner; (d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner; (e) is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner; (f) is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or (g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps.</i>  <i>(7) A person who commits an offence under subsection (6) is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or to both.</i>	The proposed amendment has expanded the scope of offences and penalty in relation to handling of excise stamps vis-a-vis the current provision of the law which is imprecise.  In our view this is a welcome move as it will go a long way in curbing the sale of counterfeit excise stamps as well as excisable goods.

# Excise Duty Act proposed Amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Payment of Excise Duty within twenty-four hours on betting and gaming</b>	Not contained in the EDA, 2015.	The Bill proposes to introduce a new section; 36A after section 36 as follows; <i>36A. (1) Despite the provisions of section 36, Excise Duty on betting and gaming, offered through a platform or other medium, shall be remitted to the Commissioner by a bookmaker within twenty-four hours from the closure of transactions of the day. (2) For the purposes of this section, "closure of transactions of the day" means midnight of that day. (3) The Commissioner may, by notice in the Gazette, require taxpayers in any sector to remit Excise Duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day.</i>	<p>The proposal is aimed at enhancing revenue collection for the Government in a timely manner as well as managing cash flow amidst the shortages being experienced.</p> <p>We note that the daily collection of Excise Duty in the gaming and betting sector is already in force. It is our view that this proposal is seeking to legalise KRA's ongoing administration action.</p> <p>Of concern is the proposal to give the Commissioner discretion to impose daily remittance of Excise Duty on other sectors; it is our view that such discretion should be removed or subjected to approval by the National Assembly.</p>
<b>Removal of Condensates from the ambit of specific Excise Duty rates</b>	The EDA subjects condensate to Excise Duty at KES 6,868.94 per 1000l @ 20degC.	The Bill proposes to delete this provision from part 1 of the First Schedule of the EDA	<p>This proposal is aimed at reducing costs of condensates used in the manufacture of petroleum (gasoline), diesel and jet fuel among other products in the oil and gas industry.</p> <p>In our view, this is a positive impact to the oil and gas sector as condensates have been excisable since 2015 when it was first introduced through the Finance Act, 2015.</p>
<b>Excise Duty now applicable on white chocolate of heading 1704 and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00 to Excise Duty</b>	The EDA subjects White chocolate, chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00 to Excise Duty at 2,457.55 per kg	The Bill proposes to expand the ambit of imported white chocolate being subjected to Excise Duty by deleting the description, "Imported White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00 and replacing it with <b>white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00</b> "	The proposal is aimed at enhancing revenue collection for the Government by expanding the range of excisable goods to not only white chocolate but also other food preparation containing cocoa of tariff nos 1806.31.00, 1806.32.00 and 1806.90.00 as well as white chocolate of heading 1704.
<b>Excise Duty now applicable on imported plastics</b>	Excise Duty is applicable at the rate of 10% on "Articles of plastic of tariff heading 3923.30.00 and 3923.90.90."	The Bill proposes to subject Excise duty only on the imported Articles of plastic of tariff heading 3923.30.00 and 3923.90.90." by inserting the word imported before the tariff description "Articles of plastic of tariff heading 3923.30.00 and 3923.90.90."	<p>Excise Duty on articles of plastics was introduced through the Finance Act of 2021. The Finance Act, 2022 further added articles of plastics under tariff 3923.90.90 to the ambit of Excise Duty.</p> <p>The proposal seeks to remove locally manufactured plastics from the ambit of Excise Duty.</p> <p>It is our view that If the proposal is adopted, this will be a welcome relief as it protects local manufacturers. As a result, locally produced plastics will be competitive, affordable and will lead to an increase of its consumption. However, this proposal seems to go against the Government's agenda of discouraging the use of plastics to reduce pollution.</p>



Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Locally produced Pasta now subject to Excise Duty</b>	Excise Duty is applicable on <i>Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared at the rate of 20%.</i>	The Bill proposes to subject both locally produced and imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared to Excise Duty at the rate of 20%	Excise Duty on imported Pasta was introduced by the Finance Act, 2021. This was aimed at protecting the local manufacturers and make their products competitive.  In our view, the proposal goes against the Government's agenda of supporting the local manufacturing industry.  Further, pasta is considered a basic food commodity for some communities in Kenya. Levying Excise Duty on pasta will increase its cost exacerbating cost of living for affected consumers.
<b>Locally produced sugar confectionary now subject to Excise Duty</b>	Excise Duty is applicable on Imported sugar confectionary of tariff heading 17.04 at Sh. 36.74 per kg.	The Bill proposes to amend the description of the excisable good by deleting the word " <b>imported</b> " so that it reads, "sugar confectionary of tariff heading 17.04 at Sh. 36.74 per kg.	This proposal seeks to bring back the provision as proposed by the Finance Bill, 2021. If adopted the proposal will be punitive to local manufacturers as Excise Duty shall be applicable to both imported and locally manufactured products.  This proposal goes against the Government's agenda of supporting the local manufacturing industry.
<b>New Excisable Goods added in the First Schedule</b>	N/A	The Bill proposes to add the following items to the ambit of Excise Duty as follows; <ol style="list-style-type: none"> <li>1) <i>Imported fish at KES. 100,000 per metric tonne or 20%, whichever is higher;</i></li> <li>2) <i>Powdered juice KES. 25 per kg</i></li> <li>3) <i>Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer KES. 5 per kg</i></li> <li>4) <i>Human hair and other products of heading 6703 at 5%;</i></li> <li>5) <i>Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704 at 5%;</i></li> <li>6) <i>Artificial nails of tariff no.3926.90.90 at 5%;</i></li> <li>7) <i>Imported cement at 10% of the value or KES. 1.50 per kg, whichever is higher;</i></li> <li>8) <i>Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin at 30%;</i></li> <li>9) <i>Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210 at 15%</i></li> <li>10) <i>Imported Test liner of heading 4805.24.00 at 25%</i></li> <li>11) <i>Imported fluting medium of heading 4805.19.00 at 25%</i></li> </ol>	The proposal is aimed at increasing revenue collection for the Government by bringing more goods to the ambit of Excise Duty.  Items such as human hair, wigs, false beards, eyebrows and eyelashes and artificial nails which are deemed to be luxurious with inelastic demand have recently grown in popularity in the Kenyan industry. The introduction of these products to the ambit of Excise Duty will result in a further increase in the cost of acquiring these products given that the cost of excise stamps on cosmetics products has recently increased by 317% through the The Excise Duty (Excisable Goods Management System) Regulations of 2023.  We also note that the cost of importing certain items such as fish, powdered juice, furniture, paints, varnishes and lacquers, test liner, fluting medium and cement increases thereby encouraging local production which is in line with the Government's agenda of promoting and protecting local industries.

# Excise Duty Act proposed Amendments

Issue	The current tax provision		Proposed change as per the Finance Bill, 2023		Comments/impact
<b>Decrease in Excise Duty for telephone and internet data services from 20% to 15% of the excisable value</b>	Excise Duty is applicable to telephone and internet data services at 20%.		The Bill proposes to reduce Excise Duty charged on telephone and internet data services from 20% to 15%.		<p>The application of Excise Duty on telephone and internet data services was introduced through the Finance Act, 2018 at the rate 15%. The Finance Act, 2021 increased the rate to 20%.</p> <p>The proposal intends to reduce the Excise Duty rate back to 15%.</p> <p>This change will result in decreased telephone and internet data costs thereby increasing the demand and consumption of telephone and internet data services. This is in line with the Government agenda to digitise the economy.</p>
<b>Decrease in Excise Duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers</b>	Excise Duty is applicable to fees charged for money transfer services by banks, money transfer agencies and other financial service providers.		The Bill proposes to decrease Excise Duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers from 20% to 15%.		<p>The proposed amendment is a welcome move as it reduces the costs of money transfer services offered by banks, money transfer agencies and other financial service providers.</p> <p>The proposal is in line with the Government's agenda of widening financial inclusion of more citizens.</p>
Issue	#	Description	Excise Duty rate	Proposed rate	Comments/impact
<b>Increase in the Excise Duty rates for various services</b>	1.	Excise Duty on betting	7.5% of the amount wagered or staked	20%	<p>In our view, the proposal to increase Excise Duty rates by 150% of the current rates is extremely punitive in spite of the drive to raise additional revenue through this tax head.</p> <p>The high rate of duty is perhaps aimed at discouraging the harmful effects commonly associated with the services in question.</p>
	2.	Excise Duty on gaming	7.5% of the amount wagered or staked	20%	
	3.	Excise Duty on price competition	7.5% of the amount paid or charged to participate in a prize competition.	20%	
	4.	Excise Duty on lottery (excluding charitable lotteries)	7.5% of the amount paid or charged to buy the lottery ticket.	20%	
Issue	The current tax provision		Proposed change as per the Finance Bill, 2023		Comments/impact
<b>Excise Duty on fees charged for money transfers by cellular phone service providers and payment service providers</b>	The EDA subjects fees charged for money transfer services by cellular phone service providers to Excise Duty at the rate of 12%.		The Bill proposes to subject fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011 to Excise Duty at a rate of 15%.		<p>The proposal seeks to harmonise the excise duty rate on fees charged for money transfer services by cellular phone service providers with that charged other financial institutions.</p> <p>Further, we also note that the proposal seeks to introduce excise duty on fees charged by payment services providers licensed under the National payment system Act, 2011.</p> <p>In our view, the increase of excise duty rate on money transfer services by cellular phone service providers and introduction of excise duty on fees charged by payment service providers is going to increase the cost of money transfers.</p>



Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Excise Duty on alcoholic beverages and gaming advertisement on television, print media, billboards and radio stations</b>	Not contained in the EDA, 2015	The Bill proposes to subject fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions to Excise Duty at 15%.	This proposal is not only aimed at discouraging the advertisement and consumption of alcoholic beverages, betting, gaming, lotteries and prize competitions but also on increasing Government revenue.
<b>Excise Duty now applicable to any amount charged in respect of lending by digital lenders</b>	Excise Duty is charged <b>on fees</b> charged by digital lenders at twenty percent	The Bill proposes to subject Excise Duty <b>on any amount charged in respect of lending</b> by digital lenders at twenty percent.	Excise Duty on fees charged by digital lenders was first introduced through the Finance Act, 2022.  The proposed amendment seeks to broaden the revenue streams subject to Excise Duty in the hands of digital lenders. However, the proposed change risks being discriminative versus traditional lending arrangements where interest charged and other return on loan are specifically exempted from Excise Duty.
<b>Clarity in the definition of amount wagered or staked</b>	The EDA provides for the definition of amount wagered or staked to mean the amount of money placed by a person for an outcome in a betting transaction	The Bill proposes to amend the definition by inserting the words " <i>or gaming</i> " after the word " <i>betting</i> " so that it will read " <i>the amount of money placed by a person for an outcome in a betting or gaming transaction</i> ".	In our view, this proposal seeks to align the taxation of gaming to that of betting with a view to increasing Government revenue.
<b>Excise Duty on fees or commission earned by financial institutions</b>	The EDA provides for the definition of other fees as " <i>includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder</i> "	The Bill proposes to amend this definition by deleting the words, " <b><i>relating to their licensed activities</i></b> ".	Excise Duty on 'other fees' charged by financial institutions was introduced through the Finance Act, 2012. The definition of the phrase 'other fees' has been disputed since and various legislative amendments have tried to clarify the meaning of the phrase.  The proposal appears to be aimed at expanding the scope of excisable services offered by financial institutions.

# Miscellaneous Fees and Levies Act, 2016 amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Reduction in rate of Import Declaration Fee ("IDF")</b>	The Miscellaneous Fees and Levies Act, 2016, ("MFLA") provides that, IDF shall apply at the rate of 3.5% on goods imported for home use.	The Bill proposes to reduce the rate of IDF from 3.5% to 2.5% of the customs value of imported goods.	This is a welcome move as it will reduce the cost of importation.
<b>Scrapping of reduced rate of IDF on imports by manufacturers and players in the construction of affordable housing</b>	The MFLA provides for a reduced IDF rate of 1.5% on: a) Raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry, b) inputs for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.	The Bill proposes to delete this provision in its entirety.	Manufacturers and players in the construction of affordable housing, will have to incur additional importation costs with IDF applying at the proposed rate of 2.5%.  We note that this move seems to contradict the Government's agenda of supporting the construction and building material value chain. We also expect that manufacturers will pass on the additional cost to consumers.
<b>Scrapping of reduced rate of IDF on goods imported under duty remission</b>	The MFLA provides that goods imported under the East African Community ("EAC") Duty Remission Scheme are subject to a reduced rate of IDF at 1.5%.	The Bill proposes to delete this provision in its entirety.	Goods imported under duty remission will be subject to IDF at the proposed rate of 2.5% effectively increasing the cost of manufacture which is bound to be passed on to consumers.
<b>Introduction of an export and investment promotion levy</b>	The export and investment promotion levy does not exist under the current tax laws.	The Bill seeks to introduce an exports and investment promotion levy at the rate of 10% (of the Customs value) which will be applicable on certain imported goods specified in a newly introduced Third Schedule to the MFLA.  The purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.  The goods affected by this provision are: cement clinker of tariff no. 2523.10.00; items of iron and steel of tariff no. 7207.11.00, 7213.91.10, and 7213.91.90; and articles of paper pulp, of paper or of paperboard of tariff no. 4804.11.00, 4804.21.00, 4804.31.00, 4819.30.00, and 4819.40.00.  Goods originating from the EAC will not be subject to the levy.	This levy will significantly increase the taxes paid on importation of the various items which already attract import duty at the rates of 0%, 10%, 25% and 35%.
<b>Reduction in rate of Railway Development Levy ("RDL")</b>	The MFLA provides that, RDL shall apply at the rate of 2% on goods imported for home use.	The Bill proposes to reduce the rate of RDL to 1.5%. We note that the Bill erroneously refers to the previous rate as 2.5% rather than 2%.	This is a welcome move as it will reduce the cost of importation.

