RSM Newsletter

OVERVIEW OF THE KENYA FINANCE BILL, 2023

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INTRODUCTION

The Finance Bill, 2023 was presented in Parliament on Thursday 4th May 2023. This newsletter covers the economic highlights of the proposed budget and tax changes as follows:

- Introduction of taxation on digital tax assets
- Restriction of interest on foreign exchange losses
- Proposal to include a new pay-as-you-earn (PAYE) tax bracket of 35% for any employment income above KShs. 500,000 per month
- Proposal to reduce the income tax rate on monthly rental income and withholding on rental income from 10% to 7.5%
- Proposal to increase the Turnover Tax rate from 1% to 3% and to alter its bracket to KShs. 0.5 million – KShs. 15 million
- Exported taxable services are now proposed to revert to exempt from VAT
- Transfer of business as a going concern would also be made exempt from VAT
- Removal of provision on application of waiver of penalty and interest
- Increase in tax shortfall penalty on deliberate omission from 75% to 200%
- Reduction of the rate of IDF from 3.5% to 2.5% of customs value and RDL from 2.5% to 1.5% of customs value
- Introduction of a new Levy on specified goods; the Export and Investments Promotion Levy
- The Bill proposes to introduce a 20% deposit requirement for taxpayers appealing to the High Court from the Tax Appeals Tribunal refundable if the High Court decides in favour of the taxpayer

ECONOMIC OUTLOOK

GLOBAL OUTLOOK

- 2022 has seen various economic hurdles such as the ongoing Russia-Ukraine war, sky rocketing inflation – both global and local, the lasting effects of COVID-19 pandemic, supply chain disruptions and food security and detrimental climate effects. In Kenya, the year 2023 is likely to continue with the economic downturn due to the elevated inflation and high interest rates. The further weakening of the Kenyan Shilling against the USD may lead to higher cost of imports and slow trade with the rest of the world.
- Global inflation rose by 4.7% in 2021 to 8.8% in 2022 mainly due to the high energy prices and significant depreciation of the USD in most countries. It is forecasted that in the year 2023, there will be a gradual recovery from the aforementioned economic hurdles as the inflation rates have been forecasted to decline to 6.5% in 2023 and 4.1% in 2024. This is as a result of China's re-opening of the economy, un-winding of supply chain disruptions and the tightening of monetary policy by most central banks resulting in inflation moving back to target.
- After increasing by 6% in 2021, the real GDP growth rate for the entire world slowed down to 3.4% in 2022 as illustrated by the table below:

REAL GDP GROWTH (%)	2019	2020	2021	2022	2023*
Japan	-0.4	-4.6	1.6	1.6	1.8
UK	1.6	-11.0	7.5	4.4	-0.4
USA	2.3	-2.8	5.9	1.8	0.5
Euro Area	1.6	-6.3	5.3	3.3	0.5
Germany	1.1	-4.1	2.6	1.8	-0.3

Source: Kenya National Bureau of Statistics (KNBS)

- The economy of Sub-Saharan Africa expanded by 3.9% in 2022 compared to 4.8% in 2021 due to a drop in private investment and household spending brought about by growing global prices and tighter monetary policy.
- The real GDP of the East African Community (EAC) increased by 4.9% in 2022 compared to a rise of 6.7% in 2021.

The global energy sector has been characterized by high volatility, instability and shortage arising from the conflict between Russia and Ukraine, Covid- 19, low global oil stockpiles and US Dollar strengthening against majority of the other currencies.

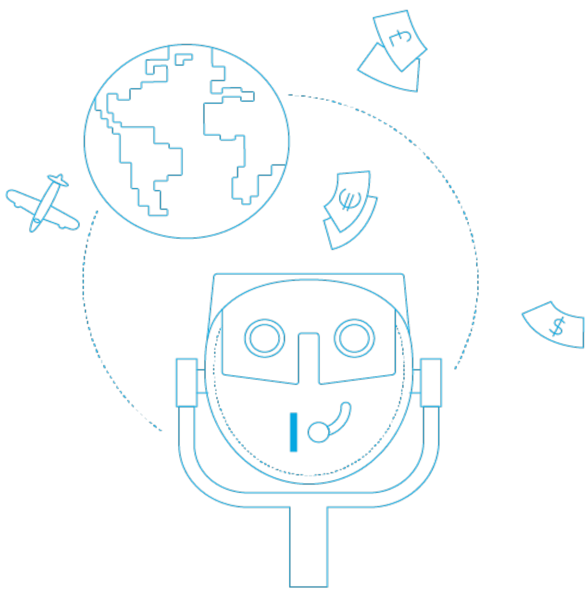
DOMESTIC OUTLOOK

- Kenya's inflation rates are above the governmental targets mainly due to external shocks as well as the prolonged drought effects. The inflation rate had been gradually declining from 9.5% in November 2022 and 9.1 % in December 2022 to 9.0% in January 2023 and rose again to 9.2% in February 2023 and March 2023. The below table shows the growth in inflation rates from March 2022 to March 2023 portraying a steep growth in inflation rates after the August 2022 elections.

Month	Overall CPI	Inflation rate
March – 2022	120.14	5.6
April – 2022	122.17	6.5
May – 2022	123.12	7.1
June – 2022	124.22	7.9
July – 2022	125.05	8.3
August – 2022	125.58	8.5
September – 2022	126.73	9.2
October – 2022	127.86	9.6
November – 2022	128.31	9.5
December – 2022	128.99	9.1
January – 2023	129.29	9.0
February – 2023	130.13	9.2
March – 2023	131.18	9.2

Source: KNBS CPI report March 2023

- Between 2018 and 2022, the Kenyan Shilling faced continued weakening against the currencies of major trading partners, leading to a deterioration in the Trade Weighted Index from 121.66 in 2021 to 123.81 in 2022. In 2022, the Shilling depreciated against key currencies such as the US dollar (7.5%) and Chinese Yuan (3.1%), but appreciated against the Euro (4.3%), Pound Sterling (3.3%), South African Rand (2.6%), and Japanese Yen (9.8%). Within the East African Community, the Kenyan Shilling weakened against the Tanzanian and Ugandan Shilling by 7.0% and 4.5%, respectively, in 2022. This depreciation can be attributed to the fact that Kenya was in the period of a general election.
- The weakening of the Kenya Shilling against the dollar has had significant implications in debt repayment, as a significant portion of the country's debt is in foreign currency.
- In the recent past, the country has been experiencing below average rainfall, resulting in food insecurity. As of late 2022, approximately 3.5 million people faced acute food insecurity due to decline in agricultural productivity, with negative growth of 1.9% compared to a negative of 0.3% in 2021. However, we have seen drastic changes in the weather patterns with long rains in the months of March, April and beginning of May 2023 in many parts of the country. The outlook for May 2023 indicates that several parts of the country are likely to experience near average rainfall.
- On 29th March 2023, The Central Bank of Kenya (CBK) through its Monetary Policy Committee, raised its base lending rate from 8.75% to 9.5% as a measure to curb rising inflation.



DOMESTIC OUTLOOK (CONTINUED)

- The energy sector was characterized by high costs and low demand. Despite the high charges imposed on consumers, demand for electricity increased. With demand for petroleum products dropping by 1.1% to 5.1 million tonnes in 2022 as illustrated by the table below;

DEMAND	2018	2019	2020	2021	2022
Liquefied Petroleum Gas	222.3	312.1	326.2	371.4	338.8
Motor Spirits	1,359.0	1,434.3	1,395.3	1,554.4	1,561.3
Aviation Spirits	18.8	10.2	1.9	1.4	0.9
Jet/Turbo Fuel	674.4	699.4	394.8	506.8	592.3
Illuminating Kerosene	339.4	168.3	127	111.3	89.0
Light Diesel Oil	2,173.1	2,198.7	2,157.6	2,305.7	2,219.7
Heavy Diesel Oil	0.2	1.3	1.8	0.8	0.0
Fuel Oil	402.0	382.8	273.9	340.3	337.1
TOTAL DOMESTIC DEMAND	5,189.2	5,207.1	4,678.5	5,192.1	5,134.1
Exports of Petroleum Fuels	8.4	7.0	2.3	0.4	8.0
TOTAL DEMAND	**5,197.6**	**5,214.1**	**4,680.8**	**5,192.5**	**5,134.1**

SUPPLY	2018	2019	2020	2021	2022
Net Imports of Petroleum Fuels	5,396.3	5,682.2	4,920.4	5,827.6	5,453.6
Adjustments	198.6	468.1	239.5	635.1	311.5
TOTAL SUPPLY	**5,197.6**	**5,214.1**	**4,680.8**	**5,192.5**	**5,142.1**

Source: Kenya National Bureau of Statistics (KNBS)

GOVERNMENT MANIFESTOS

In its 2023 Budget Policy statement, the Government intends to implement policies and structural reforms and promote investment in five core thematic areas that are expected to have the highest impact at the bottom of the economy. These include: Agricultural Transformation; Micro, Small and Medium Enterprise (MSME) Economy; Housing and Settlement; Healthcare; and Digital Superhighway and Creative Economy.

AGRICULTURAL TRANSFORMATION AND INCLUSIVE GROWTH

Agriculture is a crucial sector in Kenya's economy, contributing 21.4% to the GDP and accounting for 65% of the country's total exports and it provides the highest employment multiplier. However, agricultural productivity has been declining due to prolonged drought.

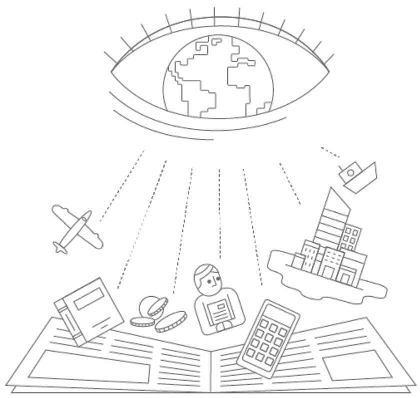
The Government plans to implement policy, legal, and institutional reforms to boost an environment for agricultural productivity and in particular:

- Provide adequate affordable working capital to farmers through well managed farmer organisations;
- Deploy modern agricultural risk management instruments that ensure farming is profitable and income is predictable;
- Transform two million poor farmers from food deficit to surplus producers through input finance and intensive agricultural extension support;
- Raise productivity of key value food chains and support dairy farmers by supplying feeds to lower cost of milk production;
- Reduce dependence on basic food imports by 30 percent;
- Revamp underperforming and collapsed export crops while expanding emerging ones;
- Avail high yielding cotton seeds to increase productivity per acre; and
- Boost tea value chain (blending & branding).

TRANSFORMING THE MICRO, SMALL AND MEDIUM ENTERPRISE (MSME) ECONOMY

The MSME sector employs 85% of non-farm workers, making a significant contribution to the economy. Access to affordable credit is crucial for its growth, but high interest rates limit its potential. The Government is committed to facilitating access to affordable credit for Kenyans. Interventions by the Government will include:

- End criminalisation of work by enacting a right to work law, and making trading licences and provision of a trading location an entitlement to every citizen who applies;
- Reduce regressive taxation, bureaucracy and regulatory compliance costs;
- The Government will commit KShs. 50 billion a year to provide MSMEs with 100 percent access to affordable finance through SACCOs, venture capital, equity funds and long-term debt for start-ups and growth-oriented SMEs; and
- Establish MSME Business Development Centre in every ward, an industrial park and business incubation centre in every TVET institution.



HOUSING AND SETTLEMENT

The cost of housing is a heavy burden to majority of Kenyans and is the major factor driving the proliferation of slums. The Government plans to close the housing gap by:

- Facilitating delivery of 250,000 houses per year by implementing policies and administrative reforms to lower the cost of construction and improve access to affordable housing finance while creating jobs and entrepreneurial opportunities; and
- Additionally, the Government plans to implement measures to unlock the challenges that inhibit investment in the housing sector.

HEALTHCARE

The Government's commitment to ensure a Universal Health Coverage (UHC) system include:

- Employment and initiation of payment for community health workers who shall form part of the Primary Health Care system;
- Prioritization of employment of 20,000 healthcare workers – doctors, nurses, clinical officers, laboratory technologists, physiotherapists, among others, to bridge the gap according to WHO recommendations of 23 HC per 10,000 populations;
- Set up of an emergency medical treatment fund to cater for emergency, cancer treatment and referrals;
- Setting aside of KShs. 50 billion for Kenya Association of Retired Officers medical schemes;
- Integration of preventive and promotive services/establish a primary healthcare approach as envisioned in the Afya Bora Mashinani;
- Setting aside of seed deposit amount of KShs. 100 billion into co-funding the strategic programs for HIV, tuberculosis, blood transfusion, malaria, family planning and reproductive health;
- Ring-fencing funds for healthcare from facility improvement funds to allocations from the Treasury in collaboration with County Governments; and
- Building up supply chain management system (KEMSA) to ensure efficiency and accountability in the medical supplies to all health facilities.

DIGITAL SUPERHIGHWAY

- Over the next 5 years, the Government will support the extension of National Optic Fibre Backbone infrastructure work to ensure universal broadband availability.
- The Government also plans to digitize and automate all critical Government processes throughout the country, with a view to bringing at least 80% of all Government services online for greater convenience to citizens.
- The Government will establish a Presidential Advisory Council on Science and Technology Policy that will ensure a wholesome Government approach to technological development and use and build necessary capacities across Government.
- The Government will also promote investment in Konza Technopolis to bring together industry, academic institutions and other innovators to co-invest in emerging technologies to create high-quality jobs that leverage on artificial intelligence, robotics and other technologies and thus enhance regional and global competitiveness.
- The establishment of the Africa Regional Hub and promotion of the development of software for export will cement Kenya's position as a digital leader.

CREATIVE ECONOMY

The creative industry is meant to add value to Kenya's exports such as fashion, leather products and craft industries that can employ millions of Kenyan youths. To realize these benefits, the Government plans to:

- Work with stakeholders to expand the space for creativity, including freedom of expression and protection of intellectual property rights;

CREATIVE ECONOMY (CONTINUED)

- Incorporate arts and culture infrastructure (theatres, music halls, art galleries) into the infrastructure development programme, and identify dedicated streams of resources for their development;
- Work with stakeholders to identify the incentives, capacity building and other support required from the State to scale up cultural production and the creative economy; and
- Have the creative economy in Brand Kenya and commercial diplomacy, including appointing accomplished Kenyan artistes and creative sector personalities as cultural ambassadors.

PUBLIC DEBT HIGHLIGHTS– DOMESTIC AND FOREIGN

- In the second quarter of 2022/23, the public and publicly guaranteed external debt of Kenya saw a notable increase of 7.8 percent. The upsurge was mainly due to disbursements from multilateral lenders and exchange rate fluctuations. The US dollar and the Euro are the primary currencies used. According to CBK, the following is the public borrowing data for the period FY2018 to January of 2023.

YEAR	2018	2019	2020	2021	2022
	Ksh 'Billion'	Ksh 'Billion'	Ksh 'Billion'	Ksh 'Billion'	Ksh 'Billion'
DOMESTIC DEBT					
Securitised debt	2,413.8	2,723.5	3,127.1	3,634.7	4,216.7
Non Securitised debt	65.0	62.0	50.4	63.0	71.6
TOTAL DOMESTIC DEBT	**2,478.8**	**2,785.5**	**3,177.5**	**3,697.7**	**4,288.3**
(as a % of GDP)	28%	29%	30%	33%	34%
(as a % of Total Debt)	49%	48%	48%	48%	50%
EXTERNAL DEBT					
Bilateral	816	996	1074	1141	1173
Multilateral	821	914	1322	1659	1924
Comm. Banks	906	1096	1102	1187	1181
Export Credit	17	17	18	12	12
TOTAL EXTERNAL DEBT	**2,560.2**	**3,023.2**	**3,515.8**	**3,999.5**	**4,290.7**
(as a % of GDP)	29%	31%	33%	35%	34%
(as a % of Total Debt)	51%	52%	53%	52%	50%
TOTAL PUBLIC DEBT	**5,039.0**	**5,808.7**	**6,693.3**	**7,697.2**	**8,579.0**
as a % of GDP)	57%	60%	63%	68%	67%

PUBLIC DEBT SERVICE

- The total public debt service increased by 17.6% from KShs. 780,628 million as at end June 2021 to KShs. 917,777 million as at end June 2022. External debt service increased by 30.3% from KShs. 234,590 million as at end June 2021 to KShs. 305,665 million at June 2022 while domestic debt service increased by 12.1 percent from KShs. 546,038 million in June 2021 to KShs. 612,112 million in June 2022.
- In its budgetary policy statement, the following are the actions proposed by the Government to manage the public debt:
  - The Government is committed to adhere to the PFM Act Section 15(2) (c) by ensure that its borrowings shall strictly be used only for development expenditure purposes;
  - Public debt and obligations shall be maintained at a sustainable level as approved by Parliament for National Government; and
  - Through the National Treasury, the Government intends to ensure that the borrowing strategies contained in the BPS and the MTDS are aligned in accordance with the provisions of Section 33 of the PFM Act, 2012.

DEFINITIONS – EFFECTIVE 1ST JULY 2023

The definition of "winnings" has been amended to encompass 'the pay-out from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered'.

This means that withholding tax (WHT) on winnings will be applicable on the total amount including the staked amount. The rate for both resident and non-resident remains 20%.

The Bill also proposes to introduce the following New Definitions:

Term	Definition	Implications
"Digital content monetisation"	means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms— a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands; b) sponsorship where a brand owner pays a content creator for content creation and promotion; c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed; d) subscription services where the audience pays a periodic fee to access the content and support the content creator; e) merchandise sales where physical goods and services are sold featuring a logo, brand or catchphrase to the audience of the content creator, eBooks, courses, or software; f) membership programmes for exclusive content including early access; g) licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or h) crowd funding for raising funds for specific goals for a content creator or another person.	Digital content monetisation will be subject to WHT at the rate of 15%.
"immovable property" includes—	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 Bill proposes to delete Section 3(3)(c)(i) on definition of immovable property which did not include the meaning of 'land'. An expanded definition of immovable property, including land, is included under Section 2.
"person" includes	a) in the case of an individual, a reference to a relative now includes spouse, ancestors, uncles and aunts, nephews and nieces, and step father, mother and children and adopted children, and their spouses etc; and b) a company.	This increases the scope of taxation of a person to comprise the family, which cannot be upheld in a Court of Law.
"related person"	means, in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.	Provides clarity on the definition of a related person.
"institution, body of persons or irrevocable trust, of a public character"	clarity provided that such institution are required to be more transparent and accountable without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilises its assets or income exclusively to	Non-governmental organisations seeking tax exemptions will undergo more stringent requirements to get the exemption.

Term	Definition	Implications
	carry out the purpose for which the entity was established without conferring a private benefit to an individual.	

RESTRICTION ON INTEREST EXPENSE

Removal of interest restriction on local loans (Effective 1st January 2024)

Restriction on deductible interest expense based on 30% of the EBITDA will only apply to foreign loans. This means that interest expense with respect to local loans will not be subjected to the restriction.

The interest expenses in excess of 30% of the EBITDA shall be an allowable deduction in the subsequent three years of income provided that the interest expense claimed in each year shall not exceed 30% of the EBITDA.

Interest restriction shall not apply where the interest is exempt from tax under this Income Tax Act.