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Scrapping of reduced rate of RDL on imports by manufacturers and players in the construction of affordable housing</b>	The MFLA provides for a reduced RDL rate of 1.5% on: c) Raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry, d) inputs for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.	The Bill proposes to delete this provision in its entirety.	This deletion will have no adverse impact, as the proposed rate of RDL equals the reduced rate under the MFLA.
<b>Changes in the First Schedule of the MFLA ( goods subject to export levy)</b>	The MFLA provides for export levy on various products of Chapter 41, 43, 80, and 81 at varied rates.	<p>The Bill proposes to make amendments to the First Schedule to the MFLA which contains goods subject to export levy. The proposals are for the amendment of tariff numbers and/or description of various raw hides and skins and leather items. The proposals 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.</p> <p>The Bill also proposes that export levy be applied on additional base metals of tariff number 8002.00.00, 8106.10.00, 8106.90.00, 8105, 8109.31.00, 8109.39.00, 8112.61.00, 8110.20.00 and; molasses of tariff heading 1703 at the rate of 20%.</p> <p>The Bill further proposes to scrap the application of export levy on base metals of tariff number: 8105.00.00, 8107.30.00, 8109.30.00, and 8110.20.20.</p>	<p>The reduced export levy rates for raw hides and skins and leather items have previously been proposed through the Finance Bill, 2022 but were not enacted. It remains to be seen whether these rates will be adopted in the Finance Act, 2023. Important to note is that the leather and leather products value chain is a focus area under the Bottom-up transformation agenda.</p> <p>Further, the export levy on molasses will improve its availability locally as it is a critical component in the production of bioethanol and animal feeds such as within the dairy value chain, etc.</p>
<b>Changes in Part A of the Second Schedule to the MFLA ( goods exempt from IDF)</b>	The MFLA provides for the exemption of the following goods from IDF: <ul style="list-style-type: none"> <li>• Gifts and supplies for diplomatic and consular missions and to the United Nations Missions;</li> <li>• Aircraft, excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00; and</li> <li>• All goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.</li> </ul>	<ul style="list-style-type: none"> <li>• The Schedule has been amended to clarify that goods for official use by diplomatic and consular missions and the United Nations and its agencies are exempt from IDF. The qualifying organisations have been expanded to include institutions or organisations exempted under the Privileges and Immunities Act.</li> <li>• The Bill now proposes to exempt from IDF all goods and parts of Chapter 88 (aircraft, spacecraft, and parts thereof).</li> <li>• The IDF exemption enjoyed by the Kenya Defence Forces and National Police Service has been expanded to cover not only equipment, machinery and motor vehicles, but all goods, including material supplies for official use.</li> <li>• The Bill proposes IDF exemptions for: goods imported for official use by international and regional organisations that have bilateral or multilateral agreements with Kenya; and liquefied petroleum gas ("LPG").</li> </ul>	<p>The changes to the Second Schedule are a reprieve to the affected stakeholders.</p> <p>IDF exemption on LPG will help the government to achieve its goal of making LPG affordable with a view to minimising the destruction of the country's forest cover and dependence on biomass fuel.</p>



# Miscellaneous Fees and Levies Act, 2016 amendments

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Changes in Part B of the Second Schedule to the MFLA ( goods exempt from RDL)</b>	<p>The MFLA provides for the exemption of the following goods from RDL:</p> <ul style="list-style-type: none"> <li>• Goods for official use by a diplomatic mission, institution or organisation gazetted under the Privileges and Immunities Act;</li> <li>• Goods imported by the United Nations or its agencies</li> <li>• Equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.</li> </ul>	<ul style="list-style-type: none"> <li>• The Schedule has been amended to clarify that goods for official use by diplomatic and consular missions and the United Nations and its agencies are exempt from RDL. The qualifying organisations have been expanded to include institutions or organisations exempted under the Privileges and Immunities Act.</li> <li>• The RDL exemption enjoyed by the Kenya Defence Forces and National Police Service has been expanded to cover not only equipment, machinery and motor vehicles, but all goods including material supplies for official use.</li> <li>• The Bill proposes RDL exemptions for: goods imported for official use by international and regional organisations that have bilateral or multilateral agreements with Kenya; LPG and all goods and parts of Chapter 88.</li> </ul>	<p>The changes to the Second Schedule are a reprieve to the affected stakeholders.</p> <p>RDL exemption on LPG will help the government to achieve its goal of making LPG affordable as stated above.</p>



# Employment Taxes amendment



We discuss the details of the changes below.