Deferral of Foreign Exchange Losses (Effective 1st July 2023)

Forex losses for persons whose gross interest paid or payable to non-residents exceeds 30% of the EBITDA will be deferred (and not taken into account) and claimed over a period of three years from the date the losses were realised. This proposed amendment seeks to provide timelines on carrying forward of forex losses. Based on changes last year, where there was an interest restriction, the forex losses were to be deferred, but the period of deferment was not provided. This provides clarity that now such deferment can be claimed within three years, subject to there being headroom to claim them based on the interest restriction formula.

CHANGES TO TAXATION OF EMPLOYMENT INCOME

New PAYE Rates (Effective 1st July 2023)

The Bill proposes to revise the current PAYE bands as follows:

PAYE BANDS	RATE IN EACH SHILLING
On the first KShs. 288,000	10%
On the next KShs. 100,000	25%
On the next KShs. 5,612,000	30%
On all income over KShs. 6,000,000	35%

Currently, all employment income above KShs. 388,000 is subject to PAYE at the rate of 30%. The Bill proposed to introduce a new tax bracket of 35% for all incomes above KShs. 6 million as the Government seeks to boost the tax revenues.

Additional Taxable Employment Gains (Effective 1st July 2023)

Club entrance and subscription fees disallowed against the employer's income will be taxable on the employee. This amounts to double taxation as the expense has already been disallowed on the employer.

Non-taxable employment gains (Effective 1st July 2023)

If enacted, the following will not be deemed to be taxable employment benefits:

- Travelling allowances received by an employee to perform official duties if the travelling allowances are computed based on the standard mileage rate approved by the Automobile Association of Kenya.
- Any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased.

Post-Retirement Medical Fund (PRMF) Relief (Effective 1st January 2024)

A resident individual contributing to a post-retirement medical fund shall be entitled to a post-retirement medical fund relief equivalent to the lower of 15% of the amount of contribution or KShs. 60,000 per annum.

Exemption from Income Tax (Effective 1st July 2023)

The following shall be exempted from tax:

- Investment income from a PRMF, whether or not the fund is part of a retirement benefits scheme.
- Payment in the form of funds transfer from a PRMF to a medical insurance cover provider.

This proposed change seeks to encourage savings in respect to PRMF.

Computing Market Value of Shares under Employee Share Ownership Plans (ESOP's) (Effective 1st January 2024)

For shares fully listed on any security exchange in Kenya, the market value of shares under ESOP will be determined based on the the mid-market value on *the date the option was exercised by the employee*. Currently, the value is determined based on the date the shares were granted by the employer.

For shares not fully listed, the market value will be determined based on the price which the shares might reasonably be expected to fetch on sale in the open market when the option is exercised. Currently, the market value is determined based on the amount agreed with the Commissioner before the grant of the options.

Taxation of Shares Issued in Lieu of Cash Emoluments by Start-ups (Effective 1st July 2023)

Taxation of benefit of shares issued by a start-up to its employees in lieu of cash emolument shall be deferred and taxed within thirty days of the earlier of:

a) the expiry of five years from the end of the year of the award of the shares;
b) the disposal of the shares by the employee; or
c) the date the employee ceases to be an employee of the eligible start-up.

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 paragraphs (a), (b) or (c); or where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

The subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment.

For the purpose of this Section, the term "Eligible start-ups" means a business incorporated in Kenya that:

a) Has an annual turnover of not more than KShs. 100 million;
b) Does not carry on management, professional or training business;
c) Has not been formed as a result of splitting or restructuring of an existing entity; and
d) Has been in existence for a period of not more than five years.

Income of a Married Woman or Wife

The Bill proposes to delete Section 15(7)(e)(iii) which provides that the gains or profits derived from wife's employment income are considered as a separate source of income (effective 1st July 2023).

The income of a married woman living with her husband will no longer be deemed to be income of the husband for the husband's income tax purposes by deleting Section 45 of the ITA.

TAXATION OF A PERMANENT ESTABLISHMENT (PE)

Reduce Income Tax Rate for a PE (Effective 1st January 2024)

Non-resident companies having a PE in Kenya will pay income tax at a reduced rate of 30% from the current 37.5%. This proposed change seeks to encourage non-residents to conduct business in Kenya and boost foreign direct investment.

Tax on Repatriation of Profits of a Permanent Establishment (PE) (Effective 1st January 2024)

Income of a PE being repatriated by a non-resident person shall be subject to tax in Kenya. The following formula shall be used to compute the repatriated income:

$$\text{Repatriated Profit} = \text{Net Asset* at Beginning of the Year} + \left(\text{Net Profit for the Year of Income} - \text{Tax Payable on the Chargeable Income}\right) - \text{Net Asset* at Year End}$$

*Net Assets means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.

TAXATION OF A PERMANENT ESTABLISHMENT (PE) (CONTINUED)

The tax on repatriated profit shall be in addition to tax chargeable on the income of the PE. The rate of tax chargeable on repatriated profits has however not been specified.

TURNOVER TAX (TOT) – EFFECTIVE 1ST JULY 2023

The Bill proposes to introduce a revised threshold for TOT from *KShs. 1 million – 50 million* to *KShs. 0.5 million – 15 million.* This will mean that SMEs with income above KShs. 15 million currently registered under the TOT will now be required to pay tax at the corporate rate of 30% on taxable profits.

The Bill also proposes to increase the TOT rate from 1% to 3%.

INTRODUCTION OF DIGITAL ASSETS TAX (DAT) – EFFECTIVE 1ST SEPTEMBER 2023

The Bill proposes to introduce Digital Assets Tax (DAT) at the rate of 3% on the transfer or exchange value of digital assets.

The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the DAT and remit it to the Commissioner within 24 hours after making the deduction together with a return of the amount of the payment and the amount of tax deducted. A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.

"Digital asset" includes:

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

"income derived from transfer or exchange of a digital asset" means:

- the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.

The 24-hour timeline is not realistic especially for non-residents as cross-border fund transfers generally more than 24-hours to be processed putting non-residents at a high risk of perpetual non-compliance. This timeline is significantly shorter than the timeline provided for the remission of ordinary withholding tax.

PREFERENTIAL TAX RATE ON INCOME FROM INTELLECTUAL PROPERTY – EFFECTIVE 1ST JANUARY 2024

Income derived from Intellectual Property (IP) will be subject to a preferential tax rate. The income from the IP that will be subject to the preferential tax rate will be computed as follows:

$$\text{Income receiving tax benefits} = \frac{\text{R\&D expenses excluding acquisition costs and related party outsourcing costs}}{\text{All R\&D expenses inclusive of acquisition costs and related party outsourcing costs}} \times \text{IP income including royalties, capital gains and any other income from the sale of an IP asset}$$

** Intellectual property losses shall only be deducted against intellectual property income.

This proposed change is similar to the Patent Box Scheme in the United Kingdom which provides for a reduced tax rate of 10% from the normal 19% on qualifying income from intellectual property.

However, the Bill does not define the preferential tax rate that will apply on the income from IP.

TAXATION OF MEMBER'S CLUB AND TRADE ASSOCIATIONS – EFFECTIVE 1ST JULY 2023

Joining fees, welfare contributions and subscriptions of a members' club or trade association shall be excluded when computing the taxable income of such club or association. Any other income of members' club or trade association will be taxable.

The Bill also proposes to repeal the provision that allowed members' club or trade association to elect to be deemed to be carrying on a business chargeable to tax.

Currently, if the income received from members constitutes at least 75% of the gross receipts (excluding gross investment receipts) of the members' club or trade association, the gross receipt (excluding gross investment receipts**) is not subject to tax.

**Gross investment receipt means gross receipt in respect of interest, dividends, rent, and other payments for right of use or occupation of property or gains on CGT.

TAXATION OF COMPANIES MANUFACTURING HUMAN VACCINES

Income of a company manufacturing human vaccines which is currently exempt from tax will be taxable at a rate of 10% effective 1st January 2024.

On the other hand, the Bill proposes to exempt the following from tax (effective 1st July 2023):

- Royalties paid to a non-resident person by a company manufacturing human vaccines.
- Interest paid to a resident person or non-resident person by a company manufacturing human vaccines.

TAXATION OF COMPANIES ASSEMBLING MOTOR VEHICLES LOCALLY

Companies assembling motor vehicles locally are taxed at a reduced rate of 15% for the first five years which can be extended by a further five years if the company achieves a "**local content**" equivalent to 50% of the ex-factory value of the motor vehicles. However **local content** is currently not defined. The bill proposes to define "**local content**" as *parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya* (effective 1st July 2023).

TAXATION OF COMPANIES IN EXTRACTIVE INDUSTRY – EFFECTIVE 1ST JULY 2023

Under the indirect transfer of interests in mining/extractive activities, it is a requirement for a licensee or contractor to notify the Commissioner if there is a 10% or more change in the underlying ownership of a licensee or contractor. The Bill proposes to increase the threshold to 20%.

MONTHLY RENTAL INCOME (MRI) – EFFECTIVE 1ST JANUARY 2024

The Bill proposes to revise the MRI rate from 10% to 7.5%. This is a welcome move to encourage resident landlords to comply with MRI.

TAXATION OF TRUST INCOME – 1ST JULY 2023

The following incomes of a trust, which are currently exempt, will now be taxable:

- any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;
- income paid to any beneficiary which is collectively below KShs. 10 million in the year of income; and
- such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in Paragraph 5 of the Third Schedule.

DEDUCTIBLE AND NON-DEDUCTIBLE EXPENSES – EFFECTIVE 1ST JANUARY 2024

The following expense will not be deductible for income tax purposes:

- Any expenditure or loss incurred where the invoices of the transactions are not generated from an Electronic Tax Invoice Management System (TIMS) except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015.

This provision is punitive as it does not take into account exempt supplies from taxpayers who are not registered for VAT and supplies from taxpayers who have not attained the threshold for VAT registration.

The following expenses (which are currently non-deductible) will now be deductible expenses for income tax purposes:

- Club fees including entrance and subscription fees;
- Remuneration to non-whole-time non-resident directors of a non-resident company who have a controlling interest of more than 5% of the income of that company;
- Executive and general administrative expenses incurred outside Kenya by a non-resident person; and
- Interest expense (to a maximum of KShs. 300,000 per year of income) incurred by an individual on a loan issued by a Kenya Post Office Savings Bank for the purpose of purchase or improvement of residential premises.

TRANSFER PRICING (COUNTRY-BY-COUNTRY REPORTING) – EFFECTIVE 1ST JULY 2023

The Bill proposes a new definition of Ultimate Parent Entity (UPE). Under the Bill, a UPE means 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.

Under the current definition of UPE, the UPE has to be resident in Kenya.

The threshold for Country-by-Country ("CbC") reporting is currently a group's gross turnover of KShs. 95 billion. However, the Act does not specify the Act does not specify the basis of determining the turnover. The Bill proposes to provide a more specific threshold of KShs. 95 billion of the total consolidated group turnover in the prior financial year of income.

The Bill further proposes that a resident constituent entity (a member of a multinational group that is not the ultimate parent entity) shall be required to file a CbC report if any one of the following conditions is met:

a. the UPE is not obligated to file a CbC report in its jurisdiction of tax residence;
b. the jurisdiction in which the UPE is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the CbC report for the reporting financial year; or
c. there has been a systemic failure of the jurisdiction of tax residence of the UPE that has been notified by the Commissioner to the constituent entity resident in Kenya.

WITHHOLDING TAX (WHT) – EFFECTIVE 1ST JULY 2023

WHT on Rental Income

Rental Income Tax Agent (persons receiving rental income on behalf of the owner of the premise) appointed by the Commissioner shall be required to deduct WHT at 7.5% from the rental income and remit it to the Commissioner ***within 24 hours*** after the deduction together with a return specifying the amount of the payment and the amount of tax deducted. Currently, the WHT is due on 20th of the following month.

The Bill proposes to reduce the rental income WHT rate for residents from 10% to 7.5%. The WHT rate for non-residents remains at 30%. A WHT certificate on the tax withheld on the rental income shall be issued upon filing the rental income WHT return.

The appointment of Rental Income Tax Agent has the potential to create a double-withholding risk on the same rental income where a tenant is appointed as a rental income withholding agent and the landlord's agent is appointed a rental income withholding agent. Further, the Bill does not propose any remedy for landlords who suffer double-withholding on the rental income.

WHT on sales promotion, marketing and advertising services

The Bill proposed to re-introduce WHT in respect to sales promotion, marketing and advertising services offered by residents at the rate of 5% for amounts above KShs. 24,000 per month.

WHT on Digital Content Monetisation (DCM)

DCM will be subject to WHT at the rate of 15%.

WHT on Adjusted Expenses (Effective 1st July 2023)

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 of the payer where an audit adjustment has been made in respect of such payment.

The term "audit adjustment" is not defined creating ambiguity as to the type of audit it refers to.

INVESTMENT ALLOWANCE

Deduction for Diminution of Value of Loose Tools (Effective 1st July 2023)

The Bill proposes to amend Section 15(2)(g) to allow taxpayers to claim a 100% deduction of the value of any implement, utensil or similar article employed in the production of gains or profits. This deduction is considered as representing the diminution in value of such items. Currently, the rate of the deduction is at the discretion of the Commissioner (33.3% per practice)

Industrial Buildings and Dock Capital Allowances (Effective 1st January 2024)

The Bill proposes to introduce Industrial Building and dock allowance at a rate of 10% per annum on straight line basis.

The Bill proposes to expand the definition of 'civil works' to include "*earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures*."

To enhance clarity on capital deduction, the Bill also proposes to introduce the following definitions:

Dock	includes a container terminal berth, harbour, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation
Industrial building	includes a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking
Machinery used for agriculture	means machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting
Telecommunications equipment	includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment

Investment Deductions

Where a taxpayer has an accumulative investment of at least KShs. 2 billion in the preceding three years in Nairobi City County and Mombasa County on or before 25th April 2020, the applicable rate for investment deduction is currently at 100%. The Bill proposes to restrict this investment deduction to entities involved in the manufacturing and hotel industries.

If a business/company has to be located in places outside Nairobi City County and Mombasa County purely because of the nature of their business, they will not be allowed to claim investment deduction at the rate 100%

ADVANCE TAX ON COMMERCIAL VEHICLES – EFFECTIVE 1ST JANUARY 2024

The Bill proposes to revise:

- Advance tax in respect to Commercial vehicles (vans, pickups, trucks, prime movers, trailers, lorries excluding tractors or trailers used for agricultural purposes) from *the higher of KShs. 1,500 per tonne of load capacity per year or KShs. 2,400 per year* to *the higher of KShs. 3,000 per tonne of load capacity per year or KShs. 5,000 per year*.
- Advance tax in respect to saloons, station wagons, mini buses, buses and coaches from *the higher of KShs. 60 per passenger capacity per month or KShs. 2,400 per year* to *the higher of KShs. 100 per passenger capacity per month or KShs. 5,000 per year*.

CAPITAL GAINS TAX (CGT) – EFFECTIVE 1ST JULY 2023

The Bill proposes to expand incomes subject to CGT to encompass the following:

a) the whole of the gains which accrued to a company, an individual or partnership on or after 1st January 2015, on the transfer of property situated in Kenya; or

b) gains derived from the alienation of shares or comparable interests, if, at any time during the year preceding the alienation, the shares or comparable interests derived more than 20% of their value from immovable property situated in Kenya; or

c) gains, other than those to which subparagraph (a) applies, derived from the alienation of shares of a resident company if the alienator, at any time during the year preceding such alienation, held at least twenty per cent of the capital of that company:

   Provided that, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least 20% in the underlying ownership of the property.

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.

The Bill proposes to change the due date for CGT from the date of the transfer to the earlier of:

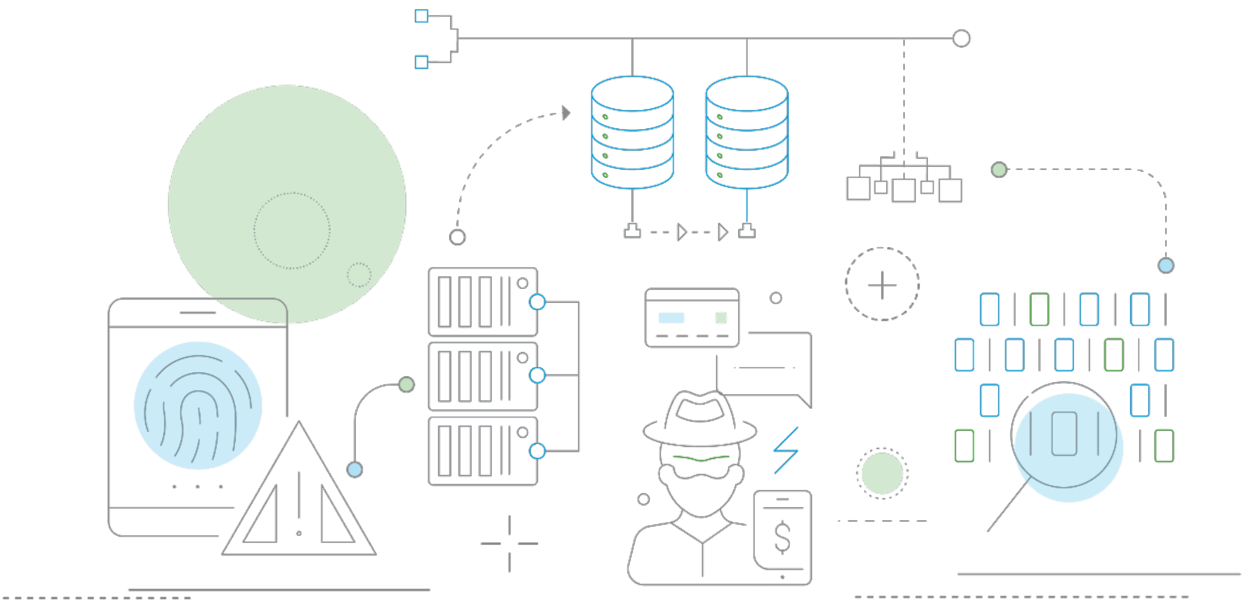
a) receipt of the full purchase price by the vendor; or

b) registration of the transfer.

The Bill seeks to provide further guidance on the exemptions for CGT on internal restructuring where it would now be a requirement for the group to have existed for a period of at least two years for any restructuring to be exempted from CGT. The Income Tax Act currently doesn't have a restriction on the timeframe.

MISCELLANEOUS CHANGES

- To ensure gender neutrality, the Bill proposes to amend Section 31(b)(c) by deleting the word "his" and "he" as well as "his employer"; and substituting it with "the individuals" and "the individual's employer" (effective 1st July 2023).
- The Bill proposes to include mortgage refinance companies licenced under the CBK Act as financial institutions (effective 1st January 2024).



INDIRECT TAXES

VALUE ADDED TAX ACT, 2013 (EFFECTIVE 1ST JULY 2023)

GENERAL PROVISIONS

Exportation of taxable services

In line with the Organisation for Economic Cooperation and Development (OECD) destination principle, the Bill proposes to exempt the exportation of taxable services. This is a welcome proposal as it will promote exportation of services from Kenya as the service industry is currently less competitive due to the charging of VAT.

Currently, exportation of business process outsourcing services (BPO) is zero-rated. If the Bill is passed, exportation of BPO services will be exempt as will be the case with all other exported services.

Transfer of business as a going concern (ToGC)

The Bill proposes to exempt the transfer of business as a going concern. Currently, such transfers are chargeable at 16% but the Act does not define the term ToGC.