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Tax free treatment of an amount received by an employee from their employer as mileage reimbursement</b>	None.	The Bill seeks to amend the ITA by introducing a new paragraph 5(2)(a)(iv) to provide for tax free treatment of mileage reimbursement for employees who receive such payments when travelling to perform official duties, provided that such reimbursement is based on the standard mileage rate approved by the Automobile Association of Kenya ("AA Kenya").	Currently, KRA recognises the application of AA Kenya rates for reimbursement of employee mileage. On this basis, employers who reimburse mileage at this rate are not required to assess a taxable benefit on the recipient employee. However, this practice is not currently backed by an ITA provision hence this proposal is a welcome change.
<b>Tax treatment of club entrance and subscription fees paid by an employer on behalf of an employee</b>	Section 16(2)(v) of the ITA provides that club fees including entrance and subscription fees paid by an employer on behalf of an employee are not deductible expenses in the ascertainment of the taxable corporate income of the employer.	The Bill proposes to delete Section 16(2)(v) of the ITA, and introduce a new paragraph 5(2)(fa) to provide for taxation of an employee in relation to club entrance and subscription fees which have been disallowed against the employer's income.	<p>The proposed deletion of Section 16(2)(v) means that club entrance and subscription fees paid by an employer on behalf of an employee may be allowed as a deductible expense on the income of the employer.</p> <p>In effect, such expenditure may be taxed on an employee, or the tax may be borne by the employer by disallowing the expense in the ascertainment of the employer's taxable income for corporation tax purposes.</p> <p>Notwithstanding the apparent intention of the Bill to create one incidence of tax (either the employee or the employer), the proposed provision is likely to result in double taxation of the club entrance and subscription fees, unless it is amended to ensure that club entrance and subscription fees deducted against the employer's taxable income are taxed on the employee and vice versa.</p>



# Employment Taxes amendment

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Reimbursement of expenditure incurred by public officers for the purpose of performing official duties</b>	None.	The Bill seeks to amend the ITA by introducing a new paragraph 5(4)(fa) to provide that any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties shall not be taxable on the public officer, notwithstanding the ownership or control of any assets purchased.	<p>This provision will result in public officers not being taxable on any amounts reimbursed for the expenditure incurred for the purpose of performing official duties. Further, public officers will not be taxable on any assets purchased using the amounts so reimbursed, regardless of the ownership or control of the assets purchased.</p> <p>This provision introduces inequality in the tax treatment of public officers over employees in the private sector as far as reimbursement of official expenses is concerned, because the ITA generally brings to charge any benefit, advantage, or facility enjoyed or received by an employee in the course of employment, whose value exceeds KES 36,000 in a year of income.</p> <p>Moreover, in the administration of tax on amounts received by an employee as a per diem, the ITA provides a tax free limit of KES 2,000 per day, and any private expenditure incurred using such amounts is taxable on an employee. We note that the proposed provision in respect of public officers neither specifies any limits on the expenditure that may be reimbursed nor does it define persons who qualify as public officers. It is interesting to note that the proposal mentions reimbursement for assets purchased by the public officer, noting that use of government funds is subject to procurement rules and regulations.</p>
<b>Amendment to the definition of market value in relation to an employee share ownership plan</b>	<p>Section 5(6)(c) of the ITA provides that market value in relation to a share, means:</p> <ul style="list-style-type: none"> <li>i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the shares were granted by the employer; or</li> <li>ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, which, shall be agreed upon with the Commissioner before the grant of the options;</li> </ul>	<p>The Bill seeks to amend Section 5(6)(c) of the ITA to read as follows:</p> <p>“market value”, in relation to a share, means -</p> <ul style="list-style-type: none"> <li>(i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the option was exercised by the employee; or</li> <li>(ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the open market, when the option is exercised;</li> </ul> <p>The proposed effective date for this proposal is <b>1 January 2024</b>.</p>	<p>The previous amendment to this section in the Finance Act, 2022 moved the tax point for the benefits chargeable to tax under an employee share ownership plan from vesting date to the date of exercise.</p> <p>The proposed changes will ensure that taxation of benefits under an employee share ownership plan is based on the market value on the date the option is exercised.</p> <p>The requirement to agree the market value with KRA before the grant of options was a redundant provision after the Finance Act 2022 introduced changes which provided that tax shall be charged based on the market on the date the employee exercises the option.</p>