Input VAT deductibility

The Bill seeks to increase the requirements for a registered person to claim input VAT on purchases by mandating that the person must not only have a valid tax invoice, but must also ensure that the supplier has declared the sale invoice in the return. This measure is aimed at improving compliance under the TIMS regime and ensuring there is no VAT leakage.

Place of supply rules for services

The Bill proposes to deem supplies made by non-resident persons to resident persons whether registered or unregistered as made in Kenya. This means that the onus to register and account for VAT now shifts to the non-resident supplier. Currently, the onus to account for VAT on imported services made to any Kenyan resident person is on the Kenyan resident.

This creates a double-taxation risk as the reverse VAT provision will still apply to the Kenyan resident recipient of the supply of imported services.

Insurance compensation

The Bill has proposed a new subsection under Section 17 of the VAT Act where a bona fide owner of taxable supplies, who has already deducted input tax, is compensated for the loss of the taxable supplies, the compensation shall be treated as a taxable supply whether it includes VAT or not. The compensation shall be declared and the VAT thereon remitted to the Commissioner.

A compensation excluding VAT would be an additional cost of 16% to the taxpayer. This creates ambiguity as insurance compensation by insurers is out of scope for VAT purposes thus the compensation is never inclusive of VAT.

Investment in manufacturing sector

The Bill proposes to revoke the VAT exemption on capital goods of KShs. 2 billion or more to promote investment in the manufacturing sector as determined by the Cabinet Secretary (CS). If passed, the CS will no longer have the power to grant such exemptions.

Digital Services

The Bill proposes all suppliers providing imported digital services over the internet, electronic network or through a digital market place will be required to register for VAT whether or not the taxable supplies meet the annual turnover threshold of KShs. 5 million.

Record Keeping

The Bill has proposed to allow business records to be kept anywhere in the world, not necessarily in Kenya. This is to accommodate foreign suppliers registered for VAT and digitization of records.

HEALTH SECTOR

- The Bill proposes to lower the cost of healthcare by availing vast exemptions to the sector. These include diagnostic tools, inputs for pharmaceutical manufacturers and their products, ophthalmic instruments, appliances and apparatuses.
- Hospital industry will have a positive impact as the Bill proposes goods for used construction and equipping of specialised hospitals with a minimum bed capacity of a hundred, would now be exempt.
- Currently, goods, inputs and raw materials imported or locally purchased by a human vaccine manufacturer under a special operating framework arrangement with the Government whose capital investment is at least KShs. 10 billion is exempt, subject to approval of the CS for the National Treasury and Health. However, the Bill proposes to restrict this exemption to services as opposed to goods, inputs and raw materials.
- Another key proposed change is extension of the current VAT exemption on importation of plant and machinery of Chapter 84 and 85 to include local purchases of the same by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products, upon the recommendation of the CS for Health.

VAT RATE CHANGES

Supplies	Proposed Rate	Current Rate
HEALTH SECTOR		
Anti-sera, other blood fractions and immunological products	16%	Exempt
Tariff 3003.90.90 – other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale	16%	Exempt
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health	Exempt	0%
Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc	16%	Exempt
Other medicaments, containing hormones or other products of heading No. 29.37 and containing antibiotics	Exempt	16%
Tariff code 3004.90.90 – other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale	16%	Exempt
Tariff code 3003.90.10 – infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale	16%	Exempt
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of one hundred, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption	Exempt	16%
Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption *This proposed change in rate will not affect services already approved by CS. Already approved services will be exempt until supplied in full.	16%	Exempt
CONSTRUCTION SECTOR		
Plant, machinery and equipment used in the construction of a plastics recycling plant	16%	Exempt
Taxable goods and 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 For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills	16%	Exempt

Supplies	Proposed Rate	Current Rate
ENERGY SECTOR		
Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)	16%	Exempt
Liquefied petroleum gas	Exempt	8%
Fuel (petrol, kerosene, and spirits)	16%	8%
AGRICULTURAL SECTOR		
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	Exempt	0%
Agricultural pest control products	Exempt	0%
Fertilizers of Chapter 31	Exempt	0%
Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved by the Cabinet Secretary responsible for matters relating to agriculture	Exempt	0%
All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs	Exempt	16%
Transportation of sugarcane from farms to milling factories	Exempt	0%
TRANSPORT SECTOR		
Inbound international sea freight offered by a registered person	0%	16%
OTHER		
Milk, specially prepared for infants	16%	Exempt

TARIFF NUMBERS AND DESCRIPTION CHANGES UNDER THE FIRST SCHEDULE

Current tariff No.	Current description	Proposed description	Proposed tariff No.
None	N/A	Bulk supply of Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale *Currently, only supplies the same in measured for retail is exempt	3003.41.00 3003.42.00, 3003.43.00, and 3003.49.00
3003.90.00	Other	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale and other medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale	3003.90.00
3005.90.10	White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes	White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes	3005.90.11, 3005.90.12, 3005.90.19
3002.11.00 *NE	Malaria diagnostic test kits	Malaria diagnostic test kits	3822.11.00
3002.20.00	Vaccines for human medicine	Vaccines for human medicine	3002.41.00
3002.30.00	Vaccines for veterinary medicine	Vaccines for veterinary medicine	3002.42.00

Current tariff No.	Current description	Proposed description	Proposed tariff No.
3003.39.00	Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale	Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale	3003.39.00
3004.20.00	Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale	Other medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale	3004.20.00
3004.32.00	Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale	Other medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff	3004.32.00
3006.20.00	Blood-grouping reagents	Blood-grouping reagents	3822.13.00

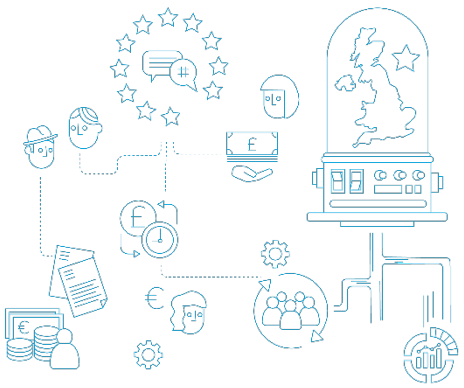
Current tariff No.	Current description	Proposed description	Proposed tariff No.
3006.60.00	Chemical contraceptive preparations based on hormones or spermicides	Chemical contraceptive preparations based on hormones or on other products of heading 29.37 or spermicides	3006.60.00
9021.50.00	Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories	Pacemakers for stimulating heart muscles, excluding parts and accessories	9021.50.00
N/A	49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801	49. All goods and parts thereof of chapter 88	N/A
N/A	71. Perforated PE film 15-22 gsm of tariff number 3921.90.00	71. Printed and unprinted Perforated PE film of other plastics 15-22 gsm of tariff numbers 3921.90.10 and 3921.90.90	N/A
N/A	119. Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health	119. Diagnostic kits or laboratory reagents and their certified reference materials of heading 3822 upon approval by the Cabinet Secretary responsible for matters relating to health	N/A
N/A	120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health	120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, and other apparatus, Instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health	N/A
N/A	122. Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet	122. Other instruments and appliances, used in dental sciences of tariff 9018.49.00, Other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 upon	N/A

	Secretary responsible for matters relating to health	approval by the Cabinet Secretary responsible for matters relating to health	
N/A	125. Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health	125. Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health	N/A
N/A	128. Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health	128. Discs, tapes, solid-state non-volatile storage devices, "smartcards" and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health	N/A
N/A	129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health	129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health	N/A

**NE- tariff code does not exist in the EAC CET*

The Bill proposes to rectify the following errors:

- Typographical correction to (Paragraph 20 of part A of the First Schedule) VAT exemption on fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307.
- Deleting the exemption of goods under tariff code 0402.29.10 as this code does not exist under the East African Community Common External Tariff.
- Deletion of the exemption on "*The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight: Provided that this paragraph shall, subject to paragraph 20 of the Second Schedule, be suspended for six months from the date of assent.*" as it is zero-rated. The Bill also proposes to correct the duplication of the same under zero-rating by deleting Paragraph 20 leaving Paragraph 22 as the only applicable zero-rating provision for the above.



EXCISE DUTY ACT, 2015 – EFFECTIVE 1ST JULY 2023

DELETION OF INFLATION ADJUSTMENT

- The Bill proposes to repeal Section 10 of the Excise Duty Act which empowers the Commissioner to adjust the excise duty rate on excisable goods.
- Currently, the Commissioner is empowered by Section 10 of the Excise Duty Act to adjust the specific excise duty rates on excisable goods on 1st October of every year to account for inflation.
- If enacted, the Commissioner will no longer be able to adjust the excise duty rates on excisable goods.
- This is a welcome proposal as it will create stability in the excise duty rates on goods listed in Part I of the First Schedule to the Act.

EXCISE DUTY ON FEES CHARGED BY DIGITAL LENDERS

- The Bill proposes to replace the word "fees" with the phrase "any amount charged in respect of lending".
- Currently, fees charged by digital lenders are subject to excise duty at 20% as per Paragraph 6 of Part II of the First Schedule to the Excise Duty Act. Whereas the phrase "other fees" is defined as excluding interest, the word "fees" is not defined thus ambiguous.
- If enacted, digital lenders will be required to charge excise duty on all amounts charged to clients (including interest) with respect to lending. This may lead to an increase in the cost of borrowing from digital lenders.

WIDER DEFINITION OF "OTHER FEES" CHARGED BY FINANCIAL INSTITUTIONS

- The Bill proposes to delete the phrase "relating to their licensed activities". If enacted, excise duty will be chargeable on other fees charged by financial institutions for activities that do not require regulatory licensing.
- Currently, excise duty on other fees charged by financial institutions at a rate of 20%.
- The Excise Duty Act currently defines the term "other fees" as "*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 any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder*".
- If enacted, fees charged by financial institutions on activities that do not require a licence will be subject to excise duty at 20%.

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

- The Bill proposes to amend Section 20(5) of the Excise Duty Act to require the Commissioner (in instances where it issues a notice of rectification) to grant a taxpayer (whose excise licence has been suspended) at least 14 days from the date it receives the notice to complete the rectification of the deficiencies that resulted in the suspension of the licence.
- Currently, a person whose excise licence is suspended may appeal against the notice of suspension under Section 20(4) of the Excise Duty Act. The Commissioner may revoke the suspension, cancel the licence or issue the taxpayer with a written notice specifying:
  - i. the actions required to remedy the deficiencies that led to the suspension; and
  - ii. the time within which these actions must be completed.
- As a result of the above, the Commissioner currently has absolute discretion on the amount of time they can give a taxpayer to rectify the deficiency.
- If enacted, this amendment will be a welcome move as it will ensure that all taxpayers issued with a notice of rectification have at least 14 days to remedy deficiencies.

DAILY REMITTANCE OF EXCISE DUTY ON BETTING AND GAMING

- The Bill proposes to introduce a new provision to the Excise Duty Act requiring betting and gaming service providers to remit excise duty before the end of the following day.

DAILY REMITTANCE OF EXCISE DUTY ON BETTING AND GAMING (CONTINUED)

- The Bill further proposes to empower the Commissioner to place taxpayers in other sectors under this daily remittance regime.
- Currently, all licensed persons are required under Section 36(1) and (2) to remit excise duty by the twentieth day of the following month.
- If enacted, betting companies will have exactly 24 hours from the end of a day to remit the excise duty for the day.
- This is a concerning proposal as the Commissioner may require other industries to remit excise duty on a daily basis which may present administrative challenges.

CHANGE TO DEFINITION OF "AMOUNT WAGERED OR STAKED"

- The Bill proposes to amend the definition of the phrase "amount wagered or staked" to include gaming transactions.
- Currently, Part III of the First Schedule to the Excise Duty Act defines the phrase "amount wagered or staked" as "*the amount of money placed by a person for an outcome in a betting transaction*" thus does not currently cover gaming transactions.
- If this proposed amendment is enacted, amounts staked on gaming will be subject to excise duty at 20%.

CHANGES TO EXCISE DUTY RATES AND INTRODUCTION OF NEW ITEMS

Goods	Proposed Rate	Current Rate
Imported fish	KShs. 100,000 per metric tonne or 20%, whichever is higher	N/A
Powdered juice	KShs. 25 per kg	N/A
Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer	KShs. 5 per kg	N/A
Human hair and other products of heading 6703	5%	N/A
Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704	5%	N/A
Artificial nails of tariff no. 3926.90.90	5%	N/A
Imported cement	10% of the value or KShs. 1.50 per kg, whichever is higher	N/A
Imported furniture excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	30%	N/A
Imported cellular phones *Proposed to be reclassified from excisable services to excisable goods	10%	10%
Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	15%	N/A
Imported Test liner of heading 4805.24.00	25%	N/A
Imported fluting medium of heading 4805.19.00	25%	N/A
Imported articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%	10%
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	20%	20%
Sugar confectionary of heading 17.04	KShs. 42.91 per kg	KShs. 42.91 per kg
Imported 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	KShs. 257.55 per kg	KShs. 257.55 per kg

Goods	Proposed Rate	Current Rate
Condensates per 1000l@ 20degC	N/A	KShs. 6,225

Services	Proposed Rate	Current Rate
Telephone and internet data services	**15%**	20%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	**15%**	20%
Excise duty on fees charged for money transfer services by cellular phone service providers or payment service provides licensed under the National Payment System Act, 2011 *fees charged by payment service providers under the NPS Act (other than cellular phone service providers) are currently not subject to excise duty	**15%**	12%
Fees charged by payment service providers licenced under the National Payment Systems Act, 2011 (other than cellular phone service providers)	**15%**	N/A
Excise duty on betting (on the amount wagered or staked)	**20%**	7.5%
Excise duty on gaming (on the amount wagered or staked)	**20%**	7.5%
Excise duty on the amount paid/charged to participate in a prize competition	**20%**	7.5%
Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries)	**20%**	7.5%
Fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions	**15%**	N/A

OFFENCES RELATING TO EXCISE STAMPS

- The Bill proposes to add a comprehensive list of excise offences to Section 28 of the Excise Duty Act. The proposed offences include:
  - i. Defacing or printing over excise stamps;
  - ii. Possession of unstamped excisable goods that are not exempted;
  - iii. Acquisition (or attempt) of excise stamps without the Commissioner's authority;
  - iv. Printing, counterfeiting or making excise stamps without the Commissioner's authority;
  - v. Possession or acquisition of stamps printed, made or acquired without the Commissioner's authority;
  - vi. Possession, conveyance, distribution, sale (or offers for sale) or trading in excisable goods without affixing excise stamps; and
  - vii. Possession, conveyance, distribution, sale (or offers for sale) or trading in excisable goods which have been affixed with counterfeit excise stamps.
- A taxpayer may be punished (upon conviction) to a fine not exceeding KShs. 5 million, imprisonment for a term not exceeding three years or both a fine and imprisonment.
- Currently, Section 40 of the Excise Duty Act vaguely provides that contravention of the provisions relating to excise stamps and markings constitutes an offence. However, the Bill proposes to repeal this provision thus Section 28 will be the governing provision.
- If enacted, this amendment will provide clarity as to what constitutes an excise stamp related offences.

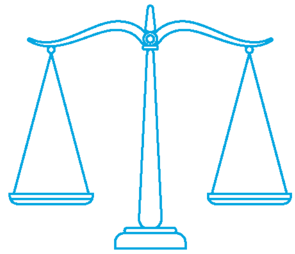
DEFINITION OF THE TERM "EXCISE CONTROL"

- The Bill proposes to correct an existing error in the definition of the term "excise control" by substituting reference to Section 23 with reference to Section 24 of the Excise Duty Act.
- The current definition of the term refers to the meaning set out in Section 23 of the Act (which deals with suspension of an excise licence) whereas Section 24 defines the term as goods stored in a licensed manufacturer's factory which are subject to the Commissioner's control.
- This is a welcome amendment as it will provide certainty as to definition of the term "excise control".

TAX PROCEDURES ACT, 2015

DEFINITION OF A TAX DECISION – EFFECTIVE 1ST JULY 2023

- The proposal seeks to exclude a refund decision from the definition of a tax decision and is also expanding the definition to include a demand for late payment interest. If this proposed amendment is passed, taxpayers dissatisfied by a refund decision will lodge an appeal to the TAT without lodging an objection. This is in line with Section 47 of the TPA (which covers tax refunds).
- Currently, the Tax Procedures Act defines a tax decision to include a refund decision and a demand for penalty only without including interest.



ENFORCEMENT OF INTERNATIONAL TAX AGREEMENTS – EFFECTIVE 1ST JULY 2023

- Multilateral agreements and treaties have been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes will take effect in the manner stipulated in such agreements or treaties.
- Further, the Bill proposes to introduce a new Section 32(A), which will empower the Commissioner to recover or collect taxes on behalf of a foreign tax authority pursuant to international agreements and treaties. The Foreign Commissioner should make such a request through a prescribed form accompanied by tax claim indicating:
  - the amount of tax due;
  - proof that the foreign tax authority issued the person with a tax claim;
  - whether liability for the amount is contested under the laws of the requesting party;
  - where liability for the amount is contested, whether the requesting party believes that the purpose of the dispute is to delay or frustrate the collection of the amount alleged to be due; and
  - whether there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets.
- Where the person who is alleged to be liable to pay the tax due admits liability, the foreign Commissioner may issue a notice requiring that person to pay the amount for which the person has admitted liability, on a date specified in the notice.
- Where the Commissioner recovers or collects the tax due to the requesting party, the Commissioner shall deposit the amount into a dedicated account in the Central Bank of Kenya after which the amount shall be remitted to an account specified by the requesting party.
- This proposal if enacted will be a good stepping-stone for Kenya entering into common reporting standard (CRS) regime pursuant to the signing and depositing the required instruments under the multilateral convention on mutual administrative assistance. The proposal also provides a clear framework on the implementation of the CRS.

REQUIREMENT FOR TRUSTEES TO MAINTAIN AND AVAIL RECORDS TO THE COMMISSIONER – EFFECTIVE 1ST JULY 2023

- Under the proposal, a trustee+ resident in Kenya who administers a trust registered in Kenya or outside Kenya shall maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not.
- If enacted into Law, this amendment will see more compliance checks on trustees on all incomes whether generated in Kenya or elsewhere.

REQUIREMENT TO MAINTAIN RECORDS THROUGH AN ELECTRONIC SYSTEM – EFFECTIVE 1ST SEPTEMBER 2023

- The proposed amendment empowers the Commissioner to establish an electronic system through which a taxpayer is required to issue tax invoices and maintain records of electronic tax invoices and information relating to stocks.
- However, the proposal excludes from this requirement emoluments, imports, investment allowances, interest and similar payments.
- The proposal also empowers the Commissioner to exempt a person from the above requirement through a Gazette notice.

REQUIREMENT TO MAINTAIN RECORDS THROUGH AN ELECTRONIC SYSTEM – EFFECTIVE 1ST SEPTEMBER 2023 (CONTINUED)

- This proposal aligns with the proposed amendment to Section 16 of Income Tax Act, which seeks to restrict the allowability of expenses to only invoices generated through the electronic system unless exempted by the Commissioner.