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Deferral of taxation of the award of shares to employees of an eligible start-up</b>	None	<p>The Bill seeks to introduce a new subsection 5(7) in the ITA to provide that the taxation of the benefit from shares allocated to an employee by an eligible start-up in lieu of cash emoluments payable by virtue of employment shall be deferred and taxed within thirty days of the earlier of:</p> <ul style="list-style-type: none"> <li>a) expiry of five years from the end of the year of the award of the shares;</li> <li>b) the disposal of the shares by the employee; or</li> <li>c) the date the employee ceases to be an employee of the eligible start-up.</li> </ul> <p>The Bill further provides that:</p> <ul style="list-style-type: none"> <li>i) this provision shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment;</li> <li>(ii) the benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in a, b or c above;</li> <li>(iii) the value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in a, b or c above; or</li> <li>(iv) where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.</li> </ul> <p>The Bill has defined an eligible start-up company as a business incorporated in Kenya that:</p> <ul style="list-style-type: none"> <li>a) has an annual turnover of not more than KES 100 million shillings;</li> <li>(b) does not carry on management, professional or training business;</li> <li>(c) has not been formed as a result of splitting or restructuring of an existing entity; and</li> <li>(d) has been in existence for a period of not more than five years.</li> </ul>	<p>The proposed changes are targeted at start-up companies hence this move is likely to boost the Government's efforts of creating a conducive environment for young businesses by introducing policies that make Kenya an attractive investment destination.</p> <p>The proposed changes are also likely to support the realisation of the objectives of share incentive schemes that are implemented by start-up companies to motivate, retain and align the interests of employees with those of the company. This is because employees are likely to work longer for start-up companies to avoid triggering early taxes and realise the full potential of the share-based compensation.</p>



# Employment Taxes amendment

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Introduction of tax relief on post-retirement medical fund contributions</b>	None	<p>The Bill seeks to introduce a new section 31A to provide that a resident individual who proves that in a year of income the person has contributed to a post-retirement medical fund shall for that year of income be entitled to a personal relief referred to as post-retirement medical fund relief.</p> <p>The amount of post-retirement medical fund relief shall be 15% of the amount of contribution paid or KES 60,000 per annum, whichever is lower.</p> <p>The proposed effective date for this proposal is <b>1 January 2024</b>.</p>	<p>The proposed change introduces an additional tax relief to be known as post-retirement medical fund relief. This is a welcome move as the additional relief will supplement the current tax reliefs provided under the ITA, including insurance relief and personal relief.</p> <p>In view of the rising inflation levels and high cost of living in Kenya, we are of the view that the government should review tax reliefs and deductions that are generally available to employees with a view of enhancing them.</p>
<b>Amendment of the provisions relating to insurance relief</b>	<p>Section 31 of the ITA states that a resident individual who proves that in a year of income-</p> <ul style="list-style-type: none"> <li>a) the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual's spouse or child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya; or</li> <li>b) his employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or</li> <li>c) he, as well as his employer, has paid a premium for the insurance referred to in paragraph (b),</li> </ul> <p>shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief.</p>	<p>The Bill seeks to amend paragraphs (b) and (c) under Section 31 to read as follows:</p> <p>A resident individual who proves that in a year of income-</p> <ul style="list-style-type: none"> <li>a) the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual's spouse or child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya; or</li> <li>b) The individual's employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or</li> <li>c) The individual and the individual's employer, has paid a premium for the insurance referred to in paragraph (b),</li> </ul> <p>shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief.</p>	<p>The proposed changes will enable anyone who has taken a qualifying insurance policy to be eligible for tax relief regardless of their gender.</p>

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
Increase of the marginal rate of tax from 30% to 35%	Head B of the Third Schedule to the ITA provides that the individual rates of tax shall be:	The Bill proposes to amend the individual rates of tax provided under Head B of the Third Schedule to the ITA to the following:	<p>The proposed increase of the marginal rate of tax for individuals from 30% to 35% will increase the effective rate of tax and reduce the net take home pay for individuals earning a taxable income above KES. 6,000,000 per annum (or KES 500,000 per month).</p> <p>For illustration purposes, a resident individual earning a taxable income of KES 100,000 per month will not be impacted by the proposed change in the marginal tax rate.</p> <p>On the other hand, a resident individual earning a taxable income of KES 600,000 per month will experience an increase of approximately 0.82% in the effective monthly tax rate (equivalent to an additional tax liability of approximately KES. 4,946 per month).</p> <p>Likewise, a resident individual earning a taxable income of KES. 1,000,000 per month will experience an increase of approximately 2.46% in the effective monthly tax rate (equivalent to an additional tax liability of approximately KES. 24,946 per month) and so on.</p> <p>This proposed increment of the individual tax rate is likely to drive high earning individuals including expatriate employees and entrepreneurs to other countries with lower taxes. This will not only lead to a drain of skilled labour out of the country but will also counteract the government's efforts to make Kenya an attractive destination for international workers and individual investors.</p>
	<b>Taxable Amount</b>	<b>Tax Rate</b>	
	On the first KES. 288,000	10%	
	On the next KES. 100,000	25%	
	Above KES. 388,000	30%	
		<b>Taxable Amount</b> <b>Tax Rate</b> On the first KES. 288,000 10% On the next KES. 100,000 25% On the next KES. 5,612,000 30% On all income above KES. 6,000,000 35%	