ABANDONMENT OF TAXES AND REMOVAL OF APPLICATION OF WAIVER OF PENALTY AND INTEREST - EFFECTIVE 1ST JULY 2023

- The proposed amendment seeks to delete Section 37 of the Tax Procedures Act, which grants the Commissioner powers to abandon recovery of taxes.
- The Bill further proposes to amend Section 89 of the Tax Procedures Act, to bar a taxpayer from making an application for remission of penalty and interest and approval of such an application by the Commissioner.

TAX AMNESTY - EFFECTIVE 1ST SEPTEMBER 2023

- Following the Voluntary Tax Disclosure Program (VTDP) introduced by the Finance Act, 2020 covering the 5 year period prior to 1st July 2020 (i.e. 1st July 2015 to 30th June 2020), the Bill proposes to refrain the Commissioner from collecting any penalties, interest, or tax debt where a person had paid all the principal taxes by 31st December 2022.
- The Bill further proposes to allow tax payers who were yet to settle all the principal taxes by 31st December 2022, to apply for amnesty of penalty and interest on the outstanding amounts and propose a payment plan. If this proposal is adopted, the waiver will only be applicable to penalties and interest on unpaid principal tax up to 31st December 2022 with the condition that such unpaid principal tax is paid by 30th June 2024.
- If this proposal is enacted, a full waiver of penalties and interest will be granted for all principal taxes paid by 31st December 2022.

SECURITY ON PROPERTY FOR UNPAID TAXES - EFFECTIVE 1ST JULY 2023

- The Bill seeks to require the Commissioner to notify the taxpayer and any other person who may have interest in the property within 14 days after registration of his notification to the Registrar that the property shall be the subject of a security of unpaid taxes.
- The Act currently requires the Commissioner to give such a notification to the taxpayer and any other person who may have interest in the property within 7 days from the date of notification to the Registrar.
- If this amendment is passed, taxpayers and affected persons (such as lenders and beneficiaries) will only be notified of the encumbrance after it has been registered.

COMMISSIONER'S INCREASED SCOPE FOR ISSUANCE OF AGENCY NOTICES - EFFECTIVE 1ST JULY 2023

- The proposed amendment seeks to repeal Section 42(14) which bars the Commissioner from issuing an agency notice unless 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.
- Instead, the Bill seeks to bar the Commissioner from issuing agency notices unless:
  - the taxpayer has defaulted in paying an instalment under Section 33(2) of the Tax Procedures Act;
  - the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;
  - the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;
  - the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or
  - the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.
- If this proposal is passed, the Commissioner will be empowered to issue an agency notice the day after the due date has lapsed when one files a self-assessment.
- This will increase the scope of circumstances under which the Commissioner may issue agency notices.

APPOINTMENT OF WITHHOLDING VALUE ADDED TAX AGENTS – EFFECTIVE 1ST JULY 2023

- The Bill proposes to amend Section 42(A) of the Tax Procedures Act, to limit the exemption from withholding VAT to only payments made for zero-rated supplies.
- Currently, this exemption applies to zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the commencement of the TPA is at least three billion.
- The proposal also seeks to change the remittance date of withholding VAT from the current timeline (by the 20th day of the month following the month in which the deduction is made) to within three days after the deduction is made.
- The proposed payment deadline will create an administrative burden for taxpayers from a compliance perspective.

APPOINTMENT OF RENTAL INCOME TAX AGENTS– EFFECTIVE 1ST JULY 2023

- The Bill proposes to confer power to the Commissioner to appoint and revoke appointment of rental income tax agents for the purpose of the collection and remittance of rental income tax to the Commissioner.

REFUND OF OVERPAID TAX– EFFECTIVE 1ST JULY 2023

- The Bill proposes to allow overpaid taxes to be utilized in offsetting both outstanding tax debts and future tax liabilities. Currently overpaid tax can only be utilized to offset future tax liabilities.
- In the current proposal, where a taxpayer makes an application for refund of overpaid taxes, the Commissioner will be required to refund the cash within 6 months from the date of ascertainment of the refund, failure to which the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities. Currently, the Act requires the Commissioner to refund overpaid taxes within two years from the date of application failure to which the amount attracts an interest of 1% per month on the refundable amount.
- Further, the Bill proposes to increase the timelines for the Commissioner to ascertain a refund application from the current 90 days to 120 days for refunds undergoing audits, failure to which such an application shall be deemed to have been ascertained and approved.
- We note that the proposed 120 day refund decision window contradicts the 90 day decision window currently in force and may create a dispute as to when a refund has been deemed to be allowed by lapse of time.

OBJECTION TO TAX DECISION– EFFECTIVE 1ST JULY 2023

- The Bill proposes to amend Section 51 (4) of the Tax Procedures Act to require the Commissioner to request a taxpayer to submit information within seven days after ascertaining that a notice of objection has not been validly lodged. Currently, the Act only requires the Commissioner to notify a taxpayer in writing on whether an objection has been validly lodged.
- In the current proposal, if a taxpayer fails to provide the information requested within 7 days, the Commissioner may make an objection decision within 60 days after the date the objection notice was lodged.
- However, the proposal does not provide any clarity as to whether the Commissioner is under an obligation to notify the taxpayer if their objection has been deemed valid once the missing information is provided.
- Further, the proposal exempts invalidly lodged objections from the 60 day decision timeline and resultant consequence.

INCREASE OF THE ALTERNATIVE DISPUTE RESOLUTION PERIOD – EFFECTIVE 1ST JULY 2023

- The Bill proposes to increase the period to pursue an out of court or tribunal settlement, from the current 90 days to 120 days.

RESTRICTION TO ADD NEW GROUNDS IN APPEALS TO THE TRIBUNAL, HIGH COURT OR COURT OF APPEAL– EFFECTIVE 1ST JULY 2023

- The Bill proposes to restrict taxpayers from introducing new grounds of objection in relation to appealable decisions and that the taxpayers can only rely on grounds stated in the objection to which the decision relates.
- If enacted into law, taxpayers will be required to present strong and valid objection grounds at the objection stage since they will not be allowed to introduce new grounds at the appeals stage.

- This is unfair to taxpayers as it limits their right to dispute issues arising from the objection decision which were not included in the assessment. This would violate a taxpayer's right to fair administrative action and fair hearing.

ESTABLISHMENT OF DATA MANAGEMENT AND REPORTING SYSTEM FOR PRODUCTION OF RECORDS – EFFECTIVE 1ST SEPTEMBER 2023

- The Bill proposes to introduce a new Section 59A which empowers the Commissioner to establish a data management and reporting system (DMRS) for the submission of electronic documents including transactional data. The Commissioner will be required to notify in writing the persons required to submit electronic documents through the DMRS.
- For the purposes of this proposed section, electronic documents include electronic invoice returns:
  - of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;
  - for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;
  - for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;
  - for periodical or lump sum payments in respect of a royalty; or
  - for such other commercial or financial transaction as may be designated by the Commissioner.
- Further, the Bill proposes to define **transactional data** to include:
  - the names and addresses of each person to whom a payment was made;
  - where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;
  - where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and
  - such other particulars as the Commissioner may specify.
- This system is aimed at targeting sectors at high risk of non-compliance.

INCREASE IN TAX SHORTFALL PENALTY – EFFECTIVE 1ST JULY 2023

- The Bill proposes to increase the tax shortfall penalty from the current 75% to 200% of the tax shortfall where such shortfall arose from a deliberate omission.
- This proposal seeks to align the shortfall penalty with the penalty charged on fraud in relation to tax provided under Section 97 of the Tax Procedures Act.

PENALTY FOR FAILING TO COMPLY WITH ELECTRONIC TAX SYSTEM – EFFECTIVE 1ST SEPTEMBER 2023

- The Bill proposes to increase the penalty for failure to comply with electronic tax system from the current KShs. 100,000 to KShs. 1,000,000 or an amount equal to 10 times the amount of the tax due, whichever is the higher.
- In case of non-compliance, comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the non-compliance before charging the penalty.
- The provision however does not provide timelines during which the taxpayer should respond to the Commissioner before the penalty is charged. Currently, the Act, provides that a tax payer should furnish the Commissioner with reasons for non-compliance within 14 days.

PENALTY FOR IMPERSONATING AN AUTHORIZED OFFICER – EFFECTIVE 1ST JULY 2023

- The Bill proposes to impose imprisonment for a term not exceeding three years to a person convicted of an offence of impersonating an authorized officer.

CONCURRENT CIVIL AND CRIMINAL PROCEEDINGS– EFFECTIVE 1ST JULY 2023

- The Bill proposes to introduce a new Section 108(A) to the Tax Procedures Act, which if enacted will bar any issuance of stay orders, prohibition or delay of criminal or civil cases on grounds of ongoing tax matters.
- The prohibition of stay of concurrent proceedings may lead to conflicting judgments.

TAX APPEALS TRIBUNAL ACT, 2013 (EFFECTIVE 1ST JULY 2023)

REQUIREMENT FOR DEPOSIT OF 20% OF THE DISPUTED TAX ON APPEAL TO HIGH COURT

- The Bill proposes to add a proviso to Section 32(1) of the Tax Appeals Tribunal Act that will require a taxpayer to deposit 20% of the disputed tax or an equivalent security with the Commissioner before filing an appeal to the High Court.
- The Bill further proposes, if the High Court decides in favor of the taxpayer, the Commissioner will be required to credit the deposit/security to the taxpayer within 30 days from the date of determination of the Appeal by the High Court.
- Currently, taxpayers dissatisfied with a decision of the Tax Appeals Tribunal are not required to deposit any funds with the Commissioner when filing an appeal to the High Court.
- If enacted, this proposed amendment will present the following challenges:
  - i. This proposal undermines the taxpayer's Constitution right to appeal to the High Court as only those with such available cash will be able to appeal;
  - ii. The Commissioner may limit the acceptable securities;
  - iii. The phrase "credit that amount or security to that party" may be interpreted as permitting the Commissioner to issue the taxpayer with tax credits or cash. If interpreted as a tax credit, this may present cash flow challenges and undesired increments to a taxpayer's tax credits; and
  - iv. With the current tax refund delay trend, there is a high likelihood of significant delays in refund of these deposit should the taxpayer be successful at the High Court.

DOCUMENTS THAT CONSTITUTE AN APPEAL TO THE TAX APPEALS TRIBUNAL

- The Bill proposes to amend the components of an appeal to the Tribunal as follows:
  - i. replacing the term "tax decision" with "appealable decision" to ensure harmony with the Tax Procedures Act; and
  - ii. listing supporting documents as an integral part of an appeal.
- An appealable decision is an objection decision and any other decision made under a tax law other than a tax decision or a decision made in the course of making a tax decision.
- Currently, Section 13(2) of the Tax Appeals Tribunal Act requires that an appeal be comprised of a memorandum of appeal, statement of facts and tax decision.
- Whereas taxpayers ordinarily file supporting documents as part of their appeal, there is no formal requirement for inclusion of the supporting documents. Some taxpayers submit supporting documentation to the Tribunal through witness statements.
- If enacted, an appeal lacking supporting documents may be deemed to be defective thus may be struck out.

MISCELLANEOUS AMENDMENTS

MISCELLANEOUS FEES AND LEVIES ACT, 2016

IMPORT DECLARATION FEES RATES – EFFECTIVE 1^{ST} JULY 2023

- The Bill proposes amendment to reduce the rate of IDF from 3.5% to 2.5% of customs value.
- The Bill proposes to scrap the preferential IDF rate of 1.5% on:
  - Raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary responsible for matters relating to industry; and
  - Input for construction of houses under affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.

- The Bill proposes the removal of IDF preferential rate of 1.5% of customs value of goods imported under East Africa Community Duty Remission Scheme. The proposal aims to charge IDF at 2.5%.
- The objective of this is to have a unified rate for IDF and to boost trade.

INTRODUCTION OF EXPORT AND INVESTMENTS PROMOTION LEVY – EFFECTIVE 1^{ST} JULY 2023

- The Bill proposes to introduce a new levy; the Export and Investments Promotion Levy.
- The Levy shall be charged at the rate specified in the Third Schedule introduced by the Bill as follows:

Tariff No.	Tariff Description	Proposed Rate
2523.10.00	Cement Clinkers	10% of the customs value
7207.11.00	Semi-finished products of iron or non-alloy steel containing, by weight,<0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness	10% of the customs value
7213.91.10	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm	10% of the customs value
7213.91.90	Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other	10% of the customs value
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10% of the customs value
4804.21.00	Sack kraft paper; Unbleached	10% of the customs value
4804.31.00	Other kraft paper and paperboard weighing 150 g/m2 or less: Unbleached	10% of the customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more	10% of the customs value
4819.40.00	Other sacks and bags, including cones	10% of the customs value

- It will be interesting to see the implementation of this given that Third Schedule's effective date is 1^{st} September 2023 while the Levy's effective date is on 1^{st} July 2023.
- The Levy shall be paid by importers at the time of importing goods into the country from outside the East African Community (EAC).

Tariff No	Tariff Description	Current Rate	Proposed Rate
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg, when simply dried, 10 kg when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c) to Chapter 41	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue)	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4101.50.00	Whole hides and skins, of weight exceeding 16 kg	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4101.90.00	Other, including butts, bends and bellies	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4301.80.00	Other raw furskins, whole, with or without head, tail or paw	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4301.90.00	Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled	80% or USD 0.52 per kg.	50% or USD 0.32 whichever is higher

- The Levy is aimed at providing funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.
- The Levy shall not be charged on goods originating from within East Africa Community Partner States that meet the EAC rules of origin.
- The funds collected from the Levy shall be paid into a fund established and managed in accordance with the Public Finance Management Act, 2012.

RAILWAY DEVELOPMENT LEVY RATES – EFFECTIVE 1ST JULY 2023

- The Bill proposes to reduce the rate of RDL from 2% to 1.5% of customs value.
- It further seeks to scrap the preferential rate of 1.5% of RDL on:
  - Raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary responsible for matters relating to industry; and
  - Input for construction of houses under affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.
- The objective of this is to have a unified rate for RDL and to boost trade.

EXPORT LEVY RATES – EFFECTIVE 1ST JULY 2023

The Bill seeks to adjust export levy rates as shown below:

- From the proposals, the following items will not be subject to export levy:

Tariff No	Tariff Description
8105.00.00	Bismuth and articles thereof including waste and scrap
8109.30.00	Waste and scrap of zirconium
4101.40.00	Hides and skins of equine animals

- From the proposals, the following tariffs will be substituted:

Tariff Description	Current Tariff No.	Proposed Tariff No.
Tin waste and scrap	8002.00.10	8002.00.00
Waste and scrap cadmium	8107.30.00	8112.61.00
Waste and scrap of antimony	8110.20.20	8110.20.00

- From the proposals, the following new tariffs will be added:

Tariff No	Tariff Description	Proposed Rate
8106.10.00	Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight	20% of the customs value
8106.90.00	Other bismuth and articles thereof including waste and scrap	20% of the customs value
8105	Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap	20% of the customs value
8109.31.00	Waste and scrap of zirconium containing less than 1 part hafnium to 500 parts zirconium by weight	20% of the customs value
8109.39.00	Other waste and scrap	20% of the customs value
1703	Molasses resulting from the extraction or refining of sugar	20% of the customs value

GOODS EXEMPT FROM IDF WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS – EFFECTIVE 1ST JULY 2023

- The Bill proposes to exempt from IDF goods for official use by diplomatic and consular missions, the United Nations and its agencies, institutions or organizations exempted under the Privileges and Immunities Act. Currently only gifts and supplies are exempt.
- The Bill proposes to expand the items exempt from IDF on import of aircraft to include all goods and parts thereof of Chapter 88(Aircrafts, Space crafts and parts thereof).
- The Bill proposes to expand items exempt from IDF to include all goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.
- It proposes to include the following new items in the list of exemption:

GOODS EXEMPT FROM IDF WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS – EFFECTIVE 1ST JULY 2023 (CONTINUED)

- Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and
- Liquefied petroleum gas.

GOODS EXEMPT FROM RDL WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS – EFFECTIVE 1ST JULY 2023

- The Bill proposes to exempt from RDL goods for official use by diplomatic and consular missions, the United Nations and its agencies, institutions or organizations exempt under the Privileges and Immunities Act.
- It proposes to expand items exempt from RDL to include all goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.
- It proposes to exempt the following items from RDL:
  - Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;
  - Liquefied petroleum gas; and
  - All goods and parts thereof of Chapter 88 (aircrafts, space crafts and pars thereof).

BETTING, GAMING AND LOTTERIES ACT

APPLICATION OF TAX PROCEDURES ACT, 2015 ON BETTING, GAMING AND LOTTERIES TAXES ADMINISTRATION – EFFECTIVE 1ST JULY 2023

- The Bill proposes to amend the Betting Gaming and Lotteries Act to enable collection of betting, gaming and lotteries taxes in accordance with provisions of Tax Procedures Act, 2015 with regard to collection, recovery, refunds of tax, penalties and interests.

KENYA ROADS BOARD ACT, 1999

COLLATION AND SUBMITION OF ANNUAL ROADS PROGRAM – EFFECTIVE 1ST JULY 2023

- The Bill proposes to have the Board collate and submit an annual roads program for each financial year together with estimates of revenue and expenditure of the Board.

KENYA REVENUE AUTHORITY ACT – EFFECTIVE 1ST JULY 2023

EXPANSION OF MANDATE OF CAPACITY BUILDING AND TRAINING – EFFECTIVE 1ST JULY 2023

- The Bill seeks to make available capacity building and training offered by the Authority to its staff, the general public and other jurisdictions.
- This seeks to align the Act to the training and capacity building policies of the Authority.

EMPLOYMENT ACT, 2007

INTRODUCTION OF NATIONAL HOUSING DEVELOPMENT FUND – EFFECTIVE 1ST JULY 2023

- The proposal requires an employer and employee to each contribute 3% of employee's basic salary provided the combined contributions shall not exceed KShs. 5,000 a month.
- The benefits to the employee shall accrue as follows:
  - 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
  - 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:
    - a transfer of their contributions to a retirement benefits scheme or pension scheme registered with the Retirement Benefits Authority;

INTRODUCTION OF NATIONAL HOUSING DEVELOPMENT FUND – EFFECTIVE 1ST JULY 2023 (CONTINUED)

- a transfer of their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund;
- a transfer of their contributions to their spouse or dependent children; or
- to receive their contributions in cash: 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.

- All contributions shall get a return based on the return on the Fund.
- 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.
- 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.
- This change shall become effective on the date the Regulations made by the Cabinet Secretary comes into operation.
- This amendment is aimed to support the affordable housing government agenda.

UNCLAIMED FINANCIAL ASSETS ACT, 2011

CLAIMS ON ASSETS – EFFECTIVE 1ST JULY 2023

- The Bill proposes to provide for appointment of any other person by the claimant / beneficiary to receive approved proceeds from the Authority.

STATUTORY INSTRUMENTS ACT, 2013

REVIEW AND EXPIRY OF STATUTORY INSTRUMENTS – EFFECTIVE 1ST JULY 2023

- The Bill proposes to eliminate the mandatory requirements for the review of subsidiary legislation and expiration of statutory instruments.

THE RETIREMENT BENEFITS (DEPUTY PRESIDENTAND DESIGNATED STATE OFFICERS) ACT, 2015

AMENDEMENT TO DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS PRIVILEDGES – EFFECTIVE 1ST JULY 2023

- The Bill proposes to amend the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to repeal Section 4 which was declared unconstitutional by the Court. Additionally, the Bill makes provision for payment of pension to entitled persons who hold an appointive or elective position in Government.

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