# Employment Taxes amendment

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
Deductions into the National Housing Development Fund	None	<p>(1) The Bill seeks to introduce a new Section 31B in the Employment Act, 2007 to provide that an employer shall pay to the National Housing Development Fund established under Section 7 of the Housing Act, in respect of each employee:</p> <ul style="list-style-type: none"> <li>(a) the employer's contribution at three per centum of the employee's monthly basic salary; and</li> <li>(b) the employee's contribution at three per centum of the employee's monthly basic salary,</li> </ul> <p>Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings a month.</p> <p>(2) The benefits to an employee shall accrue as follows:</p> <ul style="list-style-type: none"> <li>(a) for employees who qualify for affordable housing the contributions accrue to the employee and shall be used to finance the purchase of a home under the affordable housing scheme; or</li> <li>(b) for employees who are not eligible for affordable housing, upon the expiry of seven years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is earlier: <ul style="list-style-type: none"> <li>(i) a transfer of their contributions to a retirement benefits scheme or pension scheme registered with the Retirement Benefits Authority;</li> <li>(ii) a transfer of their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or</li> <li>(iii) a transfer of their contributions to their spouse or dependent children; or</li> <li>(iv) to receive their contributions in cash:</li> </ul> </li> </ul> <p>Provided that contributions paid out in cash shall be included in the contributor's taxable income for the year and be subjected to tax at the prevailing rates.</p> <p>(3) All contributions shall get a return based on the return on the Fund.</p> <p>(4) The employer shall remit both employee and employer contributions to the National Housing Development Fund before the ninth day of the following month after the deduction was made.</p> <p>(5) The Cabinet Secretary responsible for matters relating to housing, in consultation with the Cabinet Secretary responsible for matters relating to finance, shall make Regulations prescribing the qualifications to participate in the affordable housing scheme.</p> <p>(6) This section shall become effective on the date the Regulations made under subsection (5) come into operation.</p>	<p>The introduction of additional deductions from employee emoluments will further reduce the take home pay of employees.</p> <p>This proposal will also overburden employers with increased cost of employment and may lead to loss of current employment or potential employment opportunities.</p> <p>We further note that the Bill does not define the term employee for the purposes of implementing the proposed changes. This is likely to make the provisions apply indiscriminately on non-resident individuals who may be working in Kenya temporarily and thus have no desire to benefit from the housing fund in Kenya.</p>

# Non-tax legislative changes

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Annual Estimates of the Kenya Roads Board</b>  (Kenya Roads Board Act)	None	<b>35 2A</b> The annual estimates shall be submitted together with a collated annual roads programme as provided for in section 19.	The proposal , if passed, will mandate the Kenya Roads Board (the “Board”) to include the annual road programmes in the submission of its annual estimates of the revenue and expenditure to Parliament through the Cabinet Secretary for Roads.  Presently, section 35 requires the annual estimates of the Board to be submitted without any accompanying documents.
<b>Functions of the Kenya Revenue Authority</b>  (Kenya Revenue Authority Act)	<b>5.</b> 2A The Authority may establish an institution to provide capacity building and training <b>for the better carrying out of its functions.</b>	The Authority may establish an institution to provide capacity building and training <b>the staff of the Authority, general public and other jurisdictions.</b>	The proposal is welcomed as it would provide for training and capacity building initiatives for staff members, leading to overall skilled staff to operationalise the Authority's mandate. Further, in training the public, awareness is created on various tax obligations that may befall residents/ non-residents, as owners of businesses and individuals. The addition of “other jurisdictions” also allows the Authority to seek collaborations with other revenue collection bodies in different countries.
<b>Claims on assets</b>  (Unclaimed Financial Assets Act)	<b>28.</b> 5 Where a claim is allowed, the Authority shall pay over or deliver to the <b>claimant</b> the assets or the amount the Authority actually received or the net proceeds if it has been sold by the Authority.	Where a claim is allowed, the Authority shall pay over or deliver to the claimant <b>or such other person as the claimant may designate</b> the assets or the amount the Authority actually received or the net proceeds if it has been sold by the Authority.	The proposal would allow designated representatives of claimants to receive assets or amounts received following a successful claim to the asset (or amount), to the Unclaimed Financial Assets Authority.





# Non-tax legislative changes

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Automatic revocation of statutory instruments</b>  <b>(Statutory Instruments Act)</b>	<p>20 The purpose of this Part is to—</p> <p>a)..</p> <p>b)..</p> <p>c) <b>ensure the part of the Kenya statute book consisting of statutory instruments is of the highest standard;</b></p> <p>d) <b>ensure continuous review of statutory instruments by the various regulation making authorities and the agencies under them.</b></p> <p>21.</p> <p>1. Subject to subsection (3), a statutory instrument is by virtue of this section revoked on the day which is ten years after the making of the statutory instrument unless -</p> <p>a) it is sooner repealed or expires; or</p> <p>b) a regulation is made exempting it from expiry.</p> <p>2. The responsible Cabinet Secretary may in consultation with the Committee, make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by virtue of this section for a period as is specified in the regulation not exceeding twelve months</p> <p>3. Only one extension of the operation of a statutory rule can be made under subsection (2)</p> <p>4. The automatic revocation period for statutory instruments issued under the Income Tax Act (Cap. 470), the Stamp Duty Act (Cap. 480), the Value Added Tax Act, No. 35 of 2013, Tax Appeal Tribunal Act, No. 40 of 2013, Excise Duty Act, No. 23 of 2015 and Tax Procedure Act, No. 29 of 2015, is hereby extended for a period of twenty-four months with effect from the twenty fifth day of January, 2023</p>	<p>Section 20 c and d to be deleted</p> <p>Section 21 repealed</p>	<p>The proposal deletes the mandatory provisions:</p> <p>a. to review of statutory instruments by regulatory bodies; and</p> <p>b. related to the automatic revocation of statutory instruments ten years after their making.</p>
<b>Circumstances under which benefits may not be paid</b>  <b>The Retirement Benefits (Deputy President and Designated State Officers) Act</b>	<p>The Bill lists the circumstances the Deputy President, Prime Minister, Vice-President, Speaker, Chief Justice or Deputy Chief Justice (as entitled persons) may not receive benefits conferred under the Act, on a resolution by the National Assembly supported by the votes of not less than half of the members.</p>	<p>The Bill proposes to delete the circumstances under which the entitled persons) may not receive benefits conferred under the Act.</p>	<p>This proposal is in line with the decision of the High Court in Coalition for Reforms and Democracy (CORD) v Attorney General; International Institute for Legislative Affairs &amp; another (Interested Parties) [2019] eKLR, in which section 4 of the Act was declared unconstitutional.</p>

Issue	The current tax provision	Proposed change as per the Finance Bill, 2023	Comments/impact
<b>Benefits to appointive or elective office in the Government</b>  <b>The Retirement Benefits (Deputy President and Designated State Officers) Act</b>	None	The Bill proposes to provide benefits to entitled persons who hold an appointive or elective office in the Government, and who previously received benefits under the Act. The Bill seeks to prevent the entitled person from receiving benefits due to their current position and also receiving benefits due under the Act.	The proposal prevents duplication of other benefits accruing to entitled persons (such as vehicle and fuel benefits) who would be holding appointive or elective positions in or under Government until they retire or cease to hold that appointive or elective office.
<b>Entitlement to parliamentary pension.</b>  <b>The Retirement Benefits (Deputy President and Designated State Officers) Act</b>	None	The Bill seeks to provide pension benefits to an entitled person who also is entitled to pension under the Parliamentary Pensions Act.	The proposal protects the constitutional right of retirement benefits accrued to an entitled person even though they have attained eligibility for a retirement benefit in their current position.
Update of the Retirement Benefits (Deputy President and Designated State Officers) Act	<b>5</b> 1 A retired Speaker of the National Assembly or the Senate shall, during his or her lifetime, be entitled to  f. full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled <b>person's spouse</b>	1 A retired Speaker of the National Assembly or the Senate shall, during his or her lifetime, be entitled to  f. full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the <b>entitled person and the entitled person's spouse and the entitled person's child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person</b>	The proposal may be declared unconstitutional due to discrimination against female children. The Constitution protects the right to equal protection and equal benefit of the law, whereas the proposal seeks to discriminate the female child against the male child. The proposal should be amended to delete " <i>and in the case of a female child</i> "  The aspect of cohabiting can be taken to be unnecessary as only in limited circumstances will the law and the courts infer a presumption of marriage.
<b>Estimates of benefits accrued to a retired Speaker of the National Assembly or the Senate</b>  <b>The Retirement Benefits (Deputy President and Designated State Officers) Act</b>	None	<b>1D</b> The Clerk of the National Assembly in the case of a retired Speaker of the National Assembly and the Clerk of the Senate in the case of a retired Speaker of the Senate, shall prepare and submit the estimates under subsection (1)(b) to the Parliamentary Service Commission."	The proposal will mandate the respective clerks of the National Assembly and Senate to submit estimates of the benefits granted to an entitled person, or his or her surviving spouse, as the case may be.
<b>Computation of benefits</b>	In computing the benefits due to a person entitled to benefits under this section, the benefits already received by that person under any other law or policy shall be set-off against the benefits due under this Act.	<b>Repealed</b>	The proposal conforms to the decision in <i>Coalition for Reforms and Democracy (CORD) v Attorney General; International Institute for Legislative Affairs &amp; another (Interested Parties) [2019] eKLR</i> protecting benefits accrued under the Act and benefits accrued under a different Act.



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